Industry News

Crackdown on real estate loan servicing fraud

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Illegal home loan fees part of larger scam

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The battle against mortgage-servicing fraud is being won, industry experts say, citing consolidation in the industry and recent enforcement actions as the main reasons.

Two national mortgage-servicing companies accused of charging illegal fees recently agreed to forgive nearly $11 million in debt in a West Virginia settlement, and denied wrongdoing.

The companies, Fairbanks Capital Corp. of Salt Lake City, now called Portfolio Loan Servicing, and Homecomings Financial Network Inc. of Dallas, were accused of charging illegal fees, sparking a probe by West Virginia's attorney general, Darrell V. McGraw Jr.

Mortgage servicers are companies that handle billing for lenders. Industry experts say most of them are reputable and aboveboard, naming Countrywide and Wells Fargo as sterling examples.

But some have been accused of charging illegal and excessive fees either for late payments or products, defrauding consumers out of their money and even causing them to lose their homes.

Consumers have come together to fight mortgage-servicing fraud, exchanging advice and experiences in forums such as www.msfraud.org, a 2-year-old site with information on how to report the problem, legal resources, a discussion forum and other resources.

"When a new mortgage-servicing company took over the servicing of my loan in 2002, they asked for proof of homeowners' insurance," said a Webmaster and spokesperson for msfraud.org, who asked that her name be withheld.

"I gave them the information over the phone; I faxed it to them; I sent a hardcopy of my policy to them in the mail," the spokesperson said. "In six weeks, I provided the information 11 times." But, she says, the company never acknowledged her information. On her next statement, the woman says, she was charged $42 for forced placed insurance – homeowners' insurance purchased for her by the mortgage servicer.

"Mortgage-servicing fraud is primarily about fee generation," said William Matthews, vice president and general manager of the Mortgage Asset Research Institute, which reports mortgage fraud. "Forced insurance," as the tactic is known, is one of the most common gambits, Matthews said.

"It's (servicing fraud) mostly based on fees for products such as homeowners' insurance. A second type of fee would be penalties because you didn't perform in accordance with the contract – if you're late on your mortgage payment, that type of thing," Matthews said.

Mortgage fraud is rampant and spreading in the United States, with the number of suspicious activity reports to the Federal Bureau of Investigation in 2004 almost triple those in 2003, according to a report by the FBI. Mortgage-servicing fraud is just one of many schemes seeking to take advantage of unwary consumers.

Unlike other forms of mortgage fraud, Matthews and other industry experts say mortgage-servicing fraud is on the decline, thanks to consolidation in the industry and successful enforcement actions such as the West Virginia investigation.

In the West Virginia probe, Fairbanks and Homecomings agreed to forgive nearly $11 million in debt to 267 West Virginians who lost their homes in questionable foreclosures. The companies also paid $773,000 in restitution. They were accused of charging illegal fees including excessive late fees, property preservation and inspection fees, corporate advance fees and broker price opinion fees.

The companies denied wrongdoing and agreed to abide by West Virginia consumer protection laws. They continue to do business in the state.

"Homecomings Financial did not initiate wrongful foreclosures, as suggested by the West Virginia Attorney General, nor did it engage in mortgage-servicing abuses in West Virginia. Rather, Homecomings interpreted certain provisions of West Virginia law differently than the West Virginia Attorney General's office. As a result, Homecomings agreed to refund certain fees," the company said of the settlement.

Representatives of Select Portfolio Servicing, formerly called Fairbanks, did not return calls asking for comment.

The West Virginia action follows in the wake of a landmark 2003 enforcement action.

In 2003, Fairbanks agreed to pay $40 million in redress to consumers to settle lawsuits filed against it by the Federal Trade Commission and the U.S. Department of Housing and Urban Development.

Cases such as these have been a major force for changes in the industry, according to Rachel Dollar, an attorney who represents mortgage lenders nationwide in pursuing civil recovery from the perpetrators of mortgage fraud schemes.

"I really think lenders are far more aware of it (servicing fraud) and policies and procedures are being put in place that should curb a lot of the abuses we have seen," Dollar said.

"When you see a crackdown on one or two or three servicers, the rest of the industry gets the message. 'They've cracked down on these people, we need to change our ways," said Matthews.

Consolidation in the industry also will contribute to the decline of such practices, according to Matthews.

"You're not going to see the large servicers perpetrating fraud and they are getting a bigger and bigger piece of the pie," Matthews opined.