



CIVIL REMEDIES FOR MORTGAGE FRAUD

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Section 1: Going After The Loan Broker

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LOAN ORIGINATORS

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- WHO ARE THEY?
 - WHAT THEY ARE DOING?
 - WHEN AND WHY ARE THEY LIABLE?
 - HOW TO PROCEED

LOAN ORIGINATORS: WHO ARE THEY?



Originators are:

- Commissioned sales people
- Substantially unlicensed
- Working unsupervised
- In a highly competitive environment
- Always aware of CCDEI
- Are in charge of the industry

LOAN ORIGINATORS: WHO ARE THEY?



Originators are NOT:

- Salaried
- Worried about industry debarment
- Paid for performing loans
- Sufficiently capitalized or insured
- Going to turn down a loan if they have a source – everyone's qualified!

YOU'RE NOT QUALIFIED!



Add Your Company Logo Here

LOAN ORIGINATORS: WHAT ARE THEY DOING?



HONEST/BEST ONES:

- GOING STATED or NINA
- LOOKING FOR VOLUME

DISHONEST ONES:

- FLIPPING
- CREATING DOCUMENTS
- ORGANIZED SCHEMES

LOAN ORIGINATORS: WHEN AND WHY ARE THEY LIABLE?



- Liability rests in
 - Broker Contracts
 - Fraud or Negligence

It is all about CCDEI

According to MARI

- 60% of STATED inflated by 50%
 - \$5,000 increased to \$7,500
 - \$2,500/mo equals 33% of \$7,500
 - \$2,500/mo is \$350,000 PITI
 - Conclusion: At least 60% of STATEDs are people making 60K who borrowed \$350K, or worse

LOAN ORIGINATORS: THE CONTRACT

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- Powerful contract?
 - Indemnity
 - Repurchase
 - Warranties
 - Jurisdiction
 - Duties

Indemnity



IF THEN:


IF: (make it simple)

THEN: broker pays

How about refund what they made?

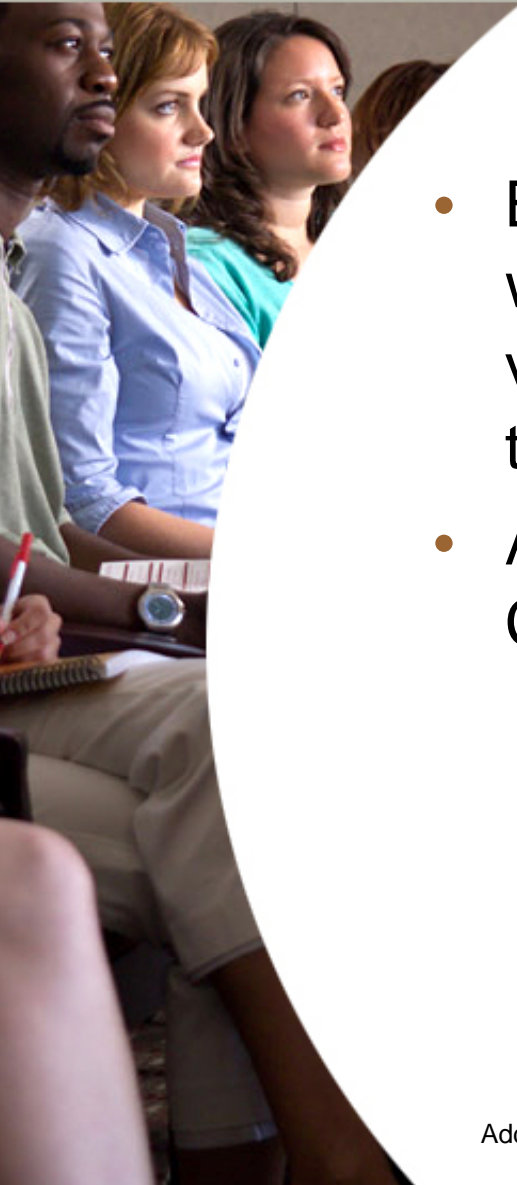
Liquidated damages?

