Mortgage Fraud: What to Look For - What to Do

By:

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March 18, 2008

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MORTGAGE FRAUD

The Problem

The number of reported mortgage fraud transactions has risen steeply in recent years – from approximately 3,000 in 1999 to 22,000 in 2005. It has been stated that mortgage fraud losses exceeded $4 billion in 2006. Suspicious Activity Reports (SAR) (reports of suspected criminal offenses, such as money laundering, to the Financial Crimes Enforcement Network) concerning mortgage fraud increased to 47,000 in the year 2007. And lenders may lose an average of approximately 40% on fraudulent mortgages.

Apparently, the temptation facing sellers had been too severe for what may appear to be normal, upstanding individuals. So, where the seller has been offered the listing price, plus an extra incentive bonus of 10-30%, and the buyer receives a significant cash payment, and further a better commission results to the real estate agent, "that's where it gets tempting and awkward for the seller. They're getting their full price; it's the seller's dilemma." (voiceofsandiego.org)

Examples of mortgage fraud schemes include:

1. Inflated Appraisals

   - The secret flip. The transaction from A to B is contingent upon the closing of the transaction from B to C, which funds first, and the transaction from A to B is not disclosed to the lender that is financing the purchase by C. The appraisal reflects the inflated sales price in the transaction from B to C. The title commitment may be altered to reflect title in B. To facilitate the fraud, C may misrepresent intent to occupy the property.
   - The inflated sales price. The purchaser offers to pay a premium price to the seller for the listed residence, subject to a kickback by payment of the inflated price backed by a false appraisal to a designated third party or to the purchaser. Or there may be two contracts, one for the lender, and the other for the seller's actual closing. The seller may waive a second lien debt, falsified as cash to the seller. Payoffs to third parties as unrecorded liens or payment to the seller outside of closing (e.g. an inflated escrow money deposit) may be falsified. To facilitate the fraud, the purchaser may misrepresent intent to occupy the residence.
   - The illusory contract. A contract for improvements as part of the purchase money financing is funded, but the improvements are not done. An alternative illusory transaction may involve non-existent property or property that is not actually improved.

2. Fraudulent Credit
   - The false application. The false loan package is made to secure a loan otherwise unavailable because of lack of credit. False information may include falsified tax returns, falsified evidence of income, falsified rental, falsified social security card, falsified evidence of employment, and falsified ID. Stated income loans are sometimes called liar loans or nonverification loans because the borrower can assert income without verification (and some audits reveal that such income is frequently overstated).
   - The front applicant. A person with good credit loans that person's credit for the transaction.
   - Equity skimming. The property is purchased, payments are not made, and rental payments are retained by the investory.
   - Chunking. The buyer is persuaded to buy the property based on promise that the company will manage and sell the property. The company secures a large fee, and does not secure tenants or sell the property.

3. Foreclosure Fraud
    - The foreclosure rescue or avoidance (sale-leaseback) promise. Where the homeowner is in default and retains significant equity in her home, the investor secures a deed from the homeowner with the promise to cure the default, and to reconvey the land to the homeowner. Total consideration given is well below fair market value. The investor may refinance and draw down the equity. Once the homeowner defaults in the rental payments, the investor may sell the property. Sometimes this is a bait and switch transaction, as the homeowner is not aware that the homeowner is conveying title to the property.

4. Gap Fraud
    - Multiple mortgages (shotgunning or slamming). The borrower executes multiple home equity mortgages within a short time frame, so that each prior mortgage is not reflected in the gap on the title search or credit report. The borrower may apply for multiple loans through online lenders or out of state closers.

    Naughty things that good people do:
    - False Appraisals
    - False or altered documents to verify income
    - False income
    - False identity
    - False residence/occupancy
    - Contract changes
    - False or inflated deposits
    - Straw buyer
    - Credit history for rent
    - Discounts/allowances
    - False payoffs/payments
    - False title commitments
    - False HUD-1
    - False contractor

For further discussion of mortgage fraud, see http://www.mortgagefraudblog.com/

<u>Recent Indictments</u>

U.S. v. Beverly Ross, and Donella Locke (the "Locke & Key" Indictment).
- Conspiracy to commit wire fraud (18 U.S.C. Sections 371, 1343); wire fraud and aiding and abetting (18 U.S.C. Sections 1343, 2)
- "One or more of the defendants recruited a buyer/borrower who then agreed to purchase the property in exchange for a sum of money the buyer would receive at the closing….One or more of the co-conspirators created or caused to be created false and fraudulent loan applications that were submitted to the lending institutions….In some case, the buyer/borrower income reflected on the loan application was an inflated amount. In some cases, the buyer/borrower's employer was misrepresented….In most cases when a first and second mortgage was obtained, the buyer/borrower did not realize at the time of closing that there was a second mortgage. One or more of the co-conspirators created false and fraudulent settlement statements that were submitted to the lending institutions that the lending institutions accepted as reflecting truthful information as to what occurred at the closing. In some cases, the settlement statement reflected that the buyer/borrower brought down payment funds to the closing when, in fact, the buyer/borrower never did. In some cases, the settlement statement reflected that one or more of the defendants received money for construction work when, in fact, little or no construction work was ever performed. In a few cases, two settlement statements were prepared with different information on the copies prepared for the sellers vs. the lenders; the lenders had no knowledge of the other settlement statement." (Indictment)

U.S. v. Alejandro Lopez, Emilio Lopez, Ravinderjit Singh Sekhon, and Linda Velasquez.

- Conspiracy to commit wire fraud (18 U.S.C. Section 371)
- "In addition to acting as real estate agents, the Lopez Team originated and brokered mortgage loans for its clients, obtaining funding from several sub-prime mortgage lenders. The sub-prime lenders offered 'stated income' or 'no income verification' loans at higher interest rates than conventional loans….To further the conspiracy…the Defendants…a. attended events, including swap meets, and advertized in Spanish language newspapers and publications and on Spanish language radio stations to induce low income individuals from Hispanic communities to utilize the Lopez Team's fraudulent real estate and loan broker services[;] b. fraudulently induced financially unqualified clients to disclose personal and financial information knowing that the Lopez Team would later alter the information on loan applications and other documents to meet the lenders' loan requirements[;] c. entered personal and financial data provided by the clients into the Lopez Team database knowing that the Lopez Team would later fraudulently alter the information on loan applications and other documents to meet lenders' requirements[;] d. fraudulently submitted to lenders loan applications that contained inflated incomes for clients and documents that falsely verified the inflated income[;] e. fraudulently submitted to lenders loan applications that contained false employment information which the Lopez Team and others falsely verified in writing and by impersonating employers[;] f. fraudulently purchased from tax preparers; and submitted to lenders, letters that misrepresented that the clients were business owners and that the tax preparers had prepared the clients' tax returns (CPA letters)[;] g. fraudulently submitted to lenders loan applications that contained inflated bank account balances which the Lopez Team falsely verified with fictitious verifications of deposits[;] h. fraudulently caused banks to generate false verifications of deposits by depositing Lopez Team members' own personal funds into client bank accounts[;] i. fraudulently altered and submitted to lenders bank statements that were not for the clients' bank accounts…[;] j. fraudulently submitted to lenders loan applications and other documents, including false verifications of rent, which contained inflated rent accounts, false rent payment histories, and false lengths of residency for clients[;] k. fraudulently listed or caused to be listed on documents submitted to, or accessed by lenders, the contact information for Lopez team members and others…as the clients' landlords to falsely verify fictitious rental information[;] i. fraudulently used third parties with higher credit scores as straw buyers to purchase homes and obtain loans for financially unqualified clients knowing that the third parties would not occupy the homes and that the loan applications would misrepresent that the homes would be 'owner-occupied'[;] m. fraudulently prepared and submitted to lenders fictitious letters (purportedly from creditors), and caused credit agencies to make false entries to clients' credit reports, which falsely bolstered the clients' credit and falsely listed the telephone numbers of Lopez Team members and others…as contacts for the creditors[;] n. fraudulently submitted to lenders loan applications that falsely represented that clients were United States citizens[;] o. fraudulently submitted to lenders copies of false social security cards which the Lopez team altered to eliminate the work restriction language[;] p. fraudulently obtained $1,070,000.00 in loan commissions from the conspiracy."

U.S. v. Lydell A. Flowers.

- Conspiracy to commit money laundering (18 U.S.C. Section 1956(h)); wire fraud (18 U.S.C. Section 1343); mail fraud (18 U.S.C. Section 1341)
- "During the conspiracy the conspirators submitted false and fraudulent property appraisal reports to various lenders. Many of the appraisal reports submitted contained inflated property values and contained the forged signatures of licensed appraisers whose identities had been stolen. The conspirators obtained the identity of licensed appraisers by searching internet web sites for legitimate appraisers and appropriating their identifying information and legitimate state license numbers found on those sites. Additionally, the conspirators, using a 'cut and paste' method, appropriated the names, license numbers and signatures of legitimate appraisers which were then transferred to false appraisal reports and submitted to lenders."

U.S. v. Henry Quintero-Lopez, a/k/a Henry J. Quintero, et al

- Conspiracy to commit bank fraud, mail fraud, and wire fraud (18 U.S.C. Section Section 1349); bank fraud (18 U.S.C. Section 1344 and 2); mail fraud (18 U.S.C. Section 1341); wire fraud (18 U.S.C. Section 1343 and 2); money laundering conspiracy (18 U.S.C. Section 1956h); money laundering (18 U.S.C. Section 1956(a)(1)(A)(i))
- "It was the purpose and object of the conspiracy for the defendants to unlawfully enrich themselves by: (a) selecting properties that the owners/sellers would be willing to overstate the sales price and/or pay a consulting fee; (b) locating appraisers willing to prepare appraisal report based on values submitted by the defendants; (c); obtaining false and fraudulent Verification of Employment Form 1005, pay stubs, bank statements; Verification of Deposit forms, and IRS Form W-2 Wage and Tax Statements, rental verifications, rental leases, cancelled checks; (d) submitting false and fraudulent mortgage loan applications Form 1003, and related documents to banks and other lending institutions, thereby inducing the banks and other lending institutions to make loans to straw buyer purchasers; (e) concealing the submissions of the false and fraudulent applications and documents and the receipt and transfer of fraud proceeds; and (f) diverting fraud proceeds for their personal use and benefit and to further the conspiracy....Defendants…would identify owners- sellers of residential properties…who would be willing to overstate the true selling price and pay the difference in the original asking price and the overstated amount to Defendants…. Defendants…would recruit and pay straw individuals to pose as buyers at the closings….Defendants…would prepare and cause to be prepared false and fraudulent mortgage loan applications, including false employment verifications, pay stubs, income and funds on deposit, and IRS Form W-2'sfor straw buyers….Defendants… would prepare and cause to be prepared false mortgage loan applications, including fraudulent Verification of Employment (VOE's) Form 1005, pay stubs, income and funds on deposit, and IRS Form W-2s for straw buyers….Defendants…would cause to be prepared fraudulent appraisals of the properties reflecting inflated property values, in order to support the contracted overstated sales prices and mortgage loan applications for the straw buyers….Defendants…and the straw buyers would create and cause to be created and submitted to the banks and lending institutions HUD-Settlement Statement Forms, also known as HUD-1'S, that falsely stated that the straw buyers brought their own funds to the closing of the transactions as indicated at line 303 of the forms, when, in truth and in fact, the straw buyers brought no such funds to the closing."

Appraisal Issues

Innumerable fraud claims have been facilitated by inflated appraisals.

In response to the rise in mortgage fraud that is generally related to inflated appraisals, Fannie Mae and Freddie Mac have agreed to revise their requirements on Home Appraisals, which will seriously undermine use of in-house appraisals or captives. (See Attached Exhibits) The agreement contemplates a "clearinghouse" that would include or address appraiser information and conduct, and that would include a hotline.

FANNIE NEWS RELEASE:

Fannie Mae Reaches Agreement with New York Attorney General, OFHEO, Regarding Home Appraisals; Investigation Terminated

WASHINGTON, DC -- Fannie Mae (FNM/NYSE) has agreed with the Attorney General of the State of New York and the Office of Federal Housing Enterprise Oversight (OFHEO) to assist the regulators in their efforts to enhance home appraisal practices on behalf of consumers. The New York Attorney General's office also announced it has terminated its inquiry of Fannie Mae, which began in November 2007 as part of the Attorney General's complaint against First American Corporation regarding that company's appraisal practices.

"We are pleased to work with regulators to do our part to ensure sound, accurate, independent and reliable appraisals," Fannie Mae General Counsel Beth Wilkinson said. "As the nation's leading purchaser of mortgage loans in the secondary market, Fannie Mae shares the interests of consumers in the integrity of the home valuation process, which is an important part of a well functioning market."

Under the agreement, Fannie Mae will take two steps to assist the regulators in their efforts to enhance the quality and independence of the appraisal process.

First, to help ensure appraisal independence and valuation protection, Fannie Mae will adopt a Home Valuation Protection Code. The Code establishes requirements governing appraisal selection, solicitation, compensation, conflicts of interest and corporate independence, among other requirements. Fannie Mae will adopt the Code immediately, and make appropriate changes to its Sellers Guide to reflect the Code. Beginning January 1, 2009, Fannie Mae will require that lenders represent and warrant that appraisals prepared in connection with mortgage loans originated on or after that date that are delivered to Fannie Mae conform to the Code.

Second, Fannie Mae will provide $12 million over five years to help establish an Independent Valuation Protection Institute. The Institute will monitor and study the area of home valuations. The Institute will establish a hotline for consumers to contact if they believe the appraisal process has been tainted or if they believe they have been harmed by appraisal fraud. Appraisers also will be able to contact the Institute if they believe their independence has been threatened in any way.

A copy of the agreement and the Home Valuation Protection Code can be accessed at http://www.fanniemae.com/media/pdf/030308_agreement.pdf.

While the Office of the New York Attorney General has indicated it has concluded its inquiry with respect to Fannie Mae, the company will continue to work with the New York Attorney General and OFHEO on appraisal practices.

"Our lender guide has always stated that lenders must buy back the loans that do not meet our standards and requirements, and the new Code reinforces our standards," General Counsel Wilkinson said. "We will continue to work with the New York State Attorney General and other regulators to support the highest lending standards for the market and homebuyers."

In November 2007, the New York Attorney General filed suit alleging that improper appraisals were repeatedly made.

PRESS RELEASE

NEW YORK, NY (November 1, 2007) – Attorney General Andrew M. Cuomo today announced that he is suing one of the nation's largest real estate appraisal management companies and its parent corporation for colluding with the largest savings and loan in the country to inflate the appraisal values of homes.

In a scheme detailed in numerous e-mails, eAppraiseIT ("EA"), a subsidiary of First American Corporation (NYSE: FAF), caved to pressure from Washington Mutual ("WaMu") (NYSE: WM) to use a list of preferred "Proven Appraisers" who provided inflated appraisals on homes. The e-mails also show that executives at EA knew their behavior was illegal, but intentionally broke the law to secure future business with WaMu.

"The independence of the appraiser is essential to maintaining the integrity of the mortgage industry. First American and eAppraiseIT violated that independence when Washington Mutual strong-armed them into a system designed to rip off homeowners and investors alike," said Attorney General Cuomo. "The blatant actions of First American and eAppraiseIT have contributed to the growing foreclosure crisis and turmoil in the housing market. By allowing Washington Mutual to hand-pick appraisers who inflated values, First American helped set the current mortgage crisis in motion."

As First American acknowledged in its 2006 annual report, appraisal fraud can damage the entire housing market, including consumers and investors alike. Consumers are harmed because they are misled as to the value of their homes, increasing the risk of foreclosure and hindering their ability to make sound economic decisions. Investors are hurt by such fraud because it skews the value and risk of loans that are sold in financial markets.

In April 2006, EA began providing appraisal services for WaMu, which became EA's biggest client. Within weeks, WaMu began complaining to EA that its appraisals were not high enough. WaMu pressured EA to employ exclusively a new panel of appraisers that WaMu hand-selected as "Proven Appraisers." This set of appraisers was chosen by WaMu specifically because they inflated property appraisals. WaMu profited from these higher appraisals because they could close more home loans, at greater values. Over the course of their relationship, between April 2006 and October 2007, EA provided approximately 262,000 appraisals for WaMu.

Attorney General Cuomo's investigation uncovered a series of e-mails between executives at EA, First American, and WaMu that show EA officials were willingly violating state and federal appraisal independence regulations to comply with WaMu's demands:

- **On February 22, 2007, in response to a description of the WaMu "Proven Appraiser" program as one in which "we will now assign all Wamu's work to Wamu's 'Proven Appraisers'… [and] Performance ratings to retain position as a Wamu Proven Appraiser will be based on how many come in on value," eAppraiseIT's president told senior executives at First American: "**we have agreed to roll over and just do it...**"**
- **On April 4, 2007, eAppraiseIT's executive vice president stated in an e-mail to First American: "we as an AMC [Appraisal Management Company] need to retain our independence from the lender or it will look like collusion… eAppraiseIT is clearly being directed who to select. The reasoning… is bogus for many reasons including the most obvious – the proven appraisers bring in the values."**
- **On April 17, 2007, eAppraiseIT's president wrote an e-mail to First American explaining why its conduct was illegal: "We view this as a violation of the OCC, OTS, FDIC and USPAP influencing regulation."**

- **E-mail evidence also shows that WaMu pressured EA to inflate appraisals as a condition for doing future business together:**
- **On September 27, 2006, First American's vice chairman reported that a WaMu executive told him: "if the appraisal issues are resolved and things are working well he would welcome conversations about expanding our relationship…"**

Attorney General Cuomo continued, "Just as my office stepped in when colleges and loan companies were profiting at students' expense, this lawsuit and my ongoing investigation into the mortgage industry should send a clear message: companies must play by the rules or they will have to account for their misdeeds."

Attorney General Cuomo's lawsuit seeks to end the illegal relationship between First American and EA and WaMu. It also seeks penalties and disgorgement from First American and EA. The lawsuit alleges that First American and EA violated appraiser independence laws, which regulate the conduct of real estate appraisers. The lawsuit was filed in the Supreme Court of New York, New York County.

This case is being handled by Assistant Attorney General Christopher Mulvihill, under the supervision of Deputy Chief Trial Counsel Nicole Gueron and Executive Deputy Attorney General for Economic Justice Eric Corngold.

