

## Attorney General Announces Mortgage Fraud Cases

### Colorado State Law for Foreclosure consulting

## FORECLOSURE

As a residential homeowner, you have specific rights and remedies if your home is facing foreclosure. **THIS SECTION PROVIDES SOME GENERAL INFORMATION ONLY. YOU MAY HAVE ADDITIONAL OR DIFFERENT RIGHTS OR REMEDIES UNDER COLORADO LAW. YOU SHOULD ALWAYS CONSULT WITH A PRIVATE ATTORNEY that understands Federal Law and Foreclosure laws.**

### Foreclosure process

If you borrowed money to purchase your home, refinance an existing mortgage, or to access the equity in your home (for example, for home improvements), those loans are probably secured by a document called a "Deed of Trust." In Colorado, deeds of trust typically name as trustee the "Public Trustee" (this is a government office) of the county in which your home is located. If you fall behind in your mortgage payments, your lender may commence proceedings to sell your home to pay off their loan. This procedure is known as a "foreclosure" and involves the following general steps:

- Lender must provide you a notice that you are in default of your mortgage and give you an opportunity to cure that default. This notice must be given in writing not more than 45 days after your initial default and at least 20 days before the lender records a document that is called a "Notice of Election and Demand for Sale."
- After giving you that notice of default, the lender may record with the Public Trustee a document that is called "Notice of Election and Demand for Sale."
- Within 20 days of the recording of the Notice of Election and Demand for Sale, the Public Trustee must mail you a notice of your right to cure the default and your right to redeem your property after the foreclosure sale. *See "Your Right to Cure" and "Your Right to Redeem" below.*
- The Public Trustee must publish in a local newspaper of general circulation (one that comes out at least once a week) a "Notice of Sale" indicating the actual date, time and place when your property will be sold. The date of sale must be not less than 45 days nor more than 60 days from when the Notice of Election and Demand for Sale were recorded.
- Within 20 days after the Notice of Sale is first published, the Public Trustee must mail you a copy of that Notice of Sale.
- Before your property can be sold, the lender must obtain a court order authorizing the sale. That is accomplished by filing a verified motion with a district court in your county and setting a hearing on that motion. The lender must give you written notice of that hearing not less than 15 days before that hearing date. **IF YOU WANT TO CONTEST WHETHER A DEFAULT HAS OCCURRED, OR WHETHER YOUR LENDER IS ENTITLED UNDER YOUR DEED OF TRUST TO SELL YOUR PROPERTY, YOU MUST FILE A WRITTEN RESPONSE TO THE LENDER'S MOTION AT LEAST 5 DAYS BEFORE THE SCHEDULED HEARING.**

- If the court enters an order authorizing the sale at least 2 days prior to the date set for the sale (and assuming that you have not cured the default) the sale will take place at the date, time and place scheduled. The lender and any other person may submit written bids for your property at that time.

### **Your Right to Cure**

You have a right to cure the default on your loan at any time up to 15 calendar days before the date set for the foreclosure sale of your property. You must file a written Notice of Intent to Cure with the Public Trustee. The Public Trustee will determine the amount you are required to pay to cure the default (this amount can include missed payments, interest, costs of the foreclosure and attorney fees). You must pay this amount on or before 12:00 noon on the day before the foreclosure sale date.

### **Your Right to Redeem**

Once your property has been sold at a foreclosure sale, you still have a limited right to redeem your property for 75 days following the foreclosure sale. Of course, you will have to pay off the total amount of the bid that purchased your property at the foreclosure sale, plus interest from that sale date. To exercise your right of redemption, you must file a Notice of Intent to Redeem with the Public Trustee at least 15 days before the end of your redemption period (that is, no more than 60 days after the foreclosure sale). You must then pay all amounts due from the foreclosure sale by the end of that redemption period.

