

THE LOAN MODIFICATION SCAM PREVENTION NETWORK

Fair Housing & Community Development Project
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, NW, Suite 400
Washington, DC 20005
www.lawyerscommittee.org

FORECLOSURE RESCUE, INC.



PREVENT LOAN SCAMS

www.PreventLoanScams.org

PROJECT REPORT BY

Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee celebrated its 50th anniversary in 2013 and continues its work in "Moving America Toward Justice." The Lawyers' Committee was created at the request of President John F. Kennedy in the summer of 1963 following a meeting of 244 lawyers in the East Room of the White House. President Kennedy, Vice President Lyndon B. Johnson and Attorney General Robert F. Kennedy spoke at the conference and urged the lawyers to use their training and influence to move the struggle for the protection of civil rights from the streets to the courts.

The 244 lawyers who attended, 50 of whom were African American lawyers, were from throughout the United States and included leaders of state bars and the American Bar Association. President Kennedy had held similar meetings with representatives of business, education, and the clergy, but the decision to call a meeting with the lawyers and the timing of the meeting was born of a sense of urgency about the absence of the organized bar in the civil rights movement.



MOVING AMERICA
TOWARD
JUSTICE



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EXECUTIVE SUMMARY

By the summer of 2009, the United States was in the midst of its worst economic crisis since the Great Depression. Home foreclosures were in the millions with no end in sight, and equity lost by families with foreclosed properties was headed into the trillions of dollars. As foreclosures increased, a “second wave” of the foreclosure crisis emerged – fraudulent foreclosure and loan modification rescue schemes. Data collected in a 2013 U.S. Government Accountability Office (GAO) audit indicate that complaints concerning such schemes rose from about 9,000 in 2009 to more than 18,000 each year in 2010, 2011 and 2012. This report provides an overview of the Loan Modification Scam Prevention Network (LMSPN, or Network), a coalition created in 2009 by the Lawyers’ Committee for Civil Rights Under Law (Lawyers’ Committee), in conjunction with Fannie Mae, Freddie Mac, NeighborWorks America and the Homeownership Preservation Foundation (HPF) to fight these pernicious practices.

Homeowners facing difficult financial circumstances are desperate to find help to keep their homes and thus are vulnerable to the high-pressure sales pitches and false guarantees of success made by individuals and companies posing as loan modification specialists. The scam artists making these pitches typically extract large upfront cash payments from homeowners, and then do little or no work to obtain a loan modification. While waiting for the promised relief, homeowners not only lose the money they paid to the scam operation, but they often fall deeper into default and lose valuable time that could have been spent negotiating directly with their mortgage servicer or going to a free U.S. Department of Housing and Urban Development (HUD) approved housing counseling agency with true expertise in assisting homeowners in trying to save their homes.

Scam operations take several different forms, all designed to fraudulently extract money from distressed homeowners. For example, in West Palm Beach, Florida,

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foreclosure rescue “consultants” held seminars to teach people how to make money off of distressed homeowners. In Northern Virginia, Spanish-language radio stations ran advertisements for “guaranteed” foreclosure rescue. In Southern California, homeowners turned to the real estate agents who helped them buy their houses only to have those agents lead them straight to illegitimate brokers who claimed special access to the banks but instead took the money and ran. In Atlanta, Georgia, attorneys at a fraud conference reported they were solicited randomly by phone to sign up as “partners” or “affiliates” of foreclosure rescue operations. In Long Island, legitimate New York housing counselors were aware that homeowners were unknowingly giving fraudsters powers of attorney to talk to banks on their behalf, thereby blocking the legitimate counselors from intervening and providing real assistance. In Fort Myers, Florida, a woman gasped and groaned, ‘Mom, no...’ as her elderly mother haltingly asked whether she could expect any assistance from the California-based company she had been paying every month all winter. And in Tucson, Arizona, a middle-aged couple on the brink of divorce, but too sickly and too broke to move forward with the proceedings, united in their fight to save their major marital asset, their home, but were fleeced out of their mortgage payments by a foreclosure rescue scammer.

Particularly distressing is that homeowners, who are embarrassed by their dire financial circumstances and facing default and foreclosure, are being tricked out of money they could scarcely afford to lose. The tricks are very effective and have led many to believe mistakenly that their homes were being saved, when the worst was actually happening – the homeowners were being placed in greater jeopardy of losing their homes. These homeowners, who had already been tricked once, often were reluctant to trust those genuinely trying to assist them or to even ask for the help they needed. African-American and Latino homeowners, already victimized by targeted predatory lending, have been victimized by scams at disproportionate

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rates compared to their percentage of the population. Senior homeowners also are victimized at high rates and their average is higher than other groups.

In 2009, President Obama convened the Financial Fraud Enforcement Task Force (FFETF), a multi-level multi-agency group charged with working together to address many types of financial fraud, including foreclosure rescue scams. It was at a FFETF fraud summit in March 2010 that the Assistant Attorney General helped to formally launch the LMSPN, marking the beginning of an important public-private relationship to gather and channel information to and through the appropriate enforcement and service agencies in order to protect distressed homeowners.

With its creation, the LMSPN brought together a broad coalition of private and governmental agencies that provided extensive resources for victims of this kind of fraud. The key to the Network's success has been the strength and breadth of this coalition. The LMSPN coalition is led by the five organizations that formed it and consists of over 200 government, non-profit and private agencies and organizations that bring different resources, skills, and perspectives to the fight against foreclosure rescue fraud. It is guided by its Steering Committee, which holds quarterly meetings where members of the Network exchange ideas, develop strategies, assess resources and hold each other accountable for the work that needs to be done. Housing counselors, who provide free assistance to homeowners facing foreclosure, are also a critical part of the Network's efforts to combat foreclosure rescue fraud and provide information and insight into the continuing evolution of the scams.

The LMSPN launch was accompanied by the launch of a website – www.preventloanscams.org – created by the Lawyers' Committee in February 2010. This website provides state and national resources, as well as Lawyers'

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Committee publications, analyses and reports, for homeowners and the public. Most importantly, it includes access to the centerpiece of the Network – a national Loan Modification Scam Database (Database) – to which homeowners can submit complaints of alleged loan modification scams. The Database serves as a national clearinghouse for loan modification scam complaints and as such provides crucial information about the frauds. Since its inception, over 38,000 complaint reports have been entered into the Database. Members of the coalition have various levels of access to the information in the Database and this access has contributed to foreclosure rescue fraud investigations at over 100 enforcement agencies on the federal, state, and local levels.

When developing the Database, the Lawyers' Committee created a standardized process for entering complaint reports to ensure a nationwide collection of foreclosure rescue scam information from distressed homeowners. Through a close working relationship with the Homeownership Preservation Foundation (HPF) that operates the Homeowner's HOPE Hotline, many of the complaints are entered in the Database from those reported to HPF. Others are submitted online, through a toll-free hotline, and on paper forms. In providing access to this Database, privacy concerns have been addressed. All complaints in the Database are immediately forwarded to the Federal Trade Commission (FTC) Consumer Sentinel Network database, providing even broader access to information in the complaints. As of early 2013, nearly three-quarters of all the foreclosure rescue scam complaints in the FTC Consumer Sentinel Network database had been submitted through the Database. From information in the Database, the Lawyers' Committee creates and shares data compilations and reports with its partners, and particularly with enforcement officials, in order to focus these partners on active scam organizations or networks of organizations. These analyses reveal important aspects of foreclosure rescue fraud such as the improper involvement of legal and

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real estate professionals in the scamming activity, the overrepresentation of homeowners of a certain age or race among those being scammed, and scams which falsely claim government affiliation.

The role of federal agencies that are members of the coalition – particularly the Department of Justice (DOJ), HUD, Department of Treasury, the FTC and the Consumer Financial Protection Bureau (CFPB) – along with state attorneys generals and consumer protection agencies – have been very important in the fight against foreclosure rescue fraud. In October 2012, the DOJ, the Federal Bureau of Investigation (FBI), HUD and the FTC announced that their Distressed Homeowner Initiative, a one-year effort aimed at businesses and individuals that scammed vulnerable homeowners, resulted in 530 criminal defendants charged. The Database and reports prepared by the Lawyers’ Committee have been a valuable resource for these enforcement agencies in this fight. Enforcement officials reach out to the Database, not only for information regarding potential scam operations in support of their investigations, but also to prepare alerts for the public about scammers’ attempts to claim associations with government-sponsored distressed homeowner initiatives.

The Database has also been a key tool in the Lawyers’ Committee private litigation program. This program was launched in March 2011 and has resulted in the Lawyers’ Committee being at the forefront in bringing private litigation to assist homeowners affected by scamming operations and operators. The litigation has grown out of Database information, which identified those operations with the most complaints for investigation. It has achieved significant success. As of October 2013, in conjunction with its *pro bono* law firm co-counsel, the Lawyers’ Committee had filed fourteen lawsuits against loan modification scam operations and their operators on behalf of over four hundred distressed homeowners, seeking both monetary and injunctive relief. To date, injunctions against 30 entities and 50

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individuals have been obtained, shutting down these scam operations and forbidding the scamming operations and operators from participation in mortgage assistance relief services in the future. In addition, to date, through court orders and settlements, over \$500,000 has been recovered for hundreds of homeowners, averaging over \$1,250 per homeowner.

Public education is another important facet of LMSPN's work. Outreach to the public has been provided by the Lawyers' Committee, through LMSPN partners HUD, Treasury, Freddie Mac, Fannie Mae, NeighborWorks America and others. This outreach included dozens of in-person and web-based trainings and presentations around the country to acquaint counselors with the value of the LMSPN reporting tools and resources, i.e. the Lawyers' Committee complaint forms and Database and the HPF Homeowner's HOPE Hotline. Lawyers' Committee staff has been tireless in its efforts, which included presenting information and trends from the Database to enforcement officials before such groups as the New York Fraud Coalition, the Nevada Fight Fraud task force, the Mortgage Bankers' Association's annual Fraud Issues conferences, the American Association of Residential Mortgage Regulators' annual conference, the National Association of Hispanic Real Estate Professionals, the mortgage fraud working group of the FFETF, and the National Bar and American Bar Associations.

The Loan Modification Scam Prevention Network report first examines the background and severity of loan modification scamming and the creation of the LMSPN. It then describes the Loan Modification Scam Database and information and reports drawn from the Database. Next is a discussion of outreach strategy and results. We then highlight the important role that the Lawyers' Committee private litigation program plays in this fight and this discussion includes a detailed description of two of the lawsuits that resulted in shutting down scamming operations and operators as well as the impact this fraud had on unsuspecting

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homeowners ensnared in the deceit. Interspersed throughout the report are examples of scam operations and tactics. The report concludes with a discussion of two sets of recommendations from the Lawyers' Committee. First is a set of recommendations aimed at boosting existing protections and closing loopholes in current regulatory regimes. These include the following:

1. Incorporate Anti-Fraud Measures into New Government Programs: We found several examples where foreclosure rescue scammers adapted and marketed their fraudulent schemes to take advantage of homeowners who were eligible for new legitimate government programs designed to provide relief for distressed homeowners. In response we engaged directly with several enforcement agencies and servicers to have them incorporate anti-scam messaging and protections into their new programs. Thus, it is important that as new government programs are created, they include explicit warnings to consumers regarding potential scammers and advice for how to avoid scams. For non-governmental agencies and organization fighting scammers, identification of new fraudulent trends and efforts to educate the public about such trends is important.

2. Relevant Law Enforcement and Other Agencies Should Engage and Coordinate with Network Partners as They Formulate and Implement New Government-Sponsored Programs for Distressed Homeowners: Early coordination will give agencies that are devising new programs the benefit of the Network partners' experience in fighting scamming. Concurrently, it will allow Network partners to alert those who interact directly with distressed homeowners (such as housing counseling agencies) to new governmental programs and resources available to them.

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3. Ensure that Homeowners Are Covered Under State Laws Targeting Foreclosure Rescue Fraud: Many states have passed new laws to address foreclosure rescue scamming. However, some of these laws defined “homeowners” that the law was designed to protect too narrowly. For example, some state laws limit coverage to homeowners who are in default or foreclosure, and fail to reach many homeowners who are defrauded seeking to refinance their mortgage or are seeking mortgage relief because loss of job or unexpected medical costs. It is therefore important that state laws targeting foreclosure rescue fraud define homeowners broadly to cover fraud at any stage of the process.

4. Provide Opportunities for Private Litigation by Homeowners: Some state and federal laws that are designed to combat foreclosure rescue fraud can only be enforced by government entities. This limits the enforcement of these laws. Providing private rights of action strengthens protection of homeowners by creating “private attorneys general” who will complement the often limited resources of those government agencies.

Chapter 1

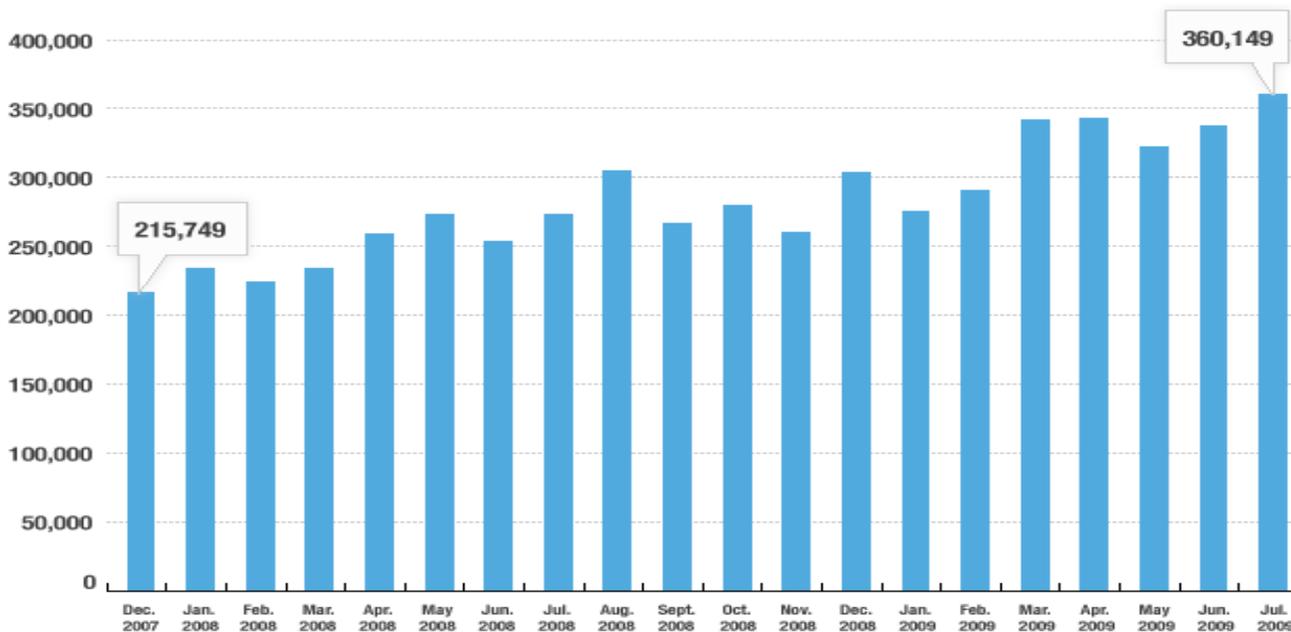
A RESPONSE TO THE CRISIS



Starting in 2007, an unprecedented foreclosure crisis spread throughout the country. Its negative impact on the nation's economic well-being was the country's most pressing domestic issue and by 2008, the United States was facing its greatest economic downturn since the Great Depression. Millions of homes were in foreclosure and millions more were projected far into the future. Equity lost by families with foreclosed properties was headed toward the trillions.

While the foreclosure crisis had vast consequences throughout the United States, it had a disproportionate impact on persons of color. Much of the crisis was the result of the collapse of subprime loans. Because minority families held a disproportionate number of these toxic loans, the effects of the explosion of foreclosures were felt first and most prominently in minority communities. An estimated almost eight percent of both African American and Hispanics/Latino homeowners were foreclosed upon in this period, compared with 4.5 percent of non-Hispanic Whites, controlling for differences in incomes among the groups.

U.S. Foreclosures, December 2007-July 2009



Source: RealtyTrac

Credit: Robert Benincasa/NPR, David Wright/NPR

As the foreclosure crisis grew, foreclosure rescue fraud – scams designed to capitalize on homeowners facing foreclosure by extracting thousands of dollars in exchange for empty promises of assistance – exploded and increased the pain of these homeowners. The proliferation of this type of fraud is not surprising. Homeowners with financial difficulties desperately need to find help to keep their homes and are vulnerable to scam artists posing as loan modification specialists, for example. Scam operators blanket television, radio, newspapers, and the internet with advertisements in English and Spanish, and also rely on street flyers, signs, billboards, and direct mail solicitation. This saturation marketing, often filled with lies and exaggerations, plays on the trust of distressed homeowners. Scammers use high-pressure sales tactics and false guarantees of success to attract homeowners and to extract large upfront cash payments from homeowners, and then typically do

little or no work to obtain the relief promised, essentially abandoning these homeowners. The homeowners not only lose the money they paid to the scam operation, but fall deeper into default and lose valuable time that could have been spent negotiating directly with their mortgage servicer or by going to free a HUD-approved housing counseling agency with true expertise in assisting homeowners in trying to save their homes.

As the foreclosure crisis was peaking, these scams replaced predatory lending as a major problem in the housing finance industry and scams resulted in what the Lawyers' Committee For Civil Rights Under Law (Lawyers' Committee) called the "second wave" of the foreclosure crisis. Indeed, many predatory lending operations morphed into foreclosure rescue scam entities. It was in this context that the idea of creating a coalition to fight foreclosure rescue fraud was born. It started with initial discussions between the Lawyers' Committee and Fannie Mae in the summer of 2009. Following those discussions, Fannie Mae hosted a meeting which, in addition to the Lawyers' Committee, included a large number of federal enforcement and bank regulatory agencies, fair housing groups, and other non-profit organizations. The meeting resulted in a joint effort to pursue the creation of a broad coalition of partners to form the Network to be led by the Lawyers' Committee, in conjunction with Fannie Mae, Freddie Mac, NeighborWorks America and Homeownership Preservation Foundation (HPF).

Federal, state, and local law enforcement agencies, as well as national, state and local housing, legal aid, consumer protection and civil rights non-profit organizations, were already involved in efforts to address the foreclosure crisis including efforts to stop the proliferation of loan modification scamming operations. The Loan Modification Scam Prevention Network (LMSPN, or Network) was designed to strengthen and support the efforts to fight foreclosure rescue scamming and after its creation, the Network brought representatives from

key governmental agencies into the coalition, such as the Federal Trade Commission (FTC), the U.S. Department of Housing and Urban Development (HUD), The U.S. Department of Justice (DOJ), the U.S. Department of Treasury (Treasury), the Federal Bureau of Investigation (FBI), and state Attorneys General offices, as well as from leading non-profit organizations from across the country, many of which were providing free housing counseling services to distressed homeowners on a nationwide basis.

This comprehensive Network was created for four distinct purposes:

1. **Increase Scam Reporting and Create a National Database**

A fundamental concept behind the Network was the Lawyers' Committee's creation of a database to aggregate complaints from homeowners across the country about foreclosure rescue fraud. The national Loan Modification Scam Database (Database) has been a vital resource in the effort to combat scamming operations. All complaints, which can be submitted online (through the Lawyers' Committee's www.preventloanscams.org website), over the phone, or on paper forms, are sent to the FTC's Consumer Sentinel database (provided homeowners consent to such sharing), which is available to federal, state, and local enforcement agencies. Unlike when federal, state, and local governmental agencies gather such information, which cannot be shared with non-profit organizations, the Database is available to Network partners, both public and private entities, thereby increasing the possibility of private enforcement actions.

Additionally, because the information in the Database is nationwide, it allows for analysis of trends across the country and provides the ability to develop a broader picture of scamming activity, rather than the more limited view allowed when such information is gathered jurisdiction by jurisdiction, which cannot account

for scammers operating across state and county lines.

2. Support Existing Federal, State and Local Counseling and Prevention Efforts

One of the Network’s primary objectives is to support existing foreclosure prevention and scam eradication efforts by providing additional resources to local agencies, including current information on scamming and potential victims. The Network has analyzed complaints collected in the Database, spearheaded local public education efforts, pushed for strong anti-scaming policies and rules, and brought private enforcement actions when necessary. This coordinated work at the federal, state and local level, supported by the resources and expertise of national organizations, makes it more difficult for scammers to continue to operate.

3. Increased Enforcement Actions

The Network was designed to work closely with federal, state, and local government officials to support their enforcement efforts to combat scamming operations. In addition to transmitting all complaints, subject to the homeowner’s



Read More about the Lawyers’ Committees’ private enforcement efforts [here](#)

approval, to the FTC’s Consumer Sentinel database, the Network works with federal, state, and local investigators, agents and prosecutors to share specific complaints directly with them when appropriate. For example, if an alleged scam operation appears to be

particularly active in a certain jurisdiction when the Lawyers’ Committee analyzes trends from the information in the Database, that activity is flagged and forwarded to the relevant government enforcement agencies.

Similarly, the Network also supports increased prosecutions of scammers by state regulatory agencies. Equally important, the Network’s design also provides for private enforcement actions. Specifically, the Lawyers' Committee engages in private enforcement efforts by bringing high impact litigation through its *pro bono* legal network, based on information and complaints generated from the Database.

Barbara Hawkins, a Lawyers' Committee Plaintiff in a case brought against Rory Alarcon, responding to a question by ABC Chief Investigative Correspondent Brian Ross, as Linda Mullenbach, a Lawyers' Committee senior counsel and lead litigation counsel on these cases, listened during the filming of the segment on Rory Alarcon's loan modification activities that aired on ABC's primetime show "The Lookout" on September 4, 2013. See more about the Lawyers' Committee's litigation in Chapter 6 of this report.



As discussed in detail in Chapter Six, this private enforcement activity has resulted in fourteen lawsuits being brought on behalf of homeowners by the Lawyers' Committee and its *pro bono* partners.

4. Public Education Through Outreach

A primary goal of the Network is to provide the public with information on how to avoid foreclosure rescue fraud, news on enforcement actions against individuals and companies perpetrating such fraud, and local resources available to help homeowners fight scammers and receive assistance in modifying their mortgages. Moreover, using the Database, the Lawyers' Committee has analyzed scams by location, type of scam, and other factors to gather vital information about the nature of homeowners' experiences.

