



# OLR RESEARCH REPORT

February 5, 2013

2013-R-0083

## **STATE REQUIREMENTS FOR DEBT NEGOTIATORS IN SHORT SALE NEGOTIATIONS**

By: Michelle Kirby, Associate Analyst

You asked for a summary of the state requirements for debt negotiators in short sale negotiations.

### **SUMMARY**

A debt negotiator is an individual who, for a fee, assists a debtor in negotiating or attempting to negotiate the terms of the debtor's obligations with a mortgage company or creditor, including short sale negotiations. In a short sale, a mortgage company allows a homeowner to sell the home for an amount less than the remaining mortgage balance; the proceeds of the sale are paid to the mortgage company.

State law generally requires a debt negotiator to obtain a license from the Connecticut Department of Banking (DOB) for each location in which he or she wishes to engage or offer to engage in debt negotiation. Applicants must meet specified requirements, pay certain prescribed fees, and file a surety bond with the department. A debt negotiator must also provide a service contract to each debtor that includes a complete, detailed list of services to be performed, the cost of services and the results to be achieved. The DOB has set maximum fees that debt negotiators may charge for their services.

## LICENSING REQUIREMENTS AND FEES

The law requires a person to obtain a license before engaging or offering to engage in debt negotiation in the state. By law, a person is engaging in debt negotiation in the state if the person has (1) a place of business located within the state; (2) a place of business located outside of this state and the debtor is a resident of the state who negotiates or agrees to the terms of the services in person, by mail, by telephone, or via the Internet; or (3) a place of business located outside of this state and the services concern a debt that is secured by property located in the state ([CGS § 36a-671\(b\)](#)).

The law exempts the following individuals and institutions from the licensing requirements: (1) any attorney admitted to the practice of law in this state who engages or offers to engage in debt negotiation as an ancillary matter to such attorney's representation of a client; (2) any bank, out-of-state bank, Connecticut credit union, Federal credit union or out-of-state credit union, provided subsidiaries of such institutions other than operating subsidiaries of federal banks and federally-chartered out-of-state banks are not exempt from licensure; (3) any person licensed as a debt adjuster, while performing debt adjuster services; (4) any person acting under a court order; and (5) any bona fide nonprofit organization organized as a 501(c)(3) under the Internal Revenue Code ([CGS § 36a-671\(c\)](#)).

Debt negotiators must obtain a license for each location where they will conduct debt negotiation. Applicants must submit the applications to the banking commissioner in writing and include a criminal conviction history for the (1) applicant; (2) partners, if the applicant is a partnership; (3) members, if the applicant is a limited liability company or association; or (4) officers, directors and principal employees, if the applicant is a corporation ([CGS § 36a-671\(c\)](#)). Licensees must notify the commissioner, in writing, of any change in license location ([CGS § 36a-671\(d\)](#)).

The initial and renewal debt negotiation license fee is \$1,600 or \$800 if it expires in one year or less, which applicants must pay when submitting the application. Unless a license is renewed, it expires at the close of business on September 30<sup>th</sup> of the odd-numbered year following its issuance. The license renewal application must be filed on or before September first of the year in which the license expires. Licensees must pay an additional \$100 processing fee for renewal applications when the license expires less than 60 days before the application filing ([CGS § 36a-671\(e\)](#)).

## **SURETY BONDS**

Applicants for an initial or renewal debt negotiator license must file a surety bond in the aggregate amount of \$50,000 covering their main office, as well as an addendum to the bond covering any branch offices.

A licensee who is engaged in negotiating residential mortgage loans must file a bond, ranging from \$50,000 to \$150,000, based on the aggregate underlying dollar amount of all residential mortgage loans for which the sponsored mortgage loan originator provides debt negotiation services.

The surety bond must be written by a surety company authorized to write such bonds in Connecticut. The bond must be maintained during the entire license period and the aggregate liability under any such bond must not exceed the principal amount of the bond ([CGS § 36a-671d](#)).

## **DEBT NEGOTIATION SERVICE CONTRACT**

A debt negotiator must provide each debtor with a contract that must include a complete, detailed list of services to be performed, the costs of such services, and the results to be achieved. Each debt negotiation service contract must contain (1) a statement certifying that the person offering debt negotiation services has reviewed the consumer's debt and (2) an individualized evaluation of the likelihood that the proposed debt negotiation services would reduce the consumer's debt or debt service or, if appropriate, prevent the consumer's residential home from being foreclosed.

Each contract must allow the consumer to cancel or rescind it within three business days after the date the consumer signed the contract. It must contain a clear and conspicuous caption that reads: "Debtor's three-day right to cancel" along with the following statement: "If you wish to cancel this contract, you may cancel by mailing a written notice by certified or registered mail to the address specified below. The notice shall state that you do not wish to be bound by this contract and must be delivered or mailed before midnight of the third business day after you sign this contract." Any contract that does not comply with all of these requirements is voidable by the consumer ([CGS § 36a-671b](#)).

## **DEBT NEGOTIATOR FEES**

The banking department has set the maximum fees that debt negotiators may charge for their services.

In negotiating a short sale, a debt negotiator may charge the mortgagor or debtor up to \$500 for performing debt negotiation services. The fee is collectable only when all services stated in the debt negotiation service contract have been successfully completed. The debt negotiator is not prohibited from also receiving compensation from the mortgage company.

Additional information about debt negotiator fees can be found on the DOB's website at: [DOB Schedule of Maximum Fees](#).

MK: car