

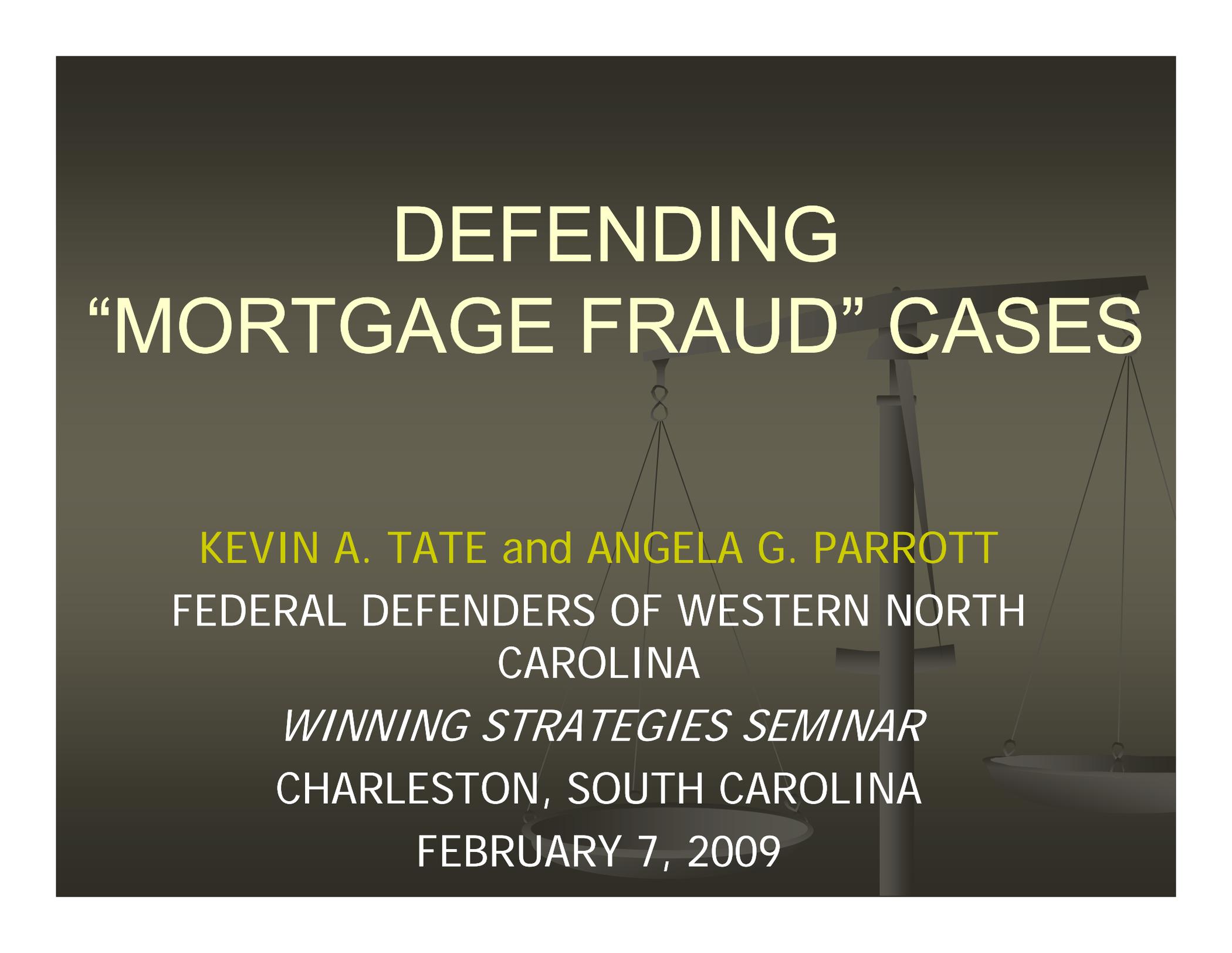
WINNING STRATEGIES SEMINAR



**Introduction to Mortgage
Fraud Terms, Players,
Defense Strategies, Pretrial
Motions and Defenses**

*Kevin Tate, AFD,
Western District of
North Carolina
&
Angela Parrott, AFD,
Western District of
North Carolina*



A faint, stylized image of a pair of scales of justice is visible in the background, centered behind the text. The scales are dark and semi-transparent, with the pans hanging from a central beam.

DEFENDING “MORTGAGE FRAUD” CASES

KEVIN A. TATE and ANGELA G. PARROTT

FEDERAL DEFENDERS OF WESTERN NORTH
CAROLINA

WINNING STRATEGIES SEMINAR
CHARLESTON, SOUTH CAROLINA

FEBRUARY 7, 2009

CHARGING SCHEMES

- 18 U.S.C. 371 CONSPIRACY
 - BANK FRAUD
 - WIRE FRAUD
 - MAIL FRAUD
 - MONEY LAUNDERING
 - HONEST SERVICES 12 U.S.C.
- 12 U.S.C 1709-2 – Equity Skimming
- Parallel state prosecution and civil suits

