



When Fraud Comes Knocking: Foreclosure Rescue Scams in New York City

What are foreclosure rescue scams?

Foreclosure rescue scams target homeowners in foreclosure with a variety of tricks designed to steal money, property deeds or both.

What do these scams mean for homeowners? What do they mean for neighborhoods?

These frauds can be readily found in the neighborhoods in which Habitat-NYC builds. According to the *New York Times*, “nationwide, mortgage fraud and deed theft cost homeowners \$4 billion to \$6 billion annually, . . . in New York City, housing fraud has wiped out tens of millions of dollars for thousands of predominantly black and Latino homeowners in large parts of Brooklyn, Queens and Staten Island.”¹

With the number of foreclosures predicted to rise to 70,000 statewide in 2009, New York remains an attractive target for foreclosure rescue scammers.

How do these scams work?

Scammers take advantage of the fear that attends a mortgage default and the complexity of the foreclosure process. They offer “quick solutions” that distressed homeowners want to hear, gain their confidence, and then extract as much value as possible.

Homeowners in foreclosure are easy for scammers to find because of published foreclosure listings.² Then scammers contact these homeowners by phone, mail and in person. Some target high-foreclosure neighborhoods with flyers and ads promising to “save your home.”

1 Michael Powell. “Prosecutions Lag as N.Y. Foreclosure Frauds Surge.” April 14, 2009.
http://www.nytimes.com/2009/04/15/nyregion/15prosecutors.html?_r=2&ref=nyregion.

2 NYS Banking Department. “Home Equity Theft & Foreclosure Rescue Scams: How they work and how to avoid them.”
<http://www.banking.state.ny.us/hetpfsc.pdf>.

There are three common types of foreclosure rescue scam:

1) Loan Modification (Phantom Help)

The scammer offers to negotiate with the lender to get the homeowner's loan modified to reduce monthly payments, interest or principal. The only catch: the homeowner has to pay the scammer a fee up front or make mortgage payments directly to the scammer instead of sending them to the lender.

Once the money is paid, the scammer usually disappears and cannot be reached. This often leaves the homeowner with little time remaining to seek real assistance or to negotiate with the lender, and a much smaller chance to save the home from foreclosure.

2) Lease / Buyback

The scammer offers to repair the homeowner's credit, prevent foreclosure and keep the homeowner in their home. All the homeowner has to do is sign over the title to the house to a third party ("straw buyer") so that the scammer can "get them a new loan using someone else's good credit." The homeowner is told that he or she "will be able to buy the house back again when their credit is repaired. In the meantime, he or she can "rent it" from the scammer.

Once the deed is signed over, the straw buyer owns the home and will be treated as the home's legitimate owner by lenders and prospective buyers. Working with or on behalf of the straw buyer, the scammer can flip the home, raise the rent, evict the original owner, rent the house to someone else and/or extract all the equity in the home by refinancing it.

Variants of this scam that involve mortgage refinancing may constitute mortgage fraud.

3) Bait and Switch

The scammer shows the homeowner documents for a "rescue loan" that will supposedly save him or her from foreclosure. In actuality, the documents assign the house's deed to the scammer. The homeowner is pressed to sign them quickly without reading, and the scammer walks off with the home.⁴

Variants of this scam may constitute mortgage fraud.

See our reporting and assistance resources at the end of this guide for specific recommendations for action.

The exact design of these scams is limited only by the scammer's creativity. See below for a list of general "red flags" to watch out for.

⁴ South Brooklyn Legal Services. "Beware Foreclosure Rescue Scams." http://www.sbls.org/pdf/foreclosure_rescue.pdf

Red Flags

When it comes to foreclosure advice, homeowners should be cautious when a business:

- Guarantees to stop the foreclosure process and resolve the homeowner's problems, no matter the circumstances.
- Makes it sound like a foreclosure or default is easy to fix.
- Tells the homeowner not to respond to court papers, especially papers regarding a settlement conference.
- Tells the homeowner to stop making payments to the lender in order to "qualify for a refinance."
- Instructs the homeowner not to contact or reach out to his or her lender, lawyer, or credit or housing counselor.
- Pressures the homeowner to sign paperwork in a hurry, before he or she has had a chance to read it or run it by an attorney.
- Asks for payment of a fee before providing all services.
- Encourages the homeowner to transfer the deed to the home to a third party for any purpose.
- Advertises online, but does not provide standard contact information (website provides no phone number, no business address, etc.)

Report businesses acting along these lines to the authorities. See our reporting resources at the end of this guide.

What protections do homeowners have under New York State law?

1) Foreclosure Prevention and Responsible Lending Act of 2008

As of September 1, 2008, any company that solicits homeowners in default and promises to help them with a work-out or in negotiating with a lender must:

- Have a written contract with the homeowner.
- Give the homeowner a five-day window in which he or she may end the agreement.
- Give the homeowner information about nonprofit and government agencies that give free foreclosure assistance.

Companies may not:

- Take payment before completing all contracted services.
- Take power of attorney from the homeowner.
- Keep the homeowner's original loan documents.⁵

Lawyers, real estate brokers, lenders and those operating under their supervision are exempt from these requirements, as are nonprofit and government agencies. Unfortunately, not all businesses that work with lawyers, brokers and lenders offer a legitimate product.

⁵ NEDAP. "Foreclosure Prevention and Responsible Lending Act of 2008: Brief Summary of Key Provisions." <http://www.nedap.org/programs/documents/2008-09statelawsummary-NEDAP.pdf>

2) Home Equity Theft Prevention Act of 2007

As of February 1, 2007, if selling to a buyer who does not intend to reside in the home, is not directly related to the homeowner and is not a nonprofit or government housing agency, the homeowner has a right to a contract containing:

- A notice that the homeowner may cancel the contract within five business days.
- The total value of the house being sold, plus any fees paid.
- The time at which the house will become the property of the buyer.
- The time at which the homeowner must leave the house.
- The terms of any buyback agreement.

