

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE  
IN RE: Traut Law Group

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
Respondent: Traut Law Group	
JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General  1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 Phone: (303) 866-5134 Fax: (303) 866-4916 Email: Andrew.McCallin@state.co.us	
<b>ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH TRAUT LAW GROUP</b>	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General and Respondent Traut Law Group. This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondent for the conduct described below.

**I. PARTIES**

1. John W. Suthers is the duly elected Attorney General for the State of Colorado ("Attorney General") and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act ("CCPA"), §§ 6-1-101, *et seq.*, C.R.S. (2008).

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2. Respondent Traut Law Group is a California Corporation with its principal place of business at 200 W. Santa Ana Blvd. Ste 990 Santa Ana, CA 92701. The agent for service of process is Eric V. Traut. Traut Law Group is not registered with the Colorado Secretary of State as a foreign entity, authorized to do business in the State of Colorado. Respondent, including but not limited to employees, independent contractors, brokers, salespersons and/or agents of Traut Law Group have offered to negotiate or originate loan modifications for Colorado consumers.

**II. FACTUAL BACKGROUND**

3. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the advertising practices of Respondent.

4. The Attorney General contends that Respondent sent misleading and deceptive direct mail solicitations to Colorado consumers.

**A. Traut Law Group Direct Mail Solicitation Appears To Come From Someone Other Than Respondent.**

5. Traut Law Group's direct mail solicitation, a copy of which is attached hereto as Exhibit A, purports to be an official "Eligibility Notice." The top of the direct mail solicitation contains the words "FORM 892 ELIGIBILITY NOTICE" near the name of the consumer's lender. The solicitation assigns a disbursement code and the recipient's eligibility area. (*See Ex. A.*)

6. The name of the consumer's lender appears in large font in all capital letters in the upper left hand corner of and at various other places throughout the solicitation. While the

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name of the consumer's lender appears in all capital letters two (2) times in the solicitation, the only indication that this "Eligibility Notice" is coming from the Traut Law Group appears in a footnote in small font at the bottom of the solicitation. (*Id.*) Respondent does not indicate Traut Law Group's company address anywhere on the direct mail solicitation.

7. The Outside of the "Eligibility Notice" contains the phrase "Stimulus package Information Enclosed" above the recipient's address. (*Id.*) The solicitation, however, contains no information on any formal "Stimulus Package". The solicitation is simply an offer to modify the recipient's loan.

8. Respondent does not have the permission of the consumers' lenders to use the lenders' names in its advertising. The Attorney General contends that Traut Law Group's direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it appears to be an official notice from the consumer's lender.

9. The Attorney General contends that the Traut Law Group's direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it appears to be an official notice from the consumer's lender containing information on a formal "Stimulus Package" when it does not.

**B. Traut Law Group's Direct Mail Solicitation Contains a Misleading Payment Rate and Does Not Comply With Regulation Z.**

10. Traut Law Group's solicitation claims that the recipient's mortgage loan "may be eligible to be **RESTRUCTURED** to a 5, 10, or 30 yr. fixed rate mortgage with a **payment**

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of only \$568.75 a month” on a loan amount of \$195,000. The solicitation also promotes fixed interest rates as low as 3.5%. (*Id.*)

11. The monthly principal and interest payment for a \$195,000 loan at a 30-year fixed interest rate at 3.5% is \$875.63. The \$568.75 monthly payment advertised in the direct mail solicitation, however, is for an interest-only loan at an interest rate of 3.5%. Once the interest-only period expires, this monthly payment will increase to the fully-amortized payment.

12. The solicitation fails to disclose that the \$568.75 monthly payment: (1) is an interest-only payment; (2) will increase once the interest-only period expires; and (3) does not include taxes and insurance.

13. Additionally, despite the fact that the Traut Law Group’s direct mail solicitation advertises interest rates, it does not contain an Annual Percentage Rate (“APR”) in violation of Regulation Z, 12 C.F.R. § 226.24.

14. The Attorney General contends that the Traut Law Group’s direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it fails to disclose that the advertised monthly payment is an interest-only payment instead of a 30-year fully amortized payment and fails to state an APR.

**C. Traut Law Group’s Direct Mail Solicitation Improperly Offers to Modify the Recipient’s Loan.**

15. Respondent offers to modify the recipient’s loan when they state: “Based on public records, we have reviewed your property information and determined that you may be

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eligible for a loan modification. This offer to negotiate the current terms of your mortgage could allow you to **Reduce your monthly payments by 30% - 50%.**

16. The direct mail solicitation contains a footnote in very small print with the following statements:

Legal advertisement. Information obtained from public record sources and not by Countrywide Home Loans Inc. Traut Law Group is not sponsored by or affiliated with Countrywide Home Loans Inc and this solicitation is not authorized by Countrywide Home loans Inc. This is not a formal offer as eligibility depends on individual company information. No terms are implied and this is simply an offer for more information. This is not a government agency letter, nor should it be construed as such. This is not an offer for a loan.

(*Id.*)

17. The Attorney General contends that Traut Law Group's direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that Respondent offers to modify the recipient's mortgage loan in the text of the solicitation, but then attempt to disclaim that offer in a footnote. Persons cannot represent one thing in the text of an advertisement and then directly contradict that representation in a footnote in small print.

**D. Respondent's Agents Acted as Mortgage Brokers Without Proper Licenses.**

18. The Director of the Division of Real Estate has determined that "persons who directly or indirectly negotiate, originate *or offer or attempt to* negotiate or originate loan modifications for a borrower and for a commission or other thing of value are required to be licensed as mortgage brokers." (Ex. B, Division of Real Estate, Position Statement MB 1.5 –

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Loan Modifications, Nov. 19, 2008.) (Emphasis added.) Additionally, “persons who directly supervise individuals who negotiate, originate, *or offer or attempt to negotiate* or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.” (*Id.*) (Emphasis added.)

