



By Lisa A. Tyler  
*National Escrow Administrator*

The year 2012 seems to have gone by in no time at all. It was a busy year for criminals – and also for our settlement agents, who were thwarting the crimes and keeping up on the newest rules and requirements.

In this edition the Company hits \$101,000 rewards paid to astute employees and agents who have successfully prevented a fraud or forgery in their own transaction and ultimately saved the Company from millions of dollars

in claims and losses. Be sure to read the two stories that take the Company over the top in its goal of rewarding fraud fighters. They are entitled “COMMUNICATION is key to crime prevention” starring Lynn Koniecki and “DOUBLE take” starring Marta Drobyn.

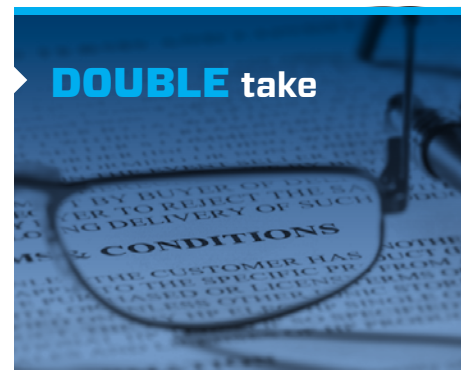
While \$101,000 in rewards paid is quite a milestone for the Company, we do not plan on stopping there. The fraud detection and reward program is a huge success in sharing the latest schemes and scams. *Fraud Insights* has an average of 3,726 online readers each month and a hard copy distribution of over 13,000

copies. Stay alert to the latest real estate crimes and report them to our staff, we would be happy to pay you the next reward if your story is published.

As *Fraud Insights* enters its 8th year of publication in 2013, many changes appear on the horizon. The industry will most likely see the retirement of the HUD-1 Settlement Statement and introduction of a whole new form called the Closing Disclosure. No doubt the fraudsters will not give up either.

We will continue to report the latest and greatest but one thing is for sure – 2013 will be Magnificent!

## IN THIS ISSUE



**Share Fraud Insights**

via email, mail or word of mouth.



volume 8 issue 1  
January 2013

# VETTING settlement agents

**Publisher**  
Fidelity National Financial

**Editor**  
Lisa A. Tyler  
National Escrow Administrator



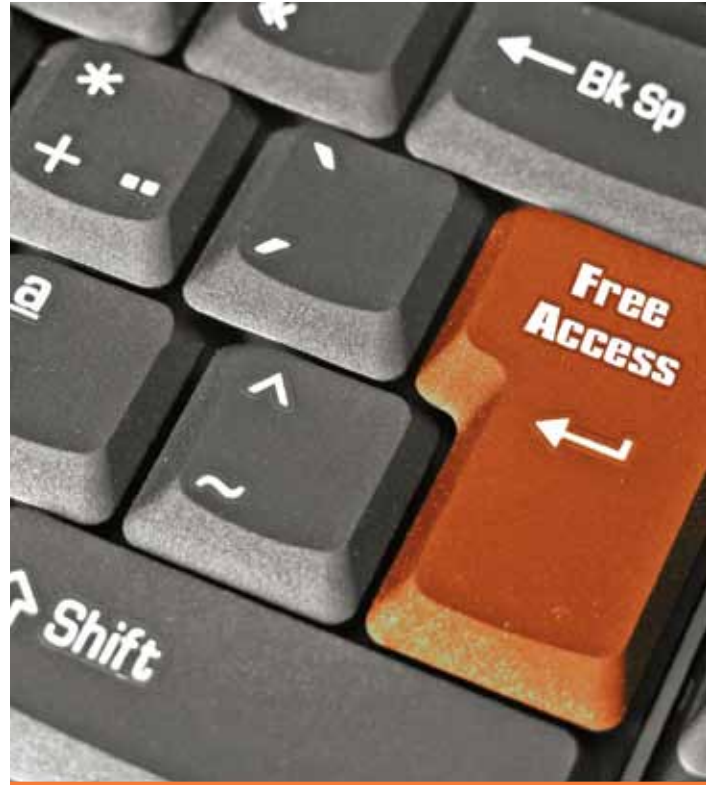
Earlier this year the Consumer Financial Protection Bureau (CFPB) issued a Bulletin notifying banks of their obligation to oversee their business relationship with service providers as it relates to unfair, deceptive and abusive acts or practices. Immediately a new company emerged offering lenders a service which, based on their interpretation of the CFPB Rules, enables lenders to ensure settlement agents closing their loans meet the requirements of the CFPB. Read on for details about the service they provide, cost and invasion of your privacy.

Settlement agents from all over the country began receiving emails from lenders stating they must be registered and vetted by a third party risk management company. The emails stated settlement agents who fail to register would no longer be able to close any loans for them. The cost to register is \$299 per year.

