

The Real Estate Advisor

By Rick Staff, WRA General Counsel

DON'T GET INVOLVED IN MORTGAGE FRAUD CRIME

As with many industries, real estate is filled with new and innovative ideas. Here's one that fits the category of a good idea gone bad . . . It goes like this:

You list your home for sale, receive a great offer and quickly accept it. Everything is moving ahead smoothly until the buyer and the buyer's mortgage broker tell you that you need to write up a new offer which will show a purchase price \$20,000 higher than the original offer's purchase price. That sounds great until you are told that the new offer requires you to give the buyer a \$20,000 second mortgage which will be forgiven immediately after closing. Your bottom line won't change, but apparently this is necessary for the buyer to qualify for their mortgage. Is this: 1) a great idea; 2) no big deal one way or the other; or 3) a crime? If you guessed a crime you are probably correct.

This scenario usually occurs because the buyer didn't qualify for the mortgage they applied for under the original offer. Why is changing the contract terms a problem if the deal closes? The problem is that loan originators typically resell these loans to the secondary market. The secondary market is a group of investors, often closely tied to the federal government, who buy mortgages from mortgage brokers so that these loan originators have the money to make more loans. If your last mortgage was "sold" by your lender to a company you never heard of, the loan was probably sold on the secondary market. Because the secondary market lender will likely not be told the true terms of the deal, they could be buying a loan based on fraudulent documentation. If the truth was told, the loan would probably not meet the requirements necessary for sales on the secondary market. Thus, in order to make the contracts marketable, loan originators are altering them specifically to defraud the secondary market lender.

In addition to the "phony second mortgage," other variations of these scams include transactions in which the parties are told to increase the purchase price and then have the seller pay the increase to a phony "contractor." In reality, the "contractor" will never work on the property; he or she just passes the money through to the buyer and the lender. Sometimes the price increase is offset by a credit to the buyer that only shows up in a side agreement, not in the offer that is provided to the secondary market investor.

How does a buyer or seller protect him or herself from mortgage fraud, particularly when the "professional" that is structuring the deal says that everything is perfectly legal? First, you have to be able to tell the difference between a scam and a properly drafted contract. If the contract is changed solely to qualify the buyer for a higher loan than they could borrow under the original deal, you need to stop and ask an expert if a crime is being committed. Your first step will be to ask the lender to put his or her request in writing. Once documented, the proposal can be forwarded to the Mortgage Banking Section at the Department of Financial Institutions (DFI) in Madison [608/261-7578] or the FBI in Milwaukee [414/276-4684] for review. A copy of the DFI's lender fraud

complaint form and instructions for preparing a complaint can be found on the Wisconsin REALTORS[®] Association's web site at <http://www.wra.org> in the legal services section.

As General Counsel of the Wisconsin REALTORS[®] Association, I have worked with representatives of the FBI, the United States Department of Justice, Wisconsin's Departments of Financial Institutions and Regulation and Licensing to try to get the word out to consumers that mortgage fraud is occurring. Each of these agencies has issued alerts to the public, warning that these transactions may involve federal bank fraud. They warn that a buyer or seller who participates in this type of fraudulent activity may be charged with federal bank fraud. If convicted, penalties can include incarceration in a federal prison, a substantial fine, or both. Don't let someone whose only goal is to make a fast buck talk you into becoming a criminal.

The Real Estate Advisor is a regular column written by Attorney Rick Staff, General Counsel for the Wisconsin REALTORS[®] Association (WRA). The WRA is one of the largest trade associations in the state, representing over 12,000 real estate brokers, salespeople and affiliates statewide.