

MICHAEL T. CHULAK  
& ASSOCIATES

A L A W C O R P O R A T I O N

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**Fee Agreement – Request for Mortgage Loan Modification**

This document (Agreement) is the written fee contract that California law requires lawyers to have with their clients (Client). Michael T. Chulak & Associates (Attorney) will provide legal services to you, on the terms set forth below.

1. **CONDITIONS.** This Agreement will not take effect, and we will have no obligation to provide legal services, until you return a signed copy of this Agreement and pay the initial deposit, if any, called for under Paragraph 4.
2. **SCOPE OF SERVICES.** You are hiring us as your attorney to represent you in requesting a loan modification from your \_\_\_\_\_ trust deed lender (and/or loan servicer) in connection with the real property located at \_\_\_\_\_  
Our services will include preparing an application for a proposed loan modification, providing the lender with requested information and documents, negotiating with the lender and/or loan servicer, sending letters to the lender and/or loan servicer as we determine necessary, and reviewing/negotiating the loan modification documents if we are successful in concluding a mutually agreeable modification. We will provide legal services to you until the first of the following takes place:
  - (1) We conclude a satisfactory loan modification agreement,
  - (2) the lender and/or loan servicer refuses to modify the loan,
  - (3) You decide to withdraw your application to modify the loan, or
  - (4) the property is foreclosed or sold.
3. **CLIENT'S DUTIES.** You agree to be truthful with us, to cooperate, to keep us informed of developments, to abide by this Agreement, to pay our bills on time, and to keep us informed of your address, telephone number and whereabouts. In addition, you agree to provide us with the information and documents we must submit to the lender.
4. **DEPOSIT.** No deposit shall be required.
5. **ATTORNEY FEES, EXPENSES AND BILLING PRACTICES.**  
Client agrees to pay for legal services at the following rates:
  - 1.) Attorney fees at \$320 per hour
  - 2.) Paralegal fees at \$125 per hour
  - 3.) Law clerks at \$125 per hour

Hourly charges shall be in minimum units of .10 hours.

In addition to paying legal fees, Client shall reimburse Attorney for all costs incurred by Attorney on behalf of Client, including but not limited to photocopy services, recording fees, notary fees, postage,

Initials: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

messenger and delivery fees, in-office photocopying at \$.25 per page, parking fees and any other required expenses.

6. **NEGOTIABILITY OF FEES.** The attorney fees set forth above are not set by law, but are negotiable between an attorney and client.
7. **BILLING STATEMENTS.** We will send you periodic billing statements for attorney fees and expenses incurred in connection with this matter. You may request a statement at intervals of no less than thirty days. Upon your request, we will provide a statement within ten days.
8. **DISCLAIMER OF GUARANTEE.** Nothing in this Agreement and nothing in our statements to you will be construed as a promise or guarantee about the outcome of your matter. We make no such promises or guarantees. There can be no assurance that your loan will be successfully modified. Our comments about the outcome of your matter are expressions of opinion only.
9. **DISCHARGE AND WITHDRAWAL.** You may discharge us at any time, upon written notice to us, and we will immediately after receiving such notice, cease to render additional services. Such a discharge does not, however, relieve you of the obligation to pay any legal fees and costs incurred prior to such termination and we have the right to recover from you the reasonable value of our legal services rendered from the effective date of this Agreement to the date of discharge including reimbursement for any expenses incurred on this matter. In the event of discharge or withdrawal, Client shall reimburse Attorney for the costs of duplicating any file materials provided to Client.

We may withdraw from representation of you with your consent or upon reasonable notice to you.

10. **CONCLUSION OF SERVICES.** When our services conclude, all unpaid charges will immediately become due and payable. You authorize us to use any funds held in our trust account as a deposit against attorney fees and expenses for such unpaid charges. After our services conclude, we will deliver any funds of yours in our possession. Client authorizes and instructs Attorney to destroy all file materials after four years have elapsed from the conclusion of services.
11. **DISPUTES.** In the event that any suit is instituted concerning or arising out of this Agreement, each party shall pay all of such party's costs, including, without limitation, the court costs and reasonable attorney's fees incurred in each and every such action, suit or proceeding, including any and all appeals or petitions there from. Any suit filed shall be in Los Angeles County. Venue shall be the court closest to Attorney's office.
12. **EFFECTIVE DATE.** This Agreement will take effect when you have performed the conditions stated in Paragraph 1, but its effective date will be retroactive to the date we first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, you will be obligated to pay us the reasonable value of any services we may have performed for you.
13. Client has read "Loan Modifications Frequently Asked Questions" which is attached and incorporated into this Fee Agreement by reference.

