



THE LAW OFFICES OF STEVEN C. VONDRAN, P.C.

PHOENIX, ARIZONA / NEWPORT BEACH, CALIFORNIA

**(877) 276-5084**

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## **The Loan Modification Scam Dilemma in California**

The following is general legal information only and not intended to serve as legal advice or a substitute for legal advice. In addition, case law may further define or clarify the following, which may not necessarily be accurate or current. For specific questions, please contact an attorney.

Steven C. Vondran, Esq. is practicing real estate law, loan modifications and foreclosure prevention law and can be reached at [steve@vondranlaw.com](mailto:steve@vondranlaw.com) or (877) 276-5084 He is licensed to practice law in Arizona and California. Please note that the emails sent to my office or posted on my Blog are not confidential and create no attorney-client relationship. Therefore, please do not send personal or confidential information.

### **INTRODUCTION:**

My office has been inundated with calls lately from homeowners who have been lied to, cheated, deceived, scammed and otherwise abused by loan modification companies (many of whom do not possess a real estate license). These companies often hold themselves out as "loan modification specialists" or "loan modification experts" (although it is usually unclear how such entities and individuals became specialists or experts). In addition, the latest flavor seems to be the "attorney-backed" or "attorney-based" loan modification scam where a company will hold itself out as having an in-house attorney or outside counsel, when in fact there either (a) is no such attorney at all or (b) there is an outside attorney who does nothing more than collect money from California homeowners who have received a notice of default (this activity basically results in a lawyer or law firm essentially aiding and abetting a company, which is often times not compliant with DRE rules and regulations, skirt around the California Foreclosure Consultant law (which prevents non-lawyers, and other exempt entities, from collecting an advance fee from a California property owner who has received a notice of default).

My office has been working hard to obtain loan modification refunds and money damages where applicable for California homeowners who have been victimized, deceived, misled, or otherwise taken advantage of by a loan modification company or "attorney-backed" scam.

In some instances we find ourselves citing the following applicable statutes in an attempt to educate the would be defendant as to the legal requirements that they blatantly refuse to comply with. Often times the non-broker or non-advance fee agreement company will be in complete denial or is ignorant of legal requirements.

The following are a few California state laws that brokers wishing to perform loan modifications should be aware of. If you are a California broker seeking to legally and ethically set up a loan modification company, contact me to discuss your advance fee agreement and other requirements. You can get more information about a California advance fee agreement at [www.AdvanceFeeContract.com](http://www.AdvanceFeeContract.com) or call me at (877) 276-5084.

## **CALIFORNIA LAW IMPACTING LOAN MODIFICATION COMPANIES**

### **A. Loan modification marketing, soliciting, and negotiation services in California is a licensed activity requiring a real estate broker's license pursuant to Cal. Bus. & Prof. Code § 10131.**

A real estate broker is any person who solicits borrowers for the purpose of negotiating a loan that is secured by real property. Cal. Bus. & Prof. Code § 10131(d). The California Department of Real Estate recently stated that "unless otherwise exempt, a real estate license is required to **solicit, market, or provide loan modification, short sale and other loss mitigation services.**" See California Dept. of Real Estate "*Mortgage Loan Bulletin*" Fall 2008. See also Cal. Bus. & Prof. Code §§ 10131 & 10015.

*Many companies that we send legal demand letters to refuse to recognize that loan modifications is considered to be "negotiating a loan" (as set forth in state statutes) and thus a broker license and broker supervision is required.*

### **B. Brokers who accept advance fees must have an advance fee agreement (and verified accounting format) that has received a "Letter of Non-Objection" from the California Department of Real Estate pursuant to Cal. Admin. Code Title 10 § 2970.**

An "advanced fee" is defined as "a fee claimed, demanded, charged, received, collected or contracted from a principal...to negotiate loans." See Cal. Bus. & Prof. Code § 10026. A person or corporation "who proposes to collect an advance fee as defined in Section 10026 shall submit to the Commissioner...all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee." See Cal. Admin. Code Title 10 § 2970.