Closing Instructions

Because the fiduciary responsibility of the escrow agent varies in different states, the closing instructions remain the paramount basis for defining the relationship of the escrow agent and principals (borrowers, sellers, and lenders) to the transaction. It is often asserted that the closing instructions will supplement or modify the fiduciary responsibilities of the escrow agent. The closing instructions and any contract of the parties for the sale of land generally form the terms of the escrow contract with the escrow agent, absent a separate escrow agreement or instruction.

The Uniform General Closing Instructions (draft) have been prepared by the Mortgage Bankers Association, American Land Title Association, and American Escrow Association. The most current draft includes an indemnity by the Settlement (in Section A.2):

> **To the extent permissible under Applicable Law, Settlement Agent agrees to indemnify Lender from any losses resulting from Settlement Agent's or Signing Agent's failure to follow the INSTRUCTIONS. Such indemnification shall be mitigated to the extent such failure is due to the fault of Lender. Such indemnification shall include, but not be limited to reasonable attorney's fees and court costs incurred by Lender.**
>
> **Lender must promptly send written notice of a claim under this indemnity to Settlement Agent at its Mailing Address shown on the Uniform Specific Closing Instructions. Settlement Agent is not liable for a loss if the written notice is not received within one year from the date of the closing. Settlement Agent will not be liable to Lender for loss arising out of fraud, dishonesty or negligence of Lender's employee, agent, or attorney, Lender's settlement or release of any claim without the written consent of Settlement Agent, any matters created, suffered, assumed or agreed to by Lender, or any matters known to Lender.**
>
> **When Settlement Agent shall have reimbursed Lender pursuant to this indemnity, it shall be subrogated to all rights and remedies which Lender would have had against any person or property had Lender not been so reimbursed. Liability of Settlement Agent for such reimbursement shall be reduced to the extent that Lender has knowingly and voluntarily impaired the value of this right of subrogation. Either Settlement Agent or Lender may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association.**

The Uniform General Closing Instructions (draft) also include fraud prevention provisions (in Section J):

> **Lender is committed to taking the strongest action, including criminal referrals, against settlement agents and signing agents who, by their acts, create an increased risk of loss to Lender and reputation risk for both the mortgage lending and settlement service industries. Examples of these acts include but are not limited to: altering title commitments, back dating documents, falsifying settlement statements, facilitating identity theft by false impersonation, committing notary fraud, turning a blind eye to false down payments or fraudulent checks, and creating false payoff figures.**
>
> **It is not the purpose of this Section J to broaden liability of Signing Agent, Settlement Agent or their employees beyond existing legal requirements, but it is the intention of this Section J to require Settlement Agent to notify Lender's designated 'Fraud Prevention Contact' in the LENDER CONTACTS section of the SPECIFIC INSTRUCTIONS in accordance with this Section.**

J.1 Reporting Suspicious Activities.

As soon as possible after discovery, Settlement Agent or Signing Agent must stop the Closing and notify Lender of any suspicious activity discovered (including but not limited to the items set out in Section J.2 of these GENERAL INSTRUCTIONS below) directly to Lender's designated 'Fraud Prevention Contact' as set out in the LENDER CONTACTS section of the SPECIFIC INSTRUCTIONS. This ;includes discovery of what Closing Employee suspects may be unfair, deceptive, misleading or unlawful behavior by any Lender or Mortgage Broker employee in connection with the Loan. Lender indemnifies Settlement Agent, Signing Agent and their employees against any legal claims brought by a Lender employee or Mortgage Broker or Mortgage Broker employee who is the subject of any report of suspicious activity given in good faith.

If a Lender employee, Mortgage Broker employee, or real estate brokerage employee or agent attends the Signing, Settlement Agent shall not permit such a party to overtly pressure Borrower at Signing or encourage Borrower to Sign prior to reading the Loan Documents, act as interpreter, or in any way obstruct the ability of Settlement Agent or Signing Agent to perform its duties. It must not be suggested by any party that Borrower use the rescission period to read Loan Documents or to address questions or objections raised at Signing. In the event any such conduct set out in this paragraph occurs, Settlement Agent must immediately contact Lender and postpone Signing or Disbursement of the Loan until Settlement Agent receives written permission to proceed from Lender's designated 'Fraud Prevention Contact' in the LENDER CONTACTS section of the SPECIFIC INSTRUCTIONS.

J.2 Suspicious Activities.

***Unless expressly accepted by Lender in the* LOAN CONDITIONS section *of the SPECIFIC INSTRUCTIONS, if any one or more of the following circumstances is known (or should have been known by a reasonable person in the normal exercise of his/her duties) by Closing Employee to exist during any stage of this transaction,* Settlement Agent must immediately contact Lender and postpone Signing or Disbursement of the Loan until Settlement Agent receives written permission to proceed from Lender's designated 'Fraud Prevention Contact' in the LENDER CONTACTS section of the SPECIFIC INSTRUCTIONS:**

Training Directive: The standard here is that the Closing Employees cannot ignore circumstances that they become aware of or would be aware of if they just kept their eyes open. There is no duty to actively investigate or search for these circumstances.

a. Property Transfers.

i. This transaction will occur in conjunction with, or simultaneously with, any other sale, transfer or financing of the Property (e.g., double escrow, double closing, flip sale, pass through, equity skimming, etc.), except for the following:

A. a junior loan provided or approved by Lender;

B. the Property was acquired through inheritance;

C. the Property is a single-family residence and Seller is a federal government agency;

D. Lender has approved the existence of multiple concurrent transactions in the SPECIFIC INSTRUCTIONS; or

E. a Section 1031 transaction.

ii. A full or partial transfer of the Property has occurred within 180 days, or will occur on or before the Completion of Closing, except for the transfer to Borrower by the vested owner.

iii. The Loan is for purchase money and Borrower has acquired record title to the Property before the Signing date.

b. Any material fact that may, in the reasonable opinion of Closing Employee, have an impact on Lender's decision to make the Loan. A material fact includes but is not limited to, any significant information on changes in the value or title of the Property, financial condition of Borrower, changes in marital status or the legal status of Borrower, changes to the sales contract (if a purchase), changes to the financing, Borrower or Seller bankruptcy, enforcement of creditor's rights against Borrower or Seller, or any other indication of suspicious activity.

c. Potential or Actual Fraud, Misrepresentations, Falsehoods

i. Any evidence that a potential or actual fraud or scheme related to the transaction has been or may be committed.

ii. Any Person involved in the transaction, including but not limited to Borrower, Seller, real estate broker, builder, Mortgage Broker, Title Insurer, appraiser, Signing Agent or Settlement Agent may have made a material misstatement or committed a falsehood that might affect this transaction.

iii. A Loan Document or invoice appears to have been tampered with, falsely generated, bears any falsified or materially incorrect data, bears different names or addresses for the same party, or bears a fictitious name.

iv. Any Person's handwriting or signature appears to be inconsistent with earlier documents.

v. Any Person appears to be or is being paid to lend credit or identity to the transaction.

d. Property Condition.

Recent adverse changes to the condition of the Property, including fire, flood, regional disaster, or other damage.

e. Persons involved in the Transaction.

i. Closing Employee who handles the transaction has a conflict of interest, is a party to the transaction, has an ownership interest in or is controlled by or is related to Seller, Borrower, appraiser, Lender, Mortgage Broker or any other interested party to the transaction.

ii. Mortgage Broker appears to be or is a party to the transaction or has an ownership interest in or is controlled by or is related to Seller, Borrower, appraiser, Settlement Agent, Signing Agent, real estate agent, Closing Employee, or any other interested party to the transaction.

iii. Seller appears to have or has an ownership interest in or is controlled by or is related to Mortgage Broker, Borrower, appraiser, Settlement Agent, Signing Agent, Closing Employee, or any other interested party to the transaction.

f. Borrower Lacks Comprehension.

If Closing Employee suspects Borrower does not comprehend the transaction.

g. Title Insurance

If the Title Policy to be issued as a result of the Closing is to contain exceptions not shown in the original Title Commitment provided to Lender or otherwise accepted by Lender in the TITLE INSURANCE section of the SPECIFIC INSTRUCTIONS Or if the title owner shown on the Title Commitment does not match Seller on the purchase contract.
***Training Directive: Except in a Contract for Deed refinance or leasehold, the transaction cannot be subject to Seller acquiring title to the Property. New construction transactions may also have seller name issues which need to be addressed*.**

h. Loan Documents.

The Loan Documents are incomplete or inconsistent with other information in Settlement Agent's closing file for this Loan.

i. Identity.

Closing Employee cannot verify the identity of any signatory, or any signatory is unable to produce an unexpired form of government issued photo identification.

j. Undisclosed Loan.

A lien undisclosed to Lender has been, or will be placed on the Property, or other financing undisclosed to Lender has been provided to Borrower.

k. Source of Borrower Funds.

Borrower's funds are to be paid by a third party without Lender's approval.

l. Coercion, Undue Influence.

Borrower appears to be coerced or under undue influence.

m. Sales Price.

The sales price is inconsistent with the Sales Price shown in the PROPERTY section of the SPECIFIC INSTRUCTIONS.

n. Occupancy.

Borrower occupies another residence not subject to this transaction and does not appear to intend to occupy the Property (unless this is noted as an investment property on the SUMMARY section of the SPECIFIC INSTRUCTIONS).

o. Payments.

Any request for a Disbursement is ambiguous, has incomplete information, lacks a clear description, appears unusual in any manner or has not been approved by Lender in the LOAN CONDITIONS section of the SPECIFIC INSTRUCTIONS.

p. Prior Obligations.

Mortgage Broker has advised Borrower against making scheduled payments on any existing obligation.

<u>Closing Protection Letters</u>
The ALTA adopted three new Closing Protection Letters, effective January 1, 2008. These letters, which are available in a majority of states, are (1) the blanket letter, (2) the limitations letter, and (3) the single transaction letter. The limitations letter is the default letter for Stewart Title Guaranty Company.

ALTA CLOSING PROTECTION LETTER-LIMITATIONS

STEWART TITLE GUARANTY COMPANY

Name and Address of Addressee:

Date:

Name of Issuing or Approved Attorney (hereafter, "Issuing Agent" or "Approved Attorney", as the case may require):

[Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears hear]

Re: Closing Protection Letter

Dear Sir or Madam:

Stewart Title Guaranty Company (the "Company") agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with closings of real estate transactions conducted by the Issuing Agent or Approved Attorney provided:

(A) title insurance of the Company is specified for your protection in connection with the closing;; and

(B) you are to be the (i) lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land

and provided the loss arises out of:

1. Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or

2. Fraud, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected under the foregoing paragraph, your borrower, your assignee and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them.

CONDITIONS AND EXCLUSIONS

1. **The Company will not be liable to you for loss arising out of:**

   A. **Failure of the Issuing Agent or Approved Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.**

   B. **Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or the Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.**

   C. **Defects, liens, encumbrances or other matters in connection with your purchase, lease or loan transactions except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.**

   D. **Fraud, dishonesty or negligence of your employee, agent, attorney or broker.**

   E. **Your settlement or release of any claim without the written consent of the Company.**

   F. **Any matters created, suffered, assumed or agreed to by you or known to you.**

2. **If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.**

3. **When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of this right of subrogation.**

4. **The protection herein offered shall not extend to any transaction in which the funds you transmit to the Issuing Agent or Approved Attorney exceeds $10 million. The Company shall have no liability of any kind for the actions or omissions of the Issuing Agent or Approved Attorney in that transaction except as may be derived under the Company's commitment for title insurance policy of title insurance or other express written agreement. Please contact the Company if you desire the protections of this letter to apply to that transaction. This paragraph shall not apply to individual mortgage loan transactions on individual one-to-four-family residential properties (including residential townhouses, condominium and cooperative apartment units).**

5. **The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing other closing or settlement services. The Company's liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss**

resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with a real estate transaction, or the failure of any collateral to adequately secure a loan connected with a real estate transaction. However, this letter does not affect the Company's liability with respect to its title insurance binders, commitments or policies.

6. Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than $2,000.000. If you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than $2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.

7. You must promptly send written notice of a claim under this letter to the Company at its principal office at P.O. Box 2029 in Houston, Texas 77252-2029. The Company is not liable for a loss if the written notice is not received within one year from the date of the closing.

8. The protection herein offered extends only to real property transactions in Arkansas, Georgia, Florida, Louisiana, Missouri, New Jersey, New Mexico, North Carolina, New York, Ohio, Pennsylvania, Texas, Vermont, Virginia and West Virginia.

Any previous insured closing service letter or similar agreement is hereby cancelled, except for closings of your real estate transactions for which you have previously sent (or within 30 days hereafter send) written closing instructions to the Issuing Agent or Approved Attorney.

STEWART TITLE GUARANTY COMPANY

By: ____________________________________

Mortgage Fraud Laws

Applicable federal criminal statutes used in prosecutions of mortgage fraud cases include 18 USC Section 1005 (false representations to a federally insured institution); 18 USC Section 1005 (false statements on application); 18 USC Section 1010 (false statements in HUD loan); 18 USC Section 1341 (mail fraud); 18 USC Section 1343 (wire fraud); 18 USC Section 1344 (bank fraud); 18 USC Section 1951, et seq. (RICO); and 18 USC Section 1957 (transaction with illegal proceeds).

States have also enacted criminal statutes to combat mortgage fraud:

Georgia:

§ 16-8-102. Offense of residential mortgage fraud A person commits the offense of residential mortgage fraud when, with the intent to defraud, such person:

(1) Knowingly makes any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(2) Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(3) Receives any proceeds or any other funds in connection with a residential mortgage closing that such person knew resulted from a violation of paragraph (1) or (2) of this Code section;

(4) Conspires to violate any of the provisions of paragraph (1), (2), or (3) of this Code section; or

(5) Files or causes to be filed with the official registrar of deeds of any county of this state any document such person knows to contain a deliberate misstatement, misrepresentation, or omission.

An offense of residential mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the mortgage lending process.

Michigan:

§ 445.1634. Person making mortgage loan; prohibited conduct.

Sec. 4. (1) A person offering to make or making a mortgage loan shall not do either of the following:
(a) Charge a fee for a product or service if the product or service is not actually provided to the customer.
(b) Misrepresent the amount charged by or paid to a third party for a product or service.

(2) A lender in making a mortgage loan shall not finance as part of the loan single premium coverage for any credit life, credit disability, or credit unemployment.

(3) A person, appraiser, or real estate agent shall not make, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a mortgage loan including, but not limited to, the borrower's ability to qualify for a mortgage loan or the value of the dwelling that will secure repayment of the mortgage loan.

(4) A lender shall not insert or change information on an application for a mortgage loan if the lender knows that the information is false and misleading and intended to deceive a third party that the borrower is qualified for the loan when in fact the third party would not approve the loan without the insertion or change.

(5) A statement or representation is deceptive or misleading if it has the capacity to deceive or mislead a borrower or potential borrower. The commissioner shall consider any of the following factors in deciding whether a statement or misrepresentation is deceptive or misleading:

(a) The overall impression that the statement or representation reasonably creates.

(b) The particular type of audience to which the statement is directed.

(c) Whether it may be reasonably comprehended by the segment of the public to which the statement is directed.

(6) A lender shall not condition the payment of an appraisal upon a predetermined value or the closing of the mortgage loan which is the basis of the appraisal.

(7) A person shall not directly or indirectly compensate, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the dwelling offered as security for repayment of the mortgage loan.

(8) A mortgage loan note shall not contain blanks regarding payments, interest rates, maturity date, or amount borrowed to be filled in after the note is signed by the borrower.

Texas:

Texas Finance Code § 343.105. Notice of Penalties for Making False or Misleading Written Statement

(a) A lender, mortgage banker, or licensed mortgage broker shall provide to each applicant for a home loan a written notice at closing.

(b) The notice must:
- **(1) be provided on a separate document;**
- **(2) be in at least 14-point type; and**
- **(3) have the following or substantially similar language:**

"Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed $10,000.

"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

"I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing."

(c) On receipt of the notice, the loan applicant shall verify the information and execute the notice.

(d) The failure of a lender, mortgage banker, or licensed mortgage broker to provide a notice complying with this section to each applicant for a home loan does not affect the validity or enforceability of the home loan by any holder of the loan.

Other states that have enacted similar mortgage fraud statutes include Arizona, Florida, Minnesota, Mississippi, and North Carolina.

Principles of Escrow

There are disparate rules among the states on the fiduciary responsibilities of the escrow agent, and the following represent principles established in some jurisdictions.

"The fiduciary duty [of the escrow agent] consists of (1) the duty of loyalty, (2) the duty to make full disclosure, and (3) the duty to exercise a high degree of care to conserve the money and pay it only to those persons entitled to receive it. A fiduciary must act with utmost good faith and avoid any act of self-dealing that places his personal interest in conflict with his obligations to the beneficiaries." *Bell v. Safeco Title Insurance Company,* 830 S.W.2d 157 (Tex. App. – Dallas [5th Dist.] 1992, writ denied).

"In delimiting the scope of an escrow holder's fiduciary duties, then, we start from the principle that an escrow holder must comply strictly with the instructions of the parties. On the other hand, an escrow holder has no general duty to police the affairs of its depositors; rather, an escrow holder's obligations are limited to faithful compliance with the depositors' instructions. Absent clear evidence of fraud, an escrow holder's obligations are limited to compliance with the parties' instructions." *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Company,* 27 Cal.4th 705, 711, 117 Cal. Rptr.2d 541, 41 P.3d 548 (2002).

The escrow agent has no duty to tell a borrower whether the borrower can realistically repay a loan. The escrow agent must simply comply with instructions and has no duty to police the affairs of depositors *Hwang v. Lee*, No. B172405, 2005 Cal. App. Unpub. LEXIS 10460 (Cal. App. 2nd App. Nov. 15, 2005).

The escrow agent may not use the relationship to benefit the escrow agent's personal interest. *NRC, Inc. v. Huddleston,* 886 S.W.2d 526 (Tex. App. – Austin 1994, no writ).

The escrow agent also owes a duty to other signatories to the contract, including a broker who receives land pursuant to the contract. *Zimmerman v. First American Title Insurance Company*, 790 S.W.2d 690 (Tex. App. – Tyler 1990, writ denied). Generally, "…the obligations of an escrow agent are limited to faithful compliance with the instructions from the principals." *Romo v. Stewart Title of California*, 35 Cal. App. 4th 1609, 42 Cal. Rptr. 2d 414 (1995) (claim allowed to proceed against escrow agent on real estate commission paid to unlicensed broker on fictitious sale, where escrow agent allegedly knew and failed to disclose that person was not licensed and had history of fraudulent real estate deals).

