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THE ORANGE COUNTY REGISTER

Short sale fraud 'heating up,' expert says

By JEFF COLLINS
2012-10-05 14:44:20

As short sales become increasingly dominant in today's market, so has short sale fraud, said short sale expert Kathy Mehringer.

"Fraud is heating up like a wildfire right now," said Mehringer, risk management director and short sale advisor for Coldwell Banker Residential Brokerage in Sherman Oaks. "We've got to be aware that this fraud is changing directions, is jumping containment lines."

Mehringer spoke Wednesday during a session at the California Association of Realtors conference in Anaheim.

Short sales involve the selling of a home for less than is owed on its mortgage.

In the looking-glass world of short sale fraud, real estate agents do their best to get the lowest price they can for a home, Mehringer said.

Instead of staging the home to look its best, they make it look worse. They run pictures and videos highlighting the home's flaws.

Instead of marketing it to potential buyers, they advertise it in a multiple listing service that's miles away from the property.

And once they the lender agrees to sell at their artificially low price – often as part of a sweetheart sale to a friend, a relative or an LLC – they quickly flip the house, selling it at its true value and pocketing thousands of dollars in ill-gotten gains.

Mehringer's message to agents and brokers: Since a lot of Realtors are losing their licenses because of inadvertently representing the wrong guys, agents and brokers have to be on their toes.

"The consequences of fraud are enormous," she said. "You can't bury your head in the sand and pretend it's not happening."

Among the most common schemes are:

- Flopping: Scammers arrange to buy a home at an artificially deflated price intending to flip it immediately at its actual value.
- Non-arm's length transactions: The buyer in a short sale is related to the seller by blood, marriage or some type of business or personal affiliation. This is typically arranged by an underwater borrower to regain ownership of the property free from the mortgage debt.
- Side agreements: In addition to payments included in a lender's "approval letter," the buyer and seller have side agreements to pay off junior liens, short sale negotiators' fees or other third-party fees.
- False information: The transaction includes phony details in the closing settlement statement, or HUD-1, to hide buried costs and fees.

Mehringer said one problem is agents are targeted by trainers offering seminars on how to make short sales easy. Many of those techniques are sketchy at best, she said.

“You can’t put ‘easy’ and ‘short sale’ in the same sentence. It’s an oxymoron,” she said.

Johanna L. Hladunk, the FBI’s supervisory special agent in San Diego, said the so-called “sovereign citizens movement” has spawned a whole new type of mortgage fraud.

The anti-government adherents believe that they are separate or “sovereign” from the United States even though they live here. Adherents have tried a variety of techniques to shuck their mortgage without paying it off.

One agent told Mehringer her office is losing clients because they refuse to play along with short sale schemes.

“We’re the minority,” the agent said. “The agents who are doing things correctly are having a lot of problems.”

The solution is for agents and brokers to report problems they see and can document, Mehringer said. Complaints about fraud sometimes do fall on deaf ears, but that shouldn’t deter Realtors from doing the right thing.

“Sometimes you have to report it when it’s righteously wrong,” Mehringer said. “Don’t be afraid to report it.”

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The New York Times

ACADEMY AWARD® WINNER
ANTHONY HOPKINS

October 4, 2012

The High Price of ‘Forced’ Insurance

By LISA PREVOST

BORROWERS who allow their homeowners’ insurance to lapse will often get stuck with a bill for much more expensive coverage, courtesy of their lenders.

Called force-placed or lender-placed insurance, these policies protect banks’ interests when borrowers fail to follow through on the standard loan requirement that they maintain continuous coverage on their home.

The use of these policies soared during the recession, as homeowners who fell behind on their mortgages effectively stopped paying their insurance as well, since premiums are typically included in the monthly payment. From 2006 to 2011, direct earned premiums for lender-placed insurance more than tripled, to $3.1 billion from $954 million, according to the Insurance Information Institute. “It’s a privately run, high-risk market of last resort,” said Robert P. Hartwig, the institute’s president.

But state and federal regulators have begun to question whether mortgage servicers have been too quick to slap these high-priced policies into place, possibly because of financial incentives. At hearings held this spring by the New York State Department of Financial Services, a representative for American Home Mortgage Servicing acknowledged that a company affiliate receives 15 percent commissions from QBE First, a major provider of lender-placed insurance, for policies placed on its loans.