The Lawyers' Committee generates reports through this research and provides them to the Network, other partners, and to the public. The Network also supports its partners' media campaigns by providing the information collected through the Database and experiences of local leadership to educate the public. These campaigns include NeighborWorks America's Loan Scam Alert, Treasury's Making Home Affordable, HUD's Know It. Avoid It. Report It., and Fannie Mae's Know Your Options. Such campaigns publicize resources available to

homeowners, including information on filing a foreclosure rescue fraud complaint, common tactics used by scammers, tips on how to avoid such fraud, news on enforcement actions against individuals and companies perpetrating foreclosure rescue fraud, and other updates on the activities of the Network's members.

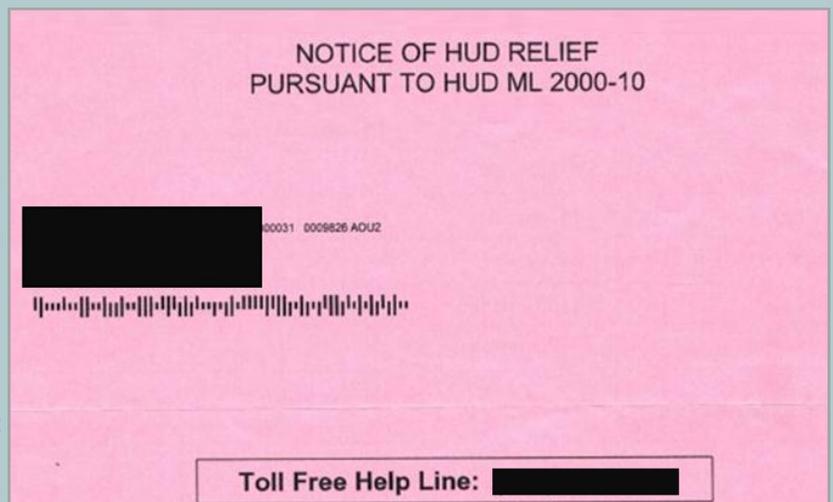
ANATOMY OF A SCAM

“Your modification is approved! Send us your new payments”

Operation asserts the homeowner has been approved for a modification then steals the homeowner’s “new” mortgage payments.

The most devastating foreclosure rescue fraud scams are those that not only promise a modification, but also trick homeowners into believing the lender has agreed to the terms. The party then instructs the homeowner to pay the “new” modified mortgage payments to them, and they will forward the payment to the lender. In reality, the third party takes the payments and the money never reaches the lender. Homeowners are often blindsided by foreclosure notices after many months of believing they are paying the “new” payments to the lender. The scammers often use copies of government logos and have names that are similar to real government programs.

In one heartbreaking example, a woman from Lindenhurst, New York, received a flyer in the mail in early 2013 with the header “NOTICE OF HUD RELIEF.” Believing the flyer came from the government, she called the number on the flyer, and explained that she had tried working with her lender, but had no success. The third party told her that the lender was not being cooperative because they really just wanted to foreclose on her. After sending the third party personal financial information, the homeowner quickly received a call back with some good news: they told her she was qualified for “*HAMP through*



Making Home Affordable.” The homeowner was told she now had a mortgage that was a thousand dollars less than her current one, but this was a lie. Then the party told her there was one other thing she had to do before paying the new mortgage payment – pay a “*reinstatement fee*” of \$6,000 that her lender required. Believing it was the final hurdle to reach relief, she sent in the \$6,000. Then in March, April and May 2013, she made her new “trial payments” to the third party. They encouraged the homeowner to let them know when she sent the check so they could contact her lender with a tracking number.

Each month the homeowner received a “Mortgage Coupon” with what appeared to be various government logos on it, including the Making Home Affordable and Treasury logos. The homeowner stayed in close contact with the third party, diligently sending the checks.

In May 2013, the homeowner received a call from her lender, telling her she owed almost \$30,000. She explained that she had received a loan modification and had

already paid the reinstatement fee along with three mortgage payments. The lender representative told the homeowner that she may have gotten caught in a scam. Frantically, the homeowner called her main contact at the operation to which she had been sending her checks. The phone number was disconnected.

After losing almost \$12,000, the homeowner is now facing foreclosure.

Making Home Affordable Program
Request For Modification and Affidavit (RMA)

MAKING HOME AFFORDABLE.gov

1st Lender: Wells Fargo
Loan Number: [REDACTED]

Here is your Mortgage Coupon for the month of MAR 2013; we need you to sign and mail back to us. Please make sure you send **CERIFIED FUNDS ONLY** (cashier check or money order) and make sure your check is payable to "HAMP SERVICES" and send [REDACTED]

Package Label (Att: Processing Dept.)
[REDACTED]

Payable To: HAMP SERVICES
Payment Due: \$1,945.09

(Please send package UPS && FEDEX ONLY Overnight Or Two Day Mail)

*Please contact your counselor [REDACTED] with tracking number when you send the package.

Chapter 2

CREATING THE NETWORK



One of the keys to the Network's success is the strength and breadth of the coalition involved in its work: dozens of organizations, ranging from government to non-profit to private entities, all of whom bring unique resources, skills, and perspectives to the fight against foreclosure rescue fraud. The idea of creating a coalition to fight foreclosure rescue fraud grew out of initial discussions between the Lawyers' Committee and Fannie Mae in the summer of 2009. Following those discussions, Fannie Mae hosted a meeting which, in addition to the Lawyers' Committee, included a large number of federal enforcement and bank regulatory agencies, fair housing groups, and other non-profit organizations. The meeting resulted in a joint effort to pursue the creation of a broad coalition of partners to form the Network.

At the core of the coalition that evolved is a group of entities that form the foundation of the Network, each playing a distinct, essential role that complements the roles of others. That core includes the five organizations that originally came together to form the Network – **the Lawyers’ Committee, Fannie Mae, Freddie Mac, HPF, and NeighborWorks America; and also includes HUD and Treasury**, which joined the coalition shortly after it was formed and became vital players as well.

Creation of the Loan Modification Scam Prevention Network

- **Fannie Mae** is a driving force behind the Network and an essential part of maximizing the Lawyers’ Committee’s reach in getting the tools for reporting foreclosure rescue fraud into the right hands, from public service announcements to incorporating the Network into their distressed homeowner outreach to sponsoring trainings and webinars.



- **Freddie Mac**, another driving force behind the Network, provides essential access to industry. Freddie Mac facilitates connections with servicers, loss mitigation specialists, realtors, and other industry professionals. Without that access, the Lawyers’ Committee could not have reached the significant number of groups it engaged with for information sharing and for opportunities to block the avenues that foreclosure rescue scammers use to reach homeowners.



- **HPF's** counseling hotline (888-995-HOPE) provides by far the greatest number of complaints into the Database. HPF worked closely with the Lawyers' Committee to maximize data capture and retention, from creating and maintaining a team dedicated to collecting complaints on foreclosure rescue fraud to making changes to the call script and adding voice prompts.



- **HUD** connected the Lawyers' Committee to its housing counseling agencies across the country and encouraged the agencies to use the Lawyers' Committee's reporting tools when they learned of possible foreclosure rescue fraud from their homeowner clients. Through these connections, the Lawyers' Committee is able to collect information about foreclosure rescue fraud directly from homeowners through hundreds of housing counselors nationwide.



- **NeighborWorks America** spearheaded a national media and public awareness campaign about foreclosure rescue fraud through its Loan Modification Scam Alert campaign and loanscamalert.org. In addition to educating homeowners about such fraud and how to avoid it, NeighborWorks publicizes how homeowners can file complaints in the Database regarding foreclosure rescue fraud.



- **Treasury** provided valuable anti-fraud insight, including essential investigation and follow-up as to why and how homeowners are scammed when searching for information online. In conjunction with the HOPE NOW Alliance, Treasury hosts the Making Home Affordable events, where homeowners meet with housing counselors and their servicers. Through these events, the Lawyers' Committee reaches out to homeowners about foreclosure rescue fraud. Treasury also brought together groups that the Lawyers' Committee could not have brought together on its own.



The Lawyers' Committee's key contribution to the Network is the creation and subsequent maintenance of the Database, and the analysis and dissemination of the information from the Database. The Database is valuable to members of the Network, both because they can direct homeowners who may have been victimized by foreclosure rescue scams to file complaints and because it provides information about foreclosure rescue scams across the United States. Additionally, the Database is especially important to the Network because it is accessible to both governmental agencies and non-governmental organizations to assist in the fight against foreclosure rescue scams. Further discussion of the Database may be found in Chapter Three.

The Lawyers' Committee also played a leading role in building the coalition of groups that form the Network. Shortly after the initial organizing meetings, the Lawyers' Committee reached out to other national civil rights organizations that were providing information and assistance to homeowners facing foreclosure, including the AARP Foundation, National Fair Housing Alliance, the National Council of La Raza, and the National Coalition for Asian Pacific American Community Development (National CAPACD), and the National Urban League. Since the inception of the Network, the Lawyers' Committee also has regularly

conducted nationwide outreach to a wide variety of groups and organizations – from homeowners to housing counselors to real estate professionals and market participants – in order to provide information about foreclosure rescue scams and to collect complaints. That outreach increased the visibility of the Network, raised awareness about the magnitude of the problem of foreclosure rescue fraud, and drove complaints to the Database.

In addition, through its *pro bono* law firm network, the Lawyers' Committee compiled and made available on its website (www.preventloanscams.org) applicable state laws and other information on foreclosure rescue fraud, and also brought private enforcement actions against scammers.



Yolanda McGill of the Lawyers' Committee for Civil Rights Under Law answers questions at a Making Home Affordable event.

During a LMSPN Steering Committee meeting, Susan Stocks of the Consumer Financial Protection Bureau discusses strategy, observed by (from left to right) Kristin Murphy, of Treasury; Peter Frandsen, of the DOJ; and Michael Tanglis, of the Lawyers' Committee.



Well Defined Roles, Accountability, and the Leadership of the Steering Committee

Two essential aspects to the success and effectiveness of the work of the core members of the Network, and indeed of the entire Network, are the well-defined roles of those involved and their accountability toward each other. As described above, the core members each played an essential part to enable the Network to carry out its functions.

Their clearly delineated responsibilities, of course, were not always obvious from the start. Rather, the groups worked together to hammer out all of the moving parts and how those parts would work together – from the public awareness campaign, to the information gathering and enforcement efforts, to the myriad efforts to prevent foreclosure rescue fraud through any possible channel. That

effort was, of course, well spent, as it resulted in a smoothly operating Network, with members who are invested, involved, and promptly tackle issues as they arise. The high level of accountability that the members of the Network have with each other is due, in large part, to the work of the Steering Committee. The Steering Committee includes not only the “core” of the coalition, but several other non-profit and governmental agencies, including the FTC, the DOJ, HOPE NOW Alliance, Conference of State Bank Supervisors, Financial Crimes Enforcement Network (FinCEN), National Community Reinvestment Coalition (NCRC), and National Fair Housing Alliance (NFHA). The Steering Committee meets quarterly and those meetings are essential to providing direction and accountability to the Network. The meetings are the forum where ideas are exchanged, strategies are created, and resources are assessed. And, possibly most importantly, the Steering Committee meetings are where the members of the Network hold each other accountable for the work that needs to be done. Appendix A contains a list of all of the Steering Committee members.

Omolara Bewaji, Co-counsel Associate

Davis Polk & Wardwell LLP

“The opportunity to work with the Lawyers Committee on the Loan Scam Prevention Project has been one of the most rewarding experiences of my career. I joined the Davis Polk team as a first-year associate and for the past three years, have treasured this opportunity to grow as an attorney and an advocate. In fact, I experienced many “firsts” while participating in this project including drafting my first complaint, taking my first deposition and interviewing a client for the first time. In addition to these professional achievements, I have enjoyed the opportunity to see first-hand the value of providing pro bono services in this area of consumer protection. Our clients have repeatedly expressed their gratitude--not only for the monetary recovery we have been able to secure in the loan scam litigation--but also for helping them to fight back against these scams and make a difference.”

Additional Partners Recruited to Fill Other Roles

As strong as both the “core” of the Network and the Steering Committee are, the great accomplishments of the Network could not have been achieved without the work of hundreds of other partner organizations. One of the important roles undertaken by members of the Network was to reach out to other organizations – from non-profits to governmental agencies to the private sector - to bring them into the Network as partners.

FinCEN, with its extensive background in collecting, maintaining, analyzing, and distributing data on financial transactions in the United States, provided invaluable assistance in determining which agencies might be interested in the information from the Database and in setting up those connections.



As the Lawyers’ Committee engaged in its work as a part of the Network, its staff identified many components of the Lawyers’ Committee’s role that could be accomplished only through working with other organizations. With limited resources of its own, the Lawyers’ Committee formed partnerships to fill these needs and engaged a diverse group of entities as partners.

Yolanda McGill of the Lawyers’ Committee (left), talks with anti-fraud agents from Treasury’s Office of Financial Stability.

When the Lawyers’ Committee developed the complaint form, it needed the advice of organizations with deep backgrounds in consumer protection/anti-fraud work. The FTC and NeighborWorks America, both already key players in the Network, provided useful guidance in the development of the complaint form. That form has now been used by homeowners over 38,000 times to report foreclosure rescue fraud.

Lawyers’ Committee Has Recruited

94 State, Federal and Local Government Agency Partners

113 Non-Profit Partners To the Network

In order to drive complaints to the Database, the Lawyers' Committee, lacking a public relations budget, needed to get the word out about the reporting. Shortly after the creation of the Network, the Lawyers' Committee was invited to make a presentation launching the Network's fight against foreclosure rescue fraud at a March 2010 summit



convened by the Financial Fraud Enforcement Task Force (FFETF), which President Obama had commissioned to fight all aspects of financial fraud. HUD provided access to its nationwide network of housing counseling agencies. The Lawyers' Committee's staff traveled around the country to conduct trainings for housing counselors on foreclosure rescue fraud.

The housing counselors who partnered with the Lawyers' Committee became a key source of complaints and, more generally, of information about what was happening on the ground related to foreclosure rescue scams. The housing counseling agencies and related non-profits that regularly provided complaints included Aspera Housing, Center for Financial Health, Consumer Credit Counseling of the YWCA El Paso del Norte Region, Don't Borrow Trouble Pima County, Fair Housing Council of Riverside County, Gateway Community Action Partnership, Housing Counseling Services, Inc., Long Island Housing Services, Metropolitan Milwaukee Fair Housing Council, MHDC Home Rescue, Money Management International, New Jersey Citizen Action, Pro-Home Inc., Project Sentinel, Springboard Non-profit Consumer Credit Management, and United South Broadway Corporation.

To further publicize the project and gather more information about foreclosure rescue fraud taking place all over the country, and to attempt to decrease foreclosure rescue scams through any channel possible, the Lawyers' Committee also engaged market participants and other industry professionals. Such partners

included the American Bar Association, the Better Business Bureau of Metropolitan New York, the National Association of Hispanic Real Estate Professionals of Northern Virginia, the Mortgage Bankers Association, the North Carolina Bankers Association, and the American Association of Residential Mortgage Regulators.

Again, these partnerships were often sparked by Lawyers' Committee staff conducting trainings for potentially interested groups. For the Database to provide the greatest public benefit and to fulfill its intended purpose, the Lawyers' Committee needed to partner with federal, state, and local enforcement agencies that would use the Database, particularly those already focused on combatting foreclosure rescue fraud.

Over seventy-seven law enforcement agencies partner with the Lawyers' Committee as Database users. Those agencies include eleven United States Attorneys' Offices, the FTC, the United States Secret Service, Federal Housing Finance Agency, Consumer Financial Protection Bureau (CFPB), the offices of Attorneys General for eleven states, and dozens of city, county, and state regulators and prosecutors.

Over **400** Law Enforcement Officials have
credentials to access the Database

Daniel Kolb, Co-counsel Partner
Davis Polk & Wardwell LLP

“Supporting private clients who are acting under New York law as Private Attorneys General has been a very special undertaking for us at Davis Polk. With the pro bono support of a large law firm our clients have been able to obtain injunctions that have barred many scammers and their companies from continuing to prey on innocent homeowners who find themselves in financial distress. Our clients are also well on their way to recovering the money they paid to those who defrauded them and the exemplary damages the law allows. We hope that other large law firms will see, as we have, the special importance and reward of such efforts by private citizens, efforts that for most are only possible with law firm pro bono support. Our firm is also very proud and pleased that in the effort many of our young lawyers have been able to take depositions and appear in court, providing rewarding professional experiences for them and a quality of representation that the clients could not afford on their own. It is a win-win for everyone but the scammers.”

To develop the resources on www.preventloanscams.org and file fourteen separate cases, the Lawyers’ Committee needed thousands of hours of legal work. To accomplish this work, the Lawyers’ Committee harnessed the resources of its pro bono partners. Fourteen law firms provided valuable research to populate the state pages on www.preventloanscams.org: Cleary Gottlieb Stein & Hamilton LLP; Davis Polk & Wardwell LLP; Dechert LLP; Kilpatrick Townsend & Stockton LLP; Kirkland & Ellis LLP; Linklaters LLP; Morgan, Lewis & Bockius LLP; Morrison & Foerster LLP; Orrick, Herrington & Sutcliffe LLP; Proskauer Rose LLP; Quarles & Brady LLP; Ropes & Gray LLP; Sullivan & Cromwell LLP; and Wilmer Hale LLP.

Thirteen firms assisted in the Lawyers’ Committee’s enforcement efforts, with some serving as co-counsel in private enforcement actions brought on behalf of homeowners: Arnold & Porter LLP; Carlton Fields; Cooley LLP; Davis Polk & Wardwell LLP; Dickstein Shapiro LLP; Dorsey & Whitney LLP; K&L Gates LLP; King & Spalding LLP; Latham & Watkins LLP; McDermott Will & Emery; Orrick, Herrington & Sutcliffe LLP; Patton Boggs LLP; and Weil, Gotshal & Manges LLP.

**From 2009 to 2012, pro bono partner law firms donated
legal work to this effort valued at**

\$12,423,847



The Work Continues

Just as foreclosure rescue fraud is a constantly evolving problem, the Network is not a static entity. Rather, the members of the coalition, guided by the Steering Committee, continue to refine their roles, work together to develop new strategies to tackle emerging issues, and hold each other accountable in the process. And, with this continuing work and flexible approach, the successes of the Network continue.

Michael Tanglis of the Lawyers' Committee (left) shakes hands with Treasury Secretary Jack Lew at a Making Home Affordable event.

Lessons Learned

- One of the keys to a successful coalition is well defined roles so that all of the necessary work gets done, work is not duplicated, and people are not stepping on each other's toes.
- Another key to a successful coalition is a method for accountability. For the Network, that accountability was driven mainly through the Steering Committee.

ANATOMY OF A SCAM

“We volunteer all our hours with no payment.”

Alleged “Non-profits” Referring Homeowners to “Law Groups”

Lawyers’ Committee data shows that attorney involvement in scams is growing and appears to be an effective means of ensnaring victims, but some homeowners still approach attorneys with skepticism. Attorneys, or someone pretending to be affiliated with an attorney, attempt to ease this skepticism by involving a “non-profit.” Anyone involved in preventing foreclosure or foreclosure rescue fraud knows the best resource for homeowners is a FREE, HUD – approved housing counseling agency. The problem is that not every organization who claims to fit that description actually does. Some “non-profits” operate as lead generation agencies, gaining the trust of vulnerable homeowners. A search for “.org” in the Database produces over 1400 complaint hits. Homeowners meet with these “non-profits” and things appear to be in order. They aren't asking for any money, the people seem very nice, and they begin to look over various mortgage documents, free of charge. Providing what appears to be a free service, the “non-profit” can make the homeowner feel at ease and also invested in the process. Once the homeowner is invested, the next level of the scam begins.

2013

**PAYMENT REDUCTION NOTIFICATION
ECONOMIC STIMULUS 2013**

One homeowner from Rosedale, New York, began working with one of these “non-profits” in early 2013. She had received a flyer in the mail with the headline, “Economic Stimulus Mortgage Notification” that read, in part: *“You are hereby notified that the property at (her address) has been pre-selected for a special program by the Government Insured Institutions. In addition, this property is pre-qualified for an Economic Advantage Payment or Principal Reduction Program, designed to bring your house*

Our records indicate that prior attempts for notification of entitlements & eligibility have failed. Your National non profit representative for your county is available Monday through Friday, 9:00 A.M. to 7:00 P.M. (Eastern Time only). You must contact the housing and debt counseling assistance helpline immediately at 800-██████████ to complete the enrollment and registration process before 8/3/2012. This is an urgent and last attempt to assist you with your financial situation.

Your Eligibility # is ██████████

Call Toll Free ██████████

payments current for less than you owe or your principle balance down. There are no restrictions on equity, credit ratings, or mortgage delinquencies.” The flyer said to contact “Your National non-profit representative” because this is the “last attempt to assist you with your financial situation.”

The homeowner was in need of a modification, so she called the “non-profit” listed on the top of the flyer. After working with the “non-profit” for a while, they told her that they did “all that they could,” and she needed to talk to “(Name withheld) Law Group.” This “Law Group” advertised that they “fight the bank.” They assured her that nothing could happen to her home as long as they were defending her, saying “(her lender) will not take her case until 2016,” giving her some much needed breathing room. After paying four thousand dollars to the “Law Group” and following weeks of empty promises, she was blindsided by a letter telling her that her mortgage was put into foreclosure just a few months after she began working with the “non-profit.”

To keep skeptical homeowners on the hook, the “non-profit” will stay involved throughout the process, assuring the vulnerable homeowner everything is fine. The “Law Group” extracts numerous fees from the homeowner, often saying, “the bank can’t do anything as long as we represent you.” Often in the end, the “non-profit” was started by the same attorney (or non-attorney) who started the “Law Group.” The homeowner loses thousands of dollars and is left wondering, if a “non-profit” will scam them, is there anyone they can trust?

