

# Common Misrepresentations Involving Mortgage Fraud

## INTENTIONAL MISREPRESENTATION OF FACT... ..

Today, one of the most significant risks to the American Dream of homeownership for individuals and to the nation's economic well-being is mortgage fraud. Loan fraud has become one of the largest areas of white collar crime in the United States. It has become pervasive in the real estate industry and includes mortgage lenders, real estate brokers, real estate salespersons, real estate appraisers, attorneys, title companies and, of course, sellers and buyers of real estate. Though found in many forms and fashions, mortgage loan fraud is typically defined as an "intentional misrepresentation of fact to a lender, mortgage broker, loan originator, or governmental agency for the purpose of obtaining more money than a purchaser could otherwise qualify to receive, with the expectation that the mortgage broker, the initial lender, or a subsequent lender will rely on the false information."

**COMMON MISREPRESENTATIONS (or OMISSIONS)** involving mortgage fraud includes the following:

- 1) The contract sales price is considerably higher than the listing price and, many times, the real estate agent is requested to change the list price in the MLS.
- 2) The market value of the property that is being used as the collateral for the mortgage loan is inflated by the appraiser.
- 3) The amount, type, and source of the purchaser's down payment are falsified.
- 4) The amount of the closing cost (fees) and the source of the funds used to finalize the transaction are erroneous.
- 5) Personal information about the purchaser's credit-worthiness; including income, debt, credit history, and verification of employment are falsified.
- 6) Who will actually be living in the property (owner occupancy) and what will be the primary use of the property is not disclosed.
- 7) Undisclosed rebates, credits, or monetary transfers to one of the parties (usually the purchaser) that are not reflected on the closing statements.

The Mississippi Real Estate Commission (MREC) is currently working in conjunction with several governmental agencies to discipline those individuals who appear to be involved (directly or indirectly) in these transactions. The schemes that we are presently investigating include the following:

- 1) **CONTRACT KITING** – a real estate licensee proposes or permits the use of two or more contracts of sale for the same transaction, one of which is the true agreement of the parties, and the other of which is given to the lender to enable the borrower to obtain a different (bigger/better) loan than they are entitled. Another version of the scheme is to having the parties sign a separate contract addendum but omit the addendum when the contract is given to the lender. This scheme usually leads to some very strange sales commission percentages (4.589%).

- 2) **SECRET SECOND MORTGAGE** – this is one of the oldest and most prevalent loan fraud schemes. Typically the buyer does not have sufficient funds to make a down payment and pay the closing cost for a loan. The parties agree to a “secret second” and the real estate licensee increases the purchase price above what the seller expects and wants to receive from the sale of their property. The buyer then applies for a mortgage and indicates they will obtain a second mortgage from the seller via owner financing. The problem is that the second mortgage will never be filed or it will be immediately “forgiven” after closing. The parties are guilty of a federal crime that is punishable by 30 years in jail and \$1,000,000.00 in fines, or both.
  
- 3) **FALSE DOWNPAYMENT/DEPOSITS/GIFT LETTERS** – this scenario is created by the real estate licensee completing a contract that recites earnest money when there was no such a deposit. The closing statements will show the deposit as “P O C .” We have found that some licensees will use a “check swap” where the agent actually pays the purchaser the amount of the deposit and when the purchaser qualifies for the loan, a check is written back to the real estate agent. On occasion the licensee will just have a purchaser write a check for the earnest money, copy the check, and give the check back to the purchaser while presenting the lender with a copy of the nonexistent check. Many legitimate mortgages are made where purchasers are given “gifts” that they are not obligated to repay. However, many times the gift is actually expected to be repaid and is really a loan. This is loan fraud.
  
- 4) **FALSE QUALIFICATIONS** – this involves the purchaser giving erroneous information to the lender and having an accomplice assist in verifying the erroneous information or **it** involves collusion with the loan originator. The items that are typically falsified include employment verifications, actual income, underreports debt, and increases assets. We have even had the real estate broker indicate that the purchaser worked for the broker and falsified all income (checks).
  
- 5) **APPRAISAL ISSUES.** Unfortunately, practically every fraudulent transaction requires an appraisal of the real property that supports the market value of the collateral for the loan. It is all but impossible to finalize such a transaction without the assistance of an appraiser. Licensees should be wary when
  - a. appraisal values are not similar with general prices in the area,
  - b. when the comparable sales are located outside of the immediate market area,
  - c. and when the lender insists that they have an appraiser who can “make the value” on the property being sold.

**The following list of other types of mortgage fraud were found by visiting the National Association of REALTOR® website at [www.realtor.org](http://www.realtor.org) and searching**

**mortgage fraud.** There is a wealth of additional information on the topic on NAR's website.

Additional **Mortgage Fraud Schemes** are listed in the *Financial Crimes Report To The Public* published by the U. S. Department of Justice and the Federal Bureau of Investigations in 2005 include:

- 1) **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.
- 2) **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 in exchange for a transfer of the deed and up-front fees. The perpetrator profits from these schemes by remortgaging the property or pocketing fees paid by the borrower.
- 3) **EQUITY SKIMMING.** An investor may use a straw buyer, false income documents, and false credit reports, or 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.
- 4) **AIR LOANS.** This is a non-existent property where there is usually no collateral. An example of an air loan would be where a broker invents borrowers and properties, establishes accounts for payments, and maintains custodial accounts for escrows. They may set up an office with a bank and telephones, each one used as the employer, appraiser, credit agency, etc. for verification purposes.

#### **PENALTIES FOR PARTICIPATING IN MISREPRESENTATION**

Real estate licensees should remember that the MREC statute and the rules/regulations forbid any type of misrepresentation (affirmative or by omission) and will discipline a licensee who is deemed guilty of improper, fraudulent or dishonest dealing, conduct unworthy of a real estate licensee, or conflict of interest. In addition there are state laws which involve the criminal theories of conspiracy, aiding and abetting, and obtaining money or property by false pretense. Similarly, there are state laws which involve the civil theories of fraud, misrepresentation, and unfair/deceptive trade practices.

The United States Code (Chapter 18) specifies jail terms and fines for the following crimes associated with mortgage loan fraud:

- |    |                            |                      |
|----|----------------------------|----------------------|
| 1) | Fraud/False Statements     | 5 Years/ \$100,000   |
| 2) | False Loan Application     | 30 Years/\$1,000,000 |
| 3) | Conspiracy to commit Fraud | 30 Years/\$1,000,000 |
| 4) | Fraud/Swindles             | 30 Years/\$1,000,000 |
| 5) | Bank Fraud                 | 30 Years/\$1,000,000 |