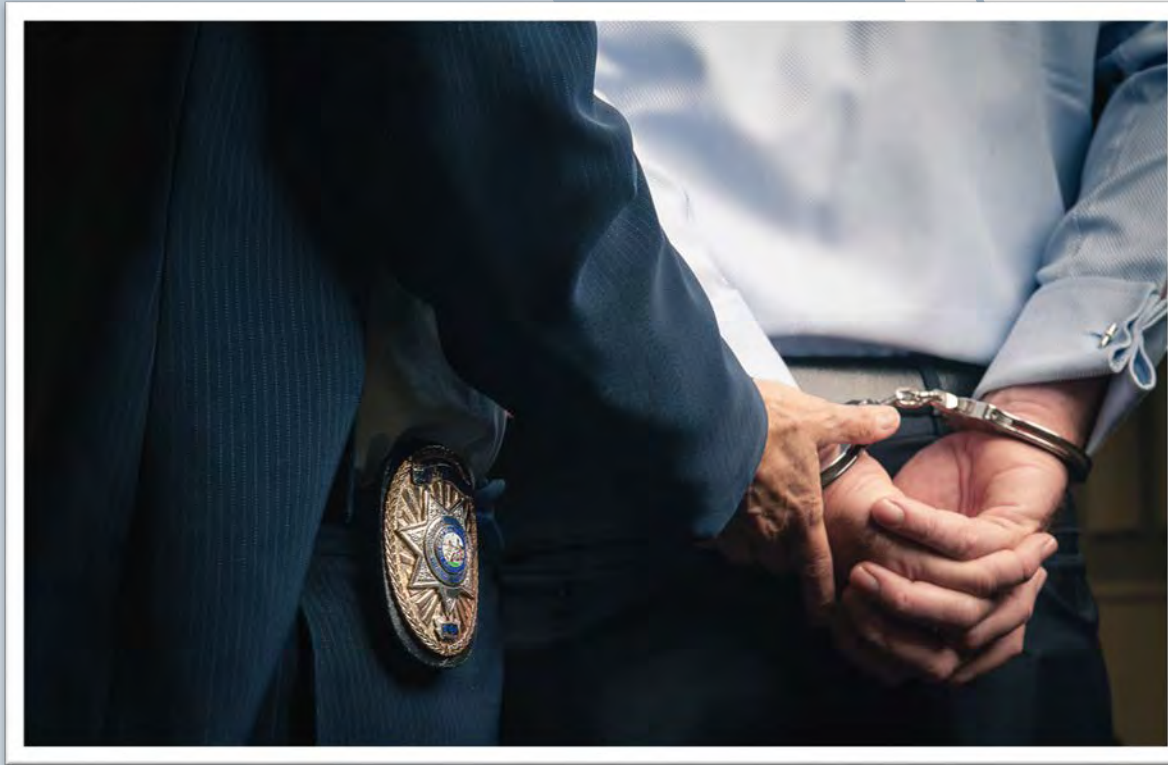




REAL ESTATE FRAUD & BEST PRACTICES FOR REAL ESTATE PROFESSIONALS

OCDA REAL ESTATE FRAUD UNIT
SEPTEMBER 16, 2021

When do Real Estate Shenanigans become Criminal?



Law and Order: Criminal Intent

Civil

- Private citizens (or companies) sue each other in court
- Standard is “preponderance of the evidence” – 50% + a hair
- “Winner” typically gets monetary award and/or specific action taken
- Common RE-related causes of action:
 - Breach of contract
 - Specific performance
 - Quiet title
 - Landlord/tenant disputes

Criminal

- A prosecuting (gov’t) agency brings criminal charges against an individual (or company)
- Standard is “beyond a reasonable doubt” – abiding conviction that the charge is true
- If a defendant “loses,” result is loss of liberty (probation, jail, community service)
- Common RE-related criminal charges:
 - Generally requires we can prove a **criminal intent to defraud** or **knowing falsehood**



Real Estate Fraud California Statutes

- **Penal Code 115 – Offering a false or forged instrument for recording**
- **Civil Code 2944.7 – Upfront loan mod fees**
- **Penal Code 487 – Grand Theft** (Theft of real or personal property of another (or of property entrusted by another)); theories of liability include:
 - Theft by trick and device
 - **Embezzlement** (position of trust used to obtain property and convert it for own benefit)
 - **Theft by false pretenses** (intentionally deceiving a property owner by false or fraudulent representation or pretense)



