

HOW IS MORTGAGE FRAUD INVESTIGATED?

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Corporate Mortgage Advisors (CMA) is a leading nationwide financial & mortgage fraud firm specializing in white collar crimes. The firm has been in business since 1997. CMA's main consulting projects focus on bank fraud, lending standards and practices, and sub-prime lending abuses. CMA's team of highly skilled professionals analyzes confidential governmental data, ranging from FBI recordings to IRS & HUD investigations to Grand Jury testimony. The information contained in these highly sensitive investigations provides a unique "insider's" view of fraud investigation.

This article is written to help consumers understand mortgage related fraud and provide insight into the devastating 2008 financial crisis. The foundation of skyrocketing property values and investor speculation from 2003 to 2006 is closely linked to lax lending standards that allowed fraud to flourish.

Build Up To the Financial Crisis

On almost a daily basis, news organizations report sweeping mortgage & real estate fraud arrests and indictments. The picture of a wide-eyed fraudster in handcuffs being carted off by the FBI is unfortunately a common sight these days. Likely, the news sources will continue to feature these types of cases for years to come which keeps investigators and fraud experts working overtime.

Everyone seems to know a person affected by the financial crisis of 2008- such as millions of people who have lost their homes to foreclosures, loan modification scams, and individuals who've been laid off work and remain unemployed. Simply speaking, at the heart of the country's financial woes was real estate speculation combined with lax lending standards. The resulting collision of greed and weak lending was a meltdown in banking and the economy which almost resulted in a second Great Depression.

Thankfully, a financial recovery is finally on the horizon but the legions of individuals who obtained fraudulent mortgages and developed highly complex schemes are still in the cross hairs of governmental investigative agencies. Many of the fraudsters who lied and cheated on mortgage loan applications will be prosecuted over the next several years according to the FBI.

The Investigation Process

The big question is how do government investigators identify their targets and conduct an investigation leading to conviction? What actually goes into a mortgage fraud investigation is often kept quiet by investigators to keep future fraudsters in the dark. This article summarizes key aspects of the investigation process but some details have been intentionally left out to ensure the information does not fall into the wrong hands.

Local & State Investigations:

Local or state investigations often start with a report filed with a District Attorney's Office from a consumer who believes they are the victim of fraud. Typically, an investigator is assigned to investigate the initial allegations and the consumer is interviewed and potential evidence gathered. If warranted, a more comprehensive investigation, possibly including the FBI and IRS is conducted to further identify if a crime has been committed.

The investigative findings are summarized in detailed reports along with a collection of evidence in a condensed format presented to the District Attorney's Office for prosecution consideration. Some typical evidence in a fraud case includes mortgage loan applications, interviews of witnesses & suspects, along with analysis of transaction records. Analysis of publicly recorded instruments, such as Trust Deeds or Mortgages, is often needed since a fraudulent transaction that involves mailing document through the U.S. Mail is considered Mail Fraud. Likewise, if a lender transfers loan funds to a closing agent via a wire transfer, the defendant is typically charged with wire fraud.

An effective team of investigators will essentially layout their theory of the fraud, compile the necessary evidence to support their findings, and present the case to the prosecutor for evaluation. If the prosecutor determines the case contains

sufficient and sound evidence to charge a suspect, the filing of a criminal complaint or information is the next step.

Once indicted, the suspect is now identified as a defendant in court records. Co-conspirators may or may not be identified upfront depending on whether or not the investigators need additional time to tie-in evidence to other parties linked to the crime. During interviews with additional suspects, some individuals quickly admit guilt and provide supportive evidence to investigators. A co-conspirator who admits guilt is often given a plea agreement that provides better terms than if convicted by a jury trial. For example, a person facing a 10 year sentence if convicted would only serve a 3 year term if they assist the government and accept a plea.

Federal Cases

In larger, often more complex schemes, the federal court system, by way of the Attorney General's Office, is usually the court of choice. Federal prosecution often carries stiffer prison sentences and the level of investigation may take years to investigate and prosecute. In complex fraud cases, several cooperating agencies are usually involved, such as the FBI, IRS, HUD, and Postal Service to name a few.

