



By Lisa A. Tyler
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In May 2017, we featured an ethical struggles article written by author and speaker, Jerome Mayne, a convicted real estate fraud felon. This month Jerome is contributing to *Fraud Insights* with the article entitled “CONSPIRACY theory or conspiracy fact?” which provides an eye-opening conclusion about the fact a conspiracy does not have to be successful or even harmful to still be illegal and immoral. The article is a must read for everyone in the real estate industry.

Probate is the legal process whereby a will is proved in a court of law to be a valid document that is the true last testament of a deceased person. After an initial probate hearing the judge will sign an Order

for Probate to appoint the administrator of the estate, then the administrator has the power and legal authority to manage the estate. Read “ORDER for probate halts sale” to discover how an extraordinary title officer was able to save the Company from potential claims involving a sale property owned by two deceased people.

When notarizing a signature the notary public must be able to communicate directly with the signer in order for the signer to either swear to or affirm the contents of the affidavit or to acknowledge the execution of the document. Read “COMMUNICATING with the signer” for this month’s notary-know-how tip.

IN THIS ISSUE



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Conspiracies can come in many different forms. Which scenario is considered a conspiracy?

Scenario A:

The Francisco Conspiracy
Atlantic City, New Jersey

It is 1:36 a.m. and a silent, stealth helicopter lands behind a warehouse on the outskirts of the city. Rafael exits the aircraft toting a dark blue metal attaché case. He taps two quick knocks on the door, waits, then two more. A voice from behind the door says, "The eagle flies at midnight." Rafael responds, "Nocturnal" — the coded response.

The door opens. Francisco gives his partner Rafael a nod. He turns, withdraws a penlight and gives three short flashes to the chopper pilot who takes off. They close the door and descend the metal staircase where a half dozen computer monitors illuminate the basement.

Rafael sets his attaché case atop a waist high, wooden crate. From his shoe he produces a tiny silver key, inserts it into the lock and turns. The case pops open to reveal a clear plastic flash drive embedded in a block of foam padding.

Rafael withdraws the memory device and hands it to his partner. In low tones he says, "With these codes you'll be able to divert all wire transfers coming into the escrow company. The funds will be deposited into our offshore account. The codes are valid for the next fifteen hours."

Rafael turns to leave. At the stairs he turns back. "I'll see you in Costa Rica on Friday where we'll execute the final phase; laundering the money." Francisco replies, "Follow the river north until sunrise. Godspeed my friend."

Scenario B:

The Mike and Joe Conspiracy
 Fargo, North Dakota

Mike gets up from his desk and walks over to his processor's cubicle. "Hey Joe, do me a favor would ya? That one guy were doin' that loan for – Johnson – anyways, he lost his job." Joe replies, "Wait, he's supposed to close on the Monday. Now he can't."

Mike says, "I need it to close because I need the money." A bit confused Joe says, "But if he's got no job, he's got no income and then he can't well close on the Monday."

Mike pokes his head around the corner and sees they're alone. Mike whispers, "Okay, here's the thing. I think he's got a new job. But the whole thing is, the loan's already approved with the job he had. Nobody'll know the better if he closes on the Monday – 'specially if no one says nuthin' 'bout him gettin' fired and all."

Joe stands up and looks in the next cubicle to see if anybody is there, then replies, "What are you sayin'?" Mike rolls his eyes, "For cryin' out loud Joe. Just keep your mouth shut and don't be such an idiot. He's got the good credit. Come on. I'll buy you a real nice jacket or a new cat or something."

Joe sits down, turns back to his computer and says, "Okay then, I won't say nuthin'. Geez!" He pauses, "And I'll take the cat."

Both of these scenarios fall under the definition of criminal conspiracy. By definition a criminal conspiracy is an agreement between two or more persons to commit a crime at some time in the future. Even if the crime has not been committed the acts fall under the category of a criminal conspiracy.

