



By Lisa A. Tyler
National Escrow Administrator

Chicago Title opened an order for a rehab/remodel loan in the amount of \$38,000. The title search revealed there was an existing Deed of Trust the new loan would be subordinate to. Barbara Eickmann, Title Officer in the Fresno, California Central Processing Facility (CPF), also noticed there was an uninsured deed in the chain of title. The Quitclaim Deed recorded in 2012 wherein Sam Daniel Smith and Joan Smith conveyed the property to Joan Smith. Read "CLOUDY with a chance of fraud!" to find out what happened next.

Nancy, Commercial Escrow Officer for Fidelity National Title, received an order for a refinance on an investment property. The loan would be funded by a private lender. The borrower and owner of the property was an LLC that came into title in 2015 by an uninsured deed. Two individuals, Anita Mann and Corey O. Graff, granted title using a Quitclaim Deed which was noted on the title search. Read "HONESTLY?" to find out how many times the parties attempted to trick Nancy.

Title Officers in our offices make million dollar decisions day in and day out. In Southern California, title officers process orders placed by independent escrow companies. This means the title officer does not have the collaborative efforts of a Company escrow officer as a second set of eyes to ensure all i's are dotted and t's are crossed — usually at the ninth hour when the transaction is ready to close. Title Officer Cindy Fern with Ticor Title in Orange County, California, knows this all too well. Read her heroic story entitled "DID they really think they could get away with it?"

Recently one of our offices was handling a transaction where the seller was a trust. The trust was a disregarded entity for IRS purposes therefore it did not have an Employer Identification Number (EIN). The trustee and his attorney insisted on reporting the sale in the name of someone who was not the trustee. As the settlement agent, our Company insisted the sale be reported in the name of the trustee. The trustee, his attorney and our Company could not agree on how to properly report the sale. Rather than tell the seller no, the Company offered them another solution; they could report the sale, instead of the settlement agent. Find out who should report to the IRS and how, by reading "DESIGNATION agreements."

IN THIS ISSUE



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Lisa A. Tyler
National Escrow Administrator



Joan Smith was the borrower on the new loan. Sam Smith was her ex-husband. Jennifer Videgain, Escrow Assistant with Chicago Title's Madera, California office, contacted the borrower to obtain Sam's contact information so she could confirm that he did sign the deed transferring title to Joan.

Joan Smith indicated Sam Smith was unavailable. She explained he had moved to Mexico and she could not locate him. Joan Smith and Jennifer had a language barrier, so Joan Smith asked Jennifer to talk to her daughter to find out if she had any additional questions. Jennifer explained the situation to Joan Smith's daughter. The daughter told Jennifer her Mom was awarded the house as part of the divorce settlement.

Jennifer relayed this information to Title Officer Barbara Eickmann. Barbara asked Jennifer if she could obtain a copy of the divorce settlement. Joan Smith said she searched through her records but could not find a copy of her marital settlement agreement. She did, however, provide a copy of the final divorce decree. Unfortunately the decree did not say anything about who was awarded the property.

Joan Smith had been living in the home making the mortgage payments all along. She applied for the new loan so she could rehab/remodel the property. Barbara kept digging to find a solution.

Barbara reviewed the Quitclaim Deed by comparing the signatures found on the existing Deed of Trust. It was clear Sam Smith's signatures did not match. Barbara was concerned she had uncovered a forgery and urged Jennifer to get in touch with Sam Smith directly.

Jennifer contacted Mrs. Smith's daughter and insisted she turn over the contact information for her Dad. The daughter finally provided his phone number.

The husband confirmed he did not sign a deed conveying title to his ex-wife. As a matter of fact he had already moved to Mexico when the deed was signed. Jennifer asked him if he would be willing to sign a deed now and he said, "No."

Chicago Title notified the lender they would not be able to proceed. The lender cancelled the deal but there is a happy ending. The wife re-opened her divorce case and asked the courts to award the property to her so she could move forward with her plans to remodel her home. The courts agreed to her request and the appropriate paperwork is being completed.



