

Use Foreclosure Law – Keep Your Home

*"Those who do not learn from history are doomed to repeat it."
George Santayana*

The Rule of Law is at the center of all economies. Application of the Rule of Law allows families threatened with imminent foreclosure, and those severely underwater, to use legal leverage when dealing with lenders. All around the nation average American families are obtaining justice if their real estate contracts are based in fraud. It seems astonishing, yet, most loan documents contain elements of fraud.

For homeowners, the best hope for a legitimate loan modification, making the loan affordable, is a *cramdown* reduction in principal. This reduces the total amount actually owed to current market value, minus 10% (allowance for oncoming reductions in market value).

The Obama/Geithner loan modifications come up short because the Senate has blocked the cramdown provision for principal reduction. Even worse is that fact that if the Senate did allow the cramdown provision, homeowners would only qualify if they file for bankruptcy.

The path to cramdown Principal Reduction is through legal leverage utilizing Predatory Lending and Securities Law violations and issues, only discoverable through a Forensic Loan Audit.

What is a Forensic Loan Audit?

A Forensic Mortgage Audit is the comprehensive examination of all loan documents including legal documents, and other evidence important to the mortgage loan. A forensic mortgage audit identifies anything done illegally by the lender, broker, appraiser or other parties involved with the mortgage. During the Audit process we review all documents received from the date of application to the funding date.

A Forensic Loan Audit provides a powerful tool for negotiating with the lender. Violations and possible fraud are the leverage used to present the case to the lender and/or the court and come out a winner. The more violations discovered, the better the chances of obtaining a favorable settlement.

Loan Audits May Find

Violations of Federal, State or Local Laws

The act of using a home as collateral in obtaining a mortgage is covered by numerous federal, state and local laws. These laws are in place to protect the borrower's rights when a home is used as collateral in a mortgage transaction. We review loan documents to determine if there are differences between the disclosure of information in the loan documents and the disclosure of information required by law.

Constructive Fraud

Material facts include: the terms of the loan, whether there is a prepayment penalty, or any other information which the borrower would want to know before signing the loan papers. Did the broker or loan officer hide or fail to disclose any material facts to the borrower?

Fraud and Negligent Misrepresentation

Were any representations, statements, or comments, written or oral made by the loan officer, broker, escrow agent or anyone else which contradicted the terms of the documents? When a licensed mortgage professional makes errors it is tantamount to negligent misrepresentation.

Excessive Fees

Were there any excessive fees or improper charges made by the lender or loan broker? Are there any deceptive, abusive or predatory lending practices or an excessive prepayment penalty? Is there a Net Tangible Benefit to the Borrower in the mortgage transaction? Was there a proper analysis to determine

if the Borrower could afford the payments on the loan? Were the fees properly disclosed?

Breach of Contract

The note and its attachments are a contract. The lender must follow all the terms of the contract such as the way the interest is calculated. Monetary penalties are assessable if there are errors. Were there any terms in the contract which the lender failed to follow?

Once the loan Audit determines deceptive lending practices or any other type of mortgage compliance issue stated above, you have the leverage to fight the lender and win.

Why The Lender Will Want To Settle

An out of court settlement helps the lender avoid expensive litigation and the risk of being charged with large fines and the risk of setting a legal precedent recorded in public records that other borrowers may also use in their litigations with their lenders.

Lenders are pragmatic and fully aware that if a loan was funded illegally, the borrower may be **entitled to compensation, a refund of all interest and principal payments, closing costs, legal fees and a restructure** of the terms of the loan.

An attorney retained by you with “**documented proof**” (the Audit) often **will reach a settlement agreement** with the lender and hardly ever continue on to trial. With the Audit’s documented findings of Federal and State Violations the lender will have no choice but to settle.

Our Auditor

Involved in the loan modification business since 1989, around 2004 he saw the signs of what is now the worst housing crisis in our history. Up until that time his primary business was loan modifications of which he successfully completed hundreds. He was among the first involved professionals to recognize the need for loan analysis. He is considered by many the authority in this field and is constantly sought after for advice.

As of mid-2009 he and his firm have completed over Twenty Six Hundred Audits.

