CASUALTIES of the AMERICAN DREAM

Risky loans increase

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When Maximiano Martinez signed loan documents in August on a $559,900 house in Salinas, he thought he was getting a three-bedroom home in Salinas with a lawn and room to build memories.

What he got instead was a financial and legal mess.

The monthly loan payment of $2,500 he'd been promised turned out to be more than $3,000. His first payment in November — $2,970 — was every dime he could gather. It was the last payment he made.

Martinez, 48, never moved into the house, never tended the tidy lawn he'd envisioned. Before July runs out, the bank will set a date for the sale of the property.

He was a homeowner in Monterey County for no more than a moment, but the impact of the purchase, and the foreclosure, will follow him for years.

In Martinez's case, language was certainly an issue, said his attorney. His loan documents were in English, a language of which he speaks scarcely a word.

But the language of loans — in any language — has proved to be a foreign tongue to many homebuyers in recent years. And judging by the rising tide of foreclosures, plenty of homebuyers may not have fully understand what they were buying into.

Record foreclosures|

Foreclosures — the various stages in the process of losing a home — have swelled to record numbers across the country. For the first four months of this year, California led the nation in foreclosure filings by volume.

And a fifth of all first-mortgage debt last year was made up of sub-prime loans — loans made to borrowers with less than stellar credit — and loans requiring little or no documentation of income, said the California Society of CPAs. Aimed at buyers with poor credit ratings, they're complex contracts, and the consequences of not fully understanding them or their changeable rates can be dire.

"An option ARM (adjustable rate mortgage) loan is among the most sophisticated loan product there is," said Soquel attorney Bill Purdy, "and it's being sold to the least likely portion of the population to understand them."

An option ARM, or payment-option ARM, lets the borrower choose the type of payment each month from several options. While typically those choices include payments of interest and principal that would pay off the mortgage in 30 or 15 years, said the Mortgage Bankers Association, most option ARMs also allow borrowers to make interest-only payments that don't reduce the total loan balance, or to make minimum payments that don't cover interest and increase the total loan balance.

In essence, with negative amortization, their debt rises month by month, payment by payment.

His firm, Simmons & Purdy, is representing Martinez in a claim against his lender, Atlas Mortgage Services, which allegedly falsified bank accounts and employment information to get him into a house he couldn't afford.

It's predatory lending at its worst, said Purdy, and there's no shortage of clients.

But there's plenty of mortgage trouble these days even when lending practices are transparent.

Details ignored|

As housing values soared in recent years, some homeowners ignored the implications of their financing packages, some failed to take the time to decipher them. Some just wanted to get real estate rich fast.

Mortgage brokers wrote loans as quickly as buyers could sign, with some of them, too, getting rich off the fees generated by the boom.

Nationally, foreclosure filings — default notices, auction sale notices and bank repossessions — hit a two-year high in March, according to RealtyTrac Inc., which publishes a national database of real estate activity and trends. In April, the national foreclosure rate reached one filing for every 783 households. California had one foreclosure filing for every 400 households, placing the state in fourth place for foreclosure activity, led only by Nevada (1 in 232), Colorado (1 in 314) and Connecticut (1 in 329), according to RealtyTrac data.

Not all defaults result in bank repossessions or auctions. Many homeowners who fall behind on their payments manage to borrow from friends or family. Some owners refinance; others sell their homes and pay off what they owe.

But home sales have stagnated, so a quick home sale is a long shot these days: In Monterey County, the average days on the market for a single-family residence reached 102 days in May, according to Monterey County Association of Realtors data. For that month, 135 houses were sold, from an inventory of 2,707 listings. Two years ago, the average days on the market was 56, and inventory was 1,143 for May 2005.

Some buyers to blame|

No one pretends that homeowners don't shoulder some blame for playing fast and loose with the real estate market.

Any real estate agent can tell of cases where buyers told them they could afford a house at one price, then turned around and bought a property for $100,000 over that amount, of buyers who pumped up their loan information to buy more house.

Bob Hammel, an agent with Century 21 Scenic Bay, knows of one case where a man offered a seller cash for a $700,000 home in Carmel. He'd been working out of the country, he claimed, and he'd have cash in 22 days. Once he moved in, the money never materialized, and it took the seller almost a year to get the man out.

When he did leave, he stripped the house bare, down to the alarm system and the soap dishes pried out of tile.

"It's a two-edged sword, whether they understand it or they take advantage of it, or they don't understand and don't want to admit it," said Hammel. "It's two things: People can be tricked, and people can be greedy."

In the Creekbridge development of Salinas, Hammel saw properties change hands three times in three years, as buyers flipped, flipped and flipped for fast profit.

But Hammel said many buyers also didn't understand the implications of their loans, "what an option ARM is, what a teaser rate is."

Loan documents moved into indecipherable realms, and as home prices rose, lending practices loosened to get people into homes. Stated-income or no-document loans, where applicants didn't have to provide paperwork backing up salary claims, interest-only and adjustable rate loans, loans with enticingly low teaser rates, became common — as did loans homeowners could never afford if they held onto them for long enough.

