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Mortgage meltdown spurs lawsuits, negotiations

By CLAUDE SOLNIK

The subprime meltdown is leading borrowers to fight back, suing for predatory lending practices and violations of the Truth in Lending Act.

"I've seen an increased number by subprime borrowers who are either in foreclosure or on the brink of foreclosure bringing these actions," said David Scheffel, of counsel at Farrell Fritz in Uniondale.

Adjustable rate mortgages – the heart of the subprime mortgage crisis – gave homeowners an initial low-interest honeymoon. When the interest on ARMs reset, homeowners faced double-digit rates and foreclosure.

But litigation is becoming the latest initiation rite in homeownership as lawyers seek to show homeowners' rights and various regulations were violated when they signed the mortgage agreements.

Abraham Krieger, partner at Garden City-based Meyer, Suozzi, English & Klein and co-chair of the newly created subprime committee of the real property section of the Nassau County Bar Association, believes some were given misleading or insufficient information.

"If the inquiry was made, 'What happens when the rate goes up?' the answer was, 'We can always refinance or put you into another product,'" Krieger said. "Of course, it wasn't the case."

Eric S. Rosenblum, chairman of the real property committee of the Nassau County Bar Association, said "We're dealing primarily with lower to middle class who were dangled an opportunity to buy a house that they really couldn't afford."

While some lenders argue borrowers are passing the buck for their own mistakes, Krieger said consumers often were victims.

"It's the fisherman blaming the fish for biting at the hook," Krieger said.

Consumers nationwide are fighting back on the grounds that brokers acted illegally, funneling them into inappropriate mortgages without full disclosure.

Kansas City lawyer Bernard Brown and Susan Kephart, a Legal Aid of Western Missouri lawyer, represented Richard and Yvonne Morris, suing the lender and mortgage broker, Columbia Mortgage, for predatory lending. Richard Morris said he signed the loan, expecting an 8.05 percent rate and not knowing it would rise to 17.5 percent.

The suit, in U.S. District Court in Kansas City, was resolved through a confidential settlement.

Diane Thompson, a Godfrey, Ill., lawyer working with the National Consumer Law Center, said it's "extremely common" for brokers to falsify income with or without borrowers' knowledge. "Appraisal fraud is endemic," Thompson said.

Darryl Knopf, of Knopf Appraisal in St. Louis, said he stopped working for mortgage companies because of pressure to reach certain values. "When the market turns down, when the interest rates go up, everything hits the fan," Knopf said.

Homeowners who can't afford to pay mortgages are finding other solutions to stave off foreclosure. Banks sometimes renegotiate or let owners sell houses for less than they owe, avoiding the blot of a foreclosure on their record.

"The bank is accepting less than their mortgage, because it's easier than foreclosing and probably better public relations," Rosenblum said.

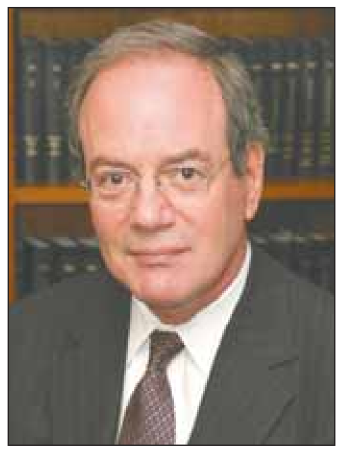
Scheffel said amid the meltdown "lenders are more inclined to renegotiate now. You can renegotiate the terms."

In Overland, Kan., Cheryl and John Trueblood worked out a payment plan to stave off foreclosure. "I can't lose my house. I've got kids. I have nowhere to go," Cheryl recalled telling a supervisor at her mortgage company. "And he said, 'We don't care. We don't care about your family; we just want your house.'"

While the Truebloods sleep better at night after renegotiating, thousands of families go to bed amid uncertainty, awaiting possible foreclosure and deciding whether they should sue.

About 7.2 million families own a subprime mortgage; 14.4 percent are in default, according to The Center for Responsible Lending's Subprime Crisis Index. Nearly 90 percent of these have "exploding" adjustable interest rates that skyrocket suddenly. Half were approved without fully documented income, according to the group.

"We're still at the tip of the iceberg," Krieger said. "I think you're going to see a lot of foreclosures and a lot of work-outs in the courthouse."



Meyer, Suozzi's Abraham Krieger said the foreclosure crisis is going to get worse.

According to the Mortgage Bankers Association, in the first half of 2007, 32 percent of subprime loans were made to first-time homebuyers, unchanged from the second half of 2006.

Adjustable rate mortgages comprised 69 percent of subprime originations in the first half of 2007, down from 75 percent of subprime originations a year ago.

Kari and Keith Sessa in 2002 achieved their version of the American dream when they bought the Huntington cape she lived in as child. They're now among the thousands facing an American nightmare and deciding whether to sue.

After seeking a home equity loan, the Sessas walked out with a refinanced mortgage and a second loan through Global Home Loans and Finance in Melville (no longer in business).

Kari said they ended up with an adjustable rate mortgage that jacked up payments on a prior mortgage from 6 percent to 10.5 percent.

She said her lawyer said that it doesn't make sense to sue the mortgage holder, unless they face foreclosure. The fact that the firm that arranged the mortgage is gone makes legal action tougher.

Lender leniency helps, but it may not be enough for some. While the Sessas' mortgage holder agreed not to jack up rates for two years, they still haven't agreed to turn it into a 30-year, fixed-rate mortgage. "It's stalling foreclosure," Sessa said. "That's all that's doing."

Reporter Donna Walter of sister paper, The Daily Record, in Kansas City, Mo., contributed to this report.