

# Consumer Concerns **for Older Americans**

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## **Dreams Foreclosed: Saving Older Americans from Foreclosure Rescue Scams**

A growing scam that disproportionately targets older Americans can, and often does, literally cost them the homes they have lived in for years and worked hard to obtain. It is called a foreclosure “rescue” scam, and it is anything but what the word “rescue” implies.

Foreclosure “rescue” scams target those who have fallen behind on their mortgage payments. In this scam a con artist who promises to help consumers save their home is actually intent on stealing the home – often an older American’s most precious asset -- or most of its accumulated equity.

Why are older Americans special targets? Many have lived in their homes for decades, have paid down their mortgages, and have accumulated substantial equity in the house. Unfortunately, many older Americans have trouble paying their bills and need to tap into that accumulated home equity due to rising medical bills and other age-related expenses.

### **Identifying Foreclosure “Rescue” Scams and How They Work**

#### **Phantom Help Scams**

Foreclosure rescue scams most often appear in one of three varieties. The first might be called “phantom help,” where the “rescuer” charges outrageous fees either for light-duty phone calls and paperwork the homeowner could have easily done or makes a promise of additional representation that never occurs. In either event the homeowner is usually left without enough assistance to save the home, and with little or no time left to prevent the loss of the home or seek other assistance.

## **False Bailouts**

A second variety of the scam is the “bailout” that never quite works. This scenario includes various schemes under which the homeowner surrenders title to the house in the belief that he is entering a deal where he will be able to remain as a renter, and then repurchase the house over the next few years. This is also known as a “lease/buyback scheme.” Homeowners are sometimes told that surrendering title is necessary so that someone with a better credit rating can secure new financing to prevent the loss of the home. But the terms of these deals are almost invariably so bad that the buyback becomes impossible, the homeowner permanently loses possession, and the “rescuers” walk off with all or most of the home’s equity.

## **Bait-And-Switch**

The third variety is a bait-and-switch where the homeowner does not realize he or she is surrendering ownership of the house in exchange for a “rescue.” Many homeowners later insist that they believed they were only signing documents for a new loan to make the mortgage current. Many also say they had made it quite clear they had no intention of selling or giving up their home to anyone. It is important to note that substantial numbers of this third type of scenario involve fraud and forgeries of deeds.

## **Typical Tactics Employed by “Rescue” Scammers**

The “rescuer” identifies distressed homeowners through public foreclosure notices in newspapers or at government offices. These records are more readily accessible than in the past because they are computerized and because more private firms now compile and sell the lists. The homeowner has not been foreclosed on yet, but is merely threatened with foreclosure after falling behind on mortgage payments. The “rescuer” then contacts the homeowner by phone, personal visit, card or flyer left at the door, or advertising. Initial contact typically revolves around a simple message such as “Stop foreclosure with just one phone call,” “I’d like to \$ buy \$ your house,” “You have options,” or “Do you need instant debt relief and CASH?” This contact also frequently contains a “time is of the essence” theme, adding a note of urgency to what is already a stressful and possibly desperate situation.

Initial meetings stress the promise of a “fresh start” – likely what a frightened homeowner most wants to hear – and often feature written or recorded “testimonials” from other homeowners the “rescue” scammer supposedly saved. While it is true that these programs “work” for some, what’s glossed over is that even that help often comes at a very steep price.

Homeowners are also frequently instructed to cease all contact with lawyers or the mortgage lender and let the “rescuer” handle all negotiations. This doubly-devilish tactic simultaneously cuts off access to possible refinancing options while running out the clock on ways to prevent the foreclosure.

Once it is too late to save the home the property is either taken by the “rescuer” or, having been drained of substantial equity through the “rescuer’s” imposition of heavy fees and other charges, simply lost to foreclosure. After things fall apart many homeowners suffer the added stress and indignity of being evicted by their “rescuer” from the home they once owned.

### **Ways Consumers Can Avoid Foreclosure Rescue Scams**

It is wise to advise consumers who have fallen behind on their mortgage payments to proceed with extreme caution if an individual or company:

- Calls itself a "mortgage consultant," "foreclosure service," or something similar.
- Contacts or advertises to people whose homes are listed for foreclosure, including anyone who sends flyers or solicits door-to-door or by phone.
- Collects a fee before providing services.
- Tells the consumer to make home mortgage payments directly to the individual or company (and not the mortgage lender).
- Tells the consumer to transfer the property deed or title to the individual or company.