All that, and more, sandwiched between the signatures and initials on dense documents filled with undecipherable legalese.

"If you could read them, they'd be impossible to understand," said Purdy. "And that could be leveled at 99 percent of the population."

Downward spiral|

What made such risks possible, for lenders and borrowers alike, was the steadily rising market. As long as a property could be sold six months later for considerably more than was paid for it, the risks were low.

When home sales slowed and the rise in prices stalled, foreclosures went up, which in turn fed the decline in prices. The market is now in a downward spiral, accelerated by shaky loans.

Foreclosures are happening to the extent that they are, Purdy said, because people have no idea what they signed. He calls it a time bomb.

In many cases, the lowest introductory rates were the highest a homeowner could ever have afforded.

"An option ARM," said Purdy, "is basically an option for removing the homeowner from the home, and leaving the home standing."

Difficult to prove|

Yet proving predatory lending cases can be tough, since a client's signature is all over the forms.

"I could walk into your house right now, and if I stuck a pistol in your face and stole $53 from you, I'd be in prison for so long, it would be unbelievable," said Purdy. "But if I steal every bit of equity with a pen, and I put you in the street with no chance of ever owning a home again, there's a good chance nothing's going to happen to me."

Dylan Saaki, an attorney for California Rural Legal Assistance in Salinas for the past 14 months, tells of Spanish-speaking clients being handed stacks of documents and told to sign, with no concept of what they said.

On one stated-income loan, a 20-year-old landscaper had been listed on his loan document as having a monthly income of $12,000. He earned a 10th of that, and he was about to lose his house.

Veronica Navarro, housing counselor for the Salinas-based Monterey County Housing Alliance, has been getting calls since November.

"Almost every day, I get some type of call about what to do to save a home," she said. "Most of the time, it's too far behind."

Big jump in payments|

The majority of those callers bought homes with option adjustable rate mortgages, and their payments have jumped drastically. Ninety percent, she said, are Spanish-speaking victims of predatory lending practices.

"They are Mexican, they don't know how to write, they work in the fields," said Navarro. "They were sold the American dream, told not to worry about (it)."

Said Purdy: "We have people who are literally working in jobs who could no more refinance a house and buy a house than flap their arms and fly to the moon."

He's convinced that non-English-speaking Latinos — "people who can be relied upon not to understand what they're signing" — were heavily targeted.

"If you want to steal property from Hispanic people" said Purdy, "the place to do it is Monterey County."

Martinez now lives with his wife in a rented room, with no home to show for the process, a mountain of debt and ruined credit.

He still works as a prep cook at a Moss Landing fish market, the same place he worked last year when a loan agent at

Atlas Mortgage Services wrote his loan.

Only that loan reportedly listed him as a restaurant chef with a side catering business and a $9,800-a-month income. His credit history, including a 2000 bankruptcy filing, was not reported, even though he said he told the loan agent.

At issue is whether Martinez was defrauded by his lender. Alison Lawton, the lawyer representing Martinez, said a loan representative assured him he'd pay less than $2,200 a month, and added the fraudulent income and asset data.

Saddled with two mortgages, Martinez had been financed for a home — and home payments — exceeding his grasp. The adjustable rate loan had an initial 24-month fixed rate, a 10.795 annual percentage rate, prepayment penalties and negative amortization.

After that introductory period, the interest rate would have reset every six months.

He understood none of that. He says it wasn't what he was told.

The law firm has made pre-suit demands seeking reimbursement of the money he lost, for damage to his credit and legal fees.

Dave Hamerslough, the San Jose attorney representing the mortgage company, could not be reached for comment.

If settlement isn't reached and a civil suit is filed, it could take up to a year to come to trial, said Lawton.

Losing ground|

Lawton has so many predatory lending cases, she's turning away people who have claims against the same brokers the law firm is going after.

Clients are often shocked, she said, to learn they are essentially making negative loan payments — the unpaid interest ballooning their debt even as they struggle to meet loan obligations.

"They just absolutely financially tap every financial resource they have to try to stay in these houses, and they're just throwing their money away because there's no way they could ever afford these houses."

Some have no idea what their loan documents claim, particularly when it comes to their stated incomes. They're even more shocked to find out about the commissions their loans generated.

"And mostly," said Lawton, "they come to me because they want me to save their house. And I can't do it."

Staff Writer Claudia Melendez contributed to this report.

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Defaults in Monterey County ZIP Region 2005 2006 Jan.-May % change code 2007 '05- May '07 93901 South Salinas 16 19 27 69 93906 North Salinas 48 65 115 140 93905 East Salinas 28 57 79 182 93907 North County 25 19 45 80 93908 Toro corridor 3 11 20 567 93923 Carmel 10 6 8 -20 93924 Carmel Valley 6 6 3 -50 93926 Gonzales 6 8 8 33 93927 Greenfield 11 16 24 118 93930 King City 10 19 13 30 93933 Marina 17 12 20 18 93940 Monterey 9 11 12 33 93955 Seaside 20 25 46 130 93960 Soledad 14 20 43 207 93950 Pacific Grove 8 9 6 -25 Total 231 303 469 103 Source: RealtyTrac

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