



# FUNNY feeling

By Lisa A. Tyler  
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Time and time again we publish stories where an escrow officer had a funny feeling about a transaction only to prove their funny feeling was warranted. The story entitled “COMMON law marriage” is no different. The parties described in the story consented to a marriage, but had no marriage license issued by the government and no marriage certificate filed with a government entity.

The lack of a license or certificate, however, did not make their marriage invalid. In fact, their marriage is just as valid as a couple with the appropriate paperwork. In community property states, like California, that marriage creates a spousal interest in the real estate holdings of either party to the marriage.

The spouse’s community interest in real estate has to be resolved before title can transfer to a new owner. Read the story to find out how the escrow officer’s funny feeling lead to the discovery of a common law marriage of a seller

in a recent sale transaction.

Are you a commissioned notary? Then you need to read “KNOW your liability risks.” It contains a quiz that will increase your awareness of the personal liability your notary commission carries when you are using it outside the scope of your employment with the company.

Read SAFETY CORNER to discover what steps to take if your identity is stolen.

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## **COMMON** law marriage

**The transaction involved a beneficiary to a deed of trust who would not cooperate, third parties who kept trying to influence the escrow officer to close the deal without proper instructions and a seller who went MIA. As usual, our escrow officer never wavered from sound, basic escrow practice - protecting the Company and preventing a potential claim. Read on to find out how...**

RaeAnn Fay, an escrow officer in Fresno, Calif. with Fidelity National Title, opened a sale transaction. The sales price was \$214,500. The seller held title as a single man and the title report revealed only one lien against the property. The beneficiary listed on the lien was an individual.

RaeAnn obtained the beneficiary's contact information from the seller and called him several times. When he finally responded he directed her to work with his protégé, Paul. RaeAnn explained what she needed in order to pay the loan off at closing; the payoff demand, original note, deed of trust and request for reconveyance. Upon receipt of the documents RaeAnn noticed a 50% interest in the note was assigned to a self-directed IRA – for benefit of Paul's wife!

RaeAnn informed Paul she needed to speak with the custodian or trustee of the IRA. The custodian was very confused and unsure what to do, but did require an assignment to the deed of trust be signed by the original beneficiary and recorded. The escrow officer, buyer, new lender and seller all waited until this was done and an updated prelim could be issued. After several weeks RaeAnn finally obtained all the documentation she needed to pay off the loan. The whole time she received pressure from the seller to close.

The seller was planning on leaving town so he made an appointment to come in and sign his closing documents early.

At the signing, he and his real estate agent talked about how they were both leaving town. The seller was leaving for Las Vegas and the agent was heading to China.

Something they said in their conversation made RaeAnn question the seller's marital status. She asked him if he was married and he said no, but not with confidence. RaeAnn was suspicious, but he signed an affidavit confirming his marital status so the document was accepted.

Three days later the receptionist called RaeAnn to let her know the seller's wife had come by to drop off a power of attorney (POA). The POA appointed the seller's wife as his attorney-in-fact. Huh, his wife?

RaeAnn sent the POA to her title officer for review and informed him the attorney-in-fact was the seller's wife and asked him to update the title report reflecting her spousal interest. The title officer approved the POA and sent an updated title report which included two new liens.

The liens were for the benefit of the State Board of Equalization and against the seller's wife. The amounts due were just over \$62,000. RaeAnn called the seller and left a message stating she needed to discuss an interspousal deed and additional liens which would have to be paid.

Meanwhile, the buyer signed his loan documents. The seller's business partner, Tommy, called RaeAnn back. She explained to Tommy she needed to speak with the seller directly. Tommy indicated the seller was unavailable, and asked what she needed. RaeAnn asked where he was. Tommy again avoided the question, offering to help her himself. She reiterated she needed to speak with the seller.

Tommy told her the seller's wife has been appointed as his attorney-in-fact so RaeAnn should contact her. Knowing she needed to have the wife sign an interspousal deed, RaeAnn

contacted the wife to schedule an appointment for her to come into the office.

RaeAnn knew she was going to be pressured into allowing the attorney-in-fact to sign the final closing statement. She was very uncomfortable since the new liens being paid would financially benefit the wife. Additionally, she did not understand why the seller could not be contacted. All she needed was a fax number or email to send the closing statement to him. She did not need an original signature.