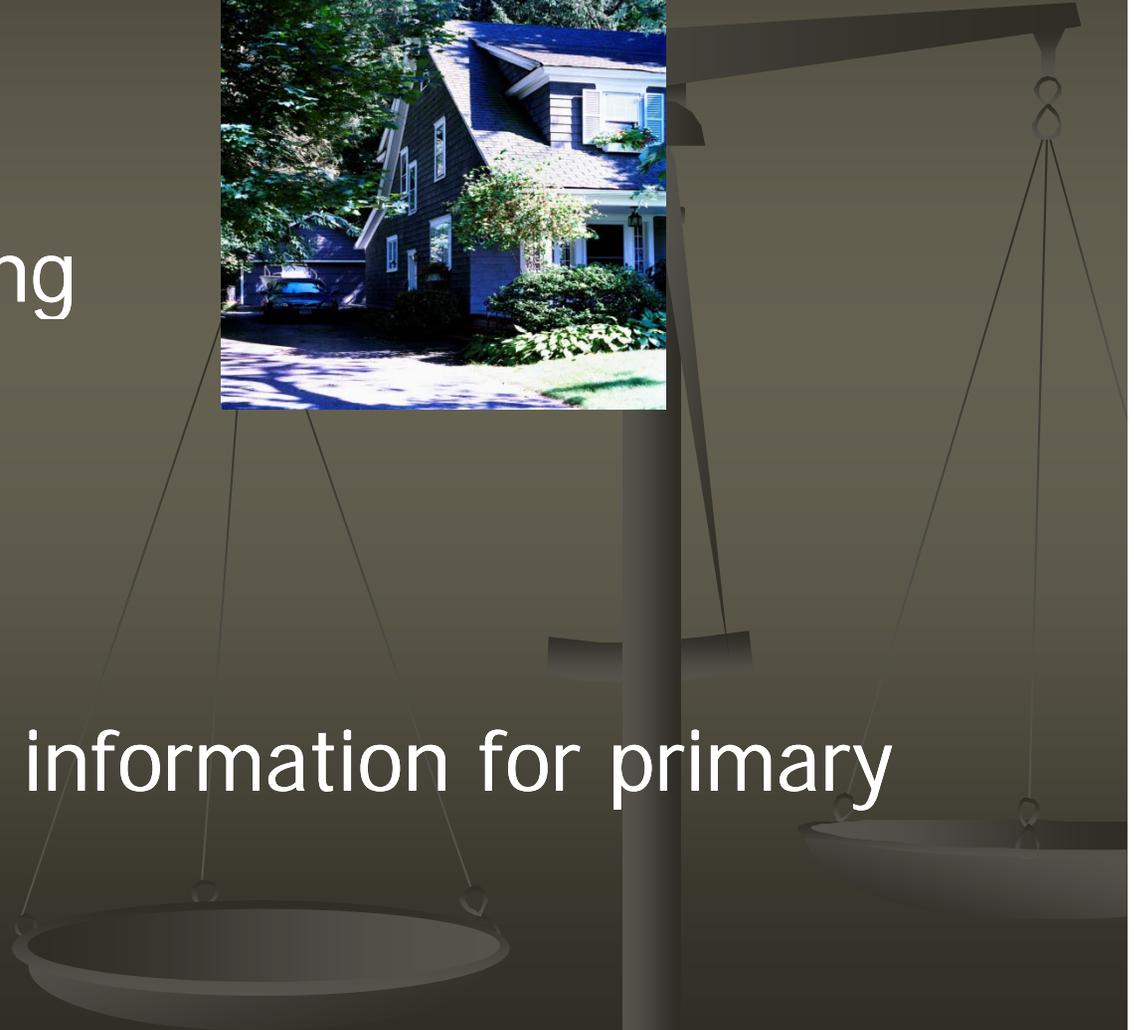


Common Mortgage Fraud Schemes

- Fraud for Housing



- Misrepresenting information for primary residence

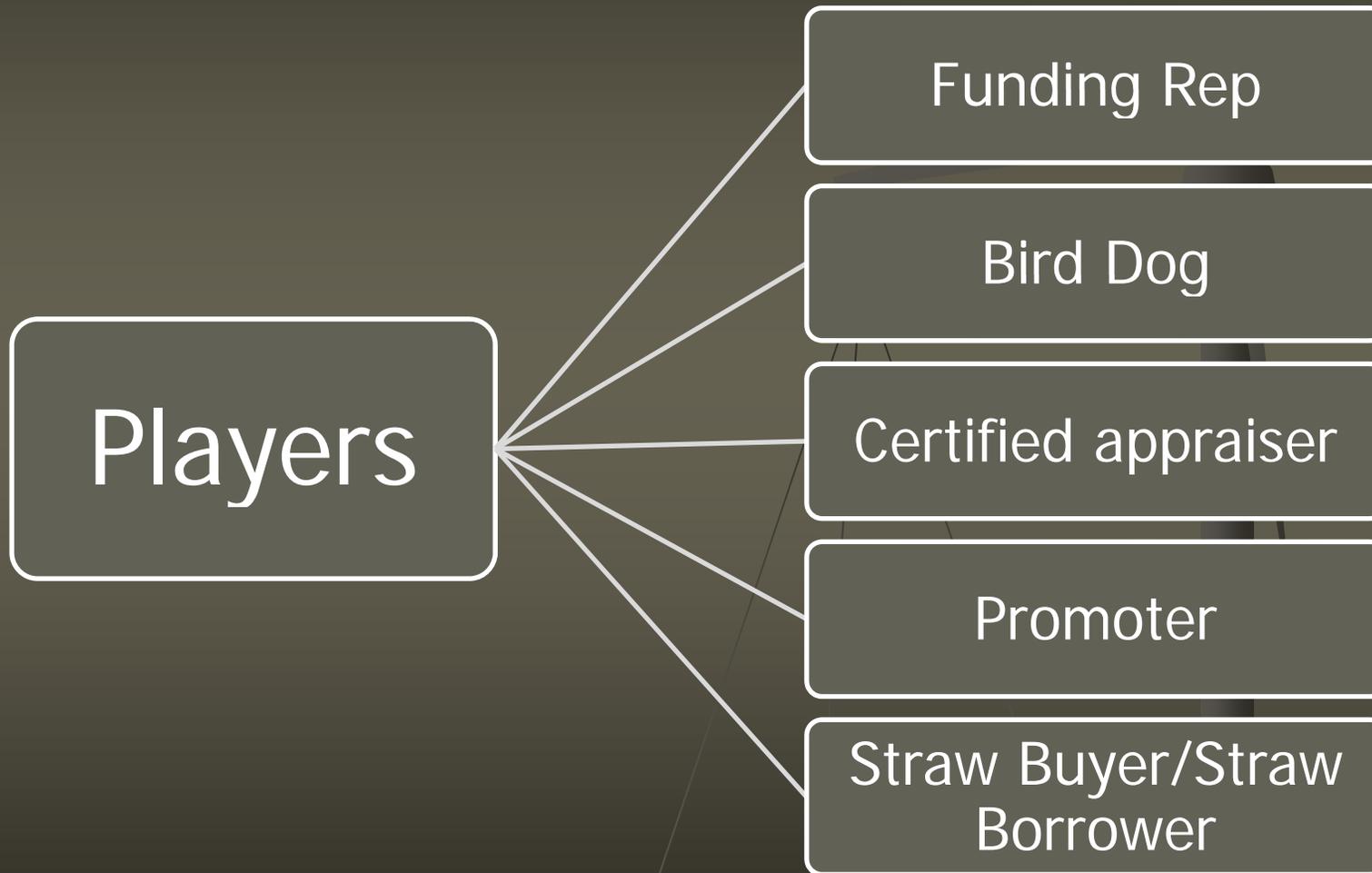


Common Mortgage Fraud Schemes

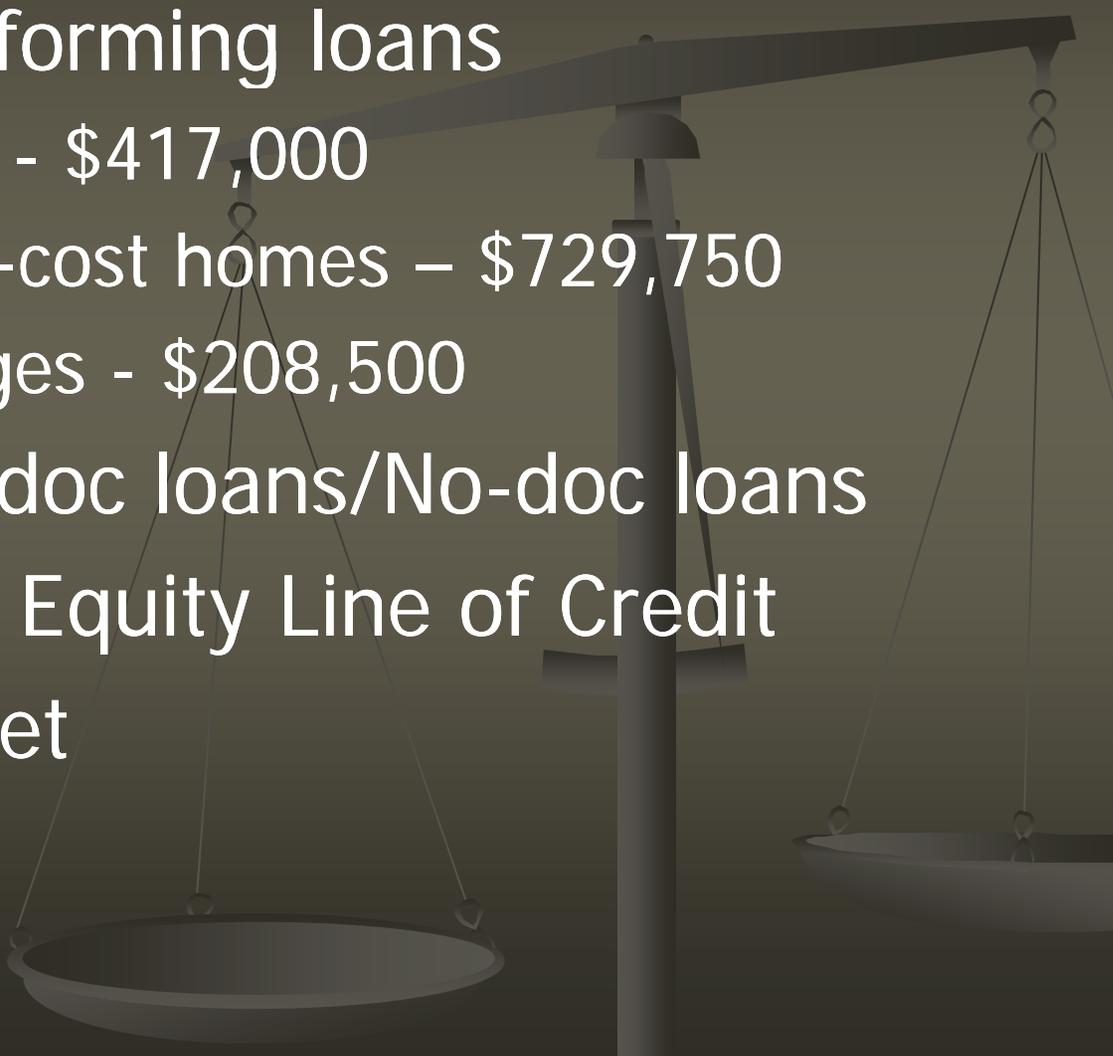
- Fraud for Profit
 - Fake Properties
 - Fraudulently inflating property values
- Property Flipping
 - Typically a fraudulent appraisal
- Equity Skimming
 - Straw buyer obtains mortgage
 - Straw buyer signs property over to investor
 - Investor does not pay mortgage
- Foreclosure Rescue Scams
 - Homeowner transfers deed, then consultant strips equity through sale or second mortgage



Mortgage Fraud Vocabulary



Loans

- Jumbo/Non-conforming loans
 - First Mortgages - \$417,000
 - Areas with high-cost homes – \$729,750
 - Second Mortgages - \$208,500
 - Liar Loans/Low-doc loans/No-doc loans
 - HELOC = Home Equity Line of Credit
 - Secondary Market
 - Subprime Loans
- 

| Borrower | | IV. EMPLOYMENT INFORMATION (cont'd) | | Co-Borrower | |
|-------------------------------|-----------------|-------------------------------------|-------------------------------|-----------------|---------------------------------|
| Name & Address of Employer | FI/SEI Employed | Date (mm - dd) | Name & Address of Employer | FI/SEI Employed | Date (mm - dd) |
| | | Monthly Income | | | Monthly Income |
| Address/Code/Type of Business | | Business Name (incl. sec. code) | Address/Code/Type of Business | | Business Name (incl. sec. code) |
| Name & Address of Employer | FI/SEI Employed | Date (mm - dd) | Name & Address of Employer | FI/SEI Employed | Date (mm - dd) |
| | | Monthly Income | | | Monthly Income |
| Address/Code/Type of Business | | Business Name (incl. sec. code) | Address/Code/Type of Business | | Business Name (incl. sec. code) |

| V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION | | | | | | |
|--|-----------|-------------|-----------|----------------------------------|-----------|-----------|
| Gross Monthly Income | Borrower | Co-Borrower | Total | Combined Monthly Housing Expense | Physical | Proposed |
| Base Earnings* | \$ | \$ | \$ | Rent | \$ | \$ |
| Dividends | | | | Prop. Mortgage/Ref. | | \$ |
| Interest | | | | Prop. Insurance (P & I) | | |
| Commissions | | | | Lease Payments | | |
| Dividend Income | | | | Rent from Prop. | | |
| Net Rental Income | | | | Property Income | | |
| Other (Specify category on the reverse in "Details of Income") | | | | Borrower Assn. Fee | | |
| | | | | Other | | |
| Total | \$ | \$ | \$ | Total | \$ | \$ |

* Self-employed (BTR-100) may be required to provide additional documentation such as tax returns and financial statements.

Indicate Other Income: None Allowance, child support, separate maintenance income need not be reported if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

BC Monthly Amount

VI. ASSETS AND LIABILITIES

This borrower and any applicant supporting schedules may be completed by both borrower and co-borrower. If their assets and liabilities are differently listed on the schedule, the borrower's schedule should be completed. If the co-borrower's schedule was completed, the borrower's schedule should be completed. If the co-borrower's schedule was completed, the borrower's schedule should be completed. If the co-borrower's schedule was completed, the borrower's schedule should be completed.

| ASSETS | | Market Value | LIABILITIES | | Monthly Payment or Months Left to Pay | Unpaid Balance |
|--|--------------------|--------------|-----------------------------|-------------------|---------------------------------------|----------------|
| Description | Cost (if reported) | \$ | Name and address of Company | \$ Payment/Months | \$ | |
| Equity checking and savings accounts | | | | | | |
| Name and address of Bank, S&L, or Credit Union | | | | | | |
| Account | \$ | | | | | |
| Name and address of Bank, S&L, or Credit Union | | | | | | |
| Account | \$ | | | | | |
| Name and address of Bank, S&L, or Credit Union | | | | | | |
| Account | \$ | | | | | |

| VI. ASSETS AND LIABILITIES (cont'd) | | | |
|--|---|------------------------|---------------------|
| Name and value of Bond, Note, and other Origin | Name and address of Company | \$ Payment/Month | \$ |
| App. no. \$ | App. no. | | |
| Stocks & Bonds (Specify company name and description) | Name and address of Company | \$ Payment/Month | \$ |
| Life Insurance (net cash value) | Name and address of Company | \$ Payment/Month | \$ |
| Real Estate (net cash value) (Include rental property owned) | | | |
| Auto/Other Insurance | | | |
| Other Assets (Name) | App. no. | \$ Payment/Month | \$ |
| | App. no. & description of Support/Service/ Maintenance Systems Used on: | | |
| | Other Related Expenses (child care, nurse fee, etc.) | \$ | \$ |
| Total Assets a | | Total Monthly Payments | Total Liabilities b |

Schedule of Real Estate Owned (If additional properties owned, attach additional sheets)

| Property Address (omit S if sold, PS if partially sold or if Trust held for income) | Type of property | Financing Number/Date | Amount of Mortgage & Liens | Types of Social Income | Mortgage Payments | Estimated Monthly Taxes & Misc | Net Rental Income |
|---|------------------|-----------------------|----------------------------|------------------------|-------------------|--------------------------------|-------------------|
| | | \$ | \$ | | \$ | \$ | \$ |
| | | \$ | \$ | | \$ | \$ | \$ |
| | | \$ | \$ | | \$ | \$ | \$ |

