Real estate transactions are particularly susceptible to fraud – actual fraud and fraudulently inducement. Appraisers may receive payments to overstate the value of property. Developers or others seeking debt or equity financing may overstate their industry expertise or financial capacity. Concerns about environmental or other forms of latent liability may be shaded to the point of outright misrepresentation. These and many other forms of fraud creep easily into real estate transactions. Identifying these risks in due diligence and drafting protective provisions into the underlying documents of the transaction – or spotting red flags after the deal has closed – are essential to protecting client interests. This program will provide you with a real-world guide to the circumstances in which fraud most frequently occurs, the most important elements of investigatory due diligence, and practical preventive measures to combat fraud.

- Transactions and common fact patterns in real estate where fraud is most commonly seen
- Types of fraud – actual fraud v. fraudulent inducements, civil v. criminal
- How to ask the right due diligence questions depending on the type of transaction
- Categories of diligence – credibility and integrity of counterparties, rent roll accounting, environmental, and much more
- Review of common types of fraud – appraiser kickbacks, overstating financial capacity
- Understanding the opportunities and limits of investigatory diligence
- Preventive measures to mitigate the risk of fraud in transactions

Speakers:

Craig B. Kravit is the chairman and CEO of iVision International, LLC, a national firm providing clients a multi-disciplinary approach to fact-development and intelligence gathering. His company has deep experience conducting investigative diligence in connection with internal corporate matters, in support of litigation, and relating to a wide range of business and real estate transactions. He formerly served as managing director and associate general counsel of world’s leading corporate investigations firm. Mr. Kravit received his B.S. from Franklin & Marshall College and his J.D. from St. John’s University School of Law.

Joshua Stein is the principal in the New York City office of Joshua Stein, PLLC, where he has wide has wide experience in commercial real estate transactions, defaulted loans, and other real estate disputes. He is a Fellow of the American College of Real Estate Lawyers, a member of the Anglo-American Real Property Institute, and formerly served as chair of the Commercial Leasing Committee of the New York State Bar Association’s Real Property Section. He is the author of five books, including “A Practical Guide to Real Estate Practice” (ALI-CLE 2001). Mr. Stein earned his B.S. from the University of California at Berkeley and his J.D. from Columbia University Law School.
Please complete all of the requested information, print this application, and fax with credit info or mail it with payment to: Vermont Bar Association, PO Box 100, Montpelier, VT 05601-0100. Fax: (802) 223-1573 PLEASE USE ONE REGISTRATION FORM PER PERSON.

First Name __________________________ Middle Initial ___ Last Name ________________________
Firm/Organization ________________________________________________________________
Address __________________________________________________________________________
City __________________ Stateless _______ ZIP Code ______________________
Phone # __________________________ Fax # ______________________
E-Mail Address ______________________

Spotting & Preventing Fraud in Real Estate Transactions
Teleseminar
March 5, 2015
1:00PM - 2:00PM
1.0 MCLE GENERAL CREDITS

VBA Members $75
Non-VBA Members $115

NO REFUNDS AFTER February 26, 2015

PAYMENT METHOD:
Check enclosed (made payable to Vermont Bar Association) Amount: __________
Credit Card (American Express, Discover, Visa or Mastercard)
Credit Card # ________________________________ Exp. Date ________________
Cardholder: ____________________________________________________________
Vermont Bar Association

CERTIFICATE OF ATTENDANCE

Please note: This form is for your records in the event you are audited

Sponsor: Vermont Bar Association

Date: March 5, 2015

Seminar Title: Spotting & Preventing Fraud in Real Estate Transactions

Location: Teleseminar - LIVE

Credits: 1.0 MCLE General Credit

Program Minutes: 60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.
HOW TO FIND AND DEAL WITH FRAUD IN COMMERCIAL REAL ESTATE TRANSACTIONS

Craig Kravit, Esq., Licensed Private Investigator
iVision International LLC – New York City
(o) (212) 252-0870, ext. 201
ckravit@ivisioninternational.com

Joshua Stein, Esq. Moderator
Offices of Joshua Stein PLLC – New York City
(o) (212) 688-3300
Joshua@joshuastein.com

1. DUE DILIGENCE BEFORE THE CLOSING

1.1. What easy due diligence can parties and their counsel do in advance?

1.2. How does a lender’s due diligence and fraud detection differ from other players in real estate transactions?

1.3. In looking at financial statements as part of due diligence, what can a lender or other party do to identify fraud?

1.4. Outside of financial statements, what forms of fraud are most common in the pre-closing stage of a transaction? How can you identify and prevent them?

