By Lisa A. Tyler  
*National Escrow Administrator*

Mona Walter, Branch Manager for Liberty Title in East Lansing, Michigan, took a verbal beating from a buyer attempting to throw around his celebrity status and bully her into closing without unconditionally collecting closing funds. This guy clearly did not think his scam all the way through. His plan was flawed in so many ways. Read “CELEBRITY is no excuse!” for the details about one of the dumbest schemes published in this newsletter yet!

Have you ever closed a transaction where the real estate agent took a commission advance and then refused to pay the commission advance company at closing? Be sure to read “SMALL claims court” to discover what transpired after the real estate broker directed the settlement agent to pay her instead of the commission advance company.

“$600,000 forgery” reveals a crime perpetrated against a title agent who failed to recognize all the red flag warnings. This story is representative of a ring of bad guys attempting to commit this crime repeatedly in Didnotseethatcoming City, USA.

To report or not to report? That is the question. Read “EXEMPT sellers” to uncover the answer and to take this month’s quiz on 1099-S reporting. You will be excited to discover the list of exemptions is extremely short and well-defined.

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via email, mail or word of mouth.
Liberty Title in Michigan was handling the sale of a residential property. Everything was in order so the buyer and seller signed their closing documents. The buyer was a celebrity chef with a big ego. At the signing, Branch Manager Mona Walter explained to the buyer that $148,000 was due by wire transfer and she provided him with her wire instructions.

The next day a deposit was posted to her incoming wire account. This was peculiar since they only accept wires into this account. Mona was unable to view the deposit so she contacted her Chief Information Officer, Tracy Brewster, for help.

Tracy reached out to their bank representative who confirmed the deposit was by check. The buyer had taken the check to the bank along with the wire instructions and instructed the bank to deposit the check into Liberty Title’s account.

Tracy explained to the bank representative they do not accept payment by check for that amount and asked they back out the deposit. Mona called the buyer to let him know the deposit was not accepted and he needed to go back to the bank to pick up his check.

The buyer was not happy. He pushed her to accept his check even asking at one point, “Don’t you know who I am?” Even the real estate agents pushed and urged her not to upset the celebrity.

Mona did not back down nor did she let the buyer bully her. She explained he must wire the funds in order for the transaction to close. He claimed he shredded the check and would initiate a wire.

The next day a deposit of $148,000 appeared in the wires only account. Tracy contacted the bank representative who confirmed the buyer went to a different bank branch and deposited the same check as he did the day before.

The bank reversed the deposit and turned the check over to their security team. The bank’s security team contacted the issuing bank who confirmed the check was out of sequence and did not match the other checks drawn on that account. The bank provided a copy of the check to Liberty Title. Here is a portion of the check:

Clearly there are several red flags. First off, there is no such thing as Bank of America Illinois. That would be an oxymoron. “Pay to the Order of” is typically above the amount of the check. At the bottom of the check it says “Authorize Signature” instead of Authorized.

Mona called the phone number on the check which went directly into voicemail. The check was written from an account of the L.A. Dodgers organization, but the buyer had nothing to do with the Dodgers.

Mona also looked on the website for the L.A. Dodgers but did not find the name of the person whose voicemail she had reached on their staff or players lists. By all accounts this check was counterfeit. Tracy forwarded a copy of the check to a contact email she found on the L.A. Dodgers website.

Liberty Title did not have the earnest money. Tracey did not know if the real estate agent had the check or if it was real. Liberty Title resigned from the transaction by way of letter to all parties and to their surprise the buyer did not respond. A few days later someone from the L.A. Dodgers returned Tracy’s call to verify the check was not theirs.

Throughout the transaction the purchaser was less than pleasant. Every time Mona explained the process to him he would turn things back on her. In the end he lied to her on multiple occasions and accused Liberty Title of a bad buying experience.

Did the buyer really think he could get away with it? How did he think this was going to end? Even if the file closed and Mona had disbursed against the uncollected funds it would have been only days before the check was returned. This was not a well thought out plan.

Liberty Title filed a police report in East Lansing, Michigan, and the Dodgers filed a police report with the Michigan Police Department. Some celebrities believe that all publicity is good publicity. Surely this celebrity chef will have to decide for himself.
An escrow officer was handling a sale transaction involving separate listing and selling brokers. On January 22, 2016, a commission advance company emailed the escrow officer a Commission Advance Agreement and a Commission Disbursement Authorization electronically signed by the selling broker — who was also the selling agent — who we will refer to as “Ms. Jones.” The escrow officer received the email but did not respond affirmatively to the receipt of the commission advance company documents.

On January 25, 2016, the commission advance company emailed again, insisting the escrow officer acknowledge receipt of the agreement and authorization forms. Again she did not respond. Eventually Jones emailed the escrow officer and requested she acknowledge receipt of the agreement and authorization documents. She replied she had received the documents.

On January 29, 2016, the listing broker deposited Instructions to pay commission in the amount of $9,270 to the listing broker and $7,270 to Jones. The escrow officer sent the instruction to Jones to acknowledge. Much to the escrow officer’s surprise, Jones directed her to wire transfer the funds directly to her personal checking account — not to the commission advance company as previously instructed.

The escrow officer contacted Jones who again insisted the commission be wire transferred to her personal checking account. At closing the escrow officer proceeded as instructed and wired $7,270 to Jones’ personal account.

The commission advance company emailed and called the escrow officer repeatedly for payment. The escrow officer referred the commission advance company back to Jones. When they were unable to collect repayment of the advanced commission, they filed an action in small claims court against Jones and the instructions sent from Jones dated after the date of the agreement and authorization documents.

