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Duck and Recover

Fraud losses and escrow
instructions ...



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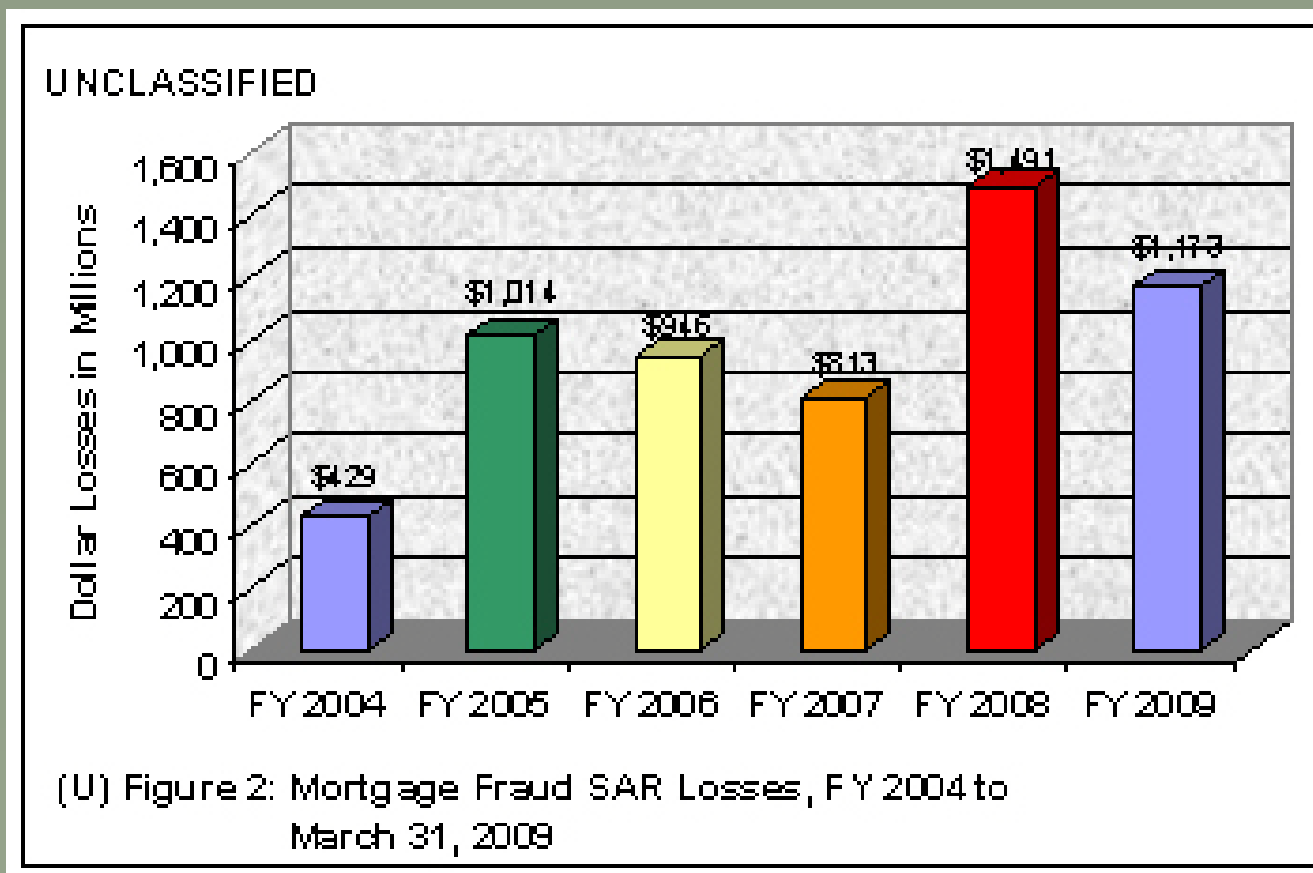
Fraud is a battlefield

- Loss Statistics
- Escrow Fraud = Losses
- Litigation over escrow obligations continues
- Revisiting Escrow Instructions is of paramount importance



