



Loss Mitigation and Foreclosure Fraud

MBA's National Mortgage Servicing Conference
February 23 - 26, 2010
Manchester Grand Hyatt San Diego

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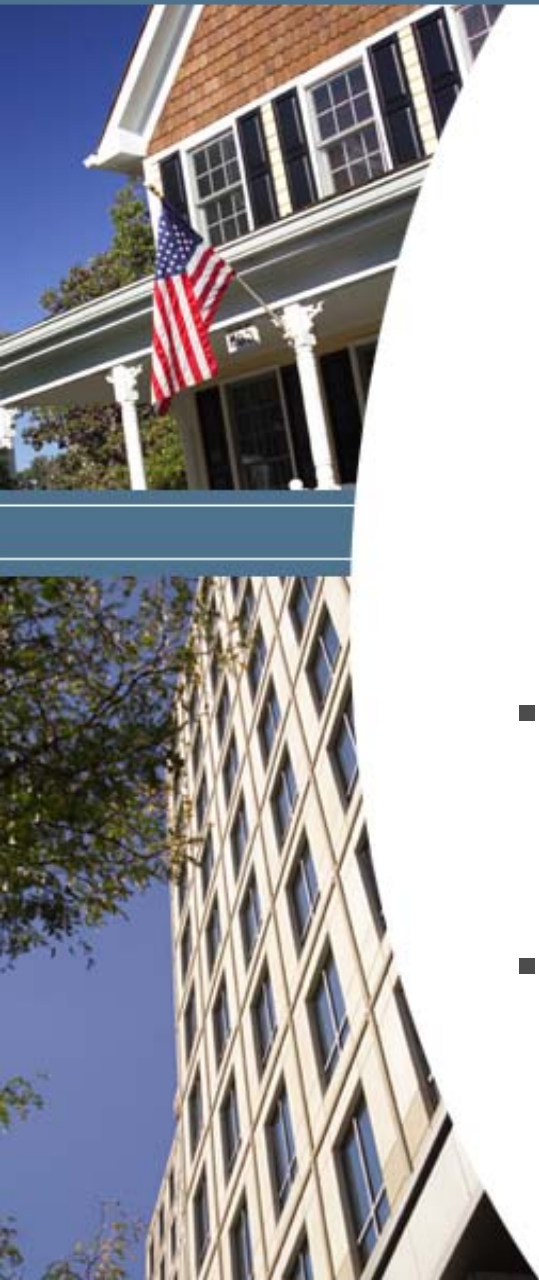
Loss Mitigation & Foreclosure Fraud

OVERVIEW:

The purpose of this session is to introduce multiple fraud schemes impacting mortgage companies that are being revealed across the country. Then to present possible steps to prevent these activities and possibly recover losses.

OBJECTIVES:

- Describe fraud schemes involving default/ loss mitigation, identify preventive measures and possible recovery.
- Describe foreclosure rescue schemes, identify preventive measures and possible recovery.



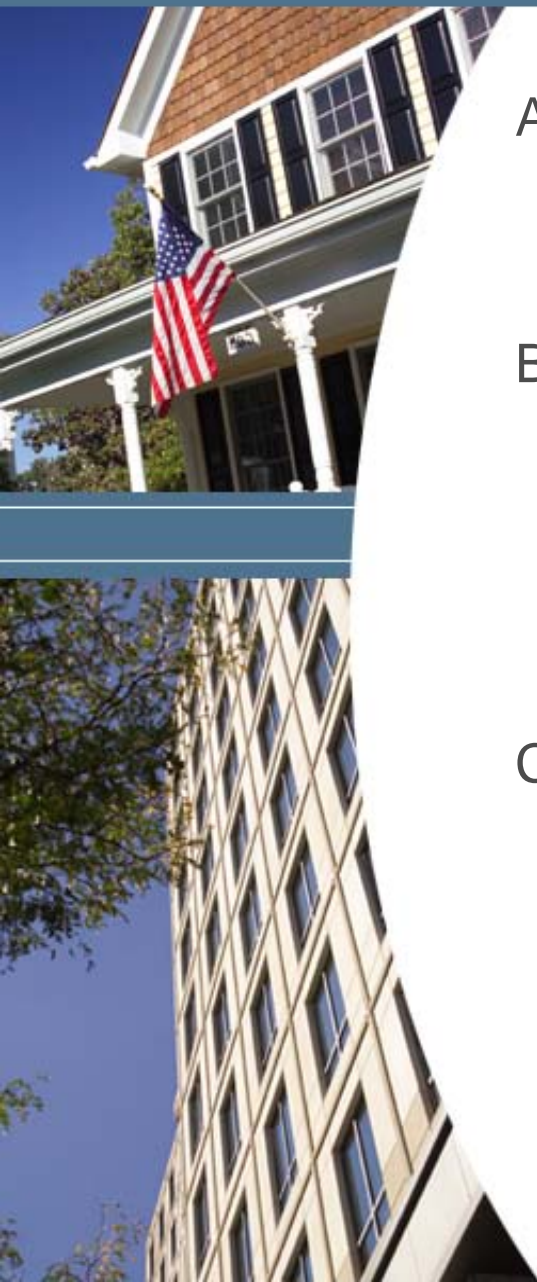
Loss Mitigation & Foreclosure

Objective # 1

Realize Origination Fraud Impacts
Servicing

Loss Mitigation & Foreclosure Fraud

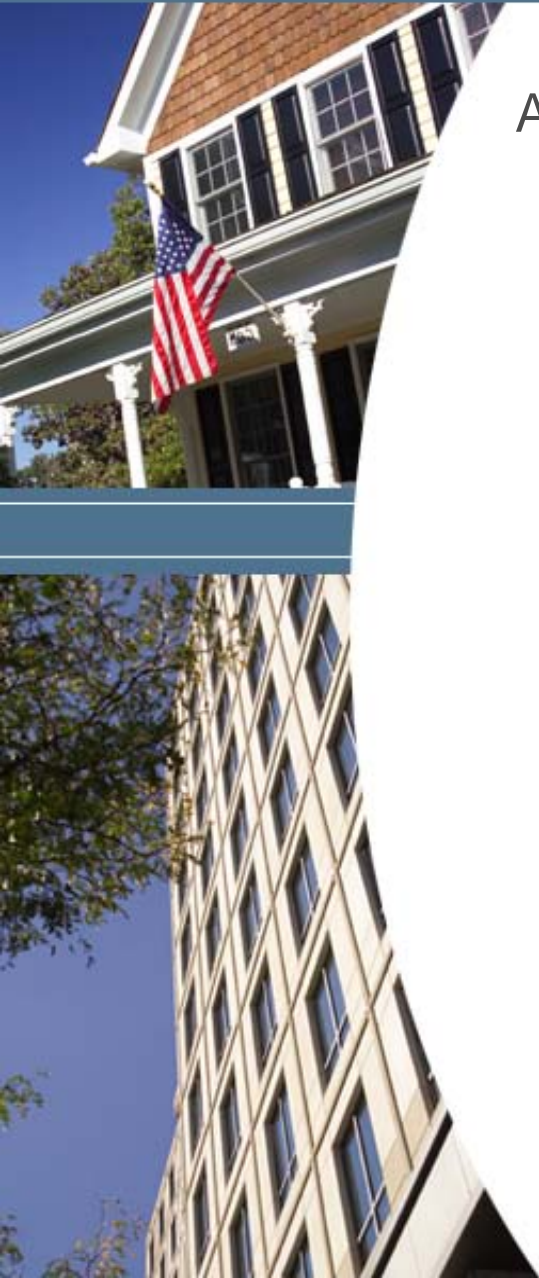
Types of Mortgage fraud



- A. Origination/Pre-Closing Fraud
 - I. Fraud for Housing
 - II. Fraud for Profit
- B. Fraud for Housing
 - I. False statements
 - II. Forged documents
 - III. False Occupancy Declaration
 - IV. Misrepresentation
- C. Fraud for Profit
 - I. Appraisal Scams
 - II. Straw Buyers
 - III. Flipping
 - IV. Identity Theft

Loss Mitigation & Foreclosure Fraud

Realize Origination Fraud Impacts Foreclosure

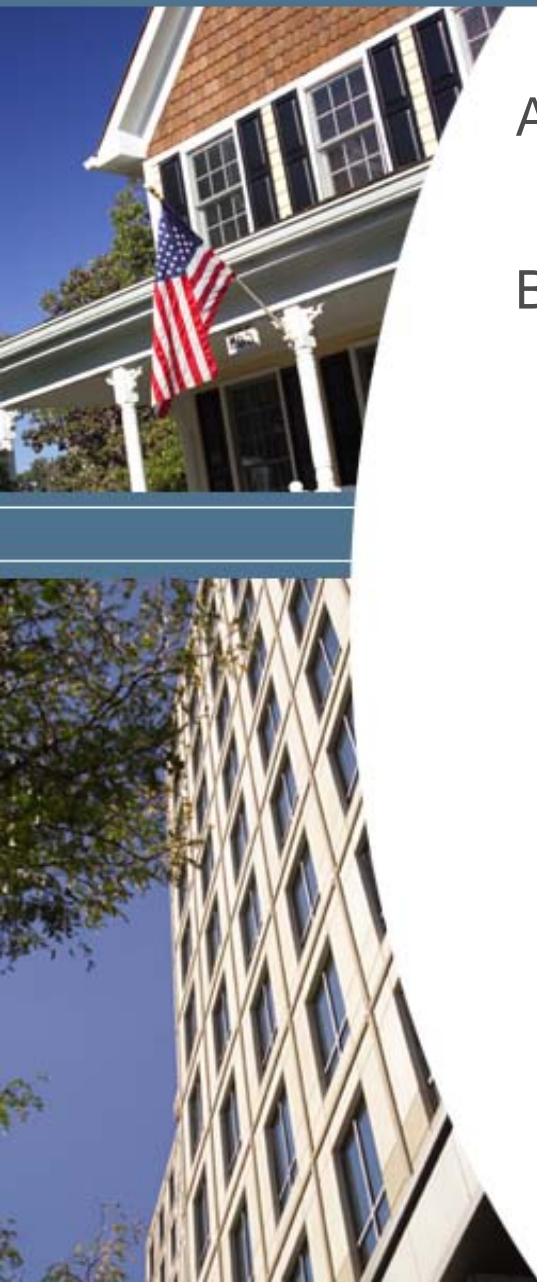


A. Pre-Closing/Origination Fraud Impact

- I. **Fraud for Housing** placed an unqualified borrower in a property they could not otherwise afford, except through fraud. In this economic climate, they are much more likely to fail and become delinquent.
- II. **Fraud for Profit** typically involves either an over inflated value on the property or a borrower that does not have the intention to pay the mortgage payment (straw buyer or fraudster)

Loss Mitigation & Foreclosure Fraud

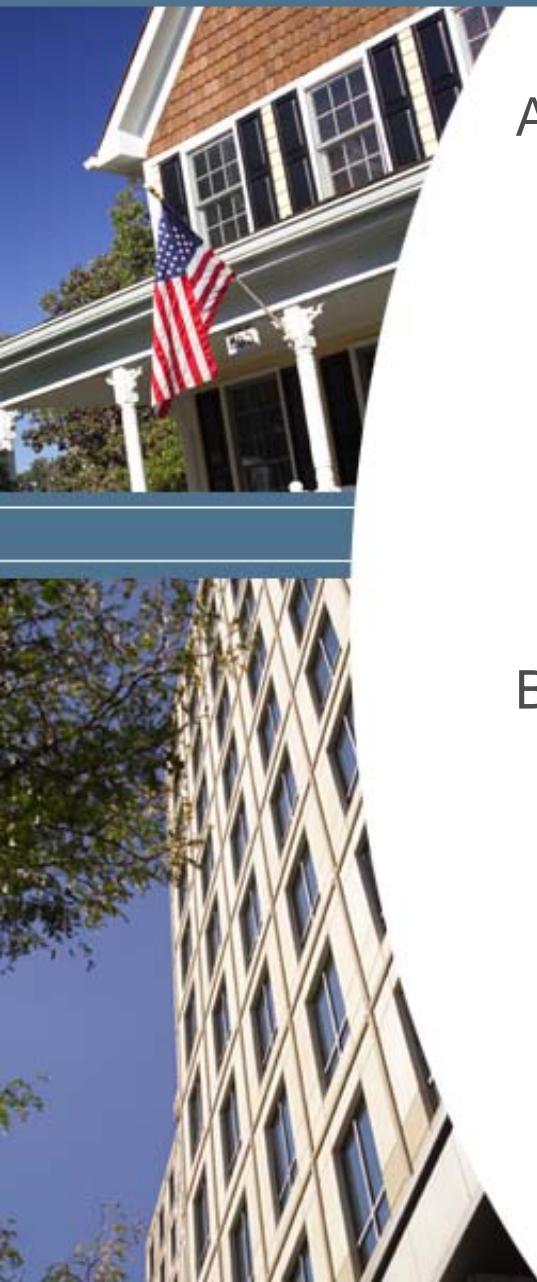
Realize Origination Fraud Impacts Foreclosure



