



Mortgage Fraud & Foreclosures

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Roadmap

- SCDCA Overview
- Mortgage Fraud Basics
- Common Mortgage Fraud Schemes
- Mortgage Fraud Hotline
- Foreclosures- By the Numbers
- Foreclosure Process
- SC Consumer Credit Counseling Act
- Sidebar: Mortgage Lending Act



SCDCA Overview

- Consumer Services & Education
- Public Information
- Consumer Advocate
- Administration
- Legal Division



Mortgage Fraud Basics

○ Types

- **Fraud for Property** (aka "fraud to qualify" or "fraud for house") :
 - The purpose of this kind of fraud is to look more creditworthy.
 - Perpetrated solely by the borrower
 - Examples:
 - a home buyer making misrepresentations about their income or employment
 - Credit enhancements





Mortgage Fraud Basics Cont...

- **Credit Enhancement Schemes**
 - Having a borrower's name added to another person's bank account.
 - A builder or loan originator will deposit money into the borrower's bank account & later withdraw the money.
 - Purchase seasoned trade line accounts (CROA Issue), the creation of fraudulent retailer financial relationships, and credit-washing schemes.

Mortgage Fraud Basics

Cont...

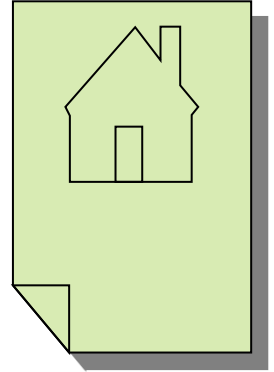
● Fraud for Profit:

- The purpose of fraud for profit = to make money either by defrauding a lender, home buyer, or both.
- Perpetrated by lending industry insiders such as mortgage brokers, real estate appraisers, or straw buyers.
- Example: “Appraisal Fraud”
 - falsely inflates the value of a house.



UP Next: Common Schemes

Common Mortgage Fraud Schemes



○ Property Flipping

- Property is purchased, falsely appraised at a higher value and then quickly sold.
- Typically involve 1 or more of the following:
 - fraudulent appraisals,
 - doctored loan documentation,
 - inflating buyer income, etc.
 - Kickbacks to buyers, investors, property/loan brokers, appraisers and title company employees are common in this scheme.



Common Mortgage Fraud Schemes Cont...

○ Silent Second

- The borrower gets the down payment from the seller through the issuance of a non-disclosed second mortgage.
- The primary lender believes the borrower has invested his own money in the down payment, when in fact, it is borrowed.
- The second mortgage may not be recorded to further conceal its status from the primary lender.

Common Mortgage Fraud Schemes Cont...



○ Fictitious/Stolen Identity

- Applicant may be involved in an identity theft scheme.
- An applicant's name, personal identifying information and/or credit history are used without the true person's knowledge.

○ Nominee Loans/Straw Buyers

- True borrower “borrows” another persons id to get the loan (name and credit history)



Common Mortgage Fraud Schemes Cont...

○ Leaseback/Rent-to Buy Schemes

- Scammer convinces the homeowner to transfer title to the scammer. Homeowner remains in property to hopefully eventually buy it back. Scammer then evicts homeowner and/or collects rent but fails to pay mortgage- resulting in foreclosure.

