

The Business, Law & Ethics of Mortgage Modifications: Learn How to Legally Navigate in the New Mortgage Resolution Climate



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OVERVIEW

AGENDA

AUTHORS

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Agenda / Content Covered:

All times are shown in Eastern Time

- I. **Foreclosure or Loan Modification: That is the Question!**
10:00 - 10:30, Richard I. Rydstrom
 - A. Introduction & Overview of the State of the Housing Market and Mortgage Workout Industry
 - B. Overview Common Loss Mitigation Methods or Devices
 1. Forbearance
 2. Repayment Plan
 3. Short Sale
 4. Example Agreements
 5. Loan Modification
 6. Interest Rate, Term, Principal Reduction/Forgiveness
 7. Example Agreements
 8. FHA Partial Claim
 9. Deed in Lieu of Foreclosure (DIL)
 10. Short Payoff Refinance
- II. **New Required Government Mortgage Workout Programs**
10:30 - 11:30 and 11:45 - 1:00, Richard I. Rydstrom
 - A. New Laws
 - B. New Public Policy
 - C. MHA (Making Home Affordable)
 - D. HAMP; FHA-HAMP; Fannie-HAMP; Freddie's Role; NON-HAMP
 - E. New RIGHTS Under Law
 - F. Does HAMP Create New (Borrower) Rights?
 - G. Is 5th Amendment Due Process or FOIA at Issue Here?
 - H. Is a Written Denial With Specific Reasons Required?
 - I. Does the Borrower Have a Right to Appeal?
 - J. HAMP: New Servicer Guidelines and Supplemental Directives
 - K. New Requirements
 - L. How to Determine Initial HAMP Eligibility
 - M. How to Determine HAMP Hardship
 - N. How to Determine Imminent Default
 - O. How to Determine Net Present Value (NPV)
 - P. New Best Practices
 - Q. New Optimal Best Practices
 - R. New NPV Tests: Model 3.0, Proprietary
 - S. New Ability to Pay Tests
 - T. New HAMP Waterfall Test
 - U. New HARP - MHA Federal Refinance Program
 - V. Private Label Programs
- III. **New Required State Court Structured Foreclosure Mediation & Monitor Programs**
2:00 - 3:30, Cynthia A. Nierer and Richard I. Rydstrom
 - A. New Trends Becomes the Norm!

- B. New State Court Foreclosure/Mediation Programs in Force
 - C. New State Laws & Judicial Orders
 - D. New Related Pending Legislation
 - E. Conflicts in Law, Preemption Issues re: Federal, State and Local Laws
 - F. Common Principles and Requirements
 - G. Unusual Principles and Requirements
 - H. Problems Observed
 - I. Solutions and Recommendations to Promote Effectiveness and Fairness to all Participants
 - J. New Federal Default: Safe Act - A New World Starting August 1, 2009
 - K. New Court Monitor Programs: Example: Ca AB 1588
 - L. Bridging the GAP Among Courts, Servicers & Borrowers - Solutions
 - M. Borrower Representatives Equalize the Bargaining Positions
 - N. Do We Need Foreclosure Attorneys for Foreclosures and Workout Attorneys for Workouts?
- IV. **Ethics, Jail & Challenges Facing the "Business of Mortgage Modifications"**
3:45 - 4:15, Richard I. Rydstrom and Andrew J. Sherman
- A. Overview of Related Ethics Rules
 - B. New Foreclosure Consultant Rules:
 1. Example: Registration per Ca Civil Code 2945.45
 2. New Los Angeles Ordinance No. 180675 - Prohibitions on Brokers - Foreclosure Consultants
 - C. Attorney General/DA/FTC/State Bar Enforcement Actions
 - D. Injunctions, Damages, Jail
 - E. FTC Enforcement Actions
 - F. Related Lawsuits
 - G. Ethics: Foreclosure Attorneys Serving Many Masters?
 - H. Conflicts in Interest
 - I. Foreclosure Attorney vs. Borrower
 - J. Foreclosure Attorney vs. Employer (Lender/Servicer)
 - K. Foreclosure Attorney vs. Multi-Tier MBS Investors
 - L. New LPS Case Re: Who's the Client?
 - M. FDCPA (Overshadowing, etc.)
 - N. Case: *Reginald Warren, Sr. v. Countrywide Home Loans, Inc.* (USCA 11th Cir.) No. 08-16171
 - O. New FTC Letter Ruling: A Safe Harbor or is More Need?
- V. **Ethics in Today's Mortgage Crisis**
4:15 - 4:45, Richard I. Rydstrom and Andrew J. Sherman
- A. Related Ethics Rulings
 - B. Unlawful Practice of Law
 - C. Capping and Running
 - D. Lawyer Backed Broker Modification Services
 - E. Duty of Competency
 - F. Outsourcing
 - G. Legal vs. Non-Legal Tasks
 - H. Referrals vs. Directories and Networks
 - I. Prohibition on Fee Splitting
 - J. Prohibition on Advance Fees (Brokers)
 - K. Example: Loan Modification Bill in California (SB 94)
 - L. Requirements of Broker Licensure and Registration
 - M. California Attorney General Guidelines of Civility and Professionalism
 - N. Handout: State Ethics Survey
- VI. **Brief Litigation Update/Technology, Security, and Protecting the Privacy of Confidential Information**
4:45 - 5:30, Richard I. Rydstrom
- A. New Cases & Laws
 - B. Foreclosure Attorneys Overcoming New Burdens
 - C. New "Unfair Mortgage" Burdens
 - D. Need for Automated Decisioning & Efficient Processing
eMortgages (FHA)
 - E. New Rules Effective May 1, 2009: FACT Act (Fair and Accurate Credit Transactions Act) Identity Theft Red Flag Requirements (Amending Fair Credit Reporting Act (FCRA); Effective Date extended for FTC regulated "Creditors" (i.e.: lenders, brokers, etc.)