MORAL OF THE STORY

Both the title and escrow departments did an excellent job of working together on this file to avoid a potential claim. For their efforts Barbara and Jennifer will split the \$1,500 reward and both will receive a letter of recognition on behalf of the Company.

Remember, title insurance is unique when compared to most other insurance products since title insurance covers acts which have already occurred, unlike risk insurance which covers events which might occur in the future.

Barbara's thorough review of the public record revealed this forgery. Jennifer did not quit until she was able to make contact with Sam Smith to confirm Barbara's findings. In the end their hard work convinced the borrower to clean up the cloud she created on her own chain of title — legally. Good job Barbara and Jennifer!



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STOPPED
FRAUD**

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HONESTLY?

Upon receipt of the title report, Nancy, Commercial Escrow Officer for Fidelity National Title, discovered she had a lot of work to do. The search found several utility liens, three years of delinquent property taxes and an uninsured deed.

Nancy called the offices of the LLC, which we will call "123 Investments, LLC," to inquire about the grantors on the Quitclaim Deed. The managing member explained the two people who executed the deed, Anita Mann and Corey O. Graff, were friends of his. Nancy asked for their phone numbers.

The managing member would not give her their phone numbers, instead he told Nancy he would have Mann and Graff call her. This was the first red flag for Nancy.

Several days later Nancy had not heard from Mann or Graff so she emailed 123 Investments, explaining that Ms. Mann and Mr. Graff needed to sign a new deed conveying title. She further explained the deed needed to be notarized in accordance with the Company's Document Execution Guidelines so the title officer would approve the deed.

The next day she received a reply to her email. Attached was a copy of a new deed which was not executed properly. Nancy replied she needed to speak directly to the Grantors. The LLC provided her with a phone number for Graff, and Nancy immediately called him.

Graff answered her call. Nancy explained the reason for her call. Graff indicated he knew she would be calling and asked her to email the deed to him so he could sign it and obtain Mann's signature. He would be sure it was notarized in accordance with the guidelines she sent to the managing member.

The newly executed deed was returned to Fidelity National Title by overnight delivery. Nancy compared the signatures on it to the signatures on the deed recorded last year. The signatures did not match.

Then Nancy tried to confirm whether the notary who acknowledged the deed met the Document Execution Guidelines. She could not find the notary on the approved notary list. The notary did not work for



Bancserv®. The document was not notarized under the supervision of an attorney. So who was the notary?

The lender called Nancy to find out her progress. She explained to the lender she had the deed in hand but was unable to confirm whether the notary met the Company's underwriting requirements. The lender said they knew the notary and that they worked for 123 Investments, LLC. Nancy knew she could not accept the deed; besides her escrow gut was telling her this was surely a fraud.

Nancy contacted the managing member at 123 Investments, LLC and explained she would not proceed with closing this loan unless Mann and Graff came to her office in person to sign in front of her. Neither Mann nor Graff ever came to her office.

Nancy stuck to her guns, cancelled the transaction and as a result protected the Company from a potential claim. The new loan policy would have been insured by the lender for \$45,000.

The parties tried several times to deceive Nancy. Who knows who she was really talking to or emailing with? Surely it was not Graff or this deal would have been able to successfully close. Thank you Nancy for honoring the Company's underwriting requirements.

DID they really think they could get away with it?

Cindy Fern, with Ticor Title in Orange County, California, received a recording package from an independent escrow company for a sale transaction. She prepared the preliminary report for the sale price of \$1,260,000.

The buyer was obtaining a new loan in the amount of \$893,000 and the lender expected a new loan policy insuring their lien position. The seller was a limited liability company (LLC). Cindy requested copies of the organizational documents to ensure the person who signed the deed was in fact the authorized signer for the LLC.

