Mortgage Audits - Do They Really Help?

Among the biggest problems, however, is that unscrupulous Mortgage Audit Companies produce "audits" that won't help the homeowner. These companies often make use of a generic computer software that just talks about Truth In Lending Act (TILA) violations and nothing more. Most TILA violations have a 3 year Statute of Limitations. So, if the mortgage is more than 3 years old, the audit won't help even if violations are exposed. Note: If the mortgage is less than 3 years old, TILA violations can produce significant remedies that might include rescission (cancellation) of the loan.

We have discovered that probably the most powerful audit requires a complete manual overview of ALL mortgage documents beginning with the first application through closing. Few companies actually perform this sort of in-depth forensic audit properly. One of the most common violations we find is fraud. The fraud is generally in the proper execution of inflated income, assets, or appraised value. We also realize that the homeowner was unacquainted with the fraud because it had been the loan officer who falsified the information in order to get the loan closed and receive his/her commission. Certain types of fraud have no Statute of Limitations and are therefore enforceable even though the mortgage is over 3 years old. This fraud often requires "assistance" from the loan processor, appraiser, and/or underwriter whose duties include verifications of information within the application and supporting documents.

For example, we recently audited a declare a consumer that earned just over $4000 per month. They certainly were applying for a $175,000 mortgage for the purchase of a home. Their debt-to-income (DTI) ratio was over 60% therefore the loan should have already been denied. The borrower had recently graduated from college and had less than the usual year on his new job. He also had numerous student loans that have been deferred while he was in school, however the payments would begin in just a few months. As opposed to deny the loan (or instruct the borrower to get a more affordable property), the loan officer illegally inflated the borrower's income to $7500 per month. We know this because we reviewed copies of the initial loan application which showed the $4000 income. This was confirmed by copies of paystubs, W-2 forms, and Federal Tax Returns. The closing package told a different story. A revised "Residential Loan Application" was prepared by the lender which increased the borrowers'income to $7500 per month. There's just one place on the "Application" that discloses the borrower's income. It's on Page 2 which does not require a signature from the borrower. The borrower was shocked to discover that his income was stated as $7500. He never saw this amount until we pointed it out. Now that his student loan payments are due, he struggles to afford the mortgage payment and is facing foreclosure as a result. A loan modification has become being processed to lessen his payments.

In another case, a borrower requested a 30 year fixed conventional mortgage in 2006. He was well qualified and there should have already been not a problem getting this loan as requested. The loan officer, however, talked the borrower into accepting a loan with a Balloon Payment that has been due in 5 years. The rate was slightly better (.375%) which meant that the monthly mortgage payment was about $43 less per month. The borrower liked the low payment, but was concerned with the Balloon Payment. The loan officer improperly persuaded the homeowner to maneuver forward with the Balloon Note in spite of the borrowers concerns. The loan officer assured him he would be able to refinance the loan before the Balloon Note was due and that he should make the most of the $43 monthly savings. Why was the loan officer so insistent that he accept the Balloon Note? You will find 2 reasons; first, the Balloon Note likely produced a larger commission for himself. Secondly, he was positioning himself to refinance the loan in order to earn another commission when the Balloon Note was due (a practice called "Churning" or "Equity Stripping"). The loan officer was negligent because he'd no means of knowing whether the Borrower would qualify for the refinance as planned. Guess what...his Balloon Note came due in 2011 and he was incapable of refinance since the property value had declined by about 50%. His lender refused to modify his loan and he was facing foreclosure as a result. The lender "Breached their Fiduciary Duty" by putting the Borrower in harm's way.

If you consider the numbers closely, you will see that the Borrower really wouldn't have saved any money even though the property value had not declined and he refinanced as the loan officer suggested. The $43 monthly "savings" amounted to $2580 on the 5 years before the Note matured. ($43 times 60 months equals $2580). But, the closing costs to refinance the loan would likely have been at least very much which may negate any real savings. This homeowner did nothing wrong, but he now has damaged credit (the Note is delinquent when he could not refinance or tender the Balloon Note of almost $200,000). Most importantly, he's worried sick he will miss his home and not be able to buy another.

About the Author

What's promising is that his attorney is confident he will get his loan modified largely regarding mortgage audit software as a result of findings of our full manual forensic audit. This will likely result in the reamortization of the loan by having an interest rate that's less than he might have obtained through a refinance. There will be no closing costs and he expects a much lower payment as a result.

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