Advanced fees are required to be deposited in to a client trust account and are subject to strict accounting and recording procedures. See Cal. Admin. Code Title 10 § 2972.

*Many of these unlicensed companies that we are dealing with seem to believe that collecting money in advance of services, while offering a 100% money-back guarantee, allows them to avoid the advance fee agreement requirements. This is simply not the case. What's more, even so, we find that these companies fail to return any money as the agreed to do in their contracts and on their websites, out of cavalier defiance of the rights of the Client. The above referenced statutes are clear. When will companies wise up and start complying. The DRE has even created a FREE advance fee agreement that in most cases they will expedite approval of for the Broker that wishes to legally engage in the loan modification business in a manner that complies with law and is fair to the consumer. Why not just comply?*

**C. All advertising and marketing materials must have been pre-approved for use by the Commissioner of the California Department of Real Estate.**

In addition, "any person using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication. See Cal. Bus. & Prof. Code § 10085.

Typically, this violation will accompany all of the others. The non-compliant company generally refuses to look up the rules or follow the rules.

Where these companies defraud or deceive my Clients, we use the California law to compel them into settlement, or else seek to file an injunction to enjoin them from any future improper and illegal loan modification business and seek a full refund and any money damages that may be applicable.

## **ATTORNEY-BASED / ATTORNEY-BACKED**

Here is a previous blog I have written about this topic.

Here are a couple of issues I think are worth exploring. The following is general legal information only and just the opinion of the author, Steve Vondran Attorney.

### **I. First of all, what exactly does *ATTORNEY BACKED OR ATTORNEY BASED* mean?**

HAS THERE EVER BEEN A COMPANY (PRIOR TO THIS FINANCIAL CRISIS) THAT HELD THEMSELVES OUT AS BEING *ATTORNEY BACKED OR ATTORNEY BASED*? Does this term suggest that there is an in-house attorney working on every loan modification file? What I have been hearing is that it really means that the loan modification company either passes through its files to an attorney who does the work and then pays the loan modification company for the "lead." Another answer I have heard is that the loan modification may send one or two files every now and then to an attorney to conduct a forensic loan audit, but that the attorney does not work for the loan mod company, nor does it work on every file. If true, it would seem the loan modification company is using false and misleading advertising to get clients. The Clients believe that an attorney is working on the file when in fact that is largely not the case.

### **II. Is the loan modification company actually a law firm?**

As mentioned above, the loan modification company that holds itself out as being *ATTORNEY BACKED OR ATTORNEY BASED* is not really a law-firm. Rather, it appears that they want you to believe that your loan modification is in the hands of an attorney which may or may not be the case.

### **III. Is a loan modification that holds itself out as *ATTORNEY BACKED* or *ATTORNEY BASED* company practicing law? (i.e. engaged in the unauthorized practice of law)?**

It does not appear that act of performing loan modifications on behalf of borrowers and homeowners is being construed as the practice of law. In California, the California Department of Real Estate allows real estate brokers to engage in loan modifications. If the broker wants to accept an advance fee from the homeowner, the broker must have an advance fee agreement that has received a letter of non objection and use a verified accounting format. We off these for sale and have roughly 30 approved companies as of this writing. For more information see [www.AdvanceFeeContract.com](http://www.AdvanceFeeContract.com)

In Phoenix and in other cities in Arizona, (as well as California) it appears loan modifications may also be performed by non-attorneys. So, even though the non-attorney is negotiating a contract and advising a Client in regards to its legal rights and options in regard to the homeowners foreclosure situation, it appears no one has challenged this as being the unauthorized practice of law. This is not to say that it isn't though.

The problem is compounded when the homeowner hears the phrase *ATTORNEY BACKED OR ATTORNEY BASED* and thinks that the loan modification company will be able to advise the homeowner in regard to filing a lawsuit for predatory lending, or advising on a deed-in-lieu of foreclosure or perhaps even filing a bankruptcy.

