

BEWARE: More A Victim Than A Lender Or A Borrower You May Be

Combating Predatory Lending & Mortgage Fraud:

*A National Initiative To Deter Predatory Lending And
Increase Criminal Prosecutions In Response To The National Mortgage Fraud Epidemic*

OVERVIEW

Once considered a tolerable pastime of industry insiders and a relatively few unscrupulous borrowers; Predatory Lending and Mortgage Fraud including Fraudulent Foreclosures have spun America's **\$3 trillion** mortgage market into a national crisis. Those ethically challenged and outright criminals responsible for the debacle should be identified, stopped, and punished. Yet they are clearly emboldened by recent housing booms, the explosive growth of select property values, as well as the sheer size and complexity of typical mortgage transactions.

“Fraud schemes are difficult to articulate by common people” –
and ultimately difficult for local law enforcement to pursue.

CONGRESS AGAINST RACISM AND CORRUPTION IN LAW ENFORCEMENT (CARCLE) and **NATIONAL JUDICIAL CONDUCT AND DISABILITY LAW PROJECT, INC. (NJCDLP)** are spearheading a public awareness campaign among other national initiatives to promote early detection, prevention, and prosecution as appropriate of predatory lending and mortgage fraud schemes as well as related misuses of federal funds. Their efforts will begin at the forefront of mortgage fraud in America which statistics suggest is Fulton County, Georgia. Networking in Georgia and elsewhere with religious organizations, public legal services programs, consumer advocacy groups, advocates for senior citizens, civil rights activists and the like – CARCLE and NJCDLP will identify and count on a national basis the accessible “Borrower Victims” of predatory lending, mortgage fraud, and/or fraudulent foreclosures. Building on the network by which they access these victims, CARCLE and NJCDLP will recruit state and federal law enforcement agencies, banks, mortgage companies, real estate professionals, Fannie Mae, etc. to form a **PREDATORY LENDING AND MORTGAGE FRAUD TASK FORCE**. The task force should collaborate to increase and enhance the most effective law enforcement strategies for combating predatory lending and mortgage fraud.

PROBLEM STATEMENT

Mortgage Fraud is a national epidemic. “Each mortgage fraud scheme contains some type of ‘material misstatement, misrepresentation, or omission relied upon by an underwriter or lender to fund, purchase or insure a loan’.” FBI 2005 - *Financial Crimes Report*. The schemes are generally perpetrated to “. . . revolve equity, falsely inflate the value of . . . property, or issue loans based on fictitious properties.” *Id.* “For a long time, mortgage fraud was ignored. But

now the industry recognizes that lenders are victims, and something needs to be done.” Rachel M. Dollar, editor *Mortgage Fraud Blog*.

Predatory Lending is not necessarily paired with, but may precede mortgage fraud. Senior citizens, lower income people, and higher risk credit applicants are generally the targets of predatory lending. It “. . . forces borrowers to pay exorbitant loan origination/settlement fees, sub-prime or higher interest rates, and in some cases, unreasonable service fees.” FBI 2005 - *Financial Crimes Report*. Often borrowers must refinance as a result or default and contend with mortgage foreclosure.

Whether stemming from predatory lending and/or mortgage fraud, fraudulent foreclosures are arguably the most critical aspect of America’s mortgage crisis. They include foreclosures instituted by defunct mortgage companies or entities without an enforceable interest in the underlying notes. As these foreclosures are not postponed to allow compliance with applicable repossession statutes, mortgage lenders are empowered to “flip” the subject property. Property flipping begins with the artificial inflation of its value which is escalated through multiple resales to sham buyers and ends with the property’s foreclosure by a victimized lender.

TACKLING AMERICA’S PREDATORY LENDING AND MORTGAGE FRAUD CRISIS AS A LAW ENFORCEMENT PROBLEM

Relevant Failures of Self-Regulation; Local Criminal Law Enforcement; and Civil Litigation:

It is simply cause and effect. The lack of industry accountability and appropriate law enforcement allowed sub-prime and predatory loans to become so profitable that many real estate professionals devised even more profitable schemes. Their scams crossed the line of merely predatory loans and became actual fraudulent transactions.

With eighty percent (80%) of mortgage fraud cases allegedly involving industry insiders, the self-regulatory agencies and on-site business managers (i.e. the built in checks) are not delivering the oversight required to prevent these frauds. In fact some industry insiders reportedly collude with business managers to commit mortgage fraud to meet business goals and make their numbers. Local criminal law enforcers have seemed loath to investigate the situation, respectively deeming it a “civil dispute” rather than potential crime. Their agencies may refuse a private citizen’s related complaint or “accept” it with the filing of an incident report, but no corresponding assignment of an investigator or detective.

When predatory lending and/or mortgage fraud escalates to property foreclosure, affected borrowers may get victimized by debt collectors in the process. The recourse supposedly available under fair debt collection provisions and tort law easily translate into costly, protracted, and unsuccessful litigation for underdog borrowers. As such, it is not hard to conceive that money which should be paid to investors, instead goes to collectors and association-in-fact members of real estate fraud schemes. The misdeeds of mortgage servicers also siphon incalculable amounts of money from the national securities market. *See*, "Limiting Abuse and

Opportunism By Mortgage Servicers" and "Private Property Rights Deferred: Has Predatory Mortgage Servicing Destroyed The American Dream" by Rawle Andrews, Jr., Esq., and Leroy Jones, Jr., J.D.

