

At 03:35 PM 10/5/2009, Mortgage Audits wrote:

### **Finding the Fraud in the Loan Documents:**

What is now beginning to surface are the losses attributed to the massive amount of fraud that mortgage originators created and passed on to Freddie Mac with two specific types of origination fraud known as "Double-Funding", "Double Selling" or "Double Warehousing" fraud and Assignment Fraud.

"Double-Funding" involves a mortgage originator sending simultaneous funding requests for the same loan to two different warehouse lenders. Both warehouse lenders, unaware of each other, would send funding for the loan to the title companies specified by the mortgage originator. The mortgage originator then disburses the money from one lender to the borrower, while directing the title company to wire the money received from the other lender to mortgage originator's bank account. The mortgage originators then provide fabricated mortgage documents to the warehouse lenders that falsely represented that the lender's funds had, in fact, been used to finance borrower loans.

Assignment Fraud involves modifications to the original loan where the name of the bank who actually owns the note is changed on execution of the Loan Modification Agreement. The problem with these "modifications" (actually new loans with new "lenders") is that the old loans remain unaffected. The existing cloud on title to the property, the mortgage deed (or deed of trust), the note, the obligation, the purported assignments etc. is being compounded by attempts to allow impostors to foreclose on the mortgage, collect on the note, modify the loan, or approve a short sale. The time bomb is title where securitized loans were recorded, foreclosed, modified or sold. The parties (other than the borrower and possibly the Trustee on the Deed of Trust) had actual knowledge that the "lender" was not the Lender, the terms of the obligation were already changed at the time of closing, the appraisal was false, the underwriting was negligent or fraudulent, the Good Faith Estimate was by definition rendered neither in good faith nor even close to an accurate estimate, and the list goes on and on.

In determining whether a particular loan is part of a "double-funding" or "double-selling" scheme, examiners and forensic accountants should look for as evidence that a mortgage originator is engaging in this scheme and participating in a pattern of deception, forgery and fraud. Once demonstrated, these indicators inevitably point to fraudulent affidavits and assignments of mortgages filed in the public records.

As you examine your loan documents you should be looking for the following:

1. Loan originators, servicers and their lawyers forge documents with "squiggle marks" that are not the marks, initials or signatures of the actual officer that is notarized to be the signatory.
2. Signature, initials or "squiggle marks" differ for the same signatory from document to document.
3. Squiggle marks and full signatures that are diametrically opposed to the known signature of the signatory.
4. Pre-stamped assignments and notary signatures on assignments, affidavits and proof of claims.
5. Back-dating of dates on assignments and signatures of officers dating years after either a company is no longer in business or the officers are no longer with the company.

Examples of this can be seen here:

<http://dc131.4shared.com/download/134186016/9761c46f/BadNotary.pdf> Notice that the notary swears under oath that they witnessed the signature on these documents in 2001. However in the State of Texas, notaries are commissioned for 4-years. The notary stamps on these documents expires in 2006 making it impossible for this notary to have witnessed anything in 2001. Again, these are all loans originated by Memorial Park Mortgage, sold to Freddie Mac and then, as demonstrated here, other banks on forged and fraudulent assignments.

6. The forgery of forbearance agreements and modification agreements.

7. Missing assignments or multiple assignments of the same instrument filed in the public records are a direct result of multi-pledging and the use of the same collateral, the mortgage loan, to pool into securities or pledge for other financing and should be viewed as an overt act of fraud when encountered.

As an example: <http://dc131.4shared.com/download/134185974/325196a4/Aug28Admit.pdf> Freddie Mac was finally compelled by a court to admit to purchasing this particular loan even though no assignment to Freddie Mac was ever filed in the public records.

8. The discovery of pre-dated, backdated and fraudulent assignments of mortgages or endorsements either completely filled in or left blank to be filled in before or after the fact to support the future allegations of a foreclosing party. These fraudulent assignments are typically discovered by examiners in the servicers files or MERS files when MERS acts on the servicers behalf. These documents are created for the sole purpose of assisting in concealing known frauds and abuses by originators, prior servicers and are designed specifically to conceal the true chain of ownership of a borrower's loan.

Here is an example from a loan from Memorial Park Mortgage of Houston, Texas that was first sold to Freddie Mac and then to several other banks by the originator.

<http://dc148.4shared.com/download/134235430/a8cc4755/BlankAsmt.pdf> Notice that the bank to whom the assignment is made is left blank as are the instrument number and several other blanks. More importantly, notice that the assignment has already been signed and notarized. This document was produced in discovery by CitiMortgage even though an assignment to them already existed in the public records.

9. No escrow instructions or settlement statements should trigger the examiner to immediately attempt to locate the assignment of the mortgage. Multiple or missing assignments coupled with an inability to produce escrow and settlement statements demonstrate a deliberate concealment of the ownership of the borrower's mortgage debt obligation and the actual lender to whom the borrower is indebted.

10. Lack of possession of the original note demonstrating the proper chain of title and legal right to foreclose should be noted as evidence of fraud. Coupled with a missing assignment or multiple assignments is further evidence of the existence of fraud.

A common practice by some banks party to or victims of this kind of fraud is the fraudulent concealment from the court and the borrower that the financial institution does not have possession of the note. Of special note is the use of known false, fraudulent, and forged affidavits and assignments by those institutions unable to demonstrate their possession of the original note.

The effects and implications are more far reaching than a borrower simply having their debt extinguished. Debt extinguishment or dismissal of foreclosure actions could be obtained if it can be shown the entity filing the foreclosure:

1. Does not own the note;

2. Made false representations to the court in pleadings;
3. Did not have the proper authority to foreclose;
4. Does/did not have possession of the note;
5. All indispensable parties (the actual owners) are not before the court or represented in the pending foreclosure action.

This kind of fraud is not difficult to detect once you know the indicators.