

ORGANIZATIONAL AND TACTICAL FEATURES OF CERTAIN INVESTIGATIVE MEASURES IN THE INITIAL STAGE OF THE INVESTIGATION OF CREDIT FRAUD WHICH INCLUDES ILLICIT REAL ESTATE TURNOVER

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Abstract: The presented article is aimed to determine the organizational and tactical features of certain investigative measures in the initial stage of credit fraud investigation, including the crime involved illicit realty turnover. The **Methods** were represented by strategies and tactics of investigation of fraud in the field of lending and credit in real estate malpractice. **Results:** Investigative and judicial practice indicates that officials and other authorized entities violate the legal real estate turnover established by applicable law when registering illicit transactions. The circumstances of the commission of illegal actions directly depend on the

labeling process, which may result in fraud (Art. 159 of the Criminal Code of the Russian Federation), abuse of power (Art. 285), forgery by an official (Art. 292), and other accusations.

Conclusions: Additional methods of detecting and exposing false testimonies are also quite effective in their practical application. In particular, such techniques include the utmost detalization (forcing the interrogated person to ‘make up’ facts and circumstances that can later be verified); re-interrogation (provides an opportunity to ‘play on’ certain testimony discrepancies, which are inevitable as the evidence in the case accumulates); and

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listening to a deliberately false messages without expressing any doubt or mistrust (allows exposing the false testimony of the interrogated after proper examination):

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1. Introduction

Currently, the formulation of certain conclusions and proposals aimed at improving the methodology for investigating credit fraud is gaining a specific relevance in scientific studies. In the future, this issue will acquire further scientific consideration with a view of the corresponding formulation of certain conclusions and proposals aimed at improving the methodology for the investigation of fraud in the field of real estate lending.

The following system of investigative (search) measures was developed and proposed for the investigation of credit fraud:

1) Inspection of the premises, belongings, Internet content (devices, gadgets), social networks and documents;

2) Interrogation (of the victim, suspect, witnesses, relatives, employees, managers, staffers of a legal entity and other persons);

3) Temporary access to documents and personal belongings;

4) Documentary and inventory audit;

5) The legal search of the suspect's place of residence (place of work);

6) Involvement of a specialist and/or expert;

7) Information retrieval from transport telecommunication networks and electronic information systems;

8) Audio and video facial-expression monitoring.

The study of the features and tactics of individual investigative (search) measures in the investigation of credit fraud is of particular importance. The issue at stake is resolved depending on:

1) The state of investigative and procedural actions [2];

2) The scope of circumstances that the investigator needs to clarify;

3) Goals and objectives (this refers to the type of specific action: content and nature of obtaining criminalistic data) [4];

4) Procedural regulation and tactical content of certain investigative (search) measures;

5) A particular stage of investigation;

6) Particular stage of certain investigative (search) measures;

7) Investigator's position;

8) The motivation of the position of the very individual;

9) Positions in action of the representative, defense counsel and other persons or government bodies that represent the interests of the individual;

10) Investigator's arrangements for investigative (search) actions;

11) Availability of certain information or evidence;

12) Type of crime committed;

13) Procedural status of the individual;

14) The age of the individual;

15) Circumstances to be clarified;

16) Type of investigative (search) measures and other factors.

Great significance in identifying and revealing the signs of credit fraud is given to the features and tactics of conducting an investigative examination of documentation that allows reproducing certain parties and moments

of an objectively existing crime event in a certain way; as well as reflecting information on the identity of the offender and the particulars of the subject of the criminal offense (along with the method of committing the crime), on the basis of which the possible explanations can be put forward; obtaining data on the number of offenders who acted in the commission, etc. The criminal investigation technique distinguishes the following types of documentation: electronic, written (texts), graphic (drawings, figures, diagrams), photos, film, and video documents. According to the sources of origin, all documents can be divided into official (the turnover of which is normatively provided for) and unofficial (most often drafts and documents of a personal nature: letters, notebooks, diaries), and by legal nature - into genuine and counterfeit.