- A. How does Pre-Closing/Origination Fraud Impact Servicers?
- B. Both Fraud for Housing and Fraud for Profit lead to:
 - I. Increased expense in collection attempts
 - II. Increased expense in loss mitigation contacts
 - III. Increased expense in foreclosure costs
 - IV. Increased expense in REO attempting to secure, insure, keep up property and sale
 - V. Increased expense for litigation for loan repurchase from GSE and against originator
 - VI. Decreased Reputation for servicer
 - VII. Decreased property values for surrounding properties
 - VIII. Decreased portfolio value, portfolio does not perform as anticipated

Loss Mitigation & Foreclosure Fraud

Realize Origination Fraud Impacts Foreclosure



- A. Furthermore, though we may as an industry classify this as Origination fraud, once the loan is closed different units in servicing will have to deal with the fallout of the loan – Collection, Loss Mitigation (straw buyer), Investor/GSE relations, Foreclosure, REO – at least and until the loan is repurchased by the originator
- B. Therefore, we can easily conclude that even though the Fraud may have occurred Pre-Closing – Foreclosures may ultimately take place

Loss Mitigation & Foreclosure Fraud

Objective # 2

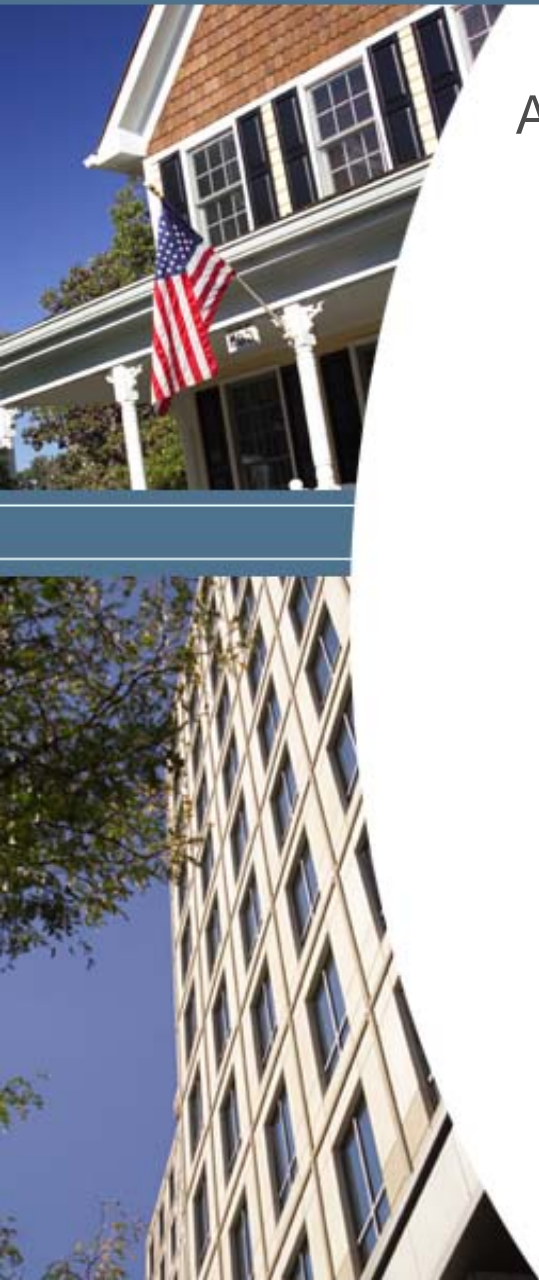
Describe Fraud Schemes Involving Default/ Loss Mitigation, Identify Preventive Measures and Possible Recovery.

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Fraud Schemes Involving Default and Loss Mitigation

- I. Phony Short Sale Scams
- II. Mortgage Elimination Scams
- III. Fraud Schemes in Bankruptcy
- IV. Preemptive Lawsuits by Delinquent Borrowers
- V. Buy and Bail



Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Phony Short Sale Scam

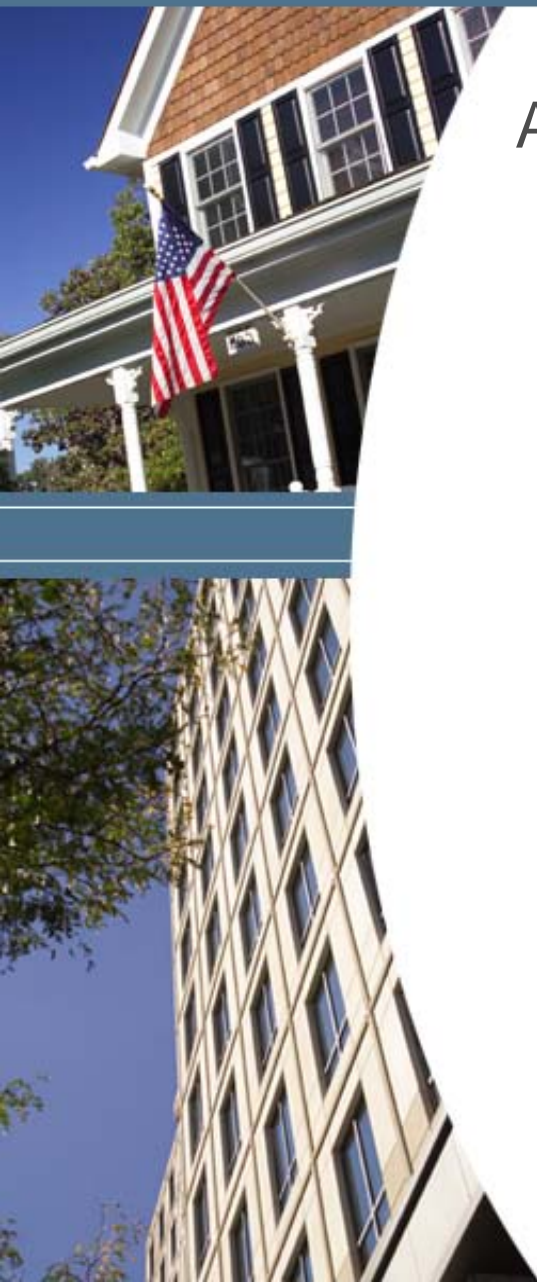
I. Background

a. Borrower is delinquent and property is on market for sale. Usually some communication between borrower and servicer has already taken place to determine:

1. Original Value
2. Current UPB
3. Applicable local market conditions
4. Range for Short Sale Price

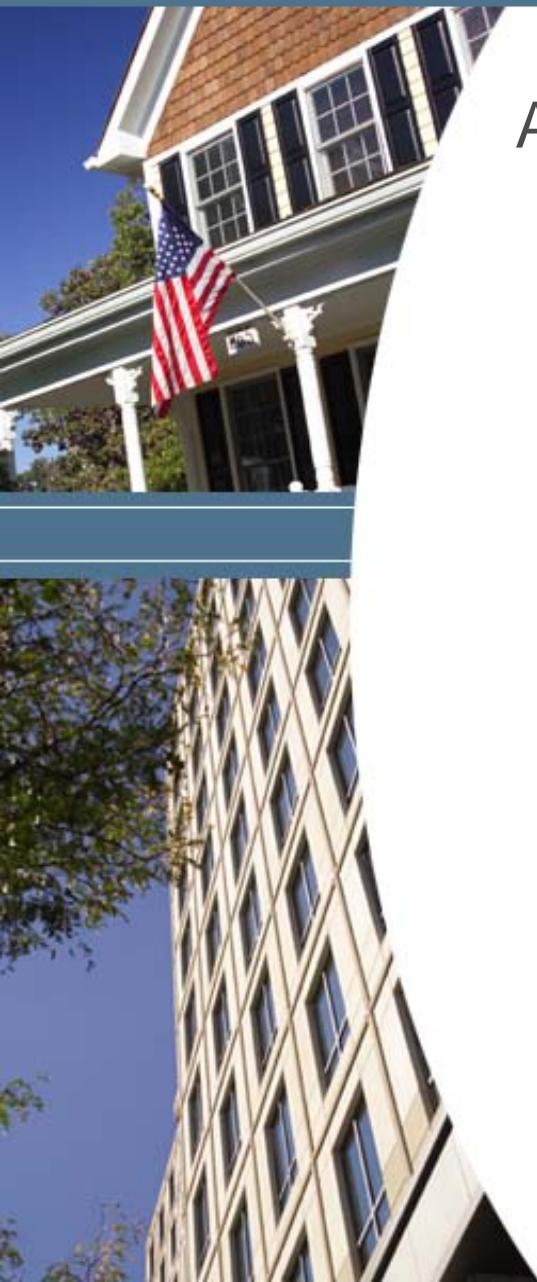
II. Usually two (2) types of fraud

- a. Fraud directed against Borrower
- b. Fraud directed against Servicer



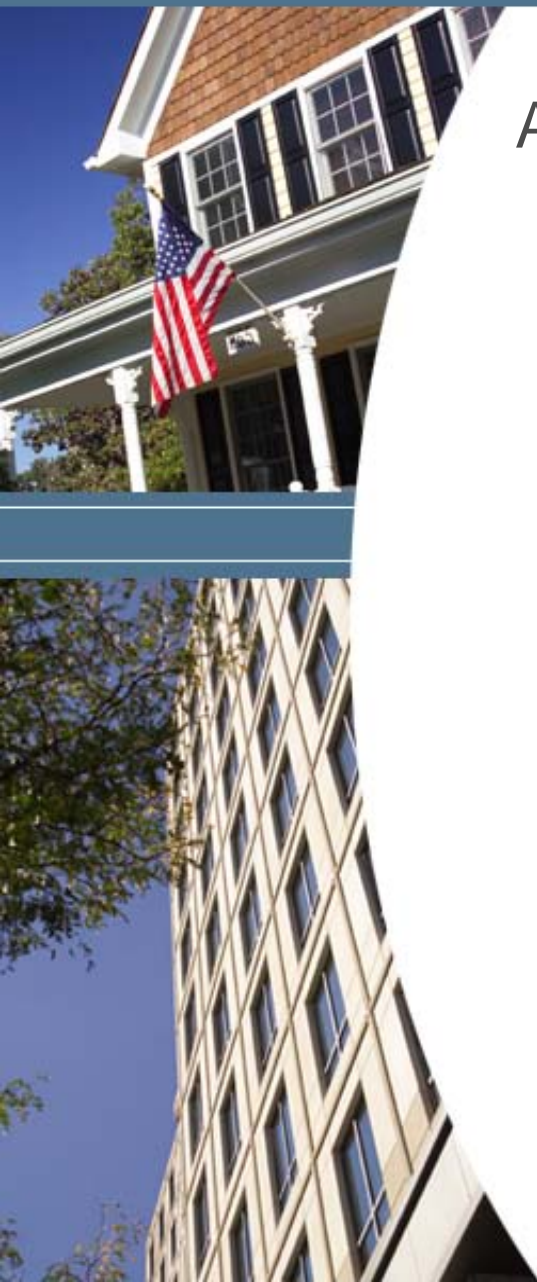
A. Phony Short Sale Scam - Fraud Directed Against Borrower

- I. Distressed Borrower, pays an up front fee and grants Power of Attorney to “Short Sale Specialist” to negotiate with lender and/or prospective purchaser for short sale price.
- II. If no Sale – Specialist just keeps up front fee if no sale, servicer loses valuable time due to specialist and borrower further upside down.
- III. If Sale – Specialist makes money off of sale, buyer has good price, servicer/investor loses money, distressed borrower has no home and possible tax consequences from the short sale



A. Phony Short Sale Scam - Fraud Directed Against Servicer

- I. Borrower enters into contract with colleague, relative, business partner, etc. for a contract well below UPB
- II. Property “dressed down” to give illusion of “artificially distressed” for inspection purposes (waste issue)
- III. Lender accepts artificially depressed short sale price
- IV. Original Borrower moves back into property, arranges to “buy back” property and eventually has same house with new lower loan
- V. Servicer and Investor lose through fraud

A collage of images on the left side of the slide. The top part shows a two-story house with a red roof, white columns, and an American flag flying. The bottom part shows a tall, modern skyscraper with a grid of windows.