The escrow agent must consider all of the applicable agreements and ambiguities, such as a purchase contract, letter of intent, subordination agreement and escrow instructions in closing an escrow. "[W]e do not impose on the escrow agent a new duty to review all documents deposited in escrow to determine that those documents are legally correct and effectuate the parties' subjective intentions. We rely instead on the old principle that an escrow agent which fails to follow the escrow instructions breaches its contract, and the parties to the escrow may recover 'all damages resulting from any deviation' from the escrow instructions…. Nor do we believe Arizona law recognizes Ticor's argument that the escrow agent can remain ignorant of the agreements between the parties and need only read the terms of the escrow instructions…. [T]he escrow agent must be cognizant not only of the escrow instructions but of the provisions contained in the documents that are deposited in escrow. If there is a significant variance between the two, the escrow agent has a remedy. When the terms of the instruments, or any other fact known to the escrow agent, including the documents deposited in escrow, 'present an ambiguity of interpretation as to the intentions' of the parties, the agent has a 'duty to call its principal[s] for clarification'….When the 'agent should realize the possibility of conflicting interpretations, ordinarily [it] is not authorized to act, since it would be [its] duty to communicate with the principal[s] and obtain more definite instructions." *Burkons v. Ticor Title Insurance Company of California,* 168 Ariz. 345, 813 P.2d 710, 717 (1991) (escrow agent should have disclosed to seller the ambiguities in subordination as drawn and as provided in contract, escrow agreement and letter of intent; in essence the courts doubted based on surrounding circumstances that the sellers intended to provide unconditional subordination when funds when to sales price and buyer, not to construction); *Manley v. Ticor Title Insurance Company*, 168 Ariz. 568, 816 P.2d 225 (1991) (with other lien, the land would be over-encumbered and such state evidenced fraud; notice by the escrow agent to the real estate agent was not sufficient disclosure).

"As an escrow agent for premiums and taxes, (the lenders who were escrow agents) have the duty to safeguard, disburse, and account for funds properly. The disbursing agent's duties do not include securing the lowest insurance rate, the best terms for the borrower, or the strongest company." *White v. Mellon Mortgage Company,* 995 S.W.2d 795 (Tex. App.—Tyler 1999, no pet.).

The escrow agent has no fiduciary duty to third parties. For example, the escrow agent does not have a duty to partners of a partnership to determine that a deed of trust was properly authorized in connection with its gratuitous recording of the deed of trust at the request of the lienholder. *Luce v. State Title Agency*, 190 Ariz. 500, 950 P.2d 159 (1997). A contractor was not a third party beneficiary of a construction loan disbursement agreement. *Bescor, Inc. v. Chicago Title and Trust Company,* 113 Ill. App. 3d 65, 446 N.E.2d 1209 (1983) (the agreement expressly stated that there were no third party beneficiaries). A person, such as a mortgagor in connection with a proposed assignment of existing mortgages, was not a part to the escrow agreement and was owed no duty by the escrow agent to comply with his requests. *Norian v. Fidelity National Title Company,* 2004 Cal. App. Unpub. LEXIS 1511 (No. F040475, Ct. App. Cal. Feb. 19, 2004). An escrow agent has no duty of care to a mortgage assignee who was a nonparty to an escrow to pay off the nonparty assignee of mortgage instead of the original mortgagee held by another nonparty to the escrow. A determination of ownership of the mortgage was not required by the escrow. *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Company*, 27 Cal.4th 705, 117 Cal. Rptr.2d 541, 41 P.3d 548 (2002). An escrow agent owed only a fiduciary duty to the record title holder and first phase investors, who were parties to the escrow, and had no duty to second phase investors who were not parties to the escrow. Those second phase investors also were not third beneficiaries of the escrow. "To bring an action as a third-party beneficiary, the escrow agreement had to show a clear intent to directly and substantially benefit the second phase investors and not merely provide an indirect benefit to the second phase investors….Furthermore, in the absence of a fiduciary relationship, (the escrow agent's) nondisclosure of material facts in an arm's length transaction is not actionable misrepresentation unless (the escrow agent) employed an artifice or trick to prevent an independent investigation by (the second phase investor)." *Watkins v. NCNB National Bank of Florida, N.A.,* 622 So.2d 1063 (1993). A sub-escrow with instructions from a bank to pay off a lienholder in return for a release and other documents has no duty to the landowner to record the release; the landowner did not provide any written instructions to the sub-escrow and is not a party to the sub-escrow, even though he may have relied on the sub-escrow. *Markowitz v. Fidelity Nat. Title Co.,* 142 Cal.App.4th 508, 48 Cal. Rptr. 3d 217 (Cal. App. 2nd Dist. 2006). An ex-spouse who executed a deed in connection with a finance by the other former spouse was not a party to the escrow contract and thus was owed no duty by the escrow agent to verify that the ex-spouse had been paid for the deed. The duty of an escrow agent extends (1) to a party to the escrow contract, and (2) to a third party victim of fraud on the part of the escrow agent, and (3) where the escrow agent displays dishonesty or lack of good faith when the escrow agent engages in self-dealing or has a conflict of interest. *Black v. Metro Title, Inc.,* 712 N.W.2d 395 (Wis. App. 2006).

Duty of Disclosure

Case law also varies on the duty of disclosure imposed on the escrow agent, absent specific instructions. The following cases suggest the views of some states on the issue:

An escrow agent must disclose changes to documents made by one of the parties, but does not have the duty to explain or provide legal advice as to the consequences of those changes. An explanation would breach the escrow agent's duty to remain a neutral third party. *Bell v. Safeco Title Insurance Company,* 830 S.W.2d 157 (Tex. App. – Dallas [5th Dist.] 1992, writ denied). An escrow agent has a duty to make full disclosure. If the escrow agent acts under a back-up contract, it must fully disclose to the second buyer (under the back-up contract) its knowledge of the status of the first contract. *Pack v. First Federal Savings and Loan Association of Tyler,* 828 S.W.2d 60 (Tex. App. – Tyler 1991, no writ).

If an escrow holder "knows a party to the escrow is relying on it for protection as to facts learned by the escrow holder, the escrow holder can be held liable if it does not disclose those facts to the party." *Markowitz v. Fidelity Nat. Title Co.,* 142 Cal.App.4th 508, 528, 48 Cal. Rptr. 3d 217 (Cal. App. 2nd Dist. 2006) (escrow holder had little or no contact with landowner who was not a party to the subescrow, and thus would not know that the landowner was expecting the escrow holder to protect him with respect to facts learned). .

"[I]f the facts actually known to the escrow agent present substantial evidence of fraud, there is a duty to disclose." *Burkons v. Ticor Title Insurance Company of California*, 168 Ariz. 345, 813 P.2d 710, 720 (1991).

"Even where, as in this case, no formal escrow agreement has been entered into, a title company that accepts funds for disbursement in a closing transaction for a fee owes the party remitting those funds a duty of loyalty, a duty to make full disclosure, and a duty to exercise a high degree of care to conserve the money and pay it only to those persons who are entitled to it….Ordinarily, a fiduciary duty of full disclosure requires disclosure of all material facts known to the fiduciary that might affect the rights of the person to whom the duty is owed. However, there is variation among the states regarding the extent to which any such disclosure duty applies to escrow agents….Under the Restatement and in at least one state, an escrow holder's duties are limited to the safekeeping of the escrow property and its delivery or return to the appropriate party, as the case may be, in accordance with the agreement; and, thus, entail no duty of disclosure whatever unless specified by the agreement. In at least two other states, an escrow agent has no duty to disclose unless it has actual knowledge of clear evidence of fraud. A further variation followed in at least two other states is that, although not required to investigate, an escrow agent has a duty to disclose facts that a reasonable escrow agent would perceive as evidence of fraud. Finally, at least two other jurisdictions prescribe that an escrow agent owes a duty to disclose all matters coming to the agent's notice or knowledge concerning the subject of the agency that are material for the principal to know for his protection or guidance…[There is no] rationale for limiting such an agent's fiduciary duties to only those set forth in a written contract because (1) fiduciary duties arise as a matter of law, not contract; (2) they exist in special relationships in which a high degree of trust warrants that the fiduciary's conduct be measured by higher standards than ordinary contractual dealings between those parties…; and [(3)] contracts between fiduciaries and those to whom they owe a fiduciary duty carry a presumption of unfairness…..[A] fiduciary's duties do not extent beyond the scope of the fiduciary relationship. To the extent an escrow agent is employed only to close a transaction in accordance with a contract…it is not apparent how the agent's duty of disclosure could extend beyond matters affecting the parties' rights in the closing process to those concerning the merits of the underlying transaction." Consequently, the escrow agent cannot sustain a summary judgment on a claim of breach of fiduciary duty for failure to disclose that the seller had requested that over half of the seller's proceeds be disbursed to a mortgage loan broker, to disclose that the seller then requested that those proceeds be paid to the principal of that broker, and to accurately disclose on the HUD-1 that proceeds would be so disbursed. *Home Loan Corp. v. Texas American Title Co.*, 191 S.W.3d 728, 731,733 (Tex. App. – Houston [14th Dist.] 2006, pet. denied) (the court states that it is not with its "province as an intermediate appellate court to select the law our State will follow").

"Several fiduciary duties arise from the escrow relationship. First, the escrow agent is obligated 'to act in strict accordance with the terms of the escrow agreement.'….Second, the escrow agent has a fiduciary duty to disclose information about a known fraud being committed on a party to the escrow agreement….However, an escrow agent has no duty to disclose other information to a party of the escrow agreement unless required by the agreement…. '[O]nce an escrow holder received information (from whatever source) he would be forced to decide independently whether to believe the information and disclose it or disbelieve it and conceal his knowledge. If he concealed his knowledge he would risk suit. If he discloses and the information is inaccurate, he may be sued by all parties to the escrow for interfering with their contract. Establishing a rule which would create such a dilemma and subject…the escrow holder to a high risk of litigation would damage a valuable business procedure.'" American State Bank v. Adkins, 458 N.W.2d 807, 810-811 (S.D. 1990).

If the lender informs the escrow agent that it will increase the interest rate on a loan after it is assumed, the escrow agent has a duty to disclose this fact to the buyer. The buyer's contract allowed the buyer to rescind if the interest rate was increased, and the buyer did not know of the increase. *Sudberry v. Lowke*, 403 So.2d 1117 (Fla. Ct. App. 1981).

Knowledge acquired by an escrow agent in one transaction is not imputed to separate principals in a second transaction. *Triple A Management Company, Inc. v. Frisone*, 69 Cal. App. 4th 520, 81 Cal. Rptr. 2d 669 (1999).

As a general rule, the escrow agent has no duty to disclose the terms of another escrow relating to the land, absent specific request in the closing instructions. *Blackburn v. McCoy*, 1 Cal. App. 2d 648, 37 P.2d 153 (1934); *Lee v. Title Insurance and Trust Co.*, 264 Cal. App. 2d 160, 70 Cal. Rptr. 378 (1968) (agreeing with *Blackburn)*. If the escrow agent actually knows facts that present substantial evidence of fraud, the escrow agent has a duty of disclosure. "Absent fraud, the activities of real estate investors and speculators in buying and selling real property is a legitimate activity. The escrow agent has no duty to regulate the transactions so that each party receives a fair price for his property. The escrow company is not a guardian for the uninitiated. On the other hand, the escrow agent should not assist the perpetration of fraud by silence when disclosure could prevent the accomplishment of the fraud. Generally there is not duty to disclose information received by an escrow agent [such as a flip or back-to-back escrow transaction] unless such a duty is required by the terms of the agreement [such as in lender instructions on occasion], but we hold that there is an exception to the foregoing rule when the escrow agent knows that a fraud is being committed on a party to an escrow and the failure of the escrow agent to disclose the information of the fraud will assist in accomplishing the fraud; under such conditions the escrow agent has a duty to disclose the facts actually known. We agree that an escrow agent has no duty to look for fraud, but, if knowledge comes to the escrow agent that there is a fraud, there is a duty to disclose such information to the parties to the escrow. In the case at issue Stewart Title denies that there is any evidence that its employees knew that McLeod was being defrauded. Stewart Title contends that the most that the evidence shows is that the land being sold by McLeod to the corporation of Joes and Parent was being sold [in a flip transaction] for a higher and better price to a W.O. Stewart [first sale for $160,000, and flip sale for $320,000]. The contention is made that this evidence merely shows that McLeod wasn't making as much as he could on the sale of his land. McLeod argues that Stewart Title's agent, Noll, was aware that Jones and Parent were brokers acting for McLeod, and that these brokers, using the device of a corporation, were buying their principal's land at a lower price so that they could sell it at a higher price and make a secret profit for themselves. The evidence in support of McLeod's position is in serious dispute, but it is sufficient to resist the granting of a directed verdict on the breach of fiduciary duty thereof." *Berry v. McLeod*, 124 Ariz. 346, 604 P.2d 610, 616 (1979).

An "escrow agent has a duty to disclose fraud committed by another party to the escrow 'if the facts actually known to the escrow agent present substantial evidence of fraud.' Although we conclude that the escrow agent has such a duty, we also conclude that an escrow agent has no duty to investigate circumstances surrounding a particular sale in order to discover fraud…. [An escrow agent may not] close its eyes in the face of known facts and console itself with the thought that no one has yet confessed fraud. Although not required to investigate, when the agent is aware of acts and circumstances that a reasonable escrow agent would perceive as evidence of fraud, then there is a duty to disclose….We cannot condone an escrow agent's silence when the agent is aware of facts indicating that fraud is being perpetrated on a party with whom the agent has an escrow relationship. When the escrow agent performs the escrow with such an awareness, the agent becomes, in effect, a participant in the fraud, and should, therefore, be liable to the defrauded party if the fraud is not disclosed….An escrow agent owes a duty to disclose fraud only to parties to the escrow relationship." *Mark Properties, Inc. v. National Title Co.*, 34 P.3d 587 (Nev. 2001) (escrow agent may be liable to parties to its escrow for failure to disclose fraud in inflating sales price in first closing of flip transaction, but is not liable to a parties who were not participants in the escrow which it conducted). An example of closing instructions by a lender intended to require disclosure of a flip, back-to-back escrow or "straw man" transaction was a requirement that the escrow agent advise the lender prior to recording "of any deed on the subject property which would vest title in persons other than the bank's borrower" in order to protect itself against a phony transaction with a straw man, inflating the true value and letting the ultimate buyer purchase with no money down. *Universal Bank v. Lawyers Title Insurance Corporation*, 62 Cal. App. 4th 1062, 73 Cal. Rptr. 2d 196, 198 (1997).

STG Guidelines

1. Foreclosure Rescues have become more common as defaults on home loans have increased.

In *Clemons v. Home Savers, LLC,* No. 2:07cv244, 2008 U.S. Dist. LEXIS 3304 (E.D.Va. Jan. 15, 2008), the court ruled that the relationship of the parties was not that of borrower and lender, and the defendant Home Savers prevailed.

"In 1995, Plaintiff, Angela D. Clemons ("Clemons**") purchased a home at 2016 Candlelight Drive in Chesapeake, Virginia for $ 63,800 by borrowing all but $ 300 of the purchase price.** Clemons **subsequently refinanced her mortgage loan three times before she fell behind on her payments in 2006. At that time, her monthly mortgage** [*2] **payments were $ 847.20. Shortly after receiving notice from her mortgage lender of pending foreclosure proceedings,** Clemons **contacted Defendant,** Home Savers, **LLC ("**Home Savers**") -- whose billboard advertisement reading "stop foreclosure, save your home, save your equity, save your credit" she had seen on her drive to work. Pl. Dep. 37:25-38:2, Aug. 3, 2007.**

"At the parties' first meeting, Home Savers's **CEO, William F. Law, Jr. ("Law") and President, Ulysses "Chuck" Gray ("Gray") suggested that they could help** Clemons **avoid foreclosure by purchasing her home, leasing it back to her, and granting her an option to repurchase after an agreed upon period of time.** Clemons **consented to the proposed transaction, and on October 20, 2006, at the law office of White & Selkin in Norfolk, Virginia, the parties executed a number of documents including an Agreement of Sale, Deed of Assumption, and Lease Agreement.** [1] **Although Albert C. Selkin, Esq. ("Selkin"), the attorney that conducted the real estate closing, summarized each document and offered** Clemons **an opportunity to ask questions,** Clemons **does not recall posing a single question before or after signing the documents. She further acknowledges** [*3] **that the documents accurately set forth her agreement with** Home Savers.

"On October 24, 2006, Home Savers **recorded the Deed of Assumption with the Clerk of the Chesapeake Circuit Court. Thereafter,** Clemons **began paying rent to** Home Savers **and in a letter dated February 19, 2007, she gave** Home Savers **written notice of her intent to repurchase the property. But, despite her clearly expressed intent,** Clemons **failed to comply** [*5] **with the remaining terms of the Option Agreement. She never requested or obtained an appraisal of the property. She was delinquent on her March rental payment. And, while she attempted to obtain financing,** Clemons **was unable to pay the option price by March 31, 2007.**

"Once Clemons **notified** Home Savers **that her March rental payment would be late, the parties discussed and executed an additional agreement. Pursuant to the agreement, dated March 17, 2007,** Clemons **acknowledged that** Home Savers **owned the property and** Home Savers **agreed to extend** Clemons's **lease by one month until April 30, 2007, at which time** Clemons **was to amicably vacate the property.** Home Savers **later notified** Clemons **by letter that it would begin eviction proceedings if she had not vacated the property by May 1, 2007."**

Several states have enacted laws regulating foreclosure consultants (such as California, Colorado, Georgia, Illinois, Maryland, Missouri, New York, and Rhode Island).
Stewart has established local guidelines on such transactions (e.g. See Bulletins MU2008003, MU2008006, RI2008001). (See Exhibit attached)

"Recent economic conditions have led to a substantial increase in mortgage defaults and foreclosures. As is often the case, there are opportunists who will prey upon the disadvantaged. In our industry, this is taking the form of companies and/or individuals who purport to rescue homeowners from their dire economic circumstances. What makes this difficult for us is that there are legitimate foreclosure saver companies among the fraudulent ones.

“Agents must be extremely careful before insuring any transaction that is or appears to be a foreclosure saver. If you have any doubt or question about the transaction, call underwriting counsel.

