



By Lisa A. Tyler
National Escrow Administrator

The stories are pouring in! I love it, because it makes writing this newsletter so easy. But, I also hate it because it means crime is on the rise and we have to stay alert for the tell-tale signs with every transaction. Our settlement agents are now suspicious of every principal – and justifiably so!

Nothing demonstrates this increased level of suspicion better than the actions of the escrow assistant in the story entitled “WHAT a lying sack!” Sarah Haberthur knew the borrower

in her transaction was up to no good – she just had to prove it. Read the story to find out the extraordinary steps she took to prove a borrower had been lying about an outstanding open line of credit.

The “ALTERED checks” story is eye-opening, given the frequency with which offices currently accept endorsed checks into escrow. If you are not aware of the potential issues that can arise from accepting a check made payable to anyone but the Company, you will want to read this story to increase your knowledge of our banking agreements.

Does your office have a document safe? Is it bolted to the floor? If not, you will consider bolting it down after reading the story entitled “SECURITY breach” where intruders took the safe thinking there might be cash inside. The theft did not create a monetary loss to the Company; but it did create a security breach.

Fraud Insights is provided to raise awareness within Our Company regarding fraud and other crimes. It is also a tool to use in the field to aide in changing the entire industry. Please share it!

IN THIS ISSUE



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WHAT a lying sack!

A refinance was opened at the end of November 2011. Upon receipt of the title report, the assistant escrow officer asked the mortgage broker to provide payoff information for the three loans reflected on the report. The broker skirted the question and demanded a fee quote. The assistant provided the fees and then shortly thereafter was informed the loan was on hold.

In January 2012, the mortgage broker requested an estimated settlement statement for this loan. Sarah Haberthur, the assistant escrow officer handling the file for Fidelity's Santa Rosa, Calif. office, again requested the payoff information for the three loans reflected on the title report, one of which was an old equity line of credit from 2003. The broker provided the payoff information, lender and loan number for two of the loans, both of which were with Chase Home Finance.

Sarah ordered the payoff demands, however, she still had no payoff information for the old equity line of credit from 2003 which was in first lien position. Sarah consulted with her escrow officer, "BJ" Woods, and they both thought it should have been paid off in 2005 when Chase Home Finance issued the new first and second loans. Since the lien was still showing, however, it was evident no release had been recorded. The lien had to be released prior to closing this new refinance.

Sarah asked the broker a third time for the payoff information on the old equity line of credit and her response was, "This old loan is a 'BOGUS' loan against the property and there is no balance due. It is old and has been paid off." Sarah replied it could very well be old and paid off, but she still needed to obtain a release to remove the lien from the property. The broker responded that the borrower is, "...an attorney and he used to be a mortgage broker so he would not have let this happen to his property; it has to be a BOGUS loan!"

The broker suggested Sarah find the title company's settlement statement that showed it was paid in full and no longer existed. Sarah responded that it might have been paid in full, but that did not mean it was closed, frozen or released from this property. Sarah asked the broker to have the borrower contact Chase Home Finance for a release, since they were also the lender on the equity line of credit from 2003.

The broker called back to let Sarah know the borrower was calling Chase, but was not having much luck getting through. He would call her later that day after he was done in court to let her know what he found. Sarah received no call from the borrower that day or even that week.

A week later Sarah received the loan documents and, of course, a RUSH SIGNING was needed. She asked the broker what the outcome was from the borrower's call to Chase regarding a release of the lien. The broker said, Chase told him the loan was so old (2003) they could not find it in the system any longer and it does not exist! And...it was BOGUS!"

Frustrated beyond belief, Sarah called Chase Home Finance herself and explained the situation to their customer service representative. She indicated that their mutual customer currently had two loans with them – a first and second. She shared that the second was open since 2005 and had a balance of

\$52,000, but there was also another equity line that recorded in 2003 for \$150,000 which should have been paid off and closed, but was never released.

When she pleaded with them to help her obtain the release, the customer service representative gave her the same answer a settlement agent always receives: "Sure, but we need the authorization from the client to speak to you, can you fax it? Within 24 hours it will be processed and we can discuss the account details."