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Michael T. Chulak & Associates  
A Law Corporation

Initials: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I/We have read and understand the foregoing terms and agree to them. If more than one party signs below, we agree to be liable jointly and severally for all obligations under this Agreement. By signing this Agreement, I/we acknowledge receipt of a fully executed duplicate of this Agreement.

Date: \_\_\_\_\_

Client Signature: \_\_\_\_\_

Client Name: \_\_\_\_\_

Address: \_\_\_\_\_

Day Telephone: ( ) \_\_\_\_\_

Home Telephone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Cellular Telephone: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

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Date: \_\_\_\_\_

Client Signature: \_\_\_\_\_

Client Name: \_\_\_\_\_

Address: \_\_\_\_\_

Day Telephone: ( ) \_\_\_\_\_

Home Telephone: ( ) \_\_\_\_\_

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# Loan Modifications

## Frequently Asked Questions

- Q** Why do real estate lenders generally agree to modify loans?
- A** Lenders agree to modify loans because they become convinced that it is in their interest to modify a particular loan rather than foreclose and sell the property. Our job is to convince the lender that the proposed modified loan terms are reasonable.
- Q** How do you convince a lender that it is in their interest to modify a loan rather than foreclose?
- A** By pointing out the very specific details of how each alternative will effect them.
- Q** Can a non-attorney represent us in negotiating a loan modification?
- A** Only attorneys can practice law, provide legal advice and file lawsuits. An experienced, knowledgeable and creative attorney can nearly always be more effective in convincing a lender that they should modify their loan.
- Q** Can you guaranty us that you will be successful in obtaining a loan modification if we pay your fee?
- A** No one can guaranty that a lender will modify its loan. While we expect lenders to act in their best interest, we cannot guaranty that they will do so. Sometimes lenders make the mistake of foreclosing, costing their shareholders and sometimes the taxpayers of this nation thousands of dollars. We can only represent to you that we will be diligent and will use our knowledge, experience and negotiating skills to the best of our ability.
- Q** Should I continue to make my real estate loan payments while you negotiate with the lender?
- A** No. Mortgage lenders have absolutely no incentive to modify a loan that is current (not in default). Unless the borrower stops paying, we are likely to be unsuccessful in obtaining any material concessions from the lender. If you continue to make your monthly payments, the lender will conclude that you will not risk a foreclosure and will continue to bleed you dry.
- Q** Do I risk having my property foreclosed if I stop making the monthly payments?
- A** Yes. If you stop making the payments and the lender refuses to modify the loan, you will lose the property to foreclosure (unless you reinstate the loan prior to the foreclosure by paying all delinquent payments plus all foreclosure related costs and late fees). Remember, in order to get the best terms from your lender, the lender must absolutely believe you will let the property be foreclosed absent an acceptable loan modification.
- Q** Can bankruptcy stop a foreclosure?
- A** Yes, but only for a few weeks at most.
- Q** Does your law firm offer tax advice in connection with loan modifications?
- A** No. This is a specialized area. We strongly recommend that you obtain the advice of a licensed California CPA to determine whether or how a loan modification will affect your tax liability.
- Q** Does your law firm provide no cost initial consultations?
- A** Absolutely
- Q** What is reasonable to expect from my lender in terms of a loan modification?

**A** It is reasonable for the lender to reduce the principal balance of the loan to the fair market value of the property and to adjust the interest rate and term to reflect current market terms. A lender that modifies a loan to reflect these terms will definitely net more dollars than will be received from a foreclosure sale.

**Q** Is purchasing a foreclosed property risky?

**A** Yes. Its similar to buying a car that has been in a serious accident. Buyers of foreclosed homes do not generally receive the same disclosures required of other sellers and may be subjected to the risk that the property was previously sabotaged or has hidden defects. Buyers of such properties have found drain and sewer lines filled with cement, severed electrical wires, holes made in the roof and much worse. In short, its dangerous to buy a foreclosed home and buyers of foreclosed properties rarely pay top price because of the risks.

**Q** What risks do lenders take if they refuse to modify a loan and decide to foreclose?

**A** Prior to becoming an attorney, I ran the foreclosure divisions of several financial institutions. My responsibilities included loan workouts or modifications, foreclosing on properties, managing the foreclosed properties (including all repairs and maintenance and selling the foreclosed properties). I handled hundred of loan modifications and foreclosed properties in the 1970's and 1980's. During this period, I learned why mortgage lenders are better off reasonably modifying loans rather than foreclosing.

