

LENDER FRAUD –

“THE OFFER THAT IS TOO GOOD TO BE TRUE”

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I. INTRODUCTION.

While the wave of questionable lending practices which helped trigger the current mortgage lending crisis has largely dissipated, transactions which occurred over the past several years remain subject to prosecution. Individuals should remain diligent in avoid transactions which violate state and/or federal law. More often than not, the deal that seems “too good to be true” (i.e. the buyer offers more than the purchase price to buy a home that has languished unsold) will likely violate state and federal law. This presentation will:

1. Examine the Controlling Law;
2. Analyze Recent Prosecutions by State and Federal Authorities; and
3. Examine Commonly Asked Questions.

The free-for-all use of sham borrowers with “stated income,” “no ratio,” or “no documentation” loans has been significantly curtailed since the August 1, 2007 amendment to Minnesota Chapter 58. The focus of this presentation is not on proper compliance with Minnesota Chapter 58 or preventing predatory mortgage lenders, instead will examine the fraud transactions from the perspective of the buyer, seller and other participants.

II. CONTROLLING LAW.

A. Federal Law.

1. RESPA. This discussion of the Real Estate Settlement Procedures Act (“RESPA”) is not intended to be an exhaustive presentation. RESPA (12 U.S.C. § 2601-17) may be one of the least understood and most commonly violated real estate laws. While the law is strict, the ambiguities in RESPA result in misunderstandings and substantial violations by many individuals. Although RESPA was not aggressively enforced for many years (further exacerbating lapses in good judgment), it does provide for substantial criminal and civil penalties in the event of violations. Penalties include fines of up to \$10,000 for each offense, imprisonment of up to one year, or both. Recent rampant predatory lending and the subsequent mortgage banking crisis has energized federal agencies in other jurisdictions, including the FBI and the Criminal Division of the IRS, to prosecute RESPA violations.

RESPA was enacted in December 1974 as a consumer disclosure and anti-kickback statute. RESPA seeks to protect borrowers by prohibiting individuals who provide services from paying one another for kickbacks or referral fees. Additionally, the statute protects lenders by insuring that the value of the loan is not lessened by kickbacks or other “hidden” transactions. See National Association of Realtors, RESPA: Guide to Complying with the Real Estate Settlement Procedures Act (2005).

a. Two Basic Rules. While there are certainly many complex aspects to understanding RESPA, there are essentially two basic rules to follow in order to avoid violations:

- i. All transactions must be disclosed to a lender; and
- ii. All fees or services must be earned.

b. Prohibitions/Violations.

i. Section 8(a) – Improper Referrals. Section 8 of RESPA provides two basic prohibitions. First, Section 8(a) prohibits a person from giving or receiving any fee, kickback or thing of value pursuant to an understanding that business will be referred:

“Business referrals. No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.”

12 U.S.C. § 2607(a). There are four basic elements required for a Section 8(a) violation:

1. A settlement service involving a federally related mortgage loan;
2. A referral of business incident to or part of a settlement service pursuant to an agreement or understanding (the referral agreement does not need to be in writing);
3. A payment or receipt of thing of value; and
4. A referral of settlement service business.

In 1993, RESPA was amended to permit settlement service providers to own other settlement service providers or enter into joint venture operations, so long as the parties’ Affiliated Business Arrangement (AfBA) adheres strictly to RESPA requirements and guidelines. Generally, this exception permits AfBA owners to receive a financial return on their ownership interest in a AfBA, and these payments are not considered a referral fee as long as: (i) this referral arrangement is disclosed to the customer on a separate sheet of paper identifying the business relationship, along with the written estimate of the charge imposed by the affiliated entity; (ii) the person being referred must not be required to use any particular provider of services; and (iii)

no payments other than a return on ownership interest, or payments otherwise, are permitted under the arrangement. 12 U.S.C. § 1607(c).

ii. Section 8(b) Kickbacks and Fee Splitting. Section 8(b) prohibits splitting of any charge made or received for performance of settlement services, except for services actually performed:

“Splitting charges. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.”

