



Consumer News

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The Role of the District Attorney's Office in the Foreclosure Crisis

The "foreclosure crisis" has recently dominated headlines in the press. The role in the "crisis" for prosecutorial agencies, such as the San Diego District Attorney's Office is to bring criminal charges against people and companies that commit crimes against borrowers.

Mortgage fraud is one of the more common crimes committed against borrowers and comes in different forms. One variety occurs when lenders target vulnerable victims, and induce the victims to secure loans that are beyond their means.

Mortgage fraud increased with the emergence of "subprime" mortgages and the loosening of qualifications for borrowers. The "subprime mortgage market" refers to the market of loans made to borrowers who represent a higher risk to lenders than borrowers who qualify for "prime," or best available, loan interest rates. The most common characteristics of a subprime borrower are a low credit rating score and history of bad credit. Risk is evaluated by reference to the borrower's Fair Isaac and Company score (FICO score). This indicator assesses a potential borrower's credit history and risk of default. A typical subprime borrower has a FICO score of

around 620 (out of 850). The low FICO score typically leads to an interest rate that is two percentage points higher than that charged to a "prime" mortgage loan borrower.

Crimes were committed when lenders took advantage of the lack of oversight and loosened standards in the "subprime" market to commit fraud by "qualifying" unqualified vulnerable victims who were eager to own a piece of the American dream.

Deputy District Attorney Steve Robinson prosecutes mortgage fraud cases for the San Diego District Attorney's Office. Mr. Robinson warns that companies defraud individuals by asking for a fee in exchange for promises to solve their financial problems. In the end, the companies keep the fee and do nothing to solve the underlying problems. The perpetrators may further victimize vulnerable borrowers by using the borrower's personal information to secure additional loans on other properties.

Perpetrators also search for those already in foreclosure, and promise to make the foreclosure go away for a fee. Many use scams such as title transfer in the form of a "Federal Land Grants," the traditional "Bait and Switch," and the recently popular "Phantom Help." A "Federal Land Grant" occurs when a scam convinces the homeowner to transfer title to a grant with the empty promise that it will prevent the lender from foreclosing the property. In a "Bait and Switch," the homeowner believes he or she is merely signing documents for a new loan to update the mortgage, but in fact

inadvertently surrenders ownership of the house. "Phantom Help" takes place when the so called "rescuer" charges fees for simple tasks the homeowner could have easily performed. In all of these scenarios, the promises are untrue or intentionally misleading. Savvy consumers must be aware – if it sounds too good to be true, it probably is.

Some of the sources consumers should turn to are the Housing Opportunities Collaborative (www.housingcollaborative.org), the San Diego District Attorney's Real Estate Fraud Complaint Line at (619) 531-3552, or the San Diego County Bar Referral Service at (800) 464-1529. Additional numbers are provided at the end of the article.

The Tide of Foreclosures

After remaining steady for a number of years, the Federal interest rate began to increase in 2004 and doubled within approximately two years. At the same time, housing prices, which experienced exponential growth during the past several years, slowed down considerably. This combination of factors made it difficult for borrowers to sell their homes in order to pay off their loans. Moreover, borrowers were no longer able to negotiate favorable terms, or refinance their existing loans into more manageable ones. The result – unprecedented rates of foreclosure.

Subprime Lending Effects, and its Resulting Rescue Efforts.

According to mortgagebankers.org, in the first

quarter of 2007, the payment delinquency rate for all subprime mortgages rose to around 14%, compared to around 2.5% for prime mortgages. In addition, one in every five subprime Adjustable Rate Mortgage (“ARM”) loans had late payments toward the end of 2007. According to RealtyTrac, an online marketer of foreclosures, in April of 2008, foreclosure filings jumped by 65% compared to the same month last year. California had the second highest foreclosure rate in the U.S., up 112% over the previous year, and affecting about 1 in every 204 houses.

Currently, in order to keep the subprime crisis from spiraling when the rest of the ARM rates reset in the next several years, the federal government is implementing rescue plans and working with lenders to either temporarily freeze interest rates for five years or insure new loans to facilitate the refinancing of existing subprime ARMs. Specifically, Congress enacted the Expanding American Homeownership Act of 2007 which enables the Federal Housing Administration (FHA) to serve a greater variety of subprime borrowers, and empowers bankruptcy judges to adjust mortgage terms for homeowners who stand to lose their primary residence.

Federal Rescue Plan

Aside from regulatory and judicial means, there are also legislative efforts aimed at mitigating the harm that predatory lending and the rise in foreclosures has caused our society.

The FHA has recently implemented a \$300 billion Hope for Homeowners program where the federal government will ensure new loans for struggling homeowners who wish to refinance. However, banks are

entitled to implement their own loan modification programs. The result of this law is yet to be seen.

Additionally, the recent legislation that permits the Treasury to buy up to \$700 billion in bad assets, most of which is backed by mortgages, is still in progress.

California Legislative Update

Senate Bill 1137 (Perata) was approved on July 8th, 2008. It directly assists California homeowners at risk of foreclosure. The bill follows recent federal regulations by promoting reconciliation between borrowers and lenders to avoid foreclosure. It requires lenders to meet with borrowers before filing a notice of default to go over the options available to avoid foreclosure. The bill gives borrowers at least 30 days to come up with a payment plan to keep their home. Further, the bill also protects tenants by requiring lenders to more actively notify residents of the property’s status if it is facing foreclosure. As such, lenders must give tenants at least 60 days to vacate the property.

For more information concerning California legislation, visit the State Senate website at www.sen.ca.gov or the State Assembly website at www.assembly.ca.gov.

Complaint Hotlines:

DA Consumer Fraud: 619-531-3507
DA Real Estate Fraud: 619-531-3552
Dept of Corporations: 866-275-2677
Dept of Real Estate: 916-227-0864

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