

1 [Regulations for Mortgage Modification Consultants]

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3 **Ordinance amending the San Francisco Police Code by adding Article 27 to regulate**
 4 **mortgage modification consultants by (1) requiring a written contract describing**
 5 **mortgage modification services to be provided prior to initiation of services, (2)**
 6 **requiring that any contract entered into for these services provide notice that the**
 7 **contract may be cancelled within fourteen calendar days and that services may be**
 8 **obtained free of charge from nonprofit sources, (3) prohibiting collection of fees until**
 9 **the consultant has obtained a written loan modification offer for the homeowner, (4)**
 10 **providing for enforcement by criminal penalties and a private cause of action for**
 11 **homeowners, and making environmental findings.**

12 NOTE: Additions are *single-underline italics Times New Roman*;
 13 deletions are ~~*strike-through italics Times New Roman*~~.
 14 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strike-through normal~~.

15 Be it ordained by the People of the City and County of San Francisco:

16 **Section 1. Findings.**

17 (a) General Findings.

18 The San Francisco Board of Supervisors hereby finds that:

19 (1) California's home mortgage foreclosure crisis has led to record numbers of defaults
 20 and foreclosures in the City and County of San Francisco in the last two years. According to
 21 the City Assessor-Recorder's Office, the number of Notices of Defaults increased 121% from
 22 2006 to 2008. The number of foreclosures increased even more dramatically, by 723%,
 23 during that same time period.

24 (2) The home mortgage crisis has fueled a new predatory industry of high cost loan
 25 modification "specialists" or "consultants" who are charging desperate homeowners

1 thousands of dollars in up-front fees in exchange for falsely promising that they can help
2 homeowners modify the terms of their mortgages. In reality, these consultants often provide
3 little to no service, except to urge the borrower to stop calling the loan servicer, further
4 propelling the borrower towards foreclosure.

5 (3) In the wake of unprecedented and well-publicized efforts to encourage homeowners
6 to attempt to modify their mortgages to affordable levels, the problem of loan modification
7 fraud is growing. According to a June 2009 report, 68% of nonprofit housing counselors
8 report seeing more loan modification scams than six months ago. Most counselors reported
9 that clients received little or no service from these for-profit providers, and that the outcomes
10 for clients were poor. According to an "Ethics Alert" issued by the State Bar of California in
11 February 2009, some loan modification consultants are partnering with lawyers in ways that
12 violate the California Rules of Professional Conduct and other ethical rules for lawyers.

13 (4) Mortgage modification consultants have a significant impact on San Francisco's
14 economy and on the welfare of its citizens. Not only do individual homeowners suffer when
15 threatened with foreclosure, but entire communities feel the spillover effects as property
16 values depreciate, tax revenues decline, public services wane, and social fabrics fray.

17 (5) Many desperate homeowners are unaware that the U.S. Department of Housing
18 and Urban Development ("HUD") has approved nonprofit housing counselors who can offer
19 homeowners better service, deliver better outcomes, and do so for free.

20 (6) Numerous analyses of loan modification re-default rates have shown that loan
21 modifications that reduce monthly payments have lower re-default rates than those that do
22 not. A March 2009 analysis by Credit Suisse shows that re-default rates after 10 months were
23 50% for modifications that increased payments, 42% for modifications that decreased
24 payments by less than 10%, 38% for modifications that decreased payments between 10%
25 and 20%, and 27% for modifications that decreased payments by more than 20%.

1 (7) California state law currently regulates the activities of persons who offer to arrange
2 for services purporting to cure mortgage defaults after a property is in foreclosure as
3 evidenced by the recording of a Notice of Default pursuant to California Civil Code Section
4 2924. However, state law does not regulate persons who offer to secure loan modifications
5 prior to the recording of a Notice of Default.

6 (8) It is in the public interest to regulate the activities of persons who promise to attempt
7 to prevent foreclosure prior to the recording of a Notice of Default. Moreover, it is in the public
8 interest to provide remedies for homeowners who are the victims of unscrupulous persons
9 who falsely promise to attempt to prevent foreclosure.

