Mortgage Fraud
Red Flags, Forgeries, Releases, Powers of Attorney, Third-Party Disbursement Authorizations, Out-of-Office Closings and other Matters of Interest to the DA!

December 3-4, 2009
Hyatt Regency Hill Country Resort & Spa
San Antonio

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Christopher Lee Milner

Christopher Lee Milner has been the Chief of the Criminal Section of the Special Crimes Division at the Collin County District Attorney’s Office since May 2003. Mr. Milner received an undergraduate degree in Mathematics from Rice University in Houston, in 1972 and his Doctor of Jurisprudence degree from the University of Texas in Austin, in 1976.

He served as an Assistant District Attorney in the Criminal Division of the Dallas County District Attorney’s Office, an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney’s Office for the Northern District of Texas, and a Supervisory Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney’s Office for the Southern District of Texas. Mr. Milner joined the White Collar Criminal Section of the Dallas law firm of Gardere & Wynne in 1989, and established a solo defense practice in 1991.

Mr. Milner is Board Certified in Criminal Law by the Texas Board of Legal Specialization, and is licensed to practice in all Texas Courts, the U.S. District Courts for the Northern, Southern, Eastern, and Western Districts of Texas, the U.S. Court of Appeals for the Fifth Circuit, the U.S. Tax Court, and the U.S. Supreme Court.

He routinely provides assistance and training for peace officers and prosecutors on the topics of search warrants, mortgage fraud, and other issues arising from the investigation of complex white collar criminal matters.
RED FLAGS, FORGERIES, RELEASES, POWERS OF ATTORNEY, THIRD-PARTY DISBURSEMENT AUTHORIZATIONS, OUT-OF-OFFICE CLOSINGS, AND OTHER MATTERS OF INTEREST TO THE DA!
MORTGAGE FRAUD

... involves lying to a mortgage lender to obtain one or more financial benefits that the lender would not have provided had the truth been known!
LENDER RELIES ON THESE DOCUMENTS TO MAKE A DECISION TO FUND ...

- Loan application (and supporting documentation)
- Property Appraisal
- Lender’s Closing Instructions
- HUD-1 Settlement Statement
TEXAS PENAL CODE OFFENSES WE TYPICALLY USE

- False Statement to Obtain Property or Credit (TPC Section 32.32)
- Theft (TPC Section 31.03)
- Securing Execution of Document by Deception (TPC Section 32.46)
TEXAS PENAL CODE OFFENSES WE TYPICALLY USE

- Money Laundering (TPC Section 34.02)
- Tampering with Governmental Record (TPC Section 31.10)
- Engaging in Organized Criminal Activity (TPC Section 71.02)
False Statement to Obtain Property or Credit  (TPC Section 32.32)

... if a person intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit ...
Theft (TPC Section 31.03)

... if a person unlawfully appropriates property with the intent to deprive the owner ...
Securing Execution of Document by Deception
(TPC Section 32.46)

... if, with intent to defraud or harm any person, he causes another to execute any document affecting property, service, or the pecuniary interest of any person ...
Money Laundering
(TPC Section 34.02)

... if he knowingly [does just about anything ...] with the proceeds of criminal activity ...
If You Know The Funds Are Criminal Proceeds And You …

- Acquire or maintain an interest in them
- Possess, conceal, transfer, or transport them
- Conduct, supervise, or facilitate a transaction with them
- Invest, expend, receive, or offer to invest, expend, or receive them

You are “GUILTY” of Money Laundering!
Tampering with Governmental Record (TPC Section 37.10 (a)(5))

... if he makes, presents, or uses a governmental record with knowledge of its falsity ...
Engaging in Organized Criminal Activity (TPC Section 71.02)

... if, with intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more listed predicate criminal offenses ...
EOCA Predicate Offenses:

- All “Theft” offenses
- All Chapter 32 “Fraud” offenses
- All Chapter 34 “Money Laundering” offenses
- All Section 37.10 “Tampering with Governmental Record” offenses
Parties to Offenses

(TPC Section 7.01)

A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.
Criminal Responsibility
(TPC Section 7.02)

A person is **criminally responsible** for the conduct of another if …
... acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense, or ... 