A. Phony Short Sale Scam - Fraud Directed Against Borrower and Servicer

I. Prevention and Recovery

- a. Communication and contact with distressed borrower are critical to help prevent either Borrower or Servicer from falling prey to the scam and losing money.
- b. Servicer needs to closely scrutinize all parties involved in a Short Sale. (Borrower, Purchaser, Realtors, etc)
- c. Servicer needs to make sure the Short Sale is an arms-length transaction. Use affidavits if necessary.
- d. Servicer needs an updated appraisal or BPO
- e. Civil suit in fraud against Servicer for fraudulent inducement and rescission of sale.

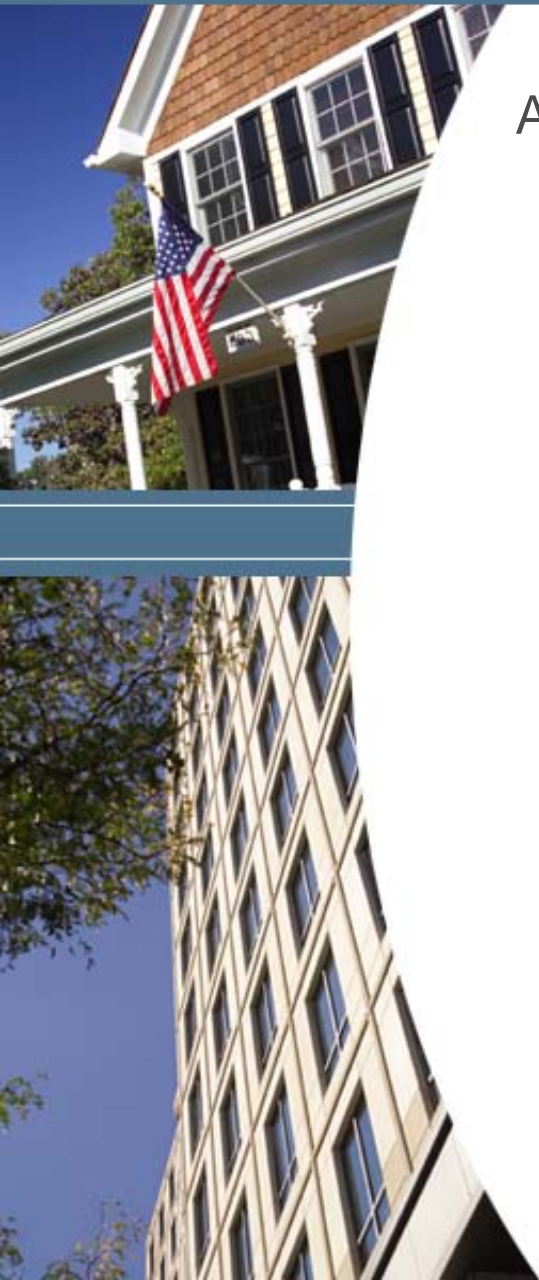
Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Mortgage Elimination Schemes

I. Background in Delinquency context

- a. Borrower is delinquent and stress of situation makes them susceptible to radical views toward Mortgage/Deed of Trust instrument. Scammer preys on lack of sophistication of Borrower that no “real” money changed hands during real estate closing transaction; therefore, Mortgage/Deed of Trust is invalid lien on property.



Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Mortgage Elimination Schemes

- I. Common steps in scheme, though multiple variations on theme.
- II. The set up:
 - a. Fraudster convinces Borrower that mortgage loans are illegal
 - b. Fraudster assists Borrower in contacting servicer
 - c. Fraudster files instrument allowing them to act on behalf of servicer
 - d. Fraudster has Borrower transfer title into a trust, usually with the mortgage elimination group or representative as trustee
 - e. Lien release or Satisfaction is filed
 - f. Fraudster files/obtains new 2nd mortgage on property and keeps new loan proceeds

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Mortgage Elimination Schemes

I. The result:

- a. Borrower stops paying on original mortgage loan
- b. Original servicer will move into default management
- c. Borrower will soon learn the mortgage elimination documentation will not stand up in court of law.
- d. Court will find Borrower still responsible for original valid mortgage (if not, sue on Note)
- e. Borrower loses and has civil liability and possible criminal exposure.
- f. Servicer loses and has to expend additional resources for default, loss mitigation or foreclosure.
- g. Fraudster wins (temporarily) has new loan proceeds

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Mortgage Elimination Schemes

I. The Prevention and Recovery:

- a. Communication and contact with distressed Borrower as to legitimate Loss Mitigation Options available.
- b. Notify authorities and assist in prosecution of fraudster and Borrower - make it very public to deter similar groups
- c. Civil suit against fraudster for fraud, tortious interference, misrepresentation, slander of title to property, etc.
- d. Civil suit against Borrower for fraud, misrepresentation and negligence. If not already done, notice of delinquency and notice of acceleration due to transfer to trust without written consent

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Fraud Schemes in Bankruptcy

- I. Numerous fraud scams exist in Bankruptcy which impact the servicer. The following are just examples of what we have seen.
 - a. Transfer of Property immediately prior to Petition
 - b. Only one spouse files bankruptcy, so the undivided $\frac{1}{2}$ interest is part of the estate the other $\frac{1}{2}$ is not.
 - c. Obtaining fraudulent deflated appraisals on property in an attempt to strip secured lien off the property and convert it into an unsecured lien.
 - d. Debtor receives Bankruptcy court approval to sell property and then sets up a fraudulent sale of property to a straw buyer to either keep the house or strip the remaining equity out of the house. Courts don't like it when you steal/embezzle from the bankruptcy estate. See following page.

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Fraud Schemes in Bankruptcy

I. Press Release 1/28/09 from USA Hewitt SDCA

- a. **Justine Lorraine Rice, 45, and Wendell Anthony Rice, 45, Rancho Santa Fe, California, have been indicted and arrested for mortgage fraud, false statements on loan applications, bankruptcy fraud, contempt of court, perjury, and money laundering.**

In April 2006, Mrs. **Rice** filed for bankruptcy claiming the home, co-owned by Mr. **Rice** and her, as her primary asset. **During the pendency of the bankruptcy, the home was foreclosed upon by one of her lenders. Mrs. Rice arranged for a third party to purchase the home from the lender. Mrs. Rice assisted the third party in falsifying a mortgage loan application and secretly supplied the down payment to that individual.** Part of the down payment was obtained by Mrs. **Rice** by borrowing money from other third parties.

Mrs. **Rice** obtained permission from the Bankruptcy Court for the sale of the home to occur, but the **Court ordered that any proceeds from the sale, excepting payments to secured creditors, had to be placed in a blocked account or an attorney-client trust account.** Instead, Mrs. **Rice** caused the **more than \$200,000 in proceeds to be wired to an account controlled by Mr. Rice. Mrs. Rice lied in several Bankruptcy Court proceedings regarding the third-party loan claiming that it was taken by her brother-in-law and given to her as a gift.**

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

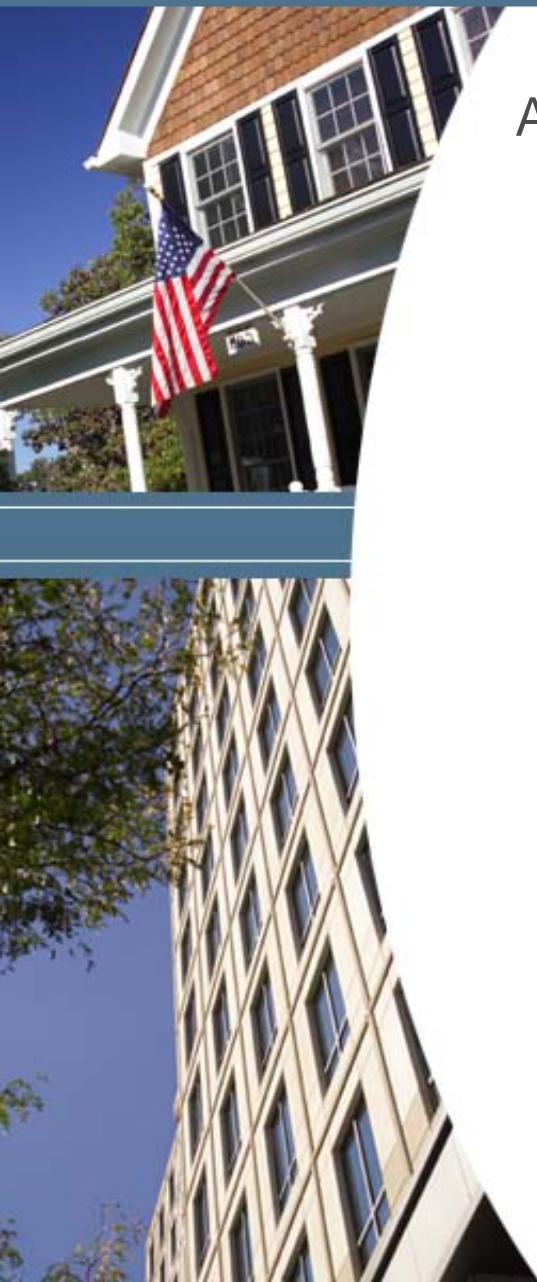
A. Preemptive Lawsuits by Delinquent Borrowers

1. Background:

- a. Borrowers in default and in some instances at the beginning of the foreclosure process and the apparent goal by the Borrower is DELAY!!
 - b. Types of Claims:
 - i. Allegation of payment misapplication
 - ii. Allegation of escrow issues
 - iii. Allegation of TILA/RESPA non-compliance
 - iv. Allegation of origination fraud
 - v. Voluminous QWR for documents
 - vi. Switching their mailing address
 - vii. Challenge the Ownership of Your Note
- Does your lender really own your mortgage? Are you sure? Why don't you make them prove it?
- All of the above are done to delay and then pressure for a loan modification

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation



- A. Preemptive Lawsuits by Delinquent Borrowers
 - I. Outbreak of Copy Cat Form Complaints filed in order to delay the default management/foreclosure process.
 - II. Most Complaints and QWR are form documents, not even tailored to the specific borrower or loan.
 - III. The following illustrative cases have no substantive legal basis but all contain the following causes of action:
 - a. RESPA/GFE violation
 - b. TILA/Disclosure statement violation
 - c. Florida Unfair Deceptive Trade Practices Acts
 - d. Fraud
 - e. Rescission

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- A. Example of Copy Cat Complaints all filed by same attorney, all filed in same Court, all filed within weeks of each other, all filed after an internet press release on the National Association of Consumer Advocates (NACA) website, same COA, same demand for damages, all subsequently sought loan modifications:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 08-CV-60922-Cohn-Seltzer

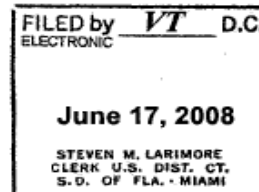
ANGELA TOUSSAINT

Plaintiff(s),

vs.

NOVASTAR NORTGAGE, INC.

Defendant(s).



Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- A. Example of Copy Cat Complaints all filed by same attorney, all filed in same Court, all filed within weeks of each other, all filed after an internet press release on the National Association of Consumer Advocates (NACA) website, same COA, same demand for damages, all subsequently sought loan modifications:

Case 0:08-cv-60918-WPD Document 1 Entered on FLSD Docket 06/17/2008 Page 1 of 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: **08-CV-60918-Dimitrouleas-Rosenbaum**

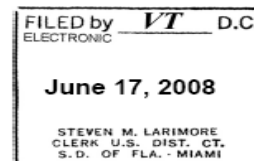
ROY WILLIAMS,

Plaintiff(s),

vs.

**SAXON MORTGAGE SERVICES,
INC. AND NOVASTAR
MORTGAGE, INC.**

Defendant(s).



Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- A. Example of Copy Cat Complaints all filed by same attorney, all filed in same Court, all filed within weeks of each other, all filed after an internet press release on the National Association of Consumer Advocates (NACA) website, same COA, same demand for damages, all subsequently sought loan modifications:

Case 1:08-cv-21823-AJ Document 1 Entered on FLSD Docket 06/26/2008

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| Filed by <u>1/16</u> D.C. ELECTRONIC |
| JUNE 25, 2008 |
| STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI |

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO: _____

08-21823-CIV-JORDAN/MCALILEY

**MARK ASHBY AND ADIAHA
ASHBY,**

Plaintiff(s),

vs.

**SAXON MORTGAGE SERVICES,
INC. AND HOMECOURT
MORTGAGE GROUP, INC.,**

Defendant(s).

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- A. Example of Copy Cat Complaints all filed by same attorney, all filed in same Court, all filed within weeks of each other, all filed after an internet press release on the National Association of Consumer Advocates (NACA) website, same COA, same demand for damages, all subsequently sought loan modifications:

Case 1:08-cv-21970-JLK Document 1 Entered on FLSD Docket 07/14/2008 Page 1 of 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 08-21970-CIV-KING/BANDSTRA

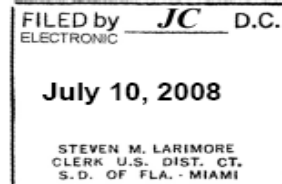
GUANDALINA MILLER,

Plaintiff(s),

vs.

