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# Servicing Shops Tackle Origination Fraud, Short Sale Scams

## By Jennifer Harmon

Origination fraud is impacting mortgage servicers today with increased expenses in dealing with collection attempts, loss mitigation contact, foreclosures and real estate-owned assets, according to Robert Maddox, a partner with the law firm of Bradley Arant Boult Cummings.

Mr. Maddox spoke at the "Loan Defaults – The New Fraud Dream" session at the MBA's National Mortgage Servicing Conference in San Diego. He said the servicing industry is also seeing increased expenses in litigation for possible repurchase.

"That is the big 'R' that everyone is having to deal with right now. Most of you that are servicers have your own repurchase defense team to deal with those issues. Origination fraud causes a decreased reputation for the servicer unfortunately and across the whole industry. It also causes a decrease in property values. Portfolio values are obviously down as well," said Maddox.

"It used to be classified as origination fraud, but once the loan closes it's in servicing. You may go back up the line in repurchase but it's something that servicing has to deal with. Litigation, default and REO have to deal with it. It may have happened on the origination side, but it's servicing that's going to have to clean it up. Even though it's called origination fraud, it's a servicing problem."

When it comes to phony short-sale scams, Maddox talked about how the borrower is delinquent and the property is up for sale. There is usually some communication between the borrower and the servicer.

Short-sale fraud against the borrower happens when short-sale specialists "prey on people who are in a really tough spot," he said.

"The people I have seen, quite a few are former mortgage brokers who stayed in the market. They understand the industry and they are set up for these phony short sales. They sit down and talk to the borrower. You have to understand the psychology of the borrower in distress. They know they are behind. They are getting phone calls and letters. Someone says, 'I want to help you,' but it's not your mortgage company. That has a powerful effect—to listen to that. This is the only person who says they can help. But they often say, you have to may be a lot of money, too."

If there is no sale, typically the "specialist" gets $1,500 to $3,000 to cover the telephone bill, mail and faxes. "You should pay the mortgage, don't pay them," Maddox said. If there is a short sale, the specialist will make money off of it. The buyer has a good price, the servicer-investor will lose money and the borrower has no home. There are also tax consequences."

This type of fraud is ramping up all over the country—in Tennessee, Florida, California, Texas and Arizona, he said. In many instances, there are double closings. "The message is coming out. Often, the people driving these scams are appraisers and Realtors. The Realtor gets a double commission."

If it's short-sale fraud against the servicer, the borrower enters into a contract well below the UPB with a colleague, friend, or relative.

"They dress down the property. Yes, they will go down and punch a hole in the wall or knock out a window. You get the drive by, and the home has a distressed look to it. You'd be surprised that just by dressing it down a little, you can knock some money off the price. The lender accepts the artificially depressed price, and the original borrower goes back into the property and arranges to buy it back. It's the same house with a new, lower loan."

Clearly, Maddox stressed, the most important thing for any servicer right now is communication.

"It's critical for the borrower and the servicer to stay in constant communication, especially when the borrower is in distress. If they don't, that is when the borrower is susceptible to listening to someone else. Work closely to scrutinize all parties involved in a short sale—the borrower, purchaser and Realtors."

Maddox said he has had recent experience working with two top 10 servicer clients where the short-sale fraud was coming from inside.

There were a lot of people in the companies' loss mitigation areas who were not there 18 months ago. These employees had access to a great deal of information that obviously they didn't have before.

"Some validity was given to the complaints by borrowers who said it took forever for them to move through the process. So, if I work for ABC Mortgage Co. and John Smith calls in, I'll say I can't really help you, John, but Sandy can. Sandy and I are working together. Let me refer you. Sandy pulls off the money out of this transaction and both of them split it."

It was almost impossible to detect, but the servicing shops discovered the fraud because borrowers called and complained. "I can tell you for both of these servicers, once they dug in, it grew. It was a like a matrix of how many people were involved. So, food for thought, think about that when you go back to your shops. Think about all the delicate information that is in there. There is nothing wrong with scrubbing a few e-mails every now and then to make sure that is not happening."

If the servicer thinks there is a problem, they should not be afraid to use affidavits, he also stressed. "Draft up a simple affidavit that says, 'I, Robert Maddox, have no business or personal relationship with anyone else in this transaction nor do I know that anyone else here does.' Make them sign it. If they don't, well you may save yourself some headaches and some problems."

If it gets bad enough, file a civil suit against the fraud and rescind the sale. "I can tell you we're rescinding sales all the time. There is nothing wrong with it. If you think you have a good reason to rescind the sale, go back and do it. It can get sticky in some instances. If it's bad, they will walk away. I have had one person fight me in 18 months. Other than that, go back and rescind the sale and get your money back."

Fraudsters are convincing borrowers that their mortgage loans are illegal. They assist the borrower in contacting the servicer. These fraudsters will offer to become a third party on the account so they can speak on the borrower's behalf. They transfer title for people in default usually into trust, claiming the lender cannot foreclosure.

"Not only are we involved, but the authorities are involved as well. They are trying to create a merged relationship when they are only nominees."