List any additional names under which credit has previously been received and include appropriate creditor name(s) and account number(s):

| Creditor Name | Credit Type | Account Number |
|---------------|-------------|----------------|
| | | |

| VII. DETAILS OF TRANSACTION | | VIII. DECLARATIONS | |
|---------------------------------------|--------|--|--------|
| 1. Substantive | Yes/No | 1. Are there any pending judgments against you? | Yes/No |
| 2. Alterations, improvements, repairs | Yes/No | 2. Have you been declared bankrupt within the past 7 years? | Yes/No |
| 3. Land (Selling/rental property) | Yes/No | 3. Have you had property involved in foreclosure sale or deed in lieu of sale in the last 3 years? | Yes/No |
| 4. Homeowner's association dues | Yes/No | 4. Are you a party to a lease? | Yes/No |
| 5. Estimated income taxes | Yes/No | 5. Have you directly or indirectly been notified by any bank which is a Federal Reserve member bank of any delinquency or judgment? | Yes/No |
| 6. PSL, MFE, Funding Fee | Yes/No | 6. Have you made more than one mortgage loan, SBA loan, home improvement loan, educational loan, transactional (credit) card loan, any loan with a financial obligation, local or non-local, secured if "Yes," contain details, including date, name, and address of lender, FICA or VA card number, ID#, and transaction details? | Yes/No |
| 7. Discount (if borrower will pay) | Yes/No | | |
| 8. Title costs (add lines with cash) | Yes/No | | |

Uniform Underwriting and Transmittal Summary

I. Borrower and Property Information

Borrower Name _____ SSN _____
 Co-Borrower Name _____ SSN _____

Property Address _____

Property Type _____

1-1/2
 2-1/4 Units
 Condominium
 HUC Co-op
 Manufactured Housing
 Singlewide Multisite

Project Classification

Project Name _____

Encumbered Review Partial Review New E-4-LJ 1 Co-op
 Full Review Full Review New FRID 2 Co-op
 New Project H Limited Review New
 De-Link Project S Expedited Review Est.
 2-Link Project T Points Use Review
 Residual Review U FIM approved

Occupancy Status

Primary Residence
 Second Home
 Investment Property

Additional Property Information

Number of Units _____
 Sales Price \$ _____
 Appraised Value \$ _____
 Property Rights _____
 Fee Simple
 Leasehold

II. Mortgage Information

Loan Type

Conventional Fixed Rate - Monthly Payments
 FHA Fixed Rate - Biweekly Payments
 VA Balloon
 USDA-RHS ARM (Type) _____
 Other (Specify) _____

Amortization Type

Loan Purpose

Buydown
 Yes
 No
 Terms _____

Buydown

Loan Position

First Mortgage
 Amount of Subordinate Financing \$ _____
 If HELOC, include balance and credit limit
 Second Mortgage

Second Mortgage

Owner of First Mortgage

Front/Title Credit Via
 Seller/Other
 Original Loan Amount of First Mortgage \$ _____

Notes Information

Original Loan Amount \$ _____
 Initial PM Payment \$ _____
 Initial Note Rate % _____
 Term (in months) _____

Mortgage Originator

Seller
 Broker
 Correspondent
 Broker/Correspondent Name and Company Name _____

III. Underwriting Information

Underwriter Name _____ Appraiser Name/Company _____ Appraised Company Name _____

Stable Monthly Income

| | Borrower | Co-Borrower | Total |
|-------------------|----------|-------------|---------|
| Base Income | \$ _____ | \$ _____ | \$ 0.00 |
| Other Income | \$ _____ | \$ _____ | \$ 0.00 |
| Dividend/IRA/401k | \$ _____ | \$ _____ | \$ 0.00 |
| Total Income | \$ 0.00 | \$ 0.00 | \$ 0.00 |

Qualifying Ratios

DTI % _____
 Total Debt to Total Income % _____
 Total to Housing Cost Ratio (Front) % _____

Loan-to-Value Ratios

LTV % _____
 DTI % _____
 DULM LTV % _____

Qualifying Ratio

1st Lien % _____
 2nd Lien % _____
 3rd Lien % _____
 4th Lien % _____
 5th Lien % _____

Level of Property Review

Full Review
 Expedited Review
 No Appraisal
 Form Number _____

Risk Assessment

Manual Underwriting
 AUS
 DU UH Other _____
 AUS Recommendation _____
 DU Case ID/P.A.U.S. ID # _____
 IP Doc Class (Product) _____

Escrow (T&E)

Yes No

Community Lending/Habitat for Humanity Initiative Yes No
 Home Buyers/ Homeownership Education Certificate in File Yes No

Representative Credit/Borrower Score _____

Underwriter Comments _____

Present Housing Payment \$ _____
 Proposed Monthly Payments \$ _____
 Proposed Primary Residence \$ _____
 First Mortgage PM \$ _____
 Second Mortgage PM \$ _____
 Hazard Insurance \$ _____
 Taxes \$ _____
 Mortgage Insurance \$ _____
 HOA Fees \$ _____
 Free/Condo Rent \$ _____
 Other \$ _____
 Total Primary Housing Expense \$ 0.00

Clear Closing
 Negative Cash Flow (Subject Property) \$ _____
 All Other Monthly Payments \$ _____
 Total All Monthly Payments \$ 0.00

Borrower Funds to Close

Required \$ _____
 Verified Assets \$ _____

Source of Funds

Number of Months Reviewed _____
 Interested Party Contributions % _____

IV. Seller, Contact, and Contact Information

Seller Name _____ Contact Name _____
 Seller Address _____ Contact Title _____
 Seller Phone _____ Contact Phone Number _____
 Seller Email _____ Contact Email _____
 Seller Loan No. _____ Contact Signature _____

FredMac Form 1277 ©A08 Page 1 of 1 Form 1277 Form 1277

| L. Settlement Charges | | | | |
|---|-------------|-------------|--|----------------------------|
| 700. Total Settlement Commission based on Sale \$ | \$ | % = | | |
| Distribution of Commission (The 700 as follows) | | | | |
| 701. \$ | to | | | Pay From Seller's Proceeds |
| 702. \$ | to | | | Pay From Buyer's Proceeds |
| 703. Commission paid to Seller(s) | | | | |
| 704. | | | | |
| 800. Items Payable in Connection With Loan | | | | |
| 801. Loan Origination Fee | % | | | |
| 802. Loan Discount | % | | | |
| 803. Agency Fee | to | | | |
| 804. Credit Report | to | | | |
| 805. Lender's Inspection Fee | | | | |
| 806. Mortgage Insurance Acquisition Fee or | | | | |
| 807. Assessor's Fee | | | | |
| 808. | | | | |
| 809. | | | | |
| 810. | | | | |
| 811. | | | | |
| 900. Items Required by Lender To Be Paid In Advance | | | | |
| 901. Interest from | to | date | | |
| 902. Mortgage Insurance Premium fee | | per month | | |
| 903. Private Mortgage Insurance fee | | per month | | |
| 904. | | per month | | |
| 905. | | per month | | |
| 1000. Reserve Deposited With Lender | | | | |
| 1001. Hazard Insurance | per month | | | |
| 1002. Mortgage Insurance | per month | | | |
| 1003. City property taxes | per month | | | |
| 1004. County property taxes | per month | | | |
| 1005. Annual assessments | per month | | | |
| 1006. | per month | | | |
| 1007. | per month | | | |
| 1008. | per month | | | |
| 1100. Title Charges | | | | |
| 1101. Escrow or closing fee | to | | | |
| 1102. Abstract or title search | to | | | |
| 1103. Title examination | to | | | |
| 1104. Title insurance policy | to | | | |
| 1105. Document preparation | to | | | |
| 1106. Notary fees | to | | | |
| 1107. Attorney's fees | to | | | |
| Includes above item numbers: | | | | |
| 1108. Title insurance | to | | | |
| Includes above item numbers: | | | | |
| 1109. Lender's charge | | | | |
| 1110. Lender's charge | | | | |
| 1111. | | | | |
| 1112. | | | | |
| 1113. | | | | |
| 1200. Government Recording and Transfer Charges | | | | |
| 1201. Recording fees: Doc # | Mortgage \$ | Transfer \$ | | |
| 1202. Change of ownership: Doc # | Mortgage \$ | | | |
| 1203. Sale of property: Doc # | Mortgage \$ | | | |
| 1204. | | | | |
| 1205. | | | | |
| 1300. Additional Settlement Charges | | | | |
| 1301. Survey | to | | | |
| 1302. Pest Inspector fee | | | | |
| 1303. | | | | |
| 1304. | | | | |
| 1305. | | | | |
| 1400. Total Settlement Charges (enter at Item 700, Section J and 800, Section K) | | | | |

Uniform Residential Appraisal Report

FAR 1

The purpose of this summary appraisal report is to provide the lender/client with an accurate and trustworthy statement of the market value of the subject property.

Property Address: _____ City: _____ State: _____ Zip Code: _____
 Bldg No.: _____ County: _____
 Parcel ID: _____
 Assessor's Parcel # _____
 Neighborhood Name: _____ Map Reference: _____
 Estimated Value: _____
 Property Type Appraised: Leasehold Other Description _____
 Assignment Type: Purchase Transaction Refinance Transaction Other (Describe): _____
 Is this a first mortgage or second mortgage or other type of mortgage? Yes No
 Record date sources used (listing, contract and details): _____

I did not analyze the contract for sale for the subject purchase transaction. Even so, the results of the contract for sale are of the subject property and assignment.

Contract Price: _____ Date of Contract: _____ Is the property being purchased in bulk? No Yes. Code: _____
 Is there any financing available for the property sale (except one of the down payment assistance programs)? Yes No
 If financing is available, are there any conditions? _____

Notes: Base and the actual condition of the neighborhood and neighborhood factors.

| | | | | | | | | | |
|----------|---|------------|--|-------|--|------------|---|-------------------|---|
| Location | <input type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Rural | Topography | <input type="checkbox"/> Level <input type="checkbox"/> Sloping <input type="checkbox"/> Hilly | Soils | <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor | Year Built | <input type="checkbox"/> 1900-1949 <input type="checkbox"/> 1950-1999 <input type="checkbox"/> 2000-Present | Previous Land Use | <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Other |
| Climate | <input type="checkbox"/> Dry <input type="checkbox"/> Humid <input type="checkbox"/> Other | Vegetation | <input type="checkbox"/> Sparse <input type="checkbox"/> Moderate <input type="checkbox"/> Dense | Water | <input type="checkbox"/> None <input type="checkbox"/> Limited <input type="checkbox"/> Abundant | Age | <input type="checkbox"/> New <input type="checkbox"/> Older | Condition | <input type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor |

Neighborhood Trends: _____
 Residential Description: _____

Market Area (not the subject property) is an established market area: Yes No

Character: _____ Area: _____ Shape: _____ View: _____
 Specific Calling Classification: _____
 Zoning Classification: Equal Unequal Special Use Other (Describe): _____
 Is the highest and best use of the subject property, required for as proposed per city and state administrative review, use? Yes No. If No, describe: _____

| | | | | | | | |
|-----------|--------------------------|--------------------------|--------|--------------------------|----------------------------|--------------------------|--------------------------|
| Utilities | Public | Other (Describe) | Public | Other (Describe) | Off-site Requirements—Type | Public | Private |
| Gas | <input type="checkbox"/> | <input type="checkbox"/> | Water | <input type="checkbox"/> | Street | <input type="checkbox"/> | <input type="checkbox"/> |
| Electric | <input type="checkbox"/> | <input type="checkbox"/> | Sewer | <input type="checkbox"/> | Other | <input type="checkbox"/> | <input type="checkbox"/> |
| Fire | <input type="checkbox"/> | <input type="checkbox"/> | Other | <input type="checkbox"/> | Other | <input type="checkbox"/> | <input type="checkbox"/> |