... acting with the intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense ...
SIX LIES WE TYPICALLY TARGET

- **Owner occupancy** (the intention of the borrower to occupy the target property as his primary residence)
- **Income/employment** of the borrower
- **Debts and assets** of the borrower
- **Value** of the **target property**
- **Identity** of the **borrower**
- **Who is giving** or **getting** the **money**
THE CRITICAL DOCUMENTS WILL BE:

- Uniform Residential Loan Application (URLA, Form 1003, or “loan app”)
- Occupancy Affidavit
- Deed of Trust
- Property Appraisal
- Lender’s Closing Instructions
- HUD-1 Settlement Statement
THESE DOCUMENTS OFTEN LEAD TO:

- **Powers of Attorney** (forged and/or with false notary attestations)

- **Third-Party Disbursement Authorizations** (what does that person/entity have to do with anything?)

- **Releases** (do they make sense?)
Uniform Residential Loan Application

(URLA, or Form 1003)
### Borrower
- **Owner**
- **Occupancy**
- **Source of down payment**
- **Current residence, length of stay**

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**Uniform Residential Loan Application**

- **Amount**: $145,500
- **Interest Rate**: 4.625%
- **No. of Years**: 30
- **Amortization Type**: Fixed Rate
- **Term**: 360/365

**Property Information and Purpose of Loan**

- **Property will be**: Primary Residence
- **No. of Units**: 2

**Borrower**

- **Borrower’s Name**: Sydney Means
- **Co-Borrower’s Name**: Evelyn Means

**Legal Description of Subject Property**

- **Subject Property Address**: 450 Wherever Plano, TX 75093
- **Legal Description**: 

**Current Address**

- **Former Address**: 6 different from Present Address

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2009 TEXAS LAND TITLE INSTITUTE
Employment and monthly income

Gross monthly income

2009 TEXAS LAND TITLE INSTITUTE
Liabilities

Subtotal of liquid assets

<table>
<thead>
<tr>
<th>Description</th>
<th>Cash or Market Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liabilities and Mortgages</td>
<td></td>
</tr>
<tr>
<td>Home mortgage</td>
<td></td>
</tr>
<tr>
<td>Car loan</td>
<td></td>
</tr>
<tr>
<td>Total Liabilities</td>
<td></td>
</tr>
</tbody>
</table>

Total Assets = 175,000

Total Liabilities = 168,000
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Loan officer’s signature

Borrower’s signature

Owner, occupant

U.S. citizen,
Borrower’s signature (again!)
Occupancy Affidavit
Primary, investment, or secondary residence

Lying on this form is a crime

Signature and sworn notary attestation

2009 TEXAS LAND TITLE INSTITUTE
Deed of Trust
Identity and address of lender

Identity and address of title company, closer
1-4 Family Rider
Occupy Clause

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Signature(s) of borrower(s)
Notary attestation (sworn)
WHO TYPICALLY MAKES FALSE STATEMENTS IN CONNECTION WITH THE LOAN APPLICATION?

a. Purchaser/borrower …
b. Any agent the purchaser/borrower permits to act/speak for him/her …
c. Mortgage broker …
d. Loan officer …
e. Whoever “a.,” “b.,” “c.,” and/or “d.” is/are working with …
Property Appraisal
<table>
<thead>
<tr>
<th>Property address</th>
<th>Name of borrower</th>
<th>Contract price</th>
<th>$$$ assistance for borrower</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Comparable properties

<table>
<thead>
<tr>
<th>Similarity</th>
<th>Description</th>
<th>County</th>
<th>Size</th>
<th>Value</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

## Appraised value and date of appraisal

- **Appraised value**: $540,000
- **Date of appraisal**: 2009

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2009 TEXAS LAND TITLE INSTITUTE
Notes to underwriter
APPRAISER’S CERTIFICATION: The appraiser certifies and agrees that:

1. I have researched the subject property and have selected a market area of three recent sales of properties of similar size and status to the subject property for analysis in the same comparable analysis and have made a dollar adjustment when appropriate to reflect the impact of these sales on the subject property. I have evaluated the subject property and made a dollar adjustment when appropriate to reflect the impact of the subject property on these sales

2. I have taken into consideration the factors that have an impact on value in my development of the market value in the appraisal report. I have not known of any significant influence from the appraisal report or information that I believe would affect the market value of the subject property

3. The findings in the appraisal report are my own personal, observed, and professional estimation of market value, which may be subject to significant variations in the subsequent market value.

