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If you often wonder why the Company has such stringent "DOCUMENT execution guidelines" in comparison to its competitors, read the story in this month's edition. The details are a chilling testament as to why the guidelines are in place: to protect the Company, but also to protect real estate buyers and sellers.

Our Company is constantly improving internet security and tightening our escrow practices to address fraudulent attacks on the Company's network and infrastructure. One of the latest attacks targeting the real estate industry has been deemed the "watering hole attack."

These attacks trick users by infecting websites they typically visit or find (the watering hole) in industry-related searches. The fraudsters

plant malicious files within commonly associated files or documents used by the targeted industry. Find out how to prevent the attacks in the article entitled "WATERING hole attacks."

When real estate is sold in Vermont, state income tax is due on the gain from the sale. If the seller resides out of state, the buyer is required to withhold 2.5% of the sale price and remit the appropriate tax forms to the Vermont Department of Taxes within 30 days of the sale.

As a matter of fact, town clerks cannot record a deed unless it is accompanied by a completed Property Transfer Tax Return. Read all about this month's state withholding topic in the article titled "VERMONT real estate withholding."

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STOPPED
FRAUD**

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DOCUMENT execution guidelines

Joanne Zeigler, an escrow officer with Lawyers Title Company's Las Vegas operation, opened an escrow that was a For Sale By Owner (FSBO), meaning the seller did not use a real estate agent to market and sell the property. In this instance, the buyer also did not use a real estate agent.

The seller entered into a sales contract with a buyer (the "Contract Buyer") for \$142,000. The Contract Buyer then entered into an assignment of contract to the ultimate buyer (the "Ultimate Buyer") for an \$18,000 assignment fee. The Ultimate Buyer was an investor who would renovate the house and then re-sell the property.

The seller told Joanne why she was selling the home: One day, she went home and discovered someone had broken in and ransacked it. She left the house so quickly, she did not take her purse or any identification. She was afraid to go back to the house to retrieve them and so she had no identification.

The seller said she did not want to ever go back and that is why she was selling. Joanne also noticed that when the seller called, the name on the caller ID was someone else's — not the seller's name. Joanne became suspicious about the transaction.

The contract called for an early release of earnest money in the amount of \$3,000. The seller told Joanne she closed all her accounts due to the home being broken into and she needed Joanne to send the funds to her friend's account.

Joanne told the seller she could not do that, so the seller asked to have the funds transferred to her Venmo account. Joanne told her she could not do that either. The seller said she really needed the money and would cancel the escrow if Joanne did not get her the cash.

Joanne told the Contract Buyer about the conversation and warned him to verify the identity of the seller. She told him every time she talked to the seller, there were more red flags. The Contract Buyer ended up transferring the \$3,000 directly into the seller's Venmo account so he would not lose the deal.

Finally, it was time to have the seller sign the closing documents. However, she would not allow Joanne to arrange for an approved signing agent to go to her house and reiterated that she still did not have any identification.

The seller said she had no idea who ransacked her house and did not trust anyone, so she did not want to meet with anyone for the signing. Joanne told her a Company approved notary must conduct the document execution.



The seller absolutely refused and said she would only feel comfortable if a friend, who is a notary, did the signing. Joanne argued she could not accept her friend's notarization unless her friend was a notary approved by our Company.

Joanne told her the friend could be there with her — along with the Company approved notary — but the seller refused that, as well. At that point, Joanne felt there were too many stories and too many things that did not add up.

Joanne told the Contract Buyer, who had directed the transaction to Lawyers Title, that she would not accept anything less than a Company approved notary conducting the signing and would not close unless she could get the Department of Motor Vehicles to verify that the seller's ID was valid. She warned him this transaction had red flags of fraud and she was ready to resign as escrow agent.

A day later, the Contract Buyer reported to Joanne that he had talked to a representative at a competitor title company and they would accept the seller's friend's notarization on the closing documents. As a result, they were going to transfer the deal to the other title company. Joanne cancelled the transaction file.

Two weeks later, the Contract Buyer called Joanne. The competitor closed the deal and never even checked to see if the friend was a valid notary. As it turned out, the notary stamp was fraudulent, and the seller turned out to be an imposter!

By this point, the Ultimate Buyer had removed everything from the house, ripped the kitchen out and started the rehab of the property. The actual property owner went to the house and found the Ultimate Buyer working in the property and asked where all her things were. The Ultimate Buyer informed her he threw it all out.

The actual property owner said her **husband's ashes** were in the house and she was going to sue everyone associated with the sale for punitive damages. The competitor title company is now in

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[DOCUMENT execution guidelines — continued]

the process of attempting to unwind the sale and reinstall the kitchen. This poor owner, however, will never get her husband's ashes back.

The Company is thankful Joanne stuck to her guns and refused to deviate from the Company's document execution guidelines. Joanne will receive a \$1,500 reward for her efforts to detect and prevent a future loss to the Company.

MORAL OF THE STORY

Always listen to that little voice in your head that indicates, "Something is very wrong." Always follow the Company's document execution guidelines by accepting only documents signed in the presence of an approved notary.