Because the premiums for lender-placed policies are 2 to 10 times as expensive as standard homeowner policies, these policies impose a considerable burden on already distressed homeowners, said Alexis Iwanisziw, a research and policy analyst for New York’s Neighborhood Economic Development Advocacy Project. In some cases, the cost more or less ensures foreclosure for a household on the brink; it can also hurt a borrower’s chances for a loan modification.

Fannie Mae has adopted new mortgage servicer guidelines aimed at reducing the likelihood that borrowers will get stuck with a high-priced policy unnecessarily. The guidelines require the servicer to keep the borrower’s own homeowner policy in force if at all possible, even if that means advancing money to cover the past-due premium.

The servicer is required to contact the borrower by letter at least twice before putting a lender policy in place. Such disclosures must explain that lender-placed insurance costs more, and that it covers only the structure of a house, not its contents.

Once a lender policy is in place, homeowners can still buy their own insurance and ask to have the lender policy canceled. Fannie Mae wants servicers to refund the premiums on canceled policies within 15 days of receiving evidence of other coverage.

The Consumer Financial Protection Bureau proposed similar guidelines, as part of the mortgage servicer rules it is writing to implement the Dodd-Frank Act.

"The new rules would require the servicer to continue advancing the money to keep the homeowner's policy in effect rather than letting it lapse, so the forced-place insurance would never even come up," said Andrew Pizor, a staff attorney at the National Consumer Law Center.

Consumer advocates like Mr. Pizor are concerned that, under the bureau's proposal, the requirement does not apply if a borrower doesn't have an escrow account. The bureau is accepting public comment on the rules through Oct. 9; comments may be registered on its Web site.

Mr. Hartwig of the insurance institute defends the rates as a reflection of the risk of insuring the homes on a lender's books in bulk, "sight unseen, irrespective of their condition."

But Birny Birnbaum, a former insurance regulator and the executive director of the Center for Economic Justice in Texas, says losses on lender-placed policies amount to less than on standard policies. "The responsibility comes down to regulators to do their job and say rates need to be reasonable and not excessive," he said.

THE ORANGE COUNTY REGISTER

Will time run out on short sale tax breaks?

By MARILYN KALFUS
2012-10-05 15:17:43

Homeowners down on their luck and considering a short sale may now have to think about placing another bet.

A law exempting some from having to pay taxes on debt forgiven by the bank – the Mortgage Forgiveness Debt Relief Act and Debt Cancellation -- is set to expire at the end of this year.

There's optimism in the real estate industry that the act could be extended, but there's no guarantee, especially in a post-election lame-duck session. Others say the act would cost too much to extend in light of big budget deficits.

Either way, homeowners contemplating short sales as a way to get out of debt may want to seek financial advice.

"There's a lot of confusion out there," says Alex Creel, chief lobbyist for the California Association of Realtors. "A lot of people aren't going to be tuned in to the legal technicalities. It gets really complicated.

"If you've got a lot of potential debt forgiveness in the mix and there's going to be a large tax consequence," he says, "you might want to see an accountant and spend some time thinking that through."

In California, many distressed homeowners who think the act will help them avoid paying some taxes may find it doesn't, or that they don't even need it. But many will, a tax expert says.

More on that in a minute.

Short sales have been playing a big part in the Orange County housing market in recent years, far eclipsing foreclosures. In August, 29% of distressed local listings were foreclosures being sold by banks; while 71% were short sales, according to an analysis by Steve Thomas, who regularly analyzes residential real estate sales in Orange County,

"The expected market time (for short sales) is only two weeks and continues to be the hottest segment of the housing market," he says.

How the debt relief act works

Most people know that in a short sale, the house is sold for less than the balance remaining on the mortgage, if the lender agrees.

When a bank lets a homeowner transact a short sale -- or forecloses or modifies a home loan -- the forgiven amount has traditionally been considered "income" to the homeowner and is reported to the Internal Revenue Service.

The Mortgage Forgiveness Debt Relief Act of 2007 exempts homeowners from having to pay tax on up to

$2 million in qualified forgiven debt. Only cancelled debt used to buy, build or substantially improve a principal residence or refinance debt incurred for those purposes qualifies for the exclusion, the IRS says.

