# $Fraud\ Is\ Fun$ or How a Foreclosure Rescue Scam Changed My Life



#### Peter A. Holland

We are an association of trial lawyers seeking justice for our clients and for society. As such, we study diligently "how" to try a case. Get the documents. Note the depositions. Subpoena the witnesses. Anticipate the objections. Know the judge. Prepare the Opening Statement.

But before we can learn "how" to try a client's case, we should ask the big question: "why?" Specifically, we should ask at a very deep level: "Why should anyone care about *this* client and *this* case"? If we cannot articulate the answer this question, then we can never truly "win" the case. Why we care about a cause can – and should – direct how we try the case.

Getting in touch with the *why* instead of obsessing on the *how* can restore the creative juices and the passion to your practice. It can inspire you to become the *advocate for justice* you always hoped to be, instead of the *lawyer technician* you sometimes fear you have become. Like a dog with a bone, it is almost impossible to snatch victory from the lawyer who knows deep down "why" he or she should win the case. Only by discovering the client's story can we ever truly know "why" we should win. We can never truly know "how" to best try our case if we don't first know "why" our audience should care about it.

What follows is an only slightly fictionalized account of how a chance meeting on a Friday afternoon changed me from a lawyer who was often focused on the "how" of a case to an advocate who is most often guided by the "why" of the client.

It was one of those "Everybody's Workin' for the Weekend" kind of weeks. Friday was busy and stressful. Only one more appointment, which should be easy, because there is obviously no case to be pursued; merely a hand to be held, a shoulder to be offered. That morning I had agreed to meet with her that same day, only because she was referred by someone to whom I "could not say no," and because it clearly would not take very long.

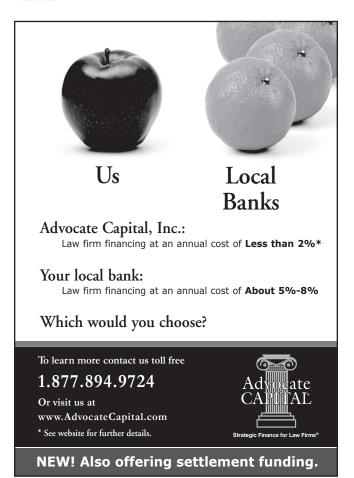
Mary ambled in with a grocery bag full of papers, out of breath after the short walk from the waiting area to the conference room. She sat there and told me that someone – a "landlord" –- was evicting her from her own house. "How can you be a tenant in your own house," I asked, showing only mild disdain. Then I saw the deed she had signed over to the "landlord," and the lease she had signed at the same time at the "closing."

Like any lawyer in touch with one's own abilities, I thought: No way! There is no arguable case here, let alone a winnable case. The lady knowingly signed away the deed to her house! I would be laughed out of court (again)! But Mary wouldn't quit. She told me that her daddy and uncle had built the house with their own hands. She and all of her siblings

were raised there. Her mother died there. Mary told me that she earned \$50,000 a year, and that the house was mostly paid for – she had over \$100,000 in equity in that house.

Now my stomach is grumbling, but I have to ask: "How did you get into this mess which I cannot get you out of?" Although she was working part time at the time that I met her, previously she was being treated for a very aggressive breast cancer. Although Mary's employer was great to her, after her surgery, rehabilitation, chemotherapy and brief relapse, she got laid off from work. She fell behind in her mortgage.

With nowhere to move to, and with the looming foreclosure sale of the family homestead, Mary turned to a member of her church. One of her friends referred her to a mortgage broker who could refinance her, quickly and cheaply. The days went by, the foreclosure became imminent, and the refinancing never came through. But this was not just any mortgage broker. He had very powerful and wealthy friends; friends who could literally stop the foreclosure. Friends who styled themselves as the "Homesavers" and the "Foreclosure Busters!"





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Indeed, the "Foreclosure Busters" promised to "save" her home. They paid off her mortgage arrearage, which allowed her to "keep" the house. In exchange for the ministerial act of signing her deed, the "Homesavers" promised to lease the house back to Mary, and even to let her repurchase her house once she was "back on her feet again" after a year. Mary took these "Homesavers" at their word, and then she thanked God and for the first time in months, she slept through the night. The foreclosure sale was cancelled, and she got to keep her house.

