



**Statement of Robert E. Story, Jr., CMB**

**Before the House Financial Services  
Subcommittee on Housing and Community  
Opportunity**

**Hearing on  
“Legislative Solutions for Preventing Loan  
Modification and Foreclosure Rescue Fraud”**

**May 6, 2009**

Chairwoman Waters, Ranking Member Capito, thank you for inviting the Mortgage Bankers Association (MBA)<sup>1</sup> to discuss the very important issue of foreclosure rescue scams. My name is Robert E. Story, Jr., CMB, and I am Chairman-Elect of the Mortgage Bankers Association (MBA). I am also President and Chief Executive Officer of the Seattle Financial Group.

I am here today because MBA shares the concerns of this subcommittee about the rise of foreclosure rescue scams and the need to protect innocent homeowners from unscrupulous individuals. The impact of such outright fraud, scams and deceptive practices results in borrowers being scammed out of thousands of dollars or worse, their homes. Moreover, these scams severely undermine legitimate foreclosure prevent efforts.

Those who commit financial fraud prey on people who are at the end of their financial rope. In the midst of a recession, with borrowers facing greater financial hardships, delinquency and foreclosure rates are rising. Fraudsters are targeting these troubled borrowers. Borrowers need to turn to the right sources for help. However, in many cases, borrowers in trouble are often reluctant to call their mortgage servicers or other trustworthy companies. In other cases, borrowers actively look for help. In both these cases, borrowers may come in contact with individuals or businesses that are looking to scam them.

MBA and our foreclosure prevention coalition partners, such as HOPE NOW<sup>2</sup>, have worked hard to make borrowers more aware of free and legitimate homeownership counseling. These efforts include homeowner education and outreach on an unprecedented scale. HOPE NOW and its partners, NeighborWorks and the Homeownership Preservation Foundation, continue to support the HOPE hotline to help borrowers navigate loss mitigation and other financial solutions. The HOPE hotline is free and its home retention counselors

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

<sup>2</sup> MBA is a partner in the HOPE NOW alliance, a partnership among counselors, mortgage market participants, and mortgage servicers to create a unified, coordinated plan to reach and help as many homeowners as possible. Since its inception in 2007, HOPE NOW has expand its outreach efforts to include public service announcements that encourage delinquent borrowers to contact the person to which they send their mortgage payment, or a qualified housing counselor at 1-888-995-HOPE.

are approved by the U.S. Department of Housing and Urban Development (HUD).

### **Mortgage Fraud**

The increasing unemployment rate and continued delinquency rate of homeowners provides scammers and criminals with the opportunity to exploit vulnerable homeowners seeking financial guidance. Such scams can take many forms, but two of the most common are:

- **Phantom Help** – In these cases, for-profit counselors promise to complete paperwork and obtain a loan workout settlement in exchange for up to thousands of dollars. The scammers either do not follow through or perform menial tasks that the borrower could complete easily and for free. At best, these for-profit companies perform the same services HUD-approved counselors and servicers do for free.
- **Title Transfers** – Perpetrators convince homeowners that they can save their homes from foreclosure through deed transfers and promises to lease back or sell back the property. This type of so-called “foreclosure rescue” often is a manipulated deed process that results in the preparation of forged deeds or fraudulent lien releases. In extreme instances, perpetrators sell the home or secure a second loan without the homeowners’ knowledge, stripping the property’s equity for personal gain.

Many mortgage rescue scams start with a phone call, mailing Web site or advertisement promising help. Most of these advertisements are virtually indistinguishable from legitimate organizations offering assistance and often use names identical or similar to legitimate organizations. They are designed to achieve one thing only: to lure a person who is desperate for help.

Once a fraudster makes contact with a distressed borrower, the borrower is inevitably told that their situation is dire and that they are going to lose their house. The scammer does everything he or she can to raise the anxiety level of the borrower. Just when the borrower is at his or her lowest point, the person on the other end of the phone says there may be some hope, but only if the borrower agrees to cooperate. Next, the borrower will be told to cease any communication with their lender to avoid being detected.

At this point, the borrower is convinced the person offering his or her services is the only solution and agrees to pay money for services or signs documents including transfers of title to the property. The psychological pressure imposed on the borrower is intense and fraudsters know how to instill a strong sense of desperation.

### **Contact Your Servicer First**

MBA encourages borrowers in financial trouble to call their mortgage servicer right away. Mortgage servicers have an economic incentive to avoid foreclosure and are the entity with legal authority to make repayment plans, or refinance or modify a mortgage. Borrowers can also contact trustworthy sources for advice and counseling such as the HOPE hotline at 1-888-995-HOPE or a HUD-approved counselor (a list is available on HUD's Web site). State and local governments across the country have also set up hotlines, as have churches, legal aid societies and consumer assistance organizations.

### **MBA and Law Enforcement Respond to Escalating Mortgage Fraud**

Fighting mortgage fraud is a top priority for MBA. Fraud not only affects the borrower but impacts mortgage companies to the tune of hundreds of millions of dollars every year.