According to the emails, each title company or escrow company would be required to register their company, as well as any and all persons with authority to direct or disburse funds and conduct signings. It was quite odd, as these emails were not in conjunction with a specific closing and in some cases came from lenders they did not work with. It was a mass mailing message sent to any and every settlement agent the lender had ever emailed.

Our Company has received solicitations similar to these in the past. Other companies have popped up purporting to compare subscribers of their services against the Excluded Parties List System, Specially Designated Nationals and Limited Denial Participation lists.

We declined to subscribe because access to these lists is completely FREE. Settlement agents can prove they do not appear on these lists at any time. There is no need to pay an outside third party to confirm



this. But this solicitation seemed a little different, so National Escrow Administration did some research.

Vetting companies do check the lists mentioned above, but they also look further into the settlement agent. When vetting a settlement agent they also look into:

1. Licensing status
2. Education credentials
3. Credit checks
4. Background checks
5. Trust account verification and status of the account
6. Complaints or disciplinary actions with state or federal regulators
7. News about the settlement agent
8. Confirming a bond is in place
9. Ensuring the settlement agent has E&O insurance

A vetting company is designed for small, individually owned title agents or law firms - not publicly held and traded national companies such as ours. In their own marketing materials they even acknowledge

national underwriters need not subscribe for their service.

The Company does not support the idea of settlement agents providing non-public, personal information (required to sign up for this service) to a third party provider. Although many of these service providers promise to keep the information secure there is no guarantee they will not sell the information or use it for other purposes. They do not have to establish and maintain an Information Security Policy or notify their subscribers in the event of a breach of security, so anyone affected could take measures to protect their identity because they are not regulated in the same way as lenders, banks and insurers.

Keep in mind it is the lender's obligation to ensure they are in compliance with the CFPB Regulations – not the service providers. Settlement agents within the FNF Family of Companies need not subscribe to these services.



**TELL US HOW YOU STOPPED FRAUD**

settlement@fnf.com or 949.622.4425

# COMMUNICATION

## *is key to crime prevention*

Below is an article about a man who stole foreclosed properties from large lending institutions in Southern California. Mr. Boucher identified REO properties in Los Angeles, Riverside and San Bernardino Counties and executed grant deeds as the lender's "authorized representative." In many instances, the individuals he deeded the properties to were the very persons upon whom the lender had previously foreclosed.

In February 2012 Eldred Sotello, a Western States underwriter, prepared confidential memorandum #2265 which identified Boucher and many other individuals and entities with whom he collaborated. Eldred also directed an email alert to be issued to the Company's operations and agents in Arizona, California and Nevada.

While this likely prevented or stopped numerous transactions handled by the Company (and potential claims), Boucher continued to file his fraudulent recordings, deeding properties back to owners who had lost their home to foreclosure and to others in exchange for money.

In June 2012, another suspected fraudster requested Lynn Koniecki, title operations manager for Fidelity National Title's Long Beach Office, to record, as an accommodation, a couple of Boucher's fraudulent grant deeds. Because of Lynn's attention to detail, she detected the fraudulent documents and declined the request.

Further, rather than return the counterfeit grant deeds back to the fraudster, Lynn notified the police, who took them as evidence of a crime. Since Lynn's initial contact with law enforcement, the Company has had additional follow up communications with the authorities and provided them with a great deal of information from

## Upland man accused of \$4.5 million in real estate fraud

Reprinted with permission from the Inland Valley Daily Bulletin

**UPLAND** – An Upland man was arrested at his home July 28, accused of defrauding banks and financial businesses by illegally filing fraudulent grant deeds on properties throughout San Bernardino County.

David Alan Boucher, 56, is accused of 63 felony counts of filing false documents, forgery and identity theft according to a news release provided by the San Bernardino County District Attorney's office.

If convicted he faces a maximum sentence of 16 years and 4 months in state prison.

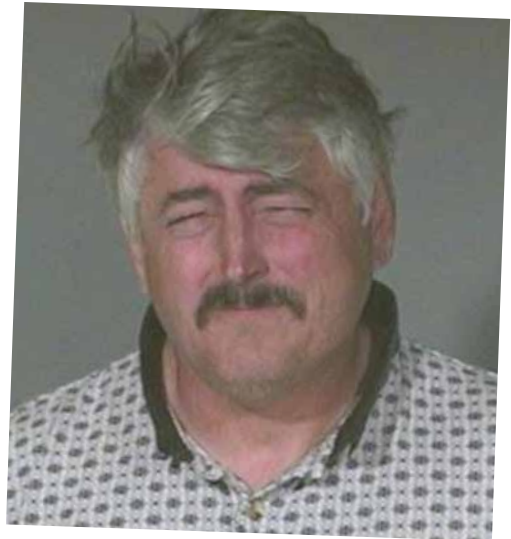
Boucher fraudulently transferred approximately 20 properties in San Bernardino County, representing a property value of approximately \$4.5 million dollars according to the release.