Are there any special use improvements (e.g., swimming pool, hot tub, etc.)? Yes No. If Yes, describe: _____
 Are there any special use conditions (e.g., easements, encroachments, etc.)? Yes No. If Yes, describe: _____

| | | | |
|---|---|---|--|
| General Description | Foundation | Exterior Description | Interior Description |
| Unit: <input type="checkbox"/> Det <input type="checkbox"/> One with Accessory Unit | <input type="checkbox"/> Concrete Block <input type="checkbox"/> Concrete <input type="checkbox"/> Brick <input type="checkbox"/> Other | Foundation: _____ Siding: _____ Roof: _____ Windows: _____ Doors: _____ Other: _____ | Floors: _____ Walls: _____ Ceiling: _____ Bathrooms: _____ Kitchens: _____ Other: _____ |

Is there any physical encumbrance or easement on the property? Yes No. If Yes, describe: _____
 Is there any physical encumbrance or easement on the property? Yes No. If Yes, describe: _____



Request for Verification of Deposit

Privacy Act Notice: This information is to be used by the agency collecting it or its assignee in determining whether you qualify as a prospective borrower under its program. It will not be disclosed outside the agency except as required and permitted by law. You do not have to provide this information, but if you do not your application for approval as a (prospective) mortgagee or borrower may be delayed or rejected. The information requested in this form is authorized by Title 28, U.S.C. Chapter 37 (if VA); by 12 U.S.C. Section 1701 et seq. (if HUD/FHA); by 42 U.S.C. Section 14625 (if HUD/CPD); and Title 42 U.S.C. 1467 et seq. or 7 U.S.C. 1621 et seq. (if USDA/FmHA).

Instructions: Lender — Complete items 1 through 6, then applicant's completed item 7. Forward directly to depository named in item 1.

Depository — Please complete items 7 through 10 and return DIRECTLY to lender named in item 2.

The form is to be completed directly to the lender and is not to be transmitted through the applicant or any other party.

Part I — Request

1. To (Name and address of depository)

2. From (Name and address of lender)

I certify that this verification has been sent directly to the bank or depository and has not passed through the hands of the applicant or any other party.

3. Signature of lender

4. Title

5. Date

6. Lender's No. (Optional)

7. Information to Be Verified

| Type of Account | Account in Name of | Account Number | Balance |
|-----------------|--------------------|----------------|---------|
| | | | \$ |
| | | | \$ |
| | | | \$ |

To Depository: If we have applied for a mortgage loan and stated in my financial statement that the balance on deposit with you is as shown above. You are requested to verify this information and to supply the lender identified above with the information requested in items 7 through 10. Your response is solely a matter of courtesy for which no responsibility is attached to your institution or any of your officers.

8. Name and Address of Applicant(s)

9. Signature of Applicant(s)

To Be Completed by Depository

Part II — Verification of Depository

10. Deposit Accounts of Applicant(s)

| Type of Account | Account Number | Current Balance | Average Balance For Previous Two Months | Date Opened |
|-----------------|----------------|-----------------|---|-------------|
| | | \$ | \$ | |
| | | \$ | \$ | |
| | | \$ | \$ | |

11. Loans Outstanding To Applicant(s)

| Loan Number | Date of Loan | Original Amount | Current Balance | Installments (Monthly/Quarterly) | Secured By | Number of Late Payments |
|-------------|--------------|-----------------|-----------------|----------------------------------|------------|-------------------------|
| | | \$ | \$ | per | | |
| | | \$ | \$ | per | | |
| | | \$ | \$ | per | | |

12. Please include any additional information which may be of assistance in determining credit worthiness. (Please include information on loans paid-in-full in item 11 above.)

13. If the name(s) on the account(s) differ from those listed in item 7, please supply the name(s) on the account(s) as reflected by your records.

Part III — Authorized Signature — Federal statute provides severe penalties for any fraud, intentional misrepresentation, or criminal conspiracy or conspiracy purposed to influence the issuance of any guaranty or insurance by the VA Secretary, the U.S.D.A., FmHA/FHA Commissioner, or the HUD/CPD Assistant Secretary.

14. Signature of Depository Representative

15. Title (Please print or type)

16. Date

17. Please print or type name signed in item 14

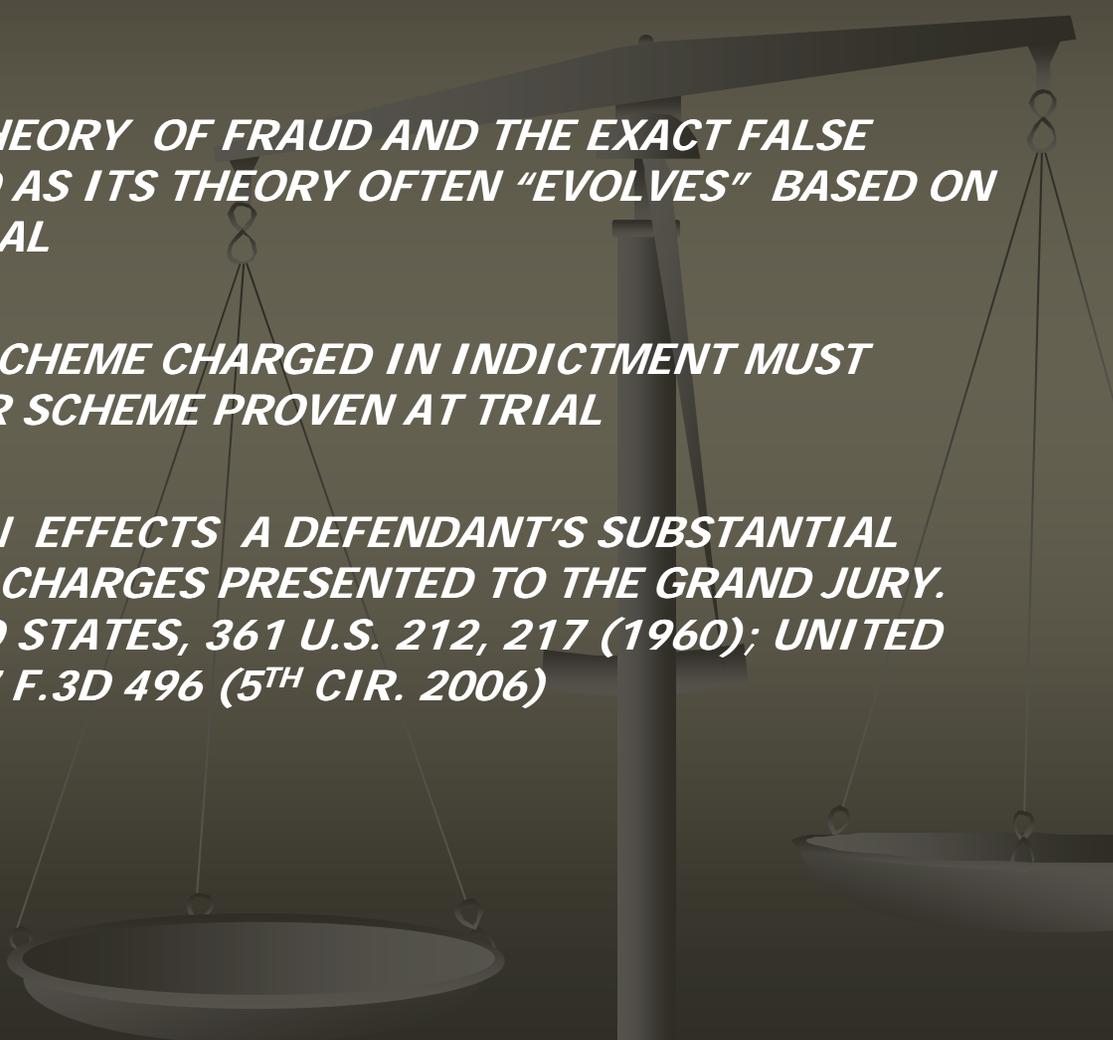
18. Phone No.



Litigation Tactics

- ***DUPPLICITY AND MULTIPLICITY CHALLENGES (FLUSH OUT AND MAKE GOVERNMENT COMMIT TO A THEORY)***
- ***MOTION TO PRECLUDE OPINION/EXPERT EVIDENCE***
 - ***GOVERNMENT EXPERT WITNESS CONSTANCE WILSON***
 - ***http://www.interthinx.com/pdf/ITX_InvestTeam_broFNL.pdf***
 - ***SEEK TO DETERMINE HOW MUCH GOVERNMENT IS PAYING WILSON FOR TESTIMONY***
 - ***WHAT IS THE ARRANGEMENT BETWEEN INTERTHINX AND DEPARTMENT OF JUSTICE FOR CONTRIBUTIONS TO HER WEBSITE AND PUBLICITY FOR DOJ MORTGAGE FRAUD INITIATIVES***
- ***DAUBERT/KUMHO CHALLENGE FED. R. EVID. 702 AND 704***
 - ***OPINIONS THAT TRANSACTION AND/OR DOCUMENTS USED WERE FOR "FRAUDULENT PURPOSE"***
 - ***CONCLUSORY TESTIMONY REGARDING THE "ROLE OF MORTGAGE FRAUD PARTICIPANTS", "THE PROPRIETY OF MORTGAGE LOAN DOCUMENTS", AND "THE STRUCTURE AND DIVISION OF WORK WITHIN MORTGAGE FRAUD ORGANIZATIONS"***
 - ***CONCLUSORY TESTIMONY REGARDING "ECONOMIC LOSS", "THE VALUE OF REAL ESTATE", "AMORTIZATION" AND "PROFIT/LOSS ANALYSIS"***

