

Defending Older Adults from Home Equity Theft, “We Buy Houses,” and Foreclosure Rescue Scams

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National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Introduction

Sometimes homeowners facing foreclosure are desperate enough to take any offer that looks like it may save their home. Foreclosure rescue scammers and other “equity thieves” take advantage of homeowners’ desperation through a variety of schemes.

The frequency and type of scam varies with changes in the real estate market. In the mid-2000s, rising foreclosure rates coupled with high real estate values brought a wave of schemes to take advantage of financially distressed homeowners.¹ Older adults are particularly vulnerable to these scams because they are more likely to be homeowners and to have equity, due to having owned their home for a significant period of time, and also more likely to be living off of limited retirement income. Being “equity rich” and “cash poor” makes older adults more likely targets for equity theft scams. Cognitive disabilities, which are more common among older adults than the population at large, may also put older homeowners at risk for these scams.

Equity theft and foreclosure rescue scams are cyclical. While property values were rising and distressed homeowners were likely to have equity in their property, scams focused on stealing that equity. When property values dropped, scammers focused on stealing homeowners’ remaining cash. After the wave of foreclosures crested, foreclosure rescue scams became less common. Now, as real estate values have gone back up in most areas, equity theft scammers have become more active again. During the Coronavirus pandemic, homeowners may be at particular risk for this kind of scam if they are facing a loss of income, unable to afford their mortgage or other home-related expenses, and have a lot of equity in the home.

There are many different types of foreclosure rescue and equity theft scams. Equity stripping schemes are common when the home is worth considerably more than the balance due on any outstanding mortgages or liens. When little equity remains, foreclosure rescue scams focus on squeezing homeowners for their remaining cash or using falsely inflated appraisals to create the appearance of equity when none exists. But all foreclosure rescue scams have one thing in common: instead of being “rescued,” as promised, homeowners end up worse off than they were before the transaction, having lost time and money and often their homes.

¹ Gov’t Accountability Office, [Foreclosure Rescue Schemes Have Become More Complex, and Efforts to Combat Them Continue](#), GAO-14-17 (Oct. 29, 2013) (finding “[f]oreclosure rescue schemes remain at historically high levels and have become more complex”), available at www.gao.gov; Amanda Abrams, [Foreclosure Crisis Spawns a Wave of Rescue Scams](#), *Washington Post*, Jan. 18, 2013, available at www.washingtonpost.com; Creola Johnson, Stealing the American Dream: Can foreclosure-rescue companies circumvent new laws designed to protect homeowners from equity theft?, 2007 Wis. L. Rev. 649, 656–659 (2007) (discussing how market conditions facilitate exploitation of vulnerable homeowners).

Key Lessons

1. Nearly 80% of older adults own a home, making them vulnerable to foreclosure rescue scammers and other “equity thieves.”
2. Many older adults have owned their homes for decades and have amassed a lot of equity, making them a prime target for equity-related scams.
3. Older adults may not realize they have been scammed until they are served with foreclosure papers or face eviction.
4. Time is of the essence and older adults should seek legal assistance quickly. If a distressed homeowner can obtain legal assistance in time, there may be effective claims and defenses to undo the transaction.

What Is a Foreclosure Rescue Scam?

Foreclosure rescue scams include various types of schemes targeted at homeowners already facing foreclosure and in financial distress.² When homeowners have significant equity in their homes or when property values are rising, foreclosure rescue scams often focus on obtaining title to the home and robbing homeowners of their equity. When homeowners have little equity, scams center on squeezing upfront fees—often thousands of dollars—from borrowers.

A “rescuer” may identify potential victims through public foreclosure notices in newspapers, at government offices, or on the Internet. The homeowner is then contacted by phone, mail, or personal solicitation, with offers to save the home. Television, radio, newspaper, and Internet advertisements can also lure homeowners to rescuers, who often use affinity marketing to target their audience based on racial, ethnic, or religious affiliation.³ Older adults and non-English speaking homeowners are particularly likely to be targeted.⁴ Small-time scammers may simply post advertisements on local telephone poles and by the side of roads.

Most foreclosure rescue scams fall into one of three categories: phantom help, obtaining title by fraud or deception, and obtaining title through a fake bailout.