His Expertise

His firm has earned a reputation as a highly-respected litigation consulting firm, assisting attorneys in the preparation and management of mortgage litigated cases. He investigates mortgage fraud, predatory lending practices and real estate fraud. This involves the originator of the loan, the original note holder, the servicer and subsequently the end receiver of the mortgage payment. Having had numerous and frequent correspondence with all parties concerned including federal and state regulatory agencies throughout the country they *are extensively involved in the methods that are used by these organizations. Over time they have learned to adjust audits to their methods and in fact have used lenders correspondence in opposition to them.* A number of attorneys claim their expertise is superior to other Auditors that they have encountered. Their opinions and advice come from hands on knowledge and deep experience over time.

Loan Modifications.

Since December the press has gone on and on about new home loan modifications, which some call a *mod-in-a-box*. These are offered by the federal government (through Fannie/Freddie, Sheila Bair's FDIC) and most of the major banks. Prior to December you were not likely to gain a loan modification (or approval

for a short sale), even when in serious trouble with your mortgage payments. Yet, if you can afford your payment, but, are severely underwater (owing more than the house is actually worth) you were not able to obtain a loan modification. Period!

You Must Do Your Own Cramdown.

The bottom line is that you must do your own cramdown using legal leverage obtained through a Forensic Loan Audit and then work with an attorney to **Use Foreclosure Law to Keep Your Home.**

Conventional Loan Modifications Do Not Work -- For You.

The proof is in the data. The Office of the Controller of the Currency recently released data showing that 58% of borrowers entering into these newer conventional loan modifications are re-defaulting after eight months. Thirty two per cent are behind one payment after three months. Recently [Sean Dobson](#), chief executive officer of Amherst Securities Group LP, an Austin , Texas , firm that focuses on home debt said, "Most modifications are a sham done in the servicer's self-interest, and they do nothing to benefit the homeowner."

Yet, the powers that be soldier on. They kick the can down the road, instead of taking actions to fix the economy sooner, by letting actual market forces drive down values to true and historical Income to Debt ratios. Laws of economics dictate that this market will continue to reset lower, a reversion to the mean, regardless of temporary band aids.

Obligation To Family

People have the right, moreover the *obligation to family*, to utilize existing law to repudiate mortgage debt that is based on Predatory Lending. A Forensic Loan Audit can discover the extent of fraud in your existing mortgage loan documents.

Debt Default. From Wikipedia.

"In finance, default occurs when a debtor has not properly met his or her legal obligations according to the debt contract, e.g. has not made a scheduled payment, or has violated a loan covenant (condition) of the debt contract. A default is the failure to pay back a loan."

Debt Repudiation. From Merriam-Webster: re·pu·di·ate:

- a. to reject as having no binding force <repudiate a contract>
- b. to reject as untrue or unjust <repudiate a charge>
- c. to refuse to pay <repudiate a debt>

Don't Walk Away in Defeat.

Our point is that generally, regarding housing debt, *to default is to walk away in defeat* after foreclosure.

Here, by utilizing the Rule of Law to repudiate fraud-based debt, family objectives can be achieved by confronting a lender, utilizing an experienced attorney after obtaining a Forensic Loan Audit. The family objective may be either to Use Foreclosure Law to Keep Their Home, or, if fraud is significant, to walk away with monetary damages in hand under the family's terms of settlement.

The Long Con.

A *long con* is often complicated and deep in its implications, and requires building trust (here, by bankers) from those who will ultimately be swindled (here, home purchasers in need of a mortgage). The facts are now emerging that most adjustable rate mortgages (ARMs) were illegally originated.

A housing bubble came to exist because unregulated Investment Banks were able to leverage(borrow and create money), which they in turn invested by making money available to mortgage lenders such as Countrywide, who used ethically challenged mortgage brokers to enable almost anyone who could fog a mirror to buy a home. The lenders knew all the way to the top (Investment Banks) that millions of

homeowners would not be able to keep their home once payments reset on subprime and Option ARM. They literally created a historic Mania. "Housing always goes up." Until it doesn't.

On the brighter side, understand that judges throughout the nation are granting relief to borrowers under quiet title actions brought by their attorneys. The homeowner may receive the title to the home, free and clear, if the violations, the fraud, is manifest and shows in the loan origination documents. This is obviously the *home run*. Literally.

The (Current) Short Con -- New Loan Modifications

A *short con* is done swiftly and deceives by making promises and assertions that are simply *too good to be true*, even though they may seem *too good* not to take advantage of. They usually proceed quickly in order that the victim will not have time to analyze the situation, nor have time to gain proper legal advice. Often the victims may have some inkling that it doesn't quite add up, but, in a desperation over the fear of losing their home, they believe it is in their best interest to go along.

