



# The EAGLE

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## A Focus on Mortgage Fraud

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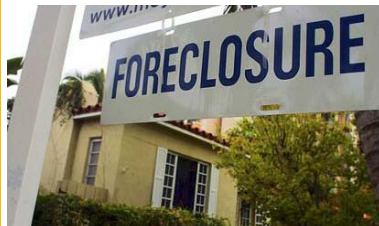
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## The American Dream?

Approximately two-thirds of all Americans own a home. For generations, home ownership has been the dream of families across the country, but over the past year or so, that dream has turned into a nightmare for many.



For countless homeowners, the poor economy and accompanying unemployment have made once-affordable homes financially unmanageable. Others have fallen prey to unscrupulous real estate brokers, lenders, and developers, who have misled them into buying houses beyond their means or have otherwise defrauded them. In a few instances, the homeowners themselves have committed the fraud in an effort to acquire real property or cash. Regardless of



intent or motive, however, these acts often have led to the same result, that being foreclosure.

### A Law Enforcement Issue

Foreclosed homes are important to law enforcement because they routinely lead investigators to mortgage fraud. A review of

documents supporting a mortgage that ended up in foreclosure will many times yield false statements about the borrower's employment or assets, the home's appraisal or other information that evidences fraud.

Foreclosed homes, which usually stand empty, are of interest to law enforcement for another reason too. They regularly attract illegal activity. Criminals routinely vandalize foreclosed homes and strip them of their copper. Then, sometimes, they use them to manufacture and deal drugs, store illegal firearms, or hide criminal associates. And, while it is true that neighbors can keep their eyes open for such activity, law enforcement, in the end, must handle these situations.

### Minnesota is Hard Hit

While law enforcement officials across the country are worried about the skyrocketing number of foreclosures, officials in Minnesota are especially concerned because foreclosures here jumped by 6,000 between 2007 and 2008.

The Minnesota Home Ownership Center reported 26,265 foreclosures statewide during 2008.

Washington County saw the sharpest increase, at 43 percent over 2007. Other counties that experienced dramatic leaps included Anoka, at 36 percent, and Ramsey, at 29 percent.

Although these statistics might suggest that foreclosures are

### From the Desk of...



**Frank Magill**  
United States Attorney

The crime of mortgage fraud is devastating. It costs the nation about \$6 billion a year. It costs individuals their life savings and, often, their dreams of home ownership. It impacts the elderly as well as the young, including our children.

Nationally, during Fiscal Year 2008, the FBI reviewed over 66,000 Suspicious Activity Reports in the area of mortgage fraud. Those reports led to more than 730 cases being opened for investigation, with most involving numerous defendants.

Investigations conducted by the FBI, the IRS, and others in 2008 resulted in charges related to mortgage fraud being filed at the federal level against about 560 defendants. At year's end, approximately 338 of those defendants had been convicted.

During the past eighteen months, this office has brought federal charges against approximately 40 people for mortgage-fraud crimes. Over half of them

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## Fighting Mortgage Fraud in Federal Court

### Why are Mortgage Fraud Rates Still Rising?

Even though fewer mortgages were issued in 2008 than in 2007, mortgage fraud jumped 26 percent during that year. While some of the increase may be attributed to more diligent reporting, much of it is due to the continual rise in fraud incidents.

According to the Mortgage Research Institute, which studied this issue on behalf of the Mortgage Bankers Association, mortgage fraud is actually more prevalent now than it was at the height of the housing boom. The Mortgage Research Institute found that borrowers and real estate professionals are now more willing to act illegally to meet the stringent loan qualifications recently developed by many lenders.

Currently, the most common fraud being perpetrated in connection to real estate is misrepresentation of mortgage-application information. In 61 percent of the cases included in the Mortgage Research study, borrowers or real estate professionals lied about a loan applicant's income or related data on a mortgage form.

Investigators believe the spike in mortgage fraud can also be blamed in part on the recession. They say some people in real estate claim misrepresentation of applicant information is necessary in order to finalize sales in this poor economic environment. Likewise, some borrowers insist lying about personal information is the only way they can buy homes at

Unscrupulous real estate brokers, predatory lenders, and dishonest developers use unwitting buyers in illegal schemes to make money through the mortgage process. At the same time, some home buyers scam lenders in their own attempts to acquire real estate or cash illegally.

Such actions constitute mortgage fraud, a crime that has occurred with greater frequency and with more disastrous effects over the past couple of years. In fact, economists blame the spike in mortgage fraud for much of the current international credit crisis.

According to the FBI, complaints of mortgage fraud have more than tripled nationwide since 2003. Minnesota, the FBI reports, has been hit especially hard. It now ranks among the top 15 states in the country for mortgage fraud, with urban and rural areas alike experiencing its devastating consequences.



