

Mortgage Fraud In The News

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Mortgage fraud and mortgage lending practices have been in the news in the last few weeks as the U.S. District Court of appeals ruled on two controversial mortgage settlement charges and the FBI announced a striking increase in and a crackdown on **mortgage related fraud**. And the bubble continues to float as the Commerce Department announces yet another month of strong new house sales.

Court Rules "Yes" and "No" in Wells Fargo Case.

September 10, 2004

The United States Court of Appeals for the Second Circuit (New York) split a decision regarding settlement charges in a class action suit brought on behalf of several borrowers against the holding company and several subsidiaries of Wells Fargo & Company.

The plaintiffs, in a suit originally decided in the United States District Court for the Eastern District of New York, charged that Wells Fargo had levied excessive and unreasonable fees for settlement services and that it had also marked up fees charged the plaintiffs for services provided by third parties as part of the mortgage settlement process.

Specifically, the plaintiffs claimed that Wells Fargo overcharged for services required to be paid by borrowers as part of the underwriting or settlement process at rates many times the costs incurred, most particularly charges for analysis of the borrowers' ability to repay the loan so as to qualify it for resale on the secondary market. Such qualification was allegedly ascertained using software obtained from Freddie Mac and Fannie Mae at a cost of \$20 per loan underwritten. The plaintiffs claimed to have been charged up to 25 times that amount at settlement.

A second category of charges were termed by plaintiffs as **mark-ups** on required services performed by third parties. This would include appraisals, title examinations, and credit reports. It was alleged that Wells Fargo added a premium to charges for such services even though they performed no action that added value to those services. For example, a credit report which might cost \$50 was charged to the borrower at \$150 even though Wells Fargo had done nothing more than order such a report. The District Court found in favor of Wells Fargo on both issues.

The court based its decision largely on whether the Department of Housing and Urban Development (HUD), in the absence of clear guidance in the statute (Real Estate Settlement and Procedures Act (RESPA), and in particular **8(b)** of that act, had authority to speak to these charges in its **Policy Statements** which sought to regulate such fees.

The Appeals Court upheld the District Court in the matter of **overcharges**, finding that nothing in the language of the statute authorized courts to divide a **charge** into what they or some other...entity deems to be its **reasonable** and **unreasonable** components. Nor did Congress empower HUD to determine such reasonable and unreasonable components. **Whatever its size**, such a fee is **for** the services rendered by the institution and received by the borrower.

The 2nd District Appellate Court, however, reversed the District Court on the issue of **mark-ups**. They found that a 1992 regulation issued by HUD stating that **A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates RESPA 8(b) to be a response to an invitation by an (earlier) court for HUD to clarify its view on the matter.** For this and several other reasons, the Court ruled that HUD's policy statements should be deferred to.

This decision may well set the stage for an eventual hearing in the Supreme Court about the legality of the **overcharges** and **mark-ups**. In the meantime the case has been sent back to the District Court for further review. We will try to follow this, but you can read the entire decision at www.ca2.uscourts.gov, reference Kruse v Wells Fargo Home Mortgage, Doc. # 03-7665.

THE FBI IS ON THE CASE

September 17, 2004

On September 17, the Federal Bureau of Investigation (FBI) announced that **mortgage fraud** is running rampant in the United States, with reports of suspicious activity up three fold since 2001. The Bureau also trumpeted its progress in the largest nationwide crackdown in its history directed at persons and groups engaged in mortgage and allied fraud.

FBI Criminal Investigative Division's Assistant Director Chris Swecker stated that **Operation Continued Action** reflects the FBI's...effort to identify, target, disrupt, and dismantle operations engaged in fraud schemes that target our nation's financial institutions. The FBI claims that, since the operation's inception in August, 2004 (sic), it has identified more than 245 subjects in 158

investigations resulting in more than 151 indictments, informations, and complaints filed to date.

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Mortgage fraud is a complex issue, one that has many facets. The most costly impact is on lending institutions, but there are many types of fraud and predatory lending practices that victimize individuals, even whole neighborhoods and communities. We will soon present a multi-part series of articles on mortgage fraud; what it is, federal and state programs to combat it, and how you can recognize it and protect your home, your finances, and your credit.

And the Beat Goes On

September 27, 2004

After a downward blip in July, new home sales resumed its seemingly endless climb in August, rising 9.4 percent to a seasonally adjusted annual rate of 1.18 million units. The annual adjusted rate in July was 1.08 million homes according to a monthly report issued Monday by the U.S. Department of Commerce.

The fast growing Southern and Western regions of the country led the pace with double-digit increases (12.6% and 19.5% respectively) but sales in the Northeast were also up by a more modest 6%. Sales in the Midwest slowed by 8.3%.

The average sales price nationwide was \$267,000.

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