

Identify and Prevent Real Estate / Mortgage Fraud

by
Richard Hagar, SRA

This is the first class in the Nation approved for instruction to all real estate professionals: Agents, Appraisers, Mortgage Brokers & Loan Officers

This 3 (or 6) Clock hour course looks at the National and State wide problem with real estate fraud. Real estate fraud usually involves three licensed professionals, the agent, mortgage broker and appraiser. This class examines the law, a specific case study of the Century Mortgage in Spokane, together with other local examples. The course is designed to provide the basic education for real estate agents, appraisers, and mortgage brokers regarding real estate fraud, ethics and the laws in Washington State.

Certificates of Clock Hour Education issued to:

- Agents by - **Professional Direction Inc.**
- Appraisers and Mortgage Brokers by - **American Home Appraisals**

About the instructor, Richard Hagar SRA

I have a career that spans more than 25 years as a real estate agent, real estate appraiser, and investor.

My father was a real estate broker selling homes in Seattle, later selling recreational property in various places around the World. I've spent my entire life in and around the real estate business.

I started as a licensed real estate agent in 1976, selling homes and condominiums to first time home buyers. On weekends I'd sell recreational properties such as timeshare condominiums, camping lots and acreage for vacation homes. I worked with builders creating entire subdivisions, condominiums, converting apartments into condominiums and building homes throughout western Washington.



As a regular investor in real estate, I've read every get rich quick book I could find and tried to purchase property using every method around.

Today I'm:

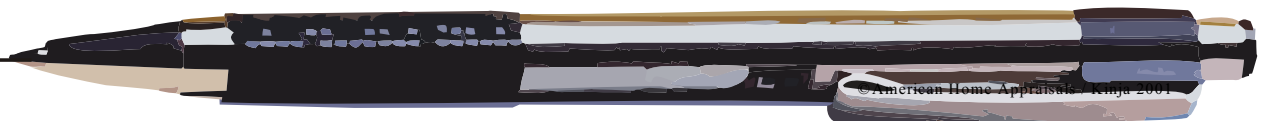
- The owner of American Home Appraisals.
- One of the more senior real estate appraisers in the State of Washington with the highest residential certificate available from the State.
- An SRA with the Appraisal Institute.
(The SRA designation indicates proficiency in appraising and is awarded to less than 1% of all appraisers)
- On the approved list with more than 100 different lenders,
- Perform review work for the State of Washington and some of the largest lenders
- Provide attorney's, valuation and real estate consulting for legal matters in Washington and Colorado.
- One of the few people to be licensed by the State of Washington to teach more than eight different fields of real estate including valuation, construction issues, sales and marketing, land use and real estate investment.
- Create classes for local community colleges, real estate agents, mortgage brokers and appraisers
- Regularly teach Real Estate Investing, fraud, and Appraisal classes
- Author of "The Real Estate-Advisor", The Real Estate Investors Handbook, "The 8-Step Plan" and How to Recognize; Real Estate ~ Agent, Appraiser &, Mortgage ~ Fraud.
- Own and manage, with my wife's constant help, our own portfolio of investment properties including homes, condominiums, multi-family, and a commercial office building.

Why am I qualified to talk about fraud? ...I'm an appraiser:

- On a weekly, if not daily basis, someone asks my office to commit fraud.
- Attempts at fraud come to us in person, via phone, fax, and email.
- Loan officers, processors, underwriters, corporate presidents, agents, buyers, sellers, and borrowers have tried bribes, threatened my health, business and when all else failed - fall back on...
"...well if you won't, I'll find an appraiser who will"
- This isn't always overt fraud, it's usually someone demanding a predetermined value, or asking me to be silent about a problem with the property. Ignorance is one reason, greed is the most common.
- A large percentage of the appraisals I review are beyond bad, there obvious attempts to lie and hide facts.
- In legal matters, I examine appraisals with opposing conclusions, often discovering the absence of fact and failure to comply with basic appraisal standards.
- I've provided information to bank examiners, Senators, and State Attorneys.
- I've conducted interviews with loan officers who are now convicted felons.
- I'm the author of the first and only class in the Nation to be approved for continued education to all real estate professionals and the Bar.
- I was a co-author of Washington's Mortgage Brokers Practices Act (RCW 19.146)

AMERICAN HOME APPRAISALS
AmericanAppraisals.com

206-236-3037





Warning



- A few details have been changed to protect privacy
 - I am not an attorney and information and opinions are not my legal opinion, nor do I give legal advice
 - Information & conclusions are based on information from:
 - the Appraisal Sub committee via USPAP advisories
 - Indictments
 - Criminal convictions
 - E&O carriers
 - Private lawsuits
 - And discussions with
 - Assistant Attorney's General
 - Prosecuting attorneys
 - Banking and appraisal regulators
- I might not have all of the answers but the sources are good**