12 U.S.C. § 2607(b). A “settlement service” is broadly defined to include most, if not all, services that are performed prior to or in connection with a real estate closing transaction. “Settlement service providers” include real estate brokers, salespersons, insurance companies, attorneys, appraisers, surveyors, credit reporting agencies, mortgage bankers, home inspectors and title insurance companies. This is the oft cited provision requiring fees be “earned” as part of real estate transactions.

iii. Section 8(c). While the language of RESPA is very broad and appears to limit many payments, the provisions also contain specific exceptions. The following do not violate RESPA:

- Payment to an attorney for services actually rendered;
- Payment of a fee to a duly appointed agent of a title company, by the company itself, for services actually performed in issuing a title policy;
- Payment of a fee to a duly appointed agent of a lender, by the lender itself, for services actually performed in making the loan;
- Payment of a bona fide salary for services actually performed; or
- Payment of any compensation for goods or facilities actually furnished.

In addition to these exclusions, no violations of Sections 8(a) or (b) will be deemed to have occurred by giving a “thing of value” if the thing of value:

- Is normally a promotional or educational activity;
- Is not directly a condition for referral of business; or
- Does not involve significant expense that otherwise would not be incurred by the referring party in the real estate transaction.

See A. Arnold, Real Estate Investor's Deskbook, § 13:5 (3d Ed. January 2007) citing 12 U.S.C. § 2607(c).

iv. RESPA Enforcement. The primary focus of RESPA enforcement looks at kickbacks and unearned fees. As discussed below, the exact nature of the transactions have evolved over time, but the fundamental principle in a “kickback” transaction involves a payment by a buyer of an amount in excess of the actual value of a property with monies being “kicked back” to the buyer, or some other third party. The approach is usually made by the buyer or its agent offering to purchase a distressed property at or above its asking price. As part of the sales transaction, the seller is asked to “kickback” to the buyer, the buyer’s agent, a “deal facilitator” or into a sham escrow some amount of the closing proceeds.

For a desperate seller, this offers an extremely appealing temptation. The property is being sold, even with the “kickback,” still represents an attractive opportunity to remove an unwanted property from the seller’s balance sheet. However, the reason these transactions constitute a RESPA violation is the “kickback” constitutes a charge for which no actual value is rendered. The conspiracy¹ and fraud in the transaction is, in the final instance, perpetrated on the lender. That is, the buyer and seller are representing that the property being sold is worth the full purchase price when, in fact, the value rendered is far less when the “kickback” is remove. Thus, the lender is lending money predicated upon an illusory “full” purchase price when monies are being siphoned off through a kickback as part of the settlement service. See H. Gunnarsson, 92 Ill. B. J. 337 “Watch Out For (Un)real Estate Deals” (July 2004).

The most significant unearned fee and fee splitting case in Minnesota was the memorialized recent Consent Order between First American Title Company, the Minnesota Commissioner of Commerce and the U.S. Department of Housing and Urban Development signed on January 20, 2007. While the factual background is extensive, First American was found to have engaged in improper affiliated business

¹ Many of the federal indictments also include a conspiracy claim under 18 U.S.C. § 1371.

relationships which directed customers for title insurance work to its related AfBAs that was not adequately disclosed in violation of 24 C.F.R. Part 3500.10 and Section 8 of RESPA. HUD found that little or no title work was provided by the title agencies themselves and settlement services purported to be provided by the title agencies were essentially provided by First American. Applying the factors in HUD's policy statement on sham and affiliated transactions, HUD determined the title agencies were not independent business entities, but rather sham businesses controlled through arrangements in order to make referral payments back to other parties. As part of the settlement, nine builders agreed to cease their business activities with First American and agreed to pay \$225,000 in additional fines. See D.Slifer and P. Schieber, "Beware of Kickbacks: HUD's Recent RESPA Enforcement Actions," *Banking Law Journal* (June 2006).

Significantly, there appears to be a dispute between HUD, the 8th and 7th Circuits, and several state courts, whether the imposition of an "unearned fee" requires a transaction with a third party in order to trigger the statutory prohibition. The 8th Circuit in Haug v. Bank of America, 317 F.3d 832 (8th Cir. 2003) relied upon Echevarria v. Chicago Title and Trust Co., 256 F.3d 623 (7th Cir. 2001) in ruling that even though a bank charged more than it paid for services to a customer, because the "overcharge" was not shared with a third party, the fee splitting prohibition in Section 8(b) was inapplicable. In response to the Echevarria decision, HUD promulgated a Statement of Policy which implies that Section 8(b) prohibits all unearned fees, whether or not the transaction involves a third party. Real Estate Settlement Procedures Act Statement of Policy 2001-1, 66 Fed. Reg. 53,052 (October 18, 2001). The 8th Circuit specifically ruled that deference to the HUD Policy Statement was not warranted and that to demonstrate a violation of Section 8(b) a plaintiff must make a "showing that the defendant illegally shared fees with a third party." Haug, 317 F.3d at 840.²

In contrast, fees or kickbacks have been found illegal where a "facilitator" or broker is paid an excessive fee for facilitating a transaction. For example, a broker or "deal facilitator" will receive a 25% undisclosed commission or "finders fee" as a cash back payment after closing. Again, this involves the typical situation where the home value is already inflated and the "kickback" is not reflected in either the HUD or the loan documents.

