Warning to borrowers – ASIC protecting the control fraudsters

by Lindsay David

ASIC has the backbone of a chicken wing when it comes to enforcing the rule of law; this is widely recognised in Australia and resulted in a Parliamentary inquiry. If any politician believes that ASIC is a 'tough cop on the beat' they should seriously reconsider their opinion on this issue.

Under the pomp and ceremony of the government's decision to levy the banks to fund ASIC's prolonged $400 million+ annual fishing vacation is its pursuit of catching tadpoles in the open seas while leaving sharks and barracuda's to freely roam. Unfortunately for the regulator, there is a new term Australians will become accustomed to.

If you haven't heard of the term control fraud before, you do now. It refers to fraud committed by the controllers of a corporation: executives and managers, typically a bank. It's a crime that ASIC has decided neither to investigate nor prosecute, leaving borrowers on their own with no pennies to spare and nowhere to turn to.

So here's how a control fraud would work. Let's say you're an asset rich and income poor (ARIP) husband and wife in their 70s surviving off an income of less than $23,000 a year and own your $400,000 (today's value) home outright. You want to obtain a $400,000 loan from the bank for an investment property that will run at an annual net loss. You walk into the bank branch for an appointment and are presented with 3-page pre-filled loan application form (LAF) stating only the basics details.

During the application process, you honestly state your income and assets and are then issued with a 30-year interest-only loan you have absolutely no chance of servicing beyond a three to five year horizon. In other words, there is a strong chance that a few years later the only way you can get out of your loan is to sell your investment property at a higher net price than what you paid for it to extinguish your mortgage or go bankrupt.

Firstly, this type of loan is predatory as it is far larger than what can be serviced by income and rent. There are laws and regulations in place preventing banks from engaging in this illegal activity which ASIC (including APRA) seemingly refuse to enforce, let alone impose penalties on such behavior.

Secondly, and more importantly (from a criminal aspect) there are many cases where bankrupted borrowers realise they were not given a copy of their LAF at time of approval. They then phone the lender and demand their copy. The banks' version differs significantly from the original application.

On these LAFs, there is clear evidence of lenders tampering with their copy to show that a particular borrower was more credit-worthy then they actually were. In a nutshell, there is evidence of lenders inflating incomes and assets of borrowers to get mortgages approved. In many cases, signatures and initials of borrowers were forged; this is fraud.

So when the old ARIP couple goes to ASIC after they ascertain the bank's copy of the LAF (which now states they apparently earn $180,000 a year rather than $23,000) to report fraudulent activity and rightly asking for justice to be served, ASIC has an all too familiar response. Now broke, ASIC will inform you in a polite manner: "hire a lawyer as it is not ASIC's problem". In reality, this conduct is why ASIC was established, to protect Australians against white collar crime and enforce the law when it is broken.

If you think this is a one-off instance, then how has Denise Brailey, Australia's leading financial services consumer activist, managed to organise with more than two thousand victims of this mortgage control fraud along with their LAFs to prove they are victims of fraud? Yet, all of these accusations have been completely ignored by ASIC and other authorities when the evidence points to widespread control fraud.

So why would a lender fudge their copy of a LAF to issue predatory jumbo loans? The answer is simple: it maximises revenues, share prices, profits, market share and executive remuneration. Furthermore, it keeps funding costs low via AAA ratings the ratings agencies provide. By using the fraudulent LAFs, the residential mortgage backed securities (RMBS) can be made to look secure. In reality, however, there is evidence to suggest these AAA rated RMBS contain lots of toxic subprime mortgages.

We have seen this story before in the US. The only way to run up mortgage debt as historically and globally high as Australia's is for lenders to commit control fraud. According to Brailey, this has been going on since the late 1990s. ASIC could've intervened to stop these practices a long time ago but have decided instead to side with the fraudsters.

A Royal Commission into lenders would uncover a cesspit of control fraud, which is why vested interests adamantly oppose it. Typically it takes a bursting asset bubble for the fraud to be publicly revealed, but Australian banks are so flagrant the criminality is seeping out everywhere. These control frauds have received wide publicity in the mass media, though the one to watch is the mortgage control fraud which is likely to be the nuclear bomb to our overleveraged and undercapitalized banking system.

In the meantime, if you are currently seeking a loan, do not walk out without your full eleven-page copy of your LAF from the bank or broker, and do not sign anything without first obtaining legal and financial advice. And never sign blank forms!