Three Groups Of Fraud

1. Predatory Lending

Primary victim; the borrower

2. Fraud For Profit - External

Primary victim; the lender

3. Fraud for Profit - Internal

Primary victim; the lender

Fast no exp

1. Predatory Lending

Victim = Borrower

- Rate swapping
- Illegal fees
- Overcharging
- Failure to disclose
- Property flipping
- Equity skimming
- Ineligible buyers
- Straw buyers
- Mortgage Elimination Scheme
- Foreclosure skimming



2. Fraud For Profit - External

Victim = Lender, Seller, Agent

- False earnest money agreements
- False or misleading Addendums or second Deeds of Trust
- False information on loan applications
- Pressure on Appraiser
- Bribes – appraiser, loan officer
- Equity skimming
- Property flipping
- Renting of Assets or Job

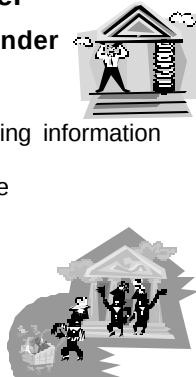


3. Fraud for Profit – Insider

Primary victim = Lender

Insiders:

- Preparing false documents
- Allow the use of false or misleading information
- Pressuring an Appraiser
- Asking for a predetermined value
- Failure to disclose
- Improper comparables
- Equity skimming
- Straw buyer
- Renting of Assets or Job

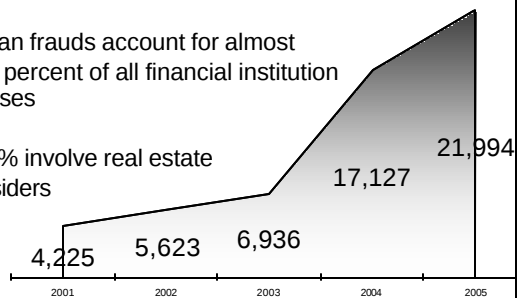


Real Estate Fraud¹

- FBI's caseload for mortgage fraud is up 500% over 3 years ago

- Loan frauds account for almost 40 percent of all financial institution losses

- 80% involve real estate Insiders



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Number of Reported Violations Mortgage Related fraud (SARS) 9 - '05

Conspiracy⁴⁰

- To plan, act or work together to commit an illegal act
- Racketeer Influenced and Corrupt Organizations (**RICO**) Act, Title 18, United States Code, Sections 1961-1968.
- Section 1964(c) allows civil claims to be brought by **any person** injured in their business or property by reason of a RICO violation. Any person who succeeded in establishing a civil RICO claim would automatically receive judgment in the amount of three times their actual damages and would be awarded their costs and attorneys' fees.

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Money Laundering (U..S. Code as of: 01/06/03)

Title 18; Section 1956.

Laundering of monetary instruments:

- (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds



Normal Transaction		Layered/Gift Transaction	
List/Sales Price	\$100,000	New Sales Price	\$110,000
Down Payment 5%	\$ 5,000	Down Payment from "gift"	\$ 5,000
		Seller pays closing costs	\$ 5,000
Loan	\$ 95,000	New Loan	\$105,000
Proceeds to Seller - Net	\$100,000		\$ 100,000

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Anatomy of a layered transaction



In My Opinion... For Appraised Value To Be Above List Price Requires One Of The Following:

1. Multiple offers
2. The original list price was too low (on purpose or mistake)
3. Values are increasing faster than data can track

4. Appraiser's misunderstanding
5. Incompetence
6. Fraud

Is there another explanation? Lets hear it

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Market Value:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

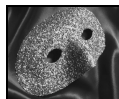
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Market Value:

(4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and

(5) the price **unaffected by special or creative financing or sales concessions*** granted by anyone associated with the sale.

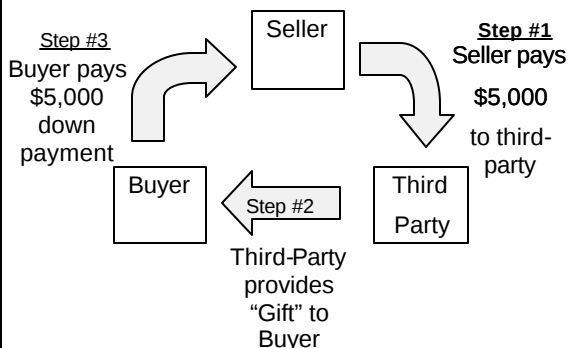
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The flow of money is being disguised

- “Seller to pay Buyer’s closing costs”
- BUT, if you **raised** the price of the house to cover the costs, who really paid the costs?
- So, your paperwork says one thing, reality is really something else.....
- **Sounds misleading**
Fraud

The Money Flow “Gift” Transaction



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Also flow of Money laundering

What's Illegal or Excessive?