The title company representative provided the written instructions from Jones dated after the date of the agreement and authorization documents, re-directing payment to her personal checking account via wire transfer.

The judge stated he sold real estate to pay his way through law school and had been a real estate agent for forty years. He told the commission advance company they had no grounds for a suit against the title company as they were not a party to the agreement, nor were they the collection agent for the commission advance company.

The judge dismissed the title company from the lawsuit altogether. He did grant the commission advance company a default judgment against the real estate agent/selling broker for the maximum allowable in that jurisdiction under small claims, which was $5,000.

There are companies which provide commission advances to real estate agents and loan officers. The commission advance can be reimbursed at closing with the written authorization of the broker, but settlement agents cannot enter into the agreement between the commission advance company and the broker/agent because the language included could be problematic. Here is a sample:

**Acknowledgment of Assignment**
Settlement Agent (a) acknowledges receipt of this Notice of Assignment, (b) has received the Contract referenced above, (c) is processing the transaction for settlement and (d) will make payment of the amount directly payable only to Commission Express without offset or deduction upon settlement of the transaction. In the event settlement on the above referenced contract does not take place in this office, we have no liability under this Notice of Assignment.

What are the issues? Items (b) and (c) the settlement agent cannot confirm or deny they have a file with anyone who is not a party to the transaction. All files are completely confidential. Item (d) a settlement agent cannot guarantee to pay the commission advance company unless they receive written authorization from the real estate broker therefore settlement agents cannot sign an acknowledgement.
An escrow officer received a hard money loan transaction from a lender in Didnotsee that coming City, USA. The loan was to be secured by five properties. The five properties were all rentals owned by a husband and wife who lived out of state.

The owners were so desperate for the hard money loan they drove four hours to sign their loan documents. The escrow officer recorded the driver license numbers for the husband and wife in her journal and then proceeded to have them sign the loan documents. The loan closed and the escrow officer paid the borrowers nearly $600,000 in proceeds.

Months later, a real estate agent was attempting to list for sale one of the five properties securing the loan. The real estate agent obtained a property profile from another title company and discovered the $600,000 lien.

The real estate agent contacted the title company that recorded the lien to let them know there must be some mistake. The agent said the owners told her repeatedly the property was owned free and clear of all liens. The agent referred to the escrow officer who closed the loan.

After the escrow officer spoke with the real estate agent, she became concerned and contacted the lender for a copy of the documents in the loan file used to identify and qualify the borrowers. The lender provided nothing but the title agent’s statement of information. The escrow officer recorded the borrowers’ names, addresses, social security numbers, dates of birth and driver license numbers from the statement of information and identification presented at the signing only to discover the driver licenses did not contain valid numbers.

The address provided by the borrower at closing was not valid. The real owners lived elsewhere, as reflected on the deeds and tax bills for all five properties. All properties purchased were closed as all-cash short sales between 2011 and 2013. Some of the purchase transactions were closed by the same title agent that closed the loan.

The signatures on the note and deed of trust were not even remotely close to the signatures on the documents used to close the purchase transactions. In fact, the imposters signed names that were not even the borrowers’ names. The person posing as the husband signed the name “Barney” instead of Joe Smith!

Some potential red flags to alert you to a fraud scheme, especially if more than one occurs in the same transaction:

1. The borrowers applied for a high interest rate, hard money loan when they owned five properties free and clear, and could have sold any one of them for hundreds of thousands of dollars.
2. Verified the authenticity of the identification presented at the signing by a commission notary (in this case, the escrow officer was a notary) using a UV light. The borrowers signed in the title agent’s office.
3. Recognized the borrowers did not sign the names as typed under the signature lines.
4. The borrowers used a mailing address other than the address where the deeds and tax bills were being sent.

All the information provided at closing — the email addresses, physical addresses, phone numbers and identification — was fake. The perpetrators are going to be difficult to locate. Chances are they have already funneled the nearly $600,000 in proceeds out of the country.

Read the story in the November 2015 edition of Fraud Insights, entitled "VERIFYING the statement of information," to discover how an escrow officer halted a similar crime.

### EXEMPT sellers

There are some exemptions to 1099-S reporting. Some exemptions require proof or evidence of their exempt status. The most common exemptions are:

- **Seller is a corporation.** Sellers who are corporations are automatically exempt from 1099-S reporting.
- **Transfer as a result of a foreclosure or Deed in Lieu of Foreclosure.** Transfers that occur as the result of a foreclosure or because the homeowner is conveying the property to their lender via a Deed in Lieu of Foreclosure.
- **An individual seller qualifies to sign the Certification for No Information Reporting.**
- **Seller is an exempt volume transferor.**

Transferors who are a corporation, governmental unit (including a foreign government) or an international organization are automatically exempt from reporting the sale on IRS form 1099-S.

Settlement agents do not have to file a 1099-S nor include any further documentation in the file to prove their exempt status.

If the beneficiary of a note secured by a Deed of Trust forecloses on the property or accepts a Deed in Lieu of Foreclosure from the owner, that transfer is not reportable unless the owner is paid for any equity over and above the amount due on the note.

Use of the **Certification for No Information Reporting** was fully explained in the March 2016 edition of Fraud Insights.

Transactions which are exempt should be marked as exempt in your production system. This ensures the file does not keep coming up as an exception on the 1099 reports.

In next month’s edition we will explain the exempt volume transferors and how to document their exempt status.