10 (b) Environmental Findings.

11 The Planning Department has determined that the actions contemplated in this
12 Ordinance are in compliance with the California Environmental Quality Act (California Public
13 Resources Code sections 21000 et. seq.) Said determination is on file with the Clerk of the
14 Board of Supervisors in File No. _____ and is incorporated herein by reference.

15 Section 2. The San Francisco Police Code is hereby amended by adding Article 27, to
16 read as follows:

17 Sec. 2700. Definitions.

18 (a) "Contract" means any agreement, or any term thereof, between a Mortgage Modification
19 Consultant and an Owner for any Service as defined in subsection (g).

20 (b) "Mortgage Modification Consultant" means any Person who makes any solicitation,
21 representation, or offer to any Owner to perform for compensation or who, for compensation, performs
22 any service that the Person in any manner represents will in any manner do any of the following:

23 (1) Contact or negotiate with any beneficiary or mortgagee for the purposes of modifying the
24 interest rate, principal balance, or terms of any loan prior to the recording of a Notice of Default.

25 (2) Prevent the recording of a Notice of Default.

1 (3) Obtain any forbearance from any beneficiary or mortgagee prior to the recording of a
2 Notice of Default.

3 (4) Obtain any waiver of an acceleration clause contained in any promissory note or contract
4 secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or
5 mortgage prior to the recording of a Notice of Default.

6 (5) Assist an Owner to obtain a loan or advance of funds to cure a mortgage default where the
7 property is not the subject of a recorded Notice of Default.

8 (6) Avoid or ameliorate the impairment of the Owner's credit resulting from the threatened
9 recording of a Notice of Default.

10 (7) Save an Owner's residence from a threatened foreclosure prior to the recording of a Notice
11 of Default.

12 Mortgage Modification Consultant does not include any Person identified as exempt from the
13 definition of "Foreclosure consultant" by Section 2945.1(b) of the California Civil Code.

14 (c) "Notice of Default" means a notice that is recorded pursuant to California Civil Code
15 Section 2924.

16 (d) "Owner" means the record title owner of residential real property located in the City and
17 County of San Francisco.

18 (e) "Person" means any individual, partnership, corporation, limited liability company,
19 association, or other entity, however organized, but does not include the City and County of San
20 Francisco.

21 (f) "Residence" means residential real property consisting of one or more dwelling units, one of
22 which the Owner occupies as his or her principal place of residence, encumbered by a loan secured by
23 a deed of trust the terms of which the Owner wishes to modify in order to reduce or fix the payments
24 thereon, but is not the subject of a recorded Notice of Default.

25 (g) "Service" means and includes, but is not limited to, any of the following:

1 (1) Debt, budget, or financial counseling of any type.

2 (2) Receiving money for the purpose of distributing it to creditors in payment or partial payment
3 of any obligation secured by a lien on a Residence but prior to the recording of a Notice of Default on
4 the Residence.

5 (3) Contacting creditors on behalf of an Owner of a Residence prior to the recording of a
6 Notice of Default on the Residence.

7 (4) Arranging or attempting to arrange for an extension of the period within which the Owner
8 of a Residence may cure his or her default prior to the recording o a Notice of Default.

9 (5) Advising the filing of any document or assisting in any manner in the preparation of any
10 document for filing with any bankruptcy court on behalf of an Owner of a Residence.

11 (6) Giving any advice, explanation, assistance, or instruction to an Owner of a Residence
12 relating to the cure of an existing or threatened default in, or in an obligation secured by a lien on the
13 Owner's Residence, or the postponement or avoidance of the recording of a Notice of Default for the
14 Owner's Residence.

15 Sec. 2701. Contract Requirements.

16 (a) Every Contract shall be in writing and shall fully disclose the exact nature of the Mortgage
17 Modification Consultant's services and the total amount and terms of compensation.