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Loss Statistics



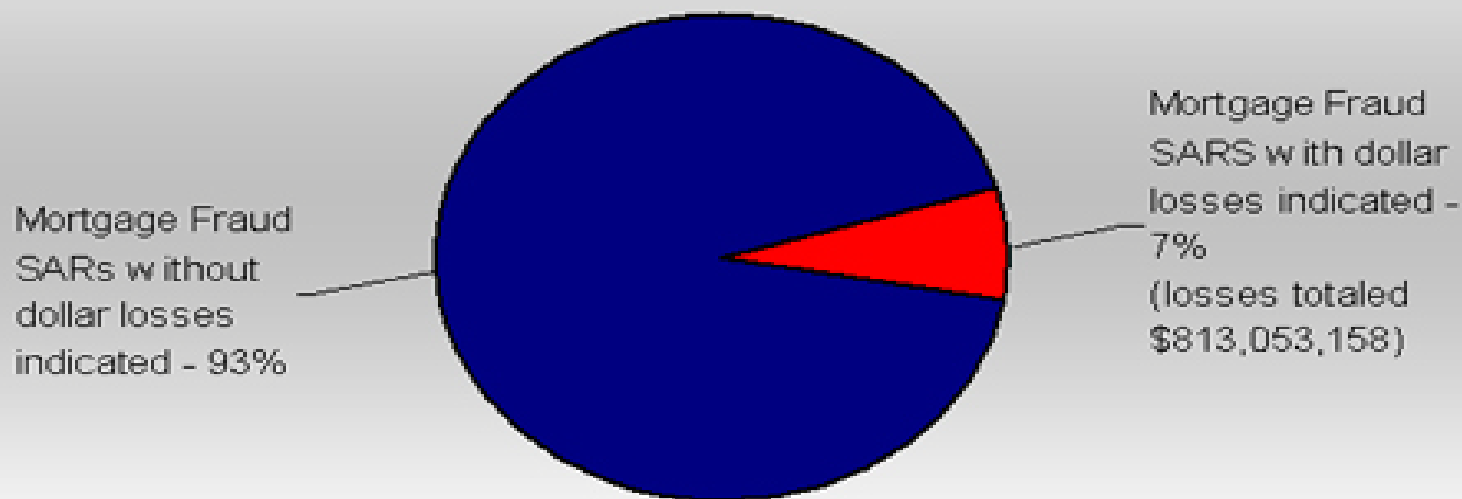


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SARS without losses

UNCLASSIFIED

**(U) Figure 2 : Mortgage Fraud SARs for FY 2007
Indicating a Dollar Loss**





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Simple Math

2009 MF to 3/31/09

As Reported

\$ 1,173,000,000

FBI Fiscal Year Ends 9/30

Times 2

\$ 2,346,000,000

1/3 of Industry Reports

Times 3

\$ 7,038,000,000

7% of SARS Report Loss Figures

Divided by .07

\$100,542,857,142

Approximately 2 trillion per year in originations



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When Escrow Hurts ...

Loss Avoidance and Recovery



How Fraud Schemes Implode

5. During May, 2008, your Affiant was contacted by a Tampa defense attorney regarding his client, and his client's desire to provide information to law enforcement about his and other individuals' involvement in wide spread mortgage fraud in Sarasota, Florida. Prior to providing any specific information, the client (hereinafter the "Cooperating Defendant" or "CD") agreed in principle to plea to a criminal charge of conspiracy in violation of 18 U.S.C. § 371, and in turn the United States Attorney's Office agreed to consider the Cooperating Defendant's cooperation for purposes of sentencing, and agreed not to pursue any other charges against the Cooperating Defendant related to the conduct pertaining to the Cooperating Defendant's reported mortgage fraud.



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The CD has detailed that from approximately January, 2001, through April, 2007, he/she directly participated, along with other individuals in a large number of fraudulent mortgage transactions. The CD has specifically identified to your Affiant in excess of eighty (80) properties in the Sarasota area that he/she directly participated in fraudulent mortgage transactions, which properties have an estimated value of over \$200,000,000.00.

That's a lot a Zeros!



