typically requires at least the cooperation, if not the participation, of an appraiser, real estate broker, mortgage broker or other real estate professional. Such cooperation or participation does not always require any action on the part of the real estate professional. It can be implicit through the real estate professional's failure to disclose or correct a representation made by someone else which the professional knows to be false.

The consequences for the housing market differ only as to degree. The latter group causes far more in losses to the mortgage industry and ultimately the public because the people involved are not trying to stay in the property and never intended to make the payments required by the mortgage. Often their schemes will involve multiple properties and parties. They are motivated to commit mortgage fraud solely by the money that can be taken from a property. When they have done that or the threat of being caught increases they will often disappear. Individuals who provide false information to the lender to help secure their own housing lack the same kind of bad motivation and usually intend to make the payments to stay in the housing. But if they default on the loan because they really were not qualified, the community is still left with foreclosed housing and the individuals with damaged credit and credibility.

Mortgage fraud is accomplished through the use of false documents, identity theft, straw buyers, and sometimes the witting or unwitting assistance of real estate professionals. To protect themselves and their clients, real estate agents must be able to distinguish between legal and illegal mortgage practices. There are a number of different ways in which the real estate agent may inadvertently become involved in these schemes or involve their seller clients. Agents may be asked to interfere in the appraisal process, alter or not include parts of the purchase agreement that is provided to the lender or title company, intercept verifications of income or employment history or help out by hand carrying verifications provided by the buyers or others working with the buyer. Any of these activities could be a part of a mortgage fraud scheme.

Some common examples of mortgage fraud as described by the FBI include:

Property Flipping - Property is purchased, falsely appraised at a higher value, and then quickly sold. What makes property flipping illegal is that the appraisal information is fraudulent. The schemes typically involve one or more of the following: fraudulent appraisals, doctored loan documentation, inflating buyer income, etc. Kickbacks to buyers, investors, property/loan brokers, appraisers, title company employees are common in this scheme. A home worth $200,000 may be appraised for $400,000 or higher in this type of scheme.

Silent Second - The buyer of a property borrows the down payment from the seller through the issuance of a non-disclosed second mortgage. The primary lender believes the borrower has invested his own money in the down payment, when in fact, it is borrowed. The second mortgage is usually not recorded to further conceal its status from the primary lender.

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

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

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

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

As is demonstrated in each of the foregoing descriptions, a key element of the problem is the imbalance of information. One side, normally the borrower or someone working with the buyer, conceals information from or affirmatively misleads the lender. Anytime an agent suspects this may be the case, further investigation is warranted to rule out any involvement by the agent or their unwitting client in a fraudulent transaction. There are several clues which may alert the agent that there may be a problem.

One of the most important documents in detecting fraud is the ***original sales agreement and any addenda to that agreement***. It is the document which the real estate agent is most likely to be involved in preparing. Thus, care must be exercised in preserving its accuracy. Things to be sure of:

- The property is clearly identified
- All parties to the transaction are identified and have executed the agreement
- The signatures are legible or properly identified
- All riders and addendums are attached
- There are no blanks or inconsistent information in the purchase and sales agreement
- It accurately reflects the consideration to be paid by the buyer for the property

Other possible red flags:

- Significant sales price adjustments that are not supported by comparable market data possibly accompanied by request that list price in MLS be altered to reflect appraised value.
- Required use of a particular appraiser
- Down payment assistance programs that charge excessive fees or that attempt to place restrictions on how their participation is reported in contract documentation, including the HUD 1
- Large seller contributions, possibly in the form of provisions for large decorator or improvement allowances
- Mortgage brokers who refer pre-qualified buyers to agents
- Statement that the buyer will occupy the property is questionable. For example, the

buyer is retaining old property or there is unrealistic commute to the buyer employment
- Buyer has very limited credit history and existing history is with high rate consumer finance companies
- Credit history indicates the repayment of a prior obligation did not include any interest payments
- Unrealistic income for occupation
- Recent drastic increase in income due to a raise or a new job
- Sales contract, appraisal and title work disagree with respect to seller's name and appraisal shows property or comps previously sold in past year.

If these warning signs are present in your transaction, bring the situation to the attention of your broker. While fraud isn't involved every time one of these warning signs appear, the few minutes it will take to decide between innocent and fraudulent can save you and your broker time, money and maybe even your license, and reporting fraud will protect the communities in which you do business.

Mortgage fraud is more than a just a possibility for real estate professionals. Read the following fraud profile which describes one broker's experience and lesson.

An agent was asked by a friend to help in the acquisition of a distressed property. This friend was in the mortgage brokerage business with her husband. The agent successfully assisted her friend in the purchase. Unbeknownst to the agent, the buyers arranged a simultaneous closing for the same property to another buyer for double the original purchase price. The issues of fraud were as follows:

1. The second buyer was a straw buyer whose loan qualifications were "enhanced".

2. A fraudulent appraisal was obtained to substantiate the inflated second sale price to the lender funding the loan.

3. The simultaneous closing was doctored to allow the high LTV loan on the second transaction to close first in order to fund and close the first transaction.

4. Participation of the escrow closer is not documented but the closing sequence certainly should have raised questions.

5. Not surprisingly, the straw buyer did not perform on the loan and the lender took a large loss.

Outcome: The mortgage broker served Federal prison time. Unfortunately, his name has come up again following his release from prison. The agent was not prosecuted only because there was no evidence that she had any knowledge of the fraudulent second sale to the straw buyer.

Lesson learned: If the agent becomes aware of a short-term flip of a property for a lot more money, without justification for a higher value, the agent should be alerted that he or she could be implicated in a loan fraud investigation and take appropriate steps of self-defense.

Have your own story you would like to share or want to learn more about mortgage fraud? Go to http://www.realtor.org/letterlw.nsf/1006mortgagefraud

Prepared by the Risk Management Committee of the National Association of REALTORS®

REALTOR® NATIONAL ASSOCIATION OF REALTORS®
The Voice for Real Estate®

Mortgage Fraud

Recognizing the Signs

Financial crimes are one of the fastest growing areas of criminal activity in the United States and one of the fastest growing areas of financial crimes is mortgage fraud. Fraud involves two parties: one makes a false statement of fact material to the business involved and the other party relies on that statement to their detriment. In mortgage fraud false or inaccurate information in connection with a mortgage application is provided and that information causes a lender or another in the chain of approving and funding that loan to make the loan or to make the loan on terms and conditions different than if the true facts were known.

Mortgage fraud includes a whole category of illegal business dealings. The different schemes that may be used include, but are certainly not limited to, property flipping, equity skimming, application fraud, credit or income misrepresentation or asset and down payment misrepresentation. Mortgage industry professionals and law enforcement break these different schemes into two groups.

There is "***Fraud for Housing***" in which a borrower will knowingly provide false or at least inaccurate information regarding his or her qualification for the loan. This might be something as innocent sounding as fudging a little on their income levels or employment in order to qualify for the loan or for better terms on a loan.

Although we would like to see everyone be able to obtain the American Dream of homeownership, real estate agents must be careful when counseling purchasers to avoid any suggestion that enhancing certain facts may assist a buyer in qualifying for the necessary mortgage. The desire to be helpful can not override good sense and honesty. The REALTORS® Code of Ethics requires members to treat all parties to the transaction honestly, including those providing the financing for the purchase.

There is also "***Fraud for Profit***" which is sometimes referred to as "industry insider fraud" because it