



LOOK at me now.

By Lisa A. Tyler
National Escrow Administrator

Look – we just got a makeover! We have a fresh new look and a new distribution date. Our research has shown previous editions of this newsletter are more widely read by our audience when distributed on a Tuesday. As a result, starting this month and moving forward, *Fraud Insights* will be distributed on the second Tuesday of every month. We want to reach as many readers as possible and continue to change the real estate industry for the better.

The lead story in this edition, “Husband’s Exit Strategy,” illustrates the importance of knowing our limits with regard to documents signed under duress or coercion. As the title insurer, we have to take seriously statements such as, “I was forced to sign.” We must always refuse to insure transactions involving parties who feel threatened or forced in any way to sign over their rights to real property, because those documents are then later voidable.

The story entitled “All In The Family” is a short story about a family whose men held the same

name - generation after generation. As a result, when property transferred from one generation to the next, the family members never deeded the property to the next generation, since title was held in the common family name.

You’ll notice two heroic employees in these stories were rewarded \$1,000 each. You could be next! Share your own fraud-busting story with us by e-mailing the details to settlement@fnf.com or calling us at 949.622.4425.

IN THIS ISSUE



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volume 7 issue 3
March 2012

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Fidelity National Financial

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HUSBAND'S exit strategy

Fidelity National Title's Sebastopol, Calif. office recently handled a transaction for a buyer who was purchasing a \$240,000 condominium as his sole and separate property. He was simultaneously taking out a \$100,000 purchase money loan. His lender required his wife to sign an Interspousal Transfer Deed conveying her community half interest in the property back to her husband. The buyer elected to sign on a Saturday and a mobile signing agent was sent to his residence to obtain his signature on the closing documents along with the wife's signature on the deed. Neither the escrow officer nor the notary were aware of the fact the husband was purchasing the condominium because he was contemplating divorce!

Shauna Irwin, an escrow officer for Fidelity National Title's Sebastopol office, was handling this transaction because she knew the property owner and had worked with him before. It was a short sale transaction she had been working diligently on for nine months. On Monday morning, following the buyer's document signing appointment, Shauna found the following e-mail from the mobile signing agent in her in-box:

So this got really weird... I took the husband's signature in about 20 minutes, as he had previously

read all the documents. When I asked to see the wife to sign her part, she came to the table and started drilling me with questions on what I know about the documents, if I am certified and wondering if I am an attorney. I tell her what I know about the documents, but cannot tell her anything that is not written on them, such as over-explaining to her satisfaction. She and her husband then start getting into a fight. The wife asked him, "How could you do this to me?"

She just found out she had to sign the Interspousal Deed an hour before the signing appointment. Then the wife started telling me how she was under duress and felt like she was being coerced into signing the deed. I just sat quietly and listened to her speak. She said she wanted to read the documents because there was an inheritance issue that they are going through and that was why she was not on title. She knew the house was being purchased and she was not going to be on title, but she was VERY upset she had to sign something.

The wife then accessed the Internet and researched what it meant to sign an Interspousal Transfer Deed. In the end (1 hr and 45 min later) she did end up signing the deed, but told me that she may call me to court if

she feels that what she signed was not in her best interest, and that she was coerced into it. I just smiled; I didn't really know what else to do. No one forced her to sign physically and no verbal threats were made. I am sorry, I did not intend for the e-mail to go this long, but wanted you to be aware of the situation. Please let me know if there is anything else you need.

After reading the e-mail, Shauna notified all parties she would not be able to close the transaction without personally speaking to the wife and receiving additional notarized instructions, signed under penalty of perjury from her, authorizing Fidelity to record the Interspousal Transfer Deed. Shauna also contacted the lender to see if they would allow the husband to take title without the Interspousal Transfer Deed. The lender would not allow it.

Shauna then called the wife. After leaving multiple messages she finally received a return phone call from the wife stating the following:

- » **Everything the notary said is true and she was coerced into signing the deed.**
- » **She was, and still is, under duress.**
- » **She has not slept in nine days because she has an eight-week-old puppy that has kept her up every night.**



STOP

TELL US HOW YOU STOPPED FRAUD

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- » Her husband is purchasing this condo with money inherited three years ago, from both his parents' deaths. All of his siblings shared their inheritance money with their spouses, but her husband has said he would not be sharing the money with her.
- » She does not know where the condo is, has never been okay with it and cannot understand why a husband would buy anything without his wife.

- » When her husband called to say the notary was coming, she did not understand why he would have the notary come to their home when they could just meet at a coffee shop. Their house was a mess; she has a puppy and didn't have time to do anything. He then told her an hour before the notary showed up, that she would

to access his inheritance, as she does not have the money right now to hire an attorney to file for divorce.

on for months, and had a good working relationship with the seller. After sending out the notification, Shauna started receiving calls from all parties involved in the transaction begging her to close. She even talked to the husband who said, "What does it matter if she was under duress or forced to sign, you have her signature - just close!"

Shauna then received a call from the listing broker instructing her to prepare an authorization for the principals to sign, authorizing her to transfer the buyer's deposit to an independent escrow company in Southern California. Shauna notified Lisa Tyler, who notified the underwriting department, so a bulletin could be sent to all title plants across the state posting the address of the property - so no other FNF Company could issue policies for this transaction.