### Federal Prosecutors Take Action

In U.S. Attorney offices across the country, prosecutors, aided by federal, state, and local law enforcement, are fighting back. They are pursuing cases against those who have stolen the dream of home ownership from law-abiding citizens or have otherwise contributed to the current economic climate through their schemes to commit mortgage fraud.

In a 2008 case out of the U.S. Attorney's Office in Minnesota, for example, a 50-year-old Chaska woman and a 38-year-old Buffalo woman were

sentenced federally for money laundering after stealing more than \$2.5 million through mortgage fraud. Molly Heise, of Chaska, was ordered to serve 70 months in federal prison for taking money from the clients of her real estate closing company, Profile Title and Escrow Corporation.

**Mortgage fraud includes a material misstatement, misrepresentation, or omission relied upon by an underwriter or lender to fund, purchase, or insure a loan.**

The woman who served as the company's chief financial officer, Christine Hein, of Buffalo, was given two years of probation.

According to documents on file with the court, Profile accepted millions of dollars in wire transfers and check deposits

from buyers and lenders. The money was to be held in escrow for the purpose of closing residential real estate deals.

Chicago Title Insurance, acting as Profile's underwriter, directed Profile to deposit the funds into an account Chicago Title would monitor. Heise, however, caused \$370,000,000 to be placed in a secret account. She then used some of that money to pay for personal expenses.

In addition to prison time, Heise also was directed to pay \$3.9 million in restitution. Hein, who admitted taking about \$134,000 from the secret account to buy a home, was directed to pay that amount in restitution.



In another 2008 federal case out of Minnesota, the owners of Parish Marketing and Development Corp., a well-known Minnesota home-building company, were sentenced to prison for mortgage fraud. Their scheme involved 200



properties, primarily in the New Prague, New Market, and Lonsdale areas, and generated nearly \$100 million in ill-gotten loan proceeds.

Michael Parish, age 63, of Eagan, was sentenced to 156 months in prison, while his wife and company co-owner, Ardith Parish, age 62, received a 60-month sentence. Several others, including the Parishes' son-in-law, also were ordered to prison for their roles in the conspiracy to commit mortgage fraud.

Their illegal acts included using "straw buyers" to purchase homes built by Parish Marketing. Those straw buyers often failed to visit the properties before purchasing them and seldom executed sales documents, allowing, instead, others involved in the conspiracy to sign their names. Moreover, home loan applications routinely included false information, such as inflated property appraisal figures. And, once the properties were purchased, Parish Marketing, rather than the straw buyers, made the mortgage payments or let foreclosure occur. These actions resulted in a total loss of between \$20 million and \$50 million for more than fifty victims.

In a more recent federal case in Minnesota, a 37-year-old man, also from Eagan, was sentenced to 87 months in federal prison after pleading guilty to wire fraud and identity theft in connection to mortgage fraud. John M. Rubischko admitted that between



2003 and 2007, he obtained and used the identities and personal information of other people, without their knowledge, to obtain approximately \$1.8 million in bank loans, credit, and mortgages. To accomplish this, he paid an array of bank employees to notarize forged documents, create false documents, misapply funds, and conceal transactions.

Rubischko was a mortgage broker, and he committed these illegal acts through businesses he operated, including Family First Mortgage, All Fund Mortgage, and MortgageBanc.us. The money he acquired through this illegal activity was used to buy personal property and homes. His victims included his elderly mother, whose identity he stole to buy property in Prior Lake.

### Prosecutions Remain Strong

The Justice Department must remain focused on a wide range of issues, the primary being the fight against terrorism. However, Department officials have pledged that mortgage fraud, which has caused families, communities, the country, and even the global economy much hardship over the past 18 months, will continue to be a prosecutorial priority. The U.S. Attorney

in the District of Minnesota agrees, saying, "This office is committed to doing its part to restore integrity to the home mortgage system." ■

*Editor's Note: For the story about one of the biggest mortgage fraud cases in Minnesota History, see "TJ Waconia," on Page 4.*

## The American Dream?

*Continued from Page 1*

primarily an urban problem, they are not. While the number of foreclosures may be greater in urban areas, the rate of foreclosure is actually higher in rural Minnesota. In Isanti County, for example, 3.27 percent of all homes were in foreclosure during 2008, giving it the highest foreclosure rate

of any county in the State. Sherburne, Mille Lacs, Wright, and Scott counties followed closely behind.

As a result, law enforcement in all cities and towns across the State must be mindful of foreclosures and how they impact crime

and community safety. With foreclosures still on the rise, this is not an issue that will be fading away anytime soon. ■

## Frank Magill, U.S. Attorney

*Continued from Page 1*

have been convicted and are currently serving time in federal prison. Two of them were sentenced to ten years or more.

