



## **STOPPING FRAUD BEFORE IT STARTS**

**HOW THE REAL ESTATE COMMUNITY  
CAN WORK TOGETHER TO AVOID  
FRAUDULENT SCHEMES**

AUTHORED FOR:

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**GEORGIA REAL ESTATE FRAUD  
PREVENTION AND AWARENESS  
COALITION, INC.**

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Stopping fraud before it starts will require a collaborative effort throughout the real estate industry with full cooperation and affirmative steps from lenders, closing attorneys, appraisers, title insurers, homeowners, real estate agents and/or brokers. Here are concrete tools to start conversation in your neighborhood, company, quality control office or brokerage.

### **I. ROLE OF LENDER**

Finding fraud begins with quality control. "No doc" or "low doc" programs without careful safeguards are engraved invitations for fraud. Merely requiring documentation is not enough; a common sense failsafe should be used.

#### **A. UNDERWRITING CONSIDERATIONS**

Retrain your Underwriting Department. Every lender is seeking more loans. The process must be user-friendly, but not abuser-friendly.

- Do not rely on the information provided on the fact of Verification of Employment ("VOE"), Verification of Deposit ("VOD"), or the loan application. Fraudsters typically have a straw person standing by at the telephone number listed to parrot the information that was given. The phone number may be a bribed receptionist with multiple "companies" to "verify."
- Use the old-fashioned telephone book or an updated current search engine on the Internet to crosscheck the name, address, and phone numbers given. Specific software can be purchased, or use available internet resources to check for names.
- Let your fingers do the walking and call the employer at the number given in the phone book, not the one on the verification form. Verify information with the personnel manager from a random call, not only from a specific name given. If it turns out those people are the same, the five minutes you have spent to verify will be well worth it.
- Verify that the name of the bank/financial institution is a bona fide entity by checking records of doing business with the Georgia Secretary of State, either on the telephone, by written request, or on-line at their website, [www.ganet.org/services/corp/individual.html](http://www.ganet.org/services/corp/individual.html) in the Directory of Securities which is used by most financial institutes.
- Run the rough numbers yourself. Is it really logical that a bank teller is making \$30,000.00 a month salary?

#### **B. KNOW YOUR MORTGAGE BROKERS**

Most mortgage brokers are professional, thorough and competent. But the minority of brokers who do not fit this exemplary behavior are costing title insurance companies and lenders a literal fortune.

1. Obtain multiple references for a prospective broker, including personal, financial, and business track record. Ask for written adverse claims, both litigated and settled, demanded or unpaid.
2. Take the references and actually call the people. References are people, not a name or a paper in a file. Would you give this person your own checkbook?

3. Reward the brokers who are consistently honest and professional. A sophisticated fraudster may slip by the most well-intentioned broker, but repeat problems signal claims. Rewards can consist of more business, public praise, and printed recognition in your company newsletter.
4. Solicit new brokers, but be wary. Loans submitted by new brokers should be verified thoroughly and fly-specked. Establish a track record before you reward a broker with your trust.
5. Require a properly executed IRS Form 4506 for all loans and for every person obligated on the loan.

### C. CAREFULLY CHOOSE A CLOSING ATTORNEY

The closing attorney/settlement agent generally represents the lender. The lender is the client of the attorney, so the lender is ultimately in control of directions to that attorney. The lender should incorporate the following or similar language in its closing instructions:

1. Be selective about choosing a closing attorney/settlement agent.
2. Do not be shy about seeking references from lenders and title insurance companies. Ask about claims and litigation.
3. Insist on an insured closing letter from a reputable title insurance company. Title companies should notify lenders immediately of fraudulent attorney activities.
4. Watch out for names of closing attorneys/settlement agents that are consistently linked with suspicious loans. Stop permitting those attorneys/agents to close.
5. If you deal with a closing attorney/settlement agent who is fraudulent, request a Bar Complaint form from the State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303-2934; Phone 404-527-8700/Fax 404-527-8717. Report the matter so others are not victimized. Seek restitution.
6. Communicate concerns about suspicious files to your closing attorney/settlement agent. Make him or her your eyes and ears.
7. Modify your closing instructions to prevent flips without your written consent.