Phantom help

Phantom help is when a rescuer charges outrageous fees for little or no work. Some offer to negotiate loan modifications that never materialize, while others may “assist” homeowners in filing for bankruptcy

² See generally Lawyers’ Comm. for Civil Rights Under Law, Foreclosure Rescue, Inc. (2014), available at lawyerscommittee.org; Lauren Saunders, Andrew Pizor, & Tara Twomey, National Consumer Law Center, Desperate Homeowners: Loan Mod Scammers Step In When Loan Services Refuse to Provide Relief (July 2009), available at nclc.org; Steve Tripoli & Elizabeth Renuart, National Consumer Law Center, Dreams Foreclosed: The Rampant Theft of Americans’ Homes Through Equity-Stripping Foreclosure “Rescue” Scams (June 2005), available at nclc.org. See also Gov’t Accountability Office, Federal Efforts to Combat Foreclosure Rescue Schemes Are Under Way, But Improved Planning Elements Could Enhance Progress, GAO-10-787, at 7–10 (July 2010) (describing scams), available at gao.gov.

³ See *Reed v. Zak* (*In re Zak*), 573 B.R. 13, 20 (Bankr. D. Mass. 2017) (quoting testimony that loan modification company sought out agents from different ethnic backgrounds to target communities that were particularly hard hit, particularly Hispanic and Haitian communities); Lawyers’ Committee for Civil Rights Under Law, A Practical Guide for Identifying, Investigating, and Bringing Suit Against Consumer Financial Scams: Lessons Learned and Tips Developed From Combatting Loan Modification Scams at 7 (approx. Dec. 2015) (describing efforts of scammers to focus on certain ethnic or language communities), available at web.archive.org.

⁴ Federal Reserve Bank of Atlanta, Foreclosure Rescue Scams: Real Estate Fraud Prevention and Awareness, atlantafed.org/-/media/documents/community-development/data/foreclosure-resource-center/foreclosure-rescue-scams-real-estate-fraud-prevention-and-awareness.pdf.

without a proper understanding of the law.⁵ Or, a rescuer may obtain a hopelessly unaffordable loan modification offer, such as one requiring a large lump sum payment beyond the borrower's means. Often the foreclosure clock keeps ticking while homeowners wait for rescuers to make good on their promises. Whatever form phantom help takes, the homeowner is usually left without enough assistance to save the home and with little or no time left to seek other assistance.

Transfer of title through fraud and deception

Two other varieties of foreclosure rescue scams are similar to each other—they both involve transferring ownership of the home. One involves outright fraud. The homeowners believe they are obtaining refinancing or a new loan and do not realize they are surrendering ownership of the house. The homeowners may truly sign the papers transferring the home, but the transaction is confusing and the homeowners are misled about the nature of the papers they are signing.⁶ Older adults appear to be frequently targeted for this kind of scam. In another variation, the deed transferring the house may be forged.⁷

Fake bailout

The third category is a “bailout,” in which the homeowner typically understands that they are signing a deed to transfer ownership of the home, but they are doing so in the belief that they will be able to regain ownership at a later time. Meanwhile, the homeowner becomes a tenant in their own home on terms that are often oppressive and unaffordable, ending with eviction. The rescuer may even renege on promises to pay off the mortgage, leaving the homeowner liable for loans on a house they no longer own. Sometimes the rescuer goes even further—selling the house to a third party or mortgaging it and pocketing the proceeds.

Recognizing a Foreclosure Rescue Scam

A scam, by its nature, disguises the true intent of the perpetrator. As a result, the victims in some cases may not realize that they have been scammed until they are facing foreclosure or eviction from their own home.

This section and those that follow primarily address cases involving equity-skimming rescue scams. Loan modification scams and other types of “phantom help” are often less complex because they do not involve the transfer of title to the homeowners' property. Despite the simpler nature of these latter cases, the following sections will also be useful in resolving them.

The following list of questions will help advocates recognize when they are dealing with a foreclosure rescue scam:

Were the homeowners facing foreclosure or otherwise in financial difficulty at the time they transferred their property?

