

# Fraud in Loss Mitigation and Loan Modification

MBA's National Fraud Issues Conference 2010

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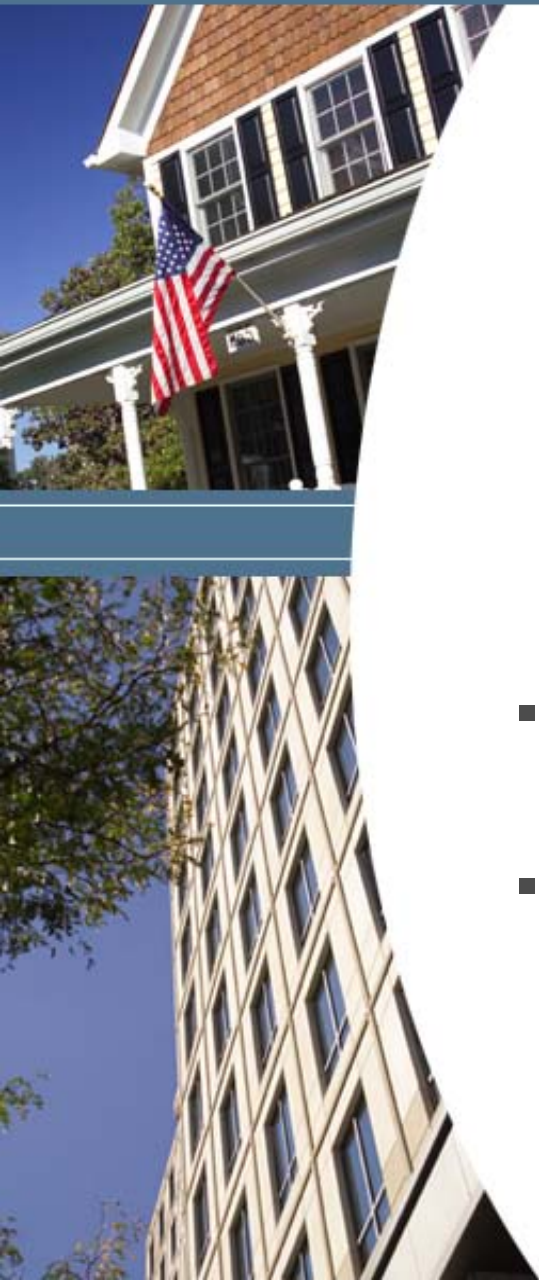
# Loss Mitigation & Loan Modification Fraud

## OVERVIEW:

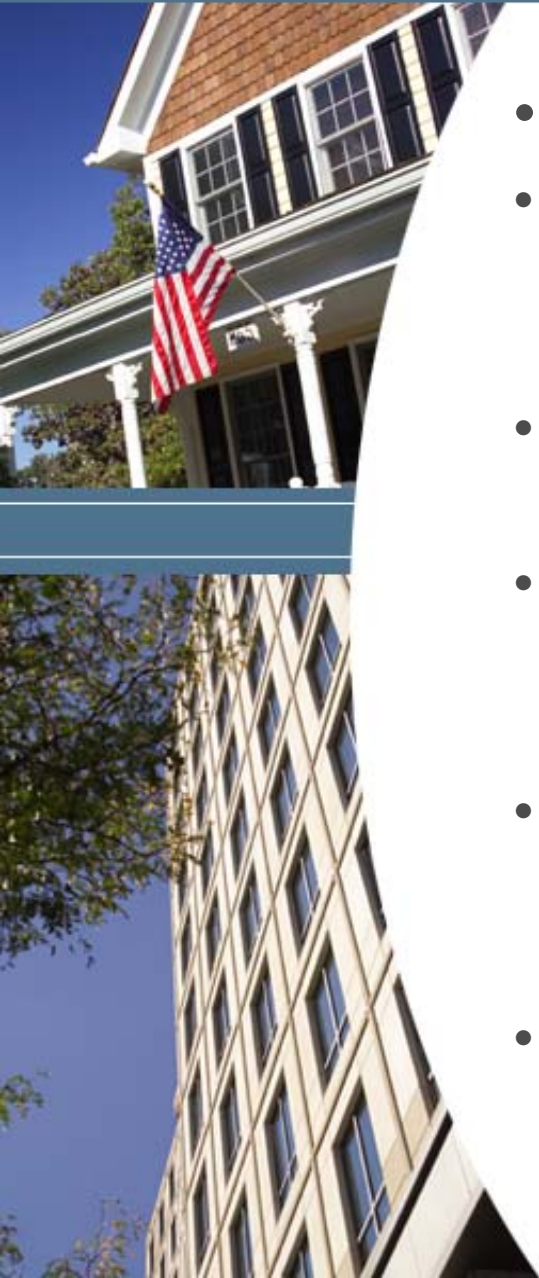
The purpose of this session is to introduce multiple fraud schemes impacting mortgage companies that are being revealed across the country. Then to present possible steps to prevent these activities and possibly recover losses.

## OBJECTIVES:

- Describe fraud schemes involved in general loss mitigation operations.
- Provide expanded focus on Short Sale fraud, Foreclosure rescue schemes and Loan Modification fraud. Then identify preventive measures and possible avenues of recovery.

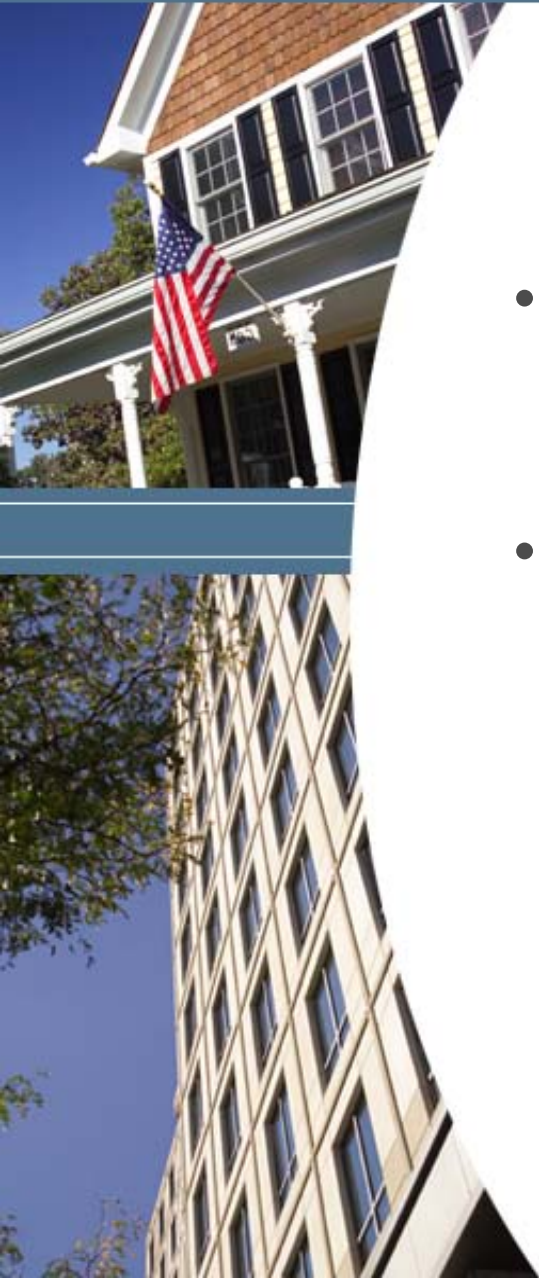


# Loss Mitigation & Loan Modification Fraud



- **Agenda:**
- I. Background/The Basics - Communication and Identify general Loss Mitigation options where fraud occurs and highlight steps for Prevention
- Strategy Step – A) Evaluate Borrower’s Financial Condition & B) What to do with Property
- II. Breakdown Short Sale Fraud – Parties involved, damage to company, outline possible steps for prevention and potential recovery.
- III. Breakdown Foreclosure Fraud & Loan Modification Schemes - Parties, damages, prevention and potential recovery.
- IV. Summary and Questions

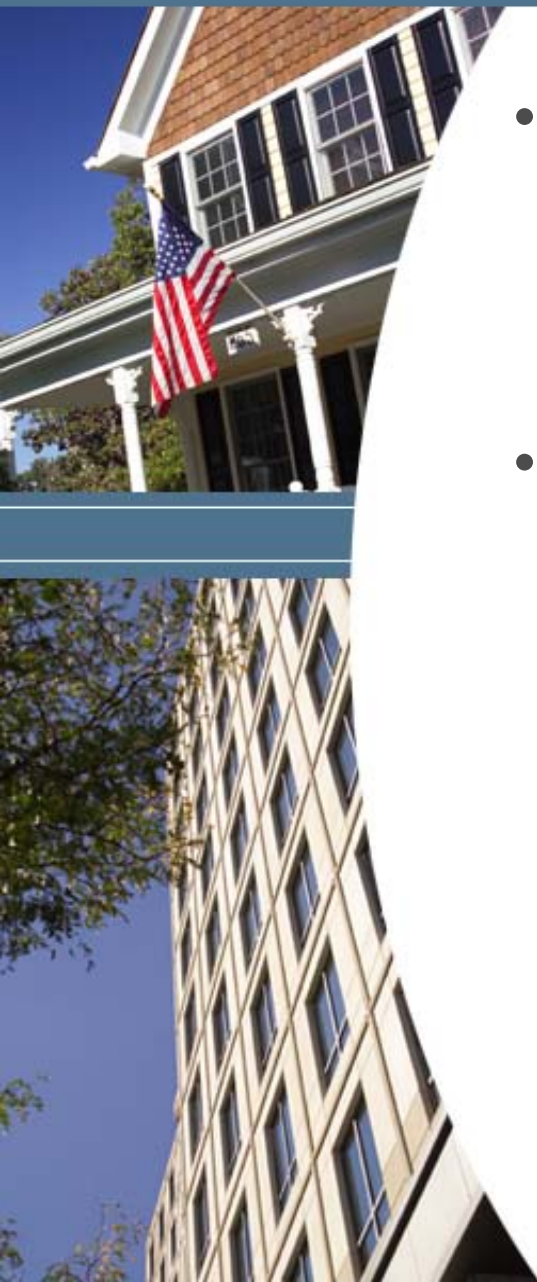
# Loss Mitigation & Loan Modification Fraud



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# Fraud in Loss Mitigation and Loan Modification

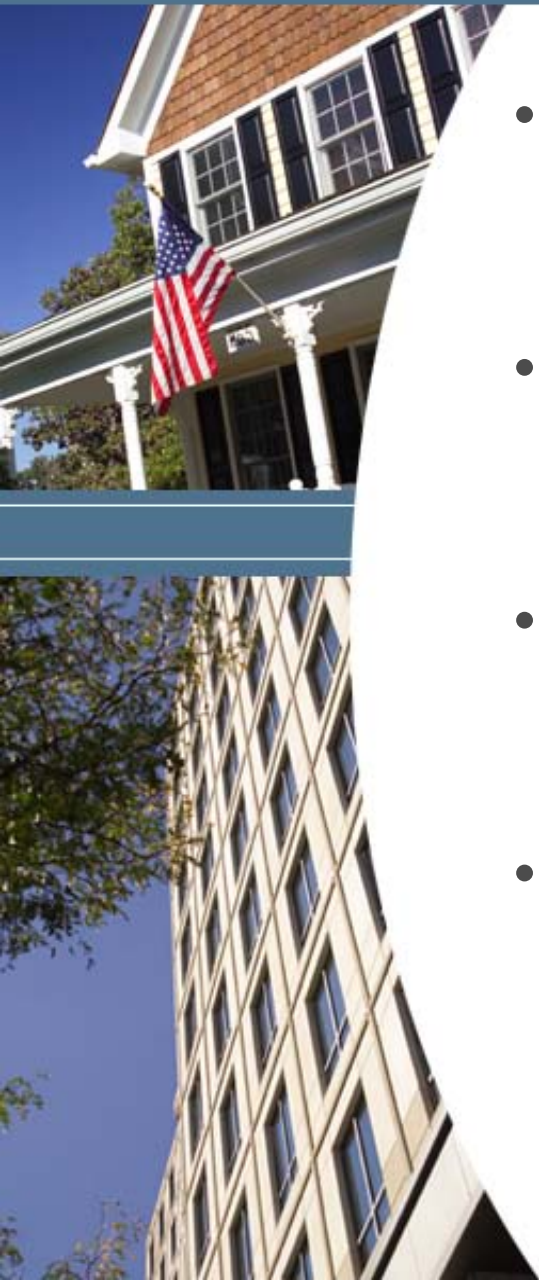
## The Basics



- If we are looking at Loss Mitigation, then by definition we have a borrower who is in default and threat of foreclosure is likely imminent.
- Given the public outcry and political push to stop foreclosures – Loan Modifications have taken an unprecedented and a financially historic position in not only the mortgage servicing arena but also in the global financial system.

# Fraud in Loss Mitigation and Loan Modification

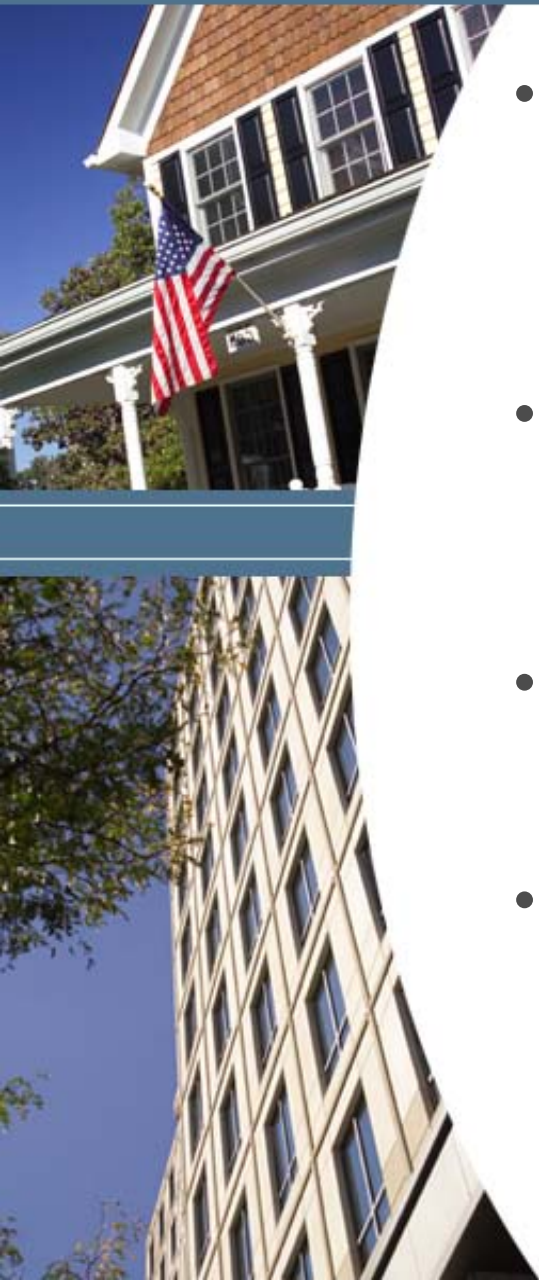
## The Basics - Communication



- Numerous times we have consumer and commercial mortgage lawsuits that started with simple miscommunication
- The Banking/Mortgage industry has its own terminology which is not part of the public vernacular\*\*\*
- The mortgagor becomes frustrated, files a complaint with state agency, BBB, or seek help from a consumer lawyer
- Most lawyers, unless they specialize, do not understand the Banking/Mortgage industry – so we add on a layer of miscommunication in a default situation – it also makes an excellent breeding ground for fraud

# Fraud in Loss Mitigation and Loan Modification

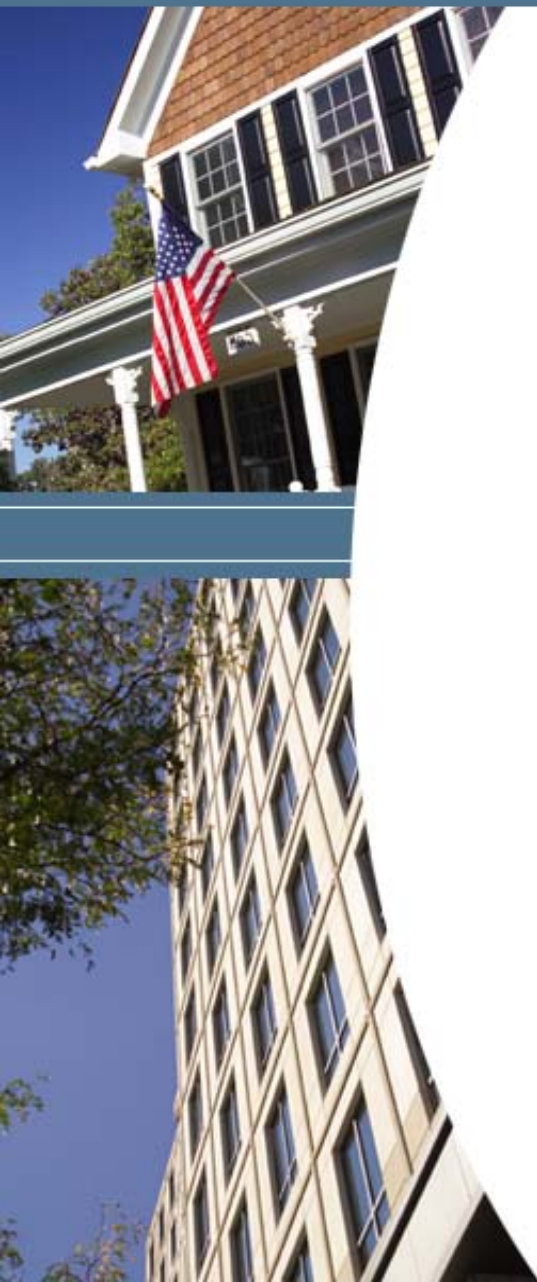
## The Basics - Communication



- An old man was on his death bed. He wanted badly to take some of his money with him. He called his priest, his doctor and his lawyer to his bedside. "Here's \$30,000 cash to be held by each of you. I trust you to put this in my coffin when I die so I can take all my money with me."
- At the funeral, each man put an envelope in the coffin. Riding away in a limousine, the priest suddenly broke into tears and confessed, "I had only put \$20,000 into the envelope because I needed \$10,000 for a new baptistery."
- "Well, since we're confiding in each other," said the doctor, "I only put \$10,000 in the envelope because we needed a new machine at the hospital which cost \$20,000."
- The lawyer was aghast. "I'm ashamed of both of you," he exclaimed. "I want it known that when I put my envelope in that coffin, it held my personal check for the full \$30,000."

# Fraud in Loss Mitigation and Loan Modification

## The Basic - Tools Available in Loss Mitigation Arsenal

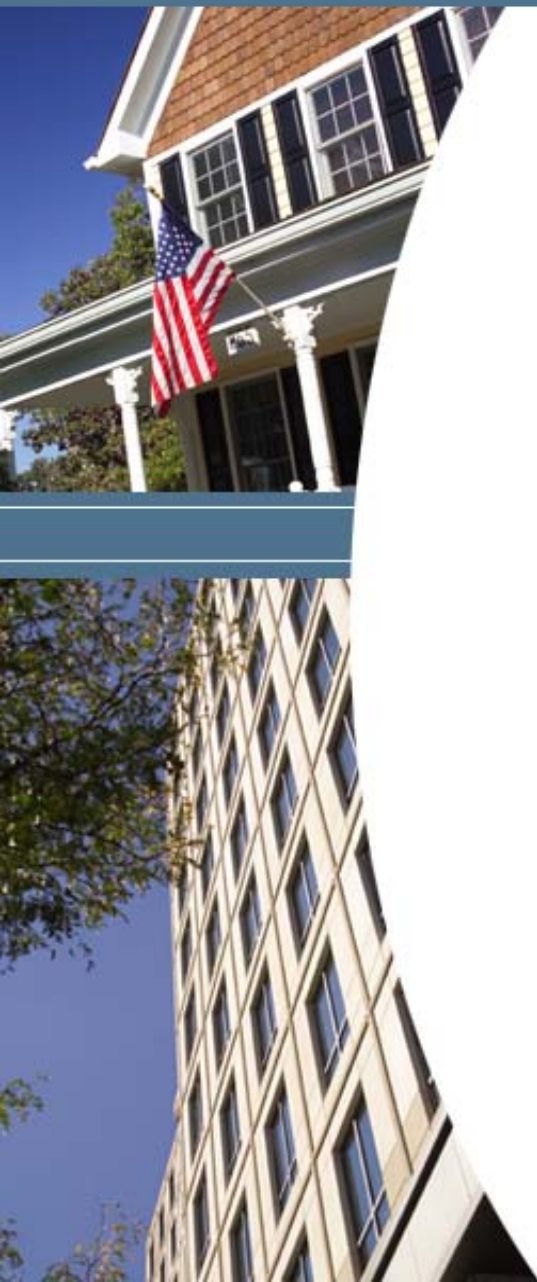


The following are general Loss Mitigation terms and options available when looking at handling a and determining what to do with the property/mortgage.