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Craig Adams (Cooperating Defendant)





10. The CD stated that Lisa Rotolo knowingly participated in fraudulent activity as the title officer in the above identified 61 mortgage transactions for the 37 properties. Specifically, the CD stated that Lisa Rotolo facilitated the fraudulent mortgage transactions by a variety of methods, namely falsifying HUD-1 settlement statements, falsifying title documents, falsifying disbursement worksheets, falsifying documents to hide and conceal the true source of monies and property interest, and fraudulently disbursing monies.





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Baywood?

CD: I'm concerned about Baywood.

LR: I know.

CD: I mean of all the risk that I have out there Baywood is probably for us the most problematic would be a good way to put it.

LR: Um hum. I know, I think about it everyday. **Everyday I wake up with a stomach ache.**



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1636 Baywood Way is a property which was originally closed on March 1, 2005, and then went through several mortgages and refinancings. Throughout these purchases, the true ownership interest belonged to the CD and another individual. The “straw” buyer used was the CD's relative, who had an excellent credit score but did not have the income or assets to support a loan of \$1,480,000.00.



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1636 Baywood

- March 1, 2005
 - Property purchased from Erstedts by Joceyln Adams (relative of Craig Adams)
 - Loan: \$1,480,000 from WAMU
 - Actual Selling Price \$1,650,000
 - Sellers not “friendly” so two sets of HUD-1’s prepared



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1636 Baywood Way, Sarasota, FL

March 1, 2005

- Actual Sale
 - Errol Ersted, Seller
 - Jocelyn Adams, Buyer
 - Lender: WAMU
 - Price: 1,600,000
 - Downpayment: 40K
 - Cash from buyer:
\$1,559,897
- Falsified HUD
 - Rich Bobka, seller
 - Jocelyn Adams, buyer
 - Lender WAMU
 - Price: 1,850,000
 - Loan: 1,480,000
 - Downpayment: 40K
 - Cash to Seller:
\$1,807,413



While Jocelyn “owns” the property

- 1/6/06 – 2nd from BBT for \$150,000
 - Money disbursed to CD
- 6/29/06 – 2nd from Countrywide for \$330K
 - Money disbursed to CD
- 3/3/07 – 1st from Am Home for \$1,890,000
 - WAMU and Countrywide not paid off

105. Payoff To Washington Mutual Bank, FA	1,541,866.87
Payoff To Countrywide Home Loans	313,283.55



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- CD: I'm concerned about Baywood.
- LR: I know.
- CD: I mean of all the risk that I have out there Baywood is probably for us the most problematic would be a good way to put it.
- LR: Um hum. I know, I think about it everyday. **Everyday I wake up with a stomach ache.**

WAMU foreclosed in December 2008 with
\$1,567,784.78 outstanding

During scheme: CD takes approx \$2.6 Mil
from Baywood property

Title agent Rotolo

Failed to pay off liens

Disbursed to non-owner CD

CD signed Jocelyn's name – Rotolo
notarized





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Plaza Home Mortgage v. North American Title Company (April 27, 2010)

- Final HUD-1 = \$53,853 payout to Attorney in Fact for Borrower as “Additional Settlement Charges”
- Preliminary HUD-1 = not disclosed



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"Attention Settlement Agents

"Plaza Home Mortgage will not [disburse] funds to cover borrower fees that either do not appear on the Estimated HUD-1 or fees that were not verified by a Closer employed by Plaza Home Mortgage.

"Lenders are required to accurately disclose fees to our borrowers. Any increase or decrease greater than \$35 for borrower paid fees will constitute the redraw and resigning of the TIL [truth-in-lending] Itemization, Closing Instructions, and Right to Cancel (if applicable) documents.

"Please thoroughly review the fees listed on our Truth-in-Lending Itemization and verify that these fees match those on the final HUD-1 Settlement Statement. The settlement agent cannot change fee amounts after the final documents have been signed by the borrower. Note: An additional redraw fee of \$150 may be charged to the broker and/or settlement agent.

"The settlement agent is required to sign & date below.

"Acknowledged and agreed:

"BY: /s/ _____
Settlement Agent's Signature Date

"By signing, the settlement agent certifies that there are *no additional payoffs or fees that were not disclosed to the lender either verbally or on an Estimated HUD-1.*"



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Breach of contract

D. Breach of Contract Action

We conclude under the plain language of the addendum that before North American closed the loans, it was contractually bound to disclose to Plaza any "additional payoffs" that were not disclosed either in the estimated HUD-1 or verbally by North American.



