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Attorneys fight rising number of predatory loans

By KRISTINA HORTON FLAHERTY
Staff Writer

One loan salesman boasted that to close the deal on a high-cost home loan, he once got down on his knees and prayed with the family in their kitchen.

"And they signed on the dotted line," said East Palo Alto attorney Shirley Hochhausen, recalling the former salesman's account.

So-called predatory lenders use an arsenal of tactics, attorneys say, to collect excessive fees, penalties and interest — some \$9.1 billion a year by one estimate — and send many struggling homeowners spiraling into foreclosure. But in East Palo Alto, Hochhausen, a few law student volunteers and various public and private organizations have pooled their efforts to spread the word about predatory lending tactics and to assist victims, mostly senior citizens and minority and non-English-speaking families, with very few means.



Shirley Hochhausen is helping victims of predatory lending.

"We have seen an explosion of predatory lending in places like East Palo Alto, where poor people live and the housing prices have risen dramatically," Hochhausen says. "They're sitting ducks."

Launched last summer, the Community Home Ownership Program's Anti-Predatory Lending Initiative in East Palo Alto is taking a full-service approach to victim assistance. Based at the East Palo Alto Community Alliance and Neighborhood Develop-

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ment Organization (EPA CAN DO), the program offers legal and refinancing help, social services support, low-cost and deferred home repair loans, fair housing redress and credit counseling and education. In addition, Fannie Mae has committed \$5 million in guaranteed loans from Chase Manhattan Mortgage Corp., reportedly the first lender on the West Coast to be involved in such an initiative, for those found to be victims of predatory loans.

Sheila Burks, director of Fannie Mae's Bay Area Partnership Office, says the aim is to "replace the bad money with good." But she stresses that outreach and education, too, play a central role in the initiative and in all 18 other such Fannie Mae-backed initiatives nationwide. "The ultimate goal always is prevention," she said.

With a \$20,000 grant from the Fannie Mae Foundation, Hochhausen is training law students and pro bono attorneys to help undo some of the damage in what can be very complicated cases. The students research and evaluate the cases. Then, through Community Legal Services of East Palo Alto, pro bono attorneys step in to help negotiate better loan terms, pursue refinancing, assist victims in filing for bankruptcy or take more drastic legal measures, depending on the case. In just eight months, Hochhausen and five law student volunteers have assisted homeowners in 33 cases and are always, she says, looking for pro bono attorneys willing to help meet the need.

Illegal or just a bad deal?

Distinguishing a loan that is simply a poor deal from one that is predatory and illegal can be difficult. Predatory lending nearly always involves "sub-prime" loans — those loans geared for the high-risk borrower who cannot qualify for a conventional loan at standard rates.

Not all sub-prime loans are abusive. Non-abusive sub-prime loans actually serve a purpose, many point out, in providing home financing to those who cannot get it elsewhere. However, if the broker or lender uses hard-sell, deceptive or fraudulent tactics to reel in the borrower or if the loan fails to meet state and federal requirements, it may be what is considered a predatory loan.

A predatory lender might hide the true cost of the loan — or lie about it. The loan might include unnecessary insurance or excessive financed fees that strip away the borrower's equity in the home. It might include a balloon payment that forces the desperate borrower to refinance at a greater cost to avoid losing his or her home. Or a stiff prepayment penalty might lock the borrower into a high-cost loan when he or she would actually qualify for lower rates. The loan might even be designed to fail, with a mortgage payment that far exceeds the borrower's means.

Such practices are warning signs that a predatory lender is at work. But such lenders are moving targets, Hochhausen says. "Every time we get on to one of their tactics," she says, "they shift to another one."

Widespread egregious abuses

Hochhausen first encountered predatory lending complaints while working as counsel at the U.S. Department of Housing and Urban Development in San Francisco in the early 1990s. At the time, she saw relatively few cases but was troubled by how little was being done to address them.

"This is hard, messy work, but the abuses have become so egregious and so numerous that you can't ignore them anymore," Hochhausen says. "People who washed floors to be able to buy a house are losing their homes."

Take the case of Maria Sara Landa Gonzalez, a single mother who worked two jobs as a cleaning woman to buy her home in East Palo Alto. After six years, she needed to refinance the home to buy out her partner. A loan salesman negotiated the terms in Spanish, Hochhausen says, and then had Gonzalez sign the final documents in English. By the time the loan was

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finalized, Gonzalez had been asked to sign three separate sets of loan documents, unwittingly transforming a \$200,000 loan with no points into a \$300,000 loan with five points and a prepayment penalty. Each time, Gonzalez was told that there was a legal problem with the papers and that new ones had to be signed, Hochhausen said. "Why would a company do that with a woman who didn't have the income to support the loan?" she asked.

