



HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Is it a Real or an Imaginary DeLorean?

Join us as we discuss fraud in the industry.

MEET THE PANEL





JP LoMonaco, MAI CBRE Valuation & Advisory Services

- Mr. LoMonaco entered the real estate consulting industry in 1989 and has been working exclusively in seniors housing and health care since 1996. Assignments include market feasibility analysis, appraisal reports, lease analysis, highest and best use studies, and general consulting. Mr. LoMonaco's expertise has been used by clients for lending, litigation support, asset allocation, due diligence, lease negotiation, tax appeals, bankruptcy proceedings and market and site selection.
- Prior to joining CBRE in June 2023, Mr. LoMonaco was the President of Valuation & Information Group (V&IG) . Experience includes appraisal and market feasibility assignments for a wide variety of property types in the senior housing and healthcare related industry. Property types include senior apartments, independent living, congregate, assisted living, skilled nursing, Alzheimer's, medical office buildings, surgery centers, dialysis centers, rehabilitation hospitals, psychiatric hospitals, specialty hospitals and general acute-care hospitals.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Rania S. Galan **Ballard Spahr LLP** **PARTNER**

- Rania Galan represents borrowers and mortgage lenders in commercial real estate financing transactions. Her practice involves the construction, rehabilitation, acquisition, and refinancing of market rate and affordable multifamily and health care facilities, with an emphasis on Fannie Mae agency loans and loans insured by the Federal Housing Administration (FHA).
- Rania helps clients maintain compliance with the National Housing Act and FHA regulations. She also advises on a wide variety of financing structures and transactions involving bridge loan financing, Section 8 properties, tax-exempt bonds, tax credits, and public and private mezzanine debt.



Matthew Ebert Ballard Spahr LLP OF COUNSEL



- Matthew Ebert is a former Assistant U.S. Attorney for the District of Minnesota who focuses his practice on white collar defense and investigations matters.
- As an Assistant U.S. Attorney in the District of Minnesota, Matthew helped spearhead prosecution of the 75-defendant, \$250 million Feeding Our Future fraud case, the largest pandemic-related fraud prosecution in the country and one of the largest-ever fraud cases in Minnesota. Also during his time with the District of Minnesota, Matthew was Chief of the Criminal Division's Fraud and Public Corruption Section, and he investigated and prosecuted insider trading, public corruption, securities fraud, tax crimes, money laundering, and bank and investment fraud matters.
- Prior to serving in the District of Minnesota, Matthew was an Assistant U.S. Attorney for the Northern District of Illinois in Chicago for the Criminal Division in the Securities & Commodities Fraud and Financial Crimes & Special Prosecution Sections. In this role, he led cases from investigation to trial through sentencing and advocated at the appellate level.
- Matthew gained additional experience as a trial attorney for the U.S. Department of Justice, Civil Division, Consumer Protection Branch; and as an associate with a *Chambers*-ranked law firm

Why discuss fraud?

- Recent developments – lawsuits, investigations, guilty pleas
- Scope of parties under scrutiny: borrowers, lenders, appraisers, title companies, accountants, attorneys
- More likely to come
- Protection of business interests & industry interests
- High stakes / authority of GSE, HUD
- Rise in loan repurchase requests
- Loss mitigation
- Evolving impact on lender standards and regulatory scrutiny

VULNERABILITIES IN THE INDUSTRY

Rapid appreciation of real estate provided comfort to lenders

Demand outpacing supply – need for inventory to remain online

Tension between production & asset management

Financial incentives for brokers & third-party service providers to close deals

Low barrier to entry for owners/operators of multi-family housing

Small, closely controlled SPE owners
Many junior, inexperienced staff
Frequent lack of internal controls & oversight

- Historically low default rates
- High deal volume
- Historically low interest rates
- COVID-era adjustments to diligence process
- Disconnect between payor and recipients of housing
- Rapid appreciation of real estate provided comfort to lenders





CASE STUDIES IN HEALTHCARE

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Fraud & Section 232: *From the loan fine print ...*

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Application for Insurance Benefits Section 232

U.S. Department of Housing and Urban Development
Office of Residential Care Facilities

OMB No. 2502-0605
(exp. 01/31/2026)

Public reporting burden for this collection of information is estimated to average 0.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information is being collected to obtain the supportive documentation that must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived from the National Housing Act Section 232 Healthcare Facility Insurance Program. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

This form collects data required for cancellation of multifamily mortgage insurance contracts and payments of mortgage insurance premiums. The information collection is needed when the mortgage goes into default and the lender files a claim for insurance benefits. The Department ascertains that the claim is a legitimate claim for mortgage insurance premiums. This information is required under 24 CFR Part 207. Providing this information is required to obtain benefits.