○ Equity Skimming

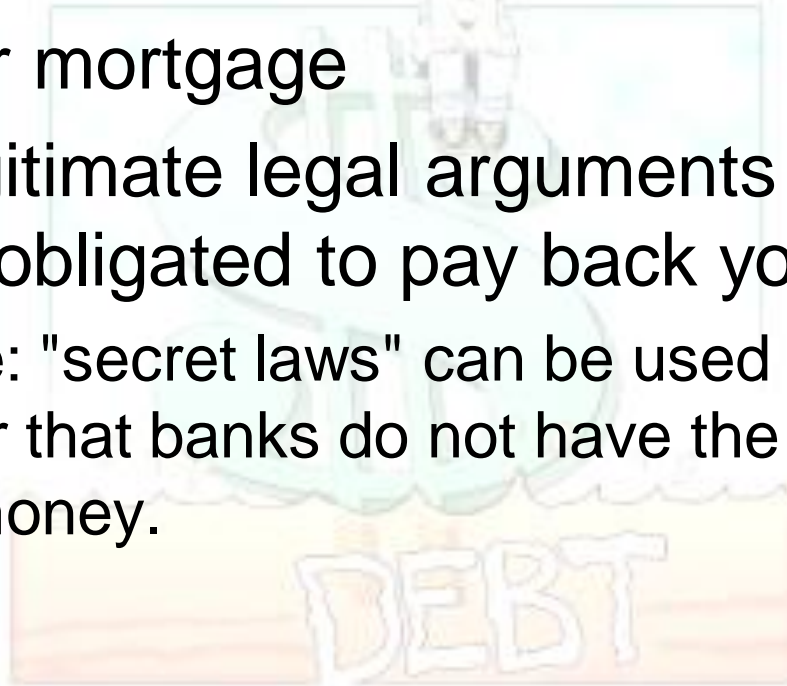
- Scammer purchases the property in his own name, or that of a straw buyer, then rents property out without making the mortgage payment until it goes into foreclosure.



Common Mortgage Fraud Schemes Cont...

○ Mortgage-elimination schemes

- Scammers claim to be able to "eliminate" your mortgage
- Illegitimate legal arguments that you are not obligated to pay back your mortgage.
 - Ie: "secret laws" can be used to eliminate debt or that banks do not have the authority to lend money.



Common Mortgage Fraud Schemes Cont...

○ Foreclosure Rescue/ Modification

- Scammer claims to be able to obtain a loan modification for a homeowner.
- **Red Flags:**
 - Charged up-front fees
 - Accepted up-front payment only by official check, cashier's check or wire transfer;
 - Used aggressive tactics to seek out the homeowner by telephone, e-mail, mail or in person;
 - Pressured the homeowner to sign paperwork he/she didn't have an opportunity to read thoroughly or that he/she didn't understand;
 - Guaranteed to save the home from foreclosure or stop the foreclosure process "no matter what!"





Common Mortgage Fraud Schemes Cont...

- **Red Flags cont...:**

- Claimed the process will be quick with relatively little information and paperwork required from the homeowner;
- Falsely claimed to be affiliated with the government. (ie: use names or symbols that mimic federal and state programs; falsely suggest that they offer legal services or are affiliated with an attorney or law firm); or
- Instructed the homeowner not to contact the lender, a lawyer or financial counselor
- Make Promises/ Guarantees
- Have No Written Contract / Services in Writing



UP Next: SC Mortgage Fraud Hotline

SC Mortgage Fraud Hotline

- Background
 - *SCDCA/ AG*
- Re-Launch
 - *April 2010*
 - 350 Calls





SC Mortgage Fraud Hotline Cont...

Monthly Calls

March 2010	19
April 2010	54
May 2010	35
June 2010	56
July 2010	39
August 2010	45
September 2010	72
October 2010	23

SC Mortgage Fraud Hotline Cont...



March 22, 2010 – October 13, 2010

○ *Top Complaint Categories*

● Trouble Getting Loan Modification: **65**

- These callers complain of difficulty working with their loan servicer to get a loan modification. Complaints are often regarding the HAM program.
- Common complaints include:
 - that loan servicers are making multiple requests for documents that the caller has already sent in,
 - servicer is not following the HAM program guidelines,
 - servicers do not adequately explain why loan modifications are denied.



SC Mortgage Fraud Hotline Cont...

- Servicing Issues/Errors: **62**

- These callers allege issues with mortgage loan servicers such as:
 - failure to properly credit payments,
 - claiming an incorrect amount due,
 - failing to provide documents upon request.



SC Mortgage Fraud Hotline Cont...

- Foreclosure Rescue/Loan Modification Scam: **52**
 - These callers typically complain about companies or individuals charging large up-front fees to prevent foreclosures or obtain loan modifications.
 - Callers often allege that these services are not provided or are not provided in a satisfactory manner.

Complaints by Type

Difficulty Making Payments	23
Appraisal Fraud	7
Foreclosure Rescue/Modification Scam	52
Credit Enhancements	1
Tenant in Foreclosure	3
Servicing Issues/Errors	62
Other/NA	74
Unperformed Services	9
Building Condition	6
Closing/Settlement Issues	21
Insurance Issues	4
Debt Collection	11
Trouble Getting Modification	65
Forged Documents	7
Seeking Info on Business	29
Credit Repair	3

Predatory Lending/Unfair Practices	33
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HOA Issues	1
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SC Mortgage Fraud Hotline Cont...