Yet, the fight goes on, as mortgage fraud continues to rise. In fact, the FBI reported that in 2008, Minnesota was one of the top 15 states plagued by that crime.

With the support of our law enforcement partners, however, we in this office, along

with our counterparts in the State Attorney General's Office and the county attorney offices, will keep working to ferret out mortgage fraud, prosecute the criminal wrongdoers, and restore the dream of home ownership for those Minnesotans victimized by this crime.

To that end, this issue of The EAGLE provides information about what is being done at the State and federal levels to

address mortgage fraud. It also highlights some of the laws that have served as the basis for mortgage-fraud prosecutions. Finally, it offers resources that may be helpful in dealing with this crime. I hope you find this material useful in your law enforcement efforts as well as your community outreach, and I thank you for your efforts in this area. ■





## The Case of TJ Waconia

Between 2005 and 2007, TJ Waconia, a Roseville real estate company, purchased 162 homes throughout the Twin Cities. Within a few weeks of buying each one, Jonathan Helgason and Thomas Balko, the owners of TJ Waconia and other companies collectively called the TJ Group, sold the property to a so-called investor.

That investor, who was really nothing more than a straw buyer, purchased each house, sight unseen, at a price set by Helgason and Balko. That price was often \$20,000 to \$60,000 more than the TJ Group paid for the same property just a few weeks before. Helgason and Balko also provided some straw buyers with their down payments and, on occasion, even gave lenders false information, so the buyers would qualify for home loans.

To accomplish their scheme, Helgason and Balko routinely led “investors” to believe they were merely “lending their credit” to TJ Waconia. In exchange, they received a payment of about \$2,500 each, along with a promise of additional payments in two years, when the TJ Group was to repurchase the properties.

In the meantime, TJ Waconia, through Helgason and Balko, assured investors the company would make all loan payments and incur all maintenance expenses. Ultimately, however, the scheme collapsed. The TJ Group failed to make the mortgage payments or repurchase the properties and left investors owning homes with mortgages that far exceeded home values.

Through this scheme, the two men, who were later charged federally for mortgage fraud, obtained about \$35 million in

mortgage proceeds. Both men pled guilty and, on April 16, 2009, were sentenced to federal prison. Helgason, a 46-year-old licensed real estate agent from Chisago City, was ordered to serve 96 months, while Balko, age 38, of Rogers, was sentenced to 84 months. Both men will also have to pay restitution to the victim lenders.

In handing down the sentences, United States District Court Judge Joan Ericksen rejected defense attorney arguments that the losses attributed to the scheme were, in fact, the result of the collapse in the housing market and not due to the actions of Helgason and Balko. She said, “You knew very well at the time that what you were doing couldn’t be done without you lying about it.”

Federal prosecutors argued successfully that the scheme was doomed from the start because it relied on continually getting new “investors” in order to pay off old ones. Prosecutors also argued Helgason and Balko failed to heed the warnings of market forecasters about a potential collapse in the housing market and, instead, continued to pursue their Ponzi scheme, which yielded them \$14 million from reselling properties.



Approximately 140 of the homes involved in this scheme are located on the north side of Minneapolis. Almost two-thirds of those properties ended up in foreclosure. Most of them were vacated and, once empty, became ripe for criminal activity. As a result, owners of other homes in the area saw their property values plummet, and legitimate home sellers had a much more difficult time meeting their sale goals.



## Typical Mortgage Fraud Schemes

### Scheme I. Fraud for Property

The buyer makes misrepresentations as to his income or debt load or other information on a single loan application in an attempt to qualify for a mortgage. The purpose of this type of fraud is to obtain a residence; and, usually, the buyer intends to repay the loan. As home prices soared, making the purchase of a home less likely for many, this “fraud for property” increased.

### Scheme II. Fraud for Profit

A. The seller routinely is the owner of a single home and often is having trouble making the mortgage payments. He is convinced, usually by a criminal posing as someone who provides “seller assistance,” to sell his property for an inflated value. That criminal then recruits a buyer accomplice, who applies for the loan. The application and other loan documents are falsified as to home value, the borrower’s earnings and debt load, or any other information necessary to secure the loan. At closing, the seller receives cash equal to the difference between the home’s actual value and its inflated value. Kick-backs and other illegal payments are then made from that cash to those involved in the scam. Those people may include the seller, the buyer, and industry professionals. The buyer sometimes retains the property, allowing it to be used in another scam or letting it go into foreclosure. This type of fraud is becoming more common as the economy worsens, and homeowners feel trapped in homes valued at less than the balances of their mortgages.

