

Mortgage Fraud Task Force Catches Many In Western PA

[On behalf of Dornish Law Offices, PC](#) | Apr 1, 2009 | [All, Real Estate Practice](#)

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In February, the Western Pennsylvania Mortgage Fraud Task Force celebrated its first anniversary by indicting fifteen more individuals in Federal Court for alleged offenses. The persons indicted face charges including closing real estate transactions with fraudulent HUD-1 Settlement sheets, misrepresenting the purchase prices, buyer down payments and source of buyers' funds to close, writing checks from lenders' funds before loans closed, among other charges. The list of over twenty persons indicted so far, some of whom are already in jail, includes a prominent Pittsburgh real estate attorney whose clients include many investors, two different mortgage brokers who work(ed) with many investors, and members and former members of our local real estate investors' associations, as well as no-investor buyers and sellers.

The task force is comprised of attorneys and investigators from the U.S. Attorney's Office and the Pennsylvania Attorney General's Office, F.B.I Agents, Agents of the U.S. Postal Inspector General's Office, and Representatives of the U.S. Department of Housing and Urban Development Inspector's Office. The task force also includes U.S. Secret Service Agents, Internal Revenue Service Agents, Pennsylvania Department of Banking investigators, Pennsylvania Department of State investigators and representatives of the Allegheny County Sheriff's and District Attorney's offices.

The over twenty indictments so far are the tip of the iceberg here, and we can anticipate many more indictments, as well as guilty pleas, trials and convictions over the next year. Some local mortgage brokers and real estate investors are already in Federal prison for their crimes, but Assistant U.S. Attorney Brendan Conway told me that over a hundred people are currently being investigated.

Unlike most crimes, where the evidence is often testimony about who said and did what, mortgage fraud investigation often starts with an indication

of improper activity from a buyer, seller, bank or closing officer, which leads very quickly to warrants being issued for the seizure of paper files, cancelled checks from closing agents and real estate agents, banks' and mortgage brokers' files on particular closings. Once the paper files are obtained and the information in them reviewed by members of the task force, a process which can take six months from the seizure of files, Federal Grand Juries of ordinary citizens are impaneled to hear the evidence of what the paper files show occurred, and if the jury believes the information against an individual is sufficient to convict them of a crime, the Grand Jury hands down an indictment, and the case is held for criminal trial in front of a judge and jury in Federal Court.

According to the Task Force's record so far, almost all of those indicted plead guilty to crimes and are sentenced to jail as well as to repayment of money made in the fraud or taxes not reported and paid. As for those who go to trial, the paper trail already in the hands of prosecutors, which formed the basis for the indictments in the first place, is available to all but play a video of the fraud occurring. Signatures on false loan applications, where the income, assets and/or down payment are exaggerated make the cases of application fraud. False agreements of sale, showing inflated sales prices and off the record deals between buyers and sellers, establish agreement of sale fraud. HUD-1s signed under penalty of federal law as true and correct by buyers, sellers and settlement attorneys or closing officers which show numbers completely inconsistent with checks signed by the attorney or settlement officer, and accepted and endorsed by the same buyers and sellers who signed the HUDs, prove settlement fraud. All that remains is for the prosecutors to link the various participants to the documents, and match the conduct reflected in the documents to the myriad of laws violated in each case.

As our justice system provides that anyone accused of a crime is presumed innocent until proven guilty, those whose files have been seized but who have not yet been indicted, and even indicted mortgage brokers, lawyers, appraisers and settlement agents can still write loans, practice law, appraise properties and close real estate transactions. But the Task Force believes most of those investigated will be indicted, and the vast majority of those indicted will be out of business, if not in jail in less than a year.

So how can you protect yourself as an investor from unwittingly being part of a mortgage fraud investigation, or worse being indicted and convicted? How can you help to stop Western Pennsylvania from being second in the

country only to central Florida in the number of pending mortgage fraud investigations and prosecutions?

The answers are deceptively simple. First, make sure your agreements of sale, whether as agent, buyer or seller, fully and accurately reflect all of the terms of the deal that they are complete when you sign them, and that you get a copy of what you sign. Nothing should be left off of the papers in side deal or understanding, and the whole set of documents reflecting the transaction should be provided to the buyer's lender.

Second, make sure that any loan application you sign as a borrower is completely and accurately filed in before you sign it, that you get a copy of the completed and signed application, and that you compare that application to the one you see and have to sign at closing. Your income, assets, and debts, the terms of the loan and the elements of the transaction, including price, income and expenses of the subject property, and the correct amount and source of funds for your down payment need to be disclosed on the application.

Third, read the HUD-1 you sign as a buyer or seller, and compare the numbers on that form to the actual checks you bring to or take from closing. Make sure all of the amounts reflected on your side of the settlement sheet are real, and what you expected based on the terms of your agreement of sale and, if applicable, your loan application.

If anyone asks you to participate in any way in a real estate transaction that doesn't sound quite right to you, or appears too good to be true, and then tells you that what they are asking you to do is proper and legal, and you have any doubt at all, ask them to describe exactly what they are asking you to do in a letter. Have them put the letter on their letterhead, with their signature at the end and mail it to you as well as faxing or giving you a copy. The mailing makes any fraud or deception in the letter additionally subject to prosecution for mail fraud, and may help to show you were a victim and not the perpetrator of the fraud.

If anything at any point in the transaction doesn't match up, have the transaction reviewed by your real estate lawyer, and have him or her give you a confidential, privileged legal opinion on your transaction before you go through with it. Relying on advice of counsel that something is not illegal is a pretty strong defense to you having the intent to commit a crime. Most crimes require *mens rea*, or the intent to commit a crime for you to be found guilty, or at least a reckless lack of concern for what the law requires to end up in jail, in this case, an ounce of prevention can well be worth

several years of freedom, and avoiding a criminal record which will follow you for the rest of your life.

And just to be sure you (and I) haven't missed anything in this article, Assistant U.S. Attorney Brendan Conway, who helps to run the Mortgage Fraud Task Force and investigate and prosecute fraud cases will be the main speaker at the ACRE of Pittsburgh meeting on Tuesday, April 7, at 8 pm, and he may even bring one or two investigators of F.B.I. agents with him. Brendan just spoke to a group of over 30 Allegheny County real estate attorneys in March, and even that group was surprised at some of the information he had to offer.

Everyone, including former members, members of other real estate groups, non-members, real estate agents, mortgage brokers, buyers and sellers, is invited to attend the April 7 meeting, at no charge as a public service of ACRE.

(Created April 2009)