FRAUD Insights

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CASH for keys

By Lisa A. Tyler
National Escrow Administrator

Many institutional lenders have started "Cash for Keys" programs incentivizing homeowners in default on their mortgage payments to hand over the keys and leave the property in good repair. The Cash for Keys program is a win-win for both the homeowner and lender. The homeowner usually receives $20,000 to $30,000 to offset relocation expenses, while the lender receives the property, used as collateral for the loan, in a timely fashion and in good shape to list and resell.

The Cash for Keys programs, however, are seen by 2nd lienholders as an opportunity to receive more funds toward their outstanding debt than they would under any other type of short sale program. Read how a 2nd lienholder demanded funds from the cash due to the seller at closing in the story entitled "WHO would close with an outstanding condition like that?"

Bank of America has become aware of a short sale scam in which fraudulent short sale approval letters are provided to title companies. The intention of the fraudulent letters is to close short sale transactions without the approval of the holder of the note.

These fraudulent letters mimic legitimate approval letters from Bank of America in several ways, including logos, formatting and language. Read "BANK OF AMERICA short sales" to discover the new process Bank of America put in place to verify their short pay letters.

Unclaimed property is something escrow settlement offices are used to dealing with, right? Some consumers find their names on a state's Unclaimed Property website. Others are contacted by shysters looking to help consumers locate their unclaimed property in exchange for a fee, and as a result contact our offices for proof the funds belong to them.

Did you know Our Companies have several thousands of dollars on various states' Unclaimed Property lists? Find out how a consumer informed us of the funds in the story entitled "GOOD samaritan."

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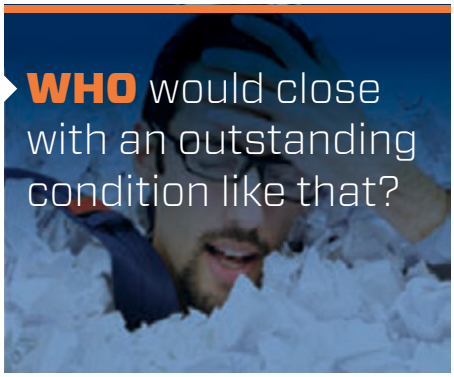

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WHO would close with an outstanding condition like that?

At an escrow branch in California an escrow officer closed a "Cash for Keys" short sale transaction involving 1st and 2nd lienholders. The 1st lienholder allowed the seller to receive $20,000 in cash at closing in exchange for his keys. The 1st lienholder allowed the 2nd lienholder to receive $2,700 toward their loan balance at closing. The 2nd lienholder wanted $10,000, however, and put a condition in their short pay letter calling for the additional $7,300 to be paid outside closing by the seller. So we have to ask...who would close with an outstanding condition like that?

The short pay letter found in the escrow file from the 2nd lienholder (addressed to the seller) read as follows:

...will accept a settlement in the amount of no less than $10,000... A total of $2,700 will be collected from a short sale of the collateral property. Additionally, you promise to pay $7,300 which will be due in full no later than close of escrow.

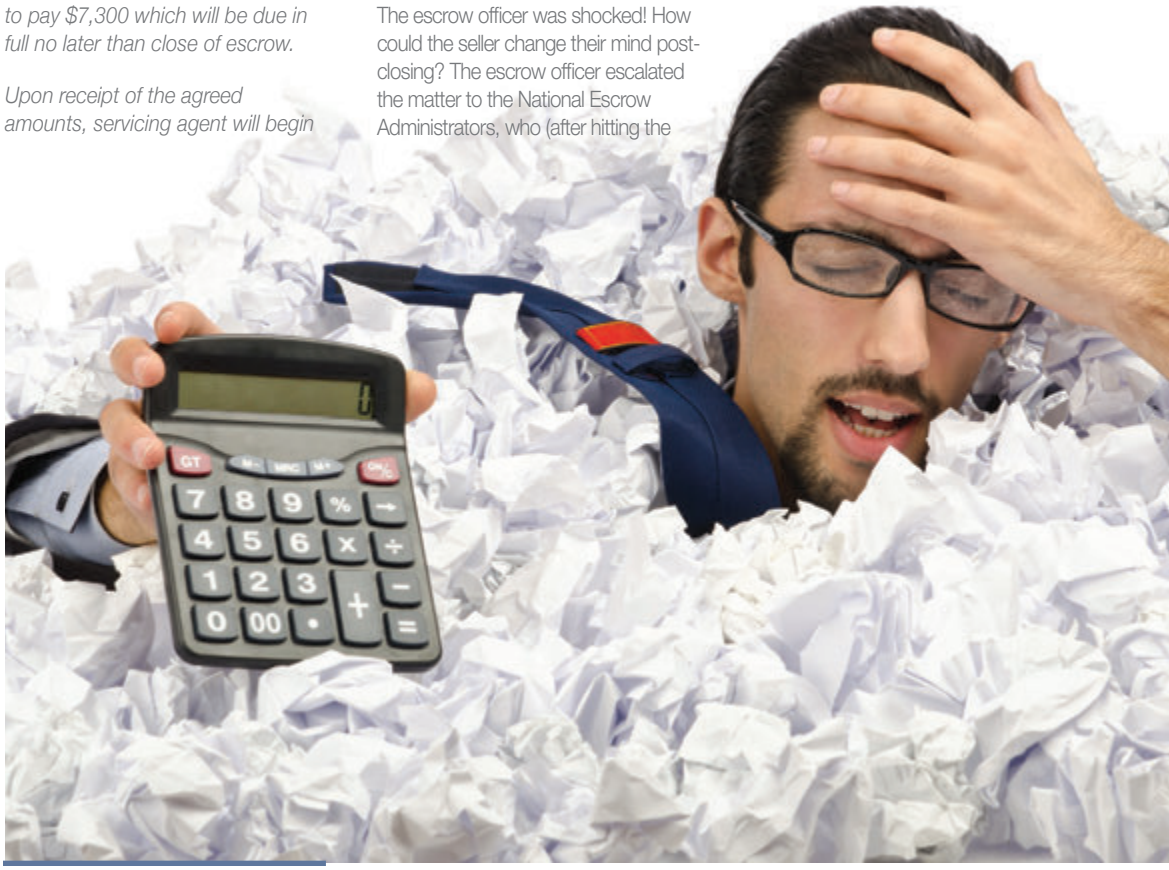
Upon receipt of the agreed amounts, servicing agent will begin the process to release the lien against the collateral and will grant you a full release of the remaining unpaid principal balance of the debt. However, if settlement proceeds are not received by specified dates or if the funds received are returned by the bank for any reason, the lien and promissory note will remain in place until the account is satisfied in full.