Sarah knew the timing of the new refinance would not allow for another 24 hour waiting period, so she asked if she could get the borrower on the phone in a conference call with the customer service representative. The representative from Chase agreed.

Since he was a "very busy" attorney Sarah was not sure the borrower would be in the office. She called and let the receptionist know who she was and where she was calling from. The borrower picked up the phone and said, "Sarah, I have a client in front of me and I am very busy. I have had no luck with Chase. The account was paid off and there is not much more that can be done on my part."

Sarah asked him if he would be willing to do a conference call with Chase to authorize her to speak to them and he agreed, but indicated it must be fast. The Chase



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customer service representative got the information they needed from the borrower and he hurried off the phone.

The Chase representative then let Sarah know they were able to answer any and all questions she had on his accounts. She asked if the 2003 equity line of credit was closed. The customer service representative told Sarah the loan WAS an open line of credit, it DID have a balance and the borrower had JUST made a payment on January 17, 2012. What a lying sack!

Sarah was flabbergasted! She had a feeling that was the case, but to have it confirmed was a shock.

Not only did the purportedly closed, paid off and bogus loan have a balance – but it was \$150,210.00! The new refinance loan was dead as there was not enough equity to support a loan increase of more than \$150,000 needed to pay the line of credit.

The borrower said the account was paid off in 2005 but the bank must not have completely closed the

account as he was able to draw the available \$150,000. Sarah called to notify the borrower of her discovery, who did not even seem upset or try to argue. She proceeded to tell her title officer all the details so they could document the plant records in case the loan was re-opened with another escrow office within the Fidelity Family of Companies.

For Sarah's diligence, and ultimate discovery of the unpaid balance on the equity line of credit, she has been rewarded \$1,000 by the Company.

MORAL OF THE STORY

Double and triple check that equity lines are closed and released! This could have been an expensive mistake.

ALTERED checks

Settlement agents are regularly pressured into accepting altered checks (which they should not) for earnest money. This usually occurs when the buyer's original offer to the seller indicates one escrow company and then, somewhere in the negotiations, the principals agree on another escrow company. Real estate agents do not want to go back and ask their buyer for a new check, so instead the check is altered and the buyer initials the changes. Accepting the check is done at the sole risk of the operation. In this story, our office accepted an altered check which proved to be risky.

A Fidelity National Title office received a fully executed Purchase and Sale Agreement, along with a personal check representing the earnest money. Per the agreement, the amount of earnest money due was \$1,000. The check was originally written to Old Republic Title Co., but during negotiations the principals agreed to change the escrow and title company to Fidelity National Title. Rather than obtain a new check for \$1,000, the buyer simply crossed through the original payee, wrote in Fidelity National Title and initialed the change.

The settlement agent receipted-in the funds and began to process the transaction. About a month later the buyer decided he wanted to cancel the transaction. His real estate agent instructed the settlement agent to prepare cancellation instructions reflecting the earnest money as being refunded to the buyer. The settlement agent prepared the cancellation instructions and sent them to the listing agent.

At first, the seller was not sure they were willing to give the money back to the buyer. The real estate agents began negotiating for their respective clients.

In the meantime, the buyer went to his bank, Wells Fargo, and tried to place a stop payment on his earnest money check. When the request was denied, he filed an Affidavit of Forgery, claiming the check was altered and cashed without his approval.

Simultaneously, the sellers signed mutual cancellation instructions agreeing to return the earnest money to the buyer. The settlement agent cut a check from the trust account to the buyer, representing the refund of the earnest money. The buyer deposited the refund into his account at Wells Fargo.

Shortly thereafter, the Operational Accounting Center (OAC) received notice from Bank of America that Fidelity's trust account was debited \$1,000 based on the fact the original earnest money check was altered. When a fraud report is filed, banks act quickly to freeze the amounts in question while they determine the merits of the report. Wells Fargo immediately contacted Fidelity's bank, Bank of America, who reviewed the affidavit.

Anytime a settlement agent accepts an altered check, he or she subjects the instrument to questioning. As a matter of fact, accepting an altered or endorsed check is done solely at the operation's own risk, since the banking agreements Our Company enters into offer no protection for these checks. The operation is on their own to prove they were entitled to negotiate the check.

