NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

Research

Foreclosure Rescue Scams: A Nightmare Complicating the American Dream

A report identifying common foreclosure scams perpetrated against consumers, and red flags that every homeowner must know.

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THE NATIONAL COMMUNITY REINVESTMENT COALITION

The National Community Reinvestment Coalition is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families. Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority- and women-owned business associations, and social service providers from across the nation. Their work serves primarily low- and moderate-income neighborhoods and communities.

NCRC is a recognized United States Department of Housing & Urban Development National Housing Counseling Intermediary Organization who, with its affiliates, provides foreclosure prevention, pre-purchase, landlord tenant, fair housing, reverse mortgage, consumer credit and financial education services at no cost to consumers.

The Board of Directors would like to express its appreciation to the NCRC professional staff that contributed to this publication, and continue to serve as an invaluable resource to all of us committed to promoting responsible lending and a financially inclusive society. For more information, please contact:

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Executive Summary

Foreclosure prevention and rescue modification scams present a growing concern for the consumer protection community. Numerous consumer complaints and NCRC's mystery shopping investigation confirm that companies that pose as "rescuers" are a pervasive threat to community stability and sustainable homeownership. This report identifies common scams perpetrated against consumers, including phantom help, reverse mortgages, title theft, and short sale fraud, and highlights those important red flags that every homeowner must know. In addition, NCRC's findings demonstrate that an aggressive legislative solution and added public and private oversights and enforcement is necessary to prevent consumers from being harmed.

Over 80% of the companies "tested" in this study gave consumers problematic advice and offered little or no guarantees for their "professional" services. They quoted consumers an average fee of $2600 for the same services that could be readily obtained from HUD Certified Counseling Agencies or by dealing directly with mortgage servicers. Furthermore, many companies were truly out to scam homeowners, looking to strip equity, steal title, or sell services that would allow the company to profit at the expense of consumers and lead to foreclosure and irreparable harm to the consumers' credit and financial situation. Less than 20 percent followed Federal Trade Commission (FTC) guidance that requires companies to inform consumers of alternatives such as nonprofit organizations that provide foreclosure prevention services for free. In about a quarter of the mystery shopping calls, the shoppers were advised not to pay their mortgage or have any contact with their lender.

Foreclosure modification scams have been a problem for years. However, with the recent increase in foreclosures, scams have become more prevalent and present a significant consumer protection concern.

Background & Recommendations

Solving the foreclosure crisis is critical for the economic health of this country. Since the onset of this crisis, $7 trillion in household wealth has been lost. This translates into reduced consumer spending, depressed business activity, a lower gross national product, lower property tax receipts, and higher local and state budget deficits. Foreclosures not only impact individual homeowners but entire neighborhoods through declining property values, increases in abandonment, decay, crime, and vandalism. In short, the continued failure to adequately address this crisis multiplies the profound social, cultural, and economic injury to our nation.

The foreclosure tsunami has been further compounded by the highest unemployment rates in the last quarter center. In a vicious cycle, the record rates of unemployment and reduction in wages are now feeding continued foreclosures.

In the face of this "Great Recession" the Bush Administration encouraged the private sector to create the HOPE Now Alliance with the purpose of coordinating the foreclosure prevention efforts of counseling organizations, servicers, and other financial institutions. While the HOPE Now Alliance recorded 3.1 million loan workouts during 2007 and 2008, two-thirds of these workouts only deferred or re-scheduled borrower payments without lowering monthly payments. Meanwhile, the foreclosure crisis worsened.

Subsequently, the Obama Administration created two programs, the Home Affordable Modification Program (HAMP) and the Home Affordable Refinance Program (HARP) that aimed to increase the number of loan modifications and refinances by offering public subsidies to financial institutions and borrowers. Using $75 billion of funding from the Troubled Asset Relief Program (TARP), HAMP's goal is to reach 3 million to 4 million borrowers.

Unfortunately, these current programs are not keeping pace with foreclosures. Today, after almost a year of its launching, the HAMP program has fallen short of this goal. While it has offered homeowners almost 1.35 million trial modifications, only 170,207 or 12.5 percent, have been converted into permanent modifications. In addition, the HARP program has assisted only 200,000 borrowers refinance into lower cost loans. The fact of the matter is that these federal government programs and the good faith efforts of servicers alone are not sufficient to reduce the volume of foreclosures that last year displaced 2.9 million households and this year economists estimate may reach as many as 4.5 million mortgage holders as Option ARM resets and interest rate adjustments hit.

As consumers struggle to maintain their housing, “predatory” for-profit foreclosure prevention service providers are undermining the legitimate efforts of the Administration, mortgage servicers, the HOPE Now Alliance, HUD Counseling Intermediaries and their affiliated state and local counseling agencies who work with consumers at no cost.

Testing of foreclosure prevention service providers reveals that consumers experience a wide range of treatment. In the best-case scenario, consumers receive fair advice, and cost-effective strategies for preserving homeownership. However, many companies have been revealed to be sources of misinformation. Further testing is needed to fully assess the nature of the problem, but many avenues for consumer-protection enforcement are already apparent.

The testing results underscore the need for an effective legislative solution and increased public and private sector oversight combined with effective education and outreach to ensure consumers work with responsible providers. Modification companies are often operating in a regulatory vacuum, without any accountability, and may be preventing consumer access to the Home Affordable Mortgage Program and the Home Affordable Refinance Program.

Foreclosure Rescue Scams: A Nightmare Complicating the American Dream

Each year counselors within the NCRC Housing Counseling Network assist thousands of consumers. United States Department of Housing and Urban Development certified housing counselors understand that for each and every family we counsel, the possibility of losing their home to foreclosure is real and terrifying. However, the reality that scam artists are preying on the vulnerability of desperate homeowners is equally frightening. This is why NCRC commissioned over 200 mystery shops of for-profit foreclosure prevention providers in 2009.

NCRC frequently receives “eleventh hour” requests from consumers who facing imminent foreclosure and have been taken advantage of by so-called foreclosure rescue companies or foreclosure assistance firms. They operate under a bait-and-switch technique, promising homeowners that they can save their home. Many inform consumers that they can more effectively navigate the maze of federal and state foreclosure assistance programs and speed the process along with their mortgage servicer. Many were brazen enough to offer a money-back guarantee without placing the assurance in writing. Unfortunately, once a foreclosure fraudster takes homeowners’ money, they leave consumers much the worse for wear.