### **Foreclosure Relief Scams**

Once the Public Trustee issues a Notice of Sale on your property, you are certain to be contacted by various companies and individuals seeking to "assist" you with this foreclosure. **BE EXTREMELY CAREFUL ABOUT DEALING WITH ANYONE PROMISING THAT THEY CAN "SAVE YOUR HOME FROM FORECLOSURE" OR SIMILAR COME-ONS.**

The Colorado Foreclosure Protection Act,, § § 6-1-101-1120, C.R.S., applies to any contract between a homeowner and a Foreclosure Consultant who offers to stop or prevent a foreclosure sale for a fee. The law prohibits a Foreclosure Consultant from charging or collecting any money from the homeowner BEFORE their services have been completed. It is a criminal offense to violate this law.

Many people try to take advantage of people in a desperate situation caused by a foreclosure. Rather than trying to help you, however, too many of these people are simply looking to steal the equity you have built up in your home. Common scams include:

- Extremely high cost and short term (balloon) loans secured by a second mortgage on your home to allow you to cure your current default. Usually, you have no real ability to pay off this loan.
- There are a variety of scams in which the consumer is convinced (or misled) to convey title of his or her property to the individual who is "rescuing" him or her from foreclosure. The consumer is left with a lease or option to "repurchase" his or her home, often on terms that are even more onerous than the loan on which he or she originally defaulted. The consumer is soon evicted from the home and his or her rescuer ends up with all of the equity.
- Consumers (especially non-English proficient) are asked to falsify loan application and other documents to misrepresent either the value of their home or their employment/income in order to qualify for a loan. Of course, they then have no real ability to repay that loan and soon find themselves in foreclosure.
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**6-1-1104. Foreclosure consulting contract.**

- (1) A foreclosure consulting contract shall be in writing and provided to and retained by the home owner, without changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the home owner.
- (2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the home owner signed the contract.
- (3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.
- (4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner of the residence in foreclosure and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.
- (5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point bold-faced type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the home owner's signature:

Notice Required by Colorado Law

\_\_\_\_\_ (Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (him/her/it) or (his/her/its) associate.  
\_\_\_\_\_ (Name) or (his/her/its) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.  
You may, at any time, cancel this contract, without penalty of any kind.  
If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to \_\_\_\_\_ (name and address of foreclosure consultant) at \_\_\_\_\_ (address of foreclosure consultant, including facsimile and electronic mail address).  
As part of any cancellation, you (the home owner) must repay any money actually spent on your behalf by \_\_\_\_\_ (name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year. This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the federal department of housing and urban development before signing.

- (6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract. The notice of cancellation shall:
  - (a) Be on a separate sheet of paper attached to the contract;
  - (b) Be easily detachable; and
  - (c) Contain the following statement, printed in at least fourteen-point type:

Notice of Cancellation

(Date of contract)

To: (name of foreclosure consultant)  
(Address of foreclosure consultant, including facsimile and electronic mail)  
I hereby cancel this contract.  
\_\_\_\_\_ (Date)  
\_\_\_\_\_ (Home owner's signature)

(7) The foreclosure consultant shall provide to the home owner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the home owner may cancel the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

**Source: L. 2006:** Entire part added, p. 1334, § 1, effective May 30.

### **6-1-1105. Right of cancellation.**

(1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when the home owner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the home owner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the home owner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the home owner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the home owner.

(6) The right to cancel may not be conditioned on the repayment of any funds.

**Source: L. 2006:** Entire part added, p. 1336, § 1, effective May 30.

### **6-1-1106. Waiver of rights - void.**

(1) A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

- (a) Waive any of the rights specified in this subpart 2 or the right to a jury trial;
- (b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;
- (c) Consent to venue in a county other than the county in which the property is located; or
- (d) Impose any costs or fees greater than the actual costs and fees.