Email To:
multifamilyclaimsbranch@hud.gov

Or Mail to: U.S. Department of Housing and Urban Development
Multifamily Claims Branch, HWAFC, Room 6252
451 7th Street S.W., Washington, DC 20410-8000

“Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and penalties.”

Fraud & Section 232: *From the loan fine print ... to the headlines*

The New York Times

\$146 Million Default by Nursing Home Chain Leaves U.S. on the Hook

The failure of the Rosewood Care Centers is the biggest default in the history of a little-known program that underpins 15 percent of the nation's nursing homes.

Share full article



HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Texarkana doctor who allegedly took hundreds of thousands of dollars from Alzheimer's living facility pleads guilty

Sharon Haissi

5 years ago



TEXARKANA, Texas (KETK) — A Texarkana doctor pleaded guilty Wednesday to a federal tax fraud violation, according to Eastern District of Texas Acting U.S. Attorney Nicholas J. Ganjel.

According to information presented in court, 68-year-old Rafael Otero was the majority owner of Magnolia Alzheimer's Assisted Living facility in

Courts Crime News

Nursing home owner charged in misuse of Housing and Urban Development funds

By Field Walsh - January 21, 2021



Fraud & Section 232: Types of Legal Actions & Remedies

- Civil Causes of Action
 - False Claims Act
 - Double Damages Statute
- Criminal Investigation and Prosecution
 - Fraud
 - Unlawful Misappropriation
 - False Statements

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



Fraud & Section 232: False Claims Act

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- The False Claims Act allows the Department of Justice (DOJ) to investigate and sue entities that submit
 - false statements and claims to the government and recover losses caused by those entities.
- Under the False Claims Act, a defendant found liable for fraud is subject to treble damages, meaning the government can
 - recover three times the amount of actual damages they sustained plus civil penalties for each false claim submitted.



Fraud & Section 232: False Claims Act

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- The DOJ has used the False Claims Act in actions against lenders that knowingly submitted or caused the submission of false claims for FHA mortgage insurance by approving FHA insured loans that the lenders knew were not eligible.



Fraud & Section 232: False Claims Act

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Knowledge:
 - Knowingly submitting a false claim; or
 - acting in deliberate ignorance or reckless disregard of the truth or falsity of the information,
 - i.e., more than mere negligence or a simple mistake to hold a person liable.



Fraud & Section 232: False Claims Act

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Materiality:
 - False claim must have natural tendency to influence, or
 - be capable of influencing, the payment or receipt of money or property,
 - i.e., insignificant violations that have no effect on a person's entitlement to the payment of a claim also do not give rise to liability.



False Claims Act: *False Statements about Finances*

PRESS RELEASE

Three Individuals in Oklahoma to Pay \$5.3 Million for Allegedly Making False Statements in Refinance Scheme

Tuesday, July 31, 2012

Allegedly Made False Statements to HUD in Connection with Refi

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



OFFICE of
INSPECTOR GENERAL
UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

HOTLINE

REPORT FRAUD, WASTE AND ABUSE

For Immediate
Office of Public

ABOUT HUD OIG < LIBRARY < COMBATING FRAUD < NEWS & CONGRESSIONAL < RESOURCES < WHISTLEBLOWER <

HOME / LIBRARY / FINAL CIVIL ACTION: BARTLESVILLE HEALTH CARE CENTER, INC., OWNERS AND LENDER SETTLED ALLEGED VIOLATIONS OF THE FALSE CLAIMS ACT

Final Civil Action: Bartlesville Health Care Center, Inc., Owners and Lender Settled Alleged Violations of the False Claims Act

- In Oklahoma, two owners and a mortgage company president were busted for misleading HUD in order to get HUD-insured mortgage refinancing for three Oklahoma nursing homes.
- The trio allegedly made false statements regarding the eligible existing indebtedness of two nursing homes so they could get cash from the HUD-insured mortgage refinancing, in violation of HUD rules and requirements.
- The loan defaulted resulting in a multi-million dollar loss to HUD.