“Some red flags:

- **The existing loan is in default.**

- **The owner is deeding the property to the buyer, but staying in the property beyond a normal "leaseback." There may be a contemporaneous lease or a second contract allowing the owner/seller to repurchase the property.**

- **The buyer is a non-resident individual or entity, usually arranged through a third party company with a name like "foreclosure savers."**

- **The consideration is substantially less than fair market value, especially if the consideration is the balance remaining on the existing mortgage(s). The buyer is taking title subject to the existing loans.**

- **The buyer is taking out a loan which effectively strips the equity from the property, either at closing or shortly thereafter.**

- **The seller requests the settlement statement be prepared in a way not in conformity to standard sale/purchase practices.**

“Failure to scrutinize these transactions may expose you, the agent, to liability for participation in the scheme, however unwitting it may be.”

2. Short Sale Transactions involve transactions in which the proceeds of sale are less that the amount owed on the existing mortgage. An example of guidelines addressing Short Sales is FL2008002:

This bulletin addresses closing procedures when insuring short sale transactions. A "short sale" transaction occurs when the net proceeds realized from a sale are less than the cost of selling the property and the seller is unable to pay the difference at closing. In some cases, the lender will agree to accept less than the amount needed to fully satisfy the mortgage debt in order to avoid the costs involved in a foreclosure. In many instances, the sellers are either facing or already in foreclosure. Therefore, it is important to exercise caution when handling these transactions.

GUIDELINES FOR CLOSING A SHORT SALE TRANSACTION

1. Obtain a written estoppel/payoff letter from the discounting lender and explicitly follow the payoff instructions.

2. If foreclosure proceedings have been filed, obtain a written estoppel/payoff letter from the foreclosure attorney. It should confirm that upon tender of the amount stated in the payoff letter, the attorney will dismiss the foreclosure action and discharge the Lis Pendens with no additional fees or costs.

3. Prepare a preliminary HUD-1, with the most accurate and available figures and forward to lender. No unusual unrelated charges or credits will be permitted.

4. Many short sales are conditioned upon the seller receiving little or no proceeds. All disbursements must be disclosed on the HUD-1.

5. Seller should acknowledge the estoppel/payoff letter by signing it at closing. This will eliminate a possible claim in the event the letter indicates that the note will not be fully satisfied.

6. The short sale transaction should be an arms length transaction to a bonafide purchaser for value. In other words, unless fully disclosed and approved by the discounting lender, the purchaser should not be related to the seller.

7. Once the transaction is completed, follow up to be sure that the mortgage is satisfied or released of record. Note that it is possible for a lender to refuse to satisfy a mortgage if they were provided with false or misleading information to obtain the short sale approval. Therefore, it is imperative to retain the written estoppel in the closing file.

IF THE SHORT SALE TRANSACTION IS PART OF A "FLIP"

Disclosures become extremely important when a short sale transaction is also part of a flip transaction. Consequently, please proceed with caution.

1. The previous Stewart Bulletins containing guidelines for closing and insuring flip transactions are still in effect. For online viewing of Stewart's prior bulletins, log onto http://vuwriter.com for specific requirements.

2. In addition to the disclosures set forth in the previous bulletins, if the short sale transaction is also part of a flip, and the end buyer's lender is funding the first transaction, you must disclose the second sales transaction to the discounting lender. You must obtain written authorization from the Seller to inform the discounting lender of the second sales price. See Exhibit A attached to this bulletin.

3. Obtain a General Warranty Deed from the Seller to Buyer #1, and a General or a Special Warranty Deed from Buyer #1 to Buyer #2.

4. No Quit Claim Deeds as they are often used in suspect transactions.

SCENARIO: Investor approaches a desperate seller under the guise of assisting with the short sale. The owner executes a quit claim deed conveying his interest to the investor. The short sale fails and the investor disappears. The seller remains obligated on the note and mortgage and has clouded title to his property by recording the quit claim deed.

5. Powers of Attorney should be scrutinized and must not name a party associated with the investor or Buyer #1 as agent to execute the closing documents. Our preference is to have all parties present at closing to acknowledge all closing documents.

Please contact a Stewart Florida underwriter if you have any questions concerning this topic.

Exhibit A: Authorization to Disclose to Discounting Lender

An example of a website promoting short sales is http://shortsteals.com/

3. The names of the parties to the pending transaction should be checked on the STG database at <http//specialalerts.stewart.com/> to confirm that no applicable closing or fraud alert or listing of Specially Designated Nationals and Blocked Persons (SDN) applies. Bulletins include SLS 2008001 and SLS00158.

4. Settlement Agents should obtain collected funds; reliance solely on state good funds laws may not be adequate procedure. See STG Bulletin SLS2007004 (“The Importance of Obtaining Collected Funds”); SLS2007003 (“ACH Transfers”).

5. Stewart Legal Services will no longer distribute FDIC special alerts via email. See STG Bulletin SLS2007009. Additionally, the special alerts bulletins relating exclusively to FDIC alerts no longer appear in the “Special Alerts”list on Virtual Underwriter.

Stewart Legal Services will continue to distribute state-specific, multi-state, and national closing alerts issued by the Company as well as bulletins relating to Company policy and broad underwriting practices and procedures, by email through the Exact Target system.

The names of all individuals, financial institutions, and other entities reflected in the Company closing alerts emails (along with the FDIC names) are included in a searchable database that can be directly accessed at http://specialalerts.stewart.com/ or is available as a link from Stewart.com and/or Virtual Underwriter. Both the Closing/FDIC Alerts database and the Patriot Act/Specially Designated Nationals database can be searched automatically and simultaneously with no additional steps. Before closing a transaction, all issuing offices must search the names of the parties to the transaction, including the seller, buyer, payoff lender and new lender, using our Special Alerts database.

HUD Limitations on DPA

On October 1, 2007, HUD issued a final rule prohibiting most down payment assistance (72 F.R. 56,002) provided by the seller or any other person that benefitted from the sale.   The final rule was set recently set aside. *Nehemiah Corp. v. Jackson,* No. CIV. S-07-2056 LKK/DAD, 2008 U.S. Dist. LEXIS 16222 (E.D. Cal. Feb. 29, 2008); *Penobscot Indian Nation v. U.S.,* Nos. 07-1282, 07-1752, 2008 U.S. Dist. LEXIS 16395 (D.C. March 5, 2008).

Examples of sources of Down Payment Assistance programs participating in the litigation include

- the Nehemiah Program
- AmeriDream, Inc.
- Dove Foundation, Inc.
- Partners in Charity, Inc.
- Futures Home Assistance Program
- Genesis Foundation
- Penobscot Indian Nation

See https://ilnet/wellsfargo.com/ildocs/funding/DAP_States/NW.htm

See also DpFunder and Grant America Program.

The final rule stated:

24 CFR § 203.19 Mortgagor's investment in the property.

(a) *Required funds.* The mortgagor must have available funds equal to the difference between:

(1) The cost of acquisition, which is the sum of the purchase price of the home and settlement costs acceptable to the Secretary; and

(2) The amount of the insured mortgage.

(b) *Mortgagor's minimum cash investment.* The required funds under paragraph (a) of this section must

include an investment in the property by the mortgagor, in cash or cash equivalent, equal to at least 3 percent of the cost of acquisition, as determined by the Secretary, unless the mortgagor is:

(1) A veteran meeting the requirements of § 203.18(b); or

(2) A disaster victim meeting the requirements of § 203.18(e).

(c) ***Restrictions on seller funding.*** **Notwithstanding paragraphs (e) and (f) of this section, the funds required by paragraph (a) of this section shall not consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:**

(1) The seller or any other person or entity that financially benefits from the transaction; or

(2) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in paragraph (c)(1) of this section.

(d) ***Gifts and loans usually prohibited for minimum cash investment.*** **A mortgagor may not use funds for any part of the minimum cash investment under paragraph (b) of this section if the funds were obtained through a loan or a gift from any person, except as provided in paragraphs (e) and (f) of this section, respectively.**

(e) ***Permissible sources of loans.***

(1) ***Statutory authorization needed.*** **A statute must authorize a loan as a source of the mortgagor's minimum cash investment under paragraph (b) of this section.**

(2) ***Examples*****. The following loans are authorized by statute as a source for the minimum investment:**

(i) A loan from a family member, a loan to a mortgagor who is at least 60 years old when the mortgage is accepted for insurance, or a loan that is otherwise expressly authorized by section 203(b)(9) of the National Housing Act;

(ii) A loan made or held by, or insured by, a federal, state, or local government agency or instrumentality under terms and conditions approved by the Secretary;

(iii) A loan made or held by, or insured by, a tribal government or an agency or instrumentality thereof, including a tribally designated housing entity as defined at 25 U.S.C. 4103(21), which is treated as a state or local government under applicable state or local law, under terms and conditions approved by the Secretary; and

(iv) A federal disaster relief loan.

(f) ***Permissible sources of gifts.*** **The following are permissible sources of gifts or grants used for the mortgagor's minimum investment under paragraph (b) of this section:**

(1) Family members and governmental agencies and instrumentalities eligible under paragraphs (e)(2)(i) and (ii) of this section;

(2) A tribal government or an agency or instrumentality thereof, including a tribally designated housing entity, as defined at 25 U.S.C. 4103(21);

(3) An employer or labor union of the mortgagor;

(4) Organizations described in section 501(c)(3) and exempt from taxation under section 501(a) of the Internal Revenue Code;

(5) Disaster relief grants; and

(6) Other sources as may be approved by the Secretary on a case-by-case basis.

OFAC

Executive Order 13224 blocks transactions with persons who commit, threaten to commit or support terrorism. The list of those persons known as Specially Designated Nationals and Blocked Persons (the SDN List) is maintained by the Office of Foreign Assets Control (OFAC). This List is available at the Treasury site at http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html and OFAC also addresses many questions at http://www.treas.gov/offices/enforcement/ofac/faq/index.html#gen_ques.

When you review a name on the list, you must compare it with the exact name of the party to the transaction. You do not have a "match" if they are not the same. For example, according to one OFAC representative, you may not have a match of a common name if the address of the party to the transaction according to government issued identification (such as a driver license) or other documentary evidence of address (such as mail, bills, etc. with an address) shows a U.S. address and the SDN List shows another street address, city or country as the location of the location of the blocked person.

If you find an apparent exact match of name after review of the SDN List or other circumstances reasonably arouse your suspicion, call OFAC at 1-800-540-6322 or 202-622-2490 or e-mail OFAC at ofac_feedback@do.treas.gov for further instructions.

Applicable OFAC forms are available at http://www.ustreas.gov/offices/enforcement/ofac/forms/index.html.

"The Office of Foreign Assets Control administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

"The Treasury Department has a long history of dealing with sanctions. Prior to the War of 1812, Secretary of the Treasury Gallatin administered sanctions imposed against Great Britain for the harassment of American sailors. In 1861, during the Civil War, Congress passed a "Trading With the Enemy Act," which prohibited transactions with the Confederacy, called for the forfeiture of goods involved in such trade, and provided a licensing regime under rules and regulations administered by Treasury. The Trading With the Enemy Act of 1917 ("TWEA") made that Civil War legislation "modern" for World War I. OFAC is the successor organization to the Office of Foreign Funds Control (the "OFFC"), which was established at the advent of World War II following the German invasion of Norway in 1940. The OFFC's initial objective in acting under TWEA was to prevent Nazi use of occupied countries' holdings of foreign exchange and to prevent forced repatriation of funds belonging to nationals of those countries. These controls were later extended to protect assets of other invaded countries. After the United States formally entered World War II, the OFFC became the major American program of economic warfare against the Axis powers, blocking enemy assets and prohibiting foreign trade and financial transactions. Those assets would also serve as a future source of war reparations. The OFFC program was administered by the Secretary of the Treasury throughout the war. After the cessation of hostilities, most foreign property subject to protective blocking was gradually released by licenses under the Foreign Funds Control Regulations. Most enemy property was vested by the U.S. Government during and immediately after the war. Responsibility for administering the FFC Regulations was transferred to the Attorney General (Office of Alien Property), effective October 1, 1948. All matters relating to the World War II vesting program remain at the Justice Department under the supervision of the Office of Alien Property Custodian. OFAC itself was formally created in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency under TWEA and blocked all Chinese and North Korean assets subject to U.S. jurisdiction.

“Prohibited transactions are trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute. Because each program is based on different foreign policy and national security goals, prohibitions may vary between programs.”

(Frequently Asked Questions) http://www.ustreas.gov/offices/enforcement/ofac/faq/

OFAC has adopted Regulations Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism. Any transfer that is in violation of the Regulations is null and void and shall not be the basis for recognition of any interest, unless otherwise provided. Exceptions may be recognized if the transfer is not a willful violation of the Regulations.

HUD FLIPS

Closing instructions may require disclosure to a lender of recent conveyances of the title to the land (e.g. within 6-12 months) or will require documentation confirming that the borrower will reside on the land; if the escrow agent knows of facts concerning these matters, it should make disclosure to the lender.

HUD’s prohibition on Property Flipping provides that “Re-sales occurring 90 days or less following acquisition will not be eligible for a mortgage to be insured by FHA. FHA's analysis disclosed that among the most egregious examples of predatory lending was on "flips" that occurred within a very brief time span, often within days. Thus, the "quick flips" will be eliminated. Re-sales occurring between 91 and 180 days will be eligible provided that the lender obtains an additional appraisal from an independent appraiser based on a re-sale percentage threshold established by FHA; this threshold would be relatively high so as to not adversely affect legitimate rehabilitation efforts but still deter unscrupulous sellers, lenders, and appraisers from attempting to flip properties and defraud homebuyers. Lenders may also prove that the increased value is the result of rehabilitation of the property. Re-sales occurring between 90 days and one year will be subject to a requirement that the lender obtain additional documentation to support the value to address circumstances or locations where HUD identifies property flipping as a problem. This authority would supersede the higher expected threshold established for the above-mentioned 90 to 180 day period and will be invoked when FHA determines that substantial abuse may be occurring in a particular locality.” (See attached HUD Regulations concerning Property Flipping)

EXHIBIT 1
RESPA SCRIPT PROPOSAL

"In addition to the proposed changes to the HUD-1/1A discussed above, HUD is proposing an addendum to the HUD-1 that would be provided to the borrower at closing. The loan originator would transmit to the settlement agent all information necessary to complete the prescribed addendum to the HUD-1/1A settlement form, referred to as the "closing script." The addendum would be prepared by the settlement agent and would have to accurately reflect the loan documents and related settlement information provided by the lender. The settlement agent would be required to read the addendum aloud to the borrower at settlement. The addendum would compare the loan terms and settlement charges estimated on the GFE with those on the HUD-1 and would describe in detail the loan terms for the specific mortgage loan as stated in the mortgage note, and related settlement information. The length of the addendum would vary depending on the specifics of the borrower's loan."

"To address these issues, today's proposed rule would require the settlement agent or other person conducting the settlement to read the closing script document aloud to the borrower and explain: (1) The comparison between the loan terms and the settlement charges listed on the HUD-1/1A settlement form with the estimate of charges listed on the GFE; (2) whether or not the tolerances have been met; and (3) the loan terms, as contained in the mortgage note and related settlement information. Any inconsistencies between the mortgage note, between related settlement information and the GFE, and between the HUD-1/1A settlement charges and the GFE would have to be disclosed and explained to the borrower. The proposed rule would also require that the closing script addendum be delivered to the borrower as part of the HUD-1/1A at the closing. Upon request of the borrower, the HUD-1/1A and the closing script addendum would have to be made available for review by the borrower 24 hours prior to the settlement, in accordance with 24 CFR 3500.10."

APPENDIX A TO PART 3500--INSTRUCTIONS FOR COMPLETING HUD-1 AND HUD-1A SETTLEMENT STATEMENTS; SAMPLE HUD-1 AND HUD-1A STATEMENTS

The following are instructions for completing sections A through L and the closing script addendum of the HUD-1 settlement statement, required under section 4 of **RESPA** and Regulation X of the Department of Housing and Urban Development (24 CFR part 3500). This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller and received by each settlement service provider, to be given to the parties in connection with the settlement. * * *

General Instructions

*   *   *   *   *

The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. For all items except for those paid to and retained by the loan originator, the name of the person or firm ultimately receiving the payment must be shown together with the total amount paid to such person in connection with the transaction. Charges that are customarily paid for by the seller must be shown in the seller's column on page 2 of the HUD-1 (unless paid outside closing), and charges that are customarily paid for by the borrower must be shown in the borrower's column (unless paid outside closing). If a seller pays for a charge that is customarily paid for by the borrower, the charge should not be shown on page 2 of the HUD-1 but instead should be listed as an adjustment in lines 506-509 of the HUD-1. If a borrower pays for a charge that is customarily paid for by the seller, the charge should not be shown on page 2 of the HUD-1, but instead should be listed as an adjustment in lines 204-209 of the HUD-1.

Charges to be paid outside of settlement by the borrower, seller, or loan originator, including cases where a non-settlement agent (i.e., attorneys, title companies, escrow agents, real estate agents, or brokers) holds the Borrower's deposit toward the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, must be included on the HUD-1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and cannot be included in computing totals. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as "P.O.C. (payor)."

In the case of "no cost" loans where "no cost" encompasses third party fees as well as the up-front payment to the loan originator, the third party services to be paid for out of the adjusted origination charge must be itemized and listed on the HUD-1/1A with the charge for the third party service. These itemized charges must be recorded in the columns.

For charges disclosed using average cost pricing, the amount stated on the HUD-1 Settlement Statement as a charge to the borrower or seller for the settlement service must be the average price established pursuant to 24 CFR 3500.8(e).

*   *   *   *   *

Line Item Instructions

Section L. Settlement Charges

For all items except for those paid to and retained by the loan originator, the name of the person or firm ultimately receiving the payment must be shown. In the case of loans where third party settlement services, other than origination services, are paid from the adjusted origination charge by the loan originator, the individual third party settlement services should be itemized, with the charges shown in the columns. In those cases, the adjusted origination charge in line 803 will be a negative number large enough to offset the amounts of the third party settlement services that are paid out of the adjusted origination charge.

*   *   *   *   *

Line 801 is used to record "Our Service Charge," which is received by the loan originators. This number must not be listed in either the buyer's or seller's column.

Line 802 is used to record "Your charge or credit for the specific interest rate chosen," which states the charge or credit adjustment as applied to "Our Service Charge," if applicable. This number must not be listed in either column or shown on page one of the HUD-1.

Line 803 is used to record "Your Adjusted Origination Charges," which states the net amount of the loan origination charges. This number must be listed in either the buyer's column or as "paid outside closing."