In fact, the crime does not even have to be carried out or successful. Francisco could flub up his part of the crime. Perhaps he accidentally drops the flash drive in a hot cup of coffee and the data gets erased; it is still a conspiracy. In the mortgage scenario the borrower, Johnson, could wind up short on the cash to close and his closing comes to a screeching halt; still a conspiracy.

There does not have to be any profit or loss as a result of the crime. Maybe Mike priced the loan wrong and he loses his commission. Maybe Johnson's loan does close and he actually makes timely monthly payments for the next thirty years – a performing loan and no losses by the lender. No harm no foul, right? Nope. It is still a crime.

One never knows, with absolute certainty, the scope of the activity of the other players in a real estate transaction. In the event of an investigation, Mike, the loan processor's name will come up. The FBI will look at all his old loan files. If Mike and Joe were willing to break the rules for this transaction, how many cats does Mike have?

Guilt by association is a very real thing. We all want to think one is innocent until proven guilty, but face it; society has become pretty numb to headlines such as, "REAL ESTATE INSIDERS ACCUSED OF MONEY LAUNDERING." Most glaze right over the word, ACCUSED.



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[CONSPIRACY theory or conspiracy fact? - continued]

The accused is considered innocent in the federal court system, but to the public, the accused are guilty and should be avoided like the plague since the appearance of impropriety is as bad as impropriety itself.

If you are a mortgage broker and your name was substituted for the word “Insiders” in the above headline, do you think your favorite escrow company would continue to accept loans from you? Most would un-friend you and deny ever having done business with you.

Staying out of the murky area is absolutely critical. Always be consistent and diligent. You cannot cross the line because you think it will be okay just this one time.

By skirting the rules just once, not only are you susceptible to being involved in fraud, but the first time you justify unethical behavior, the next time becomes much easier – and the next time and the next time...It is a slippery slope.

It is not impossible to resist the temptation to commit fraud. It is possible and people do it every day. But, most people who commit fraud do not wake up one morning and say to themselves, “Today, I am going to commit a crime.” It starts with something small — which seems insignificant. Fraud does not just “happen.” You are in control and you are responsible.

Jerome Mayne concludes for what it is worth (coming from a convicted felon), stay on course. If someone tries to tempt you to the dark side, ask them if they will be able to give your kids a ride to prison on visiting days. Or find out if they can arrange daycare for a couple of years while your spouse gets a second or third job. And how about rebuilding your reputation, career, self-esteem, self-confidence...

Jerome Mayne is an international keynote speaker on fraud and ethics. In 1999, he received a 21-month prison sentence stemming from federal charges of conspiracy to commit mail fraud, wire fraud and money laundering.

He is the author of the book, “Diary of a White Collar Criminal” and co-author of “Mortgage Fraud and Predatory Lending – what every agent should know” (Kaplan Publishing). He has worked with dozens of companies and associations around the country helping business professionals to stay out of prison.

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ORDER for probate halts sale

Debbie Lee, a title officer for Chicago Title’s Los Angeles operation, opened a title-only order for a \$425,000 residential purchase. The transaction was opened by an independent escrow company that has done business with Chicago Title for more than 30 years.

A preliminary report was issued October 28, 2016, reflecting the property owners, Steward and Shirley, husband and wife as joint tenants. They had owned the property since 1973, and it was free and clear of any encumbrances.

The independent escrow agent ordered an amended title report, stating the property had been transferred to a trust. Debbie found on November 22, 2016, a deed was recorded purportedly by the owners of the property transferring ownership into a trust which named an unknown third party as trustee. Debbie amended the report and called for a copy of the trust agreement or trust certification.

The trustee submitted a nine page trust agreement to the independent escrow agent to send to Debbie. Debbie examined the trust agreement and found the unknown third party trustee was actually listed as a child of Steward and Shirley. There were three children named in the trust agreement, the trustee did not share the same last name as the other two siblings.