- » 1) **Forbearance** – Happens when borrower makes arrangements to pay the amount owed a future date. Likely will impact the current payment. Formal docs to be signed.
- » 2) **Repayment Plan** – Umbrella term. Could be oral agreement or written.

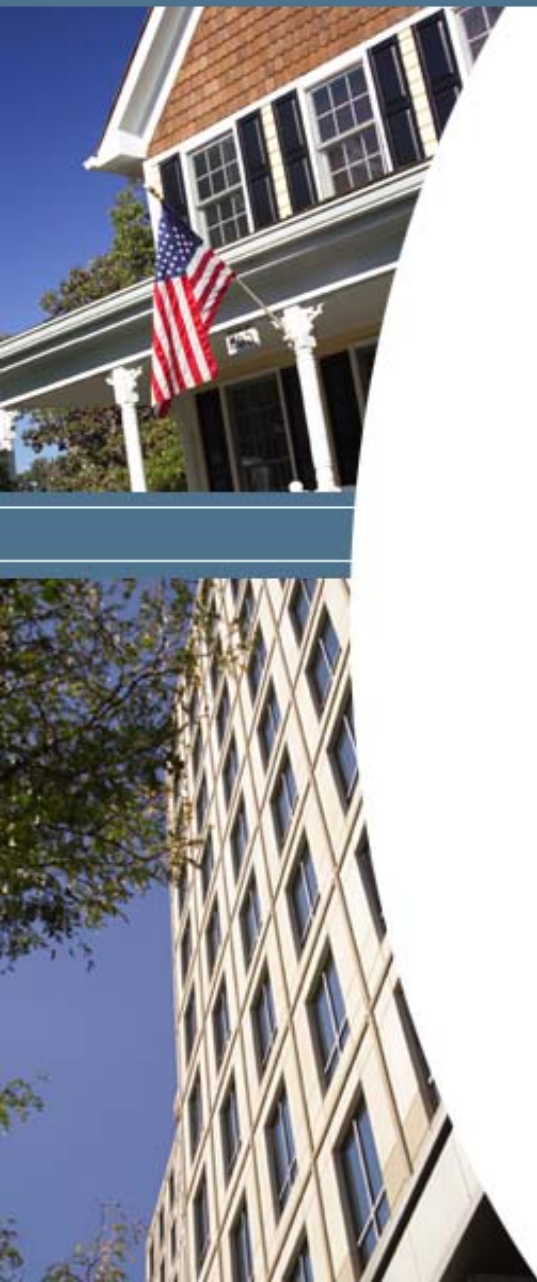
# Fraud in Loss Mitigation and Loan Modification

## The Basic - Tools Available in Loss Mitigation Arsenal

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- » 3) **Capitalize the delinquency** – Taking the current amount that is past due and adding it to the back of the loan – could be in a balloon payment or re-amortize the loan
  - » 4) **Loan Modification** – Most popular are trial mod (3 months) while Borrower's financials are reviewed and then enter into permanent loan mod. Will require modification document to prior mortgage/deed of trust. MORE ON THIS ONE LATER.

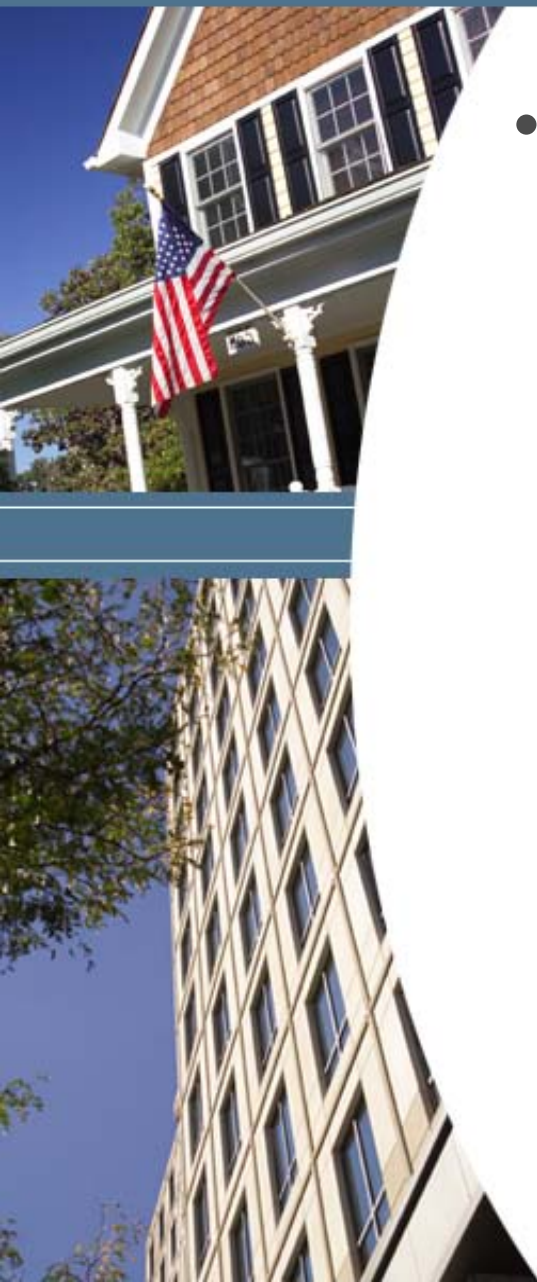
# Fraud in Loss Mitigation and Loan Modification

## The Basic - Tools Available in Loss Mitigation Arsenal

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- » 5) **Assumption** – Third party/Buyer/Single Spouse accept primary responsibility/liability of the existing note secured by mortgage/deed of trust. However, Seller/Other Spouse will remain secondarily liable, unless specifically released.
  - » 6) **Deed In Lieu** – Deed given by the Borrowers to the lender in order to avoid foreclosure.
  - » 7) **Short Sales** – Borrowers work to sell house while in communication with Lender – Lender will agree to accept less than the payoff amount.

# Fraud in Loss Mitigation and Loan Modification

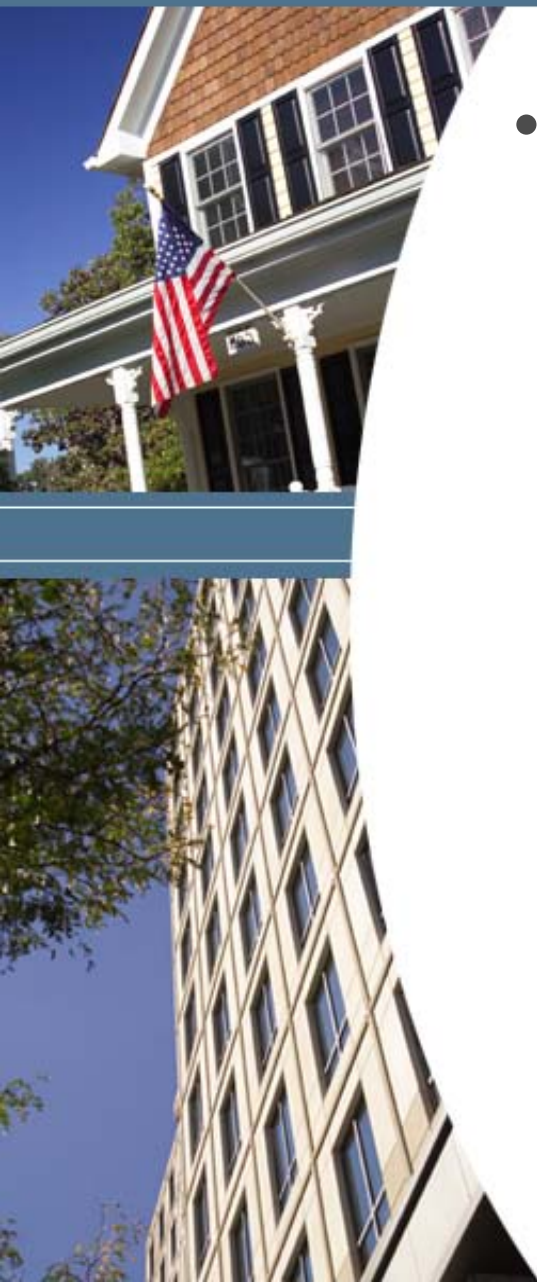
## The Basic – Questions for Mortgagee/Servicer



- 1) Identify the problem the mortgagor is currently trying to handle
  - » Economic Change: Job Loss, Divorce, Family Tragedy, etc
  - » Mortgage Product: ARM reset, increased escrow – taxes, insurance
  - » Origination Problem: Investment property, fraud in origination
  - » Other: Natural disaster, etc

# Fraud in Loss Mitigation and Loan Modification

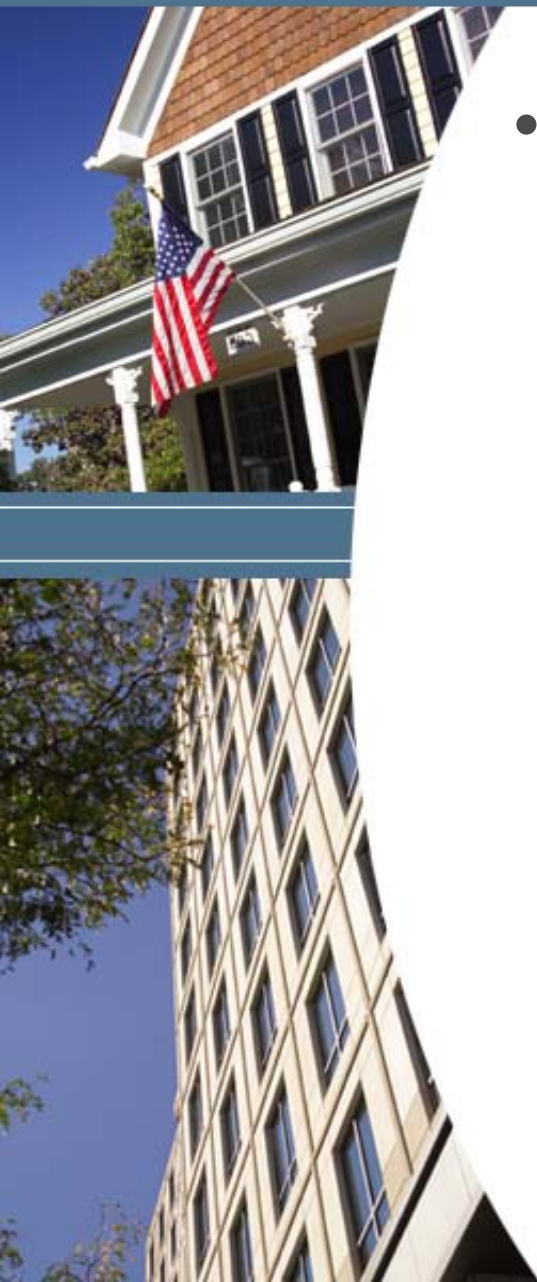
## The Basic – Questions for Mortgagee/Servicer



- 2) Questions the Mortgage Servicer has to Review and Determine:
  - » Investor guidelines – what will the investor allow them to do?
  - » Mortgage Insurance – is this going to be an impact on MI
  - » What is the lien position of the mortgage – 1<sup>st</sup> or 2<sup>nd</sup>?
  - » Are there other interested parties in the property?
  - » Does this mortgagor qualify for a loan modification?

# Fraud in Loss Mitigation and Loan Modification

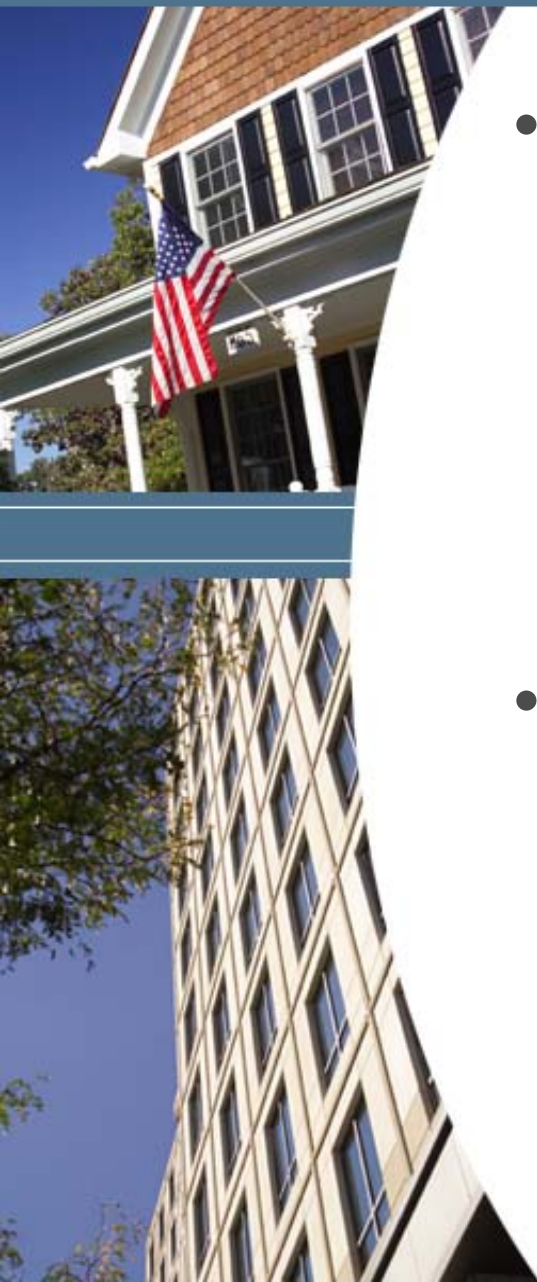
## The Basic – Questions for Mortgagee/Servicer



- This all leads the servicer to answer and/or calculate the answer to 2 fundamental questions:
  - » 1) Does the Borrower want to keep the house?
  - » 2) The servicer must undertake an “Evaluation of the Borrowers’ Current Financial Condition”

# Fraud in Loss Mitigation and Loan Modification

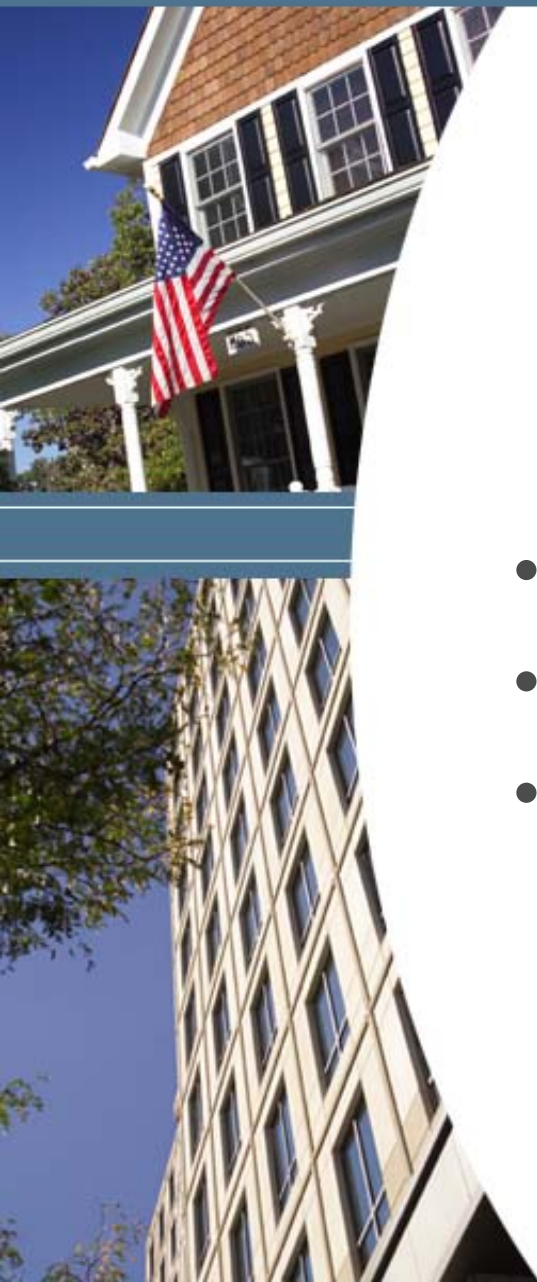
## The Basic – Questions for Mortgagee/Servicer



- If they want to keep the house (more leverage)
  - » Forbearance
  - » Repayment Plan
  - » Capitalize the delinquency
  - » Loan Modification
- If they do not want to keep the house (less leverage)
  - » Assumption
  - » Deed In Lieu
  - » Short Sales

# Fraud in Loss Mitigation and Loan Modification

## Examples of Fraud In Loss Mitigation

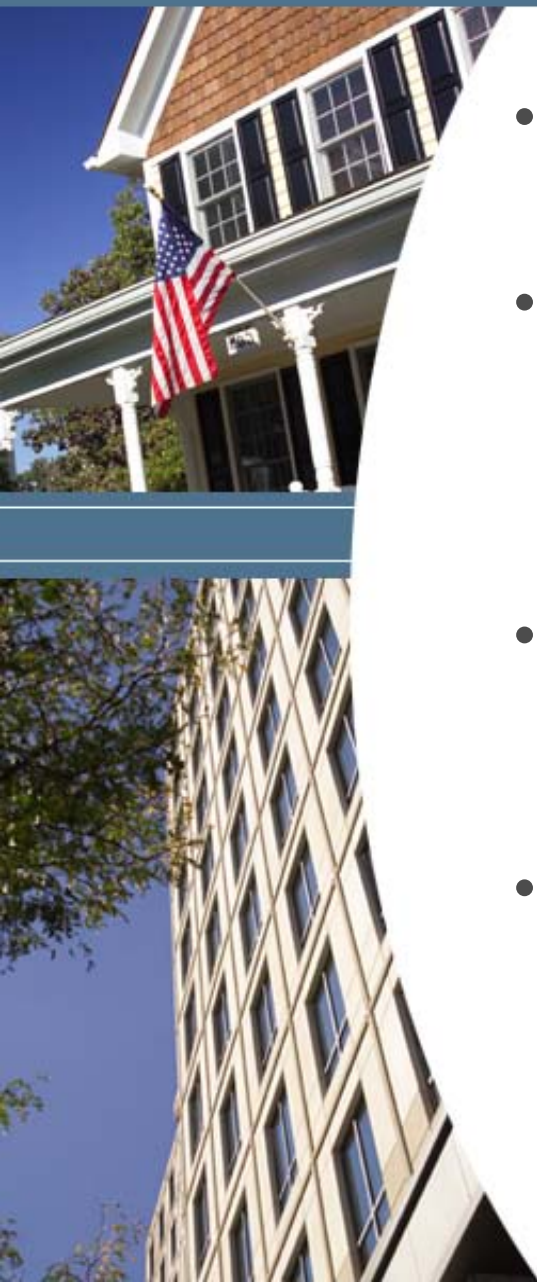


Likely areas where fraud will occur the 3  
Loss Mitigation options below: **Identity**

- » Forbearance
- » Repayment Plan
- » Capitalize the delinquency
- Look for false Power of Attorneys
- Look for double dealing with one Spouse
- Look for actions being handled by an  
“authorized third party” - if all  
communications are being handled by A3P,  
this is a red flag you may not be dealing  
with the true intentions of the borrower

# Fraud in Loss Mitigation and Loan Modification

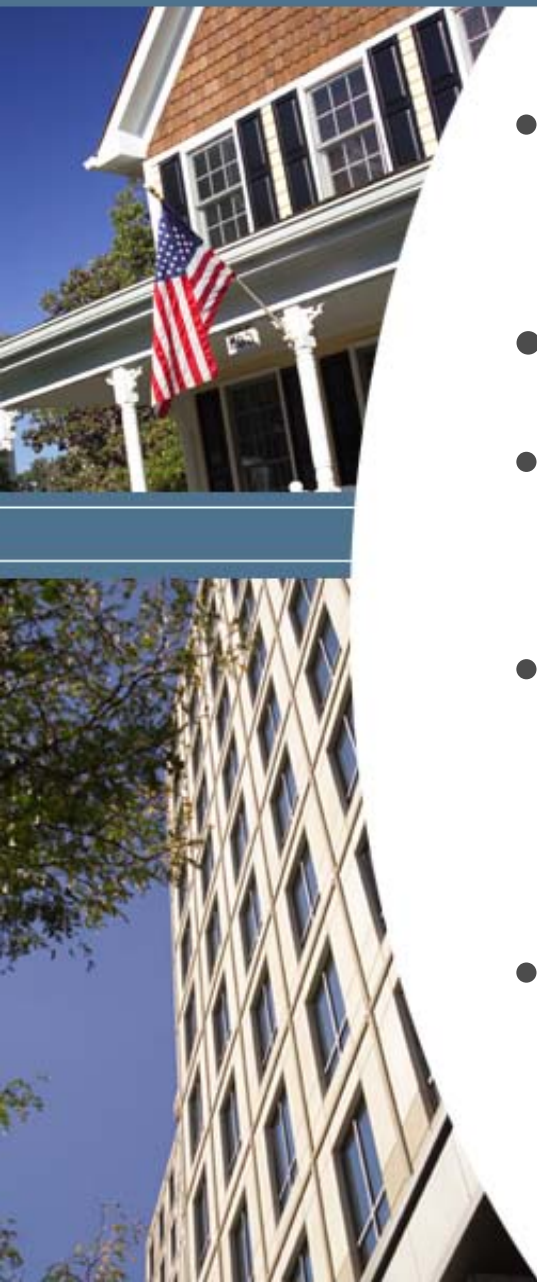
## Examples of Fraud In Loss Mitigation



- Prevention and Potential Recovery:
- Forbearance, Repayment and Capitalization of Delinquency are more “traditional” LM options, where the servicer should have more control but the most likely area for fraud.
- Here we are trying to avoid lost time when the borrower ultimately should be placed in a loan mod or other LM options.
- Evaluation of the borrower’s current financial condition is critical (even if they are providing false documents) so this does not wind up a delinquency in 90 days or provide a basis for a consumer complaint.