The escrow officer accepted the short pay letter from the seller's real estate agent and proceeded to close and disburse her file. She sent the 1st lienholder their minimum amount and the 2nd lienholder $2,700. Four days later the escrow officer received an email from the 2nd lienholder informing her the $7,300 was not received from the seller. It included an email message from the seller stating the seller had changed their mind and would not be sending the $7,300 after all. The 2nd lienholder notified the escrow officer of their intent to return the $2,700 received at close of escrow and to keep their lien in full force and effect.

The escrow officer was shocked! How could the seller change their mind post-closing? The escrow officer escalated the matter to the National Escrow Administrators, who (after hitting the stroke zone) provided language from the California Statutes prohibiting short pay lenders from demanding seller contributions above and beyond the proceeds from the short sale. The law reads in part as follows:

(b) A holder of a note shall not require the trustor, mortgagor, or maker of the note to pay any additional compensation, aside from the proceeds of the sale, in exchange for the written consent to the sale.

The good news is the 2nd lienholder accepted the $2,700 and released their lien, but what if they had not? The Company had insured a new buyer free and clear marketable title. If the 2nd lienholder had elected to ignore the law and keep their lien in full force, the Company would have to protect the insured buyer and either litigate to enforce the California law or pay the $7,300 to obtain a lien release. Both solutions are costly to the Company and bad for the consumer.



TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or
949.622.4425

MORAL OF THE STORY

We should have never closed this transaction unless the following occurred:

1. **The amount the 2nd lienholder demanded matched the maximum allowed by the 1st lienholder; and**
2. **The "side agreement" for additional cash to be paid outside closing was removed from the 2nd lienholder's demand**

Allowing more money to be paid to the 2nd lienholder than the maximum allowed by the 1st lienholder violates the conditions of the 1st lienholder's short pay agreement, enabling the 1st lienholder to return their short pay funds and keep their lien in full force.

In order to release their lien, the 1st lienholder would have to receive payment in full, since the loan investor (FNMA, Freddie Mac, Ginnie Mae) would not reimburse the lender/servicer the shortage amount without the short pay agreement's terms being followed.

As for the 2nd lienholder, closing and allowing the seller to pay a portion of the demand outside of closing is not a condition the Company is willing to accept. It removes all rights the Company has under California statutes that enable the Company to record a Release of Obligation for the lienholder's failure to timely release their lien.

The statute that gives title companies the right to release a lien requires the title company pay the lienholder in accordance with their demand. In this transaction, we only paid a portion of the demand and allowed the balance to be paid (or in this case, not paid) outside of escrow.

And, as stated in the 2nd lienholder's short pay agreement, the seller's non-payment of the additional $7,300 gives them the right to rescind their short pay agreement and demand payment-in-full of the outstanding loan balance.

Whether the 1st or 2nd lienholder exercises their right to rescind their short pay agreement to keep their lien in full force and effect, the Company is liable to its policy holders, and would have to step in and protect them from the assertion of lienholder's rights.