Chapter 3

THE NATIONAL LOAN MODIFICATION SCAM DATABASE



Gathering Scam Complaint Reports

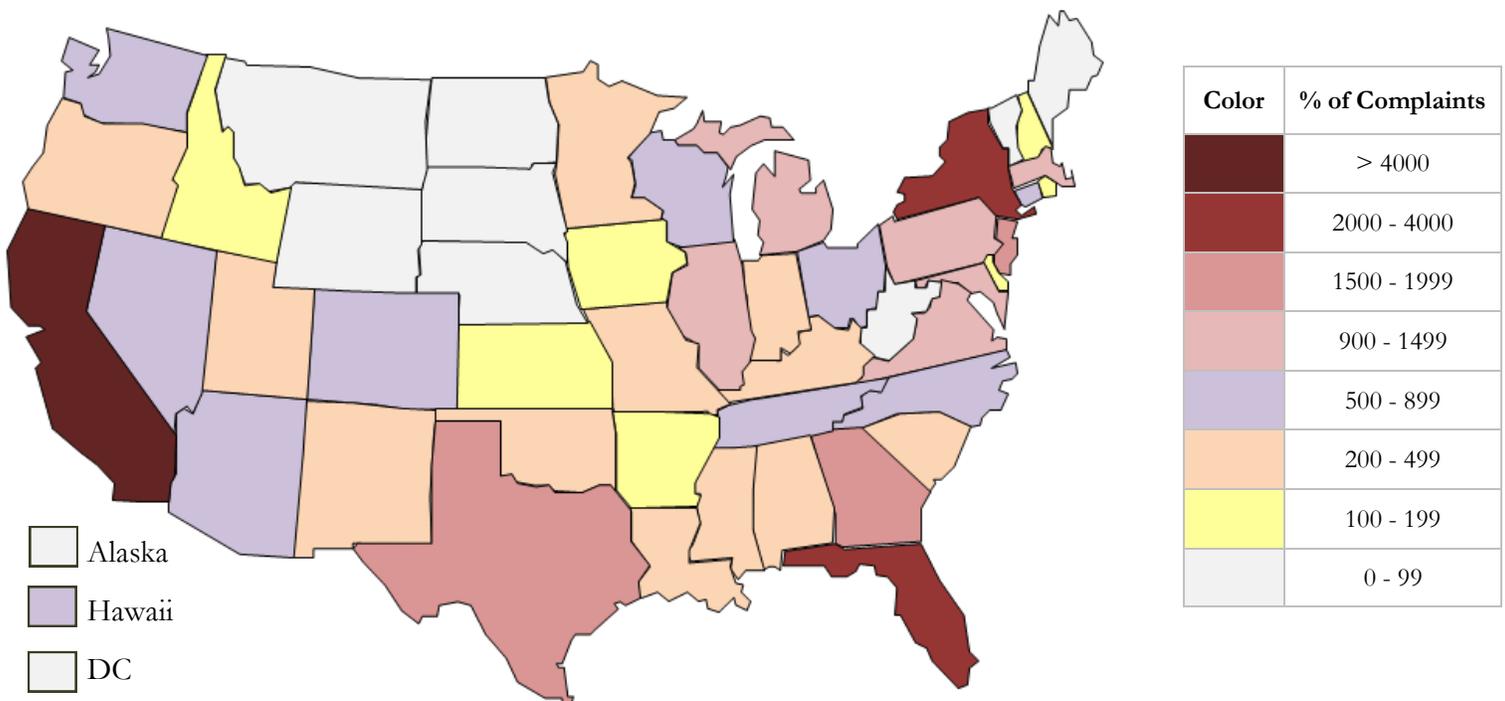
The centerpiece of the Network is the Database. The Network initiative serves as an information-gathering process that aggregates crucial information about destructive frauds that would otherwise be underreported and underrepresented in the national conversation. This aggregation in turn boosts awareness and encourages agencies to concentrate on illegal conduct that, by its nature, is considered small dollar in the mortgage fraud world and would therefore never be prosecuted on an individual basis.

An Online Interface: www.preventloanscams.org

The need for a national coalition effort to enforce applicable state and federal laws against foreclosure rescue fraud is clear when one sees how many reports in the Database allege an out of state scam. Every state plus the District of Columbia is represented among homeowners reporting fraud in the Database, **78%** of total database reports provide complete state information.

Reported Complaints by **Location of Homeowner**

(96% of homeowners provided the homeowner state)

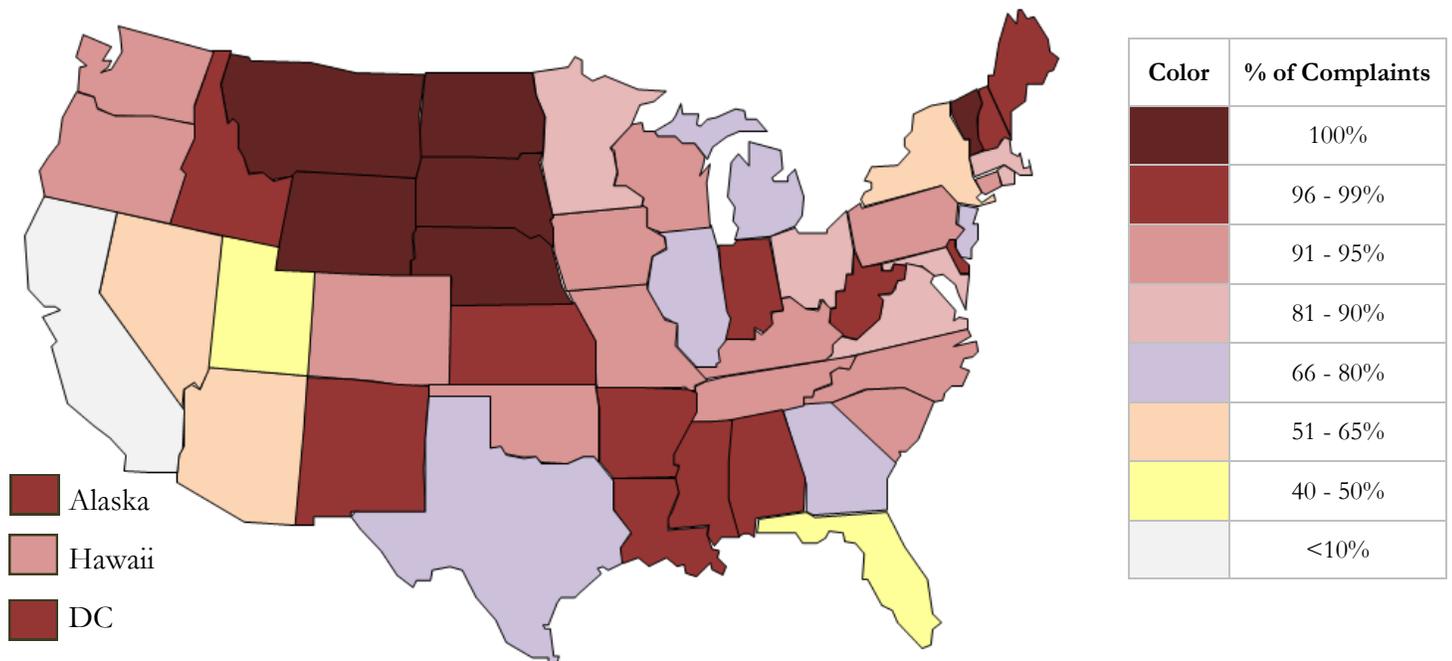


Because perpetrators of foreclosure rescue fraud often operate across state lines on a national level, it was essential that the Database collect loan scam information on a national level. All of the homeowners from Maine, Montana, North Dakota, South Dakota, Nebraska, Vermont and Wyoming reported scams that crossed state lines. A majority of homeowners from thirty-eight other states (excluding California, Florida and Utah) reported complaints against out of state organizations.

Overall, homeowners nationwide reported being scammed by an out of state scam organization 64% of the time. If California homeowners are excluded from the analysis, homeowners from around the country reported being scammed by an out of state organization 77% of the time.

% of Homeowners Who Indicated Being Scammed by an **Out of State** Scam Operation

(78% of homeowners provided homeowner state & scam organization state)



Many scam operations have numerous cease and desists orders against them, but often treat such orders as the cost of doing business. The addition of federal enforcement agencies and a nationwide coalition to state-level actions adds crucial resources to this issue that individual states cannot mount on their own.

The Network’s online portal, www.preventloanscams.org, serves this purpose. It permits reporting on every page of the site so that anyone who comes to the site and suspects, after becoming educated through the site’s materials that he or she was exposed to scam activity, can immediately file a report. The online complaint form begins with two “screening questions” that help clarify for the submitter what information the Lawyers’ Committee is seeking, thereby minimizing erroneous

complaint reports in the dataset. If an individual decides to report foreclosure rescue fraud after answering the screening questions, the submitter can then access the remainder of the questions on the form. The Lawyers' Committee extended the reach of the online reporting tool, and the Network, by offering a "unique" URL to organizations and agencies willing to collect complaint reports for transmission into the Database.

Paper Complaint Forms

The Network uses paper forms as a reporting tool in addition to the online complaint form. The use of paper forms was developed after the Lawyers' Committee consulted with counseling agencies at the national and local levels gaining insight into the vast underreporting by homeowners of scamming activity. The reasons given for this underreporting were various, but from this anecdotal information the Lawyers' Committee identified two significant homeowner perspectives that suppressed reporting: distressed homeowners felt shame about their victimization, and distressed homeowners often did not realize they had been scammed until they spoke to a counselor or other service provider who asked them questions about their finances and any remedial activity they had already undertaken.

Therefore, it was important to create reporting tools that could be used by homeowners and anyone who might be assisting them, particularly people who were not housing or financial services professionals such as family, friends and clergy. The Lawyers' Committee worked closely with Network partners who had extensive experience with distressed homeowners to develop a simple, straightforward reporting form. The form needed to be accessible and efficient, because if it was too complex or lengthy, it might discourage frustrated homeowners. More importantly, because counselors are expected to manage several data management systems and reporting requirements, the Network's reporting tools needed to be sensitive to

Loan Modification Scam Prevention Network

PREVENT LOAN SCAMS

www.PreventLoanScams.org

1 Before you fill out this form:

1) Did anyone offer to help modify your mortgage, either directly, through advertising, or by other means such as a flyer? YES NO

2) Were you guaranteed a loan modification or asked to do to any of the following:
 pay a fee, sign a contract, redirect mortgage payments, sign over title to your property, or stop making loan payments? (now or in the way)

If the answer to both questions is no, you do not need to submit this form.

NOTE: This form is designed to provide a way to submit a complaint regarding companies or individuals that may be fraudulently or illegally offering they can help you obtain a loan modification or avoid foreclosure. With the homeowner's permission, the complaint will be forwarded to law enforcement agencies for their review and any action they deem appropriate. While you may receive a follow-up call or reference from legal advocates in the network, it does not provide direct legal representation to complainants.

2 Information about Person Who Offered Help

you paid money check here: Total paid \$ _____

any of the money was paid before services were provided, check here: _____

you were guaranteed a loan modification, check here: _____

what services did the company or individual offer? (check all that apply)

Loan Modification Foreclosure relief assistance/consulting consulting Legal Representation Bankruptcy Reverse Mortgage Offer to purchase homeowner's property

you signed a contract, did the person perform the services agreed to in the contract? YES NO

When was your last contact with the person? _____

3 Contact Information for Person Who Offered Help

Company/Individual Name: _____

Main Contact (if different than company/individual): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Email: _____

Website: _____

4 Homeowner Information

first Name: _____ last Name: _____ Address of Property: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

enter? If Yes, please circle the appropriate age range: 18-45 46 or older

Homeowner race/ethnicity (not required):

American Indian or Alaska Native Hispanic/Latino White/Caucasian

Asian Native Hawaiian/Other Pacific Islander Other

Black/African-American Prefer not to list

Loan Modification Scam Prevention Network | Basic Complaint Form | Page 1 of 2

these requirements if the Network was to succeed.

Scam Reporting by Phone: 888-995-HOPE

Some homeowners do not have access to the internet, and are thus unable to make use of an online complaint form, so the Network also collects complaints through a hotline, 888-995-HOPE, managed by HPF. Considering that the Network campaign is national in scope and that maximizing reporting into the Database is the key to the campaign's success, reporting options that are low tech and easily transportable are critical. Although paper forms certainly fit these criteria, the Lawyers' Committee does not have the staff to enter massive amounts of data by hand into the Database. The hotline solves this problem.

In late 2009, just prior to the Network's launch, Treasury was organizing its massive effort to reach the millions of homeowners at risk of foreclosure, the Making Home Affordable program. As a part of its national outreach Treasury partnered with HPF and incorporated HPF's 888-995-HOPE hotline into its call to action. The phone number, placed onto billboards, placards, bus shelters, and other marketing materials, was easy to recall and connected homeowners toll-free to housing counselors. HPF agreed to formally connect to the Network and transmit to the Database any complaints about foreclosure rescue fraud that it received during counseling sessions.

Eileen M. Fitzgerald, CEO NeighborWorks America

"Our collaboration to help homeowners avoid and report loan modification scams has benefited homeowners all across the country and has established a new standard for sharing information among nonprofit organizations. Because of our work together we've made it more difficult for scammers to use the Internet to defraud homeowners and destroy financial futures. And we have given great advice to millions through advertising across diverse media"

This transmission was facilitated by creating a spreadsheet that correlated, or mapped, to the fields in the Database, as well as close coordination between the technical and program personnel at the two organizations. While the arrangement was a promising one, the proportion of potential scam complaints coming into the hotline (based on counselor feedback) compared to reports actually transferred into the spreadsheets was initially very low.

Working closely with other Network partners, HPF found additional financial resources to create a dedicated team of counselors who focus exclusively on completing reports on foreclosure rescue fraud on behalf of homeowners who called the hotline. The work of this dedicated team increased the capture rate substantially; as of mid-2013, telephonic reporting via the hotline regularly contributed over sixty percent of complaints into the Database.

The Database Is A Critical Repository for Scam Information

1. Power In Numbers

When the second wave of the foreclosure crisis – foreclosure rescue fraud – hit, homeowners who were victims of such fraud did not come forward with reports in substantial numbers, whether due to shame, lack of awareness, or the triage required when their first priority was to save the family home. Despite the lack of reports, anecdotes about foreclosure rescue fraud circulated among counselors and enforcement agencies. In order to take action and devote limited resources to this illegal conduct, enforcement agencies needed more information, specific to their particular jurisdictions, about scams and alleged scammers, victimized homeowners, and verifiable losses. The Database was designed and implemented to address these challenges.

Even under normal circumstances, enforcement agencies are strapped for resources and must prioritize which cases they investigate and prosecute, and foreclosure rescue fraud was only one of the new and extremely pressing priorities that came out of the housing crisis in 2006. While the federal FFETF launched its pursuit of mortgage fraud investigations in 2009, it did not launch its Distressed Homeowner Initiative until October 2011, well after the effects of foreclosure rescue scams were being felt by distressed homeowners across the country.

From its launch in March 2010, however, the Database elevated the plight of scammed homeowners nationwide, calling attention to the valuable time, money and trust being stolen through deceptive and fraudulent foreclosure rescue tactics.

While the average loss per homeowner in the Database is approximately \$3,248, this dollar figure does not take into account the potential domino effect of foreclosure and homelessness these foreclosure rescue scams can cause.

Homeowners may lose over \$3,200 in cash payments to a scammer, but can end up losing hundreds of thousands of dollars more because their homes fall into foreclosure as a direct result of the scam. In all but two states, the majority of complaints submitted by homeowners indicated that the scammer asked them to do one of the following: (1) redirect their mortgage payments, (2) stop making their loan payments, or (3) sign over the title of their property. Of the 77% of the total complaints that included this information, 57% of the homeowners reported falling into one of those three categories.

The Network, through the Lawyers' Committee's Database, submitted over 38,000 complaint reports to the FTC's Consumer Sentinel database since 2010. Through the aggregating effect of compiling thousands of complaints nationwide through a variety of means, the resulting information highlighted the impact of foreclosure rescue fraud on different populations and geographic regions.

2. Unique Public-Private Nature Boosts the Database's Value

The Database has been a highly effective tool for gathering and disseminating rescue scam information to stakeholders working on this issue. Part of its effectiveness flows from the unique position that the Database, and by extension the Lawyers' Committee, occupy as a hub for the continuous flow of complaints among the public, government enforcement agencies, and direct service providers. Prior to the Database's existence, service providers such as housing counselors heard anecdotes about scams or became aware of scams while assisting clients, but had no immediate way to escalate the issue in a meaningful way. Savvy homeowners who did find a way to complain to the authorities often complained to the "wrong" or non-responsible agency. Even if the homeowner found the correct agency, the report might not be addressed until the agency received adequate resources or additional reports on the same entity. The likelihood of both of these outcomes was, of course, diminished by underreporting, the homeowners' difficulties in finding the correct reporting channel, and the frequency with which scam operators change their business identities.

Moreover, information about a potential crime or violation goes only one way when submitted to an enforcement agency. Officials are typically not at liberty to discuss a possible scammer until that agency has taken definitive public action against that party, even if information about the patterns or tendencies of the scammer could provide advance warning to the public. The Database provides a wealth of information that can be used both by law enforcement and to educate the public about this issue. Just as importantly, the Database provides a simplified one-stop shop for counselors and homeowners to report foreclosure rescue fraud to a variety of local, state and federal enforcement officials who are focused on this type of fraud.

3. Accessing the Scam Information

The Database can only be accessed with a username and password issued by the Lawyers' Committee; these credentials are personal to the particular user. Within the Database there are several access levels that restrict the information that can be viewed according to the credential type. The Lawyers' Committee's administrative-level users (staff of the Lawyers' Committee and its affiliates) and all law enforcement-level users have access to homeowners' names and contact information in order to facilitate follow up conversations with these homeowners as part of the case investigation process. Partner organization-level users cannot see a homeowner's name and private information and instead see a case ID number. They can, however, see the information about the alleged scam and can search for reports that might be associated with a particular region, population, scam entity or activity, in order to identify trends that might be informative for their constituencies.

4. The Results Are Telling

More than four years after its launch, the Database is a popular tool among law enforcement officials. It cannot replace the FTC's Consumer Sentinel database, which collects reports on all frauds, from lottery schemes to identity theft, but it complements that data collection mechanism because it is dedicated solely to one type of fraud and is easy to navigate. The information that the Lawyers' Committee has culled from the Database, in the form of issue briefs, charts, reports, news articles and other easy-to-digest materials, has also proven extremely popular with coalition partners and homeowners. With the information from the Database, the Lawyers' Committee is expanding the knowledge base available to all those fighting these frauds. It elevates important national trends that should be examined and puts market participants in a position to provide remedial action, or engage in further research.

This trend analysis also empowers professionals such as realtors, brokers, and lawyers to adopt training or sanctions against their peers who might stray into illegal conduct. For example, over one third of the reports in the Database contain allegations that attorneys or promises of legal representation were somehow a part of the scam. Once this trend was uncovered through analysis of complaints in the Database, the discovery led to articles in national newspapers and new educational materials from the American Bar Association. Additionally, seven of the Lawyers' Committee's fourteen loan scam lawsuits involve allegations of attorney misconduct as part of the foreclosure rescue fraud. Another important trend identified through analyzing complaints in the Database was that distressed homeowners are highly susceptible to solicitations that somehow suggest an affiliation with government programs and offices.

Armed with this assessment and numbers from the Database to support it, Lawyers' Committee staff prepared documentation for HUD, Treasury and other members of the Network that assisted them in developing anti-fraud measures to safeguard the homeowners these agencies were trying to reach.

Lessons Learned

- The Lawyers' Committee, the Database vendor, and HPF made repeated technical adjustments to reduce the number of "incomplete" complaints entered into the Database through the online interface and the hotline, which had been occurring when a homeowner submitted insufficient information to create a usable complaint.
- Formal partnerships with translation contractors are necessary to consistently support diverse language needs.
- Realistic assessment of counselor capacity to take scam reports, while still providing excellent counseling to these homeowners, ensures that counseling and complaint capture rates are maintained.
- Internal and external clarity around distinct roles in the complaint gathering process creates solidarity around critical Network functions and permits each partner to feel duly acknowledged for its efforts.

ANATOMY OF A SCAM

“You’re eligible to join our lawsuit”

Fake Mass Joinder & Other Lawsuits

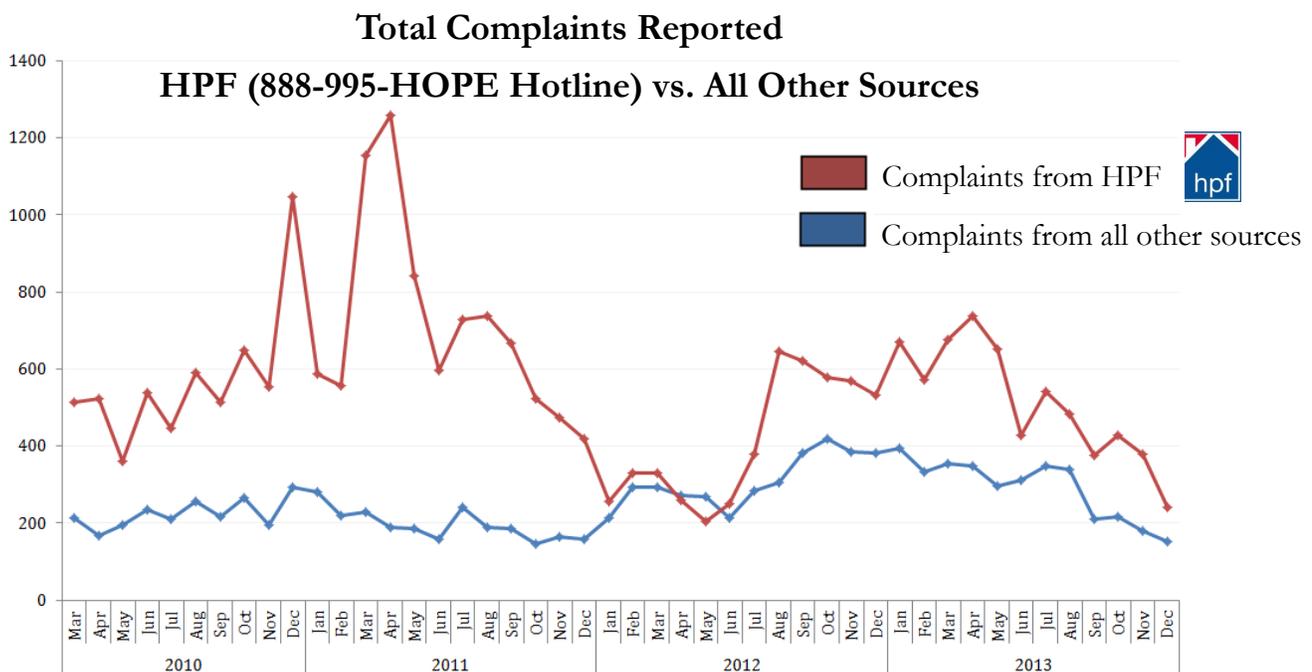
On average, complaints that allege some type of attorney involvement have produced greater losses per homeowner than all other complaints. While attorneys can be involved in any type of foreclosure rescue fraud, they are uniquely capable of tricking homeowners into believing they can get involved in fake mass joinder or other lawsuit against a lender. The lawsuit schemes can prove to be even more painful for homeowners because they often involve two parts: first a fee for a “forensic audit” to see if the homeowner is eligible to join the suit, then another fee to join the suit. Most promise very impressive results, like the homeowner who was told she could “*join a class action lawsuit against her lender. Once this was settled she was guaranteed \$75,000.*” The final selling point for many of these lawsuits is the assurances made to homeowners that nothing can happen to their homes as long as they are part of the suit. Some attorneys advise homeowners to stop paying their mortgage and instead pay monthly retainer fees to them. Month after month, homeowners pay the fee, believing the attorney is fighting for them. In the worst cases, the homeowner doesn't realize the attorney is actually providing no service at all until a foreclosure notice arrives.