*The question has to be asked, if there is no attorney working on every file, is the consumer misled as to the services the loan modification company is actually able to provide? If so, does this create legal risk for the company that touts itself in this manner?*

#### **IV. What would a Client think Attorney Based or Attorney Backed Means?**

Again, as referenced above, the average consumer would probably believe that this type of loan mod company actually has an attorney in house that works on every file. If the attorney is in fact in house, why does this have to be advertised? Lots of companies have in-house attorneys, but they don't say "we are an attorney based bakery" or "we are an attorney backed auto supply store" etc.

The attorney phrase seems to be thrown in there to induce Clients into believe you are hiring an attorney and thus, there is no need to go to a law firm. Should a Phoenix Arizona or California loan modification company be able to divert homeowners in crisis to its loan modification company (that may or may not have an attorney in house) by using the words *ATTORNEY BACKED OR ATTORNEY BASED*? *That is a question to ponder.*

#### **V. Is a Lawyer Permitted to Have a Loan Modification Company Tout its Legal Services?**

If there is in fact an attorney or lawyer "*behind*" the loan modification company, is such a lawyer permitted to receive business handed to it by a loan modification company that touted the phrase *ATTORNEY BACKED OR ATTORNEY BASED* in order to divert Clients to the loan modification only to be passed through or handed off to the Attorney or Law Firm? *Does this create a "runner" or "capper" situation that may raise ethical issues for the attorney or law firm? Another question to ponder.*

**VI. Is there are Actually a Lawyer or Attorney Behind the "Attorney Based" or "Attorney backed" Scheme?**

If there is no attorney "*behind*" or "*backing*" the loan modification company, then this would appear to be fraud in the inducement seeking to lure homeowners into using the loan modification company by the enticement that you are in the safe hand of an attorney or lawyer who will handle your loan modification. This would be fraud and false advertising and unfair competition in California.

If you are a homeowner who believe you have hired a *ATTORNEY BACKED OR ATTORNEY BASED* loan modification company, but you are not sure whether or not there is actually an attorney working on your case, call us to discuss. We have been representing more and more homeowners who feel they have been a victim of a loan modification scam due to these types of companies that either do not have an attorney, or do not use an attorney on their file.

For more information about foreclosure scams and rip-offs check out our site at [www.LoanModScams.net](http://www.LoanModScams.net)

**VII. Is this an unlawful partnership between an attorney and non-attorney?**

In the *ATTORNEY BACKED OR ATTORNEY BASED* model, it would seem the attorney or law firm is relying on the loan modification company for business and (if there is an attorney) the loan modification company would be relying on the attorney or law firm for their success. The general ethical rule for attorneys is that an attorney may not partner with a non-attorney where any of the services can be construed as the practice of law (this rule may vary by jurisdiction).

As discussed above, there is a question as to whether or not loan modifications should be construed as the practice of law. Certainly it would seem that the Client who responds to an *ATTORNEY BACKED OR ATTORNEY BASED* advertisement would certainly believe they were hiring a lawyer to aid them so in the consumers mind the fee is being paid for a legal service provided by an attorney (does this mean the fee being paid is a legal fee??).

Does this arrangement result in an impermissible partnership? I welcome your comments on this issue.

**VIII. Does an Attorney Based or Attorney Backed Firm Split Legal Fees with non-attorneys?**

Again, as discussed above, this question is not clear. If the fee pai by the homeowner is deemed by the Client to be a legal fee....does this make it so? This is a question for the ethics attorneys to chime in on. I have contacted several ethics Attorneys in California and Arizona and the answer to this does not seem to be clear. If it is a legal fee, the fee should not be split by the lawyer with the *ATTORNEY BACKED OR ATTORNEY BASED loan modification company*.