It is NCRC’s counselors’ experience that fraudulent foreclosure “rescue” professionals use half-truths and outright lies to sell services that promise relief and then fail to deliver. Their goal is to make a quick profit through the fees or mortgage payments they collect from consumers, but do not pass onto the lender. Sometimes, they even assume ownership of the property by deceiving the homeowner. Then, when it’s too late to save our client’s home, they take the property or siphon off the equity. Ultimately, the consumer, who thought that they were working with a reputable firm, loses their home to foreclosure despite their best intentions.

How the Scams Work

Foreclosure rescue firms use a variety of tactics to find homeowners in distress. Some sift through public foreclosure notices in newspapers and on the Internet, or through public files at local government offices, and send personalized letters to homeowners. Others take a broader approach through ads on the Internet, on television, in the newspaper, with posters on telephone poles, median strips and bus stops, or with flyers or business cards at your front door. The scam artists use simple and straight-forward messages, including:

"Stop Foreclosure Now!"

"We guarantee to stop your foreclosure."

"Keep Your Home. We know your home is scheduled to be sold. No Problem!"

"We have special relationships within many banks that can speed up case approvals."

"We Can Save Your Home. Guaranteed. Free Consultation"

"We stop foreclosures everyday. Our team of professionals can stop yours this week!"

Once they have a customer's attention, they use a variety of tactics that have been well-documented by the National Community Reinvestment Coalition, housing counselors, the Federal Trade Commission, State Attorneys General, The United States Department of Housing and Urban Development, the National Consumer Law Center, and the media.

Documented Mortgage Scams

NCRC's housing counselors have reported and NCRC fair lending "testers" or "mystery shoppers" have documented the following scenarios that consumers should be aware of and avoid:

Reverse Mortgage Fraud

Method: Elderly people who may have lost retirement funds sometimes turn to a reverse mortgage, which allows them to take a new mortgage out on a house they've already paid off. While this is sometimes a helpful tool, industry watchers and government officials warn about people charging sky-high fees.

Result: Elderly people are either cheated by high fees or, in worst-case scenarios, lose their house because they signed documents they did not understand. NCRC has testified on this issue before the House Financial Services and Judiciary Committees.

Phantom Help

Method: A type of foreclosure rescue scam in which a fraudster collects an upfront fee from homeowners trying to save their homes from foreclosure -- and then disappears.

Result: Criminals do nothing and pocket the fee.

Mortgage-Related Identity Theft

Method: Perpetrators use stolen identities to buy properties outright or take out mortgages.

Result: Victims find out they are on the hook for mortgages and loans, even though they believed that they were released from their mortgage obligation.

Short Sale Fraud

Method: A buyer colludes with real estate agents or others to give faulty appraisals or broker price opinions (BPOs) to banks and convinces them a property is worth less than it is.

Result: Banks are defrauded and surrounding property values can drop. This is a growing problem, and NCRC is very concerned about the use of BPOs in the Obama administration's new Home Affordable Foreclosure Alternatives (HAFA) initiative.

Bait And Bump

Method: Lenders or brokers dangle attractive loans in front of desperate homeowners. But when it comes time to close, buyers are told that they do not qualify or that it's too late to switch.

Result: Homeowners are left with mortgages they can't pay for or end up signing away their homes.

Equity Stripping Or Skimming

Method: There are several definitions for this, one of which is synonymous with lease buy-back (see below). Another iteration occurs when a fraudster convinces people to invest in or buy properties, using their credit to get loans for inflated property values, but walks away.

Result: Investors are left with properties, which often have been neglected and have gone into foreclosure.

Lease Buy-Back

Method: Homeowners facing foreclosure sign over the deed to a company or individual who promises to sell it back after a period of time, during which the homeowners can get their finances in order. In the meantime, they are told they will be allowed to rent the house.

Result: The scammer evicts the original homeowner-turned-renter and keeps or sells the property.

Bankruptcy Foreclosure

Method: The scam artist may promise to negotiate with the lender or to get refinancing on the consumer's behalf if they pay an up-front fee. Instead of contacting the lender or refinancing the loan, the scam artist pockets the fee and files a bankruptcy case in the consumer's name – sometimes without their knowledge.

Result: While this bankruptcy filing may stop the home foreclosure, it will only temporarily do so. Further, the bankruptcy process is complicated, expensive, and unforgiving. For example, if the consumer fails to attend the first meeting with the creditors, the bankruptcy judge will dismiss the case and the foreclosure proceedings will continue. Ultimately, the consumer will lose the money he or she paid to the scam artist as well as the home. Also, a bankruptcy stays on your credit report for 10 years, and can make it difficult to obtain credit, buy a home, get life insurance, and sometimes get a job.

10 “Red Flags”

If you’re looking for foreclosure prevention help, *avoid* any business that:

1. Guarantees to stop the foreclosure process – no matter what your circumstances;
2. Instructs you not to contact your lender, lawyer, or credit or housing counselor;
3. Collects a fee before providing you with any services;
4. Accepts payment only by cashier’s check or wire transfer;
5. Encourages you to lease your home so you can buy it back over time;
6. Tells you to make your mortgage payments directly to it, rather than your lender;
7. Tells you to transfer your property deed or title to it;
8. Offers to buy your house for cash at a fixed price that is not set by the housing market at the time of sale;
9. Offers to fill out paperwork for you; or
10. Pressures you to sign paperwork you haven’t had a chance to read thoroughly or that you don’t understand.

How Can Consumers Avoid Becoming a Victim?

- Be skeptical of people who make unsolicited contact.
- Do not hesitate to ask as many questions as you need until you understand what you are signing.
- Do not sign blank forms.
- Check to make sure your name is correctly on documents and matches your identification.
- Check company, mortgage agent, real estate agent and lawyer's certifications through state agencies.
- Review the value of the home by comparing it with others nearby, and go over the sales history of the home to see whether the value has been inflated through multiple sales.
- Remember, if it's too good to be true, it probably is. All HAMP, HARP and FHA assistance programs are time consuming and servicers are overwhelmed by requests for assistance. Do not believe any providers' representations that they will be able to fast track your application at a cost.