Consider adding the following to your written closing instructions:

**"IMPORTANT:** No closing attorney/settlement agent is authorized to conduct a closing of real property which has sold in whole or in part within 12 months immediately prior to the purported sale without written notification to and without written consent of the funding lender. Under no circumstance is a closing attorney/settlement agent authorized to conduct "back to back," "double," "flip," or "reverse flip" transactions absent written notification to and written consent of the lender of the specific terms of the proposed "back to back", "double", "flip" or "reverse flip" transactions. Should any such closing be conducted without the express written consent of the lender, the closing attorney/settlement agent for such transactions will be held responsible for any and all actual or consequential damages caused for attorney's fees and all expenses of litigation, in the event of any default in the loan (the closing agent's potential liability should run concurrent with the lenders) from date of closing, which results in loss or damage to the lender or its assignee. Conduct of this closing constitutes closing attorney/settlement agent's acceptance of the terms of indemnity. The block must be initialed by original ink by closing attorney/settlement agent and returned in the closing package. Failure to return said initialed block with closing package in accordance with the instructions given herein shall constitute a breach of the instructions."

**"IMPORTANT:** Closing attorney/settlement agent warrants that:

1. he or she has reviewed or caused to be reviewed the title for at least fifty years prior to the date of closing for a purchase transaction and seven years to prior owner for a refinance; and
2. marketable title is vested in the seller at the time of closing; and
3. the down payment of the Buyer was bona fide, was brought to closing, and passed through the closing attorney/settlement agent's escrow account; and
4. the funding lender is actually providing funds pursuant to O.C.G.A. § 44-14-13; and
5. picture identification was presented by and make a legible and recognizable copy for both Buyer and Seller; and
6. a list of each person present at closing is attached. "A major cause for suspicion is an entourage of persons who seem to have no relationship to the parties or the property."

#### **D. EVALUATE YOUR APPRAISER**

1. Get references and confirm that the appraiser is currently classified and has no disciplinary actions. Require a copy of their classification.
2. Consider using MAI's or a national appraisal company that warrants product.
3. For federally regulated transactions, make sure your appraiser is on the FHA Register and not just a Registered Appraiser. See <http://www.hud.gov/reac/faqs> for more details.
4. If a Registered Appraiser conducts the appraisal, have a Licensed or Certified Appraiser countersign as a supervisory appraiser on the appraisal report as well as actually INSPECT the property.
5. Will you permit the appraiser to have a copy of the Purchase and Sale Agreement?
6. Beware of multiple comparables in a limited area.
7. Stop using a suspicious appraiser immediately.
8. Require appraiser to disclose if he/she previously appraised comps.
9. Require comps to be within same subdivision.

#### **II. ROLE OF THE AGENT/BROKER**

1. Report the minority of brokers who are unscrupulous to your valued lender clients.
2. Maintain the highest ethical requirements. If you uncover a situation or information that would have a material adverse impact on the likelihood of the loan being repaid, do not make the loan. Alert the lender and title companies.
3. Know the people with whom you do business. If you have an experience with a lender who is unethical or fraudulent, notify the Ethics Committee of the Georgia Association of Mortgage Bankers, 770-993-5507, or at [www.gamb.org](http://www.gamb.org), or the Mortgage Bankers Association of Georgia toll free 877-388-6255, or at [www.mbag.org](http://www.mbag.org) or e-mail [mbag@mbag.org](mailto:mbag@mbag.org). If you have an experience with a closing attorney/settlement agent who is unethical or fraudulent, request a Bar Complaint form from the State Bar of Georgia (See I.C.(5) above).
4. You are the source closest to the borrower. Listen for problems or suspicious transactions. Track down the true facts. Refuse to be the fall guy for a fraudster.

