

Testimony of Missouri Attorney General Chris Koster for the Senate Commerce Committee Hearing on "The Economy and Fraud: Protecting Consumers During Downward Economic Times."

Thank you Mr. Chairman,

I appreciate your bringing attention to the problems we are seeing across the nation from scams and fraudulent activities borne directly from the recession. I will focus my comments today on what we in Missouri see as a particular threat to people impacted by the economic downturn -- companies and individuals who specialize in servicing, some might say preying on, consumers who have significant credit card debt, and/or an unsustainable mortgage.

Foreclosure Consultants and Debt Settlement Firms offer to cut principal in half, reduce monthly payments by hundreds of dollars, or eliminate debt altogether. And, they claim the process is virtually pain free.

All that is required is a few thousand dollars in up-front fees so they may utilize their "expertise" to "help" the consumer—as they supposedly know the "secrets" to negotiating with the credit card companies.

The unmentioned secret is that these companies are offering a service that the consumer could do for himself, or that non-profit credit counselors will perform for free or a modest fee.

And these companies' strategies rely on the consumer stopping all payments to and communications with his or her creditors.

It is this final aspect that leads to long-term damage to the consumer's credit rating and hundreds or thousands of dollars in additional fees. In fact, to the extent that these companies provide the service at all, they often obtain a debt settlement or mortgage modification that is no better than where the consumer started, partly because of these additional fees and interest.

Real people are being harmed by these companies. The Complaint Unit in my office has seen a sharply increasing volume of complaints regarding **foreclosure rescue** scams: from 16 complaints in 2007 to 9 complaints in 2008 to 84 complaints thus far in 2009.

For **debt settlement**, there has been a similar spike: from 78 complaints in 2007 to 109 complaints in 2008 to 105 complaints thus far in 2009.

To further complicate matters, both debt settlement firms and foreclosure consultants are using deceptive advertising. Much of what we are seeing seeks to co-opt the authority of the federal government and these advertisements are ubiquitous.

Thousands of direct mail pieces are distributed every day across the country offering debt settlement or foreclosure relief purporting to use money from the “Economic Stimulus Act of 2008 [or 2009].” The references are to federal programs that have nothing to do with the consumer targeted—for example, the Economic Stimulus Act of 2008 increased the size of loans that the Federal Housing Administration could insure; but this adjustment had nothing to do with whether a person with a \$150,000 loan could refinance.

The advertisements typically are replete with federal seals from the Department of Housing and Urban Development and the Federal Housing Administration, and logos that generally appear to be from the federal government. Eagles and flags grace these advertisements.

In fact, I personally received an offer for enrollment in a “Payment Reduction Program” that was “created in conjunction with the Government Economic Stimulus Act of 2008.” The advertisement looked like it came from the federal government in that it was a “Form 008-S” and the subject line read “HR 5140 Government Economic Stimulus Act of 2008.”

Luckily my University of Missouri law school education taught me to examine the fine print, which was located at the far bottom of the letter and revealed the letter to be an “advertisement” and that the offer was not “being made by any agency of the government.”

Unfortunately, too many consumers are fooled by these tactics.

We could afford to be more tolerant of these schemes if they didn’t prey on those with so few resources.

Missouri takes seriously enforcement of laws that were enacted to address these issues: the Missouri Merchandising Practices Act, the Missouri Foreclosure Consultant Act, and the Missouri Credit Services Organization Act. Our state’s ban on up-front fees for foreclosure consultants and credit repair firms represents a particularly effective enforcement tool.

Missouri polices all manner of fraud, but financial fraud has become a priority, and for which Missouri has Zero Tolerance.

Missouri has a foreclosure consultant statute that, among other things, makes it illegal for a foreclosure consultant to take an up-front fee. This ban has been the most effective tool in fighting unscrupulous foreclosure consultants.

These services are often only profitable if the company charges a large up-front fee. A ban on such fees not only discourages companies with suspect motives from entering the market, but makes proving the enforcement action quite easy, thereby enabling swift injunctive relief.

In addition to several ongoing investigations, the Attorney General's office recently filed the following case:

- Gateway Mortgage Modifications, LLC: The Attorney General's Office filed suit May 26, 2009 against this company for charging up front fees for foreclosure relief and mortgage modifications. In addition, Gateway did not deliver the services promised, falling short on the promised interest rate reduction for mortgage modifications it did obtain (in violation of the Merchandising Practices Act). Gateway had about 200 clients at the time the suit was filed. A preliminary injunction has been agreed to and Missouri is seeking restitution for consumers and possible civil penalties.