Lines 804-811 may be used to record each of the "Required services that we select". Each settlement service provider must be identified by name and the amount paid recorded inside the columns or "P.O.C.".

Lines 808-811 may also be used to record other required lender or loan program disclosures. In such a case, any charge must be listed outside the columns.

*   *   *   *   *

Lines 1000-1009. * * *

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in § 3500.17(d). The adjustment will always be a negative number or zero (-0-). The settlement agent shall enter the aggregate adjustment amount on a final line of the 1000 series of the HUD-1 or HUD-1A statement.

Lines 1100-1115. This series covers title charges and charges by attorneys. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation) and fees for title insurance. The legal charges include fees for Lender's, Seller's, or Buyer's attorney, or the attorney preparing title work. The series also includes any settlement, notary, or delivery fees.

Line 1101 is used to record the total for the category of "Title services and lender's title insurance," and the amount must be listed in the columns.

Lines 1102-1108 may be used to itemize charges paid other than those defined as "primary title services," such as for a closing attorney or escrow agent, and those charges paid must be listed outside the columns. Lines 1102-1108 may also be used to itemize some required title services whose costs are already included in Line 1101. In such a case, any charge must be listed outside the columns.

Line 1109 is used to record "Lender's title insurance premium," and the amount must be listed outside the columns.

Line 1110 is used to record "Optional owner's title insurance," and the amount must be listed in the columns.

Line 1111 is used to record the lender's title insurance policy limits of coverage, and the amount must be listed outside the columns.

Line 1112 is used to record the owner's title insurance policy limits of coverage, and the amount must be listed outside the columns.

Line 1113 is used to record the title agent's portion of the total title insurance premium, and the amount must be listed outside the columns.

Line 1114 is used to record the underwriter's portion of the title insurance premium, and the amount must be listed outside the columns.

Line 1201 is used to record the total "Government recording and transfer charges," and the amount must be listed in the columns.

Lines 1202-1205 may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Lines 1301-1305 may be used to record additional itemized settlement charges, and the amounts must be listed in either column.

Line 1400 must state the total settlement charges stated within each column.

Line Item Instructions for Completing HUD-1A

Note: The HUD-1A, including the closing script addendum, is an optional form that may be used for refinancing and subordinate lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. n34 * * * n34 Note the HUD-1A and its instructions will be conformed to changes to the HUD-1 and HUD-1 instructions at the final rule stage.

*   *   *   *   *

General Instructions for Completing Closing Script Addendum to HUD-1/1A Settlement Form

The settlement agent must complete the closing script addendum to the HUD-1/1A settlement form pursuant to § 3500.8(d) and in accordance with the instructions and example closing script forms contained in this Appendix A.

See Appendix A on Pages 14062-14092 in Original Document.

15. Appendix C to part 3500 is revised to read as follows:

[There will be recurring costs of the new HUD-1 on the settlement industry arising from the addition of the closing script. Requiring the script would impose a cost on the settlement industry only when it increases the average time spent to complete a settlement. Settlement agents would be obliged to collect data from the GFE, fill out the script, read it to the borrower, and answer any questions engendered by the script. The typical agent will perform this kind of work regardless of whether they are required to do so. A script only standardizes the explanation of the correspondence between the GFE and the HUD-1 forms. It is conceivable that the burden imposed on the average conscientious agent is very modest. However, to be cautious, we assume that the script would lead to an additional forty-five minutes spent on the average settlement. The opportunity cost of that time to the settlement firm would be $ 54 (derived from a $ 150,000 fully loaded salary). The total cost of the script in a normal year (12.5 million originations) would be $ 676 million and $ 838 million in a high volume year (15.5 million originations). (See Section VII.C.2 of this appendix for a lengthier discussion.)]

[A mandatory script could impose a cost on a settlement agent by increasing the time required to perform a settlement. A cost will arise only when a scripted settlement takes longer than the current unscripted one. First, agents would be obliged to complete the script, which would consist of collecting the data (approximately twenty on the loan terms, depending on the loan and a comparison of approximately fifteen settlement charges from both the GFE and HUD-1), fill in the blanks on the script, determine the tolerances for the fees, and check that the figures on the HUD-1 are within the tolerances of those from the GFE. An experienced settlement agent who is organized might be able to do this work in fifteen minutes. Even inexperienced agents would not need to spend much time when assisted by software. There may be the occasional loan, which is especially difficult because the loan terms are complex and because the settlement agent would like to double-check the complicated calculations made by the lender. Such loans may require thirty minutes to complete the script. We will assume the worst case scenario and that preparing a script requires thirty more minutes on average than if there were no script. Second, reading the script would take five minutes longer on average than if there were no formal procedures for explaining the HUD-1 form. For the agent who currently reviews the HUD-1 form with the borrower requiring a review will not constitute an additional burden. Third, we assume that the net effect on time spent discussing borrowers' questions is an additional ten minutes for the average loan. n91 The script may induce questions on some issues but it is also expected that a methodical explanation will obviate the need for others. For simple loans, the net effect is expected to be nil. In the case of more complex loans, clarifying the terms of the loan is expected to add from five to ten minutes. We use an average of ten minutes across all loans.]

EXHIBIT 2

HOME VALUE PROTECTION PROGRAM
AND
COOPERATION AGREEMENT
(FANNIE/FREDDIE)

WHEREAS, the New York Attorney General's Office (the "Attorney General's Office" or the "Office") has been conducting an investigation into conflicts of interest, fraud and other misconduct in the mortgage industry. As part of its investigation, the Attorney General's Office has studied the business models and conduct of entities, including but not limited to Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"), that purchase mortgage loans, and then, after pooling the loans, sell them as securities to the public; and,

WHEREAS, pursuant to the Attorney General's Office's investigation, the Office believes reforms are necessary to protect the valuation mechanisms within the housing industry in both the primary and secondary markets to protect consumers and to that end is engaged in an industry-wide investigation involving originators, securitizers and credit rating agencies; and,

WHEREAS, the Attorney General's Office believes that the current crisis in the mortgage industry follows a period of a high volume of home mortgages, home equity refinancings and securitizations of new structured mortgage financing products in which serious questions of conflicts of interest, negligence and errors throughout the housing market have arisen. The Attorney General's Office further believes that questions about valuation, both in the primary market and in the secondary market, are central to these concerns; and,

WHEREAS, the Attorney General's Office believes that, in the residential home primary market, home appraisals serve a vital role in determining the security of the mortgage loans and the basis for evaluation of mortgage pools in the secondary market. The appraisal also provides important information for consumers to consider in determining their best financial interest; and,

WHEREAS, the Attorney General's Office believes that the accuracy and independence of the appraisal process must be ensured and protected. Historically, there have been times when turmoil in the real estate market has been caused when the valuation mechanisms, and the appraisal process specifically, have been corrupted by pressure from lenders and brokers. Federal regulations require "independence" of the appraisers and the appraisal process. State governments have regulatory roles in ensuring the integrity of the appraisal process; and,

WHEREAS, the Attorney General's investigations have evidenced bias in appraisal practices, and therefore new policies safeguarding appraisal independence and *bona fide* valuations must be established; and,

WHEREAS, the Attorney General's Office believes that Fannie Mae is a highly significant institution in the secondary mortgage market that can play an important role in stabilizing the mortgage markets by, in part, helping to restoring consumer and investor confidence in home and mortgage pool valuations; and,

WHEREAS, the Office of Federal Housing Enterprise Oversight (hereinafter "OFHEO"), an independent agency in the Department of Housing & Urban Development oversees Fannie Mae and Freddie Mac, two government sponsored enterprises ("the Enterprises") and has established a regulatory regime to guide Enterprise efforts to resist and report mortgage fraud and suspected mortgage fraud; and, WHEREAS, OFHEO has worked with the Enterprises to enhance their internal programs to detect and prevent mortgage and appraisal fraud and external programs to educate seller-servicers and the public on resisting mortgage fraud and to communicate with state appraisal licensing bodies on appraisal fraud or appraiser misconduct; and,

WHEREAS, OFHEO has worked with state and federal law enforcement and has reported events of mortgage fraud and suspected mortgage fraud, including appraisal fraud, for over two years to the Department of the Treasury's Financial Crimes Enforcement Network for referral to law enforcement; and,

WHEREAS, the parties agree to seek comment and concurrence regarding this Agreement and the Code of Conduct, and the timetable for the implementation thereof to assure no disruption in the marketplace, from the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration and the Federal Housing Administration, as the parties move forward to implement the Agreement and the Code of Conduct; and,

WHEREAS, the Attorney General's Office and OFHEO share concerns for a reliable valuation and appraisal process that underlies the mortgage market and believe it is in the public interest to act in a coordinated fashion; and,

WHEREAS, the Attorney General's Office and OFHEO believe that this forward-looking agreement will in no way prejudice any of the Attorney General's ongoing investigations in the mortgage industry or OFHEO's regulatory mandates but will provide appropriate and necessary reforms and stability to the market.

NOW THEREFORE, the Attorney General's Office, OFHEO and Fannie Mae enter into this agreement and agree as follows:

I. NEW HOME VALUATION PROTECTION CODE

1. To ensure appraisal independence and valuation protection, Fannie Mae has agreed to adopt a Home Valuation Protection Code (the "Code," which is attached hereto as Exhibit A), which was crafted by the Attorney General's Office and OFHEO, in consultation with the Enterprises and other market entities. The Code establishes requirements governing appraisal selection, solicitation, compensation, conflicts of interest and corporate independence, among other things. The Code may be modified from time to time to address changes in federal or state banking laws and regulations. Fannie Mae will immediately announce the adoption of the requirements contained in the Code, make appropriate changes to its Guide and, beginning January 1, 2009, will require that lenders represent and warrant that appraisals conducted in connection with single-family mortgage loans, other than government-insured loans, originated on or after January 1, 2009 that are delivered to Fannie Mae conform to the Code. After January 1, 2009, Fannie Mae will not purchase single-family mortgage loans, other than government-insured loans, from mortgage originators that do not agree to adopt the Code with respect to such loans that are delivered to Fannie Mae. Fannie Mae may exclude from the provisions of paragraph VI, subsections 1-4, of the Code, institutions that both meet the definition of a "small bank" set forth in the 12 U.S.C. § 2908, and which Fannie Mae determines would suffer hardship due to those provisions. Institutions excluded for hardship reasons must otherwise comply with the other provisions of the Code and must meet all appropriate standards of appraiser independence. During a period before January 1, 2009, Fannie Mae shall provide the opportunity for comments from market participants on its implementation and deployment of the Code; commentators should provide copies of their comments to OFHEO. The parties to this Agreement understand the significance of the reforms provided for herein and therefore will in good faith review the comments received during this period and will consider any amendments to the Code necessary to avoid any unforeseen consequences. The parties to this Agreement believe that the adoption of this Code will enhance the integrity of and confidence in the housing finance system country-wide.

I. FORMATION OF THE INDEPENDENT VALUATION PROTECTION INSTITUTE

2. The parties hereto acknowledge that the integrity of the valuation processes involve federal and state laws and regulations as well as market practices and standards. This complex area requires a high level of expertise and coordination to ensure truly sound, accurate, independent and reliable appraisals.

3. To that end, the parties agree that an independent entity, the Independent Valuation Protection Institute (the "Institute"), will be established to monitor and study this area. The Institute may, from time to time, propose amendments to the Code which the parties to this Agreement will review and consider.

4. The Institute will establish a complaint hotline for consumers nationwide to contact if they believe the appraisal process has been tainted or if they have been harmed by appraisal fraud.

5. Appraisers themselves will be able to contact the Institute if they believe their independence has been threatened in any way, including by undue pressure. Appraiser complaints will be handled in confidence to protect the appraisers from possible retaliation. The Institute, in its judgment, will mediate complaints or forward complaints to federal or state regulators. The Institute, in its judgment, may also forward complaints to state or federal law enforcement agencies for possible investigation or prosecution.

6. The Institute will be headed by a Board of Directors. Membership on the Board shall consist of experts in the fields of real estate finance, loan origination, law enforcement, compliance review and real estate appraisal and valuation. Members of the Board shall have no financial connection whatsoever with Fannie Mae, Freddie Mac or any loan originators with whom Fannie Mae or Freddie Mac engage. This prohibition will apply to any subsequent securitizer contributing to the Institute. The Institute shall hire a full time professional staff. The Attorney General's Office and OFHEO must both approve the membership of the Board.

7. The Institute shall report publicly on the results of its activities to the Attorney General's Office and OFHEO on a bi-annual basis.

8. The Institute may be affiliated with an existing academic, professional association and/or industry organization.

9. Fannie Mae agrees to fund the Institute, along with Freddie Mac, for a period of not less than five years at an annual cost to each as follows: year one - $1 million; year two - $2 million; year three – $3 million; year four - $3 million; and year five - $3 million. To the extent other entities agree to participate in the Home Value Protection Program, the respective contributions of Fannie Mae and Freddie Mac may be reasonably reduced. The Institute may, upon a showing of good cause to the Attorney General's Office and OFHEO, request that additional funds be allocated in years one and two from funds reserved for years three through five.

III. COOPERATION AGREEMENT AND
TERMINATION OF THE ATTORNEY GENERAL'S OFFICE'S INVESTIGATION

10. Fannie Mae agrees to cooperate with the Attorney General's Office and OFHEO to effect and accomplish the terms of this agreement. Fannie Mae also agrees to continue to cooperate in the Attorney General's Office's ongoing investigation into the mortgage industry.

11. The Attorney General's Office agrees to terminate its current investigation of Fannie Mae.

12. The parties agree that the requirements in this Agreement, except for the provisions relating to the Institute, terminate 28 months from the execution of the Agreement.

13. Nothing contained herein shall be deemed to constitute an admission by Fannie Mae of any wrongdoing in connection with any matter, which Fannie Mae expressly disclaims and denies. Nor shall this Agreement or any negotiations, transactions, or proceedings connected in any way with this Agreement be offered or received in evidence in any proceeding to prove any liability, any wrongdoing, or an admission on the part of any party hereto, by any individual or entity not a party hereto; provided, however, nothing herein shall prevent this Agreement, from being used, offered, or received in evidence in any proceeding to enforce any or all of the terms of this Agreement.

14. If any provision of this Agreement or the attached Code is found to be violative of federal law or regulation, the violative provision will be deemed null and oid. If any provision is deemed null and void, the Attorney General may, in his discretion, terminate this Agreement.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: March 3, 2008

ATTORNEY GENERAL OF OFFICE OF FEDERAL
THE STATE OF NEW YORK HOUSING ENTERPRISE
OVERSIGHT

___________________________ By:_______________________
Andrew M. Cuomo James B. Lockhart III

Director
FEDERAL NATIONAL
MORTGAGE ASSOCIATION

By:________________________
Daniel H. Mudd
President and CEO

Home Valuation
Code of Conduct

I. No employee, director, officer, or agent of the lender, or any other third party acting as joint venture partner, independent contractor, appraisal management company, or partner on behalf of the lender, shall influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner including but not limited to:

1) withholding or threatening to withhold timely payment for an appraisal report;
2) withholding or threatening to withhold future business for an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser[1];
3) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
4) conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate requested from an appraiser;
5) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report;
6) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;
7) providing to an appraiser, appraisal management company, or any entity or person related to the appraiser or appraisal management company, stock or other financial or non-financial benefits;
8) allowing the removal of an appraiser from a list of qualified appraisers used by any entity, without prior written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice

9) ordering, obtaining, using, or paying for a second or subsequent appraisal or automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process; or
10) any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

Nothing in this section shall be construed as prohibiting the lender (or any third party acting on behalf of the lender) from requesting that an appraiser (i) provide additional information or explanation about the basis for a valuation, or (ii) correct objective factual errors in an appraisal report.

II. The lender shall ensure that the borrower is provided, free of charge, a copy of any appraisal report concerning the borrower's subject property immediately upon completion, and in any event no less than three days prior to the closing of the loan. The borrower may waive this three-day requirement. The lender may require the borrower to reimburse the lender for the cost of the appraisal.

III. The lender or any third-party specifically authorized by the lender (including, but not limited to, appraisal management companies and correspondent lenders) shall be responsible for selecting, retaining, and providing for payment of all compensation to the appraiser. The lender will not accept any appraisal report completed by an appraiser selected, retained, or compensated in any manner by any other third-party (including mortgage brokers and real estate agents).

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[1] An "Appraiser" must be licensed or certified by the state in which the property to be appraised is located. (USPAP) or state licensing standards, substandard performance, or otherwise improper or unprofessional behavior;

IV. All members of the lender's loan production staff, as well as any person (i) who is compensated on a commission basis upon the successful completion of a loan or (ii) who reports, ultimately, to any officer of the lender other than either the Chief Compliance Officer, General Counsel, or any officer who is not independent of the loan production staff and process, shall be forbidden from: (1) selecting, retaining, recommending, or influencing the selection of any appraiser for a particular appraisal assignment or for inclusion on a list or panel of appraisers approved to perform appraisals for the lender; (2) any communications with an appraiser, including ordering or managing an appraisal assignment; and (3) working together in the same organizational unit, or being directly supervised by the same manager, as any person who is involved in the selection, retention, recommendation of, or communication with any appraiser. If absolute lines of independence cannot be achieved as a result of the originator's small size and limited staff, the lender must be able to clearly demonstrate that it has prudent safeguards to isolate its collateral evaluation process from influence or interference from its loan production process.

V. Any employee of the lender (or if the lender retains an appraisal management company, any employee of that company) tasked with selecting appraisers for an approved panel or substantive appraisal review must be (1) appropriately trained and qualified in the area of real estate and appraisals, and (2) in the case of an employee of the lender, wholly independent of the loan production staff and process.

VI. In underwriting a loan, the lender shall not utilize any appraisal report prepared by an appraiser employed by:

1) the lender;

2) an affiliate of the lender;

3) an entity that is owned, in whole or in part, by the lender;

4) an entity that owns, in whole or in part, the lender

5) a real estate "settlement services" provider, as that term is defined in the Real Estate Settlement Procedures Act, 12 U.S.C.§ 2601 et seq.;

(6) an entity that is owned, in whole or in part, by a "settlement services" provider.

