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*National Escrow Administrator*

In the January 2009 edition we ran a story involving would-be-crooks attempting to purchase real estate repeatedly using a “Bonded Promissory Note.” In the story the settlement agent was asked to work up an estimate of the full purchase price plus closing costs. The buyer would then deposit the Bonded Promissory Note into escrow for the full amount and instruct the settlement agent to deposit the note, as if it would pay at the bank. At that time, sellers were desperate to unload their properties and accepted offers from crooks on a regular basis, only to find out they really did not have the money to complete the purchase.

In the April 2012 edition we reported the not-so-mastermind behind the scheme was convicted and faced up to 30 years in federal prison without parole, as well as monumental fines. Fast forward to 2014 and there is a new twist to the scheme and a whole new “mastermind” behind it. Read “HOW to steal a mansion” to discover the latest tactics in the plan to purchase real estate with no real money.

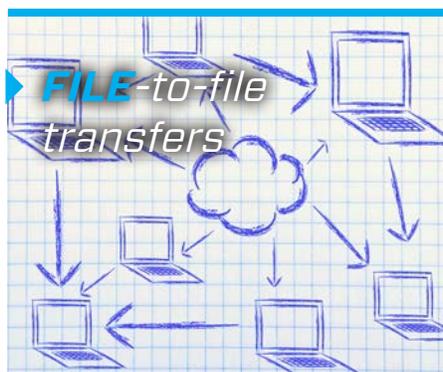
There is a reason file-to-file transfers of escrow funds require management level approval. We have learned over time that employees who have helped themselves to funds out of the escrow trust account, have to replace the money they stole. Most often they cover their tracks by using funds from another escrow file

– typically dormant funds no one is looking for.

At some point, luck runs out and it becomes a challenge for the thief to unwind all the transfers to make the principals whole. Read the story entitled “FILE-to-file transfers” to discover how an escrow officer’s defalcation ultimately led to a prison sentence.

This edition contains the third story in the continuing saga of FIRPTA nightmares. Unfortunately, this story is all too common in the untimely remittance of funds to the Internal Revenue Service (IRS). Many offices, just like the one in this story, miss the 20 calendar day deadline and end up paying costly penalties and interest as a result.

**IN THIS ISSUE**



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## HOW to steal a mansion

The Property listing reflected an 8,141 square foot home as having seven bedrooms, 10 bathrooms, a four car garage and a guest home (mother-in-law quarters). The home was newly constructed, but unfinished. The construction lender had to foreclose and take the property back and sell it as an REO (bank owned) property.

On December 27, 2013, Jackie Lamar, an escrow officer with the law firm of Penfold & Long, P.C. in Dallas, received a copy of an offer made online for the mansion in the amount of \$549,900 (full list price). The office of Penfold & Long is a fee attorney closing office for Chicago Title Company.

The online offer form was sent to Jackie along with a copy of what she thought was the earnest money deposit of \$5,000. The deposit was tendered in the form of a Money Order sent directly and made payable to the asset manager. Upon closer inspection Jackie realized the money order did not just represent the earnest money - it was for the full amount of the purchase price \$549,900!

The listing agreement called for a commission to be paid to the buyer's agent in the amount of \$10,668 and the contract called for an additional \$5,499 to be paid by the buyer to the agent at closing. Needless to say the agent was anxious to close this transaction.

The contract called for a closing date of January 15, 2014. In anticipation of the closing, the asset manager deposited the money order and on January 3, 2014 wired the \$549,900 to Jackie's office.

