

# CIVIL REMEDIES FOR MORTGAGE FRAUD

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# Burden of Proof

## CRIMINAL

- Specific Intent to defraud
- Proof beyond a reasonable doubt

## CIVIL

- No specific intent needed
- Preponderance of the evidence

# False Claims Act, 31 U.S.C. §§ 3729 - 33

- Establishes liability concerning false claims for payment to U.S. government or U.S. contractor/grantee where \$ is spent on behalf of U.S. or to advance U.S. programs, where the U.S. has paid any portion of \$. The most commonly used provisions impose liability where a person:
  - Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval, § 3729(a)(1)(A); and
  - Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim, § 3729(a)(1)(B);
- Section 3729(b): “Knowing” and “Knowingly” defined
  - “No proof of specific intent to defraud” is required. The Government only needs to show that a defendant:
    - had “actual knowledge of the information;” or
    - “act[ed] in deliberate ignorance of the truth or falsity of the information”; or
    - “act[ed] in reckless disregard of the truth or falsity of the information”
- A person who violates the FCA is liable for civil penalties ranging from \$5,500 to \$11,000 and treble damages
- Qui Tam provisions of the FCA permit suits by private persons “for the person and for the United States Government.” The person bringing such a suit is referred to as the “relator”
- Burden of proof = preponderance of evidence (lower than criminal standard of beyond a reasonable doubt)

# 18 U.S.C. § 1345

- “Fraud Injunction Statute”
- Allows Government, via TRO/injunction, to:
  1. Stop the fraud, and/or
  2. Preserve assets (usually pending resolution of criminal action)
- Civil action, but with criminal predicate and governed by civil and criminal rules

# 18 U.S.C. § 1345(a)(1) – Enjoin Fraud

- Enjoin violations of:
  - 18 U.S.C. § 287 (False Claims)
  - 18 U.S.C. § 371 (Conspiracy to Defraud U.S.)
  - 18 U.S.C. § 1001 (False Statements)
  - Mail/wire/securities fraud (Title 18, ch. 63)
  - Banking law (as defined in 18 U.S.C. § 3322(d))

## 18 U.S.C. § 1345(b)

- Court may also “take such other action, as is warranted to prevent a continuing and substantial injury to the United States” or any victim of the fraud

## FIRREA: 12 U.S.C. § 1833a

### (Financial Institutions Reform, Recovery, and Enforcement Act)

- Maximum Penalty \$1 million, \$5 million for a continuing violation, or gain or loss, whichever is greater
- Burden of Proof: preponderance of evidence
- U.S. Attorney may issue administrative subpoenas pre-filing, including deposition of target
- Can use grand jury information
  - 18 U.S.C. § 3322(a)(2)
- Statute of limitations: 10 years



# 12 U.S.C. §1833a Applicable Violations

Violations or Conspiracy to Violate 18 U.S.C. §§:

- 215: Gives, offers, promises, solicits or demands commissions or gifts to procure loan from financial institution
- 656: Theft, embezzlement or misapplication by financial institution officer or employee
- 657: Embezzlement or willful misapplication by officer, agent or employee of bank regulatory agency (e.g. FDIC)

## §1833a Violations (Cont.)

- 1005: False or unauthorized entry in books or records of financial institution by officer, agent or employee
- 1006: False or unauthorized entry in books or records of bank regulatory agency by officer, agent or employee
- 1007: False, forged or counterfeit statement or document submitted to FDIC
- 1014: False statement on loan or credit application to financial institution

# Common Law Remedies

- Common Law Fraud
- Money Paid Under Mistake
- Unjust Enrichment
- Conversion
- Breach of Contract