○ *Top Counties*

- Richland: 51
- Greenville: 32
- Charleston: 26
- Lexington: 15
- Horry: 15

**(Out-of State: 35)*

Calls by County

Aiken	5	Edgefield	3		
Allendale	2	Fairfield	2		
Anderson	10	Florence	7	Newberry	3
Barnwell	1	Georgetown	8	Oconee	4
Beaufort	9	Greenville	32	Orangeburg	8
Berkeley	7	Greenwood	1	Pickens	4
Charleston	26	Hampton	1	Richland	51
Cherokee	1	Horry	15	Saluda	1
Chester	1	Kershaw	3	Spartanburg	18
Chesterfield	2	Lancaster	3	Sumter	7
Clarendon	3	Laurens	9	York	10
Colleton	1	Lexington	15		
Darlington	1	Marlboro	2		
Dillon	4	McCormick	1		
Dorchester	3				



SC Mortgage Fraud Hotline Cont...

- Upcoming:
 - *SCDCA Mortgage Fraud Report*
 - *2007 Mortgage Fraud Report*
 - SCDCA (www.sconsumer.gov)
 - “Publications”

UP Next: Mortgage Fraud Data



Mortgage Fraud Data

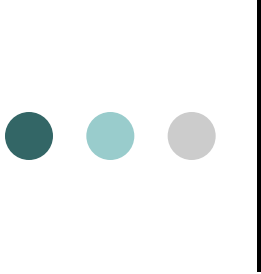
- 2005- SC = one FBI's Top 10 mortgage fraud Hot Spots
- Now = off the listing (#26 in suspicious activity reports filed with Financial Crimes Enforcement Network)
- 200% increase in HUD-OIG SC investigations between FY 2008 & FY 2009. (Rank = 6th highest)
- Correlation between mortgage fraud & foreclosures?

UP Next: Foreclosure by the Numbers



Foreclosure – By the Numbers

- 1 in every 509 homes in S.C. received a foreclosure filing in September 2010 according to RealtyTrac (nat'l avg= 1/371)
 - Some rural areas are excluded from this data which may mean that this number is actually higher
- HUD Data shows foreclosure starts in S.C. Counties for 2007 through the first half of 2008 ranging from 2.2% to 9.4% of all mortgages with an average of 5.5%
 - Keep in mind, this is only S.C. Homes with mortgages, and these numbers are over 18 months



Foreclosure – By the Numbers

cont...

○ National Trends

● During the First Quarter of 2010 (January – March)

- 10.06% of all mortgage loans were past due
 - Up from 9.12% same time last year
- 5.02% were 90 days past due
 - Up from 3.53% same time last year
- 1.23% entered foreclosure
 - Down from 1.37% same time last year
- For Subprime Loans
 - 27.21% were past due
 - 14.97% were 90 days past due
 - 3.35% entered foreclosure

**UP Next: Foreclosure
Process**

Foreclosure

- Default

- Notice

- A Hearing

- A Sale

- An Eviction?





Foreclosure – Default

- This generally means a homeowner is 90 or more days behind.
- S.C. is a Judicial Foreclosure State
 - Like 23 other states
- Judicial Foreclosure Requires Notice and a Hearing



Judicial Foreclosure States

- **Connecticut**
- **Florida**
- **Hawaii**
- **Illinois**
- **Indiana**
- **Iowa**
- **Kansas**
- **Kentucky**
- **Louisiana**
- **Maine**
- **Nebraska**
- **New Jersey**
- **New Mexico**
- **New York**
- **North Carolina**
- **North Dakota**
- **Ohio**
- **Oklahoma**
- **Pennsylvania**
- **South Carolina**
- **South Dakota**
- **Vermont**
- **Wisconsin**



Foreclosure – Notice

○ Notice: The Demand Letter/Acceleration

● First Mortgages

- The Mortgage Contract governs what notice is required.

● Second Mortgages (and third, fourth, etc.)

