

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Insurance
(AC-In)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

COMMITTEE NOTICES ...

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ **

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➤ Executive Sessions ... ES

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➤ Record of Comm. Proceedings ... RCP

➤ **

INFORMATION COLLECTED BY COMMITTEE
CLERK FOR AND AGAINST PROPOSAL

➤ Appointments ... Appt

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Name:

➤ Clearinghouse Rules ... CRule

➤ **

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr_ab0127_AC-In_pt01**

➤ Miscellaneous ... Misc

➤ **

Milwaukee Journal Sentinel

Business

FINAL EDITION 2

MONDAY, APRIL 11, 2005

Mortgage fraud takes heavy toll

Boom in property values makes huge market an attractive target

By **MICHELE DERUS**
mderus@journal sentinel.com

America's booming mortgage industry has proven ripe for criminal pickings.

Cases of mortgage fraud are mounting.

The financial toll is reaching "tens of millions of dollars each year," though the actual damage is "unknown and probably unknowable," said William Matthews, vice president of Mortgage Asset Research Institute Inc., in an interview from his Reston, Va.,

headquarters.

Losses hit consumers, lenders, investors and neighborhoods in any combination, depending on the scam, said one industry expert.

As of September 2004, 533 FBI mortgage fraud investigations were under way, up from 202 in 2001, according to a Mortgage Bankers Association analysis released in January. The same report stated that, by last September, banks had reported 12,100 cases of suspicious financial activity

to date in 2004, compared with 4,220 in all of 2001.

"We're seeing more incidents reported every year, and it's getting more egregious, in terms of losses," Matthews said.

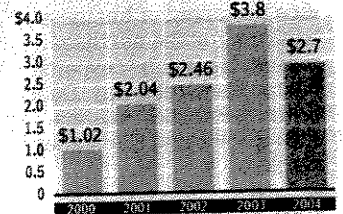
Matthews, who is co-author of an annual mortgage fraud report to the Mortgage Bankers Association of America, sees the crime spree as tied to the market's heady growth — now nearly triple its \$1 trillion size in 2000.

His reports don't calculate dollar losses, which he said victims are loathe to disclose, and complaint volume is kept confidential. Despite the pri-

FRAUD HOME IS WHERE THE MONEY IS

Mortgage originations nearly quadrupled from 2000 to 2003, providing a hard-to-miss target for fraud

MORTGAGE ORIGINATIONS
IN TRILLIONS



Source: Mortgage Bankers Association

BOB VEIERSTAHLER
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Please see **FRAUD, 5D**

FRAUD, From 1D

vate nature of his work. Matthews agreed to share his insights.

Insiders are the main culprits, he said.

"There's fraud for commission, where a professional such as the mortgage broker, banker, realty agent or appraiser changes documents in order to get a commission. This results in a loss to lenders. Then there's fraud for profit, where the con artists are people in the know — mortgage bankers, brokers, real estate agents, appraisers — ripping off the system. Some of their schemes are just outrageous," he said.

Borrowers rarely fleece the system. "Oh, maybe they get their employer to fudge some numbers for them, or get a relative to report a second job that they don't really have. But what they do usually doesn't result in losses. After all, if you cheat to get your home, you'll probably give up a lot to keep it," Matthews said.

It's a shameful sign of our times, said David Callahan, research director at the public policy group Demos in New York City, and Tim Doyle, director in government affairs for the Mortgage Bankers Association.

"This is just another area in American life where a boom, with all its money to be made, brought out the worst in us," said Callahan. "The carrots for cheating are getting bigger, and even though the sticks are hitting harder, our watchdogs are asleep, so it's easy to get away with things."

The carrots sure are getting bigger.

The mortgage-loan origination market shot up from \$1 trillion in 2000, the start of a refinancing tidal wave created by super-low interest rates, peaking at \$3.8 trillion in 2003 before subsiding last year to \$2.7 trillion.

