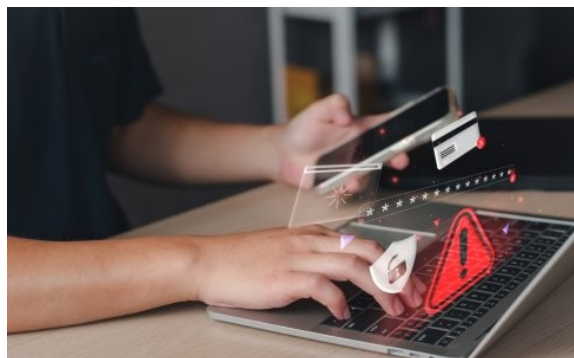


Lenders Must Act Fast to Recover Funds in Fraudulent Loan Schemes

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By Eric Lanter



Lenders get into a groove with originating loans with existing and new borrowers. So often, the closing comes and goes, and the monthly payments commence without any trouble. But then a borrower comes along who seeks to defraud the lender. If the closing goes through, with the lender transferring out the funds and the funds making their way into the borrower's account, the lender then faces significant challenges in getting that money back.

The timing of the lender's discovery of the fraud usually determines the odds of the lender clawing back the funds. With any luck, the lender will discover the fraud when it goes to record the documents with the local property records office and finds that the borrower had misrepresented that they would provide the lender with the first priority lien on the property and, in fact, had already obtained mortgages securing the property.

Regardless of how quickly the lender learns of the fraud, it is crucial that the lender take immediate action. In New York and New Jersey, the lender may consider filing a complaint and order to show cause seeking to stop the borrower from transferring the funds out of their possession. These types of lawsuits require moving fast and detailing the fraud to the extent that the lender can. Keeping complete and accurate records for each loan is crucial. For instance, when it comes time to go before a judge and show where the fraud occurred, central to that are the loan documents in which the borrower made the misrepresentations to the lender. Without proof of those misrepresentations, it becomes very difficult to convince a court that fraud has occurred and unlikely that a court would effectively freeze the borrower's assets.

Occasionally, the title insurance company may extend coverage to these types of incidents, but there is no guarantee of coverage. Also, the title insurance company's decision on whether coverage exists may take some time. That time can be very valuable for the lender to go after the borrower and may be the difference between recovering the funds or the borrower moving the funds out of the lender's reach.

A lender acting quickly in these situations is also important because if the borrower has defrauded this lender, the borrower has probably defrauded other lenders—and those other lenders may already be chasing down their funds. That borrower may have already transferred the funds out to hard-to-reach accounts, spent the money, or even thrown a wrench in the process by filing bankruptcy. Lenders that learn of the fraud hire counsel and act within hours, rather than days or weeks, maximize their chances for success.