



# TITLE examiners are heroic!

By Lisa A. Tyler  
*National Escrow Administrator*

All title company personnel should be alert to red flag warnings associated with uninsured instruments. Red flags are clues to exercising the watch; wonder; wave approach. Find out what the steps truly mean by reading the article entitled "WATCH; wonder; wave" where a heroic title examiner prevented a future claim and potential bad press against the Company.

"IN the big house" is another story about a heroic title examiner and her discovery of a forged deed. This story proves the examiners at the Fidelity family of Companies are the best in the industry and truly take pride in

their workmanship.

Have you checked yourself out lately? You should! Chances are somebody else is checking you out and that somebody is likely a prospective customer. Real estate agents, lenders and consumers search through Internet sites such as Google™ and Yelp to learn more about the company and its employees prior to opening their real estate transactions.

These sites provide them with a non-committal environment where they can gauge stability, quality of service and past performance without ever having to engage with you. "INTERNET search" is an article you must read if you are interested in managing your personal

image and professional reputation.

This edition contains story two of twelve regarding FIRPTA nightmares. This story provides more proof that there are just some things you do not know and as a result should not try to help the customer understand. Instead direct them to a tax professional.

## IN THIS ISSUE



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## **WATCH;** wonder; wave

**Kathie Healy, senior title examiner at the Portland Central Processing Facility (CPF), read legal bulletin FGOR-2010-12, that directed her to “Watch; Wonder; Wave” if and when she ever ran across an uninsured deed in a chain of title. The bulletin, issued in 2010, obviously stuck with her through the years and helped her prevent elder abuse as well as a potential title claim.**

A Ticor Title Company escrow officer in Portland, Ore. opened a \$305,000 sale of a residential property and placed a title order for a preliminary report/commitment. The order was assigned to Kathie Healy, one of the Company’s best and brightest examiners. During her examination of the chain of title documents for the subject property, she discovered a deed with many red flag warnings:

- » Deed was uninsured – not recorded by a title company
- » DIY – “Do It Yourself” deed from a stationery store
- » Handwritten (not legible)
- » Notarized in Umatilla County, where there was no evidence the Grantor ever resided
- » Deed reflected consideration of \$1
- » Grantor is a widow – husband died in 2011
- » Grantor is likely elderly – owned the property since 1985
- » Property is unencumbered

After discussing these matters with her chief title officer, Kathie created an exception for the deed on her title report and called for an uninsured deed affidavit signed by the grantor, that it was her voluntary intent to convey all of her interest to the grantee.

The report was sent out to the parties to the transaction and arrangements were made for the widow, former property owner, to appear in one of Ticor’s offices to sign the affidavit which read in part:

*On or about July 7, 2013, I executed a deed wherein I conveyed the above described property to my daughter-in-law. The deed recited the consideration as \$1. The deed recorded on August 1, 2013 in the Multnomah County Recorder’s Office.*

*The true and actual consideration was the promise by my daughter-in-law and my son to take care of me in their home for the remainder of my life in exchange for me conveying my property to them.*

Next, the escrow officer received a call from the Multnomah County aging services about possible elder abuse. The escrow officer notified Kathie, and she investigated public records which showed the daughter-in-law had divorced the son in 2012. He was not even named on the deed from his own

mother. Then, the daughter-in-law filed bankruptcy and was now running a massage parlor at the property address.

The escrow officer thought the deal was going to cancel. Luckily, bringing the Mom down to Ticor’s office to sign the affidavit raised some questions with the four children and resulted in the appointment of a conservatorship for the property owner, which means she is now a legally protected person.

The buyer – a religious institution – was willing to wait until the conservatorship was finalized as they really wanted to purchase this property. Once the conservatorship was appointed, all proceeds from the sale would be held by the conservator and not the daughter-in-law.

Watching for suspicious circumstances; Wondering about the validity of the uninsured deed; and Waving to her chief title officer for assistance were exactly the right steps taken by Kathie. Her knowledge and experience prevented a potential claim. For her efforts she has been rewarded \$1,000 and a letter of recognition from the Company.



