



▶ **DO** not be the person to take down **your company!**

By Lisa A. Tyler
National Escrow Administrator

Read "SUSPICIOUS co-worker uncovers defalcation" to find out how defalcations by a bookkeeper were discovered after years of theft. You have to wonder ... is it really worth it? What kind of criminal sentence does defalcation carry?

Do not be the person to take down your Company! Read "FEEL the ban" to learn what lenders expect from their settlement service providers and how to comply with short pay conditions. More importantly, read the article to find out how short pay lenders discover non-compliance and the steps they take to ban

settlement agents from closing future transactions.

We repeat: Do not be the person to take down your Company! Read "FORBIDDEN" to learn how an escrow officer in California failed to follow the lender's instructions, and as a result, she and her Company were forbidden to close any future loans on behalf of the lender.

What did they do with their winnings? As you know, we reward heroic employees and agents \$1,000 if their story is published in this newsletter. Here are some creative and fun ways our heroes have spent their dough:

- » Put funds in a savings or retirement account for a rainy day
- » Flew to New York to see a sick father on his 70th birthday as a surprise
- » Put the winnings in the branch activity fund so all employees of the branch were able to enjoy a very nice lunch; the winner expressed that she was just doing her job, but it takes a whole team of great people to be successful
- » Gave her assistant a percentage and bought an iPad® with the rest
- » Bought an iPad
- » Went to a wine tasting and bought wine - yum!
- » Took her office out for happy hour and went on a mini-vacation with her husband



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SUSPICIOUS

co-worker uncovers defalcation

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A bookkeeper's seven-year embezzlement spree finally ran out when a co-worker noticed her odd behavior and escalated her suspicions to her manager. After an investigation, the bookkeeper confessed to stealing \$650,000!

In November 2012, a Ticor Title administrative office in the Midwest received a call from a credit card company inquiring about a check they received from Ticor for just under \$5,550 without an account number. The Ticor accounting clerk who received the call started asking the normal questions for additional information from the caller, such as escrow number and check number.

Suddenly, a co-worker who overheard the conversation flew out of her office, took the paperwork from the accounting clerk and went behind closed doors to speak with the credit card company. Karen DeWitt, an assistant, witnessed the

entire bizarre scene and contacted her operations manager with the details.

A behind the scenes investigation ensued and it was discovered the bookkeeper had stolen \$178,900 dating back to 2001. The employee who started with the Company in 1992 had established a fake escrow file to deposit stale dated checks. From that file she would issue checks from the trust account to her credit card company, herself and her parents. The checks were cashed without a second signature, only a digitized signature of the Company Treasurer.

When confronted with management's findings, the bookkeeper signed a full confession acknowledging her misdeeds, and admitted to stealing almost \$650,000!

She was immediately terminated, Ticor referred the matter to authorities for criminal prosecution and is instituting a civil suit to recover the stolen funds.



STOP

TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or
949.622.4425

MORAL OF THE STORY

Karen was not involved in the phone call from the credit card company. She was not involved in the drama of ripping away the paperwork and the confidential conversations. Karen could have easily opted to put her head down and not get involved, but

she did get involved. If it was not for her courageous actions in reporting the incident, the bookkeeper could still be stealing money from the Company to this very day.

As stated by her operations manager, Daniel Rohaley,

"It is employees like Karen DeWitt who demonstrate the fortitude to report something that just did not seem right." In recognition of Karen's actions to report the incident she has been rewarded \$1,000 on behalf of the Company as well as a letter of recognition.

FEEL the ban

Short pay lenders are serious about the principals upholding the terms and conditions placed on them by the short sale agreement. One of the most common conditions reads, "The property will not be sold within 90 days of the closing date of the subject real estate purchase contract." Short pay lenders enforce this condition by checking the chain of title post-closing to verify the property owner matches the buyer shown on the settlement statement provided them at closing.

When the title to the property is in the name of someone other than the buyer, they immediately ban the closing agent from closing any further short sale transactions involving the lender or from closing any new loans originated by the lender. The ban on the closing agent is personal and it is serious.