"The housing market's been very active. Property values have risen very quickly, so there's a sense that there's a lot of money out there to be had," Doyle said. "I'm shocked by how many reports there are every day around the country about fraud convictions or indictments."

Too bad the mortgage industry has no single federal agency monitoring its affairs, said industry experts. Government regulation is splintered, and in some cases — notably mortgage brokers — almost nonexistent, they said.

"You can be driving a truck or selling cars today and, tomorrow, be a mortgage broker dealing with large sums of money," Matthews said.

Consider events of recent weeks:

Federal housing regulators disclosed investigations into alleged scams across the nation involving illegal kickbacks from title insurers to lenders, realty agents, builders and developers sending them customers. The U.S. Department of Housing and Urban Development settled cases in Texas and Oklahoma for nearly \$7 million. Meanwhile, Colorado and California are pursuing state charges against title insurers and their cronies operating there. Several Wisconsin title insurance representatives and lawyers say they've talked to HUD investigators about referral practices here, too.

Fannie Mae, the nation's largest mortgage financier, forfeited \$7.5 million to federal regulators for not speaking up while crooks sold what it knew were bad loans to a competitor. The Office of Federal Housing Enterprise Oversight now wants to impose a four-day reporting mandate on Fannie

Mae and its fellow government-sponsored enterprise, Freddie Mac, regarding any known or suspected fraudulent activity.

Warning that millions of dollars are being siphoned from the mortgage market via money-laundering schemes and fraud for profit, the Mortgage Bankers Association launched an online anti-fraud center. The site, www.mortgagebankers.org/MBAFightsFraud/ will carry public information on mortgage crimes and punishments plus password-protected security alerts to its members.

Demos issued a report warning that conflicts of interest pervade the home loan trade, where inflated property values have delivered handsome benefits to lenders and realty agents, leaving homeowners to discover their dearth of equity. Written by Callahan, the report suggests that some of the \$450 billion in home equity that homeowners cashed out during the 2001-'04 mortgage refinancing boom was based on exaggerated home values that came from the practice of muscling appraisers into pricing a property to "make that deal."

Some trade groups — notably appraisers and mortgage brokers — are asking regulators for stronger governance to roust their wrongdoers.

First you've got to find the wrongdoers, Matthews said. He advocates a national registry of loan originators to prevent scammers from leap-frogging states ahead of the law.

"It all comes down to accountability," he said. "I'd say we need more accountability after the fact, too. If someone costs us \$2.5 million in losses and never spends a day in jail, I have trouble with that."

Callahan recommends a legal firewall between property appraisers and other parties in a real estate transaction — ideally, prohibiting other parties from initiating any communication with the appraiser. His other advice: "Make sure all the actors in the process are accountable to some regulator."

Alan Hummel, government relations chairman of Appraisal Institute, a nationwide professional group based in Chicago, backs more sweeping change, as proposed March 15 in what's called The Responsible Lending Act. The legislative proposal, sponsored by U.S. Reps. Bob Ney (R-Ohio) and Paul Kanjorski (D-Pa.) establishes a mortgage broker registry and addresses improper pressures on appraisers, Hummel said. His trade group has endorsed the act, which critics claim set lower standards than many states.

Some remedy is needed soon, Callahan emphasized.

"Housing is a more important part of our economy than it's ever been, and people's fortunes are tied to mortgaged properties," he said.

Much of the law-breaking is well known but is not openly discussed.