False Claims Act: *False Statements about Ownership/Management*

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- At the time lenders present an application for insurance on a loan, HUD requires a credit check for the entities proposed to manage or operate nursing facilities.
- Lenders must submit a check form, which discloses the credit references and liabilities of the entity proposed to run the nursing facility, as well as a commercial credit report.
 - This enables HUD's underwriting staff to examine the financial viability of the entity proposed to manage the nursing facility for which a HUD-insured mortgage is sought.
 - HUD will not insure a mortgage loan under the program without demonstration of the financial viability of the entity proposed to manage the facility.

False Claims Act: *False Statements about Ownership/Management*

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Lender submitted an application to HUD for mortgage insurance on a loan that financed the borrower's acquisition of two existing residential nursing homes, representing that a certain firm was the current management company and would continue in that role.
- Lender then submitted to HUD a Form HUD 92013-Supp and the required credit report for that particular firm, which passed its credit screening.
- *The problem?*
- This statement, as the lender knew, was false because the actual property manager was a different firm which was delinquent and burdened by over \$3 million in tax debt liens at the time of the lender's application to HUD.

False Claims Act: *False Statements about Ownership/Management*

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Knowing HUD would insure the loan based on incomplete information for the wrong entity, the lender nonetheless closed on the loan and cemented HUD's insurance obligation.
- Afterwards, the delinquent party continued to operate the nursing facility and collected accounts receivable and forwarded the proceeds to the nursing facility.
- However, eventually the operator's delinquent tax liability caused the Internal Revenue Service to garnish Medicare and Medi-Cal payments intended for the facility, thereby depriving the facility of the operating revenue necessary to make payments on its HUD-insured mortgage.
- The loan went into default and the lender submitted to HUD a claim for mortgage insurance benefits and HUD paid a claim total of \$6,694,121.12.

False Claims Act: *False Statements about Ownership/Management*

1 TONY WEST
 2 Assistant Attorney General
 3 JOYCE R. BRANDA
 4 RENEE BROOKER
 5 BRIAN R. YOUNG (CSBN A5501009)
 6 U.S. Department of Justice
 7 P.O. Box 261
 8 Ben Franklin Station
 9 Washington, D.C. 20044
 10 Tel: 202-353-2265
 11 Fax: 202-305-4117
 12 Email: Brian.young4@usdoj.gov
 13 Attorneys for Plaintiff,
 14 United States of America

15 UNITED STATES DISTRICT COURT
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 17 WESTERN DIVISION

18 UNITED STATES of AMERICA,
 19 Plaintiff,
 20 v.
 21 Defendant.

22 COMPLAINT ALLEGING
 23 VIOLATIONS OF THE
 24 FALSE CLAIMS ACT
 25 AND DEMAND FOR
 26 JURY TRIAL

27 Civil Action No. _____
 28 CVD9-04104 RSWL

29 **UNITED STATES'S COMPLAINT**

30 The Court has jurisdiction over the subject matter of this action pursuant to
 31 31 U.S.C § 3730(a) and 28 U.S.C. § 1345. The United States demands a jury for
 32 this matter. The United States of America, by and through its undersigned
 33 counsel, respectfully alleges as follows:

34 **INTRODUCTION**

35 1. This is a civil action by plaintiff United States of America to recover
 36 damages and penalties under the False Claims Act, 31 U.S.C. § 3729, *et seq.*,
 37 arising from Carmak Finance Inc.'s ("Carmak") submission of false documents

COPY

2009 JUN -9 11:21 AM
 CLERK OF DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
 Financing Seniors Housing for America

PRESS RELEASE

Lender to Pay U.S. \$3.9 Million to Resolve False Claims Liability Related to Two Nursing Home Mortgages

Friday, February 10, 2012

For Immediate Release
 Office of Public Affairs



Fraud & Section 232: Types of Legal Actions & Remedies

- Civil Causes of Action
 - False Claims Act
 - Double Damages Statute
- Criminal Investigation and Prosecution
 - Fraud
 - Unlawful Misappropriation
 - False Statements

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



Fraud & Section 232 Programs: Civil Tools and Remedies

“Double Damages” Statute

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

- Provides a broad remedy to deter anyone from improperly distributing or misallocating funds from an FHA-insured care facility by giving the government an additional remedy beyond the traditional remedies of foreclosure and breach of contract.
 - The United States may bring an action against any “person” to recover “any assets or income used by any person in violation of . . . a regulatory agreement [with the FHA] that applies to a . . . nursing home . . . or any applicable regulation.”
 - The United States is **entitled to recover “double the value of the assets and income of the property that the court determines to have been used in violation of the Regulatory Agreement[.]”**

MISAPPROPRIATION SCHEMES

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- To obtain Section 232-insured loans, loan recipients must enter into regulatory agreements with the FHA.
- Among other requirements, the assets and income of an FHA-insured care facility may only be spent on goods and services that are reasonable and necessary to the operation of the facility.

