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As mortgage fraud runs rampant, meaningful prosecutions in short supply

By Michael Van Sickler, Times Staff Writer

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*Still, chasing fraud after it has been committed is more expensive and less efficient than preventing fraud in the first place with better regulation, said **Adam Leitman Bailey**, a New York City real estate attorney who writes about the mortgage industry.*

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TAMPA — A leading cause of the foreclosure deluge that has swamped Tampa Bay's housing market is mortgage fraud, so it was welcome news in November when federal prosecutors announced they had nailed some of the culprits.

A nine-month investigation nabbed more than 100 defendants and 700 properties across a region that includes Tampa, Orlando, Jacksonville and Fort Myers. The U.S. attorney for the Middle District of Florida said he hoped the sweep would send a clear message to the public.

"Mortgage fraud will not be tolerated," said A. Brian Albritton. "We must protect the integrity of the real estate market in our communities."

But of the 22 Tampa Bay area cases that were disclosed, none involves the kind of major fraud that helped crash the U.S. economy. They name 29 people who are accused mostly of minor scams, such as individual borrowers lying on loan applications. The cases do not involve more meaningful offenders, such as lenders, home builders or appraisers who exploited the lax oversight in the boom years on a grand scale.

Albritton said the cases were a "surge" that was never meant to ensnare the larger players, at least not yet. In the months ahead, he said, prosecutors will try to get those charged to



identify higher-level conspirators, such as ring leaders or industry insiders.

If anything, the surge shows the limitations of prosecuting mortgage fraud, despite its ubiquity.

Tampa Bay ranks seventh in the nation for such crimes, according to the FBI, which expects the problem to get worse. Tougher restrictions at closings and stricter licensing of brokers and Realtors could have prevented much of the fraud, experts say. But once committed, it can be hard to prosecute because it takes months to track down the necessary documents or players in each transaction.

"Mortgage fraud will not be tolerated," said A. Brian Albritton, U.S. attorney for the Middle District of Florida. "We must protect the integrity of the real estate market in our communities."

"You don't indict your way out of what is a regulatory problem in large part," Albritton said. "(The surge) is not in lieu of greater regulation."

The gap between those charged so far and the amount of remaining fraud out there is a hangover from a management decision made by the U.S. Department of Justice after the Sept. 11 attacks. The FBI shifted more than 1,800 agents in its criminal programs — including some who would have investigated mortgage fraud — to national security. In 2008, as the housing market collapsed, the U.S. Attorney's Office in Tampa managed only four mortgage fraud cases.

The U.S. Department of Justice has since made mortgage fraud a priority, but it won't be easy playing catchup for a type of crime that has been neglected for so long, said Rebecca Lonergan, a former federal prosecutor who now teaches law at the University of Southern California.

"If they haven't been focusing on mortgage fraud, they won't know who the real actors are," Lonergan said. "So when they want to make a point all of a sudden with a sweep, they won't get big cases. You don't get those unless investigators have been paying attention for a while."

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Albritton's first day on the job as U.S. attorney for Florida's sprawling Middle District was Oct. 15, 2008. The real estate market had long ago crashed, and the national economy was starting to implode as well. The Middle District, the nation's 11th largest, covers an area spanning 400 miles from the Georgia border to Naples that was hit particularly hard with foreclosures.

In Tampa at that time, there were just a handful of active mortgage fraud cases. Albritton was told that didn't begin to address the problem.

"It was becoming apparent to us that mortgage fraud, in tandem with the boom, had been epidemic," said Albritton, who was a white-collar criminal defense lawyer at the Holland & Knight law firm before being appointed by President George W. Bush. "In order to make a public impact, we were going to have to treat cases differently than we had treated them before and try to accelerate the timetable."

From January through October, officials from the U.S. Attorney's Office, the FBI and other agencies chased down more than 600 leads throughout the Middle District. In Tampa, Albritton had 11 attorneys from other sections, such as narcotics and gangs, help his nine attorneys in white-collar crime who already were handling mortgage fraud.

"It ended up being a lot harder than we thought," Albritton said. "Getting records was tremendously hard to do."

Title companies that were supposed to have closing documents had gone out of business. Banks that approved the bad loans were acquired by other banks, making key documents harder to trace.

Lonergan, the former prosecutor, said once the documents are found, the real work begins.