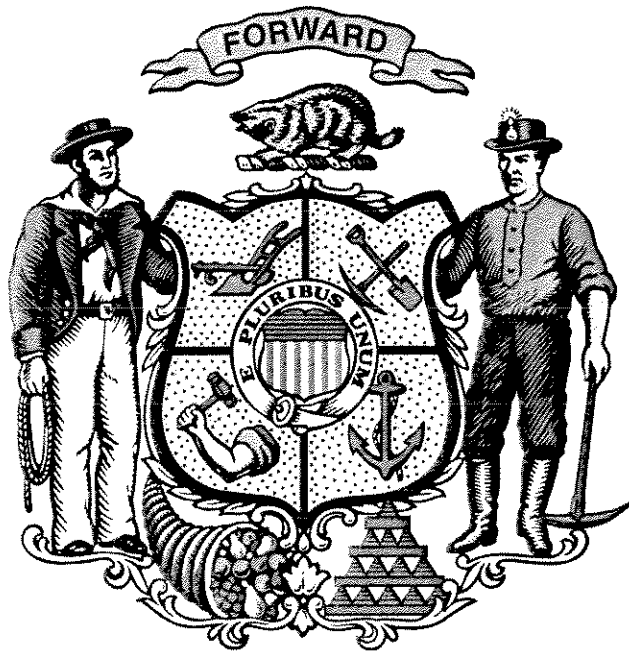
"Fraud is America's little mortgage secret, and it's scary," Hummel said. "It touches those who know it's occurring and those who don't even suspect it."

THE SCALE OF THE PROBLEM

\$3.8 billion in restitution orders and \$35.6 million in fines to parties in financial institutional fraud cases during fiscal year 2003, thanks to FBI investigations.

215 real estate fraud investigations initiated by IRS Criminal Investigation in fiscal 2003 — double the 107 investigations begun in fiscal 2001.

Source: IRS



COMMITTEE ON INSURANCE

Public Hearing AB 127

April 21, 2005

**Testimony of Rep. John F. Townsend
52nd Assembly District**

Thank you Madame Chairperson for the opportunity to explain to the Committee of Insurance AB 127. This bill was before the Committee on Insurance last session and was approved by the Committee 14-0. It was approved by the Assembly by a voice vote on February 25, 2004. The bill was not brought to a floor vote in the Senate.

According to a study of the Wisconsin Taxpayers Alliance, in 1995, real estate accounted for 26% of Wisconsin's personal wealth. Today, real estate, mainly homes, account for about 69% of the net worth of a middle class family. Because of the importance of real estate, we place a great importance on the accuracy of land records and real estate transactions.

For the year 2003, the Wisconsin Department of Revenue reported an equalized value based upon all property in Wisconsin of over \$360 billion dollars. Based upon reported sales of existing homes, it is estimated that there were approximately 116,000 real estate transactions in Wisconsin for the year 2003. The soundness of our economy is dependent upon accurate recording of real estate transactions.

A recent article in the Milwaukee Journal Sentinel indicated the magnitude of property transactions in the United States.

In 2000, mortgage originations in the U.S. were in the order of one trillion dollars. The volume for 2004 was \$2.7 trillion.

Volume of this magnitude provides tantalizing incentives for fraud of various types. Fraud for real estate transactions is increasing. AB 127 will provide another tool to help stem the tide of increasing fraud related to real estate transactions.

When a real estate transaction occurs, a title company is hired to ascertain who owns it and what liens and other encumbrances which affect the value of the property, or which must be removed so that the seller can deliver clear title to the buyer and to insure that the buyer's lender will have first claim against the property should the buyer default on the loan which is made to finance the transaction.

Historically, a document referred to as an "Abstract" or an "Abstract of Title" contained the legal description of the property and all factors affecting title to the property. Such a document was prepared by a title company. When there was a change in ownership, the title company would update the "Abstract". It would then be reviewed by a lawyer who rendered an opinion concerning the current ownership and what steps to take so the owner could transfer title free and clear of liens and encumbrances.

Current law makes it a crime for a person to “falsely (make) or (alter) a certified abstract of title to real estate with the intent to defraud another.” This prohibition is contained in Wis. Stats. s.943.38(3)(f). The penalty for violating the current law is a fine up to \$10,000 and imprisonment in the county jail, for up to nine months, or both. This means that a violation of the current law constitutes a Class A misdemeanor, under Wis. Stats. s939.51(3)(a).