Almost all victims of foreclosure rescue scams are facing some type of financial difficulty. Commonly, a foreclosure was imminent. In some cases, homeowners may have been unsuccessful in their attempts to refinance. In other cases, the borrower is behind on taxes, and a tax sale process may have begun.

5 See National Consumer Law Center, Consumer Bankruptcy Law and Practice § 16.6 (12th ed. 2020), updated at nclc.org/library. See also *In re Nina*, 562 B.R. 585 (Bankr. E.D.N.Y. 2016) (U.S. Trustee action against foreclosure rescue scammers who engaged in fraudulent and deceptive activities by filing forged chapter 13 petitions to stop foreclosures); *In re Bower*, 489 B.R. 798 (Bankr. N.D. Ind. 2013) (issuing a permanent injunction against a group of bankruptcy petition preparers who filed abusive bankruptcy cases in the operation of their foreclosure rescue scheme); *In re Hennerman*, 351 B.R. 143 (Bankr. D. Colo. 2006) (sanctioning bankruptcy petition preparer \$9000 and awarding debtor \$2300).

6 See, e.g., *ALSJ, Inc. v. Kurtz*, 58 N.E.3d 666 (Ill. App. 2016) (describing “facially outrageous” one-year balloon mortgage with 36% interest rate signed at same time as deed to be held as security).

7 See, e.g., Stephanie Saul, N.Y. Times, Real Estate Shell Companies Scheme to Defraud Owners Out of Their Homes (Nov. 7, 2015), available at [nytimes.com](https://www.nytimes.com).

Did the homeowner respond to a phone call, letter, posted sign, or other solicitation to get help saving the home or to sell it?

Rescuers typically use public records to find names of homeowners facing foreclosure and then solicit them with promises of help. Many also post flyers that the homeowner may have seen.

Did the homeowner pay upfront fees to someone promising to stop the foreclosure or obtain a loan modification?

The success of “phantom help” rescue schemes relies on upfront payments from distressed borrowers. Upfront fees are prohibited by the Mortgage Assistance Relief Services (MARS) rule and some state laws.

Were the homeowners instructed to stop communications with their current mortgage company, attorney, or other housing counselor?

Homeowners are frequently told to cease all contact with lawyers or their mortgage and let the rescuers handle the “negotiations.” This tactic simultaneously delays discovery of the scam, cuts off access to possible refinancing options, and runs out the clock on ways to prevent the foreclosure.

Did the homeowners convey their property to someone else?

The telltale sign of a foreclosure rescue scam is a deed conveying title of the victim’s property to the “rescuer” or another party affiliated with the rescuer. The grantee could be a corporation, a trust, an individual unknown to the victim, a long-time acquaintance or even a family member. Remember, rescuers come in all shapes and sizes.

Were the homeowners aware that they executed a deed transferring their property to a third party?

In some cases, homeowners are led to believe that they are signing documents for a new loan to bring their mortgage current, when in fact, they deed their home away.

Did the homeowners receive less than fair market value for the transfer of their property?

Inadequate consideration is another hallmark of foreclosure rescue scams. These scams depend on equity in the property that can be stripped away when the rescuer refinances or resells the property. Rescuers, if they provide any consideration at all, may pay only a fraction of the value of the home.

Was the homeowner unrepresented during the rescue transaction, or, worse yet, represented by an attorney who had ties to the foreclosure rescue operation?

Homeowners are typically unrepresented despite the legal complexities inherent in these transactions. It is in the rescuer’s best interest to keep the homeowner in the dark and vulnerable by denying them legal representation. Conversely, the rescuer may try to sanitize the deal by referring the homeowner to a lawyer who has a natural incentive to grease the wheels of the transaction. In the worst-case scenario, the lawyer will have close business ties with the rescuer and may even have helped set up the rescue operation.

Did the homeowners continue to live in their home pursuant to a lease agreement, occupancy agreement, or land sales contract?

In many foreclosure rescue scams, homeowners surrender title with the expectation that they will be able to remain in their homes. They may sign lease agreements, occupancy agreements, or land sales contracts that permit them to retain possession of their home so long as they pay “rent” to the rescuer. These rent payments are often unaffordable and are frequently higher than the homeowners’ previous mortgage payments. Homeowners also may continue to have many of the responsibilities of ownership,

such as performing property maintenance and making tax payments.