4. I have not prepared any analyses of the subject property that I am not familiar with. The subject property is subject to appraisal of the subject property for compensation and have not used any knowledge of the subject property as a basis for compensation.

5. I am not aware of any information that is not in the appraisal report that would affect the subject property.

6. I was not required to prepare a report or report of any nature that would affect the subject property, the amount of the value estimate, the appraisal is a specific transaction or the market conditions at the time of the appraisal.

7. I have taken into consideration the market conditions of the subject property. I have not used any information that is not in the appraisal report, the subject property is subject to appraisal of the subject property for compensation and have not used any knowledge of the subject property as a basis for compensation.

APPRAISER’S CERTIFICATION:

Supervisory Appraiser

Address of Property Appraised:

Signature of Appraiser

Date

State Certification No.

4001 E 6-03

5-03-2009

State and County

63-03-6-01

4001 E 6-03

2009 Texas Land Title Institute
Licensed as a certified appraiser
WHO TYPICALLY MAKES FALSE STATEMENTS IN CONNECTION WITH THE APPRAISAL?

a. Appraiser …

b. Whoever requested the false appraisal …

c. Whoever “b.” is working with …
RANDOM TIP #1!

For help in reviewing suspected fraudulently-inflated property appraisals, contact the Texas Appraiser Licensing and Certification Board (512/465-3958) in Austin, Texas ...
Lender’s Closing Instructions
Names and addresses of lender and title company
Title company certification

<table>
<thead>
<tr>
<th>Date:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
</tbody>
</table>

2009 TEXAS LAND TITLE INSTITUTE
Lender’s Closing Instructions –

This is a checklist the lender provides to the closer/title company describing the specific documents that must be revised, or provided by the borrower, or presented to and executed by the borrower, before the lender will fund a home loan transaction ...
Lender’s Closing Instructions –

The title company certifies compliance with these instructions and then distributes the loan proceeds and other funds collected to the various providers of services described on the HUD-1 Settlement Statement ...
So if the closer/title company falsely certifies that it has complied with the Lender’s Closing Instructions when in reality it has not, then the closer/title company is almost certainly guilty of FSTOPOC, SEDD, ML, and THEFT, as well as EOCA (and so is whoever asked them to do it that way …)
WHO TYPICALLY MAKES FALSE STATEMENTS IN CONNECTION WITH THE LENDER’S CLOSING INSTRUCTIONS?

a. Closer …
b. Whoever “a.” is working with …
c. Lender’s underwriter …
d. Whoever “c.” is working with …
HUD-1 Settlement Statement
Borrower, seller, lender, property address, settlement agent, place of settlement

Settlement date

Gross amounts due from borrower, due to seller

Significant cash to third parties

Cash (from/to) borrower cash (to/from) seller

Settlement agent’s certification
Real estate broker/agent commissions

<table>
<thead>
<tr>
<th>Description</th>
<th>Paid From Seller's Funds at Settlement</th>
<th>Paid From Buyer's Funds at Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title Insurance</td>
<td>1,800.00</td>
<td></td>
</tr>
<tr>
<td>Real Estate Broker/Agent Commission Fee</td>
<td>11,180.00</td>
<td></td>
</tr>
</tbody>
</table>

* See Supplemental Page for details.
Buyers’, sellers’, and settlement agent’s certifications
The closer typically sends a preliminary HUD-1 Settlement Statement to the lender before the lender funds the mortgage loans, and a “final” HUD-1 Settlement Statement to the lender after the closing ...
Remember!

If a payment or transfer of anything of value between the various parties to the transaction in question is not recorded accurately on the HUD-1 Settlement Statement, IT IS ILLEGAL!
SEE TEXAS INSURANCE CODE

- Section 2702.052 (a)(1) – The department shall prescribe uniform closing and settlement statement forms to be used in connection with the conveyance or mortgage of real property.

- Section 2702.053 (a) – Each closing and settlement statement provided to a party to a transaction described by Section 2702.052 (a) must state the name of any person receiving any amount from that party.
RANDOM TIP #2!

If the payments shown on the HUD-1 Settlement Statement to don’t match the title company’s disbursement ledger, the closer and/or title company is/are probably
dead in the water ... (and so is whoever wanted them to do it that way ...)
RANDOM TIP #3!

Using the HUD-1 Settlement Statements (always found in the “loan file” and “closing file”) to help determine who benefited financially from the mortgage loan proceeds will often help identify the culpable parties for the suspected fraud in question ...
RANDOM TIP #4!

