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Settlement Fraud Cases on the Rise

Sorohan, Mike

FT. LAUDERDALE, FLA.—Analysts here at the **Mortgage Bankers Association's National Fraud Issues Conference** say criminals recognize settlements as their last good chance to commit mortgage fraud.

"I've seen the consequences of settlement fraud," said **Michael Pfeifer**, partner with **Smith Dollar PC**, Santa Rosa, Calif., and general counsel for the **California Mortgage Bankers Association**, Sacramento. "Those are the cases that tend to get litigated, because that's where the rubber meets the road, the last point in which mortgage fraud can be detected."

Scott DeNike, general counsel with **Plaza Home Mortgage Inc.**, San Diego, a wholesale lender, said settlement red flags are relatively easy to spot, such as excessive closing fees, sales price differing from sales contract; and zero down required at settlement.

"We feel like the settlement agents are the last line of defense for lenders," DeNike said. "They are the governing entity at 'crunch time.' These funds are the fuel that powers the fraud."

As a result of these risks, DeNike said, Plaza Mortgage revised its settlement procedures. For example, it notes on its documents that Plaza intends to sell the loan and that title/settlement agents are responsible for the integrity of the documents. "This sends a message to the agent that they are not 'off the hook' once the loan is closed," he said.

Andrew Liput, president and CEO of **Secure Settlements Inc.**, Parsippany, N.J., said some efforts are underway to move toward a national standard for mortgage industry professionals, including pre-screening, monitoring requirements and data-sharing.

"Much of the professionals in our industry are part of homogenous groups," Liput said. "You're supposed to know what you're getting. But in reality, you have many disparate groups. A lot of people touch the closing, including realtors in some cases, and they can have an influence on the settlement. There are no common expectations or standards for entry; no national certification; no single licensing supervisory body—and no accountability until after bad acts occur."

More importantly, Liput said, there are no deterrence factor; this lack of central accountability has resulted in a weak industry approach, with the only way to recover funds through costly legal channels. "You have to pray that everything works out," he said. "What a crazy business."

Liput said with the market moving away from refinancing and more toward purchase applications, more risk will come to the marketplace. "If we don't take steps now, we're going to face a huge challenge by the end of the year," he said.

To combat this, Liput said lenders and servicers must have in place internal vetting procedures for third-party closing professionals, or outsource such functions to a qualified third-party management firm. "Do not rely on the third party to provide its own due diligence," he said. "We also need to get out of the mindset of vetting at the entity level...vendor management is a standard procedure for large businesses; why not settlement agents? We need broad, uniform standards across the board, across all professions."

Steve Gottheim, legislative and regulatory counsel with the **American Land Title Association**, said the most

important way to reduce fraud is to know who you do business with.

"Not just know them, but really know them," Gottheim said. "As in, 'I trust you with \$'X' million a year with you—show me how you protect that; 'I trust you with thousands of documents every year—show me how you protect them.'" A best practices policy, he said, ensures that "you know what procedures they have in place to protect you and the process."