

Community Law Program



CLP is a non-profit corporation formed in 1989 by members of the St. Petersburg Bar Association concerned about the civil legal needs of low income residents of Southern Pinellas County, Florida. Over the years, CLP has recruited a panel of approximately 400 St. Petersburg area attorneys who provide free assistance to thousands of people in need of civil legal assistance each year. To volunteer for pro bono service, contact Community Law Program at 727-582-7480.

Foreclosure Fraud Prevention Team

by Juanita Carroll, Esq.

The Community Law Program has partnered with the Pinellas County Department of Justice and Consumer Services, St. Petersburg Neighborhood Housing Service, Gulfcoast Legal Aid, and the Tampa Bay Community Development Corporation, to form the Foreclosure Fraud Prevention Team. As a member of the team and representing the Community Law Program, I meet with individuals who have foreclosure issues and provide them with brief legal services. As part of those services, I attempt to place a client, who meets income and asset guidelines, with pro bono attorneys. The goal of the team is to help the community identify and prevent foreclosure fraud.

As the number of foreclosures increase so do the predatory scams designed to take advantage of desperate homeowners. In response to these scams the Florida Legislature passed F.S. § 501.1377. This statute was enacted to help homeowners facing foreclosure make informed decisions before hiring people or businesses to help them try to save their homes. The statute prohibits the following:

(3)PROHIBITED ACTS.--In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:

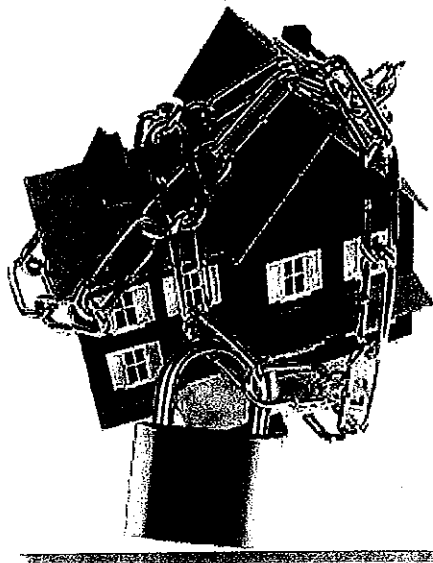
(a) Engage in or initiate foreclosure-related rescue services without first executing a written agreement with the homeowner for foreclosure-related rescue services; or

(b) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services

before completing or performing all services contained in the agreement for foreclosure-related rescue services.

The statute defines "foreclosure-rescue consultant" as:

a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services...



The statute further defines "foreclosure-related rescue services" as:

Any good or service related to, or promising assistance in connection with:

1. Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or

2. Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

There are several statutory exceptions in F.S. § 501.1377. However, for the sake of this discussion, only one exception will

be examined as it relates to the services performed by the Foreclosure Fraud Prevention Team. A Florida licensed attorney who provides foreclosure rescue-related services as an ancillary matter to the attorney's representation of a homeowner as a client is the one exception. It is important to understand how this statute narrowly applies to attorneys.

In an attempt to provide some clarification of this issue, the Florida Bar issued an Ethics Alert titled "Providing Legal Services to Distressed Homeowners." This Ethics Alert was issued as a result of the Ethics Hotline receiving "numerous calls from lawyers who have been contacted by non-lawyers seeking to set up an arrangement in which the lawyers are involved in loan modifications, short sales, and other foreclosure-related rescue services on behalf of distressed homeowners." The Ethics Alert can be found at the Florida Bar Website www.floridabar.org. The Florida Bar warned lawyers to be wary of these arrangements as they may violate multiple ethics rules and may subject the lawyer to disciplinary action. If a Florida licensed attorney has a question about what is permissible they can contact the Florida Bar Ethics Hotline at (800) 235-8619

Despite these warnings we still hear stories from clients about hiring a "law firm" to help with a loan modification proposal or other foreclosure-related rescue services. Many of these homeowners have never met the attorney and when they call to speak to the attorney they are told he or she is out of town, not in the office, etc. There may be an office but it looks and operates like a call center. The homeowner

is required to pay large sums of money up front and if there is a written agreement often it does not appear to follow the requirements of the statute. It appears in many of these situations that the attorney is lending their name and status as a licensed attorney to attempt to legitimize these businesses and to get around the legislation put in place to help homeowners. In addition to possibly violating F.S. 501.1377, these arrangements may violate a number of Ethics Rules of the Florida Bar as addressed by the Florida Bar in the Ethics Alert.

Along with providing clients with legitimate direct help or referrals for their foreclosure issues, the team also attempts to educate the public about the risk of hiring these predatory businesses. All clients of the Foreclosure Fraud Prevention Team complete Foreclosure Fraud Rescue Questionnaires. We then forward these questionnaires to Pinellas County Justice & Consumer Services. The Justice & Consumer Services

investigators review to determine if a person or business has violated F.S. 501.1377. If there has been a violation, the investigators attempt to either help the homeowner directly or refer the case to the appropriate law enforcement agency or professional regulatory agency such as the Florida Bar. Homeowners can also directly contact the Pinellas County Justice & Consumer Services to report a violation by a foreclosure rescue-consultant by calling 727-464-6200 or at their website www.pinellascounty.org/foreclosure.

Any Pinellas County resident can call the team members for free assistance or questions about their home loans and foreclosure. More information regarding the Foreclosure Fraud Prevention Team and the members can be found at www.pinellascounty.org/foreclosure. Additionally, the Foreclosure Fraud Prevention Team will be holding workshops from 10 a.m. to 2 p.m. on the following dates:

Saturday, July 24, 2010 – Enoch Davis Center, 1111 18th Ave., S., St. Petersburg

Saturday, September 11, 2010 – Largo Library, 120 Central Park Dr., Largo

Please feel free to call the Community Law Program to find out more about our program at (727) 582-7480.

Juanita Carroll is a part time staff attorney at the Community Law Program since October 2009. Her primary areas of practice include foreclosure fraud prevention, as part of the Foreclosure Fraud Prevention team formed with the Pinellas County Department of Justice and Consumer Services and other area agencies; and domestic violence law in conjunction with The Haven of RCS. Ms. Carroll graduated from Stetson University College of Law in 1995.

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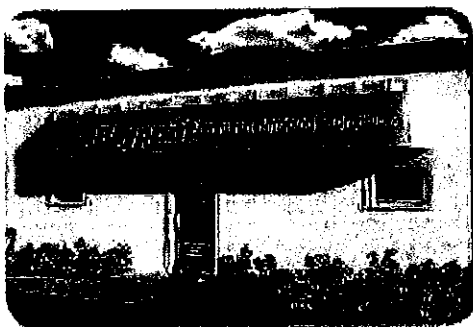
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