

MORTGAGE FRAUD EXAMINERS WARNS: BEWARE OF THE LATEST FORECLOSURE RESCUE SCAM—“PRETENDER DEFENDERS”

Mortgage Fraud Examiners, the investigative firm who warned the public about loan modification scams, the "criminal loan modification trap," "forensic loan audit" scams, and the "Mortgage Elimination" scam is now warning that "pretender defenders" may be cheating homeowners out of victory by ignoring contract breaches and tortious acts underlying their mortgage transaction.

“Only exposure of contract breaches and/or tortious conduct underlying a mortgage transaction provides a sound strategic basis for liberating homeowners from the bondage of mortgage foreclosure.” So says Storm Bradford, Founder of Mortgage Fraud Examiners.

Mortgage Fraud Examiners is a project of Lex Consulting, LLC. For over 30 years, Lex Consulting has provided litigation support to attorneys, helping them break into new areas of practice, or providing specialized advice for complex cases requiring novel approaches to the law. Due to the recent housing crisis, Mortgage Fraud Examiners, a team of specially trained legal professionals, was created to provide borrowers and the legal community with comprehensive assistance to help keep them in their homes.

“Homeowners and attorneys need to understand a promissory note; mortgage/deed of trust is nothing more, nothing less, a contract. Moreover, attorneys need to be extra careful. According to several ethics counsel we contacted around the country, “failing to identify contract breaches and/or tortious conduct may justify a homeowner suing a foreclosure defense attorney for malpractice or at least disgorgement of fees if the homeowner were to lose their property and these problems were later identified.” Bradford reiterates the point, made by the ethics attorneys, foreclosure defenders who fail to properly examine the mortgage transaction might face legal malpractice claims by their clients: **“Let me ask you this. If a client goes to an attorney with a *contract* dispute, what is the attorney ethically bound to do? Isn't it to look for breaches in, and tortuous conduct related to the contract?**

Thomas Carrero, a Florida attorney specializing in foreclosures explains, **“we see numerous borrowers who seek out representation of a "true" litigation attorney after another law firm charged them a flat fee to supposedly defend their foreclosure. It is our belief that the only true way to properly defend a foreclosure suit is through an in-depth analysis of the mortgage transaction and appraisal process, and then attacking the loan based on those findings through an aggressive litigation or settlement plan. On the flip side of the coin, if no meaningful violations are found after carefully reviewing the mortgage transaction, a borrower will *not* pay what is sometimes several thousand dollars to hear, "Sorry we can't help you." Rather, with a billable hour litigation attorney, focus could then be shifted to**

asset protection, alternate resolution (i.e., short sales, deeds in lieu of foreclosure, "friendly foreclosures," etc...), reducing the amount of any potential judgment, negotiating away any potential deficiency balance and in the most extreme cases, potentially filing for bankruptcy."

Bradford claims that so many foreclosure attorneys fall into the *Pretender Defender* category that homeowners must develop ways to determine whether the attorney can and will be able to identify contract anomalies within the mortgage transaction, and get them a financial settlement and/or their house free and clear if found. "Asking a simple question, like how many cases have you won, would be a good starting point."

Bradford explained the favorite strategy of the "Pretender Defenders:" "They use arguments like "*show me the note*," "securitization, "MERS", "robo-signing," and so on. Although these have some legal validity, inevitably, the entity foreclosing corrects the defects and wins because of one central fact that everybody knows – the borrower failed to repay the mortgage loan as agreed. These "pretender defenders" know that the court will eventually grant the foreclosure, Bradford says, and that their typical defenses generally amount to nothing more than STALL tactics."

This brings up a pressing question. How often do "pretender defenders" miss valid defenses that may help homeowners? A recent lawsuit by the FDIC shows that this happens all the time. The FDIC had 292 appraisals performed by an appraisal management company for Washington Mutual analyzed. The FDIC found "more than 75 percent of appraisals reviewed were found to contain multiple egregious violations of USPAP and applicable industry standards."

<http://www.policyshop.net/home/2011/6/6/the-fdics-big-appraisal-fraud-suit-why-it-smells-fishy.html>

"Foreclosure defenders should be identifying tortious conduct, and contract breaches. And finding problems within the mortgage transaction is relatively easy, we find appraisal fraud in eight out of every ten mortgage transaction we examine, which coincides with the findings of the FDIC, and that doesn't include all of the other types of tortious conduct and contract breaches that are usually present. So in most cases the homeowner has a ninety percent chance or better of having something viable that puts them in the proverbial "driver's seat." And in our experience, most often the demonstration of a strong cause of action will lead the bank to ask for a settlement. The settlement or the lawsuit could result in getting the house free and clear, and/or money for the foreclosure victim, plus fees and costs for the attorney."

<http://www.wvrecord.com/news/233771-quicken-loans-on-losing-end-of-3-million-predatory-lending-verdict>

Bradford adds, “if the homeowner had a choice of possibly stalling the foreclosure action or possibly getting their home free and clear, and/or a monetary settlement from the bank, does anyone really believe the homeowner would choose the stall tactic? And yet, many do because they were misled by these “pretender defenders” who are incompetent, inexperienced, or just by their greed. By just delaying the inevitable foreclosure, some “pretender defenders” bill their clients anywhere from \$1500.00, to \$3500.00 or more upfront, and \$500.00 to \$1500.00 a month until their foreclosed on. In the end, the client loses the house and has lost to the “pretender defender” \$5,000.00 to \$20,000.00 badly needed for relocation after the foreclosure.”

<http://www.tampabay.com/news/confusing-lawyer-fees-complicate-foreclosure-battles/1173271>

Mortgage Fraud Examiners provides services for attorneys and their clients who face foreclosure and for homeowners who suspect problems underlie their mortgage transaction. They discover appraisal fraud, loan application fraud, other tortious conduct, contract breaches and both typical and atypical violations of all kinds. They provide a report of the findings within 7 business days, and, as a service to attorneys, may provide it styled as a complaint ready for filing or for settlement negotiations.

"The first line of action for any homeowner or attorney should be the examination of the mortgage transaction first, and in the off chance there's nothing there of any consequence you can always stall afterwards, but never first! There really are many legal options available to homeowners facing foreclosure," Bradford concludes. "However, the only process that works is to find a REAL legal dispute that a judge is willing to accept as a valid reason to slam the bank, such as contract breaches, tortious misconduct, etc. Every mortgage transaction has unique facts, every claim has different applicable law, and only by properly examining the mortgage transaction is one going to find the answers."

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