

[back to article](#)



Printed on page I3

# Review of mortgage documents could save your home

*Published: Sunday, October 5, 2008 at 1:00 a.m.*

Troubled homeowners who are having difficulty getting the attention of their lenders might want to obtain a forensic loan review to determine if their lenders made any mistakes when the mortgage was issued.

Even a minor \$30 miscalculation on the lender's part could be an actionable offense, and the threat of a lawsuit is often enough to persuade the lender to deal with you in trying to find a way to help you work through your financial difficulties.

In a forensic loan review, a legal pathologist scours your loan documents looking for errors in, among other things, the truth in-lending (TIL) statement the lender provided shortly after you applied for your mortgage, and the lender's annual-percentage-rate (APR) calculation so you could compare loan costs.

If the TIL statement doesn't match up with the HUD-1 closing-cost sheet you received at closing, if the APR is off by just a hair, you might have cause for legal action against the lender.

Typically, forensic loan audits are ordered by mortgage investors to determine what kind of legal liability confronts them in the pools of loans they already own or are considering buying. As a so-called "business-to-business service," they are not generally available to individual borrowers.

But a San Diego, Calif., firm called You Walk Away ([www.youwalkaway.com](http://www.youwalkaway.com)) is now offering comprehensive loan-document reviews to consumers as part of its service to help homeowners who are facing foreclosure.

The reviews aren't cheap. The fee could be as high as \$3,000, depending on how much is owed on your mortgage. But if an error is found, it could be the 2-by-4 between the eyes you need to force the lender to move you up to the front of the long, long line of borrowers who are looking for ways to hold on to their homes.

"In some cases," says You Walk Away's Jon Maddux, "if people were simply overcharged by \$30 on the final HUD-1, or if the APR was higher by just 0.125 percent than was originally disclosed, this may give the lawyers leverage when negotiating with the lender to grant a beneficial loan modification and ultimately save their homes."

Maddux and his partner, Chad Ruyle, claim the chances are excellent that, somewhere in your loan papers, Loan Safe Solutions -- the Corona, Calif., firm that works with You Walk Away -- will find a mistake.

They say that more than 80 percent of the recent audits performed by Loan Safe have revealed major truth-in-lending violations, errors in the good-faith estimates required under the Real Estate Settlement and Procedures Act, illegal predatory lending practices, or even fraud.

"With 60 pages of loan documents, there's bound to be a mistake in there somewhere," says Ruyle, a real-estate and estate-planning attorney. "Maybe some pages were left out, or they are in the wrong order. Perhaps some of the language is just plain gibberish, or maybe there is a technical error."

The four-of-five figure seems a little high to Jeffrey Taylor of Digital Risk, an Orlando-based firm that performs forensic loan audits on behalf of mortgage investors. But because his company finds "material misrepresentations" in 57 percent of the loans it reviews, he says an 80 percent error rate is "very possible."

Intentional or not, mistakes on the part of mortgage brokers and funding lenders are characteristic of the housing boom, when there was a gold rush to approve the mortgage application of practically anyone who could fog a mirror. And now that the boom has gone bust, borrowers can use them to keep their homes, if they so desire.

Forensic reviews "have put a big spotlight on how the average home buyer was abused during the mortgage craze," Ruyle says. And if any kind of violation of the law is found, adds Maddux, it affords the borrower the opportunity to "use their rights to gain some leverage" with their lender.

The problem isn't so much that lenders aren't willing to work with borrowers to keep their homes. Rather, it's that they are so overwhelmed that they can't keep up with the onslaught of callers seeking help.

Which is why consumer advocate David Petrovich now advises troubled buyers to order forensic loan audits to determine whether their loans were predatory or made in violations of state or federal lending laws.

Petrovich, who is executive director of the nonprofit Society for the Preservation of Continued Home Ownership in Oakhurst, N.J., and the author of "Fight Foreclosure:

"How to Cope with a Mortgage You Can't Pay, Negotiate with Your Bank and Save Your Home" (John Wiley & Sons, 2008), says the intent of an extensive review of your documents isn't to sue the lender. Rather, it is to give you some bargaining power.

"My intent is not to see lenders dragged into court but to offer them a chance to avoid expensive litigation by agreeing to modify the illegal loan's terms in an affordable workout," he explains.

A problem that Petrovich recently encountered with a large loan-servicing company illustrates the kinds of issues beleaguered homeowners face in dealing with their lenders -- or, in most cases, the servicer hired by the owner of the mortgage to administer the loan.

As he tells the story, the servicer had been stalling for months on an application for a short sale, which is basically a contract between the borrower and a potential buyer at a price that isn't enough to cover the seller's mortgage. On such situations, the lender must give its approval for the deal to go through.

After resubmitting documents on several occasions, Petrovich was told the file had been closed because the necessary papers hadn't been received. This occurred despite the fact that he had confirmation on his fax machine that the docs had been received, as well as an e-mail from the company confirming it.

"They killed the file knowing I would resubmit," he says. "If I sent in a new application, (the servicer) could quickly approve the short sale and boast it completed a new application within a short time. This is unconscionable and despicable behavior!"

The consumer advocate maintains this is not an isolated case. Owners "on the edge of despair" are often misled into believing that if they jump through hoops, all will be OK, he says. "Loss-mitigation agents lie to owners about time frames. Others demand big payments up front" before agreeing to modify mortgages or other loan workout solutions.

"That's why I hold little hope that homeowners will be able to secure the affordable workouts needed to keep their homes," says Petrovich, who orders document reviews through another California firm, National Loan Auditors in Walnut Creek.

"Homeowners need teeth."

Lew Sichelman has been covering real estate for more than 30 years. United Feature Syndicate, Inc.

This story appeared in print on page I3

---

