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*A Washington State Approved Real Estate School for Clock Hour Education under R.C.W.18.85.*

# CORRESPONDENCE CLOCKHOURS

## INSTRUCTIONS:

1. Print out the class
2. Read the class booklet
3. At the end of the material there is a quiz (all the answers are in the material that you have read).
4. Answer the questions
5. Return to me the Quiz, evaluation and a check for the class payable to **CLOCKHOURS BY ANGIE**, or complete your credit/debit card information on the sheet provided
6. Upon receipt, I will email you a certificate.

Disclaimer: I try very hard to have the latest known information on a subject in these classes, but, the real estate industry is forever changing with new updates all the time. The class materials are not to be used for legal advice. In our State, some items are handled differently in the different regions. If you have any concerns, please do not hesitate to contact me at 509-216-3220 or at [clockhoursbyangie@gmail.com](mailto:clockhoursbyangie@gmail.com)

## CURRICULUM

SESSION	TOPIC	METHOD OF INSTRUCTION
45	Defining Fraud – What is Fraud? Types of Mortgage Fraud White Collar Crime Defined	Discussion/take notes
30	Wire Fraud	Discussion/take notes
30	Review of Five “Real Life Stories”	Discussion/take notes
45	Quiz and Answers Together	Discussion/take notes
30	Three Stories on Deceptive Practices Review of Positive Pay	Discussion/take notes

# Financial Reward Acquired Under Deception

This 3 clock hour class will focus on the different types of fraud that are around us every day, emphasizing that we should use caution in all of our real estate transactions.

As a result of taking this class, the agent shall be able to:

1. Understand the difference between Fraud for Property and Fraud for Profit.
2. Have a better knowledge of the various types of fraud that are common to the real estate industry.
3. Have a better understanding of wire fraud and how it could happen to anyone.
4. Review actual life-stories that have occurred in our area.
5. Participate in a quiz with answers that have a full explanation.
6. Know about life-stories of local closings that had deceptive practices.

## **DEFINING FRAUD – WHAT IS FRAUD?**

Most people think of fraud as an evil practice, but “fraud” as used in law simply means an action or lack of action that is punishable by law. Fraud is defined by the legislature and the courts. It includes outright deception, and sometimes almost “accidental” misrepresentation. In some circumstances (like investments) fraud includes failure to disclose or to tell the whole truth. Sometimes the law makes people like officers and directors, and those who assist in furthering the fraud, liable even if they did not know about the fraud.

The definition of fraud has undergone changes throughout the centuries. The courts have always been careful to avoid limiting fraud by devising too rigid of a definition. In the 19<sup>th</sup> century, juries were often given the authority to determine fraud without the assistance of defining fraud during jury instruction. The court was determining fraud on an ad hoc basis, making decisions based upon the standard of the community (or the particular jury). Now fraud has come to be defined by the courts to generally require the plaintiff to show that an intentional misrepresentation was relied upon and caused the plaintiff damages.

According to the FBI, mortgage fraud is a material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase, or insure a loan. In other words, it is the intentional enticement of a financial entity to make, buy, or insure a mortgage loan when it would not otherwise have done so, had it possessed correct information. If the misrepresentation alters a decision, then misrepresentation becomes fraud, which is a state or federal crime punishable by up to 30 years in prison and a \$1,000,000.00 fine.

## **FRAUD IN REAL ESTATE TRANSACTIONS:**

- The only currency is paper and documents.
- Most people involved don't experience a great amount of guilt.
- No one seems to get hurt.
- There are no deadly weapons.
- The victim is not even bleeding.

## **TYPES OF MORTGAGE FRAUD:**

### **(1) Fraud for Property:**

- (a) Fraud for property/housing entails minor misrepresentations by the applicant solely for the purpose of purchasing a property for a primary residence. This scheme usually involves a single loan. Although applicants may embellish income and conceal debt, their intent is to repay the loan.
- (b) Fraud for housing represents illegal actions perpetrated solely by the borrower. The simple motive behind this fraud is to acquire and maintain ownership of a house under false pretenses. This type of fraud is typified by a borrower who makes misrepresentations regarding his income or employment history to qualify for a loan.

### **(2) Fraud for profit:**

- (a) Fraud for profit involves multiple loans and elaborate schemes perpetrated to gain illicit proceeds from property sales. It is this second category that is of most concern to law enforcement and the mortgage industry. Gross misrepresentations concerning appraisals and loan documents are common in fraud for profit schemes and participants are frequently paid for their participation.
- (b) Fraud for profit is sometimes referred to as "Industry Insider Fraud" and the motive is to revolve equity, falsely inflate the value of the property, or issue loans based on fictitious properties. Based on existing investigations and mortgage fraud reporting, 80 percent of all reported fraud losses involve collaboration or collusion by industry insiders.

## WHITE COLLAR CRIME DEFINED:

“A crime committed by a person of respectability and high social status in the course of his occupation”.

The term white-collar crime was coined in 1939 and is synonymous with fraud in all its iterations. Today’s scams often use the Internet and other technology to put a new face on old tricks to separate people from their money. Let’s take a look at what types of dirty deeds are considered white-collar crimes and the penalties they can incur.