- Federal loophole was created in 1996 allowing 3% to be provided by a **non-profit** corporation
- Under no other circumstances can the **seller** provide the down-payment
- Relative of the borrower can provide a **gift** however anything above 4%, while legal, causes concern

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What's Illegal or Excessive?



- While FNMA allows 4% to be contributed by the seller, **it never said..**
“raise the sales price to compensate”
- Cash back to BUYER after closing, **and not disclosing the fact to the lender**, is illegal
- **Anything** above list price [legal or illegal] causes a problem and puts you at risk

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Spokane Washington

- It's possible that **more than 1,100** fraudulent appraisals were created between 1997 – 2000⁹
- Original sales: 1997 – 2001
- Foreclosures: 1999 – 2004
- Due to competition from foreclosures, **all** owners in Spokane have experienced decreased property values.

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Spokane – Foreclosure City

- 98 Foreclosures in a month
- Same foreclosure rate for **multiple years**
- \$25 million in direct losses to home owners and lenders (estimated)⁹ \$100 Million
- All from the same mortgage company, three appraisers and, one agent

Spokane Population – 200,000+ -
98 Foreclosures in a single month

Same ratio in Seattle would result in
300 foreclosures each month from a
single mortgage company

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The Mortgage Perps.



- Dale Gibbons
- David Burger
- Dwaine Klein
- Gene Taylor
- Michael Deasy
- Curtis Orvick
- Jon Webb
- Scott Tollefson
- Mark Hodge
- Cathy M. Patrick (Escrow)

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Sentencing - 2005

Profession	Name	Prison	Restitution
Agent	Sally Gibson	3 Years	\$264,406
Appraiser	John T Hanson	18 mo.	\$287,796
Broker	Dale Gibbons	5 Years	\$449,953
Broker	Ron Burger	3 Years	\$423,011
Escrow	Patrick	2 months	\$148,340

Penalty Phase of Life

1. Complaint
 2. Investigation by State Agency
 3. Hearing by State Agency
 4. Disciplinary Action by State Agency
 5. Government files criminal Indictment
 6. Trial
 7. Criminal conviction
 8. Borrowers, and others, use Government information and/or convictions to pursue civil lawsuits
- Do wrong – Your life becomes fighting legal problem

< - 2-5 year process - >

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**Do not Count On
Lenders To Provide
Accurate Information,
Identify, Or Stop
The Problem**

Office of Thrift Supervision (OTS) Disciplinary Actions Against Savings and Loans²⁰

(Single dept. of Fed. Govt)

2004 -	2005 - Oct
• 30 Cease and Desist Orders • 26 Monetary Penalties • 20 Prohibitions • 13 Agreements for <u>Supervision</u> • 89 Severe Actions	• 15 Cease and Desist Orders • 19 Monetary Penalties • 18 Prohibitions • 18 Agreements for <u>Supervision</u> • 70 Severe Actions

How common is it here?

387 Reviews 99% from mortgage brokers.

Review Ratings & dispersion

• Outstanding	7	= 2 %
• Satisfactory	56	= 15%
• Needs improvement	249	= 64%
• Substantial non-compliance	54	= 14%
• Rejected/Unacceptable	21	= 5 %



\$41 million settlement

- **28,000 loans**
- Underwriters had not viewed the files
- Numerous employees signed the names of the Underwriters
- High level of default

1-2006 / HUD No. 06- 002

HUD Audit Report – Wells Fargo¹⁹

2001 – 2002:

- 53,558 loans, worth \$6 billion were submitted as late requests for insurance endorsements, three (3) times higher than any other lender
- 2,325 loans, worth \$265 million, were submitted for insurance endorsement when the borrowers were already delinquent on payments
- \$75 million were more than 150 days late



AccuBanc Mortgage

Review of the Phoenix Branch

2004 review of loans from 2000 – 2001

9 loans reviewed from Keystone Mortgage

- “All 9 loans contained indicators of false credit and/or employment documents that were not appropriately resolved during the underwriting process
- Occurred because National City **failed to exercise due diligence when underwriting**”

National City dba as Accubanc in Arizona / Audit Case # 2004-LA-1006



- The Office of the Comptroller of the Currency (OCC) announced a Formal Agreement with The **Laredo National Bank** and **Homeowners Loan Corporation**
- The agreement requires HLC to:
 - strengthen its policies and control systems to ensure compliance with all applicable laws, regulations and guidelines
 - reimburse borrowers who were harmed by practices that occurred due to the **lack of appropriate controls**



- Alleged to have engaged in unsafe and unsound practices in connection with underwriting and lending practices
- Violations of Regulation B
- **\$70 Million in fines**
- **Cease and Desist Order**

November 5, 2005

Ryland Mortgage Company

Out of 24 loans sampled, 23 have multiple deficiencies that should have precluded their approval:

- Improper treatment of downpayment gifts
- Questionable downpayments resulting in inflated sales prices
- Unsupported sources of deposits
- Insufficient income and employment documents
- **“Failure to fully implement its quality control plan”**

HUD audit report 2006-LA-1001

Agents..

