

SHORT SALE FRAUD – ISSUES AND CONCERNS

By Charles R. Franklin¹

1. **Short Sale** - A real estate transaction in which the borrower is approved or permitted by the lender to sell the property “short of” (less than) the mortgage balance.
2. **Benefits** -
 - For the bank: Allows non-performing loan to get “off the books” without foreclosure.
 - For the borrower: Allows for extinguishment or significant reduction of debt without foreclosure.
 - For the community: Ensures the property remains occupied and continues to be a viable source for property taxes, stabilizing neighborhood property values.
3. **Short Sale Fraud** - Rigging the short sale process at an artificially low price or without full disclosures so the property can be illegally “flipped” or “flopped.”
4. **Flipping** - Reselling property – not necessarily illegal.
5. **Flopping** - Approved or permitted short sale occurs based on a misrepresentation of the property’s value.

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Charlie earned his Bachelor of Arts in Asian Studies from the University of Michigan, and his Juris Doctor from the University of Miami (Florida) School of Law. He is “AV Preeminent” rated with Martindale-Hubbell. Charlie is a past president of the Casualty Adjusters Association of Chicago, and was a founder and is a current board member of the Claims Association of Greater Chicago.

6. **Mortgage Fraud** - “Any material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan.”

Typical Scenarios

1. **Undisclosed Payments** - Kickbacks, Payoffs or “Other” Consideration to sellers, 2nd mortgages, others.
2. **Flopping** - Prearranged resales without disclosure to lender or borrower to the instant or quick profit of the fraudster.

Arm’s-Length Affidavit - deters fraud since a violation of it is mortgage fraud.

- Done for the bank’s/original borrower’s benefit
- Reiterates -
 1. Arm’s Length Transaction
 - not to a relative or business associate
 2. There are no hidden terms or agreements.
 3. Borrower will be renting back the property and staying there after closing.
 4. Only compensation is the commissions.

Other issues - Insurable Interest and Chain of Title
Quiet title actions
Receiverships and take-over losses