Jackie reviewed the offer and the other attached documents. The following did not make any sense:

- Registered Funds Certificate payable to the Department of Treasury/IRS in the amount of \$549,900 for an unrelated estate which read in part as follows:  
*This instrument is tendered for full satisfaction and accord on obligation represented by account number above, UCC 3-310, 3-311(b). I hereby claim my inherent right to Accept for Value any instrument(s) issued for Value.*
- IRS Form 1099-C Cancellation of Debt, reflecting the asset management company as creditor, the estate as the debtor and amount of debt discharged as \$549,900.
- IRS Form 1099-A Acquisition or Abandonment of Secured Property, reflecting the asset management company as borrower, the estate as the lender and the balance of principal outstanding as \$549,900.
- A memo that read in part:

**Fiduciary:** *This is a credit issue set-off item with an attached charging instrument that has been accepted by the principal. It is to be presented through electronic medium by Fedwire® to access a pre-established UCC contract treasury trust account used for this purpose.*

- UCC Financial Statement Amendment naming the asset management company as a partial assignee of an existing financing statement and the filer as the estate.
- Affidavit of Individual Surety claiming the estate as owner of surety bonds owned by the U.S. Government.
- Release of Personal Property from Escrow – not signed but clearly notarized. Whose signature was the notary acknowledging?
- Release of Lien on Real Property – not signed but clearly notarized.
- A document literally entitled, "Taken for value and accept as truth and discharge by bond. In exchange for closure and settlement of the account." It was written "without recourse" (of course).
- A notarized letter from the buyer that allowed the account involving the subject property to be "settled."
- Form 1040-V Payment Voucher in favor of the estate in the amount of \$549,900 which reads:

*No portion of this presentment is intended to harass, intimidate, offend, conspire, blackmail, coerce, cause anxiety, alarm or distress or impede any public procedure, any affirmation contrary to this certified statement will comprise a confession of fraud upon the court and the public.*

- An Allonge (modification to promissory note) claiming public debt was placed on the estate by the United States containing a diagram showing the intent of the House and Senate of the United States of America as assembled on June 5, 1933 to provide a remedy to the people in response to charges against the Federal Reserve Bank system for conspiracy, fraud, unlawful conversion and reason in taking all of the gold from the people.

This file gave new meaning to the phrase "If you can't dazzle them with brilliance; baffle them with bull\$#@%!" The documents looked official, since they all contained the property address and the name and address of the asset management company. However, all the above documents were written with legal jargon inserted in every sentence until the sentence made absolutely no sense.

Jackie was suspicious, to say the least. Even though she received the wire for the full purchase price and the buyer was prepared to close, she thought she should just make sure the money order cleared at the bank, especially since the asset management company happened to be a wholly-owned subsidiary of the Fidelity Family of Companies.

[Continued on pg 3]



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## [HOW to steal a mansion - continued]

On January 3, 2014, she picked up the phone and called the asset management company to make sure the funds they received cleared the bank. On January 15, the day of closing, the asset management company finally called Jackie to notify her that the money order was, in fact, not good and had been returned to their bank as counterfeit. The asset management company contacted the listing agent to let them know the deal was dead.

Jackie's expertise and actions saved the FNF Family of Companies from a potential loss. Had she disbursed the funds in her trust account to the REO Bank and recorded the deed to the buyer it could have taken weeks, if not months and multiple court actions, to unwind the transaction after the asset management company discovered the money order was counterfeit. For her heroic acts, Jackie has been rewarded \$1,000 and a letter of recognition from the Company.

### MORAL OF THE STORY

**When the parties to a transaction provide erroneous, non-standard documentation, do not be too intimidated to ask questions. If you have not seen the types of documents being presented, you should be suspicious, since contracts, deeds and other documents used to conduct real estate transfers have not substantially changed in decades!**

## FILE-to-file transfers

**On August 9, 2010, an escrow assistant received a call from a representative of XYZ Land Company, LLC, and the buyer in a commercial transaction. He said he was closing out the books for the LLC for the 2009 year and discovered they did not receive a credit for an earnest money deposit at a May 9, 2009 closing in the amount of \$25,000.**