19. Through these direct mail solicitations, Respondent or his agents offered to negotiate or originate loan modifications for Colorado borrowers.

20. Respondent, however, does not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate.

21. As such, the Attorney General contends that Respondent and his agents offered to negotiate or originate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1)(z) and 12-61-903(1)(a), C.R.S. (2008).

**E. Summary**

22. The Attorney General contends that the above misrepresentations and omissions of material facts are misleading and deceptive, may have caused significant financial harm to Colorado consumers, and have the potential to continue.

23. The Attorney General contends that these advertising and sales practices violate the CCPA, including but not limited to §§ 6-1-105(1) (b), (c), (e), (u), (z), (uu), & (bbb) C.R.S. (2008).

**III. CONSIDERATION**

24. Respondent enters this Assurance as a compromise and settlement of the Attorney General’s allegations herein. This Assurance shall not be considered an admission

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of violation for any purpose. Respondent expressly denies liability under the CCPA and is entering into this Assurance to avoid further costs and litigation.

25. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondent arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

IV. ASSURANCES

26. Respondent will not target advertisements directly to Colorado consumers;

*respondent complied with the guidelines set*

27. The term "advertisements" includes all advertisements, marketing or promotional materials issued by Respondent, including but not limited to, newspaper and magazine advertisements, direct mail solicitations, flyers, brochures, emails, faxes, telemarketing, billboards, envelopes, and banner or pop-up advertising that is disseminated electronically.

28. Respondent shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* ("TILA"); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) ("UCCC"); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*

29. Respondent shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph.

30. Within ten (10) business days of executing this Assurance, Respondent will provide the Colorado Attorney General with the names, company names, addresses, telephone numbers, and email addresses of all persons who assisted it in creating and/or disseminating the Traut Law

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Group's direct mail solicitation attached as Exhibit A.

**V. ENFORCEMENT**

31. The obligations set forth in this Assurance are continuing under this Assurance.

32. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

33. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by a Respondent of this Assurance. In such event, Respondent agrees to waive any and all defenses and counterclaims they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

34. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

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35. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

36. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

37. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

38. The person who signs this Assurance in a representative capacity for Respondent warrants that he or she is duly authorized to do so. Respondent acknowledges that they have had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondent agrees and represent that they have read and understand this Assurance, that they accept the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondent and the Attorney General that are not stated in writing herein.

39. Respondent and their principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of any Respondent agree to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

- a) Appear for hearings, depositions or provide testimony in any form, including affidavits. All such testimony shall be truthful;

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- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

40. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondent Traut Law Group

Eric Traut  
Email: eric@trautfirm.com  
Phone: 714 835-7000  
Fax: \_\_\_\_\_

To The Attorney General at:

Andrew McCallin  
First Assistant Attorney General  
Antitrust, Tobacco, and Consumer Protection Unit  
Consumer Protection Section  
1525 Sherman Street – 7<sup>th</sup> Floor  
Denver, CO 80203  
Email: Andrew.McCallin@state.co.us  
Phone: (303) 866-5134  
Fax: (303) 866-4916

Dated: \_\_\_\_\_

RESPONDENT TRAUT LAW GROUP

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By:

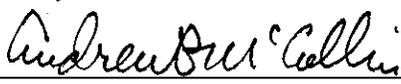


Eric V. Traut  
Print Name and Title      owner

Dated:

6/14/04

JOHN W. SUTHERS  
Attorney General

  
ANDREW MCCALLIN  
First Assistant Attorney General  
Consumer Protection Section

FORM 892 ELIGIBILITY NOTICE  
Eligibility Area: Aurora, CO

RE: COUNTRYWIDE HOME LOANS INC  
ORIGINAL LOAN AMOUNT:

STATUS:	Pending
DISBURSEMENT CODE:	
ASSIGNED:	Re-Negotiation Dept.

PROGRAM: 5, 10 and 30yr FIXED RATE MORTGAGE

Dear:

Your first mortgage, originally funded by COUNTRYWIDE HOME LOANS INC, may be eligible to be **RESTRUCTURED** to a 5, 10, or 30 yr. fixed rate mortgage with a payment of only \$568.75 a month.

Based on public records, we have reviewed your property information and determined that you may be eligible for a loan modification. This offer to negotiate the current terms of your mortgage could allow you to REDUCE your monthly payments by 30% - 50%. **NO APPRAISAL** and **NO EQUITY** are needed and late payments on your mortgage are not a problem.

**Rates as Low as 3.5%**

No other notices will be issued and no phone calls will be made to you.

Please call OUR LEGAL TEAM today to discuss how we can help you save your home.

**1-866-370-9640**

**You Don't have to Lose Your Home!**

Please have your disbursement code ready when you call.

**NOTICE EXPIRATION DATE: June 4, 2009**



Legal advertisement. Information obtained from public record sources and not by COUNTRYWIDE HOME LOANS INC. Trust Law Group is not sponsored by or affiliated with COUNTRYWIDE HOME LOANS INC and this solicitation is not authorized by COUNTRYWIDE HOME LOANS INC. This is not a formal offer as eligibility depends on individual company information. No terms are implied and this is simply an offer for more information. This is not a government agency letter, nor should it be construed as such. This is not an offer for a loan.

7/24/09 11:00

PRSR STD  
U.S. POSTAGE  
PAID  
SANTA ANA, CA  
PERMIT # 55

**PERSONAL AND CONFIDENTIAL**  
**Stimulus Package Information Enclosed**



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Aurora, CO 80013-6617