Repurchase




Simple: IF THEN
Assume it will never be honored
Make it for a simple amount


Warranties

- 
- Broker warrants all documents submitted with each loan are in every respect, true, valid and genuine, being what they purport to be.
 - All information concerning the borrowers CCDEI is true and correct.

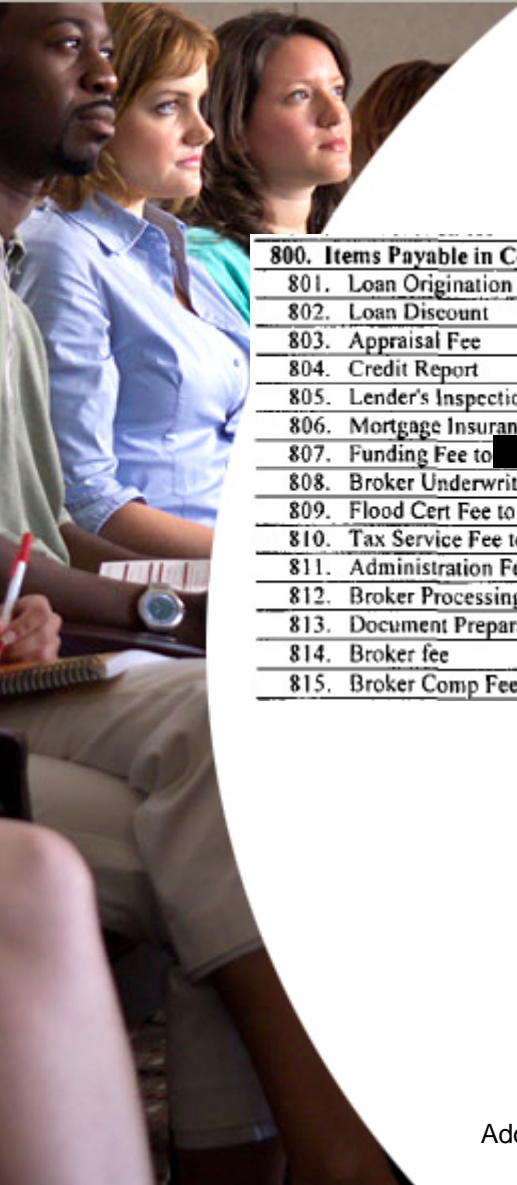
Jurisdiction

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- We elect to sue you here (pick jurisdiction)
 - Choice of laws (pick State)

DUTIES: You Can Define It

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- Interview the borrower
 - Ask about CCDEI
 - Inspect originals
 - Order appraisal
 - Don't hand carry VOEs
 - We can rely on any document provided

Brokers Are Not Notetakers



800. Items Payable in Connection with Loan:		
801. Loan Origination Fee to American [REDACTED] Group, Inc.		16,320.00
802. Loan Discount		
803. Appraisal Fee		
804. Credit Report		
805. Lender's Inspection Fee		
806. Mortgage Insurance Application Fee		
807. Funding Fee to [REDACTED]		700.00
808. Broker Underwriting Fee to [REDACTED] Mortgage Group, Inc.		899.00
809. Flood Cert Fee to LSI Flood Service		12.00
810. Tax Service Fee to [REDACTED]		75.00
811. Administration Fee		
812. Broker Processing Fee to [REDACTED] Mortgage Group, Inc.		995.00
813. Document Preparation Fee to [REDACTED]		
814. Broker fee		
815. Broker Comp Fee pd by Lender to [REDACTED] Mortgage Group, Inc. (poc \$8,160.00)		