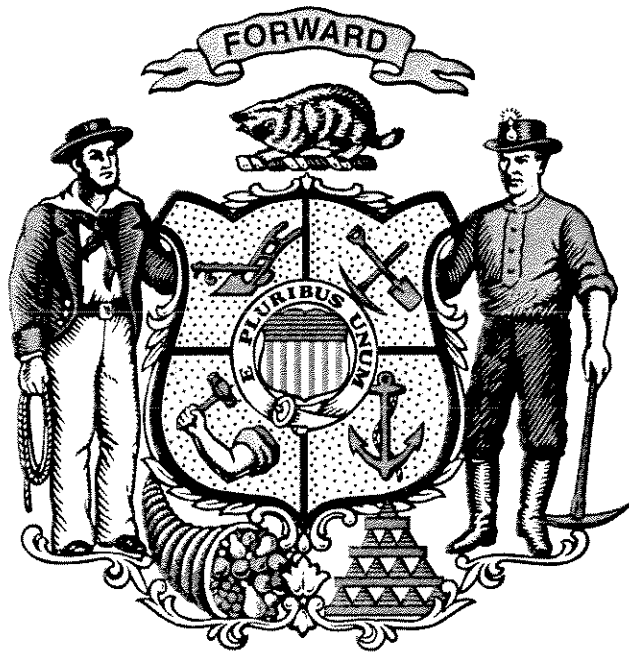
In recent years, the use of “Abstracts of Title” has greatly diminished in favor of title insurance. The same title companies are doing the same public record searches, but they do so as agents of title insurers rather than as preparers of “Abstracts of Title”, and what they produce is the formal promise by a title insurer to produce an insurance policy which guarantees clear title once the liens and encumbrances are removed.

This change in practice has been beneficial for buyers as well as for sellers. Title Insurers are licensed by the state and are required to maintain policy reserves to pay claims. It is no longer necessary for a lawyer to be hired to review the “Abstract” and render an opinion as to what actions need to be taken to deliver clear title to the buyer. But, the change also means that the current statute, which makes it a crime to falsely make or alter an “Abstract”, needs to be expanded to include a title insurance commitment.

Assembly Bill 127 will expand the prohibition contained in Wis. Stats. S943.38(3)(f) to include falsifying or altering “a title insurance commitment, a title insurance policy, or any other written evidence regarding the state of title to real estate.”

A review of today’s new technologies and practices make it clear that we need to update Wisconsin law to reflect these

changes. AB 127 will provide additional protection for all parties affected by real estate transactions.





April 21, 2005

To: Members of the Assembly Committee on Insurance
From: Peter C. Christianson, for the Wisconsin Land Title Association
Re: Assembly Bill 127 merits support

The members of the Wisconsin Land Title Association strongly support Assembly Bill 127. The bill is identical to 2003 Assembly Bill 545, which passed the Assembly unanimously last session but arrived in the Senate too late to be considered. Here are the reasons why Assembly Bill 127 is good public policy:

1. Current law makes it a crime for a person to "falsely [make] or [alter] a certified abstract of title to real estate with the intent to defraud another." This prohibition is contained in Wis. Stats. s. 943.38 (3) (f).

2. The penalty for violating the current law is a fine of up to \$10,000 and imprisonment in the county jail for up to nine months, or both. This means that a violation of the current law constitutes a Class A misdemeanor, under Wis. Stats. s. 939.51(3)(a).

3. Assembly Bill 127 would expand the prohibition contained in Wis. Stats. s. 943.38 (3) (f) to include falsifying or altering "a title insurance commitment, a title insurance policy, or any other written evidence regarding the state of title to real estate."

4. When a real estate transaction occurs, a title company is hired to ascertain who owns it and what liens (i.e. debts of the owner) and other encumbrances (i.e. rights of way owned by third parties, etc.) which affect the value of the property or which must be removed so that the seller can deliver clear title to the buyer and to insure that the buyer's lender will have the first claim against the property should the buyer default on the loan which is made to finance the transaction.

