



\$80+ million dollar save!

By Lisa A. Tyler
National Escrow Administrator

The Fidelity Family of Companies employs an incredible New York Agency Wire Processing Team, who process wire transfers for title issuing agents. The title issuing agents are typically closing large commercial transactions and issuing Chicago Title Insurance Company policies to the buyers and lenders in those transactions. As a service, the New York Agency team accepts loan proceeds on their behalf and sends out their large wire transfers, including real estate loan payoffs. The team recently prevented a multi-million dollar fraud, read “SUSPICIOUS sender” to find out more.

Privacy laws are in place to protect consumers from identity theft and financial fraud, among other things. Unfortunately, these laws often work in favor of fraudsters. They know a bank cannot disclose the names of their account holders, account numbers or whether a check is good. This puts settlement agents between a rock and a hard place. Some banks have found ways to provide some useful information — without breaching their duty of confidentiality, as demonstrated in the story titled “SILVER lining.”

Notary statutes and rules vary for each state. Regardless of the

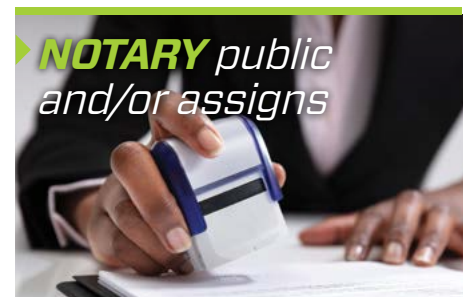
state, every notarial act requires:

1. The signer to personally appear in front of the Notary Public;
2. The Notary Public to identify the signer; and
3. The Notary Public to apply their seal and signature

Physical appearance means the signer and Notary Public must be able to see, hear and communicate with each other, and exchange the documents being executed between each other. These are the cornerstones of a notarial act. An independent, approved notary accepted a signing appointment, but failed to personally appear at the signing, which is why this story is so shocking. Instead of rescheduling, she sent her assignee in her place. Read “NOTARY public and/or assigns” for all the details.

Real estate withholding at a rate of 3% is due on sales or transfers of real property by nonresidents of Georgia. Nonresidents include individuals, trusts, partnerships, corporations, limited liability companies, limited liability partnerships and unincorporated organizations. The person or entity identified as the seller or sellers on the settlement statement shall be considered the seller for all purposes, including but not limited to, executing and delivering to the buyer all forms or other documents required to determine the appropriate amount to be withheld or the appropriate amount exempt from withholding requirements. To learn more, read “GEORGIA real estate withholding.”

IN THIS ISSUE



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SUSPICIOUS sender

Evan Amadio is an escrow wire coordinator for the FNTG New York Agency Division. On March 30, 2021, he was opening a new order in the escrow production system and creating wire instructions for the lender to send payoff funds in connection with the closing of a multi-million dollar loan.

During this new order process, at 10:35 a.m., Evan received four commercial loan payoff letters from an employee at the title agency closing the transaction.

The payoff amounts Evan was setting up to send out via wire transfer were:

Commercial Loan #1	\$5,481,303.39
Commercial Loan #2	\$35,599,820.32
Commercial Loan #3	\$12,493,594.90
Commercial Loan #4	\$26,944,184.57
Total Payoffs	\$80,518,903.18

At 11:08 a.m., Evan received the loan payoff letters again. However, this time the payoff letters were ostensibly from the borrower's legal counsel. Evan was concerned because one of the payoff letters from the borrower's legal counsel contained bank wire information with an incorrect ABA routing number. The first number should have been a "0," but instead was a "1."

During Evan's review of the latest payoff letter he noticed the bank wire instructions were completely different than the bank wire information reflected on the first payoff he received. He reviewed the other three payoff letters, they also contained different bank wire information. The funds for all four payoffs were being directed to two new bank accounts at a totally different bank. This heightened his suspicion of the sender of the email.



Evan took the payoffs to his teammates, Pat Burke and Patrick Quimby, along with the email message from the borrower's counsel. Together they confirmed the sender's email was fraudulent and sent from a spoofed email address, not the legal counsel's real email address. The spoofed account was created from a cleaning company's domain, not from a law firm's domain.

The three teammates stopped the closing. They notified the title agent of Evan's discovery. Together, they confirmed all wire information with the payoff lenders, and the closing was rescheduled. His actions saved the Company from a tremendous loss and as a result, he has received a \$1,500 reward, along with a letter of recognition from the Company.

MORAL OF THE STORY

In this fast-paced world, taking an extra moment to study bank wire information is critical in preventing losses. Had the wire transfers been sent, the Company likely would not have known for days that the loans were not fully paid.

SILVER lining

Escrow and title companies are still under attack, fraud is being perpetrated from all angles of the transaction. As a result, our operations are taking their time and extra care to thoroughly review checks; our operations need to ensure funds are unconditionally collected before closing and disbursing.

Western Title & Escrow Company received an "Official Check" drawn on an institutional bank. Tara Thompson, Branch Manager, and Ellen Frank Chapman, Escrow Administrator, were on high alert. The transaction consisted of many red flags the Company had seen before.

