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State can't keep up with mortgage fraud

Homebuyers' complaints often languish with Commerce Department

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UNEASY STREET

Ignacio and Angelina Garcia never owned a 2000 Ford Taurus, or a 1996 Ford pickup. But their mortgage application said they did, something the Garcias say they didn't know until well after they bought a rundown Minneapolis duplex in 2002. It was only later, the Garcias say, that they realized their assets had been inflated to get the loan, in a classic case of mortgage fraud.

The Garcias speak little English, but they agreed to help the housing advocacy group ACORN try to build a case against their Twin Cities real estate agent, who they say doctored their application and discouraged them from having the duplex inspected. Last December, after losing the duplex in foreclosure, Ignacio Garcia joined two other clients of the agent and went to the Minnesota Department of Commerce to tell their stories. The official they met with said the state would investigate, Garcia recalled. He left the meeting full of hope.

A year later, the Garcias are still waiting for Commerce to call.

"He told us he was going to get us the American dream," Ignacio Garcia said of their real estate agent, through a translator. "Why is it they haven't brought him to justice?"

The Garcias' complaint is one of thousands that have poured into the Department of Commerce in recent years. As the state agency responsible for regulating Minnesota's appraisers, mortgage originators and real estate agents, Commerce is the chief watchdog against mortgage fraud, which experts cite as a key factor in the rising rate of foreclosures.

But as the Garcias' case illustrates, justice isn't always swift or certain.

At the request of the Pioneer Press, Commerce compiled data on its enforcement actions against the real estate industry. The numbers paint a picture of an understaffed team struggling to catch up with the industry it's supposed to regulate.

Cases can languish for months, if not years — if investigators get to them at all. A federal audit of Commerce's regulation of home appraisers concluded the department's investigators lacked proper training and had a serious backlog problem. When the mortgage industry made efforts to get individual mortgage brokers licensed in Minnesota, Commerce actually lobbied against it, saying it would be a burden. It's not hard to find people who filed complaints but say Commerce never followed up.

"Complaints go in there and it's like dropping into a black hole," said St. Paul lawyer John Tancabel, who specializes in mortgage fraud. "You don't even get a letter saying, 'We closed it because we found your complaints to be unfounded.' "

Commerce officials say they've been as aggressive as they can be, given limited resources and the complications of building cases with many different players.

"The level of complexity of the complaints we deal with today so far exceeds the level even a few years ago, it's hard to get your arms around it," said Gary LaVasseur, a former police officer and Commerce's longtime head of enforcement who retired in early December.

Critics say it's no excuse.

"There's been substantial deceptive and unfair sales practices," said Prentiss Cox, a former assistant attorney general who now teaches consumer-protection law at the University of Minnesota. "The Commerce Department could have attacked and did not. It did not deter this conduct by taking consistent, aggressive enforcement actions. If there are not enough resources to go after it, someone should be beating down the doors to get it."

A WATCHDOG WITH LITTLE BITE

Commerce wields a mighty club in controlling the licenses of 42,323 licensed appraisers, mortgage originators and real estate agents operating around the state. No license, no business.

It can level a range of sanctions, from minor reprimands such as a fine or letter of censure to the suspension or revocation of licenses. When the conduct is criminal, Commerce can refer cases to county and district attorneys for prosecution.

Yet enforcement looks out of sync when compared with widespread problems that even local real estate industry leaders acknowledge. Mortgage fraud is the nation's fastest-growing white-collar crime, according to the FBI. Rock-bottom interest rates, easy lending terms and soaring home appreciation created a wealth of opportunities for agents, brokers and appraisers to cheat. And now that the housing market has slowed, law enforcement pros say, unscrupulous players may be even more desperate for deals.

A Pioneer Press analysis of enforcement actions shows that, as a watchdog on real estate matters, Commerce hasn't had much bite. The public has filed more than 1,800 written real estate complaints through October. That's a record, and far above the 1,309 filed all of last year. While no one expects every complaint to result in discipline, the department issued only 227 sanctions during that time — about three-quarters of them relatively minor fines or reprimands for home appraisers not meeting continuing-education requirements. The fines ranged from \$250 to \$2,500.

To be sure, license suspensions have increased in recent years. Commerce suspended 26 appraiser, mortgage originator and real estate licenses through October, up from 11 last year. Suspensions can last from a week to two years.

