

Report of the Texas Residential Mortgage Fraud Task Force
2015*

Prepared by the Office of the Attorney General

I. INTRODUCTION

In 2007, the Texas Legislature directed the Office of the Attorney General (the OAG) to establish the state’s Residential Mortgage Fraud Task Force (the “Task Force”). TEX. GOV’T CODE § 402.032(b). The Task Force’s purpose is to foster strategic, multi-jurisdictional partnerships that will improve state, federal, and local authorities’ ability to investigate and prosecute mortgage fraud statewide. TEX. GOV’T CODE § 402.032(b). The Task Force consists of the following officials, or their designees:

- (1) The Attorney General;
- (2) The Consumer Credit Commissioner;
- (3) The Banking Commissioner;
- (4) The Credit Union Commissioner;
- (5) The Commissioner of Insurance;
- (6) The Savings and Mortgage Lending Commissioner;
- (7) The presiding officer of the Texas Real Estate Commission;
- (8) The presiding officer of the Texas Appraiser Licensing and Certification Board; and
- (9) A representative of the Texas Department of Housing and Community Affairs.

TEX. GOV’T CODE § 402.032(c).

A. The Residential Mortgage Fraud Task Force

The Task Force meets annually and last met on November 10, 2015. These meetings develop a multi-agency communications network, where each agency can share information and resources.

The Task Force attendees were afforded the opportunity to learn about other agencies’ enforcement against perpetrators of mortgage fraud and resources that are available to help track, investigate, prosecute, and – ultimately - reduce mortgage fraud in Texas.

The Task Force also discussed legislative updates that could affect mortgage fraud investigations and prosecutions.

B. The Extent and Impact of Mortgage Fraud

Between all-time low mortgage rates, a well performing economy, and the number of people migrating to Texas, one would expect increased opportunities for mortgage fraud; however, past regulations and tighter lending practices have significantly reduced the amount of mortgage fraud in the state and across the country.

* This report covers the 2015 Fiscal Year (September 1, 2014 through August 31, 2015).

As a result of stricter credit requirements, it is more difficult for homebuyers to qualify for financing. The reduced volume of qualifying homebuyers creates a ripe environment for mortgage application fraud and misrepresentation. The industry and Task Force has seen these types of frauds increase in recent years, but nowhere close to the levels of fraud occurring during the 2008 housing market crisis, when the Task Force was established.

Mortgage fraud rates have dropped precipitously since the creation of this Task Force. Indications of fraudulent mortgage applications shrunk to .67% of all applications in the second quarter of 2015.¹ Texas' mortgage fraud risk remains average when compared to other states.² In 2012 the Financial Crimes Enforcement Network (FinCEN) reported Texas to be ranked 28th in number of subjects per capita reported in Mortgage Loan Fraud Suspicious Activity Reports.³

II. UPDATES ON PROGRESS FROM EACH TASK FORCE MEMBER

A. The Office of the Attorney General

The Office of the Attorney General (OAG) does not have original jurisdiction to prosecute crimes related to mortgage fraud, and therefore, can only prosecute cases related to mortgage fraud if the appropriate local county or district attorney consents. In 2015 the Criminal Prosecutions Division did not prosecute or investigate any cases related to mortgage fraud. Since January 1, 2014, only 16 matters related to mortgage fraud were reported to OAG. These matters were mostly civil in nature, referred to the relevant local prosecuting attorney or referred to the proper federal agent for investigation. The Criminal Investigations Division (CID) opened two mortgage fraud investigations in 2015. One matter was a referral from this Taskforce, and the second matter was a referral from the US Department of Housing and Urban Development – Office of the Inspector General. CID did not assist local prosecutors on any mortgage fraud related investigations in 2015. CID has one other active mortgage fraud related investigation.

In recent years there has been a significant drop off in the number of complaints reported to OAG.

B. Office of Consumer Credit Commissioner

The Office of Consumer Credit Commissioner (OCCC) has continued as an active member of the Texas Residential Mortgage Fraud Task Force. OCCC staff has attended mortgage training and meetings conducted by the American Association of Residential Mortgage Regulators and the National Association of Consumer Credit Administrators.