1.5. What levels of background check are available as part of due diligence? Which do you recommend? How does it vary if you have doubts about the bona fides of the parties?

1.6. What legal problems do background checks raise?

1.7. How do you confirm a guarantor’s assets actually exist? How hard is it for guarantors to move or hide assets? Is there anything a lender can do to protect against that?

1.8. What types of fraud have you seen in rent rolls and leasing?

1.9. Are online searches a good technique to check out counterparties and figure out if they are fraudulent?

2. FRAUD IN REAL ESTATE TRANSACTIONS

2.1. What are the best strategies to detect fraud? What should you watch out for?
2.2. What are the most common frauds you see in development transactions as they play out?

2.3. Construction loans in particular involve disbursements of lots of money over an extended time. What sorts of frauds have you encountered there, and what should the parties have done to prevent them?

2.4. When a loan goes bad, what kind of fraud are you likely to find? How do you find it?

2.5. How often do you see fraud within a joint venture, typically with a managing venturer who keeps the money or otherwise abuses the investor partners? What can the investor partners do to identify and prevent that kind of fraud?

2.6. What about forged deeds and documents? How often do they appear and how can you avoid getting dragged into a problem?

2.7. Let’s talk about fake vendors and fake employees. How often do these come up as tools for fraud? What can you do to prevent them?
COMMERCIAL REAL ESTATE FRAUD

Pre-Transaction Fraud

Common types of pre-transaction fraud include:

- Fraudulent Supporting Loan Documentation
- Identity Theft
- Silent Second
- Straw Buyers
- Short Sale
- Property Flipping
- Title/Escrow/Settlement Fraud
- Equity Skimming
- Inflated Appraisal
- Builder Bailout
- Chunking
- Buy and Bail
- Advance Fee/Loan Modification Scam
- Double Selling
- Ponzi Schemes

A. Fraudulent Supporting Loan Documentation

- Falsifying information when submitting a loan application

- Borrowers often misrepresent their financial background, credit report history and any other information that may compromise their ability to receive a bank loan

  - Case – Utah County Man gets 15 years in prison for Real Estate Fraud
    - Used misrepresentation for loans and used investor funds for personal gain

B. Identity Theft

- Loan applicant uses fictitious or stolen identity on loan application

  - Case – Former college professor/FBI informant indicted on federal charges of credit card fraud, Identity Theft
o Defendant defrauded nine financial institutions and a company out of $270,000 by using another’s personal identification to obtain credit cards and lines of credit in that person’s name

C. Silent Second

- Buyer takes out a second mortgage to cover the down payment on the initial loan
  - Case – Architect Sentenced to Five Years for Mortgage Fraud
    o Defendant took out primary loans to buy several million dollar properties in Miami and then, without the knowledge of the primary lender, obtained a “silent second” loan on each property

D. Straw Buyer

- Borrower identity hidden through the use of a nominee, in whose name and credit history the loan application is made
  - Case – Real Estate Broker Sentenced to 42 Months in Prison for Mortgage Fraud Scheme
    o Defendant conspired with developers and brokers by convincing “straw buyers” to allow their name and good credit to be used to secure mortgage loan

E. Short Sale

- A sale of real estate in which the sale proceeds are less than the balance owed on the mortgage loan pertaining to the property
  - Case – Danville Real Estate Agent Charged In Bank Fraud and Money Laundering Scheme
    o Defendant used straw buyers to purchase real estate and some of his own properties that were candidates for a “short sale”. He submitted offers for these properties to financial institutions on behalf of the straw buyer. After the short sale was completed, he maintained control of the property and then sold the property for a significant financial gain
F. Property Flipping

- Property is purchased and appraised at an inflated price then resold
  
  - Case – Real Estate Professional Pleads Guilty for Illegal Flipping

  - Defendant purchased houses in short sales at artificially low prices and immediately resold the property at their true market values.