Mod-in-a-box is the term commonly used in the industry to describe Loan Modifications offered since December by Fannie/Freddie, Sheila Barr's FDIC, and several major banks. We argue that such modifications are based on fraudulent intent. These modifications merely offer a reduced interest rate for 4-5 years, and stack the interest not paid during that time on the top of the amount owed, increasing the total amount owed. The problems are clear:

No Principal Reduction to current market value leaves the borrower underwater for years to come. Unable to sell without taking a significant loss, they become indentured servants. They are trapped for years as renters in their own home. In Japan it took 16 years, from the 1990 top of their real estate market to 2006 for home values to return to 1990 values. Our downturn may not last that long, but we see no bottom for housing for at least four years. The data that substantiates this theory or prediction is offered below.

Indemnification clauses are included in these new modifications. This means that in order to get a lower rate for a couple of years, the borrower is unwittingly giving up the legal right to sue the lender when Predatory Lending and Securities Law violations are contained in their existing loan documents. In our opinion there lays the fraud in that the lender possess superior information regarding the fraudulent loan.

Most borrowers are not aware of such violations, which is why we wrote this. Clearly if this new type of Loan Modification becomes Public Policy, we need to legally challenge such policy. We are not attorneys and do not offer legal advice.

What Is A Forensic Loan Audit

A comprehensive Forensic Loan Audit reveals Predatory Lending and Securities Law issues which can be the basis of legal claims under which lenders must negotiate loan terms (reach a settlement). A legitimate appropriate loan modification settlement should include principal reduction (amount owed) to market value, less 10% to account for future national declines in housing values.

When the law and the facts are on your side and well pled by an experienced and knowledgeable attorney, lenders will participate in settlements in order to avoid extensive, thus expensive (for them) litigation. If the violations are significant lenders will settle because they do not wish to be *found out publicly*. At the same time, by settling they avoid creating legal precedent regarding acts of fraud.

The path to a cramdown Principal Reduction is through legal leverage utilizing Predatory Lending & Securities Law issues and violations, discovered through a Forensic Loan Audit.

Are You In Foreclosure Or Underwater?

- Do you have an Adjustable Rate Mortgage that has recently or is about to spiral out of sight?
- Were you promised one thing when you began the loan process then delivered something different at the closing table?
- Did you know the difference?

- Are you experiencing the wrenching feeling of seeing your home plummet in value while the amount you owe remains the same, or actually increases?

You Are Not Alone.

Tragically, homeowners are losing their homes every day (2 million in 2007-08, over 1 million so far in 2009) to foreclosures across the country. Originally, those unfortunate homeowners had the now infamous "subprime" adjustable-rate financing that exploded beyond ability to pay. Monthly payments increased to unsustainable amounts.

Understand that lenders knew full well that they were putting people into loans that they knew they would not be able to afford over time. This is a violation of the law. They did it anyway to gain fees and then passed the risk up to the next player in a chain that extended through Rating Agencies to Wall Street Investment Banks who packaged together and sold borrower loans as Securities to Institutional Investors such as Pension Funds and Insurance companies, such as AIG.

One other factor is that they believed that when the loans defaulted, they could quickly recover the houses in foreclosure and still make a profit on the deal. That has changed. Now, if you act in your family best interest by forcing a cramdown **you** can come out ahead.

Beyond the subprime debacle (and as employment continues to crash around the nation), homeowners with every type of mortgage:

- ALT-A,
- Pay Option ARMs,
- Prime, and,
- Jumbo loans

are more and more in danger of losing their homes. Tragic is the fact that over the last 30 months a million or more families might not have lost their homes to foreclosure had they known that their lenders violated state and federal fraud laws when the loan was originated.

Some Critical Data.

