

Fraud *from the* Fringe

— by RACHEL DOLLAR —

**The sovereign-citizen movement
and the rise of mortgage-
elimination schemes.**



ou might have seen the Internet or advertising claim: *Eliminate your Mortgage—Legally, Ethically and Morally—in as Little as 90 Days. Only \$1,499!* ¶ Every disaster brings fraudsters out of the woodwork. The amount of fraud perpetrated after Hurricane Katrina was staggering. As with natural disasters, the financial crisis spurred a substantial increase in fraud schemes. ¶ Predators always target the weakest prey and financial crisis predators set their sights on struggling homeowners. From run-of-the-mill advance fee, mortgage modification and foreclosure rescue schemes to complicated bankruptcy fraud schemes, for the last five years, the mortgage industry has been plagued with back-end or servicing frauds. ¶ One prolific scheme is mortgage elimination—based on the theory that, due to historical conspiracies underlying our financial system, mortgages are not valid and cannot be enforced. ¶ The groups that buy into these conspiracy theories sell their programs to other conspiracy theorists but often catch well-intentioned distressed homeowners in their webs. ¶

Although even the smallest lenders have seen fake “pre-shipment packages” and have been targeted with forged mortgage lien releases, the history, theory and operation of these schemes is not widely understood. Mortgage-elimination theory arises out of the sovereign-citizen movement—a movement that has gained significant traction in the United States since the financial crisis.

A paper war

Sovereign citizens believe that, by filing certain documents and engaging in certain activities, they free themselves from the rule of government and become immune to the law.

The Federal Bureau of Investigation (FBI) considers extremist sovereign citizens to be domestic terrorists. Sovereign citizens don’t look or act the way most people would expect when evoking the image of a terrorist.

The language used and antics engaged in by sovereign citizens strike most people as a little crazy. They make up their own license plates for their vehicles and carry driver’s licenses purportedly issued by entities such as the Kingdom of Heaven.

Sovereign citizens wage war with paper and pen. Every year, thousands of Uniform Commercial Code (UCC) financing statements and other documents packed with legal gibberish and misused Latin phrases are recorded, filed and sent to law enforcement, company presidents and the secretary of the Treasury.

Adherents to these theories believe these documents will remove them from the jurisdiction of the state and federal government of the United States, and restore them to their status as sovereign citizens—subject only to common law.

The papers generated and sent by sovereign citizens make no more legal sense than the theories that underlie their beliefs. As U.S. 7th Circuit Court of Appeals Judge Frank

Easterbrook noted in *Coleman v. Commissioner* (1986), discussing a tax protestor who argued that wages were not income unless paid in gold, “[s]ome people believe with great fervor preposterous things that just happen to coincide with their self-interest.”

Desperate homeowners are vulnerable and may be willing to believe anything that allows them to keep their homes—even the circular logic of the sovereigns.

Sovereign citizens are not part of an organized movement; they are known more for their lack of organization than for any cohesive structure. Although individual sovereigns may be part of a militia group and they are sometimes involved in the purchase and sale of illegal weapons, violence is not necessarily a part of their ideology. That isn’t to say that they cannot be or are never dangerous. Certain sovereign citizens can become violent due to their disenfranchisement with the government or when their beliefs are challenged.

For instance, in 2010, two Memphis, Tennessee, police officers were gunned down during a traffic stop by Jerry Kane

and his 16-year-old son. Kane was a self-declared sovereign citizen touring the country teaching seminars on mortgage elimination.

One of the more notorious sovereign citizens is Terry Nichols. He helped build the bomb used by Timothy McVeigh to destroy the Murrah Federal Building in Oklahoma City in 1995, killing 168 people and injuring more than 680. Nichols and McVeigh were purportedly angered by the government’s handling of the Waco and Ruby Ridge standoffs.

But violent incidents are uncommon. The most common weapon used by sovereigns is not guns or bombs. It is paper. Sovereign citizens wage war on paper and with paper.

What is a sovereign citizen?

Sovereign citizens share a few core beliefs that underlie their suspicion of and disbelief in the U.S. financial system. These theories arise out of the U.S. departure from the gold standard.

After a run on the New York Fed’s gold reserves on March 6, 1933, President Franklin D. Roosevelt declared a national bank holiday during which he required that all commercial banks exchange their gold for Federal Reserve notes.

On April 5, 1933, another executive order was issued that required U.S. citizens to turn in their gold for paper money or face criminal sanctions. As of June 5, 1933, the United States was no longer on the gold standard. We had converted to a fiat currency under which the government can expand and contract the money supply at will, theoretically, controlling inflation and the economy.