From Event: The Business, Law & Ethics of Mortgage Modifications: Learn How to Legally Navigate in the New Mortgage Resolution Climate, held December 2009.

Program Description

This valuable instruction presents an overview of the state of the mortgage crisis, its new laws, rules, regulations, practices, and procedures. It examines what new government (workout) programs are in force and how to use each, and how to practice legally, ethically and effectively in the mortgage related businesses. Judges will learn the issues and latest

laws that control their decisions. Attorneys and brokers will learn the answers and information needed to compete *legally, ethically, effectively*, and stay in business, and avoid JAIL! Lenders, servicers, in-house counsel, and HUD certified counselors will learn the latest government programs, new laws, new rights, and legal duties and requirements. Learn how to survive and THRIVE in the mortgage crisis!

Course Content

CYNTHIA A. NIERER is the directing partner of the Closing and Eviction Departments of Rosicki, Rosicki & Associates, P.C. Ms. Nierer has been with the firm since 1995, and is a graduate of St. John's University School of Law. She received her undergraduate degree from St. John's University. Ms. Nierer is active in the Muscular Dystrophy Association, the "Make a Wish" Foundation of Greater New York, the New York City Rescue Mission, and Girls and Boys Town. Professionally, she is a board member and education chair of REOMAC (a professional real estate organization), and a member of NRBA (National REO Broker Association), REOConnection and the Queens County Women's Bar Association.

RICHARD I. RYDSTROM is a recognized national authority on the legal, strategic, and best practices issues affecting policy, business, accounting, mediation or litigation in the residential and commercial mortgage and secondary markets. Mr. Rydstrom was chosen by Chairman Charles Rangel to submit a neutral analysis of the economic and mortgage crisis that was then about to unfold. The 110th Congress, House Ways & Means Committee published Mr. Rydstrom's statement in hearings held by Chairman Charles Rangel on, "The State of the Economy and Challenges Facing the Middle Class, Homeownership & Retirement." He is also the author of one of the first public outreach booklets dealing with mortgage and tax workout solutions, and its 2009-2010 edition titled, "The 13 Homeowner Solutions to Default & Foreclosure." Mr. Rydstrom is a practicing member of the State Bar of California. He is the creator of numerous solutions to the mortgage and debt crisis facing the nation and the co-founder and chairman of the Coalition for Mortgage Industry Solutions out of DC (CMIS). He is a frequent and nationally known keynote speaker and guest panelist concerning the problems and solutions for the mortgage and secondary market crisis. Mr. Rydstrom was directly involved in redrafts of the HAMP Servicer Guidelines as a member of the Servicers Working Group (AFN, MBA, Hope Now, and Financial Services Roundtable) and directly with Treasury. He has created solutions for all participants, to the mortgage or debt transaction, including the borrower, the court, and the industry. Mr. Rydstrom has created solutions for financing or debt workouts and its related decisioning and processing. He earned his J.D. degree in law, his B.S. degree in public accounting, and his LL.M. degree in taxation.

ANDREW J. SHERMAN is a partner in the Washington, D.C. office of Jones Day, with more than 2,400 attorneys worldwide. Mr. Sherman is a recognized international authority on the legal and strategic issues affecting small and growing companies. He is an adjunct professor in the Masters of Business Administration (MBA) program at the University of Maryland and Georgetown University, where he has taught courses on business growth, capital formation and entrepreneurship for more than twenty years. Mr. Sherman is the author of seventeen books on the legal and strategic aspects of business growth and capital formation. His eighteenth book, *Road Rules Be the Truck Not the Squirrel*, is an inspirational book which was published in the fall of 2008.

ACCREDITATION DETAILS:

Continuing Legal Education

AK CLE: 6.00 Credit Approval Exp 12/04/2011

This course has been approved by the Alaska Bar Association and may qualify for up to 6.0 hours of VCLE self study credit under the voluntary CLE Rule, including 1.0 hours of MECLE ethics self-study credit under the mandatory ethics continuing legal education CLE Rule.

AZ CLE: 6.00 Credit Approval Exp 12/04/2011

The State Bar of Arizona does not approve or accredit CLE activities for the Mandatory Continuing Legal Education requirement. This activity may qualify for up to 6.0 hours toward your annual MCLE self-study requirement for the State of Arizona, including 1.0 hour of professional responsibility self-study credit.