WATERING hole attacks

The use of search engines leaves users vulnerable to what is called a "watering hole attack." A watering hole attack tricks users by creating false websites mimicking trusted, industry specific websites that appear on searches.

These sites plant malicious files in place of a template or document professionals would download for their job. Instead, users are putting themselves and the Company at risk with a malicious executable file. It is important to be alert and not depend on random searches to find downloadable documents.

Unlike other forms of loan or real estate fraud, these attackers are not targeting a specific victim. Instead, they use the watering hole to set a trap and then wait for unsuspecting users to fall victim by opening one of the malicious files.

Have you ever completed an internet search for a document necessary for closing? A perfect example would be a settlement agent performing a closing for an out-of-county or out-of-state property and the transfer tax declaration was not available in their escrow production system.

The settlement agent would typically reach out to the county tax collector's website for the document to provide to the principals for completion and signing at closing. That scenario sets off the watering hole attack!



Another example was illustrated by the California Land Title Association in their newsletter regarding a Subordination Agreement. A settlement agent searched online for a subordination agreement to use for a closing.

The settlement agent went to a website that appeared to have the needed document. They found a link to a file innocuously named "UCC Subordination_Agreement.zip" and downloaded it.

Unfortunately, the content of the zip file was not a PDF document. It was a script designed to contact a command-and-control server controlled by an attacker. The intent of the script was to infiltrate the network, steal information and start a ransomware attack!

In the past, watering hole attacks have not generally targeted real estate and settlement services. However, this trend has changed. Performing internet searches looking for business-specific templates and then clicking on a link to download them is an unnecessary risk. A risk that could affect not just you, but the entire Company.

If a document necessary for closing is not available in your escrow production system, contact your National Escrow Administration by email settlement@fnf.com or by telephone at 949.622.4425. We will assist in finding a document from a direct operation or a known, trusted site. Another great resource for documents is the title office preparing the title report and final policies of title insurance.

If it is necessary to download anything from the internet follow Company policies and procedures. Look at the URL (web address) and verify the website you are using is a legitimate and trusted source. Always look at the file type prior to downloading. Files such as ".exe" or ".zip" pose extreme risks.

Eagle County Colorado Real Property Transfer Declaration

Select Download Format:



Download



Download

Two examples of malicious downloads are Eagle-County-Colorado-Real-Property-Transfer-Declaration.pdf and Eagle-County-Colorado-Real-Property-Transfer-Declaration.doc. These icons look like downloadable documents, but they are not. They contain malicious executables that — when opened — can infect your workstation and the Company's entire network.

VERMONT *real estate withholding*

In Vermont, a real estate seller may qualify for an exemption from withholding. Here are a few examples of the type of exemptions:

1. At the time of the transfer, the seller certifies under penalty of perjury they are a Vermont resident or an estate.
2. The buyer certifies the transfer is without consideration, such as a gift or transfer for tax or estate planning purposes. It is important to understand a transaction is not exempt when consideration is paid. Consideration is not only a sales price or a payment in exchange for the property. Consideration includes the value of services or goods, forgiveness of debt or other items which are deemed consideration under the Internal Revenue Code.
3. The seller is a mortgagor conveying the mortgaged property to a mortgagee in a foreclosure or transfer in lieu of foreclosure, with no additional consideration.

In other instances, withholding may be reduced or eliminated if the seller obtains a Commissioner's Certificate. A Commissioner's Certificate may reduce or exempt the seller from withholding.

The seller must apply for and meet certain requirements to be eligible for a certificate. For example, calculating their basis showing the acquisition cost of the property and the detailed costs of any subsequent improvements. Examples of basis documentation include (but are not limited to):

- » Copies of the Property Transfer Tax return or settlement statement
- » An estate inventory, judgment order, decree of foreclosure, etc. from when the seller acquired the property
- » Detailed listing of the costs of any improvements to real property

The proof of basis is the same as the basis documentation needed when rental or business property is sold.

Other reasons why a seller may qualify for a Commissioner's

Certificate are:

- » Loss experienced on the sale
- » Withholding on gain would be lower than 2.5% of sales price
- » Internal Revenue Code §121 of a seller's primary residence exclusion will be claimed
- » Transaction is part of a §1031 exchange agreement
- » Some or all sellers are Vermont residents or domestic entities
- » Selling entity is tax exempt
- » Some other valid reason where gain is not recognized federally

If the seller is not otherwise exempt, buyers are required to file the appropriate forms with payment within 30 days of the transfer and mail to:

Vermont Department of Taxes
133 State Street
Montpelier, VT 05633

When a seller files their Vermont tax return, they must indicate the amount withheld as a credit on the appropriate line of the Vermont return. The seller must also include a copy of the first two pages of the federal income tax return and any federal schedule that documents the income or loss from the sale in order to receive credit for the payment made at closing. More information can be found at: <https://tax.vermont.gov/property/rw>.

The information provided herein does not, and is not intended to, constitute legal advice; instead, all information, and content, in this article are for general informational purposes only. Information in this article may not constitute the most up-to-date legal or other information. This article contains links to other third-party websites. Such links are only for the convenience of the reader, user or browser; Fidelity National Title Group does not recommend or endorse the contents of the third-party sites.

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