RaeAnn contacted National Escrow Administration for a second opinion. The Corporate Escrow Administrator agreed with RaeAnn's concerns. Armed with the backing of National Escrow Administration she confronted the wife when she came in to sign the interspousal deed.

RaeAnn looked the wife in the eye and asked her if they were married or not - pointing out the language included in the POA which stated they had been married since 1996. The wife explained they had a civil ceremony and they never signed or filed a marriage license. At this point they assumed they were married by common law.

RaeAnn explained to the wife in order to proceed she would treat them as if they were husband and wife and have the wife sign a deed conveying her spousal interest. Then RaeAnn asked her where her husband was. The wife finally admitted he was arrested and being held in a New York jail!

RaeAnn explained to the wife she needed to obtain her husband's signature on the closing statement. The wife asked why, reiterating she was his attorney-in-fact. RaeAnn explained she was not willing to move forward without the husband's approval of the closing statement.

The wife reluctantly provided RaeAnn with the fax number for her husband's New York attorney. RaeAnn faxed the



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closing statement over to the attorney along with specific instructions requiring a copy of the attorney's business card be faxed back to her. The attorney called her and asked what she needed.

RaeAnn explained she was handling the sale of a home owned by his client and she needed his signature on the closing statement since it included the payment of over \$62,000 in state tax liens for the benefit of his wife. The attorney said he needed to check with the U.S. Attorney's office to see if the sale of this home was allowed.

RaeAnn called National Escrow Administration to provide an update. The Corporate Escrow Administrator pointed out the Company needed to know if this property was subject to seizure or a RICO lien. In order to insure the new owner, the Company needed confirmation there was not a lien filed and whether one was going to be filed against the property. In the U.S., federal agency liens have priority over purchase money mortgages and are good for 20 years.

RaeAnn called the seller's attorney back. The attorney had obtained the seller's signature on the closing statement and explained the U.S. Assistant Attorney indicated they did not intend on seizing this property. RaeAnn asked for the U.S. Assistant Attorney's contact information. He provided it to her along with the inmate and case numbers.

The Corporate Escrow Administrator consulted with Rod Pasion in Underwriting to ensure we were taking all measures to safely insure the buyer and new lender on this sale. Rod explained the U.S. Attorney's office met with the title insurance industry years ago, and they agreed to promptly record their notice of seizures. Since then they have been quite diligent in timely recording their notices.

As an extra precaution the Corporate Escrow Administrator called the U.S. Assistant Attorney and confirmed they had already filed liens against the properties they intended on seizing. If a lien was not of record, it was not a property they intended to seize. RaeAnn emailed her title officer asking him to bring the title search to date to confirm there was not a seizure notice recorded against this property.

There was no seizure notice, but another lien against the wife showed up; an IRS tax lien for just over \$13,000. The buyer had just signed loan documents, for a second time. The lender indicated the lock on the loan would expire in two days.

RaeAnn delivered the latest update to the buyer, his real estate agent, the loan officer and the listing agent who had just returned from China. She explained it would take a few weeks to obtain a payoff statement from the IRS, assuming the deal would be dead since the buyer's lock was expiring.