² The courts have repeatedly held that mortgage brokers and lenders may have arrangements where the lender pays a "yield spread premium" to the broker for referral of the mortgage. Such transactions fall within the loan-specific liability tests promulgated by HUD that, if properly disclosed, these fee arrangements do not violate RESPA. Glover v. Standard Federal Bank, 283 F.3d 953 (8th Cir. 2002); Brancheau v. Residential Mortgage, 187 F.R.D. 591 (D. Minn. 1999).

2. Other Federal Violations. Recent indictments for lender fraud have not included claims for violation of RESPA. Indeed, claims have turned on other federal violations, including income tax evasion (26 U.S.C. § 7201, et al), money laundering (18 U.S.C. § 1957), wire fraud (18 U.S.C. § 1343) and conspiracy (18 U.S.C. § 371).

The local office of the Department of Justice confirms that it has not focused on bringing RESPA claims per se, as claims of lender fraud inevitably involve clear misdeeds which, in and of themselves, present significant violations of other federal laws. Put simply, the Department of Justice has not found it necessary to add RESPA violations when conspiracy, money laundering or fraud claims already exist.

B. Minnesota Law Violations.

There are far fewer published or available Minnesota cases regarding lender fraud enforcement. Extensive discussions with the Department of Commerce and Department of Labor & Industry reveal that most lender fraud violations have been handled through administrative enforcement, investigations and proceedings, and are not available for public review. A notable exception is the joint action by the Commissioner of Commerce and HUD against First American Title. In that case, in addition to RESPA violations, First American was charged with violations of Minn. Stat. §§ 60K.43 (Insurance License Revocation) 72A.08 (Prohibited Rebates Under Regulation of Trade Practices), 72A.20, subd. 18 (Improper Business Practices), and Minn. R. 2795.0800 (Department of Commerce – Insurance Agent). In the Matter of First American Title, “Consent” (January 20, 2007) at p. 4. Additionally, actions involving lender fraud typically involve claims relying upon the Minnesota Consumer Fraud Act (Minn. Stat. § 325F.68-70) and Minnesota Uniform Deceptive Trade Practice Act (Minn. Stat. § 325D.43-48). See generally *Blair v. Source One Mortgage Services Corporation*, 925 F.Supp. 617, 619 (D. Minn. 1996).

III. CURRENT DEPARTMENT OF COMMERCE CASES.

It is crucial to note that while many of these transactions, especially those involving “stated income” borrowers, occurred several years ago, the passage of time offers builders and developers little comfort. There is certainly a statute of limitations for breach of contract between individuals (six years under Minn. Stat. § 541.05), and a statute of limitations for criminal complaints under RESPA (one year under 12 U.S.C. § 2614), but no such parallel statutes exist as to licensure violations by builders or other professionals including realtors and appraisers. In fact, the Department of Commerce has asserted there is no applicable statute of limitations which bars enforcement, even after traditional statutes of limitation have expired.

While many of the problems with “stated income” borrowers have been addressed through substantial amendments to Chapter 58, there remains the problem that past transactions could make builders vulnerable. Additionally, while there are far fewer creditless borrowers who would qualify for a loan since the onset of the current credit crisis and amendments to Chapter 58, there are still ways to purchase properties in violation of the statutes, even with otherwise qualified borrowers.

A. Primary Focus of State of Minnesota – Department of Commerce and Department of Labor & Industry. The State of Minnesota, through the Department of Commerce, the Department of Labor & Industry, and the Attorney General’s office, has received complaints relating to the financing of transactions through multiple sources, including lenders, brokers, appraisers, and other parties participating in “questionable” transactions. The Department of Commerce has indicated that one of the major indicators of fraud currently being examined by investigating officers is whether the loan made is greater than the actual demonstrable value of the home. Regardless of the byzantine intricacies of the transaction, the key point is whether the purchase price and loan exceed the intrinsic value of the property being sold. If this is the case, there is a “fraud” on the lender and the transaction is inherently improper.