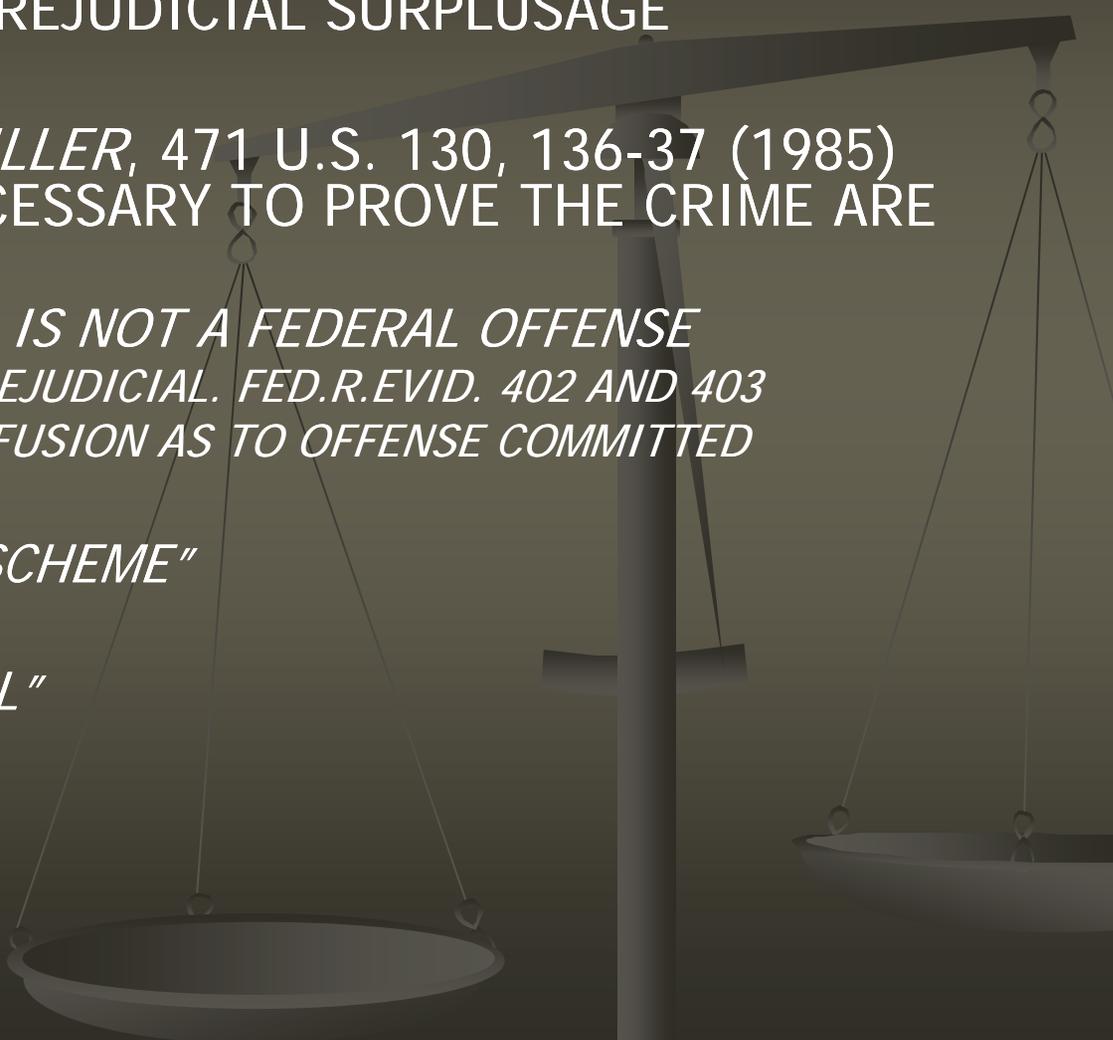
PRE-TRIAL MOTIONS



- ***BILL OF PARTICULARS***

- ***PIN GOV'T DOWN ON THEORY OF FRAUD AND THE EXACT FALSE STATEMENTS CHARGED AS ITS THEORY OFTEN "EVOLVES" BASED ON FACTS ADDUCED AT TRIAL***
- ***FALSE STATEMENT OR SCHEME CHARGED IN INDICTMENT MUST MIRROR STATEMENT OR SCHEME PROVEN AT TRIAL***
- ***IF NOT, ANY VARIATION EFFECTS A DEFENDANT'S SUBSTANTIAL RIGHT TO BE TRIED ON CHARGES PRESENTED TO THE GRAND JURY. SEE STIRONE V. UNITED STATES, 361 U.S. 212, 217 (1960); UNITED STATES V. HOOVER, 467 F.3D 496 (5TH CIR. 2006)***

PRE-TRIAL MOTIONS



- MOTION TO STRIKE PREJUDICIAL SURPLUSAGE
- FED.R.CRIM.P. 7 (d)
- *UNITED STATES V. MILLER*, 471 U.S. 130, 136-37 (1985)
(ALLEGATIONS UNNECESSARY TO PROVE THE CRIME ARE SURPLUSAGE)
 - *"MORTGAGE FRAUD" IS NOT A FEDERAL OFFENSE*
 - *TERM IS OVERLY PREJUDICIAL. FED.R.EVID. 402 AND 403*
 - *LEADS TO JURY CONFUSION AS TO OFFENSE COMMITTED*
 - *"FRAUDULENT FLIP"*
 - *"MORTGAGE FRAUD SCHEME"*
 - *"PROMOTER"*
 - *"INFLATED APPRAISAL"*
 - *"THE SCHEME"*

AVOID MASS STIPULATIONS TO VOLUMINOUS DOCUMENTS

- YOU ARE BEING SET UP FOR INTRODUCTION OF PREJUDICIAL 1006 SUMMARIES TO BE DISPLAYED TO JURY
 - WITNESSES ARE OFTEN GOVERNMENT AGENTS WHO WILL TAILOR TESTIMONY AND EXHIBIT TO EXPLAIN TRIAL EVIDENCE AND GOVERNMENT VERSION OF EVENTS
 - WILL CERTAINLY BE USED DURING PROSECUTION'S CLOSING ARGUMENTS
 - * *ARGUE THAT SUMMARY DOES NOT ACCURATELY REFLECT UNDERLYING DOCUMENTS**
 - * *INVOKE RULE 1002 "BEST EVIDENCE RULE" TO PRECLUDE INTRODUCTION OF DOCUMENTS AND INCLUSION IN ANY SUMMARY**
- *IF YOU BLINDLY STIPULATE TO THE ADMISSION OF VOLUMINOUS RECORDS WITHOUT EVER REVIEWING THEM THE PROSECUTION WILL PREPARE A SELF-SERVING CHART TO CONVICT YOUR CLIENT*



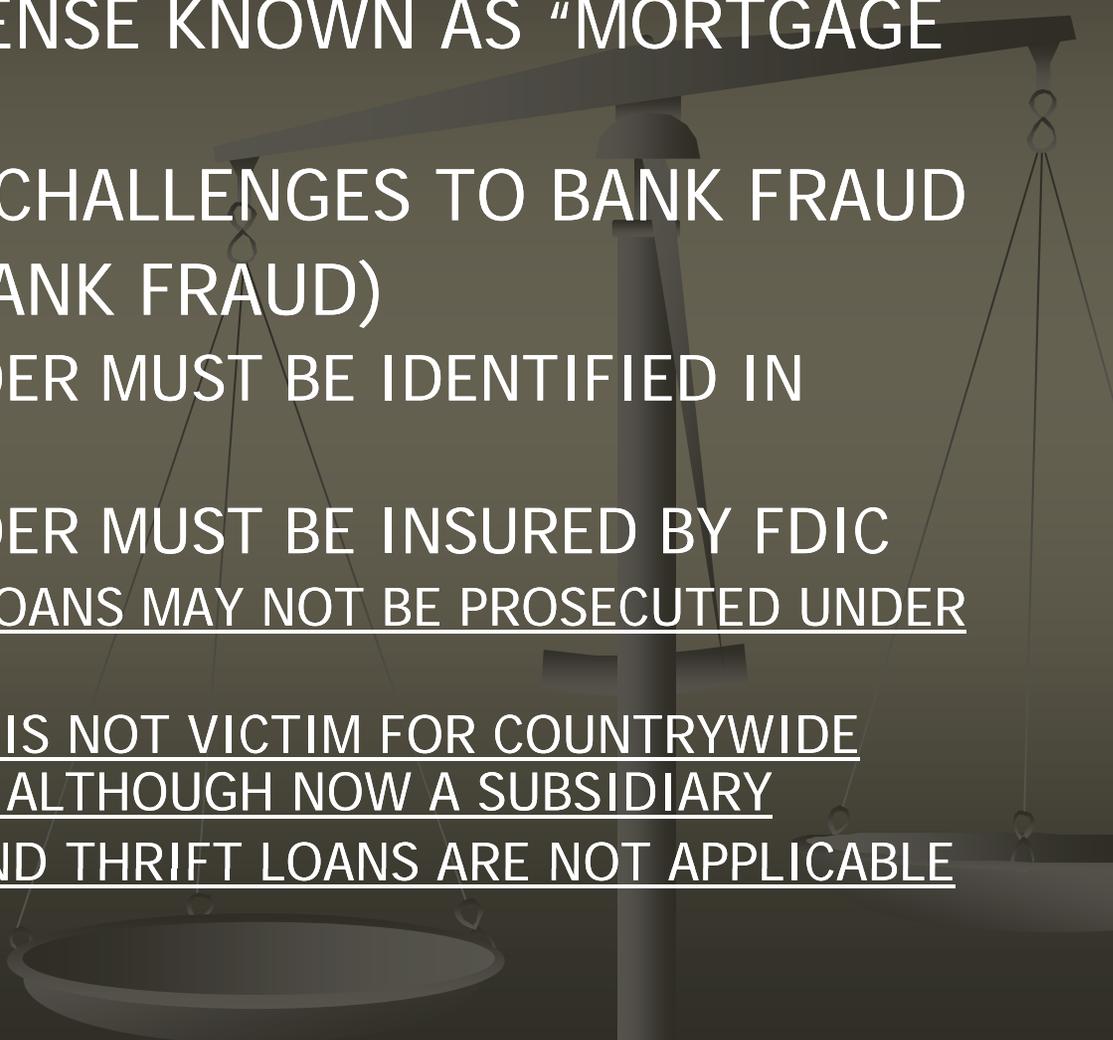
APPROACH TO DEALING WITH TESTIFYING STRAW BUYERS

- *MAKE THE GOVERNMENT ELECT WHETHER THE BUYER IS AN INDICTED OR UNINDICTED CO-DEFENDANT OR VICTIM*
- *IF GOVERNMENT DECLARES THE WITNESS A "VICTIM":
MOVE TO PRECLUDE 801 (d) (2) (E)
STATEMENTS/TESTIMONY BY WITNESS*
- *IF GOVERNMENT DECLARES THE WITNESS A "CO-DEFENDANT"*
 - *HAS THE WITNESS BEEN CHARGED ?*
 - *NO= REQUEST IMMUNIZED WITNESS INSTRUCTION PRIOR TO OR FOLLOWING TESTIMONY*
 - *YES= REQUEST INSTRUCTION THAT TESTIMONY MUST BE CONSIDERED BY JURY USING GREAT CAUTION AND CARE*
 - *IF A CONVICTION RESULTS ELECTION WILL BECOME RELEVANT TO SENTENCING GUIDELINES AS ONE PERSON CANNOT BE BOTH A CO-DEFENDANT AND VICTIM*

FRAUD/HONEST SERVICES DEFENSES

- NO *SPECIFIC INTENT* TO DEFRAUD
 - CONDUCT WAS RECKLESS OR NEGLIGENT
- "*HONEST SERVICES PROSECUTIONS*"
 - *USED AGAINST UNDERWRITERS, BROKERS AND APPRAISERS*
 - **CONDUCT MUST BE INTENDED TO DEFRAUD THE LENDER**
 - **DEFENDANT MUST HAVE AN ACTUAL FIDUCIARY RELATIONSHIP WITH LENDER OR BUYER**
 - **A DEFENDANT IS NOT ENTITLED TO CREDITS AGAINST LOSS PURSUANT TO 2B1.1 (E) FOR HONEST SERVICES CONVICTIONS**