Misappropriation Schemes: *United States v. Bob Dean, Jr., et al.*

- Dean misappropriated and misused the assets and income of four of his nursing homes in Louisiana that had loans insured by FHA.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

Nursing home owner Bob Dean misspent millions on cars, guns, family, DOJ alleges



The New York Times

Nursing Home Owner Gets 3 Years' Probation in Deadly Hurricane Evacuation

Bob Glynn Dean Jr. of Louisiana, who pleaded no contest to cruelty to the infirmed, Medicaid fraud and other criminal charges, will avoid prison time if he successfully completes probation.

Share full article



Misappropriation Schemes: *United States v. Bob Dean, Jr., et al.*

- From 2016 to 2021, Dean required the nursing homes to pay one of his corporate entities more than \$1 million in “rent” on an industrial warehouse he had acquired supposedly to serve as a hurricane evacuation center.
- For five years leading up to Hurricane Ida, Dean funneled money
 - that should have been used to prepare an evacuation site for nursing home residents to his **personal bank accounts**,
 - leaving his nursing homes — and the residents — unprepared for a hurricane.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



Misappropriation Schemes: *United States v. Bob Dean, Jr., et al.*



HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

At remote Louisiana warehouse, nursing home evacuees lay in waste, calling out for help
From the Bob Dean series
BY ANDREA GALLO, EMILY WOODRUFF, JOE GYAN AND JACKIE DEROBERTIS | Staff writers Sep 2, 2021 7 min to read

As a result, when Hurricane Ida made landfall in August 2021, the residents of Dean’s nursing homes had to ride out the storm in an overcrowded and ill-prepared industrial warehouse Dean owned through a corporate entity, where the residents languished in squalor without adequate care.



Misappropriation Schemes: *United States v. Bob Dean, Jr., et al.*

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Before *and* after the hurricane, Dean did not use the nursing homes' income and assets solely to operate or maintain the nursing homes, but instead he:
 - purchased personal goods and services;
 - spent on antiques, firearms, and cars;
 - gave cash gifts to family;
 - directed his bookkeeper to sweep all of the nursing homes' bank accounts and transfer the millions of dollars of funds to his personal accounts; and
 - misspent and misallocated in total more than \$4 million of the nursing homes' assets and income.

Misappropriation Schemes: *United States v. Bob Dean, Jr., et al.*

- Dean and his entities were sued by the DOJ for unlawful misuse of income and assets for his FHA-backed nursing homes.
- The DOJ invoked the “double damages” statutory provision concerning the \$4 million in misappropriated nursing home income and assets.
- Result: The defendants resolved the case and agreed to the entry of an \$8 million judgment against Dean.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

PRESS RELEASE

Bob Dean Jr. and Affiliated Corporate Entities Agree to \$8.2M Consent Judgment to Resolve Allegations of Financial Misconduct Stemming from Evacuation of Nursing Homes During Hurricane Ida

Tuesday, October 8, 2024

For Immediate Release
Office of Public Affairs

Fraud & Section 232: Types of Legal Actions & Remedies

- Civil Causes of Action
 - False Claims Act
 - Double Damages Statute
- Criminal Investigation and Prosecution
 - Fraud
 - Unlawful Misappropriation
 - False Statements

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



Equity Skimming: *U.S. v. Dr. Rafael Otero and Antonio Otero*

United States Attorney's Office Eastern District of Texas

About EDTX | Find Help | Contact Us

Search

District ▾ News U.S. Attorney Divisions ▾ Programs ▾ Careers ▾ Contact Us ▾

Justice.gov > U.S. Attorneys > Eastern District of Texas > Press Releases > Father and Son Guilty of Defrauding Department of Housing and Urban Development Through Texarkana Alzheimer's Assisted Living Facility

PRESS RELEASE

Father and Son Guilty of Defrauding Department of Housing and Urban Development Through Texarkana Alzheimer's Assisted Living Facility

Wednesday, February 10, 2021

Share >

For Immediate Release
U.S. Attorney's Office, Eastern District of Texas

TEXARKANA, Texas – A Texarkana, Texas, doctor has pleaded guilty today to a federal fraud violation, announced Eastern District of Texas Acting U.S. Attorney Nicholas J. Ganjei.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

Call Now: 214-828-6146

MAGNOLIA Assisted Living & Memory Care

About Us ▾ Services ▾ Contact Find Your Community

Memory Care Services

Care. Comfort. Companionship.