B. Evolution of Fraudulent Transactions³.

1. Example #1:

a. Transactions Not Reflected on HUD. The initial *modus operandi* for parties engaging in fraudulent transactions was to simply not reflect the increased price for an “improvement” (a/k/a the kickback to the buyer) on the HUD statement and have a check issued following the closing.

Initially, the property listed for \$279,900, but later decreased in value. See Exhibit 1A. On May 20, 2005, the property received an offer of \$302,000, with \$57,000 going back to finish the basement. Shortly thereafter, the MLS listing was increased to \$310,000. This is important because it created the illusion that the ultimate purchase price was less than the requested offer.

b. Appraiser. Crucial in many of these transactions is an incompetent/sloppy appraiser, or an individual who is aware of the improper actions contemplated in the transaction. In this case, the Department of Commerce is investigating the appraiser, because the appraiser testified that the \$47,100 “improvement” to the basement (a/k/a the “kickback”) represented a 5% reduction in the value of home. Obviously, this is either an incredibly basic math error (5% of \$302,000 = \$15,100), or the product of fraud.

The closing ultimately occurred with a check of \$57,000 to the buyer. This payment was not reflected in the HUD.

c. Phantom Escrow. Fraudulent transactions often involve a phantom “escrow agreement.” In the typical escrow arrangement, a title company acts as the escrow agent between the buyer and the seller to permit

³ The documents and charts presented during the presentation of this topic were received from the Department of Commerce for illustrative and educational purposes only, and while the author has engaged in extensive research and conversation with various public officials, these materials, and the documents presented, should not be viewed as reflecting an official position by the Minnesota Department of Commerce.

outstanding issue to be resolved following the closing. What is different in fraudulent transactions, is the escrow is often between the buyer and seller and does not constitute a real “escrow.” Rather, the transaction is merely a vehicle to transfer money from the seller to the buyer. For example, in this case, the amount the buyer and seller were placing into “escrow” was subject to continual negotiation. While the document reflects an escrow of \$57,000, the actual amount was \$55,800. See Exhibit 1B.

d. Fraudulent Statements in Loan Documents. Not only is fraud perpetrated against the lenders, but the multiple representations by the buyers and sellers, where they are affirming the accuracy of their documents, and, in particular, the accuracy of pay stubs, W2s and 1040s, constitute grounds for the Department of Commerce, the IRS and the FBI to impose liability. See Exhibits 1C and 1D In many cases, information provided by borrowers to lenders has been false.

e. “Stated Income” Borrowers. “Stated Income” transactions often involve individuals with minimal or no income. Borrowers would receive “stated income” financing with no real prospect of qualifying. Borrowers normally would provide fraudulent or misrepresented information in their certifications. Likewise, despite providing a “Certificate of Occupancy,” the borrower had no real intent to ever occupy the premises. See Exhibit 1E. In this example, the appraiser, builder, loan officers, closer and agents are all under investigation. The closer, in particular, indicated the transaction was permitted to go head, despite reservations, because of the closer’s long-term relationship with the builder and the desire to see this unproductive property sold.

2. Example #2:

a. Transactions Often Involve the Same Parties and Same Prices on Multiple Transactions. There are often related and multiple transactions involving the individuals taking part in fraudulent transactions. Either the transactions involve purchases of multiple properties simultaneously, or multiple transactions involving the same cadre of individuals purchasing multiple properties. For example, a builder may have five model homes available for sale, and the same group of individuals will be involved in the purchase and payments of all five homes. In the two time lines received from the Department of Commerce, the “buyer” was an asset-less and income-less individual who provided false information on his “stated income” financing. See Exhibits 2A and 2B. Within a month of the purchase of both of the properties, the buyer defaulted.

Likewise, the time line shows how the price decreased over time, but was substantially exceeded in the ultimate offer with a substantial kickback in the undisclosed addendum to the real estate company. Id. It is worth noting that this transaction was brought to the Department’s attention by a broker questioning the dubious actions of its agent. A significant portion of

investigations by the Department are triggered by information received from real estate professionals.

3. Example #3:

a. Fraud on the HUD Statement. One of the purposes of a HUD Statement is to keep the lender fully informed of the nature of the transaction. As sellers became more aware of concerns regarding non-disclosure on the HUD, predatory buyers invented a new form of fraud – simply creating two HUDs. Some mortgage brokers and closers provided a different settlement statement at closing versus the one which was given to the lenders.