BANK FRAUD DEFENSES



- NO FEDERAL OFFENSE KNOWN AS “MORTGAGE FRAUD”
- JURISDICTIONAL CHALLENGES TO BANK FRAUD
- 18 U.S.C. 1344 (BANK FRAUD)
 - DEFRAUDED LENDER MUST BE IDENTIFIED IN INDICTMENT
 - DEFRAUDED LENDER MUST BE INSURED BY FDIC
 - “COUNTRYWIDE” LOANS MAY NOT BE PROSECUTED UNDER 1344
 - BANK OF AMERICA IS NOT VICTIM FOR COUNTRYWIDE MORTGAGE LOANS ALTHOUGH NOW A SUBSIDIARY
 - CREDIT UNIONS AND THRIFT LOANS ARE NOT APPLICABLE

MAIL/WIRE FRAUD DEFENSES

- MAIL AND WIRE FRAUD

*REQUIRES MAILING OR WIRE IN FURTHERANCE OF THE FRAUD SCHEME

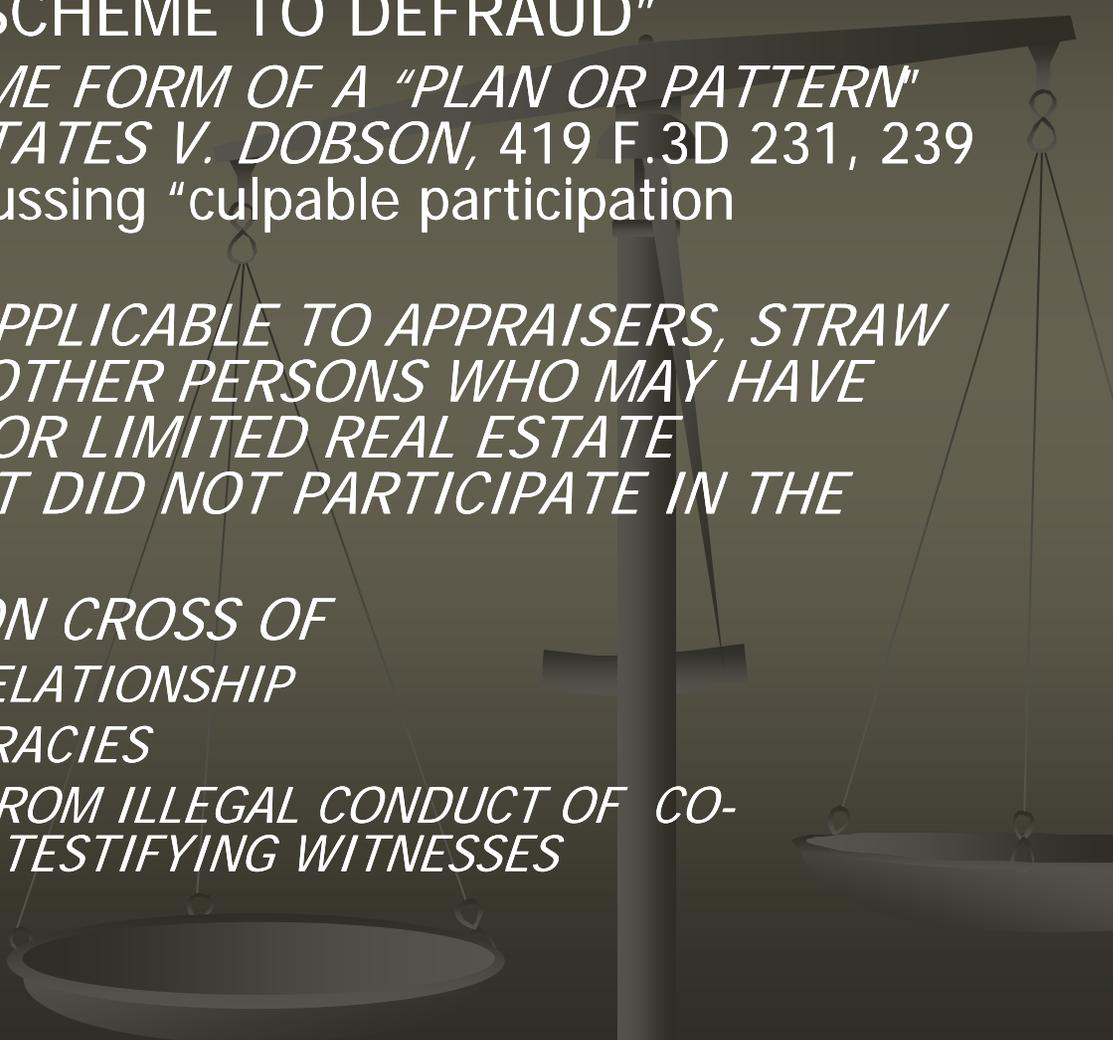
*TIMING OF THE MAILING IS CRITICAL

*HAS THE FRAUD ALREADY BEEN COMPLETED AT THE TIME OF MAILING OR WIRE

*IF SO, MAILING OR WIRING COULD NOT HAVE BEEN IN FURTHERANCE OF THE OFFENSE



CONSPIRACY DEFENSES



- SCRUTINIZE THE "SCHEME TO DEFRAUD"
 - *MUST INVOLVE SOME FORM OF A "PLAN OR PATTERN" SEE E.G. UNITED STATES V. DOBSON, 419 F.3D 231, 239 (3D Cir. 2005) (discussing "culpable participation requirement")*
 - *DEFENSE MAY BE APPLICABLE TO APPRAISERS, STRAW BORROWERS AND OTHER PERSONS WHO MAY HAVE ENGAGED IN ONE OR LIMITED REAL ESTATE TRANSACTIONS BUT DID NOT PARTICIPATE IN THE LARGER SCHEME*
 - *ELICIT EVIDENCE ON CROSS OF*
 - *BUYER / SELLER RELATIONSHIP*
 - *MULTIPLE CONSPIRACIES*
 - *DISTANT CLIENT FROM ILLEGAL CONDUCT OF CO-DEFENDANTS AND TESTIFYING WITNESSES*

MONEY LAUNDERING DEFENSES



- 18 U.S.C. 1956 (a) (1) (A) and 1956 (h) (PROMOTION MONEY LAUNDERING)
 - * *OFFENSE MUST INVOLVE "PROFITS" NOT MERE "PROCEEDS OR RECEIPTS" OF THE SCHEME**
 - *UNITED STATES V. SANTOS*, 128 S.Ct 2020 (2008) (PROCEEDS TO PAY EXPENSES OF ILLEGAL ACTIVITY ARE NOT "PROFITS"); *UNITED STATES V. SHELBURNE*, 2008 WL 2588057 (W.D. VA) (PAYMENT TO ONESELF WITH UNLAWFUL PROCEEDS IS NOT PROMOTION) *UNITED STATES V. MILES*, 360 F.3D 472, 475-76 (5TH CIR. 2004) (PAYMENT OF PAYROLL EXPENSES AND OFFICE RENT IS NOT PROCEEDS)
 - * *PROMOTION TRANSACTION MUST INVOLVE PROFITS OF THE ILLEGAL ACTIVITY NOT JUST MERE RECEIPTS OF MONEY FROM UNLAWFUL ACTIVITY**

MONEY LAUNDERING DEFENSES

- ◉ 18 U.S.C. 1957 (MONETARY TRANSACTIONS IN CRIMINALLY DERIVED PROPERTY OVER \$10,000 DERIVED FROM PROCEEDS OF A SPECIFIED UNLAWFUL ACTIVITY)
- ◉ "CRIMINALLY DERIVED PROPERTY" = *ANY PROPERTY DERIVED FROM "PROCEEDS" OF THE CRIMINAL OFFENSE"*
 - *CITING SANTOS, ARGUE THAT MONEY USED FOR TRANSACTIONS WAS NOT ACTUAL PROFITS AND THUS, NOT "PROCEEDS"*

MONEY LAUNDERING DEFENSES

- SECTION 1957 OFFENSES ONLY INVOLVE “PROCEEDS” (PROFITS) OF PRIOR COMPLETED CRIMINAL OFFENSES
- TIMING OF TRANSACTION IS KEY
 - *WAS THE SCHEME COMPLETED ? IF NO, TRANSACTION DOES NOT APPLY FOR PURPOSES OF 1957. SEE E.G. UNITED STATES V. VARNADO, 3:06 CR 415 (W.D.N.C. 2006); (MAKING ARGUMENT IN HEALTHCARE FRAUD CASE); UNITED STATES V. MYRNA TRAN, CR 05-00124 (N.D. TEXAS 2005)*
 - *IN BOTH VARNADO AND MYNA TRAN A NOMINEE WAS USED TO OPEN BANK ACCOUNT THAT UNLAWFUL PROCEEDS WERE WIRED INTO. THE ARGUMENT IS THAT THE SCHEME WAS NOT COMPLETE AS THE SCHEME CONTINUED WHEN MONEY WAS TRANSFERRED OUT OF THE NOMINEE ACCOUNTS TO PRINCIPAL CONSPIRATORS*

MONEY LAUNDERING DEFENSES

- PRESERVE AND CHALLENGE VENUE
- THE PROSECUTION BEARS THE BURDEN OF ESTABLISHING VENUE AT TRIAL BY A PREPONDERANCE OF THE EVIDENCE
- QUESTION IS WHERE THE OFFENSE BEGUN, CONTINUED THROUGH OR ENDED SEE *UNITED STATES V. CABRALES*, 524 U.S. 1 (1998)
 - **FRAUD OFFENSE IS COMPLETE WHEN AND WHERE LOAN APPLICATION SUBMITTED AND APPROVED FOR FUNDING**
- CONSTITUTIONAL VENUE PROVISIONS " *WERE DESIGNED TO BENEFIT THE ACCUSED IN CRIMINAL TRIALS. SEE E.G. UNITED STATES V. SMITH*, 452 F.3D 323, 334 (4TH CIR. 2006)
- *VENUE MUST BE APPROPRIATE FOR EACH AND EVERY COUNT IN THE INDICTMENT. SEE UNITED STATES V. BOWENS*, 224 F.3D 302, 308 (4TH CIR. 2000)

MATERIALITY DEFENSE

IS THE LENDER A VICTIM ?

■ MATERIALITY DEFENSE

- WAS THE OMISSION OR FALSE STATEMENT "MATERIAL" TO THE DECISION TO FUND THE LOAN
- "THE GIANT POOL OF MONEY" NPR EXPOSE FEATURED ON PROGRAM "THIS AMERICAN LIFE"
 - CHRONICLES THE COMPLICITY OF THE MORTGAGE LENDING INDUSTRY IN ENCOURAGING MORTGAGE FRAUD
 - SECURITIZATION AND "BUNDLING" OF LOANS FOR IMMEDIATE SALE TO OVERSEAS INVESTORS
 - "STATED INCOME"
 - "NO CLOSING COST AND OTHER LENDER INCENTIVES"
 - SIMULTANEOUS 1ST AND 2ND MORTGAGES BY SAME LENDER
 - SIMULTANEOUS CLOSINGS
 - PAYMENT OF "YIELD SPREADS" TO BROKERS
 - QUATAS FOR UNDERWRITERS

What is the Loss per Property?