- Do not - raise the sales price above the list, just to cover closing costs
- Do not - raise the sales price to hide the flow of money, from the seller to the buyer, when using the Acorn or Nehemiah systems
- Do not - change the list price, in the MLS, after the deal is signed or closed
- Do not – try to hide cash movements by raising your commissions



Agents

- I recommend against “Layered Transactions” with fees in excess of 4%
 - “Typical closing costs”
- No cash back to Borrower after closing
 - Excluding “rehab” loans and
 - refinancing where the lender is knowingly making a loan for more than the homes value (125% LTV)
- Strongly suggest not paying cash to buyer or seller for “repairs” after closing
 - It can be OK, but it also looks like a fraudulent transaction



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- Agent adds 4% on top of the list price for buyer's closing costs
- Mortgage broker orders an appraisal and includes the statement:
“Minimum value needed” (Psst! Hey buddy...)
- Appraised value equals the sales price (Acceptance)
- Property goes into foreclosure



It is illegal for any bank, lender, mortgage broker, loan officer, processor, broker employee, their agent(s), or subagent(s) to ask the appraiser, or appraisal firm, or included in an appraisal order or request (verbal or written) any of the following terms:



It is illegalto included in an appraisal order or request any of the following terms:

- The appraiser must provide an appraisal with a the minimum value of____
- Please call and notify if it is not possible to support a value at or above _____, before you proceed.
- The minimum value needed _____
- We need comps for (a specific property) that will support a loan of _____; can you provide them?
- If this property will not appraise for at least _____, then stop and call us immediately



It is illegal for any of the following terms:

- Call me with the value before you do the hard copy
- Don't send the hard copy without checking with me
- The term "Comp check" (I can supply sales, not comps)
- Appraisal can not contain any description or photographs of unfinished areas, health related items, problems or derogatory information.
- Do not report property's prior listing or sales history
- Or any statement that requires, asks, demands, or suggests the appraiser reports a predetermined value or hides any facts, assumptions or conclusions.



People's Choice
Home Loan, Inc.
The Florida Lending Solution

APPRAISAL Request

From:
Office:
Fax: 949.447.1811
jbrantley@pc

PURCHASE:
REFINANCE:XXX

SFR:YES
UNITS: -

Manual: -

VALUE NEEDED: \$900,000.00*** Please call if unable to attain this value ***

Borrowers Name:
Property Address:

Shoreline, WA 98155

Borrowers Phone: 425-661-7378 Home CAN WE GET THIS VALUE OR HIGHER? PLEASE CALL ME TO LET ME KNOW. THANKS FOR YOUR HELP

Fee quoted: OK to invoice

NEEDED BY: 12:01 PM, 6/31/05

Please e-mail complete report to: e-mail address: jbrantley@pc.com
Loan, Inc.
P.O. Box 200
Irvine, CA 92618

Comments/Special Instructions:

- 1) >>> Please call if estimated value unattainable. <<<
- 2) Please no trainee appraisers if possible (supervisory appraiser must inspect property per company guidelines)
- 3) Must have both 3 yr Sales History and 12 mo. Listing history.
- 4) >>> Photos CANNOT contain pictures of any person. OR UNFINISHED/CONSTRUCTION PICTURES!!! <<<

Please confirm appointment set with client - Call Jermaine at

Appraisers are legally unable to accept this order

declined!!

Lender Pressure Is Considered Loan Fraud

Lender Pressure is defined as:

- Asking/Demanding a predetermined value
- Asking/Demanding an increase in value
- Withholding future business if appraiser fails to appraise a property at a predetermined value or ignore deficiencies
- Failure to pay for appraisal services
- Failure to pay an appraisal for services if the value is not met AND claiming that a deficient appraisal was delivered

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Lender Pressure Is Considered Loan Fraud - continued

- Asking for alterations to the appraisal to eliminate any adverse conditions, descriptions or photos
- Asking the appraiser to not mention facts that relate to the economy, area or subject
- Hiring unlicensed appraisers in an attempt to manipulate the results

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Not So Obvious – Lender Pressure

- Asking for information, letters or opinions that are outside the scope of the appraisal process
 - Update letter
 - Recertification of value
- Asking appraisers to make statements guaranteeing improvements conform to zoning or building codes
 - Can it be rebuilt if burned down?
 - Is the deck to code?
 - Is there a health violation?