**IX. Does an Attorney Based or Attorney Backed Loan Modification Company Serve as a runner or capper for an attorney?**

This issue was raised above as well. If the loan modification company is doing nothing more than touting *ATTORNEY BACKED OR ATTORNEY BASED and then passing files through to the attorney or law firm (channeling cases) then this would raise an issue of capper or runner where the loan modification company is being compensated for this channeling of loan files for modification. Again, the question is not exactly clear. I welcome any input on this issue.*

**X. Does the Attorney help the loan modification company get around the foreclosure consultant law?**

In California, a loan modification company and other persons and entities may nor accept and advance fee from a homeowner who has received a notice of default (NOD). This is so due to the foreclosure consultant law. If an attorney accepts a file from a California loan modification broker and then pays the agent or entity to process the loan or pays a "marketing fee" etc., does this act by the attorney or lawyer (of helping the foreclosure consultant get around the foreclosure consultant law - and get paid for a NOD) raise any ethical or legal issues? Again, I would welcome input on this topic, but my opinion is that it is an act by the attorney that "aids and abets" a foreclosure consultant in getting around the law.

If you are a foreclosure consultant looking for more information about how to legally provide loan modification services to Clients that have received a NOD please visit [www.ForeclosureContract.com](http://www.ForeclosureContract.com)

## CONCLUSION

The regulatory authorities have made it very clear, loan modification activities (marketing, soliciting, and negotiating loan modifications) is a licensed activity and therefore, compliance with state law is required. Where companies illegally engage in this business, and violate false advertising statutes, breach fiduciary duties, violated B&P 17200 (the underlying state law violations can support this claim in most cases) and where outright fraud is concerned, the perpetrators should be held liable and should be enjoined from any future unlawful and/or fraudulent and deceptive conduct.

For more information or to submit your loan modification scam or loan modification fraud case visit [www.loanmodificationripoff.net](http://www.loanmodificationripoff.net)

## USEFUL LINKS:

(1) Link to DRE article of Loan Modification Companies (which discusses the need for an advance fee agreement, RESPA violations, foreclosure consultant law, and attorney-backed issues [http://www.dre.ca.gov/pdf\\_docs/mlb\\_fall08.pdf](http://www.dre.ca.gov/pdf_docs/mlb_fall08.pdf)

(2) State bar Article of Foreclosure Scams and Attorney-Backed being "fraught with ethical issues" <http://209.85.173.132/search?q=cache:gxyb8JsPHYoJ:www.calbar.ca.gov/calbar/pdfs/ethics/Ethics-Alert-Foreclosure.pdf+state+bar+ethics+alert+foreclosure&cd=2&hl=en&ct=clnk&gl=us>

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## **LEGAL SERVICES PROVIDED BY THE LAW OFFICES OF STEVEN C. VONDRAN, P.C.:**

- Eminent Domain in and around the greater Phoenix Area (Scottsdale, Avondale, Buckeye, Tempe , Mesa, casa Grande, Phoenix, Maricopa, Glendale, Peoria, Surprise, Goodyear, etc.)
- Real Estate Zoning
- Real Estate Arbitration & Litigation
- Real Estate Broker Dispute & Licensing Issues
- Loan Modification / Loan Workout / Commercial Lease Issues

If you are a landowner in need of legal representation contact Mr. Vondran for a confidential discussion or visit [www.VondranLaw.com](http://www.VondranLaw.com)

Because most of our California and Arizona loan modification and loan auditing work can be done, and is done, by phone fax and email between us and you we are able to serve our California and Arizona clients in the following California Counties and Cities:

Alameda  
Albany  
Berkeley  
Dublin  
Emeryville  
Fremont  
Hayward  
Livermore  
Newark  
Oakland  
Piedmont  
Pleasanton  
San Leandro  
Union City  
Amador  
Amador City  
Ione  
Jackson  
Plymouth  
Sutter Creek  
Chico  
Gridley  
Oroville  
Paradise  
Angels Camp  
Colusa  
Colusa  
Williams  
Antioch  
Brentwood  
Clayton  
Concord  
Danville  
El Cerrito  
Hercules  
Lafayette  
Martinez  
Moraga  
Orinda