### **MORAL OF THE STORY**

**Calling for the uninsured deed affidavit created enough attention for the children to start asking questions. If the transaction closed without the affidavit and the ultimate appointment of the conservator, it is likely the children would have contested the validity of the deed to the final buyer – the religious institution. The Company would have had to defend the buyer’s ownership interest under the terms of the owner’s policy that it purchased at closing.**

**STOP**

**TELL US HOW YOU  
STOPPED  
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# IN the big house

**The vesting on the open order sheet did not match the vested owner of record. That is not an unusual discovery in the title industry, but this time it triggered the title examiner to dig deeper and to uncover a forgery!**

A Fidelity National Title escrow branch in Denver opened a sale transaction in the amount of \$450,000 and ordered the title report/commitment. The title examiner, Venita Ogle, noticed the open order sheet reflected the property owner as an Estate of a named individual. The most current deed, however, reflected the owner as an LLC.

There was no death certificate of public record for the decedent, so Venita was unable to determine if he died prior to the deed to the LLC. She looked at previous deeds of trust in the chain of title to compare the decedent's signature to the signature on the deed to the LLC.

The signatures were not the same at all. It had been seven years from the date of the deed of trust to the most recent deed and signatures. Signatures change over time, but the discrepancy was drastic. Venita was even more suspicious the deed to the LLC might contain a forged signature for the decedent.

Venita contacted her title underwriter, Andy Baker. He agreed the signature on the deed had to have been forged. He advised Venita to prepare the title report showing title vested in the Estate and the LLC.

Venita prepared the report showing both entities and called for a deed from the Estate and the LLC. She created a second requirement for the death certificate for the decedent, as well as the organizational documents for the LLC. She noted under the requirements the documents would have to be further reviewed by underwriting prior to closing and insuring of this transaction.

When the listing agent and the attorney selling the property and settling the Estate of the decedent received the report they were shocked. Not only was the decedent a client of the attorney, but he was also a former colleague. The decedent had been a partner at the same law firm.

The attorney knew the decedent had not deeded the property prior to his death. The deed was executed in May 2013 and the decedent died in June, which raised more questions so the attorney began to investigate who signed the deed.

The attorney started with the notary – who would not return his calls or mailed requests for more information. After much investigation, the attorney discovered the managing member of the LLC is currently serving time in the big house for forgery and a list of other crimes. The listing agent and the attorney were thankful to Venita and Fidelity National Title for catching the forged deed and showing the additional requirements on the deed.

The attorney is working to file a Quiet Title Action to remove the effects of the forged deed, so he can sell the property. He also contacted the secretary of state to report the notary's bad deeds and requested her current address so he can take further action against her.

For Venita's detection of the forged deed she has been rewarded \$1,000 and a letter of recognition on behalf of the Company.

## MORAL OF THE STORY

**Venita's discovery did not prevent a crime. The crime in this story had already taken place. Her keen examining skills provided notification to the attorney settling the Estate of the forged deed on title and enabled him to act swiftly to take corrective measures. When the property's title is cleared and the property is ready to be sold, we are confident the attorney will be sure to place this and all future title orders with Fidelity National Title.**



## INTERNET search

**Now, more than ever, it is important to take stock of how you and your company appear online. Brand management – personal and corporate – has an impact on future business and how buyers and sellers judge your abilities.**

A search of your name on the Internet enables you to see otherwise unsolicited customer feedback. For instance, if a customer felt your services were not delivered as expected, rather than tell you, they might post their feedback on websites such as Yelp or Twitter®. Periodically searching the Internet provides you the opportunity to reach out to an unsatisfied customer and resolve their issues and possibly turn them into not only a satisfied customer, but an ally of both you and the company.

One of the easiest ways to find out if people are talking about you or your company is to set up a Google Alert™. You may want to set up several types of alerts such as your full name, your primary email addresses and some variants of the Company name such as Fidelity National Financial, FNF, FNTG, etc. Then anytime information – good or bad – is posted to the Internet you are notified. Otherwise, it is a good idea to search your personal and company name and email addresses at least every month to ensure customers and consumers stay satisfied with the services you have provided.

When a customer is satisfied with the services you have provided, ask them to write a good review. A testimony will go a long way in

steering prospective customers to you and will also bring into question any negative posting against you or your company.