B. The seller may be the owner of just one home, but usually he is a developer who is having trouble moving multiple properties. As a result, he schemes with an appraiser to value his properties much higher than they are worth. Then, he hires “straw buyers” to purchase the properties with down payments he provides. He also supplies false loan application data and documentation. At the property closings, he obtains cash equal to the inflated home values. With those funds, he pays off his accomplices, recoups his down payments, and keeps the remaining money, which routinely is still more than the actual value of the properties. In the end, the straw buyers usually fail to make any payments on the properties, and they go into foreclosure. According to the FBI, 80 percent of all reported mortgage fraud losses at this time involve collaboration or collusion by industry insiders who are involved in these types of real estate “flipping” schemes, as illustrated in more detail below.



### Scheme III. Fraud for Criminal Enterprise

Members of illegal gangs or other criminal organizations launder drug trafficking profits or other criminal proceeds through real estate transactions. In doing so, they conceal the true source of the funds they are investing and sometimes make additional money by flipping houses, as illustrated above, or committing other forms of mortgage fraud. This type of fraud is becoming more common as gang members acquire more business savvy. According to the FBI, “fraud for criminal enterprise” will continue to grow until prosecutions and prison sentences send gang members the message that mortgage fraud does not pay.



## Beware of Housing Scams

### Equity Skimming

According to the Minnesota Attorney General’s Office, one of the most common housing scams involves “equity stripping.” In this scam, the criminal poses as someone who can help a financially strapped homeowner keep his home. The criminal convinces the homeowner to sign the home over to him because he can get a loan to save the house. In reality, however, there is no loan. The homeowner becomes a mere renter in his own house, while the criminal starts taking out loans against the equity in his newly acquired property. Then, when he has obtained all the loan money he can, he signs the property, along with its new increased debt load, back to the original homeowner.

### Foreclosure Consulting

The State Attorney General’s Office also warns people to be careful about dealing with individuals or groups who offer foreclosure counseling in exchange for payment of a fee to be paid up front. Foreclosure counseling services, which normally include financial counseling, renegotiating mortgage payments, or discussing the potential sale of property, are offered free of charge by many reputable organizations (see Page 12). Moreover, negotiations relative to foreclosure are often best left to the homeowner and mortgage holder themselves, without outside intervention. In any case, State law prohibits a foreclosure counselor from collecting a fee until after services have been provided.



# Federal Laws Governing Mortgage Fraud

## *Fighting a Charge of Financial Fraud*

“We’ll all sing the stupidity song.” That is what one criminal defense attorney recently said when asked how he would defend clients against charges of financial fraud.

The comment might have been flippant, but the defense lawyer was serious about the argument he would make in court. He would claim the actions of his clients, while, perhaps, stupid or motivated by greed, were not criminal. Instead, they were the same or similar to those taken by scores of others employed in the financial sector. According to the defense argument, those actions were based on widely held beliefs about the marketplace. They were not taken for criminal gain.

Moreover, defense lawyers may argue that their clients did not understand the financial documents they were promoting. Or, in cases involving mortgages, they may claim the absence of industry regulations makes it difficult to prove that anyone knowingly and intentionally committed crimes.

## Controlling Federal Law

### Real Estate Settlement Procedures Act (“RESPA”)

1. All transactions must be disclosed to the lender; and
2. All fees for services must be earned.

## Other Applicable Federal Statutes

### 18 U.S.C. 215—Receipt of Gifts in Exchange for Providing Loans

If gift amount exceeds \$1,000, fined up to \$1,000,000 or three times the gift value and/or imprisoned for up to 30 years.

### 18 U.S.C. 286—Conspiracy as to False Claims Made to Government

Fined up to \$250,000 (\$500,000 for a company) and/or imprisoned for up to ten years.

### 18 U.S.C. 287—False Claims Made to the Government

Fined up to \$250,000 (\$500,000 for a company) and/or imprisoned for up to five years.

### 18 U.S.C. 371—Conspiracy to Defraud the Government

Fined up to \$250,000 (\$500,000 for a company) and/or imprisoned for up to five years.

### 18 U.S.C. 656, 657—Theft, Embezzlement by Bank Officer, Employee

If theft amount exceeds \$1,000, fined up to \$1,000,000 and/or imprisoned for up to 30 years.

### 18 U.S.C. 1001—False Statements Made to the Government

Fined up to \$250,000 (\$500,000 for a company) and/or imprisoned for up to five years.

### 18 U.S.C. 1005—False Entries, Transactions by Bank Employee

Fined up to \$1,000,000 and/or imprisoned for up to 30 years.

### 18 U.S.C. 1014—False Statements on Loan Applications

Fined up to \$1,000,000 and/or imprisoned for up to 30 years.

### 18 U.S.C. 1028—Identity Fraud

Fined up to \$250,000 (\$500,000 for a company) and/or imprisoned for up to 15 years.