Still, most enforcement actions are relative dings. Strip out the appraisers' continuing-education citations, and enforcement falls back to the level in 2001, when there were just half as many complaints. The number of licenses Commerce has permanently revoked has been hovering around six to nine a year, with a spike last year of 17. It has revoked eight this year through October.

Staffing, no doubt, is an issue. Until recently Commerce had just five real estate investigators, each juggling some 210 open cases — a lot of work for someone paid between \$35,000 and \$65,000 a year. It recently shifted two more Commerce workers onto the real estate team.

That lack of personnel may be one reason Commerce has lobbied against the mortgage broker industry's own efforts to get individual brokers licensed. Yes, the person giving you a \$15 haircut must be licensed; Commerce administered those until about a year ago. The broker arranging a \$450,000 mortgage for you does not. In Minnesota, only the company a broker works for is licensed. That's something the Minnesota Association of Mortgage Brokers wants changed, but so far Commerce hasn't agreed.

Commerce records indicate the department rarely refers real estate cases it originated for criminal prosecution, as aggressive regulators often do when they want to send strong messages to an industry. Since 2000, it has sent only nine such cases to district and county attorneys for prosecution and can't say whether anyone was charged or went to jail.

When it comes to tackling big mortgage wrongdoing, the attorney general's office's consumer-protection staff has led the charge in recent years. Commerce is conspicuously absent from the new 11-member study group Attorney General-elect Lori Swanson announced earlier this month to crack down on so-called predatory mortgage lending.

It was the attorney general's office, not Commerce, that drove the \$325 million settlement with Orange, Calif.-based Ameriquest Mortgage Co. and the major lawsuits against equity-strippers Hendrie Cutler Grant and James Hoffman and his companies Home Funding Corp. and Homeland Financial Corp.

The Grant case was settled shortly after trial in 2003. Grant agreed to pay \$500,000 and return some properties to his victims. Hoffman, too, settled midway through his trial in 2004 by agreeing to return some properties and money.

Commerce appears to get involved in such cases after the fact, and sometimes only after persistent nudging from the attorney general's office, judging from memos between the office and Commerce.

In fact, Commerce has been generating so little legal work for the attorney general's office in recent years that the number of the office's attorneys assigned to Commerce has shrunk from a full-time equivalent of eight to less than two. By comparison, the attorney general's office has 10 attorneys assigned to transportation and 15 to health licensing.

INVESTIGATION AND THEN ENFORCEMENT

Commerce and the attorney general's office share some consumer-protection responsibilities, but their leaders could hardly be more different. Outgoing Attorney General Mike Hatch, 58, is a fiery consumer-protection crusader with a take-no-prisoners approach. Commerce Commissioner Glenn Wilson, 68, is not prone to making waves, observers say. Some who've worked with Wilson liken him to a kindly uncle.

He is, however, no stranger to real estate. He was first vice president for U.S. Bank Home Mortgage when Republican Gov. Tim Pawlenty appointed him commerce commissioner in 2003. One of the first things Wilson did was to change the name of the department's enforcement division to the Market Assurance Division, but he denies the name change reflects a changed approach to enforcement; rather, he says it's to reflect the full range of work the division does. He also said he wanted to work with businesses before cases get to enforcement.

If Commerce is tapping the attorney general's office less, he says, it's because Commerce is now resolving disagreements on its own.

Bonnie Polta, head of real estate investigations for Commerce, said the volume of complaints can be misleading, since roughly 90 percent of complaints filed with the department aren't valid. Either they're not against someone Commerce regulates or investigators can't find rule violations, she said. Sometimes, she said, people file complaints but won't cooperate beyond that.

The complaints are not made public out of concern that doing so would chill people's willingness to come forward, so the Pioneer Press was not able to evaluate them.

Pursuing valid complaints is time-consuming, Polta said. Due process requires getting subpoenas for records from multiple parties, a process that she said can take six months to a year. Cases that used to be contained in file folders now require 20 to 30 file boxes of documents, said LaVasseur, the recently retired head of enforcement.

It's a logjam the department has tried to fix by shuffling resources, Wilson said. It just moved two more people from the division to its real estate investigative team. Wilson said he has not appealed for more resources because mortgage mayhem wasn't as big a problem the last time Commerce submitted a budget, in 2004. He indicated he might ask for more resources to tackle real estate matters when Commerce submits its next budget request in January.