2. Materials and methods

It should be borne in mind when inspecting electronic documents that their sending and transmission are carried out by the author or intermediary in electronic form using the means of information and telecommunication or

by sending electronic media containing a prerecorded document. An electronic document is considered to be received by the addressee from the time the author receives a confirmation from the addressee also in the electronic form. In the absence of such confirmation, it is considered that the electronic document has not been received. The integrity check of an electronic document is carried out by the identification of an electronic digital signature. It should also be remembered that the subjects (such as banks, in particular) of electronic document circulation may ensure compliance with the requirements for the preservation of electronic documents by using the intermediary services, including archive institutions.

The specificity and complexity of financial documentation, including its electronic version, requires mandatory participation in the examination of an expert who assists the investigator in identifying, recording, seizing and preserving evidence, and advises on issues requiring special knowledge. In the capacity of such experts, it is advisable to involve specialists in the field of financial operations, computer systems engineers, auditors, and

employees of alternate banking institutions [15].

Quite a significant role in the investigation of real estate lending fraud is played by the search; the latter helps to identify evidence or other guiding information. A sufficient number of scientific works of domestic and foreign academicians is devoted to the study of the essence of the search, its types, the features of the preparation and tactics, and also to the proposal of tactical techniques [5].

The investigation of credit fraud is driven by the need to determine the sequence of interrogation of certain individuals [1], and also by the procedural arrangements, which are regulated by the norms of the Russian Federation Code of Criminal Procedure; the compliance with the Code is mandatory.

The schemes of interrogation involve the use of a set of tactical techniques in their most advantageous sequence and combination. Criminalistic theoretical studies had recently revealed tendencies toward the analysis of goals and forms of tactical options and their systematization on certain grounds [14]. Moreover, attempts have been initiated

in modern criminalistic theory to develop tactical systems of certain types of interrogation [2], the analysis of which allows distinguishing the following tactical systems:

- 1) Establishment of psychological contact with the interrogated;
- 2) Prompting to testify;
- 3) Clarification of statement and elimination of contradictions;
- 4) The actualization of the recalls and flashbacks of the interrogated;
- 5) Exposure of lie;
- 6) Elimination of distortions in case of a good faith error.

Therefore, it is advisable to provide certain recommendations on a narrow application of individual tactics. Thus, firstly, the tactics of interrogating individuals involved in committing fraud in the field of real estate lending involve the employment of surprise in conducting such investigative action. Authors are entitled to the opinion that the best-performing option is to interrogate at the very location of search and seizure or immediately after the delivery of the suspect to the department of internal affairs, while:

1. The suspect is in a state of stunning confusion;

2. The suspect did not come up with the system of producing false versions;

3. The suspect still didn't think over the position during interrogation; during this period, the suspects are most often inclined to tell the truth. Options like the presentation of evidence, the announcement of testimonies of other parties involved or the results of investigative actions, and raising various questions, may bring an immediate result in the process of such an interrogation.

The interrogation specifics in cases of crime in the field of real estate lending are also determined by the following features:

1. Among the individuals involved or otherwise related to the particular crime event, in most cases could be revealed those with special financial, economic, legal, technical education or professional computer training. Suspects often have professional experience in commercial and financial bodies; they know all the features and shortcomings of the financial system, accounting, banking technology or related financial and economic activities, workflow, accounting, and control. Therefore, they immediately notice the unpreparedness

of the investigator, his uncertainty and ‘wandering’ in the evidence.

2. During interrogations, the investigator often has to deal with specific terminology (professional slang), which is used by most of the interrogated. The use of unfamiliar terms can lead to the situation when the investigator might miss the opportunity to take control promptly, fail to hit with the clarifying question, or fail to put on record (or just underestimate) useful information that the interrogated might provide (even accidentally or unwillingly).

3. The purpose of interrogations at the initial stage of the investigation is, first of all, to clarify the general picture of the event that took place, the schemes for conducting particular transactions, the transcript of numerous documents, accounting entries, accounts, and individual digital records; and also to obtain appropriate explanations regarding the findings. Therefore, if the investigator is not well versed in special economic issues, it is essential to fill this gap in the very beginning of the investigation or to attract a specialist in this field. Such preparation may include the familiarization with special literature

(textbooks, manuals, guidelines, regulatory documents), as well as the assistance of experts of economic profile and the receipt of various reference information for a general analysis of the documentation or the direct participation of an experts during the interrogation [16].