SAXON MORTGAGE, INC. AND
FIRST NLC FINANCIAL SERVICES,
L.L.C.,

Defendant(s).



Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- A. Example of Copy Cat Complaints all filed by same attorney, all filed in same Court, all filed within weeks of each other, all filed after an internet press release on the National Association of Consumer Advocates (NACA) website, same COA, same demand for damages, all subsequently sought loan modifications:

Case 0:08-cv-61081-DTKH Document 1 Entered on FLSD Docket 07/15/2008 Page 1 of 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 08-61081-CIV-HURLEY/HOPKINS

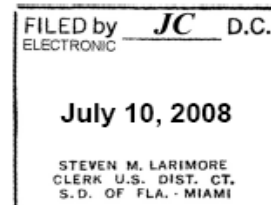
PATRICIA BRADLEY

Plaintiff(s),

vs.

SAXON MORTGAGE, INC AND
EQUIFIRST CORPORATION ET.
AL.

Defendant(s).



Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- A. Example of Copy Cat Complaints all filed by same attorney, all filed in same Court, all filed within weeks of each other, all filed after an internet press release on the National Association of Consumer Advocates (NACA) website, same COA, same demand for damages, all subsequently sought loan modifications:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 08-CV-61148-Moreno-Torres

MARCEL VILSAINT AND VIRTA
LOUIS XVI,

Plaintiff(s),

vs.

SAXON MORTGAGE, INC. AND
FIRST NLC FINANCIAL SERVICES,
LLC,

Defendant(s).

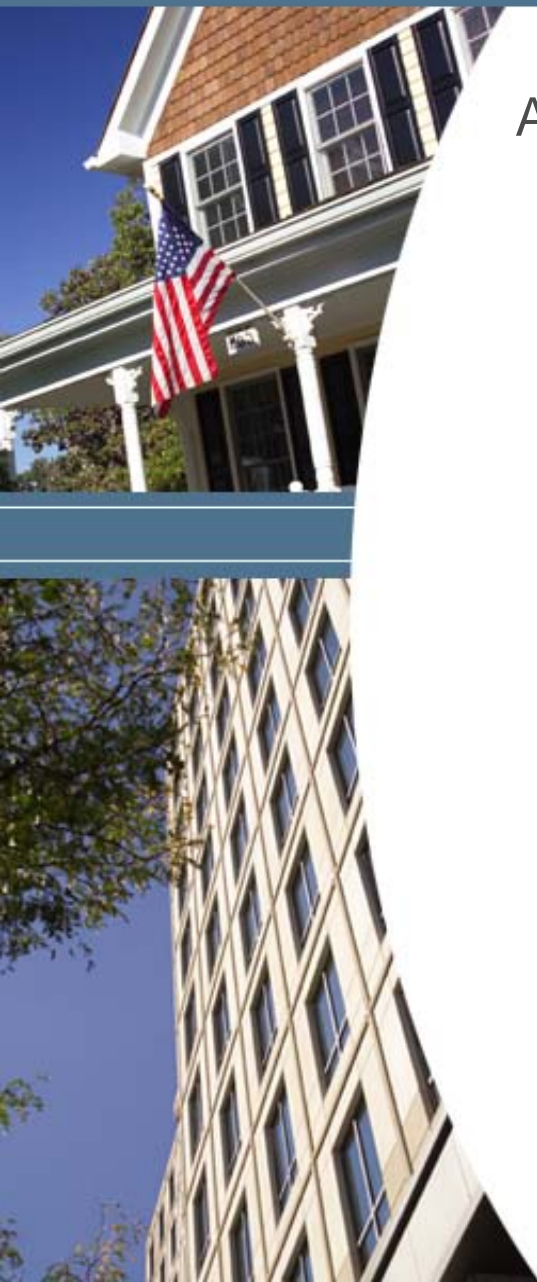
FILED by VT D.C.
ELECTRONIC

JULY 22, 2008

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

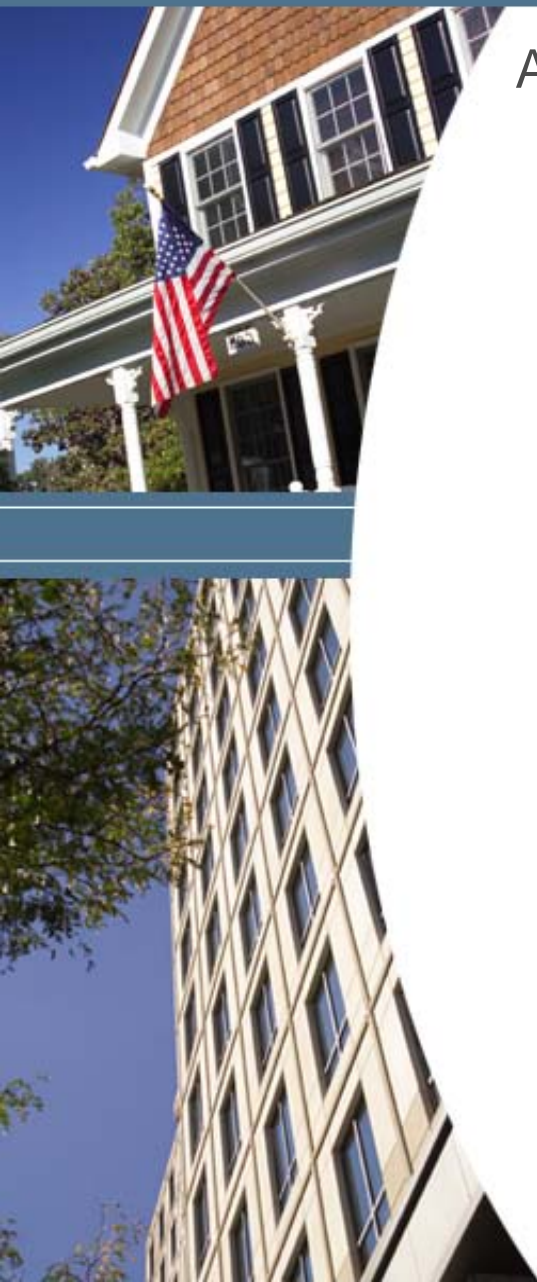
Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- 
- A. Preemptive Lawsuits by Delinquent Borrowers
 - I. Increased “Copy Cat” filings by consumer attorneys affiliated with some of the following groups:
 - a. National Consumer Advocacy organizations
 - b. State Legal Aid
 - c. Community Legal groups
 - d. Senior/Elderly Aid associations
 - e. Pro se plaintiffs with assistance from internet
 - f. Traditional Injury Attorneys with grant money
 - II. These consumer attorneys know:
 - a. A lawsuit will likely delay the default process
 - b. If property is in the foreclosure process, possibly the process will have to restart due to lawsuit, even if the lawsuit is dismissed very early.

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation



A. Preemptive Lawsuits by Delinquent Borrowers

I. Excerpts from the NACA 6/12/08 press release

- Some South Florida borrowers who are in default on their home loans aren't waiting around for their lender to begin foreclosure. They have beaten their lender to the courthouse by filing lawsuits that allege the institutions committed fraud and violated federal lending laws by overstating the borrowers' incomes to qualify them for loans, changing the loan terms just before closing, and failing to disclose the loan costs.

"These [borrowers] are basically sheep among the wolves."

• REDRESS SOUGHT

The suits seek unspecified financial damages and to have mortgages rescinded. If the borrowers prevail, any damages awarded to them could then be used to offset what they owe the lenders. That might allow borrowers **to obtain a smaller loan** and remain in their property.

II. The irony is the consumer bar alleges the lenders manipulated the origination documents for the desired loans but the consumer bar is now manipulating the legal process with bogus lawsuits for a desired "smaller loan"

III. We could call it predatory lawyering.

Loss Mitigation & Foreclosure Fraud

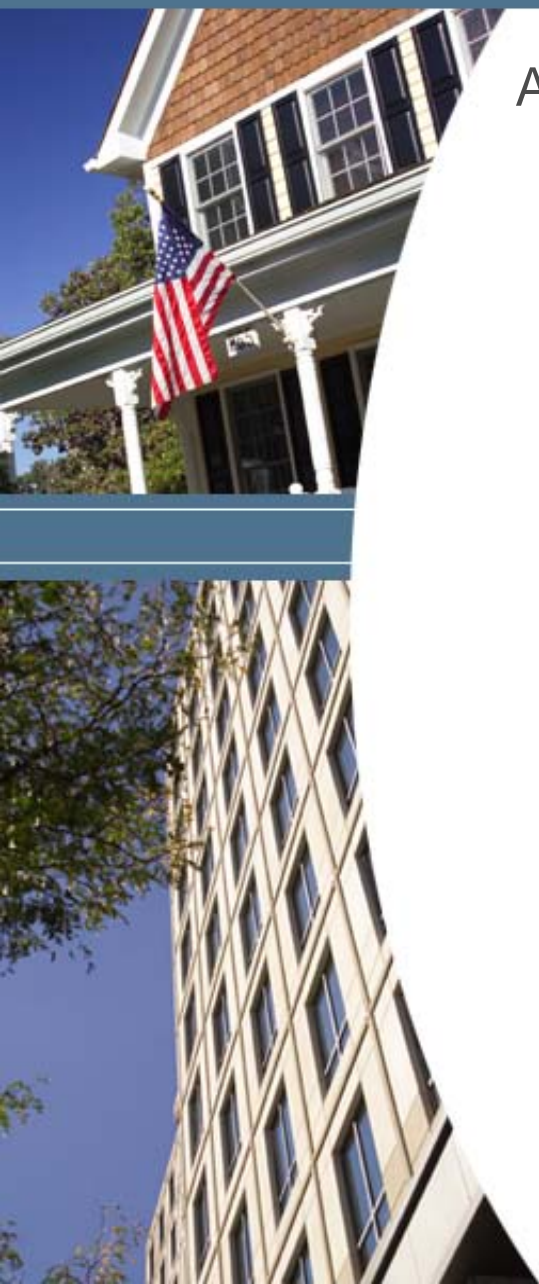
Describe Fraud Schemes Involving Default and Loss Mitigation

A. Buy & Bail

I. Background:

- a. Usually Borrower in a house with negative equity. Or Borrower is current but in near future will experience a change their ability to make the monthly mortgage payment. Ex. ARM readjust.
- b. The surrounding area already has decreased home prices. Similar homes are available for a reduced price compared to what Borrower paid for current home.
- c. Borrower realizes delinquency/foreclosure will negatively impact their credit score, which will prevent them for years from purchasing another home. Borrower desperately desires to maintain home ownership.

- II. Borrower justifies just trading a house with negative equity and higher mortgage payments for a similar house that is cheaper and with lower mortgage payments.



Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

- A. Buy & Bail

- I. The Scheme:

- a. Borrower identifies and signs a contract on a new house with decreased price.
 - b. Borrower produces a rental agreement for current house and utilizes “rental income” to obtain mortgage on the new house.
 - c. Borrower moves out of current, up-side down house and into new, market adjusted house.
 - d. Borrower defaults on old mortgage and allows foreclosure.
 - e. Borrower’s credit is damaged from foreclosure but assumes it was inevitable
 - f. Borrower in new home, lower payment, possibly beginning to build equity.

Loss Mitigation & Foreclosure Fraud

Describe Fraud Schemes Involving Default and Loss Mitigation

A. Buy & Bail

I. Why It Happens

- a. Not uncommon to purchase new home before selling current home
- b. Borrower may rationalize only option to stay in a home – credit damage will happen anyway

II. Why It is Fraud

- a. Produced fraudulent rental agreement
- b. Knowingly made a false statement on the 1003 Uniform Residential Loan Application

III. Prevention and Recovery

- a. Make sure Borrower will qualify for both mortgage payments – should help stop it.
- b. Civil Suit against Borrower for fraud (cost/benefit)
Judgment will have long term consequences to Borrower. Or if detected early enough, stop f/c and sue on the Note.
- c. Notify authorities and push in prosecution of Borrower, Title 18 USC 1001, provides for a fine and up to 5 years imprisonment.

