

## Isn't That Loan Fraud?

By David R. Rocheford, Jr., Esq.

The definition of loan fraud is simple. According to the F.B.I. loan fraud is any material misstatement, misrepresentation or omission relied upon by a mortgage underwriter or lender to fund a loan.

The definition does not make any exception for white lies, half truths, fibs or creative facts. It says any material misstatement, misrepresentation or omission. In most cases if you are involved in a real estate loan transaction, as a borrower, real estate agent, attorney or some other party, and you have to ask yourself or someone else "Is that loan fraud?" 95% of the time the answer is "yes."

In most cases when I am asked about whether or not something is loan fraud the conversation usually goes something like this:

**Client:** The upstairs bathroom plumbing does not work right at all. The seller's brother-in-law did all of the work himself and never had a permit for the remodeling. I want the seller to fix it.

**Me:** Then we should state that in the purchase contract. I can have that written in as one of the terms.

**Client:** Well the seller and the seller's agent are concerned that if it is in the contract I won't get the loan. They suggested that the seller pay me for the repairs after the closing because he doesn't have the cash right now. I am fine with that. I trust them.

**Me:** So you, and the seller and their agent are afraid that if you tell your mortgage lender the truth that they may not make the loan to you. Is that right?

**Client:** Yes. I think that if my lender finds out about the condition of the bathroom I won't get the loan. And I don't mind doing the work myself once we move in.

**Me:** Ok. So think about this, if you lie to the lender or omit certain facts then they will give you the loan, but if you tell them the truth they may not give you the loan. Is that what you are worried about?

**Client:** Yes. That is what the loan officer and my real estate agent told me.

**Me:** Does that sound like loan fraud?

**Client:** No. Not really. I am not being fraudulent. I'm just not going to tell the lender and I will honestly do the work once I move in.



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**Me:** Well. That is not only loan fraud on your part, but now it sounds like conspiracy to commit loan fraud by the seller, loan officer and the agents. In fact that is exactly what it is. Let's do the right thing and work this out in a manner that you, the seller and the lender are satisfied with.

Ok, I know sometimes it can't be worked out. But that does not make the option of committing loan fraud all right. If a deal cannot be kept together with the truth and full disclosure, it is likely better to move on to the next deal.

Here are just a few examples of how mortgage loan fraud is commonly committed:

**Making false loan applications.**

Lying on a mortgage loan application, or falsifying or misstating employment or income.

**Kickbacks.**

Making or receiving payment in return for a referral which resulted in a transaction or service.

**Undisclosed second mortgages.**

Taking an undisclosed loan from the seller to assist in the purchase.

**Misstating intent to occupancy.**

Stating a borrower/owner will occupy a property that they do not intend to occupy.

**Receiving false gift funds or equity.**

Stating that a borrower will receive a gift of equity or gift of down payment but the funds will actually be paid back.

**Inflated purchase price.**

Using two purchase contracts and sending the false contract with a higher sales price to the lender in hopes of obtaining a higher appraisal.

**Falsifying deposits.**

Stating to a lender that a deposit has been paid when it has not.

**False adjustments, purchases or credits.**

Paying additional funds to, or receiving additional funds from, the seller to adjust the purchase price prior to or after closing. This includes buying items of personal property from the seller for more than fair market value.

These are only a few examples of loan fraud. If you are a borrower or real estate professional, remember that loan fraud is a federal, criminal offense. It can be a crime of conspiracy, that is if you assist in the commitment of loan fraud you can be punished under the law.

In most of the circumstances I encounter neither the borrower, real estate agent or loan officers are intending to defraud the lender. They are simply trying to get the deal done, trying to get the seller and the buyer to where they want to be. Unfortunately, the definition of loan fraud says ANY material misstatement, misrepresentation or omission. Whether or not a fact is material is up to a judge or jury to decide. Never let it get that far.

If you have a question about whether or certain facts amount to loan fraud speak with a qualified real estate attorney.