The risk of loss to the Company is the difference between the short pay funds collected at closing and the amounts to pay the liens in full. Here is an example:

1st Lienholder's Payment in Full	**$368,163**
Short Pay Funds Collected at Closing	**-$125,198**
Potential Liability	**$242,965**
2nd Lienholder's Payment in Full	**$34,500**
Short Pay Funds Collected at Closing	**-$2,700**
Potential Liability	**$31,800**

The total escrow and title fees collected at close were $1,906.03. Now you do the math… should we have closed this deal?

BANK OF AMERICA short sales

You might recall the article titled "FAKE short pay letters plague the industry" published in *Fraud Insights* (volume 6 issue 10 October 2011), which discussed how an alert settlement agent identified a fraudulent approval letter supposedly issued by Bank of America. She prevented the closing, saving the Company from potential future liability.

In an effort to prevent the reoccurrence of such fraud going forward, Bank of America will now give our representatives the ability to verify approval letters without a title-company-specific Third Party Authorization already in place.

Below is a telephone number settlement agents or title officers may call to verify certain key data points for approval letters where the original loan balance exceeded $500,000. This original loan cutoff amount was selected because, thus far, fraudsters have concentrated on large-balance loans.

Any time you are suspicious of an approval letter provided to you by the Listing Agent, however, you may call to confirm its validity.

Both title officers and original borrowers can use the same telephone number included in the following standard disclosure on the approval letter below:

"Bank of America appreciates all of your efforts and cooperation in this matter. If you have any further questions, please contact our Short Sale Customer Care Department at 1.866.880.1232."

To verify an approval letter, select Option 1

The hours of operation are:
- Monday through Friday: 8 a.m. to 10 p.m. EST
- Saturday: 9 a.m. to 5:30 p.m. EST

Bank of America will verify the following information with title officers when they call the number:

1) The original borrower's name

2) The property address

3) The loan number

4) The agreed-to short sale payoff amount

5) Amount approved to junior lien holders specified on letter

6) The date by which this amount must be received by the bank.

When title officers call Bank of America, they should ensure the approval letter provided to them by the listing agent is accessible, as it will be needed to complete the verification process.

Also, you should be aware that if you are presented with an approval letter that does not direct the borrower to contact the Customer Care Department, then the letter is likely fraudulent.

At a meeting between Our Company and Bank of America representatives, they stated, "We look forward to partnering with you in this effort and thank you for your cooperation."

FRAUD Insights

GOOD samaritan

The Company receives many emails from the public through our websites, including employment inquiries, approved notary requests, complaints, fee quotes, etc. Recently we received a unique email. This was not a complaint; but simply a message from a good samaritan.

"Hello. Ok so this may sound a little convoluted but hear me out, I was reading CBS 13 Sacramento's website for news today. They did a story on unclaimed funds and I checked it for my name but it was not on there. I started to look at some of the 15,000 accounts the City of Sacramento owes money to out of their unclaimed funds account. I saw that they owed money to Fidelity National Title. Not just one amount but many, many amounts have been escheated to the state in this Company's name. After a Google™ search it seems like you might be associated with this Company and since the City does not have the resources to track all the people down they owe money to, I thought I would give you a heads up and maybe the money can get back to you if it is your money. Hopefully that makes some kind of sense to you and if it is your money you can collect it. Good Luck! John."

How very thoughtful of this gentleman to take his time to send this note. He is right. There are thousands and thousands of dollars escheated in our various Companies' names. This is true for many states, but why?

The various Companies that make up the Fidelity Family frequently have funds escheated in their name by payees out of the trust accounts. The escheated funds are the result of bills (tax bills, utility bills, credit card bills, etc.) being paid through escrow in excess of the amount due or sometimes the checks do not contain enough information for the payee to apply the payment to any account.

The refund checks are returned to the issuing office and often either lost in the mail or stuck in the file, and never deposited. The taxing authority or vendor has no choice but to escheat the money in the name of the Company because they cannot get the branch to negotiate the check.

Why are these funds not claimed by the Company? In most cases it is hard to determine whose funds they really are. If the funds came from a trust account, the funds do not really belong to the Company. They belong to someone else.

If the Company claimed the funds, we would have to start all over in trying to determine who they actually belong to and then locate the owner in order to deliver the funds to them.

In some cases there are legitimate refunds due to the Company for our own corporate expenses or other vendor's contracts. There are also payments for reconveyance fees, notice of default fees and payment of outstanding title invoices remitted to the Company by other title companies that were never cashed.

The limited information provided on the various states' unclaimed property websites does not provide enough detail, however, for corporate to tie a refund to a particular operation of the Company.

If you become aware of unclaimed funds in your state, do not claim them. Just because the funds are listed in the Company's name does not mean the funds belong to the Company. Once claimed, the Company must ensure the funds are credited to the proper account.

The Company does have a department devoted to the escheatment of funds. It is the Unclaimed Property Group. They manage the escheatment process for unclaimed funds which appear on trial balances. They also research funds escheated in the Company's names and claim these funds if they are able to determine whose funds they are and where they should be applied.