Investigative agencies have learned that much more effective and cohesive investigations occur when multiple agencies are involved. For example, the IRS's Criminal Investigation Unit is often instrumental in tracking unreported sources of income. The financial information assists other agencies in piecing together elements of a scheme or identifying other suspects.

Often, government investigators are tipped off by a suspicious activity report (SAR) filed by a financial institution, such as a bank. The bank may believe mortgage fraud or some other financial crime has been committed and the information is reported to the Financial Crimes Enforcement Network (FinCen) for analysis. Other investigations are triggered by defendants in other, unrelated cases, who offer to give up information about knowledge of participants in fraud schemes. Again, the goal for the defendant is to cooperate with the government and provide valuable intelligence to investigators to identify fraud schemes in exchange for a lighter sentence.

As with state investigations, an individual investigator or team of investigators may provide a cursory view of questionable transactions or suspects until credible evidence begins to materialize. At first, a select few transactions will be analyzed. If the findings suggest a large fraud scheme, the investigation is expanded and more agents are assigned to analyze and investigate different aspects of the case. For example, some investigators may be assigned to interview potential suspects or witnesses while others are assigned to analyzing financial records, such as bank statements.

In financial fraud investigations, a core objective is to “follow the money trail” which helps identify ringleaders versus passive participants who may not know they’ve committed a fraudulent act. Investigators and prosecutors are often much more interested in convicting ringleaders who are considered high value targets. Unknowing fraud participants usually make better witnesses for the government in building their case against ringleaders. Yet, some fraud participants are still prosecuted if they have more technical knowledge, such as an escrow officer or real estate agent.

Often, fraud investigations develop and gather more steam when high dollar losses are identified. Most federal agencies focus on cases where bank or lender losses exceed a minimum threshold, such as \$1,000,000 dollars. Bank losses or questionable mortgage transactions in the range of \$5 million to \$25 million will certainly initiate a “fast track” investigation.

When investigating mortgage fraud, these cases are identified as “paper intensive” cases. It’s important to properly catalog and track evidence when thousands, if not hundreds of thousands of pages of documents referred to as discovery. Most investigative agencies and prosecutors consolidate the large volume of discovery into small groups of information that are later identified as exhibits for use in court during the trial.

Of paramount importance in mortgage fraud investigations is the need to obtain the correct documents to prove the government’s case beyond a reasonable doubt. Some important documents include: Signed loan documents, loan approval letters, underwriting analysis forms, escrow/closing documents, sales contracts, bank records, and written/email correspondence between the core parties.

If important case documents are not obtained or reviewed, the investigators may arrive at false or flawed conclusions.

One of the most important groups of financial documents needed to build a strong mortgage fraud case is the lender's loan file. The loan file tells the story of why the loan request was originally approved and provides important documents needed to understand the transaction and identify likely suspects or innocent participants. Some high profile cases have been lost when the government failed to obtain sufficient financial documents to prove their case.

Often, financial investigators and prosecutors seek guidance from skilled mortgage or real estate experts. A skilled expert can recommend files and records to obtain from various sources, such as banks, mortgage brokers, closing agents, and real estate brokers. Experts can guide the investigators to identify important documents and point out potential pitfalls that could trip-up or complicate an effective prosecution. As more and more fraud investigations develop nationwide, the need for investigative support staff will likely expand- fraud analysis and investigation is considered a growth industry.

Investigating and prosecuting fraudsters is important to the national recovery of financial markets and needed to prevent future fraud from occurring in mortgage lending and real estate.

The positive result of the financial crisis is that banks and lenders now realize the importance of sound lending practices, combined with stepped up audit and quality control procedures to better catch fraud. The importance of not offering risky loan programs, such as 100% financing is hopefully a lesson that has been learned by bankers, lenders, regulators, and Wall Street. It's unlikely the level of mortgage fraud and financial collapse will occur again but that was also said after the 1990's banking crisis. Time will tell.

Note: Curt Novy is a mortgage & real estate expert and is not a government investigator or police officer. In addition, the work of CMA does not include aspects that include a requirement for a private investigator's license. Some fraud investigation work is contracted to licensed investigators.