**Excessive sub-prime lending leads to predatory loans.
Unchecked predatory lending leads to mortgage fraud.
Unprosecuted mortgage fraud led to trillion dollar investor loses
and the sub-prime market collapse.**

#1. MORTGAGE FRAUD – LENDER VICTIM

Fannie Mae / Secondary Market

Collusion

Bankers & Lenders



#2. MORTGAGE FRAUD – BORROWER & LENDER VICTIMS

Fannie Mae / Secondary Market

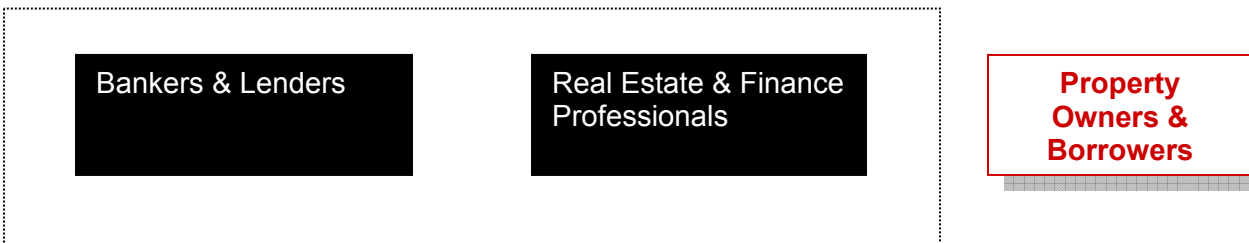
Collusion



#3. MORTGAGE FRAUD – BORROWER VICTIM

Fannie Mae / Secondary Market

Collusion



#4. MORTGAGE FRAUD – BORROWER VICTIM

Fannie Mae / Secondary Market

CollusionBudget Constraints, Public Corruption, and the Problem Proliferates:

Local police likely refuse to investigate mortgage fraud allegations because they often involve white collar criminals who may be wealthy, politically connected, and/or members of the legal community. Politics aside, there are systemic issues too. Rob Braswell, deputy commissioner for the Georgia Department of Banking and Finance, says the understaffed agency is doing “the best (it) can” – but, “we can’t get to every case as quickly as we’d like to, because we have to prioritize . . . ; we have limited resources and only so many examiners.”

Obviously budget constraints with attendant limits on manpower and investigative resources create barriers for the response of local law enforcement to mortgage fraud. Public corruption only compounds that problem. Local elected or appointed officials may interfere with, impede, or obstruct investigation(s) of associated criminal activity. Such white collar crimes involve substantial money and accordingly trigger conflicts of interest, bribery, and kick-backs; all displacing the ability of local law enforcement to investigate related allegations. Civil court judges generally seem unable or unwilling to fairly resolve the dilemma. Some apparent victims confidently allege that cronyism and judicial corruption are the salient reasons why unlawful foreclosures are sanctioned. In any event, the foreclosure epidemic compels a focused look at the total foreclosure process.

LINKS TO RACKETEERING AND ORGANIZED CRIME

Left unchecked, predatory lending and mortgage fraud entail relatively minor business “indiscretions” that escalate, leading to organized crime and racketeering. Other serious offenses generally become involved such as conspiracy, money laundering, bank fraud, wire fraud, mail fraud and identity theft. There is also the parallel specter of loan-sharking, extortion, bribery, and obstruction of justice.

“Criminals are opportunists – if you’ve got a booming market, they’re going to get away with more fraud” says William Matthews, co-author of a recent report on mortgage fraud by the Mortgage Research Institute. Presently mortgage fraud schemes involve trillions of taxpayer dollars through federally insured deposits, mortgage backed securities traded on the national

securities markets, federally insured housing loans, FHA, VA, HUD Section 8 vouchers and HUD 108 Economic Development loans, Federal Tax Credit Finance, etc. Former Governor Roy Barnes recognized that Georgia residents are plagued by organized schemes to defraud them through predatory lending and mortgage fraud. The scams are tough to spot, particularly in hot real estate markets such as California, Florida and Georgia because huge real estate price increases operate to hide illegal profits. Clearly federal intervention is warranted to protect the integrity of banking and mortgage transactions.

DESCRIPTION OF THE INITIATIVE

CONGRESS AGAINST RACISM AND CORRUPTION IN LAW ENFORCEMENT (CARCLE) and **NATIONAL JUDICIAL CONDUCT AND DISABILITY LAW PROJECT, INC. (NJCDLP)** are spearheading a public awareness campaign among other national initiatives to promote early detection, prevention, and prosecution as appropriate of predatory lending and mortgage fraud schemes as well as related misuses of federal funds. Their efforts will begin at the forefront of mortgage fraud in America which statistics suggest is Fulton County, Georgia. Networking in Georgia and elsewhere with religious organizations, public legal services programs, consumer advocacy groups, advocates for senior citizens, civil rights activists and the like (*hereinafter referred to as "Potential Referral Sources"*) – CARCLE and NJCDLP will identify and count on a national basis the accessible "Borrower Victims" of predatory lending, mortgage fraud, and/or fraudulent foreclosures.