For example, a comparison of two HUDs from the same sale demonstrates the exact nature of the overt fraud committed. The HUD statement given to the lender appears to show a typical real estate transaction without any “escrow” between the buyer and seller. See Exhibit 3A. In contrast, the Settlement Statement used at the closing represents a phantom “escrow” to the buyer (or its LLC), which constitutes the illegal kickback. See Exhibit 3B.

b. Shell Entities. In addition to overt fraud in the HUD statement, some buyer/seller transactions also involve shell entities used to shield the wrongdoers and obfuscate the “kickback” to the buyers. For example, the sellers are paying \$42,800 to a limited liability company (“LLC”) under the control of the buyers for some unspecified “valuable consideration.” See Exhibit 3C. As with the HUD statement, this “Letter of Escrow Instruction” was not given to the lender.

The closing documents further attempt to create sham consideration by and between the buyer, seller and third party, through a “Seller Agreement.” See Exhibits 3D-3G. This highly circular agreement provides that a third party will provide funds to assist the buyer in purchasing the property from the seller. To facilitate the loan between the buyer and the seller, the seller agrees to provide funds to the third party which will be given to the buyer at closing. See Exhibit 3E at ¶ 4. To create further confusion and attempt to put an impromoter of reality on the sham transaction, the third party and buyer enter into a “Buyers Funding Agreement” whereby the buyer is obligated to pay the third party the funds provided by the seller under the Seller Agreement. See Exhibits 3H-3K.

c. Side Agreements. A method often used by fraudulent parties is to also to have “side agreements” which are negotiated between the parties, but are not included in documents provided to the lender. An addendum to purchase agreement is a good example of such a “side agreement.” See Exhibit 3L. The example “Addendum to Purchase Agreement” incorporates the “funding agreements” by reference, but the addendum was not given to the lender. Id.

4. Example #4:

a. Front End Transfers. As people become increasingly aware of the prohibition of transactions off the HUD statement in order to avoid detection, wrongdoers have become increasingly sophisticated in their transactions. For example, rather than having money transferred at closing, parties have entered into agreements such as a “Notification to Title Company” which provide that a third party puts funds into the buyer’s bank account prior to closing. See Exhibits 4A and 4B. At closing, the seller gives the money to the third party. Once again, this document was never given or disclosed to the lender. Rather, the document is disguised on the HUD statement by indicating a payment of \$11,673 to a “bank.” See Exhibit 4C (at lien 507). In reality, as reflected in the notification to title company agreement, the payment instead went to a third party. Likewise, the “Letter of Escrow” instructions may provide for payment directly to a limited liability company controlled by the buyer. See Exhibit 4D.

Finally, in order to fund the transaction, the lender required evidence that the buyer had adequate cash in its account to close. To accomplish this, the mortgage broker acting improperly obtained a “Verification of Deposit” from the buyer’s bank which indicated a balance of \$10,881.94. See Exhibit 4E. Because this amount would have been inadequate to justify funding by the bank, the mortgage lender altered the Verification of Deposit from its existing condition to a deliberately poor quality copy showing a balance of \$16,039.94. See Exhibit 4F.

5. Example #5:

a. Sloppy Paperwork. Often paperwork provided by the wrongdoers is both sloppy and evidences their greed. Pre-approval letters are often fraudulently made and demonstrate the clear intent of the parties to proceed with the specific transaction. For example, a February 2005 pre-approval letter references a specific property two weeks prior to execution of a purchase agreement but, nevertheless, contained the specific property address. See Exhibit 5A. Generally, pre-approval letters are not tied to specific properties and certainly not two weeks prior to the making of an initial offer.

b. Limit Commissions. There is a repeated tendency of buyers to attempt to limit commissions paid to brokers. That is, a distinction is often made between the contract price and the sale price for purposes of commission, with the real value of the home being reflected for purposes of the commission and the higher value of the home being the actual sale price. For example, a property listed for \$559,900 prior to closing (Exhibit 5B), but ultimately, pursuant to the purchase agreement, closed at \$600,000. In this February 2005 transaction, while the contract price is \$600,000, the sale price for commission purposes is \$520,000. See Exhibit 5C. Coincidentally (or not coincidentally), the “kickback” resulting from this transaction is an \$80,000 reimbursement by

the seller to the buyer. Once again, an addendum to purchase agreement, which was not provided to the lender or put in the lender file, provided for the payment after closing. Likewise, the \$70,000 being returned by the seller to the buyer is not reflected in the HUD statement. See Exhibit 5D.

