

Malafide activiteiten in de vastgoedsector

Een exploratief onderzoek naar aard, actoren en aanpak

Henk Ferwerda, Richard Staring, Edo de Vries Robbé en Joris van de Bunt

Advies- en Onderzoeksgroep Beke, Arnhem/Erasmus Universiteit Rotterdam

Uitgeverij SWP, Amsterdam, 2007

ISBN 978 90 6665 839 4

Summary

This report is a descriptive account of an exploratory research study into fraudulent activities in the real estate industry in the Netherlands. The real estate industry can be subdivided into private homes, shops, catering industry, office buildings and company premises. The research study focused on fraudulent activities concerning private homes in Amsterdam, The Hague, Rotterdam and Utrecht (the four largest cities in The Netherlands or G4).

Public sources such as research literature, newspapers, the Internet, land registry data, observations at house auctions, data from auction firms and interviews with local and national experts were used to focus the research on different forms of fraudulent activity in the real estate industry. The aim of the research was to answer the following three questions:

- What is the nature of the fraudulent activities in the real estate industry in large cities in The Netherlands and what developments can be expected in this regard?
- What actors and what forms of collaboration play a role in these activities?
- What options are available and what options are lacking with regard to better ways of tackling these fraudulent practices?

Complementary to this research an analysis of investigative files (private or closed sources, i.e. not available to the general public) concerning this subject matter is performed by the Dutch Ministry of Justice (WODC).

Forms of fraudulent activity

In line with the research, this report distinguishes between fraudulent activities with regard to exploitation and fraudulent activities with regard to speculation. Exploiting real estate or speculating in real estate is legal and legitimate in principle. At the same time proceeds can be lucrative to such a degree that the temptation to realise these proceeds in an unlawful way can be huge. Three different forms of fraudulent activity have been distinguished with respect to exploiting private homes. The first form is *unlawful occupation*, i.e. the illegal (sub)letting to individuals who are legally or illegally residing in the Netherlands. The second form entails *irregularities concerning*

the letting of private homes: the traditional rack-renter exploiting his tenants. The third form entails *wrongful use*, which means that the house is used for purposes other than regular housing. This may vary from illegal boarding houses to using the property as a cover for criminal activities such as weed plantations, women trafficking, money laundering and illegal prostitution.

Based on the findings of the research, fraudulent activities concerning speculation on premises were subdivided into seven categories. In so-called *ABC transactions* the sale from party A to party B, and from party B to party C includes unlawful actions. The second category, *the sales carousel*, includes the purchasing and unduly rapid selling of property by means of fraudulent practices in order to gain higher profits. The third category is *mortgage fraud*: individuals or groups of individuals try to obtain a (higher) mortgage under false pretences (such as falsified income data or fake identity papers). *Tax evasion* as a form of fraudulent speculation manifests itself in more than one form. Underhand payment of real estate is probably the best-known form. Another form includes *money laundering* by means of purchasing real estate. *Mortgage discrimination* or 'redlining' is a form of fraudulent activity by banks. In this case individuals from certain high-risk neighbourhoods are excluded from obtaining a mortgage. Finally, *intimidation or threat* may occur at different points in time – both at the time of purchasing and at the time of selling real estate. Not only can buyers and sellers at liquidation auctions be put under pressure but appraisers and public notaries as well.

It is important to indicate that this report on fraudulent activities in real estate also pays attention to activities which are bona fide as such, but which can be put to use for fraudulent practices as well. Speculating in real estate is not a penal act as such, but when speculation coincides with, for example, tax evasion, mortgage fraud or threats, it is a criminal offence.

