



By Lisa A. Tyler
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Free and clear properties owned by absentee or deceased owners are prime targets for fraudsters, who see an opportunity to obtain title to the properties by fraudulent means. Then they strip the equity in the properties by obtaining cash-out loans pledging the property as collateral. These schemes leave the real property owner or their heirs, with one or more cloud on title and potential legal bills to reclaim property which was theirs all along. **Unless** the fraudster is stopped by a hero like Andy Vigil, Title Officer for Lawyer's Title. Read "HAVE no fear, captain title officer is here!" for details of his heroic tale.

Absentee owners are the target. Imposters acting as the owner of a property which is not the owner's primary residence are regularly trying to pledge the property as collateral for a cash-out loan or even sell these property rights out from under the owner. Fortunately keen title officers and settlement agents all over the country are detecting these scams and stopping the would-be thieves. Read "TAX bills are the key" to find out what Cape Coral Title Insurance Agency, Inc. out of Florida did to thwart this theft.

In this and previous issues we have discussed the risks associated with absentee property owners, but what about absentee buyers? What is their scam? Perhaps we will never truly identify the risks because we never seem to receive their closing funds and therefore never close. Maybe that is the risk? Are they hoping the settlement agent overlooks that detail and records the deed without the money? Nga Tran, Closer for Fidelity National Title in Seminole, Florida, shared her story. Read "ABSENTEE buyer" for the details.

From time to time a notary may receive a request to view or obtain a copy of an entry in their journal or other evidence the signer appeared in front of them. The notary should be sure to consult with their state's laws and codes for the proper way to respond. Read "REQUESTS for a journal entry" for this month's tip on notary know-how.

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HAVE no fear, captain title officer is here!

The title department at Lawyer's Title in Burbank, California, was processing a title-only order for an independent escrow company. The transaction was a cash-out loan for \$400,000. The title search revealed a deed of distribution to the heir of the deceased in 1994.

In 2010, an uninsured deed from the heir was recorded transferring the property to the borrower, Tom A. Toe. The deed was executed by an attorney-in-fact for the grantor. Twelve days later, Toe deeded the property back to the heir. Both deeds were notarized by the same notary public.

Forty days after that, another uninsured deed was recorded transferring the property to a woman. Six years later, almost to the day, a quiet title judgment was recorded in favor of Tom A. Toe. One month after the title judgment, Toe applied for a new loan in the amount of \$400,000 and was pledging this property as collateral for the loan. Title Officer Andy Vigil did a title search discovering two lis pendens affecting this property filed by the estate of the deceased.

The title report was sent to the independent escrow officer working on the closing. Upon receipt of the title report the escrow officer worked diligently with Toe to obtain a withdrawal of the lis pendens. The original withdrawal documents releasing the lis pendens were forwarded to Lawyer's Title for approval and recordation. The documents came in without a cover letter or any correspondence from the law firm who signed them.

Andy found this very unusual and called the law firm located in the state of Texas. The firm confirmed the withdrawals were not executed by their attorney. The attorney confirmed he was not in Texas on the date the documents were signed. The documents were notarized by a notary commissioned in the state of Texas. Andy's suspicions that the withdrawals were not legitimate were right! The documents were forged.

Andy escalated his findings to his manager, Mike Merlo, who nominated Andy for a \$1,500 reward! Mike said, "The moral of the story is know where documents come from. A release of a lien, judgement or other action which affects a property should be accompanied by either a demand statement or instructions from the party who provided the document."

Lawyer's Title notified the escrow company they would not insure the new lender and took the proper steps to ensure none of the other FNF Family of Companies would insure the new loan either.

The borrower on this property had previously succeeded in this crime, obtaining more than \$1,000,000 in loans secured against another property and insured by another title company. In addition, the same borrower has been arrested and charged with battery and indicted for robbery of a jewelry store. If only he would use his powers for good instead of evil. Good thing we have super heroes like Andy to save the day!