Did the homeowners have an option to repurchase the home sometime in the future?

Homeowners who remain in their homes after relinquishing title often believe that they will be able to repurchase the property in the future. There is typically an option or right of repurchase associated with the transaction. However, the option frequently becomes ineffective if the homeowners do not make timely “rent” payments. The repurchase price is almost certainly going to be substantially more than the homeowner originally paid for the home.

Is the homeowner facing eviction?

One of the key parts of many foreclosure rescue scams is to turn the homeowner into a tenant who has no claim to the home and can be removed from the home through an eviction action. Especially in a judicial foreclosure state, when a homeowner is facing eviction rather than foreclosure, it is a sign of a foreclosure rescue scam.

High Pressure Home Sales, Real Estate Wholesalers, & “We Buy Houses” Scams

Another type of equity theft scam that is extremely common involves high-pressure home sales. These scams involve strong-arming homeowners into signing a contract to sell their home for far less than the fair market value. The key difference between this scam and the foreclosure rescue scams described above is that in a high pressure home sale, homeowners do typically understand that they are selling the home.

Many parts of the country have signs on telephone poles, median strips, and elsewhere advertising “We Buy Ugly Houses,” “Cash for Homes FAST,” or some variation on these themes.⁸ These signs are posted by real estate wholesalers who may also go door-to-door in gentrifying neighborhoods. Their strategy is to buy homes for cash at a discount from their true value, then quickly re-sell them at a profit. Some homeowners find them useful to unload unwanted real estate that they may have inherited or cannot afford to repair.⁹ But wholesalers have become a problem in some communities for using abusive, high-pressure sales tactics that steal equity from vulnerable homeowners.¹⁰

The problem is aggravated by seminars that tout wholesaling as an easy way to invest in real estate and may even sell “we buy houses” franchises. Franchisees are taught how to convince reluctant, elderly homeowners and others how to sell and other tactics. The franchisor then sells “leads,” or lists of homeowners to solicit and takes a percentage of the profit on homes the franchisee may flip to new buyers at what can be a steep profit. The profit represents equity lost to the original homeowner. In one example, a wholesaler gradually gained the confidence of an elderly homeowner in Atlanta, Georgia, and convinced her to sell her home for \$95,000. Days later, the home was resold for \$130,000.¹¹

Wholesalers are sometimes backed by private investors who give the wholesaler a high-rate, short-term loan or otherwise expect a share of the re-sale profits. They market themselves as able to provide a quick sale without the red tape or contingencies associated with bank loans or the cost of using a real estate agent. In rare occurrences, the more honest investors admit that they pay less than market price in return for convenience.¹²

8 See *Polk Cty. v. Mitchell*, 931 So. 2d 922 (Fla. Dist. Ct. App. 2006) (granting injunction against “we buy houses” company that posted signs around county without permission).

9 Using a rapid reseller? Slow down and check ‘em out Lew Sichelman, *United Feature Syndicate* . *Chicago Tribune* ; Chicago, Ill. [Chicago, Ill]23 Oct 2005: 33.

10 See, e.g., Willoughby Mariano, *Atlanta Journal-Constitution*, Wholesaling tactics at 4 (Feb. 16, 2020), available at [ajc.com/news/buy-houses-investors-target-seniors-with-below-market-offers/34c9nhExtYBB88QivDTeEP/](https://www.ajc.com/news/buy-houses-investors-target-seniors-with-below-market-offers/34c9nhExtYBB88QivDTeEP/).

11 Willoughby Mariano, *Atlanta Journal-Constitution*, Wholesaling tactics, at 4 (Feb. 16, 2020).

12 For many real estate flippers, banks’ red tape is a red flag, Pierce, Justin . *The Washington Post* ; Washington, D.C. [Washington, D.C] 12 Oct 2013: EZ.30 (“When it comes to real estate flipping, price is everything. We essentially tell the seller that we can’t pay top dollar for their home, but we do offer speed, certainty and convenience. In our business, financing contingencies are not welcome. We put up large earnest-money deposits with no contingencies.”).