The lender also shall not use any appraisal report obtained by or through an appraisal management company that is owned by the lender or an affiliate of the lender, provided that the foregoing prohibitions do not apply where the lender has an ownership interest in the appraisal management company of 20% or less and where (i) the lender has no involvement in the day-to-day business operations of the appraisal management company, (ii) the appraisal management company is operated independently, and (iii) the lender plays no role in the selection of individual appraisers or any panel of approved appraisers used by the appraisal management company. Notwithstanding these prohibitions, the lender may use in-house staff appraisers to (i) order appraisals, (ii) conduct appraisal reviews or other quality control, whether pre-funding or post-funding, (iii) develop, deploy, or use internal automated valuation models, or (iv) prepare appraisals in connection with transactions other than mortgage origination transactions (e.g. loan workouts).

VII. The lender will establish a telephone hotline and an email address to receive any complaints from appraisers, individuals, or any other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, which hotline and email address shall be attended only by a member of the office of the General Counsel, Chief Compliance Officer or other independent officer. In addition: (1) each appraiser now or hereafter on any list of approved appraisers, or, upon retention by the lender, will be notified, in a separate document, of the hotline and email address and their purpose; and (2) each borrower, as part of a cover letter accompanying the provided appraisal, will be notified of the hotline and email address and their purpose. Within 72 hours of receiving any complaint, the lender will begin a preliminary investigation of the complaint and upon completing the inquiry (or, after a period not to exceed 60 days, whichever shall come first) shall notify the Independent Valuation Protection Institute and any relevant regulatory bodies of any indication of improper conduct. The name and any identifying information of the person or entity that has filed such a complaint shall be kept in strictest confidence by the office of the General Counsel, Chief Compliance Officer or other independent officer, except as required by law. The lender shall not retaliate, in any manner or method, against the person or entity which makes such a complaint.

VIII. The lender agrees that it shall quality control test, by use of retroactive or additional appraisal reports or other appropriate method, of a randomly-selected 10 percent (or other bona fide statistically significant percentage) of the appraisals or valuations which are used by the lender, including the results of automated valuation models, broker's price opinions or "desktop" evaluations. The lender shall report the results of such quality control testing to the Independent Valuation Protection Institute and any relevant regulatory bodies.

IX. Any lender who has a reasonable basis to believe an appraiser is violating applicable laws, or is otherwise engaging in unethical conduct, shall promptly refer the matter to the Independent Valuation Protection Institute and to the applicable State appraiser certifying and licensing agency.

X. The lender shall certify, warrant and represent that the appraisal report was obtained in a manner consistent with this Code of Conduct.

XI. Nothing in this Code shall be construed to establish new requirements or obligations that (1) require a lender to obtain a property valuation, or to use any particular method for property valuation (such as an appraisal or automated valuation model) in connection with any mortgage loan or mortgage financing transaction, or (2) affect the acceptable scope of work for an appraiser in connection with a particular assignment.

EXHIBIT 3
Foreclosure Consultants

NY CLS Real P § 265-a (2007)

§ 265-a. Home equity theft prevention

1. (a) The legislature finds and declares that homeowners who are in default on their mortgages or in foreclosure may be vulnerable to fraud, deception, and unfair dealing by home equity purchasers. The recent rapid escalation of home values throughout urban and rural areas has resulted in a significant increase in home equity, which constitutes the greatest financial asset held by many homeowners of this state. During the time period between the default on the mortgage and the scheduled foreclosure sale date, homeowners in financial distress, especially poor, elderly, and financially unsophisticated homeowners, are vulnerable to aggressive "equity purchasers" who induce homeowners to sell their homes for a small fraction of their fair market values, or in some cases even sign away their homes, through the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices.

(b) The legislature declares that it is the express policy of the state to preserve and guard the precious asset of home equity, and the social as well as the economic value of homeownership.

(c) The legislature further finds that equity purchasers may have a significant impact upon the economy and well-being of this state and its local communities, and therefore the provisions of this section are necessary to promote the public welfare.

(d) The intent and purposes of this section are to provide a homeowner with information necessary to make an informed and intelligent decision regarding the sale or transfer of his or her home to an equity purchaser; to require that the sales agreement be expressed in writing; to safeguard equity sellers against deceit and financial hardship; to ensure, foster and encourage fair dealing in the sale and purchase of homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to provide a cooling off period for equity sellers who enter into covered contracts; to afford equity sellers a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equity for the homeowners of this state.

2. The following definitions shall apply to this section:

(a) "Bona fide purchaser or encumbrancer for value" means anyone acting in good faith who purchases the residential real property from the equity purchaser for valuable consideration or provides the equity purchaser with a mortgage or provides a subsequent bona fide purchaser with a mortgage, provided that he or she had no notice of the equity seller's continuing right to, or equity in, the property prior to the acquisition of title or encumbrance, or of any violation of this section by the equity purchaser as related to the subject property.

(b) "Business day" means any calendar day except Sunday or the public holidays as set forth in section twenty-four of the general construction law.

(c) "Covered contract" means any contract, agreement, or arrangement, or any term thereof, between an equity purchaser and equity seller which:
(i) is incident to the sale of a residence in foreclosure; or
(ii) is incident to the sale of a residence in foreclosure or default where such contract, agreement or arrangement includes a reconveyance arrangement.

For purposes of this section, any reference to the "sale" of a residence by an equity seller to an equity purchaser shall include a transaction where an equity seller receives consideration from the equity purchaser, and a transaction involving a transfer of title to the equity purchaser where no consideration is provided to the equity seller.

(d) "Default" means that the equity seller is two months or more behind in his or her mortgage payments.

(e) "Equity purchaser" means any person who acquires title to any residence in foreclosure or, where applicable, default, or his or her representative as defined in this subdivision, except a person who acquires such title as follows:

(i) to use, and who uses, such property as his or her primary residence;

(ii) by a deed from a referee in a foreclosure sale conducted pursuant to article thirteen of the real property actions and proceedings law;

(iii) at any sale of property authorized by statute;

(iv) by order or judgment of any court;

(v) from a spouse, or from a parent, grandparent, child, grandchild or sibling of such person or such person's spouse;

(vi) as a not-for-profit housing organization or as a public housing agency; or

(vii) a bona fide purchaser or encumbrancer for value.

(f) "Equity seller" means a natural person who is a property owner or homeowner at the time of the equity sale.

(g) "Foreclosure" means that there is an active lis pendens filed in court pursuant to article thirteen of the real property actions and proceedings law against the subject property, or the subject property is on an active property tax lien sale list.

(h) "Property owner" or "homeowner" means any or all record title owners of the residential real property in foreclosure or, where applicable, default at the time of the equity sale.

(i) "Reconveyance arrangement" means:

(i) the transfer of title to residential real property by an equity seller who is in default or foreclosure, either by transfer of interest from an equity seller to an equity purchaser or by creation of a mortgage or other lien or encumbrance during the time of default or foreclosure that allows the equity purchaser to obtain legal or equitable title to all or part of the property, and

(ii) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the equity seller by the equity purchaser that allows the equity seller to regain possession of the property, which interest shall include but not be limited to a purchase agreement, option to purchase, or lease.

(j) "Representative" means a person who in any manner solicits, induces, arranges, or causes any equity seller to transfer title or solicits any member of the equity seller's family or household to induce or cause any equity seller to transfer title to the residence in foreclosure or, where applicable, default to the equity purchaser.

(k) "Residence" and "residential real property" means residential real property consisting of one- to four-family dwelling units, one of which the equity seller occupies or occupied at a time immediately prior to the equity sale as his or her primary residence.

3. Every covered contract and notice of cancellation attached thereto shall be written in letters of a size equal to at least twelve-point bold type, in English or in both English and Spanish if Spanish is the primary language of the equity seller, and shall be fully completed and signed and dated by the equity seller and equity purchaser. Any instrument of conveyance shall become effective no sooner than midnight of the fifth business day after the date on which the covered contract is executed.

4. All covered contracts shall contain the entire agreement of the parties and shall include, but not be limited to, the following terms:

(a) The name, business address, and the telephone number of the equity purchaser;

(b) The address of the residence in foreclosure or, where applicable, default;

(c) The total consideration to be given by the equity purchaser in connection with or incident to the sale;

(d) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature which the equity purchaser represents he or she will perform for the equity seller before or after the sale;

(e) The time, if any, at which physical possession of the residence is to be transferred to the equity purchaser and the residence vacated by the equity seller;

(f) The terms of any rental or lease agreement;

(g) The terms of any reconveyance arrangement;

(h) A notice of cancellation as provided in paragraph (a) of subdivision six of this section; and

(i) The following notice shall appear on the contract in immediate proximity to the space reserved for the equity seller's signature and shall be in at least fourteen-point bold type if the covered contract is printed or in capital letters if the covered contract is typed. The notice must contain the name of the equity purchaser and the date and time by which the covered contract must be cancelled. The notice shall be completed by the equity purchaser:

“NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract at any time before midnight of [----------] [----------] [----------] .
: : : (Date)
[----------] [----------] [----------] [----------]
: (Name of Equity Purchaser)
or anyone working for [----------] [----------] CANNOT ask you to
(Name of Equity Purchaser)

sign or have you sign any deed or any other document until your right to cancel this contract has ended. See attached notice of cancellation form for an explanation of this right. You should always consult an attorney or community organization before signing any legal documents concerning your home. It is advisable that you find your own attorney, and not consult with an attorney who has been provided to you by the purchaser. The law requires that this contract contain the entire agreement. You should not rely upon any other written or oral agreement or promise."

The equity purchaser shall accurately enter the date on which the right to cancel ends. The covered contract required by this section shall survive delivery of any instrument of conveyance of the residence in foreclosure or, where applicable, default, and shall have no effect on persons other than the parties to the covered contract.

5. (a) In addition to the right of rescission described in subdivision eight of this section, the equity seller has the right to cancel any covered contract with an equity purchaser until midnight of the fifth business day following the day on which the equity seller and equity purchaser sign a covered contract that complies with this section.

(b) Cancellation occurs when the equity seller, or a representative of the equity seller, personally delivers written notice of cancellation to the address specified in the covered contract or sends a letter via facsimile or other means of written communication, United States mail, or through an established commercial letter delivery service, indicating cancellation to the business address of the equity purchaser listed on the covered contract. Proof of facsimile delivery or proof of mailing creates a presumption that the notice of cancellation has been delivered.

(c) A notice of cancellation given by the equity seller pursuant to paragraph (a) of this subdivision need not take the particular form as provided with the covered contract and, however expressed, is effective if it indicates the intention of the equity seller not to be bound by the covered contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance with this subdivision, the equity purchaser shall return without condition any original covered contract and any other documents signed by the equity seller as well as any fee or other consideration received by the equity purchaser from the equity seller. Cancellation of the contract shall release the equity seller of all obligations to pay fees to the equity purchaser.

6. (a) The covered contract shall be accompanied by a form completed by the equity purchaser in duplicate, captioned "notice of cancellation" in at least twelve-point bold type if the covered contract is printed or in capital letters if the covered contract is typed. This form shall be attached to the covered contract, shall be easily detachable, and shall contain in type of at least twelve-point if the covered contract is printed or in capital letters if the covered contract is typed, the following statement written in the same language as used in the covered contract:

"NOTICE OF CANCELLATION

This contract was entered into on [----------] [----------] [----------] [----------]
(Enter date covered contract signed)
You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before midnight of [----------] [----------] . (Enter date)
To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice, or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to [----------] [----------] [----------] , at
(Name of purchaser) [----------] [----------] [----------] [----------]
(Street address of purchaser's place of business and facsimile number if any) NOT LATER THAN midnight of [----------] [----------] .
(Enter date)
If you wish to cancel this contract, sign and date both copies and return one copy immediately to the purchaser.
I hereby cancel this transaction.
[----------] [----------] [----------] / [----------] [----------] "
(Seller's signature) (Date)

(b) The equity purchaser shall provide each equity seller with two copies of the covered contract and attached notice of cancellation. The equity purchaser shall accurately enter the date on which the right to cancel ends.

7. (a) Before midnight of the fifth business day after the date on which the covered contract is executed, the equity purchaser shall not do any of the following:
(i) accept from any equity seller an execution of, or induce any equity seller to execute, any instrument of conveyance of any interest in the residence in foreclosure or, where applicable, default;
(ii) record with the county clerk any document, including, but not limited to, any instrument of conveyance, signed by the equity seller;

(iii) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure or, where applicable, default to any third party;

(iv) pay the equity seller any consideration; or

(v) suggest, encourage, or provide any form which allows the equity seller to waive his or her right to cancel or rescind under this section.

(b) An equity purchaser shall make no false or misleading statement regarding the value of the residence in foreclosure or, where applicable, default; the amount of proceeds the equity seller will receive after a foreclosure sale; the timing of the judicial foreclosure process; any contract term; the equity seller's rights or obligations incident to or arising out of the sale transaction; the nature of any document which the equity purchaser induces the equity seller to sign; or any other false or misleading statement concerning the sale of the residence in foreclosure or, where applicable, default, or concerning the reconveyance arrangement.

(c) An equity purchaser is prohibited from representing, directly or indirectly, that:

(i) the equity purchaser is acting as an advisor or a consultant, or in any other manner represents that the equity purchaser is acting on behalf of the equity seller;

(ii) the equity purchaser has certification or licensure that the equity purchaser does not have, or that the equity purchaser is not a member of a licensed profession if he or she is actually such a member;

(iii) the equity purchaser is assisting the equity seller to save the house unless the equity purchaser has a good faith basis for the representation; or

(iv) the equity purchaser is assisting the equity seller in preventing a completed foreclosure unless the equity purchaser has a good faith basis for the representation.

(d) It is unlawful for any equity purchaser to initiate, enter into, negotiate, or consummate any covered contract involving residential real property in foreclosure or, where applicable, default if such person, by the terms of such covered contract, takes unconscionable advantage of the equity seller.

8. (a) Any transaction involving residential real property in foreclosure or, where applicable, default which is in material violation of subdivision three, four, six, seven or eleven of this section is voidable and the transaction may be rescinded by the equity seller within two years of the date of the recording of the conveyance of the residential real property in foreclosure or, where applicable, default.

(b) Such rescission shall be effected by giving written notice to the equity purchaser and his or her successor in interest, if the successor is not a bona fide purchaser or encumbrancer for value as set forth in paragraph (c) of this subdivision, and by recording such notice with the county clerk of the county in which the property is located, within two years of the date of the recording of the conveyance to the equity purchaser. The notice of rescission shall contain the name of the equity seller and the name of the equity purchaser in addition to any successor in interest holding record title to the residential real property and shall particularly describe such residential real property. The equity purchaser and his or her successor in interest if the successor is not a bona fide purchaser or encumbrancer for value as set forth in paragraph (c) of this subdivision, shall have twenty days after the delivery of the notice in which to reconvey title to the property free and clear of encumbrances created subsequent to the rescinded transaction and which are due to the actions of the equity purchaser. As a condition of the reconveyance of title, the equity seller shall return to the equity purchaser any consideration received from the equity purchaser as part of the original transaction. Upon failure to reconvey title within such time, the equity seller may bring an action to enforce the rescission and for cancellation of the covered contract and deed.

(c) The provisions of this subdivision shall not affect the interest of a bona fide purchaser or encumbrancer for value if such purchase or encumbrance occurred prior to the recording of the notice of rescission pursuant to paragraph (b) of this subdivision. Knowledge that the property was residential real property in foreclosure or, where applicable, default shall not impair the status of such persons or entities as bona fide purchasers or encumbrancers for value. This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure or, where applicable, default.

(d) In any action brought to enforce a rescission pursuant to this section, a court may award to a prevailing equity seller costs and reasonable attorneys' fees.

9. An equity seller may bring an action for the recovery of damages or equitable relief against an equity purchaser for a violation of subdivision three, four, six, seven or eleven of this section. A court may award to a prevailing equity seller actual damages plus reasonable attorneys' fees and costs. In addition, the court may award equitable relief, or increase the award in an amount not to exceed three times the equity seller's actual damages, or both, if the court deems such award proper. Any action brought pursuant to this section shall be commenced within six years after the date of the alleged violation.

10. (a) (i) Any equity purchaser who, with intent to defraud, violates subdivision seven of this section or engages in any practice which would operate as a criminal fraud or deceit upon an equity seller shall, upon conviction, be guilty of a class E felony and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both.

(ii) Any equity purchaser who knowingly violates subdivision seven of this section shall, upon conviction, be guilty of a class A misdemeanor and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both. A second offense within five years shall be a class E felony and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both.

(b) An equity purchaser who, when acting in good faith, violates subdivision seven of this section, shall not be deemed to have violated such subdivision if the equity purchaser:

(i) establishes by a preponderance of the evidence that the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors;

(ii) notifies the equity seller within ninety days of the contract date of the compliance failure; and

(iii) makes appropriate restitution to the equity seller and appropriate adjustments to the transaction within ninety days of the contract date. Examples of bona fide errors include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error, nor is a failure to provide notices or other material information required by this section.

11. (a) In any transaction in which an equity seller purports to grant a residence in foreclosure or default to an equity purchaser by any instrument which appears to be an absolute conveyance and reserves to himself or herself or is given by the equity purchaser an option to repurchase, such transaction shall create a presumption that the transaction is a loan transaction, which may be overcome by clear and convincing evidence to the contrary, and that the purported absolute conveyance is a mortgage.

(b) An equity purchaser shall not enter into a reconveyance arrangement unless:

(i) The equity purchaser verifies by appropriate documentation that the equity seller has or is likely to have a reasonable ability to pay for the subsequent conveyance of an interest back to the equity seller. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to purchase the property within the term of the option to purchase. There is a rebuttable presumption that the equity purchaser has not verified reasonable payment ability if the equity purchaser has not obtained documents other than a statement by the equity seller of assets, liabilities and income. The standard for determining a reasonable ability to pay shall be the same standard as set forth in paragraph (k) of subdivision two of section six-l of the banking law;

(ii) the equity purchaser and the equity seller complete a closing for any reconveyance arrangement in which the equity purchaser obtains a deed or mortgage from an equity seller. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by an attorney who is not employed by or an affiliate of the equity purchaser;

(iii) the equity purchaser obtains the written consent from the equity seller before the equity purchaser grants any interest in the property to anyone else during such time as the equity seller maintains an interest in the property, including an option to repurchase; and

(iv) the equity purchaser notifies all existing mortgage lien holders of his or her intent to accept conveyance of an interest in the property from the equity seller, and fully complies with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions or meeting all qualification requirements for assuming the repayment of the mortgage.

(c) An equity purchaser shall not enter into repurchase or lease terms as part of the reconveyance arrangement that are unfair or commercially unreasonable, and is prohibited from engaging in any other unfair or unconscionable conduct.

