

1. WHAT IS A MORTGAGE?

Mortgage loans finance the purchase of all types of real property, including homes and commercial real estate.¹ For example, a borrower seeking to finance the purchase of real property, most often a home, will take out a loan with a lender such as a bank for a term of around 30 years.² The borrower will secure the loan by signing a contract and providing the lender with a lien, or “mortgage” on the home.³ The mortgage insures the repayment of the loan to the lender.⁴ If the loan is not repaid, then the lender may foreclose on the property, selling it and using the proceeds to satisfy the debt.⁵

Once the loan is issued to the borrower and the mortgage is received by the lender, the lender often “bundles” this mortgage loan with other mortgage loans it holds.⁶ These bundled mortgage loans are then packaged and sold to a secondary mortgage market institution, such as Freddie Mac or Fannie Mae.^{7,8} These secondary mortgage market institutions then take the packaged mortgage loans and sell them as mortgage-backed securities to investors on the New York Stock Exchange, or another similar financial market.⁹ The secondary mortgage market provides an important source of investments to U.S. financial markets.¹⁰ The money generated from the sale of the mortgage loans by the lender to the secondary mortgage market provides a major asset for the lenders, and allows them to continue to fund further mortgage loans.¹¹ Without the assets generated by the sale of the packaged mortgage loans, lenders would be severely limited as to the amount of funding they could provide to borrowers.¹²

2. THE MORTGAGE PROCESS

When a borrower decides to purchase real property by taking out a mortgage loan they must interact with a variety of individuals and institutions to obtain the loan and provide the mortgage to the lender.¹³ A real estate agent helps the borrower to find the real property they would like to purchase.¹⁴ An appraiser determines the value of the real property.¹⁵ A mortgage broker may assist the borrower in finding the best mortgage to suit the borrower’s needs.¹⁶ A settlement agent, such as an attorney or a title examiner, prepares to close the purchase.¹⁷ Finally, the lender, who may be a bank, a savings and loan, a credit union, or another type of financial institution, funds the loan, and receives a mortgage from the borrower to insure the loan’s repayment.¹⁸

3. WHAT IS MORTGAGE FRAUD?

Mortgage fraud occurs when anyone involved in the process of obtaining a mortgage, or the loan it secures, lies to or misleads the other parties in the process.^{19, 20} The most common mortgage fraud cases involve borrowers and lenders lying on the loan application.²¹ The misrepresentations made on the loan applications include: falsifying income, misrepresenting employment history, and falsifying debt and asset amounts.²² The 2007 FBI *Financial Crimes Report to the Public* describes common mortgage fraud schemes.²³

Property Flipping - Property is purchased by a borrower, falsely appraised at a higher value by a property appraiser, and then quickly sold to another party. What makes property flipping illegal is that the appraisal information is fraudulent. In this scheme one or more of the following may occur: the appraiser may fraudulently appraise the property at a higher value than it is worth, the borrower or the lender may inflate the borrower’s income, the borrower or lender may doctor the loan documentation, etc. Depending on who is supplying the fraudulent information, kickbacks to borrowers, investors, property/loan brokers, appraisers, and title company employees are common in this scheme.

Silent Second – The buyer borrows the down payment from the seller through the issuance of second mortgage, and then fraudulently represents that the money provided for the down payment on the sale of the house is the buyer’s own money. The primary lender is left unaware of the fact that the down payment was secured by a second mortgage and is led to believe that it is the buyer’s own money. Often the second mortgage is not recorded so there is no way for the primary lender to discover it.

Nominee Loans/Straw Buyers - The identity of the borrower is concealed through the use of a nominee who allows the borrower to use the nominee’s name and credit history to apply for a loan.

Fictitious/Stolen Identity - A fictitious/stolen identity may be used on the loan application. The applicant may be involved in an identity theft scheme: the applicant's name, personal identifying information, and credit history are used without the true person's knowledge.

Inflated Appraisals - An appraiser acts in collusion with a borrower and provides a misleading appraisal report to the lender in return for a kickback from the borrower. The report inaccurately states an inflated property value.