The National Association of Realtors and other proponents of the act have said that without it, the short sale market would largely freeze up, threatening the recovery and the economy, while troubled homeowners deciding to brave a short sale could again be mired in financial woes -- tax payments they can't afford.

Now for the California twist. In many cases in this state, debt forgiven on certain types of loans is already exempt from being taxed.

California is a "non-recourse loan" state when it comes to purchase money mortgages. That means when a bank forecloses on a property or short sale occurs, the lender is prohibited from pursuing the borrower for any unpaid balance. Under these circumstances, tax experts say, the homeowner typically does not pay taxes on the unpaid balance, which is not considered income.

For those who have refinanced, however, the "non-recourse" status often goes out the window. Now, they most likely have a "recourse loan." But in these cases, the debt relief act may help them avoid paying taxes on the forgiven debt, explains Bradford L. Hall, a certified public accountant and managing director of Hall & Company CPAs, an Irvine firm.

Those who have refinanced (or taken cash out) to make improvements to their home – and have the documentation to prove it – would be covered by the act, he says. However, if they took the cash and spent it in other ways, the act would not apply.

"Non-recourse loans do not have a tax liability," Brett Chapell, business development director at Short Sale Tax Pro in Temecula, told real estate agents at the California Association of Realtors convention in Anaheim last week. "The greatest thing about the Mortgage Forgiveness Debt Relief Act is it does cover recourse loans.

"That's a big deal," Chappell said. "That accounts for a lot of people."

Looking ahead

California's mortgage debt forgiveness law, which has lower limits – up to $800,000 -- also is due to sunset at the end of the year. Creel says the state Legislature is expected to extend the state law to conform with a federal extension, which he is optimistic will occur at some point. He notes there's bipartisan support to keep the tax exemption going. The law also could be given a green light retroactively next year.

"I think there is still a large (number) of homes out there that will be prime inventory for short sales, and the feds have to realize that at some level and have to realize the negative impact (of losing the debt relief act) would be very great," he says.

Hall is among those who do not think an extension is likely.

"If I was betting, I would bet it's not going to be extended," says Hall. He thinks the $2.7 billion it would cost to extend it for two more years – as reported by the Congressional Budget Office -- won't fly in the face of fiscal deficits.

Others think that allowing the act to expire would help the housing industry.

Dennis Smith, a mortgage broker in Huntington Beach, thinks the pending expiration has created a greater sense of urgency among homeowners contemplating strategic defaults, voluntary foreclosures and short sales.

"I can't see any program that encourages people to default on loans -- costing lenders billions which are passed on to new borrowers with higher fees, insurance rate (and) tighter credit requirements -- is positive for the housing industry as a whole or in part," says Smith, co-owner of Stratis Financial, a mortgage company.

Tax experts note that there also are other laws on the books allowing exemptions for debt issues, such as insolvency.

"There are no cookie-cutter solutions," Chappell says. "Everybody's situation is different and everybody's tax scenario is different."

But, he told the Realtors gathered at the convention in Anaheim, "This stuff is complicated ... The IRS is looking at these returns very closely."

See also: 10 priciest short sales offered in Orange County

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FEATURE-U.S. builders put home buyers into credit boot camp

Thu, Sep 27 2012

By Michelle Conlin

Sept 27 (Reuters) - In the post-housing crash world, Kelly and Jeff Clark are the kind of people who are not supposed to be able to buy a house.

For a down payment, they had exactly nothing. Their credit scores were sub-par. But this Christmas, the Clarks will move from their rundown rental into a brand new, four-bedroom home in an amenity-loaded development outside of Lakeland, Florida. All without paying a dime.

The Clarks were able to qualify for a mortgage because their builder, Southern Homes, spent the summer putting them through a financial boot camp. Bigger home builders such as D.R. Horton Inc, Lennar and PulteGroup Inc are also offering sophisticated financial advice to prospective home buyers who would not normally qualify for loans.

These fiscal rehabs are one reason many builders are boosting sales, even though mortgage lending is tight. Pulte said in July that its financial program could help its sales for some time. On Monday, Lennar Corp said revenue from home sales rose 33 percent last quarter from the same quarter a year earlier. Orders for homes rose 44 percent, helped by the 25 percent increase in membership in its Homebuyers Club since last year.