White collar crime can describe a wide variety of crimes:

- **Securities fraud** also known as stock fraud and investment fraud is a deceptive practice in the stock or commodities markets that induces investors to make purchase or sale decisions on the basis of false information, frequently resulting in losses, in violation of securities laws. Offers of risky investment opportunities to unsophisticated investors who are unable to evaluate risk adequately and cannot afford loss of capital is a central problem.
- **Mortgage fraud** is a crime in which the intent is to materially misrepresent or omit information on a mortgage loan application to obtain a loan or to obtain a larger loan than would have not been obtained had the lender or borrower known the truth. Mortgage fraud is not to be confused with predatory mortgage lending, which occurs when a consumer is misled or deceived by agents of the lender. Predatory lending practices often co-exist with mortgage fraud.
- **Insurance fraud** is an illegal act on the part of either the buyer or seller of an insurance contract. Insurance fraud from the issuer (seller) includes selling policies from non-existent companies, failing to submit premiums and churning policies to create more commissions. Buyer fraud includes exaggerated claims, falsified medical history, post-dated policies, faked death or kidnapping, murder, and much more.
- **Embezzlement** occurs when someone fraudulently coverts another’s property or money that has been entrusted to him or her. If an employee takes property or funds for personal use that belongs to his or her employer, he or she has embezzled those items. An agent, like a property manager, embezzles when he or she keeps payments from third parties that were intended for the principle.

- **Tax evasion** is an illegal practice where a person, organization, or corporation intentionally avoids paying his/her/its true tax liability. Those caught evading taxes are generally subject to criminal charges and substantial penalties.
- **Money laundering** occurs when parties knowingly participate in a financial transaction which is designed to hide the origins of those funds. This often occurs with drug money and other profits made from crimes. The Money Laundering and Control Act also covers a broader range of accounts. Those include securities and money market accounts. Banks have additional reporting requirements and must assign one person to follow up on law enforcement information regarding suspicious activity and individuals.
- **Extortion** is the illegal demand by a public officer acting with apparent authority. The person demanding money demands it in exchange to either buy his action or prevent him from acting.
- **Blackmail** is a similar demand to extortion, made by a private official. Blackmail is usually a threat to make something public if not paid.
- **Counterfeiting** occurs when a person knowingly makes a document or coin that looks genuine but is not. Traditionally, this crime applies to the creation of what looks like U.S. money, but has expanded to include foreign securities and foreign bank notes.
- **Forgery** is the crime of fraudulently making or altering an instrument that in turn creates or alters the legal liability of another. The easiest way to think of this is forging a check. By forging a check, the forger acts without authority to create a legal obligation on the part of the account holder and bank to pay money to a third party.
- **Perjury** is the crime of knowingly giving false testimony in judicial proceedings after swearing to tell the truth. This crime occurs if a witness lies on the stand. But to be prosecuted the person must first swear to tell the truth.
- **Bribery** occurs when an individual or business gives money, property, or any other benefit to a particular person for the purpose of influencing that person's actions and judgment in their favor. Giving a bribe is one crime. Receiving a bribe is also a crime. And if a person tries to coerce a person or entity into giving him or her a bribe, that is also a crime.
- **Occupancy Fraud** This occurs where the borrower wishes to obtain a mortgage to acquire an investment property, but states on the loan application that the borrower will occupy the property as the primary residence or as a second home. If undetected, the borrower typically obtains lower interest rate that was warranted. Because lenders typically charge a



higher interest rate for non-owner occupied properties, which historically have higher delinquency rates, the lender receives insufficient return on capital and is over exposed to lose relative to what was expected in the transaction. In addition, lenders allow larger loans on owner-occupied homes compared to loans for investment properties. When occupancy fraud occurs, it is likely that taxes on gains are not paid, resulting in additional fraud. It is considered fraud because the borrower has materially misrepresented the risk to the lender to obtain more favorable loan terms.

- **Income fraud:** This occurs when a borrower overstates his/her income to qualify for a mortgage or for a larger loan amount. This was most often seen with so-called “stated income” mortgage loans (popularly referred to as “liar loans”), where the borrower, or a loan officer acting for a borrower with or without the borrower’s knowledge, stated without verification the income needed to qualify for the loan. Because mortgage lenders today do not have “stated income” loans, income fraud is seen in traditional full documentation loans where the borrower forges or alters an employer-issued W-2, tax returns and/or bank account records to provide support for the inflated income. All lenders obtain an official IRS transcript that must match the borrower provided tax returns. It is considered fraud because in most cases the borrower would not have qualified for the loan had the true income been disclosed. The “mortgage meltdown” was caused, in part, when large numbers of borrowers in areas of rapidly increasing home prices lied about their income, acquired homes they could not afford, and then defaulted. Many of the past problems no longer exist.
- **Employment fraud:** this occurs when a borrower claims self-employment in a non-existent company or claims a higher position (e.g. manager) in a real company, to provide justification for a fraudulent representation of the borrower’s income.
- **Appraisal fraud:** Occurs when a home’s appraised value is deliberately overstated or understated. When overstated, more money can be obtained by the borrower in the form of cash-out refinance, by the seller in a purchase transaction, or by the organizers of a for-profit mortgage fraud scheme. Appraisal fraud also includes cases where the home’s value is deliberately understated to get a lower price on a foreclosed home, or in a fraudulent attempt to induce a lender to decrease the amount owed on the mortgage in a loan modification. A dishonest appraiser may be involved in the preparation of the fraudulent appraisal, or an existing and accurate appraisal

may be altered by someone with knowledge of graphic editing tools such as Adobe Photoshop. Appraisal Independence is current law.

