



RELEASE of funds prior to closing

By Lisa A. Tyler
National Escrow Administrator

Previous editions of *Fraud Insights* included stories about a common thread in high-risk transactions – the release of funds prior to close of escrow. These articles were:

- July 2014: BOAT for sale
- November 2014: RECOGNIZE the signs?
- January 2015: 1.3 miles down the road

In those stories the purchase and sale agreement contained instructions for the escrow holder to release funds prior to close of escrow upon receipt of the buyer's authorization which would occur after he supposedly completed his due diligence on the property. The agreement contained a legitimate property owner's name as the seller and a legitimate property address. However, the property owner had no idea his name and address were being used to perpetrate a scam. In all instances, the seller did not even have his property listed for sale!

Spoiler alert! This current story has a happy ending due to the intestinal fortitude of the escrow officer who opened the order. Read "AUTHORIZATION to release escrow funds" to find out how a busy escrow officer thwarted a crime and saved the Company from a \$69,900 loss.

Would you freak out if a tenant showed up at your property to move in, when the property was not even available to rent? Read "ONLINE rental scams" to find out how to protect you and your property from the latest scam involving the online advertisement of property for rent utilizing someone else's property. If only these scammers would use their power for good, instead of evil!

The changes in how residential loans are originated and closed, became effective this month on October 3, 2015. However, it is likely you have yet to close a transaction with the new Closing Disclosure form. That is because the Consumer Financial Protection Bureau (CFPB) rule allowed lenders to use the new forms on loan applications taken on or after October 3, 2015. Those loans will not likely close for 45-60 days. In the meantime, settlement agents will continue to close out loans in the lender's pipeline using the HUD-1 form of settlement statement. While settlement agents continue to wait to feel the tremendous effects of the changes, it is important to continue to educate yourself and your customers. Read "DELIVERY, waiting and rescission periods" to discover how the new rules and forms will slow down the lending cycle. Markets used to a 30 day close should now plan on a 45 day close. It is important to start setting expectations with real estate agents, buyers and sellers now, so new contracts are negotiated with a more realistic close date.

IN THIS ISSUE



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



volume 10 issue 10
October 2015

AUTHORIZATION to release escrow funds

Publisher
Fidelity National Financial

Editor
Lisa A. Tyler
National Escrow Administrator



Liz Kalodemas, Escrow Officer at Fidelity's office in Santa Rosa, California, received a random email for escrow services from a buyer by the name of "Darl." The email signature line indicated the message was from a Doug Jenner. Liz responded to the message asking for particulars about the transaction.

Darl responded:

Attached is a copy of the purchase contract. This is a private sale and a cash transaction. I would need escrow to make a deposit, which is to be remitted to the seller as commitment, once inspection is completed. I need you to provide information on how the escrow deposit should be made out to you in certified check and also do let me know your fees/charges.

The contract contained a valid property owner's name and valid property address for the sale of property in the amount of \$389,000. The contract called for an earnest money deposit in the amount of \$69,900. The contract listed a Darrell "Smith" (not Darl) as the buyer and a David "Jones" listed as the seller. It made no mention of a Doug Jenner.

Liz promptly opened the new escrow and ordered the title report. On July 14, 2015, Liz provided her branch address to Darl so that he could send the earnest money deposit check. On July 21, 2015, Darl emailed Liz again asking for the address of where to send the check. Liz responded immediately with her branch mailing address.

On August 10, 2015, Liz received a new email message from Darl that read:

I have been away on a business trip and will not be back until next week. I have sent you the escrow deposit (\$95,500) in certified funds and it should be delivered no later than August 11, 2015. Once it is received do go ahead and deposit it. Inspection has been scheduled for August 11, 2015. I will provide further update on the transaction once inspection is completed.

The very next day, August 11, 2015, Liz received the check via overnight delivery. It was in the amount of \$95,500, not the \$69,900 called for in the purchase agreement. The check referred to the remitter as Darrell, not Darl. Liz confirmed to Darl via email the check had been received and deposited into the escrow trust account. Liz requested mailing addresses for both buyer and seller.



On August 12, 2015, Darl sent the following message:

Hello,

I am pleased to inform you that Inspection of the property has been completed and we are ready to proceed with the transaction. Attached to this message is the sellers remittance instructions for the deposit as stated on the purchase contract. The seller resides at the property.

I have informed the seller that the deposit of \$69,000 will be sent as instructed by the end of business tomorrow. Do see that the wire transfer is initiated to the seller. Once the transfer is initiated do attach and send me a copy of the transfer confirmation so that I may be able to update the seller accordingly. I am looking to close as soon as possible do act swiftly to enable me secure the property so we can commence with the Title work. You can mail me Darl, P.O. Box 363, but email attachments are a lot safer and faster.

Darl supplied no city, state or zip code information for the mailing address. The email contained an instruction attached to it as well as wire instructions to an account of an unrelated third party.

AUTHORIZATION TO RELEASE ESCROW FUNDS

The sum of \$69,900 is presently held in escrow pursuant to the terms of Contract of Sale between the parties hereto, dated this 12th day of August, 2015, regarding the premises as stated on the Contract of Sale.

The undersigned hereby authorize Escrow Holder to release the sum of \$69,900 from the Escrow Fund to the Seller and agree to hold Escrow Holder harmless for the release of the Escrow Funds authorized hereby.

	8/12/15		8/12/15
Seller	Date	Buyer	Date

What was missing from the instruction?

The instruction made reference to a Contract of Sale – not a purchase and sale agreement. No other specifics – like the parties to the contract, date of contract and subject property – were mentioned which would have tied the instruction back to the operative purchase and sale agreement.