# Fraud in Loss Mitigation and Loan Modification

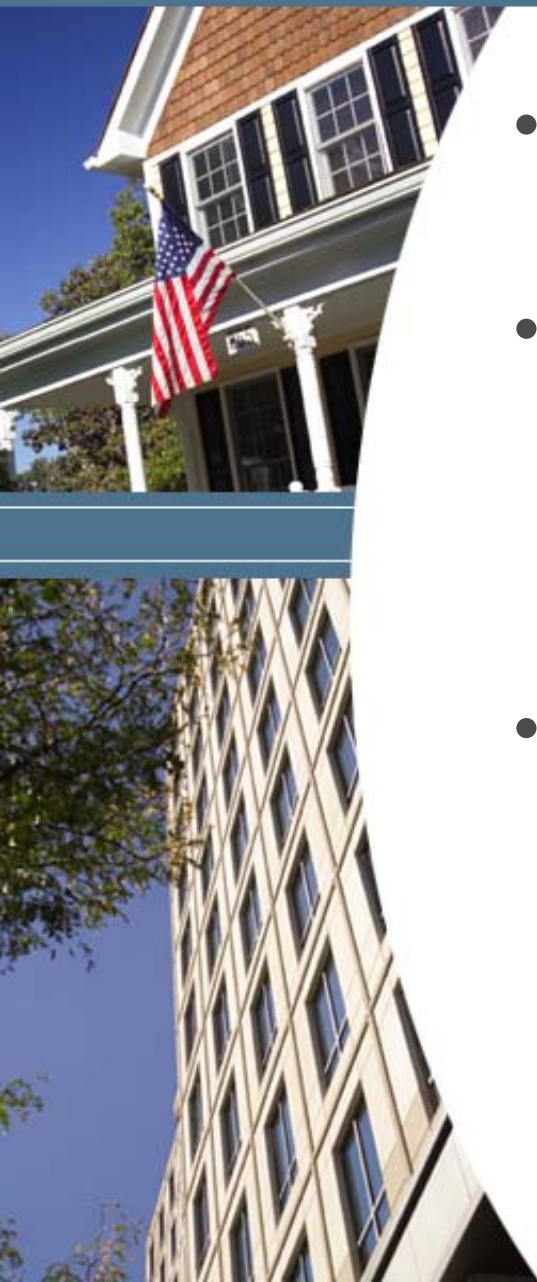
## Examples of Fraud In Loss Mitigation



- Likely areas where fraud will occur in Assumptions: **False Financials**
- Assumptions
- Assumptions are back! They tend to show up in down economic environments
- Usually are done by relative, friend or colleague of borrower who is desperate to remove liability of mortgage
- False Financials submitted by borrower or person to assume mortgage

# Fraud in Loss Mitigation and Loan Modification

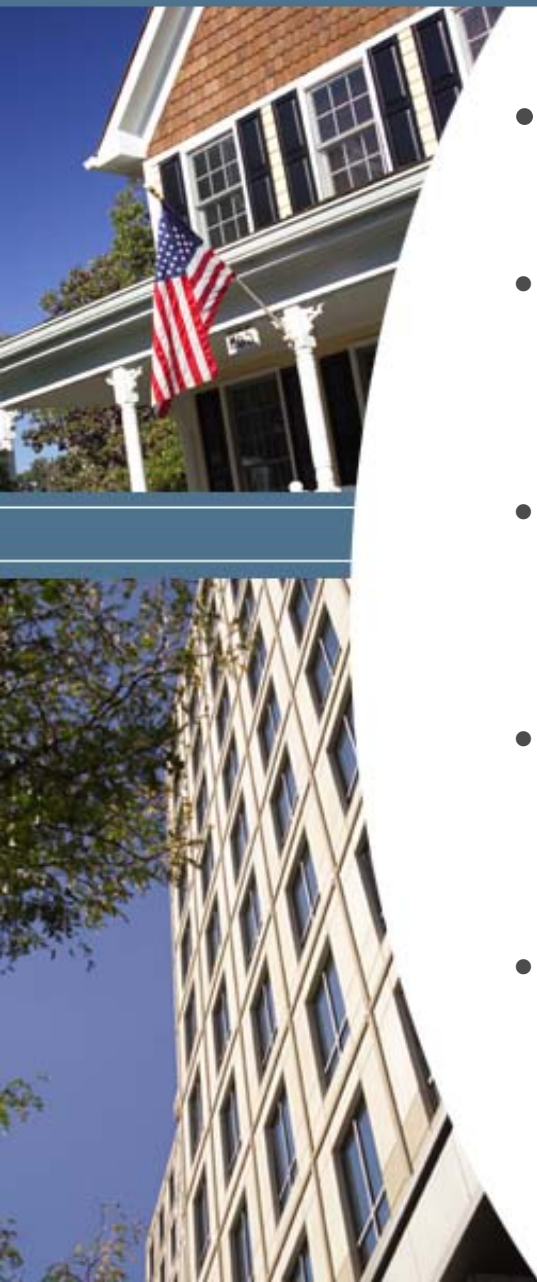
## Examples of Fraud In Loss Mitigation



- Prevention and Potential Recovery:
- Should be underwritten as if new mortgage, with original borrower as guarantor and still liable in event of default by person assuming mortgage
- Verification of financials, employment and basic affordability thresholds should prevent fraud.

# Fraud in Loss Mitigation and Loan Modification

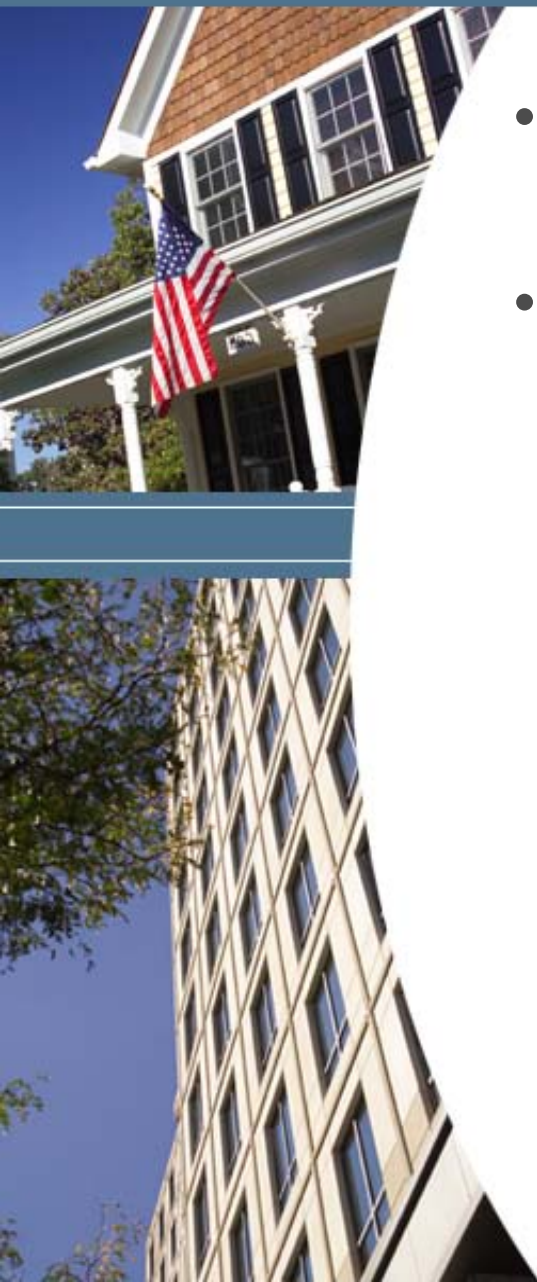
## Examples of Fraud In Loss Mitigation



- Likely areas where fraud will occur in Deed in Lieu: **False Satisfactions/Releases**
- Throughout the country we are seeing false lien releases and satisfactions by companies and individuals (nothing new)
- However, we they are now being done in the DIL context to remove 2<sup>nd</sup> liens/HELOCS in order for a DIL to take place.
- Most often the release/satisfaction is falsified by a loan mod/title agent, who has accepted \$\$ from a distressed borrower for a DIL.
- Outcome is a DIL done, 1<sup>st</sup> takes prop assuming free and clear but the 2<sup>nd</sup> soon coming to collect from 1<sup>st</sup> – more litigation and borrower is usually judgment proof.

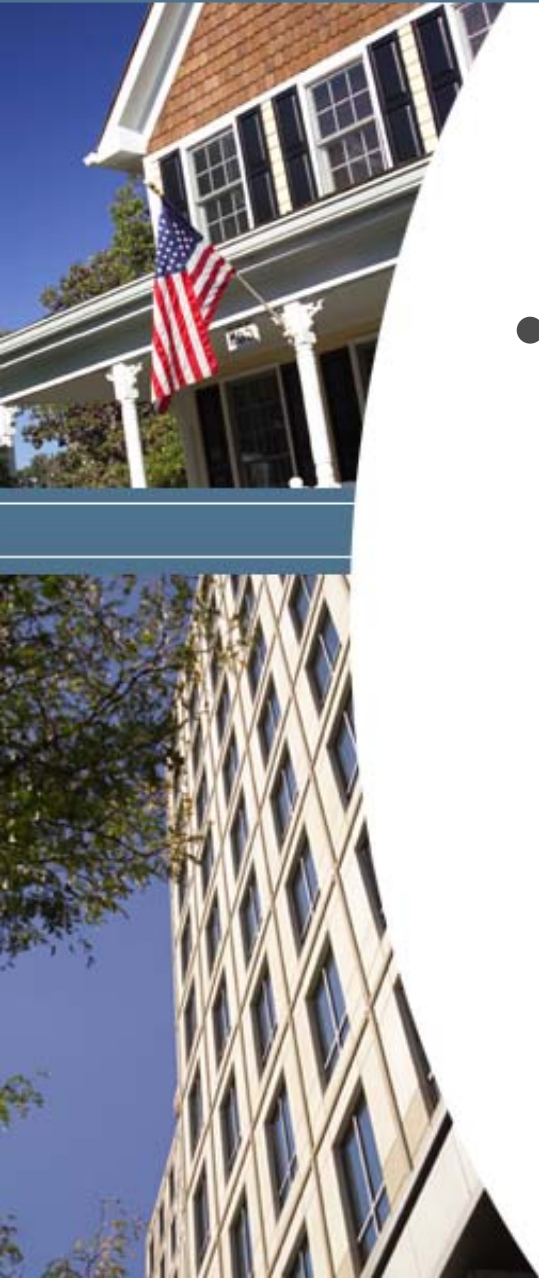
# Fraud in Loss Mitigation and Loan Modification

## Examples of Fraud In Loss Mitigation



- Prevention and Potential Recovery:
- Make sure these are done prior to DIL:
  - » Needs to be a first lien priority position
  - » Check status of taxes
  - » Have a title search done to make sure no unknown encumbrances
  - » Make sure you have indemnity for any unknown liens, taxes, assessments, etc
    - \*\*\* Have a notarized affidavit by both the borrower and their A3P/loan mod company – indemnifying you. They all know at the absolute minimum that the 2<sup>nd</sup> existed and it was not paid off. You can argue the fraud later. Then rescind the DIL.\*\*\*
  - » Make sure delinquent mortgagor pays recording fees

# Loss Mitigation & Loan Modification Fraud



- II. Breakdown Short Sale Fraud
  - Parties involved, damage to company, outline possible steps for prevention and potential recovery.

# Loss Mitigation & Loan Modification Fraud

## Describe Fraud Schemes Involving Default and Loss Mitigation

### A. Phony Short Sale Scam

#### I. Background

a. Borrower is delinquent and property is on market for sale. Usually some communication between borrower and servicer has already taken place to determine:

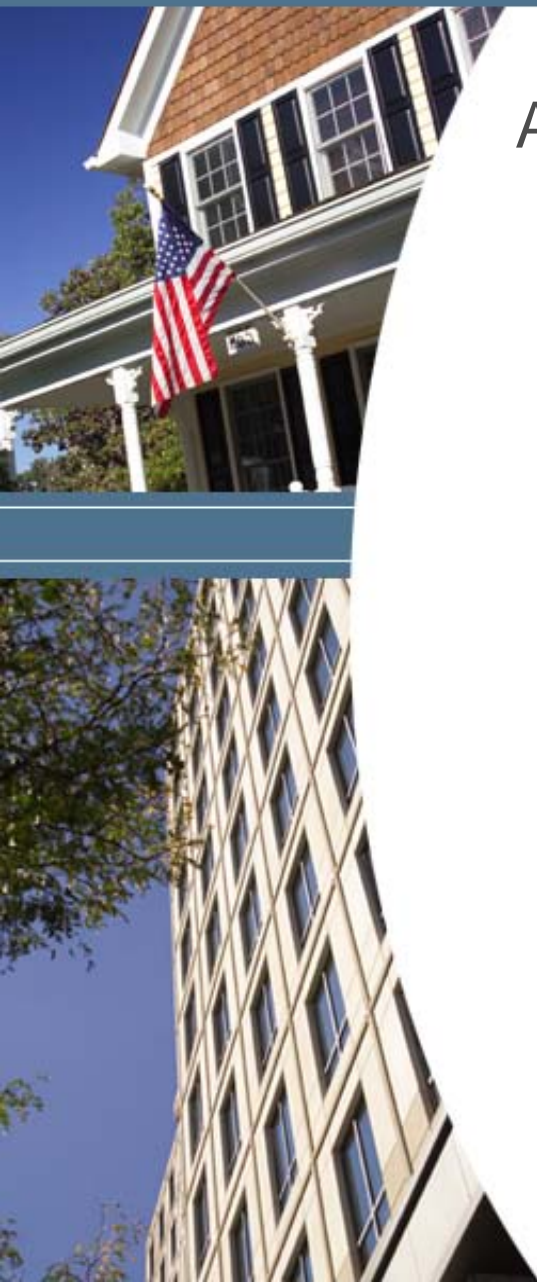
1. Original Value
2. Current UPB
3. Applicable local market conditions
4. Range for Short Sale Price

#### II. Usually two (2) types of fraud

- a. Fraud directed against Borrower
- b. Fraud directed against Servicer

# Loss Mitigation & Loan Modification Fraud

## Describe Fraud Schemes Involving Default and Loss Mitigation

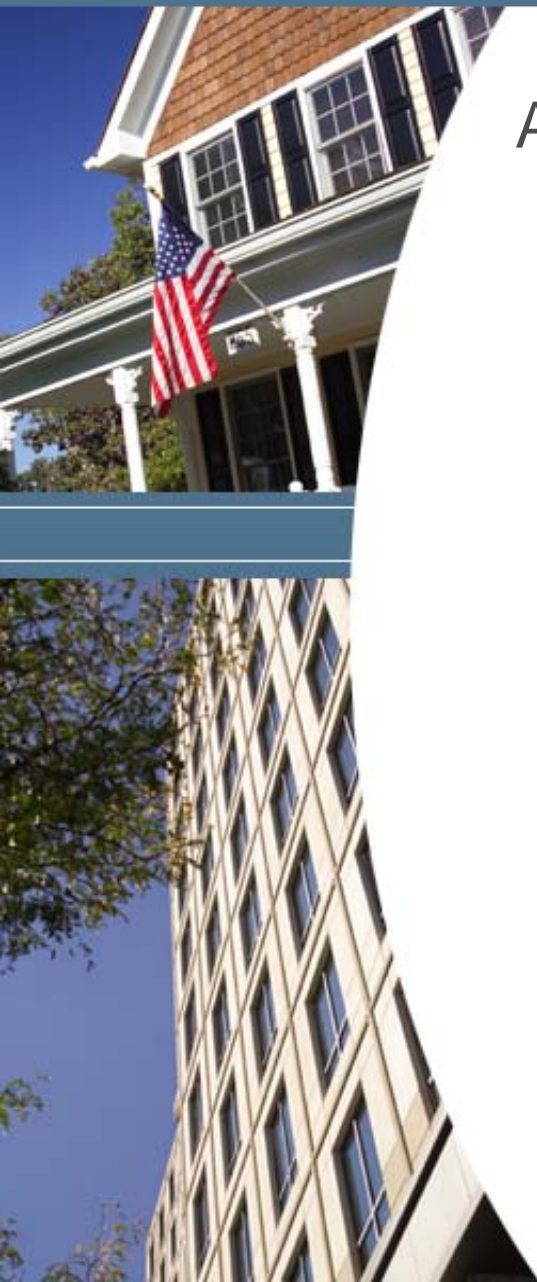


### A. Phony Short Sale Scam - Fraud Directed Against Borrower

- I. Distressed Borrower, pays an up front fee and grants Power of Attorney to “Short Sale Specialist” to negotiate with lender and/or prospective purchaser for short sale price.
- II. If no Sale – Specialist just keeps up front fee if no sale, servicer loses valuable time due to specialist and borrower further upside down.
- III. If Sale – Specialist makes money off of sale, buyer has good price, servicer/investor loses money, distressed borrower has no home and possible tax consequences from the short sale

# Loss Mitigation & Loan Modification Fraud

## Describe Fraud Schemes Involving Default and Loss Mitigation

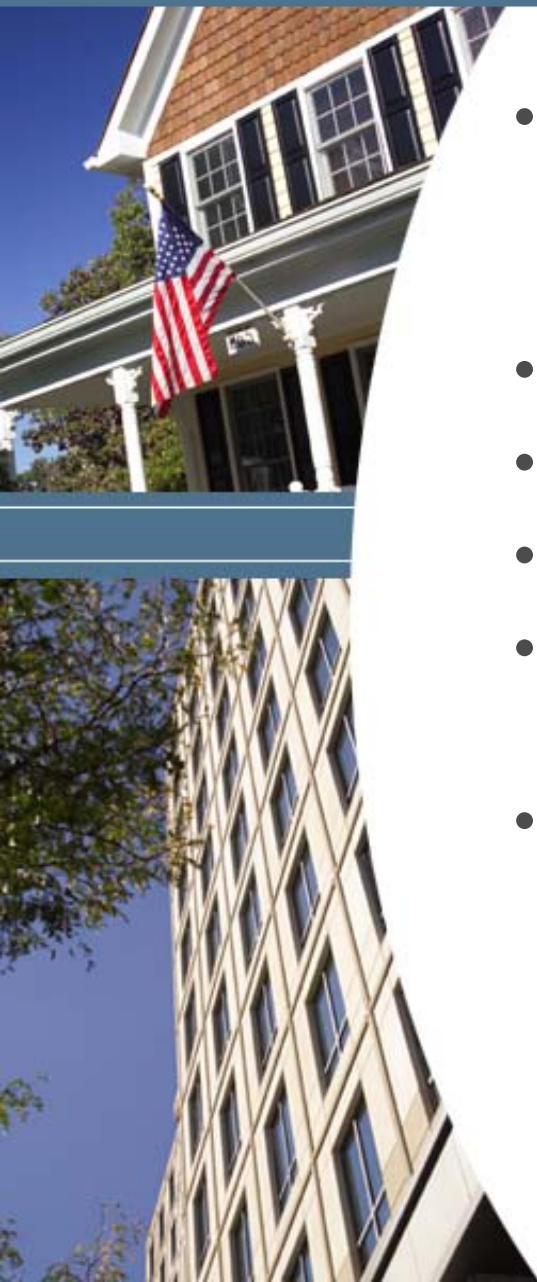


### A. Phony Short Sale Scam - Fraud Directed Against Servicer

- I. Borrower enters into contract with colleague, relative, business partner, etc. for a contract well below UPB
- II. Property “dressed down” to give illusion of “artificially distressed” for inspection purposes (waste issue)
- III. Lender accepts artificially depressed short sale price
- IV. Original Borrower moves back into property, arranges to “buy back” property and eventually has same house with new lower loan
- V. Servicer and Investor lose through fraud