"Mortgage fraud cases are work-intensive," she said. "I had to review hundreds of loan files, and each one is many inches thick. They are incredibly complex, making them hard for juries to understand. In my experience, they are some of the most difficult cases."

Albritton said he's proud of the cases his attorneys produced, especially those that charged industry insiders.

In Orlando, two former employees of Taylor, Bean & Whitaker Mortgage Corp. were charged. In Jacksonville, the former part-owner of one of northeast Florida's biggest home-builders was indicted.

But Tampa's cases appear weak by comparison.

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A dozen of them — more than half — identified the lowest rung in mortgage fraud: borrowers who lied about their income to qualify for loans they couldn't afford.

Nine of the cases identify only one property bought with the fraudulent loans — barely a ripple in a region where fraud touched thousands of properties.

Albritton said these cases are of a complex nature that will be publicly disclosed later. He wouldn't say whether they include other properties or represent wider schemes.

Other Tampa Bay area cases that were part of the surge seem to have little significance in terms of prosecuting mortgage fraud.

Two cases identified fraud for property that wasn't in the Middle District, including a house in Hawaii that former federal Judge Thomas Stringer bought with a fraudulent loan in 2004.

Two other cases involved scams that weren't primarily mortgage fraud. The defendants spent money they got through other scams on mortgages, qualifying them as fraudulent.

Only a handful of the cases identified schemes involving multiple properties. The biggest one, by far, included \$68.5 million in loans. But it took place between 1999 and 2001, a period of time far removed from last year's housing collapse.

None, at least publicly, identified cases depicting extensive straw-buyer scams or institutional corruption in Hillsborough. Albritton said such elaborate cases take longer to develop.

That's certainly been true in the case of Matthew Cox.

In 2005, Assistant U.S. Attorney Robert A. Mosakowski told a judge that charges were expected against as many as 13 defendants in the Tampa Bay area who helped Cox in a scam involving nearly \$9 million and 80 properties. The scam was first reported by the *St. Petersburg Times* in 2003. In 2007, Cox was sentenced to 26 years in prison and ordered to pay \$5.97 million. As part of the sentence, Cox agreed to cooperate and name co-conspirators.

But more than four years after he promised more people would be charged, Mosakowski has produced no indictments. He said he can't comment on why that is.

In 2008, Albritton said he had concerns after reading a *Times* story about Sang-Min Kim, a tattoo parlor owner who bought and sold about 90 homes across Tampa Bay in deals that totaled nearly \$11 million and left a trail of foreclosed homes. Kim hasn't been charged, but two of his title agents have.

Howard Gaines was the title agent in about a third of Kim's deals. The U.S. Southern District in Miami charged him for participating in a Broward County scam that closely resembled the type of deals Kim made in Hillsborough. Gaines was found guilty of mail fraud and sentenced this year to eight years in prison, but hasn't been charged with anything in Hillsborough.

Another title agent, Michelle Fabry, helped Kim close on three homes that he bought and sold for significant profits. She was one of the people Albritton charged in the November surge, but it was for an alleged role in a Pinellas scam. Kim and the Hillsborough properties weren't mentioned.

Albritton said he can't comment on Kim or his partners, which include a convicted drug dealer named Frank Acevedo.

"We're not done yet," Albritton said.

"Stay tuned," said Steve Cole, a spokesman for the U.S. Attorney's Office.

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Albritton didn't reapply for his job and President Barack Obama will soon select a replacement, as is the custom with new administrations.

Before he goes, Albritton will help decide whether some of the 21 lawyers now working mortgage fraud cases in Tampa will be shifted to other pressing matters, like health care fraud and environmental crimes.

The surge accomplished its goal of making mortgage fraud an issue with the public, Albritton said. The next step, he said, will be targeting those fraud cases that merit the limited resources of his office.

Meanwhile, many of the people who committed fraud are still out there. The FBI estimates it has nearly 3,000 active cases of mortgage fraud nationally. Its 2008 report on mortgage fraud predicted that as the number of distressed homeowners increases, fraud will, too. U.S. Attorney

General Eric Holder announced in November that a new task force will focus on mortgage fraud and financial crimes.

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Times researcher John Martin contributed to this report. Michael Van Sickler can be reached at mvansickler@sptimes.com or (813) 226-3402.