# Federal Laws Governing Mortgage Fraud

## 18 U.S.C. 1341—Mail Fraud

Fined up to \$250,000 (\$500,000 for a company) and/or imprisoned for not more than twenty years per count.

## 18 U.S.C. 1343—Wire Fraud

Fined up to \$250,000 (\$500,000 for a company) and/or imprisoned for up to 20 years.

## 18 U.S.C. 1344—Bank Fraud

Fined up to \$1,000,000 and/or imprisoned for up to 30 years.

## 18 U.S.C. 1956—Money Laundering

Fined up to \$500,000 or twice the value of the property involved in the transaction, whichever is greater, and/or imprisoned for up to 20 years. Offender may also be subject to civil penalties.

## 18 U.S.C. 1961-1968—Racketeering

Fined up to \$250,000 and/or imprisoned for up to twenty years or for life if the violation is based on racketeering activity for which the maximum penalty is life in prison. Offender must also forfeit all personal and real property obtained through the criminal enterprise or acquired with the proceeds of the criminal enterprise.

## 26 U.S.C. 7201, et seq.—Income Tax Violations

Fined up to \$100,000 (\$500,000 for a company) and/or imprisoned for up to five years for attempting to evade taxes.

Fined up to \$25,000 (\$100,000 for a company) and/or imprisoned for up to one year for willful failure to file a tax return.

Fined up to \$100,000 (\$500,000 for a company) and/or imprisoned for up to three years for making a false declaration under penalty of perjury relative to taxes.

**Note:** All fines and prison sentences provided on Pages 4 and 5 are offered for informational purposes only. In actual cases, sentences are determined by judges, who base their decisions on a number of factors, including the U.S. Sentencing Guidelines.

## *The FBI Wants You!*

Officials at the Federal Bureau of Investigation recently announced they want to hire a considerable number of white-collar crime investigators. One of the primary duties of those new hires will be to investigate mortgage fraud.

Applicants with experience in computer science and accounting or those who speak a foreign language are preferred, as are those who have been certified by the Association of Certified Fraud Examiners. In the past, successful applicants have included finance executives, paralegals, librarians, and investigative journalists.

Fraud investigators must possess curiosity and tenacity. Their work can be time-consuming and even tedious; however, their efforts are often rewarded with successful outcomes.

The need for white-collar crime investigators has increased in recent years outside of government too. Investigators are hired by firms who do security work, accounting, consulting, and internal audits. Other investigators start their own fraud investigation businesses.

According to the Association of Certified Fraud Examiners, the average annual salary for a full-time certified fraud examiner in 2008 was just over \$90,000.

To learn more about the many employment opportunities offered by the FBI, visit [www.fbi.gov](http://www.fbi.gov).



# State Laws and Offices that Deal with Mortgage Fraud

**Minn. Stat. 60K.43—Insurance License Revocation**

**Minn. Stat. 72A.08—Prohibited Rebates Under Regulation of Trade Practices**

**Minn. R. 2795.0800—Improper Business Practices**

**Minn. Stat. 325F.68-70—Minnesota Consumer Fraud**

**Minn. Stat. 325D.43-48—Minnesota Uniform Deceptive Trade Practices**



## The Minnesota Attorney General's Office

The Minnesota Attorney General's Office has taken an active role in addressing our current home foreclosure and mortgage fraud problems. In late 2008, the Office supported the proposed Homeowner-Lender Mediation Act, which would require a lender to give a homeowner in default notice of the right to mediation before foreclosure would be allowed. The legislation would require a financial analyst to work with a homeowner who requests mediation, as well as with the lender, to find an agreeable remedy to the situation. Those remedies would range from adjusting a mortgage rate to extending the repayment period. The legislation is modeled after the Farmer-Lender Mediation Act, which helped an estimated 14,000 Minnesota farmers during the 1980's, when farm foreclosures were skyrocketing.

The Minnesota Attorney General's Office also is prosecuting sham foreclosure counselors and others who abuse our home mortgage system. Recently, the Office filed suit against IMC Financial Services and American Financial Corp., doing business as National Foreclosure Counseling Services. Both companies, with offices in Florida, charged Minnesotans up-front fees and then failed to deliver the services needed to save their homes from foreclosure. The Attorney General's Office has sued over a dozen of these so-called foreclosure counselors. In Minnesota, foreclosure counseling fees can only be sought after appropriate assistance has been provided to homeowners.

For further information or assistance from the Attorney General's Office, call (651) 296-3353 or 1-800-657-3787, or visit the Office's website, at [www.ag.state.mn.us](http://www.ag.state.mn.us).



