

# THE PROCESS OF PROVING FRAUDULENT ACTIONS IN THE FIELD OF BANK LENDING

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## Abstract

The article analyzes the main directions on the facts of fraudulent actions in the field of lending with a list of possible actions aimed at the initial collection of evidence. Separate issues of proof for the category of crimes under consideration are considered by listing the circumstances, the totality of which can confirm the existence of intent to commit a crime. A list of investigative actions carried out at the initial stage of the investigation is proposed.

**Keywords:** Credit and financial system, fraud, credit, proof, investigative actions, authenticity, withdrawing assets, deliberately false (unreliable) information, obtaining information.

## Introduction

In modern conditions, the credit and financial sphere is of great importance to ensure the stable functioning of the monetary system and the entire economic complex. The banking sector, which is part of the credit and financial sector, is most susceptible to criminal encroachments. Effective investigation of criminal cases of fraudulent activities in the field of lending depends on clear planned actions at the stage of preliminary verification of the report of the crime committed. At the same time, it is necessary to be guided by general recommendations for the verification of a crime report [1; 2], and it is also necessary to highlight the features of the verification inherent in the composition of the crime under consideration.

According to scientists, the reasons for initiating a criminal case on the facts of fraudulent activities in the field of lending include:

- statement of a bank or other creditor about the theft of funds by a legal entity (individual entrepreneur) according to documents, known falsity (unreliability) which was established after non-repayment of the loan;
- application of a credit institution for the presentation by the borrower of documents containing deliberately false information in order to obtain a loan;
- statement of the central bank of the country, the deposit insurance agency on the facts of non-repayment of a loan issued under forged documents revealed during the audit of a credit institution, bankruptcy proceedings [3, 114-115];
- a statement from a credit institution about the presentation by the borrower of documents containing deliberately false (unreliable) information in order to obtain a loan.

When planning a preliminary check of the information about the crime contained in the application, it is necessary to take into account the peculiarities of the qualification of this composition, about which many scientific articles have been written [4; 5].

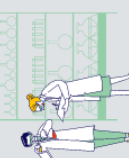
In our opinion, it is advisable to carry out the following actions aimed at the initial collection of evidence:

1. Request documents and examine their contents for authenticity:

- a) characterizing the personality of the subject of the crime and his legal capacity;
- b) confirming the presence of the borrower's property (including property transferred as collateral), the absence of various types of debts, including overdue (for example, taxes and other mandatory payments), the presence of stable economic ties with third parties, etc.: the borrower's questionnaire, contracts, invoices, invoices, technical passports, certificates of ownership, etc.;
- c) confirming the purpose of obtaining a loan, the sources of its repayment: a business plan, an economic justification, contracts with third parties in whose favor payments are supposed to be made at the expense of the loan;
- d) containing the obligations of other persons to repay the loan in case the borrower fails to fulfill the assumed obligation: surety agreements, bank guarantees, pledge agreements and documents confirming the mortgagor's ownership of the property, as well as the financial position and legal status of guarantors, mortgagors and guarantors;
- e) reflecting the fact of obtaining a loan: a questionnaire filled out and signed by the subject; an application for a loan; copies of constituent and other documents of title (charter, foundation agreement, certificate of state registration, contract with the borrower); a card with samples of signatures of the head and chief accountant, a seal, notarized; technical and economic calculations estimated payback of the credited costs; information about loans received from other banks, etc.;
- f) confirming the fact of illegal withdrawal of funds or goods by transferring them from the owner (the lender organization or from a private person actually acting as a bona fide borrower) to the subject of the crime under a loan agreement (by personal agreement): a contract for the provision of financial or material resources concluded on the terms of their sale by means of a consumer loan; primary accounting documents that were issued in accordance with this contract for the direct transfer of money (goods) from the lender organization to the borrower, etc.;
- g) disclosing and justifying the amount of damage caused;
- h) reflecting the results of various types of inspections: acts of audits, audit and other documentary inspections;
- i) other documents: decisions taken by the management of banking institutions, etc.

The unreliability of the submitted documents can be confirmed by examining the documents; conducting forensic examinations; protocols of seizure, search; protocols of interrogation of witnesses, victims; documents obtained from tax and other state bodies.

2. Depending on the type of loan, at the stage of the inquiry, additional documents must be collected and analyzed that will serve as evidence of the event of the crime and partially the intent to commit it.