Find Your Community

Memory Care at Magnolia

At Magnolia Assisted Living and Memory Care, we understand that memory loss affects not just individuals, but entire families. Our Memory Care program is designed to provide a secure, nurturing

Equity Skimming: *U.S. v. Dr. Rafael Otero and Antonio Otero*

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Antonio Otero and Dr. Rafael Otero each pleaded guilty to charges of equity skimming and were sentenced to 46 months and 12 months, respectively, in federal prison.
- They were ordered to pay \$2 million in restitution to HUD.
- Acting U.S. Attorney Nicholas Ganjei:
 - *“Dr. Otero, and his son Antonio Otero, exploited a HUD-insured mortgage program designed to provide affordable housing for those suffering from diseases like Alzheimer’s. While they left the HUD-insured mortgage unpaid, the Oteros took hundreds of thousands of dollars. Because of their actions, the American taxpayers ultimately suffered a loss of over \$3.6 million.”*



Equity Skimming: *U.S. v. Yampol and the Rosewood Default*



HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Rosewood Care Centers operated multiple nursing homes across Illinois and Missouri, almost all of which were involved HUD-insured mortgages under Section 232.
- Rosewood's operators:
 - failed their financial obligations and failed to maintain required reserves,
 - stopped making mortgage payments,
 - violated regulatory requirements and operational mismanagement, and
 - made misleading representations to HUD.

Fraud & Mismanagement: Rosewood Care Centers

- Ultimately, in 2018, Rosewood defaulted on a record \$146 million in loans,
- making it the largest loss ever in the 60-year history of Section 232.
- Highlights the exposure of taxpayer-insured financing to financially unstable operators of nursing/care facilities.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



NEWS

Skilled nursing chain's collapse leaves HUD holding the bag on \$146M



KIMBERLY MARSELAS

x @KIMMARSELAS

JUNE 2, 2019

SHARE ^

When a nursing home chain collapsed last year, its default on \$146 million in loans became the biggest loss in the 60-year-history of a HUD loan-guarantee program, according to a new investigative report.

Fraud & Mismanagement: Rosewood Care Centers



NEWS

Leader of record \$146M nursing home mortgage default settles SEC lawsuit

DANIELLE BROWN

SEPTEMBER 23, 2019

SHARE ^

A rabbi at the center of... has agreed to settle a... scheme that targeted t...



NEWS

\$1M penalty approved after record \$146M nursing home mortgage default

DANIELLE BROWN

AUGUST 19, 2019

SHARE v



Biggest HUD mortgage default heads toward resolution.

A judge has approved a nearly \$1 million penalty for the former leader of a nursing home chain after the company defaulted on \$146 million in loans – the biggest default in the HUD federal mortgage insurance program's history.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

- HUD took control of the facilities, assigned the loans, and placed operators under receivership.
- HUD also entered into legal actions to recover losses, including obtaining a \$1 million civil penalty against the owner.
- The ownership also faced legal action from private investors and the Securities and Exchange Commission.
- Criminal prosecution

Fraud & Mismanagement: Rosewood Care Centers

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Mark Yampol directed, managed, and controlled the Rosewood Care Centers.
- In 2014, within about a year after Yampol and the owner acquired the Rosewood, they began experiencing severe cash-flow problems which impacted their ability to keep up with all of the facilities' bills and expenses.
- HUD subsequently learned that Yampol had transferred funds from a Rosewood bank account—money that should have been used to make the delinquent mortgage payments—to a Yampol-controlled LLC and to make payments on the one mortgage (Galesburg) in which Yampol's family had financial exposure.