## The Minnesota Department of Commerce

### Mortgage Originators

The Minnesota Department of Commerce licenses mortgage originators, commonly known as mortgage companies or mortgage lenders. Mortgages can also be obtained, however, through banks and credit agencies, which are regulated by other entities. If you are working with a mortgage originator licensed through the Department of Commerce, call the Department or check its website to see if that originator has been subjected to Department reprimands.

The Department of Commerce also requires anyone who engages in loan modifications on behalf of a homeowner to have a residential mortgage originator license, since that person is, more or less, acting as a mortgage originator. In addition, anyone who negotiates loan modifications must adhere to specific standards of conduct outlined in State law.

Finally, the Department of Commerce also investigates criminal wrongdoing as it pertains to the mortgage industry. If you have a complaint in this regard, contact the Department of Commerce, at (651) 296-2488 or 1-800-657-3602.

### Real Estate Agents

All real estate agents authorized to work in Minnesota must be licensed through the Department of Commerce. To ensure an agent is licensed and not the subject of any enforcement actions, visit the Department's website, at [www.commerce.state.mn.us](http://www.commerce.state.mn.us).

### Real Estate Education, Research and Recovery Fund

The Commissioner of Commerce is obliged to maintain the Real Estate Education, Research and Recovery Fund. Under State law, licensed real estate industry professionals must pay into the Fund every year. That money is then used to reimburse consumers who lose money because of unscrupulous people who work in the industry. To find out more about the Fund, contact the Recovery Fund Administrator, at (651) 297-1118, or visit the Department's website, at [www.commerce.state.mn.us](http://www.commerce.state.mn.us).





# The Federal Mortgage Fraud Task Force

The Federal Mortgage Fraud Task Force is comprised of specially-trained agents from the IRS—Criminal Investigations, the FBI, the U.S. Postal Inspection Service, the U.S. Secret Service, and the Minnesota Financial Crimes Task Force. They work with prosecutors from the U.S. Attorney’s Office to ensure that the most egregious cases of mortgage fraud are investigated and prosecuted. For assistance from the Task Force, contact IRS Special Agent Andy Gibert, at (651) 767-3213, or U.S. Postal Inspector Christi Kroells, at (651) 293-3208.



## The Internal Revenue Service—Criminal Investigations

As financial investigators, Special Agents with IRS Criminal Investigation use their investigative skills to follow the money trail and uncover the documents and evidence necessary to support criminal charges related to mortgage fraud schemes. Criminal Investigation agents use income tax and money laundering statutes to pursue individuals and companies that profit from such illegal activity.



## The Federal Bureau of Investigation

Agents with the FBI often get leads as to possible mortgage fraud from the Suspicious Activity Reports that federally-insured financial institutions must file with the federal government. These reports, which document large-dollar deposits and transfers as well as other unusual account activity, regularly tip off agents as to “fraud for profit” and “fraud for housing” schemes, the two types of mortgage fraud on which the agents of the FBI primarily focus.



## The U.S. Postal Inspection Service

The U.S. Postal Inspection Service is the federal law enforcement branch of the U.S. Postal Service. The Postal Inspection Service has jurisdiction over federal crimes relating to the use of the U.S. Mail, postal employees, and postal property. The Postal Inspection Service’s role in investigating mortgage fraud is tied to the use of the U.S. Mail in furtherance of the fraud. For instance, when a closed mortgage file containing fraudulent statements or misrepresentations is mailed to a lender, postal inspectors have authority to investigate the case.



## The U.S. Secret Service

Federal laws passed in 1982 and 1984 provided the Secret Service with the authority to investigate identity crime cases. Later, the agency was authorized to investigate financial institution fraud. With the assistance of Secret Service agents, who often focus on crimes committed via computers and other electronic devices, the fight against mortgage fraud has become more effective.

## The Minnesota Financial Crimes Task Force

The Minnesota Financial Crimes Task Force works on combating the growing trend of cross-jurisdictional financial crimes, including mortgage fraud. For assistance from the Task Force, contact Pat Henry, Task Force Commander, at (763) 502-5576.

## The Hennepin County Attorney’s Office Also Address Mortgage Fraud

The Hennepin County Attorney’s Office has actively pursued the investigation and prosecution of mortgage fraud by working and coordinating with local police, the Hennepin County Sheriff’s office, the Minnesota Financial Crimes Task Force, the Minnesota Department of Commerce, and federal prosecutors and investigative agencies. To date, 34 mortgage fraud cases have been brought against various real estate insiders, from mortgage brokers to developers and their firms. Fourteen convictions have been obtained by both plea and trial for crimes ranging from racketeering to identity theft. Owing to the gravity of the offenses, the Office has sought and won long prison sentences for the most serious offenders, including a 84-month sentence for a builder and real estate developer in December of 2008.