Four months later, Mary was summoned to Landlord Tenant Court. It seemed that her "Homesaver" was not such a nice landlord. Her monthly mortgage payment of \$900.00 had somehow morphed into monthly "rent" of \$1,800.00 per month. She struggled and borrowed money from her church to pay the first 2 months rent...late. Four months after being saved, Mary had a notice of eviction. The Sheriff would be there on Tuesday (remember, I am meeting with her on Friday afternoon) to supervise when the goons put all of her belongings in the street, and the "Homesaver" would then take possession of the home to which he already held title.

If this sounds unlikely, try googling the term "foreclosure rescue scam." Or look for "foreclosure help" on the web.

Foreclosure Rescue Scam. Homesavers. Equity theft. These are terms that were virtually unheard of by Maryland attorneys even a few years ago. Sadly, these terms, and the

vultures who define them, have become the stuff of newspaper headlines, criminal prosecutions, and million dollar civil judgments.

Like all great crises, the growth and eventual bursting of the home equity bubble created great opportunities for the merchants of false hope. Unscrupulous fraudsters – vultures – created an entire new category of fraud known as the "foreclosure rescue scam." The cost of this crisis in terms of money and human suffering has been staggering. Mary was lucky, because she was able to recover her stolen house. Sally was not so lucky. She lost title, possession, and \$150,000.00 of equity in her house. She spent 6 months living in a friend's garage, and she continues to live off the charity of others.

Like the "Tin Men" before them, for years most of the "Homesavers" got away. Idealistic lawyers were hard to find, and civil judgments were largely uncollectable. Criminal prosecution was rare. But then the legislature, the executive, and the regulatory agencies started stepping up efforts to rid our state of this type of fraud. In 2005, emergency legislation was passed to protect homeowners in foreclosure. Federal and State prosecutors got involved sending loads of people – including some lawyers – to jail. Chief Judge Bell sent letters to every licensed attorney in Maryland asking them to help homeowners in foreclosure. The Maryland State Bar Association, in collaboration with Civil Justice, Inc. has trained over 1,000 Maryland attorneys in the nuts and bolts of how to represent a homeowner in foreclosure.

#### Foreclosure Rescue Scams Are Widespread Throughout Maryland and the Rest of the Country

Foreclosure Rescue Scammers often engage in direct solicitations of homeowners in distress. But, as was the case with Mary, they also use "bird dogs" or "feelers" in the community: people who are trusted such as church members, mortgage brokers, real estate agents, and yes – even lawyers – to whom a desperate homeowner in foreclosure may turn for help.

According a special task force convened by Governor Martin J. O'Malley, foreclosure rescue scams are the result of trickery and fraud in the inducement:

Rising foreclosures also have led to another type of predatory practice: foreclosure rescue scams. These are cases that involve an unscrupulous individual approaching a homeowner facing foreclosure, offering help, only to steal their equity by tricking the desperate homeowner into signing over the deed to the home. As foreclosure rates have spiked this year, so have the incidence of rescue scams.

"Maryland Home Preservation Task Force Report", *infra* footnote 1, at page 12.

The Maryland Attorney General describes the level of sophistication involved as follows:

Like a shark swooping in for the kill, a scam artist moves quickly and with great control. The victims often do not know what hit them until it's too late. Scam artists prey on homeowners who are equity rich, but cash poor, including — the elderly, the desperate and those unfamiliar with the foreclosure process.<sup>1</sup>

The National Consumer Law Center has described the problem as follows:

The rise in real estate prices in recent years have brought with it a wave of schemes designed to deprive homeowners of the equity that has built up in their homes. Individuals who are in financial distress and are having trouble meeting their mortgage payments [or property tax assessments] are particularly vulnerable to these schemes. Thought their monthly incomes may be low, their homes may be worth considerably more than their mortgages [or tax liens]. A homeowner who is facing foreclosure may be desperate to grab at any hope of saving the home, even if it risks the home's built up capital.