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Penal Code 115(a): Filing False Document

(a) Every person who **knowingly** procures or offers any **false or forged instrument** to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

False vs. Forged:

- False: where a deed appears valid on its face but in fact a spurious document (e.g., a “wild” deed).
 - Recording a quitclaim deed where the purported conveyor does not in reality own any interest in the property, whereby the recording of the deed would establish a cloud on title, would meet this definition of a “false instrument.” (See *Generes v. Justice Court* (1980) 106 CA3d 678, 682).
- Forged: where the person signing the deed did not intend to/actually do so.
 - Signatures on Deed of Trust obtained from victims under the fraudulent representation that it was in fact a grant deed to consummate their cash purchase of a home are “forged.” (See *People v. Astorga-Lider* (2019) 35 CA5th 646, 653).
 - Signature purporting to belong to property owner of record on quitclaim deed but which is not in fact the owner’s signature is “forged.” (See *People v. Abrahamian* (2020) 45 CA5th 314, 322).



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What are we seeing in Orange County?

Embezzlement by Broker

- **Penal Code 487(a) – Grand Theft by Embezzlement**
 - Person *entrusted* with goods/money/property fraudulently uses it for their own purpose, with the intent to deprive the victim of its use
 - A person acts *fraudulently* when he/she takes undue advantage of another person or causes a loss to that person by breaching a duty, trust, or confidence
 - Position of trust: fiduciary relationship
 - Employer-employee (requires evidence of trust/confidence)
 - Escrow agent

NEWS > CRIME AND PUBLIC SAFETY • News

La Habra real estate professional gets a year in jail for stealing \$570,000 from prospective home buyers

By **CITY NEWS SERVICE** | news@socalnews.com |

PUBLISHED: July 18, 2021 at 6:06 p.m. | UPDATED: July 18, 2021 at 11:12 p.m.

SANTA ANA — A La Habra woman pleaded guilty Friday and was immediately sentenced to a year in jail for stealing about \$570,000 from prospective home buyers.

[Laura Christina Preciado](#), 50, pleaded guilty to seven counts of grand theft, with sentencing enhancement allegations of aggravated white collar crime in excess of \$100,000, according to court records that list her occupation as a real estate agent.

Preciado was given credit for 22 days in custody.

Orange County Superior Court Judge Richard King placed her on 10 years of formal probation and ordered her to pay \$570,640 in restitution plus 10% interest, according to court records.

Preciado **listed real estate properties that were going through foreclosure** without the **consent of owners**, often for amounts well below market value, Orange County District Attorney's investigators said in a court filing that sought to increase her bail.

She pocketed the earnest money that prospective buyers posted and instructed them to not **contact the residents**.



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What are we seeing in Orange County?

Loan Mod Scams

- **Civil Code 2944.7 – Upfront Loan Mod Fees**
 - Unlawful to offer to perform loan mod services for compensation and receive *any* compensation until all services are fully performed, take any form of security to secure the payment of compensation, or to take a POA from the borrower for any purpose.
 - NOTE: this is a strict liability crime – no intent to defraud needed
- **Penal Code 487(a) – Grand Theft by False Pretense**
 - Convincing a victim to part with money/goods/property in reliance on false promises, with the intent to deprive the victim of the money/goods/property

NEWS > CRIME AND PUBLIC SAFETY

Irvine man gets 8 years for \$2.3 million loan modification scam

By **SEAN EMERY** | semery@scng.com | Orange County Register
PUBLISHED: July 17, 2018 at 12:57 p.m. | UPDATED: July 17, 2018 at 4:14 p.m.

An Irvine man has been sentenced to eight years in prison after admitting to dozens of felonies involving a multimillion-dollar loan modification and money laundering scheme.

Assad Suleiman, 48, pleaded guilty late last week to 64 felony counts, including money laundering, grand theft and second-degree burglary. He was ordered to pay about \$1.5 million in restitution.