If the HUD-1 Settlement Statements from the lender’s loan file and the title company’s closing file (for the same transaction) don’t agree with each other, chances are very, very good that the closer has not complied with the Lender’s Closing Instructions, and the closer/title company is complicit in the fraud …
WHO TYPICALLY MAKES FALSE STATEMENTS IN CONNECTION WITH THE HUD-1?

a. Closer …

b. Whoever “a.” is working with …

c. Lender’s underwriter …

d. Whoever “c.” is working with …
CRITICAL DOCUMENTS

Mortgage Lender’s “Loan File”
Title Company’s “Closing File”
Deed Records at County Clerk’s Office
RANDOM TIP #5!

The identities and addresses of the mortgage lender and/or the title company can often be found on the “Deed of Trust” filed in the Deed Records of the County Clerk’s Office, or on-line at the CAD (“County Appraisal District”) websites ...
Typical Investigative Strategy

1. Find Deed of Trust
2. Identify mortgage lender and title company
3. Issue grand jury subpoenas *duces tecum* for the “loan file” and “closing file”
4. Locate the URLA/1003/“loan app,” the property appraisal, and the Occupancy Affidavit
Typical Investigative Strategy

5. See what these documents say about the five most commonly misrepresented facts

6. Determine whether any of the most commonly misrepresented facts are false

7. Determine who is responsible for submitting the false information

8. Convict as many complicit “parties” to the offense as possible
Standard GJ Subpoena Attachment for Mortgage Lender
(and/or Title Company)
The Collin County Grand Jury requests production of true and correct copies of the complete contents of the following XYZ Mortgage Corporation ("XYZ") residential mortgage loan files:

1. The XYZ files pertaining to the purchase of 1234 Anyplace Drive, McKinney, Collin County, Texas 75070, by Bobby and Janet Buyer ("purchasers/borrowers") on or about June 1, 2006;

said complete XYZ loan files to include, but not be limited to, the following categories of documents, regardless of where and how executed, or when and how eventually transmitted to XYZ:

a.) All residential mortgage loan applications, financial statements, lease agreements, and other supporting documentation provided to XYZ by or on behalf of the purchasers/borrowers, and all documentation of XYZ underwriting and verification efforts concerning the same (including credit reports; property appraisals and surveys; contracts for sale; broker’s continuation agreements; verifications of employment, income, asset values; and previous residences; etc.);

b.) All affidavits, statements, disclosures, notices, special warranty deeds, deeds of trust, riders, assignments of proceeds, acknowledgments, and other similar real estate-related documents purportedly executed by or on behalf of the purchasers/borrowers in furtherance of his/her/their loan application and related real estate closing;

c.) All corporate board authorizations and minutes, partnership resolutions, powers of attorney, and similar documents;

d.) All correspondence, whether handwritten, facsimile, typed, and/or e-mailed, between any of the individuals and/or entities directly or indirectly involved in the processing or funding of the mortgage loan(s) in question, or in the related real estate closing in question, including, but not limited to, all lender’s closing instructions;

e.) All HUD-1 settlement statements bearing one or more red ink signatures of the seller, purchasers/borrowers, and escrow officer/closer, and all documentation (checks, debit memos, cash-in tickets, cash out tickets, documentation pertaining to incoming and outgoing wire transfers, etc.) reflecting monies received and disbursed at the real estate closing in question;
IRS docs and SAR's

Promissory notes

Lender investigative and foreclosure records

1. All IRS tax-related documents, if any, all IRS currency transaction reporting documents, if any, and all Suspicious Activity Reports, if any, prepared and/or submitted to any federal agency in connection with the real estate closing in question;

2. All notes and other instruments reflecting purchasers/borrowers' obligation to pay;

3. All documentation pertaining to XYZ efforts, if any, to investigate possible fraudulent conduct in connection with the application or funding of said loan(s); and

4. All documentation pertaining to XYZ efforts, if any, to foreclose on said residential property.

*****

Please number each page of the documents intended for production to the Collin County Grand Jury pursuant to this grand jury subpoena duces tecum in a sequential manner, beginning with the number “10,001” and continuing with “10,002,” “10,003,” etc., until each such document produced bears its own unique number. If any of the documents produced contains information on both of its sides, please be sure each side of that document receives and bears its own unique number.
RANDOM TIP #6!