As of August 31, 2015, the OCCC had 342 active licensed lenders conducting mortgage transactions and 379 licensed residential mortgage loan originators. The residential mortgage loan originators are licensed through Nationwide Mortgage Licensing System and Registry (NMLSR). The agency examination staff conducted 96 mortgage examinations in fiscal year 2015. Pursuant to the Nationwide Cooperative Protocol for Mortgage Supervision, the OCCC participated with

¹ CoreLogic 2015 Mortgage Fraud Report, October 2015.

² CoreLogic 2014 Mortgage Fraud Report, October 2014.

³ The same report indicates Texas is ranked 5th when just looking at the total number of SAR subjects reported.

other state mortgage regulators in conducting one multi-state examination focusing in mortgage servicing.

Additionally, for fiscal year 2015, the OCCC processed 66 mortgage complaints. The primary issues of the complaints involved application of payments to the accounts and payoff disputes.

C. The Texas Department of Banking

The Texas Department of Banking (Department) operates under the oversight of the Texas Finance Commission, and is an agency of the State of Texas. The Department's mission is to ensure Texas has a safe, sound and competitive financial services system. The major functions of the Department are to charter, license, or register specific entities, which may include regulating and examining.⁴

As of December 7, 2015, the Department oversees 252 state-chartered banks. Texas state banks hold a relatively small percentage of mortgages in their loan portfolios, and they have not been involved in a material number of mortgage fraud cases. From 2009 to 2015, the Department received 38 reports of actual or potential mortgage fraud involving various non-Department regulated entities as well as some institutions with Department oversight. However, the Department has been proactive in alerting banks to the responsibility of complying with the Residential Mortgage Fraud Act (Act).

Since 2009, the Department has referred 16 complaints related to mortgage fraud to the Office of the Attorney General. Only one of these complaints was clearly actual residential mortgage fraud covered by the Act.

D. Texas Credit Union Department

The Credit Union Department (the "Department") is an active participant of the Residential Mortgage Fraud Task Force and is firmly committed to sharing information and resources and successfully enforcing administrative and criminal actions against perpetrators of mortgage fraud as required by Tex. Gov't Code § 402.032. The Department receives information about fraudulent activity through consumer complaints to the Department about state-chartered credit unions and through Suspicious Activity Reports ("SARs").

Consumers may file written complaints with the Department regarding state chartered credit unions or entities engaged in unlicensed activity under the Department's jurisdiction. For each complaint under the Department's jurisdiction, the Department conducts an investigation or inquiry into the allegations and every attempt is made to bring about a fair resolution. Through its response to consumer complaints and inquiries, the Department attempts to help consumers better understand their rights under applicable laws and regulations. The Department monitors the level of satisfaction with its responses to consumer complaints and inquiries. In situations where an unlicensed or noncompliant business is discovered, the Department has statutory authority to take enforcement action. State leadership and other interested parties are routinely

⁴ <http://www.dob.texas.gov/about-us>

provided information about the Department's regulated industries, and the associated laws, rules, policies, and practices of the Department.

The Department requires credit unions to notify the Department of any known or suspected criminal activity under Credit Union Commission Rule 7 TAC § 91.208. During FY 2015, the Department received one report that fraudulent mortgage activity has been committed or is about to be committed pursuant to Tex. Gov't Code § 402.033. That report related to the gifting of funds on a residential mortgage.

Mortgage fraud is of increasing concern to the financial services industry and to the overall economy. The Department believes it is in the best interest of credit unions and their members for notice to be given to every applicant for a home loan before they close on a loan of the elements and penalties for mortgage fraud. Such notice serves to both educate and warn the borrowers of the seriousness of the offense in a manner similar to that required of all other residential mortgage lenders in Texas. Accordingly, the Credit Union Commission adopted the following rule in 7 TAC § 91.704(e):

A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan."I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.