Missouri also has a credit services organization statute that makes it illegal for such individuals to accept an up-front fee. Again, this is an effective way to police the credit repair markets because it discourages bad actors from entering the market and is an easily proven violation.

However, Missouri is also pursuing a deceptive and unfair practices theory under the Merchandising Practices Act with respect to debt settlement firms' advertisements and instruction to consumers not to pay their creditors while the company negotiates with those creditors.

In addition to several ongoing investigations, the Attorney General's Office recently filed the following case:

- Credit Solutions of America, Inc. – On May 28, 2009, Missouri filed suit against Credit Solutions of America, Inc. for violations of the Missouri Merchandising Practices Act and the Missouri Credit Services Organization Act. Credit Solutions claims it can lower consumers' monthly payment, resolve debts for 50 cents on the dollar, and get consumers out of debt within 3 years. In addition, Credit Solutions relies on consumers not paying their creditors during the negotiation. Finally, Credit Solutions failed to comply with several portions of the Credit Services Organization Act, including the ban on up front fees. Missouri joins New York and Texas in filing suit against Credit Solutions for similar practices.

Missouri has used its Merchandising Practices Act to crack down on the deceptive use of federal government logos and programs. Missouri has also targeted companies making misleading references to consumers' lenders. Missouri has investigated more than a dozen companies, reached settlement with several, and brought two cases:

- Goldstar Home Mortgage: The Attorney General's Office filed suit April 20, 2009 against this company, which sent direct-mail letters to consumers with the consumers' own bank name at the top of the letter, making it appear that the consumers' bank was encouraging them to refinance.
- Oxford Lending Group: The Attorney General's Office filed suit April 20, 2009 against this company, which made deceptive representations regarding the "Economic Stimulus Act of 2008" in its mailing, to appear that consumers had a special opportunity to refinance, and using the HUD (U.S. Department of Housing and Urban Development) label and name to mislead the recipient that the letter was related to the federal government.

But, the most powerful tool to combat the appeal of the schemes is education.

The consumer complaint hotline, along with the Attorney General's website, is where Missouri consumers can let my office know about unscrupulous practices. In addition to a mediation procedure whereby investigators seek to resolve individual complaints, the complaint hotline allows Missouri to stay on the leading edge of what scams are out there and address them quickly.

Similarly, the Consumer Corner Blog on the Attorney General's website allows the Attorney General's consumer protection division to alert consumers as to what scams are out there and what they can do about them.

My website provides links that allow consumers to sign up for the no call list, which precludes most telemarketers from calling the consumer. This can prevent some scammers from ever pitching their product. The Missouri No Call List is a model for other states.

Further, my website has, on its front page, an Action Center, which has short cut buttons for several categories of complaints, including Mortgage Fraud, Consumer Complaints, No Call, and Search of Complaints against Businesses. These buttons reflect some of the priorities of the Missouri Attorney General's office in fighting scams; in fact, the buttons placed in the action center reflect what Missourians are telling the Attorney General regarding priorities for enforcement.

In addition, consumers can search businesses on my web-site to see whether those businesses have received any consumer complaints. We also publicize scams with the news media, in an attempt to get out the warnings as broadly as possible.

Finally, particularly given the foreclosure crisis, consumers need to know what help is available for free. For those in a distress position, the federal government has a website, www.makinghomeaffordable.gov, which can answer questions regarding refinancing or loan modifications. And, the Better Business Bureau or my office may be able to help direct the consumer to legitimate organizations that can help them with mounting debt or an adjusting mortgage.

In my six months as Missouri's Attorney General I have been continually amazed at the lengths individuals will go in an attempt to scam innocent people out of their money. I am certain it has always been so; I saw it in my ten years as a county prosecutor. But these tough economic times, with desperate consumers needing help and an array of new government programs, seem the perfect climate for frauds and scams to thrive. False hope is notoriously easy to provide.

I encourage your committee to consider any additional enforcement measures at the federal level to make people using these fraudulent tactics think twice, and to give us as strong of tools as possible to go after them once they have perpetrated their scams. Thank you for your time.