



Sharp as a tack: When mortgage fraud becomes elder abuse

The fear of losing their homes can leave the elderly vulnerable to scams and fraud

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A 98-year-old San Francisco man states on a loan application that he has an income of \$980 a month for his work as a Toyota repairperson. You would think that the loan would be denied. Not in northern California.

"The professionals look the other way. There are a million different types of schemes," says Rachel Dollar, a Santa Rosa civil attorney. Dollar specializes in defending lenders. She explains that frauds range from misstatements and forged signatures on loan applications to *foreclosure rescue*. "In that, groups of people (perpetrators) are coming in and saying that they can help [elderly] people save their house. [But] they don't generally leave any avenue open for them to do so," Dollar states.

The advent of EADACPA

Since the late 1990s, mortgage fraud perpetrated on elderly people, those age 65 and older, has become severe and widespread. Today, criminal prosecutors and civil attorneys are invoking elder abuse statutes in many mortgage fraud cases. The Elder Abuse and Dependent Adult Civil Protection

Act (EADACPA), stated in California's Welfare and Institutions Code section 15600 et seq., provides special remedies for frauds against the elderly. Language in the Penal Code section 368 and the Civil Code section 3345 do as well.

Joe Piasta, a Santa Rosa civil attorney, says one of the most helpful provisions of the EADACPA is the requirement that the losing party pay attorney's fees. "Normally if you have a case [under EADACPA] like a personal injury case, your cause of action dies with you. [With EADACPA], they came up with a new cause of action called *elder financial abuse*. This can be applied to a mortgage fraud case," Piasta states.

James Schwartz, a Pleasanton civil attorney, says the other most useful part of the EADACPA is the provision which allows elder abuse cases a priority to go to court. "The problem is, though, that once you turn the case over to the district attorney's office, it's unlikely you'll be able to get any money [out of the perpetrators]," Schwartz explains.

Judge Julie Conger, who runs the Elder Protection Court in Alameda County, disagrees. "[In my county] I do everything involving elder abuse. I bring the criminal prosecutions, then [handle] the civil case coming. [The criminal pros-

ecution] is a jumpstart to resolve the civil cases," said Conger.

One of the most important details to note in a mortgage fraud case with elderly victims is the point at which the fraud stripped an elderly person of more than their home. Mortgage fraud can leave an elderly person with a primary residence that is being foreclosed upon, a blackened credit history, loans at outrageously high interest rates, and no funds to seek help from an attorney or financial counselor to resolve their problems.

Self-help may be dangerous

Bill Denny, lead prosecutor of the real estate fraud division of the Alameda County District Attorney's office, says that elderly people who are losing their homes often get themselves in more trouble by trying to solve problems themselves.

"Once the people were in distress, they were vulnerable to scams," said Denny. "We found that even after the house was foreclosed upon, the elderly people were still being scammed. The house went to auction, and the money left over, [called] the *overage*, was supposed to go to the rightful owner of the house. They [the elderly person] got a signed postcard in the mail that said, 'We'll give you 30 percent of whatever we recover,'"



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said Denny. Denny says the postcard was created by an unethical corporation that charged a fee for *finding* money that was already scheduled to be returned to the former homeowners.

Tom Pool, spokesman for the California Department of Real Estate, reports that it is unclear how many victims of mortgage fraud are elderly. "We don't really categorize our victims that way [by age]. The way we track our data, fraud is fraud, whether it is a real estate transaction or a mortgage transaction. The number of fraud cases that we are investigating is definitely increasing," Pool states. Pool adds that the department filed over 1900 administrative actions against licensed real estate agents and brokers that resulted in over 400 revoked licenses in 2007.

Margot Smith, convener of the East Bay Gray Panthers, is furious that more action is not being taken against the perpetrators. "You have these mortgage predators with all their slimy persuasiveness preying on people who are not financially savvy," said Smith.

Protections are available

There are several methods to protect elderly homeowners. Arthur Prieston, chairman of The Prieston Group, a Novato-based company that protects lenders, says that elderly people need good financial planners. They also need unbiased help in checking their credit report on a regular basis. "In addition, as a representative of the elder client, sue both the lender and the title company to remove them from any inappropriate lien that has been claimed. In many cases, the title company will just get a deed in lieu. The lender will have to release the lien if it can be proven a fraud," said Prieston.

Piasta recommends that both lawyers and children of elderly homeowners keep in contact with the elderly people. "They need protection. Know the people in the neighborhood. Make sure the elders are being watched. Touch base with the various agencies [that deal with elder concerns] in the area. Look for the red flags of elder abuse: isolation,

secretive transactions, unusual transactions, and difficulty in seeing the elder alone," Piasta recommends.

Dollar says that it can be hard to work with elderly clients. "Anything you do to protect them narrows their ability to obtain financing," said Dollar.

But Piasta says that it is necessary to work with elderly victims to find out who is perpetrating the fraud. "A lot of people [who do it] justify it," he says. "[They always say] it's the elder's idea. 'She loved me. She's sharp as a tack.' But if

you watch elderly people, if they're slipping, they hide it. They're proud. They don't want to be put in a rest home," Piasta concludes.



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