Additionally, it should be noted that the National Credit Union Administration ("NCUA") has a fraud hotline: a telephone line established solely for the reporting of suspicious or illegal activity committed by credit union employees, members, or officials in federally insured credit unions. That number is 800-827-9650 (toll-free anywhere in the United States) or 703-518-6550 in the Washington, D.C. area. When a call is received by NCUA, a report is completed by NCUA's Office of General Counsel based on the information provided and forwarded immediately to the appropriate regional office. An investigation or inquiry into the allegations is conducted. In the event information provided to the hotline results in a finding of fraudulent or improper conduct, NCUA takes the necessary corrective action.

E. Texas Department of Insurance

During the 2015 fiscal year, the Texas Department of Insurance Fraud Unit received 23 complaints against title agents. Of those complaints, 5 were identified as mortgage fraud, and each was reviewed based upon the specific facts of the report submitted. Based upon these analyses and a variety of factors considered, 4 were closed without additional action by the Fraud Unit. The remaining case involved a joint investigation with the San Diego District Attorney's Office in which California had venue. The case will be closed and referred out to that office.

While there were no new mortgage fraud cases in the past fiscal year, there continues to be work from cases opened in previous years as the statute of limitations allows.

F. Texas Department of Savings and Mortgage Lending

The Department monitored mortgage fraud through examination of both Texas's thrift banks and Texas's mortgage industry. In regards to the latter, the Department conducted 403 mortgage examinations in Fiscal Year 2015 ("FY2015"), which was an increase from Fiscal Year 2014 ("FY2014"). During the course of those examinations, the Department also conducted examinations of 8,239 licensees, which was a substantial increase compared to FY2014.

In addition to conducting examinations, the Department also reviewed and investigated 931 complaints. While the majority of complaints revolved around loan servicers, the Department did investigate claims of licensees committing mortgage fraud. Disciplinary action in appropriate cases included license surrender.

The Department also continued to receive and investigate complaints involving fraudulent loan modifications, and subsequently issued appropriate disciplinary actions such as cease and desist orders and/or administrative fines.

Steven O'Shields, Director of Licensing, testified in a federal criminal jury trial in July of 2015 regarding the licensing status of the Defendant, Euneisha Hearn. Ms. Hearn was convicted of conspiracy to commit bank fraud, and sentencing is currently pending.

For the upcoming Fiscal Year 2016, the Department remains committed to combatting mortgage fraud in order to maintain a healthy mortgage lending environment in Texas.

G. Texas Real Estate Commission

The Texas Real Estate Commission (TREC) is the regulatory and licensing agency for real estate brokers, salespersons, inspectors, residential service companies and timeshare developers. TREC's jurisdiction is limited to taking disciplinary action against a license holder when it could be proved that they violated a provision of the Texas Real Estate License Act (the "Act") or TREC Rules (the "Rules"). Chpts. 1101 and 1102, Tex. Occ. Code (the Texas Real Estate License Act). TREC has jurisdiction to investigate and impose administrative penalties on a person who violates the Act by engaging in an activity for which a real estate license is required without first holding the proper license. Section 1101.701, Tex. Occ. Code.

Since the establishment of HB 716, the Standards & Enforcement Services Division of TREC developed separate procedures to review complaints against license holders or those suspected of conducting unlicensed real estate brokerage activities when alleged activity may have involved mortgage fraud. At any time in the complaint process, when mortgage fraud was suspected, these complaints were brought to the attention of TREC's Task Force representative who serves as a member to the Task Force. While covert investigations were prohibited under the Act, when appropriate, complaints involving mortgage fraud may have been opened for confidential investigations.

Complaints and information obtained as a result of an investigation have been shared with the Office of the Attorney General ("OAG") and as appropriate brought to the attention of law enforcement. If it appeared a person involved in the suspected fraudulent activity was also a license holder under the jurisdiction of another Task Force member, the complaint and information were then forwarded to that member.

