



By Lisa A. Tyler
National Escrow Administrator

“IN the back of my mind” serves as positive proof reading articles in this newsletter expands your knowledge and aids in the reduction of claims for the Company. An examiner in this story runs across entity names in the chain of title he is certain he has seen before. His detection leads to the discovery of a criminal ring thought only to have destroyed property titles on the West coast, but now appears in Florida.

Every year I am surprised by the new schemes and scams the fraudsters come up with. Year 2014 proved to be no different. There are three schemes which seemed to top the list in 2014. Nearly every week your escrow administrators received reports from our direct and agency operations about criminals attempting or succeeding in perpetrating these schemes. They are – cybercrimes, holding

escrows and counterfeit checks. Find out more about them in “TOP stories.”

“JUST as we were resigning” is a story about a buyer looking to scam the escrow holder out of millions by having them accept more money than needed to close from a third party investor. The contract buyer wanted the overage returned to his bank account at closing. There is no telling what story the contract buyer was telling his investors. Luckily, we resigned from the transaction before ever having to find out.

Not all residential loans will be originated and closed using the Loan Estimate and Closing Disclosure. Some residential loans are exempt from the new rules and the new forms. Read “GONE but not forgotten” to discover the types of loans that will be originated and closed using the same forms used by the industry today, even after August 1, 2015.

IN THIS ISSUE



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IN the back of my mind

Chris McKim, Title Examiner from FNTG's Sunrise, Florida operation, had an order for a short sale in the amount of \$699,900 for a property in Florida that came in as a rush and was supposed to close in a few days. After reviewing the chain of title, Chris recognized the property's title was a mess and might not even be insurable.

A grantor and grantee name on deeds in and out of title rang familiar with Chris. In the back of his mind he knew he had heard the name before. He ran a search on the name from the *Fraud Insights* page located on the Company's intranet. He instantly discovered an article containing the same entity name from November 2010.

The article provided details about a fraudulent scheme involving an entity in which a woman was running a fraudulent "mortgage rescue" scheme. Chris escalated the transaction to his underwriting counsel, Sarah Diaz.

Sarah discovered the woman was in federal prison and when she pulled up her criminal case using the online system, Public Access to Court Electronic Records (PACER), she found the federal investigation included properties the woman ran the scam on in California, New Mexico, Nevada and other Western states, but she did not see a mention about any Florida properties.

This particular transaction involved property in Miami-Dade owned by a husband and wife. They had transferred title in and out of a trust, but there also was a deed of record from them to the entity and then a deed back out of the entity, to the husband and wife.

The husband and wife also happened to be in bankruptcy. Sarah recognized they had a Chapter 13 bankruptcy filed which was still open, but they did not properly list the property as their

"homestead" on Schedule C. Instead the property showed on Schedule A and referenced it as being homestead.

Sarah and Chris informed the insuring title agent that even if they found the title to be insurable, they would not be able to close on that day because they would need an order from the bankruptcy court sending notice to all interested parties, approving the short sale.

Sarah read the *Fraud Insights* article Chris brought to her, entitled "Operation Stolen Dreams." (<http://fraudinsights.fnf.com/vol05iss11/fullarticle.htm>).

Sarah had the following questions:

- » Would we find the property insurable even though we suspected that the woman was fraudulently conveying back to her entity and filing false satisfactions of mortgage on those properties?
- » How would we even know if the deed out of the entity back into the husband and wife was valid?
- » Would there be a need for a quiet title action to clear the title?

Sarah contacted her state underwriting counsel who put her in touch with Eldred Sotello, the Western States Underwriter initially involved in the discovery of the woman and her wrong doing.

Sarah spoke with Eldred and said he was awesome. She stated he had so much information about the entity and the criminal behind the operation. She said he was shocked to learn the scam had reached the East Coast. Until that day the furthest East he had heard of them reaching was Utah. He said he has dozens of chains of title for lands out west where the entity is in the chain.

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STOP

TELL US HOW YOU STOPPED FRAUD

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Eldred said the Company does not insure them unless they go through a proper foreclosure to clean up the mess made by the entity's scam. He also pointed out that the entity is a Nevada company NOT a California company like the deeds purport. In Nevada, their status has been revoked prior to the date of the deed in the chain which appears to put title back into the husband and wife.

Sarah and Chris called back the title agent and advised them of the issues they had uncovered and declined to insure. Strangely enough, the title agent completely understood and agreed. Sarah felt certain it was not the first time they heard this from an underwriter on this property.

For reading *Fraud Insights* and keeping the stories and lessons learned in the back of their minds, Chris and Sarah are to be commended. For denying coverage on the aforementioned transaction based on their discoveries, Chris and Sarah have shared the \$1,000 reward and each received a letter of recognition from the Company.

MORAL OF THE STORY

Sometimes turning a blind eye to a bad transaction is easier than acting on gut instincts. Chris acted heroically in discovering the article pertaining to the entity found in the chain of title and escalating the findings to the underwriter to review. Had Chris ignored the nagging feeling he had read an article regarding the entity, the Company might have elected to insure the transaction, exposing the Company to a possible claim against the owner's policy for deeds not properly executed in the chain of title.

Sarah acted heroically by bringing to light the issues regarding the bankruptcy and the failure to list the subject property on the right schedule. Her expertise saved the Company from insuring a transaction that could have had a claim post-closing by a creditor that had not received proper notice of the sale.

TOP stories

There are many reasons why I do not publish each and every fraud story submitted. In some instances the story is very similar or the same to a story already published. Sometimes the details of the story cannot yet be published in order to protect the details of the transaction. This does not mean these schemes are not being attempted all over the country, nearly every day. Here are the top three schemes:

Cybercrimes

Our country and industry have come under attack by cyber crooks. I alerted you of these types of crimes beginning in 2012 and since then have published several examples of the schemes we have become aware of. They are:

December 2012: CYBER-CROOKS

February 2013: ONLINE fiancé

June 2013: EXPOSED

June 2013: DIVERTED funds

January 2014: GO phish!

