FRAUD Insights

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Payoff proceeds continue to be a growing target for wire fraud. Payoff statements are ordered in a variety of ways – through email, online, fax and verbally. When the statements are generated and sent in response to the request, sometimes they are intercepted and altered. Find out how two escrow associates saved the Company from falling victim to the crime in the stories entitled "COMMERCIAL loan payoffs" and "WIRE fraud averted."

The National Business Unit, referred to as the NBU, coordinates the closing and insuring of transactions involving commercial real estate nationwide. They do business with large companies with a multi-state footprint. Read "NATIONAL business unit (NBU)" to discover how a commercial escrow officer uncovered not one, but two fraudulent lien releases and protected the customer, as well as the Company from a potential claim.

The power of attorney is the most forged document in a real estate transaction. Most of the time the illegal acts performed with a forged power of attorney are actually conducted by the principal's own family member. When a power of attorney is being used in any transaction, the power of attorney must be signed in accordance with the Company's document execution guidelines. Learn the correct steps to take when closing a transaction involving a power of attorney by reading "DOCUMENTS executed by an attorney-in-fact."

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COMMERCIAL loan payoffs

On August 31, 2018, Fidelity National Title's Vancouver, Washington operation opened an order for the refinance of a loan secured by an apartment complex in the amount of $9 million. The loan was scheduled to close on October 31, 2018. The title report reflected two loans to be paid at closing. Both loans were held by the same commercial lender.

The escrow officer on the transaction emailed payoff requests for both loans and received two payoff statements on October 10, 2018, reflecting payoff amounts of $4,111,978.79 and $836,471.77. The email containing the payoff statements originated from a servicing associate employed by the payoff lender. The new loan documents were drawn and the escrow officer requested updated payoff statements on October 18, 2018.

Donna Finnegan, an escrow associate extraordinaire with Fidelity, had placed a reminder on her calendar to follow-up with the payoff lender for the updated statements. Then out of the blue on October 24, 2018, Donna received two back-to-back emails with two payoff statements pertaining to this refinance. The emails appeared to come from the loan officer on the new commercial loan, instead of the payoff lender.

Donna carefully reviewed the payoff statements and compared them to the statements received on October 10, 2018. The amounts were exactly the same, nothing had been updated. She thought that was strange as the loans would have accrued more interest.

Next, Donna checked the date issued on the new statements and found that they were also dated October 10, 2018. The new statements she received were not updated statements at all. Then she noticed the bank wire information on the statements she just received had been changed from one national banking institution to another.

Donna notified the escrow officer immediately and the escrow officer called the payoff lender to confirm that its bank wire information had not changed. The representative of the payoff lender confirmed the statements purportedly received from the new lender had been altered in a failed attempt to divert millions of dollars in loan payoff funds. The escrow officer received updated figures and a verbal verification of the bank wire information and the refinance transaction closed without a loss.

Whew! Donna's keen sense of wrong doing and heightened awareness prevented a potential loss of $4,948,450.56 and as a result the Company has rewarded her $1,500.

MORAL OF THE STORY

Bank wire information on payoff statements should be verified against previous successful payoffs to the same lender. When the information is not available on previously closed transactions, the bank wire information provided in each transaction should be verbally verified with the payoff lender in order to prevent potential losses.

TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or
949.622.4425

WIRE *fraud averted*

Ticor Title Company in Riverside, California, received a title only order for a sale transaction wherein Ticor would be receiving loan proceeds and performing sub-escrow services. The sub-escrow services included paying off existing liens, property taxes and the title invoice. The balance of the funds was then to be disbursed to an independent escrow agent to close out the transaction.

The independent escrow agent ordered the payoff statement for one existing loan on the property. She received the payoff statement on September 27, 2018, and forwarded the statement to the title officer at Ticor.

The title officer noticed the payoff statement indicated it was from a national default servicing company, the title officer notated in the file the loan being paid was in default. That note would prompt a call to the servicing company for additional legal fees prior to recording and insuring the transaction.

On October 15, 2018, an updated payoff statement from the default servicing company was received from the independent escrow agent. Shortly thereafter, Karin Arredondo, an escrow associate in the Ticor Central Processing Unit (CPU), received the loan proceeds. She notified the title officer and he proceeded to record the deed and deed of trust.

Karin was in charge of disbursing the loan funds to pay off the existing loan and property taxes. When she reviewed the payoff statements she noticed the bank wiring instructions on each of the statements was typed in an entirely different font than the rest of the statement.

Karin called the default servicing company for the additional legal fees that rack up when a loan is in default. While she was on the phone she also asked to verify the bank wiring instructions. The default servicing company representative told Karin they only accept cashier's checks and the payoff statements they issued clearly stated that on page three. Karin noticed the payoff statement in her hand was only two pages.

Karin asked the default servicing company to re-send the actual payoff statement to her directly. She reviewed the email address on the email transmission containing the first payoff statement and the updated statement, the emails originated from CustomerService@ndscorps.com. She compared it to the email address on the email transmission she received containing the valid, unaltered payoff statement, which was CustomerService@ndscorp.com with no "s" at the end. She knew she caught an altered payoff.

Karin's diligence and keen eye prevented $131,585.40, the amount of the payoff funds, from being diverted to a national bank that has become the target for the majority of illegally diverted wire transfers. For her efforts the Company has rewarded her $1,500 and a letter of recognition.

MORAL OF THE STORY

In each transaction, when sub-escrow agents and settlement agents update the figures contained in payoff statements, they need to also verify the bank wire information contained in the statement to ensure the statement has not been intercepted and altered.

