

**Mortgage Rescue Scams Undermine CED Efforts:
What Are State Attorneys General Doing About Scams?
By David Chunn**

This past summer I interned at NeighborWorks America's Washington DC office, and researched state attorneys general efforts to combat rescue scams. The scams largely entail the act of charging distressed homeowners fees while promising to save their homes, but doing very little to do so. The scams are hugely problematic because they undermine foreclosure prevention efforts, thus adding to community decline. Using information found in the public realm, I collected data to get a better idea of what each state was doing and compared their efforts. The search focused on four areas: enforcement, legislation, collaboration and advocacy. The purpose of the research was to review trends and examples of state approaches to consumer protection and enforcement as a means of combating scam activity.

This article addresses (i) enforcement activity by the attorneys general; (ii) state advocacy and outreach efforts; (iii) legislative work to strengthen the tools at the disposal of the attorneys general; (iv) collaboration initiatives among the states; and (v) trends encountered during the research.

It is a perilous time to be a homeowner. For many the ideal of homeownership in America has become a nightmare for an ever-growing number of homeowners who desperately cling to the edge of financial disaster. Indeed, it is estimated that nearly half of all U.S. mortgages will be underwater (owe more than the house is worth) by 2011.

Yet, for an entrepreneurial few, the foreclosure crisis represents a golden business opportunity. And business is booming. The economic downturn has spawned an astounding number of scam operations seeking to take advantage of troubled homeowners. A popular scam just now beginning to reach critical mass in the public consciousness is the foreclosure or mortgage rescue scam.

Using sleek salesmanship and hurried tactics, the typical rescue scammer entices the unsuspecting homeowner into an arrangement that promises a loan modification or foreclosure relief in exchange for up-front fees. Unfortunately, these services are rarely rendered and the homeowner's situation becomes dire. Many homeowners, unaware of what is happening until it is too late, become victims of not just foreclosure rescue fraud but of identity fraud as well.

On the enforcement effort, some novel approaches stand out. The Florida Attorney General's office has established a website dedicated to educating consumers on mortgage fraud in the state of Florida. While many states have websites that promote state efforts and community outreach, Florida prominently posts a list of business entities that have

had legal action taken against them by the state as well as press releases detailing convictions. The press releases show the actual booking pictures, or “mug shots,” of the individuals arrested for mortgage fraud. A list of current public investigations is also available for viewing.

Attorneys general in states such as Texas, New Jersey, Colorado, and Illinois have also compiled a long list of arrests and convictions against suspected scam artists. Enforcement, coupled with strong consumer protection laws, has scored numerous victories against large rescue fraud entities operating in these states. The victories resulted in funds being returned to some consumers.

State efforts with respect to consumer advocacy and outreach follow the same pattern as enforcement. Every state has moved to make resources available online through the establishment of state websites dedicated to assisting homeowners in distress. Links to federal programs such as Making Home Affordable and information on how to connect with foreclosure counselors are basic resources being offered to the public. For most states that are not largely affected by the crisis, posting links is the extent of their outreach.

Alternatively, in heavily impacted states like Arizona, Michigan and Nevada outreach campaigns are bolstered by advertising and feature public events crafted to help homeowners in need of assistance. For example, the state of Michigan has sponsored the *Save the Dream* campaign.

However, enforcement and advocacy have their limits. In some cases even an aggressive attorney general is restricted by the legal tools available under existing state consumer protection laws. Those states at the epicenter of the foreclosure crisis, states like Florida and California, have pushed through legislation to bolster existing protection laws. For example, in California, legislation sponsored by the Speaker of the State Assembly established regulations allowing Attorney General Jerry Brown to direct foreclosure consultants to be registered with the state or face violating state law.

Often, an attorney general will collaborate with the local legislature to push through badly needed legislation. Last December, Texas Attorney General Greg Abbott and State Senator Craig Estes announced a legislative initiative called the Foreclosure Rescue Fraud Prevention Act. The legislation seeks to enhance the Attorney General’s enforcement authority and place new restrictions on foreclosure prevention consultants. Such restrictions would require that contracts between homeowners and consultants be written in plain language and require a customers’ written consent before beginning any services or accepting any fees. A written disclosure statement instructing homeowners to contact an attorney or an housing counselor before signing mortgage rescue agreements is mandated by the new legislation.

Findings from the research suggest that collaboration among the states is present but not to a large extent. The most recent example was the announcement of “Operation Loan Lies,” a coordinated national law enforcement effort to crack down on mortgage

modification scams. Involving the Federal Trade Commission (FTC) and twenty-three state attorneys general and other federal and state agencies, the operation resulted in 189 separate legal actions against defendants. This collaboration is unique in that it sets a precedent in the coordination of a large number of state and federal partners working against mortgage modification scams.

The Federal Bureau of Investigation (FBI) announced in December 2007 that it was launching mortgage fraud task forces to be located in thirty-two field offices across the country. Research showed that collaboration exists between certain states and the FBI mortgage fraud task forces present within those states. Other than “Operation Loan Lies” and the FBI mortgage fraud task forces, no other data suggests the presence of a large collaborative effort between the states.

The foregoing is not indicative of collaboration happening within the states themselves. Many states have established task forces within their borders to prevent foreclosure and to research and collect data so as to give state lawmakers continuous reports on the foreclosure crisis developing within their communities. Other task forces provide assistance to distressed homeowners by way of advocacy and publicly-held events that introduce those in need to free counseling. Task forces also assist attorneys general in bringing action against mortgage fraud.

Some notable trends became evident during my research. Not surprisingly, states with high foreclosure rates were states most likely to be active in combating both mortgage modification fraud and avoidable foreclosures. States with low foreclosure rates were generally inactive with respect to efforts to deal proactively with mortgage fraud.

Although foreclosure rates and mortgage fraud activity vary between states, I learned that mortgage fraud is prevalent throughout the country. Areas experiencing low foreclosure rates generally experience low fraud rates.

Another trend is that many scammers are claiming to be attorney-backed. This claim can bolster the image of scams as being trusted legitimate businesses. Another difficult issue facing enforcement is that scams are often operating out-of-state, thus making them difficult to track or to regulate. To meet this problem, numerous states have begun to enact legislation requiring all foreclosure consultants to be registered with the state. These efforts are recent and it will take time to assess their effectiveness.

Like the legend of the Dutch boy who sticks his finger in the leaky hole of a dike in order to avert disaster, attorneys general are plugging holes to hold back the flood waters. Yet as the number of foreclosures continues to rise, state attorneys general will find that plugging one hole just reveals three more in need of repair.