G. Title/Escrow/Settlement Fraud

- Diversion or embezzlement of funds for uses other than those specified in the lenders closing instructions

  - Case – Title Company Owner Sentenced for Stealing Escrow Funds

  - Defendant owned and operated a Title company where she would receive money on behalf of others, which included escrow, settlement and closing funds. Though she was required to hold these funds as a fiduciary in a fiduciary trust account, there was evidence that she had embezzled the funds to support a gambling habit

H. Equity Skimming

- Purchasing residential properties whose owners are in default on their mortgages or real estate taxes and then diverting rent income from these properties for personal gain

  - Case – Three Indicted in Equity-Skimming Scheme

  - Defendants constructed a fake Business and told homeowners that if they sold their homes to the business, all debt would be forgiven. After buying the properties, defendants continued to collect rent and fees from homeowners
I. Inflated Appraisals

- Property appraisal value is overstated in order to get a larger loan
  
  - Case – Beach First Fraud Lawsuit
    
    o Homeowner sued the Bank of North Carolina after their appraiser overstated his newly purchased property by more than two thirds. The Homeowner had used the appraisal information to take out a bank loan which he was unable to pay back with the property’s real value

J. Builder Bailout

- Builder that cannot sell property inflates purchase price by using straw buyers or forged documents
  
  - Case – Builder Bailout Scheme in Chico, California
    
    o Defendant established relationships with several unlicensed mortgage brokers to “sell” his homes to straw buyers at inflated prices. He then rebated $40,000 to $60,000 of the reported purchase price per home to shell companies controlled by the buyers’ agents. The rebates were not disclosed to the lenders

K. Chunking

- Buyer’s information sent to several different lenders to obtain multiple loans
  
  - Case – Ten Charged in Florida Chunking Scheme
    
    o Ten people involved with the Florida Company Alternative Home Financing, Inc (AHFI) spent two years approaching homeowners to entice them into allowing AHFI to apply for mortgages in the name of the nominee in order to buy houses. They would then submit false information in order to qualify for the mortgage.
L. **Buy and Bail**

- Homeowners with property that went “under water” (owed more than the property worth) use false information to obtain a new bank loan for a new home

  - Case – Trial Opens for Sibling Deputies Charged with Mortgage Fraud
    - Three siblings took part in a “buy-and-bail” scheme when they made false statements to qualify for a bank loan to purchase a new home in Corona. The brothers did not disclose that they were a party to a lawsuit with Bank of America for unreturned loans on a different property which they walked away from or “bailed on” as they were “under water”

M. **Advance Fee**

- Advance fee frauds ask for payment up front before the deal can go through. The advance payment may be described as a fee, tax, commission, or incidental expense that will be repaid later.

  - Case – Man Charged in $3 Million fraud scheme in Connecticut
    - Realtor was able to scam more than $3 million in advance fees by promising large loans to borrowers. Defendant never carried out the loans and did not fully refund the advance fees

N. **Foreclosure Scam**

- Perpetrators convince homeowners that they can save their homes if they pay some initial up front fees to avoid foreclosure. The perpetrator can then remortgages the property and continue to pocket fees from the homeowners

  - Case – Man Gets 35 Year Prison Sentence in Nationwide Foreclosure Rescue Scam
    - Defendant solicited homeowners facing foreclosure, promising to help the homeowners avoid foreclosure and repair their credit. Instead, through misrepresentations, fraud, and forgery, the defendants
led the victims to complete transactions that substituted straw buyers for the victim homeowners on the titles of properties without the homeowners’ knowledge. Defendants then shared the proceeds.

O. **Double Selling**

- Loan officer sends loan application to several warehouse lenders asking for funds. Because closings are usually within in a few days of each other, the lenders are unaware of competing loans. The perpetrator can then sell the property to multiple lenders and pocket the profit

  - Case – Arizona Man Sentenced for Role in Fraud Scheme

    - Defendant and others submitted simultaneous loan applications for multiple real estate purchases without fully disclosing other pending applications, provided false information on the loan applications to obtain mortgage loans. The defendant then acted as a straw buyer so would appear that he had purchased the property from the seller. He then turned around and sold it at a higher price to one of the other defendants

P. **Ponzi Schemes**

- Perpetrators entice victims with the promise of amazing returns for investment in land opportunities. Initial investors are paid with subsequent investors until there are no more investors

  - Case – Roseville man sentenced for real estate fraud

    - Defendant solicited 22 investors to buy real estate. Investors were directed to send money to an escrow service run by a co-schemer who had no escrow license. Defendant used new investor money for his own purposes and to pay earlier investors in what were described as disbursements.