# Fraud in Loss Mitigation and Loan Modification

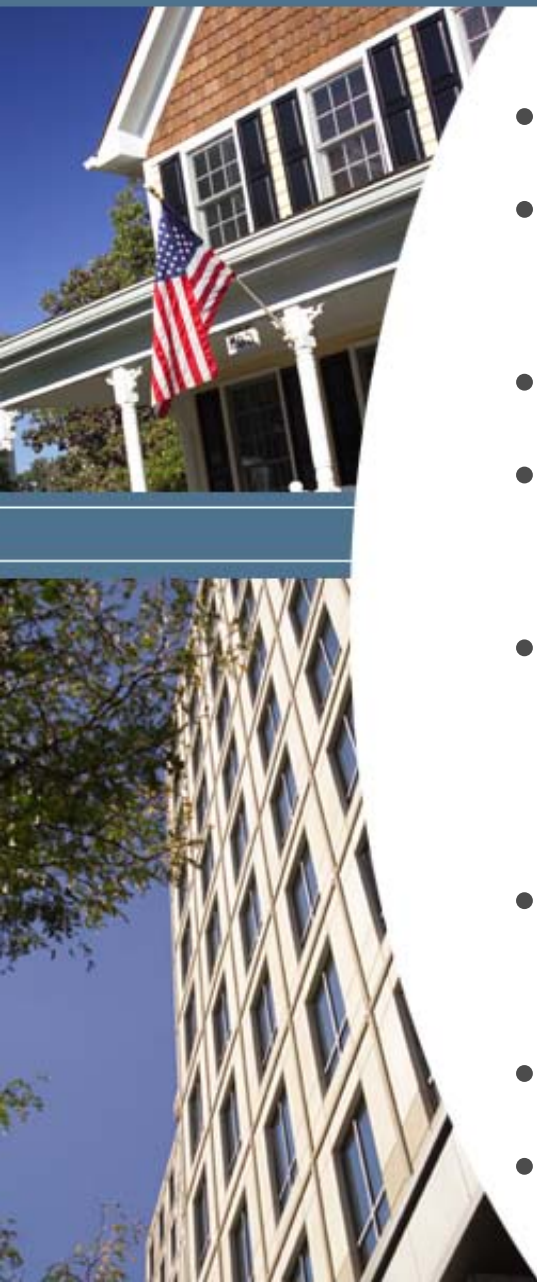
## Examples of Fraud In Loss Mitigation



- Likely areas where fraud will occur in Short Sales: **False Appraisals, Back to back closings, Dirty Realtor and Borrower may be involved**
- Property dressed down for BPO
- Depressed offer for short sale
- Short sale goes through and realtor collects
- Sometime back to back closings – realtor already has second contract to close for higher price
- Closing attorney/title agent, realtor and appraiser just collected 2 fees for the same property

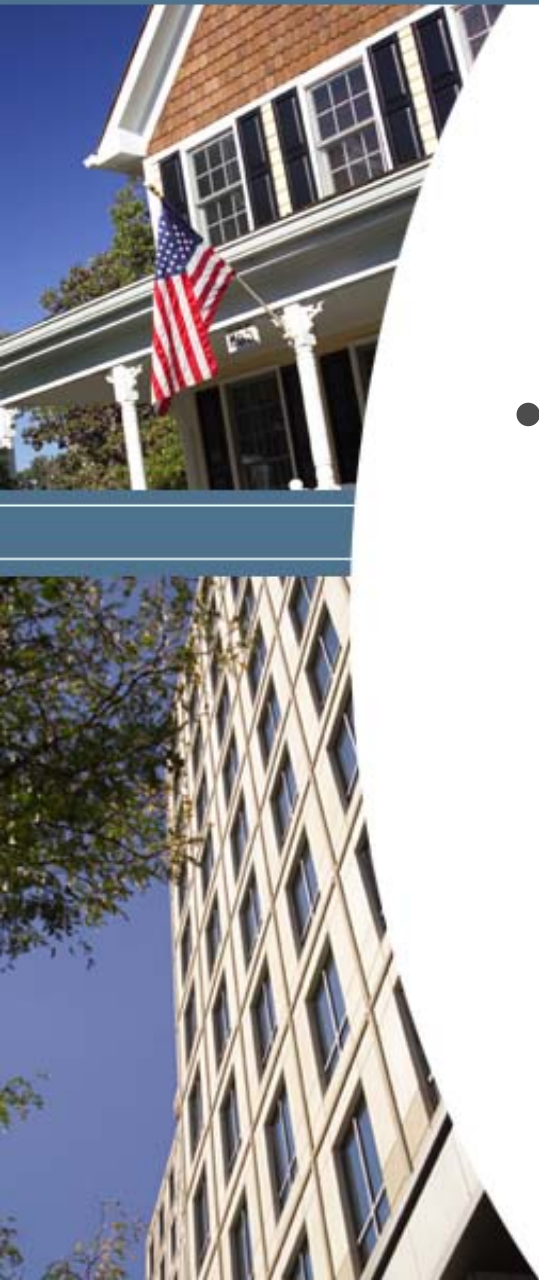
# Fraud in Loss Mitigation and Loan Modification

## Examples of Fraud In Loss Mitigation



- Prevention and Potential Recovery:
- Reg Comp \*\*\* - make sure short sale approval letter has anti-flipping language \*\*\*
- Give all parties notice – and rescind the sale
- Send the short sale purchaser back their by money by whatever means you received
- Cost benefit – after rescinding sale, notify all parties involved that you are going “to turn them” to the appropriate licensing agency
- Negotiate for all your “carrying costs” to be paid by the parties involved to short sale fraud
- If they resist, sue for fraud and report them
- So far, 100% negotiation/settlement in short sale fraud – no loss to company

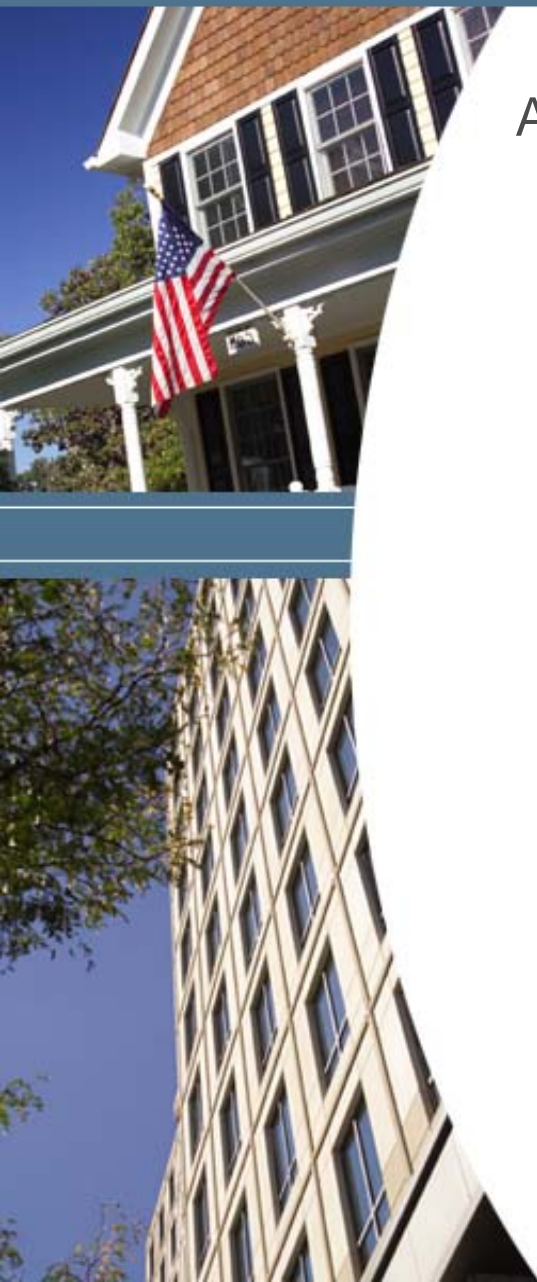
# Loss Mitigation & Loan Modification Fraud

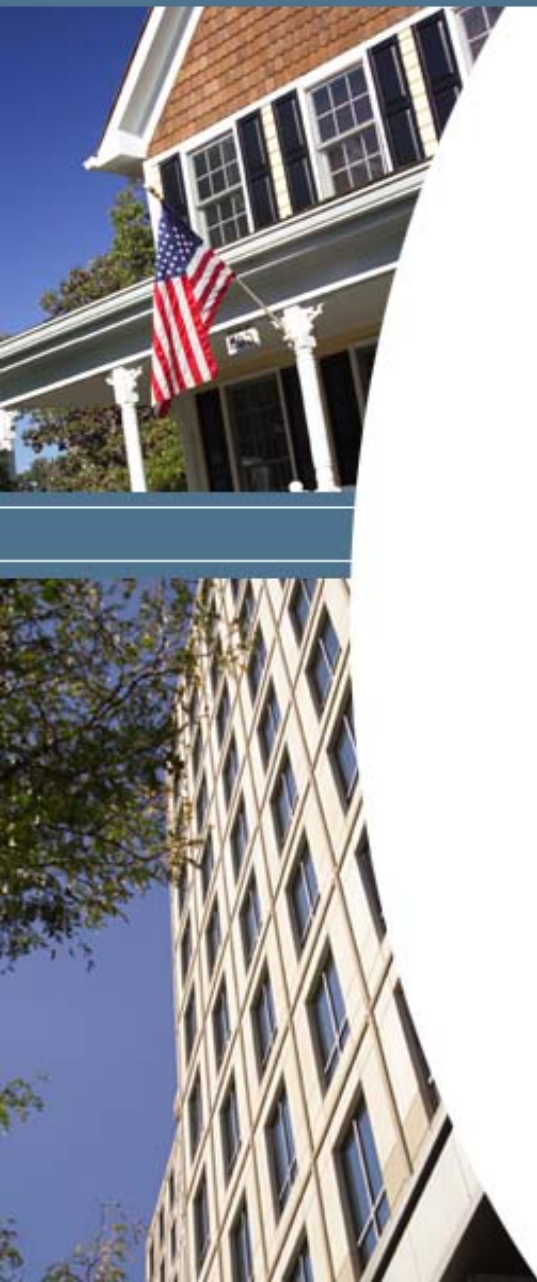


- III. Breakdown Foreclosure Fraud & Loan Modification Schemes
  - Parties, damages, prevention and potential recovery.

# Loss Mitigation & Loan Modification Fraud

## Describe Foreclosure Rescue Schemes

- 
- A. Fraud Involving Foreclosure Rescue Schemes
    - I. Discussion of the Current Foreclosure Crisis
    - II. Discussion of the Loan Modification Environment
    - III. Examination of Foreclosure Fraud – Why it Occurs
    - IV. Examination of Loan Modification Schemes – Why they Occur
    - V. Anatomy of a Typical Foreclosure/Loan Modification Rescue Scheme - “the middle man and the scam”
    - VI. Variations on a Theme: Transfer and Rent
    - VII. Prevention and Recovery

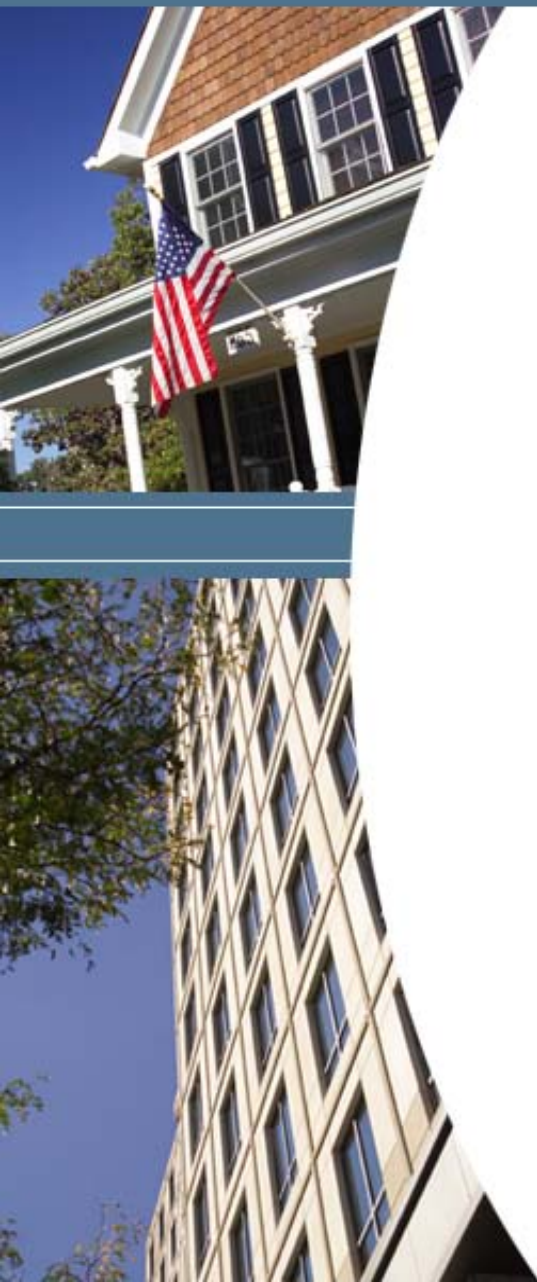


### Discussion of the Current Foreclosure Crisis

- I. Foreclosures are at historic highs. The foreclosures cut across all socio-economic areas in America – inner cities & suburbs – residential & commercial.
- II. Given the incredible amount of publicity on mortgage delinquencies/foreclosures and the link to financial meltdown – Foreclosure litigation is exploding across the country.
- III. Courts and consumer advocates dismiss the contractual obligations and focus on the equity both on an individual and macroeconomic level.
- IV. The historic increase in loss mitigation efforts, delinquency by homeowners and foreclosures are overwhelming an already inundated mortgage servicing system .

# Loss Mitigation & Loan Modification Fraud

## Describe Foreclosure/Loan Modification Rescue Schemes

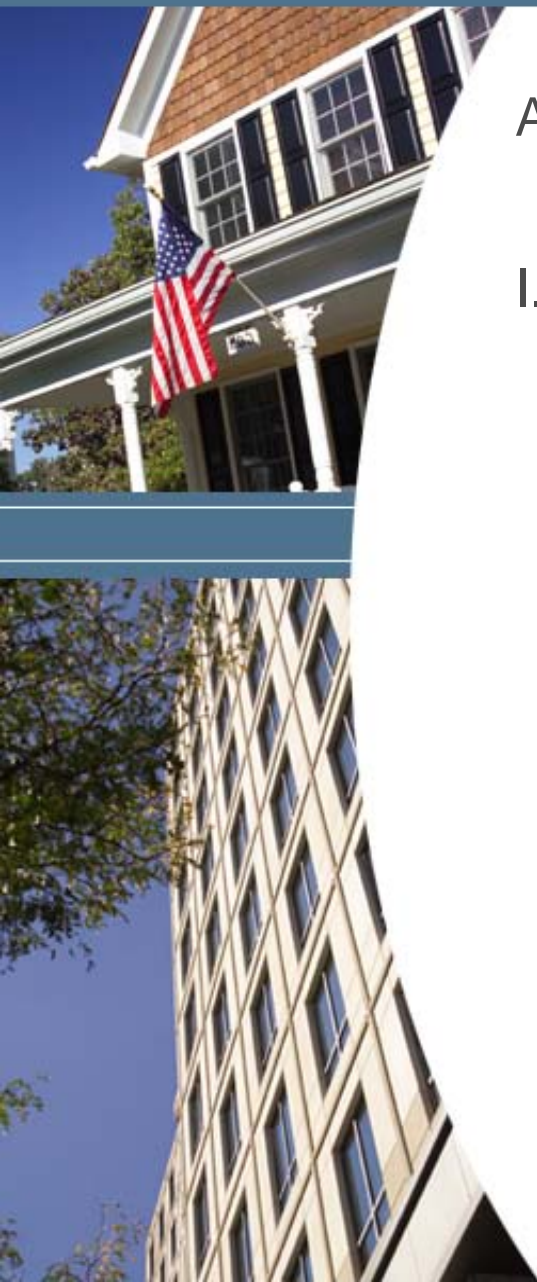


### Discussion of the Loan Modification Environment

- I. The credibility of the entire industry is being attacked by the media, in state legislatures, the halls of Congress and courthouses across America.
- II. Arguably, there is a growing, immediate presumption the originator/servicer acted inappropriately and an evolving belief the American homeowner has a right to a loan modification.
- III. Three interconnected issues are allowing fraud in loan modifications to flourish –
  - I. Demand by public/politicians for loan modifications
  - II. Borrower to provide “financial package” some of which can not be independently confirmed
  - III. Unreasonable time constraints placed on public/politicians or be crucified in the press
- IV. The historic increase in loss mitigation efforts, delinquency by homeowners and foreclosures are overwhelming an already inundated mortgage servicing system .

# Loss Mitigation & Loan Modification Fraud

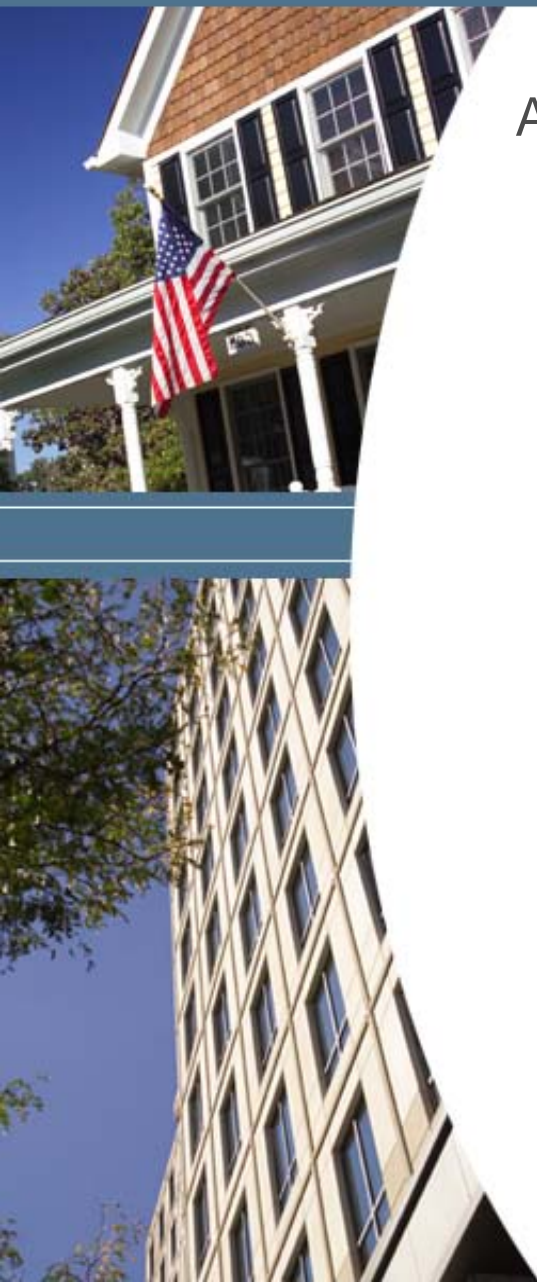
## Describe Foreclosure Rescue Schemes



- A. Examination of Foreclosure Fraud – Why it Occurs
  - I. The foreclosure process is an easy target for fraud because we have a basic premise that the foreclosure sale should be:
    - a. Public
    - b. Transparent from the lender's perspective
    - c. To achieve the highest price for the property in question

# Loss Mitigation & Loan Modification Fraud

## Describe Foreclosure Rescue Schemes



### A. Examination of Foreclosure Fraud – Why it Occurs

#### I. Public Notice

a. Regardless of the type of state foreclosure system:

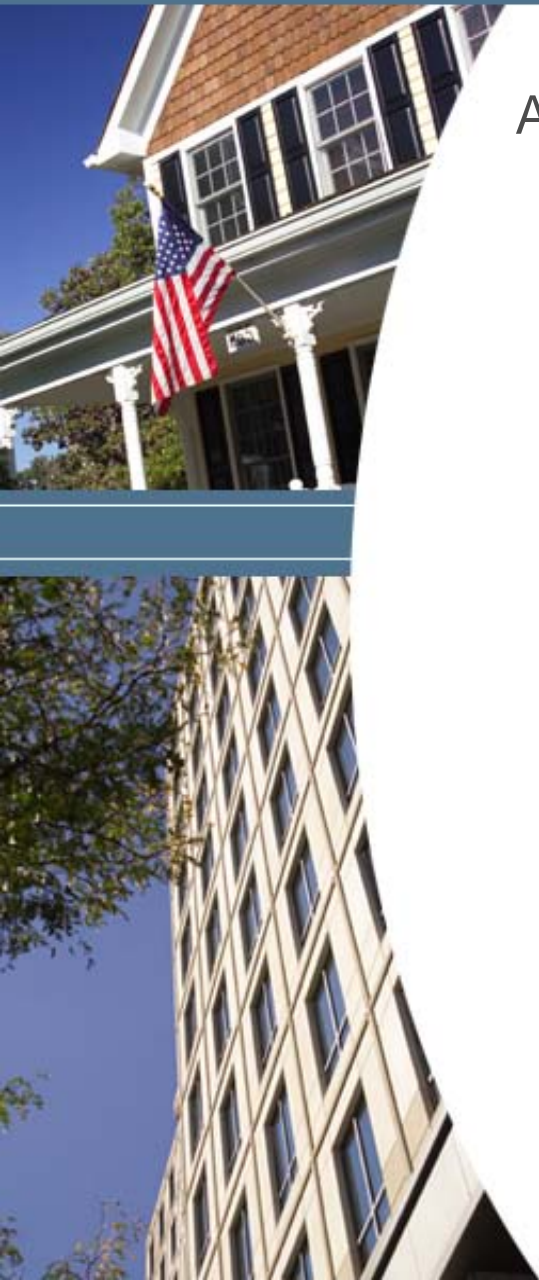
1. Power of Sale (Non-Judicial), or
2. Judicial foreclosure,

b. We provide public notice:

1. Power of Sale – the foreclosing entity has to provide notice to the public, usually in a legal periodical for a certain number of days/weeks
2. Judicial Foreclosure – the lawsuit is a public record

# Loss Mitigation & Loan Modification Fraud

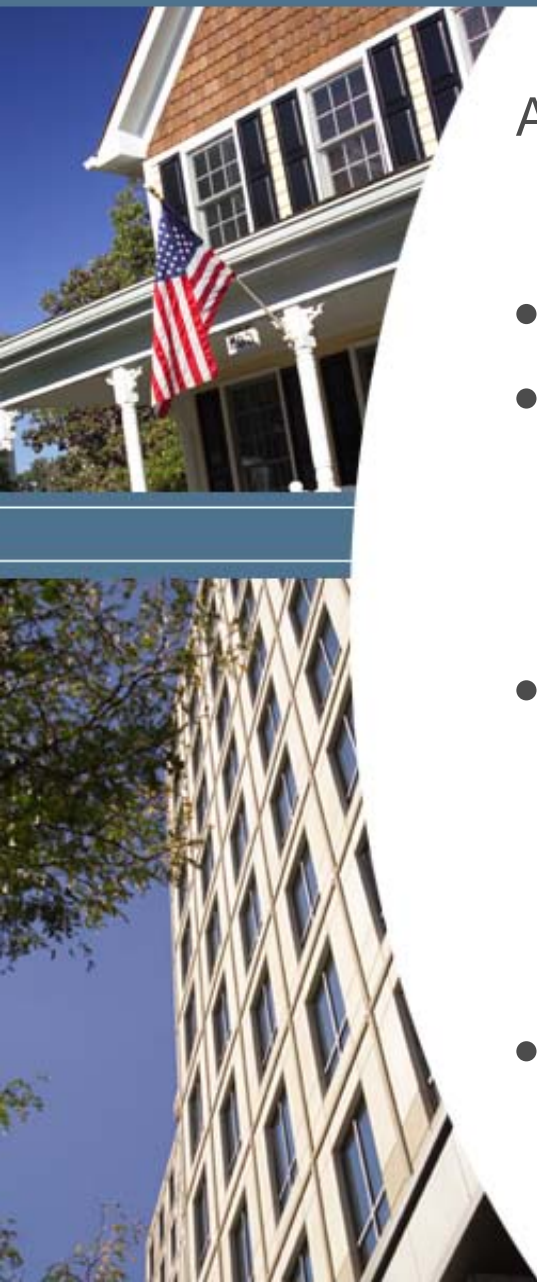
## Describe Foreclosure Rescue Schemes



- A. Examination of Foreclosure Fraud – Why it Occurs
  - I. Public Notice – Public Information
    - a. Both types of foreclosure notices provide to the fraudster:
      1. The borrower's name
      2. The lender's/foreclosure entity's name
      3. The amount of indebtedness (in some jurisdictions)
      4. The property address

# Loss Mitigation & Loan Modification Fraud

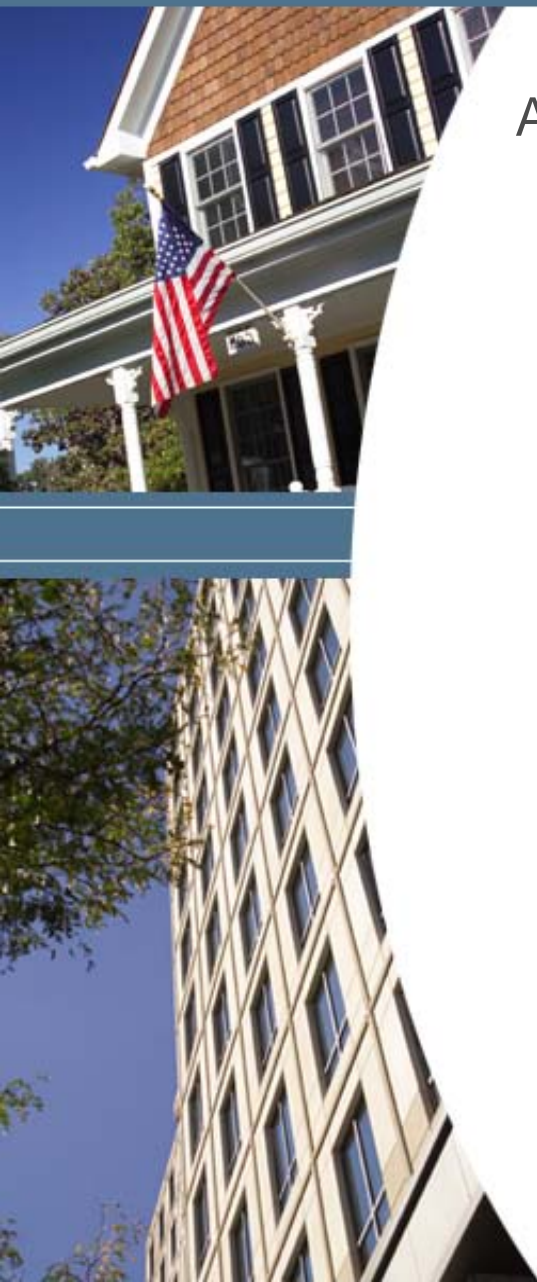
## Describe Foreclosure Rescue Schemes



- A. Examination of Foreclosure Fraud – Why it Occurs
- I. Public Notice – Public Information
- **Knowledge is Power**
  - This type of personal information about the pending foreclosure coming from a “credit counselor”, “real estate agent”, “foreclosure specialist” is powerful.
  - From the borrower’s perspective – usually they are not communicating with their servicer or are frustrated with their servicer and you have an “uninterested” 3<sup>rd</sup> party offering help with that type of knowledge
  - Easy Target – Easy Money – Borrower, Servicer and Investor will lose.

# Loss Mitigation & Foreclosure Fraud

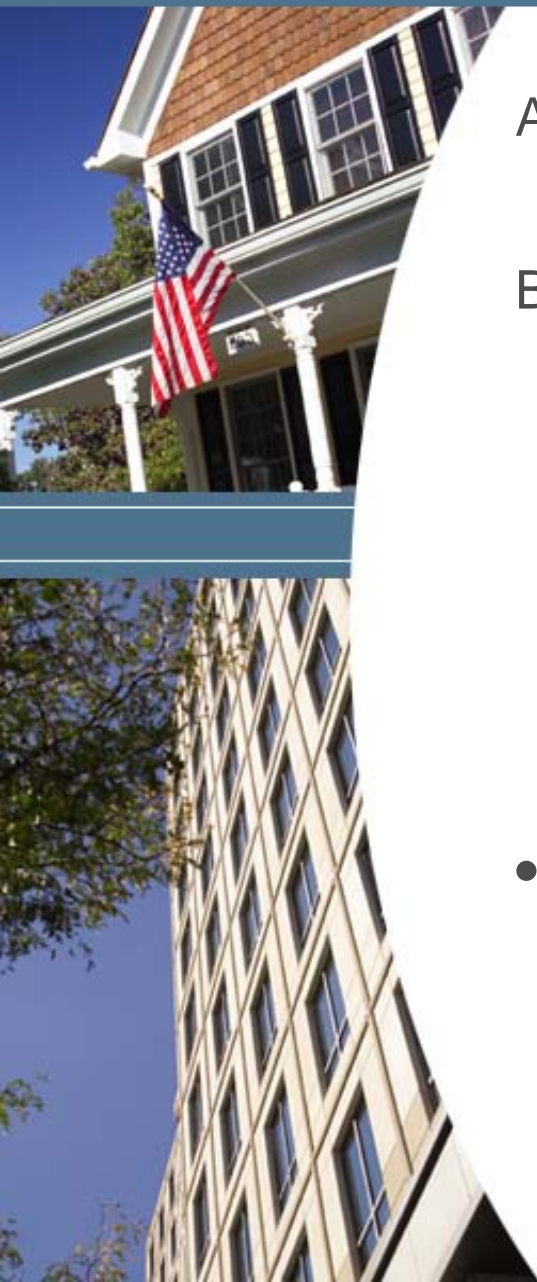
## Describe Loan Modification Rescue Schemes



- A. Examination of Loan Modification Schemes – Why they occur
  - I. Public/Political demand are driving forces
  - II. Investor & Servicer have financial incentives – in some cases
  - III. Based on the above – Borrower submits a “financial package” for analysis and review by servicer
  - IV. The borrower is notified for the reasons that they did not qualify.

# Loss Mitigation & Foreclosure Fraud

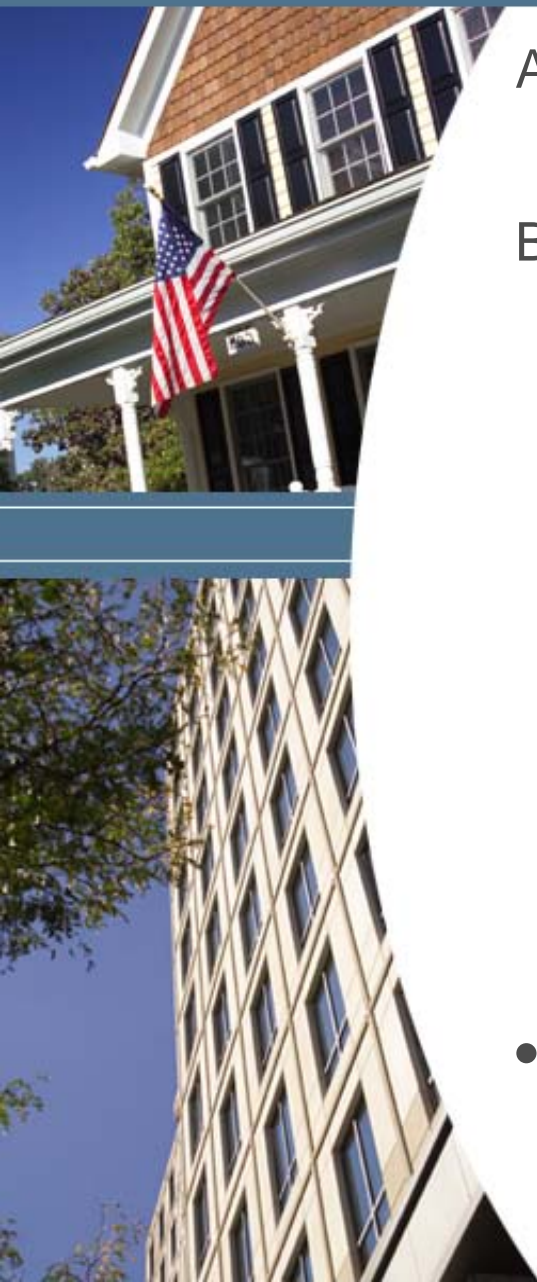
## Describe Loan Modification Rescue Schemes



- A. Examination of Loan Modification Schemes – Why they occur
- B. Borrower Fraud
- V. The borrower is then usually given an opportunity to resubmit “updated” financials, to see again if they can qualify for a loan modification.  
Roadmap to fraud.
- Easy Money – Servicer and Investor will lose.

# Loss Mitigation & Foreclosure Fraud

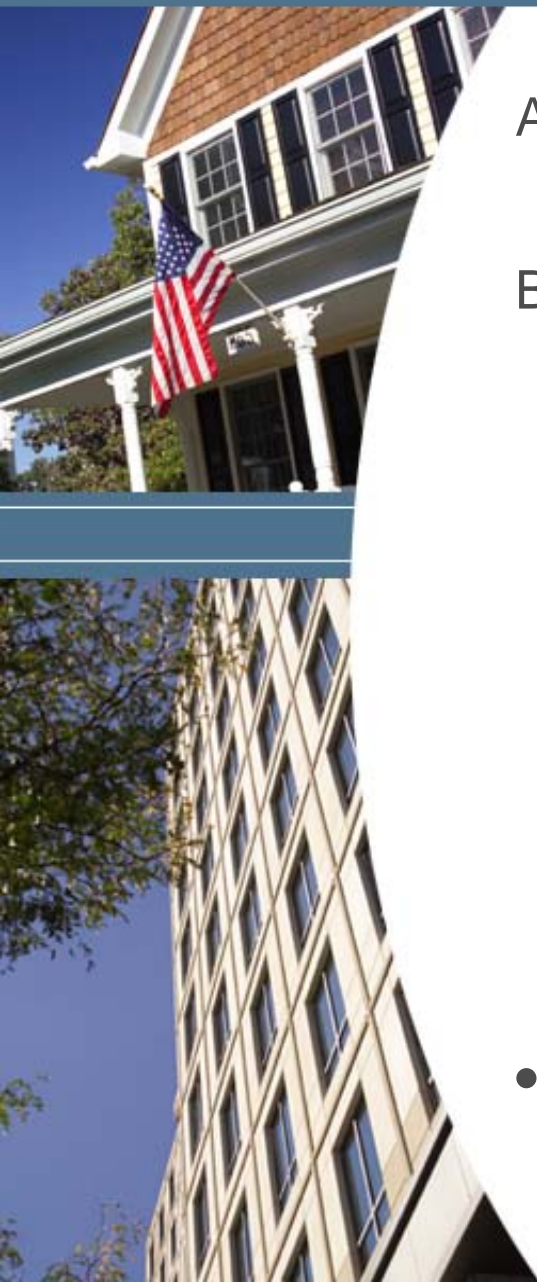
## Describe Loan Modification Rescue Schemes



- A. Examination of Loan Modification Schemes – Why they occur
  - B. Borrower Fraud – Variations on a theme
- VI. The borrower adds the following to their “updated” financials:
- Unemployment Income (limited in duration)
  - Rental Income from “renting room” in house with false rental agreement
  - Extra unverified income – babysitting, elder sitting (opens up servicer for complaint down the line for failure to consider)
- Easy Money – Servicer and Investor will lose.

# Loss Mitigation & Foreclosure Fraud

## Describe Loan Modification Rescue Schemes



- A. Examination of Loan Modification Schemes – Why they occur
  - B. Borrower Fraud – Variations on a theme
- VII. Different scenario – Borrower with investment property. Submits “financial package” but fails to disclose all financial liabilities. Servicer has no idea as they have different servicer with principal residence.
- Easy Money – Servicer and Investor will lose.

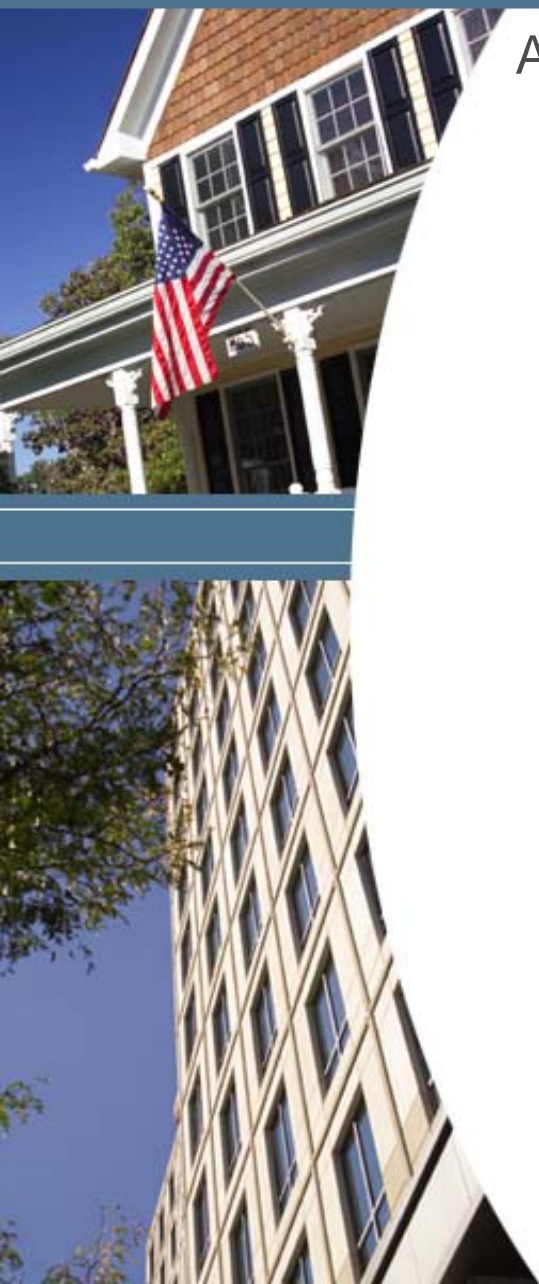
# Loss Mitigation & Foreclosure Fraud

## Describe Foreclosure/Loan Modification Rescue Schemes

### A. Anatomy of a Typical F/C - LM Rescue Scheme

#### I. The Scheme – Direct Contact

- a. After obtaining Borrower's trust with Public Notice Information, they convince the Borrower they have a relationship with the servicer which can save their home from foreclosure or with loan mod.
- b. They convince the Borrower to pay a large "upfront" fee to cover costs with communicating with the servicer – telephone calls, letters, payment history analysis, etc.
- c. Then they advise and encourage the Borrower to cease all communication with servicer – they will handle it all – you need to speak in a single, uniform voice without conflicting information in order to achieve the best result – saving your home.