Local differences

The research indicates that exploitation takes on different forms in the four largest cities of The Netherlands. One important difference is caused by shortages in the housing market in Amsterdam and Utrecht, which are more severe than in Rotterdam and The Hague. This is why in Amsterdam and Utrecht illegal subletting is the main problem. In Amsterdam fraudulent housing brokers take advantage of the situation by acting as intermediaries. Homeowners in the private letting sector sometimes revert to (or threaten with) violence in order to replace long residing tenants who pay relatively low rents by yuppies and other moneyed people. In Rotterdam such threats are not uncommon either, but here those threats are made in order to be able to sell these houses free of tenants (speculation). In Rotterdam and The Hague the main problems in this respect are (exploitation of) illegal immigrants, traditional rack-renters, public nuisance, decay and overcrowding of houses that are predominantly in private ownership. Of course, housing illegal immigrants is also common in Amsterdam and Utrecht. Both in Amsterdam and in Utrecht it is more common for illegal immigrants to

live in houses owned by housing corporations of which legal immigrants are the principal tenants. The research indicates that the houses in problem areas in Rotterdam and The Hague are predominantly privately owned, whereas similar premises in Amsterdam and Utrecht are predominantly owned by housing corporations. Illegal use of houses is common in all four cities.

As to speculation, the situation in the four cities is more or less the same. Actors use similar constructions and channels in order to speculate or launder money by buying and selling premises. However, it is true that top criminals have always owned more real estate in Amsterdam than in other places. Only in The Hague and Rotterdam have we found indications of real estate carousels – houses changing ownership in rapid succession and houses brought on the market via liquidation auctions.

Actors and their motives

The number of actors that may be involved in fraudulent practices in real estate is large. First of all there are the victims, such as ordinary citizens or tenants, the (local) authorities, the tax authorities, the power companies and the housing corporations. This research study identified thirteen actors that may play a negative role. Examples include the person who sublets, the straw man, the fraudulent homeowner, the accommodation agency, the criminal network, the real estate agent, the appraiser and the public notary.

As appears from the above list, various parties from respectable industries may be involved in the fraudulent trade in real estate. They all belong to industries that have entered the free market and this is one of the reasons why they may have become influenced by the values of the market. The question of to what extent this structure offers organised criminal networks the chance to establish themselves in the 'upper world' cannot be answered on the basis of this research study.

Effects

The effects of fraudulent activities are very diverse and vary in scope and seriousness. Examples include displacement effects on a tight housing market, the rise of fraudulent accommodation agencies, tenants not being registered in the municipal register (GBA in The Netherlands), various forms of fraud and tax evasion, public nuisance caused by overcrowded houses, problems with fire safety, drug-related crime, price control and price-fixing, intimidation and threat, links to organised crime and criminal exploitation of premises.

Moreover, fraudulent activities in the real estate industry can be interwoven with other illegal activities such as illegal habitation, people smuggling, black labour or with serious crime.

Tackling the problem

The research shows that the way this problem is dealt with is still in its infancy for a large part. At present the approach is mainly aimed at tackling the fraudulent

exploitation of houses. Local authorities play a prominent role or take the lead in this. Examples include the Van Traa team (Amsterdam), the AMFI project (The Hague) and the Alijda project (Rotterdam). Furthermore, the research study showed that administrative legal instruments were often used, whereas criminal law was relatively rarely reverted to. From these facts it can be concluded that up to now the problem has been tackled in large part by fighting public nuisance and to a lesser degree by punishing criminal offences. Tackling fraudulent speculation, especially when this has led to serious crime and unlawfulness, should receive more attention.

The research report offers some recommendations to improve the ways in which fraudulent activities in the real estate industry are tackled. National and local authorities, the various industries and citizens all should have their own roles and responsibilities in this. The recommendations include: straightening out the municipal register (GBA) and keeping it up to date, improving the possibilities of co-ordinating information for the benefit of the various authorities (datamining) in order to be able to spot possibly 'infected' premises, more frequent use of the instrument of an 'administrative fine', a more extensive enforcement of the so-called 'BIBOB law', increasing transparency and auditing in various industries (appraisers, public notaries, real estate agents and mortgage brokers) and adjusting the way liquidation auctions function at present.

Finally, the report calls for a broader perspective on fraudulent activities in the real estate industry in order to deal with them more effectively. Tackling fraudulent activities in the real estate industry can only be effective if the housing shortage for seasonal workers, students, newcomers on the housing market and people wanting to move up the housing-ladder is reduced. Besides, strong links with illegality and other forms of criminality seem to be in place. It is vital to find out what exactly the effect is of a repressive approach of real estate brokers, such as rack-renters, on other parties in this semi-autonomous social field. It is to be expected that shutting down the informal housing market will not put a stop to illegal immigrants entering the country.