



BONDS that tie us together

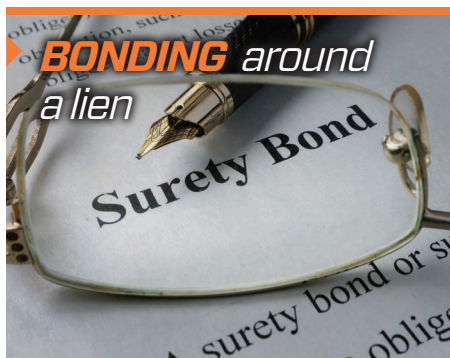
By Lisa A. Tyler
National Escrow Administrator

Surety bonds — once written — are very broad documents. The bond guarantees that promises made will be kept. If the principal defaults, the surety must meet the guarantee and then subrogate against the principal through the indemnity agreement. Unlike insurance where losses are anticipated, in theory there should be no losses under surety bonds. When a loan has been fully paid, but the security instrument such as the deed of trust or mortgage has not been formally released of public record, the borrower can purchase a surety bond to bond around the loan proving it was fully paid. This is done frequently by property owners selling or encumbering property within a certain time frame with old loans still reflected in the public records. Read “BONDING around a lien” to discover the lengths one borrower was willing to go to in order to close a fraudulent loan.

Chicago Title in Las Vegas, opened an all cash sale transaction in September 2016. The transaction was scheduled to close in January 2017. The buyer deposited over 10% as an earnest money deposit into escrow. Suddenly, the terms changed in November and an additional deposit was due, or was it? Read “ADDITIONAL \$150,200 deposit due” for more details.

Being commissioned as a notary is an honor and responsibility. Each commissioned notary is personally liable for knowing the statutes and rules which govern the acts of the notary public. Failure to comply can result in suspension or revocation of one’s commission. Read “YOUR notary commission, your responsibility” for more details.

IN THIS ISSUE



Share Fraud Insights

via email, mail or word of mouth.



volume 12 issue 2
February 2017

Publisher

Fidelity National Financial

Editor

Lisa A. Tyler

National Escrow Administrator



Rhiannon Stotler, an extraordinary title officer from Lawyers Title Company located in San Diego, recently opened a title only transaction for a refinance of property located in Saratoga, California. The loan was originated by a mortgage broker charging \$16,250 to originate a \$650,000 new loan with a private money lender. The new loan was to be in first position, but when Rhiannon prepared the title report, she noticed an existing first deed of trust in the original amount of \$850,000.

The independent escrow agent handling the closing of the loan had a conversation with the borrower about the existing first loan. The borrower insisted the loan was fully paid and would work with a bonding company to bond around the loan, so the new loan could close.

The escrow agent received loan instructions, and completed the note and deed of trust along with other documents for the borrower to sign at closing. The package was sent to the borrower in Las Vegas, even though the statement of information indicated the borrower was retired and living in La Quinta, California.

The documents were signed, notarized and returned to the independent escrow agent, along with wire instructions for the loan proceeds to be sent to someone other than the borrower. The owner of record and borrower on the note and deed of trust was a family trust, but the proceeds were to be sent to different people who were not a party to the transaction.

The escrow agent called Rhiannon to tell her she was suspicious because the borrower was directing the loan proceeds to someone unrelated to the transaction. She sent Rhiannon the documents that were signed in Las Vegas.

Rhiannon pulled the documents recorded previously, and discovered the signatures on the recorded deed of trust and the signature on the \$650,000 deed of trust did not match. Rhiannon decided to escalate the matter to her manager, Janelle Ramirez. Janelle agreed with Rhiannon's findings and looked up a phone number for the borrower in La Quinta. She placed a call to the owner of record.

The owner of record acknowledged he owned the property in Saratoga, but confirmed he was not involved in a loan for that property. He asked if he could have his attorney call Janelle. The attorney called and confirmed the owner was the victim of identity theft, and that he had contacted the FBI to make them aware of the incident.

As a result of the conversation, Janelle notified the independent escrow agent our Company would not be willing to insure this transaction. Ironically the escrow officer said she received an email that very day from the purported borrower stating the bond for the \$850,000 deed of trust had been delivered to Lawyers Title Company, so the funding would not be delayed.

The original bond arrived via overnight delivery the very next day with a receipt showing the purported borrower had paid \$23,000 for the bond. Rhiannon and Janelle commented the \$23,000 cost of the bond was a small price to pay for a \$600,000 pay-out.

For her keen sense of wrong doing and her expertise in pulling documents in the chain of title to compare signatures, and mostly for saving the Company from a potential claim of \$650,000, Rhiannon has been rewarded \$1,500 and has received a letter of recognition from the Company.

MORAL OF THE STORY

Had Rhiannon ignored the alert by the independent escrow agent, and recorded and issued a policy of title insurance, the Company could have been exposed to a \$650,000 claim if the purported borrower defaulted on the new loan and the new lender initiated a foreclosure action.

**STOP****TELL US HOW YOU
STOPPED
FRAUD**settlement@fnf.com or
949.622.4425

ADDITIONAL \$150,200 deposit due

When the buyer's real estate agent opened the transaction with Chicago Title in Las Vegas, the escrow officer emailed wiring instructions to the selling agent. The selling agent forwarded them on to the buyer, who wired their earnest money deposit in the amount of \$200,000 to Chicago Title. The transaction was moving along when the selling agent received this email purportedly from the listing agent:

An additional deposit of \$150,200.00 is required by the Title this morning. The funds will be deducted from the balance due at closing and it is refundable. Personally I think if this can be done today it will be perfect, that is of-course if funds are available now. Please advice if funds can be wired today, if not please advice when this can be done so i can update all relevant parties, i will be having series of meetings today hence i will not be able to pick calls, but leave me an email if you have any questions and i will get back to you ASAP. All relevant parties to this contract are aware of this additional deposit & it will be noted in the contract as per closing.