One senior citizen from Williamstown, New Jersey, was contacted by a group of attorneys who guaranteed him a loan modification for just over four thousand dollars. After they allegedly reviewed his documents and made “*headway*” with the bank regarding a loan modification, they informed him that he was eligible to join a lawsuit against his lender. The suit included over twenty thousand homeowners and they assured him that the lender would settle. At that point the homeowner began making monthly retainer payments of just over a thousand dollars, for eleven months, for a suit that never happened. On top of all of that, the attorneys advised him to stop making his mortgage payments.

Chapter 4

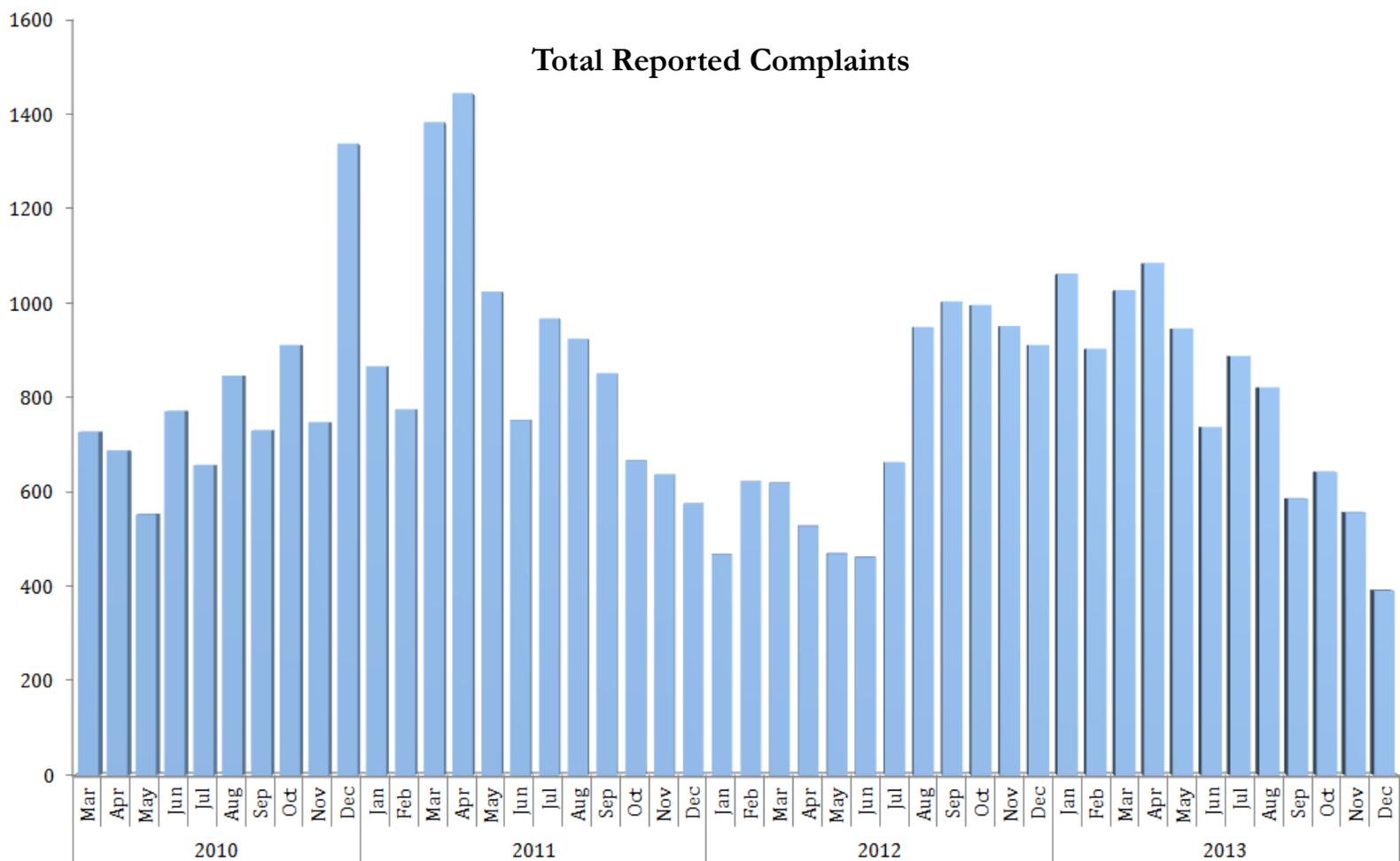
USING DETAILED FORECLOSURE RESCUE DATA

As discussed in Chapter Three, the Lawyers' Committee's Database gathers foreclosure rescue fraud complaints from many different sources: homeowner outreach events; housing counselors; the Network partners; the online complaint form; paper complaint forms mailed to the Lawyers' Committee's office; and the largest contributor of homeowner complaints, HPF's 888-995-HOPE hotline.



The complaint form is simple, with only eight questions, but captures over thirty information fields including the homeowner’s address, contact information, age, race, name, and alleged scam organization location and contact information. The fields are comprised of both free text fields and drop down lists. Questions regarding age and race are selected from lists in order to facilitate standardized, clean data results. Since the Database was created, through the end of 2013 more than 38,000 complaint reports were entered.

Total Reported Losses of
\$89,425,635
 Average Reported Losses of
\$3,248



The Database has a high capture rate for many crucial fields, including a ninety percent capture rate for homeowner race, an eighty-six percent capture rate for homeowner age, a ninety-six percent capture rate for homeowner state, and a ninety-seven percent capture rate for homeowner phone number. Regarding the alleged scam organization, the Database has a ninety-two percent capture rate for the scam organization or individual name, an eighty-two percent capture rate for the scam organization phone number, and an eighty percent capture rate for the scam organization state. Since the Database's inception, eighty-five percent of homeowners using the complaint form filled out the homeowner narrative field, which has been critical in understanding scam details. This wealth of data gives the Lawyers' Committee the ability to provide detailed, standardized complaint analysis.

Effective Data Sharing with Enforcement Officials

The Lawyers' Committee creates and shares a variety of data compilations and reports with enforcement officials, focusing on active scam organizations or networks of organizations. These reports focus on important aspects of scams, including attorney involvement, apparent overrepresentation of homeowners of a

certain age or race, and scams alleging government affiliation. Enforcement officials also reach out to the Lawyers' Committee for information regarding specific alleged scam organizations and to provide notification of government initiatives that scammers may attempt to co-opt for fraudulent or illegal purposes.

The Lawyers' Committee shares **“Active Operation Reports”** and other data compilations with enforcement officials.

Loan Modification Scam Prevention Network (LMSPN)
Active Scam Operation Report

Overview

This report highlights database trends that appear to identify a network of connected scam entities, primarily located in Orange County, California. The connected entities use over 100 different company names; they are linked together by common addresses and phone numbers. As possible scammers they are noteworthy because they commonly use quasi-government names such as [REDACTED] or [REDACTED]. It is clear from our data that these entities have affected homeowners in almost every state, with IL, SC and WI residents hit the hardest. Our database has recorded a very large number of complaints against these entities, including 50 in the month of December alone. The Lawyers' Committee also has on file limited documents and correspondence related to these connected scam entities. This report analyzed complaints entered into the database through December 31, 2012. The complaints are available upon request.

This report analyzes complaints from over **450 homeowners** with total reported losses of over **\$1.1 Million** and an average loss per homeowner of **\$3,980**

Homeowners Indicate Recent Contact with Alleged Scam Entities

18 homeowners indicated that their last contact with the alleged scam entity was in November or December of 2012

About the LMSPN

The Loan Modification Scam Prevention Network (LMSPN) is a national coalition of government agencies, non-profits, and service providers using education and a centralized complaint gathering process to help stop foreclosure rescue scams. This effort is led by Fannie Mae, Freddie Mac, the Homeownership Preservation Foundation (1-888-995-HOPE), NeighborWorks America (LoanScamAlert.org) and the Lawyers' Committee for Civil Rights Under Law (PreventLoanScams.org).

Lawyers' Committee for Civil Rights Under Law
 1401 New York Avenue NW, Suite 400
 Washington, DC 20005
 Toll-Free: (866) 459-2162
 Fax: (202) 783-0857
 Website: www.preventloanscams.org
 E-Mail: scaminfo@preventloanscams.org
 Contact: Michael Tanglis

Complaints in 2012

| Month | Complaints |
|-------|------------|
| Jan | 5 |
| Feb | 7 |
| Mar | 18 |
| Apr | 14 |
| May | 22 |
| Jun | 20 |
| Jul | 31 |
| Aug | 31 |
| Sep | 43 |
| Oct | 47 |
| Nov | 50 |
| Dec | 50 |

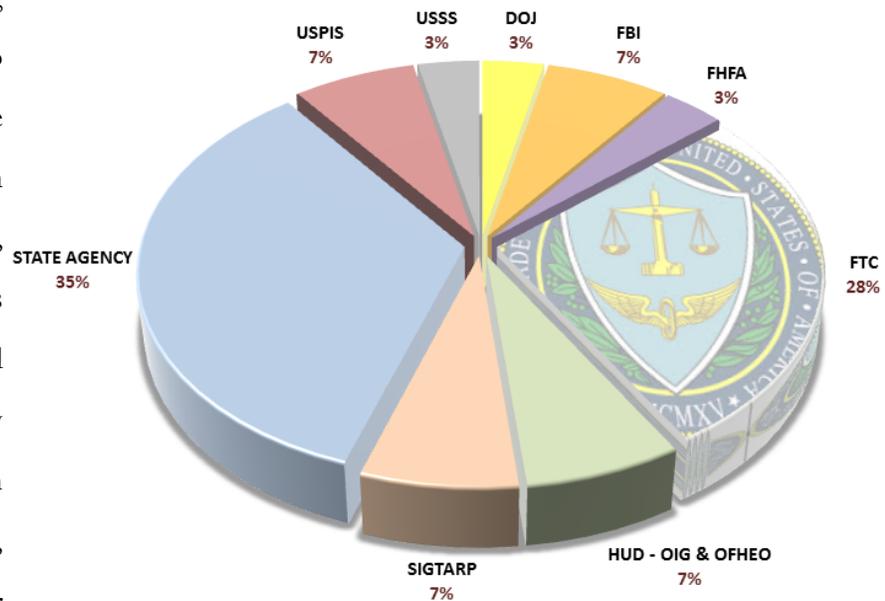
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Active Operation Reports

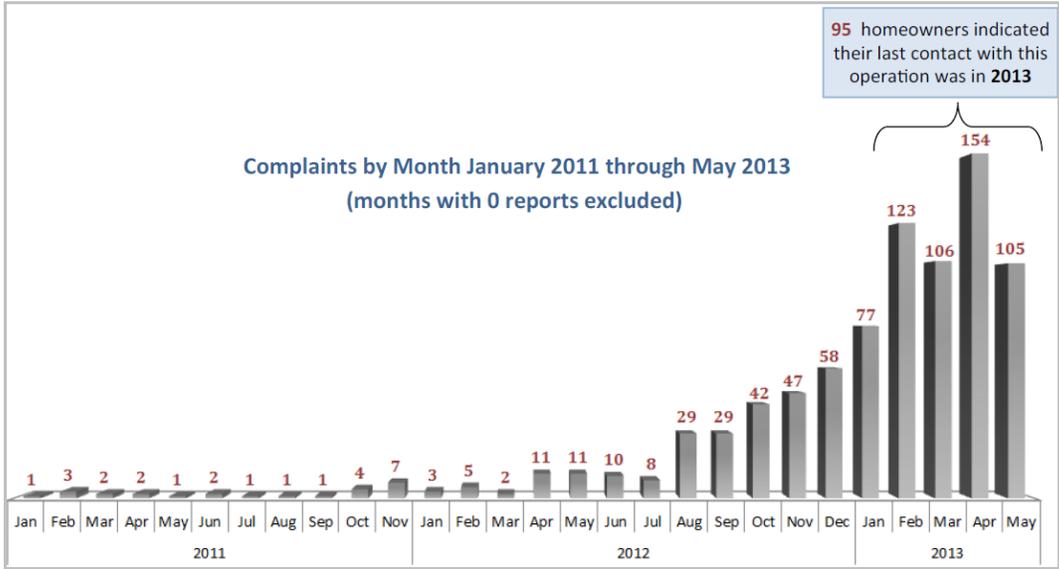
Helping Investigations & Increasing Communication

In January 2013, the Lawyers’ Committee began distributing to LMSPN enforcement database users “Active Operation Reports” highlighting active scam operations around the country. With the massive number of operations, and their tendency to change names and locations frequently, these reports help put a focus on one operation at a time. Enforcement officials have no shortage of operations to pursue, and the Lawyers’ Committee is able to play a vital role in the process by gathering and analyzing large complaint datasets in order to clearly highlight potential targets. These reports help paint a picture of operation locations, names used, people involved, how active they are, and what exactly is being offered to homeowners – all questions consistently asked by enforcement officials. As a result, from January 1 through December 31, 2013, the Lawyers’ Committee fielded over **sixty** information requests from federal, state and local enforcement agencies. The requests are related to not only the Lawyers’ Committee’s Active Operation Reports but also many other scam operations. As of December 31, 2013, the Lawyers’ Committee created nine Active Operation Reports. Eight of the nine have resulted in direct communication with an enforcement agency as well as the Lawyers’ Committee releasing all complaint data and supporting documentation to that agency.

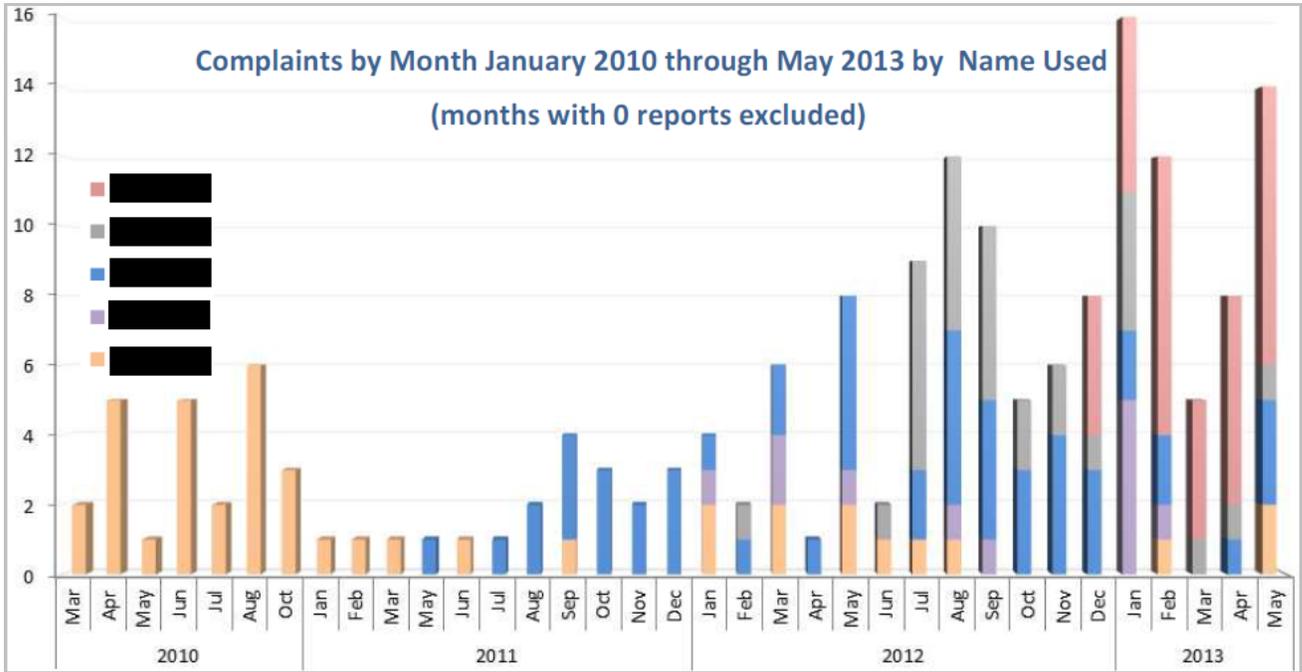
**% of Information Requests in 2013
By Requesting Agency
(January 1 - December 31st)**



The reports alert enforcement officials about active operations, focusing on operations where homeowners indicate recent contact with the alleged scammer. This can help reduce the number of investigations that result in finding bankrupt or dissolved entities that have been inactive for long periods of time.



The reports also break down an operation by the names it has used, so are helpful in understanding the evolution of the operations. While the names may be different, they are often just a new face of the scammers' continuous shell game. Connections can be based on numerous factors, e.g. matching phone numbers, addresses or employees. Five names (redacted) were used in the figure, below.



Common Operation Lead Generation / Marketing Methods

From the documentation sent in by homeowners, two common lead generation / marketing methods appear.

Method # 1

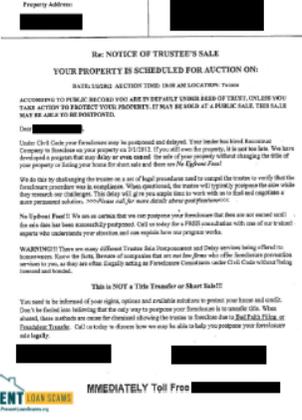
"ECONOMIC STIMULUS MORTGAGE NOTIFICATION"



This flyer sent to homeowners claims "You are hereby notified that the property at (homeowner address) has been pre-selected for a special program by the Government Insured Institutions. In addition, this property is pre-qualified for an Economic Advantage Payment or Principal Reduction Program, designed to bring your house payments current for less than you owe or your principle balance down. There are no restrictions on equity, credit ratings, or mortgage delinquencies."

Method # 2

"Re: NOTICE OF TRUSTEE'S SALE" YOUR PROPERTY IS SCHEDULED FOR AUCTION ON:



This flyer sent to homeowners claims "According to public record you are in default under deed of trust, unless you take action to protect your property, it may be sold at a public sale. This sale may be able to be postponed."

One of the most important variables in a scam operation investigation is what exactly they offer or promise homeowners. This information can be hard to decipher from homeowner complaints in the Database or in the FTC's Sentinel database. With the Active Operation Reports, the Lawyers' Committee is able to describe what marketing or lead generation tactics an operation likes to use as well as what types of contracts homeowners sign (see figures, this page; actual Active Operation Reports not redacted). The Lawyers' Committee shares all complaint data and supporting documentation with the requesting enforcement agency as long as the homeowner has given consent.

The Lawyers' Committee has collected a wide range of documentation, several examples of which are contained on this page.



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Active Operation Report # [redacted]

The Law Offices of [redacted]

SCOPE OF REPRESENTATION

The Law Offices of [redacted] will provide services for the expressed and implied purpose of providing the following loss mitigation and sale date postponement services. (as defined and referred to in the following "Description of Services") for [redacted] (the "Client").

This agreement and representation is limited to the loss mitigation and sale date postponement services for the aforementioned client and real property address located at [redacted] (the "property"). The Law Offices of [redacted] acts as Client's Attorney in Fact. Client is made aware, and hereby assents to, that The Law Offices of [redacted] and Client may contract and retain outside counsel or engage third party vendors on Client's behalf, as deemed necessary. The Law Offices of [redacted] assures Client timely, effective, and professional legal representation.

SERVICE/RETAINER AGREEMENT

The purpose of this letter agreement is to set forth the mutual understandings and agreements between you and The Law Offices of [redacted] with respect to the agreement to assist you in loss mitigation services and sale date postponement services. The Law Office of [redacted] appreciates your confidence in our business and, while we can make no guarantee as to the outcome of your matter, we shall keep you generally apprised as to the status of your case. In turn, you agree to cooperate with The Law Office of [redacted] so that your matter can be properly handled.

In exchange for the Services provided by The Law Offices of [redacted] hereunder, you shall pay to The Law Offices of [redacted] (the "Fee") equal to:

- \$ 2700 for negotiating your first mortgage
\$ for negotiating your second mortgage
\$ and monthly payments thereafter of \$ as non refundable monthly retainers (HBP only)

appeals are subject to separate discussion and negotiation between The Law Offices of [redacted] and you. This agreement also does not cover any services you may request in connection with any other, action or proceedings.

The representation you have sought from The Law Offices of [redacted] will be time- ing. In order to give you an understanding of what is involved; the following is our best estimation of the representation as well as the time frame we expect it will take for the representation to conclude:

The Law Offices of [redacted]

Description of Services provided under this agreement:

- 1. Initial Consultation and counseling of client's rights and options regarding their rights, responsibilities, and alternatives in preparing and submitting all loss mitigation and sale date postponement paperwork on behalf of the client. Such services include but are not limited to, legal research, drafting of pleadings, conference calls, preparation of documents, investigation of facts, preparation for and appearances in court, and any and all other tasks or products necessary to handle Client's case.

The Lawyers' Committee has been able to enhance communication among enforcement agencies. With so many active operations, it is crucial to not have overlapping investigations. Through the information request process, the Lawyers' Committee has been able to connect agencies that are looking into the same operation. While all requests are confidential, and the Lawyers' Committee does not discuss anything without consent from the investigating agency, enforcement officials have been appreciative of the "heads up" regarding duplicate investigations.

This increased communication has also helped streamline the process of routing complaints, often with crucial supporting documentation, directly to the investigating official as soon as this information comes into the Lawyers' Committee database. This process can shorten, and often erase, the sometimes months long gap between a homeowner filing a complaint and that complaint reaching the official investigating the operation. With the constant name changes, bankruptcies and dissolutions of many foreclosure rescue fraud operations, working to streamline this process is very important. Homeowners who have been scammed are often very vulnerable and erasing this gap could be the difference between foreclosure and relief.



Eileen O'Connor, Senior Counsel, and Meredith Horton, Counsel, of the Lawyers' Committee discuss litigation strategy.

Long Island Housing Services, Inc.