3. Results

A significant part of investigative and judicial practices indicates that officials and other authorized entities violate the legal real estate turnover established by applicable law when registering illicit transactions. The circumstances of the commission of illegal actions directly depend on the qualification of the act, including but not limited to fraud (Art. 159 of the Criminal Code of the Russian Federation), abuse of power (Art. 285), forgery by an official (Art. 292) and others.

The presence of cases when real estate is withdrawn from legal turnover for further action is indicating the possibility of fraud in registering such realty transactions. Under-pricing or over-estimation of the actual value of real estate causes difficulties in proving

the amount of damage caused and the very intent of the transaction.

The research results had proven that a successful fight against economic crimes in many respects is possible due to the improvement of the criminalistic support of crime investigation activities [7].

The 2019 amendments to legislation allowed changing development strategy over to the construction of multi-apartment buildings with the primary attraction of bank funds. The main objective of the reform of shared construction was to reduce the number of defrauded home buyers. Starting July 1, 2019, raising funds from citizens will only be possible using escrow accounts; a separate account must be opened for each shareholder. Opening such accounts is impossible without the participation of the bank; the participatory interest agreement will, in fact, become a tripartite agreement: the developer, interest holder and the bank [17].

Also, it is necessary to point out that while choosing tactics of interrogation and evaluating the evidence obtained, it is essential to reveal the following:

1) The conditions under which the witness or the accused observed described objects and/or phenomena (day, night, close, far, i.e. objective factors);

2) The mental state of the interrogated at the time of perception or immediately after (the witness was frightened, shocked, worried, was intoxicated or even unconscious, etc.);

3) The general state of the sensual capability of the interrogated (eye health, hearing, smell, etc.);

4) The general ability of specific perception and memorization (oral information provided by the interrogated should clarify his/her peculiarities on perceiving and memorizing colors, numbers, surnames, etc.) [10].

The vast majority of crimes committed in banking structures are accompanied by the production and use of various fake documents; an analysis of the latter affects the nature of the issues that need to be clarified during interrogations. Moreover, interrogations in cases of fraud are carried out, as a rule, using specific documents. The interrogation report must clearly state what comments the interrogated gave regarding a particular document or

subject. If necessary, the interrogated must be allowed to build a composite portrait of the fraudster; the corresponding description along with the suspect sketch obtained should be reflected in the interrogation report. The investigator should also put on record any documents or items evidencing criminal activity produced by the interrogated, as well as detailed explanations on the nature and characteristic features of the items turned over to the authorities.

The interrogation of witnesses in cases of fraud in the field of real estate lending differs from the same procedure elsewhere in criminalistics, primarily by the specifics of the subject of interrogation. Tactical features of interrogation of witnesses in such cases may be divided into the following groups:

- a) Actualizing the recalls and flashbacks of the witness;
- b) Facilitating the verbal reproduction of the witness knowledge (on the incident);
- c) Exposing the lies and establishing the motives of non-disclosures in the witness testimony;

d) Establishing errors in the testimony (with their further elimination).

The interrogation of witnesses has its particular difficulties. For example, gaps in accounting activities or the HR are quite expected when studying the operating conditions and office procedures of a financial institution or an enterprise with no strict accountability; the same goes for investigating other facts of such fraud in this or another institution. Among the tactical methods of conducting the interrogation, it will also be advisable to pose neutral or conditionally neutral questions combined with significant and key questions, as well as with the security and situational questions. In particular, during the interrogation of witnesses in criminal cases of the category in question, it is quite necessary to obtain answers to the following questions:

- 1) When, by whom and by which manner was carried out the alleged activity, the contents of which revealed fraud in the field of lending with real estate?
- 2) Who made the corresponding management decision when issuing a loan?

3) Whose competence included the authority to issue such a loan?