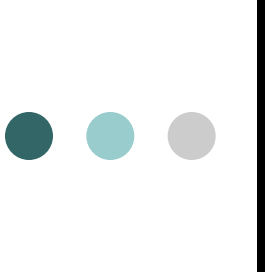
- Notice of Right to Cure as required by the S.C. Consumer Protection Code
 - Can give this notice on the 11th day after payment is due and not received
 - Notice has to give the consumer 20 days to cure the default



Foreclosure – Notice (cont)

○ Notice: A Summons and Complaint

- The summons and complaint have to be served on the consumer
 - For most people service means either
 1. Being personally served (hand-delivered), **or**
 2. Certified Mail, Return Receipt Requested, and Delivery Restricted to Addressee
 3. The summons and complaint is left at the consumer's usual place of residence with someone of suitable age and discretion who also lives there. (This generally means someone over 14)
- The Homeowner gets 30 days after being served to respond to the complaint
 - **If the Consumer doesn't respond within this time, the plaintiff can move for an entry of default.**
 - **Careful:** With a few exceptions, the consumer doesn't have to be served with anything else after they're found to be in default (i.e., didn't answer the complaint w/in 30 days of service). Some things may be mailed to the consumer's last known address.
 - After an entry of default, the plaintiff can then move for a default judgment



Foreclosure – The Hearing

● Hearing

- This is usually conducted by a “master in equity” or “special referee” depending on which county the property is in.
- The consumer is given an opportunity to be heard.
- In most cases, the consumer doesn’t show up at all
 - So, the lender gets what they ask for by default
 - **Don’t do this!**
- The judge (or master/referee) may enter a judgment of foreclosure here. If this happens, a sale date will be set.
 - Sales often happen on the first Monday of the month, but this depends on what county the property is in.

● Appeal

- Homeowner has **30 days** after getting notice of the judgment to file a notice of appeal.



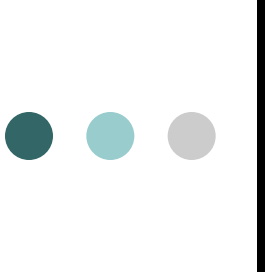
Foreclosure – The Sale

○ How it works

- The property is sold by accepting bids.
- The property is advertised once a week for three weeks prior to the sale.
- Usually, the high bidder on the day of the sale wins.

BUT....

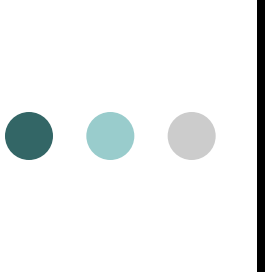
- If the plaintiff has demanded a deficiency judgment, then the sale is held open for 30 days. During that 30 days, someone else can outbid the winner at the first bid (who will not be allowed to bid again).
- Deficiency Judgment: when the home sells for less than the amount owed on the mortgage, there is a deficiency. If the plaintiff gets a deficiency judgment, the homeowner will still owe the difference between what the house sold for and the amount of the debt even though the house was sold.



Foreclosure – After the Sale

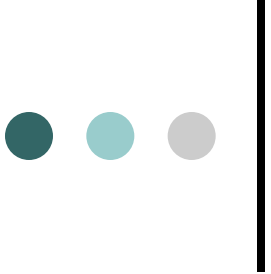
○ The Appraisal Statute

- When the plaintiff seeks a deficiency judgment against the consumer, the consumer can seek an appraisal of the property after the sale.
- Has to be sought w/in 30 days of the sale
 - The first sale if it's a non-deficiency case
 - The second “hold open” sale if it's a deficiency case
- Appraisals are made by three appraisers
 - One chosen by consumer, one by plaintiff, and one by the court
 - Two out of the three appraisers have to agree on a value
- This value essentially becomes the sale price for the purpose of calculating the deficiency.
 - If the actual sale price is less than the appraised value, any deficiency is reduced by that amount.
- This protects the consumer from a lender who buys the house cheap at the foreclosure sale, and then still tries to recover the deficiency from the consumer.



Foreclosure – An Eviction?