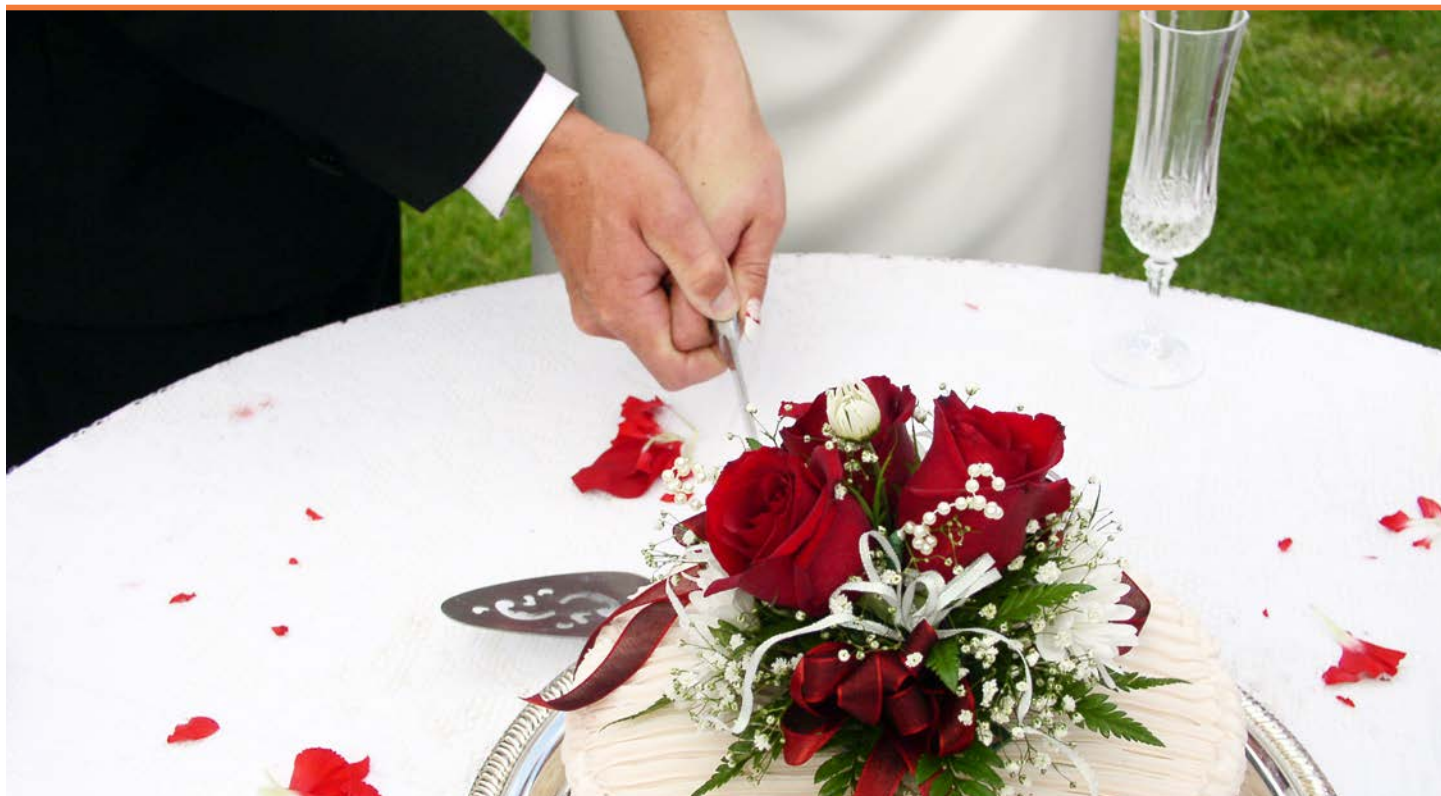
RaeAnn was wrong about the deal being

dead. All the parties agreed to wait. The buyer really wanted the house and the seller needed to sell. RaeAnn ordered the payoff from the IRS and everyone waited for it to come in. The seller's attorney was also on standby to obtain the seller's signature on the final closing statement along with the IRS payoff.

Although this story had several twists and turns – starting with an uncooperative beneficiary, then a surprise wife and finally a missing seller – RaeAnn made very reasonable requirements in order to proceed with the closing and protect the Company.

RaeAnn received a lot of pressure from both the seller's business partner and wife, who tried to hide where the seller was. They kept indicating the wife could sign since she was appointed as the seller's attorney-in-fact. Since the seller told RaeAnn he was single, and even signed an Affidavit confirming this, RaeAnn wanted to be sure he was fully aware of the fact she knew he was married and would be paying off his wife's liens with the proceeds from the sale.

Lastly, she worked with the seller's attorney, the National Escrow Administration team and title to ensure the property was not in danger of being seized in relation to the charges the seller was facing. For her persistence and careful attention to all the issues which came up in this transaction RaeAnn has been awarded \$1,000.





# KNOW your liability risks

This article is being re-printed with permission from the National Notary Association. Many of our settlement agents are also commissioned notaries. The quiz below is an excellent opportunity to remind settlement agents who are commissioned notaries of their liability if they choose to notarize documents on their personal time or documents which are not related to a real estate transaction where the Company is the title insurer or escrow agent. Take the quiz below to find out exactly what the risks are.