4) Have you reported the facts of the unlawful activity of an official to someone from the management or law enforcement and control-and-auditing bodies? If so, what were the results of your appeal; and if not reported, what were the reasons for this non-disclosure?

5) Are you aware of any other facts of committing fraud in the field of lending by this official? And if so, what are the facts, etc.

Again, it is necessary to point out that while choosing tactics of interrogation and examining the evidence obtained, it is essential to reveal the following:

1) The conditions under which the witness or the accused observed described objects and/or phenomena (day, night, close, far, i.e. objective factors);

2) The mental state of the interrogated at the time of perception or immediately after (the witness was frightened, shocked, worried, was intoxicated or even unconscious, etc.);

3) The general state of the sensual capability of the interrogated (eye health, hearing, smell, etc.);

4) The general ability of specific perception and memorization (oral information provided by the interrogated should clarify his/her peculiarities on perceiving and memorizing colors, numbers, surnames, etc.) [10].

The vast majority of crimes committed in banking structures are accompanied by the production and use of various fake documents. Their due diligence investigation affects the nature of the issues that need to be clarified during interrogations. Moreover, interrogations in cases of fraud are carried out, as a rule, with the use of particular documentation; the interrogation report must clearly state what comments the interrogated gave regarding a particular document or subject. If necessary, the interrogated must be allowed to build a composite portrait of the fraudster; the corresponding description along with the suspect sketch obtained should be reflected in the interrogation report. The investigator should also put on record any documents or items evidencing criminal activity produced by the interrogated, as well as detailed explanations on the nature and

characteristic features of the items turned over to the authorities.

The interrogation of the suspect or the accused is one of the most difficult types of investigative actions, which has its own procedural and tactical features [2]. This refers to the fact that the investigator a priori is significantly less informed than the suspect; moreover, this is quite a piecemeal knowledge. This kind of interrogation is intended to solve two the following tasks. First of them is obtaining detailed information on the actions of the accused; in the process of making the statement the latter may suppress the facts such as the time of crime occurrence, which, in turn, forces the interrogated to change the structure of the evidence, allow contradictions or reservations, or providing just false information. The second task involves creating the impression of a significant awareness of the investigator, which prompts the accused to give truthful testimony in a situation that seems hopeless. In this context, noteworthy is that in all cases of the suspect interrogation, the employed tactics should be aimed at the exposure of lie; the tactical features are to be selected by the investigator in the sequence and in

the combination that seems most appropriate to achieve this goal.

The procedure and tactics of interrogation of the suspect and the accused, despite some similarities, have several fundamental differences. While forming own idea of the investigator's awareness, the suspect is not able to take into account the information that the investigator received during the prejudicial inquiry. The suspect has only limited data on the available evidence of his criminal activity. At the same time, the accused can possess the experience of taking part in previous interrogations and other procedural actions. Knowing the content of the indictment, the accused may conclude on the real evidence in hands of the prosecution, thus being able to assess the situation realistically and choose the appropriate tactics of behavior.

4. Discussion:

S.A. Udovichenko [15] among the other features notes that during the investigation of fraud in real estate lending, the condition, properties and content of corporeal and electronic documents are perceived, studied, and recorded directly.

L.B. Krasnova writes, in particular, that ‘... the examination of seized digital equipment is not a new type of search as such but only a new object of a search on-premises or elsewhere, although, of course, it determines certain tactical features of its conduct’ [12].

A.B. Kochubey and O.V. Gorbachev stated that since the Criminal Procedure Code does not contain anything on searching and seizing computers (to obtain electronic evidence in criminal investigations), the use of this term in some context other than the Criminal Procedure Code is unacceptable. The extraction of information contained on the computer’s hard drives should be carried out as part of the investigative action so that the information received acquires procedural evidence status.

Despite all the controversy of such views, the specificity and necessity of such investigative actions cannot be denied. Thus, L.B. Krasnova speaks to the fact that when investigating crimes committed using computers, networking systems or other electronic equipment, the investigator encounters unconventional corpus delicti or traces

of criminal activity; this refers to the rise of new objects in forensic processing: computerized information and means of computer technology [12].