Providing financial therapy solves a huge problem for the builders: How to sell to first-time home buyers when s o many yo unger consumers a re s a ddled wi th student debt and ba d c redit.

The financial advisors go by names such as "mortgage advisors," "credit advocates" or "loan officers." They help prospective customers create budgets and slash spending. Both D.R. Horton and Lennar also help out with "credit repair," the practice of analyzing credit reports to determine the best stra t egies for raising scores as quickly as possible.

The buyers then get mortgages from the builders' own, in-house lending arms.

But consumer advocates say there is an obvious conflict when doling out financial advice. Instead of helping prospective customers maximize wealth, advocates say builders' advisors could be trying to suck as much money as possible out of buyers' pockets.

"What it does is create a captive consumer where the builder can charge a lot more," said Douglas Miller, executive director of Consumer Advocates in American Real Estate, a nonprofit.

Homebuilders are often helping buyers get government-backed loans that require no down payment, or a low down payment, so taxpayers could be on the hook if buyers can't repay their mortgages. Som e consumer experts fear that, j ust five years after the biggest housing meltdown in generations, bui lders are up to their old tricks again.

"You have people applying for loans that there's no way they can pay, but it doesn't matter because the ability to repay isn't the basis of the loan. It's the ability to pass underwriting so the loan can be sold," says Washington, D.C.-based bankruptcy attorney, Brett Weiss.

Builders say they are putting people in homes they can afford and helping them achieve their dreams. Most loans that banks are underwriting now meet stringent government standards.

For buyers with enough cash and income, buying a home can lower monthly housing costs because mortgage rates are at r ecord lows an d rents are surging. Monthly mortgage costs are lower than rent in nearly every major U.S. metro area now, according to John Burns Real Estate Consulting.

CALL WHENEVER YOU NEED TO

Last year, executives at PulteGroup found that nearly 90 percent of younger buyers wanted to own a home. They loathed throwing away money on rent each month.

"The dream of American home ownership has not died at all," said Pulte Vice President of marketing Fred Ehle. "It was somewhat of a surprise to us."

But Gen X and Yers also had reservations about buying so soon after watching the housing market crash and burn. T hey also feared they would not qualify for a mortgage.

Just five years after the biggest housing meltdown in generations, that's led some consumer experts to fear that builders are up to their old tricks again.

The number of people aged 25-to-34 who bought homes in 2011 fell to 27 percent, the lowest share in the past decade, according to the National Association of Realtors. Rising student debt has played at least some role in that decline, analysts said. According to the U.S. Consumer Financial Protection Bureau, about 50 percent of young people that started college in 2003 were paying more than 10 percent of their income on student debt.

In response, Pulte launched a mortgage advisor program, whose members are buying houses at twice the rate of prospective purchasers who do not participate.

The advisors hand-hold customers through the entire home process, from picking the floor plan to arranging the mortgage to taking as many calls as necessary to assuage fears.

"I could call whenever I needed to with whatever I needed," says program member Erin Shafer, a 23-year-old school teacher who is buying a new home, along with her fiancé, in Woodstock, Illinois.

The couple have student debt, but they had enough for a down payment due to a relative's recent death. Pulte is giving them $5,000 for closing costs, $3,000 worth for free appliances and a mortgage.

THE INCUBATOR

The Clarks thought they would remain renters forever. But early in the summer, a friend recommended that they meet with Janet Backman, a grandmotherly sales agent for Southern Homes.

During that first meeting, Backman pored over the Clarks' financials and decided to put them in what she calls her "Incubator."

That's the process Backman uses to convert the credit-challenged into home buyers within a matter of months. It drives her crazy that people in her area pay more to rent then to own.

The Clarks had no credit cards and paid for everything with cash. So as Backman talked with them that first day, she simultaneously signed them up for credit cards on the Capital One website.

Then she told the couple that, if they made $50 worth of purchases each month, but only paid the balance down to $25, their credit scores would likely rise immediately.

Within a month, Backman got the couple's scores up enough to qualify for the zero-down government-backed loan she secured for them through a partner lender.

Southern Home's sales agents have sold 162 homes so far this year, with nearly all getting similar advice and loan terms.

Says Backman: "Every time I hear about how hard it is to purchase a home, I'm thinking, what planet are they living on?"