- **Cash-back schemes:** Occur where the trust price of a property is illegally inflated to provide cash-back to transaction participants, most often the borrowers, who receive a “rebate” which is not disclosed to the lender. As a result the lender lends too much, and the buyer pockets the overage or splits it with other participants, including the seller or the real estate agent. This scheme requires appraisal fraud to deceive the lender. “Get Rich Quick” real-escrow gurus’ courses frequently rely heavily on this mechanism for profitability.
- **Shotgunning:** Occurs when multiple loans for the same home are obtained simultaneously for a total amount greatly in excess of the actual value of the property. These schemes leave lenders exposed to large losses because the subsequent mortgages are junior to the first mortgage to be recorded and the property value is insufficient for the subsequent lenders to collect against the property in foreclosure. The result of this fraud is that lenders often litigate which has first priority to the property.
- **Working the gap:** A technique which entails the excessive lien stacking knowingly executed on a specific property within an inordinately narrow timeframe, via the serial recording of multiple Deeds of Trust or Assignments of Note. When recording a legal document in the United States, a time gap exists between when the Deed of Trust is submitted to the Records Office and when it actually shows up in the data. The precision timing technique of “working the gap” between the recording of a deed and its appearance in the database is essential for this kind of deception. The goal of the perpetrator is the theft of the funds from each lender by deceit, with all lenders simultaneously and erroneously believing their respective Deeds of Trust to be senior in position, when in actuality there can only be one.
- **Identity theft:** Occurs when a person assumes the identity of another and uses that identity to obtain a mortgage without the knowledge or consent of the victim. In these schemes, the thieves disappear without making payments on the mortgage. The schemes are usually not discovered until the lender tries to collect from the victim, who may incur substantial costs trying to prove the theft of his/her identity.
- **Corporate fraud:** Fraud by high level corporate officials became a subject of wide national attention during the early 2000s, as exemplified by corporate officer misconduct at Enron. It became a problem of such scope that the

Bush Administration announced what it described as “aggressive agenda” against corporate fraud.

- **Dummy Corporations:** Dummy corporations may be created by fraudsters to create the illusion of being an existing corporation with a similar name. Fraudsters then sell securities in the dummy corporation by misleading the investor into thinking that they are buying shares in the real corporation.
- **Internet fraud:** According to enforcement officials of the Securities and Exchange Commission, criminals engage in pump-and-dump schemes, in which false and/or fraudulent information is disseminated in chat rooms, forums, internet boards and via email (spamming), with the purpose of causing a dramatic price increase in thinly traded stocks or stocks of shell companies (the “pump”). When the price reaches a certain level, criminals immediately sell off their holdings of those stocks (the “dump”), realizing substantial profits before the stock price falls back to its unusual low level. Any buyers of the stock who are unaware of the fraud become victims once the price falls.
- **Ponzi schemes:** A Ponzi scheme is an investment fund where withdrawals are financed by subsequent investors, rather than profit obtained through investment activities. The largest instance of securities fraud committed by an individual ever is a Ponzi scheme operated by former NASDAQ chairman Bernard Madoff, which caused up to an estimated \$64.8 billion in losses depending on which method is used to calculate the losses is used prior to its collapse.

## **PENALTIES:**

There are several different types of penalties that can be enforced against the defendant. First, the defendant can forfeit any property that was used to commit the crime. Forfeiture is rare in white-collar crimes, but is an option for the court. The more common punishments are fines and jail time. Recently, fines have been adjusted to recognize that what is a significant penalty to an individual may not affect a business. Since the fines are designed to deter criminal behavior this had to be adjusted.

There are also mandatory sentences now for the officers and directors who were in positions of authority at the time of the crime. The U.S. Sentencing Guidelines allow reductions in sentences if the managers were actively engaged in trying to prohibit the crime. Under the November 2003 amendments, the court can take the following factors into consideration when determining sentences:

- The seriousness of the offense
- The company's history of violations
- Its cooperation in the investigation
- The effectiveness of its compliance program
- The role of its senior management in the wrongdoing

**With the advent of the internet, white-collar crimes are not just for businessmen anymore!**

## **REAL ESTATE FRAUD.....WOULD YOU KNOW IT IF YOU SAW IT?**

Real estate practitioners must be vigilant of red flags that may signal that they are in the midst of a legal matter than involves real estate fraud. In most cases, potential clients that provide information that just does not add up or is unsupported by the documentation presented can tip you off. In some cases those clients themselves may be the victims of the scam, and many times they may be participating in a fraud that they themselves initiated.

Individuals can do inconceivable things with personal and public information ranging from very minor to mind blowing scams.

What should an individual do when he or she believes that his or her client is involved in a real estate scam? The first step is understanding the types of real estate fraud that are popular with these scammers. The second step is following the paper trail to get to the bottom of the situation. You may find that there are many active and unwitting participants – a list of players that may include mortgage brokers, loan officers, appraisers, real estate brokers, closing attorneys, escrow officers, buyers, sellers, straw men, investors, bankers, and title companies.

Real estate scams can lead to individuals having their houses stolen from underneath their feet, bankruptcy, damaged credit reports and credit ratings – not to mention the attorney fees that will be owed as they try to escape from the real estate scam. Worse yet, your clients may find themselves stuck between a rock and a hard place since the scam may cloud their title. This could prevent them from being able to sell their house or take out another mortgage or equity in the current house to use as collateral for a new home.

While anyone may fall prey to one of these scams, the groups most targeted by real estate scammers are usually the elderly, homeowners already in foreclosure, and individuals with low income.

# WIRE FRAUD

## Definition of Wire Fraud:

*Per 18 U.S.C. 1343, it is illegal to devise or scheme to defraud or to obtain money or property through false means by using wire, radio or television to execute the scheme. A person that knowingly and willfully engages in wire fraud may be subject to criminal prosecution. A person found guilty of wire fraud is subject to a fine and/or prison of no more than 20 years.*

## Wire Transfer Process:

A Transaction that moves funds from one bank to another bank

- Domestic or international wires
- Outgoing domestic – sender provides personal identification information
- Incoming domestic – receiver (beneficiary) provides specific information to sender
- International transfers – currency of sender typically converted to currency of receiver
- Transfers are not instantaneous – domestic wires typically take a few minutes to several hours, international wires typically take 1-2 days up to 10 days