- If the consumer stays in the house after the sale, they are essentially a tenant who hasn't paid rent.
 - The new owner of the house can try to have the consumer evicted
- The process
 - The new owner can request that the consumer leave, but can't use force or threats to make this happen
 - Plaintiff serves the consumer with a "Rule to Show Cause"
 - Consumer gets 10 days after service to respond to this.
 - If the consumer doesn't respond or doesn't show the judge that he shouldn't be evicted, the judge will issue a writ of ejectment.
 - The sheriff will then present a copy of the writ of ejectment to the consumer and give the consumer 24 hours to leave voluntarily. After this 24 hours, the sheriff can remove the consumer.



Foreclosure – The Timeline

- From default (90 days behind) to sale, the process usually takes somewhere between 3 and 6 months to complete.
 - This timeline is very dependent on how fast the new owner moves
- Generally:
 - Delinquency → Service: about 90 days
 - Delinquency is where payment is due and not made
 - Service → Hearing: 30-60 days
 - Hearing → Sale: 4-6 weeks
 - Sale → Eviction: 10 days to 6 months or more



Foreclosure – Deficiency Judgments

- As mentioned earlier, this is where the servicer tries to recover from the consumer if the house sells for less than the amount of the debt.
- After the sale, the servicer can try to enforce its judgment.
 - This is easiest if the consumer owns other real property (home, land, etc). The servicer can attach its judgment to the real property and have it sold to pay the judgment.
 - A little more difficult with personal property, but it too can be seized and sold to pay the deficiency judgment



Foreclosure – Deficiency Judgments

- Enforcing the judgment (cont.)
 - If the consumer doesn't have any other real property, the servicer can ask the sheriff to see if the consumer has any personal property that can be seized and sold (called levy and execution)
 - If the sheriff says there's nothing (called a "nulla bona return") then the servicer can file for supplemental proceedings to question the consumer about his/her assets and find out what can be used to pay off the judgment.
 - Nulla bona return is very common



Foreclosure – Loss Mitigation

- South Carolina (and a number of other states) required certain loss mitigation steps before a servicer can foreclose
- The S.C. Supreme Court has issued an administrative order that essentially requires the servicer to plead that they have made a good faith effort to modify the loan under HAMP before they can foreclose
 - The consumer can contest this if it's not true
 - Of course, the consumer has to answer the suit and show up at the hearing to do this

**UP Next: Protecting
Tenants in Foreclosure**



Protecting Tenants at Foreclosure Act of 2009

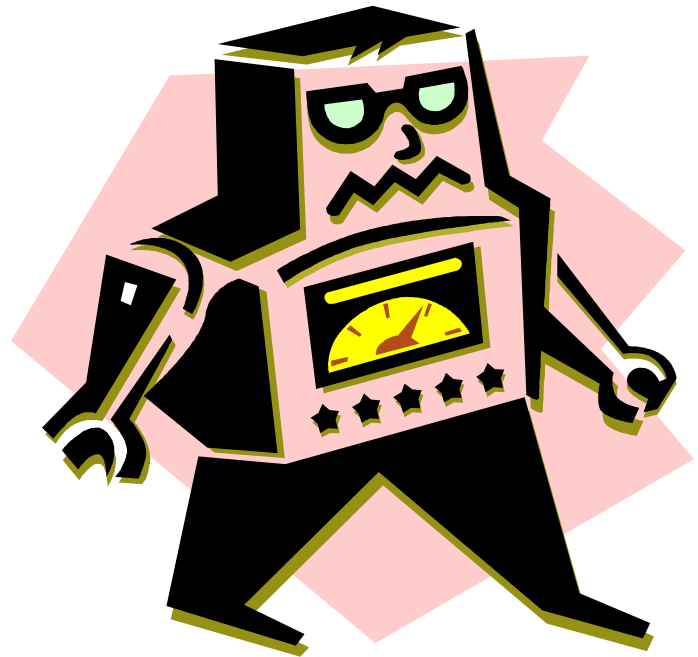
- Protects tenants where the property they live in is sold in foreclosure
- The tenant gets to stay in the property for the remainder of their lease or 90 days, whichever is longer.
- Exceptions:
 - The buyer of the property will live in it as their primary residence
 - There is no lease or the lease is terminable at will under state law
 - In these cases, the tenant still gets 90 days notice before they can be evicted
- Expires at the end of 2012

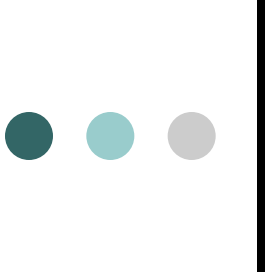
UP Next:

Robo-Signers

Robo-Signers

- Judicial Foreclosure (and often Non-judicial foreclosure) requires the filing of affidavits that state facts about the case
 - How much is owed
 - Who owes
 - That loss mitigation has failed
 - Etc.
- An affidavit is a statement, under penalty of perjury, that the affiant has personal knowledge of the facts in the affidavit.