Section 2: Appraisers and Other Issues

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APPRAISERS

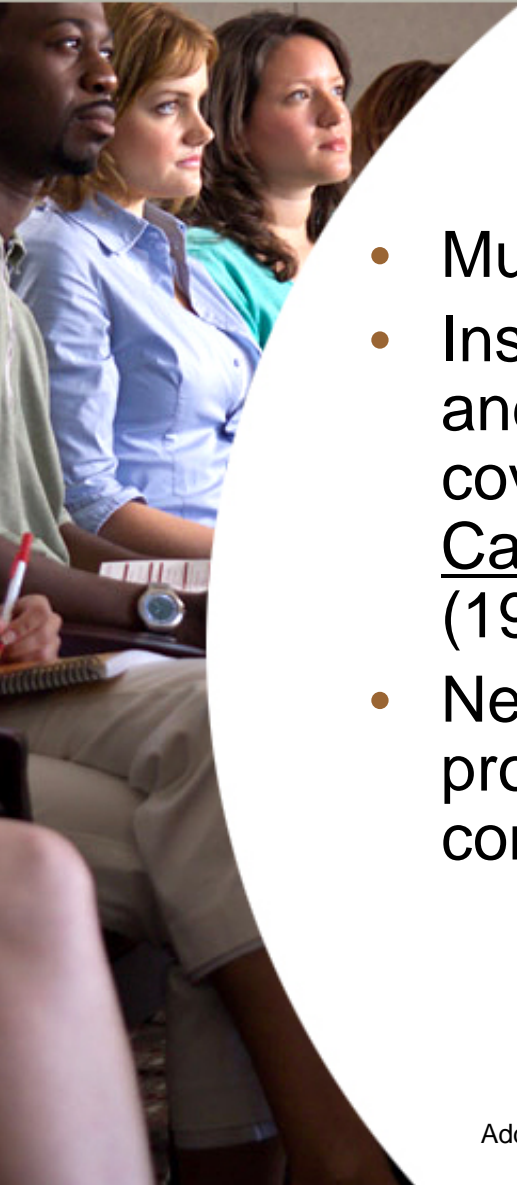
- 80% OF ALL MORTGAGE FRAUD INVOLVES APPRAISERS
- AVERAGE PER OCCURRENCE LOSS IS IN EXCESS OF \$60,000 (2005 FBI INFORMATION)

INCREASED LITIGATION

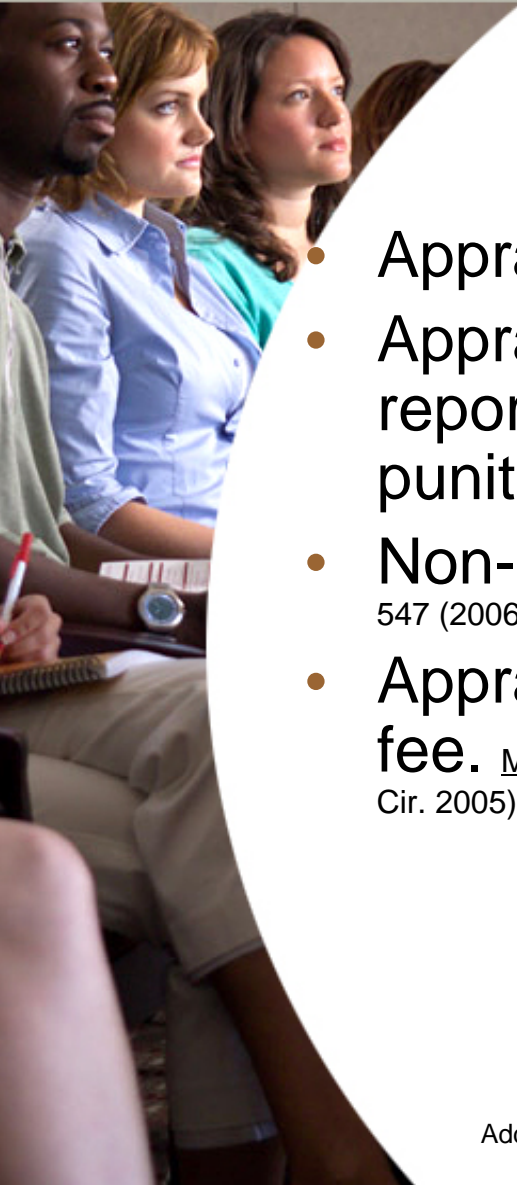
- OVER-VALUATION ERRORS MATERIALLY INCREASE DEFAULT RISK AT THE RATE OF 2-3 PERCENT FOR EACH PERCENTAGE POINT OF UPWARD APPRAISAL BIAS.

Lacour-Little and Malpezzi, *Journal of Real Estate Finance and Economics*, 27:2, 211-233(2003).

