Barbarians at the gate –The danger of mortgage fraud

California surfing, New York's Broadway, Colorado Rockies and Florida's sunshine are each known for their unique features; however, they all now share a plague. They are ranked as among states with the highest amount of reported mortgage fraud in the U.S. in 2008, according to the FBI's Mortgage Fraud report released July 7, 2009.[1]

Suspicious Activity Reports (SARs)[2] increased 36 percent to 63,713 during fiscal year 2008, compared to 46,717 reports in 2007. While the total dollar loss attributed to mortgage fraud is unknown, financial institutions reported losses of at least $1.4 billion, an increase of 83.4 percent from 2007.

Nationally, more than 3.1 million foreclosure filings were reported on approximately 2.3 million properties during 2008, up 81 percent from 2007 and a whopping 225 percent from 2006.[3]

The first half of 2009 intensified as the Financial Crimes Enforcement Network (FinCEN)[4] ranked the top 10 states for SAR filings as: California, Florida, New York, Illinois, Georgia, Texas, Arizona, Michigan, Virginia and New Jersey. Overall, the borrower stands alone in the number one position as the main suspect with the mortgage broker further away in second place. The top fraud issues include forged documents, debt elimination or foreclosure rescue schemes, Social Security Number issues, misrepresented assets or undisclosed liabilities, title or insurance concerns and appraisal matters.

As 2010 ushers in a whole new earthly creation of mortgage loan fraud, the leftovers of the cheating trends from the not so distant past linger.

In a short sale, the current fraudster delight on the mortgage fraud menu, the borrower will obtain funding for a property and most likely place a Home Equity Line of Credit (HELOC) on the subject concurrently or shortly after the closing. The property value may have been deliberately inflated in order to obtain a higher limit of HELOC funds for the taking. Not surprisingly, the borrower defaults on the loan after making a few payments or none at all. Avoiding the mortgage company's attempted contacts and just before foreclosure, the borrower reaches out to the lender and conveys that the loan is no longer affordable. When given the opportunity by the mortgagor, the borrower purposely does not qualify for a work out package.

This structure would have allowed a qualified borrower to catch up with their mortgage payments. From the perpetrator's point of view, the motive removes a lender's option and eats away time to this draining piece of property. Precisely at this moment the ruse wanders into the picture disguised as a prospective buyer, who is actually a friend, relative, or business associate of the borrower. This relationship is not disclosed and the co-conspirator offers a low-ball amount that grossly undercuts the property resale price. After the short sale transaction is negotiated and complete, shortly thereafter, the new owner will sell/convey the property back to the original borrower and voila, this fraudster just swindled a $300,000 residence for $57,000, most likely with minimal expenses or payoffs.

Lending institutions, with the click of a button, can tap into public records databases prior to the short sale to connect any players or, eliminate suspicion. There are a few all-inclusive web sites out there that are quite reliable. For further recourse, follow up on closed short sales can be conducted by checking deeds filed with the county recorder or spot checking the vesting history to see if any concerning ownership changes transpired.

The additional deception associated with a fraudulent short sale also should not be underestimated. Many lenders do not permit certain parties to a loan to be connected, unless this information is disclosed in writing and accepted by all parties. If this occurs it is considered to be an Undisclosed Non Arms Length transaction (NAL). This method is intentional, deceitful, used for personal financial gain and therefore subject to a SAR filing.

Investigation methods have not changed just increased in volume. The course of action is as stale as that lost piece of bread hidden in the cabinet — follow the money.

The fact is that mortgage loan deception is not going away anytime soon and the lending industry can not face this disease alone. Mortgage fraud units are part of every branch of law enforcement with new interventions taking root on a regular basis.

According to FinCEN[5], in April 2009, the Departments of Justice (DOJ), Treasury, Housing and Urban Development (HUD), and the Securities and Exchange Commission (SEC) announced the formation of an interagency Financial Fraud Enforcement Task Force to strengthen efforts to combat financial crime. The task force's leadership, along with representatives from a wide range of federal agencies, regulatory authorities and inspectors general, will work with state and local partners to investigate and

[1]FBI Issues 2008 Mortgage Fraud Report, http://www.fbi.gov/pressrel/pressrel09/mortgage_070709.htm
[2]FBI Issues 2008 Mortgage Fraud Report, http://www.fbi.gov/pressrel/pressrel09/mortgage_070709.htm
[3]FBI Issues 2008 Mortgage Fraud Report, http://www.fbi.gov/pressrel/pressrel09/mortgage_070709.htm
[4]FinCEN, SAR Activity Review – Trends, Tips & Issues, Issue 16, 10/2009, http://www.fincen.gov/news_room/rp/files/ sar_tti_16.pdf
[5]FinCEN, Annual Report Fiscal Year 2009, http://www.fincen.gov/news_room/rp/files/YEreport/FY2009/ annualreport.html

prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes and recover proceeds for victims. Three months after its inception the "Treasury's Financial Fraud Enforcement Task Force has pursued more than 100 cases," cracking down on mortgage fraud and shutting down suspect companies.

As this fraud-guard continues to strengthen, government agencies will be able to better curb mortgage loan abuse by coordinating information and focusing resources in their fraud investigations, which will aid in the reduction of mortgage loan fraud. This includes alerting financial institutions to emerging schemes, stepping up enforcement of the various types of mortgage fraud, and educating consumers to avoid becoming the victim.

Accurate SAR filings are an important measure as it allows law enforcement to focus on infectious geographical areas and the types of trendy issues at hand. Such awareness will better equip the industry as a whole to fight mortgage fraud.

Stacey Kerreos, SAR manager, GreenPoint Mortgage Funding, Inc., Larkspur, California, USA, California Licensed Private Investigator, Stacey.Kerreos@greenpoint.com