A Little Fraud Goes a Long Way, But You Can Stop It

By Bradley S. Dornish, Esq.

In just over a month, I have seen three Pittsburgh Real Estate Lawyers lose their careers, reputations, huge sums of money, and soon, their freedom, over mortgage fraud. I knew and dealt with each of them. They all had good educations, many years of experience, and handled a lot of closings for real estate investors. One already paid $250,000.00 in restitution, and is spending over a year in jail. Another gave up the defense of his case before trial, pled guilty, and is now facing a sentence of up to a million dollar fine and up to many years in prison.

A third lawyer defended his innocence all the way through trial, had good defense attorneys, expert bankers and other lawyers who testified that it was okay if all the money for closing didn't go through the settlement company, as it indicated on the settlement sheets. They said it was up to the bank to figure out if the buyers really had the down payments, or the money came from sellers. The jury didn't believe these experts, and convicted the lawyer on 12 counts of mortgage fraud.

Each of these lawyers lost or will lose his license to practice law, his title license, his practice and his income, with no real hope of getting any of those things back, ever. The secretaries, paralegals and other lawyers who worked with them have lost their jobs, and they and even the lawyers' other clients may bear the stigma of association with the lawyers found guilty of committing financial crimes.

These lawyers will serve their time, and come out felons, ready to start new careers at a time in life when most of us reach our professional peaks. Their families face the loss of financial security for the future, as well as the staggering costs of their criminal defenses and the fines they are paying.

Despite the huge prices they are paying for the crimes they were found to have committed, none of them lived a life of wealth and power for years as a result of their fraud, like Bernie Madoff. They simply did a few more closings, winking and nodding while they made hundreds of dollars in profit from each illicit closing. Each closing netted them HUNDREDS, not even thousands, let alone hundreds of thousands or millions of dollars in illicit gains. Nobody in his right mind could make an argument that the gains justified the criminal risks these men took.

But recently, I have seen several instances of “almost” fraud happening innocently enough, but with the potential to change participants’ lives permanently, just like the lawyers above. A family member of mine was buying a house in another state, and moved in early. The deal was done until the appraisal didn’t work, and everyone involved was trying to “save the deal” by moving money to the seller outside the settlement sheet. And just a week ago, I was on the phone to one of the other lawyers in my office who was conducting a closing. The lender limited the amount of the credit the seller was able to pay the buyer at closing, and the seller, buyer and agents were all hard at work at the closing table, trying to figure out how to ”fix the problem” and “get around” the bank’s requirements. I told the other lawyer to point out the language at the bottom of the HUD, above the signature lines for the buyers and sellers. This language states that the signatures represent that the numbers on the HUD were true and complete, under penalty of federal law. That would be the same federal law under which the lawyers mentioned above are going to jail.

I realized that if it was easy for knowledgeable, experienced real estate lawyers to slide down the slippery slope of mortgage fraud, and risk losing everything they worked for all their lives, it would be so much easier for an unsuspecting real estate investor as a buyer or seller, borrower or lender to end up on the same slope, maybe even in blissful ignorance of what they were doing. So I decided to write this article, without meaning to offend anyone, as sort of a dumb investor’s guide to avoiding mortgage fraud.

First, do not sign a blank loan application or any other blank document related to a real estate transaction, ever. Going along with that, read the applications you are asked to sign “again” at closing, making sure they match the originals and that all the information on your income, assets and debts is accurate.

Next, make sure that the agreement of sale you sign accurately reflects the transaction, and covers every part of the deal between the buyer and seller. This is even more important in short sale situations. If any part of the deal between the parties is not in the written agreement of sale, the written agreement does not accurately reflect the transaction, and when the written agreement is represented by the parties to the appraiser, bank and recorder of deeds to be the “real” deal, it is fraud.

When you get to closing, make sure the HUD-1 Settlement sheet you sign accurately reflects the price of the property, the money in from the buyer, and the money out to the seller. Make sure the checks given and received match the numbers on the HUD. And also make sure the buyer brings his or her own money for the down payment, not money from some other source. If a gift from a parent or other relative is used, make sure the gift is disclosed to the lender.

If the seller is providing financing to the buyer, make sure the price and amount of financing are accurate, that the financing is disclosed on the HUD, and if it is a first, second or third mortgage, that the correct documents are signed and recorded, and the buyer intends to pay and the seller intends to be paid consistently with the forms signed.

If any of the above parts of the transaction don't seem right to you, stop before signing, whether it is the agreement of sale or you are sitting at the closing table. Even if a lawyer, banker or real estate agent at the table says not to worry, everything is fine, trust your gut feeling and have the transaction reviewed by a real estate lawyer not involved in the deal. Enough lawyers and other mortgage and real estate professionals have been prosecuted and convicted of mortgage fraud that you can't be sure anyone making money from the closing is not involved in the conduct which you think may be fraudulent.

If you don't have the time to get an outside opinion, get everyone who is telling you that there is no problem with the transaction to put that advice to you in writing on their company letterhead, and to sign the writing and give it to you, before you put your signature on the closing documents. If they won't do that, run from the transaction.

Remember, it usually takes the knowing or unwitting cooperation of several people to close a fraudulent transaction, but any one person who has to sign the paperwork as a buyer or seller can stop it just by saying NO!

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