Prosecutors allege that Suleiman was connected to a “sophisticated loan modification scheme” that used multiple business names and defrauded nearly \$2.3 million from 387 homeowners. Also charged in connection to the alleged scheme are Suleiman’s brother, Kevin Suleiman, 39, of Irvine and his ex-wife, Rosa A. Barraza, 45, of Santa Ana.

According to the Orange County District Attorney’s Office, the Suleimans and Barraza ran the loan modification operation under a variety of business names, including the Jefferson Legal Group in Los Angeles, The Simplify Law Group in Irvine, Synergy Law Center in Anaheim and Wilshire Debt Advisors in Irvine. Despite the names of the businesses, none of the operations involved any lawyers, prosecutors said.



What are we seeing in Orange County?

Loan Mod Scams

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NEWS > CRIME AND PUBLIC SAFETY • News

7 charged in OC mortgage fraud scheme

By **CITY NEWS SERVICE** | news@socalnews.com |

PUBLISHED: July 18, 2021 at 6:57 p.m. | UPDATED: July 19, 2021 at 8:22 a.m.

SANTA ANA — Seven defendants have been charged in connection with a Tustin- and Santa Ana-based mortgage fraud scheme that prosecutors say ripped off 79 victims of about \$247,000.

Natalie Nava, 36; Amir Khoshnevis, 35; Aaron Pierson, 33; Alejandra Orozco, 27; Maria De La Paz, 24; Payom Ilkhanipour, 34; and Ryan Pelzer, 30, are charged with multiple felony counts of conspiracy, money laundering and grand theft with sentencing enhancements for aggravated white collar crime between \$100,000 and \$500,000.

The defendants worked for Regional Community Services, which had offices in Tustin and Santa Ana, and illegally offered mortgage foreclosure consulting and debt consolidation, Orange County District Attorney's Office investigator Henry C. Griffin Jr. said in court papers.

The defendants "lied to the homeowners about obtaining a low-interest mortgage, and after providing the homeowners with a 'payment program' they requested and received these advance payments before a mortgage modification was approved," Griffin said.



What are we seeing in Orange County?

Loan Mod Scam Prevention

➤ **Civil Code 2944.6 – Notice to Borrower**

- **(a)** Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

“It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.”



Other Criminal Statutes

- PC 531 (Fraudulent conveyance to delay creditor)
- PC 532a (False financial statement re: ability to pay)
- PC 533 (Selling the same land twice)
- PC 470 (Forgery)
- PC 186.10 (Money Laundering)
- Notary crimes under Government Code
- Unlicensed practice of law (B&P 6125)
- ***PC 532f (Mortgage Fraud)****



Penal Code 532f: Mortgage Fraud

(a) A person commits mortgage fraud if, with the intent to defraud, the person does any of the following:

(1) Deliberately **makes any misstatement**, misrepresentation, or omission **during the mortgage lending process** with the **intention that it be relied** on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(2) Deliberately **uses or facilitates the use of any misstatement**, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(3) **Receives any proceeds or any other funds** in connection with a mortgage loan closing that the **person knew resulted from a violation** of paragraph (1) or (2) of this subdivision.

(4) **Files or causes to be filed with the recorder** of any county in connection with a mortgage loan transaction any **document the person knows to contain a deliberate misstatement, misrepresentation, or omission**. [See PC 115]



ORANGE COUNTY DISTRICT ATTORNEY
NEWS RELEASE
TONY RACKAUCKAS, *District Attorney*

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Office: 714-347-8405
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FOR IMMEDIATE RELEASE
Case # 17CF0675

Date: November 22, 2017

**MAN CONVICTED AND SENTENCED TO THREE YEARS IN PRISON FOR
ABUSING 73-YEAR-OLD ELDERLY WOMAN, COMMITTING MULTIPLE
FORGERIES, AND STEALING OVER \$75,000 FROM THE VICTIM**

SANTA ANA, Calif. – A man was convicted and sentenced to three years in state prison today for abusing a 73-year-old elderly woman, committing multiple forgeries, and stealing over \$75,000 from the victim.