These scams come in many variations, but they have one thing in common: instead of being 'rescued,' as promised, the homeowners lose not only their home, but also their equity, and often additional monies, and end up worse off than they were before the transaction.

Foreclosures: Defenses, Workouts, and Mortgage Servicing, 2nd Ed., page 375. National Consumer Law Center (2007).

A recent Google search for the exact term "Foreclosure Rescue Scam" retrieved more than 35,000 entries. A similar Google search for "Foreclosure Rescue Fraud" retrieved more than 16,000 entries.

Faced with perhaps the first reported foreclosure rescue case in the Federal District Court of Maryland, Judge Messitte said this in the recent case of *Johnson v. Wheeler*:

As home mortgage foreclosures have increased in recent years, so have so-called "foreclosure rescue scams." Typically, a homeowner facing foreclosure is identified by a rescuer through foreclosure notices published in the newspapers or at government offices. The rescuer contacts the homeowner by phone, personal visit, card or flyer, and offers to stop the foreclosure by promising a fresh start through a variety of devices. As the date for the foreclosure approaches and the urgency of the matter becomes greater, the rescuer or some entity with which he is linked agrees to arrange for the pay-off of the mortgage indebtedness and to see to the transfer of title to the property to an investor pre-arranged by the rescuer, often with a leaseback of the property to the homeowner for a period of time, occasionally giving him the right to repurchase the property after the lease ends. The rescuer imposes heavy fees or other charges for his services, in effect stripping some if not all of the homeowner's equity, and does all this with little or no advance notice to the homeowner, who is usually unrepresented by counsel.

492 F.Supp.2d 492, 495-96 (D.Md.,2007), citing generally Dreams Foreclosed: The Rampant Theft Of Americans' Homes Through Equity-Stripping Foreclosure "Rescue" Scams" (2005).<sup>2</sup>

#### How a Foreclosure Rescue Scam Works

A Foreclosure Rescue Scam really only has only one goal: to steal the equity in a person's house. The target is a person who has owned their home for a long time (thus creating equity) and who is facing foreclosure or a tax sale. Regardless of how elaborate the scam is, the goal and the end-game are always the same:

- The **Goal** is to steal the equity from a person's home.
- The **Targets** are consumers who are in foreclosure or tax sale, who have lots of equity in their home.
- The Result is loss of the homeowner's title, loss of the homeowner's possession, and loss of the homeowner's equity.

As aptly described by Freddie Mac on their website, here is what happens to the homeowner at closing:<sup>3</sup>

- The homeowner deeds the property to the straw borrower, relying on the false promises made by the "investor"
- All proceeds are used to pay off the defaulted loan
- The homeowner walks away with nothing
- The "investor" pockets the equity and runs
- The straw borrower defaults on the loan
- The homeowner is evicted, loses the house and all equity

<sup>1</sup> Available at: http://www.oag.state.md.us/Consumer/124.pdf.

<sup>2</sup> Available at: http://www.consumerlaw.org/news/ForeclosureReportFinal.pdf).

http://www.freddiemac.com/singlefamily/news/newsletter/2007/06/fraud.html?printPage=yes
This, like so many governmental and quasi-governmental agencies, gives a very succinct overview
of the fraud.

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#### A. Types of Foreclosure Rescue Scams

Foreclosure Rescue Scams come in three basic varieties.4 First, "Phantom Help" includes charging lots of money for services that were never delivered, and thus the house goes to foreclosure as scheduled (but the "consultant" made several thousand dollars in the meantime).

Second, "Bait and Switch" involves tricking the homeowner into signing away the title to their house, unknowingly.

