

Packaging Files for Litigation

Lower Attorneys Fees – Enhanced Results



Define your Objectives



- What is your company's philosophy on fraud
 - **MAXIMIZED RECOVERY** – We cannot afford to absorb fraud losses. We seek legal counsel for the sole purpose of recovery and view fraud referrals to legal counsel as a profit center
 - **ZERO TOLERANCE** – we are committed to stopping fraud in the industry regardless of how that affects our recovery options and we are willing to spend the funds necessary to contribute to this result
 - **MIDLINE** – We do what we can to prevent fraud and recover our losses. If a situation requires that we chose between maximizing our recovery and supporting industry fraud eradication efforts, we try to accommodate both to the extent possible but make this decision on a case by case basis.

Prepare Philosophy Statement



- Provide counsel with a road map as to your company's philosophy and the attendant litigation choices
- MAXIMIZED RECOVERY
 - Hold off non-essential criminal and civil complaints
 - Seek sale of property or refinance of obligation
 - Active enabling?
 - Resell repurchased loans
 - Reputational Risk
 - Settlements and confidentiality agreements
- ZERO TOLERANCE
- MIDLINE

Not in my Shop!



- Provide counsel with a road map as to your company's philosophy and the attendant litigation choices
- MAXIMIZED RECOVERY
- ZERO TOLERANCE
 - Aggressively pursue criminal and administrative reports against brokers, appraisers, etc. involved in suspected fraud
 - Report all suspected fraudsters to MARI
 - Move immediately toward foreclosure either monetary or non-monetary
 - Include all potentially culpable parties as defendants
 - Submit civil complaints and criminal information to Mortgage Fraud Blog (www.mortgagefraudblog.com)
- MIDLINE

Taking the Middle Road



- Provide counsel with a road map as to your company's philosophy and the attendant litigation choices
- MAXIMIZED RECOVERY
- ZERO TOLERANCE
- MIDLINE
 - Practical position of most lenders
 - Contractual remedies enforced
 - Broader defendant classes when no solvent contractual options
 - Non-mandatory reporting used strategically

What to Send

How to Send it



Loan File Documents



- Full loan file the way it is kept in the ordinary course of business
 - Imagined Documents
- Tabbed and Highlighted Skinny
 - Prepared for referral to counsel,
 - Marked Privileged and segregated
 - One File for Entire Scheme

Verification Documents



- Public Records
 - Searches regarding properties
 - Searches regarding participants
 - SORT, LABEL, HIGHLIGHT, SUMMARIZE
- Valuations (AVMS, BPOs, Review Appraisal)
 - Historical and Current
- Occupancy Checks
- Re-verifications

Investigative Documents



- Records of interviews and routine analysis documents prepared by your in house fraud team
 - Keep them factual!
 - The borrower said that. . .
 - The appraiser was perspiring heavily
 - The appraiser was nervous because he knew he committed fraud. He got really mad when I confronted him
 - Do not speculate
 - Do not draw non-essential conclusions
 - Do not point out errors in your own underwriting
 - Do not highlight training opportunities
- Need clear distinction between when routine investigation ends and litigation referral begins

Servicing Data



- Information from servicing
 - Vital
 - Overlooked
 - Often difficult to obtain
- Servicing Status
 - Dictates recovery options
 - Must be constantly updated
 - Link counsel to servicing data
- Servicing Notes
- Loss or Potential Loss Analysis
- Liquidation Documents
 - HUD-1
 - Valuations

Spreadsheet



- COPY FOR COUNSEL AND **MARK**
- Loan File Elements
 - Essential Loan Data
 - Loan Number
 - Note Date
 - Original Principal Balance
 - UPB
 - Appraised Value and Date
 - Parties involved
 - Appraiser
 - Broker
 - Borrower
 - Seller
 - Employer
 - Depository
 - Loss or Estimated Loss Data
- Hard Copy and Electronic
- Cross-referenced to Skinny Loan File

Letter to Counsel



- Addressed to your lawyer – marked attorney-client privileged – copied to no person that is non-essential
- What did you find in your review of the documents?
- What did you learn in your interviews with the borrower and other parties?
- What do you think happened here?
- Are there any other facts, thoughts, gut feelings not in your reports that contribute to your opinions or conclusions?
- What mistakes did your company make in the origination or servicing of this loan
- Refer to the documents in the skinny file – especially public records findings

It Doesn't Matter



- Packaging can keep down costs
- If there's a choice between packaging perfectly and not referring, put it in a box and ship it out!

Questions



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