



WASHINGTON STATE ATTORNEY GENERAL
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AG REQUEST LEGISLATION - 2008 SESSION

PROTECTING CONSUMERS FROM FORECLOSURE RESCUE SCAMS

THE PROBLEM

In this time of rising mortgage rates, desperate homeowners have been lured by offers of assistance – only to be cheated out of equity they've built up and tricked into transferring ownership of their home. Consumers gain ownership of the home for much less than its actual value, then evict the family and sell the home – stealing a family's equity and leaving them homeless. Many homeowners are unaware that they've lost their property until they receive an eviction notice. Facing potential foreclosure is traumatic enough without the added harm of unscrupulous foreclosure rescue companies.

BACKGROUND

- Foreclosure rescue scams are on the rise. While nationwide numbers are difficult to find, this form of fraud, also known as equity stripping, has turned up in almost every state. Victims are becoming more plentiful as homeowners fall behind on payments and find that they cannot refinance.
- The *New York Times* reported on July 23, 2007, that at least seven states have created laws against foreclosure rescues. No such legislation exists in Washington.
- The growing number of cases is taxing prosecutors and consumer advocates.
 - The Attorney General's Consumer Protection Division settled a case in March 2007 with three businesses accused of taking unfair advantage of homeowners and other property owners facing tax foreclosure. The defendants targeted their services toward Washington residents who had fallen behind on their property taxes. Property owners who agreed to receive "help" from the defendants were inundated with paperwork, including a form that gave the defendants power of attorney or an "overage assignment form" that defendants asserted gave them the right to collect excess auction proceeds. In other situations, the property was placed in a trust and the defendants acted as trustees. Most property owners believed they still owned the property.
 - Seattle attorney Melissa Huelsman has filed multiple lawsuits in foreclosure "rescue" cases and is planning several others. She's told KOMO TV and others that she is swamped with victims of real estate foreclosure scams.
- Without legislation, the problem is likely to get worse in Washington.
 - According to the *New York Times*, the Mortgage Bankers Association recently disclosed that nearly 19 percent of all loans to less-creditworthy consumers, or 1.1 million mortgages, were either delinquent by more than 30 days or in foreclosure. At the end of 2006, the figure among these loans was 17.9 percent.
 - KOMO TV reported that more than 1.2 million Americans nationwide lost their homes last year – a 42-percent increase over 2005. Washington saw a 25 percent jump.
 - RealtyTrac ranked Washington 21st in the country in total foreclosures reported for November 2007, with one foreclosure filing for every 1,072 households. A total of 2,473 reported foreclosure filings were reported that month, a 13 percent increase from the previous month and a 72 percent increase from November 2006, according to the company.
 - The Mortgage Bankers Association reported that Washington state ranked 47th in delinquencies and 49th in foreclosure activity for the April-June 2007 quarter. The delinquency rate tracks the number of people who are behind in their payments but have not yet entered the foreclosure process.
 - Craig Nolte of the Federal Reserve Bank of San Francisco said last summer that subprime adjustable-rate mortgages now account for nearly half of conventional loans entering foreclosure, even though they make up less than 10 percent of the market. Nolte said that nationwide more than \$100 billion in loans were scheduled to reset between June and October 2007 and \$1 trillion in the next five years. In some cases, borrower payments may double.
 - Real Change, Seattle's homeless paper, reported that local homeowners are already feeling the sting of unexpected increases in their subprime mortgage payments.
 - Washington's foreclosure rates are lower than national and regional averages. But we don't want the record homeownership levels achieved in the last few years to result in record "home-losership."
- In June, the Attorney General's Office convened a think tank with the Washington Bar and NW Justice Project to look at issues around mortgage problems and fraud. The think tank brought together representatives from government agencies and nonprofit organizations, private attorneys and industry professionals. From this, we formed work groups to further explore ways to reduce the rate of foreclosure in Washington, help consumers who face the loss of their homes and crack down on fraud.
- Education and outreach are important to helping prevent consumers from becoming victims but we must also be able to hold fraudsters accountable for their actions.

PROTECTING CONSUMERS FROM FORECLOSURE RESCUE SCAMS

The Attorney General's Office is requesting legislation to reduce foreclosure rescue schemes that include an option to buy or lease back the property. The proposed bill was modeled after 2004 legislation enacted in Minnesota and a similar version subsequently passed in Illinois, California and several other states. This important law would add a new chapter to RCW 64 "Real Property and Conveyances" to:

- Require a written contract with clearly disclosed terms be completed, signed and dated by the homeowner and the purchaser prior to the property's transfer;
- Provide the foreclosed homeowner with the right to cancel the contract within five business days;
- Require that the purchaser demonstrate that the foreclosed homeowner is able to meet the terms of the contract including making interest and lease payments and is capable of purchasing the property within the allowable period;
- Require that the homeowner must receive at least 82 percent of the difference between the property's fair market value and the underlying mortgage in the event of a sale to a third party.

A violation of the law would be made a per se violation of the Consumer Protection Act, making the outcome of litigation against foreclosure rescue schemes substantially certain and resulting in broad deterrence.