Foreclosure Schemes - The perpetrator identifies homeowners who are at risk of defaulting on loans or whose houses are already in foreclosure. Perpetrators mislead the homeowners into believing that they can save their homes if the homeowners transfer the deed to the home and pay up-front fees for the perpetrators' services. The perpetrators profit from these schemes by remortgaging the property or pocketing fees paid by the homeowners, while the homeowners often lose their homes.

Equity Skimming - An investor may use a straw buyer, false income documents, and false credit reports to obtain a mortgage loan in the straw buyer's name. Subsequent to closing, the straw buyer signs the property over to the investor in a quit claim deed which relinquishes all rights to the property and provides no guaranty to title. The investor does not make any mortgage payments and rents the property until foreclosure takes place several months later.

The U.S. Attorney's Office recently prosecuted a Jacksonville defendant for engaging in activities that constitute mortgage fraud.²⁴ In that case, the defendant entered into an agreement to purchase a house for \$490,000. He obtained an inflated appraisal of the house for \$625,000 and submitted first and second mortgage loan applications reflecting a sales price of \$625,000. Obtaining an appraisal that overvalues the property is an example of inflated appraisal mortgage fraud. The defendant also submitted altered bank account statements showing significantly larger cash balances in the account than were actually there. Based upon this information, the lender approved the loans. Falsifying bank account information on a loan application to defraud the lender is another example of mortgage fraud. At the closing on the property, a check for \$134,000 was issued to an entity controlled by the defendant. This amount was listed on closing documents as an "Assignment of Contract Fee."

4. HOW IS MORTGAGE FRAUD PROSECUTED?

A number of federal criminal statutes are used to prosecute mortgage fraud including mail fraud, wire fraud and bank fraud statutes.²⁵ Other federal criminal statutes used to prosecute mortgage fraud pertain to use of false or fictitious information to secure the mortgage loan.²⁶ The US Attorney's office collaborates with the FBI and other investigative agencies to prosecute mortgage fraud cases.²⁷

5. MORTGAGE FRAUD IN THE U.S.

Mortgage fraud is directly tied to the national economic crisis.²⁸ Nationally the losses attributed to mortgage fraud for 2008 are between \$15 billion and \$25 billion.²⁹ Given the current economic downturn these numbers are likely to increase.³⁰ When a single case of mortgage fraud can result in \$92 million in losses, it is likely that the mortgage fraud losses measured thus far are just the tip of the ice berg.³¹ The FBI's mortgage fraud caseload increased from 293 in 2003 to over 2,000 cases in 2009.³² The victims of mortgage fraud are not only the borrowers, bankers and other mortgage industry entities, but also those who live and work around the properties affected by mortgage fraud.³³

6. MORTGAGE FRAUD IN FLORIDA

"Florida still churns out fraudulent home loans at nearly three times the rate of the national average."³⁴ Florida continues to occupy a spot in the top five states for mortgage fraud; its position since 2004.³⁵ The top three mortgage fraud types in Florida are application fraud, tax return and financial statement misrepresentation, and appraisal and valuation fraud.³⁶ The Middle District of Florida is a major area for mortgage fraud activities.³⁷

7. MORTGAGE FRAUD IN THE MIDDLE DISTRICT OF FLORIDA

a. Fort Myers

As of December 2007, the top 10 markets for mortgage loan misrepresentations according to Fannie Mae included Fort Myers.³⁸ The most common types of mortgage fraud that occurred in Fort Myers were credit misrepresentations and occupancy misrepresentations made to obtain loans.³⁹ Lee County continues to have one of the highest foreclosure rates in the nation.⁴⁰

b. Jacksonville

Many mortgage fraud cases are being prosecuted in the Jacksonville area. These cases include misrepresentations in the loan approval process,⁴¹ and inflated appraisal schemes^{42, 43}.

c. Orlando

Firms are being investigated throughout Central Florida for their participation in foreclosure rescue scams.⁴⁴ The Central Florida area accounts for over 16.5% of the state's foreclosures as of February 2009.⁴⁵

d. Tampa

Tampa is ranked second in the state for cases of suspicious loan activity, behind only Miami.⁴⁶ "The most common types of misrepresentation for the Tampa area were associated with appraisals, flip sales and inflated values of more than 30 percent."⁴⁷

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