5. Historically, the title company produced a document commonly referred to as an "Abstract" or an "Abstract of Title." Such a document would provide an enumeration of the public records available which would establish or affect the current ownership of the property. The Abstract would then be reviewed by a lawyer who would render an opinion concerning the current ownership and what steps would have to be taken so that the owner could transfer title free and clear of liens and encumbrances.

6. That's how land transactions took place from the time that Wisconsin became a state until the last 30-40 years. In fact, many of the title companies which operate in Wisconsin are among the oldest continuously-operated businesses in their communities.

7. In more recent years, the use of Abstracts of Title has greatly diminished in favor of title insurance. The same title companies are doing the same public record searches, but they do so as agents of title insurers rather than as preparers of Abstracts of Title, and what they produce is the formal promise by a title insurer to produce an insurance policy which guarantees clear title once the liens and encumbrances are removed.

8. This change has been beneficial for buyers as well as for sellers. Title insurers are licensed by the state and are required to maintain policy reserves to pay claims. It is no longer necessary for a lawyer to be hired to review the Abstract and render an opinion as to what actions need to be taken to deliver clear title to the buyer.

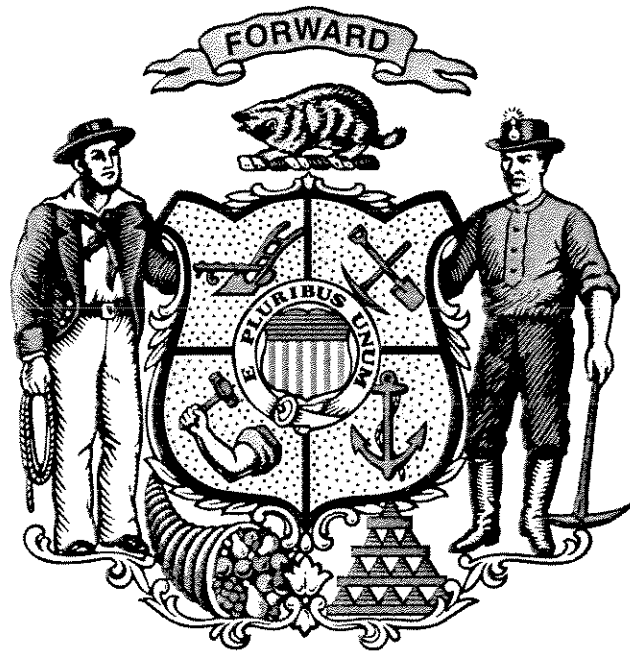
9. But the change also means that the current statute which makes it a crime to falsely make or alter an abstract no longer fits the crime. The purpose of AB 127 is to make the law relevant to the type of criminal activity which could occur today.

10. A review of today's new technologies make it clear why it is necessary to update the law. In the old days, a title company would obtain printed letterhead from a local printer and a long-time employee would prepare an abstract in long hand. The local lawyers would be familiar with the style and practice of the title company and would recognize the handwriting of the person who prepared and signed the abstract. Later, title documents were prepared using manual typewriters and would be signed by an employee of the title company authorized to sign on its behalf. This is when the current law would likely have been enacted, because the switch from long hand meant that it would no longer be possible to rely upon recognition of handwriting to establish the authenticity of a document.

11. The same recognition problems exist today. With the internet and modern copy machines, it is now possible to "cut and paste" and forge a wide variety of documents. This is why the federal government decided to change the \$20 bill, for example.

12. An informal survey of Wisconsin title insurers in southeast Wisconsin produces examples of current claims against title insurers which involve forgery of title insurance documents. There is a case pending in Dodge County, for example, in which an elderly individual was induced to loan money with the promise of obtaining a second mortgage as security. A falsified title insurance commitment was provided to him by the party borrowing the money, who did not own the property in question. It would also be relatively easy, for example, to alter a title insurance commitment to remove a particular lien, which would mean that the lien might not be removed at closing.

mjw



Committee Proposals
Items in committee
Committee on Insurance

02/22/2005 **Assembly Bill 127**
relating to: falsifying title insurance documents and providing a penalty.