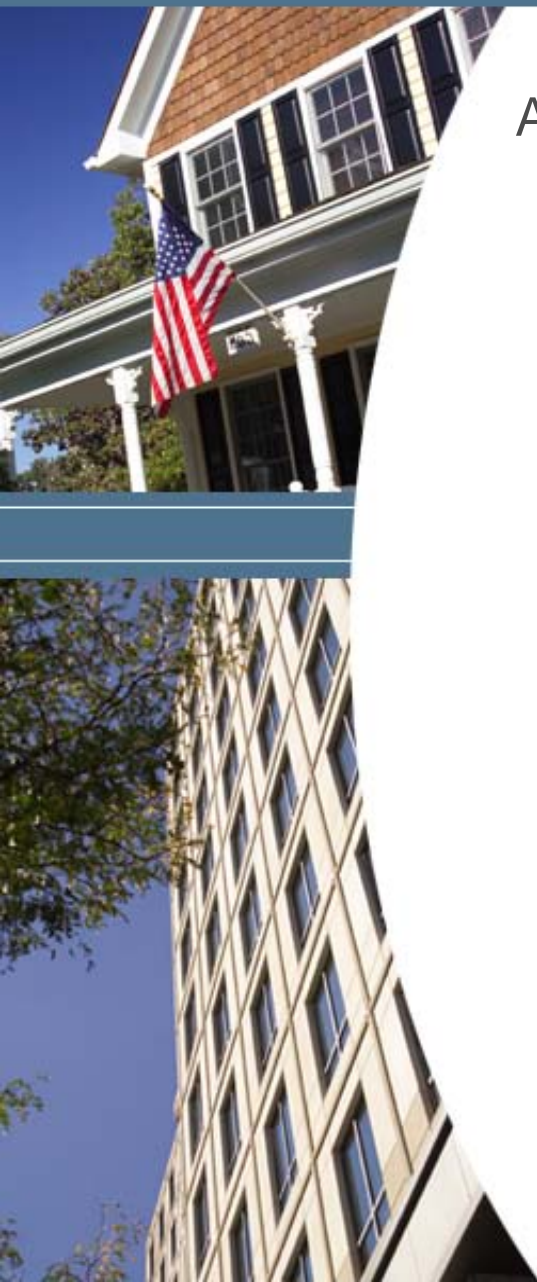
Loss Mitigation & Foreclosure Fraud

Objective # 3

Describe Foreclosure Rescue Schemes, Identify Preventive Measures and Possible Recovery.

Loss Mitigation & Foreclosure Fraud

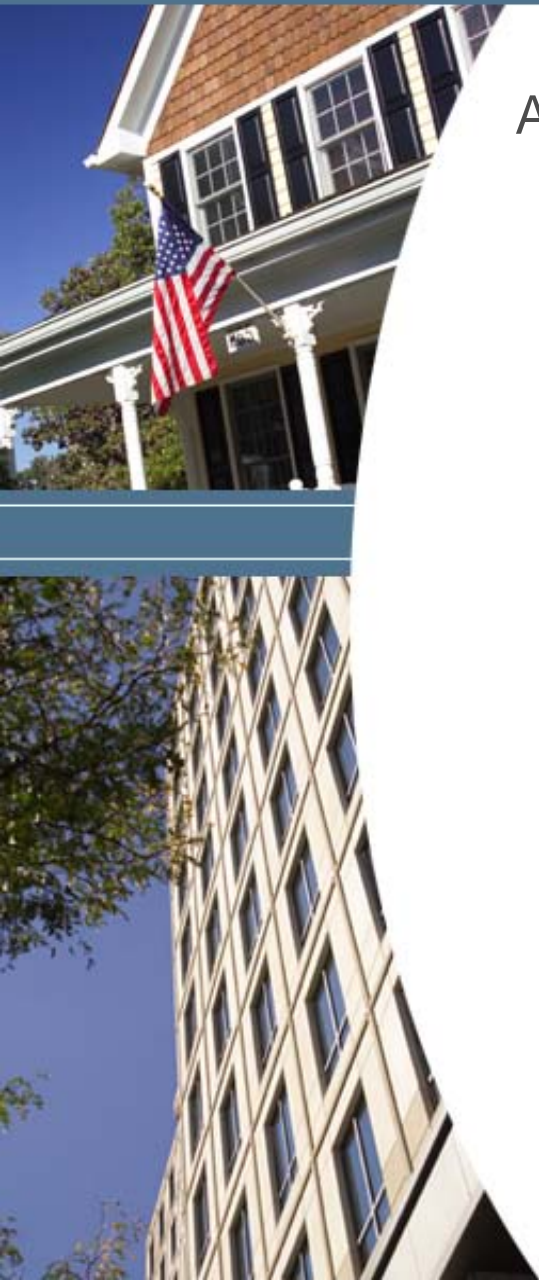
Describe Foreclosure Rescue Schemes



- A. Fraud Involving Foreclosure Rescue Schemes
 - I. Discussion of the Current Servicing Environment
 - II. Examination of Foreclosure Fraud – Why it Occurs
 - III. Anatomy of a Typical Foreclosure Rescue Scheme - “the middle man and the scam”
 - IV. Variation on a Theme: Transfer and Rent
 - V. Prevention and Recovery

Loss Mitigation & Foreclosure Fraud

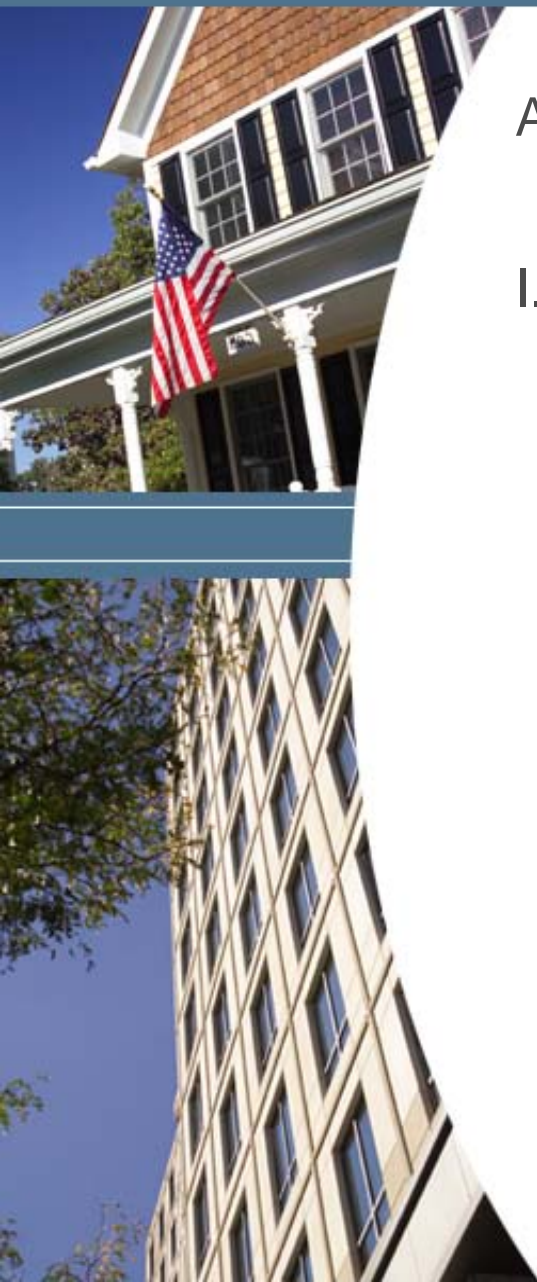
Describe Foreclosure Rescue Schemes



- A. Discussion of this Current Servicing Environment
 - I. The credibility of the entire industry is being attacked by the media, in state legislatures, the halls of Congress and courthouses across America.
 - II. Given the incredible amount of publicity on mortgage delinquencies/foreclosures and the link to financial meltdown – Litigation is exploding across the country.
 - III. Arguably, there is a growing, immediate presumption the originator/servicer acted inappropriately and an evolving belief the American homeowner has a right to a loan modification.
 - IV. The historic increase in loss mitigation efforts, delinquency by homeowners and foreclosures are overwhelming an already inundated mortgage servicing system .

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



- A. Examination of Foreclosure Fraud – Why it Occurs
 - I. The foreclosure process is an easy target for fraud because we have a basic premise that the foreclosure sale should be:
 - a. Public
 - b. Transparent from the lender's perspective
 - c. To achieve the highest price for the property in question

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes

A. Examination of Foreclosure Fraud – Why it Occurs

I. Public Notice

a. Regardless of the type of state foreclosure system:

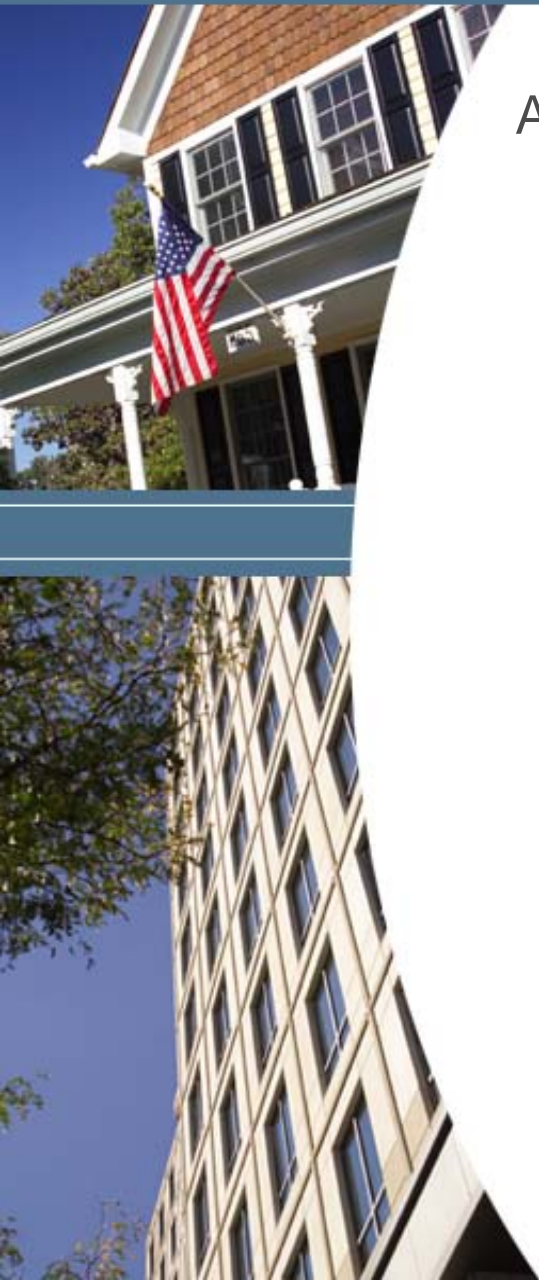
1. Power of Sale (Non-Judicial), or
2. Judicial foreclosure,

b. We provide public notice:

1. Power of Sale – the foreclosing entity has to provide notice to the public, usually in a legal periodical for a certain number of days/weeks
2. Judicial Foreclosure – the lawsuit is a public record

Loss Mitigation & Foreclosure Fraud

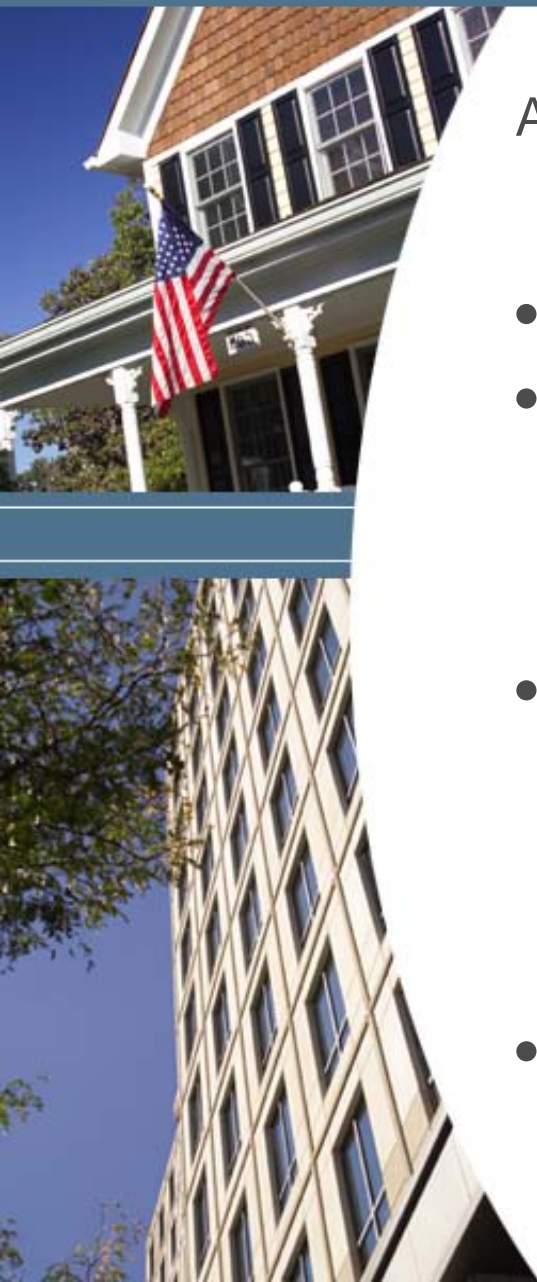
Describe Foreclosure Rescue Schemes



- A. Examination of Foreclosure Fraud – Why it Occurs
 - I. Public Notice – Public Information
 - a. Both types of foreclosure notices provide to the fraudster:
 1. The borrower's name
 2. The lender's/foreclosure entity's name
 3. The amount of indebtedness (in some jurisdictions)
 4. The property address