**Post-Transaction Fraud**

Common types of post-transaction/transaction fraud include:

- Bid Rigging
- Kickbacks/Bribes
- Change order manipulation
False Representations
- Diverting lump sum charges to time and material cost
- Nonpayment of subcontractors and material suppliers
- Billing for work not performed
- Double Invoicing

A. Bid Rigging

- Competitors agree in advance who will submit the winning bid on a contract being let through the competitive bidding process

  - Case – Former Bank of America executive pleads guilty in bid-rigging scheme
    - The defendant and his co-conspirators worked with CDR Financial Products to manipulate a North Carolina bidding process and win over investment contracts. CDR Financial Products would then give out interest rate and other details on bid submissions in advance. Bidders competing for the contracts would decide ahead of time whose bid would win. As a part of the conspiracy, the defendant and co-conspirators agreed to have kickbacks paid to CDR in exchange for the company’s help in manipulating the bidding process

B. Kickbacks/Bribes

- A kind of bribe paid incrementally by the contractor as it is paid.

  - Case – Manhattan D.A. Levels Charges In Major Electrical Contracting Kickback Scheme
    - Defendant created the company Bar Electrical Consulting Inc. to engage in a bribery scheme that steered millions of dollars of business from Unity Electrical Company, of which the defendant was the purchasing agent, to electrical supply companies. He created Bar Electrical Consulting Inc. as a shell company to accept the bribes

C. Change Order Manipulation

- Contractors submit a change order for work they have not yet done without subtracting the amount for the original, displaced work.

  - Case – Dunn Construction Company, Inc. et. al. v. Cloney
In Dunn Construction, the homebuilder admittedly failed to meet the plans and specifications when constructing the home, in particular the foundation wall. The contractor then “repaired” the wall and claimed to have filled the repaired wall with rebar and reinforced the “cells” with concrete. The homeowner hired a structural engineer to inspect the wall and determined that the contractor did not do what he said he’d done.

D. False Representations

- Not adhering to contract requirements
- Contract may require contractor to utilize specific percentage of minority workers

- Case – Lend Lease Construction Company False Representations

- The Lend Lease Construction Company falsely misrepresented the work performed by its minority business enterprise partners, thus fraudulently obtaining payments on lucrative contracts.

E. Diverting lump sum charges to time and material cost

- Expenses such as cleaning or general conditions may be budgeted in a lump sum amount, but the contractor may attempt to bill for these services on a time and materials basis, resulting in additional costs. This often occurs for items such as equipment charges or cleaning expenses (e.g., billing for the actual rental cost of an electric sweeper, while a lump sum in the budget should already cover that sweeper)

- Case – Lend Lease Construction Company overbilling scheme

- The Lend Lease Construction Company was charged with a decade long overbilling scheme. The company intentionally and fraudulently billed clients for hours that were not worked by labor foremen. They did so by falsely representing billing requisitions, certified payrolls and other documents in a way that greatly inflated time and material costs
F. Nonpayment of subcontractors and material suppliers

- Delay of subcontractor lien waivers
  - Case – Contractor headed to prison in Tarrant County construction fraud
    - Defendant acted as the general contractor on a construction site in Tarrant County. He submitted regular reports for work finished and stated that he was paying all subcontractors on site. The fraud scheme unraveled once the construction was complete and subcontractors began issuing liens, (claims made against property by subcontractors who supplied labor but did not get paid)

G. Billing for Work not performed

- Contractors or workers overstate equipment/labor usage
  - Case - Man charged with nearly $100,000 in Construction Fraud
    - Defendant was paid by homeowners to act as the contractor on their home construction. After paying the defendant $109,000 for costs related to the home’s construction, homeowners found that only $13,500 of work had been completed leaving $96,108 unaccounted for
**It should be noted that a review of additional resources may also be recommended dependent upon various factors and circumstances. Further, certain of the above information is subject to jurisdictional and other availability, and may require the express written consent of the particular subject of review.**
**It should be noted that the above listing is representative of allegations pursued in a wide range of civil proceedings in at least the past five years, and should not be interpreted as the universe of possible exposure risks.**