While no authoritative statistics are available on the full extent or the cost of foreclosure rescue scams, MBA's members continue to report an increasing number of overall mortgage fraud cases. According to the Mortgage Asset Research Institute (MARI), incident reports of mortgage fraud increased 26 percent from 2007 to 2008.<sup>3</sup> While the vast majority of such fraud occurs at the origination of a loan, some of this fraud is specific to mortgage rescue scams or debt elimination scams.

MBA believes the first way to stop this fraud is by raising awareness of these scams. The Department of the Treasury and the federal banking regulators has issued alerts for consumers on foreclosure rescue scams. The FTC has produced a fact sheet for consumers warning them about services that promise to stop the foreclosure process regardless of the borrower's circumstances, accept payment only in the form of a cashier's check or wire transfer or offers to fill out paperwork for the borrower.<sup>4</sup>

MBA believes that new laws are not needed to investigate and prosecute mortgage fraud. While some fraud prevention and enforcement proposals have focused on amending federal law, current federal law empowers law enforcement officials with sufficient authority and tools to combat mortgage fraud. The federal mail and wire fraud statutes, which are broadly phrased and have been broadly interpreted, reach all possible varieties of mortgage fraud. Additional federal statutes apply to certain instances of mortgage fraud committed against federally

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<sup>3</sup> James, Denise, Butts, Jennifer, Donahue, Michelle, "Eleventh Periodic Mortgage Fraud Case Report," Mortgage Asset Research Institute, March 2009: <<http://www.marisolutions.com/pdfs/mba/mortgage-fraud-report-11th.pdf>>

<sup>4</sup> See "Foreclosure Rescue Scams; Another Potential Stress for Homeowners in Distress," Federal Trade Commission: <<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm>>

regulated or insured institutions, providing federal law enforcement officials with additional avenues to combat mortgage fraud. Unlike new legislation, which always carries with it the risk of unexpected interpretations, existing law is tested by years of judicial precedent and can be applied by federal law enforcement officers with confidence.

Rather than enacting new legislation MBA believes a more effective approach is to educate borrowers on how to identify and avoid foreclosure rescue scams. Another way to reduce mortgage fraud is to increase the level of resources needed by law enforcement officials to combat mortgage fraud. This can be accomplished by: 1) providing more funding for mortgage fraud prevention and prosecution efforts; 2) assuring that investigative and prosecutorial resources are committed to mortgage fraud prevention, including foreclosure rescue scams; 3) placing responsibility for law enforcement of all mortgage fraud in a dedicated office within the Department of Justice; and 4) encouraging further intergovernmental cooperation in prosecuting mortgage fraud, as was exhibited in Treasury Secretary Timothy Geithner's announcement to crackdown on foreclosure rescue scams through coordination of the federal banking regulators' law enforcement offices by the Financial Crimes Enforcement Network (FinCEN).

In the past, MBA has asked Congress to appropriate \$6.25 million per year over five years to provide dedicated funding for the Federal Bureau of Investigation (FBI) to investigate and prosecute mortgage fraud. The funding would provide for new FBI field investigators; additional prosecutors dedicated to mortgage fraud; and support for the operations of FBI Interagency Task Forces in the areas with the 15 highest concentrations of mortgage fraud. Greater funding may be needed in fiscal year 2010 to address the proliferation of these new schemes.

### **Borrower Tips For Avoiding Foreclosure Rescue Scams**

As discussed above, fraudsters mislead homeowners into believing they can help them avoid foreclosure in exchange for a transfer of the deed, usually in the form of a quit-claim deed. The crooks then usually seek out a fraudulent lien release and quickly re-mortgage the property or sell it. The victim loses the property and any fees they may have paid. Because the lender is not paid off as promised, the borrower remains responsible for the mortgage debt as well. To protect borrowers from becoming a victim of a foreclosure rescue scheme, MBA cautions consumers to keep these points in mind:

- If it sounds too good to be true, it probably is.
- Beware of offers to “save” homeowners from default or foreclosure. Such scams often come in the form of unsolicited contacts and use high-pressure sales techniques.

- The moment you realize you may have troubles paying your mortgage, contact your mortgage company. The sooner, the better. The longer you wait, the fewer options you will have.
- If you are unwilling or unable to contact your mortgage company, seek a qualified credit counselor or an attorney to assist you.
- Open all your mail from your mortgage servicer. Servicers send multiple notices to assist delinquent borrowers. Borrowers who are 45 days delinquent will receive information on how to contact a HUD-approved counselor. Moreover, every borrower is eligible to call (888) 995-HOPE, a toll free counseling service that is free to borrowers.
- Do not sign a document you have not read or do not understand, especially under duress.
- Make sure that your servicer is fully aware of and approves any transfer of title (deed) to your property. Failure to do so could make the mortgage immediately due and payable in full. Moreover, you will remain liable for any debt that was not paid off upon sale or transfer of the property.

### **Conclusion**

On behalf of MBA, I would like to thank the subcommittee for the opportunity to present our views on protecting homeowners from falling victim to fraudulent schemes. Mortgage fraud is a growing problem that is becoming more expensive for homeowners and lenders. MBA believes that increased enforcement, better communication, and further innovation is required in order to adequately protect borrowers and the industry, taxpayers and communities, from the costs of mortgage fraud.