Potential Referral Sources will be encouraged to print and distribute prescribed promotional material extending the option for likely Borrower Victims to describe their relevant difficulties to CARCLE/NJCDLP agents during a prescheduled phone interview, in writing, or by internet submission. The Potential Referral Sources will also be invited to co-sponsor, co-develop, and otherwise help implement some form of public awareness program on predatory lending and mortgage fraud for their constituents or in their service area with CARCLE and NJCDLP. In addition these Potential Referral Sources will be asked to join a PREDATORY LENDING AND MORTGAGE FRAUD TASK FORCE.

CONGRESS AGAINST RACISM AND CORRUPTION IN LAW ENFORCEMENT (CARCLE) and **NATIONAL JUDICIAL CONDUCT AND DISABILITY LAW PROJECT, INC. (NJCDLP)** are spearheading the formation of a PREDATORY LENDING AND MORTGAGE FRAUD TASK FORCE. In addition to the network of Potential Referral Sources through which they access Borrower Victims, CARCLE and NJCDLP will recruit state and federal law enforcement agencies, banks, mortgage companies, real estate professionals, Fannie Mae, etc. to join the task force. It should collaborate to increase and enhance the most effective law enforcement strategies for combating predatory lending and mortgage fraud.

Some ideas and initiatives likely to be considered and addressed by the referenced task force are:

- Improved training of special agents and auditors to assist them in conducting investigations of mortgage fraud, procurement fraud, public corruption, public administration fraud, bribery, and conflicts of interest;

- Increased collaboration between neighborhood and community groups, federal and state regulatory agencies, business and real estate professionals, and state and federal agents to educate them on effective means of detecting and preventing mortgage fraud;
- Better collaboration between special agents and prosecutors at early stages of mortgage fraud, procurement fraud, and public administration fraud investigations to assure successful prosecutions and civil recoveries;
- Increased education of real estate and mortgage professionals, real estate managers, and neighborhood and community groups on issues relating to the detection and prevention of mortgage fraud;
- Partnering with faith-based, neighborhood and community groups, and use of computer data-mining and other programs to uncover and detect mortgage fraud; and
- Enhanced efforts to detect ethics violations and conflicts of interest by current and former public officials, law enforcement agents and regulatory agency officials with regard to mortgage fraud and related misuses of federal funding.

Hopefully the PREDATORY LENDING AND MORTGAGE FRAUD TASK FORCE to be coordinated by CARCLE and NJCDLP will share extensive resources and efforts to combat predatory lending as well as mortgage fraud and collectively function as a victims advocate in that regard.

RECOMMENDATIONS AND GOALS

1. Create a PREDATORY LENDING AND MORTGAGE FRAUD TASK FORCE:

The task force will meet periodically to accommodate exchanges of information and ideas. Its membership will be expanded continually to maximize public awareness, political buy-in, and positive impact on the reduction of predatory lending and mortgage fraud. CARCLE and NJCDLP will be jointly positioned as the lead facilitator of this national effort to combat predatory lending and mortgage fraud through increased/enhanced communications, collaboration, and prosecutions.

2. Initiate Public Awareness Campaign:

Plan, develop and execute a Public Awareness Campaign to educate and inform the general public, local law enforcement agencies, and real estate, banking as well as financial service industry professionals about predatory lending and mortgage fraud. Of particular note would be general trends in mortgage fraud; the kinds of mortgage fraud; how mortgage fraud occurs; available resources to combat mortgage fraud, etc.

3. Enact New Mortgage Fraud Legislation:

The Georgia General Assembly recently passed a criminal mortgage statute. *See*, OCGA § 16-8-101 through 16-8-106. To combat predatory lending and mortgage fraud, multiple state legislatures are enacting laws that protect their citizens from these practices. E.g., the Illinois General Assembly passed legislation targeting mortgage rescue fraud.

4. Increase Enforcement Through Racketeering Statutes:

Many of the more serious cases of mortgage fraud can and should be pursued under existing criminal statutes. Many states already have very powerful anti-racketeering statutes on the books. Most notably, Georgia has a state RICO statute which provides significantly more protection to mortgage fraud victims than even federal racketeering statutes.

The Georgia RICO Act was enacted in response to a finding by the General Assembly of increasing organization among certain criminal elements in Georgia and the increasing extent to which criminal activities and funds acquired through criminal activity are directed to and against the state's legitimate economy. (OCGA §16-14-2(a).) The intent of the Act is to impose sanctions against the subversion of the economy by organized criminal elements and to provide compensation to private persons injured thereby. (OCGA §16-14-2(b).) The Georgia RICO Act provides extensive penalties for criminal violations, including lengthy prison terms, large fines, asset forfeitures, divestiture orders, restrictions on future activities or investments, dissolution orders, orders suspending or revoking licenses, permits or prior approvals granted by agencies of the State, forfeiture of corporate charters, and injunctive relief.

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