NEWSBRIEF: NEW FORECLOSURE LAWS NEEDED?

A Review of the NCLC's "Dreams Foreclosed" Report

by William Bronchick, Esq.
[published in August 2005]

Editor's Note: Please do NOT skim over the article below. The author gives an excellent analysis of today's problems with the banks and with homeowners in foreclosure. Note: some of us predicted the real estate downturn back in 2005!

The National Consumer Law Center recently published a report called *"Dreams Foreclosed - The Rampant Theft of Americans' Homes Through Equity-Stripping Foreclosure 'Rescue' Scams"*. It is being paraded around the media as an objective study of the foreclosure market and all the bad people who are taking advantage of homeowners. In the vein of a Michael Moore documentary**, it is a poorly researched, one-sided editorial piece designed to push someone's agenda.**

So who is the National Consumer Law Center and what exactly is their agenda? Here's how they describe themselves:

> *"The National Consumer Law Center (NCLC) is the nation's consumer law expert, helping consumers, their advocates, and public policy makers use powerful and complex consumer laws on behalf of low-income and vulnerable Americans seeking economic justice."*

That description paints a pretty picture, but their political leanings are quite obvious if you read between the lines. They take funding from radical left-wing billionaire George Soros to help illegal aliens continue to live illegally in the U.S. They also virulently fought the new Bankruptcy Reform law that stops deadbeats from abusing the bankruptcy system. Like many far-left organizations, they believe that corporate America is evil and the "little guy" is always innocent.

If you are left-of-center politically, please don't miss the point here - I'm not criticizing liberals. The NCLC is entitled to their opinion, so long as they make it clear that their "research papers" are just that - someone's opinion. It is academically dishonest to call a paper an "objective study" when the group sponsoring the study has a particular agenda that skews the conclusions. It would be like asking Rush Limbaugh to do an objective documentary on the Clintons.

New Laws Don't Always Help, They Sometimes Hurt

By passing new laws designed to "protect" the homeowner in foreclosure, it actually ends up hurting everyone in the long run. For example, a new law was passed in Maryland that requires a waiting period for any transaction involving a person in foreclosure. Similar laws are being considered in other states. Various intricate disclosures, rules and penalties written in these laws make it virtually impossible for a mortgage broker to help fund a new loan in fear of being punished.

Waiting periods do nothing more than SHORTEN the time a homeowner has to solve his problem. If the homeowner in foreclosure is 10 days before the sale date and the law requires a 5-day waiting period, how does this help a deal get closed? The fact is, it hurts the homeowner by preventing a last minute loan or deal from being worked out that might help save the property from foreclosure.

Also, let's not forget that all of these ideas about new laws sound great when the real estate market is hot. When a local economy goes South, more and more people will be looking to dump their homes quickly and will not be able to do so because of these "consumer protection" laws.

The Court of Public Opinion

The NCLC and their friends at the media are playing a political war to sway public opinion about foreclosure investors. Certainly, there are some bad apples in every business, and the foreclosure business is no exception. But, to suggest that the vast majority of real estate investors that buy properties in foreclosure are bad people is absurd.

Likewise, the media and the NCLC seem to feel that all of the foreclosure sellers are without blame. Everyone in foreclosure has something in common **- they stopped paying their loan**! Some people are a victim of bad circumstances, had excessive medical bills or ended up in a messy divorce. But, let's not forget that the vast majority of people in foreclosure are simply financially irresponsible people who lived from paycheck to paycheck.

Furthermore, the NCLC blames the lenders for giving out too much money. Doesn't the borrower who got in over his head and lived beyond his means have any responsibility here? The NCLC and their kind are the same kind of lawyers who blame McDonalds for obesity, blame the cigarette companies for causing cancer and think class action lawsuits are the way to solve society's problems.

Of course, the NCLC doesn't see it that way from their skewed political perspective. Here's how the NCLC report begins:

> *"In this report you'll read about those who target many thousands of good people, people often under serious stress, and shake all or most of the value out of what's often their only major asset."*

Shall I get out the violin yet? What about the lenders who are losing money from the borrower who didn't pay his loan? Let's not forget that foreclosures cost lenders money, which is passed on to all their other borrowers. Increased costs means less profit for their shareholders, most of which are the pension funds and 401k's of ordinary working people. **With Government insured loans, the taxpayer picks up the tab for people who don't pay their debt, live for free, then, with the help of lawyers like the NCLC, file bankruptcy and tie up the property for a year or more. Who's the victim here?**

Value... What Value?

An interesting item worth noting again is the NCLC's statement on how investors *"shake all or most of the value out of what's often their only major asset"*. **What value are they talking about here?**

From personal experience in a lot of foreclosure transactions as an investor, attorney and manager of an escrow company, I can attest that the vast majority of deals involve a seller who has very little equity, has little emotional interest in his property and has already exhausted all other options, including trying to refinance or list the house for sale with a real estate broker. Most foreclosure sales often happen just before the foreclosure sale date when the homeowner wakes up to reality. **So, when the NCLC suggests that an investor is "stealing" a seller's equity, it's a complete misunderstanding of the reality of the marketplace.**

For example, let's say a seller owes $170,000 on a house worth $200,000. The foreclosure sale date is one week away. An investor pays the seller a few thousand bucks for the deed to his property, then resells the property for a profit. The NCLC might scream, "but you're stealing $30,000 in equity for just a few thousand dollars!" That's a typical reaction from someone who doesn't understand how the foreclosure business works.