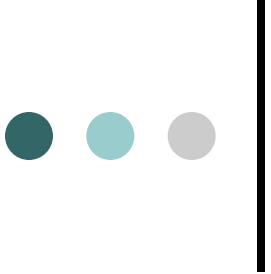




Robo-Signers

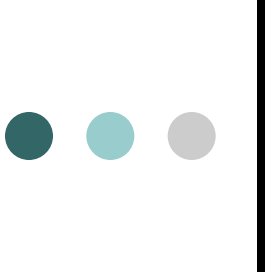
- The Problem:

- Some of these folks were signing at least 8,000 – 10,000 affidavits a month
- These affidavits contained statements about the debt that the affiants didn't personally verify and couldn't possibly have verified given the number that they were signing.



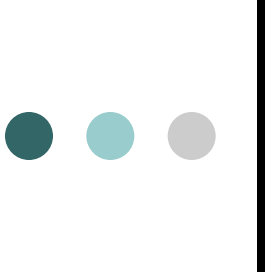
Robo-Signers

- The Problem (cont.)
 - This may just be a “technical” flaw
 - The information in the affidavit is correct, it was just verified by someone other than the person who signed it.
 - This is what some servicers are saying
 - The problem is that it’s probably also “technically”:
 - Perjury
 - Fraud on the Court
 - Etc.



Robo-Signers

- The Problem (cont.)
 - There are some cases that indicate that the information in these affidavits wasn't always correct
 - Servicers unable to support the amount they claim is owed
 - Servicers unable to justify the fees added on during foreclosure
 - Servicers unable to prove that the party bringing the foreclosure action actually has standing to do so
 - Lots of litigation around these issues in FL and some other states



Robo-Signers

- The Investigation

- On October 13, 2010, the attorneys general of all 50 states and a number of state banking and consumer finance regulators began an investigation into this issue
 - This includes the S.C. Attorney General's office and The S.C. Dept. of Consumer Affairs
 - Some states had already begun individual investigations
 - OH has brought an action against GMAC
- You can see the press release at <http://www.naag.org/joint-statement-of-the-mortgage-foreclosure-multistate-group.php>

UP Next:
SCCCCA

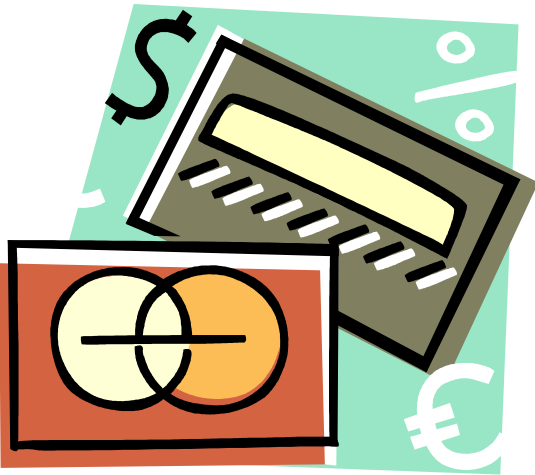
SC Consumer Credit Counseling Act (SCCCCA)

- Effective → December 2, 2005
- Climate
- *Why “Consumer Credit Counseling” Act*



SCCCCA: Purpose

- Rights for Consumers when being contacted by or hiring a:



- ***Debt Management Businesses***
- ***Credit Repair Businesses***
- ***Debt Settlement***
- ***Foreclosure Assistance Businesses***
- ***REGARDLESS of whether or not the business is located in South Carolina!!!***



SCCCCA: Definitions

- *“Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts”*
- *“Improving or offering to improve a consumer's credit record, history, or rating”*
- *“Negotiating or offering to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others”*

SCCCCA: Requirements

Be Licensed by SCDCA!!!