Pinole  
Pittsburg  
Pleasant Hill  
Richmond  
San Pablo  
San Ramon  
Walnut Creek  
Crescent City  
Placerville  
South Lake Tahoe  
Clovis  
Coalinga  
Firebaugh  
Fowler  
Fresno  
Huron  
Kerman  
Kingsburg  
Mendota  
Orange Cove  
Parlier  
Reedley  
San Joaquin  
Sanger  
Selma  
Orland  
Willows  
Humboldt  
Arcata  
Blue Lake  
Eureka  
Ferndale  
Fortuna  
Rio Dell  
Trinidad  
Imperial  
Brawley  
Calexico  
Calipatria  
El Centro  
Holtville  
Westmorland  
Inyo  
Bishop

Kern  
Arvin  
Bakersfield  
California City  
Delano  
Kern County  
Maricopa  
McFarland  
Ridgecrest  
Shafter  
Taft  
Tehachapi  
Wasco  
Avenal  
Corcoran  
Hanford  
Lemoore  
Lake  
Clearlake  
Lakeport  
Susanville  
Los Angeles  
Agoura Hills  
Alhambra  
Arcadia  
Artesia  
Azusa  
Baldwin Park  
Bell  
Bell Gardens  
Bellflower  
Beverly Hills  
Bradbury  
Burbank  
CalabasCarson  
Cerritos  
Claremont  
Commerce  
Compton  
Covina  
Cudahy  
Culver City  
Diamond Bar

Downey  
Duarte  
El Monte  
El Segundo  
Gardena  
Glendale  
Glendora  
Hawaiian Gardens  
Hawthorne  
Hermosa Beach  
Hidden Hills  
Huntington Park  
Industry  
Inglewood  
Irwindale  
La Canada-Flintridge  
La Habra Heights  
La Mirada  
La Puente  
La Verne  
Lakewood  
Lancaster  
Lawndale  
Lomita  
Long Beach  
Lynwood  
Malibu  
Manhattan Beach  
Maywood  
Monrovia  
Montebello  
Monterey Park  
Norwalk  
Palmdale  
Palos Verdes Estates  
Paramount  
Pasadena  
Pico Rivera  
Pomona  
Rancho Palos Verdes  
Redondo Beach  
Rolling Hills  
Rolling Hills Estates

Rosemead  
San Dimas  
San Fernando  
San Gabriel  
San Marino  
Santa Clarita  
Santa Fe Springs  
Santa Monica  
Sierra Madre  
Signal Hill  
South El Monte  
South Gate  
South Pasadena  
Temple City  
Torrance  
Vernon  
Walnut  
West Covina  
West Hollywood  
Westlake Village  
Whittier  
Chowchilla  
Madera  
Marin  
Belvedere  
Corte Madera  
Fairfax  
Larkspur  
Mill Valley  
Novato  
Ross  
San Anselmo  
San Rafael  
Sausalito  
Tiburon  
Mariposa  
Mendocino  
Fort Bragg  
Point Arena  
Ukiah  
Willits  
Merced  
Atwater

Dos Palos  
Gustine  
Livingston  
Los Banos  
Merced  
Modoc  
Alturas  
Mono  
Mammoth Lakes  
Monterey  
Carmel  
Del Rey Oaks  
Gonzales  
Greenfield  
King City  
Marina  
Monterey  
Pacific Grove  
Salinas  
Sand City  
Seaside  
Soledad  
Napa  
American Canyon  
Calistoga  
Napa  
St. Helena  
Yountville  
Nevada  
Grass Valley  
Nevada City  
Truckee  
Orange  
Anaheim  
Brea  
Buena Park  
Costa Mesa  
Cypress  
Dana Point  
Fountain Valley  
Fullerton  
Garden Grove  
Huntington Beach

Irvine  
La Habra  
La Palma  
Laguna Beach  
Laguna Hills  
Laguna Niguel  
Lake Forest  
Los Alamitos  
Mission Viejo  
Newport Beach  
Orange  
Placentia  
San Clemente  
San Juan Capistrano  
Santa Ana  
Seal Beach  
Stanton  
Tustin  
Villa Park  
Westminster  
Yorba Linda  
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Beaumont  
Blythe  
Calimesa  
Canyon Lake  
Cathedral City  
Coachella  
Corona  
Desert Hot Springs  
Hemet  
Indian Wells  
Indio