## Example of Money Wiring Scams:

- Sweepstakes/lottery scams
- Overpayment scams
- Relationship scams
- Mystery shopper scams
- Online purchase scams
- Advance fee loans scams
- Family emergency or friend-in-need scams

## Preventative Measures Closers Can Take:

- Use dual control with fellow employees when executing wire transfers
- Keep customer information under lock and key at all times
- Keep track of passwords, tokens, etc.
- Minimize internet use with business computers used for online banking

## **WIRE FRAUD AND HOW IT CAN HAPPEN:**

When a purchase and sale agreement is received by an escrow office, it is customary for the closer or his/her assistant, when setting up the file, to send out an opening package to both the purchaser and seller. This opening package will be made up of the following:

### **Purchasers:**

1. Opening welcome letter
2. Escrow closing instructions that usually contain the escrow company's boiler plate language of the closing process and what certain terms mean
3. Driving instructions to the office
4. Insurance request information
5. Wiring instructions should the purchaser want to have their balance to close funds wired into the escrow account rather than a cashier's check brought to the signing appointment
6. If the closer is a Limited Practice Officer, then a document called APR 12 which notifies the client of the closers name and the number assigned to them by the Washington State Bar Association of what their limits of practice are

### **Sellers:**

1. Opening welcome letter
2. Escrow closing instructions that usually contain the escrow company's boiler plate language of the closing process and what certain terms mean
3. Driving instructions to the office
4. Borrower authorization so the closer can order a payoff, if any
5. Utility request information
6. If the closer is a Limited Practice Officer, then the document called APR12 which notifies the client of the closers name and the number assigned to them by the Washington State Bar and what their limits of practice are

So, now we know that the purchaser has received in this opening letter the trust account's wiring instructions of the escrow company to be used when it is time to complete the transaction, normally 30-45 days later.

A hacker will break into an escrow company's e-mail account to obtain information about upcoming real estate transactions. After monitoring the account to determine the likely timing of a close, the hacker will send an e-mail to the buyer, posing as the escrow company.

The fraudulent e-mail will contain new wiring instructions or routing information, and will request that the purchaser send transaction-related funds accordingly. Unfortunately, some purchasers have fallen for this scheme and have lost money.

Because the perpetrator has been monitoring the escrow e-mail account, the fraudulent communication may include detailed and accurate information pertaining to the real estate transaction, including previously given banking information, escrow information, and significant dates.

Escrow companies have many different practices in place to help prevent this from occurring. The following are a couple of different practices I know of:

- Inform clients at the beginning about your communication practices and the possibility of fraudulent activity in the industry. Explain that you will never send or request that they send sensitive information via e-mail.
- Prior to wiring any funds, the wirer should contact the escrow company via a verified phone number and confirm that the wiring information is accurate.

**SEE HANDOUT # 1: FRAUD ALERT**

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## **HERE IS AN EXAMPLE OF HOW WIRE FRAUD ALMOST HAPPENED AT AN ESCROW OFFICE**

It was a normal day at the closing office and Mary decided that during her lunch hour she would do some personal banking and pay some bills. She logged onto her bank and sent a few of her creditors payments and then logged out, totally normal things happening.

When lunch was over, Mary had to check on a couple of wires for the trust account to see if they were there as she had two fundings she had to complete that afternoon. Both her wires were in so she proceeded to cut checks on each of those closings. Both had payoffs to underlying lien holders that had to be wired out.

Mary sent out the two wires. When a closer sends out a wire they set it up in our system so that another "set of eyes" can review during the day what is going on.

Our office manager at another location noticed the wires out, but saw there was another wire there that went out for \$99,201.22 that was on set up by a closer, just came out of our trust account.

She immediately contacted the closer and found out that there was no such wire associated with any account.

The bank was contacted and told to reverse the wire out. They caught it in the nick of time, 10 minutes later and it would not have been possible to reverse.

Mary's computer was shut down to be analyzed what was happening, and here is what was discovered:

When Mary was working on her "personal" accounts, a hacker got into her system. This hacker then followed all her key strokes and eventually saw her access the trust account and wire funds out and then put in this "false" wire, and almost got away with it!

The bank set up a new system with the escrow company using another type of key fob system and then adding a third person on a check list. And, the company placed a restriction on anyone using the work computer for personal business.

**NOTE TO EMPLOYEES: DO NOT ACCESS YOUR PERSONAL ACCOUNTS ON YOUR BUSINESS COMPUTERS!**

## **OUTGOING MAIL FRAUD.....**

An escrow settlement company issued checks at closing for a home warranty policy in the amount of \$375.00 and \$2,500.00 to a contractor for work done, both from separate closings.

Weeks later the office received calls looking for the payments. The checks were sent by regular mail. Neither of the checks arrived at their intended destinations.

The escrow office contacted their accounting department to void the lost checks so they could be reissued. They were shocked to discover both checks had actually cleared the bank. The manager requested copies of the cashed checks to prove to both the home warranty company and the contractor that they had received their payments in full.

The manager received copies of the checks and found the payee name on both checks had been changed to an individual's name. The checks had been endorsed and cashed!

The account manager then contacted the escrow officer and informed her that the checks could not be voided and reissued since they were not lost – they were stolen. The manager then opened fraud claims and began the investigation.

In the course of ordinary business practices, the office delivers an electronic file containing the check numbers and amounts of each check disbursement created in their system every business banking day. Any check presented to the bank for payment must match by check number and amount in order for the check to pay at the bank.

The accounting manager quickly added Payee Positive Pay to the attributes checked by the banking system, before a check can be paid to prohibit any further incidents like the two they just experienced. Now the electronic file contains the check number, check amount and the payee name. Then the manager filed losses for the \$375.00 and \$2,500.00 to replace the funds in the trust account, so the checks could be reissued.