Foreclosure Modification Scams: NCRC Fair Lending Audit

Foreclosure modification scams have been a problem for years. However, with the recent increase in foreclosures, scams have become more prevalent and present a significant consumer protection concern. By promising an easy fix for a fee, scammers mislead homeowners into believing that they will get a modification that significantly lowers their payment, or stabilizes an exploding adjustable rate mortgage ("ARM"). Consumers are encouraged to deal only with the for-profit company or mortgage service provider, and sometimes are advised to cease making payments as they are contractually obligated to do. Scammers often fail to deliver the services they advertise, and consumers are left in a worse position than before -- further behind on their home loan, with no recourse or hope of a refund. More vulnerable than ever, consumers may fall prey to other schemes, such as a transfer of title without a release of the mortgage obligation. Directed to make rental payments to the new owner, the home may still fall into foreclosure. At the end of the process, consumers find themselves without equity, with scarred credit, and with nothing to fall back on. Community ties are ruptured and neighborhoods become more prone to blight, disinvestment, and elevated crime.

To address the concerns surrounding rescue scams, NCRC conducted a research study for three months in mid-2009 by using "fair lending matched pair testing" or "mystery shopping" to assess the extent of the problem. Our findings demonstrate that an aggressive legislative solution and added public and private oversights and enforcement are necessary to prevent consumers from being harmed.

Fair Lending Audit Methodology

Mystery shoppers called national and local foreclosure prevention service providers to ascertain:

1. The fees for their services;
2. The types of services offered;
3. The documentation that was required to receive services; and
4. The types of agreements/arrangements troubled homeowners must enter to receive services and/or keep their homes, and other recommendations that were made.

The mystery shoppers posed as distressed borrowers who were delinquent in their mortgage payments and needed foreclosure prevention assistance.

Shoppers informed service providers of a scenario in which they had received an interest-only loan that was initially affordable, but had adjusted sharply to rates above the current market. After several years in their homes, the shoppers had lost at least 20 percent of their property value, but could afford their mortgage balance under the initial terms of the loan, and under current market rates. These troubled borrowers had missed the previous month's payment and had been yet unable to pay the current month's payment, making them 31 to 59 days behind, depending on when the test was carried out. No shoppers were yet in foreclosure, and a loan modification would be a sustainable solution to ensure continued homeownership.

Mystery shoppers were instructed to only disclose information about their financial hardship, and not to disclose personal information such as property address, date of birth, last name, home phone number, social security number and loan number.

In this study, our intent was to replicate the behavior of a troubled borrower who is on the cusp of foreclosure, is seeking help, and is a viable candidate for assistance. In total, over 200 “shops” of foreclosure prevention service providers were conducted.

NCRC’s Housing Counseling Network and National Neighbors professional staff used the internet, radio advertisements, complaint and intake logs and in-house database repositories to research and identify national and local foreclosure prevention providers. From this research, a list of 115 of service providers was generated. Seventeen of these were found to have invalid phone numbers, indicative of the “fly-by-night” nature of this emergent industry.

Companies Tested

123 Fix My Loan

877 You Keep

Access Loss Mitigation

Advantage Loan Modification

All Options

American Executive Mortgage Group

American Foreclosure Prevention

American Foreclosure Specialists

American Loan Modification Agency

American Mitigation Group

Apply 2 Save

Avoiding Mortgage Foreclosure

Benjamin Law

Chase Colby

Clear Home Relief

Debt Negotiation.com

Debt Plan/Consumer Credit Counseling

Diversified Real Estate Consultants

Emitigation

EnTrust Home Solutions

Federal Loan Modification

Federal Loan Modification Bureau

Federal Loan Modification Service

FHA Refinance Loans

FHA.com

Financial Restoration, Inc

Fleischman Consumer Law Center

Foreclosure Assistance of America

Foreclosure End

Foreclosure Shield

Fransen & Molinaro

Free Loan Modification

Fresh Start Financial Solutions

Fresh Start Mortgage Solutions

Green Credit Solutions

Griswold & Agdeppa

Heartland Loss Mitigation

Help for Homeowners

HELP Me Stop Foreclosure

Help U Modify

Home Foreclosure Fighter

Home Loan Modification Advisors

Home Payments Made Easy

Home Rescue Center

Home Solutions of North America

Help 2009

Hope for Homeowners and Hope Now Mortgage

HopeNow Mortgages

Intellichoice Mortgage Services

Ioannou and Ioannou

Jack I. Hyatt, Attorney at Law

Keep A Home

Keep Your Payment Low.com

Merrimac Mortgage Co. Inc

Mitigation Online Consultants

Modification Center

Mortgage Assistance Now

Mortgage-Relief.info

MortgageRelief 411

My Loan Counts.com

National Foreclosure Assistance

National Foreclosure Relief Services

National Mortgage Help

Home Relief Assistance

Law Office of J. Scott Morse, LLC

Legal Loan Bailout

Lend Sure

Liberty American

Loan Mediate.com

Loan Modification Hope

Loan Savings Solutions

Loan Shrink

Loan Workout

MD Loan Modifiers

MDF Financial Services

Nationwide Foreclosure Prevention Center LLC

No Bull Financial, LLC

Omni Mortgage Corp.