18 (b) Every Contract shall contain on the first page, in a type size no smaller than that generally
19 used in the body of the Contract, (1) the name, mailing address, email address, and facsimile number of
20 the Mortgage Modification Consultant to which notice of cancellation is to be mailed, and (2) the date
21 the Owner signed the Contract.

22 (c) Every Contract shall be dated and signed by the Owner, and shall contain next to the space
23 reserved for the Owner's signature, in not less than 14-point bold type, the following statement:

24 NOTICE REQUIRED BY THE CITY AND COUNTY OF SAN FRANCISCO

1 You, the owner, may cancel this transaction at any time prior to midnight of the
2 fourteenth calendar day after you sign this contract. Cancellation occurs when you give written
3 notice of cancellation to the other party to this contract at the party's address identified in this
4 contract, or by facsimile or email at the number or address identified in this contract.

5 It is not necessary to pay a third party to arrange for a loan modification from
6 your mortgage lender or servicer. You may call your lender directly to ask for a change in your
7 loan terms. Nonprofit housing counseling agencies also offer borrower assistance free of
8 charge. A list of nonprofit housing counseling agencies approved by the United States
9 Department of Housing and Urban Development (HUD) is available by calling 888-995-HOPE
10 (4673) or by visiting www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm

11 (d) Foreign Languages. If Services are offered or negotiated primarily in one of the foreign
12 languages set forth in subdivision (b) of Section 1632 of the California Civil Code, the Mortgage
13 Modification Consultant shall provide the Owner, before the Owner signs the Contract, with a
14 translated copy of the completed Contract in the language in which the Contract was negotiated. If
15 English is the language principally used by the Mortgage Modification Consultant to describe the
16 Services or to negotiate the Contract, the Mortgage Modification Consultant shall notify the Owner
17 orally and in writing before the Owner signs the Contract that the Owner has the right to ask for a
18 completed copy of the Contract in a language described in Civil Code Section 1632.

19 (e) Notice of Cancellation. The Contract shall be accompanied by a completed form in
20 duplicate, titled "Notice of Cancellation," which shall be attached to the Contract, shall be easily
21 detachable, and shall contain in not less than 14-point bold type the following statement written in the
22 same language that was used in the Contract: "NOTICE OF CANCELLATION."

23 (f) The Mortgage Modification Consultant shall provide the Owner with a copy of the Contract
24 and the attached Notice of Cancellation. An Owner's use of the Notice of Cancellation is optional.
25 This section is in no way intended to limit the application of Section 2702.

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2 Sec. 2702. Right of Cancellation.

3 (a) In addition to any other right under law to rescind a contract, an Owner has the right to
4 cancel a Contract until midnight of the fourteenth calendar day after the day on which the Owner signs
5 a Contract.

6 (b) Cancellation occurs when the Owner gives written notice of cancellation to the Mortgage
7 Modification Consultant by mail at the address specified in the Contract, or by facsimile or email at the
8 number or address identified in the Contract. If given by mail, notice of cancellation is effective when
9 deposited in the mail properly addressed with the postage prepaid. If given by facsimile or email,
10 notice of cancellation is effective when successfully transmitted. Notice of cancellation given by the
11 Owner need not take the particular form as provided with the Contract and, however expressed, is
12 effective if it indicates the Owner's intent not to be bound by the Contract.

13 Sec. 2703. Violations.

14 It shall be a violation of this Section for a Mortgage Modification Consultant to do any of the
15 following:

16 (a) Perform any Service without a written Contract.