La Quinta  
Lake Elsinore  
Moreno Valley  
Murrieta  
Norco  
Palm Desert  
Palm Springs  
Perris  
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San Jacinto  
Temecula  
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Isleton  
Sacramento  
San Benito  
Hollister  
San Juan Bautista  
San Bernardino  
Adelanto  
Apple Valley  
Barstow  
Big Bear Lake  
Chino  
Chino Hills  
Colton  
Fontana  
Grand Terrace  
Hesperia  
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Montclair  
Needles  
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Carlsbad  
Chula Vista  
Coronado  
Del Mar  
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Imperial Beach  
La Mesa  
Lemon Grove  
National City  
Oceanside  
Poway  
San Marcos  
Santee  
Solana Beach  
Vista  
San Francisco  
San Joaquin  
Escalon  
Lathrop  
Lodi  
Manteca  
Ripon  
Stockton  
Tracy  
Arroyo Grande  
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Paso Robles  
Pismo Beach  
San Luis Obispo  
San Mateo  
Atherton  
Belmont  
Brisbane  
Burlingame  
Colma  
Daly City  
East Palo Alto  
Foster City

Half Moon Bay  
Hillsborough  
Menlo Park  
Millbrae  
Pacifica  
Portola Valley  
Redwood City  
San Bruno  
San Carlos  
San Mateo  
South San Francisco  
Woodside  
Santa Barbara  
Buellton  
Carpinteria  
Guadalupe  
Lompoc  
Santa Barbara  
Santa Maria  
Solvang  
Santa Clara  
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Cupertino  
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Los Altos  
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San Jose  
Santa Clara  
Saratoga  
Sunnyvale  
Santa Cruz  
Capitola  
Santa Cruz  
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Watsonville  
Shasta  
Anderson

Redding  
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Sierra  
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Dorris  
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Etna  
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Solano  
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Fairfield  
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Sonoma  
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Ceres  
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Modesto  
Newman  
Oakdale  
Patterson  
Riverbank  
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Tehama  
Corning  
Red Bluff  
Tehama  
Trinity  
Tulare  
Dinuba  
Exeter  
Farmersville  
Lindsay  
Porterville  
Tulare  
Tulare  
Visalia  
Woodlake  
Tuolumne  
Sonora  
Ventura  
Camarillo  
Fillmore  
MoorpaOjai  
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The Law Offices of Steven C. Vondran is also helping loan modification clients identify predatory brokers and foreclosure consultants who are violating the California Foreclosure Consultant Law and otherwise ripping off, cheating, scamming and deceiving California and Arizona homeowners facing foreclosure.

**CONTACT US FOR A FREE CONSULTATION AND DISCUSSION ABOUT  
TAKING YOUR CASE ON CONTINGENCY (877) 276-5084**

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We are licensed to Practice Law in California and Arizona. Here are our two offices.

**California Clients**



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For more information about Mr. Vondran's law firm please visit [www.VondranLaw.com](http://www.VondranLaw.com) the Attorney Loan Audit program can be reviewed at [www.AttorneyMods.com](http://www.AttorneyMods.com) If you are a California Real Estate Broker looking for a DRE Approved Advance Fee Agreement please visit [www.AdvanceFeeContract.com](http://www.AdvanceFeeContract.com) We have over 20 approved DRE companies as of this writing and have several advance fee agreement options available including an advance fee agreement that allows for outsourced Attorney Loan Audits and/or a letter to the Lender. We also have spanish advance fee agreements available.

If you are a homeowner and are looking for an attorney or law firm to handle your loan modification request, please visit [www.loanmodsolutions.net](http://www.loanmodsolutions.net) Fill out the form and a representative of our firm will contact you promptly to discuss your situation. We also have loan modification information available at [www.AttorneyLoanAudit.com](http://www.AttorneyLoanAudit.com)

Homeowners who believe they may have been a victim of loan modification fraud should visit [www.ModScams.com](http://www.ModScams.com) or [www.LoanModificationScams.net](http://www.LoanModificationScams.net) to learn more about what you can do to fight foreclosure rescue scams.

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