Fraud & Mismanagement: Rosewood Care Centers

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

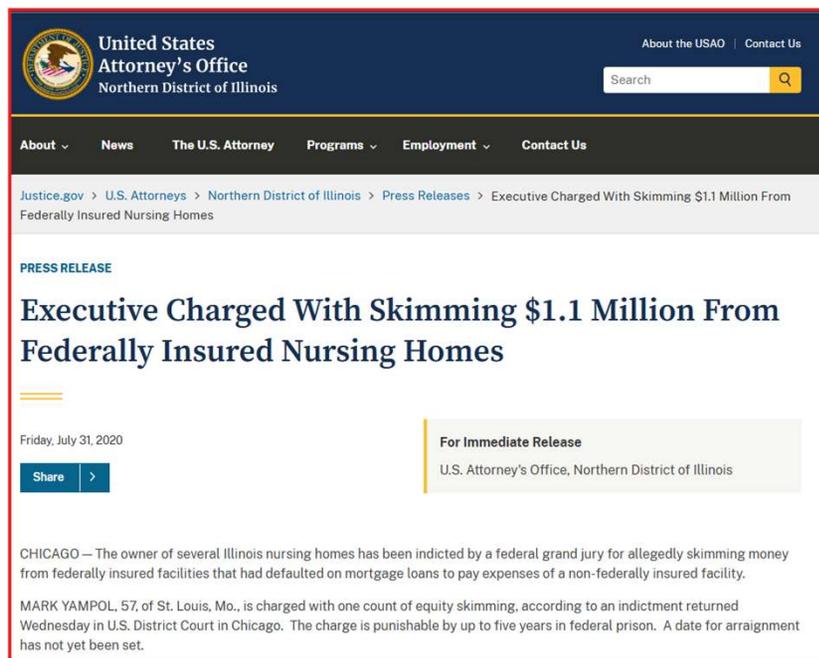
Financing Seniors Housing for America

- On a weekly basis, Yampol transferred funds from a Rosewood bank account to his own bank accounts under the guise of paying “consulting fees.”
- Yampol transferred (or “skimmed”) those funds from the Rosewood facilities during a time when the Rosewood facilities were in financial distress and heading toward collapse.
- The funds should have been used to pay Rosewood’s delinquent mortgage loans.
- By instead using the funds for his own personal benefit, Yampol walked away from Rosewood’s financial obligations, putting himself at the front of the line, that is, ahead of the government (which had insured the mortgage loans), leaving taxpayers to foot the unpaid mortgage bills.



Fraud & Mismanagement: Rosewood Care Centers

- Yampol's diversion of large sums to satisfy his own personal financial interests, during a time when the Rosewood facilities were in financial distress, resulted in the filing of criminal charges against him to which he pled guilty in 2023.



United States Attorney's Office
Northern District of Illinois

About the USAO | Contact Us

Search

About News The U.S. Attorney Programs Employment Contact Us

Justice.gov > U.S. Attorneys > Northern District of Illinois > Press Releases > Executive Charged With Skimming \$1.1 Million From Federally Insured Nursing Homes

PRESS RELEASE

Executive Charged With Skimming \$1.1 Million From Federally Insured Nursing Homes

Friday, July 31, 2020

For Immediate Release
U.S. Attorney's Office, Northern District of Illinois

CHICAGO — The owner of several Illinois nursing homes has been indicted by a federal grand jury for allegedly skimming money from federally insured facilities that had defaulted on mortgage loans to pay expenses of a non-federally insured facility.

MARK YAMPOL, 57, of St. Louis, Mo., is charged with one count of equity skimming, according to an indictment returned Wednesday in U.S. District Court in Chicago. The charge is punishable by up to five years in federal prison. A date for arraignment has not yet been set.

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



Health Care

St. Louis nursing home executive Mark Yampol indicted in skimming scheme

Unlock URL Order Reprints Gift this Article



Image: Heiko Kuverling

From May 2015 to August 2015, the feds alleged, Yampol diverted about \$1.1 million in funds from the homes to pay the mortgage and operating expenses of the non-HUD-insured facility.

Fraud & Section 232: Why it matters

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Rosewood (and all of these case examples) have forced HUD and lenders to re-evaluate risk controls, underwriting assumptions, and monitoring.
- Exposed weaknesses and caused HUD to tighten regulatory oversight and pursue more aggressive intervention.
- Triggered greater scrutiny of Section 232 borrowers by HUD and lenders:
 - Management fees
 - Related-party transactions
 - Distributions
 - Staffing levels
 - Quality of care indicators
 - Financial reporting



Appraisal Practices

- Background on Ethics Rule
- Conduct
- Management
- Standards Rule 1-5 Subject Sales and Other Transfers, Sale Agreements, Options and Listings
- Standards Rule 2-3, Certification

2024 Uniform Standards of Professional Appraisal Practice (USPAP)

An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics.