Gonzalez' monthly mortgage payment shot up to more than her \$2,800-a-month income. She tapped all of her friends for help. She even rented out her children's bedrooms in a futile attempt to make ends meet. By the time she found EPA CAN DO, she was two months behind in her mort-

blatant fraud cases and the county counsel was taking on cases involving mentally incapacitated victims, but a troubling number of other potential victims was being turned away because they didn't meet the "service criteria," recalls Jean Crawford, a fair housing attorney at Bay Area Legal Aid's Santa Clara office.

What followed was a series of monthly meetings that expanded to include local, state and national organizations, educators, counseling agencies and a financial institution. The result is a proposed anti-predatory lending ordinance for San Jose and a plan for a community-based program to help victims. Currently, Crawford and others are awaiting word on a proposed grant for start-up funding. In the meantime, with a grant from

actually qualify for lower-cost, more traditional loans. Statistics suggest that up to half of such borrowers would be eligible for a better deal.

Those who fall victim to predatory lenders often wind up in desperate situations. They are elderly and alone, facing foreclosure after owning their homes for decades. Or they sign loans for home improvements and fall further into debt without ever seeing any work done. Or they are pulled into refinancing over and over again by unscrupulous lenders who promise to fix the situation.

Lying and more lying

"The standard methods are lying, not giving people their documents, lying to them about what the terms are and lying about their credit," said Ben Diehl, a deputy attorney general in the Office of the Attorney General's consumer section in Los Angeles.

Diehl says he has seen predatory lending — as well as the attention paid to it — mushroom since he first worked with victims as a law student during a summer internship in 1995. Struck by what he saw, he has spent much of the past seven years, until recently, as a legal services attorney handling predatory lending cases. In his new job, he expects to continue combating the problem.

Various state and federal laws can be used to curtail some predatory lending practices and undo some of the damage, Diehl and others say. Attorneys point to, among other laws, the Truth-in-Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), the Home Ownership and Equity Protection Act (HOEPA) and various elder abuse statutes. Just last July, new state anti-predatory lending legislation went into effect, barring certain practices for some very high cost loans.

Oakland and Los Angeles have enacted city ordinances as well. But their impact remains to be seen; both are on hold pending an appellate review of Oakland's ordinance. Critics warn that such ordinances could effectively shut the door on loans for some high-risk borrowers. Supporters, however, point out that such a shutdown has failed to materialize in North Carolina, which has had an anti-predatory lending law since 1999.

What Diehl would like to see is increased vigilance by regulators and the industry itself, and greater community outreach to those who are most at risk of becoming unwitting victims. He sees the community-based programs in East Palo Alto and Santa Clara County as "new and good and exciting" developments.

"I'm hopeful that we're making inroads to the problem," he said. "but we're not done by a long shot."



EPA CAN DO team confers on a case. They are (L-R) Shirley Hochhausen, executive director Robert Jones, Stanford law student Alexis Soterakis and program director Beatriz Rodriguez-Jraous.

gage payments. "I was desperate," she said recently through a translator. "I was very fearful that I was going to lose my house."

EPA CAN DO is working to get Gonzalez' home refinanced and has enlisted the help of a pro bono attorney. Volunteers can be tough to find in such cases, Hochhausen says. The learning curve is steep. Law firms often have conflict-of-interest issues. And such cases are time-consuming and, as she puts it, "emotionally messy."

Attorneys and community advocates in other counties, too, have begun setting up anti-predatory lending programs. In Santa Clara County, legal services attorneys and staff from the district attorney's office and county counsel became concerned a couple of years ago that victims might be falling through the cracks. Prosecutors were handling

the Foundation of the State Bar, they are putting together 10 litigation teams to handle predatory lending cases. "The need has been so great that the cases have filtered in even without a centralized intake program in place," says Crawford.

Recently, a report authored by the Association of Community Organizations for Reform Now (ACORN) estimated that in Santa Clara County alone, the losses to predatory lending practices topped \$120 million in 2001.

Attorneys say sub-prime lending has grown tenfold in the last decade for a variety of reasons. Mortgage-backed securities have become attractive to investors in recent years. And with California's boom in housing prices, the climate is ripe for predatory lending. Victims' advocates say, for example, that too many borrowers are being steered into high-cost sub-prime loans when they