After reissuing the checks, the office started their own investigation to see how the checks could have ended up in the hands of fraudsters. The office takes measures to ensure their mail is mailed by a staff member each and every day. They have not yet discovered how the checks were stolen during the delivery to their intended destination, but for now they know if they are stolen again and altered, they cannot be cashed at the bank.

**Moral of the story:**

Since we know that outgoing mail is a target of theft, make sure your office is doing all it can to secure the mail that leaves the office:

- Make sure an employee or special courier is delivering the mail to a locked box
- The mail should never be overflowing out of the locked mail box where it could be taken from the box by anyone other than a postal worker
- Ensure your trust accounts have Positive Pay to ensure stolen, altered checks cannot be cashed
- If a check is stolen and cannot be cashed it will likely be thrown in the trash. Follow up on all outstanding checks from the outstanding checks report generated by the bank. Certain checks with a payee name of an insurance company, taxing authority, or a payoff lender deserve immediate attention. All other outstanding checks should be reviewed and investigated and reissued if they are older than 90 days

## **OVERVIEW OF POSITIVE PAY**

### **What is Positive Pay?**

Positive Pay is an automated fraud detection tool offered by the Cash Management Department of most banks. In its simplest form, it is a service that matches the account number, check number, and dollar amount of each check presented for payment against a list of checks previously authorized and issued by the company. All three components of the check must match exactly or it will not pay.

### **How does Positive Pay work?**

Positive Pay requires the company to send (transmit) a file of issued checks to the bank each day checks are written. When those checks are presented for payment at the bank, they are compared electronically against the list of transmitted checks. The check-issue file sent to the bank contains the check number, account number, issue date, and dollar amount. Sometimes the payee name is included, but is not part of the matching service.

When a check is presented that does not have a “match” in the file, it becomes an “exception Item”. The bank sends a fax or an image of the exception item to the client. The client reviews the image and instructs the bank to pay or return the check.

There is generally a fee charged by the bank for Positive Pay, although some banks now offer the service for free. The fee might well be considered an “insurance premium” to help avoid check fraud losses and liability.

## THE SELLER DID WHAT!

It was a “normal” signing appointment. One of the documents the seller had to sign was the Amendment to the Closing Instructions, where the seller will check a box on the form of how he/she will obtain their loan proceeds. They have many choices:

- Pick up the check
- Have the funds wired to the sellers account in which they would then give us the necessary information so we can wire it to their bank
- Mail the check
- Have the funds go to another closing company for their purchase of a new property
- Deposit the funds into their bank account in which they would leave the closer a deposit slip of a local bank

In this case the seller said he would pick up his check when it was ready.

The closer called the seller to tell him his check was ready and the seller said he'd be in the office at 1:00 to pick up the check. The seller went to the closing office and got his check and left the office. He left and came back 5 minutes later and said he changed his mind and wanted to have his funds wired and gave the closer his wiring instructions and left.

The closer wrote “VOID” on the check and wired the proceeds to the seller's checking account.

What the closer did not know, is that when the seller went to his car, he took a picture of the check and deposited it in his bank account with his new bank app. After he left the closing office he went directly to his bank account. Then, once the wire hit his bank, he withdrew the DOUBLED proceeds amount from his bank in cash and left town.

Of course, he eventually got caught, but he caused a lot of problems for the escrow company. Because we are talking about a “trust” account, a claim had to be submitted immediately for the doubled proceeds amount and deposited into the trust account. The escrow company was out this money.

What was that seller thinking!!!!

## **HERE IS A STORY THAT WAS NOT FRAUD, BUT REALLY AN HONEST MISTAKE**

An escrow officer initiated a wire transfer for the proceeds to the seller in the amount of \$498,300.00. Her assistant served as the counter-signature on the outgoing wire form. After the form was signed, the escrow officer scanned and emailed the form to the accounting center to initiate the wire using the online banking system.

Later that day, the seller called complaining he had not received his proceeds. The escrow officer looked up the federal reference number and gave it to the seller to provide to his bank to trace the wire transfer. The bank traced the wire but unfortunately the funds were deposited to another account – not the account of the seller!

The seller called back to let the escrow officer know the wire was sent to the wrong account. The escrow officer pulled her file and compared the posted wire information against the wire instructions provided by the seller. Sure enough, the account number posted by the escrow officer on the outgoing wire form had one duplicate digit: “22”!

The escrow officer began working with the accounting center to recall the wire. The accounting representative contacted the sending representative at the Bank who recalled the wire from the receiving Bank. The receiving Bank requested authorization from the account holder to recall the wire. In the meantime, the escrow officer filed a loss for the proceeds so she could pay the seller who was anxiously awaiting the money.

The recall request remained unanswered for more than a week. The escrow officer and her management team assumed the account holder was out of town for spring break, but after a week the accounting center followed up with the Bank regarding their recall request. The sending Bank contacted the receiving bank informed them the account holder had died!

The sending Bank and the escrow company were shocked! How could they obtain account holder authorization when the account holder was deceased? The receiving Bank agreed to attempt to contact the account holder’s wife, since they could not release the account holder’s name or contact information to the escrow holder.

Now, weeks later, the escrow office is still out the \$498,300.00 loss and has not received the funds initially wired. Luckily, the account is frozen and the deceased person’s heirs cannot access the money sent to the account in error. The Company has retained outside counsel to petition the bank, as well as the heirs to the deceased person’s estate, to return the funds.

**Moral of the story:** If you are the “second set of eyes” on a wire out, stop what you are doing and check and re-check all information provided one more time.

**NOW, let's see how your knowledge of Fraud is by reviewing the following questions.**

**(The answers are at the end with full explanations.)**

## **FRAUD AWARENESS QUIZ:**

Mortgage fraud is a material misstatement, misrepresentation, or omission relied upon by an underwriter or lender to fund, purchase or insure a loan. It continues to evolve as lenders and fraudsters alike adapt to changing economic conditions and government regulations. How much do you know about it? Take the quiz to find out.