“Scammers ... prey on people’s fear of losing their home, they prey on the fact that people are feeling desperate because the loan servicer is not working with them or fails to respond to calls. They take advantage of homeowners that reside within LEP [limited English proficiency] communities that have no idea of the documents or contracts they are signing because they do not speak, read, or write in English. We have also seen an increase of Attorney firms that have representatives for their offices reach out to people, they are cold calling homeowners at risk and guaranteeing loan modifications, in most cases the homeowner does not ever meet the attorney or gets feedback on their particular situation. In most cases these so called ‘representatives’ are not even working with an attorney.”

Housing Counselors are Crucial to the Network’s Foreclosure Rescue Fraud Fight

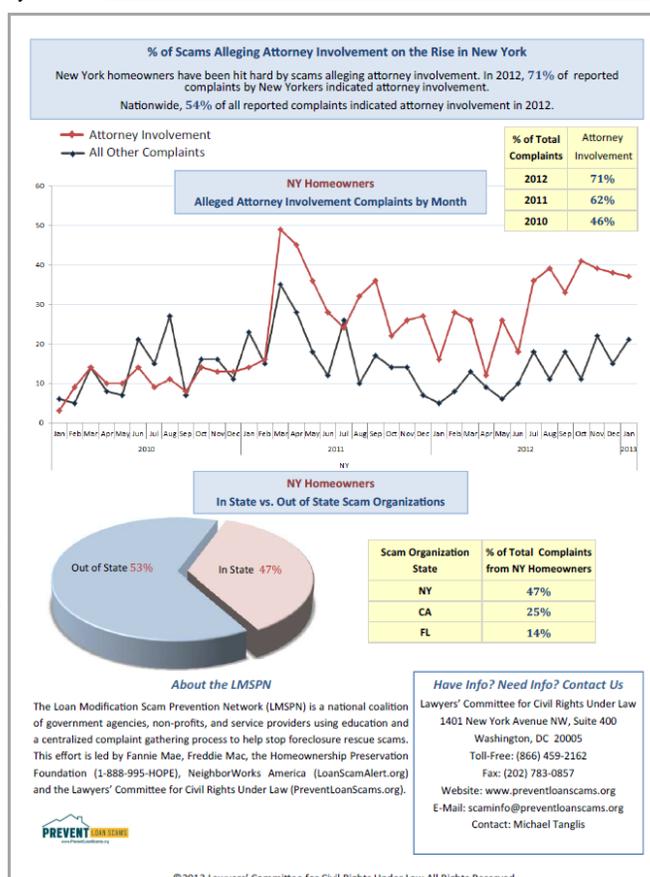
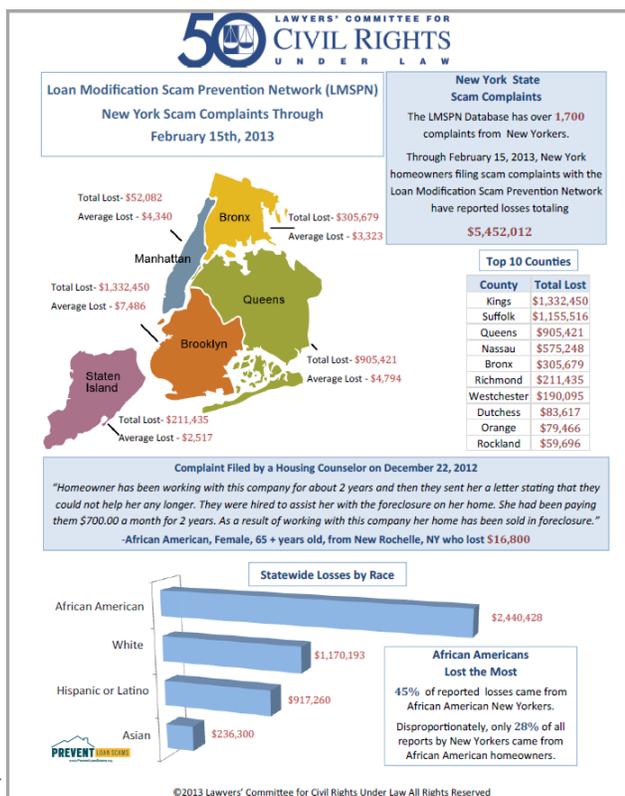
Housing counselors are on the front line of the fight against foreclosure rescue fraud. Despite what must seem like an endless flow of distressed homeowners, counselors continue to help homeowners and report fraud. Some of the Network’s most detailed complaints come from housing counselors who take the time to send in not only the complaint, but also supporting documentation. Housing counselors have been a critical part of the Network’s efforts to combat and track foreclosure rescue fraud and are a great resource in understanding the continuing evolution of foreclosure rescue scams. The Lawyers’ Committee creates monthly reports for its counseling partners and the public, and makes them available on preventloanscams.org.

The Lawyers’ Committee also prepares customized reports focused on emerging trends or particular geographical locations, which it distributes to Network partners. The Lawyers’ Committee maintains fluid communication with both enforcement officials and non-profit housing counseling agencies in order to increase prosecutions nationwide and to stay alert to changes in scammer tactics.

Identifying Scam Trends

The Lawyers' Committee analyzes information in the Database to pinpoint active scam organizations, highly active scam states, and homeowner populations who may have been more susceptible due to race or age. The complaint data is analyzed using the built in Database tools (available to Network partners), as well as pivot tables and charts in Microsoft Excel. With the depth and flexibility of the complaint data, the Lawyers' Committee is able to show both a broad overview of complaints nationwide and a narrow, detailed analysis of a location or organization.

These reports can be useful for our partners in their resource allocation, as they need to make sure that each dollar is spent effectively in combating foreclosure rescue fraud, particularly the frauds that are disproportionately impacting vulnerable communities, such as older homeowners and Hispanic/Latino homeowners.



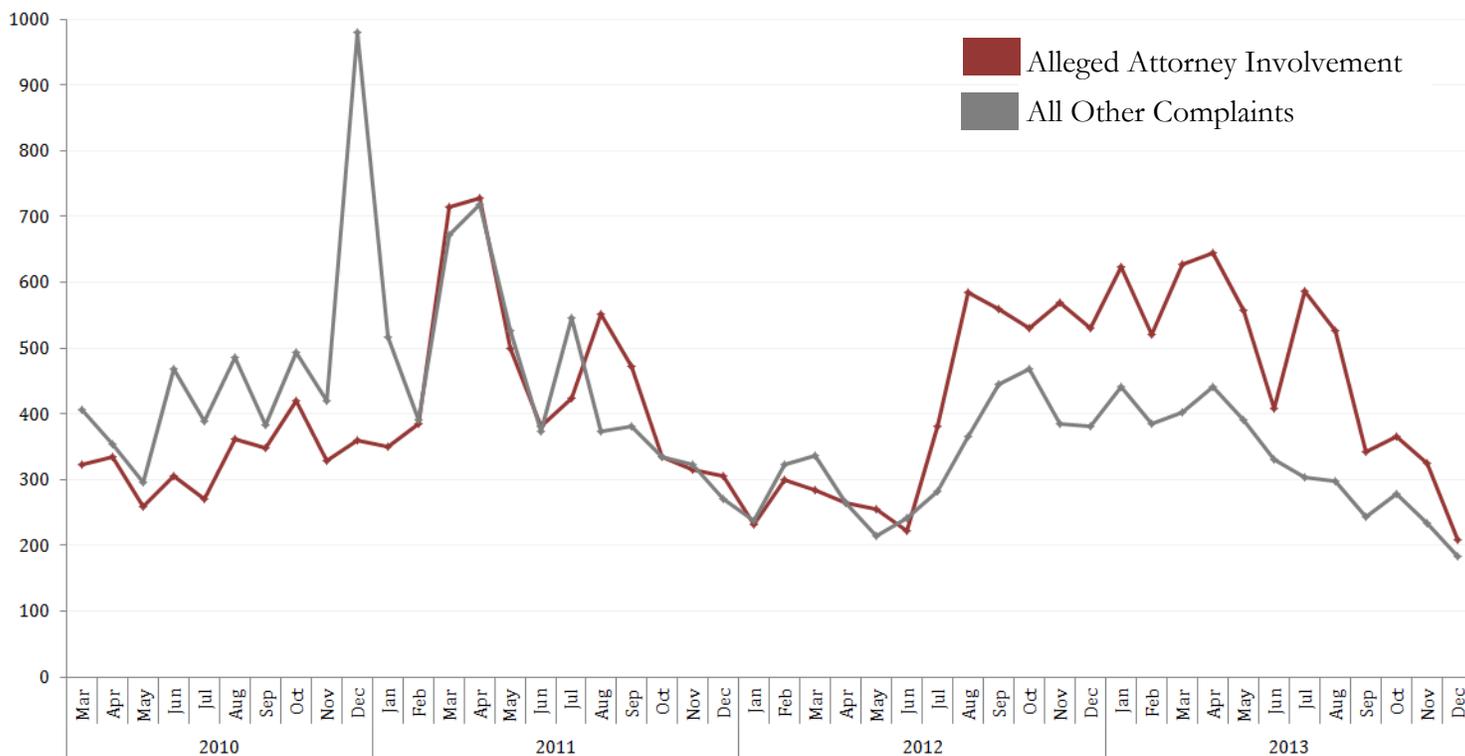
Attorney Involvement on the Rise in Foreclosure Rescue Fraud

The percentage of total complaints in the Database alleging attorney involvement in foreclosure rescue scams has increased every year since 2010. From July 2012 through December 2013, the majority of complaints received in the Database each month have alleged attorney involvement, a clear change from previous months. There are a few ways that complaints are considered to allege attorney involvement. First, the second question on the complaint form asks if the homeowner was offered legal representation. Second, many complaints give a clear indication that a lawyer or legal representative will be involved by calling themselves a “law group,” “legal group,” “litigation group,” or “attorney group.” Third, if the homeowner indicates that one of his/her contacts claimed to be an attorney, then that complaint is also considered to be a complaint alleging attorney involvement.

| YEAR | % of Complaints Alleged Attorney Involvement |
|------|--|
| 2010 | 41% |
| 2011 | 50% |
| 2012 | 54% |
| 2013 | 59% |

Total Complaints Reported

Alleged Attorney Involvement vs. All Other Complaints



Attorneys Engaged in Foreclosure Rescue Fraud Results in Higher Homeowner Losses

The majority of complaints submitted to the Database after July 2012 allege attorney involvement. The data also points to higher average reported losses per homeowner when the reported scam allegedly involves an attorney. During 2012 and 2013, an increasing number of lawyer-related umbrella organizations appeared in the Database. These “Law Groups” or “Law Networks” claim to include hundreds of lawyers from around the country and claim that they will connect homeowners to lawyers in their home state. As of December 31, 2013, homeowners who indicated attorney involvement in their complaint suffered an average loss almost seven hundred and fifty dollars more than homeowners who did not indicate attorney involvement.

| Average Loss Per Homeowner |
|---|
| Alleged Attorney Involvement - \$3,601 |
| All Other Complaints - \$2,871 |

Stories from the Lawyers’ Committee’s Database

“Found flaws with his mortgage and advised he did not need to continue paying his mortgage he would re-direct payments to organization to be put in a special account. Paid 4,000 for contract and made mortgage payments of \$500 for 18 months. Communication had stopped for sometime.

- Counselor’s report on behalf of Hispanic / Latino, Male, 65 + years old, from Ft Lauderdale, FL who lost \$13,000.

Stories from the Lawyers' Committee's Database

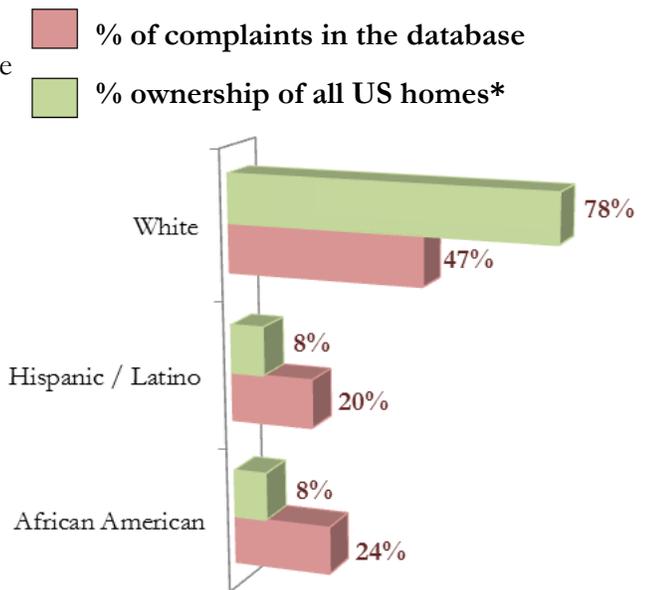
"Homeowner has been working with this company for about 2 years and then they sent her a letter stating that they could not help her any longer. They were hired to assist her with the foreclosure on her home. She had been paying them \$700.00 a month for 2 years. As a result of working with this company her home has been sold in foreclosure."

- Counselor's report on behalf of an African-American Female, 65 + years old, from New Rochelle, NY who lost \$16,800.

Minorities Are Overrepresented in the Database

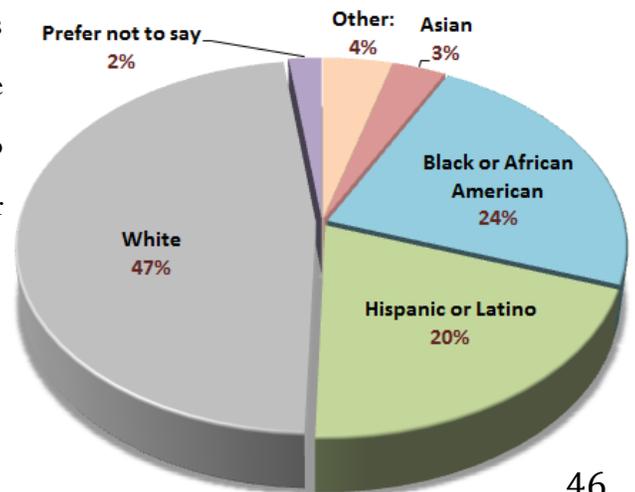
When comparing the complaints in the Database to the homeownership rates across the country, there is a startling overrepresentation of minority homeowners in the Database. While white homeowners account for forty-seven percent of the complaints in the Database, they account for seventy-eight percent of the homeowners nationwide. Hispanic/Latino homeowners account for eight percent of the homeowners nationwide, but account for twenty percent of all the complaints in the Database, while African-Americans account for eight percent of homeowners nationwide and twenty-four percent of the complaints in the Database.

Throughout the foreclosure crisis minority communities have consistently had higher foreclosure rates; the Lawyers' Committee's data suggest that minorities are also being caught in foreclosure rescue fraud at much higher rates relative to homeownership rates.



% of Complaints by Race

* 91% of total complaints that provide this information



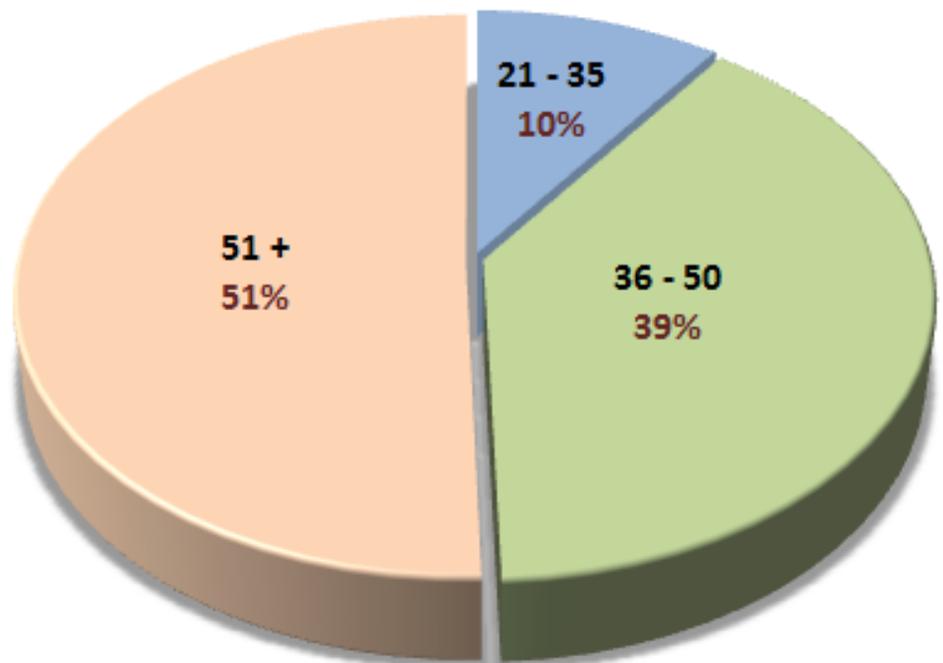
Boomers and Seniors Are Overrepresented in the Database

Fifty-one percent of all Database complaints came from homeowners who are 51 years of age or older. As of December 31, 2013, this group has reported losses totaling almost thirty-one million dollars and are consistently the hardest hit age group according to the reports in the Database.

Over the past three years the percentage of complaints reported by boomers and seniors has been on the rise. During the final months of 2012, boomers and seniors accounted for more complaints than all other homeowners combined.

% of Complaints by Age

* 87% of total complaints that provide this information



Stories from the Lawyers' Committee's Database

"I am 86 years old and purchased the home in 1955. I was contacted by this agency that stated they were connected with my lender. I had to pay \$600 for initial paperwork and was told not to pay my next two mortgage payments in order to pay them. I was told by the company I would receive a contract for the modification soon. I spoke with them last week and was told due to complications I needed to pay an additional \$600 which I did. They took my check payment over the phone on both payments."

-White, Male, 65+ years old, from Pittsburgh, PA who lost \$1,200

Stories from the Lawyers' Committee's Database

"We heard on the Christian radio station about this company and we paid \$2,000 for a service that the banks offer for free and this company never told me this. They told me to get behind on my payments for 6 months. I've been waiting for this company to do their job, and they don't even answer my calls.... I have never seen a lawyer and when I try ... she doesn't come to the phone. Looks like we lost \$2000.00, money that we could have used to pay the mortgage."

- Hispanic / Latino, Female, 36-50 years old, from Miami, FL,
who lost \$2,000.

The Long Arm of Fraud: Out of State

Scam Operations Harm Most Homeowners

The need for a national coalition effort to enforce applicable state and federal laws against foreclosure rescue fraud is clear when one sees how many reports in the Lawyers' Committee's national Loan Modification Scam Database allege an out of state scam. The prevalence of out of state scams suggests that homeowners are most vulnerable to scam solicitations by phone, mass media advertising and illegitimate offers on the internet. Every state plus the District of Columbia is represented among homeowners reporting fraud in the Database, and 78% of all total database reports provide complete state information (homeowner state & scam organization state).

The majority of homeowner reports from every state except three (California, Florida and Utah) indicate a complaint against an out of state scam operation. Overall, homeowners nationwide reported an out of state scam 64% of the time.

Stories from the Lawyers' Committee's Database

“\$1,000 upfront and \$550 every month paid for 1 year; cash was requested and was provided with a receipt. During this time he was diagnosed with cancer and began chemo. Attorney advised him not to worry, just to take care of his health he would take care of dealing with his mortgage. One year after he was in remission and called to inquire on why he had paid so much money and had no results, they advised this was a process and it took time and were just waiting for the lender to reply. He received foreclosure notice and had court dates. Company advised he did not have to appear at court.”

- Counselor's report on behalf of a Hispanic / Latino, Male, 36-50 years old, from Miami, FL , who lost \$7,500.

Hispanic or Latino Homeowners

Buck National Trend and Allege an In State Scam Operation

When homeowner race is taken into account, Hispanic or Latino homeowners buck the national trend—alleging an in state scam operation a stunning 69% of the time. This percentage is particularly high when compared to Black or African American and White homeowners.

| Homeowner Race | % of Complaints that allege an In State Scammer |
|---------------------------|---|
| Hispanic or Latino | 69% |
| Black or African American | 28% |
| White | 24% |

Dorothy Dean, Housing Counselor

Metropolitan Milwaukee Fair Housing Council

“Over the last year, about 70% of my caseload is people with Hispanic surnames. That has increased dramatically from prior years. Cold calling is one tactic used. A friendly and aggressive Spanish-speaker calls and offers a loan modification to reduce the interest rate. Who wouldn't want a deal like that? The scammer then promises to send the paperwork and walk the homeowner through it. That way, when the scammer sends the paperwork in English they help the homeowner fill it out. These scams often originate in California and Florida. Since they are located out of state, there is no reasonable way for the homeowner to actually walk into an office to assure themselves the business is more than a mail drop.”

Local, Spanish-Speaking Radio and Television

May Explain In State Scam Trend

While alleged scam operations do not commonly advertise that they only work with minority communities, some operations' sales and marketing tactics, and the details from the complaints filed against them, raise serious questions about possible targeting, especially targeting of Hispanic or Latino homeowners. Local radio and television can be an extremely effective and direct way to reach local communities with a high percentage of homeowners with limited English proficiency and who may rely on these local stations for much of the information they receive. Over two thousand complaints in the Database mention radio or television solicitation. Analysis of that dataset points to a startling trend. While White and Black or African American homeowners account for a smaller percentage of radio or television solicitation complaints compared to their corresponding percentage of overall complaints, Hispanic or Latino homeowners account for a much larger percentage of radio or television solicitation complaints than their corresponding percentage of overall complaints. Hispanic or Latino homeowners account for 20% of all complaints in the database, but they account for 34% of the complaints that mention radio or television.