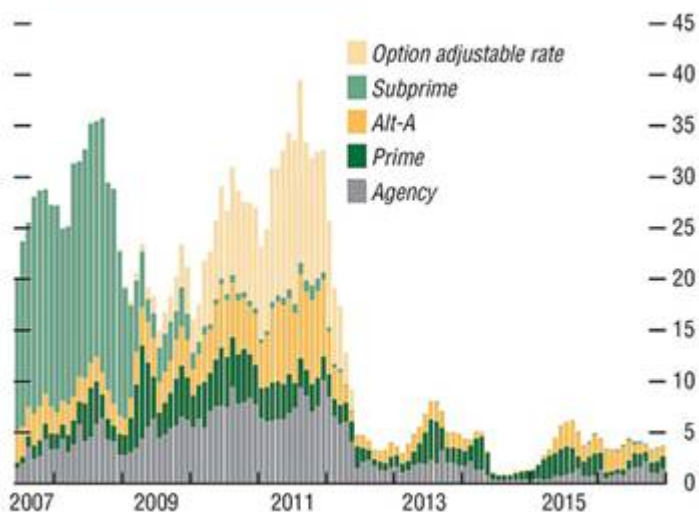
Some readers accused us of being rather heavy handed in the initial book (*Choose Foreclosure: The Case For Walking Away*), regarding our finger pointing at the culprits. That book went into print on Amazon in August 2008. Much has happened since then that shows the we were prescient in describing what was sure to happen based on the facts "on the data. Now it is happening and increasingly becoming worse for homeowners.

During the time of the housing bubble expansion, mortgage originations became different, and at the top of the bubble the growth of new originations were in ALT-A loans (good credit rating, but low or no requirement to *document* income). Also, and more significant, were Option-ARMs (initial very low teaser rates, with no required payments on principal (Negative Amortization).

No Market Correction Until 2012.

Many, particularly those in the real estate market, make hollow arguments that we are near or at the bottom. The chart below is staggering and indicates that significantly higher resets will occur on ALT-A, Prime and Jumbo paper through 2011 into 2012.Â Â Forcing more inventory on the market and forcing pricing to continue to drop through that time frame. A broader profile of mortgage resets is presented below (this chart does not include the full range of adjustable mortgage products).

Figure 1.7. Monthly Mortgage Rate Resets
(First reset in billions of U.S. dollars)



Source: Credit Suisse.

The chart above clearly shows that the majority of ALT-A and Options Arms have not yet reset as they will do over the next three years. One other factor is that most of these were originated at the top of the bubble, with the highest prices, and will therefore likely have the largest losses.

Negative Equity.

It is a well known fact that borrowers with negative equity are more likely to simply walk away. *That is a tremendous mistake.*

The First American CoreLogic [Negative Equity Report](#) for December 2008 is available on line.

"Approximately **17 million households will have negative equity by the end of 2010 under the baseline scenario** (in the CoreLogic database), and

"Approximately **23 million households will have negative equity by the end of 2010 under the more severe scenario.**

Some Mortgage Brokers.

The Mortgage Brokers (MBs) on the ground who actually work one-on-one with borrowers to obtain these new loan modifications are the very individuals who wrote the original loans in the first place. You must understand that most MBs were, are now, and in the future will be joined at the hip with the lenders. In most states as a condition of their MB license they have a legal obligation, a fiduciary duty to their client, the borrower, to see to the borrower's best interest. Yet, the lender who MBs consistently do business with is the **real** client. Yes, there is legislation pending in Congress to rein in the practices of Mortgage Brokers. Good luck. As Senator Dick Durbin recently said regarding banking interests and the Senate: "They own the place."

After writing the original illegal loans (some Forensic Loan Auditors claim 80 - 95% of all loans since 2003 contain illegal Predatory Lending violations), the MBs are now coming back to the well for an upfront fee to write modifications-in-a-box that aren't helpful, will not contain Principal Reduction to current market price, and much worse, sweeps the illegal violations under the rug, beyond appropriate litigation.

Indemnification Clauses Again.

The crux of the matter is that embedded in fine print in the new loan modification is a small indemnification clause, which was written to not make any real sense to a borrower desperate for help who will likely sign anything to stay in their home. That indemnification states that the borrower is giving up any rights to contest any part of the original loan documents, fraudulent or not.

In other words if there are actionable Predatory Lending or Securities Law violations in the original loan docs, they are swept under the rug and the borrower is agreeing to never use said violations to litigate in the future against the lender even if the loan is filled with fraud. You waive your rights for a temporary band-aid. **Don't do it!!!**

This blanket indemnification protects: assignees (Investment Banks), successors, servicers, lenders, appraisers, and you may have guessed it, Mortgage Brokers. At the heart of Predatory Lending is the fact that generally borrowers paid more for their loan than what they actually qualified for. Excess fees were tacked on by the MB which benefited the lender, who kicked back *Yield Service Premiums* to the Mortgage Broker as a bonus for charging the borrower excessive fees. In short that's the basis, the bottom of their dirty game.