1. A title policy insures against:
  - a. Fraud and forgery
  - b. Principal and interest
  - c. Madness and mayhem
  - d. Metes and bounds
  
2. A straw buyer is:
  - a. Someone who purchases straws in bulk
  - b. Someone with good credit who agrees to help someone with bad credit obtain a loan
  - c. A first time home buyer
  - d. Someone who is over 65
  
3. Which of the following items are commonly fabricated in order to induce a lender to approve a loan:
  - a. Employment verifications
  - b. Mortgage loan applications
  - c. Bank statements
  - d. All of the above
  
4. What document is the most forged document in a real estate transaction:
  - a. Deed
  - b. Power of Attorney
  - c. Mortgage
  - d. Purchase Contract



5. Flopping occurs in what type of transaction:
  - a. Refinance
  - b. Deed in Lieu
  - c. Bulk Sale
  - d. Short Sale
  
6. Which of the following steps can a settlement agent follow to assist in preventing fraud from occurring in one of their transactions:
  - a. Disclose all receipts and disbursements on the Closing Disclosure Statement
  - b. Make sure the funding lender has everything the settlement agent has
  - c. Trust their escrow gut
  - d. All of the above
  
7. Proper identification should be issued by a governmental entity and include a physical description and (select all that apply):
  - a. Include the bearer's signature
  - b. Include the expiration date
  - c. Include the bearer's weight
  - d. Include the bearer's photograph
  
8. Which of the following is a red-flag warning of a possible fraudulent transaction (select all that apply):
  - a. Purchase offer is more than the list price
  - b. Unusual expenses paid by the seller
  - c. Silent second mortgages
  - d. Transactions not recorded on the Closing Disclosure Statement
  
9. What are two classifications mortgage fraud schemes are put into:
  - a. Fraud for profit and fraud for housing
  - b. Tit for tat
  - c. Civil and criminal charges
  - d. Tax evasion and wire fraud
  
10. Who are usually the perpetrators in a fraud for housing scheme:
  - a. Cops
  - b. Industry professionals
  - c. Drug dealers
  - d. Ex-cons

## QUIZ ANSWERS:

1. The Title Policy insures against:

**Answer: Fraud and forgery** – The Covered Risks section of both an Owner’s and Lender’s title policy state the insured is covered for, “a defect in the title caused by...forgery, fraud...” Since this coverage is offered in all of the title policies available, fraud and forgery is of major concern to the title industry.

2. A straw buyer is:

**Answer: Someone with good credit who agrees to help someone with bad credit obtain a loan** - Generally, a straw buyer is someone recruited by a perpetrator to take out a mortgage and purchase a house in their name. The straw buyer normally does not live in the house or have the intent to reside at the house. They often receive cash in exchange for the use of their credit and name.

3. Which of the following items are commonly fabricated in order to induce a lender to approve a loan?

**Answer: All of the above** – Mortgage fraud schemes involve falsifying a borrower’s financial status by including material misstatements on documents the lender’s underwriter relies on, when evaluating the eligibility of a borrower. This is done by supplying fictitious employment verifications, mortgage loan applications and bank statements.

4. What document is the most forged document in a real estate transaction?

**Answer: Power of Attorney** – A Power of Attorney is written authorization to represent or act on another’s behalf in private affairs, business or some other legal matter. As a result, perpetrators sometimes forge the names of property owners in order to sell a property out from under the rightful owner or use the Power of Attorney to get a loan to strip all the equity from a property unbeknownst to the property owner.

5. Flopping occurs in what type of transaction?

**Answer: Short Sale** – A flopping scheme requires the perpetrator to conceal or provide falsified information to the loan servicer. This is information the servicer needs to make informed short sale decisions. These concealments might include hiding the true parties to the transaction, any contingent transactions or the true value of the property.

6. Which of the following steps can a settlement agent follow to assist in preventing fraud from occurring in one of their transactions?

**Answer: All of the above** – The settlement agent is often the best defense against mortgage fraud. Without them, the fraud might never be prevented. It is important the settlement agent fully disclose all receipts and disbursements on the Closing Disclosure Statement and material facts to the funding lender.

7. Proper identification should be issued by a government entity and include a physical description and:

**Answer: Include the bearer's signature and photograph** – Forged documents are often one of the many elements included in a mortgage fraud scheme. It is important to the lender and Title Company the borrower is properly identified. Although the identification requirements for the purpose of notarizing vary from one state to the next, it is often the lender who requires the borrower present identification which contains all of these elements.

8. Which of the following is a red-flag warning of a possible fraudulent transaction?

**Answer: A, B, C and D** – Although any one of these items alone might not be an indicator – combined they definitely have the makings of a scheme.

9. What are the two classifications mortgage fraud schemes are put into?

**Answer: Fraud for profit and fraud for housing** – The FBI defines these two classifications. They state fraud for housing entails misrepresentations by the applicant for the purpose of purchasing a property for a primary residence. This scheme usually involves a single loan. Fraud for profit often involves multiple loans and elaborate schemes perpetrated to gain illicit proceeds from property sales.

10. Who are usually the perpetrators in a fraud for housing scheme?

**Answer: Industry professionals** – Industry professionals are the ones most familiar with the ins and outs of the loan process – and most often the perpetrators involved in a fraud for housing scheme. The scheme could never occur without the cooperation of the real estate agents, loan officers, appraiser and settlement agent assisting in all the material misrepresentations which must be provided.

## **I NEVER HEARD THE TERM “STRAW BUYER”!**

It was February 2002 and business was slow. The spring rush was just around the corner. I received two purchase and sale agreements for over \$400,000.00. I was delighted. One was scheduled to close in 30 days and one in 60 days. Both were the same purchasers and the seller was the builder on both.

