

## Case Study:

# Courts Rule in Favor of Responsible Information Sharing Using Mortgage Asset Research Institute's Policies and Procedures



Leverage powerful content to help your business track and combat mortgage fraud risk and support compliance with evolving state and federal regulations.

## Overview

The LexisNexis® Mortgage Asset Research Institute (MARI<sup>SM</sup>) began in 1990 and its subscribers represent the major originators, insurers, investors and regulators involved in mortgages originated in the United States. One of the main solutions provided by the Mortgage Asset Research Institute is the LexisNexis® Mortgage Industry Data Exchange (MIDEX®).

Many customers utilize the information contained in MIDEX to perform due diligence when establishing new business relationships and evaluating existing relationships. MIDEX is the only industry-contributed repository used for verifying, credentialing and monitoring professionals and companies. The database contains a unique combination of industry-contributed, subscriber-verified investigations of adverse activity, public disciplinary sanctions and licensing information. MIDEX assists customers in identifying mortgage and real estate professionals that have been associated with fraudulent activity or serious misrepresentation in the past.

MIDEX solutions help to safeguard business relationships by:

- Verifying licenses of individuals and companies
- Providing public and non-public adverse activities
- Monitoring updates to search results and alerting users of changes

Due to the information contributed and exchanged using MIDEX we receive inquiries about the liabilities associated with contributing to the exchange. MARI and MIDEX adhere to a well-established set of rules and principles that were designed to minimize exposure to liability for participants contributing and utilizing the information contained on the exchange. Relatively few lawsuits have been filed against Mortgage Asset Research Institute based on the information disseminated through the MIDEX database; even fewer have included Mortgage Asset Research Institute subscribers as co-defendants. The legal principles on which Mortgage Asset Research Institute's MIDEX system was established in 1995 are still being upheld in court today as illustrated below with details into two lawsuits that were filed and resulted in findings that support the lawful use of the MARI and MIDEX solutions.

## Dismissed Legal Challenges

### United States District Court:

A defamation claim against a Mortgage Industry Data Exchange (MIDEX®) subscriber was dismissed when a federal judge ruled that a subscriber's contribution to the Mortgage Asset Research Institute was protected under the principle of qualified immunity.

Flagstar Bank, a MIDEX subscriber that followed Mortgage Asset Research Institute's procedures regarding information sharing, was sued and found not liable in a federal court.

Prime Time Mortgage's suit against Flagstar Bank<sup>1</sup> was heard by the United States District Court for the Southern District of Ohio in 2005. Prime Time alleged that Flagstar Bank defamed the good character of Prime Time and one of its loan officers by reporting to Mortgage Asset Research Institute that Prime Time and the loan officer misrepresented the appraised value of a property and failed to report a "flip" of the property. In response, Flagstar asserted that Prime Time and the loan officer breached a contract with Flagstar by which they warranted the truth and accuracy of all mortgage loan documents. The court granted summary judgment in favor of Flagstar Bank, awarded nearly \$40,000 in damages on the loan in question and ordered Prime Time to pay Flagstar Bank's legal fees and costs in an amount to be determined by the Court.

The court recognized that MIDEX subscribers share a common interest of reporting those who engage in suspect transactions so as to allow extra caution in dealing with the individuals involved. Because of this common interest and the fact that the MIDEX information is limited in scope to this purpose and made in a proper manner to proper parties, the MIDEX subscriber's statements were qualifiedly immune.

### Supreme Court of New Hampshire:

Andrea Collins sued Mortgage Asset Research Institute for defamation, gross negligence and willful misconduct. The trial court ruled in favor of MARI holding that MARI held a conditional privilege that could not be lost absent a showing of malice or willful misconduct. On appeal, the Supreme Court of New Hampshire confirmed that plaintiffs could not prove malice in this case.<sup>2</sup>

### Subscriber Protections and Data Safety:

Several thoroughly vetted policies and procedures govern data contribution and data exchange on the MIDEX database to create a layer of protection for subscribers and participants in the exchange. These include:

- Each contributed incident is subjected to a stringent quality control review by Mortgage Asset Research Institute's staff to ensure adherence to all established policies and procedures.
- Identities of contributing entities are kept confidential, and are not released to subjects of database reports, absent a legal mandate to do so.
- MIDEX is not subject to Fair Credit Reporting Act (FCRA), but Mortgage Asset Research Institute affords the subjects of database reports response opportunities based on FCRA procedures.

The legal principles on which Mortgage Asset Research Institute's MIDEX system was established in 1995 are still being upheld in court today as illustrated in court findings that support the lawful use of MIDEX.

**Minimize risk exposure with access to information on industry-contributed incidents of subscriber-verified fraud and/or misrepresentation and public administrative actions and professional license information from state, federal and regulatory agencies.**

## The Solution

Together MARI and MIDEX deliver powerful tools for detecting and preventing mortgage fraud by industry professionals, minimizing exposure to financial risk and avoid reputation damage and strengthening compliance with key lending regulations.

LexisNexis® Risk Solutions offers a variety of risk management services, including:

- MIDEX (Mortgage Industry Data Exchange)
  - Contributory (non-public) information from subscribers
  - Public sanction information from 200+ sources
- Licensing verification
  - Nationwide database repository containing federal, state, and self-regulatory association license information for company and individual mortgage professionals, including NMLS verification
  - Continuous monitoring of adverse actions and licenses
- Identity verification for companies and individuals
- Comprehensive Report data including criminal history
- Negative News
- Verification of Occupancy

MIDEX helps your business proactively mitigate insider risk by monitoring content on key players across the industry, including:

- Lenders
- Loan Officers
- Appraisers
- Real Estate Agents
- Mortgage Brokers
- Field Service Vendors
- And More

With time tested and legally upheld safeguards in place to protect contributors and subscribers, you can be confident in leveraging the powerful content delivered by these solutions to help your business track and combat mortgage fraud risk and support compliance with evolving state and federal regulations.

## For more information:

Call 866-676-6274 or visit [risk.lexisnexis.com/mortgage](http://risk.lexisnexis.com/mortgage) or <https://risk.nexis.com/RealEstate/Login.aspx>.



<sup>1</sup> Prime Time Mortgage, Co. vs. Flagstar Bank, FSB, et. al, (S.D. OH 2005, case no. 3:03-cv-337)

<sup>2</sup> Andrea Collins et. al vs. Mortgage Asset Research Institute, Inc. (S.Ct. NH 2006, case no. 2005-0336)