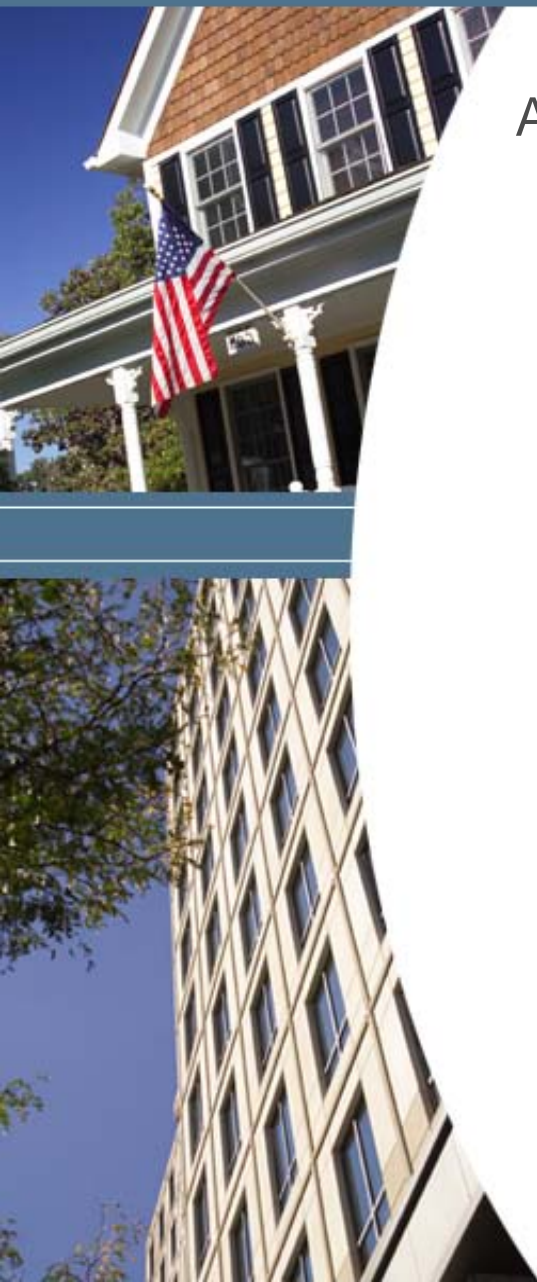
# Loss Mitigation & Foreclosure Fraud

## Describe Foreclosure/Loan Modification Rescue Schemes

### A. Anatomy of a Typical F/C - LM Rescue Scheme

#### I. The Result – Direct Contact

- a. Some “f/c - LM specialists” never even attempt to make contact – they take the “upfront fee” and leave the Borrower only with the advice not to communicate with the servicer – while the Borrower’s inaction and lack of communication puts them even further behind.
- b. Other “specialists” do attempt to contact the servicers but they are providing an additional and expensive layer of communication the Borrower could receive for free. In addition, the “upfront fee” further depletes the Borrower’s financial resources with an unnecessary fee, which in most instances could be used to pay down the indebtedness or as part of the contribution on a loan modification.
- c. \*\*\*NOTE\*\*\* - same scenario can play out for both f/c and LM



- A. Anatomy of a Typical F/C - LM Rescue Scheme
  - I. The Scheme – Property Transfer
    - a. Public Notice Information to gain Borrower’s trust
    - b. Request “upfront” fee
    - c. Advise not to communicate with servicer
    - d. Usually through multiple written agreements, the “specialist” convinces the Borrower to transfer the Property in a “Limited Conveyance” – to an entity, person, or trust
    - e. “If you “technically” don’t own the home anymore, they can’t foreclose because you don’t own the property – but you will stay in the house and we will transfer it back into your name when you can make the mortgage payments again.”
    - f. The grantee in the “Limited Conveyance” either quit claims the property to a straw for another mortgage or the property is sold.

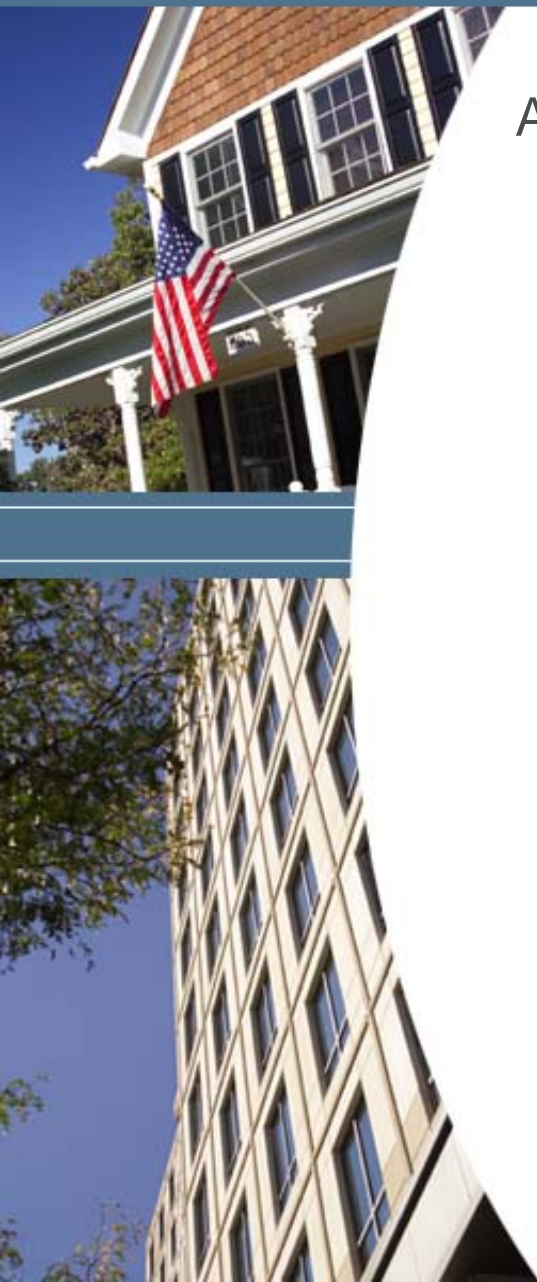
# Loss Mitigation & Foreclosure Fraud

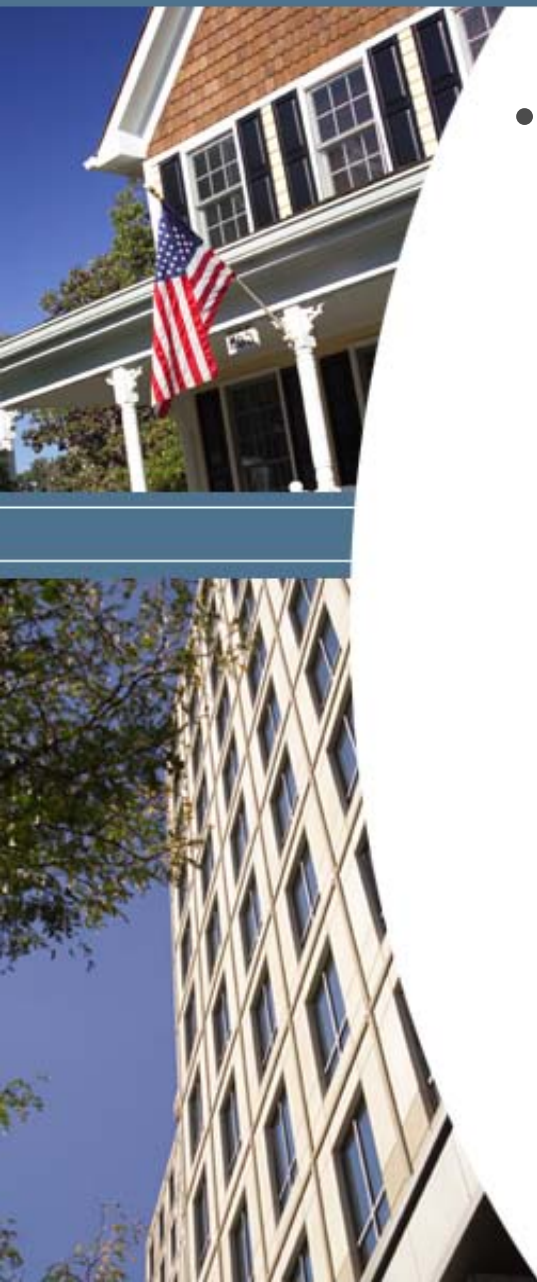
## Describe Foreclosure/Loan Modification Rescue Schemes

### A. Anatomy of a Typical F/C - LM Rescue Scheme

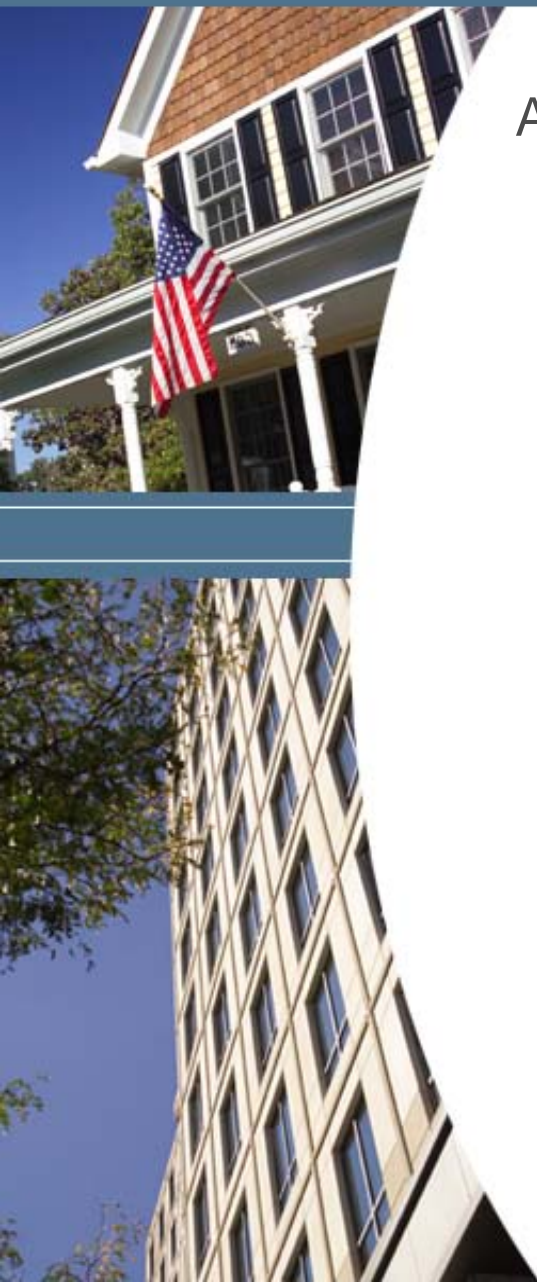
#### I. The Result – Property Transfer

- a. The Borrower temporarily remains in the house unaware and ignorant of the subsequent transfers.
- b. The “specialist” is gone with:
  1. The Up Front Fee
  2. Any money made off of the subsequent transfers
  3. The Borrower’s future
- c. The subsequent grantee and/or mortgagee have been duped and are out the money
- d. The Borrower eventually loses the “up front” fee, the home to foreclosure and probably their faith in humanity.





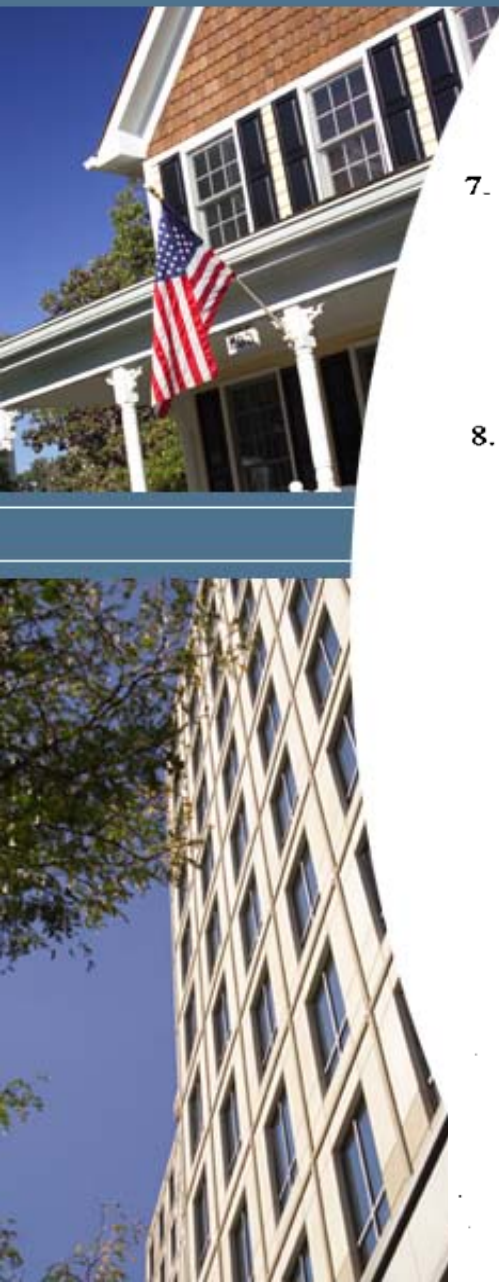
- Anatomy of a Typical F/C - LM Rescue Scheme
  - I. The Scheme: Variation on a Theme:  
Short Sale to Rent
    - a. Public Notice Information to gain Borrower's trust.
    - b. Advise not to communicate with servicer.
    - c. "Specialist/Broker" mislead Borrower they can avoid foreclosure with a "quick short sale" and just pay "rent" to stay in the house.
    - d. "Specialist/Broker" sets up a straw buyer (usually paid 5k-15k for use of good credit)
    - e. Fraudulent short sale orchestrated to straw, false second mortgage and/or smaller liens "appear" on title report, which add additional money on top of the short sale to pay the "Specialist/Broker", the straw buyer and the closing agent.



- A. Anatomy of a Typical F/C - LM Rescue Scheme
  - I. The Result: Variation on a Theme:  
Short Sale to Rent
    - a. The Straw Buyer defaults on the new mortgage, red flag of EPD. Credit ruined.
    - b. The closing agent committed fraud and likely to lose any license.
    - c. “Specialist/Broker” had nothing in their name and made money off of sale to the straw.
    - d. Borrower pays rent and likely stays in house another 90 to 120 days before new mortgagee forecloses

# Loss Mitigation & Foreclosure Fraud

## Describe Foreclosure/Modification Rescue Schemes



### A. Anatomy of a Typical F/C - LM Rescue Scheme

7. Plaintiff Andrea Martin was made a victim of a fraudulent real estate scheme which has been prevalent nationally and in the Dallas real estate market. While this scheme has been highlighted in the media consumers continue to be victimized.
8. In this a scheme, an investment group, usually led by a mortgage broker and comprised of real estate agents, title company agents and appraisers, solicit innocent inexperienced individuals and persuade them to volunteer the use of their good credit for the purchase of real estate in their name. They are promised that everything will be taken care for them and that the property will be managed with no responsibility or liability for any losses. They are usually told that the property will be initially rented out for a period of a year so it may appreciate and will then be sold. In reality, these conspirators never intending to perform as promised, usually strike a deal with desperate sellers of otherwise expensive properties to agree to raise the listed sales price, sometimes several hundred thousand dollars, they obtain inflated appraisals and secure loans for the unwary borrower based on manipulations of the loan process as brokers or lender insiders. Sellers usually kick back the inflated funds from sale to the group. The conspirators pocket these funds, rent out the property and collect additional money, but sooner thereafter fail to pay the mortgage as promised and abandon the property to be foreclosed. The borrower / victim cannot sell the property as the loan far

### A. Anatomy of a Typical F/C - LM Rescue Scheme

#### I. Prevention and Recovery

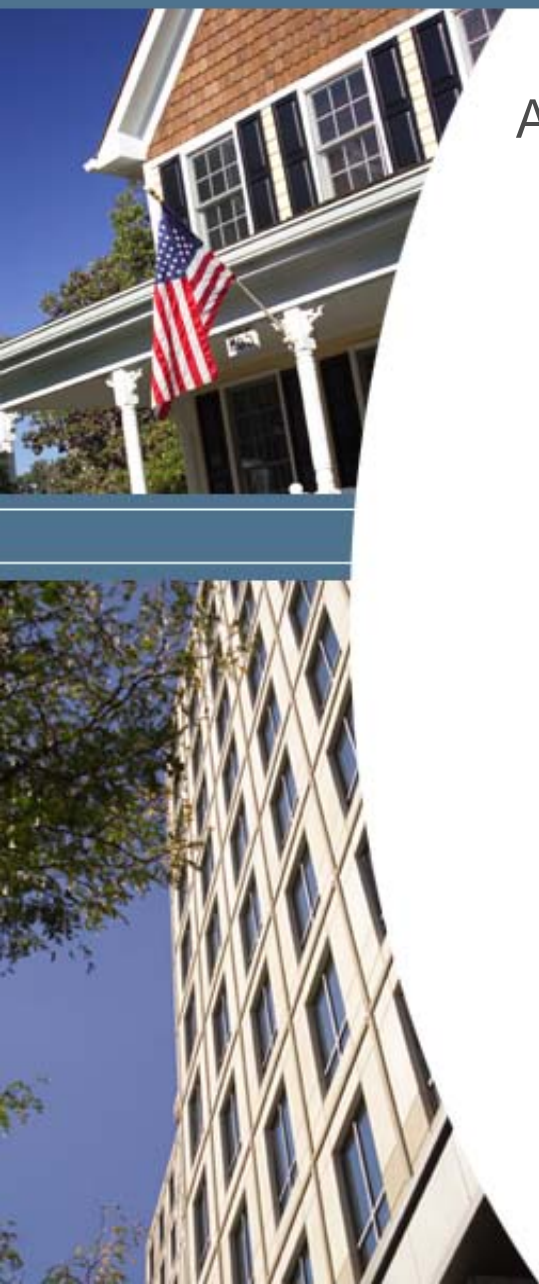
##### a. Prevention by the Servicer

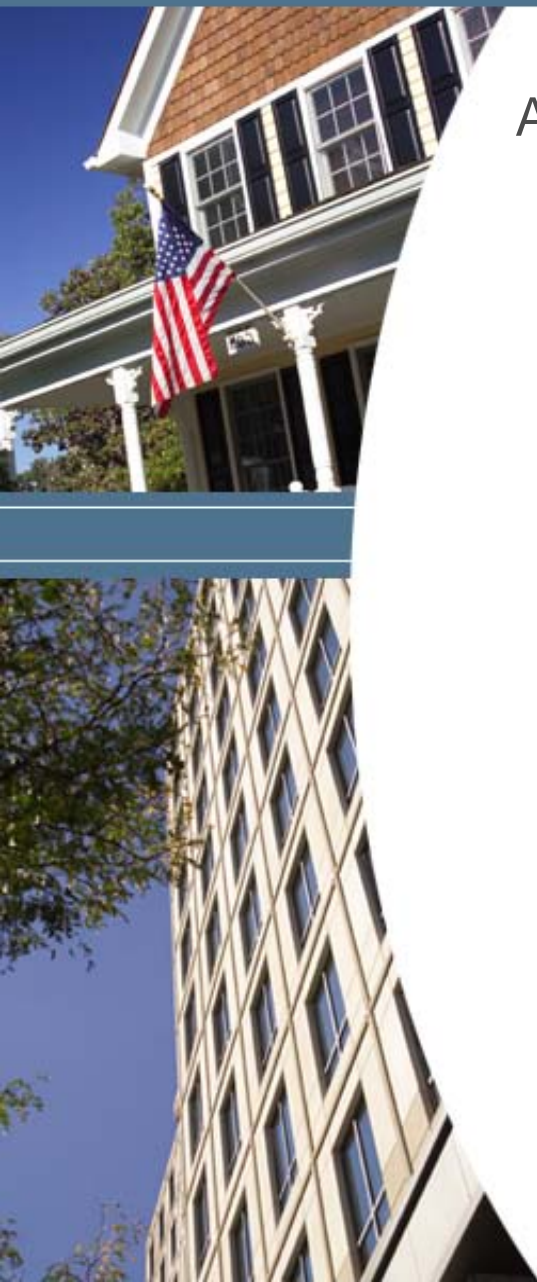
###### 1. Denial, Shame or Embarrassment

The Borrower may not want to confront their economic reality or are ashamed and embarrassed of their inability to make their mortgage payment.

###### 2. Communication between the Borrower and Servicer is critical to deterring the “middle man and the scam” in taking advantage of the Borrower, which directly impacts the servicer.

###### 3. Referrals to HUD approved counselors ([www.hud.gov](http://www.hud.gov)) and government entities for a neutral, third party perspective.