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THE ORANGE COUNTY REGISTER

Bulk sale of foreclosures called 'stupid'

By JEFF COLLINS
2012-10-05 14:30:46

The head of the state's leading real estate trade group had just two words to describe government plans to sell foreclosed homes en masse and rent them out.

"They're stupid," Joel Singer, CEO of the California Association of Realtors, said during the association's annual conference held this past week in Anaheim.

Under a Federal Housing Finance Agency "bulk sales" proposal, more than 2,000 foreclosed homes owned by mortgage giant Fannie Mae in six states are being sold to investors.

The homes include more than 500 units in Los Angeles County and the Inland Empire.

CAR raised objections to the plan in May and August, complaining that there's already a shortage of bank-owned foreclosures on the market. Bank-owned homes currently sell within weeks, often above the asking price with multiple offers.

The bulk sales would limit the supply available for small investors and first-time homeowners while driving down values in surrounding neighborhoods by moving in renters, critics have complained.

Singer — one of five experts taking part in Thursday's economics forum – complained that in past deals, real estate investment funds have bought the properties with a 14 percent discount, on top of 20 percent management fees for renting out the units.

"When everything is said and done, these things make no sense from a taxpayer's standpoint," Singer said.

"It makes no sense," added Robert Kleinhenz, chief economist for the Los Angeles Economic Development Counsel and a former CAR economist. "Our market is disposing of distressed sales at a rate that there's very low inventory."

Earlier in the discussion, Kleinhenz said 2012 "seems to be the year we're waiting for, that transition year" leading to a recovery in the housing market.

But during the wide-ranging discussion, panelists also listed two potential developments that could kill the recovery:

Failure to avert the so-called "fiscal cliff" that will occur at the end of the year under terms of last year's budget-cutting compromise. If Congress can't agree to an alternative plan, Bush tax cuts and payroll tax cuts go away and a series of automatic budget cuts take effect.

A failure to avert the fiscal cliff "would likely push us into recession," Kleinhenz said.

Singer predicted that Congress will agree to a two-month delay and kick the can down the road.

Eliminating Fannie Mae, Freddie Mac and other government-sponsored mortgage enterprises, which generate cash for homebuyers by providing government backing to private lenders. Government-sponsored enterprises (GSE's) provide nearly 90 percent of today's home loans.

Singer called Fannie and Freddie "damaged goods," but argued that banks are realize they must have government support to keep the mortgage market alive.

"There is no private mortgage-backed securities market," Singer said. "The result is we're either going to shut down the market or we're going to get rational."

Related story: Big-money funds buy foreclosures — to rent

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The New York Times

ACADEMY AWARD NOMINEE
JOHN HAWKES

September 27, 2012

The Rental Alternative to Foreclosure

By LISA PREVOST

FOR homeowners who have been buffeted about by the foreclosure process, the suggestion that they willingly hand their deed to the lender and rent the home instead may only add insult to injury.

But such an alternative to foreclosure — variously called “deed for lease” or “mortgage to lease” — is an option for a select few. Fannie Mae introduced a rent-back program in 2009, and this year, both Bank of America and CitiMortgage announced that they would try a similar approach in a handful of markets.

The programs are basically an extension of what’s known as “deed in lieu of foreclosure.” In this process, the lender agrees not to foreclose if the homeowners simply hand over the deed to their property.

The new element is a rental option: after relinquishing the deed, homeowners who meet certain requirements may sign a lease to stay on as renters for one to three years (depending on the lender).

This alternative may be ideal for families seeking to weather the unpredictability of the foreclosure process, and who want to keep their children in the same school district, said Dean Baker, a co-director of the Center for Economic and Policy Research.

Mr. Baker says he began pushing for this approach when the market first collapsed five years ago because he views it as both simpler and less politically controversial than loan modifications and write-downs. “It doesn’t cost the government anything, it doesn’t require a lot of bureaucracy, and it doesn’t raise some of the moral-hazard issues that come up with other programs,” he said.

Borrowers benefit because a deed-in-lieu looks better than a foreclosure on a credit report, and outstanding mortgage debt is forgiven.

Mr. Baker estimates that homeowners who bought at the peak of the housing bubble in the New York area could save, on average, $1,200 a month by renting instead of paying the mortgage and other related expenses.