2024 Uniform Standards of Professional Practice (USPAP)

- CONDUCT:

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An Appraiser:

- Must not communicate assignment results with the intent to mislead or to defraud;
- Must not use or communicate a report or assignment results known by the appraiser to be misleading or fraudulent;
- Must not knowingly permit an employee or other person to communicate a report or assignment results that are misleading or fraudulent;

If known prior to agreeing to perform an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client, and in each subsequent report certification:

- Any current or prospective interest in the subject property or parties involved; and
- Any services regarding the subject property performed by the appraiser, as an appraiser or in any other capacity, within the three-year period immediately preceding the agreement to perform the assignment.

Standards Rule 1-5, Subject Sales and Other Transfers, Sale Agreements, Options, and Listings

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business: ³¹

- (a) analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; and
- (b) analyze all sales and other transfers of the subject property that occurred within the three (3) years prior to the effective date of the appraisal. ³²

2024 Uniform Standards of Professional Practice (USPAP)

- MANAGEMENT:

HEALTHCARE MORTGAGEE ADVISORY COUNCIL
Financing Seniors Housing for America

- An appraiser must not agree to preform an assignment, or have a compensation arrangement for an assignment, that is contingent on any of the following:
 1. The reporting of a predetermined result (e.g., opinion of value);
 2. A direction in assignment results that favors the cause of the client;
 3. The amount of a value opinion;
 4. The attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or
 5. The occurrence of a subsequent event directly related to the appraiser’s opinions and specific to the assignment’s purpose.

STANDARDS RULE 2-3, CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and (or the specified) personal interest with respect to the parties involved.
- I have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding the agreement to perform this assignment.

- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

Appraisal Fraud

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Manipulating or inflating comparable locations
- Inflating market values and property characteristics
- Pressure by brokers or loan originators.
- Works in collusion with other conspirators.
- Property flipping.
- Liability Insurance Appraisal Fraud

FALSE PRETENSES – PROPERTY/APPRaisal FRAUD

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Falsified tenant leases & lease terms
- Rent rolls with inflated/misstated occupancy information
- Financials with math errors
- Purchase agreements with misstated or inflated purchase prices
- Unreliable appraisals
 - Appraisers relying on faulty information and/or methods
 - Appraisers with significant relationships with borrowers
- Misrepresentation of property conditions & needs
- Gamesmanship with inspections – unavailable principal, access issues, unit swapping, “staging” of empty units/spaces

FNMA – Fraud Alerts

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Red Flags
- Deed transfers recorded 60–180 days before loan origination;
- LLCs acting as both buyer and seller;
- Questionable leases used to qualify borrowers;
- Large, unexplained jumps in property value;
- Refinance transactions paying off unrecorded “private” hard money loans;
- Title commitments reflecting liens that don’t appear in public records;
- Ownership or lender affiliations between borrower and lienholder; and
- Documentation with inconsistent or illogical execution dates.

FALSE PRETENSES –BORROWER AND CLOSINGS

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Straw buyers & concealment of true control persons
- Sources of equity – “shell game”
- Concealment of non-arms-length transactions & off-record entity sales
- Concealment of insider dealings (e.g., ground leases)
- Lack of broker independence / compensation incentive
- Title companies & escrow agents with close ties to borrowers
- Misrepresentations on Schedule of Real Estate Owned

Lessons Learned: What to Look for in Underwriting

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Make sure to check the 4 questions on the Certifications.
 - 4 questions pertaining to: Delinquent federal debt, judgments, suits or legal actions, bankruptcies
 - Certifications: Borrower, Principals, Operator, Parent of the Operator, General Contractor, Management Agent.
- Look for PDF's that are blurry or look doctored:
 - (Financial statements, Rent rolls if ALF/B&C).
- Watch closely for name variations of facilities.
- Make sure to be diligent in looking at evacuation facilities.
- Be diligent on determining the active and controlling principal.
- Perform thorough debt investigation if warranted.

Questions?

THANK YOU FOR ATTENDING
OUR PANEL!