*[http://www.sconsumer.gov/licensing/credit_counseling/
licensed_counselors.pdf](http://www.sconsumer.gov/licensing/credit_counseling/licensed_counselors.pdf)*

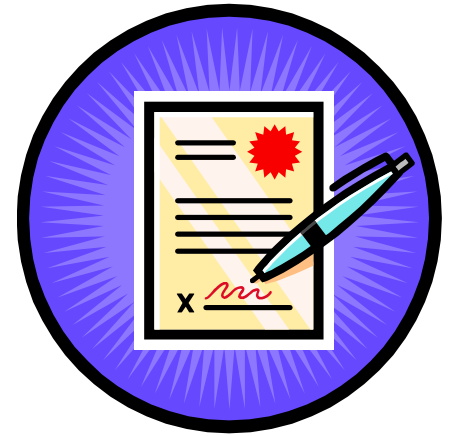
- Application for Organization and Credit Counselors
- Bond – at least \$25k
- Financial Education Session
- Budget Analysis/ Contract



SCCCCA: Contract

- Credit Counseling Organizations
MUST:

- Describe services
- Tell you how much their services cost
- Tell you how long it will take to get results
- Have a *written contract & give you a copy*



SCCCCA: Fees*



Initial Consultation Fee	\$50
Plan Enrollment Fee	\$30
Monthly Maintenance Fee	\$10 per (\$50 max)
Reinstatement Fee	\$25

**** Businesses can charge UP TO these amounts. All credit counseling businesses cannot charge every fee listed- it is dependant on the services provided.***

SCCCCA: Consumer Rights

○ Cancel

- Anytime
- 10 days notice
- Refund



○ SUE

- 3 years
- Knew/Should have known



SCCCCA: Administrative Actions

- Enforcement Background
- Fiscal Year 2009-2010

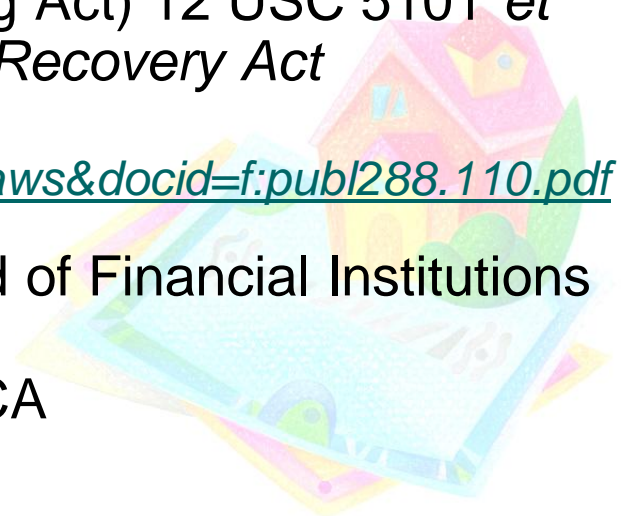
- ***Assurances/ Settlements***

Total # of Companies	Amount of Consumer Refunds	Total # of Consumers
13 <small>*Still have 2 company numbers outstanding.</small>	\$2,800,000* <small>Total for 4 fiscal years= \$4.3 million</small>	3,112

Sidebar: Mortgage Lending Act

○ Background

- Act No. 67/ R. 77/S 673
- Found at: http://www.scstatehouse.gov/sess118_2009-2010/bills/673.htm
- Required by Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Licensing Act) 12 USC 5101 *et seq* (*Title V – Housing and Economic Recovery Act* ~http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ288.110.pdf
- Regulator of Mortgage Lenders- Board of Financial Institutions
- Regulator of Mortgage Brokers- SCDCA
- Effective: January 1, 2010



● ● ● | Sidebar: Mortgage Lending Act

○ Requirements~ General cont...

- Licenses expire December 31st annually
- Licensing done through Nationwide Mortgage Licensing Systems and Registry (NMLSR)
- State and National background checks required for originators, persons having control of applicant, managing principal*, and branch manager of lender or broker.
- Three years experience
- Credit reports required for originators, persons having control of applicant, managing principal*, and branch manager of lender or broker.

**Licensees must designate a managing principal*

● ● ● | Sidebar: Mortgage Lending Act

○ Licensing Requirements cont...