Loss Mitigation & Foreclosure Fraud

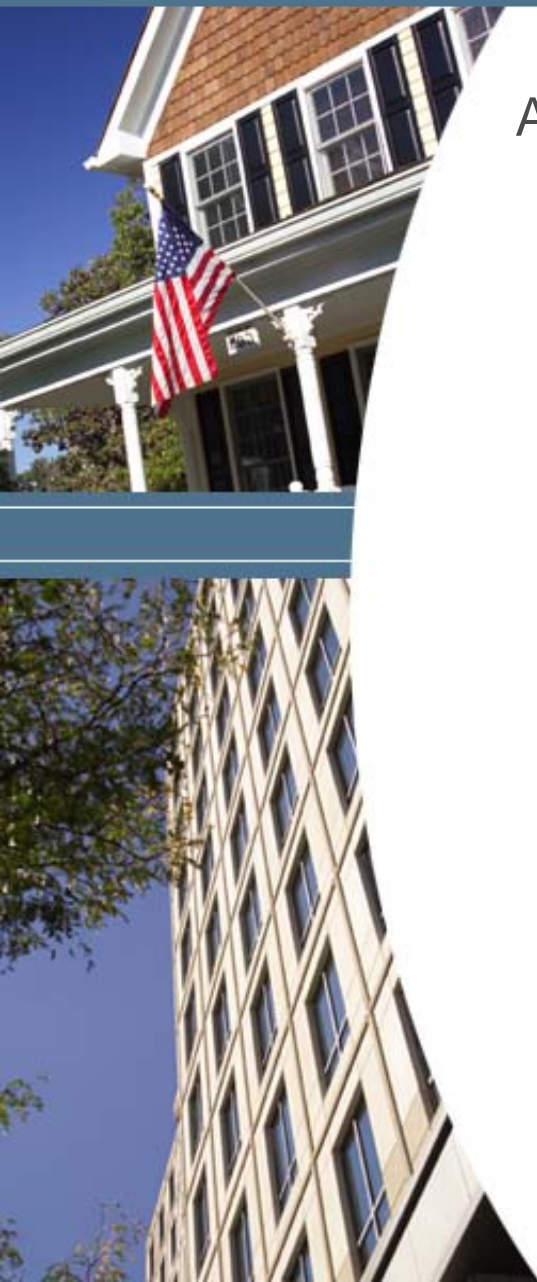
Describe Foreclosure Rescue Schemes



- A. Examination of Foreclosure Fraud – Why it Occurs
- I. Public Notice – Public Information
- **Knowledge is Power**
 - This type of personal information about the pending foreclosure coming from a “credit counselor”, “real estate agent”, “foreclosure specialist” is powerful.
 - From the borrower’s perspective – usually they are not communicating with their servicer or are frustrated with their servicer and you have an “uninterested” 3rd party offering help with that type of knowledge
 - Easy Target – Easy Money – Borrower, Servicer and Investor will lose.

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



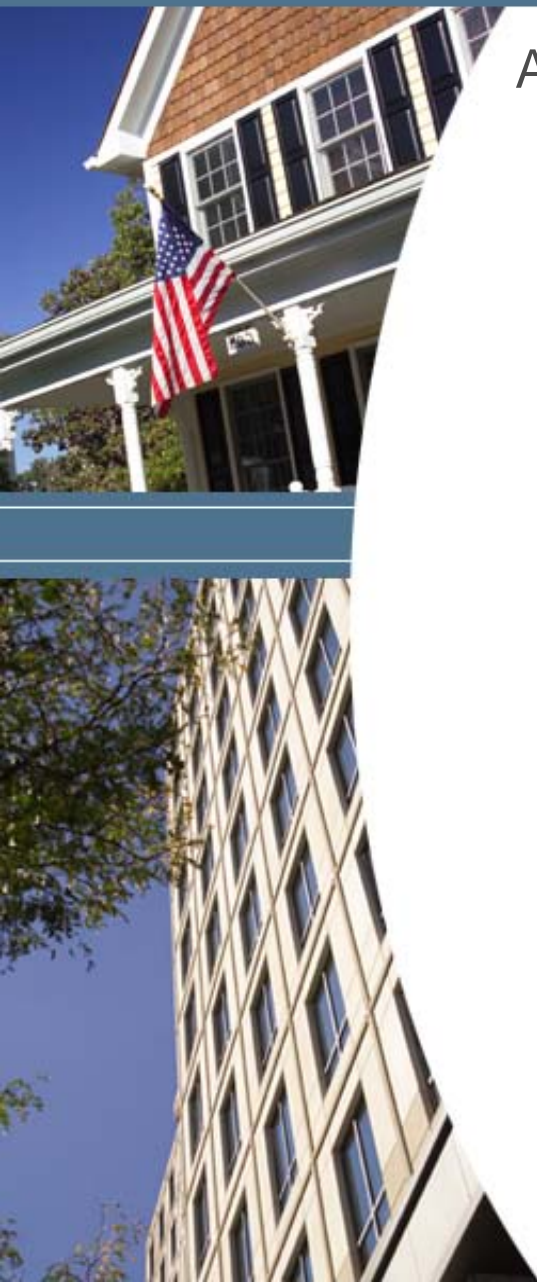
A. Anatomy of a Typical Foreclosure Rescue Scheme

I. The Scheme – Direct Contact

- a. After obtaining Borrower's trust with Public Notice Information, they convince the Borrower they have a relationship with the servicer which can save their home from foreclosure.
- b. They convince the Borrower to pay a large "upfront" fee to cover costs with communicating with the servicer – telephone calls, letters, payment history analysis, etc.
- c. Then they advise and encourage the Borrower to cease all communication with servicer – they will handle it all – you need to speak in a single, uniform voice without conflicting information in order to achieve the best result – saving your home.

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



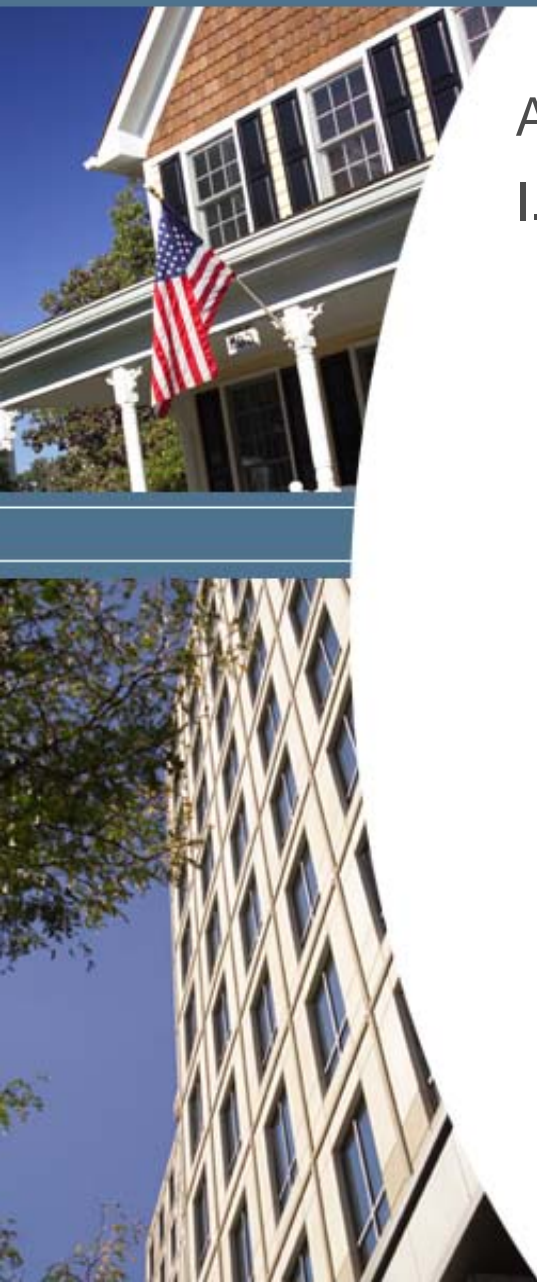
A. Anatomy of a Typical Foreclosure Rescue Scheme

I. The Result – Direct Contact

- a. Some “foreclosure specialists” never even attempt to make contact – they take the “upfront fee” and leave the Borrower only with the advice not to communicate with the servicer – while the Borrower’s inaction and lack of communication puts them even further behind.
- b. Other “foreclosure specialists” do attempt to contact the servicers but they are providing an additional and expensive layer of communication the Borrower could receive for free. In addition, the “upfront fee” further depletes the Borrower’s financial resources with an unnecessary fee, which in most instances could be used to pay down the indebtedness or as part of the contribution on a loan modification.
- c. ***NOTE*** - same scenario for both can play out for “loan modification specialists”

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



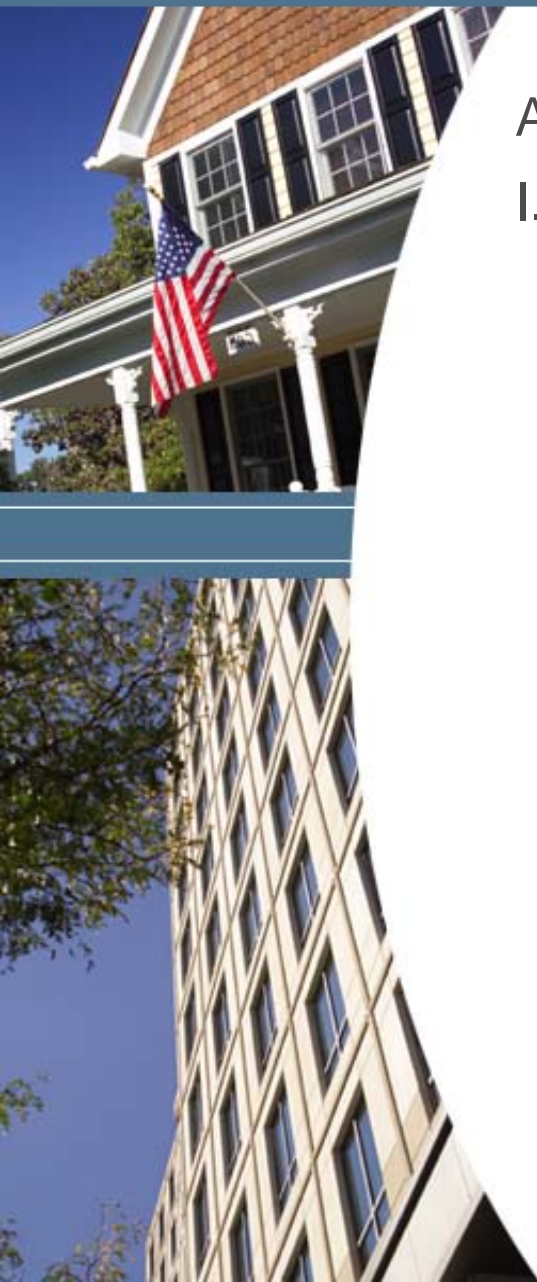
A. Anatomy of a Typical Foreclosure Rescue Scheme

I. The Scheme – Property Transfer

- a. Public Notice Information to gain Borrower's trust
- b. Request "upfront" fee
- c. Advise not to communicate with servicer
- d. Usually through multiple written agreements, the "specialist" convinces the Borrower to transfer the Property in a "Limited Conveyance" – to an entity, person, or trust
- e. "If you "technically" don't own the home anymore, they can't foreclose because you don't own the property – but you will stay in the house and we will transfer it back into your name when you can make the mortgage payments again."
- f. The grantee in the "Limited Conveyance" either quit claims the property to a straw for another mortgage or the property is sold.