Defendant	Charges	Sentence
William Marion "James" Carter, 67, Riverside	<p>Pleaded guilty yesterday to the following felony counts:</p> <ul style="list-style-type: none">• Elder abuse• Attempted grand theft• Possession of forged driver's license• Money laundering derived from criminal activity• (2) Forgery of public or corporate seals• (2) Attempt to file false/forged instrument• (4) Burglary second degree• (7) Grand theft• (23) Acts constituting forgery	Three years in state prison

Circumstances of the Case

- From March 10, 2016, to March 18, 2016, the defendant was in a position of trust as caretaker for his wife's distant cousin, 73-year-old Carol Folz.
- While Folz was in his custody and care, Carter allowed the victim to be injured or endangered under circumstances likely to produce great bodily injury or death.
- Sometime in March 2016, the victim passed away.
- The defendant contacted a private body removal service to transport the deceased victim from her home in Laguna Niguel to San Bernardino.
- Carter forged a notary's signature on the cremation authorization, and the victim's body was cremated without notifying law enforcement, paramedics, or the coroner's office.
- After Folz passed away, the defendant took out a reverse mortgage on the victim's home, attempted to sell the property worth \$859,500, and impersonated a real estate broker, an attorney, a doctor, and the victim's brother by forging various signatures and documents.
- Carter also used the victim's finances to deposit several cashier's checks into his personal account, laundering the stolen money at JP Morgan Chase bank.

What are we seeing in Orange County?

Truth Stranger than Fiction

- **Grand Theft & Attempted Grand Theft**
- **Attempt to file false/forged documents**
- **Forgery**
- **Money Laundering**



Who Prosecutes Real Estate Fraud?



Investigating Agencies

- Federal Law Enforcement
- Local Police Agencies
- Federal Trade Commission (Civil)
- State Administrative & Licensing Agencies
 - E.g., DRE, State Bar
- OCDA Real Estate Fraud Investigative Staff



Who Prosecutes Real Estate Fraud?

Prosecuting Agencies

- United States Attorney General
- California Attorney General
- Other Local Prosecutors
- **OCDA Real Estate Fraud Unit**

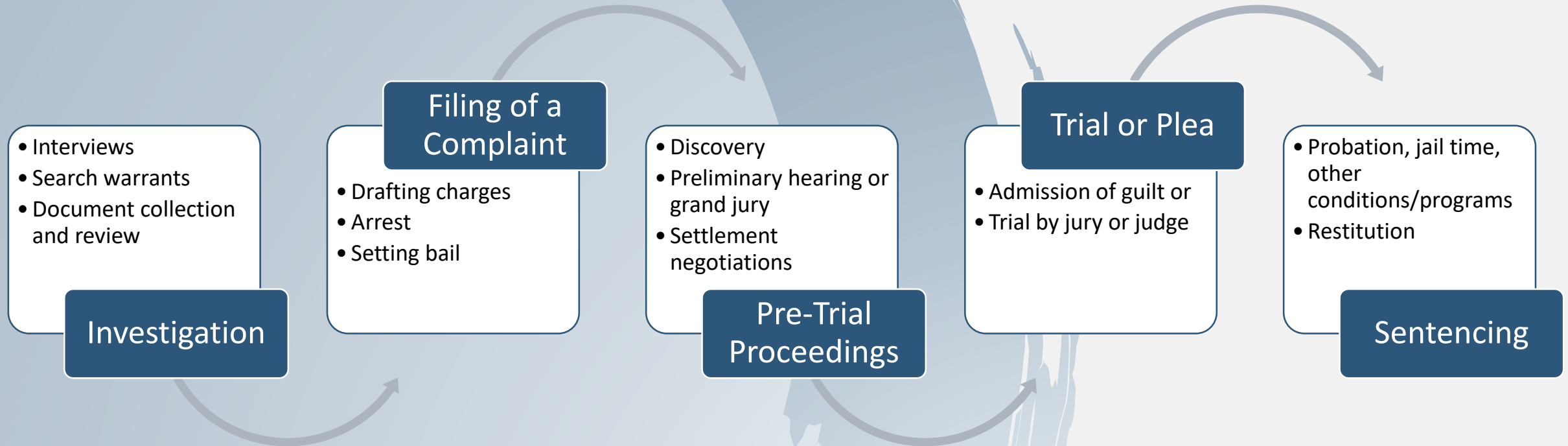


OCDA Real Estate Fraud Unit

- 2 Deputy District Attorneys
- 2 District Attorney Investigators
- 3 District Attorney Civil Economic Crimes Investigators
- 1 Paralegal
- Use of Clerical Staff and Senior Forensic Accountants



Prosecution Life Cycle



Real Estate Fees Help Fund Prosecution

- The Orange County Clerk-Recorder currently charges an additional recording fee of \$3 to help fund the Real Estate Prosecution Team.
- This fee was authorized by the Board of Supervisors and is significantly less than fees charged by surrounding counties.
- The fee attaches to some, but not all, recorded property documents.