CA CLE: 6.00 Credit Approval Exp 12/04/2011

This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California and may

qualify for up to 6.0 hours of self-study credit, of which 1.0 hour will apply to legal ethics self-study credit. NBI, Inc. certifies this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education. NBI, Inc. is a State Bar of California approved MCLE provider - #53.

CO CLE: 7.00 Credit Approval Exp 12/04/2011

This program may qualify for up to 7.0 hours of self-study general Colorado Continuing Legal Education Credit, including 1.0 ethics credit.

CT CLE: 6.00

This course is currently pending with the CBA Academy of Continuing Professional Development.

ID CLE: 6.00 Credit Approval Exp 12/04/2011

This program may qualify for up to 6.0 hours of self-study continuing legal education credit in the state of Idaho, which may include 1.0 ethics credit.

IL CLE: 6.00 Credit Approval Exp 12/04/2011

This program has been approved by the Illinois MCLE Board for 6.0 hours of distance learning CLE credit, which includes approval for 1.0 hour of legal ethics CLE credit by the Illinois Supreme Court Commission on Professionalism.

ME CLE: 6.00 Credit Approval Exp 12/04/2011

This course has been approved by the State of Maine Board of Overseers of the Bar. Lawyers who complete this course may receive up to 6.0 hours of self-study CLE credit including 1.0 ethics hours under M. Bar R. 12. No more than 5.5 hours of self-study CLE credit may be earned during a reporting period.

MO CLE: 7.20 Credit Approval Exp 12/04/2011

NBI, Inc. is an accredited sponsor with Missouri Minimum Continuing Legal Education. This program qualifies for up to 7.2 self-study CLE credit hours. No more than 6.0 hours of self-study CLE credit may be earned during a reporting period. Attorneys may not earn ethics credit with self-study.

MP CLE: 6.00 Credit Approval Exp 12/04/2011

This course has been approved by the Commonwealth of the Northern Mariana Islands. Lawyers who complete this course shall receive 6.0 hours of self-study CLE credit including 1.0 ethics hours.

MT CLE: 6.00 Credit Approval Exp 12/04/2011

This program may qualify for up to 6.0 hours of self-study CLE credit by the Montana Commission on Continuing Legal Education, including 1.0 hour of ethics. No more than 5.0 hours of self-study CLE credit may be earned during a reporting period.

ND CLE: 6.00 Credit Approval Exp 12/04/2011

This program has been approved by the North Dakota Commission for Continuing Legal Education for up to 6.0 self-study CLE credit hours, including 1.0 hour of ethics credit. No more than 15.0 hours of self-study CLE credit may be earned during a reporting period.

NM CLE: 6.00 Credit Approval Exp 12/04/2011

This program has been approved by the New Mexico Minimum Continuing Legal Education Board. This program may qualify for up to 6.0 hours of self-study credit, including 1.0 hours of self-study ethics credit. No more than 4.0 hours of self-study CLE credit may be earned during a reporting period.

NV CLE: 6.00 Credit Approval Exp 12/04/2011

This course has been approved by the Nevada Board of Continuing Legal Education. This program may qualify for up to 6.0 of alternative format CLE credits by the Nevada Board of Continuing Legal Education, which includes 1.0 hour of alternative format ethical considerations.

OK CLE: 7.00 Credit Approval Exp 12/04/2011

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission. This program may qualify for up to 7.0 of computer-based CLE credit hours. No more than 6.0 hours of computer-based CLE credit may be earned during a reporting period.

OR CLE: 6.50 Credit Approval Exp 12/04/2011

NBI, Inc. is an approved sponsor with the Oregon MCLE. This program may qualify for up to 5.5 hours of general self-study continuing legal education credit and 1.0 hour of ethical considerations credit.

VI CLE: 7.20 Credit Approval Exp 12/04/2011

The course has been approved by the V.I. Bar Association Committee on Legal Education and Admissions to the Bar for 7.2 hours of self-study CLE credit, including 1.0 hour of ethics.

VT CLE: 6.00 Credit Approval Exp 12/04/2011

This course has been approved by the Vermont Board of Mandatory Continuing Legal Education. This program may qualify for up to 6.0 hours of self-study credit, including 1.0 hour of self-study ethics credit. No more than 10.0 hours of self-study CLE credit may be earned during a reporting period.

WA CLE: 6.00 Credit Approval Exp 12/04/2011

This program may qualify for up to 6.0 hours of Washington continuing legal education self-study credit, which includes 1.0 hour of ethics.

WV CLE: 7.00 Credit Approval Exp 12/04/2011

This program may qualify for up to 7.2 hours of self-study credit, which includes 1.0 hour of self-study ethics credit, under the West Virginia Rules for Mandatory Continuing Legal Education. No more than 12.0 hours of self-study CLE credit may be earned during a reporting period.

WY CLE: 6.00 Credit Approval Exp 12/04/2012

The Wyoming State Board of Continuing Legal Education has granted up to 6.0 hours of Continuing Legal Education Credit, including 1.0 hour of ethics. No more than 5.0 hours of self-study credit may be earned during one calendar year.