Sovereign citizens often believe that several other events took place during those fateful months in 1933.

(Individual sovereign citizens may have beliefs and theories that diverge greatly from those set forth in this article. This article attempts to set forth the most pervasive theories

in a straightforward manner and is not intended to be comprehensive or explain the theories and beliefs of all sovereign citizens. Much sovereign theology is circular and not legally sound, and any attempt to explain this belief system will, necessarily, be incomplete.)

According to sovereign-citizen theory, the United States declared bankruptcy on or about April 5, 1933. The executive order requiring U.S. citizens to exchange their gold was an effort to pay off the debt of the United States. Following the bankruptcy, the United States had no credit and no assets to pledge to obtain credit. That is, it had no assets other than its citizens and their future earnings and production. To obtain loans for capital after 1933, the United States had to use its citizens as collateral, according to sovereign-citizen theory. Upon the birth of each U.S. citizen, the United States creates a “corporation” or “straw person” that is attached to that person. The straw person is identified by the name of the person spelled in all-capital letters. (Any time a person’s name is spelled in all-

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capital letters, the sovereigns believe that it is a reference to his or her straw man—not the person’s true identity.)

The birth certificate is believed, by those subscribing to sovereign-citizen theory, to be the title certificate to the corresponding straw person. The original certificate is sent to the Treasury and an account is set up in the name of the straw person with the value of the real person’s future earnings and worth. This is the collateral for loans from foreign countries to the United States. Thus, the story goes, we are all slaves, toiling to secure the debt of the United States.

Sovereign citizens have invented various methods they claim can be used to take control of the account held in the name of their straw man at the Treasury.

This process often involves filing UCC financing statements or sending in their birth certificate and Social Security card to the secretary of State and obtaining an “apostille.” An apostille is a document issued by the government to authenticate official records such as birth certificates for use in other countries. Sovereign citizens attribute far more significance to an apostille, theorizing that it frees the individual from the so-called straw man created by the government.

Sovereign-citizen banking theories often incorporate fractionalized reserve banking. As depositories can loan multiples of their actual assets and do not have to hold gold or other monetary equivalencies in their vaults to back loans, sovereign citizens espouse that banks create money every time they make a loan.

Banks do this by making book-keeping entries. When a loan is made, the bank reduces cash on hand and increases the loan receivables account—which is an asset account. Therefore, when a borrower signs a promissory note and gives it to the bank, the bank obtains an asset. The borrower did not, however, receive gold. Under sovereign logic, this means that the bank obtained value but the borrower did not. The borrower only received “vapor money,” which has no value. The bank thus owes the borrower the value of the promissory note—not the other way around.

Financial crimes arising from sovereign theory

Mortgage-elimination schemes are another battle in the sovereign’s paper war. Although the tactics are not deadly, they are annoying, costly and time-consuming.

Numerous such schemes are operating within the United States at any given time. There are many methods and theories promoted by sovereign citizens to eliminate debt—the common thread is using legal-sounding language and unusual instruments.

By far, the most common debt-elimination method is through the presentment package and resulting tacit agreement to the removal of debt. This is the method generally sold to consumers via Internet sites with the promise that mortgages

can be eliminated in as little as 90 to 180 days.

In 2004, a mortgage-elimination scheme operated throughout the United States. It was run by two men, D. Scott Heineman and Kurt Johnson, through a California company known as The Dorean Group.

They created a multilevel Internet marketing scheme where promoters received commissions for referrals. The Dorean Group held town hall conference calls where they explained they could get rid of a homeowner’s mortgage for an upfront payment.

They also required homeowners to refinance their properties after the mortgage was eliminated and to give The Dorean Group half of the refinance proceeds. The Dorean Group would then eliminate the refinance mortgage.

To start the process, borrowers were required to deed their property into trust with The Dorean Group as the trustee. Dorean would send a presentment package to the lender that held the mortgage. The documents purported to shift the burden to the lender to prove it held a valid mortgage on the property. The lender’s failure to comply, according to Dorean Group theory, allowed The Dorean Group to act for the lender.

From a warehouse in Northern California, Heineman and Johnson mailed 2-inch-thick packages of documents to lenders, following their own internally created rules and timelines. The documents were nonsensical.

When the lenders didn’t act as demanded, Heineman and Johnson executed and recorded mortgage releases “under power of attorney.” They posted these recorded lien releases on their website as proof the mortgages were successfully eliminated.

Hundreds of consumers signed up for the program and paid fees to The Dorean Group. No one received a free house. Almost a decade

later, homeowners are struggling to have their homes taken out of the Dorean Group trusts. (Heineman was sentenced to 21 years and Johnson to 25 years in federal prison after being convicted by a jury of one count of conspiracy and 34 counts of mail fraud.)