- 100% of the loan
- Loan - Value of Home = Loss
- "Equity Spread"
- 0% of the Loan



Who is the Victim?

Seller

Closing

Lender

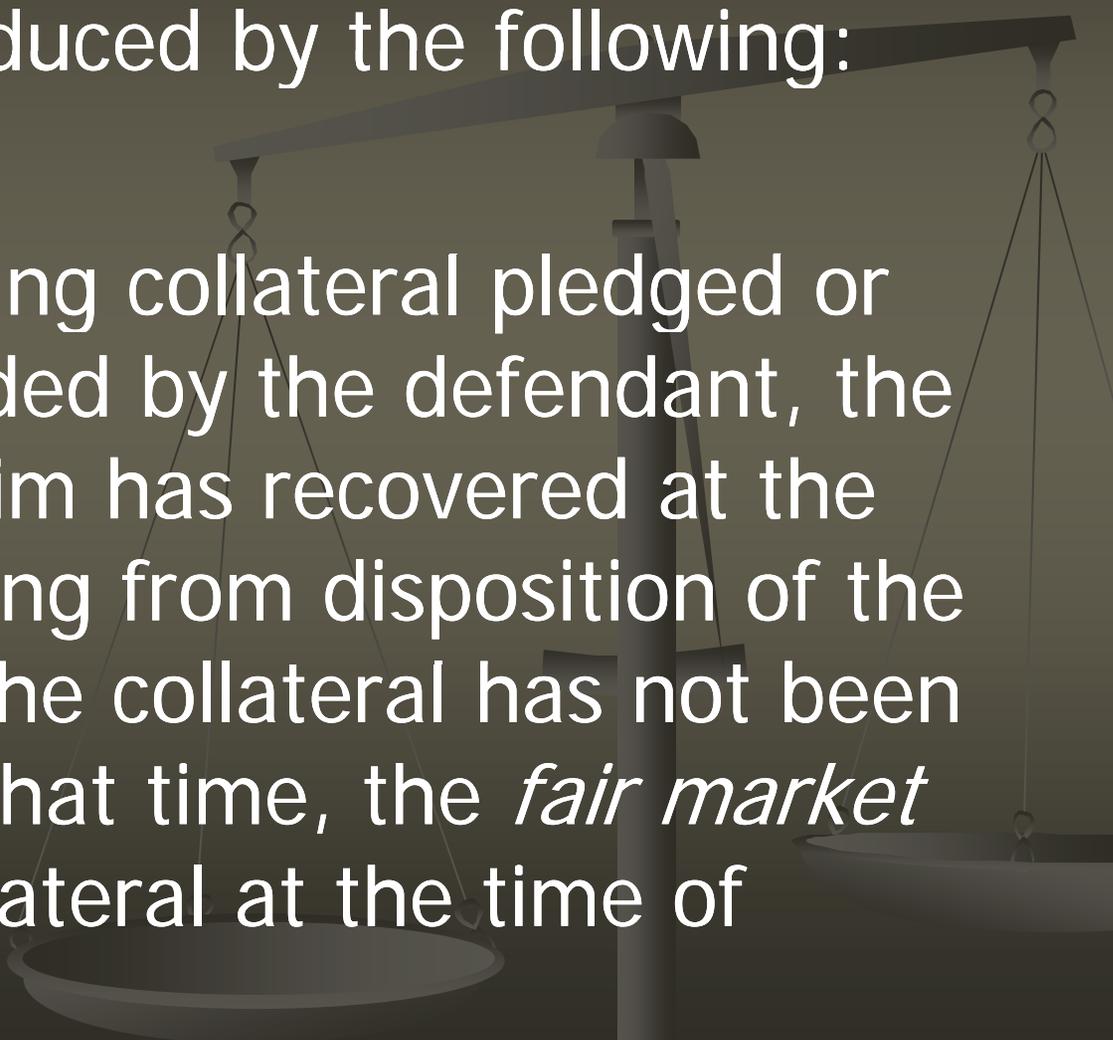
Secondary
Market

Is loss reported by Victim
for restitution the same as
"loss" for the Guidelines?

USSG § 2B1.1, n 3(E)(ii)

Loss shall be reduced by the following:

In a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the *fair market value* of the collateral at the time of sentencing.



USSG § 2B1.1, n. 3(E)(ii)

- Total loan

- Disposition of Collateral ($\$240K - \$40K = \$200K$)

Loss = $\$160K$



Where is the \$40K?

Victim Reported

- Value of Property: \$157K
- Loss: \$200K

USSG § 2B1.1, n.3(E)(ii)

- Value of Property: \$200K
- Loss: \$160K

Base Liquidation Report

| | |
|------------------------------------|--------------------|
| Restricted Escrow: | 0.00 |
| Rental Income Received: | 0.00 |
| Insurance Settlement Received | 0.00 |
| Other: | 0.00 |
| Total Liquidation Proceeds: | 325,535.62 |
| Total Liquidation Expenses | 117,960.95 |
| Net Liquidation Proceeds: | 207,574.67 |
| Loan Principal Balance: | 459,440.54 |
| Realized Gain/Loss Amount | -251,865.87 |
| Additional Proceeds Applied | 0.00 |
| Prior Additional Proceeds: | 0.00 |
| Loss Severity: | -54.82% |

| | |
|-----------------------------|-------------|
| Total Liquidation Expenses | 117,960.95 |
| Net Liquidation Proceeds: | 207,574.67 |
| Loan Principal Balance: | 459,440.54 |
| Realized Gain/Loss Amount | -251,865.87 |
| Additional Proceeds Applied | 0.00 |
| Prior Additional Proceeds: | 0.00 |
| Loss Severity: | -54.82% |

Notes: DLJ Owned, w/ntr not paid, held back \$484.00. sk

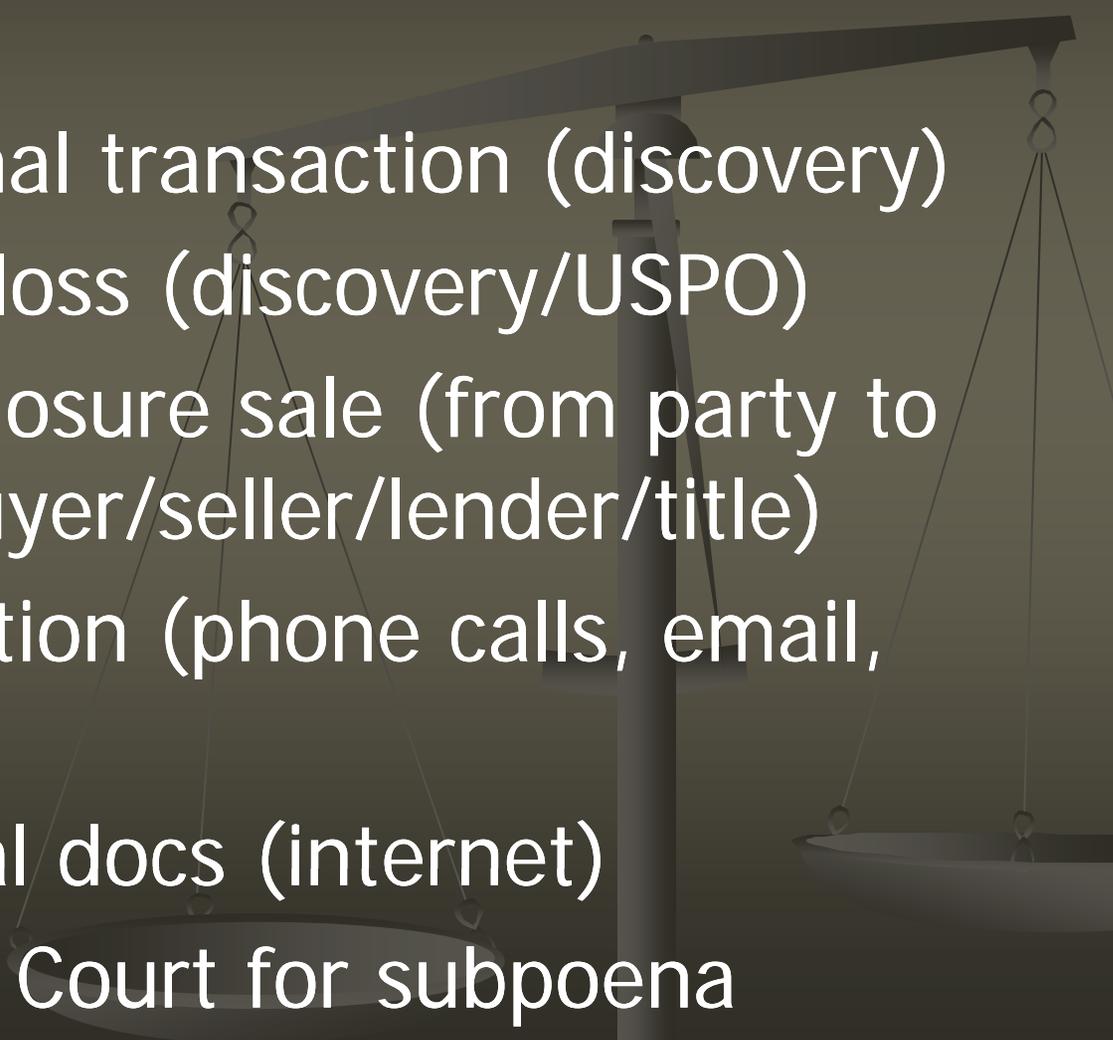
| | |
|------------------------------------|-------------------|
| Unlites: | 100.00 |
| REO Repair Costs: | 250.00 |
| Foreclosure Fees: | 0.00 |
| Bankruptcy: | 0.00 |
| Eviction Costs: | 0.00 |
| Transfer Tax: | 0.00 |
| Reconveyance Fees: | 0.00 |
| Other Holdbacks: | 634.00 |
| Demand Fee: | 0.00 |
| Total Holdbacks: | 1,809.78 |
| Other Fees (Including Fee Code B): | 0.00 |
| U/B Accrued Interest to COE: | 71,111.11 |
| Advanced Delinquent Interest: | 71,111.11 |
| Stopped Delinquent Interest: | 0.00 |
| Deferred Interest: | 0.00 |
| Additional Interest: | 0.00 |
| Total Liquidation Expenses: | 117,960.95 |

USSG § 2B1.1, n.3(D)(i)

- Q: What do Guidelines say about the basis for extra \$70K for punishment purposes?
- A: USSG § 2B1.1, n.3(D)(i)
 - Exclusions from Loss - Loss shall not include the following: Interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs.