TREC continued to not receive any complaints related to mortgage fraud in fiscal years 2014 and 2015. Although there were no referrals to other Task Force members during this time period, TREC's Task Force representative continued to cooperate with other Task Force members by providing assistance and information when called upon. TREC has received complaints involving other types of fraud or dishonest conduct and taken appropriate action, such as revocation of licenses, imposition of administrative penalties, and referrals to county or district attorney offices when it appears there may be criminal conduct. When a complaint is not within TREC's jurisdiction, the complainant, when appropriate, is referred to the Consumer Complaints Division of the Office of the Attorney General or another state agency.

Sharon S. Harris, attorney and Deputy Director of the Standards & Enforcement Services Division, serves as the TREC representative to the Residential Mortgage Fraud Task Force. Ms. Harris can be reached at the agency at (512) 936-3005 or sharon.harris@trec.texas.gov.

H. Texas Appraiser Licensing and Certification Board

The Texas Appraiser Licensing and Certification (TALCB) is charged with regulating licensed and certified real estate appraisers in Texas in accordance with state and federal law. Tex. Occ. Code Chpt. 1103 (the Texas Appraiser Licensing and Certification Act) and 12 U.S.C. § 3331 et seq. (the "Financial Institutions Recovery, Reform, and Enforcement Act of 1989" or "FIRREA"). As of 2012, TALCB also licenses and regulates Appraisal Management Companies, in accordance with Tex. Occ. Code Chpt. 1104 (the Texas Appraisal Management Company Registration and Regulation Act).

Under federal law, TALCB is regularly monitored by the Appraisal Subcommittee (ASC) to ensure compliance with federal requirements regarding real estate appraisers used in conjunction with federally related transactions. Currently, the ASC audits TALCB biannually. In addition, the ASC, along with other federal agencies, have developed additional minimum regulatory requirements for AMCs; for which TALCB will soon be held accountable to the ASC. A requirement of the ASC is that TALCB operate an effective complaint resolution process,

addressing and resolving complaints in no more than one year absent special, documented circumstances, and also resolving complaints in a uniform and consistent manner.

In fiscal year 2015 TALCB received 191 complaints and 13 requests for assistance from law enforcement. The agency has received approximately 47 complaints and 2 requests for assistance during fiscal year 2016, as of November 30, 2015. Of those complaints, 0 cases were referred to other Task Force members.

While the bulk of TALCB's involvement in the fight against mortgage fraud has focused on evaluating appraisal reports and providing testimony when required, TALCB has also referred matters it has investigated at the regulatory level for evaluation and, as appropriate, prosecution. To date, TALCB has referred 44 matters to law enforcement or prosecutorial agencies for evaluation. The bulk of these have been to law enforcement or prosecutorial agencies in the greater Houston or Dallas / Ft. Worth metropolitan areas. The remainder has been referred to the Attorney General's Office and a handful of other law enforcement or prosecutorial agencies for possible criminal investigation.

I. Texas Department of Housing and Community Affairs

We appreciate the opportunity for the Texas Department of Housing and Community Affairs ("Department") to participate on the Task Force. As you know, TDHCA has no original jurisdiction over matters concerning mortgage fraud; however, through the significant mortgage lending programs we administer we are in a unique position to see the effects of economic trends, in general, and changing housing market conditions, in particular, on certain kinds of fraud, waste, and abuse in the housing industry. In part, we administer state and federal programs for the financing of single family home ownership and rental activities, as well as the financing of multifamily developments. In these transactions, we are a primary or secondary source of funds, and we monitor recipients of our awards for compliance with applicable legal requirements.

The Department's Compliance and Enforcement Mechanisms

The Department has a Compliance Division which employs a staff of 48 monitors and support staff that conduct regular inspections of our awardees' properties including file monitoring and physical condition inspections. We also have an Enforcement Committee that takes referrals from the Compliance Division and makes recommendations to our governing board for appropriate administrative penalties and debarments. Until 2013, debarment authority applied only to responsible parties in our tax credit program but now applies to all Department programs. We also have a Fraud, Waste and Abuse Task Force that meets on demand whenever staff has a matter to report. The Department's Fraud, Waste and Abuse Hotline and the Compliance Monitoring staff are the primary resources who handle complaints.