FRAUD OR NEGLIGENCE

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- Multiple loans or isolated instance;
 - Insurance companies are required to defend and indemnify for any negligence claim covered under an insurance policy. Imperial Cas. & Indemn. Co. v. State, 246 Conn. 313 (1998).
 - Negligence claims require lower burden of proof but typically are tempered by comparative negligence.

CASES

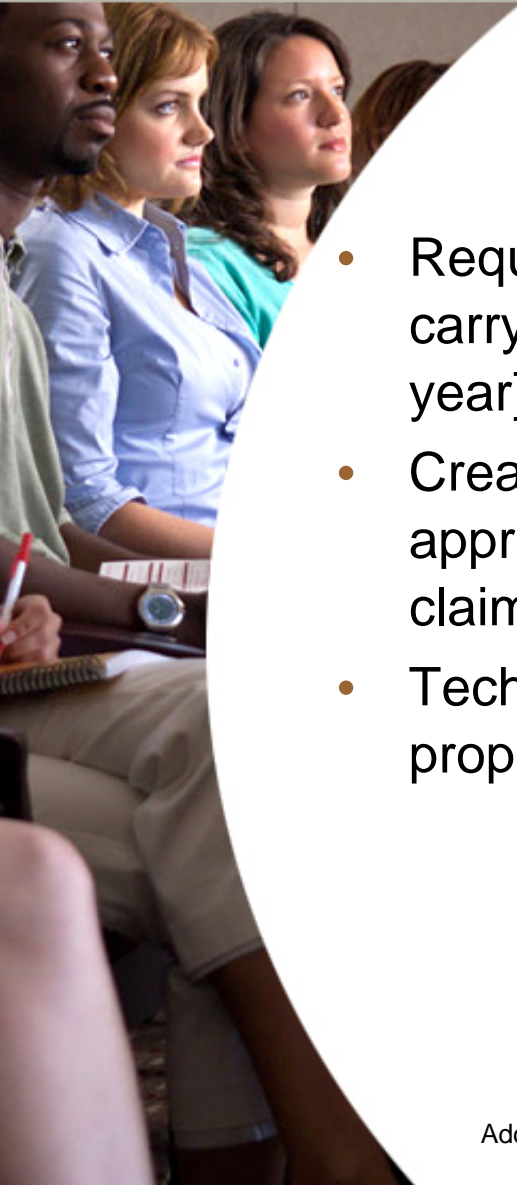
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- Appraiser can owe a fiduciary duty to a lender;
 - Appraiser who intentionally inflates an appraisal report commits an unfair trade practice [allows for punitive damages and attorneys fees];
 - **Non-delegable duty ?** *Cornelius v. Department of Banking*, 94 Conn. App. 547 (2006).
 - Appraisers still liable even if they do not charge a **fee**. *Massachusetts Asset Financing Corporation v. Harter, Secret & Emery*, 430 F. 3d 59 (1st Cir. 2005).

PREDATORY LENDING ?

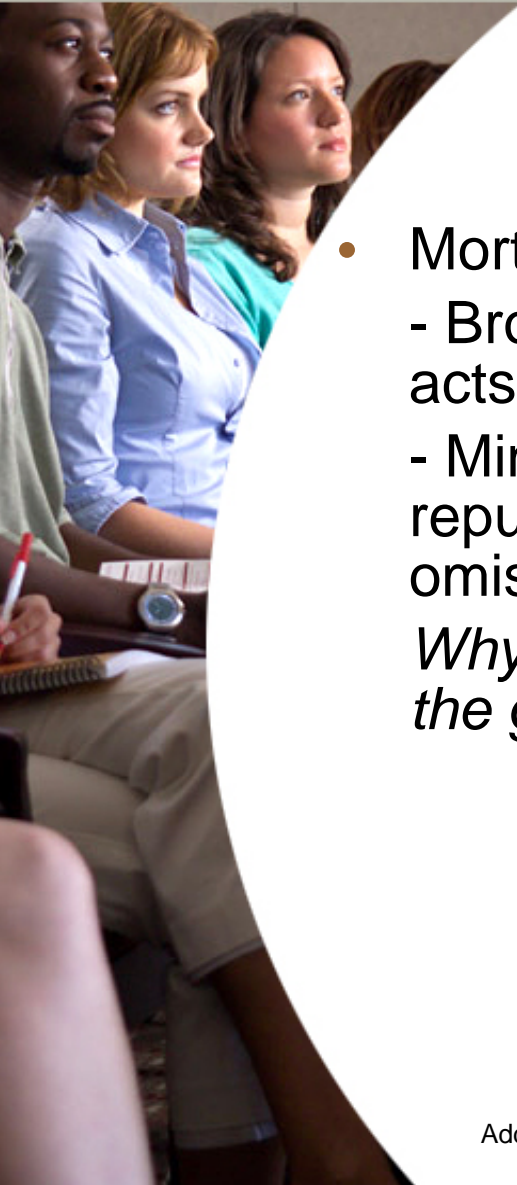
- **SUBPRIME LOAN + INFLATED APPRAISAL =
PREDATORY LENDING ?**