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State of Washington V. Dameon V. Sims



- An attempt to inflate the purchase price and have the sellers pay at least \$17,875 at closing for **"property improvements"**. Repairs to be performed by company owned by borrowers spouse.
- Purchase price was inflated so that the sellers paid at least \$9,000 at closing to a mortgage broker working with Sims



Appraisers Job Description Per FNMA



“Provide an accurate description of the property [as it exists the day of inspection] and an adequately supported estimate of value”

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THE LAW

- FHA 4150.2-D: The [appraisal] fee cannot be based on a requested minimum valuation, a specific valuation, or the approval of a loan.
- FNMA, Certification: I was not required to report a predetermined value.....

Lender Request Log

Date / Time	Lender	Who at Lender	Property	What was Requested
4-18-05	xxxxxxxxxx Lending-Bellevue	Loan officer read statement from the Underwriter - My Way Sally	153xx 80 Ave NE Redmond - rambler -	Please include a statement that says the subject hasn't been listed in the past year.
4-18-05	xxxxxxxxxx Lending-Bellevue	XXXXX xxxxxx from Underwriter	350xx 258 Ave SE Puyallup/Buckley - Split	Please REMOVE all references to the fact the property WAS listed in the past year.
10-10-05	Xxxxxx Bank	Underwriter	Xxxx 23 Ave E Seattle	Please remove all reference to mold in the bathroom

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Supervisory signatures

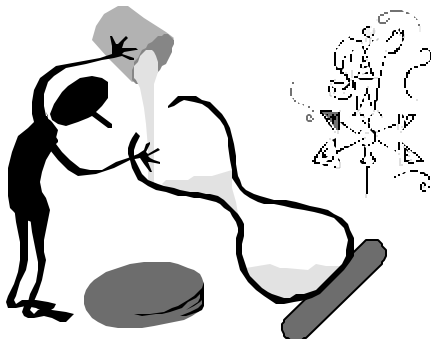


To all Washington Certified and Licensed Appraisers;

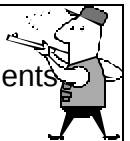
- Appraisal reports are required to include a certificate that states:
- ***"I have (or have not) made a personal inspection of the property that is the subject of this report."***
- FNMA's Form 1004B goes further and includes the certification that states:
- ***"I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report."***
- When a "Supervisory Appraiser" signs an appraisal and checks the ***"Did Inspect Property Box"*** he/she is certifying that they agree to the above statement(s).

Full copy of letter – handout)

Get Ready For Change or, what's being done about it



Private Firms are hunting mortgage brokers, appraisers, agents



Recent Help Wanted Ad:

- **Junior Analyst** ~ Analyze mortgage loan files for fraud and summarize findings. Ideal candidate will be familiar with loan processing or underwriting. Successful candidate will read private investigator's report, then summarize those findings and enter data for use by collectors and attorneys.
 - **Loss Manager** ~ Responsibility for negotiating and collecting fraud losses from loan brokerages, loan officers, appraisers, real estate agents, and others. Ideal person will have loan origination experience, a collector's attitude, and be able to deal knowledgeably with loan brokers. Training provided to successful candidate.
- Base (\$12 to \$15/hr) plus commission.**

FNMA Faces Extinction In Its Current Form 8-27-2005

- Office of Federal Housing Enterprise Oversight (OFHEO)
- Must reorganize and train
- Must report all attempts at possible fraud
- Review loans and report existing fraud
- Created new internal procedures
- New requirements for lenders and questionable lending practices
- Force repurchasing of questionable loans
 - Note: not fraudulent but questionable loans

Department of Housing and Urban Development 12 CFR Part 1731; Final Rule

Secondary Market



- FNMA is required to track **questionable** loans and who provided them. Up to this year, tracking was not a requirement.
- New FNMA forms have been created in part to help identify fraudulent appraisals
 - Optical scanning
 - Designed to track all parties
 - Yes/No questions aid in obtaining convections

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National

- New computer programs tracking ALL unusual transfers of money, not just above \$10,000
- FNMA's computers connected to Fed's
- All State Attorney's General are coordinating investigations and prosecutions
- MASSIVE multi-state investigations are in process against large lenders
- Mortgage broker licensing - 39 states

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All HUD loans are now considered high risk!