One of our escrow officers closed a transaction July 31, 2012. The Realtor® completed a Short Sale Affidavit spelling out the above condition not to resale the property for 90 days. The seller signed the affidavit, as did the real estate agents - but not the settlement agent or the buyer. Their information was printed on the affidavit but their signatures were never rendered. On September 27, 2012 (just 57 days later) the same escrow officer closed a subsequent sale of the subject property to a new buyer.

Months later the escrow officer was working on another unrelated short sale transaction with the same lender. The agent was notified by the short sale processor of the following message, "All of our files are sent through quality review and the settlement company and agent do not meet our quality review guidelines. You will need to submit documents with an alternative settlement agency. Thank you."

The agent did not have a clue why the short payoff lender needed to have the closing moved to another settlement agent. The settlement agent did not know either, so she reached out to the lender to find out why and this was their response:

We approved a short sale for a loan that was secured by the property located at 7519 Paradise Drive, Anytown, USA. The HUD-1 shows that this transaction was closed by an escrow officer of Fidelity National Title on July 31, 2012. All parties to the transaction, including the escrow officer, signed a Short Sale Affidavit in which the parties agree not to sell the subject property within 90 days of the close of the short sale.

However, public records show that the buyer from the short sale sold the property to another entity on September 27, 2012. A copy of the Grant Deed from the September sale was notarized by the escrow officer.

Wells Fargo Home Mortgage has concerns with



business practices that may place us, our customers and/or investors at greater risk of loss in connection with short sales – whether we are the servicer on the loan being paid off short, the lender on a new loan for the property or both.

The following business practices are unacceptable:

- » *Allowing a sale to close when the seller has not yet acquired title and paid off all liens that are not assumed (with the approval of the lender).*
- » *Producing a HUD-1 where the parties to the transaction are listed differently than the deed transferring the property shows.*
- » *Allowing a short sale to close without following all the requirements of the lender(s) being paid off for less than the full amount owed. This includes but is not limited to fee specifications, parties to the transaction and execution of all related documents.*
- » *Knowledge that the parties to the transaction are using a trust and/or transfer of beneficial interest that may mislead the current or new lender(s) as to the true identities of the parties involved.*
- » *Allowing a short sale to occur between parties that are related or affiliated by family, marriage or commercial enterprise.*
- » *Allowing a short sale to occur with an agreement or understanding between the parties that the Seller will remain in the subject property as a tenant, or will later obtain title or ownership of the subject property.*
- » *Allowing a short sale to occur without disclosing all agreements, understandings or contracts relating to the current sale, or subsequent sale, of the subject property of the short pay lender.*
- » *Allowing a short sale to close in which any*

of the parties to the short sale, including the settlement agent, will receive any proceeds or other remuneration from the short sale transaction except as set forth in the related settlement statement.

- » *Allowing a short sale to close in which any of the parties to the short sale have any knowledge of any offer to purchase the subject property for a higher purchase price than contained in the short sale purchase contract that has not been presented to the short pay lender.*
- » *Allowing a short sale to close with any knowledge that the subject property will be sold again within 90 days of the date of the short sale.*

Wells Fargo expects that settlement agents closing its transaction will not engage in this type of conduct. For this reason, Wells Fargo has declined to use your services at this time.

The escrow officer is appealing the decision of the lender banning her from closing any further short sale transactions or new loans, since she did not sign the Short Sale Affidavit containing the condition not to re-sale the property for at least 90 days. In response to the escrow officer's appeal, the transaction has been reviewed in greater detail only to discover additional discrepancies as follows:

- » *The 1st lienholder's short pay agreement only allowed \$2,000 to be paid to the second. The second lienholder demanded \$4,700. The buyer paid the additional \$2,700 at closing. She closed without the 1st lienholder's approval of the additional amount being paid.*
- » *Payment of the additional \$2,700 was not reflected in the 500 section of the HUD as a payoff, it was disclosed as a buyer charge in the 1300 section of the HUD.*
- » *After adjusting the prorations at time of*

[Continued on pg 4]

[FEEL the ban - continued]

disbursement there was an additional \$46.48 in favor of the seller. The escrow officer paid the overage to the 2nd lienholder, instead of the first who was only allowed to receive \$2,000.

