



Memorandum – Request for Comments

ML
To: All Providers of Loan Modification Services on Residential Mortgage Loans in Idaho
From: Michael Larsen, Consumer Finance Bureau Chief, Idaho Department of Finance
Date: June 30, 2009
Re: A. Important Changes in Idaho Law Effective July 1, 2009
B. No Upfront Fees May be Charged for Loan Modification Services in Idaho on Residential Mortgage Loans
C. Request for Comments on what are "Reasonable and Customary" Fees for (i) an Application for Mortgage Loan Modification Services, and (ii) Cancellation Fee When a Mortgage Loan Modification Services Contract is Cancelled by a Consumer Prior to Completion of the Contracted Services

Change in Idaho Law for Loan Modification Services on Residential Mortgage Loans: The Idaho Department of Finance petitioned the 2009 Idaho Legislature to change the Department's regulatory oversight of residential mortgage loan modification services offered in Idaho. Formerly, the offering of such services in Idaho fell under the Idaho Collection Agency Act as "credit counseling" services. With industry support, the Department proposed changing its oversight of residential mortgage loan modification services from the Idaho Collection Agency Act to the Idaho Residential Mortgage Practices Act. That transition was accomplished by the Idaho Legislature's passage of House Bill 169.

Language of the New Law Applicable to Offers of Residential Mortgage Loans in Idaho and Loan Modification Services on Residential Mortgage Loans: Effective July 1, 2009, the following provisions of Idaho law apply to those offering residential mortgage loans or loan modification services on residential mortgage loans in Idaho:

26-31-210. RESTRICTIONS ON FEES AND CHARGES. (1) *A person subject to this part shall not require a borrower or person seeking a loan modification to pay any fees or charges prior to a residential mortgage loan closing, or prior to the completion of a loan modification, except:*

(a) Charges actually incurred by the person subject to this part on behalf of the borrower or person seeking a loan modification for services which have been rendered by third parties. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, UCC4 lien searches and appraisals;

(b) An application fee;

(c) A ratelock fee;

(d) A commitment fee upon approval of the residential mortgage loan;

(e) A cancellation fee which may be charged and collected by a person subject to this part at any time either prior to the scheduled closing of a residential mortgage loan transaction, completion of a loan modification or subsequent thereto.

(2) Any fees charged under the authority of this section must be reasonable and customary as to the type and the amount of the fee charged.

Effect of the Law Change on Residential Mortgage Loan Modification Service Providers: On or after July 1, 2009, individuals and entities offering loan modification services in Idaho on residential mortgage loans are prohibited by law from charging customers any upfront fees or charges prior to the completion of a loan modification, except for the following fees when properly disclosed and agreed upon by all parties: (i) third party fees actually incurred on behalf of the customer, (ii) an application fee, and (iii) a cancellation fee, if applicable. Importantly, these fees must be “reasonable and customary as to the type and the amount of the fee charged.” Charging an unreasonable amount upfront and labeling it as an “application fee” will not be tolerated. The Department takes the position that even a permissible upfront fee will be deemed unreasonable unless such fee is reasonably related to the provider’s actual costs in rendering the service for which the fee is identified. Likewise, even though the amount of a “cancellation fee” may be properly disclosed and agreed upon at the outset of a transaction between a provider and person seeking a mortgage loan modification, the cancellation fee may be deemed unreasonable unless it is reasonable and customary as to the amount of the fee charged.

If No Mortgage Loan Modification is Accomplished, No Loan Modification Fee Can Be Charged: Mortgage loan modification service providers must understand that an essential prerequisite to charging or receiving a fee for providing loan modification services on residential mortgage loans in Idaho – is the successful completion of such services. In other words, unless the person seeking a loan modification on a residential mortgage loan obtains the loan modification that he or she contracted for, the mortgage loan modification provider is prohibited by Idaho law from charging any fee for services rendered in seeking such loan modification.

Request for Comment – and Comment Period: Pursuant to Idaho Code § 26-31-204(6) the Director of the Idaho Department of Finance is empowered to set, by annual written notification, limits on the fees set forth in Idaho Code § 26-31-210, as set forth above. The Director hereby requests written comments as to what is “reasonable and customary” for the following types of fees in Idaho: (i) an application fee for loan modification services on a residential mortgage loan, and (ii) a cancellation fee when a consumer cancels an existing contract for loan modification services on a residential mortgage loan prior to the completion of the services contracted for. The Director invites written comments on the foregoing from interested members of the public, licensees under the Idaho Residential Mortgage Practices Act, and mortgage loan modification services providers operating in Idaho who were licensed as “credit counselors” under the Idaho Collection Agency Act prior to July 1, 2009. **The comment period begins immediately and extends until August 15, 2009. Written comments may be submitted to Director of the Idaho Department of Finance at the following address:**

Comment on Application/Cancellation Fees
Idaho Department of Finance
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