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The “seller proceeds” argument

North American argues that it had no duty to disclose the \$53,853 payment to Peregrino because escrow closed at the latest when the loans funded and the grant deeds recorded at 8:00 a.m. on March 2, 2007, *before* North American received Santillian's written instruction to pay Peregrino \$53,853.⁶ According to North American, when it received the instruction to pay Peregrino, Santillian held "equitable title to the money" and could distribute the money as she saw fit.



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Does not apply ...

While this principle may be correct as far as it applies to a buyer and seller of real property regarding who "owns" escrow funds or real property at a particular point in time, we conclude it does not apply here. Instead, we are concerned in the instant case with the duties and obligations of North American as set forth in the closing instructions contract. One such duty was the obligation of North American to disclose to Plaza any "additional payoffs or fees" that were not included in the estimated HUD-1, or otherwise disclosed by North American. We conclude this duty to disclose continued until the loans closed, and not, as North American argues and the trial court concluded, when escrow closed.



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NARROW DECISION

- Court remanded for further action
- Did not reach breach – only reached issue of contract interpretation
- Did not consider breach of maximum seller contribution provisions



Logic ...

If we accepted North American's argument at trial and in this appeal, that after escrow closed—but before the balance of the loan proceeds was distributed in accordance with the closing instructions (that are based on the estimated HUD-1 approved by the lender)—the seller could authorize distributions of money that conflicted with the closing instructions, we would be creating a void or "legal holiday," so to speak, between escrow and settlement. That void, in turn, would actually encourage potentially illegal and unlawful conduct, such as the "kickbacks" in *Money Store* or here, which Plaza claims was a "red flag" that the subject property was overvalued and the appraisal inflated.⁸



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Closing Instructions Define Obligations

- Can establish breach of contract but also FRAUD – Knowledge that lender would not accept transaction
- Notice of what is and is not acceptable
- Provides remedy against escrow and potential TITLE if breach



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Closing Instructions

- Disburse only to entities listed on preliminary HUD-1
- Do not pay liens not recorded or recorded outside a certain time window
- Suspend if knowledge that borrower does not intend to occupy in owner occupied transaction



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Closing Instructions

- Disclose previous, subsequent or concurrent transactions involving property or borrower
- Must submit to lender ALL escrow instructions, addendum or other agreements that affect the closing or direct disbursements



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Closing Instructions

- Do not accept contribution of any funds from party other than borrower.
- Require down payment from borrower's verified account



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Now is the time

- Timing for revising documents
 - Risk Averse
 - Focus on loss recovery
 - Low volume = less power in production



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Fraud is a battlefield

- Mortgage Fraud is not a “cost of doing business – it can put your institution out of business
- Strong documents define your expectations and cement your rights
- Now is the perfect time to revise your documents




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Rachel Dollar, the editor of Mortgage Fraud Blog, is an attorney and Certified Mortgage Banker who handles litigation for lending institutions and secondary market investors. She is an author and a nationally recognized speaker on the topic of mortgage fraud. Ms. Dollar is a shareholder with the law firm of [Smith Dollar, PC](#), is licensed to practice law in California and maintains offices in Santa Rosa, California. [Email Ms. Dollar](#)

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Fraudline: Shell Games

Wednesday, March 10, 2010

Another Metropolitan Money Store Player Indicted

Rolando Alonzo Cousins, a/k/a "Junior", 31, Bowie, Maryland, has been indicted for conspiracy to commit mail fraud, mail fraud, and money laundering, in connection with a massive mortgage fraud scheme which promised to help homeowners facing foreclosure keep their homes and repair their damaged credit, but left them homeless and with no equity....

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Fraudster Sentenced for Submitting False Information to Lenders

Kara E. Robinson- Franks a/k/a Kara E. Garret, a Kansas resident, was [sentenced](#) for wire fraud and money laundering in connection to her role in a mortgage fraud scheme.

As previously [reported](#) on Mortgage Fraud Blog and per court [documents](#), [Robinson - Franks](#) held herself out to be a real estate agent and vice president of Operations and Human...

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