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Attorneys fight predatory lenders

Predatory lenders usually target individuals who, because of a poor credit history or limited income, believe they cannot afford a traditional mortgage, according to legal experts.

While the elderly and people in low-income neighborhoods are the typical targets, no one is immune to predatory lenders, they note.

"Home owners seeking to refinance a mortgage or to obtain a home-equity loan to pay bills or make home improvements are especially vulnerable," says Peter J. Birnbaum, president and chief executive officer of Attorneys' Title Guaranty Fund Inc., a company with headquarters in Chicago, whose membership comprises 3,500 independent real estate attorneys.

"Unlike potential home buyers, those seeking to refinance usually don't hire an attorney to review the terms of the contract," he stated. "Without an advocate protecting his or her interests, a consumer who makes an uninformed decision runs the risk of serious exposure.

"As a result, they can lose their home — or at least the equity they've built up — if they can't make the required payments."

Many organizations, such as the American Association of Retired Persons and the media, have tried to educate the public about the problem of predatory lending, Birnbaum noted. Congress is considering legislation and many states have passed laws that attempt to restrict predatory lending by imposing penalties on individuals who engage in the practice, he added.

Sadly, the problem persists, Birnbaum said.

He noted there are, however, ways to avoid the scams.

Red flags

Predatory lenders are often good sales people who want to make a fast buck at the expense of the mortgage seeker, Birnbaum continued.

But they send out signals that an educated consumer will recognize, he said, including:

- Recommending that you apply for more money than you need and, furthermore, that you accept monthly payments that you really don't believe you can make.

- Suggesting that you gloss over or falsify even the smallest bit of information on your

loan application.

- Misrepresenting the type of credit you're getting, for example, calling a one-time loan a "line of credit."

- Promising one set of terms when you apply, then giving you another set of terms to sign.

- Encouraging you to sign forms that fail to disclose important financial terms.

Predatory lenders often contact their victims through cold calls, either by telephone or direct mail, or they come "referred" by a disreputable source, such as a home-repair company trying to convince you to borrow money to pay for their services, Birnbaum said.

"It is unwise to make major financial decisions based solely on an unsolicited phone call or sales literature from an unknown company," Birnbaum says. "If something sounds too good to be true, it probably is."

Selecting lender

Birnbaum suggests taking the initiative to contact three or four banks, savings and loans, credit unions and mortgage companies, to inquire about the best loan for which you qualify and see how they compare.

You will need to obtain information from each institution:

- Annual percentage rate, points and fees. The APR is extremely important, along with whether the rate is fixed or adjustable. You will need to know the terms of the loan, including the number of points and fees each institution charges, so that you know whether you can afford the down-payment and what the actual monthly payment will be. Keep in mind that you will also have to pay real estate taxes, in addition to other routine expenditures.

- Terms of balloon payment. If the rate is adjustable, there will be a "balloon payment," a large payment due at the end of the loan term, usually after a series of low payments have been made. If you cannot come up with the money, you may need another loan which means new closing costs, points and fees. Predatory lenders often contact borrowers shortly after their loans have closed and offer refinancing with excessively high fees to "eliminate" the balloon payment.

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- Prepayment penalty. Find out if there is a penalty if you decide to pay off the loan ahead of schedule and also whether the interest rate on the loan will increase if you default. Predatory lenders are often inflexible about these issues whereas a credible lender may be willing to negotiate both of the terms out of your loan agreement.

- Credit insurance. Most people really don't need credit insurance, yet unscrupulous lenders will encourage it, thereby increasing their profit and decreasing the chances that the buyer will be able to make his or her monthly payments.

If you're contemplating the purchase of a home or taking out a second mortgage, Birnbaum of Attorneys' Title recommends hiring an attorney before you make a final selection on a lender.

"A real estate attorney can help you make the loan decision that is best for you and your circumstances," he says. "For a relatively small investment, an attorney is an advocate in your corner right up to the closing when you take ownership of your new home."

Founded in 1964, Attorneys' Title Guaranty Fund Inc. is a lawyer-service organization for the benefit of the profession and the public. In addition to providing title insurance to home buyers and lenders, the company offers — through its network of 3,500 member-lawyers — investments and other services delivered by subsidiary companies. The subsidiaries include a trust company, a mortgage bank, a real estate brokerage company and a real estate auction company.

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