Shauna could have proceeded to close, having all the signed documents and money, but she did not. Instead, she saved the Company from a potential claim. For Shauna's keen understanding that a deed signed under duress or coercion is voidable, and for her integrity and courageousness, she has been rewarded \$1,000.

the husband stopped making payments on the loan and the lender had to foreclose, and later the wife asserted her claim of ownership against the foreclosing lender - the lender would be afforded protection under their loan policy. That is part of the reason it was in the best interest of the Company to resign from the transaction altogether.

The other reason for resigning is simply that it is not worth the title and escrow fees (approximately \$2,035) we would have collected at closing, only to later be forced to defend the Company against any potential legal action by the angry wife.

SHE WAS, AND STILL IS, UNDER DURESS.

- » She has contacted nine lawyers to find out her options with regard to the signing of the Interspousal Transfer Deed because she feels she should be included in the inheritance money and the purchase.
- » She stated she does not want to sign any additional instructions. She added, even if she does sign additional instructions in the future, to remember she really did not want to. **She will say in court that she was forced by Fidelity National Title to sign the additional instruction no matter when she signs.**
- » She told the notary to remember her face as she was crying the entire time the notary waited for her signature - with mascara running down her face as she was being coerced into doing something she did not want to do.
- » She and her husband have been married for 30 years and been together since she was 16. He has always taken care of her financially.
- » He told her when he buys this condo that he is going to will it to their two children.
- » She needs to find some way

have to sign something. When the notary did ask her to sign, she went ballistic. **Her husband admitted while the notary was there that he was going to move into the condo when he left her.**

- » She went back and forth between saying maybe it is a good idea for him to buy the condo so he had somewhere to go and their kids could inherit the property...to saying how it was unfair that she would be left with the house that they are in with a large mortgage and no job or income.
- » She said that when he bought the house they currently live in, she had signed a deed to her husband because she had bad credit, and to this day, regrets signing the document.
- » She has sworn that she will not be a fool again and deed away her interest.

Based on this conversation, Shauna notified all parties that if the buyer's wife was not going to be on title we would have to resign as escrow holder. This was a very difficult thing to do as this was a short sale Shauna worked so hard

MORAL OF THE STORY

Resigning from a transaction is never easy, but is sometimes our only choice. Had Shauna closed her transaction and the wife claimed the deed was signed under duress, we would be obligated to defend the husband's new lender against any loss resulting from her actions.

The owner's policy does not afford coverage to the husband if his wife later made a claim of ownership. However, if

SECOND MORAL OF THE STORY

The notary in this story should have never allowed the wife to sign the deed in the first place! Acknowledgments must be voluntary and the, "...free will acts and deeds..." of the signer. For this reason, a notary who sees evidence of duress or coercion being used to extract an acknowledgment from a signer should not proceed with the notarization, unless the duress issues are resolved to the notary's satisfaction.

ALL in the family

A small piece of Lucerne Valley, Calif. was being sold for \$41,000 in an all-cash transaction. The buyer and seller lived out of the area, necessitating the closing documents be mailed out for signature. The vacant land sale went sideways when the escrow officer mailed the documents to the seller and demanded they be signed in the presence of an approved notary.

Tiffany Vogel, an escrow officer with Chicago Title's Victorville, Calif. office, was handling a simple all-cash sale transaction. All the closing documents were mailed out to the principals for signing. The buyer sent in his completed paperwork and closing funds. All Tiffany was waiting for, was the seller to send in his completed documents and signed grant deed.

When the seller returned the documents to Tiffany, she discovered the seller had not followed her direction to sign them in the presence of a Company-approved notary. She advised him he would have to re-sign with an approved notary. The seller complained our offices were, "...too far and too inconvenient to get to." and "This is ridiculous; a notary is a notary." The seller's real estate agent even gave Tiffany flack about the seller having to re-sign the conveyance deed.

Finally the seller agreed to have a Company-approved notary come to him. The owner of record is Charles S. Calloway and the person the notary was meeting with only had identification for Charles E. Calloway. The seller insisted the notary notarize him just as Charles Calloway and that it would be fine with no middle initial.

The notary immediately called Tiffany after meeting with the seller. He informed her that he went ahead and notarized the signer as Charles Calloway without the middle initial to avoid getting into the legalities with him. The notary



wanted to make sure, however, that Tiffany knew the Charles Calloway he met with was not the Charles S. Calloway on title, but Charles E. Calloway - the grandson of the owner of record.

The property had been in the same family since 1938, passed down from father (deceased owner of record) to son (deceased 20+ years) to grandson. The family members apparently never felt they had to transfer title, since they all had the same name of Charles Calloway.

Tiffany promptly notified the real estate agents that the seller did not actually own the property. The seller's agent quickly apologized about the hard time she gave Tiffany over the approved notary requirement and thanked her for catching the situation before it was too late.

The agent has put her client in contact with a probate attorney and it appears the buyer is still very interested in the property and is willing to wait for him to go through probate.

For upholding the Company's document execution guidelines and enforcing the Company policy, even in the face of objection by the principal, Tiffany has been rewarded \$1,000.

MORAL OF THE STORY

The deed could have been invalidated by the heirs of the estate of Charles Calloway (senior). Since the new owners were purchasing an owner's title insurance policy from Chicago Title, the company would have had to defend them against any claim or loss resulting from the heirs of the estate laying claim to the property or the proceeds from the sale of the property.