- Must increase oversight of lenders
- Must hold mortgage brokers responsible for the quality of the loan package
 - Information
 - Appraisal quality
 - Competency of the appraiser
 - Borrowers

GAO05-207

American Association of Residential Mortgage Regulators

The primary goals are to:

- promote the exchange of information between various states for the administration and regulation of residential mortgage lending, servicing and brokering;
- promote a better understanding of mortgage regulation;
- develop model legislation applicable to the administration and regulation of mortgage lending, servicing and brokering;

www.aarmr.org

Bad Boy List

- Secondary market is making a list of bad mortgage brokers and lenders
- Lenders are making, and publishing on the Internet, list of mortgage brokers and appraisers who are banned from submitting loans
- Brokers, Agents and Appraisers names are being gathered and tracked by the Federal Government

Do appraisers go to jail? - YES

- Out of 89,000 appraisers nationwide, 5% have had disciplinary actions taken against them.
- Indictments typically come 2 - 4 years after appraisal was performed;
- Most indicted appraisers confess to 4 - 10 counts with others being dropped for cooperating with authorities;
- None of the imprisoned appraisers took a bribe
 - **All did it to get additional business;**
- "Willfully Blind" or "Willfully Ignorant" summarizes typical accusation against appraiser;
- Files from cooperating appraisers are used to indite real estate agents and mortgage brokers.

□ Conclusions from 1998-1999 Study by Ken Guilfoyle, IFAS and Elizabeth Kern, IFA

Aggressive Prosecution, Conviction and Jail Terms²³

Chalana McFarland - Attorney

- Convicted of 169 counts of Fraud, Wire Fraud, Conspiracy, RICO
- 30 years in prison
- \$15,000,000 fine ... *that's Million*

(real estate agent and mortgage broker last seen in Belize)
August 2005

Special Fraud Prosecutor



- \$1.00 from every recording
- Special Fraud Prosecution account
- State special prosecutor - fraud
- King Co. – Special fraud task force
- Licensing will likely be required for **all** loan officers by July of 2006
- Licensing for all appraisal **trainees**

In Washington



- 130 ongoing investigations -- mortgage brokers¹⁴
- 90 ongoing investigations – appraisers¹⁴
- 1,000+ complaints against – real estate agents¹⁴
- DFI / DOL hiring additional investigators
 - Agent - 5 investigators
 - Appraisers - 2 investigators
 - Mortgage Brokers - 2 investigators



Figures vary from month to month

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Supporting Information

Real Estate Agent - **RCW 18.85.230**

Disciplinary action -- Grounds.

In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action against any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any of the sanctions specified in RCW 18.235.110 for any holder or applicant who is guilty of:

(2) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(3) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(7) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

(11) Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal;

(12) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(18) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(23) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency;

Mortgage Brokers Practices Act

RCW 19.146.0201:

Loan originator, mortgage broker - Prohibitions - Requirements. It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under

RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:

(2) **Engage in any unfair or deceptive practice toward any person;**

(9) **Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;**

(11) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

Appraiser: Laws and Requirements

FNMA's instructions to the appraiser:

“Provide an accurate description of the property [as it exists the day of inspection] and an adequately supported estimate of value”

Certification included with every FNMA form appraisal and signed by the appraiser (partial):

- I have researched the subject market and have selected a minimum of three recent sales of properties most similar...
- I was not required to report a predetermined value.

Definition of Market Value (Partial)

This definition is included in every appraisal provided to, and required, by lenders [restrictions apply].

The most probable price which a property should bring in a competitive and open market assuming the price is not affected by undue stimulus. ... payment is made in terms of cash **unaffected by special or creative financing or sales concessions** granted by anyone associated with the sale.

Washington State Law - Appraiser/Appraisal

RCW 18.140 and WAC 308.

WAC 308-125-200

Standards of practice. (1) The standard of practice governing real estate appraisal activities will be the 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation

Appraisal Standards

Do not misconstrue the term "rule" used in the following. The following rules are appraisal regulations as adopted by the Federal and State governments and have the force of law. How important are they? Any appraisal, completed by anyone (appraiser, agent, etc.) must conform to these Standards. Appraisers are required to take a class regarding the Standards every other license renewal. Ignorance is no excuse!

Standards Rule 1-2

In developing a real property appraisal, an appraiser must:

- c) .. if the value opinion is market value, ascertain whether the value is:
 - (i) in terms of cash; or
 - (ii) in terms of financial arrangements equivalent to cash; or
 - (iii) [omit]
 - (iv) if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influences on value must be developed by analysis of relevant market data.

Standards Rule 1-5

In developing real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

- (a) analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal; and
- (b) analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal.

Standards Rule 2-1

Each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and
- (c) clearly and accurately disclose any extraordinary assumptions, hypothetical conclusions, or limiting condition that directly affects the appraisal and **indicate its impact on value.**



ADVISORY OPINION 19 (AO-19)

SUBJECT:

Unacceptable Assignment Conditions in Real Property Appraisal Assignments

ISSUE:

All real property appraisal assignments involve conditions that affect the appraiser's scope of work and the type of report. What types of conditions are unacceptable?

