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Business Email Compromise (BEC) scams continue to plague our industry and the crooks are getting bolder. Recently a title agent in Florida was closing a sale transaction. The buyer was obtaining a FHA insured loan. There were a couple of loan documents the seller needed to sign. Read "FORGERY using an electronic signature" to discover the details that led up to forgery in an attempt to divert a wire transfer of seller proceeds.

Kelly Ivy, Assistant Vice President and Senior Escrow Officer for Chicago Title in Houston, Texas, received a phone call from a buyer who stated she was purchasing a property for all cash and wanted to close with Chicago Title. The woman explained there were no real

estate agents involved and she would be available that afternoon to come to her office to deposit the earnest money and sign any necessary documents. Kelly agreed to act as her escrow officer and explained she would begin the process upon receipt of the earnest money. Read "FOR sale by owner (FSBO)" for more details.

Identity theft is rampant and protecting our customers' non-public information has become more critical than ever. A seller must provide the settlement agent with their U.S. T.I.N. or Social Security Number to report the sale to the IRS. The IRS guidelines state, "The transferor is required to furnish his or her TIN and to certify that the TIN is correct." So what happens when a seller refuses to provide their U.S. T.I.N.? Does this put a stop to the transaction? Read "REFUSING to provide a T.I.N." to find out.

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**Share Fraud Insights**  
via email, mail or word of mouth.



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**Marilyn Olliver, Division Manager, Vice President of North American Title Company, was covering the desk of a manager out on a much deserved vacation. One of the files she worked on was a sale where the buyer obtained a FHA insured loan. The seller was out of state and had already signed all of their closing documents, and provided written and signed Disbursement Authorization Instructions for the proceeds from the sale.**

The buyer's loan documents came in. The buyer signed off on the loan documents and left for the bank to initiate a wire of their closing funds. Since the loan was a FHA insured loan a few of the documents required the seller's signature. An assistant at the office emailed the loan documents to the seller to sign.

The seller emailed the assistant back stating she wanted to change the account where her proceeds would be wired. The body of the email included the new wiring instructions. The assistant replied with a blank copy of the Disbursement Authorization Instructions and asked the seller to complete them, then send them back with the other documents.

Marilyn was copied on the email. She noticed the account name for the new bank account was a company name and not the seller's name. Marilyn notified the seller the proceeds must be wired to an account in her name individually. Something about the email bothered Marilyn so she reviewed it closer.

Marilyn looked carefully at the email address comparing it to the one in the file and discovered the address was not the same. It was very

close, but it was not the same. A fraudster was "spoofing" the seller's real email account. Marilyn picked up the phone and called the seller at a trusted phone number. She left her a voicemail and asked her to call regarding her closing so they could finalize everything.

While Marilyn waited for the seller to call back, the fraudster sent in revised wire instructions and continually asked for confirmation the wire was sent. The seller returned Marilyn's call and confirmed she had not sent revised instructions. Marilyn explained it appeared fraudsters hacked her email. The seller was very grateful North American Title Company caught this and thus protected her \$246,000 in proceeds.

This story, however, did not end there because the fraudster did not let up. He again completed another Disbursement Authorization Instruction and signed it electronically in an attempt to divert the wire transfer. Furthermore, the fraudster electronically signed or forged the seller's signature on the loan documents Marilyn provided and returned them. The fraudster kept asking for confirmation the wire was sent.

Marilyn replied requesting the fraudster call her. The fraudster replied he was in meetings all day but she could always reach him by email. She replied she would not be able to send the wire until he called her. He did not respond.

Marilyn shared the emails with her corporate offices. Her corporate attorney then contacted the bank where the fraudster attempted to divert the proceeds. The attorney alerted them their account holder was up to no good. The bank's fraud department is investigating the account.



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**STOP**

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Marilyn sighed in relief. Thank goodness she took the time to trust her gut and review the email. She halted a large loss and a potential claim to the Company's errors and omissions insurance policy and saved the customer.

In hindsight Marilyn realized how difficult it was to detect forged documents signed electronically since comparing to live signatures she had was impossible. Marilyn said, "It is so important for everyone to be aware of all the fraud schemes out there today,

and to pick up the phone and call your customers to insure that all instructions are correct instead of taking the easy route and emailing."

North American Title Company is a title agent for the FNF Family of Companies. National Escrow Administration completely agrees with Marilyn and thanks her for sharing her story. Although we have published many other articles in previous issues, this one features a new twist — the fraudster actually forging the seller's signature to other documents. Thank you Marilyn!

## **FOR** sale by owner (FSBO)

**Kelly Ivy, Assistant Vice President and Senior Escrow Officer for Chicago Title in Houston, Texas, opened the transaction in her production system and receipted in the earnest money. While processing the order Kelly noticed the buyer on her transaction previously owned this property. The buyer of the current transaction actually sold the same property to the current owner in 2012 for \$69,000 cash. The new sales price was \$160,000. Nothing else in the chain of title appeared out of the ordinary.**

The transaction progressed and the sellers notified Kelly they appointed an attorney-in-fact to sign their closing documents since they were out of the country. Kelly asked for the powers of attorney to be faxed to her for review and approval. Upon receipt she sent them to Bobbye Harris in the Underwriting Department for review. Bobbye was unable to clearly view the authentication seals, so she asked for the originals.

A few days later a very pushy woman showed up at Kelly's office without an appointment and during the lunch hour to drop off the original powers of attorney. She refused to leave unless she spoke to someone and received a receipt for the original documents. The receptionist made a copy of the first page of each of the powers of attorney and then handwrote on the copies "Received by Chicago Title" and noted the date. Satisfied, the pushy woman left.