The main problem, as with all foreclosure alternatives, is whether an applicant qualifies. As acknowledged by Andrew Wilson, a spokesman for Fannie Mae, the agency's "Deed-for-Lease," or D4L, option has not been widely utilized.

Applicants may not be more than 11 payments past due on their mortgage, and must be able to pay fair-market rent without spending more than 31 percent of their gross income. Properties with second mortgages are ineligible, as are properties in areas where zoning or homeowners' associations prohibit rentals. The condition of the property is also a factor.

"I'm surprised they didn't include a requirement that you give your firstborn," said John Taylor, the president and chief executive of the National Community Reinvestment Coalition. "They should come back with something that's not as restrictive."

Bank of America is offering its "Mortgage to Lease" option to only about 2,500 preselected borrowers in New York, Nevada, Arizona and California. A company spokesman would not comment on how many customers had taken part in the program.

Citi's "Home Rental Program," announced just last month, applies to only 500 homeowners in Arizona, California, Texas, Florida, Nevada and Georgia.

Advocates for distressed borrowers say that even those who do qualify ought to be cautious. It may be more financially beneficial to ride out the lengthy foreclosure process living in their houses free and putting money aside, rather than working out a deal to pay rent, said Craig D. Robins, a bankruptcy and foreclosure defense lawyer working in Nassau and Suffolk Counties.

Homeowners who really want to stay in their homes should first exhaust all possibilities for a loan modification or principal reduction, Mr. Taylor said. Consulting with a housing counselor approved by the Department of Housing and Urban Development is advisable.

"A push to get people into rental should only be after all the other alternatives have been explored," he said.

latimes.com/business/money/la-fi-mo-mortgage-modification-scam-crackdown-20121010,0,4483816.story

latimes.com

Mortgage modification scam watchdog cheers federal crackdown

By Jim Puzzanghera

7:53 AM PDT, October 10, 2012

WASHINGTON --Since early 2010, a leading civil rights group has helped compile a database of approximately 26,000 complaints about mortgage modification scams -- attempts by fraudsters to take advantage of those hardest hit by the housing market meltdown.

advertisement

The people making those complaints have reported losses of $63 million to the National Loan Modification Scam Database. And the Lawyers' Committee for Civil Rights Under Law, which manages the database, has filed 10 civil suits in conjunction with other organizations to try to halt mortgage assistance operations in California and New York.

The group said it was happy to hear that federal officials were cracking down on the scams with criminal charges, which adds another dimension to the fight in addition to civil fines.

“For some of these folks, the fines might be the cost of doing business,” said Yolanda McGill, senior counsel in the Fair Housing and Lending Project at the lawyers' group. “So the risk of jail time is important in all the efforts going on to stop this.”

U.S. Atty. Gen. Eric H. Holder and other officials on Tuesday said the government's Distressed Homeowner Initiative had filed criminal charges against 530 people during the fiscal year that ended Oct. 1.

The defendants were accused of defrauding about 73,000 underwater homeowners of a total of $1 billion nationwide.

"Distressed homeowner schemes have displaced loan origination fraud as the most common type of mortgage fraud in many areas of the country," said Kevin Perkins, the FBI's associate deputy director, who was among the officials announcing the results of the crackdown.

In addition to criminal charges, there have been 110 federal civil cases filed against more than 150 defendants. Those cases allege that an additional 15,000 victims were bilked out of a combined $37 million by mortgage-assistance scams.

Even as the housing market shows signs of a rebound, the stream of complaints about those scams has continued, McGill said. The database received 1,005 complaints in September, with the most -- 169 -- coming from California.

“This type of fraud is a little bit like whack-a-mole ... and these outfits engaged in this are making money hand over fist,” she said.

The database is a project of the Loan Modification Scam Prevention Network, a national coalition of government agencies, nonprofit organizations and service providers that includes the Department of Housing and Urban Development, Fannie Mae and Freddie Mac.

Federal officials, who have access to the database, told the lawyers' group this year that they were going to focus more on fraud against distressed homeowners, said Linda Mullenbach, also a senior counsel in the Fair Housing and Fair Lending Project.

“Any type of assitance to shut these operations down is very much valued,” she said.

ALSO:

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Freddie Mac: Fixed mortgage rates set record lows for second week

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