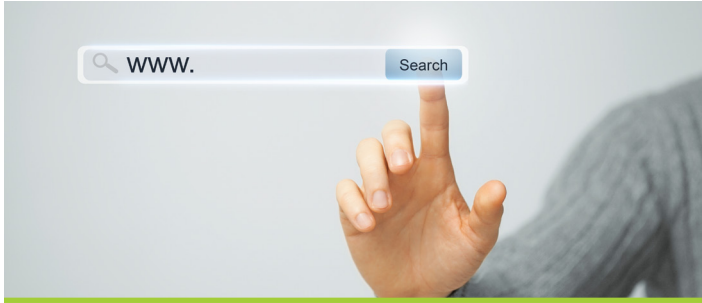
Your Internet search might find instances where someone used the company's name and/or an employee's name without permission. This is done to lend legitimacy to a fake transaction.

We have had individuals claim escrow officers were holding "proof of funds" for potential buyers; when the escrow officers had never worked with the individual. We have had individuals claim they had open transactions with our Company, when, in fact, we had no dealings with them whatsoever.

[Continued on pg 4]



[INTERNET search - continued]



#### MORAL OF THE STORY

In addition to brand management, an Internet search of yourself and your company keeps you informed as to others who might be using your good name illegally. If you identify illegal use of your name or the company name, do not ignore it! Report it to us at [settlement@fnf.com](mailto:settlement@fnf.com). It is important to us and our continued good-standing reputation.

## FIRPTA nightmare #2

**The seller filed an 8288-B “Application for Withholding Certificate.” This means escrow needs to have the principals sign the FIRPTA Holdback agreement and the buyer STILL needs to complete the 8288 and 8288-A (which are held in the closed file along with 10% of the gross sales price pending the decision by the IRS whether they will grant the seller a reduction or waiver of the withholding).**

Instead, immediately after closing the operation sent the 8288, 8288-A and the funds to the IRS. Fast forward and the seller is granted a reduction in the withholding amount. Only \$5,800 was due. The seller was expecting the closer to issue them a refund in the amount of \$14,950. Problem was the closer did not have the money.

She and her manager explained to the seller what happened. The seller was not happy, but decided to file a tax return to obtain the refund. When the tax return was filed, the IRS responded by indicating they did not receive the payment. The seller went back to the closer.

The closer provided proof that the payment was sent in, when it was delivered to the IRS and gave a copy of the negotiated check. Turns out the check was credited to the buyer's TIN.

The closer did not follow the policy and procedure described in Tech Memo 120-2010. Procedures which have been put in place in order to prevent errors like this one. Procedures that (when not followed) create huge problems for our customers.

What procedures were not followed? The check remitted did not reference the buyer's name, the seller's name or their ITIN numbers. In addition, the office failed to obtain a completed 8821 from each buyer and seller.

To make matters worse, the buyer received a notice from the IRS indicating he owes \$21,000 plus penalties and interest. Why? The IRS did not know which account to credit the payment to because the check did not include a name and U.S. TIN.

Our company does have a dedicated representative at the IRS who is supposed to assist us with FIRPTA issues. Lisa Tyler is the person designated on behalf of our Companies to contact this representative. Sometimes this representative assists with errors in postings of the payment. In this case, we were lucky – the representative was able to find the payment and post it.

In the meantime, the seller was furious and wanted the \$14,950 back. The escrow officer's manager explained the payment had not been credited properly, but should be at the time of the conversation.

Unfortunately the correction takes about a week to show up in the IRS system.

A week later the seller called again. The payment still did not appear as a credit. Lisa Tyler contacted the IRS who admitted the payment was credited to the buyer's taxpayer identification number as the withholding agent, not the seller. She said she would correct it, but it would take another week to appear on the seller's taxpayer identification number. A week later, the credit was still not there.

Lisa contacted the IRS, yet again. The IRS agent explained she was unable to move the payment to the seller's account because when she did, it caused a penalty to the buyer. This was beyond her pay grade and she had to escalate the issue to someone else. She had no idea when it would be corrected.

Although many of the mistakes made were made by the IRS, the first mistake was made by the escrow officer who sent the funds in before the IRS issued a Withholding Certificate.

Remember, at the beginning of this story the seller filed IRS Form 8288-B Application for Withholding Certificate. The buyer and seller both signed our FIRPTA Holdback instructions, which meant they and the closer agreed to hold the funds until a decision is made by the IRS. Once the Withholding Certificate is received, only the actual amount due is remitted to the IRS and it is not due until 20 days after the Withholding Certificate is issued. Had the closer held the funds, the seller would already have their \$14,950.