3. Obtaining information contained in information records (search engines), operational records of the Ministry of Internal Affairs (including operational search records of stolen, lost passports, passport forms and passports of fugitive criminals).

Obtaining explanations from the subjects of the crime; witnesses, which include persons who have information about the circumstances of obtaining a loan, the financial situation of the borrower, the facts of his acquisition of movable and immovable property, accounts payable.

The peculiarities of proving in this category of criminal cases are the establishment of such circumstances as: the time and place (bank or other lender) of the commission of a crime; the conditions for concluding a loan agreement, the unreliability or deliberate falsity of the information entered into the documents submitted in the justification of the loan application and as collateral for the fulfillment of credit obligations; the circumstances characterizing the identity of the suspect; the actual spending of credit funds; guilt, purpose, motives and method of committing a crime.

Evidence of unjustified spending of the loan received for personal purposes in full or in part, are account statements, payment orders, spending orders, contracts, invoices, invoices, testimony of witnesses and victims, protocols of inspection, search, seizure, etc.

The borrower's actions related to preventing the lender from foreclosing on the borrower's property by withdrawing assets (including collateral) from foreclosure, challenging pledge agreements, sureties, bankruptcy (including intentional) of the borrower, etc. are confirmed by the data contained in contracts, expert opinions, judicial acts, testimony of witnesses, victims etc.

When proving intent to steal a loan, it is necessary to confirm the fact that a person realizes that it is impossible to repay a loan and performs actions to fulfill obligations to return funds [6, p. 56]. In this regard, it is required to establish a set of the following circumstances in their various combinations, depending on the circumstances of the criminal event:

- overestimation of the valuation of property pledged to the bank in order to create an opinion on the security of the loan;
- partial -targeted use of credit in order to create the appearance of good faith;
- concealment of information about an outstanding loan from the bank, submission of forged documents to the bank confirming the existence of accounts receivable and a stable financial position;
- initiation by the borrower of court sessions in order to withdraw real estate objects from the borrower's property, followed by encumbrance of this property with collateral from other banks;
- the presence of sufficient knowledge and skills of the entrepreneur, higher education and sufficient work experience, allowing the defendant to know about the falsity of the information submitted to the bank by him, which distorted the real financial condition of the individual entrepreneur;
- transfer of credit to the accounts of a one-day company that does not conduct real financial and economic activities, and whose founders and employees deny involvement in the establishment and activities of the company;

- submission to the bank of the balance sheet and other documents on economic activity and financial situation containing obviously false information;
- the use of forged documents confirming the ownership of the collateral, payment orders and powers of attorney; legalization of credit funds with the help of one-day firms;
- evasion from registration of the mortgage agreement;
- the sale by the borrower of property pledged by the bank without the consent of the bank and the use of the proceeds not for repayment of the loan, etc.

The investigative actions carried out at the initial stage of the investigation include:

- the interrogation of the suspect is carried out to establish the circumstances of obtaining a loan, the range of documents collected and transferred to the bank for its receipt, the list of deliberately false (unreliable) information entered in them, the circumstances of the manufacture and use of forged documents, including passports, income certificates, from the place of work, residence, for what purposes the credit was spent funds;
- reasons for committing a crime, etc.;
- interrogation of witnesses, as which, depending on the method of the crime committed, the type of loan, bank employees, including a credit inspector, employees of car dealerships, tax authorities, employees of the borrower's organization, insurance organizations, relatives, acquaintances, neighbors, colleagues, guarantors and other persons are interrogated. During the interrogation of witnesses, depending on the circumstances known to them, the conditions and procedure for crediting, the amount of the loan issued, the directions of its expenditure, the range of actions for drawing up forged documents, who and in what way made deliberately false (unreliable) information in the documents, which seals and letterheads were used, whether they were forged, were purchased whether the suspect has movable and immovable property, whether he has changed his place of residence, work, cell phone number, etc.

Since crimes in the field of lending belong to the category of economic crimes, a complex of examinations peculiar to this category is assigned during its investigation [7]. Typical forensic examinations, as a rule, are technical and forensic, handwriting, financial and economic expertise, in particular financial and credit.

Thus, in order to resolve the issue of initiating a criminal case and in the course of further proof of fraud in the field of lending, the investigator (inquirer) needs to investigate a wide range of regulatory legal acts and identify discrepancies in the actions of the perpetrators with the requirements of the legislation.

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