The OAC quickly found this out. They contacted Bank of America upon receipt of the notice Fidelity's account was debited. Bank of America referred back to the banking agreement. Neither Bank of America nor Wells Fargo would provide assistance since the office accepted and negotiated an altered check – even though they had already refunded the buyer their earnest money deposit.

The OAC filed an Affidavit of Claimant on the refund check disbursed to the buyer. The basis for the affidavit was the fact that the borrower had already collected the original earnest money deposit. The claim was denied.

Next the settlement agent contacted the buyer's real estate agent. She explained the borrower needed to withdraw their Affidavit of Forgery since he had received his refund. The borrower finally withdrew it and their account received credit for the original deposit. Whew! All of this work for a \$1,000 deposit on a cancelled transaction for which we will never be paid!

MORAL OF THE STORY

When Our Company opens a trust account, a banking agreement is signed which outlines the bank's and Our Company's responsibilities. One of our responsibilities is to accept checks made payable to Our Company only. If an office deviates from the agreement and accepts a third-party-endorsed or altered check, the bank has no obligation to assist or defend them; which is exactly what occurred in this instance.

Settlement agents should be aware of the risks when accepting personal checks which have been altered or endorsed, and request a replacement check.

SECURITY breach

At a Chicago Title Company branch, the employees were used to using the scanner on the remote capture deposit system to scan checks received into escrow for earnest money, down payment and closing costs. After scanning the checks for deposit, the employees locked up the checks each day and destroyed them after holding them for a minimum of thirty days.

On a Friday afternoon in 2012, the branch employees locked up their deposited checks in their document safe and went home for the weekend. On Monday morning, the branch personnel arrived to discover their office had been robbed! They quickly began to inventory missing items. Candy, coffee and the document safe were identified as missing, but nothing else. The manager contacted the local authorities and the landlord to report the theft.

After filing the police report, the branch manager realized her office had just suffered a breach of security. Some of the checks contained in the document safe were cashier's checks which did not present an issue because they did not contain depositors' non-public information. Some of the checks, however, were personal checks written for earnest money deposits, which contained depositors' names, addresses, bank names and bank account numbers.

The manager quickly pulled her deposit history report to uncover which customers were affected by this breach of security. Luckily the number came to less than twenty. She notified the real estate agents representing the buyers of the breach of security. She informed them of her intent to notify each buyer in writing and to provide them with solutions to the problems posed by this breach of security. The notification to the customer read as follows:

Notice of Security Breach

I am regretfully writing to report a recent security incident at Chicago Title Company which may affect you. On _____, 2012 it was discovered our office located



at _____ was robbed. The thieves stole candy, coffee and our document safe. The document safe contained your original check, which has already been negotiated and paid at the bank. I am concerned if the thieves are able to open the safe, they will have knowledge of your checking account number.

To help prevent unauthorized access and fraudulent activity on your account, we recommend you immediately contact the bank and close your account. Inform them your account may have been compromised, and ask they report it as "closed at customer request."

In addition, I am including a coupon for a year's worth of Credit Check Basic® Credit Monitoring through Experian®. If you elect to redeem the coupon and register with Experian, you will receive one year of automatic daily monitoring of your Experian credit report. Also included are email alerts of key changes to your credit report, as well as identity theft assistance from dedicated Fraud Resolution Representatives.

I regret this incident occurred and want to assure you the Company is reviewing and revising our procedures and practices to minimize the risk of recurrence. Should you need any further information about this incident, please contact the undersigned.

Best regards,

WHAT CHANGES HAVE BEEN IMPLEMENTED?

First they had the entire office re-keyed, as they suspect the intruders might have had access to a master building key since there was no evidence of forced entry. Second, a replacement safe was ordered, and this time they made arrangements with the landlord to allow the safe to be bolted to the floor, so it can no longer be removed.

This office has always been careful to protect the non-public information they receive. Files are kept in filing cabinets, checks are locked up in the safe, employees protect their passwords used to access the Company's computer systems, etc. Unfortunately it seems the thieves were prepared.

QUICK NOTE!

Do not send copies of earnest money checks disclosing buyers' bank account numbers to unauthorized persons (i.e. listing agent, seller, seller's attorney, etc.).