First, the direct and indirect costs of foreclosing on a property are substantial and include the following:

#### Standard Costs

- Trustee's fees and costs
- Advertising costs
- Real estate commission (4% - 7%)
- Title insurance and escrow fees (1%)
- Opportunity cost or loss of interest on investment
- Cost of normal repairs
- Normal maintenance, cleaning and property management costs
- Utilities (water and electricity)
- Insurance
- Real estate taxes
- Security, alarm monitoring
- Homeowner association fees, including fines and special assessments
- Cost of lender's employees
- Landscape maintenance
- Pool repairs and maintenance

## Possible Costs

- Vandalism of property. While illegal and highly unethical, I have seen instances of the following scorched earth conduct by desperate and revengeful people:
  - Concrete poured into plumbing fixtures and drains
  - Removal of plumbing fixtures, electrical fixtures, appliances and cabinets
  - Removal of carpeting and screens
  - Removal of air conditioning – heating equipment, garage door openers, doors and pool equipment
  - Destruction of irrigation systems and landscaping

## Other Lender Costs

- Given the laws of supply and demand, every foreclosure in every community drives the market value of the other homes in the community down. In short, when a real estate lender forecloses instead of reasonably modifying a loan, it contributes to the destruction of the market for the assets they own.
- The lender will avoid possible adverse publicity resulting from newspapers, radio stations and television stations reporting the horror and tragedy of another unreasonable foreclosure.
- The lender will avoid the possible criticism from shareholders, federal and state regulators, government agencies and politicians asking why the lender foreclosed when it could have saved money by reasonably modifying the loan to reflect market terms.
- The loss of good will in the community. The reputations (and net worth) of lenders can be destroyed one unreasonable foreclosure at a time.
- Capital impairment, with all that results, including a decline in the value of the lender's stock.

## Other Factors

- Employees who are costing their employer - lenders money are losing their jobs for good reason. Remember, every day a lender is unrealistic or unreasonable means greater losses for the lender, the shareholders and possibly the tax payers.

**Q** Do mortgage lenders ever ask for concessions before they modify a loan?

**A** Yes. They will often bury many things in the fine print if you are not careful. Often they will ask that you release them from liability for any prior wrongdoing and waive the right to a jury should you ever file suit against them in the future. In addition, they will often add fees on to the "end" of the loan to cover their attorney's fees and costs. These may be substantial. The list of possibilities is limitless which is why you should be represented by competent legal counsel.

**Q** My lender insists that I must make at least one more loan payment to show good faith. Should I make the payment?

**A** We believe you must cease all loan payments while negotiating a loan modification. Remember, the bank or other lender is not your friend. They simply want your money. They don't care about you or your family. Its all about getting you to pay them.

**Q** Should I pay the property taxes while a loan modification is being negotiated?

- A** No. So long as you don't exceed five years of non payment. Not paying will cause you to pay interest and penalties if your loan modification is successful. If it is not successful, payment of the taxes will be money lost forever.
- Q** Should I pay the fire insurance on the property while a loan modification is being negotiated?
- A** Yes, but don't pay ahead any longer than necessary.
- Q** Why should a lender choose a loan modification based upon a loan equal to the fair market value of the property instead of a short sale?
- A** Lenders are always better off with a loan modification where the loan is equal to fair market value of the property than a short sale based on fair market value. With a short sale, fair market value is almost always less than fair market value based upon a loan modification because the property will almost always be in a more distressed condition. In addition, with a short sale, the lender must pay all of the costs associated with the sale. Choosing a short sale over a loan modification will generally result in the lender incurring an additional loss equal to 10% to 20% of the fair market value based on the rejected loan modification.
- Q** Is it possible or likely that my real estate lender will report the fact that I am withholding my mortgage payments to the credit reporting companies?
- A** Yes. It is both possible and likely. Many real estate lenders are acting vindictively by intentionally harming the credit rating of their clients, if their clients act in their own best interest instead of the lender's best interest. This common act of revenge harms the borrower but it also harms the lender by reducing the value and marketability of the loan in the secondary mortgage market. A borrower with a poor credit rating reduces the value of the loan when it is offered for sale. Notwithstanding the fact that real estate lenders are harming themselves in the process of injuring their clients, many are more interested in trying to intimidate borrowers into paying than in restructuring a fair loan based upon economic realities.
- Q** My loan is being serviced by a company other than the mortgage lender. How does this effect a potential loan modification?
- A** It complicates things. There is often a major conflict of interest between the servicer and lender. If a foreclosure takes place, the servicer is likely to earn substantial fee income. If a loan modification is completed (therefore, no foreclosure takes place), the loan servicer does not earn substantial fee income. Generally, if a loan modification is completed, both the lender and borrower benefit but the servicer does not benefit. As a result of this common conflict, a trend is developing where lenders are now filing lawsuits against loan servicers for breach of fiduciary duty and negligence. Employees of loan servicers must be aware of the legal liability that exists.