In most cities, a $200,000 house takes a few months to sell. If the seller is late in the foreclosure process, there's no time left, so he'd have to price the property around $170,000 or less to move it quickly. So, when someone says, "you're paying 10 cents on the dollar for the seller's equity", that not really true - **the seller in foreclosure really has no equity, since the impending sale date forces the seller to liquidate quickly.**

In bankruptcy, the courts have routinely ruled that the borrower is only entitled to "reasonably equivalent value" in a foreclosure sale, not *market* value. **These rulings reflect the fact that a property sold in distress is WORTH LESS than a property sold under normal circumstances.** To the investor, the foreclosure property has equity, because the investor has the financial means to stop the foreclosure process, whereas the seller does not. The investor makes money because he has the solution the seller does not.

Who's "Taking Advantage" of Who?

The NCLC and the news media often paint the picture that foreclosure investors are "sharks" who take advantage of helpless sellers in bad circumstances. Admittedly, foreclosure investors make a profit here from other people's bad circumstances - so what? Thousands of businesses make a profit from other people's problems, including:

- Bankruptcy lawyers
- Class action lawyers
- Divorce lawyers
- Funeral parlors
- Pawn shops
- Doctors & Hospitals

Think about it this way: if you are bleeding and a doctor stitches up the wound to save your life, is his knowledge and expertise worth money? Or, will someone call that doctor a "thief" if the patient gets a $20,000 bill for the life-saving operation?

The bottom line is that if a family is in foreclosure and about to lose their home, they should do whatever they can: make up back payments, negotiate with their lender, try to refinance or try to sell the home. When all options are exhausted, the only choice may be to sell to an investor cheap or let it go back to the bank. If an investor profits from the transaction, so what?

Of course, there's another option the NCLC would suggest, as outlined in their various "consumer-law" publications: Hire an attorney to file a series of silly legal challenges to the validity of the bank's loan disclosures. This will help delay the lender's foreclosure process for several months. When the court denies all of your frivolous objections, you then file for bankruptcy and stay in the property for free for another six months. When the lender completes the foreclosure, the homeowner can stay a few more months until the lender gets around to evicting the former homeowner. If you really want to squeeze out a few more months of free rent, you file a bunch of technical objections to the lender's eviction proceeding.

So, instead of an investor profiting from the seller's equity, we have attorneys and their clients who profit by bilking the lender. The NCLC attorneys call this "protecting the consumer's rights." Most people would call it being a "deadbeat." You see how easy it is to spin the story in the other direction?

New Laws Giving Government More Power?

The problem is, the NCLC's media campaign is actually working. They've got the press parroting the same message and adding wild stories of how innocent homeowners lost their homes to unscrupulous investors. Don't get me wrong; these investors that are being reported are often people who did bad things. Getting a deed to a property under false pretenses is a crime - it's stealing. Investors who lie and mislead sellers in foreclosure give a bad name to everyone and they should be punished.

But, we don't need new laws to punish these bad people, since there are already laws on the books that are applicable (such as "grand larceny"). In addition, the Attorney General of your state already has broad powers under the Consumer Protection Acts to deal with this kind of activity.

And, while we're on that topic, the Attorney Generals of many states are foaming at the mouth and sharpening their axes, too. Both Democrats and Republicans with political aspirations, these Elliot-Spitzer wannabe's are going after foreclosure investors to get a name for themselves. It looks real good on your resume when you run for Senator if you headed up a "special task force."

But once the smoke clears, reasonable people know that you can't solve all the problems of financially irresponsible people by punishing foreclosure investors. Investors didn't cause the problem, they are just trying to help solve it, and (God forbid) make a buck!

The Whole Truth?

The NCLC report suggests that the vast majority of foreclosure transactions are bad for the homeowner and a result of investors that "prey" on them. What is not reported in the NCLC paper or the news media is that MOST foreclosure deals that blow up are generally the fault of the seller. Many of these sellers knew **exactly** what they were doing, but got "seller's remorse" when they saw that someone else was making a profit. In most cases, the seller's remorse comes about when another investor tells the seller he could have offered more for the property. When the homeowner demands more money and doesn't get it, he hires an attorney to fight for his rights. The newspaper reporter doesn't tell you that side of the story - instead he interviews the plaintiff's attorney for the whole picture. In fact, this is exactly what the NCLC did in their research. I don't recall any quotes in the report from the president of any real estate investment groups or authors.

I can tell you from personal experience that there are just as many sellers who lie and do not live up to their promises in foreclosure deals. Sellers often flake out, don't move out when they promise, neglect to tell you about liens on their property, and develop a "convenient" memory about the facts when they find an attorney. In one Colorado Springs case, the homeowner actually demanded his house back because he claimed he was drunk when he signed the papers. Don't laugh - the news reporter spun it into a sad story about how alcoholism was to blame for the seller's financial problems, and how the investor should be ashamed for trying to get papers signed by a drunk man.

There are a whole lot of happy endings about investors who bought homes from foreclosure sellers who received cash, saved their credit and got on with their lives. If a seller is four payments in arrears, has exhausted all options and is facing foreclosure, he'll lose everything and his credit will be ruined for a long time. Instead, if he deeds his house to an investor who makes up the back payments and negotiates a deal with the lender, his credit will be improved. And, if the seller gets a few bucks of the deal, he can move on with his life. The lender is thrilled because the loan is no longer in default.

These stories happen all the time, but unfortunately they don't make headlines in newspapers.

Reprinted by Permission. Visit www.legalwiz.com or call 1-888-587-3253.
The author, CEO of Legalwiz Publications, is a nationally known attorney, author, entrepreneur and speaker. He has been practicing law since 1990, having been involved in over 700 transactions.