NATIONAL *business unit (NBU)*

Theresa Griswold, a commercial escrow officer for Chicago Title Company in Riverside, California, received an order from the NBU to close and insure a $450,000 refinance loan secured by commercial property in Chicopee, Massachusetts. Theresa only had three days to obtain the payoff statements for four outstanding liens reflected on the title commitment. The outstanding liens were shown on the commitment as follows:

1st mortgage in favor of ABC Mortgage

2nd mortgage in favor of Construction Lender

3rd mortgage in favor of ABC Mortgage

4th mortgage in favor of World Famous Lender

Theresa reached out to the managing member of DTS, LLC, the property owner and borrower on the new loan, to obtain payoff information. For some reason the managing member was reluctant to provide Theresa with contact information and loan numbers for each loan. After a few phone calls the borrower provided payoff information and stated the 1st and 3rd mortgages in favor of ABC Mortgage were paid in full.

Theresa thought the borrower and his broker who were claiming the mortgage was paid could be right, since the fourth mortgage had recorded on October 2, 2018, with the World Famous Lender and may have paid off the prior mortgages.

Theresa asked the borrower for proof both loans with ABC Mortgage were paid in full and then she ordered payoff statements, expecting the statements to reflect a zero balance for each. Instead she received two payoff statements from ABC Mortgage. The amount due from the two separate mortgages totaled $288,918.45.

The managing member of DTS, LLC emailed a copy of a recorded Discharge of Mortgage for the first Mortgage in favor of ABC Mortgage and a copy of a recorded Satisfaction of Mortgage for the third mortgage in favor of ABC Mortgage.

Theresa was suspicious and wondered why ABC Mortgage would issue a Discharge of Mortgage for one loan and a Satisfaction of Mortgage for the other. Theresa took another look at the discharge and discovered it released a mortgage recorded in book 18065, page 143. The mortgage shown in first position on the title commitment was recorded in book 18065, page 113. The page number was one digit off!

[Continued on pg 4]

[NATIONAL business unit (NBU) - continued]

She emailed her contact at ABC Mortgage with a message that read:

> *It has been brought to our attention that the two loans the above mentioned borrower had with your organization, relating to the subject property have already been paid off and discharged/recorded as satisfied. Please provide us with a ZERO demand letter for each of the two loans, together with a copy of a corrected Discharge of Mortgage for loan number 1845586.*
>
> *All documents supporting this request, including borrower authorization are enclosed herewith. This loan is closing tomorrow, October 17, 2018, therefore I would appreciate it if you could provide the two letters as soon as possible together with confirmation the correction to the discharge will take place.*

The response from ABC Mortgage read as follows:

> *Theresa, your information is incorrect. The discharge you reference as an error actually refers to the following mortgage and is a correct discharge. Also your assertion that the loans have been satisfied are false. At this juncture we are referring this to outside counsel. Our previous payoff letter stands.*

Theresa discovered the Discharge of Mortgage was unrelated to the current first loan of record; it released a take-out loan that was satisfied by the second mortgage. The recording numbers were quite similar because the release of the old mortgage and the new mortgage recorded in the same transaction.

The Satisfaction of Mortgage was not forged. It was, however, wrongly signed by a bank employee of ABC Mortgage, and it was recorded on October 2, 2018. However, it should have never been signed, nor recorded. The gentleman from ABC Mortgage stated the individual behind this incident was being fired.

Theresa reached out to the NBU manager in Los Angeles to let them know her findings; they immediately amended the title commitment to reflect the Satisfaction of Mortgage as erroneously recorded by the lender.

Theresa notified the new lender she had received the payoff statements from all four lenders and the aggregate payoff amount of $556,266.54, which exceeded the loan amount of $450,000. She asked how they would like to proceed, since the borrower would have had to bring in well over $130,000 to close the transaction. The transaction cancelled, and loan funds were returned to the new lender.

Theresa's expertise and experience protected the Company from a potential loss of $288,918.45 and for that the Company is grateful. In fact, so grateful, the Company has rewarded her $1,500 along with a letter of recognition for her diligent efforts to protect the Company from claims and losses.

MORAL OF THE STORY

A lien release (i.e. reconveyance, satisfaction, discharge) by itself should never be accepted as absolute proof of payoff in an insured transaction without further investigation. The supporting evidence the lien release is legitimate would be a zero demand or payoff statement reflecting the loan as paid in full.

DOCUMENTS *executed by an attorney-in-fact*

When a settlement agent is faced with closing a transaction where a principal is represented by an attorney-in-fact, they must take the following precautions to avoid potential claims against the Company:

1. Ensure the power of attorney is executed in accordance with the Company's document execution guidelines.
2. Send the executed power of attorney to the title officer for review prior to closing.
3. If a loan is involved, notify the lender a power of attorney will be used and obtain their approval of the form.
4. Make contact with the principal to verify the power of attorney is valid, has not been revoked, and the principal is aware of the overall transaction.
5. Never accept disbursement instructions from the attorney-in-fact diverting the proceeds from the principal.
6. Follow state specific laws regarding how the attorney-in-fact signs on behalf of the principal. If a state law is nonexistent, the attorney-in-fact should sign the principal's name by their name, as attorney-in-fact. Example: *Lisa A. Tyler by Diana Hoffman, her attorney-in-fact*
7. Do not allow the attorney-in-fact to execute an occupancy affidavit.
8. Do not allow the attorney-in-fact to execute forms to be sent to the Internal Revenue Service (IRS) unless an IRS Form 2848 has been signed by the principal appointing the attorney-in-fact to act on their behalf.