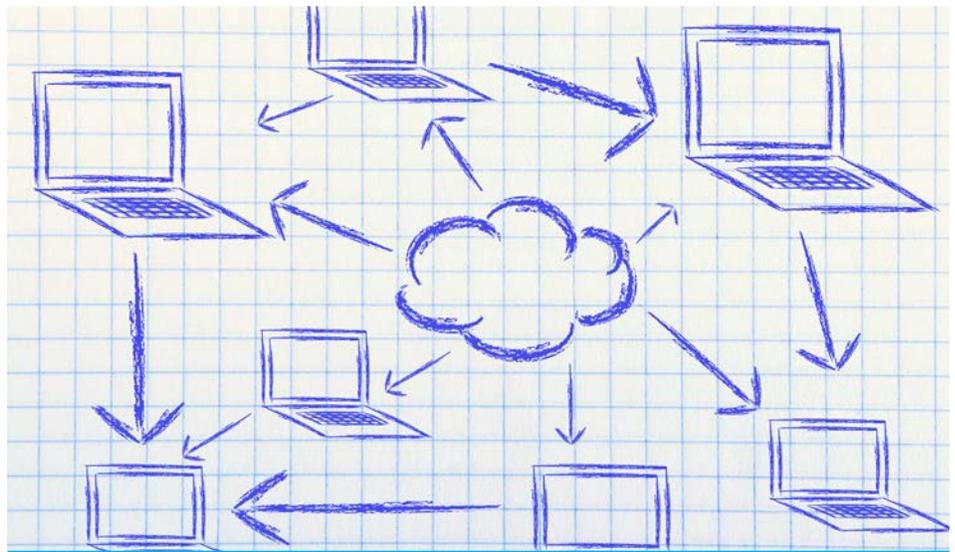
The assistant was unable to locate the funds. They were no longer in the closed escrow file. She contacted the manager at the Operation Accounting Center (OAC) and turned the matter over to her.

An investigation by the manager at the OAC revealed that on May 1, 2009, the escrow officer for this particular transaction had transferred \$25,000, labeled as "earnest money transfer" to an unrelated escrow file. The manager dug further and discovered the escrow officer had transferred funds amongst various files in order to conceal that she had deposited funds into her personal account in October 2008 by ordering several cashier's checks made payable to the bank in an amount totaling \$25,000. The account where those cashier's checks were deposited is the same account where the escrow officer's paychecks were deposited.

The accounting center manager expanded her investigation by reviewing every transaction where the escrow officer created a disbursement to her bank, as well as every transaction where she transferred funds from one file to another. She uncovered 115 disbursements totaling \$787,053.12.

Additionally, there were two instances where the escrow officer cut checks directly out of an escrow file payable to her bank and deposited them into her checking account, and one instance where she cut a check to pay her mortgage payment. These three transactions totaled an additional \$19,749.40.

These defalcations occurred between



February 2005 and March 2010. The nature of the scheme was a combination of theft of dormant funds overcharging fees, payoffs, taxes or neglecting to refund overages to the proper party at closing and then depositing overages into her personal bank account.

At the request of the account manager, the bank froze the escrow officer's personal bank account. However, the bank indicated there was very little money in the account.

Since this defalcation was uncovered, the operation has taken the following steps to prevent a similar incident:

- » Automatic lockdown on escrow files containing dormant funds
- » File-to-file transfer requests must be reviewed and completed by the accounting center
- » Checks cannot be made payable to the Company for the purpose of transferring funds from one file to another
- » Cashier's check service requires secondary escrow review prior to ordering the check

The escrow officer had been employed by the Company since 1994. She was terminated in May 2010 due to a reduction in workforce, prior to the discovery of her theft.

