



UNLAWFUL clouding of title

By Lisa A. Tyler
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“DISBURSING funds to unrelated third parties – the plight continues” provides additional details to the scheme that continues to successfully syphon thousands of dollars from industry escrow trust accounts. The thieves are getting smarter with each attempt. The scam started with the sale of a boat. When settlement agents balked at closing the sale of a boat it morphed into an option to purchase real estate, and now it is a sale with an early release of funds upon inspection of the property. Review the Real Estate Purchase and Sale Agreement and escrow instructions being used in every fraudulent transaction, so you can arm yourself and your company against the crime.

During a purchase closing in Illinois, an ex-husband of the seller was listed in a mechanic's lien even though he never held title to the subject property as an owner. Read “MECHANIC’S lien fraud” to find out how an escrow officer discovered a number of fraudulently filed

mechanic’s liens that eventually led to the arrest of the would-be contractor.

The risk of theft of property and customers’ non-public information became a near reality for one unlucky title company. Their courier company had a car stolen with keys to all of its branches inside. Read “STOLEN keys” to find out what happened next.

Although the real estate industry fought hard to have the word “optional” removed from the charge description reflected on the Loan Estimate as required by the CFPB’s proposed rules, they were unsuccessful in convincing the bureau of the harm the word brought to the consumer and possibly the entire transaction. The industry pleadings actually ended up backfiring in that the CFPB’s final published rules not only require the word “optional” after the owner’s policy premium charge on the Loan Estimate, but on the Closing Disclosure as well. Read all about it in “OWNER’S title insurance – part I.”

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DISBURSING funds to unrelated third parties – the plight continues

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One year has passed and the industry is still plagued with the theft of trust funds by criminals who deposit counterfeit checks, call for the immediate release of funds and have the money wired to an outside third party – an entity’s account, not an individual’s account.

We have reported the details of the crime in previous editions to share the red flag warnings in an attempt to halt the crime spree:

January 2015 story entitled “1.3 miles down the road”

November 2014 story entitled “RECOGNIZE the signs?”

July 2014 story entitled “BOAT for Sale”

Unfortunately, the criminals have found a prime target – settlement agents – and continue to pull off their crimes to the tune of hundreds of thousands of dollars. The most gut-wrenching part of the crime is that it is completely preventable. What can you do to prevent the crime?

- 1. Insist on speaking to the principals by a pre-established telephone number or in person before acting on their instructions; currently the people perpetuating this scheme will only communicate with settlement agents via email.**
- 2. Verify the check was validly issued by the bank by calling the issuing institution.**
- 3. Do not disburse against uncollected funds. The checks are drawn from a federal reserve outside of the depositing bank, so they take additional time to clear – or in this case be returned as counterfeit.**
- 4. Contact National Escrow Administration by email at settlement@fnf.com even if you are slightly suspicious. We can spot the crime from miles away.**
- 5. Review the purchase contract making note of different fonts and typographical errors.**

Below is an example of the purchase agreement:

**REAL ESTATE PURCHASE & SALE AGREEMENT
and escrow instructions**

This PURCHASE & SALE AGREEMENT AND ESCROW INSTRUCTIONS (the “Agreement”) dated the [REDACTED] day of [REDACTED], is by and between [REDACTED] whose address is [REDACTED] [REDACTED] (hereinafter referred to as “Seller”) and [REDACTED] whose address is [REDACTED] (hereinafter referred to as “Buyer”). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

- 1. AGREEMENT TO SELL AND BUY.** Upon and subject to the terms set forth in this agreement, Seller agrees to sell to Buyer and Buyer agrees to buy from Seller, the Property described in Paragraph 2 (the “Property”).
- 2. PROPERTY.** Seller agrees to sell, convey, and assign to Buyer and Buyer agrees to purchase and accept from Seller land and building(s) located at [REDACTED].
- 3. PURCHASE PRICE AND CONDITIONS OF PAYMENT.** The purchase price shall be \$[REDACTED] to be paid in accordance with the terms described in Paragraph 4 (the “ESCROW INSTRUCTIONS AND EARNEST MONEY DEPOSIT”).
- 4. ESCROW INSTRUCTIONS AND EARNEST MONEY DEPOSIT.** Escrow instructions and payment schedule shall commence as follows:
 1. Buyer shall make an initial deposit of \$[REDACTED] to Escrow as earnest money deposit on the said premises prior to his inspection. Such Earnest Money shall be credited to the Buyer towards the purchase price of the property.
 2. Upon receipt of said funds, Escrow holder will notify seller that said funds have been deposited into Escrow.
 3. Escrow holder will release said funds to seller upon receipt by Escrow holder of a written authorization from buyer that he is satisfied with the inspection of said premises and will complete the purchase.

If you see this agreement, immediately contact your manager and/or the National Escrow Administration department.



settlement@fnf.com or
949.622.4425

MECHANIC'S *lien fraud*

In November of 2014, Alicia Obernuefemann, Escrow Officer for Abstracts and Titles in Illinois, was preparing documentation on a purchase closing for a property located in Illinois. The real estate agent had just scheduled the closing for the following week.

Alicia called as soon as she had the file in her hands to discuss the numerous issues noted on the title report, including a pending foreclosure and a mechanic's lien that had been filed one month earlier in the amount of \$3,125.

The real estate agent was aware of the foreclosure, but was surprised to hear a mechanic's lien had been filed for work that had supposedly been done at the property in July 2014. The real estate agent stated the property was in poor condition and could not believe any work had been performed recently. She asked Alicia to contact the seller.