The Hennepin County Attorney’s mortgage fraud prosecutions are carried out by the Office’s Complex Crime group, which consists of six lawyers. Those lawyers have participated in training prosecutors and law enforcement personnel in the area on the investigation and prosecution of mortgage fraud under State law. The group is a great resource, so if you would like assistance or information from them, contact Emery Adoradio, Senior Attorney in charge of the Complex Crime group, at (612) 348-7947, or [emery.adoradio@co.hennepin.mn.us](mailto:emery.adoradio@co.hennepin.mn.us).



## Taking Action to Improve Home Mortgage Practices

### The Pecora Commission

In 1932, immediately following FDR's election as president and at the lowest point of the Great Depression, the U.S. Senate Committee on Banking and Currency formed a commission to determine the cause of the stock market crash of 1929. The Committee chair put Committee Chief Counsel Ferdinand Pecora in charge.

During the two years that followed, Pecora subpoenaed Wall Street executives and forced them to answer tough questions. Because of his interrogations, Congress and the American people learned of the corruption that existed in the financial sector. They came to know, for example, that National City Bank mixed commercial and investment banking, which led to huge profits for the Bank at the expense of customers, whom Bank officials coaxed into making bad investments. They also discovered that J.P. Morgan provided preferential treatment to a select group of stock-market clients. Moreover, they found that Morgan had not paid income taxes for years, and that tax evasion was common among America's rich.

As a result of the Pecora Commission, Americans not only became aware of what led to the stock market collapse, they also supported new federal legislation to curb financial abuse and regulate financial activity. Among the legislation enacted as a result of Pecora and the commission he headed was the Securities Act of 1933, the Glass-Steagall Act of 1933, and the Securities Exchange Act of 1934. Pecora was tapped as SEC's first commissioner.



On Friday, March 20, while cable television and talk radio were all abuzz over Bernie Madoff and the AIG bonuses, the U.S. House Financial Services Committee quietly met with a number of federal agency representatives to talk about the steps being taken to improve home mortgage practices in this country.

### Action for the Future

Federal Reserve Governor Elizabeth Duke reported to the Committee that the Fed is developing registration requirements for residential mortgage originators. She explained that many of the mortgages contributing to the current



financial crisis were created by lenders who had little or no oversight. She stated, "While the expansion of the subprime mortgage market... increased consumer access

to credit, too many homeowners and communities are suffering today because of lax underwriting standards and other unfair or deceptive practices that resulted in unsustainable loans." Duke says the Fed wants to change that in the future.

U.S. Securities and Exchange Commissioner Elisse Walter agreed that practices in many agencies and departments must change. She said the SEC is in the process of determining what legislation it will need to ensure its examination and enforcement officers have the tools necessary to combat fraud. Walter also noted, however, that without adding personnel, the SEC, which has been soundly criticized for failing to detect the fraud committed by Bernard Madoff earlier, will fall even farther behind in its fraud investigations.



When it was the FBI's turn to speak, its representatives urged legislators to support the Fraud Enforcement and Recovery Act that recently passed out of the U.S. Senate Judiciary Committee. Among other things, that proposed

bipartisan legislation expands the definition of "financial institution" to include mortgage lenders. According to the FBI, such a change would greatly enhance U.S. Justice Department power to prosecute mortgage fraud cases.

### Addressing the Past

As for addressing wrongdoing that already has occurred, Commissioner Walter said the SEC is investigating several subprime mortgage lenders for possible insider trading. In addition, the SEC is reviewing the timing and the amount of asset devaluing done by investment banks in an effort to determine if any crimes were committed by them.

FBI officials stated they currently are juggling in excess of 2,000 mortgage fraud investigations, up from 880 just three years ago. Moreover, the Justice Department reported that mortgage-fraud related charges were filed against over 400 defendants during 2008.



According to the FBI, the number of mortgage-fraud cases is expected to climb even higher during 2009, especially if the Fraud Enforcement and Recovery Act passes. That legislation, which has yet to be considered by the full Senate or the House, provides money for additional federal agents and prosecutors.

Beyond any resources that may be authorized through new legislation, however, the FBI stated it plans to adopt a new, proactive approach for dealing with mortgage fraud in the future. That approach will include educating potential victims, deterring would-be offenders, and detecting criminal activity much earlier. To that end, Acting Assistant Attorney General Rita Glavin said the Justice Department already is working closely with the Inspector General at the Treasury Department to ferret out criminal wrongdoing as that agency doles out approximately \$700 billion in taxpayer money through the federal Troubled Asset Relief Program. ■

## Don't be a Victim of Mortgage Fraud

The FBI offers the following tips on how to avoid becoming a victim of mortgage fraud:

1. Get referrals for real estate and mortgage professionals when you want to buy or sell a home and don't be afraid to check their credentials with state regulatory agencies.
2. Do your own research as to the sale prices of other homes in your neighborhood. You can do this through your county tax assessor.
3. Be leery of "no money down" loan offers. Usually, these offers are gimmicks to entice people to buy homes they cannot afford.
4. Do not let anyone talk you into making a false statement on your mortgage loan application. Always tell the truth about your income, debt load, and the source of your down payment.
5. Under no circumstances sign a blank mortgage or loan document. Likewise, do not sign any such document with blank lines that will be "filled in later."
6. Always read and understand the documents you are signing. If you do not understand them, hire a real estate attorney to review them for you. The money may be well spent.