Loss Mitigation & Foreclosure Fraud

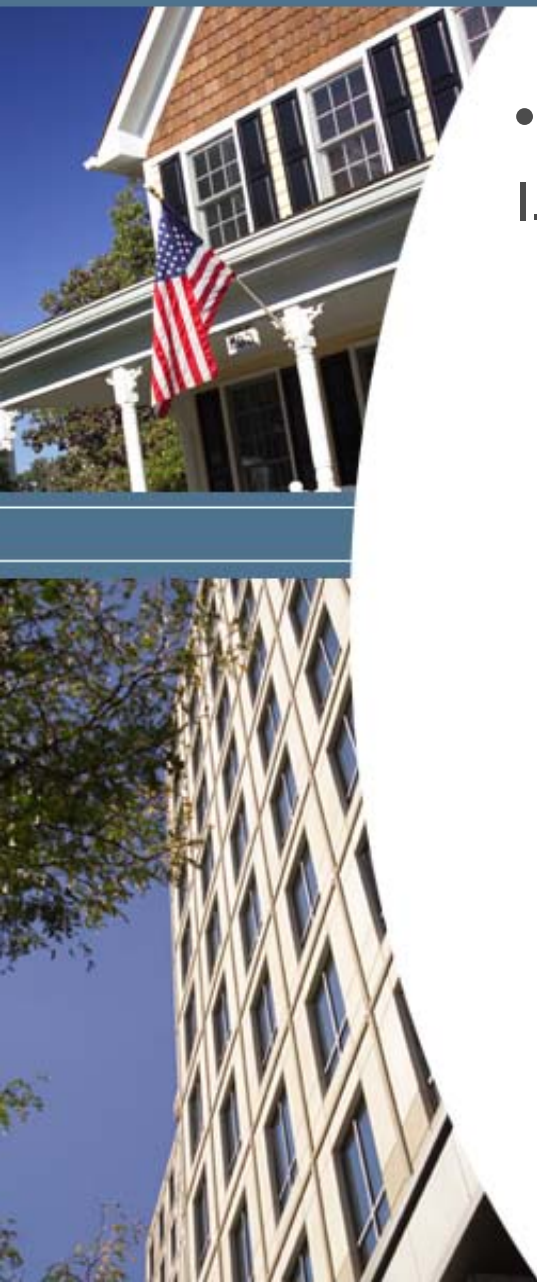
Describe Foreclosure Rescue Schemes



- A. Anatomy of a Typical Foreclosure Rescue Scheme
 - I. The Result – Property Transfer
 - a. The Borrower temporarily remains in the house unaware and ignorant of the subsequent transfers.
 - b. The “foreclosure specialist” is gone with:
 - 1. The Up Front Fee
 - 2. Any money made off of the subsequent transfers
 - 3. The Borrower’s future
 - c. The subsequent grantee and/or mortgagee have been duped and are out the money
 - d. The Borrower eventually loses the “up front” fee, the home to foreclosure and probably their faith in humanity.

Loss Mitigation & Foreclosure Fraud

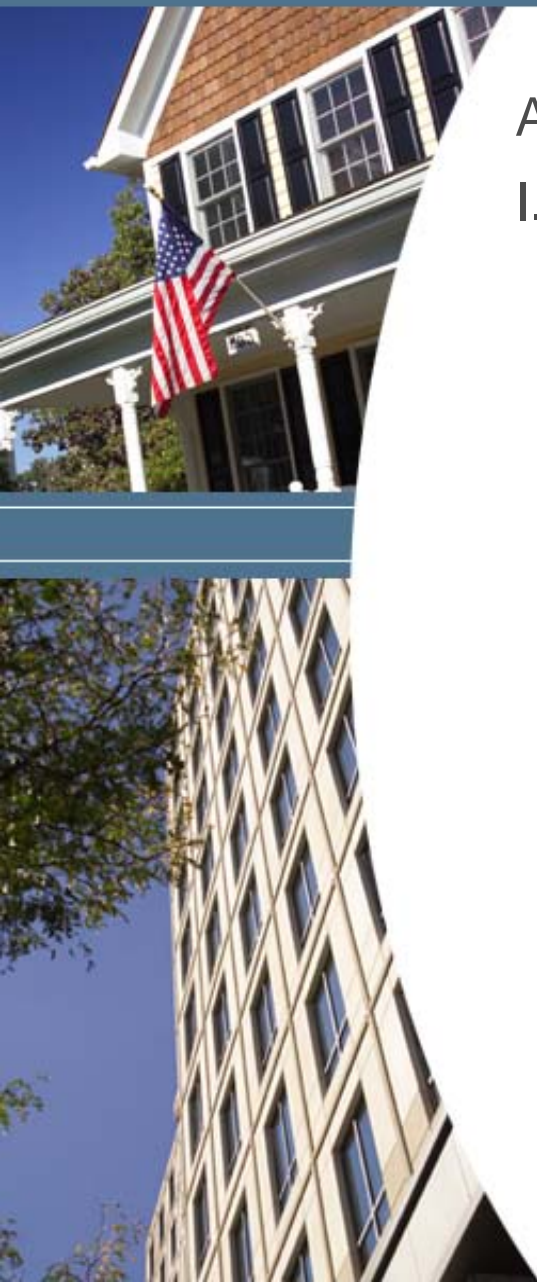
Describe Foreclosure Rescue Schemes



- Anatomy of a Typical Foreclosure Rescue Scheme
- I. The Scheme: Variation on a Theme:
Short Sale to Rent
 - a. Public Notice Information to gain Borrower's trust.
 - b. Advise not to communicate with servicer.
 - c. "Specialist/Broker" "mislead Borrower they can avoid foreclosure with a "quick short sale" and just pay "rent" to stay in the house.
 - d. "Specialist/Broker" sets up a straw buyer (usually paid 5k-15k for use of good credit)
 - e. Fraudulent short sale orchestrated to straw, false second mortgage and/or smaller liens "appear "on title report, which add additional money on top of the short sale to pay the "Specialist/Broker", the straw buyer and the closing agent.

Loss Mitigation & Foreclosure Fraud

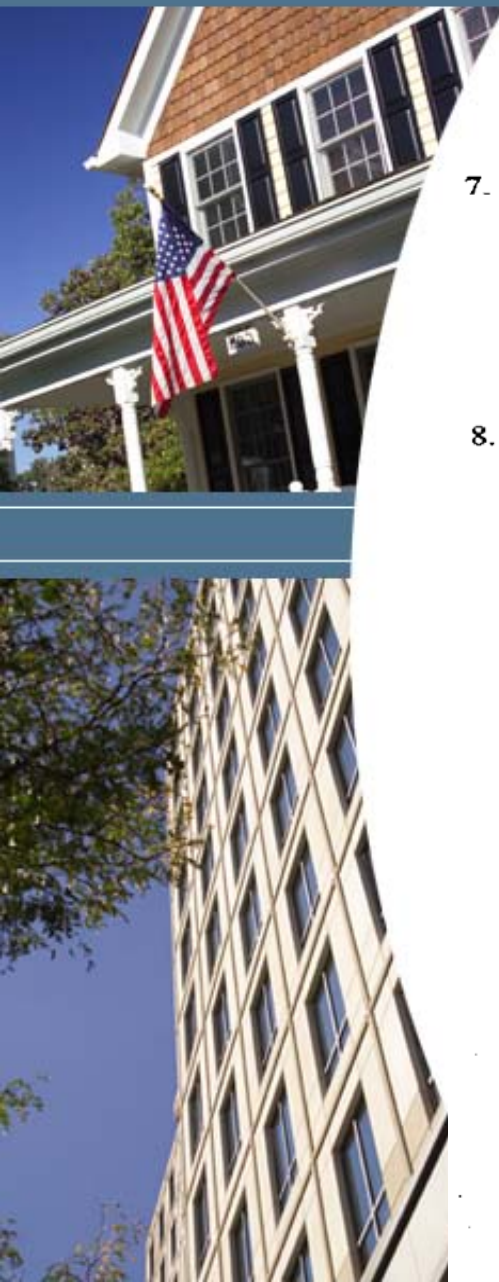
Describe Foreclosure Rescue Schemes



- A. Anatomy of a Typical Foreclosure Rescue Scheme
 - I. The Result: Variation on a Theme:
 - Short Sale to Rent
 - a. The Straw Buyer defaults on the new mortgage, red flag of EPD. Credit ruined.
 - b. The closing agent committed fraud and likely to lose any license.
 - c. “Specialist/Broker” had nothing in their name and made money off of sale to the straw.
 - d. Borrower pays rent and likely stays in house another 90 to 120 days before new mortgagee forecloses

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes

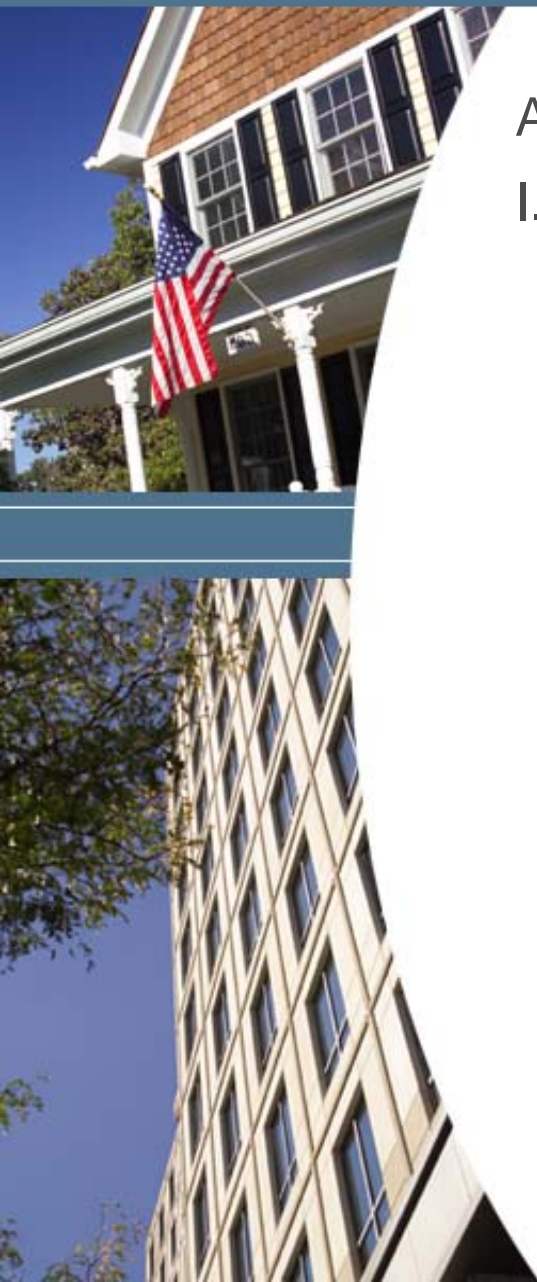


A. Anatomy of a Typical Foreclosure Rescue Scheme

7. Plaintiff Andrea Martin was made a victim of a fraudulent real estate scheme which has been prevalent nationally and in the Dallas real estate market. While this scheme has been highlighted in the media consumers continue to be victimized.
8. In this a scheme, an investment group, usually led by a mortgage broker and comprised of real estate agents, title company agents and appraisers, solicit innocent inexperienced individuals and persuade them to volunteer the use of their good credit for the purchase of real estate in their name. They are promised that everything will be taken care for them and that the property will be managed with no responsibility or liability for any losses. They are usually told that the property will be initially rented out for a period of a year so it may appreciate and will then be sold. In reality, these conspirators never intending to perform as promised, usually strike a deal with desperate sellers of otherwise expensive properties to agree to raise the listed sales price, sometimes several hundred thousand dollars, they obtain inflated appraisals and secure loans for the unwary borrower based on manipulations of the loan process as brokers or lender insiders. Sellers usually kick back the inflated funds from sale to the group. The conspirators pocket these funds, rent out the property and collect additional money, but sooner thereafter fail to pay the mortgage as promised and abandon the property to be foreclosed. The borrower / victim cannot sell the property as the loan far

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



A. Anatomy of a Typical Foreclosure Rescue Scheme

I. Prevention and Recovery

a. Prevention by the Servicer

1. Denial, Shame or Embarrassment

The Borrower may not want to confront their economic reality or are ashamed and embarrassed of their inability to make their mortgage payment.

2. Communication between the Borrower and Servicer is critical to deterring the “middle man and the scam” in taking advantage of the Borrower, which directly impacts the servicer.