The mortgage loan broker sent me the customary 1003 on both of them, at different times to set up and the files proceeded as “normal” in every way.

The payoffs were ordered and title was in great shape and I was ready to proceed once the purchasers were approved for their loan. Loan docs were received and both seller and purchaser came into to sign. The purchasers did not have to bring in much money to close, I believe it was under \$1,000.00 and the earnest money was a “note” for \$1.00. While I was funding this loan I thought to myself, wow, a brand new home and such a small down payment and it wasn't even a VA loan. The loan fees were very high though.

I remember calling the purchasers (there were no real estate agents on these transactions) and telling them the loan was funded and they needed to contact the builder for their keys. They didn't seem too excited, like most purchasers were. (That should have been the first clue!)

Then, about 30 days later, I received loan documents on the other file. Purchaser and seller both came in to sign and it was scheduled to close and fund tomorrow. Once again I noticed that they didn't have much of a down payment, again, under \$1,000.00.

During the closing, the purchasers had no questions whatsoever about the charges, payment terms, anything, which was highly unusual. I wanted to ask them which brand new home were they going to live in, but they didn't appear to want to talk.

And, once again, when the loan was funded I called the purchasers to tell them it was funded and they could contact their seller for the keys directly since there were no real estate agents again on this transaction, no excitement again!

A few months went by and I had another purchase and sale agreement provided to me by the mortgage loan broker with the same purchasers, but a different seller, with a sales price of \$299,000.00. The same mortgage loan broker sent me the 1003 again. I decided to pull the two previous files. In reviewing I noticed the 1003's on the two previous files and the new one I had open all were identical and were all copies, just dated differently.

Now, I woke up! I called my company attorney and told him about the three files, and he said I bet your purchasers are “straw buyers”. I said “WHAT ARE STRAW BUYERS?” He proceeded to educate me on the term and said for me gather up the three files and to meet with him the very next day to review.

During the meeting with my attorney the following day, he made a couple of calls and found out that no one ever moved into either home, utilities were never even changed over. (At closing the purchasers and sellers signed a form instructing me that utilities would be handled outside of escrow.) Matter in fact, the utility bill was 4 months past due and shut off. And, when we called the lender, no payments were ever made.

So, the attorney instructed me to tell the parties that I would not be able to do the new closing and they would have to find another closing company, which I did immediately.

And, that is how I found out about “straw buyers”!

## **A DIFFERENT KIND OF FRAUD, BUT STILL FRAUDULENT OR AT LEAST DECEPTIVE!**

Bob was a very successful real estate agent in our area. I had only done a few transactions for him over the years so when he brought me in 6 purchases, yes, SIX, I was very excited. They were all different sellers but all the same purchaser who was an investor Bob was working with.

They were all seller financing transactions with nothing down. So, I set them all up and proceeded to close the first one. I noticed the on form 34 (that is the form used to create the terms of seller financing prior to the current form now available as 22C) that there were some strange terms.

1. **Unsecured Promissory note** in the amount of \$80,000.00 with interest at the rate of 10% , first payment due 60 days from closing in the amount of \$450.00
2. Purchaser will set up reserve account for taxes and insurance
3. Escrow fees to be split 50/50

Unsecured Promissory Note – what was that all about? I called the selling agent and questioned that. He told me I was to do exactly what the agreed upon terms said for me to do.

I proceeded with the closing. I thought it was strange there was not a deed of trust on this transaction for security for the sellers and called the listing agent to confirm that was the intention. The listing agent told me this was his first seller financing transaction and said it was explained to both him and his sellers when the offer was presented as the selling agent went with the agent to present the offer.

Once again, I called my attorney and told him about the terms. He said that he felt I should have a disclaimer as part of the closing and he prepared one for me as part of the closing stating the parties understood that the property would not be the security for this note, that it would be unsecured per the contract instructions, and if they had any questions, they should seek legal advice prior to signing. Of course, the selling agent and the purchaser were not very happy with me but we proceeded. The sellers read the disclosure and signed it. I was shocked that they signed it! No questions asked.

The closing recorded and funded.

I checked on the long-term escrow collection a few months later, just out of curiosity and found the purchaser never made the first payment or the second or third. The sellers decided they would have no choice but to commence with foreclosure proceedings and hired an attorney.

The attorney called our office and asked for copies of the documents in escrow and an accounting of the delinquent payments. A couple of days later the attorney called and asked why the note was not secured by a deed of trust on the property. I explained about the closing and he had the seller give me permission to give him a complete copy of the closing file, which I did. He then called back the next day and said the closing file was in perfect order and it was a good thing I had my attorney complete the disclaimer.

The attorney said all the sellers had was the promissory note. He also mentioned that when the sellers called me to do a foreclosure action, he called the title company and ordered a "litigation guarantee". (A litigation guarantee is a form of a title search that is done so that the attorney doing the foreclosure action knows of all liens on the property so that all can be named on the action.) In this case he should not have ordered it because there was no property that was secured, but he did find out something very interesting. Exactly 3 weeks after the sale of the property to the purchasers, they borrowed money on this property and put a \$60,000.00 deed of trust against this property. So, they purchased it with nothing down, never made payments on the note to the seller, AND got cash from a loan for \$60,000.00!!!!

Now, does this have FRAUD written all over it! The sellers were an elderly couple and all they end up with is a promise to pay note!

If it is not fraud, then it sure is a deceptive practice.

Needless to say, after discovering all six of these transactions were of the same format, I called the agents to tell them that I could not participate in these closings and they would need to have them transferred elsewhere.