The third and (at least in Maryland) most pervasive form, is known as the "Bailout" or "Rescue" where the rescuer is going to "bail out the consumer" by taking the home out of foreclosure by paying off the indebtedness, and then promising that the homeowner will be able to "save" the house and continue to live in it or preserve it as an asset. But the terms which the consumer must meet in order to receive title back are impossible to meet. For example, if the consumer is "saved" from the burden of a \$900.00 per month mortgage payment, then the "rent" which they will have to pay the rescuer is typically twice or three times that amount. It is not unusual to see the "rent" at \$2,700.00 per month, when the consumer (who is on a fixed income) was already not able to pay \$900.00 per month. As explained by the National Consumer Law Center, this third and most pernicious variety takes the following form:

...the homeowner **does not realize** s/he 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 quite clear they had no intention of selling or giving up their home to anyone. Further evidence that homeowners are being gulled by this variant of the scam is the many cases in which the home is transferred for a ridiculously small fraction of its actual value.

"Dreams Foreclosed" Report, infra footnote 3, at pp. 8-9.

In October 2006, the Maryland Consumer Rights Coalition published a study similar to the "Dreams Foreclosed" report. The Maryland study is titled "Protecting Homeownership: The Challenge of Preventing Abusive Lending and Foreclosure Practices. A Study of Maryland Predatory Lending and Foreclosure Laws."5 As pointed out in the "Dreams Foreclosed" report, at page 22 the Maryland study concurred that "There are several variations on the fraud, but they all result in the homeowner losing their home and the equity in it." (citation omitted).

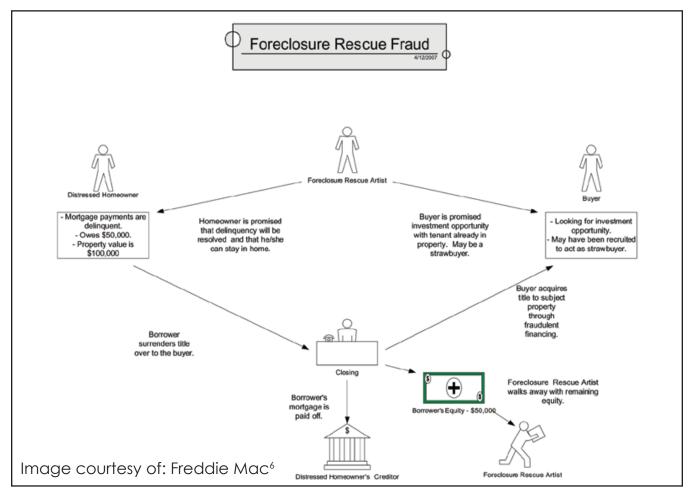
#### B. The Parties to a Foreclosure Rescue Scam

While it can take different forms, the most common foreclosure rescue scam seen in Maryland works as follows with the following players:

- A consumer in a mortgage or tax sale foreclosure who has lots of equity in their home, usually between \$100,000 and \$300,000. Typically, these are older people on fixed incomes who purchased their homes 10 or more years previously, which means that there is substantial equity. With the rise in property taxes, or perhaps a death or illness in the family, they simply fall behind in their obligations on the indebtedness.
- A mastermind con artist recruits a "bird dog" to locate foreclosure properties with substantial equity. This is accomplished very easily by accessing foreclosure properties through the Maryland Judiciary Case search or newspapers, and then cross-referencing the property with tax assessment records showing the value, or with recent sales in the neighborhood. Most predators do not pursue homes with less than \$100,000.00 of equity.
- The "bird dog" will solicit the homeowner, either in person, by phone or by mail with sincere sounding promises the help the homeowner "save their home" by arranging a refinancing, a sale-leaseback transaction, or some other vague rescue plan. It is important to note that the "bird dog" does not always approach the consumer directly. Through affinity marketing, friends of the "bird dogs" have been known to refer a distressed homeowner to the bird dog, rather than the other way around. Because it involves a relationship of trust and an air of legitimacy, it is not uncommon even for victims to refer other friends who are also in foreclosure. The damage is done before either victim realizes it.
- An "investor" also known as a "straw purchaser" is recruited by the master con artist and promised that

See generally, "Dreams Foreclosed: The Rampant Theft of Americans' Homes Through Equity-Stripping Foreclosure 'Rescue' Scams' National Consumer Law Center, June, 2005 at pp. 8–9. Available at: http://www.consumerlaw.org/news/ForeclosureReportFinal.pdf.