### A. Anatomy of a Typical F/C - LM Rescue Scheme

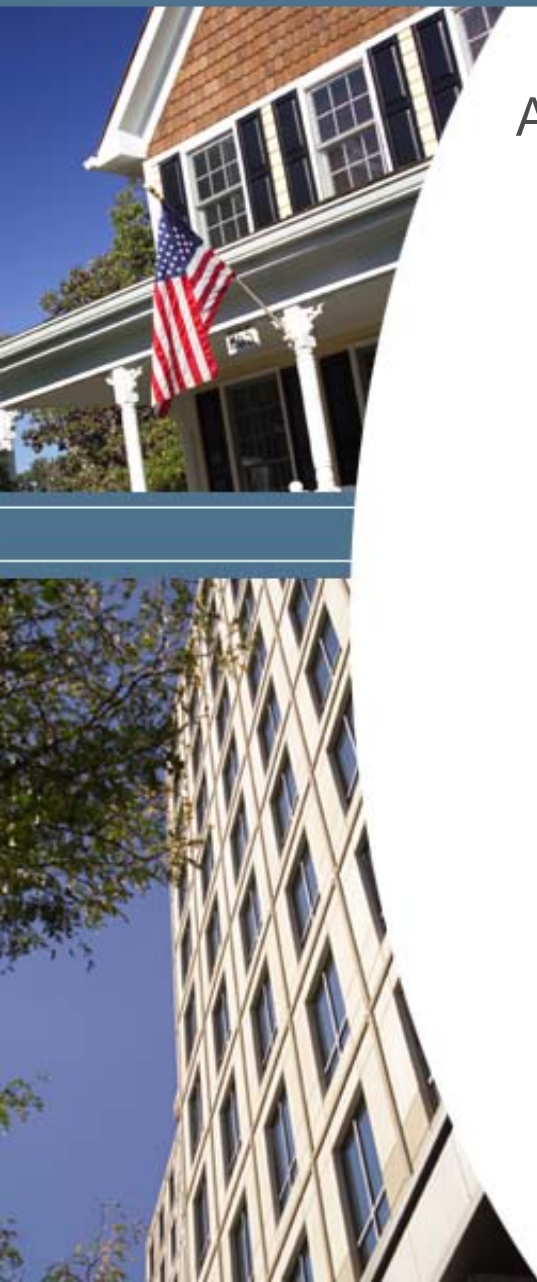
#### I. Prevention and Recovery

##### a. Prevention by Our Government

- » June 08, New Jersey AG announces multiple lawsuits involving “foreclosure rescue” scams
- » July 08, Missouri AG - Operation Stealing Home
- » September 08, Ohio AG filed suit against multiple “mortgage rescue scams”
- » October 08, North Carolina AG announced filing suit against 3 companies that, “misled homeowners in fear of losing their homes to foreclosure”
- » October 08, Florida AG announced suit under Foreclosure Rescue Fraud Prevention Act of 2008 against South FL Company Outreach Housing
- » December 08 TX AG announces new legislative initiative “Foreclosure Rescue Fraud Prevention Act”
- » January 09 CT AG – Investigating “HOPE Alliance”
- » February 09 FBI/HUD increased funding in ‘10 Budget
- » March 09, AZ AG announced suit against 4 related companies for taking advantage of distressed homeowners in foreclosure
- » March 09 TX AG has press release warning “Foreclosure Rescue Scams Threat to Consumers”

# Loss Mitigation & Foreclosure Fraud

## Describe Foreclosure/Loan Modification Rescue Schemes

- 
- A. Anatomy of a Typical F/C - LM Rescue Scheme
    - I. Prevention and Recovery
      - a. Prevention by Our Government - continued
        - » January 10, Florida Attorney General Actively Pursues Loan Modification/Foreclosure Fraud Companies
        - » January 10 – Nevada AG hands down 3 indictments in Las Vegas loan Modification Scam
        - » February 10 - CA Attorney General Brown Warns Homeowners to Avoid Forensic Loan Audits
        - » March 10, New York AG announces lawsuit involving “loan modification” group National Modification Service & Infinity Fund Group
        - » March 10, Minnesota AG sues two mortgage loan modification firms
        - » Florida Senate Bill 2226 (overly broad)

### A. Anatomy of a Typical F/C - LM Rescue Scheme

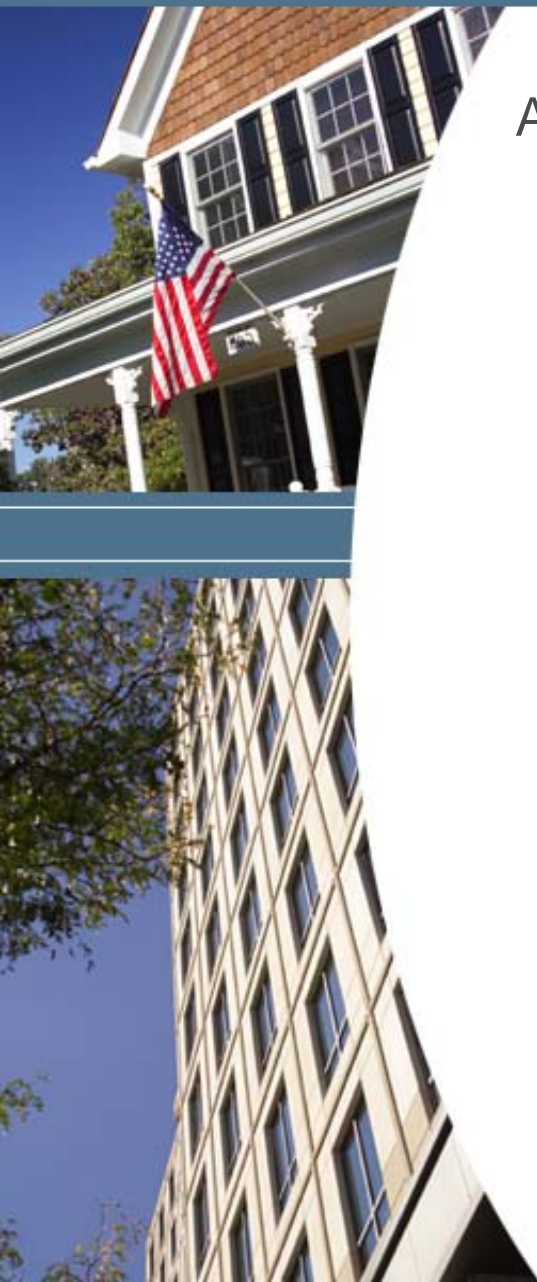
#### I. Prevention and Recovery

##### a. Recovery - Financial Concerns

1. Reality: Most servicers are very wary on attacking and litigating fraud files strictly due to cost and no guarantee of recovery.
2. Early analysis of fraud is key.
  - ✓ Identify parties, people involved
  - ✓ Perform Asset search
  - ✓ Perform docket/civil litigation search
  - ✓ Limited Interviews
  - ✓ Draft timeline referencing key documents
  - ✓ Diagram/Visio connections between parties
3. Once you complete early analysis package, then determine your recovery potential.
4. Perform cost/benefit analysis  
(Recovery Potential v. Litigation Budget)

# Loss Mitigation & Foreclosure Fraud

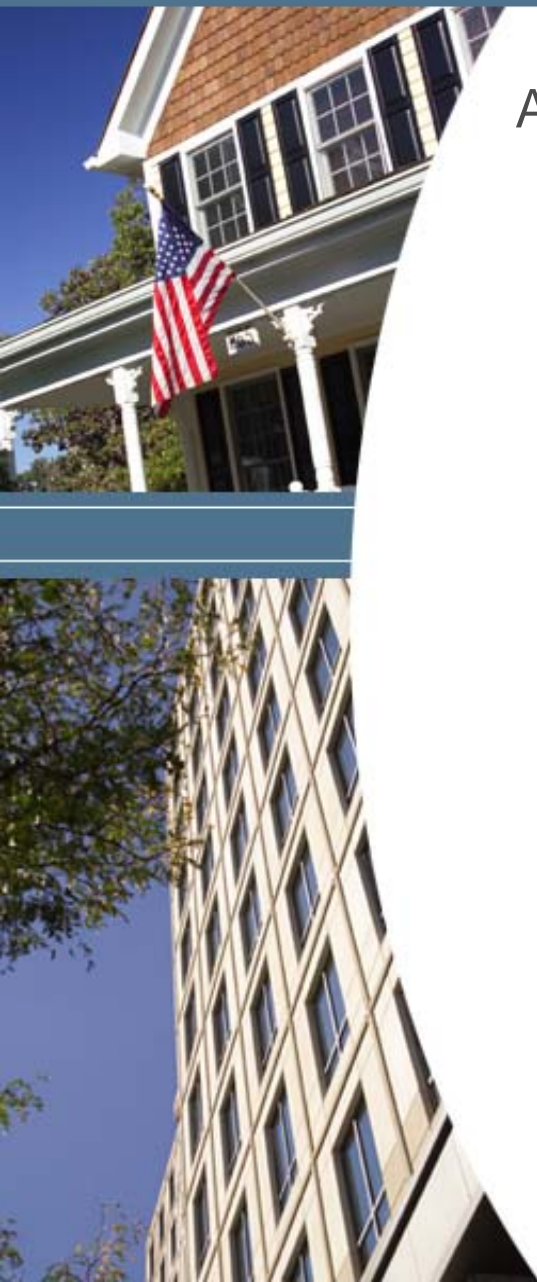
## Describe Foreclosure/Loan Modification Rescue Schemes



- A. Anatomy of a Typical F/C - LM Rescue Scheme
  - I. Prevention and Recovery
    - a. Recovery - Government Partnership
      1. Regardless of determination of Civil cost/benefit analysis, move forward with notifying proper government entities.
      2. Partner and assist with appropriate FBI/USA office around the country.
      3. Provide them the “early analysis package” because the more information you provide, the quicker they will make a determination as to whether to pursue the matter.
      4. Triple win: Assist in justice served, remove criminals from within and around the industry, possible criminal restitution to more than cover your financial investment.

# Loss Mitigation & Foreclosure Fraud

## Describe Foreclosure/Loan Modification Rescue Schemes



- A. Anatomy of a Typical F/C - LM Rescue Scheme
  - I. Prevention and Recovery
    - a. **Recovery - Pockets of Money**
      - 1. Fraudster is an Attorney
        - i. Closing Protection Letter if closing transaction
        - ii. Local/State Bar Assoc. Victim Funds
        - iii. Personal/Firm/Partnership Assets
        - iv. Malpractice carrier with negligence claim
      - 2. Fraudster is a Realtor
        - i. Personal/Firm/Agency Assets
      - 3. Fraudster is Notary
        - i. Simple Claim on Notary Bond
      - 4. Tracking, subpoenaing, freezing and attaching
        - i. File suit with TRO – immediate hearing with Order
        - ii. Track money from fraud transaction to first Bank
        - iii. Subpoena Bank for records (repeat if needed)
        - iv. Identify proceeds, freeze account
        - v. Identify assets purchased with proceeds
        - vi. Equitable lien/trust on assets/Lis Pendens on real property

# Loss Mitigation & Loan Modification Fraud Summary


- **SUMMARY**

- I. Background/The Basics - Communication and Identify general Loss Mitigation options where fraud occurs and highlight steps for Prevention
- Strategy Step – A) Evaluate Borrower’s Financial Condition & B) What to do with Property/Mortgage
- II. Breakdown Short Sale Fraud – Parties involved, damage to company, outline possible steps for prevention and potential recovery.
- III. Breakdown Foreclosure Fraud and Loan Modification Schemes - Parties, damages, prevention and potential recovery.
- IV. Summary and Questions

# Loss Mitigation & Foreclosure Fraud

## Questions

- MBA's National Fraud Conference
- April 25-28, 2010
- Hyatt Regency Chicago
  
- Elizabeth DeSilva
- GMAC ResCap
- [Elizabeth.DeSilva@gmacrescap.com](mailto:Elizabeth.DeSilva@gmacrescap.com)
  
- Robert Maddox
- Bradley Arant Boult Cummings, LLP
- [rmaddox@babbc.com](mailto:rmaddox@babbc.com)



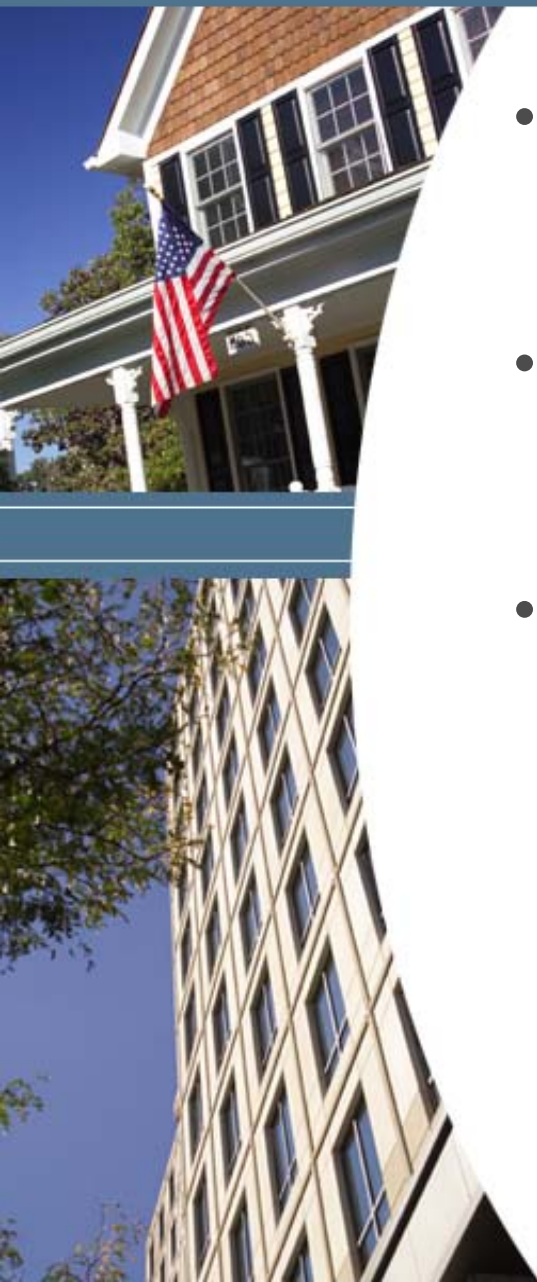
# **MBA's National Fraud Issues Conference 2010**

## **Fraud in Loss Mitigation and Loan Modification**

April 27, 2010

Alex Santos

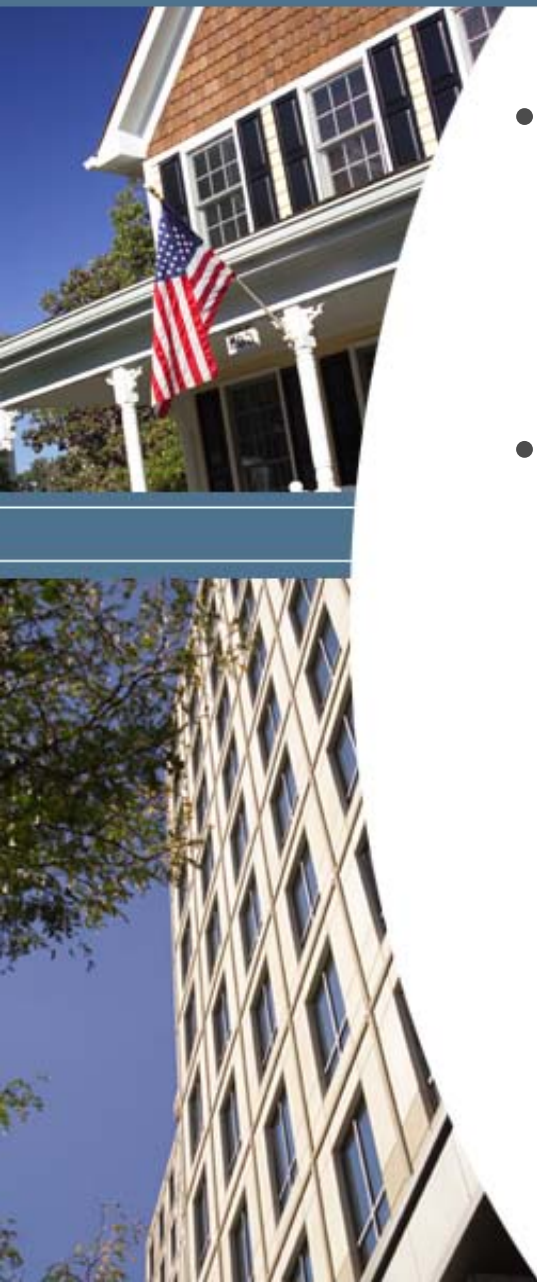
President Digital Risk, LLC

- 
- Pressure to produce
    - » HAMP
    - » HAFA
  - Borrowers
    - » In need
    - » Searching for opportunity
  - Technology
    - » Service Providers / Scams
    - » Data
    - » Tools

<http://shortsaleflip.com/>

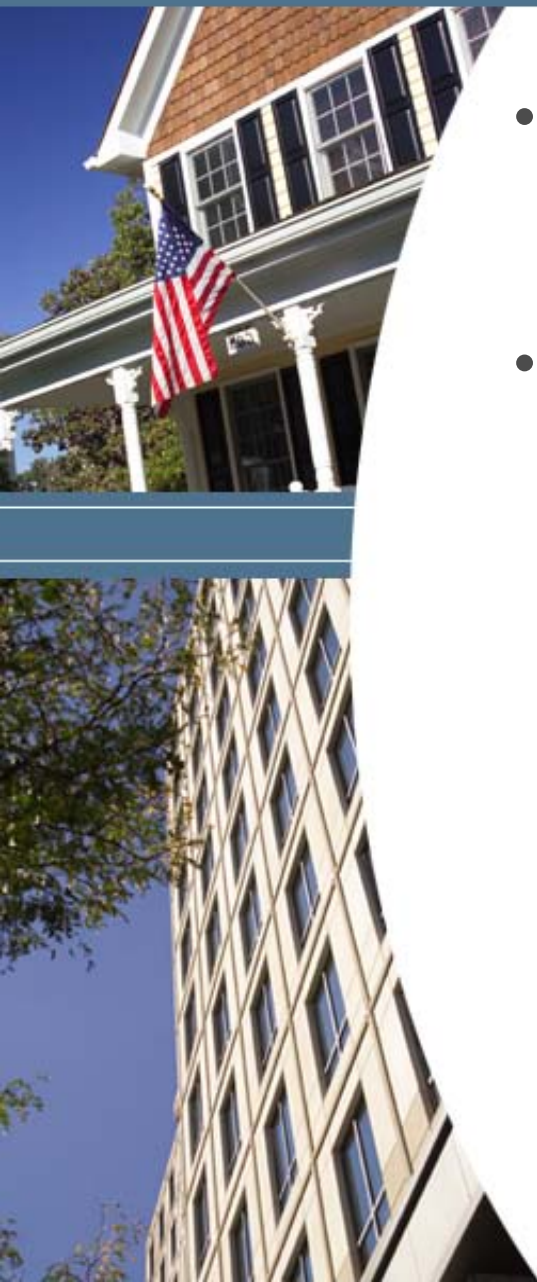
<http://www.biggerpockets.com/forums/103/topics/30644-short-sale-flip-help>

# Fraud Types

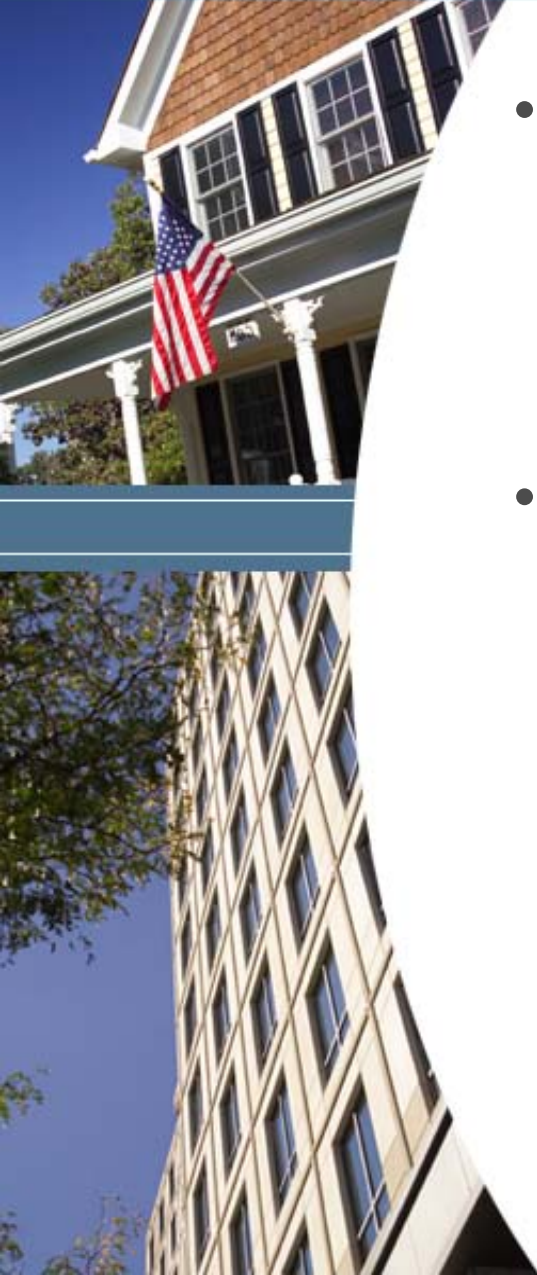


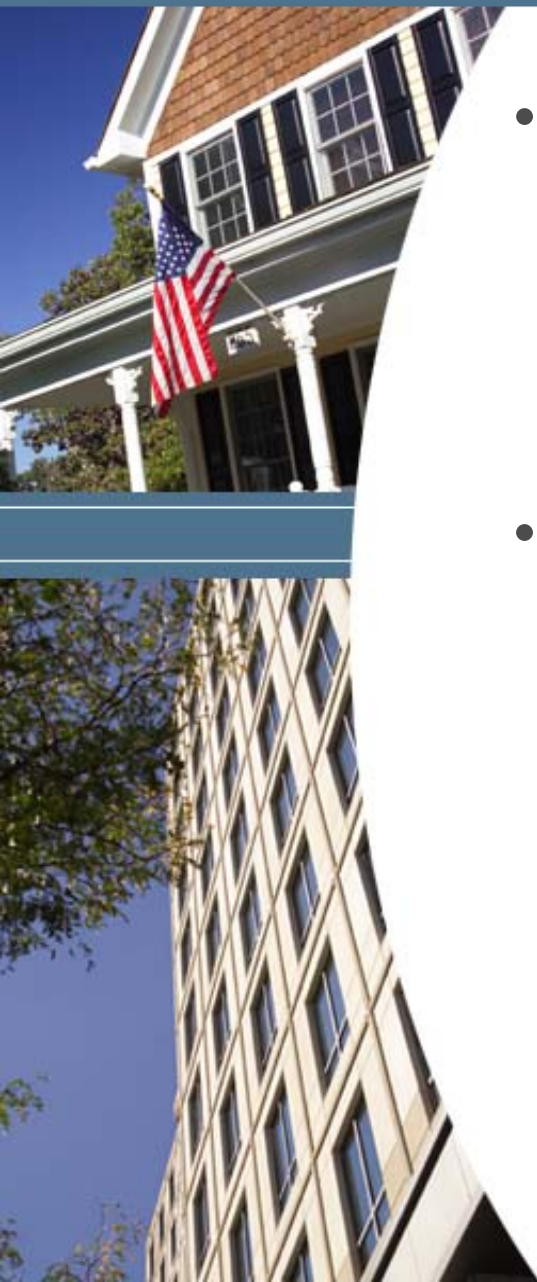
- For Housing (defined) – borrowers who misrepresent loss mitigation information to either stay in their home or preserve their credit – examples:
- For Profit (defined) – borrowers and service providers that misrepresent information or collude to profit from a transaction