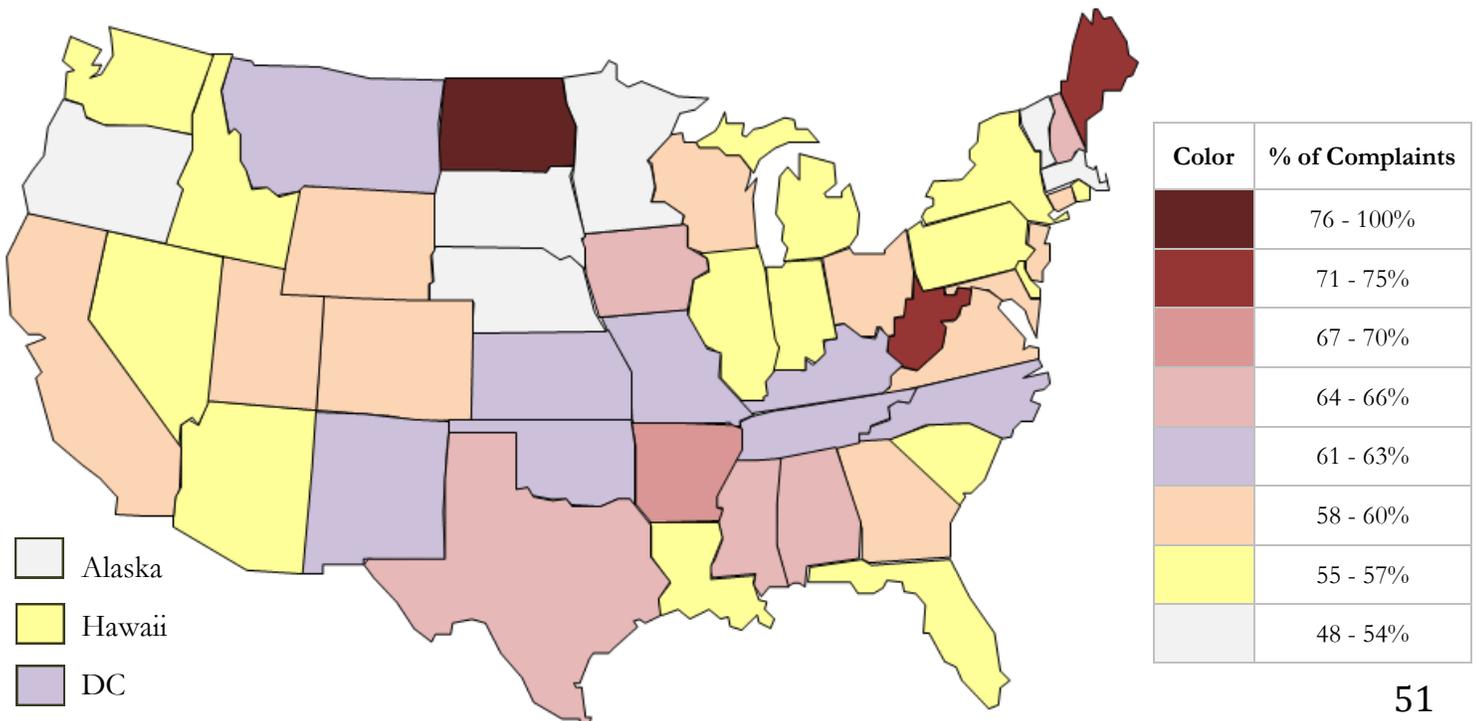
| Homeowner Race | % of Complaints that Allege | % of Total Complaints in the | Difference + / - |
|---------------------------|-----------------------------|------------------------------|------------------|
| Hispanic or Latino | 34% | 20% | + 14% |
| White | 35% | 47% | - 12% |
| Black or African American | 22% | 24% | - 2% |

The Domino Effect of Foreclosure Rescue Fraud

While the average loss reported per homeowner in the Lawyers' Committee's national Loan Modification Scam Database is over \$3,200, this dollar figure does not take into account the potential domino effect of foreclosure and homelessness these foreclosure rescue scams can have.

Homeowners may lose over \$3,200 in cash payments to a scammer, but then can end up losing hundreds of thousands of dollars more because their homes fall into foreclosure as a direct result of the scam. The majority of complaints submitted by homeowners in all but two states indicated that the scammer asked them to either redirect their mortgage payments, stop making their loan payments or sign over the title of their property. Seventy-seven percent of the total complaints included both homeowner state information and answered the question regarding what the scammer asked them to do. This subset of complaints spans all fifty states and the District of Columbia. With the exception of Nebraska (48%) and Oregon (49%), more than half of the homeowner complaints from each state fall into one of these categories.

% of Homeowners Who Indicated Scammer Asked Them to Redirect or Stop Making Their Loan Payments or Sign Over The Title To Their Property by State



Chapter 5

OUTREACH STRATEGY AND RESULTS



The Lawyers' Committee, through the Network, deployed various outreach strategies to build public awareness about foreclosure rescue fraud and to increase reports of such fraud to the Database.

Initial Targeted Outreach by Geographic Zone

In leading the Network, Lawyers' Committee staff targeted twenty U.S. states hardest hit by the foreclosure crisis by creating three geographic zones assigned to specific attorneys and support staff. The states targeted included Florida, Georgia, Michigan, New York, Ohio, Arizona and California, to name a few.

The geographic zones were the (1) West Coast, (2) Southeast, and (3) Northeast. Each geographic zone was supported by one or more Coordinating Committees, comprised of pro bono law firms, which assisted with or led outreach efforts. Originally the Coordinating Committees were called Legal Committees, but pro

bono partners preferred the name Coordinating Committees because, in forming the original teams, litigation was not viewed as their central activity. The Coordinating Committees conducted legal research, met with law enforcement agencies, and served as vital local community liaisons. As this program grew, efforts were made to determine which pro bono teams were interested in shifting from research, writing, and community relations work to identifying and supporting case development and potentially filing litigation as co-counsel. By year three of this effort, all pro bono partners dropped the Coordinating Committee moniker and engaged in case development and litigation efforts, as well as community outreach efforts. These expansive litigation efforts are described in detail in Chapter Six.

The West Coast had two Coordinating Committees, one in Northern California led by: Cooley LLP; O'Melveny & Myers LLP; Orrick, Herrington & Sutcliffe LLP; and Weil, Gotshal & Manges LLP (Silicon Valley); and one in Southern California led by Manatt, Phelps & Phillips, LLP; Morgan, Lewis & Bockius LLP; Munger, Tolles & Olsen LLP; and a separate O'Melveny & Myers LLP team. The Southeast had three teams: the Houston, Texas Coordinating Committee, the Florida Coordinating Committee, and the D.C. Metro Coordinating Committee. The Texas Committee was led by Jackson Walker LLP; Vinson & Elkins LLP; and Weil, Gotshal & Manges LLP. The Florida Committee was led by Proskauer Rose LLP; Smith, Gambrell & Russell, LLP; and Weil, Gotschal & Manges LLP. The D.C. Metro Committee was led by DLA Piper; Morgan, Lewis & Bockius LLP; O'Melveny & Myers LLP; Patton Boggs LLP; and Troutman Sanders LLP. The Northeast zone was led by Davis Polk & Wardwell LLP; Patterson Belknap Webb & Tyler LLP; and Weil, Gotshal & Manges LLP.

For each zone, Lawyers' Committee team members, aided by Coordinating

Jillian Rennie Stillman, Co-counsel Associate

Davis Polk & Wardwell LLP

“Participating in the Loan Scam Project has been one of the defining elements of my career as a young attorney. It has provided me the opportunity to develop critical skills such as taking depositions and arguing motions in the courtroom. It also has allowed me to appreciate what it means to represent clients that rely on our representation to vindicate rights that are deeply important to them. Our clients tell me that they are so grateful to us for obtaining preliminary and permanent injunctions to put the various bad actors out of business. Although our progress in obtaining and collecting compensatory damages has been slower in coming, our clients appreciate our efforts and are glad to have someone fighting in their corners.”

Committees, pursued multi-pronged outreach and community organizing strategies, which included creating partnerships with national and local non-profit organizations, building relationships with national, state, and local law enforcement offices and agencies, and building ties with legal aid organizations and non-profit housing counselors. During the initial planning stage, Lawyers’ Committee staff members identified potential local and national partners, whether non-profit or governmental, then worked with pro bono partners to further refine these state-by-state outreach lists. Team members then worked to build relationships with the identified groups. Often these efforts led to onsite meetings and program and Database presentations.

In each zone, the team members worked, along with one of the Lawyers’ Committee’s key strategic partners, such as NeighborWorks America, to increase public awareness regarding foreclosure rescue fraud, where to find free or low cost housing counseling assistance, and the importance of reporting foreclosure rescue scams to the Database.

To achieve these goals, team members sat on panels and made presentations at

partner events throughout the country, such as Making Home Affordable and Alliance homeownership preservation events and the Mortgage Fraud Summits held by the DOJ's FFETF. They also collected complaints and held Database training sessions for housing counselors (whether non-profit or servicers), law enforcement, and legal aid attorneys. In addition, team members attended other homeowner education events organized by state agencies and law schools, made television and radio appearances, and took part in public service announcements.

Formal Partnership Agreements

In addition to these efforts, staff members worked to create official partnerships with various entities, which led to additional Database trainings and increased reporting. As part of these official partnership agreements, organizations agreed to place on their sites hyperlinked "Prevent Loan Scams" logos that linked to the online complaint form, to allow their logos to be placed on www.preventloanscams.org, or did both. For example over a dozen National Council of La Raza and National Urban League affiliates placed the hyperlinked "Prevent Loan Scams" logo on their websites.

Other outreach and training activities were made possible by grants the Lawyers' Committee received from HUD through its Fair Housing Initiatives Program (FHIP). The Lawyers' Committee was able to renew its FHIP grant on three occasions based on the strength of its first FHIP grant, which involved working with two fair housing non-profit groups as sub-grantees. These two organizations were Housing Opportunities Made Equal (HOME), based in Richmond, Virginia and the Toledo Fair Housing Center, based in Ohio.

The Lawyers' Committee and these two non-profits worked together to increase homeowners' awareness of foreclosure rescue fraud and drive complaints to the Database through presentations and workshops. HOME and the Toledo Fair Housing Center also incorporated the Database complaint form into their housing

client counseling services. These additional channels have been instrumental in complementing the outreach efforts previously discussed and have led to greater public awareness and a more robust Database.

Creating New Resources for the Foreclosure Rescue Fraud Fight

1. Online and Paper Complaint Forms

In conjunction with the development of the Database, the Lawyers' Committee created a standardized complaint form to ensure collection of the essential details of a foreclosure rescue scam from reporting homeowners. As described in Chapter Three, the form requests details on the types of services marketed by scammers, the fees for those services, contact information for the scam organization, and basic demographic information about the homeowner submitting the complaint.

In addition, the complaint form requires homeowners to specifically consent to having their complaint shared with law enforcement and Network partners for possible follow up. Through outreach work, the Lawyers' Committee sought to make the complaint form widely available to the public and our partners. Complaints can be submitted online through www.preventloanscams.org, in English, Spanish, Korean, Vietnamese, and Chinese and downloaded in English or Spanish. In addition, the Lawyers' Committee encouraged Network partners to make the forms available on their own websites through the use of unique URLs.

2. Creation of a Broad-Based Coalition

As discussed in more detail in Chapter One, the broad coalition created to drive the Network has been a critical resource. Along with the Lawyers' Committee, the leading partners of the Network include Fannie Mae, Freddie Mac, Treasury, HUD, NeighborWorks America and HPF. This core group represented the diverse stakeholders in the fight against foreclosure rescue fraud. This initial group then identified additional interests that needed to be included in the effort. Accordingly, the Network expanded to engage housing counselors, market participants, regulators, and law enforcement agencies, among others.

3. Website

In February 2010 the Lawyers' Committee created a project-specific website, www.preventloanscams.org, to provide state-based and national resources for homeowners and partners, including Lawyers' Committee publications, information on the Lawyers' Committee's litigation efforts, and access to a limited set of information from the Database complaints. For each state, the website houses a collection of contact information for relevant governmental and non-profit entities that can provide help to distressed homeowners and summaries of state and local laws governing foreclosure rescue fraud.

4. Analysis and Materials

In conjunction with outreach efforts, the Lawyers' Committee shared its analysis of Database complaints with partners and the public. For law enforcement and regulatory Database users, the Lawyers' Committee compiles lists of alleged scammers whose names have appeared most frequently over a two to four month period, based on homeowner complaints from that period. The Lawyers' Committee also creates reports of highly active alleged scammers for enforcement partners – those with a large number of complaints in the Database, a broad

network of employees or office locations, and a sizable number of recent complaints indicating that they were still in business. These “active operation reports” display the links among multiple scam organizations which, based on feedback from partners, is particularly useful for law enforcement and regulatory entities investigating foreclosure rescue schemes.

Beginning in 2012, in an effort to stay better connected with housing counseling partners, the Lawyers’ Committee began distributing periodic email newsletters covering, for example, updates on our litigation efforts and announcements about relevant new government programs, such as the National Mortgage Settlement. The goal is to encourage counselors to remain watchful for potential emerging scams and to provide timely foreclosure rescue fraud information to their homeowner clients.

The Lawyers’ Committee also creates short issue briefs and fact sheets for a broader audience. These materials package analysis of national or state-specific trends in foreclosure rescue fraud activity, such as the impact of scam activity on minorities and homeowners ages 51 and older, as well as analysis of the ways in which scammers adapt their tactics to evade detection and prosecution.

Lessons Learned

- A strong online presence is crucial, and one essential component of such a presence is a mobile application.
- Given the shifting demographics of the United States, advocacy and information tools should be fully multi-lingual from the outset.

Fraud Up Close

at a Foreclosure Prevention Event

Meet Bill and His Dad...

It was the middle of July in Reno, Nevada. The Lawyers' Committee was invited to speak to homeowners about foreclosure rescue fraud while they waited to meet with counselors and their lenders at a Making Home Affordable event. The Lawyers' Committee was one of the many organizations making presentations to homeowners while they waited for their lender meeting. The Lawyers' Committee's presentation describes who we are and what we do, and then provides examples of foreclosure rescue fraud, how to file a complaint and what is done with the reported complaints. While we always hope homeowners remember everything we say, if they leave remembering "the BEST help is FREE," or you "NEVER have to pay for a loan modification," we take that as a win.

As Michael Tanglis made the Lawyers' Committee's presentation, he provided various examples of scams, such as fake government programs or those involving attorneys, and noticed increased attention to what he was describing.

While Mike spoke with many homeowners at the Reno event, one story was particularly memorable. It involved a homeowner named Bill, and his Dad. After the Lawyers' Committee's presentation, Bill's father, who is in his 80's, came to the Lawyers' Committee's table and asked that we speak to his son, who has medical issues and has difficulty walking. Bill opened his rolling filing cabinet, where he kept his mortgage documents meticulously categorized, and

Michael Tanglis of the Lawyers' Committee gives the Lawyers' Committee's presentation to a group of homeowners.



pulled out a large stack of papers from the section labeled “Name Withheld Law Center.”

Bill described his experience as follows:

Towards the end of 2009, he received a flyer in the mail with the subject line,

“RE: Obama Administration’s Homeowner Affordability and

Stability Plan.” This **“Modification PROGRAM”** said he may be eligible for the **“Governmental Economic Stimulus Act of 2009.”** The flyer contained Bill’s name, address, and exact loan amount. There was a place for him provide his email address and phone number so the group responsible for the flyer could contact him.

After receiving the flyer, Bill began talking to the “Name Withheld Law Center” associated with it. He pulled out the contract that was sent to him, which contained a recognized attorney’s name because several state Attorneys General had obtained cease and desist orders against that attorney. The attorney doesn’t appear to have ever been licensed in Nevada, and while he had been licensed in California, his license was suspended in early 2013 for misconduct in three loan modification cases.

Bill paid just under two thousand dollars for a loan modification that he never received.

Bill’s Dad sat behind him and watched closely as Bill spoke about his experience with the “Name Withheld Law Group,” and about his life in general. Bill’s Dad’s eyes would well up from time to time.

This story is so moving because it accurately describes the effects of the foreclosure

Your Property Located at [REDACTED] may be eligible for special modification program guideline created in conjunction with the **Governmental Economic Stimulus Act of 2009.**

These new programs may enable you to modify your existing home loan and reduce your monthly mortgage payments, receive interest rate reductions, and / or freeze your existing interest rate without the traditional refinance.

Based on public records and information obtained through Fannie Mae, you are in a severely declining market in terms of your home's value. We have reviewed your property information and have determined that you are eligible to modify the current terms of your mortgage, which could allow you to **REDUCE your monthly payment by 30%-60%. No Equity is required, No Minimum Credit Scores, Mortgage lates are not a problem, No appraisal is required and this is a guaranteed fixed rate loan.**

If you have experienced financial hardship, have late mortgage payments, or have negative equity call (800) [REDACTED] to take advantage of this limited time offer. When calling please reference file number MOD

WE CAN HELP SAVE YOUR HOME

Loan Modification Department
(800) [REDACTED]
6.30 AM PST TO 8 PM PST (MON-FRI)
6.30 AM PST TO 3 PM PST (SAT)

Fax Back to 1- [REDACTED] to receive a call back within 24 hours

Please Indicate best time to call 9 AM Cell Phone _____ Home Phone [REDACTED]
Email Address [REDACTED]@ _____ By [REDACTED]

crisis and foreclosure rescue frauds on struggling homeowners. The vast majority of people looking for help to modify their mortgages don't have an exploding rate mortgage. They, like Bill, have a normal 30 year fixed mortgage that they could afford pre-recession. Bill bought his home for around \$280,000 in 2005, putting down a full 20%, which now is worth somewhere between \$130,000 and \$160,000. When he bought the home, like many Americans, he couldn't foresee the worst recession since the Great Depression and the simultaneous housing collapse.

These homeowners became prime targets for foreclosure rescue scammers, having been blindsided by the recession and believing the guarantees of success by those who promised to save their homes.

Bill's complaint was entered into the database and if he consented, he was told it would be shared with enforcement officials. Bill and his Dad expressed appreciation for the Lawyers' Committee's efforts, stating: *"You know, I know I probably can't get my money back, but I hope that me reporting can stop these guys from scamming someone else."* Even after all he went through, Bill was still thinking about other people.



Yolanda McGill of the Lawyers' Committee (left), advises a homeowner at a Making Home Affordable event.

Chapter 6

USING THE COURTS TO BRING FORECLOSURE RESCUE SCAMMERS TO JUSTICE



The legal system is an essential tool for combatting foreclosure rescue scams, including loan modification scams. While extensive education and outreach efforts have protected many distressed homeowners from scams, others continue to be ensnared by the sales tactics of unscrupulous scammers and there remains no shortage of scammers attempting to lure distressed homeowners into their scams. Thus, private litigation and government enforcement actions both have played a critical role in efforts to shut down scam operators and operations, to recoup all or some of the money paid by these homeowners to the scammers, and to send a powerful message to deter future scammers.

The Lawyers' Committee has been at the forefront in bringing private litigation to assist distressed homeowners. Since March 2011, the Lawyers' Committee, in conjunction with its private law firm co-counsel, has filed fourteen lawsuits against loan modification scam operations on behalf of over 400 distressed

homeowners, seeking both monetary and injunctive relief. To date, the Lawyers' Committee and its co-counsel have successfully obtained court orders against 30 entities and 50 individuals shutting down these scam operations and ordering the individuals not to be involved in mortgage assistance relief services ever again. Moreover, to date, through court order or settlement, these efforts have resulted in the recovery of over \$500,000 in monetary awards on behalf of the distressed homeowners, averaging over \$1,250 per homeowner in recovery to date. These litigation efforts continue, and are expected to result in additional monetary and injunctive relief. In addition to the efforts by the Lawyers' Committee, government enforcement efforts also have played and will continue to play an important role in addressing the loan scam operations. Information about and pleadings and orders in these cases may be found at www.preventloanscams.org/active-loan-scam-litigation. These private litigation efforts have been challenging. This Chapter explores both the challenges presented by such litigation and the use of both private litigation and governmental enforcement actions in combatting foreclosure rescue scams. It also provides two examples of lawsuits brought by the Lawyers' Committee with its private law firm co-counsel and actions taken to shut down the loan scam operations and operators.

Challenges in Foreclosure Rescue Scam Litigation

Stories from the Lawyers' Committee's Database

"I got a letter from them. I called and made an appointment. He came to my house on a Sunday in April. My 2 daughters were home from college and we all sat at the dining room table. He said they were forensic accountants and could get me a much lower loan rate because of my income and being a widow. He insisted I stop struggling to pay my mortgage because when this was all done it would be much lower and affordable. I paid him in 5 checks of \$500 each every two weeks till he was paid in full. When I got foreclosure papers from my mortgage company I called him. He said not to worry that would take 3 years to foreclose and his people would be done soon."

-White Female, 51 - 65 years old, from Brigantine, NJ who lost \$2,500.

Several characteristics typical of foreclosure rescue scam operations pose challenges to and inform efforts to use the legal system to address the problem.

- **Fly by night companies.** Foreclosure rescue scam operations are not well-established, stable companies with broader business operations. While many scammers incorporate their businesses (although many do not), those entities are typically formed by a single person or small group of persons for the distinct purpose of carrying out the foreclosure rescue scam. Once the operation has run its course and their distressed homeowner clients/customers begin to complain about the failure to perform promised services, the scammers often simply abandon their entity and form a new one, sometimes multiple times. When the old entities cease operating, they are stripped of their assets, making it difficult to recover homeowners' lost money.
- **Hidden/inaccessible assets.** The individuals behind the operations are unscrupulous and often take steps to protect their ill-gotten gains when their practices are exposed as clients/customers press for refunds or complain about the lack of service and results, sometimes to governmental agencies or by filing a complaint in the Database or with another non-profit agency. For example, the scammers may attempt to hide their money, transfer money to others, or declare bankruptcy (personally or for their corporate entities). They may also seek to evade the courts by failing to participate in the proceedings against them and resisting efforts to collect money that is awarded to distressed homeowner plaintiffs.
- **Behind-the-scenes operators.** Foreclosure rescue scams often have multiple layers, only the first of which is readily visible to homeowners. One entity or individual, often an attorney to engender trust among homeowners, will serve as the "front" person to collect the money, interact with clients, and serve as the face of the operation. This "front" person receives a cut of the fees, but a larger share of the money goes to behind-the-scenes individuals and entities

that market to and deliver clients/customers to the “front” person. These behind-the-scenes scammers can be difficult to pursue, as they are often difficult to identify and locate and, even if they are found, have taken steps to insulate themselves against blowback from the scam.

- **Nationwide scams.** A large number of foreclosure rescue scam operations have a nationwide reach. For example, a California-based scammer might have homeowner clients/customers in California and twenty other states, complicating the development of a case and discovery issues. It can also be difficult for state law enforcement to shut down scam operations across state lines.
- **Appearance of legitimacy.** Scammers are well-aware of the efforts to limit and regulate the provision of foreclosure rescue services. As a result, they resort to creative sales techniques to lure in distressed homeowners while creating the appearance that their operations are legitimate. Those tactics include: claiming to be non-profits, claiming an affiliation with HUD or another government agency, and claiming that the upfront fee is for some other service (such as a forensic loan audit) and not loan modification assistance.