Available at: http://www.mdconsumers.org/chemical/chem\_user\_files/docs/HOME\_PRES\_REPORT\_FINAL.pdf?PHPSESSID=abff5c3bef94aa5cab21abb1d4f7daa .



they will be paid \$10,000 or more for showing up at a settlement and signing some paperwork. This person may or may not know that they are taking title to a house, together with a new mortgage at the full value of the house. By taking out a mortgage for the full value of the house, the equity is effectively "stripped" from the property. At the closing, the "investor" or "straw purchaser" is given \$10,000.00, and the homeowner who is in foreclosure is usually given several thousand dollars, with the promise that more money will be credited to them at some later point in time (for example as future "rent" or when they repurchase the home after a year at the full market value. But this never happens, because the distressed homeowner cannot come up with all of that money in such a short period of time).

- 5. A title company is involved either in the fraud itself, or at a minimum, the title company fails to perform due diligence to discover the true nature of the transaction. Frequently these title companies are affiliates of the master con artist and the "bird dog."
- 6. A new mortgage lender extends a loan in the name of the "straw purchaser" for the full value of the property. Like the title company, this new lender fails to perform due diligence in order to determine the nature of the transaction, despite numerous red flags. (Since the loan is usually sold on the secondary market as a mortgage backed security, and because courts have liberally applied

the "bona fide lender" and "bona fide purchaser" doctrines, there is little risk that even the complicit lender will ever be held accountable).

Perhaps the scam is best illustrated by the following chart, which is published on the Freddie Mac website and included on page 13 (above) of this article.<sup>6</sup>

Freddie Mac also has produced a video explaining the Foreclosure Rescue Fraud, which they have uploaded to YouTube.<sup>7</sup>

# Maryland's Legislative Response to Foreclosure Rescue Scams

Maryland was the second state (in 2005, after Minnesota) to enact specific legislation to regulate foreclosure rescue scams. *See*, Protection of Homeowners in Foreclosure Act (PHIFA), Md. Code Ann., Real Prop. § 7-301 *et seq.* (LexisNexis 2006 & Supp. 2003).8

As was stated in the Floor Report for Maryland Senate Bill 761 (which became PHIFA):

This bill addresses the growing problem of foreclosure "rescue" scams. In this scam, unscrupulous companies and

<sup>6</sup> Available at http://www.freddiemac.com/singlefamily/news/newsletter/2007/06/foreclosure\_rescue\_diagram.html.

<sup>7</sup> The video is titled "Foreclosure Scams 101." The link to the YouTube video is at http://www.freddiemac.com/avoidfraud/ This in turn takes one to www.youtube./AvoidFraud

The Maryland General Assembly made amendments to PHIFA in 2008, such that now virtually all "sale lease-back" scenarios involving a residence in foreclosure are illegal. Despite this 2008 improvement, there are still hundreds if not thousands of homeowners who are battling under the 2005 version of PHIFA.

individuals take advantage of homeowners who are facing foreclosure. These predators search the court records for foreclosure actions and then contact homeowners and offer to help them avoid foreclosure. Using misrepresentations, they dupe the homeowner into transferring the deed to the home to the predator.

Like Maryland, other states have enacted their own statutes and protections for homeowners who are cash poor and facing foreclosure but equity rich.<sup>9</sup>

As is predictable, the new legislation has generated more paperwork for foreclosure lawyers, for title companies, and for sellers and purchasers of residences in foreclosure. However, no amount of paperwork or disclosures can hide the "Red Flags" that exist in every Foreclosure Rescue Scam. They are:

- House is in foreclosure;
- Homeowner deeded house to person and is now renting it back;
- Large amounts of "escrow" on the HUD-1;
- Side agreements such as a lease that is not disclosed in the closing file;
- Homeowner did not receive the amount of money reflected on the HUD-1;
- A "consultant" offered to "save" the house;
- Fees paid for services not rendered;
- Same person who "helped" homeowner now has title to the house;
- Landlord-tenant eviction proceedings against person who formerly held title;
- Promise to let the homeowner buy back the property after a period or time.

