

Whistleblower Trends: Real Estate Fraud and the Next Bubble Break

In 2008, the U.S. economy went into free fall. Millions of homeowners lost their most valued possession. Long-standing financial behemoths were brought down. Taxpayer dollars provided bailouts to an unprecedented number of companies and the government effectively insured massive risks that had been taken by private businesses.

We still debate the causes of the 2008-09 crash. What is beyond dispute, however, is that in the wake of the crash, billions and billions of dollars in fraud on the United States government has been revealed. And this fraud is intimately tied to the crash itself.

The old adage is that lightning doesn't strike twice in the same place but this well-known myth has long been debunked.

We are witnessing the easing of credit restrictions and an increasing willingness to again take many of the same risks in the mortgage markets that we saw a decade ago. Of particular concern are those mortgage practices that put taxpayers on the hook for mortgage defaults on loans that should never have been insured by our tax dollars.

The residential real estate market is a potential hotbed for fraud, and it can happen at each and every stage of the home loan process. This starts with origination fraud, including false income and asset statements, false mortgage applications, inflated and otherwise improper appraisals, failure to follow FHA and other government mortgage rules, and generally taking advantage of an imperfect regulatory system. The parties to these frauds can include all manner of bank lenders, brokers, appraisers, finance companies, companies that manage and acquire loans, subprime lenders and others.

In two cases Hagens Berman's whistleblower team helped bring two of the first crash-era mortgage fraud cases – one on the origination end, the other on the mortgage servicing end. These cases helped the Department of Justice recoup more than \$1 billion from Bank of America and brought whistleblower awards to our clients. This continues to be an area of focus for us.

Two Successful Hagens Berman Real Estate False Claims Cases

Real Estate Appraisal Fraud

Kyle W. Lagow, a former District Manager for LandSafe (the appraisal arm of Countrywide Financial) brought one of the first mortgage fraud cases under the False Claims Act in 2009, when we filed his suit under seal against Countrywide Financial, Bank of America, and several of the executives alleged to have directed and substantially assisted in the fraudulent behavior. The case settled as part of the massive 2012 global mortgage settlement, and helped the Department of Justice secure over \$1 billion from the defendants.

Lagow's claim asserted that Countrywide systemically violated Federal Housing Administration (FHA) requirements for insuring mortgages against default with taxpayer dollars. Countrywide was materially non-compliant, among other things, with requirements for proper home appraisals.

Proper appraisals aim to identify the market value of the property – the price a willing buyer

and seller will agree upon. The higher the appraisal, the higher the loan and mortgage can be.

Among other things, when appraisals are improperly inflated, those homes are worth less than the mortgage (hence the term “underwater” mortgages). Banks aren’t permitted to secure FHA insurance where a home is improperly appraised. FHA, however, unwittingly did back thousands of these loans that ultimately went into default and ended up costing taxpayers millions of dollars that should never have been paid because the mortgages never should have been eligible for FHA insurance in the first place.

Lagow objected to practices at Countrywide that pressured appraisers to inflate values improperly. He went so far as to email the CEO and founder of Countrywide, Anthony Mozilo, with his concerns.

Lagow had discovered, for example, that Countrywide was using one fee appraiser claiming to perform 400 appraisals each month at an inflated price – an impossible job. Lagow also watched Countrywide limit the ability of staff appraisers to do their work properly. Lagow also uncovered evidence of intimidation and blacklisting. He himself was ultimately terminated after raising these objections.

With Hagens Berman’s help, Lagow was ultimately rewarded several millions dollars for his efforts and the serious personal and professional hardships he endured to challenge fraud.

Mortgage Service Fraud

In our second Bank of America fraud case, Hagens Berman represented whistleblower Gregory Mackler who also brought a False Claims Act whistleblower action alleging fraud against Bank of America. His lawsuit challenged the Bank’s improper and unlawful practices regarding mortgage modification applications it was obligated to service in good faith to struggling home owners under the Home Affordable Modification Program (HAMP) loans and its agreement with the federal government.

Congress established the HAMP to help struggling homeowners unable to make their loan payments and provided a mechanism by which homeowners could apply for mortgage modifications to essentially renegotiate the terms of their loans. To make sure lenders like Bank of America agreed to modify mortgages in their vast portfolios, the U.S. Department of the Treasury contracted with the banks and provided financial incentives to modify these loans.

Mr. Mackler asserted that Bank of America not only failed to help homeowners get new loans for the mortgages they serviced, but that Bank of America knowingly undermined homeowner efforts to secure modifications. This was because the Bank made more money when the mortgage was *not* modified, despite the government incentives. In short, Bank of America falsely certified compliance with its obligations and continued to take the Treasury Department’s incentive money while knowingly failing to provide modifications to millions of homeowners in good faith.

This behavior harmed both homeowners and taxpayers.

Mackler's claim, brought by Hagens Berman, was settled as part of the 2012 global mortgage settlement and resulted in the payment of several million dollars to the government and our client.

The Dangers of New Real Estate Fraud

As the real estate market rebounds, memories of past fraud fade, and lenders are tempted once again by greed. These recent trends make it even more important for whistleblowers to step forward with information regarding fraud in the real estate industry.

Real estate fraud is still a major concern. In a recent case against American Financial Group, Inc. (AFG), “straw buyers” – someone who makes a purchase on behalf of another individual – were artificially created to buy homes for people whose homes were in danger of being repossessed.

Documents were altered to increase the straw buyer's credit worthiness. Income and asset statements were falsely created and then verified by corrupt bank employees and appraisers. Loans were processed without the necessary due diligence to determine the real credit risks.

On paper, the straw buyers were purchasing the property, but in reality, AFG was buying the property. The property quickly went into default, ruining the credit of the straw buyers and causing lenders to lose millions of dollars.

In another case, speculators falsely claimed they intended to live in the house when all they wanted to do was resell it. By claiming they would be residents, the speculators fraudulently received significantly lower interest rates and had to make lower down payments. Many speculators claimed to be living in more than one home at the same time.

Inflated appraisals, too, have returned. According to *The Wall Street Journal*, one in every seven real estate appraisals prepared from 2011 through 2014 were inflated by at least 20 percent.

With the help of an established whistleblower firm like Hagens Berman, having brought several lawsuits in this area covering an array of mortgage-related practices, new False Claims Act cases can hold wrongdoers accountable and help stop another real estate bubble burst that would once again wreak havoc on homeowners across the country.