## **IT WAS A STANDARD FORM 'PURCHASE AND SALE AGREEMENT' OR WAS IT?**

A purchase and sale agreement was delivered to our office. The file was set up and the title was ordered. Opening letters went out to the purchaser and seller and the payoff was ordered.

There were no real estate agents, so the closer dealt directly with the purchaser and seller. The closer prepared the closing statements. The seller asked if he could review the closing statement ahead of time. It was emailed to him. He called shortly later and said why did you charge me for the excise tax, title and ½ closing fee? The closer told him that those are customary charges on the boiler plate language of the purchase and sale agreement. He said, are you sure? Of course the closer said she was sure because this was the MLS form PSA that is always used. The seller said, well, humor me, and check the boiler plate language again.

The closer checked again and sure enough, it said, the purchaser will pay for all the sellers' costs to include the excise tax, owner's title and ½ closing fee. How could that be? She checked the first page where the form number usually was to see what date this particular form was created and there was no number or date, totally gone.

This was a form that someone modified and deleted all the SAR numbers and dates, and changed the boiler plate language as to who pays for what fees!

### **DECEPTIVE PRACTICES!**

The closer completed the closing as the contract stated. When the purchasers called to set up their signing appointment and get the amount they need to bring to the appointment in a cashier's check they were shocked it was so much higher than what their lender quoted. They called their lender and the lender reviewed the settlement statement and asked why were her purchasers being charged for the seller's excise, title and ½ closing fee? The closer told them that the boiler plate language stated so. The lender took a look and said this agreement had been altered, now what do we do?

Here we go again....the closer had to contact the company attorney and explained what appeared to happen.

He told them that this is a signed around purchase and sale agreement (an altered one at that) and I would need a new agreement or an addendum telling me to make those changes. The seller was contacted and said he was not signing a new agreement nor was he signing an addendum agreeing to pay those charges.



The purchaser really wanted the house and needed to move this week-end so they agreed to pay the additional fees in order to complete the sale.

The seller got away with the altering of the MLS form!

## Quiz for FRAUD

<b>1</b>	Two types of mortgage fraud are fraud for property and fraud for profit.	<b>True</b>	<b>False</b>
<b>2</b>	2003 was the first year we heard the term “white collar crime”.	<b>True</b>	<b>False</b>
<b>3</b>	Securities fraud is also known as stock or investment fraud.	<b>True</b>	<b>False</b>
<b>4</b>	Tax evasion is when you try to get the IRS to lower your tax bill.	<b>True</b>	<b>False</b>
<b>5</b>	Fraud can be outright deception.	<b>True</b>	<b>False</b>
<b>6</b>	Fraud is a crime punishable by up to 30 years in prison and a million dollar fine.	<b>True</b>	<b>False</b>
<b>7</b>	Perjury is not a crime if you are not sworn in to tell the truth.	<b>True</b>	<b>False</b>
<b>8</b>	Giving a bribe and receiving a crime are two different crimes.	<b>True</b>	<b>False</b>
<b>9</b>	A wire transfer always takes only 3 minutes to occur.	<b>True</b>	<b>False</b>
<b>10</b>	A very common fraud right now is the “friend-in-need-scam” with an email sent.	<b>True</b>	<b>False</b>
<b>11</b>	A bank can always reverse a wire if the account number was wrong, easily.	<b>True</b>	<b>False</b>
<b>12</b>	A title policy insures against madness and mayhem.	<b>True</b>	<b>False</b>
<b>13</b>	A straw buyer is someone who purchasers straws in bulk.	<b>True</b>	<b>False</b>
<b>14</b>	Fraudulent buyers typically lie about employment.	<b>True</b>	<b>False</b>
<b>15</b>	A power of attorney is the most common document falsified.	<b>True</b>	<b>False</b>
<b>16</b>	Flopping is a term used when you are refinancing your home for the 2 <sup>nd</sup> time.	<b>True</b>	<b>False</b>
<b>17</b>	A settlement agent should always trust his/her gut.	<b>True</b>	<b>False</b>
<b>18</b>	Proper identification should always include a thumb print.	<b>True</b>	<b>False</b>
<b>19</b>	A settlement agent will not show items on a statement if you ask him/her not to.	<b>True</b>	<b>False</b>
<b>20</b>	Perpetrators in a fraud for housing scheme are usually the next door neighbor.	<b>True</b>	<b>False</b>
<b>21</b>	The security for a promissory note is a deed of trust.	<b>True</b>	<b>False</b>
<b>22</b>	A person found guilty of wire fraud is subject to prison of no more than 20 years.	<b>True</b>	<b>False</b>
<b>23</b>	Employees should never do their personal banking on company computers.	<b>True</b>	<b>False</b>
<b>24</b>	Positive Pay is another way the banking industry is trying to prevent fraud.	<b>True</b>	<b>False</b>
<b>25</b>	A good policy is to reissue any checks that are more than 90 days old.	<b>True</b>	<b>False</b>

\_\_\_\_\_

(name)

\_\_\_\_\_

(date)



# Mandatory Evaluation

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Please fill out the following form and return with your completed clock hour class quiz.

FINANCIAL REWARD ACQUIRED

UNDER DECEPTION

Name/ Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: (personal) \_\_\_\_\_ (work) \_\_\_\_\_

Email: \_\_\_\_\_

License Renewal Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

1. What are 3 things that you learned from this course?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

2. Do you feel the clock hour material was easy to follow?

\_\_\_\_\_

3. Did the material give you information to help you in your profession? \_\_\_\_\_

4. Will the material help you with future transactions? \_\_\_\_\_

5. Why did you choose to take this course? Topic \_\_ Time \_\_ Cost \_\_ Ease \_\_ Other \_\_

6. How long did this class take you to complete? \_\_\_\_\_ (a "clock hour" is 50 minute)