The instruction did not provide clear and concise information on where and when to remit payment. It provided no address or wire transfer information for the delivery of the funds to the seller, only to a third party.

The instruction did not provide information on whether the funds were to be applied toward the purchase price at closing. Nor did the instruction contain the hold harmless language required for the escrow holder to release funds without transferring or encumbering the subject property.

Based on that missing information, Liz recognized the instruction was insufficient to release the funds. She let Darl know she had to obtain manager approval in order to release the funds.

[Continued on pg 3]



TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or 949.622.4425

[AUTHORIZATION to release escrow funds - continued]

On August 13, 2015, Darl emailed to see if Fidelity had released the funds to the seller. On August 14, 2015, the accounting center emailed Liz to tell her the check in the amount of \$95,500 had been returned as fictitious!

Liz was able to cancel the transaction and avoid a loss to the Company. Liz's years of experience and her expertise in the industry told her the instruction to release funds prior to closing were not sufficient. By refusing to release the funds without complete instructions, Liz derailed the crime.

If Liz had authorized the funds to be released immediately as demanded by Darl, the Company would have suffered a loss in the amount of \$69,900. Instead, the Company rewarded Liz with \$1,500 and a letter of recognition.

Liz is a two-time reward recipient. In October 2010, she received a reward and a letter of recognition for detecting false identification presented at a signing. Criminals should know she is on her game!

Recognize the signs of this scam

1. No contact with the principals except through email

ONLINE rental scams

If you own a rental property or even have a property listed for sale, beware! It could be used to commit an ongoing online scam. The fraudster advertises the property to bait perspective tenants into leasing the premises by posting pictures online of the actual property, including pictures of the interior.

In this scam, the fraudster obtains property information and photographs from actual property listing websites and creates a fake rental advertisement. A perspective tenant contacts the fraudster directly and is convinced to put up their security deposit along with the first month's rent, all without even physically seeing the property.

The crime is often committed when the would-be tenant is moving from one city or state to another and is unable to preview the property. In addition, the monthly rent is typically well below market for the property type and location.

Once the prospective tenant puts up the money, the fictitious landlord severs all contact with the the tenant – the fraudster does not answer the phone and does not return emails. When the tenant shows up to the property, it is often already occupied or locked – and the tenant has no hope of gaining possession. The tenant is out the money he sent for security deposit and rent, but has no place in which to live.

Property owners and/or landlords should protect their property from this online scam by using online services such as Google Alerts™. With Google Alerts, the owner or his agent will receive notification and be able to follow up on any suspicious activity if the property address is copied and used on another Internet website.

Setting up a Google Alerts is easy. Search Google Alerts from any search engine and then follow the step-by-step instructions. If you find your property being used in a potential online scam, be sure to follow these steps in order to assist the authorities to end the scam:

2. No real estate agents or attorneys are involved
3. The purchase and sale agreement is not a customary form
4. The deposit called for in the contract is large for a residential transaction
5. The check for the deposit sometimes exceeds the agreed upon deposit amount
6. The contract calls for a release of funds prior to closing
7. Buyer instructs funds to be released to seller before the deposit has cleared the bank
8. The wire instructions are to an entity's account, not the purported seller's account

When these signs appear in a transaction, the best course of action is to involve your manager and/or contact the National Escrow Administration team for assistance at settlement@fnf.com. We will help you resign from the transaction and warn others so the criminals do not end up opening the same order at one of the other branch offices.



- Copy the link to the fraudulent advertisement and/or a screen shot
- Contact local law enforcement to make them aware of the scam
- Contact the Federal Trade Commission at <https://www.ftccomplaintassistant.gov/#crmt&panel1-1>
- Notify the security team managing the website where the posting is located

One other important tip is to regularly review Google Images™ of your property. Hovering over the images of the property will indicate what website to which they are posted and will reveal any illegal postings of photographs to perpetrate the scam.

DELIVERY, waiting and rescission periods

The Closing Disclosure is required to be delivered to the borrower at least three business days prior to “consummation.” Consummation is defined in the new rules as the date the borrower becomes legally obligated to repay the debt which is the date the borrower signs the note and deed of trust or mortgage.

If the Closing Disclosure is hand delivered to the borrower that would constitute day one of the waiting period. For instance, if the Closing Disclosure was handed to the borrower on a Monday, the first day the borrower would be allowed, under the rule, to sign their loan documents would be Thursday. The three day period is called the Waiting Period.

If the delivery of the Closing Disclosure is by any other means other than hand delivery, a three day Delivery Period must be added to the

Waiting Period. For example, if the Closing Disclosure is emailed, mailed or sent via overnight delivery on Monday, that constitutes day one of the Delivery Period.

On Wednesday at midnight, the Delivery Period automatically expires and the Waiting Period starts. The Waiting Period would run Thursday through Saturday. The first day the borrower could sign the loan documents would be Monday.

If the loan is a residential refinance and subject to a rescission period, the rescission period is not counted the same as the Delivery and Waiting Periods. Under the Truth-in-Lending Act (TILA), the rescission period does not start until after midnight of the date the borrowers each receive two copies of their Right to Rescind. In this example, the rescission period would run Tuesday through Thursday, and the first day the loan proceeds could be disbursed would be Friday.

Closing Disclosure Timing Example

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
1	2 Non-Hand Delivery of Closing Disc.	3	4	5 "Delivery" of Closing Disc. Occurs	6	7	
8 3-day waiting (Sunday not counted)		9 First Day Closing May Occur			10 3-day right of rescission		11
12		13 First Day Disbursement May Occur		14			
15	16	17	18	19	20	21	
22	23	24	25	26	27	28	
29	30	31					