## Test Yourself: Liability Risks

Mistakes can happen when performing a notarization. All too often, Notaries remain unaware of the risks they face and the protections available to them to shield against serious financial consequences. Take our quiz and test your knowledge about liability risks and how prepared you are to deal with them.

### Multiple Choice:

- Notaries are required to have insurance protecting themselves from liability:
  - In every state
  - In California, Florida and New York
  - In California only
  - In no state
- Who does a surety bond protect from financial loss resulting from a Notary's mistake?
  - Both the signer and Notary
  - The Notary only
  - The signer only
  - The agency that issued the document
- An Errors and Omissions Insurance policy protects a Notary from liability costs if:

- The Notary makes an unintentional error
- The Notary deliberately commits an improper act
- The Notary commits either a deliberate improper act or an unintentional error
- The Notary is physically injured by a signer

### True or False:

- If a Notary has a surety bond, the Notary does not need Errors and Omissions Insurance.
  - True
  - False
- A surety bond must be repaid by the Notary if any damages are paid out of the bond.
  - True
  - False



### ANSWERS

- Answer: D. No state requires Notaries to carry insurance policies protecting themselves from liability damages in the event of a lawsuit. Notaries who make unintentional mistakes and do not have insurance policies may find themselves paying hundreds or thousands of

dollars in damages – even if the mistake was not intentional.

2) Answer: C. A surety bond only protects the signer. The bond guarantees that a signer will be repaid up to the bond's maximum amount, should the signer suffer financial loss resulting from an improperly performed notarization. A surety bond does not cover a Notary in any way if the Notary is sued for negligence.

3) Answer: A. An errors and omissions (E&O) policy will cover a Notary who is sued for committing an unintentional error during a notarization; however an E&O policy does not cover deliberate fraud or improper acts committed by a Notary, such as backdating a document, ignoring identification requirements or purposely entering false information on a certificate.

4) Answer: False. A surety bond is not an insurance policy for Notaries. The bond only protects signers from financial loss. Notaries who want coverage protecting themselves from financial loss from a lawsuit must take out an E&O policy for themselves.

5) Answer: True. Any money paid to a signer from a surety bond must be paid back in full by Notary to the bonding company.

The National Notary Association can help. To obtain a quote for the cost of an E&O policy of your own check out their prices at: [http://www.nationalnotary.org/bonds\\_and\\_insurance/errors\\_and\\_omissions/index.html](http://www.nationalnotary.org/bonds_and_insurance/errors_and_omissions/index.html). For more information and additional resources check out their website at [www.nationalnotary.org](http://www.nationalnotary.org).

# REPORT identity theft

**SAFETY CORNER** is dedicated to providing you with tips for being safe in your personal life.

If your identity is stolen follow these three simple steps:

- Place an initial fraud alert on your credit report.
- Order your credit reports.
- Create an Identity Theft Report.

**Step 1:** Call one of the nationwide credit reporting companies, and ask for a fraud alert on your credit report. The company you call must contact the other two so they can put fraud alerts on your files. An initial fraud alert is good for 90 days.

- **Equifax:** 1.800.525.6285
- **Experian:** 1.888.397.3742
- **TransUnion:** 1.800.680.7289

**Step 2:** Each company's credit report is slightly different, so order a report from each company. Read your reports carefully to see if the information is correct. If you see mistakes or signs of fraud, contact the credit reporting company. ID theft victims get a copy of their reports for free.

**Step 3:** An Identity Theft Report can help you get fraudulent information removed from your credit report, stop a company from collecting debts caused by identity

theft and get information about accounts a thief opened in your name. To create an Identity Theft Report:

- File a complaint with the FTC at <https://www.ftccomplaintassistant.gov/>. Your completed complaint is called an FTC Affidavit.
- Take your FTC Affidavit to your local police station (or to the station where the theft occurred) and file a police report. Get a copy of the police report.

These two documents comprise an Identity Theft Report.

Recovering from identity theft can be very

time consuming. It is important to act fast completing the steps above. For more information log on to the Federal Trade Commission website at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft).

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