Many programs provide the consumer with form documents and a detailed calendar of timelines for service of documents on the lender. Some of these programs contain hundreds of detailed steps performed on successive days during a prescribed time period. Others require the consumer to transfer all or a percentage of their ownership in the property into a trust, and then the process is completed by the contracting company.

Although there are variations in the materials, most of the programs use a presentment package that is mailed to the lender. These materials generally give the lender a choice.

The first option is to execute a document that admits no money was actually lent and then record a lien release. Understandably, most lenders do not choose this first option.

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The second option is to do anything other than admit that the debt is invalid. The failure to select option one results in a tacit agreement that the loan is not valid and a tacit appointment of the sovereign as attorney in fact to reconvey the mortgage. (Tacit agreement is a principle of contract law holding that if a person remains silent in the face of a statement that a reasonable person would dispute or respond to, it can be evidence that the person consented or agreed with the statement.)

The argument is, essentially, that the lender's failure to act or its silence in the face of the statements made in the package is an agreement that the mortgage debt is invalid, and confers upon the sovereign the right to act for the lender in executing documents to rid the property of the lien. This logic is hopelessly circular.

The presentment packages often contain documents that purport to be a qualified written request (QWR) under the Real Estate Settlement Procedures Act (RESPA) or a notice of rescission under the Truth in Lending Act (TILA).

Other nonsensical documents may be entitled "Affidavit of Specific Negative Averment" or "Non-Statutory Abatement: Notice of Default, Default Judgment, and Praeceptum." The packages may refer to admiralty, maritime or common law, or contain notarized documents. They are generally sent by certified mail to the bank president, and are often sent multiple times.

The packages often include instruments meant to pay off the debt. The sovereign citizens will create and sign "bonds" for several million dollars, drawn against the secret Treasury account set up at their births, and purport to use them for payment.

Other times, the sovereign pays with a check from a closed bank account with the notation "EFT [electronic funds transfer] only for discharge of debt"—again, drawing against their straw man's Treasury account.

Earlier this year, four men were indicted in South Carolina and charged with operating a mortgage-elimination scheme. They allegedly offered to help consumers get rid of debts for a "donation" of 10 percent of the eliminated debt. Among documents sent to lenders was a registered bonded promissory note, allegedly created in the office of the four men, with a value of three times the amount of the debt. The indictment identifies the men as sovereign citizens.

Once the lender fails to respond appropriately, the debt-elimination scheme goes into action. As with other aspects of the underlying theories and the manner of obtaining sovereignty, the methodology mutates as sovereign citizens attempt to find a way of becoming sovereign—or eliminating debt—that actually works.

The theories morph a little with each unsuccessful attempt. In prior iterations, the sovereign would execute and record

a release of the mortgage "under power of attorney" for the lender "by tacit agreement." As title companies caught on to these signatures, the scheme had to morph to continue to be effective.

One of the more recent methods utilized in deed-of-trust states involves the sovereign executing and recording a substitution of trustee under power of attorney for the lender by tacit agreement whereby the sovereign purports to change the trustee to himself. As trustee, the sovereign then executes and records the reconveyance of the deed of trust (release of the mortgage).

The "tacit agreement" or "power of attorney" language is not on the actual release documents, which hinders detection.

Dealing with mortgage elimination

Law enforcement takes sovereign-citizen schemes seriously. Any time a presentment package or false payment is received, a suspicious activity report (SAR) should be filed. Consider the potential applicability of the Bank Secrecy Act safe harbor for information sharing when there is a suspicion of terrorism or money laundering.

Lenders may respond to initial presentment packages with a factual letter explaining the process being utilized is not valid and rejecting the statements and offers. This may be effective in cases where the homeowner has purchased a do-it-yourself debt-elimination package. If the communication qualifies as a qualified written request or TILA rescission, it must be handled as such regardless of signs that it arose from sovereign theology. Competent legal counsel can assist in determining the appropriate or required response to such communications.

It is also important to monitor and protect the collateral and notify title underwriters of the existence

of false documents recorded against title.

While the industry has become much better at recognizing these schemes, the early iterations are sometimes not immediately identified. During the time that the title appears to be lien-free, a bona fide purchaser or lender may intervene. Lenders can bring legal actions to quiet title or may record documents in the chain of title to provide notice that recorded documents were not authorized.

If foreclosure, eviction or legal action is instituted in a sovereign-citizen mortgage-elimination scheme, it is important to advise counsel and any involved authorities of these facts. **MB**

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