It's deeper and wider of course, but that was the shake-down at the closing table. Borrowers did not know better and their Mortgage Broker who had a fiduciary obligation (based in Agency law) to them sold them down the river. Now the MBs are back for another taste. It makes one angry just to write this out. Particularly one who also holds a real estate license, and highly honors ethical practice grounded in legal fiduciary obligations to clients.

Beyond Predatory Lending.

Securities Law issues contained in the loan documents are the newest weapon in the legal arsenal for homeowner. While Predatory Lending legal actions against lenders have been pursued in growing numbers for the last two years, it is only recently that Securities Law implication have been raised. This is in regard to loans that were sold as Securities. Some estimate 70% of all loans since 2004 were Securitized. These issues revolve around the Securitization process itself wherein the loan and the Title were separated and taken up by different parties. This was done through unexecuted and unrecorded (illegally breaking the chain-of-title) receiver and assignment document transfers to different parties.

This in turn creates chain-of-title issues (often called a *clouded title*) and Federal & State Uniform Commercial Code (UCC) violations, some sounding in fraud due to: inadequate disclosures; *unconscionability*, lack of good faith and fair dealing, etc. These violations have only been recently asserted, on behalf of borrowers. Usury law and a host of other issues are now being aggressively pursued. Including what entity has the legal right to bring a foreclosure action.

Borrowers have now begun to successfully challenge lenders and loan servicers on the grounds that because they do not possess the note, the physical loan document, they have no right under State and Federal law to commence a foreclosure action.

The actual owner of the note, the loan, is often not the party that starts the foreclosure process. Tragically, most of these illegal foreclosures proceeded through the courts, resulting in foreclosure because the borrower did not, does not know they can bring a simple action to stop such illegal foreclosures. These were uncharted waters. People did not know. Now we know.

With smart attorneys educating judges to these facts, the judge often quite willingly dismisses the foreclosure action. They lender or servicer may attempt again, but, this gives borrowers and their attorneys the necessary time to challenge the loan origination process itself, and when fraud is found through a Forensic Loan Audit, the borrower is able to obtain a settlement, ideally resulting in a legitimate loan modification.

These issues are both extensive and complex to determine. In that regard they are similar to

indecipherable loan documents you were presented at the closing table. Most loan packages consist of 100 or more pages that are completely undecipherable by an average person. They are designed to be difficult to understand.

Yet, there was often no time (or money) to consult with an attorney before the closing table. Always implicit was the fact that the borrower really wanted the home. Borrowers trusted their Mortgage Broker.

One of the top national litigators against foreclosure fraud is April Charney, a consumer lawyer with Jacksonville, Florida Area Legal Aid since 2004. She conducts attorney workshops around the country to teach other attorneys how to defend borrowers. Charney recently said, "It is common to prove that transfers and endorsements of notes were not properly made, and the real note holders are impossible to identify. The securitization process has failed, and the lenders cannot live up to the claims and contracts outlined in their 10 and 8K Securities and Exchange Commission filings."

What To Do? If you're Still In Your Home.

Critically, you must take action by first obtaining a Forensic Loan Audit in order to determine the actual leverage you have to bring a successful resolution to your situation.

Tactics and Strategy.

We are able to point you to an extremely reasonably priced Forensic Loan Audit done by an auditor that we have learned to trust.

If fraud violations are very significant you may be entitled to receive attorney fees, compensatory AND punitive damages under RICO law. (Federal and State racketeering charges.) Obviously this is one of several *best case* outcomes. We can not and do not make predictions as to how any case will work out. Outcomes are based on the results of the Audit. And, each situation is literally different.

You and your family need not be another casualty of the housing crisis. Become a Member and we will stand with you to defend your home and your family's future.

As We Said at the Top:

You have the right, moreover the obligation to your family to utilize existing law to repudiate mortgage debt that is based on fraud. A Forensic Loan Audit can discover the extent of fraud in your existing mortgage loan documents. But, first you must take action by obtaining a Forensic Loan Audit.

Become a Member.

We're pleased to announce that our Mortgage Options Network has opened a Membership Group, which *we urge* you to join. To see the Membership Agreement, go back to the top of this web page. You'll find it on the right hand side. Finally, if you do become a Member we're able to immediately refer you to a deeply discounted "Preliminary Audit," which enables you to understand whether or not you should proceed to the formal audit. We believe this is not offered anywhere else.