The Underwriting Department approved the powers of attorney and Kelly prepared the closing statements. She sent them out to the principals for review. Additionally, to the buyer, Kelly included her wiring instructions and explained the closing funds must be in the form of a cashier's check or wire transfer. The buyer scheduled the signing appointment.

The buyer arrived on time for the closing and brought a friend with her. Kelly began reviewing the closing documents with the buyer and asked her if she wired the closing funds. The buyer stated she had wired the full sales price to the seller directly and outside of escrow. Upon hearing this, Kelly excused herself from closing. She discussed the transaction with one of her colleagues and together they decided they could not proceed unless the buyer wired her closing funds directly to Chicago Title.

Kelly returned to the closing and explained the seller needed to return the funds to the buyer. Then the buyer must send the funds

directly to Chicago Title. The buyer said her bank was located in a foreign country, the same place as the seller. She further claimed, a competitor allowed her to proceed with this payment method and all Kelly needed to do was call the seller to verify the seller received the funds.

Kelly explained she needed the funds in order to properly account for all charges and adjustments, and collect her fees. The earnest money was not enough to cover them. The buyer claimed she had previously discussed this exact proposition with Kelly on the phone. Kelly reminded her, their initial conversation only covered the facts the transaction was a cash sale and no real estate agents were involved.

The buyer asked what else could be done. Kelly reiterated the funds had to be received by Chicago Title. The buyer said she would work with the seller to have the funds sent to her account in the U.S. and then forwarded to Chicago Title.

As the buyer got up to leave, the buyer's friend asked Kelly a few questions. He asked how the funds would get to the sellers. Kelly explained they would be wired to the sellers or she would send them a check. He also wanted to know if she could simply cut the proceeds check to the attorney-in-fact instead of the actual seller. Kelly explained in great detail why proceeds must be paid to the sellers of record. He seemed satisfied with her explanation and left with his friend.

After they left Kelly had a very bad feeling about the transaction. She called her title insurance underwriter to discuss the file further. Together, they agreed there were too many red flags to proceed:

1. The funds were not here in the U.S. They were in a foreign country.
2. Kelly never had direct contact with the seller.
3. The purchase price was being paid outside of escrow.
4. Kelly was asked to pay the sales proceeds to someone other than the seller.

Kelly resigned as escrow holder from the transaction. The buyer begged her to close the transaction stating she would have the funds wired to Chicago Title. She even stated there was no need to re-prorate if the closing was delayed a day or two because this was a sale amongst friends.

[FOR sale by owner (FSBO) - continued]

The attorney-in-fact for the seller showed up at the office demanding to talk with Kelly. Kelly asked her colleague to eavesdrop on the conversation so Kelly and Melissa Hull went to the lobby. Melissa made herself look busy while the attorney-in-fact questioned Kelly.

The attorney-in-fact asked what was wrong with their powers of attorney and why she thought this was fraud. Kelly simply answered she never said either of those things. Instead, the Company was unwilling to insure the sale thus she resigned as escrow holder.

Kelly listed off all the Companies which make up the FNTG Family and instructed them to take their transaction elsewhere. The buyer stated, "That is all the title companies in town, who else is left?" Kelly recommended they contact a real estate attorney to assist them. The attorney-in-fact said her sister should be able to help and left.

The attorney-in-fact returned for the original powers of attorney. The branch manager had her sign a receipt for the originals. Kelly reviewed the documents in the 2012 file and discovered the signatures on the powers of attorney did not match the buyer's signatures in that file. Kelly was relieved she did not close the transaction.



### MORAL OF THE STORY

Anytime a transaction is closed where a power of attorney is used the Company faces increased risk. As soon as the settlement agent becomes aware a principal has appointed an attorney-in-fact they should:

- Send a copy of the power of attorney to the title officer or underwriting department for review.
- Ask if the attorney-in-fact possesses the original power of attorney.
- Make contact with the principal to confirm the power of attorney has not been revoked and the principal is aware of the terms of the transaction.
- If the principal cannot be contacted, find out why and evaluate (deployed military, in nursing home, deceased, etc.).
- Verify with the principal, they executed the power of attorney of their own free will.
- Never accept disbursement instructions from an attorney-in-fact diverting proceeds away from the principal.

Although Kelly was in receipt of the original power of attorney and they were in proper form to receive approval from the underwriting department, she did not ignore the other red flags. As a result she was rewarded \$1,500. Way to go Kelly!

## **REFUSING** to provide a T.I.N.

**What happens when a seller refuses to provide their U.S. T.I.N.? Does this put a stop to the transaction? The short answer is, "No." When a seller refuses to provide their U.S. T.I.N., it does not put an abrupt stop to the transaction.**

Luckily for the buyer, settlement agents can proceed with the closing. The settlement agent still must file the 1099-S. It is filed without a U.S. T.I.N. by informing the IRS, "Seller refused to provide a Taxpayer Identification Number."

A settlement agent's obligation is merely to solicit the seller's U.S. T.I.N. If the seller refuses, the file should be documented and the 1099-S should be filed anyway. When the seller refuses to provide their U.S. T.I.N., settlement agents should provide the seller with written notice of their obligation to provide their U.S. T.I.N. and notification the 1099-S will be reported to the IRS indicating their refusal to provide a U.S. T.I.N. A copy of the notice should be maintained in the file.

The 1099-S will have to be filed manually. This is done through the National 1099 Department for FNTG direct operations. Settlement

agents should send them a copy of the Refusal Notice and the completed Substitute 1099-S indicating Seller refused to provide a U.S. T.I.N. to [1099info@fnf.com](mailto:1099info@fnf.com).

Settlement agents can proceed with the transaction without the threat of a fine by the IRS and the seller can deal with the IRS later as to why they refused to cooperate.

