

# Consumer Facts for Older Americans

## TIPS FOR CONSUMERS ON AVOIDING FORECLOSURE “RESCUE” SCAMS

Older Americans who have fallen behind on their mortgage payments are being disproportionately targeted for so-called foreclosure “rescue” scams. That is where a con artist who promises to help you save your home is actually intent on stealing your home or most of the equity you have accumulated in your home.

### What is a Foreclosure “Rescue” Scam?

#### Phantom Help

Foreclosure rescue scams most often appear in one of three varieties. The first might be called “phantom help,” where the “rescuer” charges outrageous fees either for light-duty phone calls and paperwork the homeowner could have easily done or makes a promise of additional robust representation that never occurs. In either event the homeowner is usually left without enough assistance to save the home, and with little or no time left to prevent the loss of the home or seek other assistance.

#### False “Bailouts”

A second variety of the scam is the “bailout” that never quite works. This scenario includes various schemes under which the homeowner surrenders title to the house in the belief that she is entering a deal where she will be able to remain as a renter, then repurchase the home over the next few years. Homeowners are sometimes told that surrendering title is necessary so that someone with a better credit rating can secure new financing to prevent the loss of the home. Beware! The terms of these deals are almost invariably so bad that the buyback becomes impossible, the homeowner permanently loses possession, and the “rescuers” walk off with all or most of the home’s equity.

#### Bait-And-Switch

The third variety is a bait-and-switch where the homeowner ***does not realize*** she is surrendering ownership of the house in exchange for a “rescue.” Many homeowners later insist that they believed they were only signing documents for a new loan to make the mortgage

current. Many also say they had made it clear to the scammer that they had no intention of selling or giving up their home to anyone.

### **How does a Foreclosure Rescue Scam Work?**

The “rescuer” identifies distressed homeowners through public foreclosure notices in newspapers or at government offices. The “rescuer” then contacts the homeowner by phone, personal visit, card or flyer left at the door, or advertising. The initial contact typically revolves around a simple message such as “Stop foreclosure with just one phone call,” “I’d like to \$ buy \$ your house,” “You have options,” or “Do you need instant debt relief and CASH?” This contact also frequently contains a “time is of the essence” theme, adding a note of urgency to what is already a stressful and possibly desperate situation.

The initial meetings stress the promise of a “fresh start” and often feature written or recorded “testimonials” from other homeowners the scammer allegedly saved. At the meetings, homeowners are frequently instructed to cease all contact with lawyers or the mortgage lender and let the “rescuer” handle all negotiations. This dangerous tactic simultaneously cuts off access to possible refinancing options while running out the clock on alternatives to prevent the foreclosure.

Once it is too late to save the home the property is either taken by the “rescuer” or, having been drained of substantial equity through the “rescuer’s” imposition of heavy fees and other charges, simply lost to foreclosure. Many homeowners are then summarily evicted by their “rescuer” from the home they once owned.

### **How to Avoid Foreclosure “Rescue” Scams**

Proceed with extreme caution if an individual or company:

- Calls itself a "mortgage consultant," "foreclosure service," or something similar.
- Contacts or advertises to people whose homes are listed for foreclosure, including anyone who sends flyers or solicits door-to-door or by phone.
- Collects a fee before providing services to you.
- Tells you to make your home mortgage payments directly to the individual or company (and not the mortgage lender).
- Tells you to transfer your property deed or title to the individual or company.

Contrary to advice given by many scammers, homeowners in trouble SHOULD stay in touch with their mortgage company, contacting the company or a lawyer first when in trouble. There are many ways to prevent the loss of your home, or at least to walk away with all or most of its accumulated equity if all else fails and you are forced to sell.

Do not be afraid to seek help! Many people in distress often don't exercise their rights, or think that what's happening to them is just a price they must pay for financial trouble. That is not true! In most cases you DO NOT have to lose your home or a big slice of its accumulated equity to get out of a debt. At worst an orderly sale of this precious asset may leave you a renter again, but at least you will take away the equity you have accumulated in your house through rising home values and years of payments.