3. Referrals to HUD approved counselors (www.hud.gov) and government entities for a neutral, third party perspective.

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



A. Anatomy of a Typical Foreclosure Rescue Scheme

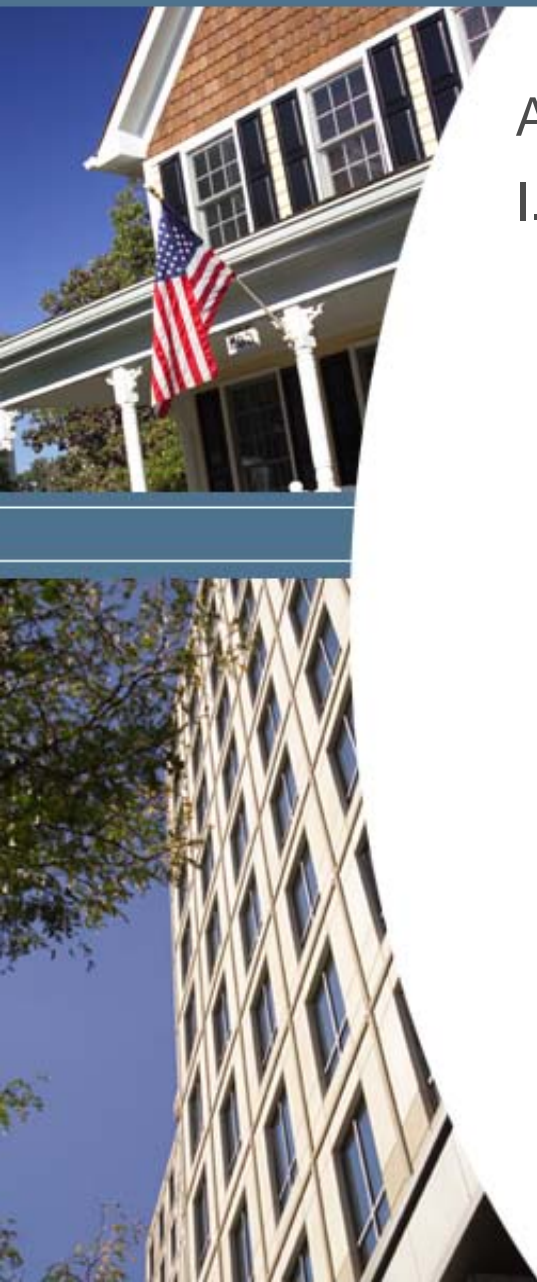
I. Prevention and Recovery

a. Prevention by Our Government

- » June 08, New Jersey AG announces multiple lawsuits involving “foreclosure rescue” scams
- » July 08, Missouri AG - Operation Stealing Home
- » September 08, Ohio AG filed suit against multiple “mortgage rescue scams”
- » October 08, North Carolina AG announced filing suit against 3 companies that, “misled homeowners in fear of losing their homes to foreclosure”
- » October 08, Florida AG announced suit under Foreclosure Rescue Fraud Prevention Act of 2008 against South FL Company Outreach Housing
- » December 08 TX AG announces new legislative initiative “Foreclosure Rescue Fraud Prevention Act”
- » January 09 CT AG – Investigating “HOPE Alliance”
- » February 09 FBI/HUD increased funding in ‘10 Budget
- » March 09, AZ AG announced suit against 4 related companies for taking advantage of distressed homeowners in foreclosure
- » March 09 TX AG has press release warning “Foreclosure Rescue Scams Threat to Consumers”

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



A. Anatomy of a Typical Foreclosure Rescue Scheme

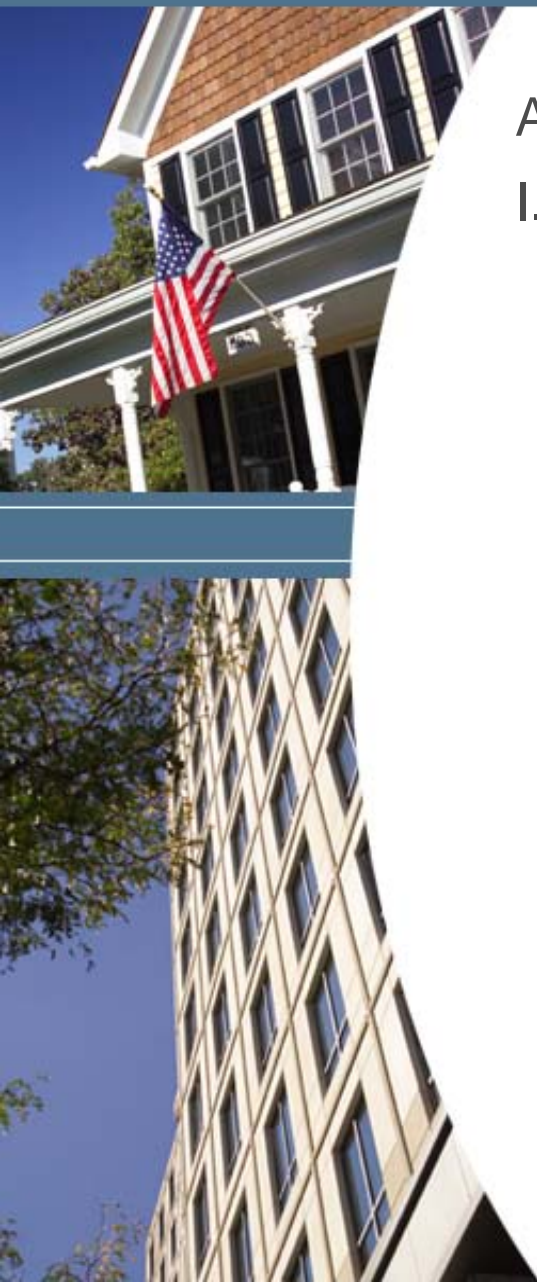
I. Prevention and Recovery

a. Recovery - Financial Concerns

1. Reality: Most servicers are very wary on attacking and litigating fraud files strictly due to cost and no guarantee of recovery.
2. Early analysis of fraud is key.
 - ✓ Identify parties, people involved
 - ✓ Perform Asset search
 - ✓ Perform docket/civil litigation search
 - ✓ Limited Interviews
 - ✓ Draft timeline referencing key documents
 - ✓ Diagram/Visio connections between parties
3. Once you complete early analysis package, then determine your recovery potential.
4. Perform cost/benefit analysis
(Recovery Potential v. Litigation Budget)

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



A. Anatomy of a Typical Foreclosure Rescue Scheme

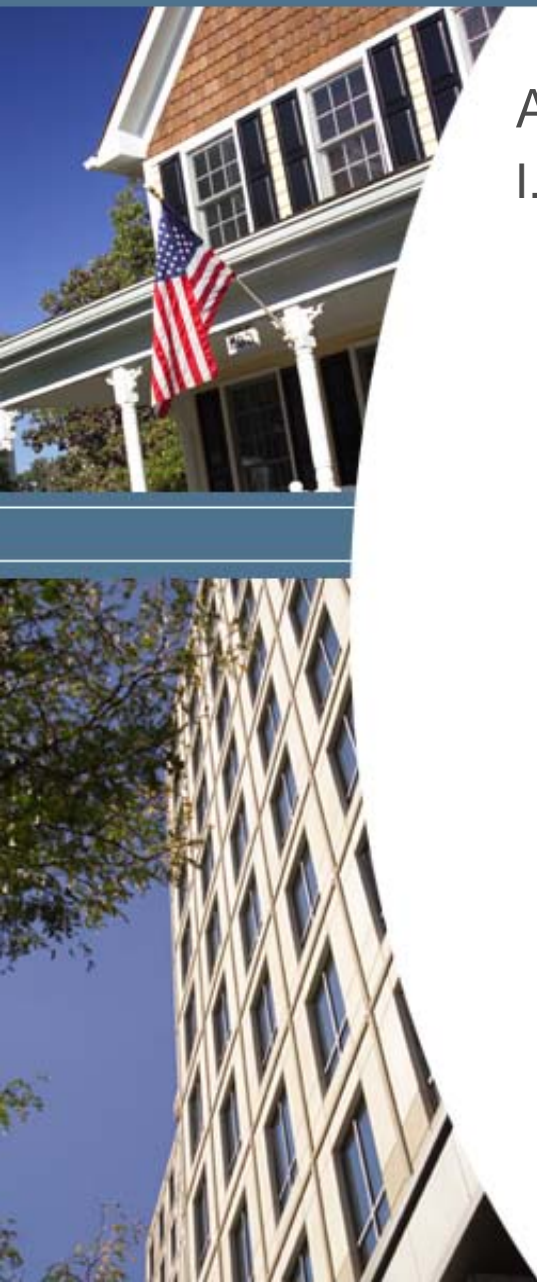
I. Prevention and Recovery

a. Recovery - Government Partnership

1. Regardless of determination of Civil cost/benefit analysis, move forward with notifying proper government entities.
2. Partner and assist with appropriate FBI/USA office around the country.
3. Provide them the “early analysis package” because the more information you provide, the quicker they will make a determination as to whether to pursue the matter.
4. Triple win: Assist in justice served, remove criminals from within and around the industry, possible criminal restitution to more than cover your financial investment.

Loss Mitigation & Foreclosure Fraud

Describe Foreclosure Rescue Schemes



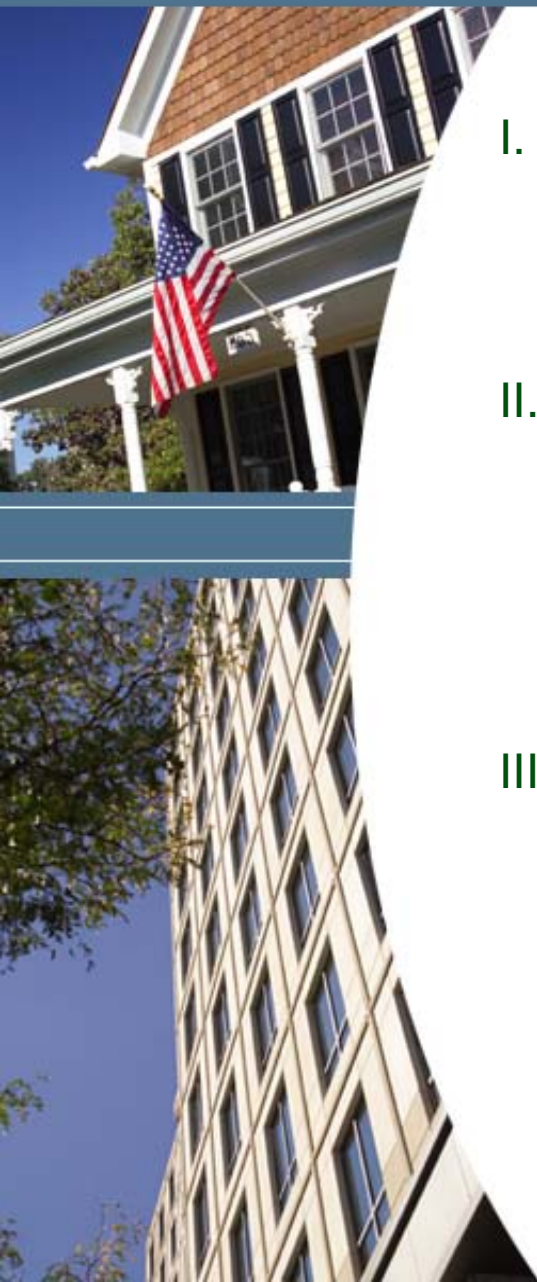
A. Anatomy of a Typical Foreclosure Rescue Scheme

I. Prevention and Recovery

a. **Recovery - Pockets of Money**

1. Fraudster is an Attorney
 - i. Closing Protection Letter if closing transaction
 - ii. Local/State Bar Assoc. Victim Funds
 - iii. Personal/Firm/Partnership Assets
 - iv. Malpractice carrier with negligence claim
2. Fraudster is a Realtor
 - i. Personal/Firm/Agency Assets
3. Fraudster is Notary
 - i. Simple Claim on Notary Bond
4. Tracking, subpoenaing, freezing and attaching
 - i. File suit with TRO – immediate hearing with Order
 - ii. Track money from fraud transaction to first Bank
 - iii. Subpoena Bank for records (repeat if needed)
 - iv. Identify proceeds, freeze account
 - v. Identify assets purchased with proceeds
 - vi. Equitable lien/trust on assets/Lis Pendens on real property

Summary

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- I. Mortgage fraud
 - A. Fraud for Housing
 - B. Fraud for Profit
 - C. Both Types Financially Impact Servicing and Utilize Critical Resources
 - II. Described fraud schemes involving default/ loss mitigation, identified preventive measures and possible recovery.
 - A. Phony Short Sale Scams
 - B. Mortgage Elimination Scams
 - C. Fraud Schemes in Bankruptcy
 - D. Preemptive Lawsuits by Delinquent Borrowers
 - E. Buy and Bail
 - III. Described foreclosure rescue schemes, identified preventive measures and possible recovery.
 - A. Discussion of the Current Servicing Environment
 - B. Examination of Foreclosure Fraud – Why it Occurs
 - C. Anatomy of a Typical Foreclosure Rescue Scheme - “the middle man and the scam”
 - D. Variation on a Theme: Transfer and Rent
 - E. Prevention and Recovery

Loss Mitigation & Foreclosure Fraud

Questions

- MBA's National Mortgage Servicing Conference
- February 23 - 26, 2010
- Manchester Grand Hyatt San Diego

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