**Source: L. 2006:** Entire part added, p. 1337, § 1, effective May 30.

#### **6-1-1107. Prohibited acts.**

(1) A foreclosure consultant may not:

- (a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;
- (b) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the prime rate published by the federal reserve at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;
- (c) Take a wage assignment, lien of any type on real or personal property, or other security to secure the payment of compensation;
- (d) Receive any consideration from a third party in connection with foreclosure consulting services provided to a home owner unless the consideration is first fully disclosed in writing to the home owner;
- (e) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a home owner with whom the foreclosure consultant has contracted;
- (f) Obtain a power of attorney from a home owner for any purpose other than to inspect documents as provided by law; or
- (g) Induce or attempt to induce a home owner to enter into a foreclosure consulting contract that does not comply in all respects with this subpart 2.

**Source: L. 2006:** Entire part added, p. 1337, § 1, effective May 30.

#### **6-1-1108. Criminal penalties.**

A person who violates section 6-1-1107 is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

**Source: L. 2006:** Entire part added, p. 1338, § 1, effective May 30.

### **6-1-1109. Unconscionability.**

(1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds a foreclosure consultant contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consultant contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the foreclosure consultant or associate such as that which results from an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

**Source: L. 2006:** Entire part added, p. 1338, § 1, effective May 30.

### **6-1-1110. Language.**

A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

**Source: L. 2006:** Entire part added, p. 1338, § 1, effective May 30.

## **Attorney General Announces Mortgage Fraud Cases**

11/18/2008

*Suthers focuses on deceptive advertising, option ARMs, foreclosure consultants*

**(DENVER)** – Colorado Attorney General John Suthers today announced numerous actions his office

has taken to crackdown on deceptive mortgage brokers and foreclosure rescue firms. These actions are part of the Attorney General's ongoing effort to help protect Colorado borrowers from deceptive lending practices and to shield borrowers facing foreclosure from fraudulent activity.

The Attorney General's Office began investigating numerous mortgage brokers and foreclosure rescue firms in late 2006 and early 2007, as the foreclosure crises reached its tipping point. Several of those investigations have recently concluded, the results of which are summarized below.

#### Mortgage advertising

Attorney General Suthers has reached settlements with several local mortgage firms, setting a new, statewide standard for truthful advertising of mortgage loans. The companies, Denver's Arbor Financial, Inc. and 5280 Financial Group, and Centennial-based Mortgage Toolbox, have agreed to settlements that will eliminate the deceptive use of teaser rates in mortgage loan advertisements.

Each of the three companies ran ads in the "Mortgage Marketplace" sections of the *Denver Post* and *Rocky Mountain News*, advertising low teaser rates and/or low minimum monthly payments associated with option ARM loans<sup>1</sup>. Disclosures of true interest rates and other loan terms were buried in agate footnotes, if included at all. Several of the brokers interviewed during the course of these investigations remarked that these advertisements "made the phones ring."

As part of the settlements, each of the brokers has agreed to advertise only traditional fixed rate loans or traditional ARMs, not option ARMs. The firms also have agreed to include certain disclosures about material loan terms in readable print. Finally, the brokers must ensure that at least 24-hours prior to closing, each borrower will be provided with a copy of the Consumer Handbook on Adjustable Rate Mortgages.

#### Deceptive mortgage brokers

The Attorney General has filed civil claims under the Colorado Consumer Protection Act in Arapahoe County District Court against Englewood-based Home Mortgage Solutions, Inc., and three associated individuals: owners Toan Le (aka James Le) and An Nguyen, and general manager Leonard Smith.

Home Mortgage Solutions allegedly used direct mail to market risky option ARM loans to borrowers without disclosing the associated risks. The complaint alleges that Home Mortgage Solutions misrepresented the low introductory rate as a permanent interest rate, and made refinancing nearly impossible with prepayment penalties, facts which Home Mortgage Solutions failed to disclose to borrowers.

In another action, Attorney General Suthers has reached a settlement with Englewood's Encore Lending, LLC, and one of its owners, Paul Baker, for depositing money into borrowers' accounts and inflating their incomes to qualify them for larger loans. Baker has agreed to surrender his mortgage broker license.