One cannot agree that a direct examination of the computer memory is almost always a part of the traditional search [12]. The availability of computer networks allows accessing information without physical penetration of the search site. However, although the investigator himself and all the participants of this procedural action (which should include the person who is being searched) can be located at a considerable distance from the actual computer/server whereabouts, therefore their actions should be considered as an unlawful entry [18].

The features of the search in the investigation of fraud in the field of real estate lending are due to the group nature of this crime, as well as to the specifics of the area and the objects that are being searched for. The latter causes the need for a group search, which is described in the criminalistic literature.

V.O. Konovalova also notes that no matter what the circumstances involved in conducting a group search, such procedure always (regardless of the

number of objects) remains a group action, that is, the single action in terms of content and procedural characteristics. Thus, in the traditional comprehension, such a search cannot pretend to be the name of a tactical operation, because the latter is a combination of several criminal-investigative and intelligence-gathering actions that are heterogeneous in their purpose [11]. Another point of view expressed in the criminological literature considers a group searches as a tactical operation. A group search involves a set of coordinated searches. The use of the tactical 'group search' operation is associated with the following circumstances: the existence of a stable criminal gang whose members are not taken into custody; the dispersal of search objects; the presence of a streamlined system of interaction or a permanent relationship between these gang members; the presence of a driving force leadership in their criminal activities [6].

According to V.M. Vartsaba [3], a group search is a tactical operation, in other words, it is a complex of coordinated searches and not just one single action. A group search is always consisting of several searches conducted

in different particular places at the same time and aimed at solving the local problem of the investigation. In this case, the investigator, having determined the necessity of carrying out a particular criminalistic operation and the sufficiency of the available case-related information, should develop a joint plan of action (together with the operations and search division officers). Such a plan should reflect the most favorable time and place, the number of officers and the distribution of roles between them, the nature of the technical means and methods employed, and the procedure for recording its progress and results [13].

5. Conclusion:

Additional methods of detecting and exposing false testimonies are also quite effective in their practical application. In particular, such techniques include the utmost detalization (forcing the interrogated person to 'make up' facts and circumstances that can later be verified); re-interrogation (provides an opportunity to 'play on' certain testimony discrepancies, which are inevitable as the evidence in the case accumulates); and

listening to a deliberately false message without expressing any doubt or mistrust (allows exposing the false testimony of the interrogated after proper examination) [16].

Thus, during the interrogation of the suspect and/or the accused in crimes of the category in question, it is essential to obtain answers to the following questions:

1. What were your previous position and the work experience?
2. When exactly you were appointed to this position?
3. What are the rights and duties of the current position, and what normative acts are they regulated by?
4. What was the attitude of the accused to the performance of official duties?
5. Have you previously been prone to misconduct; and if so, when and in which manner it was expressed, and what disciplinary action was taken?
6. When did you become aware of facts of fraud in real estate lending, and for which reason and in which manner these facts were uncovered?

Under the modern conditions of lending fraud investigation, a new type of search is gaining importance – the

search of the digital environment [8].

This new type of search is quite relevant (although controversial) in forensics since modern criminal gangs actively employ various data storage media, information technology, and high-end equipment. It should be noted also that there are opponents of the very term of ‘digital search’, as well as of the classification of such a search as an independent kind [3].

A search of the computer or electronic media may claim an independent type of search for the following reasons:

- 1) Digital information is a specific object of the search;
- 2) Inspection of computer equipment and media storage may acquire independent significance;
- 3) It is not always possible to seize the computer (s) and individual components to examine and put on record information by other procedures;
- 4) Inspection of computer equipment and media storage always implies the need to invite an appropriate expert (in the field of computer technology, digital networks, etc.);
- 5) Computer technology has become widespread; there are various

programs for the protection and emergency elimination of the stored information [3].

The study and consideration of particular features of investigative (search) actions are very important both in theoretical and practical meaning. Additional options will contribute to the improvement of the methodology for the investigation of fraud in the field of real estate lending.

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