When contemplating legal action against the scamming entities and individuals, private individuals and the government must consider the above characteristics in

Stories from the Lawyers' Committee's Database

“While [sic] dealing with cancer she felt overwhelmed financially. 3rd party offered to negotiate with lender on a loan modification. 3rd party handled all lender correspondence. Once she received notice of foreclosure, 3rd party filed Bankruptcy with out her knowledge. She had no idea of any foreclosure notice or that her home had been auctioned. When the sheriff showed up she had 30 minutes to leave and was unable to get all her cancer medication. As a direct result she lost her home.”

-Counselor's report on behalf of a Hispanic / Latino Female, 51 - 65 years old, from Los Angeles, CA who lost \$1,500.

formulating their litigation strategy and causes of action, as discussed in greater depth below.

Private Litigation—Legal Theories, Development of the Case, and Practical Considerations

Private plaintiffs who have been scammed are able to pursue claims against scammers under a variety of legal theories. Some individual plaintiffs have filed lawsuits against scam operations, typically seeking damages, although such lawsuits with attorneys representing an individual plaintiff are rare given the costs of litigation and the relatively small recoveries that are possible. Some homeowners have also taken scammers to small claims court, with some success in obtaining judgments but not in collecting on those judgments. In addition, some law firms have spearheaded class action lawsuits against scammers, although such cases also are not common given the difficulty of recovering a sizeable amount of funds from unscrupulous individuals, who may have already spent much of their windfall, and the complexities and time involved in pursuing class action litigation. The Lawyers' Committee has stepped into this area of private litigation by filing fourteen lawsuits on behalf of distressed homeowners against loan modification scam operations, starting in March 2011, with twelve of those suits involving individual plaintiffs and two suits brought as class actions. Seven of these lawsuits include lawyers as defendants, reflecting the fact that lawyers make up an increasing share of those perpetrating foreclosure rescue fraud. The goal of these cases is two-fold: (1) recover damages for the homeowner plaintiffs, and (2) enjoin scammers from continuing their operations.

1. Legal Bases for Private Lawsuits by Scam Victims

Private litigants do not have the vast array of enforcement tools available to government prosecutors and agencies to pursue foreclosure rescue scams, but they do have a variety of legal bases that permit monetary recovery and/or injunctive relief, primarily under state law.

A variety of common law causes of action are available to homeowners. These include breach of contract, breach of fiduciary duty, and breach of the duty of good faith and fair dealing, which allow for recovery of actual damages. Fraud claims, meanwhile, also are available and permit plaintiffs to seek punitive damages.

Nearly every state also has relevant laws designed to protect consumers. These include deceptive practices and unfair competition laws modeled from the FTC Act but which allow a private cause of action, laws proscribing false advertising, and laws protecting certain groups, such as seniors or the disabled. These laws permit private plaintiffs to seek damages and often permit recovery of more than actual damages through what are termed exemplary damages. Injunctive relief is also available, although state law sometimes restricts private plaintiffs' abilities to obtain such relief.

States also typically have laws regulating real estate and banking. Such laws often are sufficiently broad to cover foreclosure rescue scams and often permit private plaintiffs, not just governmental agencies, to bring a lawsuit. For example, in New York, the Lawyers' Committee has pursued claims under N.Y. Banking Law Section 589, *et seq.*, which regulates mortgage banking. Other laws specifically target conduct related to mortgage assistance for struggling homeowners. N.Y. Real Property Law Section 265-b, which regulates distressed property consulting, is one example, and California's Mortgage Foreclosure Consultants Act, which specifically addresses fraud against homeowners at risk of foreclosure, is another.

While most relief must be sought under state law, some claims may be brought under federal law depending on the facts of the case. The Lawyers' Committee has brought claims under the Fair Housing Act in cases where defendants had specifically targeted racial minorities (African Americans and Hispanics/Latinos)

with their scams. In addition, scammers' promises that they can repair distressed homeowners' credit ratings or credit records may give rise to claims under the Credit Repair Organizations Act.

2. Constructing a Private Foreclosure Rescue Scam Lawsuit

The Lawyers' Committee has relied on a variety of resources and strategies in developing its fourteen loan modification scam lawsuits.

The Database has been crucial at the initial stages of investigation. The Lawyers' Committee was able to review the homeowner complaints submitted to the Database to identify major loan scam operations for investigation and a potential lawsuit. The number of complaints, the nature of the complaints, the size of homeowner losses, and indications that the scam continued to operate all contributed to a decision to go forward with an investigation.

Once a suspected loan modification scam operation was selected for further investigation, Lawyers' Committee staff performed basic research on the operation, including review of incorporation information, public records related to assets and bankruptcies, online complaints, and any government enforcement actions that had been brought against the scammers that could be gleaned from publicly available resources. Assuming no "red flags" arose indicating that further investigation would not be fruitful due to, among other factors, the financial information uncovered or the status of other governmental actions, the Lawyers' Committee sought the assistance of a private pro bono law firm with which to co-counsel for further investigation and for the possible development of a lawsuit against the scammers.

Lawyers' Committee staff and law firm co-counsel continued the investigation by conducting extensive telephonic or in-person interviews with homeowners who had filed complaints in the Database and had indicated their willingness to be contacted about their experiences with the suspected scammer. Without the Database, it would have been extremely difficult, if not impossible, to identify homeowners who could join a case to shut down the operations and recover damages. The

homeowner interviews also included requests for documents related to the homeowners' experiences. In developing a potential case, typically, dozens of interviews were conducted. Based on the results of those interviews and the documents obtained from those homeowners, the Lawyers' Committee and co-counsel decided whether to pursue a lawsuit. Not every investigation resulted in a lawsuit, as some were discontinued for such reasons as the limited number of potential plaintiffs that could be located, the lack of recent activity by the scamming operation, or insufficient evidence of a scam.

In the event the Lawyers' Committee and co-counsel decided to pursue litigation, they next made decisions about which homeowners to potentially include as plaintiffs in the lawsuit, or, in the case of a class action, which homeowners to name as class representatives. Homeowners were considered as potential plaintiffs in the lawsuit based on the strength of their claims against the suspected scammers and the quality of the documents they provided to support their claims. The potential plaintiffs were then contacted to determine if they wished to participate in the lawsuit as plaintiffs. If so, each plaintiff entered into a client retainer agreement with the Lawyers' Committee and co-counsel and became clients for the lawsuit to be filed, with the representation being provided on a pro bono basis by both the Lawyers' Committee's and the law firm's staffs.

Once the plaintiffs for the case had been determined, the Lawyers' Committee and co-counsel prepared the lawsuit complaint for filing. In most cases, plaintiffs would seek preliminary relief, either through a temporary restraining order or a preliminary injunction shutting down the scam operation(s) named in the lawsuit, which required supporting declarations or affidavits from the plaintiffs. These declarations and affidavits contained the homeowner plaintiffs' experiences with the defendant scammers and their operations and provided the basis for the factual allegations in the complaint.

After the lawsuit was filed, the Lawyers' Committee and co-counsel acted aggressively on behalf of the plaintiffs, in many cases seeking preliminary injunctive relief to enjoin further operation of the scammers and in all cases seeking permanent injunctive relief against the scammers, as well as monetary recovery of damages. The injunctions generally barred the defendants from participating in Mortgage Assistance Relief Services – a term defined in the CFPB's Regulation O – and are an important tool in preventing the scammers from continuing to harm others through their loan scam activities. The aggressive prosecution of these cases also includes depositions and other discovery, and settlement discussions, as well as various proceedings related to defendants' defaults and collection of monetary judgments.

3. Practical Considerations

Private litigation against foreclosure rescue scam operations demands consideration of practical issues that may not arise in many other types of private litigation. These include issues related to representing homeowners located nationwide, the fly-by-night nature of many scam operators, and differences in state law as they relate to the scams.

The most prolific scam operations (and those most appropriate to pursue based on limited resources) do not limit their business to a single state or region. Indeed, many of the lawsuits the Lawyers' Committee has brought have involved operations with a nationwide scope, and sometimes none of the plaintiffs hailed from the scammers' home state. The cross-jurisdictional and long-distance features of these cases present challenges. First, they raise questions about where to file the lawsuit. Generally, cases have been filed near the site of the scamming operations so as to ensure personal jurisdiction over and participation of the defendants, but plaintiff residences were sometimes used to supply jurisdiction for a nearby forum. Second, counsel had to prepare for the prospect of depositions and trial testimony of plaintiffs from across the country.

As noted previously, foreclosure rescue scammers differ from typical defendants in consumer civil litigation. Scamming operations are not established companies with a broader business operation to protect. This difference has numerous implications, with the prospect of a scamming operation or scammers declaring bankruptcy being of primary concern, as they try to avoid liability for their wrongful actions. The defendants' foreclosure rescue scam business is usually their only business, and has only one purpose – to ensnare distressed homeowners. There is often a likelihood, therefore, that scammers will use bankruptcy to avoid being saddled with substantial judgments when the scam has been exposed and shut down. Thus, the Lawyers' Committee and co-counsel have exercised care to approach litigation and settlements so as to reduce the risk of a bankruptcy filing that would threaten any recovery by the plaintiffs.

The types of individuals and companies behind the scams also informed other litigation decisions. Service of the complaint was sometimes a challenge, requiring creativity in tracking down defendants. The challenge continued after a lawsuit was filed, as some defendants did not respond to the complaint, resulting in the need to seek default judgments. Collecting on the default judgments has also presented challenges, as efforts to locate assets or wages to garnish take time. Other defendants feign cooperation, hoping to string the process along, but such tactics do not prove useful to the scammers as the Lawyers' Committee and co-counsel press the litigation forward. And because scammers often move from one scam operation to the next, the Lawyers' Committee and co-counsel have had to be diligent in ensuring that defendants did not continue the very same scam through another entity after the court issued an injunction.

Further, while the underlying facts of the lawsuits – obtained in the investigation, reduced to declarations or affidavits, and alleged in the complaint – set forth a clear basis for monetary relief in all instances, state laws are generally undeveloped as to the availability of injunctive relief on behalf of private plaintiffs who have already

suffered an injury and are not at risk of being further harmed by the defendants. Plaintiffs, however, typically expressed a strong desire not to let the scammers continue to ensnare other homeowners, so injunctive relief has been a central component of the relief sought. The ability of plaintiffs to obtain injunctive relief for the benefit of the public at large has varied across states and different state statutes, which informed later efforts to obtain injunctive relief under those and other statutes.

In addition, public entities, such as federal and state law enforcement – and, where lawyers were involved, attorney licensing entities – often had significant interest in the subjects of the investigations and lawsuits. The Lawyers’ Committee and its co-counsel have cooperated with inquiries from those groups, as they have a shared interest with the plaintiffs in shutting down scam operations. In some situations, however, public entities hindered the plaintiffs’ cases against scammers, as their interest or actions raised the prospect of further civil litigation or criminal prosecution, which caused defendants to re-think their approach to the pending litigation, changed defendants’ settlement calculus, or even led them into bankruptcy. Consequently, the Lawyers’ Committee has taken care when assisting governmental actions attacking scammers to ensure that its assistance does not threaten its plaintiffs’ best interests.

Two Examples of Lawyers’ Committee Lawsuits and Shutting Down Scamming Operations

Described below are two exemplar cases in which the Lawyers’ Committee, and its private law firm co-counsel, sued and shut down scam operations with strikingly similar tactics – the Alarcon case on the East Coast and the Certified Financial Protection Group case on the West Coast.

Rory Alarcon and his Network of Interconnected Long Island Companies

Long Island attorney Rory Alarcon began working in the loan modification business shortly after completing law school in 2007. Long Island has been an epicenter of loan modification scam activity, with seven of the fourteen lawsuits brought by the Lawyers' Committee involving Long Island-based scams. By 2009, Mr. Alarcon and his network of interconnected companies were operating full bore, either under the guise of professional law firms directed by or affiliated with Mr. Alarcon or as non-legal companies cross-promoting Mr. Alarcon's legal services. He teamed up with Justin Romano, who developed a large referral operation to lure unsuspecting homeowners to sign up for supposed loan modification services from Mr. Alarcon's law firms that operated under a series of different names and different locations not only in New York, but also branching out into Florida. Sharing in profits, Mr. Alarcon and Mr. Romano signed up thousands of struggling homeowners, reaping revenues that undoubtedly ran into seven figures.

The scheme Mr. Alarcon and Mr. Romano perpetrated involved three simple phases: (a) marketing and sales; (b) collection of an unlawful upfront payment; and (c) neglect and abandonment of the homeowner.

The marketing and sales scheme was conducted through both in-house teams and referral agents. The Alarcon firm's in-house teams consisted of employees or agents who recruited potential customers through the use of cold-calls and internet and radio advertisements, reaching homeowners both on Long Island and throughout the country. These teams marketed Mr. Alarcon's law practice as providing experienced attorneys who have established "rapport" with many lenders, resulting in superb results. The operation's web sites contained various representations touting the success of the purported loan modification services.

The second method of marketing was through referral companies, which attracted homeowners in need of mortgage assistance and referred such homeowners to Mr. Alarcon's law practice. Individuals who contacted the referral arm were referred to the in-house teams, who provided the contracts and set the fee for their services. The homeowners believed that they were being referred to attorney specialists, when in fact they are being referred within the loan modification scam network.

Lured in by promises that the loan modification specialists would "stop the foreclosure process" and provide "professional guidance" through the mortgage modification process, homeowners were then further enticed by oral representations, including a guarantee that the homeowners would receive a loan modification that would dramatically reduce their mortgage payments.

Before any loan modification services were performed, homeowners were required to pay an upfront fee disguised as a legal "retainer" fee. The upfront fee varied from homeowner to homeowner, but was usually at least several thousand dollars and in at least one case topped \$8,000. In some cases, homeowners were told that the upfront fee would be applied, in whole or in part, to the homeowner's mortgage payments, or that the upfront fee would be refunded, in whole or in part, if the operation was unsuccessful in obtaining a modification on behalf of the homeowner. Enticed by the promises and false representations, the homeowners agreed to sign up and to pay the fee. In addition, homeowners were required to sign deceptive "retainer" agreements and packages. These agreements contained provisions designed to disclaim the very representations used to induce homeowners' agreement. Nonetheless, the Alarcon operation representatives continued to repeat false and misleading statements, and made new false statements that were contrary to the contract language.

Once homeowners agreed to hire the Alarcon operation and had paid the required "refundable" fee, they would be told to provide a number of documents

purportedly necessary to obtain a loan modification. The requested documents, which included mortgage statements, pay stubs, a financial worksheet detailing income and expenses, and a hardship letter to lenders explaining why a loan modification was necessary, all contained highly sensitive financial information. Homeowners were told to not communicate with their lenders, and that any direct communications between them and their lenders would be ill-advised and fruitless. Finally, homeowners were instructed not to make mortgage payments, to show the bank they were in need of a modification.

Thus began a series of efforts designed to keep homeowners misinformed and unaware of both the true nature of the Alarcon operations' practices and of their own legal rights, all done in an effort to forestall detection of the scam, and in some cases to ensure payment of additional installments on the upfront fee. Indeed, homeowners were frequently asked for additional documents, often the same documents multiple times, and were repeatedly assured that the loan modifications were progressing.

In fact, the Alarcon operations were not properly processing homeowners' documents or applying for loan modifications, due either to incompetence and/or in furtherance of a designed plan to avoid doing any significant work and blame the lack of progress on the loan modifications on the lenders' incompetence. In many cases, the Alarcon operations did not even contact the lenders (or any contact was limited to submitting a third-party authorization form homeowners were required to sign allowing the Alarcon operations to be the point of contact with the lender), let alone submit the documentation required to obtain a loan modification, thus making a modification impossible.

Eventually, homeowners realized that Alarcon and his operations were not performing the promised loan modification services. Despite promises of refunds

Stephen J. Riccardulli, Lawyers' Committee Co-Counsel

McDermott Will & Emery, LLP

“The mortgage crisis’ impact on American homeowners has been devastating, causing both emotional and financial hardship. One can only imagine the stress associated with the risk of losing one’s home. It was unimaginable to hear that people faced with these challenges would be preyed upon by the alleged scammers. Myself and the McDermott team jumped at the opportunity to work with the Lawyers’ Committee to put the scammers out of business and to bring some level of relief to our clients. Knowing that we’ve been able to assist our clients through this very difficult experience has been some of the most rewarding work in my career.”

if the homeowners did not receive a loan modification, the Alarcon operations consistently denied that they had promised refunds and refused to provide any refunds.

The result for homeowners was often devastating. After following the Alarcon operations’ advice not to make payments and not to contact lenders, homeowners found themselves further behind on their mortgages and in a much worse position for a modification than they were when they signed up. Many lost their homes to foreclosure.

Action Taken in Response to the Scam Operation:

The Database received over 100 complaints from homeowners nationwide who had hired Mr. Alarcon, who is only licensed as an attorney in New York, and his web of interconnected Long Island based operations. The Lawyers’ Committee and its co-counsel, McDermott Will & Emery, investigated these Alarcon operations and brought a lawsuit at the end of 2012 on behalf of 17 of these homeowners from New York and nine other states against Alarcon Law Group, P.C., Alarcon Law Firm, P.C., Alarcon & Associates, P.C., R.M.A. Legal Network and Rory M. Alarcon. Through that lawsuit, the 17 homeowners recovered from Mr. Alarcon in a settlement in March of 2013 approximately one and one half times what they paid

Hannah Banks, Lawyers' Committee Co-Counsel

McDermott Will & Emery, LLP

“Working with the 12 families in this case has been a truly rewarding experience. Through working with each individual family, it became clear exactly how damaging this loan scam was to our clients. Despite this financial hardship, it was inspiring to learn that everyone’s priority was not recovering their money, but ensuring that the scam ended so that no one else would suffer a similar fate.”

to Alarcon’s operations. In addition, in May of 2013, the Court entered an order permanently barring Mr. Alarcon and his business entities from any involvement in the loan modification business. The settlement agreement also included a provision requiring that the remaining Alarcon clients be referred to HUD-approved housing counselors to assist with their mortgage problems.

The Lawyers’ Committee and its co-counsel are continuing, on behalf of the 17 homeowners, to pursue their action against Mr. Romano.

Michael Wayman, Donald Brokaw and Their California-based Operations

In 2008, Michael Wayman and Donald Brokaw, both based in Southern California, recognized a high-demand business opportunity in offering loan modification services to struggling homeowners. Seeking to capitalize, they launched a fraudulent scheme to extract money from homeowners by selling false promises of guaranteed loan modifications. They created numerous corporate entities to operate their loan modification scheme, including Safehouse 911, Certified Financial Protection Group, and Financial Hope for America. Next, they proceeded to seek out clients nationwide to ensnare in their scheme.

Wayman's and Brokaw's companies aggressively marketed their loan modification scheme through television advertisements, mailing campaigns, YouTube videos, sophisticated websites, local referral agents, and targeted, unsolicited phone calls to distressed homeowners (apparently finding their names using publicly available lists of defaulted homeowners). The broad Internet presence was designed to attest to their entities' purported legitimacy, relying on more than fifty related websites. They filled their websites and YouTube channels with emotional testimonial videos from supposedly satisfied customers who attested to their supposed ability to delay foreclosures, obtain loan modifications and negotiate with banks.

In addition, knowing they could capitalize on the good will and trust that local insurance agents, real estate agents and financial advisors had accrued in their communities, Wayman and Brokaw hired these people as referral or affiliate agents. Many of these agents were known and trusted within their community, which added to the scam's apparent legitimacy, and the local agents – paid on commission – often assisted in enticing homeowners to sign up for services.

Wayman's and Brokaw's companies lured homeowners further into their scheme by claiming high success rates and promising quick, guaranteed results. At various

times, they claimed (i) a 90% to 99% success rate, (ii) that they were affiliated with the government, (iii) that their “team of lawyers” would aggressively negotiate with the banks on homeowners’ behalf, and/or (iv) guaranteed they could obtain a loan modification and fend off any foreclosure or they would refund all or most of Plaintiffs’ pre-paid fees. Moreover, in order to conceal the fraud after folks became wary of loan modification scams, Wayman created a document that purported to warn homeowners about such scam organizations, which was sometimes included with contractual documents. The companies successfully used these (false) promises and guarantees to convince thousands of homeowners to enter into written contracts for their services. As with many scams, homeowners also were warned against communicating with lenders and were instructed not to make mortgage payments.

After luring homeowners with promises of success and guaranteed loan modifications, the scam operation required homeowners to pay upfront “processing” or “filing” fees ranging from \$475 to at least \$3,700 before Defendants would provide any services. Because many homeowners could not pay such large upfront fees, Defendants also offered monthly “membership” packages that required an initial down payment followed by automatic monthly withdrawals from the victims’ bank account.

Wayman and Brokaw, knowing that upfront fees for loan modifications are illegal, sought to get around that prohibition by claiming that the fees were for an analysis of the legality of their mortgage (typically referred to as a “forensic loan audit”), and the loan modification and foreclosure avoidance services were “free.” However, homeowners never received any such analysis. Similarly, Defendants misled Plaintiffs about the contract’s contents. After guaranteeing loan modifications and foreclosure avoidance, Defendants included a boilerplate

contractual clause that states “[Defendants do] not and cannot assure a successful outcome or resolution.”

The scam companies initially requested various financial documents from homeowners, such as mortgage contracts, bank statements and pay stubs, which served to further establish their legitimacy. They also asked homeowners to draft hardship letters, purportedly for negotiations with lenders. However, after homeowners provided the requested materials, the companies often would tell them the paperwork was “lost” or “dated” and would need to be resent, thus prolonging the time before the fraud was revealed. Finally, Wayman’s and Brokaw’s representatives provided homeowners with a website (vipwindow.com) to check on the progress of their case and monitor contacts with lenders. The website further assured Plaintiffs that Defendants were diligently working on their behalf.

Eventually the communications from Wayman’s and Brokaw’s representatives slowed to a trickle, the vipwindow.com website (which contained fraudulent entries about case statuses) stopped working, and homeowners realized that the promised services would not be provided. While they may have sporadically contacted lenders for some homeowners, the companies systematically failed to take any actions to meaningfully assist those homeowners. Homeowners would then attempt to obtain a status update, but they were typically completely unable to reach anyone at the companies, or, if they did make contact, were shuffled between employees, assigned new case managers who needed time to “familiarize” themselves with the case, or simply told falsely that someone would contact them shortly. Sooner or later, the homeowners learned that they had been scammed. Thereafter, many homeowners sought the promised refund of their money because no loan modification had been obtained, but refunds were rarely, if ever, provided.