| | |
|-------------------------------|--|
| Lender Name: | BANK OF AMERICA, N.A. |
| Lender Loan: | 002718-143 |
| Borrower: | RANDALL J MCSWAIN, GINGER M MCSWAIN |
| Property Address: | 134 REDWOOD LANE GASTONIA, NC 28052 |
| Last Paid: | 02/01/2001 |
| Days Accrued: | 222 |
| Lien Type: | First |
| Acquired: | 09/11/2001 |
| Days Imputed: | 200 |
| Imputed Interest Rate: | 5.20% |
| Loan Type: | Conventional |
| MI Paid: | |
| Days MI Imputed: | 222 |
| Note Rate: | 6.8750% |
| Sold: | 12/31/2001 |
| Days Since Sold: | 2290 |
| Pass Thru: | 0.00% |
| Sale Price: | \$118,900.00 |
| Unpaid Principal Balance: | \$95,511.94 |
| + Delinquent Interest: | \$3,209.94 |
| + Imputed Interest: | \$0.00 |
| + Foreclosure Costs: | |
| Attorney Fees: | \$600.00 |
| Taxes: | \$1,065.31 |
| Other Liquidation Expenses: | \$2,985.35 |
| + Disposition Costs: | |
| Asset Management Fee: | \$0.00 |
| Other Disposition Costs: | \$352.00 |
| + Repairs: | \$0.00 |
| + Participation Disbursement: | \$0.00 |
| - MI Proceeds: | \$0.00 |
| - Sales Proceeds: | \$113,439.45 |
| - Other Income: | \$1,389.32 |
| + Other Adjustment: | \$0.00 |

Get Credit for Value of the House



- HUD from original transaction (discovery)
- Spreadsheet of loss (discovery/USPO)
- HUD from foreclosure sale (from party to transaction – buyer/seller/lender/title)
- “Victim” itemization (phone calls, email, etc.)
- County Appraisal docs (internet)
- Consider asking Court for subpoena

CASES DISCUSSING LOSS

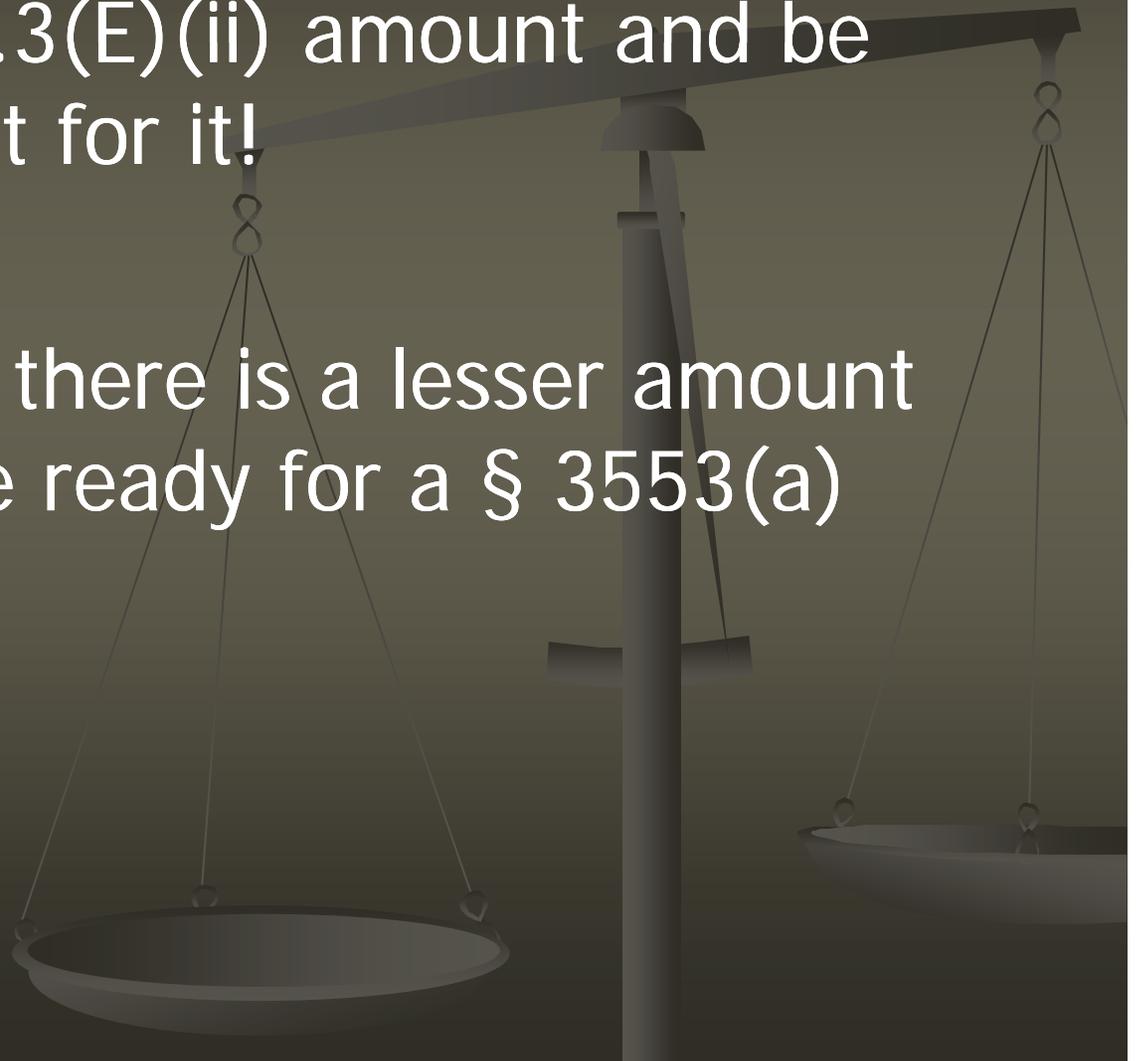
- United States v. Crandall, 525 F.3d 907, 912 (9th Cir. 2008) (Applying 2B1.1 it is error not to reduce loss by the value of properties).
- United States v. Leonard, 529 F.3d 83, 92-93 (2d. Cir. 2008) (error not to reduce "loss" by investment's value to victims).
- United States v. Goss, 549 F.3d 1013, 1019 (5th Cir. 2008) (loss must be reduced by value of collateral returned).

CASES DISCUSSING LOSS

- United States v. Coghill, 204 Fed. Appx. 328 (unpublished) (4th Cir. 2006) (loss is outstanding principle of bank loan less amount victim recovers from liquidation).
- United States v. Galloway, 509 F.3d 1246 (10th Cir. 2007) (where loss was unclear gain was used as an estimate of loss)
- United States v. Confredo, 528 F.3d 143 (2d Cir. 2008) (defendant entitled to show he subjectively intended loss was less than face amount of loan application).

Final Thoughts

1. Determine n.3(E)(ii) amount and be ready to fight for it!
2. Determine if there is a lesser amount and if so, be ready for a § 3553(a) argument



1. **Defending Mortgage Fraud Cases**

Introduction to terms and forms

2. **Common Federal Statutes for Mortgage Fraud Prosecution**

18 U.S.C. § 1341 – Mail Fraud

18 U.S.C. § 1343 – Wire Fraud

18 U.S.C. § 1344 – Bank Fraud

18 U.S.C. § 1014 – false Statement on Loan or Credit Application

18 U.S.C. § 371 – Conspiracy

18 U.S.C. § 1956(a)(1)(A) and 18 U.S.C. § 1957 – Money Laundering

3. **Common Mortgage Fraud Schemes**

Fraud for Housing – misrepresentations by mortgage applicant to obtain a primary residence

Fraud for Profit – creating fake properties and fraudulently inflating property values to gain from property sales. Often involves industry insiders and persons paid to participate.

Property Flipping: Property purchased and quickly resold for artificially inflated price, usually after a fraudulent appraisal.

Equity Skimming: Investor gets mortgage loan in name of straw buyer who signs property over to investor, then investor rents property and does not pay the mortgage.

Foreclosure Rescue Scams: “Consultant” convinces homeowner that foreclosure can be prevented by transferring the deed, then strips equity through sale of the home or by securing a second mortgage.

4. **Mortgage Fraud Vocabulary**

Players

Borrower: person seeking to purchase, refinance, obtain a second mortgage, consolidate loans, or establish a HELOC.

Loan or mortgage broker: person with relationship with lenders who promote lenders’ loans to borrowers. Must be licensed.

Loan processor: typically employed by broker and are not licensed. Prepares recommendation to borrower for the various loans for which the borrower qualifies.

Underwriter: Employed by lender. Performs detailed credit analysis before loan given, based on the credit information provided by the borrower. Underwriter is responsible for verifying borrower's income and credit and to check the appraisal and title report. Underwriter either approves or denies loan based on the information provided to the lender. Underwriter may require certain condition to be met before final approval of the loan.

Account Manager: Underwriter sends loan file to account manager after analysis completed. Account manager communicates with broker re: approval or denial of loan. Has final say regarding approval of a loan.

Funding Rep: adds all the numbers involved in the loan and sends final tally along with loan documents to escrow company, and wires funds to escrow account.

Bird Dog: Reports distressed properties to investor for payment

Certified appraiser: federal law requires that each state license and certify its appraisers

Promoter: attorneys, appraisers, mortgage brokers, and builders who conspire together to execute fraud. Recruits potential victim (buyer or investor). Falsified loan application provided to lender (victim) with overvalued appraisal, and overvalued loan given. Property forecloses because buyer cannot make payments and lender loses money.

Straw Buyer / Straw Borrower: A person whose personal profile is used to serve as a cover for a transaction. Straw buyers can be willing participants in the scheme who are paid for providing their names and credit information to make a false purchase. Straw buyers can also be victims whose identity is being used without their permission (ID theft).

Straw buyers used in situations where actual borrower does not: qualify for the loan; intend to live at the residence; exist.

Straw buyers can also sign documents that contain false information.

Red flags with straw buyers: (1) quit claim deed used right before or after closing; (2) investment property represented as owner-occupied; (3) someone signed on borrower's behalf; (4) names added to purchase contract; (5) sale involves relative; (6) no sales agent in transaction; (7) high FICO score; (8) gift used as down payment despite existence of assets; (9) power of attorney used for borrower

Loans

Jumbo / Non-conforming loans: Loans that exceed loan amounts allowed by Fannie Mae and Freddie Mac.

First Mortgages: \$417,000 for single family home

Areas with high-cost homes: Fannie Mae can purchase loans with maximum original principal obligation of up to 125% of area median home price, not to exceed \$729,750

Second Mortgages: \$208,500

Liar Loans / Low-doc loans / No-doc loans: loan programs for borrowers with a hard time producing income and asset verifying documents. Easy for borrower to overstate income and assets.

HELC: Home Equity Line of Credit. Loan set up as line of credit for maximum draw. Typically a second mortgage. Draw periods typically 5-10 years, and repayment period typically 10-20 years.

Secondary Market: Large lenders like Fannie Mae and Freddie Mac who purchase home loans from primary lender.

Subprime Loans: loan that is offered at a rate above prime for persons who do not qualify for prime rate loans.

Forms

Uniform Residential Loan Application (URLA / Form 1003): Completed by borrower and provided to primary mortgage lender or broker. Used to secure loan.

***Compare: Form 1008: Completed by lender or broker and provided to Fannie Mae or Freddie Mac.

Uniform Underwriting and Transmittal Summary (Form 1008): Standardized mortgage form used by lenders. Summarizes information used in risk assessment of the mortgage and final underwriting decision: loan purpose, property type, proposed monthly payments, debt ratio. Borrower completes this form to begin mortgage application process.