#### Conclusion

There are few things we hold more sacred than the American Dream of home ownership. It is the single largest investment we will ever make, and for most people who have owned their home for a decade or more, it contains the majority of their net worth. Trying to steal Mary's home was an assault on every value we are taught in this country. Our home is our castle, and anyone who tries to steal it is in for some serious punishment.

Since a Foreclosure Rescue Scam is, by definition, fraudulent, it is very hard to combat. But what is at stake is the American Dream of homeownership. That is *why* we trial lawyers must fight this fight. The victims of these scams are not the improvident or the irresponsible people who borrowed more than they could pay and now find themselves "under water." On the contrary, a Foreclosure Scam Artist only seeks out victims who are well above water; people with lots of untapped equity in their homes. These are the elderly, the infirm, and the most vulnerable among us.

They laughed at me when I filed Mary's lawsuit. She signed a deed, so the joke was on her (and me), they said. But those

who laughed did so because they only asked one question: "how" are you going to win this seemingly unwinnable case? (I wondered that myself). They laughed because they didn't ask "why" should I care about this? "Why" did the client do the things that she did? "Why" is this situation so...unjust? Mary would not quit. She got her house back. Why? Because she was able to show the rest of us why we should care. I am forever grateful to Mary and that chance meeting on a Friday afternoon when I was just "Workin' for the Weekend." \*\*

#### Biography

Peter A. Holland is the founder of The Holland Law Firm, PC in Annapolis, Maryland. He received his BA in Philosophy from Bard College, MA in Liberal Arts from St. John's College of Annapolis, and JD from the University of Maryland School of Law, from which he received the Public Service Award. He has been in private practice in Annapolis since 1993. His practice is devoted to Consumer Rights cases such as Auto Dealer Fraud, Wrongful Repossessions, Mortgage Fraud, Predatory Lending, Foreclosure Rescue Scams, Debt Collection Harassment and Consumer Class Actions. He also teaches Consumer Protection Law as an Adjunct Professor at the University of Maryland School of Law. For the Fall 2009 semester, he is a Visiting Professor of Law, and is running the Consumer Protection Clinic and teaching the Consumer Law Seminar. For the years 2008, 2009 and 2010, Peter has been voted by his peers to be a Maryland Super Lawyer in the area of Consumer Law. He can be reached at: peter@hollandlawfirm.com or at (410) 280-6133. Website: www.hollandlawfirm.com.

## Want to help?

Contact the Foreclosure Prevention Pro Bono Project.

For Volunteer and Training Opportunities:

**Pro Bono Resource Center of Maryland, Inc.** (410) 837-9379

Jennifer Larrabee, Esq., Project Manager jlarrabee@probonomd.org

For substantive questions regarding Pro Bono foreclosure cases and mentoring needs:

Civil Justice, Inc. Sustainable Homeownership Project

(410) 706-0174

Carrie McCully, Coordinator

cmccully@civiljusticenetwork.org

For clients facing foreclosure and in need of referral to a non-profit housing counselor or pro bono attorney:

Maryland HOPE Hotline
1 (877) 462-7555

<sup>9</sup> See Cal. Civ. Code §§ 1695.1 to 1695.17, 2945.1 to 2945.11; ); Colo. Rev. Stat. §§ 6-1-1101 to 6-1-1120; District of Columbia Home Equity Protection Act of 2007, D.C. Code § 42-2431 in 42-2435; Ga. Code Ann. § 10-2-393(b)(20); Idaho Code Ann. §§ 45-1501 to 45-1505; Illinois Mortgage Rescue Fraud Act, 765 IL Comp. Stat. §§ 940/1 to 940/65; Ind. Stat. 24-5.5-1-1 to 24-5.5-6-6; Minn. Stat. Ann. §§ 325N.01 to 325N.18; Mo. Stat. Ann. §§ 407-935 to 407.943; Neb. Leg. Bill 123; Nev. Rev.Stat. §§ 645F.300 to 645F.450; N.H. Rev. Stat. §§ 479-B:11; New York Real Prop. Law § 265-a; R.I. Gen. Laws §§ 5-78-1 to 5-79-9; Wash. H.B. 2791.