● General

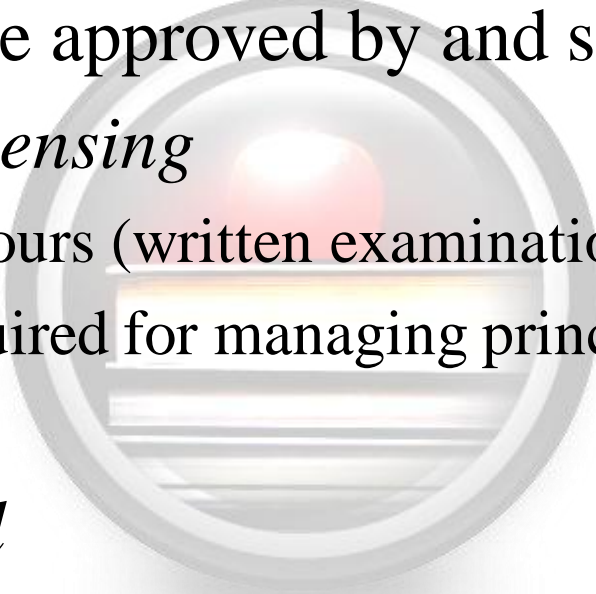
- *Lenders~ Adds Chapter 22 to Title 37.*
 - *Previously only required if engaging in second mortgages over 12%. See 37-3-501(1)&(2)*
- *Brokers~ amending current regulation in Title 40, Chapter 58*
- Mortgage lenders, brokers and respective loan originators must obtain license.





Sidebar: Mortgage Lending Act

○ Requirements~Education

- 
- Must be approved by and submitted to NMLSR
 - *Pre-licensing*
 - 20 hours (written examination included)
 - Required for managing principal & originators
 - *Annual*
 - 8 hours
 - Required for managing principal & originators

● ● ● | Sidebar: Mortgage Lending Act

○ Requirements~ Bond

● *Lender*~ based on dollar volume- § 37-22-140(F)

- 0-49,999= \$50,000
- 50,000-249,999,999= \$100,000
- 250,000,000+= \$150,000

● *Broker*~ based on dollar volume- §40-58-40

- 0-49,999= \$25,000
- 50,000-99,999,999= \$40,000
- \$100,000,000+= \$55,000





Sidebar: Mortgage Lending Act

○ Prohibitions

- Misrepresent or conceal material facts
- Fail to pay third party fees
- Fail to provide payment history when requested by borrower (*lender only*)
- Refuse to issue a satisfaction of mortgage upon payment in full (*lender only*)
- Fail to disburse funds (*lender only*)
- Cannot coerce an appraiser (*broker only*)



Sidebar: Mortgage Lending Act

○ Other Provisions

● *Mortgage log*

- Must submit annually & contain:
 - (i) credit score of the borrower,
 - (ii) adjustable or fixed type of loan,
 - (iii) term of the loan,
 - (iv) annual percentage rate of the loan, and
 - (v) appraised value of the collateral
- ~>SCDCA must prepare and make public annual report

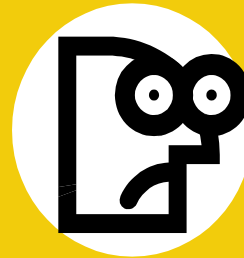
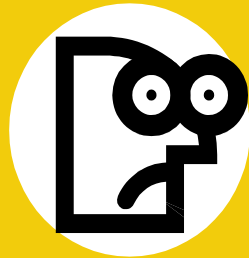
● *Annual Report*

- Must submit annually
- Information on loans services, made and brokered (laundry list of required items for lenders)



Resources

- Licensing of Mortgage Industry:
 - Mortgage Brokers & Lenders:
<http://www.nmlsconsumeraccess.org/>
 - Appraisers: <http://www.llr.state.sc.us/POL/REAB/> (803) 896-4400)
 - Attorneys: <http://www.judicial.state.sc.us/discCounsel/> (803) 734-2038
 - Real Estate Brokers:
<http://www.llronline.com/POL/REC/index.asp?file=>
(803) 896-4400)
- <http://www.makinghomeaffordable.gov/index.html>
- South Carolina Bar referral line (800) 868-2284
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