Hoffman v. Stamper, 385 Md. 1 (2005). Jury verdict for economic and non-economic damages against loan officer, lender and appraiser for properties lost in foreclosure. Underlying loans involved “flips” with inflated appraisals.

MANAGEMENT

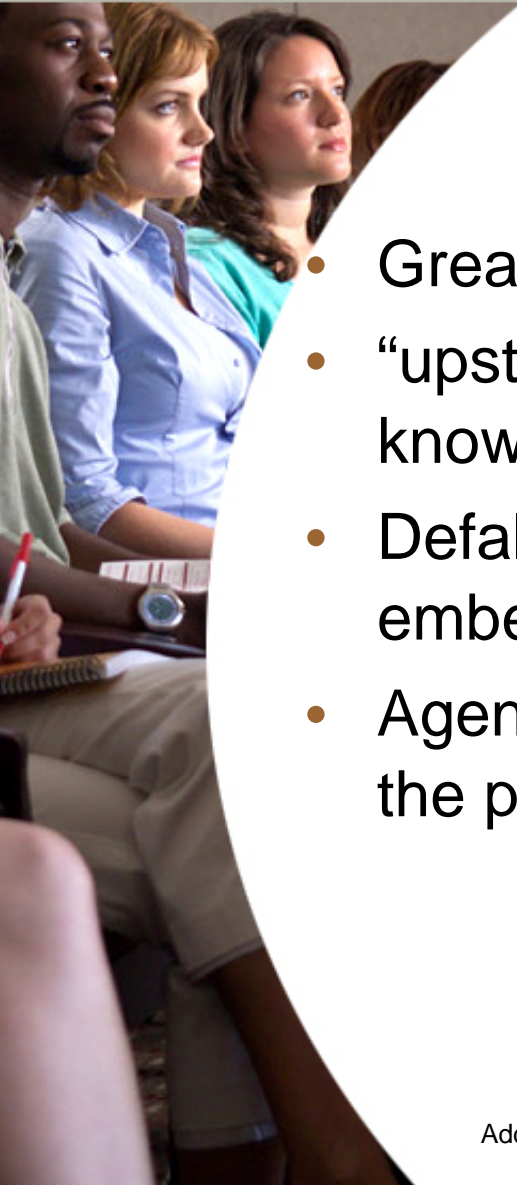
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- Require all appraisers with whom you conduct business to carry insurance coverage [have declarations page for each year];
 - Create independence zones between loan officers and appraisers [decreases risk of collusion and helps to defeat claims of comparative negligence];
 - Technology, review appraisals, and MLS history of subject property.

MANAGEMENT (Cont.)

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- Mortgage Brokers
 - Broker Agreements should provide for liability for acts of all third party agents;
 - Minimum capital requirements to honor loan repurchases; fidelity [dishonesty] bonds; errors and omissions coverage;

Why ? Brokers hire appraisers and have no “skin in the game”.

WAREHOUSE LENDING

- 
- Greater risk of being defrauded by broker;
 - “upstream” liability against funders who have knowledge of improper practices by brokers;
 - Defalcation bonds a necessity to guard against embezzlement and theft;
 - Agency- test is control and whether actions benefit the principal.



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