Attached are wiring instructions. Confirm the receipt of the wiring instructions and send the proof of wire to me once done so we can update our files.

The selling agent was confused, at first. He was confused because the buyer never agreed to an additional deposit. Then the real estate agent looked closer and realized the email was from an email address that looked similar to, but was not, the listing agent's email. That explained the typos and poor grammar. The email came from john.johndoe@gmail.com.

The signature line contained the real email address and contact information of the listing agent; not the email address the email came from.

Next the selling agent looked at the purchase agreement and discovered the fraudster had altered it. The fully executed purchase agreement looked like this:

Buyer's Offer

13
 14 **I. FINANCIAL TERMS & CONDITIONS:**
 15 \$ 200,000.00 **A. EARNEST MONEY DEPOSIT** ("E
 16 into escrow with
 17 (NOTE: It is a felony in the State of Nevada
 18 check for which there are insufficient funds. N
 19
 20 \$ 150,200.00 **B. ADDITIONAL DEPOSIT** to be plac
 21 additional deposit will -OR- will n
 22 deposit should be set forth in Section 27 b
 23
 24 \$ N/A **C. THIS AGREEMENT IS CONTIN**
 25 **THE FOLLOWING TERMS AND CO**
 26 Conventional, FHA, VA, Oth
 27 Interest: Fixed rate, _____ years -O

The altered purchase agreement looked like this:

Buyer's Offer

13
 14 **I. FINANCIAL TERMS & CONDITIONS:**
 15 \$ 200,000.00 **A. EARNEST MONEY DEPOSIT** ("E
 16 into escrow with
 17 (NOTE: It is a felony in the State of Nevada
 18 check for which there are insufficient funds.
 19
 20 \$ 150,200.00 **B. ADDITIONAL DEPOSIT** to be pla
 21 additional deposit will -OR- will
 22 deposit should be set forth in Section 27
 23
 24 \$ N/A **C. THIS AGREEMENT IS CONTIN**
 25 **THE FOLLOWING TERMS AND CO**
 26 Conventional, FHA, VA, Oth
 27 Interest: Fixed rate, _____ years -4

Fortunately, everyone involved in the transaction knew the purchase agreement was altered and no one relied on the wire instructions sent by the fraudster, which also looked very suspicious. The real estate agent recognized the account name should be Chicago Title and not a LLD.

In this example the fraudsters modified the purchase agreement and tried to tell the buyer an additional deposit of \$150,200 was due — even though the buyer did not agree to the additional deposit. Fortunately the real estate agents knew the email was a scam and notified everyone involved.

In a separate transaction, an escrow officer from Ticor Title in Reno, Nevada, emailed wire transfer instructions to the buyer's real estate agent. The agent forwarded the wire instructions to the buyer. The buyer called the Ticor escrow officer to discuss the instructions because the set he received did not make sense. They read, in part:

FUND ABOVE \$10,000 Ticor Main
 Bank of XXXXXXXXXX
 35 W. Napa Street
 Sonoma, CA 95476
 Routing No. XXXXXXXXXX
 Account Name: Ticor Custom Gates, Inc.
 Account No. XXXXXXXXXXXXXXXX

FUND BELOW \$10,000 Reno Main
 XXXXXXXXXX Bank
 535 Westminster Mall
 Westminster, CA 92683
 ABA No. XXXXXXXXXX
 Ticor Title of Nevada, Inc.
 Escrow Trust Account
 Account No. XXXXXXXXXXXXXXXX
 Reference Escrow No. 01606550

[Continued on pg 4]

[ADDITIONAL \$150,200 deposit due - continued]

The buyer needed to wire transfer \$230,388.34 in order to close his transaction and was puzzled as to which account to send the money. He contacted the escrow officer by telephone.

The wire instructions she sent did not contain the banking information or instructions for “fund above \$10,000.” Apparently, the person who intercepted the wire instructions and altered them in an attempt to

divert the buyer’s down payment and closing costs, was not interested in receiving any amounts less than \$10,000, because their instructions directed “fund below \$10,000” to the correct account for Ticor Title.

YOUR notary commission, your responsibility

No one in the Company can guarantee a commissioned notary will be protected from suspension or revocation if the notary failed to comply with his/her state’s regulations. If the notary is unsure of the state’s regulations he/she should consult the statutes and rules of the state in which he/she is commissioned, and in the end make his/her own decision to proceed or not.

For example, is a Matricula Consular Identification Card an acceptable form of identification? In some states the notary statutes may not be 100% clear. In this instance, what should the notary do? The notary should consult with the state regulator in an effort to determine whether acceptance of this type of identification could jeopardize his/her commission.

What if the title officer says the identification is acceptable as long as a jurat is used? Does that make it okay? Keep in mind the title officer may be willing to insure the transaction in this manner knowing what type of identification was presented, but that does not mean the title officer is making an assurance to the notary the form of I.D. is acceptable under the law.

The same is true of an escrow officer who has arranged for an approved notary to meet with a customer. Company employees cannot force a notary to accept identification the notary does not feel meets the regulations set forth by his/her state. A notary should not let his/her guard down with anyone or risk his/her commission over one signing. It is just not worth it.