One Stop Attorneys, PLLC

Parsa Law Group

Pro Loan Finders, LLC

Rapid Law

Raymond, Louis & Fitch

Repair Your Loan

Rodis Law Group

Save My Home Now

Save My Home USA

Save Your Dream

Save Me From Foreclosure.com

Saving the American Dream

Sirody, Freiman & Feldman, PC

Sky Business Solutions

Slade Law Center/HomeShield

Start A Loan Mod

Stop Foreclosure

Stop Foreclosure 2 Day

Stop Foreclosure Center

Stop Foreclosure Help Today

Stop Home Foreclosure Help

Stopping Foreclosures

The Debt Advocacy Center, LLC

The Home Loan Modification Center

The Lilly Law Group

The Mortgage Bailout Company

Trinity Debt Management

United Capital Mortgage Assistance

United States Mortgage Repair

US Home Help

US HUD.com

US Loan Assistance Center

Walk Away Plan, LLC

Web Loan Mods

Weissman Law Firm, PLLC

Wilshire Holding Group, Inc

Wisdom Companies

Audit Findings & Analysis

Fees for Services

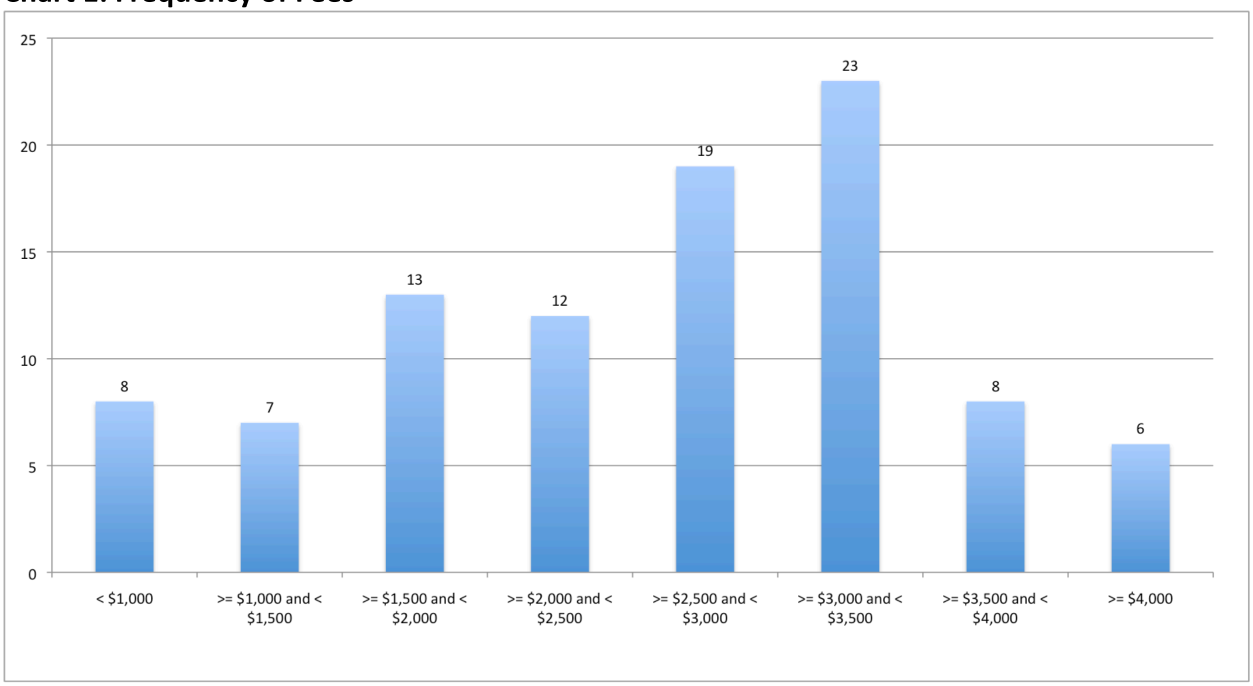
Fees were found to vary greatly across the project, from $199 for a do-it-yourself foreclosure prevention kit, to a modification fee of $5,600 over four months.

Table I: Fees Quoted to Testers

Median Fee	$2,900
Average Fee	$2,600
Most Frequently Quoted Fee	$3,000

Source: NCRC Foreclosure Prevention Service Providers: What Consumers Should Know & Red Flags to Avoid

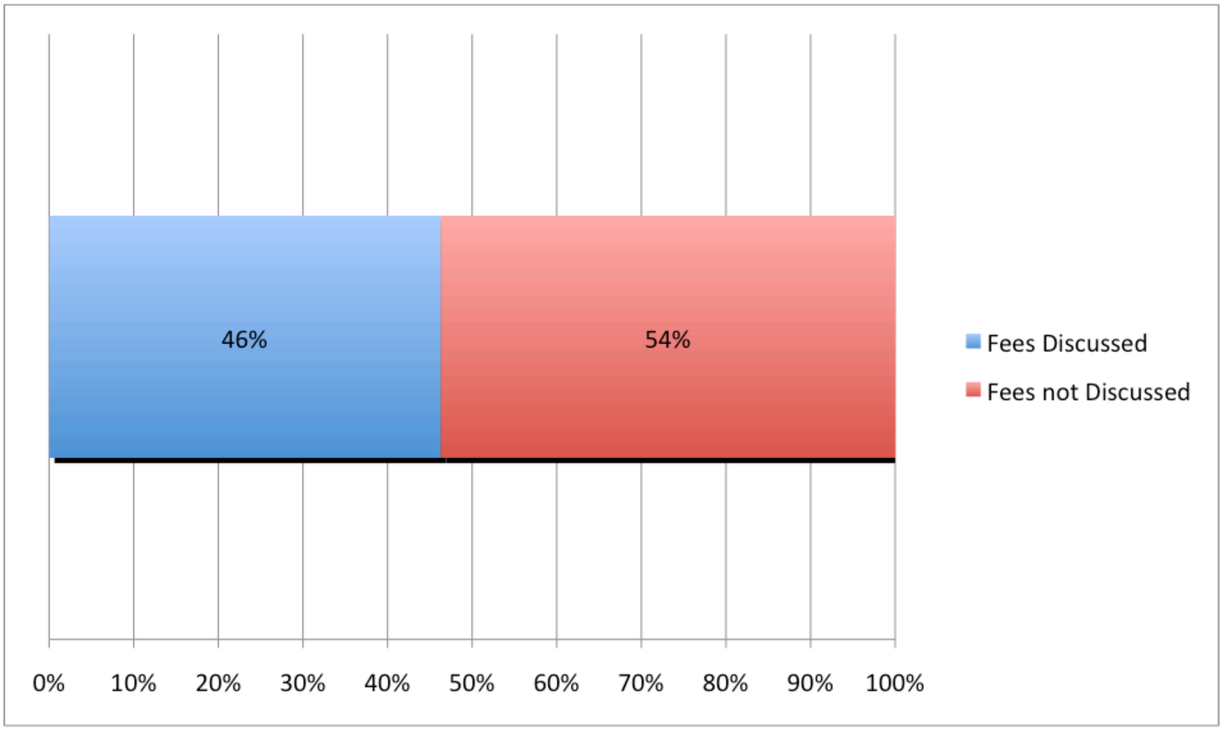
Chart 1: Frequency of Fees



Source: NCRC Foreclosure Prevention Service Providers: What Consumers Should Know & Red Flags to Avoid

Offers of service at steep fees were often tempered by refund policies, or reassurances of help. When a refund policy was described, it was most frequently for 100% of the initial payment. One company even advised one of NCRC's testers that they would not only refund the entire fee if they could not help, but that an additional $200 would be provided as payment for any inconvenience. However, it is notable that less than half of the testers were informed about fees, and only in a handful of cases did the company offer them in writing. Further testing is necessary to track this trend.