17 (b) Claim, demand, charge, collect, or receive any fee for performing any Service in connection
18 with the modification of the terms of a loan secured directly or collaterally by a lien on a Residence
19 until the Mortgage Modification Consultant has obtained from the Owner's lender or loan servicer a
20 written offer of a loan modification for the Owner that accomplishes one or both of the following
21 through an interest rate reduction, principal reduction or forbearance, term extension, or some
22 combination thereof:

23 (1) reduces the Owner's monthly loan payment (principal and interest) by at least 20%
24 for a minimum of five years; or

1 (2) reduces the Owner's monthly payment for housing expenses for the Residence,
2 including principal and interest payment, property taxes, homeowners insurance, and any applicable
3 homeowner's association fees, to no more than 31% of the Owner's monthly gross income for a
4 minimum of five years.

5 (c) Take any wage assignment, any lien of any type on real or personal property, or other
6 security to secure the payment of compensation. That security shall be void and unenforceable.

7 (d) Receive any consideration from any third party in connection with Services rendered to an
8 Owner unless that consideration is fully disclosed to the Owner at the time the Contract is entered into.

9 (e) Acquire any interest in the Residence of the Owner with whom the Mortgage Modification
10 Consultant has contracted. Any interest acquired in violation of this subsection shall be voidable,
11 provided that nothing herein shall affect or defeat the title of a bona fide purchaser or encumbrancer
12 for value and without notice of a violation of this Section. Knowledge that the property was a
13 Residence does not constitute notice of a violation of this Section. This subsection may not be deemed
14 to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of a
15 Residence.

16 (f) Take any power of attorney from an Owner for any purpose.

17 (g) Induce or attempt to induce any Owner to enter into a Contract that does not comply in all
18 respects with Sections 2701 and 2702.

19 Sec. 2704. Waiver.

20 Any waiver by an Owner of any or all of the provisions of this Article shall be deemed void and
21 unenforceable as contrary to public policy. Any attempt by a Mortgage Modification Consultant to
22 induce an Owner to waive his or her rights shall be deemed a violation of this Article.

23 Sec. 2705. Enforcement and Penalties.

24 (a) Criminal. Any person who violates any of the provisions of this Article is guilty of a
25 misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000), or by

1 imprisonment in the County Jail for a period of not more than six months, or by both such fine and
2 imprisonment. Each violation of a provision of this Article shall constitute a separate offense.

3 (b) Civil. In addition to all remedies allowed by law, an Owner may bring an action against a
4 Mortgage Modification Consultant for any violation of this Article. A Mortgage Modification
5 Consultant may be liable in a civil action for damages up to three times the amount of actual damages,
6 reasonable attorneys' fees, and costs of litigation.

7 (c) Cumulative Remedies. The remedies or penalties provided under this Article are cumulative
8 and are not intended to be exclusive of any other available remedies or penalties, including those
9 provided under state or federal law.

10 Sec. 2706. Mortgage Modification Consultant's Liability For Statements or Acts of a
11 Representative.

12 (a) A Mortgage Modification Consultant is liable for all damages resulting from any statement
13 made or act committed by the Consultant's representative in any manner connected with the
14 Consultant's (1) performance, offer to perform, or contract to perform any of Service, (2) receipt of any
15 consideration or property from or on behalf of an Owner, or (3) performance of any act prohibited by
16 this Section.

17 (b) "Representative" for the purposes of this subsection means a Person who in any manner
18 solicits, induces, or causes (1) any Owner to contract with a Mortgage Modification Consultant, (2)
19 any Owner to pay any consideration or transfer title to the Residence threatened with foreclosure to the
20 Mortgage Modification Consultant, or (3) any member of the Owner's family or household to induce or
21 cause any Owner to pay any consideration or transfer title to the Residence to the Mortgage
22 Modification Consultant.

23 (c) Any provision in a Contract that attempts or purports to limit the liability of the Mortgage
24 Modification Consultant under this subsection shall be void and shall at the option of the Owner render
25 the Contract void.

1 Sec. 2707. Severability.

2 In the event that a court or agency of competent jurisdiction holds that federal or state law,
3 rule, or regulation invalidates any clause, sentence, paragraph or section of this Article or the
4 application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the
5 court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article
6 shall remain in effect.

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8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 FRANCESCA GESSNER
12 Deputy City Attorney