OCDA Real Estate Fraud by the Numbers

FY 2020/2021



- 102** Referrals of suspected real estate fraud to OCDA
- 11** Referrals from law enforcement agencies
- 2** Referrals from County Clerk-Recorder
- 8** Filed criminal cases
- 33** Cases rejected
- 2** Cases referred to other state or federal agencies
- 5** Convictions



Who Reports Real Estate Fraud?

Buyer

reports fraud after being alerted to it by foreclosure proceedings

ID Theft Victim

reports fraudulent use of information after discovery months if not years later

Entity Servicing Loan

reports, generally after notice of default sent out

Recorder's Office

reports suspicious recorded document to OCDA

Vigilant Realtors

reports suspicious activity at or near time it occurs





RED FLAGS



Mortgage
Broker &
Escrow
Company:

*They are co-located/
"one-in-the-
same"*

Real Estate
Agent or
Broker:

*A key player
is an
unlicensed
agent*

Notary
Public:

*Is unknown
and
documents
notarized
outside
escrow*

Customers:

*always the
same
customers in
and out the
office*

Volume:

*The number
of deals
doesn't add
up*

Size:

*The size of
the deals
doesn't make
sense*

Suspicious
Timing:

*Repeated
refinances;
the timing
doesn't make
sense*

What Can You Do?

Know your notary

Know your escrow company

Meet the borrowers and buyers & sellers

Visit the property

Read the title report

Call the lenders to be paid off



How To Report Suspected Fraud

- Contact the Orange County District Attorney and fill out a real estate fraud report form:
 - www.orangecountyda.org/howdoi/reportfraud.asp





How To Report Suspected Fraud

- Contact the Orange County District Attorney and fill out a real estate fraud report form:
 - www.orangecountyda.org/howdoi/reportfraud.asp
- Contact the local police agency where the property is located
- Report suspicious documents to the OC Clerk/Recorder (who will likely notify OCDA)

Real Estate Fraud Report



Office of the District Attorney
Orange County, California

Real Estate Fraud Unit - 300/7th Fl

PO Box 808

Santa Ana, CA 92701

www.orangecountyda.org

REFraud@da.ocgov.com

Date:

Reported By:

Your Name:

DOB: Driver's License #:

Address:

City, State, Zip:

Email Address:

Home Phone: Cell Phone:

This report/complaint is about: ☐ Real Estate Purchase/Sale ☐ Lease/Rental ☐ Investment ☐ Other

Name of Business and/or Person:

Identifying Information:
(i.e. License #s, employer, etc.)

Address:

City, State, Zip:

Phone: Mobile Phone: Email:

Information about the problem transaction:

Date of Transaction: Date of Close: Date when Fraud was Discovered:

Full Address of Property involved in this transaction:

For Loan Modification: Was there a **recorded** notice of default? ☐ Yes ☐ No Date of Default Notice:

Amount of Loss: Date of Payment: Paid By: ☐ Cash ☐ Check ☐ Credit Card

Any Refund: \$ Payable to: Other:

Did you sign a contract? ☐ Yes ☐ No Date Contract Signed:

Have you complained to the company or person? ☐ Yes ☐ No Complained by: ☐ Phone ☐ Mail ☐ e-mail ☐ In Person

Name/Title of Person Contacted: Date:

How did the person/company respond?

Other actions you have taken:

Reported to another Agency:
(Agency Name, contact, and case #)

Consulted Attorney/Legal Aid:
(Attorney Name, contact #)

Court Action is Pending:
(Court, Case #, next court date)

Tips for Reporting



- ✓ Provide a detailed explanation of the transaction history, including timelines or charts/spreadsheets
- ✓ Identify and provide contact information for all the known players
- ✓ Identify the key transaction numbers: escrow file number, title file number, etc.
- ✓ Provide copies of all documents related to transaction and explain their significance



DISCUSSION