## Foreclosure and How to Avoid It

**H**ome foreclosure is the process through which a lender takes back a property and forces a borrower from that property after the borrower has failed to keep to the terms of the mortgage loan agreement he and she signed.

**D**efault occurs when a borrower is late with a monthly mortgage loan payment. At that point, the lender may contact him or her, thereby putting the borrower on notice that he or she is no longer in compliance with the terms of the mortgage loan agreement and, thus, is in jeopardy of losing the property.

**S**heriff sales take place when defaults are not cured and lenders choose to force sale of the properties. A borrower will receive a notice of the upcoming sale or a summons to appear in court, at which time, the lender will request authorization for a Sheriff's sale. Once authorized, the sale, overseen by the county's sheriff, will occur in a public place.

**R**edemption period is the period of time following the Sheriff's sale during which the borrower may try to refinance the home with a new mortgage or sell the home in order to save any equity that has been built up. The redemption period is normally six months, although it can be extended to 12 months in some instances. Refinancing at this point is difficult because the borrower's credit has been damaged. Selling at home at this time, however, also can be difficult.

**V**acate is what the borrower must do relative to the property if he or she is unable to refinance or sell during the redemption period.

### TO AVOID FORECLOSURE

1. Borrowers should contact their mortgage lenders as soon as they realize they are going to have trouble making their payments in a timely manner;
2. Borrowers should not ignore correspondence from their mortgage loan lenders relative to late payments or default, as this only compounds the problem;
3. Borrowers may want to contact a reputable mortgage counselor for assistance in finding a solution to the borrower's dilemma, which may entail—
  - A. asking the lender for forbearance, which is a temporary suspension of payments;
  - B. asking the lender to establish a repayment plan for the amount in arrears;
  - C. refinancing the mortgage through a new lender; or
  - D. checking into selling the home.

## *The Changing Face of Foreclosure*

Nearly 12 percent of all Americans who own homes found themselves in the midst of foreclosure at the end of 2008. That is an eight-percent increase from the end of 2007 and means a record 5.4 million homeowners are now on the verge of losing their homes. The national Mortgage Bankers Association, which provided these sobering statistics, also reported that the face of foreclosure is changing.

Initially, the dramatic spike in foreclosures was blamed on reckless lenders and borrowers. Subprime adjustable-rate mortgages, issued to people with poor credit histories, were deemed the primary culprits. In fact, the Mortgage Bankers Association claims that 48 percent of homeowners with subprime mortgages are still behind on their payments or are currently in foreclosure.

Association representatives state, however, that over the past six months, the number of foreclosures involving prime, fixed-rate mortgages has skyrocketed. They attribute that jump to a sharp rise in unemployment among middle-income Americans. According to the Association, the number of college-educated people to lose their jobs over the past six months nearly doubled from the previous six-month period. And, it is those people who hold most of the prime fixed-rate mortgages.



## Foreclosure Help Lines

Minnesota Housing Finance Agency (651) 296-7608 / (800) 657-3769	U.S. Department of Housing and Urban Development (800) 569-569-4287	Minnesota Homeownership Center (651) 659-9336 / (866) 462-6466
St. Paul Foreclosure Prevention (651) 266-6626	Anoka County Com. Action (763) 782-4880	Dakota County Com. Dev. Agency (651) 675-4471
Carver County Com. Dev. Agency (952) 448-7715	Wright County Com. Action (320) 963-6500	Olmsted Com. Housing (507) 328-7170
Otter Tail/Wadena Com. Action (218) 739-3011	Bi-County Com. Action (Cass, Beltrami) (218) 751-4631	Tri-Valley Opportunity (Norman, Polk) (218) 281-5832
Arrowhead Opportunity (St. Louis, Lake, Cook) (218) 748-7317 / (800) 662-5711	Inter-County Com. Council (Pennington, Red Lake, Clearwater, Polk) (218) 796-5144	West Central Com. Action (Pope, Stevens, Traverse, Grant, Douglas, Wilkin, Clay) (218) 685-4486 / (800) 492-4805
Northwest Com. Action (Lake of the Woods, Roseau, Kittson, Marshall) (218) 528-3258		



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