### **Some major DON'Ts for homeowners in trouble:**

- Don't panic. Get information on the foreclosure process in your state; find out how much time you have to resolve your problems short of losing your home. Make sure you understand all the deadlines for responding to court documents, documents from lenders and other important papers. Be sure that you know the point at which you can lose the legal right to own your home.
- Never sign a contract under pressure. Take your time to review the paperwork thoroughly, preferably with a lawyer who is representing your interests only.
- Don't sign away ownership of your property (often referred to as a "quit claim deed") to anyone without advice from your lawyer. Be especially suspicious of offers to take over ownership of your home as part of a deal that will allow you to lease it and then buy it back after two or three years; experience shows that the buy-back is often extremely expensive or otherwise out of reach, so in reality you either never get your home back or, if you do, you have paid an outrageous amount to recover it.
- Don't pay your mortgage payments to someone other than your lender even if he or she promises to pass the payments on to the mortgage company. And if you find you cannot pay your mortgage do not ignore warning letters from your mortgage lender. Call your lender or a lawyer for help.
- Beware of any home sale contract where you are not formally released from liability for your mortgage. Surprisingly, some people lose their home but still wind up holding the mortgage! Make sure you know what rights you are giving up in any contract and that you agree to giving them up.
- Never make a verbal agreement. Get all promises in writing and get copies of the agreement.
- Don't sign anything containing blank lines or spaces. Information can be added later without your permission.
- Don't fall for promises like these, often used to lure homeowners into deals that will cost them far, far more than they will "save."
  - "We will save your credit."

- “We will pay your first two months’ rent or payments in your new place.”
- “You will get several thousand dollars in cash back that you can use any way you want.”
- “If you sign the house over to us the foreclosure will be recorded against us, not you.”
- “We will buy your house ‘as is.’”
- “We guarantee we will find you a buyer in seven (or 14) days.”
- “We will help you file bankruptcy to stop this foreclosure.”
- “It may cost you thousands more if your property is sold at public auction.”
- “We will give you \$40.00 in Free Gas.”
- If you do not speak English, use your own translator; do not depend on the “rescue” firm’s translator or anyone else’s.

## FOR MORE INFORMATION

For more information on foreclosure “rescue” scams and how to avoid them please see NCLC’s report **Dreams Foreclosed: The Rampant Theft of Americans’ Homes Through Equity-Stripping Foreclosure ‘Rescue’ Scams**. You can order this report through NCLC or find it on NCLC’s website at:

<http://www.consumerlaw.org/news/ForeclosureReportFinal.pdf>

For easy-to-understand guidance on how to deal with debt and those to whom you owe money see NCLC’s consumer paperback titled “Guide to Surviving Debt” and its sister publication, “The Surviving Credit Card Debt Workbook.” Both books are available in many bookstores or through NCLC’s website at: [www.consumerlaw.org](http://www.consumerlaw.org)

This publication was supported, in part, by a grant #90AP2483 from the Administration on Aging, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of views or opinions do not, therefore, necessarily represent official Administration on Aging policy.

August 2005.

## Consumer Facts for Older Americans

# What You Should Know About Refinancing

## What is Refinancing?

Refinancing is a process in which you pay off one or more existing debts with a new home loan. If you have perfect credit, refinancing is sometimes a good way to obtain a lower interest rate or to convert a variable rate loan to a fixed rate. However, if you are in the midst of financial difficulties, if you have too much debt, or if you have bad credit, refinancing is loaded with pitfalls. We recommend that you be very careful when refinancing debts. Many refinancing loans hurt consumer. Here are twelve things to consider before refinancing.