# Fraud Schemes

- 
- For Housing
    - » Income misrepresentation
    - » Short sale
  - For Profit
    - » Income misrepresentation
    - » Short sale flip
    - » Rescue scams
    - » Lease / sell back

# Flags & Recommendations

- 
- Short sale flip flags
    - » Sudden default, no workout discussions and immediate offer at short sales price
    - » Ambiguous or conflicting reasons for default
    - » Short sale offer from related party
  - Short sale flip prevention
    - » Robust short sale appraisal review process
    - » Borrower / seller interview
    - » Public records research to determine arm-length nature of parties

- 
- Use Analytics to Target Borrowers
    - » Capacity
    - » Re-default
    - » Occupancy
  - Trust but Verify
    - » Win / Win
    - » HAMP full doc on 6/1
    - » HAFA

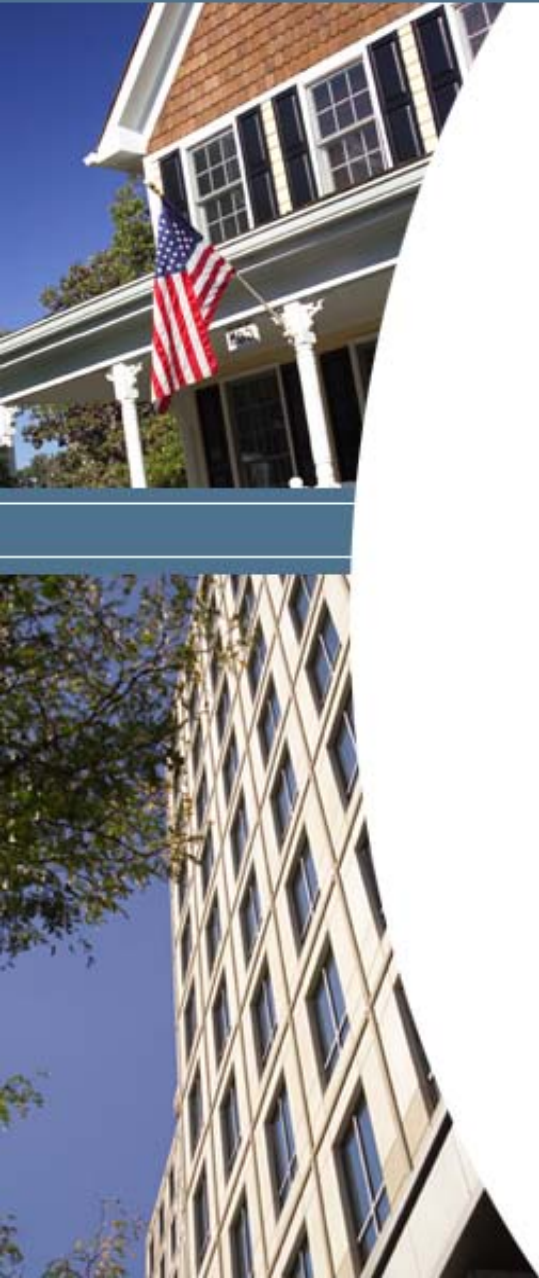
More details contact me at [asantos@digitalrisk.com](mailto:asantos@digitalrisk.com)



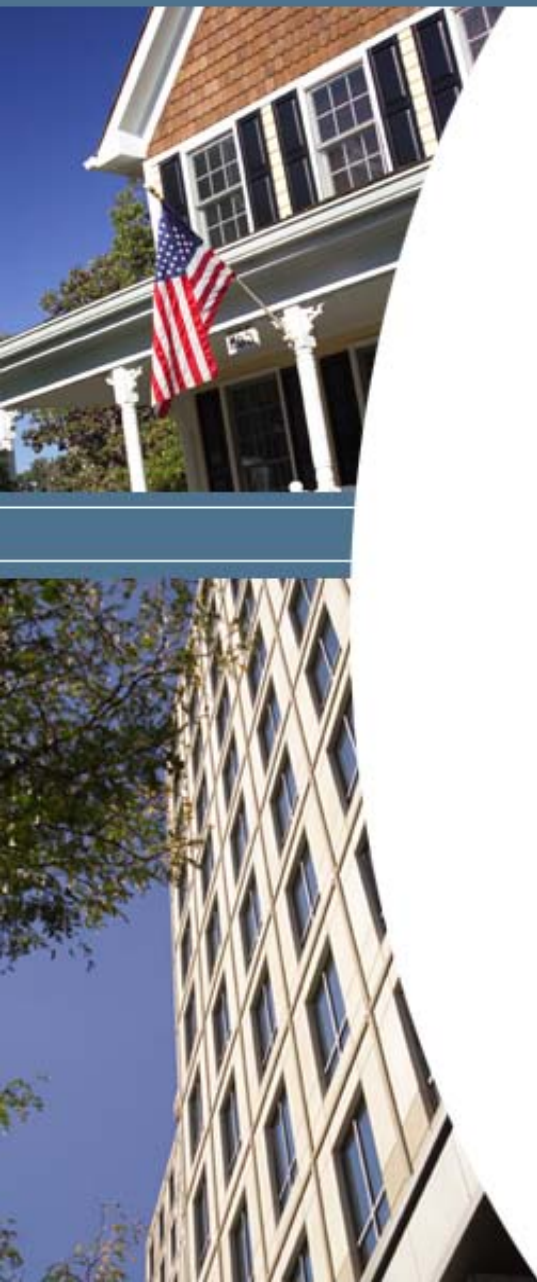
# Fraud Schemes And Modification Scams

Penny A. Paplanus, CMB  
Managing Director  
Cognitive Options Group, LLC

# Schemes and Scams



# What is Fraud?



The FBI defines mortgage fraud as "any material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan."

# Efforts from the Fed

- **Support for Foreclosure Rescue and Loan Modification Scam Efforts**

*"I believe that, if implemented appropriately, the FinCEN-led Foreclosure Rescue Scam & Loan Modification effort will help both law enforcement combat fraud and consumers avoid scams. I appreciate the Obama Administration's efforts, and I urge every law enforcement agency, including the Department of Justice, to coordinate with FinCEN as we attempt to safeguard our financial system from fraud and prosecute those who break the law."*

Senator Christopher Dodd

Chair, Senate Committee on Banking, Housing, and Urban Affairs

Senate Floor Debate

April 22, 2009



CognitiveOptionsGroup<sup>LLC</sup>

Ideas in Action

# Trends

In February 2009, FinCEN released an updated mortgage fraud analysis showing that SARs filed on suspected mortgage fraud increased 44 percent in the 12 months ending in June 2008 compared with the prior year.

The report, **Filing Trends in Mortgage Loan Fraud**, indicated that the continued rate of growth in mortgage fraud SAR filings underscores the increased vigilance and awareness of financial institutions, particularly as they continue to try to mitigate possible credit losses. One of the trends FinCEN identified in this analysis was the increase in mortgage fraud detection in connection with mortgage purchasers sending home loans back to originators for repurchase.



# FBI Weighs In

## Partnering with Other Agencies to Fight Mortgage Fraud

*"As is true across our criminal programs, our partnerships with other federal, state and local law enforcement agencies greatly enhance our effectiveness. Building upon our successful task force model, we have established Mortgage Fraud Task Forces across the country. These task forces are concentrated in areas at high risk for mortgage fraud. Partners vary across the country, but typically include Housing and Urban Development Office of Inspector General (HUD-OIG), the U.S. Postal Inspection Service (USPIS), the Internal Revenue Service (IRS), the Financial Crimes Enforcement Network (FinCEN), the Federal Deposit Insurance Corporation, and State and local law enforcement agencies. This multi-agency approach means additional resources for identifying perpetrators of fraud and additional prospective options for bringing them to justice. The option of pursuing federal or state charges is particularly beneficial in high-volume markets."*

Robert Mueller  
Director, Federal Bureau of Investigation  
Testimony before the Senate Judiciary Committee  
September 16, 2009



CognitiveOptionsGroup<sup>LLC</sup>

Ideas in Action

# Mortgage Loan Fraud SAR Subjects - Relation to Reporting Institution

## January – June 2009

Borrower	25,960
Broker	7,601
Customer	4,812
Appraiser	3,426
Employee	467
Agent	213
Attorney	152
Director	96
Officer	82
Accountant	29
Other	13,162



# “Other” Relations to Reporting Institution

## January – June 2009

Real estate professional (Loan officer, mortgage broker, realtor, or employee of any)	5944
Borrower or family member, or business owned by either	1763
Seller	1440
Closing agent (Title agent, escrow company, attorney, etc.)	735
Verifier of loan documentation (Notary, employer, tax preparer, landlord, etc.)	640
Developer, construction company, property management company, or real estate investor	476
Appraiser or employee	227
Loan modification scammers	77
Real estate professional (Loan officer, mortgage broker, realtor, or employee of any)	5944
Borrower or family member, or business owned by either	1763
Seller	1440



# Income is it Real?



The liar loan is gone..... full documentation is back.....along with that.....income fraud is here.....again!



# Novelty W-2, Paystubs & Verifications

## You Can Buy Anything on the Internet

➤ “Novelty” products is just a code word for “fraudulent documentation for sale”

- Drivers Licenses
- Social Security Cards
- Diplomas
- Paystubs
- W-2 or 1099 Statements
- Employment Written and Verbal Verifications



# It's Old..It's New..It's Back..

**PRINT PAYROLL STUBS W2 and 1099 Tax Forms CREATE INSTANT PROOF OF INCOME OR EMPLOYMENT USING THIS COMPUTER PROGRAM!**

DEVELOPED BY A HARVARD UNIVERSITY PROFESSOR !

DESIGNED WITH THE SMALL BUSINESS OWNER IN MIND!

THIS USER FRIENDLY - EASY TO USE PAYROLL PROGRAM WILL HELP EVERY BUSINESS OWNER CREATE PROFESSIONAL PAYROLL STUBS QUICKLY!

*VERIFY EMPLOYMENT AND PROVIDE PROOF OF INCOME BY CREATING PAYSTUB, W-2's AND 1099 DOCUMENTATION!*

**WWW.QUICKSTUBS.COM NOR ITS AFFILIATES ARE RESPONSIBLE FOR ANY MISUSE ASSOCIATED WITH THIS PROGRAM! ONCE THE BUYER HAS DOWNLOADED THIS SOFTWARE PROGRAM AND FILLED OUT THE FORMS WITH THE INFORMATION THEY CHOSE TO USE, THEY ARE RESPONSIBLE FOR WHAT IS WRITTEN. ALSO, THE BUYER IS RESPONSIBLE TO WHOMEVER THEY DECIDE TO DISTRIBUTE TOO! THIS COMPUTER PROGRAM IS INTENDED AS A PAYROLL SOLUTION AND/OR NOVELTY ITEM! THIS SYSTEM WAS NOT INTENDED NOR DESIGNED TO DEFRAUD ANYONE OR ANY BUSINESS! SHAME ON ANYONE WHO USES THIS PRODUCT FOR SUCH PURPOSES! KNOW THE LAWS IN YOUR COUNTRY/JURISDICTION PRIOR TO USE!**

ALL SALES ARE FINAL!



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Ideas in Action

<http://www.prooffofemployment.com/> or  
<http://www.fakepaycheckstubs.com>

# Appraisal...Value There or ??



CognitiveOptionsGroup LLC

Ideas in Action

# Appraisal

## **MAJOR CONCERN - HIGHEST Potential for loss**

- **Incidence of faulty values increases when someone other than the mortgage lender orders the appraisal**
- **Opinion of Value - not a scientific equation**
- **Pressure on appraiser to meet Sales Price**
- **More rules.....more regulations**



# Appraisal Statistics

## 2009:

3.9% of appraisal issues reported to MARI involved properties flipped within 30 days.

4.7% were properties flipped within 12 months.

## 2008:

1.4% of appraisal issues reported to MARI involved properties flipped within 30 days.

5.0% were properties flipped within 12 months.

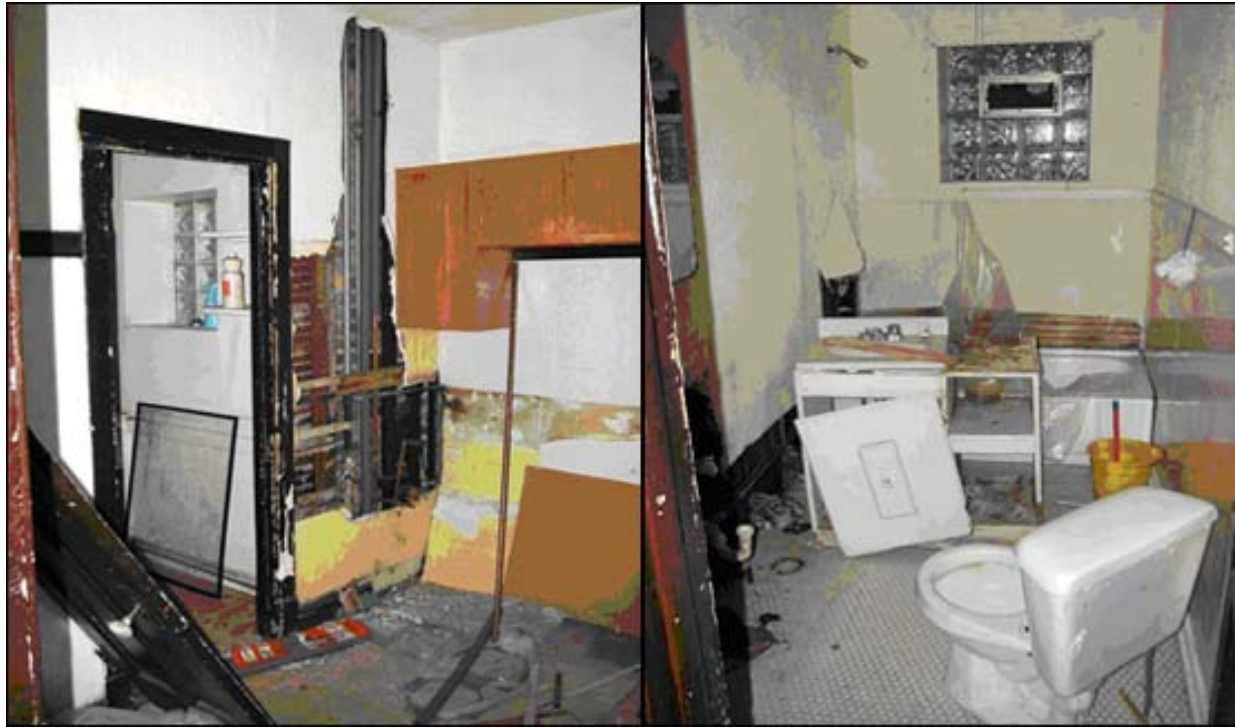
## 2007:

2.5% of appraisal issues reported to MARI involved properties flipped within 30 days.

5.8% were properties flipped within 12 months.



# Appraisal Fraud



The above photos are from condos that were involved in a mortgage fraud. The appraisal described “recently renovated condominiums” to include Brazilian hardwood, granite countertops, and a value of \$275,000.



CognitiveOptionsGroup LLC

Ideas in Action

# The Hot New Thing.....

**"We guarantee  
to stop your  
foreclosure."**



**"We stop  
foreclosures  
every day.  
Our team of  
professionals  
can stop  
yours this  
week!"**



**"We have special relationships  
within many banks that can speed  
up case approvals."**



# Foreclosure and Modification Scams

The scam artists use simple messages and broad promises, like: "Stop Foreclosure Now!" or "We can save your home!"

Foreclosure rescue firms use a variety of tactics:

Some go through public foreclosure notices in newspapers and on the Internet or through public files at local government offices, and then send personalized letters to homeowners.

Others take a broader approach through ads on the Internet, on television, radio or in the newspaper, posters on telephone poles, median strips and at bus stops, or flyers or business cards at your front door.



# Phony Counseling

The scammer offers to negotiate a deal with the lender to save your house in exchange for an upfront fee, often equal to one month's mortgage payment.

The client may be told not to contact the lender, lawyer, or credit counselor, and to let the scam artist handle all the details. Once the fee is paid, the scam artist takes off with the money.

Sometimes, the scam artist insists that client make all mortgage payments directly to him while he negotiates with the lender. In this variation, the scammer may collect several months of payments before disappearing.



# Rent-to-Buy Scheme

The scammer offers homeowners a deal to let them stay in their homes as a renter and then buy it back over the next few years. Victims are sometimes told that surrendering the title will allow a borrower with better credit rating to get new financing – and prevent the loss of the home.

But the terms of the deal are so burdensome it becomes impossible to buy back the house. Victims lose their home, and the scam artist walks off with all or most of the home's equity.

When the scammer defaults on the new loan, the original homeowner is evicted.

Sometimes, the scam artist raises the rent over time to the point that the former homeowner can't afford it. After missing several rent payments, the renter – the former homeowner – is evicted, leaving the “rescuer” free to sell the house.

# Bait and Switch

The scammer offers to arrange a new loan to make a victim's existing mortgage current.

When the homeowner signs the "new loan," the scammer includes documents that turn over the title of the house to the scam artist.

In some cases, the scammer uses the title to defraud a new lender by taking out a second loan on the property and pocketing the proceeds.

Victims of this scam often don't learn they've been cheated until they get an eviction notice.



# Equity Skimming

In this fraud, the scam artist offers to find a buyer for a homeowner facing foreclosure, but only if he or she signs over the deed and moves out. The scam artist promises to pay a portion of the profit when the home sells.

Once the deed is transferred, the scam artist rents out the home and pockets the proceeds while the lender proceeds with the foreclosure.

Victims of this scam lose their home - but they're still responsible for the unpaid mortgage. Contrary to the scammer's promises, transferring a deed to another party doesn't end a homeowner's responsibility to pay back a mortgage.



# Unauthorized Bankruptcy

In this version, the scam artist promises to negotiate with the victim's lender or to get refinancing on his or her behalf in exchange for an upfront fee.

Instead, the scammer pockets the fee and enters a bankruptcy filing in the victim's name -- sometimes without the victim's knowledge -- by forging a signature or concealing the true nature of the paperwork.

Though a bankruptcy filing often suspends a foreclosure, it doesn't end it permanently. Once in bankruptcy, the victim faces additional legal costs and bears the burden of a credit record that will make it difficult to buy or rent a new home for as long as 10 years.



# Real Company.....Real Ad.....

**Mortgage Modification** – Law group licensed in NY & FL

**Do you need to reduce your mortgage payment, but can't get the bank to listen? Whether you are behind on your mortgage, or simply want to lower your monthly payment, *Real Company* can help. We negotiate strongly with the bank to obtain a loan payment you can afford for a low one-time flat fee of \$1800 (all expenses included), or \$600 per month for three months. We aren't looking to simply buy you more time, we are working to achieve a long-term solution that will keep you in your home.**

**Call (800) 555-1212 for a free consultation to discuss your options.**



Ideas in Action

# The Rules.....

## ➤ **RULE 1:**

**DOES THE INFORMATION MAKE SENSE?**

## ➤ **RULE 2:**

**NOT EVERY RED FLAG MEANS FRAUD**

## ➤ **RULE 3:**

**TAKE A LOOK TO BE SURE**

