



By Lisa A. Tyler
National Escrow Administrator

An ounce of prevention...is worth \$66,000. In California alone, claims categorized as "fraud and forgery" cost the Company an average of \$66,000 per claim in 2011. The purpose of *Fraud Insights* is to aid in the prevention of claims by raising awareness of how they occur and what can be done to prevent them. In addition to raising awareness within the FNF

Family of Companies, it is also our full intent to change the real estate industry for the better. Do your part by sharing this and all monthly editions of *Fraud Insights* with your customers and other industry professionals.

Read "CEO talks the talk and walks the walk" to find out how a sneaky negotiator was caught attempting to defraud a short sale lender and collect more than \$13,000 at closing. Sometimes staying ahead of the fraudsters is

all-consuming. Luckily, the escrow officer in this story quickly figured out the crime and stopped the transaction from closing.

You know times are hard when an escrow officer is willing to risk her integrity, honesty and ultimately her career in order to keep a customer happy. Read the story entitled "LAID off vs. fired – which is better?" to discover the many lines crossed by one desperate escrow officer – all in the name of customer service.

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Professional designations are commonplace in many industries. The settlement industry is no different. Many state escrow associations have certification programs in place. Oregon is one such state.

Members of the Oregon Escrow Council can stand out by showing their commitment to their chosen career by achieving a professional designation such as Certified Escrow Officer (CEO). Settlement agents with this designation earn it through experience and by passing an examination administered by the Oregon Escrow Council.

Cynthia Fox is a Certified Escrow Officer with Ticor Title in Medford, OR. Through her training and experience, she was able to identify the tricks a third-party negotiator used to misrepresent the closing costs on a HUD-1 statement.

Short sale transactions pose many challenges. Generally speaking, sellers need an expert to assist them in negotiating the terms of the short sale. As a result, many licensed real estate agents and attorneys have shifted their focus to this type of business by acting as a third-party negotiator on behalf of the seller. The third-party negotiator typically has all direct contact with the seller's lender, as was the case in Cynthia Fox's file.

The listing agent asked Cynthia to work up an estimated HUD-1. She prepared her HUD-1 based on the terms as agreed upon by the buyer and seller in the purchase and sale agreement. The sales price was \$267,000. After listing all the closing costs, her HUD-1 reflected a net of \$248,897 for the lender. The listing agent forwarded the HUD-1 on to the third-party negotiator, an Oregon-licensed real estate agent – or so everyone thought.

Soon after, Cynthia received an approval letter from Wells Fargo approving the short sale, as long as they received \$234,735.54. This startled Cynthia since the amount was \$13,741.46 less than what she came up with. Upon closer review of the short pay letter, she noticed there were items included in the approval letter which neither the buyer nor seller agreed to in the purchase agreement. None of the following items were listed on her HUD-1:

Cash due from seller:	\$1,500.00
Property taxes:	\$5,288.46
Lien search:	\$1,963.00
Seller concession	\$8,010.00

Cynthia was confused. According to the purchase and sale agreement, the seller did not agree to a concession or to pay any of the buyer's closing costs. Additionally, the taxes were current, with nothing due at the time, and she had no

idea who was charging for a lien search. She asked the listing agent why these items were listed on the approval letter. The listing agent forwarded several items to her, including a final addendum, an invoice from an attorney and a copy of the HUD-1 approved by Wells Fargo.

Immediately Cynthia noticed the final addendum was not signed by anyone, nor did it contain signature lines. It was quite confusing. Here is an excerpt:

1. Buyer acknowledges that seller's lender has agreed to allow seller to contribute \$8,010.00 to buyer's closing costs and \$5,288.46 to property taxes ("Buyer Credits").

2. Buyer further acknowledges that the short sale lender has not agreed to pay all of the seller's settlement and other charges ("Seller Charges") and that only those Seller Charges approved for payment by seller's lender will be paid by seller. Unless otherwise specifically stated herein or agreed to, seller will not contribute any funds to close this escrow.

3. Buyer agrees that to close this escrow such unpaid seller charges shall be paid by buyer.

Next, Cynthia reviewed the invoice from the attorney who was charging \$15,000 for, "...services rendered to research, examine and review



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title, liens, and judgments as well as the terms and conditions of the sale and lien releases from the short sale lender.”

Finally, she reviewed the HUD-1 approved by Wells Fargo. On page one were two credits from the seller to the buyer: one in the amount of \$8,010 described as, “seller concessions (FHA buyer)” and another in the amount of \$5,288.46 described as, “credit for property taxes.”

On page two of the HUD-1 was a charge to the buyer in the amount of \$13,037.00 described as, “attorney’s fee includes lien search, title search/exam.” The approved HUD-1 was also on the old 1986 version of the HUD-1 and listed Cynthia as the settlement agent, making it appear she created this misleading HUD-1.

Now Cynthia understood completely. The third-party negotiator convinced

the lender to approve a seller concession knowing the short pay lender would not agree to pay his fee from the seller’s closing costs. The seller concession was not being used to cover the buyer’s closing costs on a new FHA loan, but was being used to cover a portion of the negotiator’s fee. The negotiator also failed to disclose that the property taxes were already paid. Instead, he presented a HUD-1 listing a separate credit to the buyer for the taxes.

Cynthia elected to resign from the transaction telling the listing agent, “You do not mess with my kids, my husband or my HUDs. Do not prepare a HUD-1 and make it look like it came from me!” The seller felt the same way and told his real estate agent he wanted to proceed with the short sale without the assistance or services of the negotiator.

This prompted a call from the third-party negotiator to the listing

agent. He admitted to the listing agent the fees listed on the buyer’s side of the HUD-1 were truly to pay for his fees. There was no contractual agreement from the buyer or seller to pay these fees, much less through closing.