- ✓ Cash purchase
- ✓ Payment is made by official or cashier's check
- ✓ No earnest money deposited
- ✓ Quick close

- ✓ Foreign buyer, purchasing the property sight unseen
- ✓ Only communication with the buyer has been by email

The buyer had been instructed to wire his closing funds but sent an Official Check instead. To top it all off, the remitter was a third-party company, not the buyer. Tara and Ellen notified the real estate agents the deal would not be able to close by the scheduled date. The agents put an addendum to the purchase agreement together to extend the closing date.

Tara and Ellen worked to verify the validity of the check. They contacted a Citibank® representative who said the company was unable to verify the check without the account holder on the line.

[Continued on pg 3]



STOP

TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or
949.622.4425



Tara and Ellen knew they needed a quick answer, so they did more digging and found a Citibank client support phone number. They called 866.678.0088, an automated system where the caller can enter a Citibank check number and the amount of a cashier's check or official check to verify whether their system recognizes it or not. The system did not recognize this check.

Next, Tara and Ellen searched the internet for a website of the company that remitted the funds. Their search was a dead end. They could not find the company online — which was enough evidence for Tara and Ellen to instruct the escrow officer to resign from the transaction.

Tara and Ellen made the right call. No one, not the real estate agents, escrow officer, title officer nor the seller, needed to keep working towards a closing. Instead, this enabled the property to be

put back on the market and sold to a legitimate buyer. Turns out the Citibank automated check verification was correct: the check was later confirmed as fraudulent.

Tara and Ellen did not back down and protected the Company from a potential loss. Their research stopped the fraudster dead in his tracks. The silver lining is the discovery of the toll-free number for verifying Citibank checks. For their efforts, they are splitting the \$1,500 reward. Thanks for sharing ladies!

Article provided by contributing author:

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NOTARY *public and/or assigns*

The settlement agent worked up the closing statement for a refinance and scheduled a mobile signing agent to meet with the borrower at her convenience. The loan officer was a good customer, and the borrower was her niece.

The settlement agent confirmed the notary appointment and ensured the notary had all the loan documents and closing statement. She passed the notary's name and contact information on to the loan officer.

The borrower showed up on time for her signing but was surprised to learn the notary sent her husband in her place. The gentleman introduced himself as Aaron Thetires and explained his wife had something else come up, but not to worry.

Thetires had all the documents for her to sign and nothing would be delayed. The signer was uncomfortable. He tried to convince her he was just as qualified and presented her with three of his business cards.

None of this made the borrower comfortable. She rushed through the documents, signing them as quickly as possible. She was even more concerned when she noticed the notary had already completed, signed and stamped the notarial certificates of the documents she was currently executing. The borrower left and immediately called her aunt, the loan officer, to report what happened.

First thing the next morning the loan officer called the settlement agent. The settlement agent was appalled! She immediately apologized to the loan officer and borrower. A new signing — with a different commissioned notary — was scheduled.

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[Continued on pg 4]

[NOTARY public and/or assigns — continued]



The settlement agent provided the borrower with a year of credit monitoring since the borrower was rightfully uncomfortable with the notary and her husband having access to her non-public information.

The settlement agent demanded the notary be removed permanently from her company's notary list, so no other customers would have such a terrible experience.

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GEORGIA real estate withholding

The rate of Georgia real estate withholding is 3% of the sales price or the seller's gain. In order to apply the withholding to the gain, the seller must complete the appropriate Georgia Department of Revenue (DOR) form attesting to the amount of the taxable gain. The seller is responsible for the calculation of the gain. Any balance due, along with the appropriate DOR form, must be remitted to the state at closing.

This DOR form, along with an explanation of the cost basis and expenses, must be kept with the closing file. The buyer and closing attorney may rely on the seller's affidavit. If the calculated amount for the withholding is more than the cash received at closing, the buyer must withhold and remit only the net proceeds.

There are **exemptions** to the withholding requirement, including, but not limited to:

- » If the property qualifies as a principal residence under the Internal Revenue Code, the exemption from withholding applies for the gain that is excluded (as described in the Internal Revenue Code).
- » Withholding is not required on transactions where the purchase price is less than \$20,000.
- » If the purchase price exceeds \$20,000, but the gain or tax liability is less than \$600, and the seller signs an affidavit certifying the gain, the buyer is not required to withhold.
- » If the seller is a mortgagor conveying the mortgaged property to a mortgagee or a private mortgage insurance company in a foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
- » Transactions are also exempt where the seller or buyer is the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), or the Federal Home Loan Mortgage Corporation (FHLMC).
- » Federal and state agencies of the United States or the state of Georgia, tax exempt organizations and insurance companies which pay tax on its premium income to Georgia are not required to withhold.
- » When the transaction is a like-kind exchange and the income from the sale is not subject to federal or state income tax, the buyer is not obligated to collect withholding from the seller.

Every buyer of real property located in Georgia who is required to deduct and withhold the withholding, shall file the required DOR return and remit payment on or before the last day of the calendar month following the calendar month in which the sale occurred.

For questions and additional information, contact the Georgia Department of Revenue at:

<https://dor.georgia.gov>

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