STOP

**TELL US HOW YOU
STOPPED
FRAUD**

settlement@fnf.com or
949.622.4425

TAX bills are the key

Teri Denison, Closing Officer at Cape Coral Title Insurance Agency, Inc., was processing a sale of a vacant, waterfront lot. The sales price was \$205,000; a cash purchase. The purchaser paid \$5,000 as earnest money and was working with a builder on plans to build a home on the lot.

Since the property was a vacant lot Teri realized the seller's mailing address would be different than the property address; her office has an added precaution in place where the address provided is compared with the address for the tax bill on the tax collector's website.

Teri discovered the vacant property address was different than the tax bill address. She sent a letter to the seller at the address listed on the tax bill introducing herself, her company and asking the seller to contact her to confirm the sale of the lot.

The buyer was not obtaining a new loan so about a week later they were ready to close. Teri prepared the closing documents on Friday, March 31, 2017. She contacted the listing agent to find out where and how she should send the closing documents.

The listing agent advised her to email the closing documents to the seller. Once again, in an effort to ensure there was no funny business going on, Teri also sent the documents via overnight delivery to the address on the tax bill. Everything was sent on Monday, April 3, 2017.

On April 5, 2017, the real owners of the vacant lot called the Cape Coral Title Insurance Agency and asked to speak with the President. Brice Cumbie took their call.

The owners explained to Brice they received a letter and overnight package from his company. They told him they were not selling their

lot and did not have it listed for sale. Further, they stated they already explained this to the listing agent on March 24, 2017. That was twelve days ago. Teri wondered why the listing agent did not tell her that when she called on March 31, 2017.

Brice called Teri into his office to share what he learned. She immediately called the listing agent to notify him the real owners just called her company's president. She asked him why he did not tell her he spoke to them on March 24, 2017.

The listing agent explained after receiving the email about the property, unbeknownst to him, he asked the fake sellers for identification. They showed him their passports. He asked for copies and they gave him copies. It never occurred to him they were false.

The real owners had forwarded their email exchange with the listing agent to Brice, where they confirmed they were the owners of the lot and were not interested in selling. Teri also asked the listing agent why he provided her with a different email address for the seller than the one he received from the real owners who communicated with him. He simply huffed at her. Was he really going to let this deal close knowing all of this? She will never know.

Fortunately for Teri this agent does not usually do business with her. It was the selling agent who encouraged the buyers to select her as their closing agent. Her company resigned from the transaction and notified their agency representative.

Cape Coral Title recognized the risks associated with sales where the property owner is absentee. Simply checking the tax bill and sending a notice to the address listed on the bill saved Cape Coral and their underwriter from a potential claim. Keep up the good work!

ABSENTEE buyer

The transaction was a sale where the buyer, a Limited Liability Company (LLC), assigned their rights and interest in the purchase agreement to an individual we will call "Willie Waite." The assignment agreement required Waite to pay an assignment fee of \$10,000 to the LLC. The buyer was paying cash for the property.

The closer went on vacation so her colleague, Nga Tran, agreed to take over the file while she was out. Neither the buyer nor the seller were available to come in for the closing. Nga prepared the closing documents. She overnighted the documents to the seller and emailed them to the buyer.

Nga wanted to talk to Waite to review the documents with him and be sure he understood he had to wire in his closing funds. She wanted to be sure she verbally verified the wire instructions with him in order to confirm he wired the funds to the correct place.

Nga searched the file and discovered the only contact information she had for the buyer was an email address. She sent the Master Closing

Statement and wiring instructions to the buyer via an encrypted email. In a separate, unencrypted email she explained to Waite the password needed to open the encrypted email was the zip code of the property he was purchasing. The buyer responded asking what the zip code was.

Nga sent the closing documents via DocuSign®. She also requested a copy of the buyer's photo identification, confirmation he sent the wire and urged him to call her. The buyer electronically signed the documents, but did not send the other two items; and he did not call. Nga replied asking Waite to send her his mailing address and phone number.