Cindy checked the California Secretary of State (SOS) website to confirm the LLC was in good standing. Next she compared the names listed in the Operating Agreement and Articles of Organization with the names shown on the SOS website and to her surprise none of them matched.

Cindy went a step further and ran a search in the public records looking for other properties owned and sold by the same entity, and several matches came up. She compared the names and signatures on the other found deeds, with the deed she was being asked to record. All the other deeds were signed by the managing member named on the SOS website — not the person who signed her deed.

Cindy was not comfortable closing this transaction. She took one more step and searched the internet for the contact information of the LLC. She found a website for the LLC which included the names and biographies of the names listed on the SOS website. She called the phone number on the website and left them a message.

While she waited for a return call she consulted with underwriting who agreed with her findings. They elected to resign from the transaction. Cindy rejected the lender's wire and notified the escrow officer the Company elected not to insure the transaction.

[Continued on pg 4]

[DID they really think they could get away with it? - continued]



The next morning she received a return call from the real managing member of the LLC who confirmed her suspicions were all true. He confirmed the names found on the SOS website are all still correct and they did not even know the names from the entity documents she was given. The manager confirmed the property which was the subject of this transaction was not for sale.

This real LLC regularly purchases real estate, rehabs the properties and sells them — but this property was not yet ready for sale. The manager was very concerned they might be a target of these fraudsters since they own and hold onto properties, free and clear of liens for months at a time. For example, this property was purchased in March 2016. The manager thanked Cindy for her call and hung up.

The lender called Cindy to thank her for stopping the deal. They were so grateful. The buyer's real estate agent called trying to figure out

the buyer's next step as they deposited \$500,000 towards their down payment and closing costs with the escrow company. Cindy directed the agent to the escrow company.

Guess who did not call Cindy back? The escrow officer. Cindy received no response whatsoever from the escrow officer. They never asked her why Ticor Title resigned. They never even asked for any of the original documents back. Cindy never had any contact directly with the seller but it appeared the entity documents were completely fabricated.

Cindy also found an open order to insure the sale of the same property with Lawyer's Title. She was able to share her findings with them so they did not insure the fraudulent deed either. The property was flagged in the title plant to prevent any other FNF Company from insuring.

For Cindy's attention to detail and determination in confirming whether or not the deed was executed by the authorized signer for the LLC, she will receive a reward of \$1,500 and a letter of recognition on behalf of the Company.

MORAL OF THE STORY

The Company has terrific guidance in place for settlement agents and title officers to gather and review entity documents to ensure the paperwork is properly executed. Be sure to obtain the entity documents as soon as possible so everyone gets a chance to review them.

Use the other tools available such as the internet. In this instance Cindy was able to confirm her suspicions were true by searching online for the true owners.

DESIGNATION agreements

Generally speaking, the person responsible for closing the transaction is the person responsible for reporting the sale to the IRS. Intentional disregard comes with heavy fines; \$10,000 for every occurrence. As a result, the Company takes this duty very seriously. But what does a settlement agent do if the seller insists on reporting the sale in the name of someone other than the vested seller?

The Company would allow the seller to file the 1099-S on their own by entering into a designation agreement. Per the IRS 1099-S Instructions the settlement agent can enter into a written agreement at or before closing to designate who must file Form 1099-S for the transaction. The agreement must identify the person responsible for filing. It is important to note the person designated cannot be just anyone; especially not the seller. The person designated may be the person responsible for closing the transaction or the buyer's or seller's attorney.

The designation agreement may be in any written form and it must:

1. Identify by name and address the person designated as responsible for filing;
2. Include the names and addresses of each person entering into the agreement;
3. Be signed and dated by all persons entering into the agreement;

4. Include the names and addresses of the buyer and seller, and
5. Include the address and any other information necessary to identify the property.

Each person who signs the agreement must keep it for four years. Settlement agents should never enter into a designation agreement without approval from your National Escrow Administrators.