Recent Trends

Even before our last Mortgage Fraud Task Force meeting in 2014, the Department's Legal Division noticed a significant increase in notices of foreclosure initiated by governmental taxing

authorities and homeowner associations against single family home owners. The number of private lender foreclosures notices remains minimal as it has been for the last few years.

The Compliance Division does not monitor for mortgage fraud, per se, but rather to assure compliance with state and federal program requirements. Occasionally, Compliance Monitoring staff will receive complaints from tenants in multifamily housing developments financed by the Department that other tenants have income that is not being reported or that the property management is asking them to back-date or otherwise make fraudulent statements on documents submitted to the Department. Reports of this type average one to three per month but there have been some months with five or more reports. Such matters are reported to the Department's Fraud Waste and Abuse Task Force who will generally verify necessary facts and report the matters to the appropriate law enforcement agencies including the Texas State Auditor's and/or the federal funding agency's OIG.

The Future

Going forward, the Department expects that it will gain further experience with its newly broadened debarment authority by focusing on responsible parties that clearly exhibit either insufficient ability or desire to administer their projects in accordance with applicable law. The Department constantly adjusts the relationships between the various compliance and enforcement components discussed above in an effort to find the most efficient way to administer the Department's housing portfolio.

III. FEDERAL AND LOCAL CRIMINAL PROSECUTIONS

The IRS reported that on March 18, 2015, in Sherman, Texas, Stephen King, a real estate agent, was sentenced to 33 months in prison and ordered to pay \$685,704 in restitution. King assisted buyers to purchase residences in Dallas and Lancaster in 2008, and referred the buyers to co-conspirators to obtain mortgage loans. King knew that the buyers did not have sufficient funds to make down payments for the loans, but he knew his co-conspirator would make materially false statements on the loan applications in order to obtain the loans.

The Eastern District of Texas announced on March 17, 2015, that five Texans were sentenced for their roles in a mortgage fraud conspiracy where they induced lending institutions to fund mortgage loans for residential properties for which the property values had been fraudulently inflated for buyers who had been fraudulently qualified for loans. The loan documents misrepresented who was funding the down payment and made false material representations so that financial institutions would fund the mortgage loans. Debra Rush-Santens, Casey Irons, Chris Limbrick, Gregory Preston and Eric Patterson were sentenced to federal prison ranging from 25 months to 87 months with restitution amounts ranging from \$1.2 million to \$6.2 million.

The IRS reported that on March 28, 2014, in Houston, Texas, Walter Ryan Macapaz, Tony David Maldonado and Buffy Marie Lawrence were sentenced for their roles in a scheme to defraud residential mortgage lenders of more than \$22 million in loans. Macapaz was sentenced to 108 months in prison. Maldonado and Lawrence were sentenced to 24 months and 12 months in prison, respectively. A fourth defendant, Lisa Carol Ross, was sentenced to 13 months in

prison on May 17, 2013. According to court documents, the conspirators used fraudulent documents to help borrowers qualify for mortgage loans to purchase condominium units in the Commerce Towers building as well as residential homes in the Houston area. The documents had false and misleading information about the borrowers' income, assets, liabilities, employment status, bank deposits, rental payments, intent to use properties as a primary residence and source of funds used to close the real estate transactions. Macapaz and Lawrence arranged for borrowers to submit the false documents to mortgage lenders in order to obtain loans, while Maldonado created some of the false documentation.

IV. CONCLUSION

While the rate of mortgage fraud has been reduced, it is still a serious and ongoing national problem. The Task Force remains an important tool in keeping dialogue open between the agencies on the Task Force, allowing for increased awareness of what each agency is working on and providing assistance or guidance between agencies when needed.

The Task Force is looking to invite and include several local District Attorney's and the FBI to the Task Force next year, since they prosecuted all of the mortgage fraud cases in the State in 2015 and are the most valuable partners in reducing incidents of mortgage fraud who are still not on the Task Force. Partnering up local prosecutors with the investigators in the State who bring them their mortgage fraud cases, should foster important dialogue in creating new approaches to more effectively investigate and prosecute mortgage fraud.