These schemes can be very costly to our Company. They require a large number of resources to attempt to recover any losses, investigate the scams in an effort to stop them from happening again, and loss of reputation.

The most troubling part about these scams is the fact we can only do so much to protect ourselves and our customers from these schemes. Many of the reports we receive about these scams are the result of one of our customer's email accounts being hacked into. This is why it is crucial you verbally verify banking information received via email. It only takes a few minutes to do, but can save in so many ways if you do.

Holding Escrows

Although our Companies do provide escrow and title services, it does not mean we handle escrow only transactions. It is more important than ever to understand the risks involved. Three articles I published in 2014 highlight the risks associated with holding

escrows, especially when they do not involve the purchase of real property. Those articles were:

April 2014: WHY don't we handle holding escrows?

July 2014: BOAT for sale

November 2014: RECOGNIZE the signs

It is important to note, these are just the articles I published. Your escrow administrators have received notification from offices all over the country that have identified the red flags of these schemes and not proceeded with the transaction. They also receive notification from offices that did fall victim to this crime. The Company is working with law enforcement in an effort to recover stolen funds and bring the criminals to justice.

Counterfeit Checks

Real estate transactions are a huge target for fraudsters. The sad part is they would not be such a target if the criminals did not have success with their scheme. I have published seven stories about fraudulent checks but could publish one or more each and every month. Review these articles to become more familiar with the red flags associated with this scheme.

February 2007: International Conspiracy

December 2009: Counterfeit Checks Plague Colorado

April 2010: You Can't Teach Instinct

May 2010: Counterfeit Checks Update

June 2010: Are We On Candid Camera?

August 2010: If It Happens In Whitefish...

It Can Happen Anywhere!

August 2011: New Twists To An Old Scam

The reason I remind you about these crimes is because I do not want you to think the stories I publish are isolated, because they are not! These three scams are attempted all the time, all over the country. Do not think you are immune. Be sure to familiarize yourself with the red flags so you can notice them right away and not waste any of your time or your customer's time working on files which will not close.

***JUST** as we were resigning*

A sales transaction opened with an escrow branch for the sale of a dairy farm in the amount of \$2.5 million. The buyer was from North Carolina and agreed to pay cash for the farm. The escrow officer engaged in a telephone conversation with the buyer about the amount of funds to wire. The buyer indicated he was going to “over-wire” funds to the trust account and he wanted her to just deposit the excess into his account. What? The amount of the wire changed throughout the conversation from \$3.5 to \$5 million.

Next, phone messages were received from the buyer that the closing funds were on hold because they were coming from out of the country and everything had to be cleared through the Patriot Act. Later, the escrow officer received emails stating the funds would be coming from Iraq. The escrow officer told the buyer and his agent she would need third-party deposit instructions from the remitter of the funds.

Then things turned really strange when the escrow officer received a call from the assistant to one of the sellers, wondering if she had heard anything about a bank draft sent to our Company from the buyer. The escrow officer asked the assistant if she had a copy of the bank draft. She did and forwarded it via email to the escrow officer. The bank draft was for \$3.5 million from Nicaragua, not Iraq.

The escrow officer consulted management, as well as the national escrow administrators. She wanted to know if she should advise the buyer of the following:

- 1. We ONLY want the amount of funds that we need to close; and**
- 2. We MUST HAVE WIRED FUNDS; and**
- 3. We need the contact information for the remitter, since they will need to execute third party deposit instructions.**

Management and the national escrow administration team advised the escrow officer to resign as escrow holder by letter immediately and to return all documents deposited into escrow to their original remitter.



As the escrow officer was preparing the letter a courier dropped off the original bank draft and a stock certificate purportedly for 5,000 shares of gold, worth \$1,000 per share. Unfortunately no one thought to refuse the package. Now the escrow officer was stuck with both!

The escrow officer, with advice from her manager, proceeded to resign from the transaction and requested an address from the buyer on where to return the bank draft and stock certificate. The buyer did not readily provide an address. The escrow officer ended up returning the documents to the address on file for the buyer.

MORAL OF THE STORY

I am sure you have to ask yourself...how did the deal get this far? The file was worked up with all of the title work completed and it was ready to close without the buyer putting up one cent for earnest money. The escrow was transferred from one officer to another during the process.

Both escrow officers had a “funny” feeling about the transaction, but both continued to process the transaction as if it would close. Since everyone else believed it could happen, we did too. Next time you have a deal that you get that “funny” feeling about, ask the buyer to put up funds to pay for the title work and curative work. If they are a legitimate buyer, they likely will not shy away from depositing money to be used to pay costs at closing.

***GONE** but not forgotten*

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Virtually every residential loan originated after August 1, 2015 will be subject to the new rules and forms, including purchase money loans, refinance loans and construction loans. However, there are residential loan transactions exempted from the new rules and the new forms. The exempted loans include reverse mortgages, home equity lines of credit (HELOCs), mobile home-only loans and loans originated by creditors who originate less than five loans in a calendar year.

The most troubling part about the exemptions is the portions of TILA and RESPA governing reverse mortgages and HELOCs are not being replaced or deleted. For those loans creditors must issue a TILA Disclosure and Good Faith Estimate (GFE) to originate the loans and settlement agents must use a 2010 HUD-1 settlement statement to close them.

What happens when a lender originates a first loan using the Loan Estimate and the second loan is a HELOC? Things are about to get interesting! The first loan will have to be closed using the Closing Disclosure and the second loan will have to be closed using a HUD-1 settlement statement.