Table II: Fees Discussed with Testers



Source: NCRC Foreclosure Prevention Service Providers: What Consumers Should Know & Red Flags to Avoid

Types of Services

With few exceptions, service providers recommended testers pursue loan modifications. A small number of companies followed recent FTC guidance by advising consumers that there were other options at their disposal, such as nonprofit assistance, or governmental help. However, this occurred in only 20% of the calls. It is important to note that at the time of this testing, the Home Affordable & Refinance Mortgage programs had recently been announced and only the FHA & Hope Now Programs were in operation. Despite this, it is our counselors' experience that while for-profit corporations today are working with the HAMP and HARP programs, they are not assessing the consumers' qualifications for the respective programs before charging them a fee. This is another area for follow-up testing.

Furthermore, companies frequently advertised assistance, but did not state their actual service area. When contacting these companies, testers were sometimes told that the company was not licensed locally. In ten instances they were referred to other resources, including 995-HOPE and their state attorney general's office.

Other companies, such as a bankruptcy law firm that advertised assistance with loan modification, created confusion when they were contacted and offered only bankruptcy services.

Few companies represented that an applicant was certain to receive a successful resolution. Instead, companies frequently advised consumers that they were able to help a significant portion, such as 98%, of their applicants, or made vague statements about the vast majority of their clients having positive outcomes. Still others declined to guarantee successful resolutions, but said that all of the clients they *accepted* were helped, citing pre-screening policies. Many companies also claimed to have a positive Better Business Bureau rating.

Documents Needed

As a part of their profile, testers were instructed to ask what documentation would be necessary to complete a modification process. Some foreclosure prevention service providers said that it would be like documenting a mortgage refinance, or that a list of needed items would be provided at a later date. About a third of the time, testers were told specifically what items were needed. Most frequently, service providers requested information about the existing mortgage (e.g. a monthly statement) or about income (e.g. paystubs, W2s, or tax returns). Some service providers also asked for a monthly budget or a hardship letter.

As a model of what a responsible loss mitigation program should include, NCRC referenced a list of standard documents that are routinely requested by HUD-Certified Counseling Agencies, NeighborWorks affiliates, and the Hope Now Alliance, all of whom do not charge for their services. These documents include:

- Proof of income (W2's, pay stubs, or bank statements);
- Reason for default;
- Monthly expenses (heating, phone, gas and electric utility bills, and food costs);
- Unsecured debt (credit cards, personal loans, car payment, additional mortgages);
- Medical expenses; and
- Insurance

Overall, when documentation was requested - which was less then 50% of the time - the items requested by modification companies did not deviate from what is required under HUD-Certified Counseling Agency, NeighborWorks, and the Hope Now Alliance programs. However, without full file review, the quality of the services offered is very much in question.

Service Providers' Recommendations

Several companies told testers that their rate adjustment would not be perceived as a hardship, because it was a risk they took by obtaining an adjustable rate loan. This is inaccurate advice. One representative instructed a tester to write a hardship letter that said her mother had been ill, because the loss of income would not be verified. This was inappropriate advice under this testing profile.

More problematic, however, was the fact that in over 50% of the tests service providers advised testers that they should not pay their mortgage. This raises a significant consumer protection problem. The examples below illustrate the kinds of misrepresentations that present a concern.

Vignette I

When testing a service provider in California, the tester was told that upon receipt of her application, her bank would be contacted and that she would not have to make her mortgage payment for 90 days. Instead, she was to pay the service provider. When the tester expressed concern about what would happen to her credit during that time period, she was told that here would be no reporting while the company was working on her application.

Vignette II

In a test of a company in Ohio, an agent emphasized that the control tester should not speak to her bank, and that if she gave them financial information, it would hurt her chances of receiving assistance. The agent said that he would give the bank what information they needed to know, and that the tester should not make her payment while he negotiated.

Vignette III

A company in Florida told a protected tester that she would not have to make her mortgage payment for the two or three months it would take for them to arrange a modification for her. The agent told the tester that it would not hurt her credit while they would be representing her.

Other Issues

A significant number of tests showed that companies were unreachable or unwilling to assist consumers who did not provide their last names, home addresses, or other personal information. This leaves consumers at a disadvantage when they are attempting to contact multiple companies to find the best deal.

Vignette IV

One prominent entity maintains several differently-branded websites offering modification assistance, all with the same phone number. When tested, this company was revealed to be a source of leads for purchase for other service providers. Testers could not move ahead without revealing personal details, but were told that they would be matched to the "best" service provider in their local area.

Recent Legislative Initiatives

Recently, Representative Gwen Moore (D-WI-4) introduced the Foreclosure Rescue Fraud Act of 2009, H.R. 1231. This bill places restrictions on "foreclosure consultants" in an attempt to ensure that consumers are treated fairly in foreclosure rescue transactions, and gives servicers the responsibility of warning delinquent consumers about rescue scams and companies that might prey on them.

A strong federal standard is needed to protect consumers in foreclosure. In a number of states, legislators have already responded to the foreclosure rescue scam crisis by passing new legislation that addresses licensing or similar issues. For example, Nevada recently passed a bill that requires foreclosure rescue companies to be licensed in the manner of mortgage brokers.[1] While the Moore bill does not preempt stronger state and local laws, it may give consumers a false sense of security and exacerbate the problem if passed as written.