BACKGROUND:

Many residential property appraisers report requests for service where the caller includes statements or information in the request similar to the following:

- We need comps for (property description) that will support a loan of \$ _____; can you provide them?
- Approximate (or Minimum) value needed: _____.
- Amount needed: _____.
- Owner's estimate of value: _____.
- If this property will not appraise for at least _____, stop and call us immediately.
- Please call and notify if it is NOT possible to support a value at or above _____, BEFORE YOU PROCEED!!!!

Appraisers report that the caller usually makes it clear that they do not want the appraiser to do any fieldwork. Some callers refer to the service requested as a "comp check" while others refer to it as a "preliminary appraisal" or use some terms other than appraisal (such as preliminary evaluation, study, analysis, etc.). Some callers indicate that if the numbers will not work, the appraiser can send a bill for research services or a "preliminary" inspection. Other callers promise future assignments if the appraiser can make the present deal work.

Appraisers ask, "Can I respond to such requests without violating USPAP and, if so, how?"

The Uniform Standards of Professional Appraisal Practice is **explicit** about such matters. Accepting an appraisal assignment under such a condition **is a violation of USPAP**, which states:

- An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.
- It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following:
 - ▶ the reporting of a predetermined result (e.g., opinion of value);
 - ▶ a direction in assignment results that favors the cause of the client;
 - ▶ the amount of a value opinion;
 - ▶ the attainment of a stipulated result; or
 - ▶ the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

An appraiser must perform assignments with independence, and **without accommodation of personal interests** to anyone.

- **It is illegal for appraisers to accept any assignment that contains a minimum value.**
- **Anyone asking an appraiser to perform an appraisal with a minimum value is soliciting the appraiser to perform an illegal act. The solicitation is illegal under Federal and State Laws.**



To all Washington Certified and Licensed Appraisers;

Appraisal reports are required to include a certificate that states:

“I have (or have not) made a personal inspection of the property that is the subject of this report.”

FNMA’s Form 1004B goes further and includes the certification that states:

“I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report.”

When a “Supervisory Appraiser” signs an appraisal and checks the **“Did Inspect Property Box”** he/she is certifying that they agree to the above statement(s).

If the Supervisory Appraiser checks the box, signs the report as did inspect, and did not personally inspect the subject and/or comparables, then the stated facts are not true and correct and the report is considered to be misleading, a direct violation of the Uniform Standards of Appraisal Practice (USPAP) [Standard 2-1 (a), Standard 2-2 (b)(vii), Standard 2-2 (c)(vii) and Standard 2-3]*

Any appraisal report that misrepresents known facts, as shown above, is considered to be misleading and fraudulent, a direct violation of State and Federal Laws and will be subject to appropriate penalties (State and Federal).

If an appraisal report, containing misleading facts, is transferred across State lines via Fax, email or directly uploaded into a clients web based system or server or any other system utilizing interstate telephone lines, then it can be considered to be Wire Fraud.

* Further described in Advisory Opinion-5 (AO5)

Notice to individuals wishing to become Washington Certified and Licensed Appraisers (Apprentices/Trainees);

The State of Washington has a requirement that individuals seeking licensing or certification, must complete a minimum of 2,000 hours of supervised training or experience in completing appraisals. Appraisals that are completed in a misleading, fraudulent, criminal, and/or inappropriate manner are not eligible for inclusion in the experience requirement.

Appraisal assignments that are considered to be ineligible are where the Apprentice or Trainee knowingly allows or participates in the creation or delivery of a misleading or fraudulent appraisal, this includes the instance where a Supervisory Appraiser checks the box “Did Inspect” a property when in fact no inspection has been performed.

If Apprentices/Trainees are found guilty of participating in the creation or delivery of misleading appraisals, not only will experience credit hours not be awarded but they will be barred from becoming certified or licensed appraisers in the State of Washington.



Letter from the State of Washington -
Department of Financial Institutions

Predatory Lending Twists and Turns:

It's been around for a long while, predatory lending. But perhaps never so popular to first time crooks as it is now. Predatory lending hurts real property consumers, real estate and appraiser licensees, and mortgage brokers and lenders. It is a calculated crime committed by criminals. Participating in a scheme of predatory lending is a violation of license law and may result in the loss of your real estate license.

There are many variations on the scheme of predatory lending. We hope to provide you with examples of different schemes over the next few months. Our first example is that of a real estate listing agent changing the asking price for a property to match an inflated selling price. If you are ever asked to inflate a listing price, you should be put on notice that something is not right.