Look for the borrower’s notarized signatures on the Occupancy Affidavit, Deed of Trust, and any other notarized documents that appear in the file – if the signature dates are the same (often the closing date), but more than one Notary Public has been used, chances are that one of the notaries and the closer have criminal liability …
Venue for Criminal Prosecution

- Where false documents are prepared ...
- Where false documents are executed ...
- Where false documents are reviewed by lender ...
Venue for Criminal Prosecution

- Where the residential property is located ...
- Where false documents are filed as governmental records ...
How to approach complex scenarios with multiple suspected transactions ...

1. Chart suspected parties for each transaction ...

2. Select 2-4 of the most suspicious transactions with the most suspected parties in common ...

3. Follow the typical investigative strategy described earlier ...

4. Identify the most vulnerable suspected party and bring him/her on board ...
House # (chronologically)

Borr.

Real.

Apprsr.

Mtg. Bkr.

Lndr.

Ttl. Co.
WHAT WE USE TO BRING PERPS ON BOARD

Voluntary Confession and Plea Agreement ("V.C.P.A.")
Paragraphs of voluntary confession

CAUSE NO. ______________

STATE OF TEXAS

v.

DISTRICT COURT OF

COLLIN COUNTY, TEXAS

VOLUNTARY CONFESSION AND PLEA AGREEMENT

I. Voluntary Confession

Comes now Defendant LIKELY PERP ("Defendant Perp"), in the presence of his attorney, M.I. Gettinerich, and being fully informed of his right not to incriminate himself, freely and voluntarily waives that right, acknowledges that he is neither in custody nor under duress, and readily confesses as follows:

1. On or about November 28, 2006, in Collin County, Texas, I, LIKELY PERP, did knowingly assist the proceeds of criminal activity, to wit: False Statement To Obtain Property Or Credit in the amount of $200,000.00 or more, a felony criminal offense in the State of Texas, through the purchase of the residential property located at 1234 Wealthy Drive, Plano, Collin County, Texas 75999, and the value of said criminal proceeds was $200,000.00 or more, in violation of Texas Penal Code §§ 34.02 (a)(3) and (e)(4).

2. On or about November 28, 2006, in Collin County, Texas, and elsewhere, I, LIKELY PERP, with intent to establish, maintain, and participate in a combination, and in the profits of a combination, said combination consisting of; among others, myself, Second Guy, Third Crook, Fourth Hook, and Fifth Dude, who collaborated in carrying on the hereinbefore described criminal activity, did commit the following offenses: False Statement to Obtain Property or Credit in excess of $200,000.00 in connection with the purchase of the residential property located at 1234 Wealthy Drive, Plano, Collin County, Texas 75999 (Texas Penal Code, §§ 32.32 (b) and (c)(7)); and Money Laundering involving criminal proceeds with a value in excess of $200,000.00 in connection with the purchase of the residential property located at 1234 Wealthy Drive, Plano, Collin County, Texas 75999 (Texas Penal Code §§ 34.02 (a)(3) and (e)(4)); all in violation of Texas Penal Code § 71.02 (a)(8) and (a)(10).
What the perp agrees to plead “Guilty” to

What the perp agrees to waive

How the perp agrees to cooperate
Restitution for costs of investigation

State will wait to pursue charges against the perp

How the perp can get a “free pass”

In return for the agreements of Defendant Perp described in paragraphs 1. through 4. of this Plea Agreement, the State agrees to:

A. Refrain from filing the two-count criminal information described above in paragraph 1. of this Plea Agreement until such time as the State, in its sole discretion, has determined the nature, value, and extent of Defendant Perp’s cooperation pursuant to paragraph 3. of this Plea Agreement.

B. Refrain from prosecuting Defendant Perp for any other non-violent criminal offense substantially related to the conduct described in his Voluntary Confession appearing on page 1 of this document (hereinafter “paragraph B. offenses”), so long as he timely discloses any such other non-violent criminal offense to the Collin County District Attorney’s Office in connection with the cooperation described above in paragraph 3. of this Plea Agreement and remains in compliance with all other terms of this Plea Agreement.
Perp must finish probation or sentence to keep the “free pass”

All the various ways the perp can blow his “free pass”
State can use perp’s information against him

State can use the V.C.P.A. against the perp any time it wants to

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There are no side deals or other parties to this agreement.
All of the perp’s statements are under oath
THE END!