6. Example #6:

a. Cooperative Closer. If the wrongdoer has the cooperation of a closer, substantial payments can be made without any of the transactions being reflected on the closing documents. For example, the closing statement does not reflect any kickbacks or payments by the seller to the buyer or an inflated purchase price. See Exhibits 6A and 6B. However, an examination of the checks actually issued by the title company demonstrated that \$185,000 went to pay off the principal debt with \$13,000 going to buyer's related entities and \$31,000 to the broker who helped mastermind the transaction. See Exhibit 6C.

What this demonstrates is that with the cooperation of a closer and an agreement between a buyer and seller, a bank has little ability in discovering the fraud unless a detailed examination is made by a determined government enforcement agency.

What is evident from the discussions above is that both the wrongdoers and the State are increasingly sophisticated and willing to go to significant lengths to avoid detection (in the case of wrongdoers) and prosecute improper actions (in the case of the State.)

C. Pending Investigations Against Builders and Developers.

The Department of Commerce, the Department of Labor & Industry and the FBI have confirmed that there are current multiple pending investigations against both builders and developers for lender fraud. While no charges had been brought at the time this document was submitted for printing, there are significant claims potentially pending relating to the Prague Estates Development as reported in the St. Paul Pioneer Press, September 25, 2007, p.1. At this time, there are no open files which might be examined or current letters or reprimand or sanctions subject to review. The Minnesota Department of Commerce has confirmed that it is actively involved in the Prague Estates indictments and investigations (discussed below).

IV. FEDERAL CASES.

A. Jill Lehn. Jill Lehn was a closer who prepared fraudulent closing documents in over 60 real estate transactions. In those transactions, the buyers signed documents knowing they were fraudulent and overstated the true purchase price. In each of the cases, false documents were sent to corporate lenders that concealed that a portion of the loan proceeds would be paid to the property purchasers and other individuals. Specifically, the buyers pocketed the difference between the actual purchase price and the inflated purchase price stated in the bogus loan documents. Minnesota Realtor's Magazine (Volume 7, No. 5, March 2007)

at p.1.⁴ Lehn was charged with wire fraud and money laundering as a result an FBI investigation.

The Application and Affidavit for Seizure Warrant submitted in the Lehn matter presents an even farther reaching acts of lender fraud than is admitted to by Ms. Lehn in her Minnesota Realtor's Magazine article. Indeed, the affidavit submitted by the Hennepin County deputy assigned to the task force working with the IRS' criminal investigation division indicates that Ms. Lehn and her husband acted as the buyers on a number of the transactions where an "improvement allowance" was used to justify a kick-back from the seller. Likewise, the Lehns created a limited liability company which also received additional payments or commissions at closing. The affidavit in support of the warrant concluded that: "I believe that Lehn is submitting inaccurate settlement statements which conceal the equity transfers and cash payouts being paid to her or her husband." August 29, 2006 Affidavit of Matt Lunde. What is apparent from the documents submitted in the federal actions is that the general tenor of the schemes being prosecuted by federal authorities mirror the transactions investigated by the state authorities and discussed in the examples above.

Jill Lehn pled guilty to charges of wire fraud and money laundering in 2006 and was sentenced in January of 2008 to 24 months for each count to run concurrently followed by three years of supervised release for each count to run concurrently. Lehn was also ordered to pay restitution in the amount of \$3,152,839.10 to "victims unknown at this time." See United States of America v. Jill Lehn, case number 0:06-cr-00400-PAM, Judgment.