More often, these investors misrepresent to struggling homeowners that they are offering a great deal and the homeowner will not get any better price by listing the home publicly with a realtor. It is very common for the scammer to make misrepresentations like, “you would have to do \$40,000 of work on this house before a realtor would want to touch it,” or to otherwise play down the benefits of listing a home publicly for sale.

The goal of a high-pressure home sale scammer is to get the distressed homeowner to sign on the dotted line. Once homeowners sign a purchase and sale contract, if they realize they have been tricked into accepting an extremely low price and try to back out of the contract, the scammers sue them for specific performance to force the sale.

If the distressed homeowner makes it to an attorney before a closing takes place, there are legal strategies to be pursued in these cases:

- **Specific Performance Defense**
 - » Most states allow a defense to specific performance if the sale price is grossly inadequate. This requires research in your jurisdiction.
- **Fraud Counterclaim**
 - » Another defense and counterclaim would be an argument that the contract to sell the home was procured by fraud, or fraudulent inducement. Look for misrepresentations regarding the home’s true value, the nature of the agreement being signed, or the price a homeowner might obtain if they listed the home publicly for sale. Sometimes the scammer has stepped into an agency relationship with the homeowner by representing that they will help sell the home, which may give rise to breach of fiduciary duty claims.
- **Bankruptcy**
 - » Filing a chapter 13 bankruptcy may allow the distressed homeowner to reject the executory contract. However, the scammer will be an unsecured creditor and may file a claim in the bankruptcy for damages equal to the lost benefit of the bargain (which will be very large if they were getting the home for far below market value). Litigating in an adversary proceeding in the bankruptcy for claims like fraud, unfair and deceptive practices, and the like can reduce the amount of any claim the homeowner might otherwise have to pay to the scammer as part of the chapter 13 bankruptcy plan.
- **Local Policy Reforms**
 - » A number of homeowner advocates have begun trying to fight back against equity theft, high pressure home sales, and wholesaling by enacting local policy reforms. The city of Philadelphia recently passed a local ordinance requiring that real estate wholesalers be licensed and allowing homeowners to sign up for a “do not solicit” list, with monetary fines for violations. Illinois also requires wholesalers to be licensed as real estate brokers. Proposed legislation in Oklahoma would ban the practice of wholesaling, selling an interest in a contract to another investor. In addition, efforts to help address “tangled title” or heir property problems, effective property tax relief, and affordable tax foreclosure diversion options are extremely important for preventing the conditions that lead distressed homeowners to be susceptible to high-pressure home sale scams.

Conclusion

Foreclosure rescue and equity theft scams deprive older adults of the ability to age in place, benefit from wealth built through homeownership, and pass that wealth on to their heirs. Low-income homeowners are particularly at risk, because these scammers target homeowners who are struggling to meet basic expenses and therefore feel economically pressured to borrow or sell. Homeowners of color are also at greater risk, due to patterns of unequal wealth accumulation, which make them more likely to have no other assets aside from the home with which to weather financial hardship. They also may be more likely to live in rapidly gentrifying neighborhoods, where increasing property taxes create financial strain on older homeowners and scammers see greater financial opportunity to turn a profit.

Community outreach is particularly important to prevent older homeowners from falling prey to equity theft scams. When homeowners are targeted, legal representation can make the difference between losing everything and holding onto the family home.

Additional Resources

- National Consumer Law Center: [Truth in Lending \(10th ed. 2019\)](#)
- National Consumer Law Center: [Unfair and Deceptive Acts and Practices \(9th ed. 2016\)](#)
- National Consumer Law Center: [Mortgage Lending](#), Chapter 16, Foreclosure Rescue Scams (3d ed. 2019)
- Prentiss Cox, [Foreclosure Equity Stripping: Legal Theories and Strategies to Attack a Growing Problem](#), 39 Clearinghouse Rev. J. of Poverty L. & Policy 607 (Mar–Apr 2006)
- Government Accountability Office report: [Homeownership Preservation: Federal Efforts to Combat Foreclosure Rescue Schemes Are Under Way, but Improved Planning Elements Could Enhance Progress](#), GAO-10-787 (July 2010)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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