The bill contains a significant loophole by exempting attorneys and licensed real estate brokers from the obligations and responsibilities placed on foreclosure consultants. NCRC's investigation has confirmed that many law firms, former subprime lenders and other real estate professionals have diverted their talents to foreclosure assistance services. These players, with their extensive knowledge of mortgages and the financial system, also have a greater ability to abuse the trust of consumers. The Moore bill provides a weaker standard than some states in terms of protecting consumers from industry experts.

The bill also fails to address a number of issues that NCRC finds to be of the highest concern. Unfortunately, foreclosure rescue companies frequently mislead consumers through advertising that suggests that they are not-for-profit, or governmentally affiliated. Names including "Federal," "National," or "Bureau" confuse consumers, especially in conjunction with marketing pieces that include eagles or shields traditionally associated with accountable federal

[1] See AB 152 at http://www.leg.state.nv.us/75th2009/Bills/AB/AB152_EN.pdf

institutions. With a confusing flurry of official bailout plans in the news, consumers are vulnerable to companies mimicking governmental rescue resources.

However, the Foreclosure Rescue Fraud Act of 2009 does offer a number of provisions that should serve as a model for foreclosure rescue best practices. The bill prohibits foreclosure consultants from receiving compensation before contractual services are performed, and would prevent them from acquiring any interest in their clients' properties. Consultants would be required to provide their clients with written contracts that detail their obligations, compensation and contact information. Most significantly, all contracts would be required to have a three-day rescission period, a protection similar to the one that consumers enjoy with refinance transactions on their primary residences, and must be written in the same language used to solicit the consumer. This is particularly important in that it provides additional protections to consumers with limited English proficiency.

Furthermore, the Foreclosure Rescue Fraud Act of 2009 places an important obligation on mortgage servicers. In cases where consumers are two payments behind on their home loan, servicers would be required to notify them of potentially fraudulent solicitations. In a statement provided in both English and Spanish, consumers would be encouraged to contact the servicer, or a legitimate, HUD-certified counseling agency, and warned of suspicious promises to save homes. As delinquent consumers are often faced with a barrage of marketing materials when their financial troubles become public, this provision will encourage consumers to seek help that is in their best interest. Mortgage servicers would be well-advised to go beyond the provisions of the Moore bill, and include this statement in all correspondence about a delinquent account.

Regulatory Developments & Best Practices

The Federal Trade Commission has been extremely proactive to address the mortgage scam issue.

- The FTC reports that "mortgage modification and foreclosure relief" complaints skyrocketed from only 1 complaint filed in 2008 to 7,927 last year.[2]
- The FTC created "Operation Stolen Hope" as part of a continuing federal-state crackdown on mortgage foreclosure rescue and loan modification scams. The operation involves 118 actions by 26 federal and state agencies.[3] A total of 28 cases have been brought by the FTC under "Operation Stolen Hope."[4]
- These cases include the First Universal Lending matter where the FTC complaint alleged that the defendant charged consumers huge up-front fees, sometimes as much as $7,000, and told consumers that if they stopped paying their mortgages it would help them in negotiations with lenders.
- The FTC also recently announced five law enforcement actions targeting perpetrators of mortgage-related scams. According to the FTC, these schemes typically operate in the following way. First, they use terms like "guarantee" and "97% success rate" to mislead consumers about the mortgage modification or foreclosure relief services they can provide. They then charge up-front fees for these "services" – fees legitimate nonprofit organizations do not charge. They use copycat names or look-alike Web sites to appear to be a nonprofit or government entity. Often, after collecting the fee, these companies do little or nothing to help consumers.

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[2] http://ecreditdaily.com/2010/02/foreclosure-crisis-spurs-soaring-mortgage-relief-scams/
[3] http://www.ftc.gov/opa/2009/11/stolenhope.shtm
[4] http://www.ftc.gov/opa/2009/11/stolenhope.shtm

FTC "Casenotes:"

Federal Loan Modification Law Center (FedMod). FedMod marketed mortgage loan modification and foreclosure relief services to homeowners who were in financial distress, delinquent on their mortgages, or in danger of losing their homes to foreclosure. According to the FTC's complaint, FedMod charged consumers from $1,000 to $3,000 in fees for these services, much of which must be paid up-front, but failed in numerous instances to obtain the promised loan modifications. In radio advertisements, the FTC alleges, FedMod induced homeowners to call its toll-free number by misrepresenting that it is part of or affiliated with the federal government. According to the complaint, FedMod often failed to answer or return consumers' calls or provide updates about the status of their loan modifications, and assured consumers that negotiations with their lenders were proceeding when in fact, little or no effort had been made to contact the lender.

Bailout.hud-gov.us. According to the FTC's complaint, defendant Thomas Ryan used a foreign Internet registrar to falsely register two sites – bailout.hud-gov.us and bailout.dohgov.us. The sites were used to entice financially strapped consumers to seek mortgage loan modification services under the guise that the services were associated with, or were actually, the U.S. government, including HUD and the Treasury Department. The FTC alleges that the defendant misled consumers nationwide. A federal district court granted the FTC's motion for a temporary restraining order which required the Internet Service Provider ("ISP") hosting the sites to immediately remove them from the Internet. The FTC and the defendant stipulated to a preliminary injunction prohibiting him from holding himself out as an agency of any U.S., state, or local government, or as being affiliated with any such agency.

Home Assure d/b/a Expert Foreclosure. In this case, the FTC alleged that the defendants promised consumers facing imminent home foreclosure that they could stop foreclosure, regardless of the amount the consumer owed his or her lender. The defendants are charged with falsely claiming that they have special relationships with lenders, have helped thousands of consumers avoid foreclosure, and will provide a 100 percent satisfaction money-back guarantee. They typically charged consumers an up-front fee of $1,500 to $2,500 but, the FTC alleges, did little or nothing to help them avoid foreclosure and failed to give refunds when foreclosures are not stopped.