(d) As part of a reconveyance arrangement, an equity purchaser shall either:

(i) ensure that title to the residence is reconveyed to the equity seller; or

(ii) make a payment to the equity seller such that the equity seller has received consideration in an amount of at least eighty-two percent of the fair market value of the property within one hundred twenty days of either the eviction or voluntary relinquishment of possession of the residence by the equity seller. The equity purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within such one hundred twenty-day period. The accounting shall be on a form prescribed by the banking department. For purposes of this subparagraph, the following applies:

(A) there is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate establishes the fair market value of the property;

(B) the time for determining the fair market value amount shall be determined in the reconveyance arrangement as either at the time of the execution of the reconveyance arrangement or at resale to a bona fide purchaser. If the covered contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within one hundred twenty days of the eviction or voluntary relinquishment of the property by the equity seller. If the covered contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within one hundred twenty days of the eviction or voluntary relinquishment of the property by the equity seller, the fair market value shall be determined by an appraisal conducted within ten days after the end of such one hundred twenty-day period and payment, if required, shall be made to the equity seller. If payment is not made to the equity seller at such time, the fair market value shall be recalculated as the resale price on resale and payment shall be made to the equity seller within fifteen days of resale. A detailed accounting of the basis for the payment amount shall be made within fifteen days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the banking department;

(C) "consideration" shall mean any payment or thing of value provided to the equity seller, including unpaid lease payments owed by the equity seller prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the reconveyance transaction, payment of money to satisfy a debt or legal obligation of the equity seller or the reasonable cost of repairs for damage to the dwelling caused by the equity seller beyond ordinary wear and tear; but shall not include amounts imputed as any fee paid directly or indirectly to the equity purchaser, or his or her representative, incident to a reconveyance arrangement, except for reasonable costs paid to third parties necessary to complete the reconveyance.

(D) "resale" means a bona fide market sale of the property subject to the reconveyance arrangement by the equity purchaser to an unaffiliated third party.

(E) "resale price" means the purchase price of the property on resale.

(e) This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure or default.

(f) All deeds or conveyances subject to a reconveyance arrangement shall state explicitly on the face of the document that the conveyance is subject to a reconveyance arrangement, and shall state the terms of the reconveyance arrangement. Moreover, all reconveyance arrangements must be simultaneously recorded by the equity purchaser with the subject deed in the county clerk's office where the property is located.

12. Any provision of a covered contract which attempts or purports to limit the liability of the equity purchaser under this section shall be null and void. Inclusion of such provision shall at the option of the equity seller render the covered contract void. The equity purchaser shall be liable to the equity seller for all damages proximately caused by such provision. Any provision in a covered contract which attempts or purports to require arbitration of any dispute arising under this section shall be void at the option of the equity seller.

13. In addition to the other remedies provided, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than twenty-five thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

14. This section shall not apply to a prior lien holder where the lien was properly recorded prior to the execution of any covered contract by both the equity seller and the equity purchaser nor shall any provision of this section be deemed to impair any equity or other available rights of any such prior lien holder.

15. The provisions of this section shall be liberally construed to effectuate the intent and to achieve the purposes set forth in subdivision one of this section.

16. The provisions of this section are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

17. Any waiver of the provisions of this section shall be void and unenforceable as contrary to the public policy.

18. If any provision of this section, or if any application thereof to any person or circumstances is held unconstitutional, the remainder of this section and the application of its provisions to other persons and circumstances shall not be affected thereby.

EXHIBIT 4
Mortgage Fraud Indictment – Ross, Locke

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JAN 30 PM 1:35
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Cause No. 1:08-cr-
)
BEVERLY ROSS, and) 1:08-cr-0018-LJM-KPF
DONELLA LOCKE)
)
Defendants.)

INDICTMENT

COUNT 1
(Conspiracy to Commit Wire Fraud)
[18 U.S.C. §§ 371 and 1343]

The Grand Jury charges that:

I. General Allegations

At all times material to these charges:

1. The defendant, BEVERLY ROSS, portrayed herself as an entrepreneur who invested in real estate and operated several businesses. Three examples of business names that BEVERLY ROSS was associated with were Design Masters, Inc., Rose Ross Realty, LLC, and Ross and Ross Investments, LLC.

2. The defendant DONELLA LOCKE portrayed herself as a real estate investor and a realtor. DONELLA LOCKE associated herself with a business called Locke and Key Investments, and variations of this name, *i.e.*, L&K Interior Designs, Locke & Key Real Estate, and L&K Investments.

3. BEVERLY ROSS and DONELLA LOCKE recruited buyers / borrowers to purchase residential properties in the Southern District of Indiana. BEVERLY ROSS and DONELLA LOCKE worked with mortgage brokers, title companies, and appraisers to accomplish the sale of these properties to the recruited buyers / borrowers. BEVERLY ROSS and DONELLA LOCKE then received funds from the closings to which they were not entitled.

II. The Conspiracy to Violate Federal Law

4. Beginning in or about 2004 and continuing until at least 2007, within the Southern District of Indiana and elsewhere, BEVERLY ROSS and DONELLA LOCKE, the defendants herein, did knowingly conspire and agree with each other and with persons both known and unknown to the Grand Jury to commit an offense against the United States; that is, to knowingly devise and participate in a scheme to defraud and in a scheme to obtain money and property from a financial institution by means of false and fraudulent pretenses, representations and promises, which scheme affected a financial institution and, for the purpose of executing that scheme, did transmit or cause to be transmitted by means of wire communication in interstate commerce, any writing, signs, signals, pictures, or sounds, in violation of Title 18, United States Code, Sections 371 and 1343.

III. The Ways and Means of the Conspiracy

5. One or more of the co-conspirators identified a property to acquire. One or more of the defendants recruited a buyer / borrower who then agreed to purchase the property in exchange for a sum of money the buyer would receive at the closing. One or more of the defendants also employed recruiters who would find additional buyers / borrowers. In most cases, the buyer / borrower believed that they were lending their money and credit information for a short time for the purpose of enabling someone else with a lower credit score to purchase

the property. In some cases, one or more of the defendants represented to the buyer / borrower that the property would be used for a group home. In some cases, one or more of the defendants represented to the buyer / borrower that professionals would lease the home and make the payments. In most cases, the buyer / borrower never received the keys to the property at the closing and never intended to live in the property. In most cases, the buyer / borrower believed that another individual, whom they never met, would actually be making the mortgage payments and if they did not, then one or more of the defendants would make the payments. In most cases, no regular and timely payments were made by other individuals or by one or more of the defendants. In most cases, the buyer / borrower did not, in fact, bring down payment funds to the closing. In most cases, the buyer / borrower did not have the financial resources to support the mortgage payments. In a few cases, one or more of the defendants used the name of a buyer / borrower who never consented to their name being used to purchase a property. In some cases, one or more of the defendants purchased the property in one or more of the defendants' names.

6. One or more of the co-conspirators created or caused to be created false and fraudulent loan applications that were submitted to the lending institutions for its consideration in determining whether to lend funds for the purchase of the property. In some cases, the buyer / borrower income reflected on the loan application was an inflated amount. In some cases, the buyer / borrower's employer was misrepresented. The buyer / borrower did not ever give permission to falsify an employer name or to inflate the true income amount.

7. In most cases when a first and second mortgage was obtained, the buyer / borrower did not realize at the time of closing that there was a second mortgage.

8. One or more of the co-conspirators created false and fraudulent settlement statements that were submitted to the lending institutions that the lending institutions accepted as reflecting

truthful information as to what occurred at the closing. In some cases, the settlement statement reflected that the buyer / borrower brought down payment funds to the closing when, in fact, the buyer / borrower never did. In some cases, the settlement statement reflected that one or more of the defendants received money for construction work to the property when, in fact, little or no construction work was ever performed. In a few cases, two settlement statements were prepared with different information on the copies prepared for the sellers vs. the lenders; the lenders had no knowledge of the other settlement statement.

IV. Acts Committed in Furtherance of the Conspiracy

9. In order to accomplish the objectives of the conspiracy, the defendants committed, among others, the following overt acts:

A. False documents and other fraudulent information was created or caused to be created by BEVERLY ROSS and DONELLA LOCKE to show to the mortgage lenders that the buyer / borrower's income and assets were higher than they actually were for the purpose of qualifying the buyer / borrower for the mortgage loan.

B. False documents and other fraudulent information was created or caused to be created by BEVERLY ROSS and DONELLA LOCKE, to show work had been done or would be done to justify to the mortgage lenders the sales price. The closing proceeds included a check to one or more of the defendants, or an associate of one or more of the defendants, for this work. In fact, little or no work was ever done.

C. BEVERLY ROSS and DONELLA LOCKE represented to the buyer / borrower that in exchange for the buyer /borrower's credit information and willingness to purchase a property, the buyer/borrower would receive funds after closing and that the mortgage payments for the property would be made by another individual or company. In fact, few or no mortgage payments were actually made.

D. For example, on or about August 11, 2006, BEVERLY ROSS recruited a buyer / borrower to purchase 8201 Traders Hollow Court, Indianapolis, Indiana for $1,424.000. The sellers originally listed the house for approximately $1,300,000, and the agreed sales price was approximately $1,150,000. BEVERLY ROSS told the buyer / borrower that she needed an investor, that he would earn several thousand dollars if he purchased the property in his name, and that he would not have to make any mortgage payments. The purchase agreement reflected that the buyer / borrower earned $32,000 per month which was not truthful because the buyer / borrower earned no more than $70,000 per year. The buyer / borrower did not authorize any fictitious information to be placed on the loan application. DONELLA LOCKE portrayed herself as the buyer / borrower's realtor to the sellers and represented that the property needed to appraise at approximately $1,400,000 to finance repair work. DONELLA LOCKE requested the sellers give her access to the property several times to different appraisers. At the time of closing, two settlement statements were prepared: (1) One settlement statement, given to the sellers, reflected that the sellers would receive $528,936.72 from the closing which was their understanding and which they actually received; and (2) The second settlement statement, given to the lender, reflected that the buyer / borrower brought down payment funds in the amount of $157,389.99, which he did not do, and that the sellers would receive $807,556.66 which was an inflated amount from the amount that the sellers actually received. Design Masters received approximately $121,229. DONELLA LOCKE received approximately $28,980.

E. For example, on or about November 21, 2006, BEVERLY ROSS recruited a husband and wife to be the buyers / borrowers to purchase 11106 Towne Road, Carmel, Indiana, for $999,950. The buyers / borrowers earned approximately $2800 monthly in retirement income and did not qualify to purchase a house for $999,950. BEVERLY ROSS told the buyers / borrowers that other people would make the mortgage payments but if they did not, then her company would make them. BEVERLY ROSS promised the buyers/ borrowers several thousand dollars in exchange for purchasing the house, and several more thousand dollars if they would refer other investors like them to her. In fact, few mortgage payments were ever made after the closing. The closing documents show that the buyers / borrowers received a check for $13,729, which they did not receive. A separate check was made to Locke & Key for $204,500 which represented approximately $11,925 for DONELLA LOCKE's real estate commission and no reason stated for the remaining funds.

All in violation of Title 18, United States Code, Sections 371 and 1343.

COUNTS 2-37
Wire Fraud and Aiding and Abetting
[18 U.S.C. §1343 and 2]

The Grand Jury charges that:

10. The Grand Jury incorporates by reference paragraphs 1 through 9 as set forth above.

11 On or about the dates listed as to each of the Counts below, within the Southern District of Indiana, Indianapolis division and elsewhere, the defendants, listed by count below, having devised and intended to devise a scheme to obtain moneys, funds, and other property under the control of various mortgage lenders, including MortgageIt Inc., Lime Financial Services, Argent Mortgage, WMC Mortgage Corp., and others, by means of false and fraudulent pretenses, representations and promises, and for the purposes of executing the scheme did cause wire communications to be transmitted in interstate commerce for the purpose of executing such scheme, and did aid and abet such conduct, as specified below:

COUNT	Defendant(s)	Property	Date of Closing / Approximate Date of Wire Transfer	Approximate Amount(s) Transferred by Wire for Loan(s)
2	Beverly Ross Donella Locke	6550 Pennan Court, Noblesville, IN	August 20, 2004	\$500,000 (First mortgage) \$119,087.72 (Second mortgage)
3	Beverly Ross Donella Locke	11106 Lexi Lane, Fortville, IN	October 22, 2004	\$477,000
4	Beverly Ross	11106 Lexi Lane, Fortville, IN	June 23, 2006	\$520,000 (First mortgage) \$127,208.96 (Second mortgage)
5	Beverly Ross Donella Locke	13408 Beckwith Dr., Westfield, IN	December 23, 2004	\$440,910
6	Beverly Ross	13408 Beckwith Dr., Westfield, IN	December 22, 2005	\$500,000
7	Beverly Ross Donella Locke	14528 Brookfield Dr., Fortville, IN	October 29, 2004	\$500,000
8	Donella Locke	11960 Bird Key Blvd., Fishers, IN	January 12, 2005	\$298,300
9	Donella Locke	2535 Dawn Ridge Dr., Westfield, IN	March 9, 2005	\$504,000 (First mortgage) \$123,738 (Second mortgage)
10	Donella Locke	1527 RedSunset Lane Brownsburg, IN	March 11, 2005	\$336,501
11	Donella Locke	12881 Elbe St., Noblesville, IN	April 8, 2005	\$289,000
12	Beverly Ross	11133 Desert Glen, Fishers, IN	April 11, 2005	\$440,000 (First mortgage) \$108,097 (Second mortgage)
13	Beverly Ross	6927 Bentgrass Dr., Indianapolis, IN	May 13, 2005	\$576,000 (First mortgage) \$141,862.50 (Second mortgage)

14	Donella Locke	362 Arborglen, Brownsburg, IN	May 27, 2005	$280,000
15	Beverly Ross	9318 Seascape Dr., Indianapolis, IN	September 9, 2005	$440,000 (First mortgage); $108,448 (Second mortgage)
16	Beverly Ross	9893 Soaring Eagle, McCordsville, IN	September 29, 2005	$594,800 (First mortgage); $144,160.45 (Second mortgage)
17	Beverly Ross	8607 WoodReed Ct., Indianapolis, IN	November 4, 2005	$680,000 (First mortgage) $161,284.95 (Second mortgage)
18	Beverly Ross	6846 Abercon Trail, Noblesville, IN	February 21, 2006	$588,000 (First mortgage); $145,328.08 (Second mortgage)
19	Beverly Ross	6807 Abercon Trail, Noblesville, IN	April 11, 2006	$438,750 (First mortgage); $199,481.80 (Second Mortgage)
20	Beverly Ross Donella Locke	2110 Emerald Pines, Westfield, IN	April 14, 2006	$324,000 (First mortgage) $79,389 (Second mortgage)
21	Beverly Ross	6802 Carters Grove Dr., Noblesville, IN	April 27, 2006	$504,000 (First mortgage) $178,470 (Second mortgage)
22	Beverly Ross	18680 Gretna Green, Noblesville, IN	May 12, 2006	$432,250 (First mortgage) $196,306.40 (Second mortgage)

23	Beverly Ross	5718 Toad Hollow Lane, Indianapolis, IN	May 31, 2006	$392,600 (First mortgage) $179,728.09 (Second mortgage)
24	Beverly Ross	7511 Hickory Drive, Nenevah, IN	July 7, 2006	$352,000 (First mortgage) $63,979 (Second mortgage)
25	Beverly Ross	11109 Fall Creek Road, Indianapolis, IN	July 28, 2006	$728,450
26	Beverly Ross Donella Locke	8201 Traders Hollow Ct., Indianapolis, IN	August 11, 2006	$950,000 (First mortgage) $327,574.26 (Second mortgage)
27	Beverly Ross	6871 Abercon Trail, Noblesville, IN	August 24, 2006	$419,900 (First mortgage) $103,537.92 (Second mortgage)
28	Beverly Ross Donella Locke	10804 Turne Grove, Fishers, IN	September 6, 2006	$660,700 (First mortgage) $162,407.29 (Second mortgage)
29	Beverly Ross Donella Locke	8020 Traders Hollow Ct., Indianapolis, IN	September 19, 2006	$493,350 (First mortgage) $262,828.24 (Second mortgage)
30	Beverly Ross	6791 Abercon Trail, Indianapolis, IN	September 29, 2006	$569,600 (First mortgage) $141,011.11 (Second mortgage)
31	Beverly Ross	13927 Waterway Blvd., Fortville, IN	October 23, 2006	$598,000 (First mortgage) $319,288.40 (Second mortgage)

32	Beverly Ross	410 Sapphire Dr., Carmel, IN	October 30, 2006	$554,925 (First mortgage) $183,312.48 (Second mortgage)
33	Beverly Ross	6879 Carters Grove Dr., Noblesville, IN	November 17, 2006	$526,435 (First mortgage) $280,672.56 (Second mortgage)
34	Beverly Ross Donella Locke	11106 Towne Rd., Carmel, IN	November 21, 2006	$699,965 (First mortgage) $297,286 (Second mortgage)
35	Beverly Ross	630 Silver Wraith Ct., Zionsville, IN	December 14, 2006	$611,800 (First Mortgage) $$258,939.36 (Second mortgage)
36	Beverly Ross	6814 Abercon Trail, Noblesville, IN	January 19, 2007	$980,000 (First mortgage) $197,180.14 (Second mortgage)
37	Beverly Ross	6655 Westminster Dr., Zionsville, IN	February 9, 2007	$562,500 (First mortgage) $184,151.67 (Second mortgage)

All in violation of Title 18, United States Code, Sections 1343 and 2.

