



By Lisa A. Tyler
National Escrow Administrator

In this month's edition, we present recent industry related fraud problems. More importantly, we provide viable solutions. The article titled "CAPTURING images" reflects an attempt to steal identification from consumers by way of a mobile signing agent. It also provides solutions for transmitting identification information, when necessary. Settlement agents do not want mobile signing agents to photograph and send by email or text copies of the identification presented at the signing. It is too dangerous to send identification this way — the identification could be intercepted during transmission. No one wants to risk a consumer's non-public information being stolen and compromised.

Several homeowners in Tucson, Arizona, were hand delivering their monthly mortgage payments to the seller on a seller carryback loan and obtaining receipts of payment. To their surprise, they found

foreclosure notices posted to their properties by institutional lenders. What is confusing is the homeowners never took out loans from the institutional lenders. They did, however, borrow from the seller. They did not know or completely understand the seller who carried back their loans already had underlying loans that would not be paid off at time of closing. Read "THAT'S a wrap" to gain a better understanding of how the homeowners are being harmed.

When Rhode Island real estate is sold, the buyer must deduct and withhold six percent (6%) of the total amount paid (or the gain) if the seller is a nonresident individual, estate, partnership or trust; the buyer must deduct and withhold seven percent (7%) of the total amount paid (or the gain) if the seller is a nonresident corporation. The buyer must pay the amount withheld to the Division of Taxation within three banking days of closing. Read more detailed information in the article titled "RHODE island real estate withholding."

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Editor

Lisa A. Tyler

National Escrow Administrator



CAPTURING images

A mobile signing agent started receiving messages from an escrow officer she regularly worked with asking for copies of identification presented at recent signing appointments. The requests were coming from a Gmail™ account but contained the escrow officer's signature block.

The first request from the escrow officer was for copies of identifications from a signing appointment the mobile agent did not handle.

The second request was for copies of 10 different identifications. The signing agent did not even respond, since she did not handle all 10 signing appointments.

The third request was for a copy of the signer's identification from a recent signing she conducted. The signing agent responded with images of the identifications captured at closing, using her mobile device.

A week later, the same mobile signing agent received two additional requests for copies of identifications via text messaging. The mobile signing agent assumed the telephone number used to send the requests belonged to the escrow officer. She replied to the text messages with images of the identifications she had captured at the recent signing appointments.

The mobile signing agent failed on several levels. She did not verify she was communicating with the escrow officer through a valid email account and never verified the phone number that was

used to send the text messages. She transmitted the identifications of six consumers to a fraudster, causing damage to the title agent and the relationships with their customers.

It is not always necessary to capture the image of the identification presented at signing. In fact, some states' notary laws prohibit the notary from recording the identification number presented at signing, much less obtaining a copy of the signer's identification.

If the signer presented their military ID, U.S. code prohibits a signing agent from obtaining a copy of said ID, whether it be a photocopy or photograph. Today, most loan instructions prohibit the identification from being introduced to the escrow file.

Solution: In those rare instances where identification is required to be transmitted to the escrow officer or the lender to clear possible liens, Bancserv, a subsidiary of Fidelity National Financial, Inc., should be utilized. Bancserv is a nationwide mobile notary service that can facilitate all your document signing needs.

Bancserv offers a mobile app with a feature made for securely capturing copies of identification presented at signing. The photos are never stored on the mobile signing agent's phone and the photos are kept encrypted from the time the image is captured by the app. The image then attaches to the order in Bancserv's secure online server.

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THAT'S a wrap

In Tucson, Arizona, some first-time homebuyers were entering into purchase contracts with real estate investors who offered to carry the financing. The homebuyers put down a small payment at closing. Post-closing, they hand delivered their monthly mortgage payments to the seller (a real estate investor).

Each of the transactions was structured as a wraparound mortgage. Wraparound mortgages are sometimes referred to as an all-inclusive deed of trust or mortgage. It means the seller remains financially responsible for the existing loans secured by the subject property.

In simple terms the transaction can look something like this:

\$100,000	Sale price
<u>-\$90,000</u>	<u>Carryback loan at 6% interest*</u>
\$10,000	Buyer's down payment

The \$90,000 carryback loan wraps the balance of an underlying loan at a lesser interest rate. In this example the underlying loan is \$80,000 at 4% interest. The seller earns interest on the full loan amount of \$90,000 at 6% and pays a portion of the interest and principal each month to pay down the \$80,000 loan. The seller is earning 2% interest on the \$80,000 balance due the underlying lienholder.

The homebuyers were not aware (or did not completely understand) the seller already had loans secured by the properties and was supposed to pay a portion of the buyer's monthly payment to the underlying lender to keep the payments current.