During the five-day cancellation period, the buyer may not:

- Take out a mortgage on the property.
- Take the deed for the property from the homeowner.
- Sell the property.

The buyer may not deceive or mislead the homeowner about:

- The value of the house.
- The amount the homeowner will receive in the sale.
- The terms of the contract.
- The timing of any subsequent foreclosure process or auction.

Additionally, the buyer may not represent that he or she is helping the homeowner to “save” her home or is acting “on her behalf.”⁶

Note: These protections aside, once the deed is signed over to the buyer, the buyer is the owner of the home unless the sale is reversed in court. He or she will be treated as the legitimate owner by lenders and by those interested in any further sale of the property. This means that the house may be quickly resold by a deed theft scammer, rendering the original owner’s legal claim to the home difficult to assert.⁷

What protections do homeowners have under federal law?

At present there are no federal statutes specifically targeted at foreclosure rescue scams. The Federal Trade Commission enforces a variety of broader anti-fraud statutes; in 2008, the agency brought lawsuits against five foreclosure rescue scam companies with 20,000 customers.⁸

Scams involving mortgage fraud are a type of bank fraud, and are of interest to the FBI and the U.S. Attorney General. See our reporting resources at the end of this guide for more information.

⁶ State of New York Banking Department. “Home Equity Theft Prevention Act: Your rights under the law.” 2007.

<http://www.banking.state.ny.us/hetpyrul.pdf>.

⁷ South Brooklyn Legal Services.

⁸ John Leland. “Swindlers Find Growing Market in Foreclosures.” New York Times. Jan. 15, 2009. <http://www.nytimes.com/2009/01/15/us/15mortgage.html>.

What can homeowners do if they need housing counseling or legal advice?

Distressed homeowners should not wait to seek help if they are having difficulty making mortgage payments. The foreclosure process in New York State is extended, but to have the best chance of saving their homes, owners of distressed property should seek advice from legitimate nonprofit or government agencies immediately.

Resources available to all New York City homeowners:

1) The Center for New York City Neighborhoods (CNYCN) can refer homeowners to a legitimate agency that provides assistance **free of charge**. Contact the center for a referral by calling New York City's 311 line. You can also contact CNYCN directly by calling 646-786-0888.

2) The New York State Banking Department maintains a full list of approved not-for-profit housing foreclosure counselors. Homeowners may call for advice at 1-877-BANK-NYS, or may view the list online at <http://nysdhcr.gov/Programs/ForeclosurePrevention/CounselListing.htm>.

Resources available to union members:

Members of some unions pay collectively for legal services. Those with access may find these services to be a useful option. The following unions have a record of taking on foreclosure rescue scam cases affecting their members.

DC 37 AFSCME: Members should call 212-815-1111.

Teamsters Local 237: Members should call 212-924-1220.

SEIU Local 32 BJ: Members should call 212-388-3499.

How can I report scammers to the authorities?

You should report these scams to all levels of government.

National:

The Federal Trade Commission collects complaints of all types of fraud through its online Complaint Assistant form at <https://www.ftccomplaintassistant.gov/>.

The Office of the U.S. Attorney General and the FBI are actively pursuing mortgage fraud cases. The FBI collects complaints of mortgage fraud via its online Tips and Public Leads system. See <https://tips.fbi.gov/>.

State / Citywide:

The New York State Attorney General's Office Consumer Frauds and Protection Bureau collects fraud complaints for New York City and may prosecute scammers, at its discretion. The Office's online resources are available at http://www.oag.state.ny.us/bureaus/consumer_frauds/about.html, and its consumer hotline can be reached at 1-800-771-7755.

Report fraud cases involving false advertising to the City Department of Consumer Affairs (DCA). DCA acts aggressively on false advertising complaints. To file a complaint, call New York City's 311 line.

Borough: A given District Attorney's Office may prosecute fraud cases in its borough, at its discretion.

Brooklyn:

The Kings County District Attorney's Office has recently set up a new Real Estate Fraud Unit. You can contact the unit at 718-250-2311.

The Bronx:

The Bronx County District Attorney's Office Investigations Division takes consumer fraud reports. You can contact the division at 718-838-7040.

Queens:

The Queens County District Attorney's Office Economic Crimes Bureau assigns a high priority to foreclosure rescue scams. You can contact the bureau at 718-286-6673.

Staten Island:

The Richmond County District Attorney's Office Investigations Bureau takes consumer fraud reports. You can contact the bureau at 718-556-7186.

Manhattan:

The Manhattan County District Attorney's Office Special Prosecutions Unit takes consumer fraud reports via its intake line at 212-335-8900.

Additional resources

To get more information on the restrictions imposed by the Foreclosure Prevention and Responsible Lending Act of 2008, see the Neighborhood Economic Development Advocacy Project's summary at: <http://www.nedap.org/documents/statelawsummary-NEDAP-9-2008.pdf>

See also its flow chart depicting "Paths of a Foreclosure in New York State," including a glossary of key terms: <http://council.nyc.gov/d28/html/members/NYSForeclosureProcess.pdf>

To get more information on your rights under the Home Equity Theft Prevention Act of 2007, see the State of New York Banking Department's summary at: <http://www.banking.state.ny.us/hetpyrul.pdf>

For a thorough discussion of foreclosure rescue scams nationwide, see: National Consumer Law Center. "Dreams Foreclosed: The Rampant Theft of Americans' Homes Through Equity-Stripping Foreclosure 'Rescue' Scams." June 2005. <http://www.consumerlaw.org/news/content/ForeclosureReportFinal.pdf>

Credits

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