Waite replied with his address — minus the zip code — and this statement, "My doctor asked me to swift off my phone number because of my health condition." Nga searched the buyer's address on USPS.com. The website search results read, "The address you provided is not recognized by the U.S. Postal Service as an address we serve. Mail sent to this address may be returned." Nga decided she needed a second opinion and contacted her legal counsel, Gerri Lacey.

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[ABSENTEE buyer - continued]

Gerri carefully reviewed the documents. She traced the IP address in the document summary, which revealed the documents were eSigned in Ghana. She also searched the public records in the county where the buyer stated he lived and found nothing.

Nga reached out to the assignor for more information about the buyer. She discovered no one — not the assignor, selling agent, seller nor listing agent — had communicated with the assignee other than by email.

The assignor claimed the buyer was a member of the LLC which assigned the purchase agreement to Waite. Nga had a copy of the LLC agreement and Waite was not named as a member at all. The gentleman representing the LLC claimed they assist members by purchasing properties and then managing them for their members.

The assignor stated sometimes they take title in the name of the LLC but then immediately transfer title to the member and the LLC continues to manage the property for the member. Yet they have never met nor talked to Waite? Something was just not adding up.

Nga was very uncomfortable proceeding with the closing. She identified three concerns:

1. The buyer provided an incomplete and possibly fake mailing address.
2. The buyer refused to talk to her on the phone.
3. The language in the emails was peculiar. One email read, "I prefer email to email conversation because of my health condition. I'm suffering from Stroke attack which affected major parts of my body, I'm experience difficulty in speaking."

A few days before the closing date, Waite began stalling the closing. Nga received two emails from him. The first one read, "I need some time to transfer ownership of the funds to my name."

Nga asked him to explain and he replied, "My investment funds are deposited under my former Wife's name since the first stroke attacked me. I have to transfer the Ownership of the funds in my name, get the necessary back up documents that will allow me to wire the investment funds successfully to you. Since my former Wife is dead, I can't send the funds out from her account without changing the Ownership of the funds legally to my name and getting the important documents."

It was at this point Fidelity's District Manager advised Nga to resign from the transaction.

Nga was relieved. She notified the buyer, seller and their real estate agents she was resigning. The representative of the LLC finally admitted this was the first time they worked with this buyer and he too was concerned about the fact he only communicated by email.

This story is puzzling on so many levels. What was the scam? We will probably never know, but we do know we rely on closers to trust their "escrow gut." If something does not feel right, ask for help. Nga did just that. In the end she was not even sure she was communicating with a real person.

For her keen insight, and for saving herself and the Company the time and expense of working on a transaction that ultimately would never close she is being rewarded \$1,500. When Nga learned of her reward, she decided to split it with her colleague Gerri Lacey, saying, "It was truly a team effort."

REQUESTS for a journal entry

First, determine if the journal is considered public record or not, then determine whether the request is in the proper form. For example, in Arizona anyone can submit a request to see a notary's journal entry because it is deemed public record.

The person making the request to view or obtain a copy of the entry must make the request in writing and include:

- Month and year of the notarial act
- Name of the person whose signature was notarized
- The type of document or transaction

The requestor must be specific about the entry they are inquiring about. They cannot simply ask to peruse the notary's journal or ask for all entries for a certain person.

When the notary responds, the notary should only provide that exact entry. All other entries which may appear on the same page should be covered. There have been many instances where a notary's seal or event certificates have been stolen or duplicated.

Be sure to respond to requests in a timely manner. If a request comes in to view an entry which does not appear in the journal, the

notary should be sure to respond in writing to the requestor letting them know there is no entry matching their request and explain why there is no entry, for example, "This indicates the signer did not appear in front of the notary as a journal is kept for all notarial acts."

Failure to respond with a detailed explanation could appear as an admission the notary did not follow proper procedures.

However, since the law in your jurisdiction regarding journal entries may be different, always consult an attorney before you respond to any requests to produce your journal entries.