By Representatives Townsend, Nass, Van Roy, Hines, Lehman, Nelson, F. Lasee, Petrowski, Albers and Hundertmark; cosponsored by Senators Roessler and Miller.

Analysis by the Legislative Reference Bureau

Under current law, no person may falsely make or alter a certified abstract of title to real estate with the intent to defraud another. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned in the county jail for not more than nine months or both. This bill expands the scope of that prohibition so that it covers falsifying a title insurance commitment, a title insurance policy, or any other written evidence regarding the state of title to real estate.

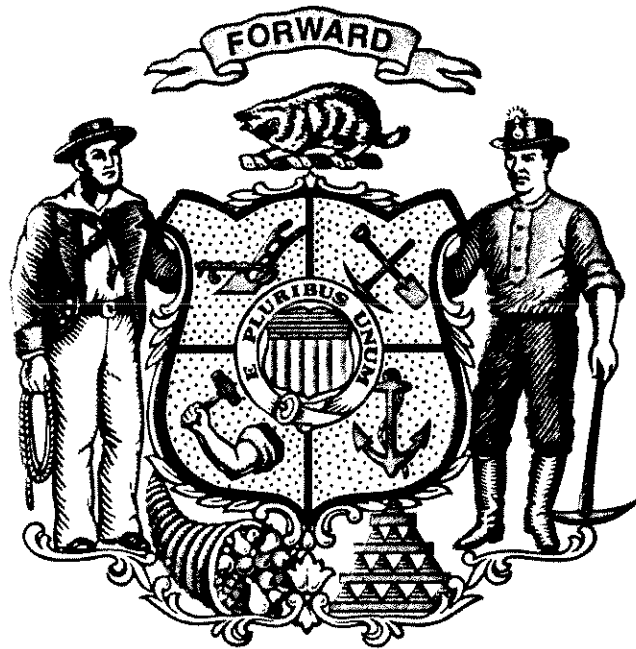
Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

3/29/05 Asked Minette to find out about

JRCAP.

Asked Minette to have Townsend talk
to Rep Mischke.



Assembly Republican Majority Bill Summary

Contact: Mary Jan Rosenak, Office of Rep. Ann Nischke

AB 127: Title Insurance fraud

Relating to: falsifying title insurance documents and providing a penalty.

By Representatives Townsend, Nass, Van Roy, Hines, Lehman, Nelson, F. Lasee, Petrowski, Albers and Hundertmark; cosponsored by Senators Roessler and Miller.

Date: Date of Scheduled Floor Action

9/22/05

BACKGROUND

Under current law, no person may falsely make or alter a certified abstract of title to real estate with the intent to defraud another. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned in the county jail for not more than nine months or both.

SUMMARY OF AB 127

Assembly Bill 127 expands the scope of that prohibition so that it covers falsifying a title insurance commitment, a title insurance policy, or any other written evidence regarding the state of title to real estate.

FISCAL EFFECT

A fiscal estimate prepared by the Office of the Commissioner of Insurance indicates that there will be no state fiscal cost and no local government cost.

PROS

1. A tool to discourage and penalize fraud in real estate transactions.
2. Real estate closings have changed over time, so that title insurance is more common than the abstract of title, and this bill updates to reflect current practice.

CONS

1. There were no cons presented at the hearing, and the bill passed out of committee in a non-partisan vote.

SUPPORTERS

Rep. John Townsend, author; Sen. Carol Roessler, lead co-sponsor; Pete Christianson, and Louie Andrew, both from Wisconsin Land Title Association.

OPPOSITION

No one registered or testified in opposition to Assembly Bill 127.

HISTORY

Assembly Bill 127 was introduced on February 22, 2005 and referred to the Assembly Committee on Insurance. A public hearing was held on April 21, 2005. On May 19, 2005, the Committee voted 14-0, With Representative Phil Montgomery absent to recommend passage of AB 127 ~~as amended.~~