The Attorney General has also reached a settlement with Sacramento, California-based mortgage broker Tri-Point Realty, which sent letters to Colorado homeowners that appeared to be from a homeowner's bank. The letters urged the homeowner to refinance to take advantage of his home's increased value. Tri-Point, however, had no affiliation with the lender and did not conduct any research to determine if the home had actually increased in value.

Mail that appears to come from the government or a homeowner's bank is more likely to be opened and considered by the homeowner, and thus places honest advertisers at a disadvantage. The settlement prohibits Tri-Point from further misrepresentations in its advertisements.

### Foreclosure Protection Act enforcement

The Attorney General has also taken action to protect homeowners who are in foreclosure from "rescue" firms who are not following Colorado's Foreclosure Protection Act, which Attorney General Suthers championed and saw passed during the 2006 legislative session. To date, the Attorney General's Office has reached Cease & Desist agreements with 15 companies to prevent them from operating in Colorado until they follow this law.

Many distressed homeowners in foreclosure are bombarded with solicitations from companies that offer to help save their homes. Under the Foreclosure Protection Act, homeowners enjoy many protections against abusive tactics. Rescue firms cannot accept an upfront fee and must provide the homeowner with a contract that specifies the services to be performed. Rescue firms are also prohibited from taking a lien or interest in the title to the home unless they provide certain disclosures.

Under the Cease & Desist agreements, seven rescue firms have agreed to cease operations in Colorado until they come into compliance with the Foreclosure Protection Act. Companies that have agreed to cease & desist during 2008 include:

- Crisis Management, LLC, located in Glendale, Arizona
- Davis Foreclosure Assistance, located in Englewood, New Jersey
- The Debt Advocacy Center, located in Cleveland, Ohio
- Franklin Equity, located in Santa Ana, California
- HomeAssure, located in New York, New York
- National Foreclosure Counseling Services, located in Jacksonville, Florida
- New Hope Modifications, located in Bellmawr, New Jersey

An additional eight companies have previously reached Cease & Desist agreements with the Attorney General since the Foreclosure Protection Act was enacted, including one Colorado company, Denver Home Rescue.

### Criminal cases and consumer education

The office of Attorney General Suthers indicted 10 individuals last March in an \$11 million mortgage fraud ring involving 34 local properties. Three of the defendants, Heather Etuk, Jennifer Wolsey, and Jessica Decker, pled guilty to felony and misdemeanor counts and received probationary sentences. The remaining seven defendants, including the alleged ringleaders, are scheduled for trial in late February and March of 2009. Several other investigations of mortgage fraud are ongoing.

The Attorney General urges borrowers to learn more and shop around before taking out a home loan. The Colorado Housing and Finance Authority has many free or low-cost programs available for consumers to learn how to buy a home and take out a mortgage. To learn more, visit CHFA's [website](#).

For those who are having trouble making their mortgage payments or are currently in foreclosure, there are many low- and no-cost options available for getting help. Homeowners facing difficulties are encouraged to call Colorado's Foreclosure Hotline at 1-877-601-HOPE (4673). Homeowners contacting the Foreclosure Hotline stand a much better chance of saving their home than those who go it alone.

1 An option ARM loan appears to be a traditional adjustable rate mortgage, with a low introductory or "teaser" rate, usually two percent or lower. After the teaser rate expires, the interest rate rises dramatically, often to eight percent or more. Although the borrower retains the "option" of continuing to make low monthly payments, any difference between the payment and the interest actually accruing on the loan is added to the principal – a process known as negative amortization. According to industry estimates, as much as 85 percent of option ARM borrowers make only the minimum

payment. When the interest added reaches a certain level (usually 110% of the principal loan balance) the loan recasts and the borrower is responsible for a fully amortized monthly payment.

[http://www.ago.state.co.us/press\\_detail.cfm?pressID=928.html](http://www.ago.state.co.us/press_detail.cfm?pressID=928.html)