### Twelve Refinancing Rules

1. **When in doubt, do not refinance or consolidate debts.** Caution is always a good idea. Refinancing usually involves significant costs.
2. **Do not refinance because of pressures from debt collectors.** Debt collectors may try to scare you into refinancing because they have no other way to get their money. There are better ways to address debt collection problems than to borrow against your home.
3. **Never (or almost never) use your house as collateral to refinance unsecured debts such as credit card debts, medical debts, or utility bills.** If you have financial problems, unsecured creditors can rarely take your property for nonpayment. But if you refinance and use your home as collateral, the lender can take your home.
4. **If you have an existing debt with a finance company or high-rate second mortgage lender, do not refinance that debt with the same company.** You can ask the company to agree to lower payments on the existing loan, but you should not allow the creditor to write out a new loan, which is likely to involve hidden penalties and expensive new closing costs (or a higher interest rate).
5. **You should not turn a car loan into a second mortgage unless you would rather lose your home than your car.** Repossession is bad, but foreclosure is worse.
6. **Do not refinance low interest-rate loans with higher rate loans.** Make sure that the "APR" (Annual Percentage Rate) of the new loan is lower than the interest rate stated in the note on the old loan. (The APR adjusts for certain up-front fees in the old loan which you have already paid.) Also factor in the cost of insurance, closing costs, and other up-front fees. Treat these as costs of the new loan that could be avoided if you did not refinance. Note: These cautions apply even if your monthly payment is lower.
7. **Keep long-term first mortgages unless you are getting a lower rate.** Lenders may try to consolidate (pay off) a first mortgage. That is, they may try to give you a new mortgage equal to the old mortgage plus the new loan. Do not let the lender do this unless the interest rate on the new loan is significantly lower than the old first mortgage to offset prepayment penalties and fees and charges and if the mortgage is for the same length of time.

8. **Be careful about variable rates.** Variable rate refinancing loans can be very tricky. In any variable rate transaction, the monthly payment can increase drastically when you can least afford it. And some loans have artificially low rates (and payments) during the first months.
9. **Do not refinance loans when you have a valid legal reason for not paying that debt.** If you have a legal defense to repayment of a debt, such as lender fraud, you can raise that defense in court. If you refinance with a new lender, the defense may not be available against the new creditor. If you need legal help to determine whether you have a defense, you should get that help before entering the refinancing deal.
10. **Be wary of claims that you will get a tax advantage from a debt consolidation loan.** Many lenders offering bad refinancing deals talk about the benefit of the tax deductibility of mortgage interest. Make sure you understand how your personal tax situation will be affected. (For example, if you don't itemize deductions, the tax deductibility of mortgage interest is worthless.)
11. **Some refinancing deals are scams. When in doubt, seek help to review the loan papers before signing anything. You can walk away from a bad deal even at the last minute.** When in doubt, seek help to review the loan papers before signing anything. You can walk away from a bad deal even at the last minute. Refinancing involves great potential for hidden costs, fees, security interests and other unfair loan terms. Even some reputable lenders make unfair refinancing deals. Whenever possible, ask a qualified professional to review the refinancing paperwork before you sign.
12. **If your home is collateral in a refinancing deal, remember that you have three days to cancel.** When you use your home as collateral for a refinancing transaction, federal law usually gives you the right to cancel for three days. You can cancel for any reason. If you do change your mind, make sure to cancel in writing before the deadline. The lender is required to give you a form for this purpose. Even if the lender does not give you the appropriate form, you may cancel by sending a signed, dated letter to the lender indicating your desire to cancel the refinancing.

**Reverse mortgages** are available as a refinancing option for older homeowners who have built up substantial equity in their property. A complete discussion of reverse mortgages is included in another Consumer Concerns and Consumer Facts.

### **For More Information...**

More detailed information on refinancing and other consumer credit issues is contained in *Surviving Debt: A Guide for Consumers*. The handbook is available from the National Consumer Law Center, 77 Summer Street, 10th Floor, Boston, MA 02110 (617/542-9595).

February 2006

*This brochure was supported, in part, by a grant, number 90-AP-2647 from the Administration on Aging, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of views or opinions do not, therefore, necessarily represent official Administration on Aging policy.*