LaVasseur said that the number of Commerce-originated cases sent for prosecution doesn't capture the large volume of criminal cases it has worked on alongside law-enforcement agencies. Right now, Commerce officials say, they're working on a large case involving false home appraisals. Polta said she expects indictments soon.

LOSING HER HOME FOR ONE MISSED PAYMENT

Such a major crackdown would be atypical for Commerce's real estate team. A 2004 federal audit of Commerce's oversight of home appraisers blasted the department on several fronts. The Federal Financial Institutions Examination Council, a rule-making body for federal bank regulators, said Commerce's real estate investigators didn't have adequate background or training in appraisals, that it had no way to check whether appraisers were actually fulfilling their continuing-education requirements, and that its cases dragged on far too long.

At the time of the audit, 31 of 76 of Commerce's ongoing cases against appraisers had been open for more than a year — two for longer than four years. Commerce responded by adding a full-time staff member to track continuing-education requirements — hence the surge in enforcement actions on that front this year.

Still, problems linger.

"The Department needs to continue its efforts to investigate and resolve complaints in a timely manner and to reduce the number of complaints outstanding for more than one year," the FFIEC's acting chairman wrote to the commissioner in April.

LaVasseur said many of the cases auditors considered open were actually finished — they just hadn't been officially closed with a computer entry. The vast majority of the appraisal backlog has been cleaned up, he said.

Yet it's not hard to find people who filed complaints and then never heard from Commerce except for a form letter acknowledging receipt.

Bonnie Tieso, 55, of Roseville, said she filed a written complaint to Commerce in 2004 after a local real estate agent, mortgage company and another financier involved her in what she called a dubious deal to escape foreclosure on her house on St. Paul's East Side. The loan documents she signed involved a promise to give them title to her house should

she miss one payment. Tieso said ACORN helped her get out of the deal and keep the house for a time. But aside from a form letter acknowledging her complaint, Commerce never contacted her, Tieso said. Commerce shows no record of any disciplinary action against the real estate agent involved.

"They've been awful," said Doug Miller, president of Minnetonka-based Title One Inc., a title insurance company. "It's a joke among real estate attorneys to even send a complaint in anymore."

THE FICTITIOUS LOAN APPLICATION

Commerce's treatment of Ignacio Garcia's case is particularly troubling, given the pattern of activity ACORN had alleged against his real estate agent. The group accuses the agent of systematically cheating more than two dozen Hispanic families in the Twin Cities, selling them homes at inflated prices, failing to disclose that the homes needed serious repairs and lying about assets and income.

Despite ACORN staffer Alexa Milton's offers to translate, none of the families heard from Commerce after their meeting with an investigator in December 2005, she said. Milton said she telephoned the Commerce investigator in May and was told they were reviewing documents "but hadn't found much."

"It's their job to investigate," Milton said. "If they were serious, they would have gone ahead and interviewed people."

If they had, they might have discovered that whoever filled out the Garcias' mortgage application in 2002 in English apparently tried to inflate their assets to qualify them for a \$185,000 mortgage. Falsely filling out a loan application is a felony that can carry a prison sentence.

The real estate agent refused to be interviewed for this story. His license shows no record of any enforcement action from Commerce.

Besides a 1996 Ford pickup worth \$9,000 and a 2000 Taurus worth \$10,000, the Garcias' loan application states that they owned "personal property" worth \$16,000. The couple said they were shocked to discover their fictitious "assets" when an attorney later pointed them out. The Garcias work together at a tortilla factory. Other than the \$12,000 they saved for a down payment, they insist they owned nothing but an \$800 Corsica when they applied for their mortgage.

The duplex was foreclosed on two years ago, but not before Garcia and his family suffered through a winter without heat. Garcia said he was never informed that the furnace in the duplex didn't work.

The couple and their two young children now rent an apartment in South Minneapolis. They have a difficult time understanding why no one from the Commerce Department ever contacted them.

"I thought in the United States they didn't steal," Angelina Garcia said

Polta, the Commerce investigator, recalls the meeting and said the department remains "very interested" in looking at the case but is waiting for ACORN to arrange interviews.

LaVasseur said that given the volume of complaints, it's probably inevitable that some fall through the cracks. Many times, he said, it's the complainants who don't follow up.

"It's frustrating," he said. "We'd all like to move these cases faster."

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