Unfortunately for these homebuyers, the seller became greedy and instead of paying a portion of the monthly payment to the underlying lender, he kept the entire payment and allowed the underlying loans to go delinquent — and eventually into default.

It is a tricky situation, since the homeowner is not the borrower on the underlying loan, the delinquency notices went to the seller and not the property address. Therefore, the homebuyers were not made aware of the delinquent payments until months had passed.

The homebuyers were not notified until a public notice of an impending foreclosure was posted on their front doors. The notices came with threats the homeowners would need to vacate the premises within 90 days.

The homeowners complained to local authorities and now the Arizona Attorney General (AG) is actively investigating the seller who ripped off the homeowners by failing to pay the underlying liens. The lawsuit initiated by the AG's office states the seller failed to make his loan payments despite taking thousands of dollars of down payments from customers and promising to apply their monthly payments to the underlying mortgage.

How can inexperienced homebuyers protect themselves from this type of devious plot?

Solution: The homebuyers need to employ the services of an account servicing agent. On a seller carryback loan with one or more remaining underlying liens, the account servicing agent collects the monthly payment from the homebuyer, pays the underlying liens first, and then pays the seller the balance.

If the homebuyer stops making monthly payments, the account servicing agent sends out delinquency notices to both buyer and seller. Everyone is apprised of the situation and there are no surprise notices posted to the subject property.

When private parties are entering into a loan, suggest they set the servicing up with Loan Care. The Fidelity Family of Companies includes a top national loan servicer and account servicing company called Loan Care which can be found by visiting www.myloancare.com.

When establishing this service on behalf of the buyer and seller, it is best to provide the servicing agent with a copy of the note and deed of trust or mortgage in advance of closing to be sure the servicing agent can service the note and all its repayment terms.

Advance copies of the note and deed of trust or mortgage is essential to obtain a fee quote for the set up and monthly maintenance of the account. Below are services offered by an account servicing agent that are essential in all private party notes, not just wrap around loans. The account servicing agent will:

1. Hold the original loan documents, including releases
2. Service impound accounts for taxes and insurance
3. Keep a record of payments made
4. Provide payment coupons and billings
5. Provide payoff statements
6. Provide annual interest statements and reporting to the Internal Revenue Service (IRS)
7. Release the deed of trust or mortgage in whole or in part as directed by the beneficiary or mortgagee



RHODE island real estate withholding

Every Rhode Island property buyer is liable for the amount withheld (or required to be withheld) and the amount shall, until paid, constitute a lien on the property purchased. The lien is subordinate to any mortgage of any lender other than a seller carryback. Filing and paying the amount of withholding due will automatically discharge the lien.

To prove residency, a seller must complete the Seller's Residency Affidavit indicating at the date of the closing, they are a resident. Corporations incorporated in the state of Rhode Island or authorized by the Secretary of State or Board of Bank Incorporation to do business in Rhode Island, are exempt from the withholding tax and would also complete the Seller's Residency Affidavit.

The buyer may rely on the affidavit only if it is notarized and signed under penalties of perjury. A recitation of the seller's residency may be contained on the deed which will discharge the lien state law imposes to secure payment of the withholding when due.

When withholding is due, the seller completes the Nonresident Seller of Real Estate Election to Have Withholding Based on Gain form and files it with the state 20 days prior to closing — otherwise withholding will be based on net proceeds at the time of the sale. The state will issue a Certificate of Withholding indicating the amount to withhold.

Here is an example of how the gain method is calculated:

Sales Price	\$200,000
Less Expenses of Sale	<u>\$21,000</u>
Net Sales Price	\$179,000
Net Sales Price	\$179,000
Less Cost/Basis	<u>\$71,000</u>
GAIN	\$108,000

Based on these numbers the withholding rate is:

6% x \$108,000	= \$6,480	For an individual seller
7% x \$108,000	= \$7,560	For corporate sellers

Failure to obtain a Certificate of Withholding would result in the withholding being deducted from the net sales price at a withholding rate of:

6% x \$179,000	= \$10,740	For an individual seller
7% x \$179,000	= \$12,530	For corporate sellers

Clearly it is to the seller's advantage to apply for the Certificate prior to closing!

The buyer must remit the withholding and appropriate forms to the Rhode Island Division of Taxation within three (3) banking days after the date of closing. Late payments will incur interest, which will be added to the amount due. Paying the withholding will automatically discharge the lien. Buyers, however, can request an acknowledgement of the lien discharge for their records by completing the reverse side of the remittance form and providing a pre-addressed envelope.

These regulations are available on the Division of Taxation's Income Tax Section website www.tax.ri.gov or by phone at 401.574.8829, Option #4.

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Article provided by contributing author:
Diana Hoffman, Corporate Escrow Administrator
Fidelity National Title Group
National Escrow Administration