Contrary to advice given by many scammers, homeowners in trouble **SHOULD** stay in touch with their mortgage company. Homeowners should contact the mortgage company or a lawyer first when in trouble. There are many ways to prevent the loss of a home or at least to walk away with all or most of its accumulated equity if all else fails and the homeowner is forced to sell.

Consumers should also be advised to be unafraid about seeking help! Consumers in distress often do not exercise their rights, or think that what is happening to them is just the price they must pay for financial trouble. That of course is not true. An orderly sale of the home may leave the consumer renting again, but at least he or she will take away the equity accumulated in the house resulting from rising home values and years of payments.

### **Legal Challenges to Foreclosure Rescue Scams**

Older homeowners who have been victimized by foreclosure scammers have a number of legal options. What follows is a brief summary of some legal options advocates can use to challenge foreclosure rescue scams. These claims may be complex; please consult the additional resources listed at the end of this *Consumer Concerns*.

## **State Laws Governing Foreclosure Assistance**

Several states enacted laws targeting foreclosure scam activities, including California, Georgia, Maryland, Minnesota, and Missouri.<sup>1</sup> State laws differ dramatically in scope and strength. The common thread among them is that they contain a right to cancel the transaction for limited periods of time. However, several exceptions – those for attorneys, accountants, real estate licensees, consumer finance lenders, mortgage brokers, and others – diminish some statutes' protections considerably.

## **State Unfair and Deceptive Acts and Practices Laws**

Many of the misrepresentations and abusive practices of foreclosure scammers can be challenged under state unfair and deceptive acts and practices (UDAP) laws. If a state's UDAP statute covers the type of transaction or the parties involved, advocates may bring UDAP claims. Be aware, however, that some state UDAP laws exclude from coverage "services" such as those provided by foreclosure specialists, real estate transactions, or certain professions such as attorneys or realtors.

## **The Truth in Lending Act (TILA)**

A sale/leaseback type of foreclosure rescue scam may be a thinly disguised loan, subject to Truth in Lending rescission rights. Under TILA a homeowner has a right to rescind a non-purchase money loan secured by his or her primary residence. This includes home equity loans, whether first or second mortgages, so long as the proceeds of the loan were not used to purchase the home. The homeowner must be provided with numerous disclosures including a notice of the right to cancel. The homeowner has a right to rescind the loan for up to three business days after the transaction and an extended right to rescind the loan for up to three years if he or she was not given a notice of the right to cancel the loan, or if he or she did not receive notice with all of the required material disclosures.

## **Fraud, Conspiracy & Other Laws**

In addition, fraud, conspiracy, unconscionability, breach of fiduciary duty, and contract law have remedies which may prove helpful in challenging these scams. Other laws, including state credit repair statutes may apply if the perpetrators promise to obtain a loan or improve the homeowner's credit. State home solicitation laws and telemarketing laws may also apply depending on how the transaction was solicited and consummated

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<sup>1</sup> Cal. Civ. Code §§ 2945.0-.11 (foreclosure consultant); Cal. Civ. Code §§ 1695.0-.17 (home equity purchaser); Ga. Code Ann. § 10-1-393(b)(20)(A); Md. Real Prop. Code Ann. § 7-105(A-1); Md. Real Prop. Code Ann. §§ 7-301-321; Minn. Stat. Ann. §§ 325N.01-.18; Mo. Ann. Stat. §§ 407.935 - .943.

## FOR MORE INFORMATION

For more information on foreclosure “rescue” scams and how to avoid them please see NCLC’s report **Dreams Foreclosed: The Rampant Theft of Americans’ Homes Through Equity-Stripping Foreclosure ‘Rescue’ Scams**. You can order this report through NCLC or find it on NCLC’s website at: <http://www.consumerlaw.org/news/ForeclosureReportFinal.pdf>

In addition, several manuals published by the National Consumer Law Center as part of the *Consumer Credit Series* will be helpful for advocates challenging these practices.

- Unfair and Deceptive Acts and Practices (6<sup>th</sup> ed. 2004)
- Repossessions and Foreclosures (5<sup>th</sup> ed. 2002 and Supp.)
- The Cost of Credit: Regulation and Legal Challenges (2<sup>nd</sup> ed. 2000)
- Truth in Lending (5<sup>th</sup> ed. 2003 and Supp.)
- Guide to Surviving Debt

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