Following his arrest, investigators seized records, weapons, \$127,000 in cash, as well as silver coins and bars at his Upland residence and business in Bloomington.

"This is a disgraceful crime because of the financial impact that it has had on the victims in this case," said San Bernardino County District Attorney Michael Ramos. "Enough is enough. Let it be known that if you come into our county and try to defraud our citizens, we will go after you in pursuit of justice."

Boucher would find properties that have been sold at foreclosure auctions and currently belong to a lender.

Authorities discovered he fraudulently signed grant deeds as the "Authorized Representative" of the bank, who acquired the foreclosed home.



After the documents were notarized, Boucher or one of his representatives recorded the grant deeds at the San Bernardino County Recorder's Office. In some cases, after the fraudulent transfer of title, hard money loans are obtained on the properties.

Investigators believe there may be additional victims.

If you suspect that you been victimized by David Alan Boucher, or any of his associates, please contact the District Attorney's Real Estate Fraud Unit at 909.891.3519.

"I would just encourage anybody out there who may have fallen victim to this scheme to come forward and contact our office so we can ensure justice is served," said Ramos.

the public records.

This is a remarkable example of how our Company's underwriting and title operations communicate to alert our offices and agents of suspected fraud and work with law enforcement officials

to stop this kind of criminal activity. As a result of Lynn's actions to protect the Company and the public, she has been rewarded \$1,000 and received a letter of recognition on behalf of the Company.

This reward marks a milestone of

\$100 grand paid out to employees and agents who were smart enough, brave enough and diligent enough to stop a fraud or forgery in their transactions. It is fitting it was paid to such a heroic and well-tenured associate as Lynn.



# DOUBLE take

Marta Drobyn, escrow officer for Chicago Title in Washington state, knows the importance of adhering to the RESPA Rules. When the third party negotiator asked her to prepare two different HUD-1 statements for the same transaction she refused. Read on for all the details.

Short sale transactions can be quite challenging. Settlement agents act as a neutral third party working diligently to ensure all the terms of the transaction match up and the instructions of the parties are mutual. This is even more complicated in a short sale where there are multiple lien holders agreeing to take a shortage.

In a short sale, the first lienholder regularly specifies the terms of their approval. The letter often includes the minimum amount due to them, approved closing costs, buyer's name, commission and the amount which may be applied to subordinate lien holders. If the second or third lien holder requires more than the approved amount, the settlement agent must ensure the terms of the first lien holder's approval letter are not violated.

In some cases, depending on the loan program, the buyer or real estate agents may contribute towards the short fall amount due the subordinate lender. In other instances the seller or their representative must negotiate with the second lender to settle for the amount permitted by the first lien holder. Regardless, everyone has to agree before the file can close and it all must be properly disclosed on the HUD-1 Settlement Statement.

Section 4 of RESPA dictates proper HUD-1 preparation. Appendix A to Part 3500 of RESPA states:

"This form is to be used as a statement of actual charges and adjustments paid by the



borrower and the seller, to be given to the parties in connection with the settlement."

When closing a RESPA Regulated transaction, whether it is a sale or refinance, the HUD-1 must be a true reflection of all receipts and disbursements made as a part of the transaction. Marta knew the RESPA Regulations quite well, which is why she was shocked by the request she received. This transaction was being negotiated by a third party negotiator, who sent her an email which read:

"This HUD is to 1st mortgage for now. That is all 1st mortgage is going to pay to 2nd: \$4,649.91

We will need another separate HUD to 2nd, which the buyer will contribute the difference for payoff to 2nd total: \$12,000."

Marta was shocked and offended. The negotiator even went as far as to tell her other settlement agents have done it for her. This is when Marta decided to report the incident to her manager who reported it to [settlement@fnf.com](mailto:settlement@fnf.com). She refused to accommodate the request, forcing the negotiator to do her job and negotiate with the second lender. The file successfully closed, without deceiving anyone by using only one HUD-1 settlement statement which properly disclosed all charges and adjustments.

## MORAL OF THE STORY

When an escrow and title company closes and insures a new buyer, in some cases a new lender as a part of a short sale, they must ensure all terms and conditions of the short pay lender are met so they will release their lien. If the terms are not met, the short payoff may be rejected, resulting in the insured buyer and lender filing a claim on their title policy.

In some instances the title insurer ends up having to pay the difference between the loan balance and shortfall in order to obtain a release of lien from the short pay lender and protect their insured. Marta knew of this risk and her obligation to ensure her HUD-1 settlement statement was correct and accurate. For upholding her standards and not wavering, she has been rewarded \$1,000, making total rewards paid by the Company to \$101 grand!