### **III. ROLE OF THE CLOSING ATTORNEY/SETTLEMENT AGENT**

1. The closing attorney/settlement agent should review or cause to be reviewed the title for at least fifty years prior to the date of closing of any sale of real estate (seven years-or to a previous owner-on a refinance).
2. The closing attorney/settlement agent should verify and warrant that marketable title is vested in the seller at the time of closing, subject only to encumbrances and liens that are reported and paid off, subordinated with written approval from lender or otherwise resolved at closing in a manner deemed acceptable by the underwriting title insurance company.
3. The closing attorney/settlement agent should scrutinize the amount to be paid by the Buyer as to whether it is bona fide brought to closing. These funds should pass through the closing attorney/settlement agent's escrow account, unless written permission is obtained from the lender and all parties are made aware that said amount was paid outside of closing. All funds presented at closing by the buyer should comply with O.C.G.A. §44-14-13.
4. The closing attorney/settlement agent should verify that the funding lender is actually providing funds and to not disburse funds at closing until the lender's funds are actually in the closing attorney's possession.
5. The closing attorney/settlement agent should insist on color picture identification from both Buyer and Seller, and should make clear, legible copies of such identification. A smeared copy that can't be read is a waste of time. Driver's license, passport or other official identification is required (not Sam's Club, sports club, etc.)
6. The closing attorney/settlement agent should identify each person present at the closing and their purpose of attending. If extraneous people seem to have attached themselves to the Seller or Buyer, make further inquiry. Straw Buyers and Sellers may travel in a pack, which can tip off a fraudulent scheme.
7. Never let a Buyer or Seller take a deed or other document outside the closing to be signed without verification of who will be attesting to signatures and confirming that the correct party executed the documents. Forgeries happen too easily.
8. Know the brokers and lenders for whom you close. Although the temptation might be great, do not compromise quick volume bucks to do business with an entity you suspect of unscrupulous dealings. Your license to practice law is on the line.
9. Read and know the closing instructions from the lender. Train your staff to carefully comply. Get authority for changes in writing from an authorized lender representative (not the originator at closing).
10. Even if the particular closing institution does not expressly require it, do not close "back to back", "double", "flip", or "reverse flip" transactions without express written consent of the lender if all or a portion of the property has closed or is closing simultaneously within a previous twelve month period, make the lender aware of it in writing
11. The closing attorney/settlement agent should have control of the closing process from initial title exam through disbursement of funds and post-closing follow-up.

#### IV. ROLE OF THE TITLE INSURANCE COMPANIES

1. Investigate the closing attorneys/settlement agents you allow to be your agents. Fraudulent transactions will not be covered in their errors and omissions policies.
2. Conduct routine audits of your file and the attorney's escrow agent account. The escrow account should be sacred.
3. Cancel agents who have repeated and inexplicable claims. See if you can find a pattern of fraud. Pursue disciplinary action with the State Bar of Georgia (see # I.C.(5) above).
4. Watch for brokers or lenders who have a pattern of similar claims. Establish an internal review panel for claims excessive to the number of transactions.
5. Require references for all parties you will underwrite. (See # I.B. (1)(2) above).
6. Beware of volume business without mutually established written guidelines between insured and insurer.
7. Refuse to insure a funding lender who will not require closing attorneys/settlement agents to stop flip transactions absent written authority from the lender.

#### V. ROLE OF HOMEOWNERS, NEIGHBORS AND HOMEOWNERS ASSOCIATIONS

Keep up with changes of ownership in the neighborhood; be on the lookout for empty houses that seem to have revolving doors.

1. Report suspicious activity to the local police, GBI or FBI.
2. Keep a neighborhood watch.
3. Educate your neighborhood as to the enormous impact of allowing fraudsters to get a foothold.
4. Evaluate any covenants recorded for your subdivision. Push your homeowners association to propose any necessary amendments to your covenants to ensure that the association can impose penalties, including fines, against owners who fail to maintain their lots in a manner consistent with the neighborhood as a whole.

#### VI. ROLE OF THE APPRAISER

1. Do not rely on comparables that are part of a fraudulent scheme. A fraudulent appraisal fuels the fire for those to follow.
2. Evaluate the appraiser value independent of the contract price. Does the price seem artificially inflated?
3. Be honest. Go the extra mile to track down comparable sales that are bona fide.
4. Push your organization to legislatively establish methods to license appraisers and to report unethical behavior.
5. Physically see the subject property.

For Further Assistance Contact  
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