All the while, the loan scam operations continued to withdraw “membership fees” from homeowners’ bank accounts, aggressively pursued homeowners who did not pay their monthly fees, and even offered extra “enhanced services” to some homeowners for additional money. These business funds were often diverted for personal use. For example, Wayman purchased real property in his individual name in Tennessee and paid for cosmetic treatments with business money.

Over time, a steady wave of online complaints and negative Better Business Bureau reviews began to weigh on the scam companies’ reputations. In response, Wayman and Brokaw attempted to prolong the useful life of their fraudulent companies by providing potential clients with “Formal Responses” to these complaints, claiming to have “investigated and resolved” all complaints against them and that the complaints originated from “disgruntled consumers who received loan modifications.”

Ultimately, even Wayman’s and Brokaw’s fraudulent efforts to save their companies’ reputations failed, so they began using new business names, such as Brookshire Holloway, U.S. Financial Advantage and Home Safe Financial. As with the previous entities, these new scam operations created a sprawling web presence, aggressively marketed their services, guaranteed loan modifications and promised to prevent foreclosure. These new entities repeated the scam with a new crop of unsuspecting homeowners.

Regardless of which Wayman and Brokaw-connected entity they dealt with, homeowners faced severe harm. After following the advice not to make payments and not to contact lenders, homeowners fell further behind on mortgage payments, and many suffered additional financial hardship and/or lost their homes.

Action Taken in Response to the Scam Operation:

The Database received dozens of complaints from homeowners who had hired Wayman's and Brokaw's businesses. The Lawyers' Committee and its co-counsel, Latham & Watkins, investigated the operation and brought a lawsuit on behalf of 16 of the scam's victims in the fall of 2012. At the end of November 2012, the trial court in California issued a preliminary injunction forbidding Wayman, Brokaw, and their businesses from performing loan modification-related services. The Court's order also requires Wayman and Brokaw to disclose certain financial information and limits the amount they can spend each month to ensure that they do not dissipate their assets before a judgment is obtained. The Lawyers' Committee and its co-counsel are continuing to pursue recovery on behalf of the plaintiffs.

Amy Hargraves & Patrick Justman, Lawyers' Committee Co-Counsel

Latham & Watkins, LLP

“Seeing the harm caused to our sixteen plaintiffs (and countless others) through the ruthless dealings of Mr. Wayman, Mr. Brokaw and their agents, was disheartening. Many paid large sums of money and all were thoroughly swindled – the failure of these entities to provide loan modification assistance and foreclosure avoidance services resulted in numerous foreclosures and other significant financial harms. While it was hard to see the pain caused by Mr. Wayman and Mr. Brokaw, working with Lawyers' Committee to see them brought to justice (at least in part) has been extremely gratifying. Although we have hit some bumps in the road along the way (dishonest witnesses, shredded documents, and a bankruptcy petition, to name just a few), we are confident that we will prevail, and that this suit will prevent the defendants from harming more homeowners the way our clients were harmed.”



Alan Martinson, Counsel at the Lawyers' Committee, works on litigation matters.

Government and Public Entity Enforcement Efforts

In addition to the private litigation in which the Lawyers' Committee and co-counsel have engaged, government agencies, law enforcement, and other public entities such as state bar associations have also undertaken substantial efforts against foreclosure rescue scams through criminal prosecution, civil litigation, and administrative avenues. The public and private enforcement efforts have complemented each other well.

These entities have been aided in their efforts by the Database, with the Lawyers' Committee granting credentials to access the Database to over three hundred employees in enforcement agencies at the federal, state, and local levels. Moreover, the Lawyers' Committee has assisted enforcement agencies in identifying scam operations by compiling information about interconnected scam entities based on Database complaints.

The results of the government and public entity enforcement efforts have been significant, both on a federal and state level. Government agencies often have additional enforcement authority, either by way of statutes that only they may enforce or by way of additional means of enforcement available through statutes that do allow a private right of action. While government agencies are sometimes slow to respond to emerging problems like this and competition for limited public resources at all levels of government can be fierce, they have significantly more

resources than private litigants and as such can more broadly attack the problem and are better situated to challenge nationwide scam operations.

Federal Government

Federal authorities have aggressively pursued foreclosure rescue scam operations through both criminal and civil litigation avenues. They have brought criminal charges against a large number of foreclosure rescue scam operations, and new federal court prosecutions are announced regularly. Such prosecutions are brought under a variety of statutes, including 18 U.S.C. § 371 (conspiracy), 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), and 18 U.S.C. § 1957 (money laundering). According to the DOJ, in the twelve months ending on September 30, 2012, it and its partners (who are part of the Mortgage Fraud Working Group within the federal government's FFETF) filed more than 107 criminal indictments against 530 defendants for allegedly victimizing more than 17,000 American homeowners, with losses exceeding \$95 million. The FBI plays a central role in the investigations, and the DOJ handles the prosecutions. These prosecutions have resulted in numerous criminal convictions and plea bargains, with scammers facing significant jail time, other criminal penalties, and being forced to pay large sums to victims in restitution.

Federal authorities have also pursued civil claims. The CFPB has brought cases under the Consumer Financial Protection Act, which proscribes unfair, deceptive, or abusive acts or practices, and Regulation O, which specifically regulates Mortgage Assistance Relief Services (MARS), including loan modification services. The FTC has brought numerous foreclosure rescue scam cases under the FTC Act, which proscribes unfair or deceptive acts or practices, and under its MARS rule, which was adopted as loan modification scamming exploded during the foreclosure crisis. The DOJ has reported that, during the same twelve month period noted above, federal agencies participating in the Mortgage Fraud Working Group had

filed federal civil cases against 128 defendants for losses exceeding \$54 million suffered by over 19,000 homeowner victims of scams.

Finally, Treasury and its Special Inspector General for the Troubled Asset Relief Program (SIGTARP) have taken steps to ensure that homeowners are not lured into foreclosure rescue scams in the first place. Treasury and SIGTARP have shut down or forced changes to numerous fraudulent or confusing websites and web advertisements that used the Treasury seal and other Treasury and TARP-related program names and insignia in an attempt to lure homeowners into their scam. Similarly, HUD has pursued scammers who claim HUD affiliations and use HUD names and insignia in their marketing.

The federal government's efforts also have challenged foreclosure rescue scams that go beyond the typical up-front fee scams in cases brought by the Lawyers' Committee, such as scams that involve the scammer filing fraudulent bankruptcy petitions, scams that induce homeowners to unwittingly commit mortgage fraud, and scams targeting specific groups, such as Spanish speakers and seniors.

State & Local Government

State and local government lawyers also have taken significant action pursuing foreclosure rescue scam operations. A number of the state attorneys general have made going after these scams a priority, devoting scarce resources to, and forming task forces to facilitate, their efforts. For example, California formed a Mortgage Fraud Strike Force in May 2011 to investigate and prosecute scams, and other states have provided specific staff and resources to cases against scammers. The DOJ reported in October 2012 that state attorneys general offices had filed over 150 civil and criminal actions in the previous year against scammers who victimized homeowners to the tune of approximately \$7 million, and the true figure is likely even higher. Many local law enforcement groups, such as county attorneys' offices, also have task forces or other programs

specifically targeting foreclosure rescue scam operations.

State attorneys general and local prosecutors have brought criminal actions against individuals who formed and operated foreclosure rescue scams. The potential criminal charges in such cases are numerous because the scams essentially amount to stealing. They include theft and grand theft, false advertising, conspiracy, unlawful collection of advance fees, violation of laws specifically aimed at foreclosure rescue scams, violations of state registration requirements, and tax evasion. These prosecutions have resulted in jail time, probation, monetary penalties, and restitution orders.

State law also typically allows attorneys general and local government attorneys to pursue civil litigation against scammers. State unfair and deceptive trade practices laws invariably permit actions by such attorneys. They may seek injunctive relief, restitution for victims, and civil penalties against scam operators. Moreover, unlike private plaintiff actions under such laws in some states, there is no question as to public attorneys' right to seek injunctive relief to benefit the general public. These unfair and deceptive trade practices laws (or other state laws) also may provide for enhanced monetary penalties if the conduct is particularly egregious or if the scam was perpetrated against seniors or disabled persons. In addition, many states have more specific laws on the books that address the conduct at issue in foreclosure rescue scam cases. These include laws regulating so-called "distressed property consultants" or "mortgage foreclosure consultants," as well as laws regulating mortgage and real estate brokers, which may provide for restitution, enhanced damages, and/or injunctive relief. For example, Florida has enacted a Foreclosure Rescue Fraud Prevention Act, and its attorney general has brought various lawsuits against scammers who collect up-front fees. New York, meanwhile, regulates "distressed property consultants," and it prohibits various types of conduct by them; although the statute provides a

private right of action for recovery, it provides additional powers to the attorney general, including allowing the attorney general to more easily obtain injunctive relief and civil penalties.

Information about state laws and resources related to loan modification scams is available at www.preventlawscams.org/states.

State Licensing Boards

Finally, foreclosure rescue scams can run afoul of state licensing requirements, either by their failure to live up to the standards imposed on licensees or through failure to obtain necessary licenses altogether.

Given the extensive involvement of attorneys in many foreclosure rescue scams, it is perhaps not surprising that state attorney licensing agencies have been among the most active in reprimanding scammers. State bars have taken allegations against attorneys seriously and have actively investigated complaints filed by homeowners. State bars across the country have suspended attorneys from the practice of law for their participation in these scams, and in some cases have gone so far as to disbar attorneys for repeated conduct.

In addition, state departments of real estate, mortgage broker regulatory agencies, and other agencies have also sought to use their powers to shut down scamming operations through issuance of cease and desist letters, and/or instituting administrative and legal actions.

The Lawyers' Committee and its Database have played a significant role in the efforts to assist distressed homeowners affected by foreclosure rescue scams, both through direct litigation efforts against foreclosure rescue scam operations and through support of government efforts also targeting such operations. As a result, numerous distressed homeowners have been helped, scammers have been shut

down and made to pay for their fraudulent conduct, and undoubtedly countless scammers and would-be scammers have been stopped from harming additional homeowners.

Lessons Learned

Although the Lawyers' Committee has achieved significant success in its loan modification scam lawsuits, there are many lessons learned from the extensive litigation efforts, including the importance of:

- Vigilance in following scammers' activities to ensure compliance with injunctions;
- Considering the possibility of defendant bankruptcies;
- Balancing the desire to help law enforcement and other public entities in their efforts against the risks of providing that assistance; and
- Appreciating the difficulties and developing strategies to address difficulties of private plaintiffs obtaining injunctive relief that benefits the public at large.

ANATOMY OF A SCAM

“We have a discount for military members & their families”

Fake Military Discounts in Foreclosure Rescue Fraud

With more than three years of data in the Database - including over thirty-eight thousand complaints and over eighty-four million dollars in total reported losses - sadly there is no shortage of disturbing stories. From the dying cancer patient who was scammed out of thousands of dollars while he was trying to make sure his widow could afford the mortgage when he was gone, to the single woman who took in her sister's four children after she passed away who was scammed into believing she was part of a fake lawsuit, then threatened by the same attorneys who scammed her after she complained. One type of troubling scam appearing over the past few years is the “Military Discount” targeted to active military service members and their families.

One man, a senior citizen from Fort Worth, Texas, had hit a rough patch when he was solicited by a third party. At that point, he was one month behind on his mortgage payments and was working hard to keep up. The company guaranteed him a loan modification for \$1,600. He was hesitant to pay so much money when he was already struggling to stay current on his mortgage. Sensing his hesitation with the original price, the third party asked if he, or anyone in his family, was currently serving the country. After he explained that his daughter was currently serving the country in Iraq, the third party thanked him for his daughter's service and told him that he was eligible for a military discount of \$300. Lowering the price just enough to make it bearable for him, he paid the fee. Months went by with no results and no refund. The damage was not done there. The company advised him that he needed to stop making his mortgage payments in order to get the loan modification, so he did. He went from being just one month behind on his mortgage when he started working with this operation, to his home being sold in foreclosure.

Chapter 7

LOOKING FORWARD: LEGAL AND POLICY RECOMMENDATIONS TO PREVENT SCAMS



Recommendation: Incorporate Anti-Fraud Measures into New Government Programs

As the foreclosure crisis persists, so has the level of activity of foreclosure rescue scammers. The scammers proved to be nimble, adapting their sales tactics and sets of promises to mirror the latest legitimate government program designed to provide relief for distressed homeowners. The Lawyers' Committee and its partners found that each new legitimate government-sponsored program presented a new opportunity for scammers, who often developed materials in which they claimed an affiliation with the new program, or solicited distressed homeowners by promising to provide expert help navigating and qualifying for the new program.

Based on this knowledge, in response to the Independent Foreclosure Review program, operated by the affected servicers under auspices of the Office of the Comptroller of the Currency (OCC) and the Federal Reserve, the Lawyers'

Committee and its partners engaged directly with the OCC and the servicers to review and make recommendations for their program website and mailers to eligible homeowners. The goal was to try to incorporate anti-scam protections and messaging into the OCC's program aimed at providing direct monetary relief to homeowners whose homes may have been subject to improper foreclosures.

In addition, the Lawyers' Committee used the Prevent Loan Scams website announce the launch of the program, its deadlines and updates in order to disseminate information to the public to familiarize them with the various components of OCC's efforts and help homeowners avoid any "look alike" programs touted by scammers. Similarly, in 2013, the Lawyers' Committee began implementing tools to analyze and track fraud related to the National Mortgage Settlement.

New government programs to assist consumers should include anti-fraud measures from the outset, recognizing that such programs offer a new opportunity for scammers.



Joe Rich, Director of the Fair Housing & Community Development Project at the Lawyers' Committee, working on fair housing and fair lending issues.

Recommendation: Ensure that Homeowners Are Covered Under State Laws Targeting Foreclosure Rescue Fraud

Since the onset of the foreclosure crisis, many states have enacted laws specifically targeting foreclosure rescue fraud activity, which are particularly useful because they are tailored to target a precise activity and may provide meaningful monetary relief for homeowners. For example, some states have imposed licensing requirements on individuals who purport to negotiate loan modifications; others prohibit the charging of advance fees for foreclosure rescue work and prescribe detailed contract language for foreclosure rescue services.

A key component of all such laws is the definition of “homeowner.” It is crucial that new laws broadly define the group of distressed homeowners that fall within their scope so as not to limit a law’s utility and reach. Unfortunately, some of the more recently enacted state laws specific to foreclosure rescue fraud narrowly define “homeowner,” thereby threatening the efficacy of enforcement efforts.

For example, to take advantage of one of the provisions of Georgia’s Fair Business Practices Act, a homeowner must have a mortgage in default. In addition, by its terms, California’s Mortgage Foreclosure Consultants Act requires covered homeowners to be in foreclosure at the time they contract for foreclosure rescue services. By requiring homeowners to be in such advanced stages of financial distress, these laws fail to reach many homeowners who are ultimately defrauded.

Many of the plaintiffs in the Lawyers’ Committee’s cases were neither behind on mortgage payments nor in default or foreclosure at the time they hired the scammers. In fact, numerous plaintiffs merely sought to take advantage of decreasing interest rates or replace adjustable rate mortgages with fixed rate loans before their interest rates spiked.

Others experienced recent job losses or medical costs that threatened to strain their budgets and were looking for mortgage relief. For some of these plaintiffs and other distressed homeowners like them, being defrauded through a foreclosure rescue scam was the cause of their falling behind on mortgage payments or facing foreclosure.

By heeding the advice of scammers encouraging them to forego making monthly mortgage payments or misrepresenting the timeframe for obtaining a loan modification, many homeowners fell into real trouble. Unfortunately, because these homeowners engaged scammers before they fell behind or went into foreclosure they are not be able to avail themselves of the protections and remedies provided by state laws targeting the exact scams to which they fell victim when a limited definition of “homeowner” is used.

State laws targeting foreclosure rescue fraud should define covered homeowners broadly, as those who seek foreclosure relief services can easily be defrauded before an actual foreclosure or mortgage payment default, thereby excluding them from the coverage of otherwise applicable consumer protection laws. Homeowners who are not yet in foreclosure and who have not fallen behind on mortgage payments should be encompassed in laws regulating third-party services in this area.

Recommendation: Provide Opportunities for Private Litigation by Homeowners

Some state and federal laws prohibiting foreclosure rescue fraud directly or indirectly (including through prohibitions on deceptive business practices) are only enforceable by government entities.

For example, the FTC and the CFPB may bring lawsuits to enforce the MARS rule, however, an individual distressed homeowner who discovers she has been scammed by a foreclosure rescue provider cannot. There are examples of similar limitations in state laws around the country. Regulatory and enforcement agencies at all levels have been diligently prosecuting these scams, but their limited resources are often no match for the volume of scam activity.

Additional prosecutions could be facilitated by allowing individual homeowners to bring lawsuits for monetary and injunctive relief directly against scam organizations. New York is a useful example. Sections 349 and 350 of New York's General Business Law prohibit deceptive business practices and false advertising, respectively. Both laws contain an express private right of action empowering consumers to sue on their own behalf to enforce their protections, rather than having to wait for the state attorney general to bring an action. This concept of consumers as "private attorneys general" has facilitated the Lawyers' Committee's litigation efforts - Sections 349 and 350 of the New York General Business Law have been the basis for requests for damages and injunctive relief in all seven of the Lawyers' Committee's foreclosure rescue fraud lawsuits in New York state courts.

Following New York State's model, lawmakers should incorporate private rights of action into laws protecting against foreclosure rescue fraud specifically, as well as laws protecting consumers generally from deceptive business practices.

Empowering consumers to bring enforcement actions to enjoin and punish fraudulent business practices can increase the number of prosecutions, complement the often-limited resources of law enforcement, and at times result in faster and more robust recovery for distressed homeowners.

Chapter 8

LOOKING FORWARD: RECOMMENDATIONS FOR THE NETWORK



Scammers have adopted new tactics. Now, some operations claim to be non-profits to build trust with homeowners and even characterize up-front fees as “charitable donations.” Capitalizing on efforts to steer homeowners to HUD-approved housing counseling agencies, some operations now refer to themselves as housing counselors, seriously undermining efforts to direct homeowners to trustworthy, free foreclosure relief resources. Scammers have also modified their traditional fixed fee arrangements, instead instituting installment plans and ongoing monthly “membership” fees to make it easier to extract payments from distressed homeowners who cannot afford hefty one-time payments. Scammers’ sales and marketing tactics have changed as well. More recently, scammers have hired third-party sales teams to solicit business from homeowners. In these situations, the homeowner interacts with the third-party during the initial sales pitch, but upon agreeing to hire the operation, signs a contract with and forwards payment to the actual scam operation. In addition, scammers have tried to repackage and rename their services – moving, for example, from providing

“loan modification” assistance to “loan workout” help. However, the essential services, and lack of assistance, are exactly the same. Alternatively, scammers may claim to offer additional services, such as forensic loan audits, bankruptcy assistance, document preparation or foreclosure defense, while offering loan modification services as a “free” bonus. As expected, though, these operations never intend to provide any of the advertised services.

The Network can continue to be a vehicle to address these ever-changing foreclosure rescue frauds. In creating the Network, the Lawyers’ Committee established a blueprint for the mobilization of national cross sector resources (government, law enforcement, and non-profit organizations) to tackle widespread social justice issues, and this blueprint could be employed more broadly. The Lawyers’ Committee designed the Database so that it could be used to collect other types of consumer complaints in addition to foreclosure rescue fraud, such as predatory lending. In addition, the “Prevent Loan Scams” website could be repurposed as a “Prevent Scams” domain to pursue advocacy efforts in other areas of interest. Equally important, the strategic alliances created during the past four years could be maintained or reactivated to address new social justice issues as they arise.

Lawyers' Committee Recommendations

- ◆ Create a truly multi-language platform. Limited resources curtailed the Lawyers' Committee's ability to sustain the foreign language information channels that the other members of the Network were able to offer to non-English speaking distressed homeowners. Unfortunately, this meant that the very useful Prevent Loan Scams website remained in English only. Due to shifting U.S. demographics, it is important that advocacy and information tools are fully multi-lingual.
- ◆ Before new government-sponsored programs for distressed homeowners are announced, engage with the relevant agencies and/or law enforcement to learn about the components of new programs (e.g., eligibility, relief to be provided, duration of program) and the agency's advertising plans (e.g., type of media and mailers, timeline for advertising). The Network partners may be able to influence the content of advertisements and incorporate an anti-scam message, or at least prepare the agency for the potential scam activity that may arise related to the announcement of a new homeowner relief program. In addition, early engagement allows the Network to alert partners who interact directly with distressed homeowners, such as housing counseling agencies who will often see signs of burgeoning scams before anyone else. In turn, counselors can alert homeowners directly about new programs, help them distinguish between legitimate and fraudulent mailers and advertisements for new programs, and direct them to the proper resources in the event they need to report a related scam.
- ◆ Staying abreast of the progression of scams should remain a priority. Scam operations have proven to be nimble, even as homeowners, law enforcement and trusted advisors become increasingly familiar with their tactics and business models. Continuing to educate all partners as new trends are identified should remain a top priority. In addition to adapting to the latest legitimate government program, these operations also adapted their business models as law enforcement, non-profits and homeowners became wise to their original trademark practices.

Appendix A

Loan Modification Scam Prevention Network Steering Committee Members

- ◇ American Bar Association
- ◇ Bank of America
- ◇ Citibank
- ◇ Conference of State Bank Supervisors
- ◇ Consumer Financial Protection Bureau
- ◇ Fannie Mae
- ◇ Federal Bureau of Investigation
- ◇ Federal Deposit Insurance Corporation
- ◇ Federal Trade Commission
- ◇ Financial Fraud Enforcement Task Force
- ◇ Freddie Mac
- ◇ Homeownership Preservation Foundation
- ◇ HOPE NOW Alliance
- ◇ Lawyers' Committee for Civil Rights Under Law
- ◇ Maryland Office of Financial Regulation
- ◇ National Association of Attorneys General
- ◇ National Coalition of Asian Pacific American
Community Development
- ◇ National Community Reinvestment Coalition
- ◇ National Council of La Raza
- ◇ National Fair Housing Alliance
- ◇ National Urban League
- ◇ NeighborWorks America
- ◇ Office of the Illinois Attorney General
- ◇ Open Society Institute
- ◇ SIGTARP (Office of the Special Inspector
General for the Troubled Asset Relief Program)
- ◇ U.S. Department of the Treasury
- ◇ U.S. Department of Housing and Urban
Development
- ◇ U.S. Department of Housing and Urban
Development Office of the Inspector General
- ◇ United States Department of Justice
- ◇ United States Secret Service

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