Hope Now Modifications LLC and New Hope Property LLC d/b/a New Hope Modifications LLC. On March 24, the FTC announced two related cases alleging that the defendants misled consumers about their ability to provide mortgage loan modification and foreclosure relief, and misrepresented that they were affiliated with or part of the HOPE NOW Alliance, the non-profit, HUD-endorsed organization that is a broad-based coalition of credit and home ownership counselors, lenders, and other mortgage market participants. In each case, the court issued a temporary restraining order with an asset freeze and set dates for a preliminary injunction hearing. The New Jersey Attorney General also filed state court actions against both sets of defendants. These cases are in litigation. The FTC's press release is available at: http://www.ftc.gov/opa/2009/03/newhope.shtm.\

FTC Warning Letters for Potentially Deceptive Mortgage Relief Ads. The Commission announced that it has sent warning letters to 71 companies that are marketing potentially deceptive mortgage modification and foreclosure assistance programs. The letters inform these companies that their ads may violate federal law. The ads were identified during a nationwide review of Internet, direct mail, and spam advertisements that focused on mortgage relief targeting financially distressed homeowners. These advertisements contain potentially deceptive claims, touting guaranteed results, success rates of over 90 percent, and claiming affiliation with homeowners' lenders, with the HOPE NOW Alliance, or with federal government programs.

FTC & HUD Consumer Outreach Efforts. The FTC & HUD recently announced a new education initiative to reach borrowers directly with the help of a broad array of government, non-profit organizations, and mortgage industry members. Through this initiative, borrowers will receive materials about how to spot and avoid mortgage rescue scams at housing counseling outreach centers, directly from their mortgage companies, and online. Joining the FTC and HUD the effort are the HOPE NOW Alliance, the Homeowners Preservation Foundation, and NeighborWorks America, all of which are non-profit organizations working to help distressed homeowners get free assistance and counseling through HUD-certified housing counselors or by directly working with borrowers to help consumers stay in their homes.

Several national mortgage companies, including Chase Home Lending, Suntrust Mortgage, and GMAC Mortgage, will be voluntarily sending consumer education information directly to consumers through a variety of methods, including during loan counseling sessions, in monthly statements, in correspondence to delinquent borrowers, and on their websites. Freddie Mac also is distributing consumer education materials to its servicing partners.

The United States Department of Housing & Urban Development. HUD has created a new website www.preventloanscams.org with the Loan Modification Scam Prevention Network (including NCRC) to protect consumers. Members of the network include federal, state and local law enforcement, as well as national, state and local housing, legal aid, consumer protection and civil rights non-profit organizations.

State Action

To find more information about state action under "Operation Stolen Hope," go to the FTC's website. [5] Some state action includes the following:

California

- In Los Angeles, five people who conned homeowners facing foreclosure out of millions of dollars have been sentenced to prison in Los Angeles. Victims lost the titles to their homes and were cheated out of more than $12 million in equity. [6]
- A Downey, California woman who orchestrated a real estate fraud scheme that caused nearly $13 million in losses after falsely promising to help homeowners in default on their mortgages has been sentenced to 10 years in federal prison.[7]

Idaho

- Idaho foreclosures soared 89 percent from 2008 to 2009, and as a result, Idaho consumers filed 353 complaints related to mortgage modification businesses. The state has entered into settlement agreements with three mortgage modification and foreclosure rescue consultants, and recovered $60,935 in restitution for consumers related to mortgage modification and foreclosure rescue and other housing complaints.[8]

Illinois

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[5] http://www.ftc.gov/os/2009/11/091124stolenhopecase.pdf

[6] http://www.mercurynews.com/breaking-news/ci_14424039

[7] http://nationalmortgageprofessional.com/news15996/califonrnians-sentenced-role-foreclosure-rescue-scam

[8] http://www.dsnews.com/articles/idaho-and-illinois-attorney-generals-plagued-with-mortgage-complaints-2010-03-01

- In 2009, the AG has filed 31 lawsuits targeting mortgage rescue scams.[9]

Florida

- Within the last year, the state Attorney General's Office has filed 20 lawsuits and is actively investigating nearly 90 companies for potential violations of Florida Statute 501.1377.[10]

Kansas

- Kansas Attorney General reports a jump in complaint about foreclosure scams from 71 complaints in 2007-2008 to 171 last year.[11]

Missouri

- Missouri Attorney General reports a jump in complaint about foreclosure scams from 25 complaints in 2007-2008 to 256 last year.[12]

Nevada

- Jeffery Brown of DB Financial was indicted on four counts of theft and one felony count of forgery in a mortgage fraud case.

Pennsylvania

- Shirley Matthews, 54, of Willingboro, N.J., was ordered to serve six months to two years in prison on the theft by deception conviction for bilking a Tunkhannock man out of $8,000. Ms. Matthews will serve that sentence after she finishes a 2- to 5-year prison

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[9] http://www.dsnews.com/articles/idaho-and-illinois-attorney-generals-plagued-with-mortgage-complaints-2010-03-01

[10] http://www.myfloridalegal.com/newsrel.nsf/newsreleases/FFBBA28CF1480B42852576E000648BC4

[11] http://www.kctv5.com/news/22780304/detail.html

[12] http://www.kctv5.com/news/22780304/detail.html

term on similar charges from Monroe County. In all of the cases, Ms. Matthews was accused of taking payments from homeowners in exchange for helping solve mortgage foreclosure problems, then failing to follow through.[13]

Research

[13] http://thetimes-tribune.com/news/n-j-woman-gets-2-to-5-years-in-prison-for-taking-from-

The Financial Crimes Enforcement Network (FinCEN), an overseer of financial activities for the US Treasury, created a study[14] of scammers and reports the following:

- In the third quarter of 2009, depository institution filers submitted 15,697 mortgage loan fraud Suspicious Activity Reports, a 7.5% increase over the same period in 2008;
- The two most common forms of borrower scams involve conning homeowners into signing quit-claim deeds to their properties. Scammers would then sell homes from under the former owners to straw borrowers and the homeowners subsequently received eviction notices. In other instances, scammers falsely claim affiliations with lenders to convince distressed home-owners to pay large advance fees for modification services, but then do nothing to keep the borrowers in their homes; and
- California and Florida originated the most overall mortgage loan SARs, at 6,444 and 5,077 respectively. New York is a distant third at 1,614;[15]

people-facing-foreclosure-1.673506

[14] http://www.fincen.gov/news_room/nr/pdf/20100218.pdf

[15] http://www.housingwire.com/2010/02/18/fincen-sees-spike-in-possible-foreclosure-scams/

State Laws Regarding Foreclosure Rescue & Loan Modification

A number of states have special laws aimed specifically at foreclosure rescue scams. They include:

- California: Cal. Civ. Code §§ 1695.1 to 1695.17, 2945.1 to 2945.11;
- Colorado: Colo. Rev. Stat. §§ 6-1-1101 to 6-1-1120;
- Connecticut: Public Act 9-208 §§ 23 to 33; (Passed by the legislature but not yet signed by the Governor, as of July 7, 2009.)
- District of Columbia: D.C. Code §§ 42-2431 to 42-2435;
- Georgia: Ga. Code Ann. § 10-2-393(b)(20);
- Hawaii: Haw. Rev. Stat. §§ 480E-1 to 480E-5;
- Idaho: Idaho Code §§ 45-1505, 45-1602;
- Iowa: Iowa Code §§ 714E.1 to 714E.4, 714F.1 to 714F.9;
- Illinois: 765 Ill. Comp. Stat. §§ 940/1 to 940/65;
- Indiana: Ind. Stat. 24-5.5-1-1 to 24-5.5-6-6;
- Maryland: Md. Real Prop. Code Ann. §§ 7-105(A-1), 7-301 to 7-321;
- Minnesota: Minn. Stat. Ann. §§ 325N.01 to 325N.18;
- Missouri: Mo. Stat. Ann. §§ 407.935 to 407.943;
- Nebraska: Neb. Rev. Stat. §§ 76-2701 to 76-2728;
- Nevada: Nev. Rev. Stat. §§ 645F.300 to 645F.450;

- New Hampshire: N.H. Rev. Stat. §§ 479-B:1 to 479–B:11;
- New York: New York Real Prop. Law § 265-a;
- North Carolina: N.C. Gen. Stat. § 14-423 (adding foreclosure assistance to activities covered by state debt adjustment law);
- Oregon: 2008 Oregon Laws 1st Sp. Sess. Ch. 19 (H.B. 3630);
- Rhode Island: R.I. Gen. Laws §§ 5-78-1 to 5-79-9;
- Tennessee: Tenn. Code Ann. §§ 47-18-5401 to 47-19-5402;
- Virginia: Va. Code § 59.1-200.1;
- Washington: Wash. Rev. Code §§ 61.34.010 to 61.34.900;
- Wisconsin: Wis Stat. §§ 846.40 to 846.45.

In addition, the Massachusetts Attorney General has issued a regulation under the state's UDAP authority targeting the scams: 940 Code Mass. Reg. § 25.00. Michigan has a credit repair statute that is broad enough to encompass foreclosure rescue scams: Mich. Comp. Laws §§ 445.1822 to 445.1825. Florida has a statute that regulates only those who offer to purchase the surplus at a foreclosure sale: Fla. Stat. §§ 45.031 to 45.035.

Proposed Legislation

Maryland State Law - H.B. 392[16] aims to prohibit a person from offering, providing, or attempting to provide debt services in the State except as allowed under the Act. It would prohibit a debt settlement services provider from receiving payments, except for specified fees for specified services, until a debt settlement services agreement is executed and the debt settlement services are completed.

California recently passed a law prohibiting debt settlement service providers from charging up-front fees.[17]

A New Jersey measure (A-359), entitled the "Foreclosure Rescue Fraud Prevention Act," would establish specific practices that foreclosure consultants and other purchasers of distressed property would have to adhere to when contracting with New Jersey homeowners on the brink of foreclosure.[18]

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16 http://mlis.state.md.us/2010rs/billfile/hb0392.htm
17 http://www.nbcactionnews.com/content/cfa/story/Foreclosure-Scams-Changing/UWCKH3H6iEe-9Z5in043Zg.cspx
18 http://www.politickernj.com/jsverapa/37444/foreclosure-rescue-fraud-prevention-act-released-assembly-committee.

Where to Find Legitimate Help

If you're having trouble paying your mortgage or you have gotten a foreclosure notice, contact your lender immediately. You may be able to negotiate a new repayment schedule. Remember that lenders generally don't want to foreclose; it costs them money.

Other foreclosure prevention options, including a reinstatement and forbearance, are explained in *Mortgage Payments Sending You Reeling? Here's What to Do*, a publication from the FTC. Find it at www.ftc.gov.

A coalition of federal agencies, national nonprofits, servicers and GSEs, recently announced the Loan Modification Scam Network. The Network's objective is to prevent loan modification fraud through a coordinated national outreach and enforcement campaign led by Fannie Mae, Freddie Mac, NeighborWorks® America and the Lawyers' Committee for Civil Rights Under Law. The National Community Reinvestment Coalition is a participant in this initiative. More information can be found at www.preventloanscams.org.

The NCRC Housing Counseling Network has also launched, with support from the United States Department of Housing & Urban Development, a nationwide training program for HUD Counselors to equip with them with the knowledge and tools to identify mortgage fraud, scams and fair lending issues. More information can be found at www.NCRC.org.

You also may contact a HUD Certified Housing Counseling Agency (see www.HUD.gov) , a private not for profit fair housing agency, the Homeownership Preservation Foundation (HPF), a nonprofit organization that operates the national 24/7 toll-free hotline (1.888.995.HOPE) with free, bilingual, personalized assistance to help at-risk homeowners avoid foreclosure. HPF is a member of the HOPE NOW Alliance of mortgage servicers, mortgage market participants and counselors. More information about HOPE NOW is at www.hopenow.com.

National Resources for Reporting Mortgage Fraud and Scams

The Federal Trade Commission (FTC)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Identity Theft Clearinghouse: (877)-438-4338.
Consumer Response Center: (877)382-4357
http://www.ftc.gov/ and FTC Identity Theft site

Filing a Complaint with the FTC
While the FTC does not actually resolve an individual consumer's problem, it does investigate mortgage fraud with the aim of leading to law enforcement action. The FTC is especially active regarding homeowner and mortgage 'identity theft'.

Federal Bureau of Investigation (FBI)
935 Pennsylvania Avenue, NW
Washington, D.C. 20535
Phone: 202-324-3000
http://www.fbi.gov/whitecollarcrime.htm

In conjunction with the 'White Collar Crime' department, the FBI investigates mortgage fraud, which often involves many professionals working in collusion: bank loan officers, real estate agents, appraisers, accountants, and mortgage brokers.