Alicia called the seller and informed her of the title defects that would need to be resolved before closing. The seller readily admitted she knew the foreclosure proceedings had begun, but was completely surprised by the mechanic's lien.

The seller stated there had never been any improvements made to the property, therefore there was no reason for this lien to be filed. She, like the listing agent, stated the house was in poor condition and the buyers were accepting the property "as is."

When Alicia mentioned the supporting documentation filed with the lien mentioned John Doe as the property owner, the seller was even more shocked. John was an ex-husband who had not lived in the property since 2009 and had nothing to do with the property since that time.

Alicia then realized that John was listed in the foreclosure proceedings since he signed the mortgage in 2004. There was no other way this contractor would even know about her former marriage to John since he never held title to the subject property as an owner. The contractor must have read the foreclosure notice when he filled out the mechanic's lien documentation.

Alicia and the seller continued talking about other items on the report that needed to be resolved, but the matter about the mechanic's lien did not sit well with Alicia. The details were just not adding up. She decided further investigation was necessary to determine the validity of the lien.

One exhibit filed with the mechanic's lien had an address for the independent contractor who purportedly performed the work, but no other contact information, such as a telephone number, fax number or email address. Alicia searched the Internet for a telephone number using the address. She found a number and dialed it, but no one answered and there was no way to leave a message.

Alicia decided to open a search on the independent contractor to see what information she could discover pertaining to any other properties he had worked on within the county. A basic search showed the contractor had filed five mechanic's liens



against properties within the county in one month. All the different properties seemed to either be delinquent on taxes or in early foreclosure proceedings. Some of the liens were for services and home repairs on parcels of vacant land!

Alicia then conducted a search in a neighboring county and discovered liens against properties under the same circumstances. Nine liens had been filed in a two month period on various properties by the same contractor, with what now appeared to be fake invoices as supporting evidence. After discovering this information, Alicia advised the homeowner to contact the police.

Next, a detective called Alicia and asked her to explain the situation. She met with the detective and provided him with all the information she had collected and explained the discovery of the falsified mechanic's liens. The detective thanked her and said that due to her report and detailed documentation they had opened an investigation on this supposed contractor with the intention of making an arrest.

The buyer and seller directed Alicia to holdback sufficient money to pay the mechanic's lien and proceed to close their transaction. After closing, the seller retained an attorney who was able to convince the contractor to sign a release of the fraudulent lien. Once the lien release was recorded, Alicia released the funds held to the seller.

After closing, Alicia was notified by the detective that charges had not only been filed in the county, but in the neighboring county as well. Warrants were issued in both counties for the arrest of the contractor and he was apprehended. The charges were perjury and unlawful clouding of title. He is in police custody awaiting trial.

Alicia has been rewarded \$1,500 for going the extra mile to make sure the fraudulent liens were reported to law enforcement, for aiding the law enforcement officers in the discovery of necessary evidence and for finding a way to get her file closed. She also received a letter of recognition from the Company.

Alicia used all resources available to clear the cloud on title to the property she was closing. More importantly she made sure law enforcement had all the necessary evidence to stop the contractor from filing additional fraudulent mechanic's liens.

STOLEN keys

An outside title company recently reported the courier company used for their offices had one of their drivers' cars stolen in March 2015. Keys to the title company's branch offices were in the car and were "semi-labeled" with the office addresses. The owner of the courier company alerted the title company's operations manager immediately.

The operations manager alerted all branch office managers and arrangements were made to have the locks changed that night. A police report was filed with local law enforcement.

Luckily there were no packages containing customers' non-public information in the car at the time of theft, as all of the deliveries had already been made. All of the branches reviewed the closings they had received and nothing was missing.

The owner of the courier company agreed to reimburse the title company for its re-keying costs.

MORAL OF THE STORY

The courier company should be instructed to color code the branch office keys and to keep the color coding locked in their office, rather than coding the keys with branch addresses, since the keys can be lost and/or stolen. No one wants the keys to fall into the hands of someone who might be malicious enough to enter a branch office and take the property inside.

Know before you close.™ | CFPB Readiness

OWNER'S title insurance – part I

If the seller has agreed under the terms of the purchase contract or by local custom to pay for the owner's policy of title insurance, then the creditor does not show the premium on the Loan Estimate and the buyer is not charged at closing with an off-set to the seller. Instead the seller is charged the premium at closing.

However, if the buyer has agreed to pay any portion of the owner's premium at closing, the creditor must show the charge on the Loan Estimate as optional.

Example: Title – Owner's Title Policy (optional) \$1,017

The portion of the Owner's Title Policy premium paid for by the buyer at closing must be shown as "optional" on the Closing Disclosure in the same manner. Conceivably the buyer could opt not to purchase an owner's policy at the closing table.

It is important to understand the CFPB never intended for buyers to get the impression an Owner's Title Policy is not necessary. Their intent was only to ensure the Loan Estimate provided a true estimate of the required costs related to their transaction, in order to obtain a loan for the purchase of the property.

Although the lender may not *require* their borrower purchase an Owner's Title Policy as a part of the purchase, the purchase agreement or contract will most likely require a policy be purchased.

The optional wording on the Loan Estimate and Closing Disclosure is really only there to alert the buyer the purchase of an Owner's Title Policy is not required as a part of the loan program.

Keep in mind any portion of the Owner's Title Policy premium paid by the seller should not contain the word "optional" in the charge description. Be sure to read next month's edition for part II of "OWNER'S title insurance" where we will reveal the disclosure amounts required to be reflected on the Loan Estimate and Closing Disclosure versus the actual filed, promulgated or card rates. It is guaranteed to blow your mind!