On December 6, 2016, the escrow officer sent the documents to Debbie to record – a deed and two deeds of trust. The instructions to Debbie were to record the following business day and to issue an owner’s policy in the amount of \$425,000 and two loan policies of title insurance in favor of two hard money lenders in the amount of \$500,000 and \$60,000.

Prior to recording, Debbie checked the public records to ensure nothing new had been recorded since the preliminary report had been issued and amended. Debbie noticed a probate case under the name of Steward.

[Continued on pg 4]

[ORDER for probate halts sale - continued]

The Order for Probate showed Steward died June 23, 2014. The deed transferring the property into the trust had supposedly been signed by Steward and Shirley on November 10, 2016. How could he have signed a deed more than two years after his death?

Debbie halted the recording and brought the file to the attention of her title operations manager, Tony Taranto. The next morning, Tony called the attorney listed on the probate to confirm their suspicion that the deed transferring the property into the trust with an unknown third party trustee was a forgery. The attorney responded as follows:

“Wow! I have never seen something so fraudulent and I have been a lawyer for 30 years. First, Steward and Shirley are both dead. Attached are their death certificates.

Second, Steward’s estate is being probated, hence any sale of real property is subject to court approval. I am attaching a conformed copy of Letters Testamentary designating Steward’s widow (the woman Steward married after Shirley’s passing) as administrator of the estate.

Third, I have met with the family previously and conferred with Steward’s widow a moment ago that the name of the trustee on the deed is not part of Steward’s family. This case is a fraud and I request the appropriate notice be made part of

title stating at the minimum any sale of the property is subject to court confirmation pursuant to a Notice of Sale which is currently being published.

Thank you and all of your colleagues for the excellent work. Please accept Steward’s widow and my deepest appreciation.”

Debbie notified the independent escrow agent of the fraud and then cancelled her title-only order, making a note in the title plant records of the need for confirmation from the court prior to insuring a future sale involving this property. Her note in the records not only protects Chicago Title from possibly insuring another fraudulent transaction, but all the other title companies with access to the title plant records.

Debbie’s actions were indeed heroic. She saved the Company from a potential claim from the new buyer and new lenders, if they were not in on the crime.

Had Debbie recorded the deed conveying Steward’s property and the deeds of trust encumbering the property, Steward’s widow could have taken legal action against our Company. The Company has shown its appreciation for Debbie’s expertise and integrity, by rewarding her \$1,500 along with a letter of recognition.

COMMUNICATING *with the signer*

The notary must be certain the signer is acknowledging he or she signed the document, understands the contents of the document and signed the document of their own free will. To do this, the notary performs the verbal ceremony, a vital part of the process of performing a notarial act by asking the client the question: “Do you acknowledge that this is your signature and that you understand this document and willingly signed it for its stated purpose?”

In some states an interpreter for someone who speaks a different language than the notary may not be utilized, as vital information could be lost in the translation. A few states expressly forbid the use of a translator for the conversation between the notary and signer.

Some states, however, simply do not address the question of a notary using a translator to communicate with the signer in state statutes or administrative codes. It is up to the notary to determine what is allowed and not allowed by the state laws and regulations where they are commissioned.

There are various ways to communicate with a signer who is hearing and/or speech impaired, including sign language if the notary knows how to sign. The notary may communicate with the signer in writing by asking them questions or administering an oath or affirmation where required. The signer must respond in the affirmative by either nodding, making another affirmative gesture or writing down his/her responses.

Ultimately the notary must decide for themselves if it is worth the risk or not. Since one of the notary’s most important tasks is to determine the signer’s comprehension and willingness to proceed, the ability to communicate one-on-one with the signer is essential.

Verbal communication, and most especially the verbal ceremony, must not be delegated to anyone else, no matter how trustworthy they are. If a notary public is unable to communicate with a signer, they should be referred to a notary public who speaks the same language as the signer or one who knows sign language.