

**ETHICS ALERT:  
PROVIDING LEGAL SERVICES TO DISTRESSED HOMEOWNERS**

The Florida Bar's Ethics Hotline has received numerous calls from lawyers who have been contacted by non-lawyers seeking to set up an arrangement in which the lawyers are involved in loan modifications, short sales, and other foreclosure-related rescue services on behalf of distressed homeowners. These non-lawyers include mortgage brokers, realtors, financial management advisors, foreclosure "consultants" and others who engage in foreclosure related rescue services or other similar services. Non-lawyers have proposed a variety of agreements, even offering to hire lawyers as "in-house counsel" to provide services to the non-lawyer's customers. The Foreclosure Rescue Act, Section 501.1377, Florida Statutes, went into effect October 1, 2008 and imposed restrictions on non-lawyer loan modifiers to protect distressed homeowners. The legislature later enacted new registration and licensing standards for private businesses offering loan modification services to homeowners, effective January 1, 2010, in Chapter 494, Florida Statutes. These statutes appear to be the impetus for these inquiries.

Lawyers should be wary of these proposals, as many violate the ethics rules and may subject the lawyer to discipline. Florida Bar members:

- Cannot pay a referral fee or give anything of value to a non-lawyer for referring distressed homeowners to the lawyer. [Rule 4-7.17(b)]
- Cannot directly or indirectly divide fees with a non-lawyer. [Rule 4-5.4(a)]
- Cannot assist in the unauthorized practice of law by:
  - providing legal services for a distressed homeowner while employed as in-house counsel for a non-lawyer company;
  - forming a company with a non-lawyer to perform foreclosure related services if any of the services are the practice of law; or
  - assisting a non-lawyer individual or company in providing services that the individual or company is not authorized to provide or are otherwise illegal.

[Rule 4-5.5(a)]

- Cannot assist a non-lawyer in violating the provisions of the Foreclosure Rescue Act, Section 501.1377, Florida Statutes. [Rule 4-8.4(d)]
- Cannot directly contact distressed homeowners to offer representation (including by telephone or facsimile) and cannot allow someone else to directly contact distressed homeowners on the lawyer's behalf. [Rules 4-7.18(a) and 4-8.4(a)]

- Cannot accept referrals from non-lawyers acting in the guise of a “lawyer referral service” (legitimate lawyer referral services must comply with a rule which requires all advertisements and contact with prospective clients to be in compliance with the attorney advertising rules, in addition to other requirements) [Rule 4-7.22]
- Must have a direct relationship with distressed homeowners who hire the lawyer for representation. [Rules 4-1.1, 4-1.2 and 4-1.4]
- Cannot allow a non-lawyer to choose a lawyer for a distressed homeowner or direct a lawyer’s representation of a distressed homeowner. [Rules 4-1.1, 4-1.2, 4-1.4, and 4-5.5(a)]
- Cannot allow a non-lawyer who pays for a lawyer to represent another to direct the lawyer or affect the lawyer’s independent professional judgment in providing legal services to the client [Rules 4-1.8(f) and 4-5.4(d)]

Several ethics opinions, Opinions [92-3](#) and [95-1](#) in particular, discuss similar proposals and the ethics problems that arise when lawyers enter business arrangements with non-attorneys. These opinions can be accessed on the Florida Bar’s website by selecting “ethics opinions” then “list of Florida Ethics Opinions by number.”

State statutes and federal rules impose restrictions on providers of foreclosure rescue and/or loan modification services. Although The Florida Bar cannot provide legal advice, lawyers should be aware of and comply with the requirements of state and federal law. State statutes prohibit accepting advance fees and require registration of service providers. There are exceptions for lawyers, but only under specific circumstances. *See* Florida Statutes, Sections [501.1377](#) and [494.00115\(1\)\(d\)](#). The Federal Trade Commission has adopted a rule on Mortgage Assistance Relief Services (MARS). The rule bans providers of mortgage foreclosure rescue and loan modification services from collecting fees *until* homeowners accept a written offer from their lender or servicer. There is an exception for lawyers who meet specific requirements **and** who place their fees into a trust account. This rule effectively bans nonrefundable fees in Florida in these cases, because nonrefundable fees cannot be placed into a trust account under the Rules Regulating The Florida Bar. *See* Rule 5-1.1(a)(1) and Florida Ethics Opinion 93-2.

This alert does not address every potential problem or concern. Lawyers should not assume that conduct is permissible merely because it is not listed above. If you are a Florida Bar member with specific questions about your own conduct related to this type of situation, you should contact The Florida Bar Ethics Hotline at (800) 235-8619.

This alert also does not address the issue of what conduct by non-lawyers is permissible. Questions regarding whether conduct of non-lawyers constitutes the unlicensed practice of law should be directed to The Florida Bar Unlicensed Practice of Law Department at (850) 561-5840.

This alert does not address whether a lawyer is subject to the registration and licensing provisions of Chapter 494. Lawyers with questions about whether they are subject to an

exemption should contact the Office of Financial Regulation at (850) 410-9896. Information is also available on the Office of Financial Regulation website at [www.flofr.com](http://www.flofr.com).

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