Let's say property is listed for \$125,000, but the buyer offers \$145,000. The \$20,000 difference goes to the buyer at closing for whatever reason, possibly for repairs or remodel costs. The deal, however, is hinged on the listing agent "upping" the list price, both on the listing agreement and in the MLS. Why doesn't the buyer simply apply for a separate loan for home repairs? Are there qualification issues? Why is it necessary to change the listing and MLS entry?

The answers to the questions in the above scheme are that it gives the buyer immediate access to the \$20,000 while misleading future buyers, lenders, and appraisers as to the actual sales price and value of the home. It defrauds the lender in the deal of \$20,000. The lender does not obtain a mortgage lien on property valued at \$145,000, but property valued at only \$125,000.

Participants in this type of predatory lending scheme include buyers, sellers, real estate licensees, mortgage brokers, loan officers, and appraisers. Each risks much if discovered. In addition to criminal penalties, since real estate licensees are prohibited from making false statements or representations related to a transaction, their licenses may be revoked. Mortgage brokers and loan officers are also prohibited from knowingly participating in lending fraud.

The scheme described in this article strips non-existing equity from a property. Be informed and work together to prevent predatory lending. It hurts us all.

<http://dol.wa.gov/realestate/predlend.doc>

Contact Information

The following have asked for people to call, contact and report mortgage fraud.



Federal Office of the Inspector General

Hotline: 1-800-347-3735
Fax: 202-708-4829
Email: hotline@hudoig.gov
Internet: hud.gov/complaints/fraud_waste.cfm

Sending written information to:
Department of Housing and Urban Development
Inspector General Hotline (GFI)
451 7th Street, SW
Washington, DC 20410

Office of Thrift Supervision (OTS)

West Region / Consumer Affairs
P.O. Box 7165
San Francisco, CA 94120

Phone: (650) 746-7098
(650) 746-7097 (Spanish)
Fax: (650) 746-7001

Email: consumer.complaint@ots.treas.gov
Internet: www.ots.treas.gov/docs/4/48780.html

Fannie Mae

1-800-732-6643
www.mortgagefraud_tips@fanniemae.com

Freddie Mac

1-800-4 FRAUD 8
www.freddiemac.com/dgtq

Mortgage Bankers Association

1-800-348-3931
www.mortgagebankers.com/MBAfightsfraud

**State of Washington -
Department of Licensing - Real Estate Agent**

Department of Licensing
Real Estate Program
PO Box 9015
Olympia, WA 98507-9015

Business Location: 2000 4th Avenue West, Olympia,
WA 98502

Internet Site: dol.wa.gov/realestate/refront.htm
Email: ReAudit@dol.wa.gov Or
RealEstate@dol.wa.gov

Complaint Form: dol.wa.gov/forms/620175.htm

Disciplinary Actions: dol.wa.gov/realestate/redispl.htm

Phone Number: (360) 664-6515
Fax Number: (360) 570-4941

Director: Fred Stephens

Commission Members:

- Bob Spain Yakima, Washington
- Paul Chiles Seattle, Washington
- Cindy White Bellingham, Washington
- Alan Barnard Port Angeles, Washington
- Jim Carollo Spokane, Washington
- Suki Bazan Seattle, Washington

**State of Washington -
Department of Licensing - Appraisal Division**

Department of Licensing
Real Estate Appraisers Licensing Program
PO Box 9015
Olympia, WA 98507-9015

Internet Site: dol.wa.gov/app/appfront.htm
Email: reappraisers@dol.wa.gov

Phone: (360) 664-6504
Fax: (360) 586-0998

Director: Ralph Birkedahl (acting director)

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cfarivar@pacapp.com
Term/Expiration: December 22, 2006

State of Washington - Department of Financial Institutions

Department of Financial Institutions
PO Box 41200
Olympia WA 98504-1200

Physical address: Department of Financial Institutions
150 Israel Rd SW
Tumwater WA 9850

Internet Site: dfi.wa.gov

Complaint form: dfi.wa.gov/banks/complaint.htm or www.dfi.wa.gov/banks/complaint.pdf

Public Records Request: dfi.wa.gov/banks/banks_prr.pdf

List of Licensed Co's: dfi.wa.gov/cs/list.htm

Guide to Predatory Lending: dfi.wa.gov/consumers/PredLendCDREquest.htm

Mortgage Laws: dfi.wa.gov/cs/mortgage.htm

Latest, who done it list: dfi.wa.gov/cs/adminactions.htm

Phone: (360) 902-8704
Fax: (360) 753-6070

Director: Scott Jarvis confsec@dfi.wa.gov

Director Consumer Services: Chuck Cross ccross@dfi.wa.gov



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