The listing agent, who has closed many short sale transactions, explained to the third-party negotiator he had placed the file in jeopardy due to his actions. The listing agent then contacted the State of Oregon to file a complaint and discovered the third-party negotiator was not even licensed! The company he works for was licensed, but it did not appear he was licensed to provide third-party negotiation services.

The sad thing is the negotiator charged \$15,000 and did not even negotiate to have the lender’s deficiency rights against the seller waived. The short pay approval letter

noted, “Nothing in this Demand Statement or in the release of the mortgage shall waive the right to seek a deficiency under the loan documents or any of its other rights thereunder...” If the sale closes, the seller could still be held responsible to his lender for any amounts unpaid.

Cynthia lives up to her designation of CEO. She talks the talk and walks the walk. She has been rewarded \$1,000 for making the decision not to participate in concealing the true nature of the transaction to the short pay lender.

LAI D off vs. fired – which is better?

At an escrow branch across town, orders were scarce and the escrow officers were clamoring for new business. One of the seasoned escrow officers landed re-sale transactions from an out-of-area agent who used to do business with a former employee of the Company. The escrow officer was determined to provide great customer service in order to keep this agent as a customer, because the agent was a high producer.

The transaction in this story was strange in that the earnest money check from the buyer (brought in with the purchase contract) had a note that read, “do not deposit.” The escrow officer put the check in the file and did not deposit it. The buyers were putting no money down and instead were obtaining gift funds from a donor in the amount of \$11,000. The balance of the purchase price was to be funded by a new FHA loan.

The lender provided the escrow officer with a copy of the donor’s cashier’s check, which would be brought to closing by the buyers. The copy of the cashier’s check was certified by the real estate

agent to be a true and correct copy of the original check. It was in the amount of \$11,000 and payable to Fidelity National Title, showing the donor as the remitter.

The buyers came to the Fidelity branch and signed their loan papers; however, they did not hand over the original cashier’s check. Instead, they told the escrow officer the check would be direct deposited into Fidelity’s trust account at the bank.

Afterward, the escrow officer started receiving suspicious emails from the selling agent indicating his commission would need to be wired to cover the \$11,000 check. The escrow officer thought the request was odd, but confirmed that once the loan funds were received and the file was ready for disbursement, the commission would be wired to the broker’s account. The agent sent another message with the commission disbursement authorization showing the commission should be wired directly into the agent’s account.

The escrow officer knew she would be receiving loan proceeds the next day, along with the buyer’s down payment, so she released the documents to

record. Later that afternoon the loan proceeds were received by wire transfer and the down payment was direct deposited. The escrow officer was provided with a deposit receipt from the bank by the selling agent, so the escrow officer issued a receipt for the deposit. The settlement statement she returned to the lender did not reflect the \$11,000 deposit from the third party donor, but instead showed the credit for the deposit on line 201 of the statement.

The escrow officer wired the commission to the agent’s account and posted all other disbursements. The next day, the selling agent notified the escrow officer his \$11,000 check would probably bounce and they would work on replacing it! The escrow officer thought the \$11,000 deposited from the donor was a cashier’s check and not a personal check from the selling agent!

The escrow officer contacted the accounting center, who sent her a photocopy of the actual deposit – it was a personal check. The next day, the accounting center notified the escrow officer the \$11,000 personal check was returned for non-sufficient funds. The escrow officer never notified the lender



the deposit was from the agent, instead of the donor.

The selling agent reacted fast and went to the bank with a \$3,000 check and cash in the amount of \$8,000. The agent direct deposited both amounts to the trust account and sent evidence to the escrow officer. The officer received the \$3,000 as if it came from the donor, even though she did not have a copy of the check, and received the \$8,000 as if it came from Bank of America, since she did not have a remitter name for the cash.

In the meantime, the escrow officer was flustered because the down payment had bounced. She contacted the escrow manager to let her know the file was overdrawn by \$11,000. The escrow manager paid a visit to the branch and the first words out of the escrow officer's mouth were, "Are you here to fire me?"

The manager indicated she wanted to audit, and then discuss, the escrow file that was the subject of the direct deposits. The manager discovered the following errors by the escrow officer:

- » **Held earnest money deposit instead of cashing it and did not notify the seller**
- » **Failed to disclose third-party deposits on the settlement statement**

- » **Accepted third-party deposits with no instructions**
- » **Disbursed against uncollected funds**
- » **Recorded documents prior to receiving any funds**
- » **Did not disclose to the lender funds were deposited by the agent and not the donor**

When the manager finished auditing the file, she discussed her findings with the escrow officer and immediately terminated her employment with the Company. She advised the escrow officer if she was going to continue to work in this business she should not let her customers walk all over her. As she packed her desk, the escrow officer nodded in agreement and replied that she had been, "...desperate for orders, and willing to do anything to keep a new customer so I would not be laid off."

Once the manager took over the file, the selling agent revealed that he was, "...currently in a recovery program." How sad, that the escrow officer allowed an addict's actions to get her fired! After working through the file, the manager forced the donor to bring in the \$11,000 deposit to her office and refunded all other deposits once they cleared. The deposits have all been disclosed on the settlement statement and all the details have been provided to the lender.

MORAL OF THE STORY

No transaction is worth compromising an escrow officer's integrity. By failing to fulfill her fiduciary duty to the lender, the escrow officer put the Company at risk of having to buy the loan from the lender. Gaining a new customer or keeping an existing customer happy should never include conspiring to commit mortgage fraud. Remember, if you do it once, that customer will expect you to continue to do it forever.