



[The Expert Witness and the Sub Prime Crisis.](#)

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Subprime lending has many faces: the first time buyer reaching for a home of his/her own, a speculator riding the crest of rising real estate values, the real estate agent or broker discovering ways to close more deals, a homebuilder to liquidating inventory, Wall Street finding a plethora of new products, and more and more and more. All this based on credit standards that reached beyond credit guidelines proven safe over years of experience. In many ways the artificial exuberance of the dot comm. boom/bust is being replayed.

The scope of this crisis is so broad it has countries losing substantial percentages of their reserves, world-class corporations taking multi billion dollar losses and homeowners losing their largest investment in record numbers not to mention a national recession. Where and when is this going to stop? The answer has more to do with public confidence and jobs than litigation but the Courts will play a role and that is the opportunity for the Expert.

In the last six months I have consulted on a number of exotic mortgage litigations including subprime loans, applicant/borrower identity theft, borrower fraud and loan officer fraud. There was or is no one single culprit. The following are typical crisis related challenges for the consulting expert.

Subprime lending, particularly Stated loans, where the lender accepts what the borrower claims as income, offers a variety of opportunities for borrowers and loan agents alike to obtain loan approvals that a more traditional underwriting would have denied. How and by whom the information or misinformation on the application was crafted is but one test for the Expert. Others are: was the information reasonable, was there adequate supervision by the supervising loan broker, was the lender reviewing the loan package, was the reasonableness of the applicant's information tested and numerous other issues in the underwriting, documentation, closing, servicing and securitization areas.

Identity theft is finding its way into the subprime market. In a recent case a creative agent was processing two loans simultaneously for two different borrowers on two different properties. One applicant had excellent credit; the other had no credit at all. The first applicant had good income; the other hardly enough to make payments. The agent placed the applications with two separate lenders but using the name on the credit worthy borrower on both. I'll omit all the details but both loans were approved, each lender seeing numerous requests for credit reports thought nothing of it since they were processing a loan from an outside loan agent. This was only discovered after the borrower with good credit wanted an equity loan and was turned down because she did not disclose all of her credit commitments.

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Credit analysis by FICO Score, believe it or not, is another opportunity for the Expert. In a recent assignment a borrower sued his lenders for reporting his series loans to the credit bureaus. The litigant claimed the lenders reported his equity line and credit card accounts incorrectly since the information reported made his credit score drop. An analysis of the six credit reports submitted as evidence showed the credit score did drop despite the borrower making every payment in a timely fashion. The reports also showed outstanding account balances frequently exceeded the limits of the accounts and usage was consistently well over 50% of the account limit. Both are major problems that can reduce credit scores.

Residential mortgage lending is document intense. Numerous disclosures, valuation documents and security forms can inform as well as confuse the borrower. Misunderstandings can occur and frequently litigation follows. The plaintiffs in a recent swore they were to have a fixed rate loan despite signing documents titled ADJUSTABLE RATE MORTGAGE. They swore they did not authorize the payoff of their Equity Loan despite signing a two sentence letter authorizing the payoff.

As this economic debacle continues the demand for knowledgeable experts who can articulate the complexity of regulation, documentation and the financing process will be in great demand.

Expert Witness No.983 is a Banking Consultant with a background in banking, mortgage banking, credit quality, and commercial credit. For over twenty years he has served as an Expert Consultant and/or Witness.

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