B. Parrish Marketing and Development Corporation, Kristopher Robbins and Ramiz Saadeh. In what appears to be the largest and most far reaching case of lender fraud in Minnesota, Parrish Builders is suspected of obtaining \$100,000,000 in mortgage loans to bankroll itself. See St. Paul Pioneer Press, September 25, 2007 at p.1. According to court file documents and the Star Tribune, the scheme worked as follows:

1. A bank officer falsified financial data of a "straw buyer," including down payment and income.

⁴ Ms. Lehn wrote the article entitled "Tips on How to Ruin Your Life," where she confesses to her misdeeds and lays out her experiences in the fraudulent scheme. It is an interesting article to share with any client who feels tempted to proceed with a questionable transaction. The following paragraph is particularly instructive: "It is quite easy to justify things in your head when you feel the bases are covered. The buyer is fully aware of this, the seller knows, the REALTOR® knows, the loan officer knows. Oh wait . . . that's right, THE LENDER DOES NOT KNOW. Funny how that little detail can just jump past the logical part of a brain. Now let's make everything totally clear for people in real estate: (1) Unless the lender knows a buyer is going to get money back on a purchase, it is not okay, good or advisable to give the buyer's money back. (2) Putting a bogus lien on a property so the seller pays it off at closing on a lender approved settlement statement, and those funds end up going back to the buyer in the end, is not okay, good or advisable. (3) Having a seller just write a buyer a check after a closing for any sort of a allowance or credit that the lender does not know they are getting is not okay, good or advisable. (4) Any new way you can think to go around the system is not okay, good or advisable." at p.5.

2. With false income data, a buyer obtained a mortgage through a lender.
3. The lender gave mortgage money to the builder.
4. The builder wrote a down-payment check making it look like it came from the buyer.
5. The builder wrote a check to a real estate closer as if it came from the buyer.
6. The builder rented the house to a renter with an option to buy.

Id. With the collapse of payments to the lender, buyers who were making payments on contracts for deed or rent-to-buy programs, thought they were entitled to the home, learned they were merely renters and are now subject to foreclosure proceedings by the unpaid lenders. The sham transactions may involve as many as 200 homes.

Michael Alan Parish and his wife Ardith Ann Parish along with their son-in-law Christopher David Troup are the owners of Parish Marketing and Development Corporation. On November 2, 2007 all three individuals pled guilty in federal court: Michael Parish pled guilty to mortgage fraud and money laundering and faces a possible sentence of 11-14 years; Christopher Troup pled guilty to mortgage fraud and money laundering and faces a possible sentence of 9-11 years; Ardith Parish pled guilty to mortgage fraud and faces a possible sentence of 5 years.

Ramiz Saadeh admitted to providing falsified verifications of deposits for buyers and making them appear as qualified loan recipients when, in fact, money was coming from a home builder to facilitate the sales transaction. Likewise, Kristopher Robbins was a closing agent and has admitted that individuals executed loan documentation of other persons who were actually purchasing properties. See Star Tribune: "Mortgage Fraud Infiltrates Suburbs" September 8, 2007, at p.C1. Saadeh pled guilty to conspiring to commit mortgage fraud on September 5, 2007 with Robbins pleading guilty to conspiring to commit mortgage fraud on September 7, 2007. Additionally, Melissa Smith pled guilty to conspiring to commit mortgage fraud on September 20, 2007 and Donald Todd Yeager pled guilty to honest services fraud on October 11, 2007. All individuals are currently awaiting sentencing. The individuals will be sentenced "based on determinations made by the court regarding the full extent of loss, the number of victims and the defendants' respective roles in the scheme." Federal Bureau of Investigation, Minneapolis Field Division, Dept. of Justice Press Release, November 2, 2007.

This is one of the first instances in Minnesota where a builder has been the subject of a major investigation. It is worth noting that this does not appear to be a situation where a builder merely sold a property at an exorbitant price and "put his head in the sand." But rather, if the allegations are true, a builder played a central role in orchestrating the scheme of fraudulent conduct.

In addition to the federal criminal charges, Parish Marketing and Development Corporation can expect to be involved in numerous actions brought by the people and or

businesses that were inadvertently wrapped up in the fraud. The latest of such claims to date was brought by Credit Suisse Financial Corporation (“CSFC”) and its affiliate DLK Mortgage Capital, Inc. on April 11, 2008 naming over 20 individual defendants involved in the lender fraud. CSFC purchased 64 of the approximately 200 mortgage loans and is seeking to recover approximately \$5 million in damages as a result of the mortgage fraud scheme.

The District Court appointed a receiver to help dispose of the Parish properties, and those involved have expressed their interest in pursuing actions individually rather than as a whole. See letter to the Honorable Ann Montgomery by court appointed receiver, Gary Hansen. To date, Parish marketing has over 49 mechanic’s liens cases pending against it for the work that was done by outside contractors. See In re Parrish Marketing and Development Corporation Mechanic’s Lien Foreclosure Litigation, Addendum of pending cases.