

Alerts

FTC Issues Rule Governing Mortgage Relief Providers; Includes Lawyer Exemption

December 22, 2010

Lawyers for the Profession® Alert

"FTC Issues Final Rule to Protect Struggling Homeowners from Mortgage Relief Scams," Nov. 19, 2010

Brief Summary

The Federal Trade Commission (FTC) has issued a rule designed to protect consumers of mortgage-related services. The rule imposes disclosure requirements, prohibits certain claims, and governs the collection of fees by service providers. But it contains a broad exemption from these requirements for attorneys.

Complete Summary

The FTC has issued a rule requiring providers of foreclosure rescue and loan modification services (mortgage relief providers) to refrain from making certain claims about their services and to disclose particular information to consumers. The rule also prevents mortgage relief providers from collecting fees until homeowners have a written offer from their lender or servicer that the homeowner deems acceptable. The disclosure requirements become effective December 29, 2010, and the advance fee ban becomes effective January 31, 2011.

Specifically, the rule prohibits false or misleading claims about mortgage relief providers' services. Mortgage relief providers must indicate that they are not associated with the government and that the lender may not agree to alter the consumer's loan. If mortgage relief providers recommend that consumers stop paying their mortgages, the consumers must be informed that they could lose their home and damage their credit rating.

Attorneys are generally exempt from the rules regarding disclosure and prohibited claims. The exemption applies so long as the lawyer (1) is practicing law; (2) is licensed in the state where the consumer or dwelling is located; and (3) complies with state rules governing attorney conduct. Lawyers also are exempt from the advance fee ban if they meet a fourth requirement by placing any fees collected in a client trust account and abiding by state laws governing such accounts.

Significance of Rule

This rule recognizes that, to the extent lawyers offer mortgage related services, consumers are adequately protected by existing state laws governing attorneys, and an additional layer of federal regulation is largely unnecessary. Notably,

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American Bar Association president Stephen N. Zack echoed this sentiment in a written endorsement of the attorney exemption. See Stephen Zack, "[President Zack Statement Re: The Attorney Exemption in the FTC's Final Mortgage Assistance Relief Services Rule](#)," *ABANOW*, Nov. 22, 2010.

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