- » Post-closing, the buyer received a refund of \$564.55 even though the short pay agreement indicated, “Neither the seller nor any other party may receive any sale proceeds nor any funds as a result of this transaction except as noted in this Demand Statement.”
- » The borrower on the short pay letter does not match the seller on the HUD. The borrower was a single woman who is now married. She and her new husband signed the closing documents without reference to her maiden name.

When questioned, the escrow officer’s response to the additional discrepancies were that she felt the short pay lender’s approval of the HUD was sufficient approval for the changes.

MORAL OF THE STORY

Taking the measures listed below will prevent the settlement agent and their Company from being banned from providing settlement services.

If the settlement agent is closing a second transaction on the same property, they should demand to see the short pay agreement and all other documents to ensure the property can be re-sold within the timeframe of the new contract.

- If there is more money to be paid to a junior lienholder than the 1st lienholder, the transaction cannot close without an amended agreement from the short pay lender. An approval of the settlement statement does not constitute a change in terms of the agreement.

- If the agreement states that no one in the transaction is to receive “proceeds or any funds” that means “refunds” too. No post-closing funds should be given to any party. Instead, the refunds should be sent to the short pay lender to apply toward their shortage – even if the borrower overpaid at closing.
- The seller on the settlement statement and the borrower named on the short pay agreement must match. If the borrower on the short pay agreement was later married, the settlement statement should reference her maiden name as well as her married name.

PEPPER spray?

SAFETY CORNER is dedicated to providing you with tips for being safe in your personal life. Some employees have been asking: Should I carry pepper spray?

Pepper spray can be a very powerful defense mechanism. It is an inflammatory agent that will incapacitate an assailant. Pepper spray will take down and cause pain to those under the influence of drugs and alcohol.

One of the most powerful is the triple-action pepper spray containing oleoresin capsicum and tear gas. This combination causes the eyes to slam shut and causes uncontrollable choking. The tear gas causes profuse tearing and disorientation.

What is the third item which makes up the pepper spray? A UV dye to invisibly mark an assailant which may aid in identification.

When deciding if you want to carry pepper spray, first check your state laws to confirm if it is legal to carry pepper spray or mace. Each state has different rules and regulations which may include what size or concentration you may carry.

If you are flying on a commercial aircraft you cannot carry pepper spray. If you attempt to carry pepper spray on board, you will be violating Federal law and may be fined up to \$25,000. Pepper spray is also not allowed in Federal Buildings or at work.

Once you have done your research and determined if you would like to purchase a triple-action pepper spray, you can purchase it from S.A.F.E. at www.justbesafe.com. Once there, click on SAFE store.

SAFETY CORNER

FORBIDDEN

California Civil Code Section 2948.5 restricts lenders from charging more than one day interest from the date the loan is funding until the date the funds are disbursed for the benefit of the borrower. In most cases, the settlement agent makes all the disbursements. As a result many lenders require the settlement agent to disburse timely, or the closing agent will be required to refund the additional days of interest charged to the borrower. Read on to find out what action one lender took when their instructions were not followed.

On September 18, 2012, Provident Funding® sent loan funds to Chicago Title. The funds were received late in the day and the settlement agent was unable to record the file until the next day. On September 20th, the file was disbursed.

On October 4, 2012, Provident Funding contacted the settlement agent pointing out the language in their closing instructions which states:

“The lender requires that the loan proceeds be disbursed within one (1) calendar day of the loan funding as required by CFC Section 50204. In the instance the funds are not disbursed within one (1) calendar day, the closing agent will be required to refund the additional days of interest charged to the borrower until the funds are disbursed.”

The lender advised the settlement agent to reimburse the additional day’s interest and send over an amended HUD-1. The settlement agent ignored the request. Again, on October 29, 2012 the lender contacted the settlement agent with the same instructions. The settlement agent did not respond.



On January 30, 2013, the lender sent an email to the settlement agent stating:

“Your office is no longer permitted to close loans on behalf of Provident Funding.”

The settlement agent’s failure to comply with timely disbursement and to respond to the lender’s requests resulted in her entire office being forbidden from closing new loans for the lender.

MORAL OF THE STORY

It is important to read, understand and comply with the lender’s closing instructions. If you are unable to comply, be sure to communicate this with the lender to find an alternative. Failure to comply can result in you - as well as your entire office - being forbidden from closing future transactions with a lender.