A TRUE BILL:

[signature]

FOREPERSON

TIMOTHY M. MORRISON
Acting United States Attorney

by: Gayle L. Helart

Gayle L. Helart
Assistant United States Attorney

EXHIBIT 5
Mortgage Fraud Indictment – Lopez

ORIGINAL

FILED
NOV 09 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

'07 CR 2918H

UNITED STATES OF AMERICA, Plaintiff, v. ALEJANDRO LOPEZ (1) EMILIO LOPEZ (2) RAVINDERJIT SINGH SEKHON (3) LINDA VELASQUEZ (4), Defendants.	Criminal Case No. INFORMATION Title 18, U.S.C. Sec. 371 - Conspiracy to Commit Wire Fraud; Title 18, U.S.C. Sec. 981 (A)(1)(C) and Title 28, U.S.C. Sec. 2461(c)- Forfeiture

The United States Attorney charges:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Information:

1. Defendant Alejandro Lopez (Defendant A. Lopez) and his brother, Defendant Emilio Lopez (Defendant E. Lopez), headed, managed, and supervised the "Lopez Team," which consisted of, among

others, real estate agents and loan officers who conducted real estate and loan broker activities, including Defendants Ravinderjit Singh Sekhon (Defendant Sekhon) and Defendant Linda Velasquez (Defendant Velasquez). From in or about November 2002 until in or about November 2004, the Lopez Team worked at the Century 21 Homes First office, located at 904 West San Marcos Boulevard, San Marcos, California. After in or about November 2004, the Lopez Team worked at the Century 21 ElDorado office (ElDorado), located at 295 South Rancho Santa Fe Road, San Marcos, California. The co-owners of ElDorado were Defendant A. Lopez, Defendant E. Lopez, and the two principals of Century 21 Homes First.

2. In addition to acting as real estate agents, the Lopez Team originated and brokered mortgage loans for its clients, obtaining funding from several sub-prime mortgage lenders. The sub-prime lenders offered "stated income" or "no income verification" loans at higher interest rates than conventional loans.

3. Defendant A. Lopez, a California-licensed real estate broker, was the Sales Manager of ElDorado and supervised the day-to-day operations of the Lopez Team. He was the Chief Financial Officer and designated licensed officer of Applied Investments, Inc. and was the President and designated licensed officer of National Award Funding, Inc. The Lopez Team received commissions for its real estate and loan broker activities through payments to Applied Investments, Inc. and National Award Funding, Inc.

4. Defendant E. Lopez, a California-licensed real estate salesman, directed the Lopez Team's marketing efforts and assisted in the supervision of its operations. Defendant E. Lopez was the President of Applied Investments, Inc.

5. Defendant A. Lopez and Defendant E. Lopez hired Defendant Sekhon, who was Defendant A. Lopez's brother-in-law, as a loan officer. Defendant Sekhon helped complete loan applications and assembled loan documentation for Lopez Team clients who sought from the sub-prime lenders financing for home purchases and loan refinances.

6. Defendant A. Lopez and Defendant E. Lopez hired Defendant Velasquez. Defendant Velasquez scheduled appointments, met with Lopez Team clients, discussed with clients their payment options and the use of straw buyers (i.e., third parties to fraudulently act as home buyers and borrowers), and acted as a Spanish language translator for Defendant Sekhon. Defendant Velasquez entered into a database the clients' personal and financial information which Defendant Velasquez and other Lopez Team members obtained verbally and from information forms they had the clients complete.

7. The Lopez Team could access the password-protected database on the Lopez Team website, which resided on a computer server in Florida. The Lopez Team, including Defendant A. Lopez and Defendant Velasquez, used the database to monitor the status of its clients' real estate and loan transactions. Defendant Velasquez often printed client information from the database and provided it to Lopez Team loan officers so they could initiate loans. When Lopez Team members accessed the database from California, they transmitted interstate wire communications.

<u>COUNT 1</u>

[TITLE 18 U.S.C. 371 - CONSPIRACY]

8. Beginning in or about December 2003, and continuing to on or about June 9, 2005, in the Southern District of California, and

elsewhere, Defendants Alejandro Lopez, Emilio Lopez, Ravinderjit Singh Sekhon, and Linda Velasquez, did knowingly conspire with each other and others known and unknown to commit wire fraud, by knowingly devising and intending to devise and carrying out a material scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises and the intentional concealment and omission of material facts, and for the purpose of executing this fraudulent scheme, did knowingly use and cause to be used writings, signs, signals, and sounds to be transmitted by wire in interstate commerce; in violation of Title 18, United States Code, Section 1343.

<u>Manners and Means</u>

9. To further the conspiracy and effect the objects thereof, the Defendants utilized the following manner and means, among others:

a. attended events, including swap meets, and advertized in Spanish language newspapers and publications and on Spanish language radio stations to induce low income individuals from Hispanic communities to utilize the Lopez Team's fraudulent real estate and loan broker services.

b. fraudulently induced financially unqualified clients to disclose personal and financial information knowing that the Lopez Team would later alter the information on loan applications and other documents to meet the lenders' loan requirements.

c. entered personal and financial data provided by the clients into the Lopez Team database knowing that the Lopez Team would later fraudulently alter the information on loan applications and other documents to meet lenders' loan requirements.

d. fraudulently submitted to lenders loan applications that contained inflated incomes for clients and documents that falsely verified the inflated incomes.

e. fraudulently submitted to lenders loan applications that contained false employment information which the Lopez Team and others falsely verified in writing and by impersonating employers.

f. fraudulently purchased from tax preparers, and submitted to lenders, letters that misrepresented that the clients were business owners and that the tax preparers had prepared the clients' tax returns (CPA letters).

g. fraudulently submitted to lenders loan applications that contained inflated bank account balances which the Lopez Team falsely verified with fictitious verifications of deposits.

h. fraudulently caused banks to generate false verifications of deposits by depositing Lopez Team members' own personal funds into client bank accounts.

i. fraudulently altered and submitted to lenders bank statements that were not for the clients' bank accounts, including bank statements belonging to Defendant Sekhon, Defendant Sekhon's wife, and Defendant Velasquez.

j. fraudulently submitted to lenders loan applications and other documents, including false verifications of rent, which contained inflated rent amounts, false rent payment histories, and false lengths of residency for clients.

k. fraudulently listed or caused to be listed on documents submitted to, or accessed by lenders, the contact information for Lopez Team members and others, including Defendant Sekhon, Defendant Sekhon's wife, and Defendant Velasquez, as the clients' landlords to falsely verify fictitious rental information.

l. fraudulently used third parties with higher credit scores as straw buyers to purchase homes and obtain loans for financially unqualified clients knowing that the third parties would not occupy the homes and that the loan applications would misrepresent that the homes would be "owner-occupied."

m. fraudulently prepared and submitted to lenders fictitious letters (purportedly from creditors), and caused credit agencies to make false entries to clients' credit reports, which falsely bolstered the clients' credit and falsely listed the telephone numbers of Lopez Team members and others, including Defendant Sekhon, Defendant Sekhon's wife, and Defendant Velasquez, as contacts for the creditors.

n. fraudulently submitted to lenders loan applications that falsely represented that clients were United States citizens.

o. fraudulently submitted to lenders copies of false social security cards which the Lopez Team altered to eliminate the work restriction language.

p. fraudulently obtained $1,070,000.00 in loan commissions from the conspiracy.

OVERT ACTS

10. In furtherance of the conspiracy and to effect and accomplish the objects thereof, the following overt acts, among others, were committed within the Southern District of California, and elsewhere:

a. Between in or about February 2004 and November 2004, Defendant A. Lopez temporarily deposited his own money into clients' bank accounts so that banks would issue fraudulent verifications of deposits.

b. On or about July 30, 2004, Defendant Velasquez signed a false name, falsely claimed to be a property manager, and provided her cellular telephone number as a contact number on a fictitious verification of rent form.

c. In or before August 2004, Defendant E. Lopez met with tax preparer A.R. and arranged for A.R. to prepare false CPA letters.

d. On or about August 31, 2004, Defendant E. Lopez temporarily deposited $18,000 of his own money into a bank account to increase a client's bank account balance so that the client could meet a lender's cash requirements.

e. In or about November 2004, Defendant Sekhon altered bank statements belonging to his wife and included them in a client's loan file to qualify the client for a loan.

f. On or about December 6, 2004, Defendant Sekhon temporarily deposited $23,000 of his own money into a client's bank account causing a bank to generate a false verification of deposit.

g. In or about February 2005, Defendant A. Lopez requested Defendant Velasquez to provide copies of her bank statements so that the Lopez Team could alter and use them for a client's loan file.

h. In or about February 2005, at Defendant A. Lopez's direction, Defendant Velasquez provided Defendant Sekhon with a copy of her bank statements so that Defendant Sekhon could use them in a client's loan file.

i. On or about May 4, 2005, Defendant A. Lopez wrote a check in the amount of $750 to tax preparer A.R. as payment for false CPA letters.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS

11. As a result of the commission of the felony offense alleged in Count 1 of this Information, Defendants Alejandro Lopez, Emilio Lopez, Ravinderjit Singh Sekhon, and Linda Velasquez shall forfeit to the United States pursuant to Title 18, United States Code, Section 981 (a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from the proceeds traceable to the commission of the conspiracy of which the defendants are convicted, in the sum of $1,070,000.00 in United States currency, representing the proceeds derived from the conspiracy to commit wire defraud.

12. If any of the above-described property, as a result of any act or omission of the Defendants,

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot been subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), made applicable herein by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendants up to the value of the said property described above as being the subject of forfeiture.

DATED: Oct 18, 2007

KAREN P. HEWITT
United States Attorney

Yesmin E. Saide

YESMIN E. SAIDE
Assistant United States Attorney

Valerie H. Chu

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EXHIBIT 6
HUD Flip Rule

LEXSTAT 24 CFR 203.37A

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** THIS SECTION IS CURRENT THROUGH THE MARCH 13, 2008 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 24 -- HOUSING AND URBAN DEVELOPMENT
SUBTITLE B -- REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER II -- OFFICE OF ASSISTANT SECRETARY FOR HOUSING -- FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SUBCHAPTER B -- MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT AND OTHER AUTHORITES
PART 203 -- SINGLE FAMILY MORTGAGE INSURANCE
SUBPART A -- ELIGIBILITY REQUIREMENTS AND UNDERWRITING PROCEDURES
ELIGIBLE PROPERTIES

Go to the CFR Archive Directory

24 CFR 203.37a

§ 203.37a Sale of property.

(a) Sale by owner of record. (1) Owner of record requirement. To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract.

(2) Supporting documentation. The mortgagee shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to HUD as part of the application for mortgage insurance, in accordance with § 203.255(b)(12). This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed from the seller, or other documentation (such as a copy of a property tax bill, title commitment, or binder) demonstrating the seller's ownership.

(b) Time restrictions on re-sales. (1) General. The eligibility of a property for a mortgage insured by FHA is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance (the re-sale date). The mortgagee shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to HUD as part of the application for mortgage insurance, in accordance with § 203.255(b).

(2) Re-sales occurring 90 days or less following acquisition. If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a mortgage to be insured by FHA.

(3) Re-sales occurring between 91 days and 180 days following acquisition. (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a mortgage insured by FHA.

(ii) However, HUD will require that the mortgagee obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The mortgagee may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) HUD may revise the level at which additional documentation is required under § 203.37a(b)(3) at 50 to 150 percent over the original purchase price. HUD will revise this level by Federal Register notice with a 30 day delayed effective date.

(4) Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.

(i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a mortgage to be insured by FHA.

(ii) However, HUD may require that the lender provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At HUD's discretion, such documentation must include, but is not limited to, an appraisal from another appraiser. HUD may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum mortgage amount under § 203.18. Otherwise, the value supported by the first appraisal will be used to calculate the maximum mortgage amount.

(iv) HUD will announce its determination to require additional value documentation through issuance of a Federal Register notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. Further, the Federal Register notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The Federal Register notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. Any such Federal Register notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

(v) The level at which additional documentation is required under § 203.37a(b)(4) shall supersede that under § 203.37a(b)(3).

(5) Re-sales occurring more than 12 months following acquisition. If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

(c) Exceptions to the time restrictions on sales. The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act *(12 U.S.C. 1710);*

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by local and state government agencies; and

(8) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

(d) Sanctions and indemnification. Failure of a mortgagee to comply with the requirements of this section may result in HUD requesting indemnification of the mortgage loan, or seeking other appropriate remedies under 24 CFR part 25.

HISTORY: *[68 FR 23370, 23375,* May 1, 2003; *69 FR 77114, 77116,* Dec. 23, 2004; *71 FR 33138, 33142,* June 7, 2006]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
12 U.S.C. 1709, 1710, 1715b, 1715z-16, and 1715u; *42 U.S.C. 3535*(d).

NOTES: [EFFECTIVE DATE NOTE: *71 FR 33138, 33142,* June 7, 2006, revised paragraph (c), effective July 7, 2006.]
NOTES APPLICABLE TO ENTIRE TITLE:
CROSS REFERENCES: Farmers Home Administration, Department of Agriculture: For agricultural credit, see 7 CFR Chapter XVIII.
Office of Thrift Supervision, Department of the Treasury, 12 CFR Chapter V.
Department of Veterans Affairs regulations on assistance to certain veterans in acquiring specially adapted housing and guaranty of loans on homes: See Loan Guaranty, 38 CFR Part 36.

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: Federal Register citations affecting Part 203 high-cost limits are: *51 FR 596, 1249, 3333, 15883, 21159, 34962, 1986; 52 FR 11643, 17397, 28250, 32126, 34903, 37607, 42634, 45322, 4493, 7841, 1987;* 3365, 6922, 9869, 11998, 13405, 19897, 28871, 36449, 48637, 49856, 1988; *54 FR 14075, 16360, 31519, 1989; 55 FR 1312, 8464, 24076, 37463, 40168, 1990; 56 FR 14021, 22114, 36980, 66975, 1991; 57 FR 12715, 44098, 62187, 1992; 58 FR 13950, 44760, 47319, 1993]*

EXHIBIT 7
OFAC REGULATIONS

August 22, 2003

OFAC UPDATE
The Office of Foreign Assets Control (OFAC), part of the Department of the Treasury, enforces economic sanctions against certain foreign countries, terrorists, international narcotics traffickers, and others. These sanctions, which include Executive Order 13224, prohibit unauthorized transactions and freeze assets under U.S. jurisdiction. As part of its enforcement efforts, OFAC publishes a list of individuals, groups, and entities that are subject to these sanctions. These persons are collectively called "Specially Designated Nationals" or "SDN's." Their assets must be blocked, and all persons and entities subject to the jurisdiction of the United States are required by law to refrain from any transactions or dealings with them. Everyone in the United States, including real estate settlement providers, must take steps to guard against engaging in any prohibited transactions or dealings with SDN's.

Global Terrorism Sanctions Regulations, Interim Final Rule 68 FR 34195 [pdf]

OFAC has issued interim final regulations to enforce the prohibitions of Executive Order 13224. See 68 Fed Reg. 34196 (June 6, 2003). Among other things, these regulations make it clear that any prohibited transaction with a SDN is void, unless OFAC elects to permit the transaction. See 31 C.F.R. 594.202(a). Title companies and mortgage lenders should be aware that such transactions are presumptively void. OFAC may determine that that transaction is not void if the person involved can demonstrate that the violation was not willful and that the person did not have reasonable cause to know or suspect that the transaction was prohibited. See 31 C.F.R. 594.202(d). The interim final regulations also provide that except to the extent otherwise provided by law or unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any blocked property. See 31 C.F.R. 594.202(d).

31 CFR 594.201

§ 594.201 Prohibited transactions involving blocked property.

(a) Except as authorized by statutes, regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Foreign persons listed in the Annex to Executive Order 13224 of September 23, 2001, as may be amended;

(2) Foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(3) Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section; or

(4) Except as provided in section 5 of Executive Order 13224, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General:

(i) To assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of:

(A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or

(B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section; or

(ii) To be otherwise associated with any person whose property or interests in property are blocked pursuant to paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(i) of this section.

Note 1 to paragraph (a). Section 5 of Executive Order 13224, as amended, provides that, with respect to those persons designated pursuant to paragraph (a)(4) of this section, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under the International Emergency Economic Powers Act and the United Nations Participation Act if the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

Note 2 to paragraph (a). The names of persons whose property or interests in property are blocked pursuant to § 594.201(a) are published on OFAC's website, announced in the Federal Register and incorporated on an ongoing basis with the identifier [SDGT] in appendix A to 31 CFR chapter V.

Note 3 to paragraph (a). Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation pursuant to § 594.201(a) or who wish to assert that the circumstances resulting in designation no longer apply. Similarly, when a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds to have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person whose property or interests in property are blocked pursuant to § 594.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

Note 1 to § 594.201. Section 106 of the USA PATRIOT Act of 2001 (Pub. L. 107-56, Oct. 26, 2001) amended section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) to authorize explicitly the blocking of property and interests in property of a person or entity during the pendency of an investigation. The name of any person or entity whose property or interests in property are blocked pursuant to this authority appears on the Office of Foreign Assets Control's (OFAC) blocked persons list with the descriptor "[BPI-PA]." The scope of the property or interests in property blocked during the pendency of an investigation may be more limited than the scope of the blocking set forth in § 594.201(a). Inquiries regarding the scope of any such blocking should be directed to OFAC's Compliance Division at 202/622-2490.

Note 2 to § 594.201. The prohibitions set forth in this part are separate from and in addition to other parts of 31 CFR chapter V, including but not limited to the Terrorism Sanctions Regulations (part 595), the Terrorism List Government Sanctions Regulations (part 596), and the Foreign Terrorist Organizations Sanctions Regulations (part 597). The prohibitions set forth in this part also are separate and apart from the criminal prohibition, set forth at 18 U.S.C. 2339B, against providing material support or resources to foreign terrorist organizations designated pursuant to section 219 of the Immigration and Nationality Act, as amended.

HISTORY:
[68 FR 34196, 34198, June 6, 2003; 72 FR 4206, Jan. 30, 2007]

31 CFR 594.202

§ 594.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 594.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 594.201(a), unless the person with whom such property is held or maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d). The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Except to the extent otherwise provided by law or unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date there existed an interest of a person whose property or interests in property are blocked pursuant to § 594.201(a).

31 CFR 594.316

§ 594.316 Otherwise associated with.

The term "to be otherwise associated with," as used in § 594.201(a)(4)(ii), means:

(a) To own or control; or

(b) To attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services, to.

HISTORY:
[72 FR 4206, 4207, Jan. 30, 2007]

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601-1651, 1701-1706; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110-96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161.

NOTES:
[EFFECTIVE DATE NOTE: 72 FR 4206, 4207, Jan. 30, 2007, added this section, effective Jan. 26, 2007.]
NOTES APPLICABLE TO ENTIRE TITLE:
EDITORIAL NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 31, Chapters II, IV, V, VI, and VII, and Title 48, Chapter 10.
CROSS REFERENCE: General Accounting Office: See 4 CFR Chapter I.

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: For Federal Register citations regarding Policy Statements to Chapter V of Title 31, see: 58 FR 3228 (1993), 59 FR 8134, 15342 (1994), 60 FR 34142, June 30, 1995.]