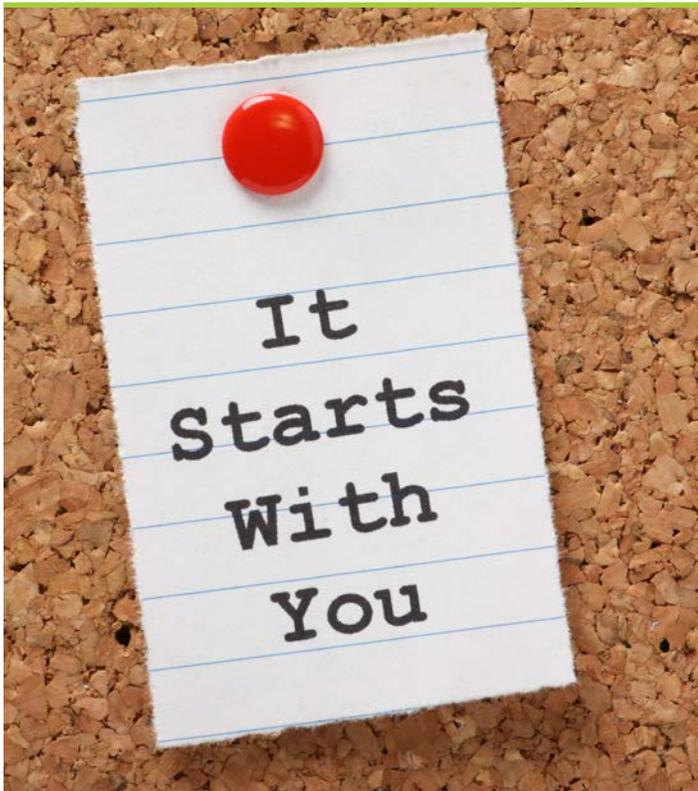
The accounting center manager opened a claim for the missing funds and worked diligently to determine the rightful owners of the stolen escrow funds so they could be made whole. This matter was reported to local law enforcement and the U.S. Attorney's Office, as well as the FBI, IRS and the Department of Insurance. The Company has retained counsel and is pursuing the escrow officer for recoupment.

### How Long Does Justice Take?

Fast forward three years later, the escrow officer in this story was finally sentenced after pleading guilty to stealing \$773,303.34. She was convicted of three felony counts of theft. She is now 60 years old and was sentenced to serve five years in prison for each offense. Each sentence will be served concurrently.

# COUNTERSIGNER'S responsibilities

As a result of the "FILE-to-file transfers" story and others just like it, FNF's corporate audit director, Melissa Alex, decided to share the following message with our readers.



The importance of the escrow disbursement reviews and second signatures seems to have been lost for some escrow officers. It is imperative that escrow officers understand the duties of an authorized trust account signer extends past simply signing their name. Regardless of the amount, two signatures are required on all escrow checks and outgoing wires, and all disbursements require supporting documentation.

If you are approached with a disbursement to approve that does not include any documentation, DO NOT SIGN THAT CHECK or authorize the wire. Authorized bank signers are held accountable for each and every check they sign/approve. That means if you sign a check without completing the proper due diligence, you have not fulfilled your responsibility to the Company and risk being implicated in the crime in the event the disbursement is fraudulent.

A good question to ask is, how does this disbursement relate to this transaction? If you do not understand the relation, ask questions and get comfortable with the answers prior to giving your approval. This might not always be easy, as at times you might be reviewing disbursements made by someone superior to you. However, if they are acting in good faith, they should gladly answer your questions until you are comfortable with giving your approval.

Those individuals doing the right thing will respect you more as being a diligent reviewer and ensuring you are keeping the Company's best interest in mind when you are reviewing their escrow file. Those individuals that get upset with your questioning or refuse to answer your questions might not be acting in the best interest of their customer or the Company and you should bring your concerns to the operation manager or others in upper level management. It is your responsibility to complete a proper review, so think twice the next time you sign off on any escrow disbursement.

## FIRPTA nightmare #3

An escrow transaction closed February 12, 2013. The escrow officer did not send the check for the FIRPTA withholding until April 17, 2013. The sale price for the subject property was \$2,250,000. The amount withheld was \$225,000.

According to the Internal Revenue Service (IRS), withholding on the transfer of real estate is due within 20 calendar days of the closing. The funds were received by the IRS 45 days late. The penalties assessed for the late payment were as follows:

Failure to file	\$20,250.00
Failure to pay	\$ 2,250.00
Interest	\$ 1,086.80
<b>TOTAL</b>	<b>\$23,586.80</b>

The escrow officer could not file an escrow loss using the Escrow Loss and Recovery system, since the amount of the loss exceeded \$5,000. Instead, she had to open a claim with the claims department to address the escrow loss caused by the penalties. The claim was paid under the category of Improper Settlement Procedures and charged back to the escrow branch dollar-for-dollar because the escrow officer's failure to follow procedure caused the loss.



### MORAL OF THE STORY

When the principals to a transaction instruct the settlement agent to deduct 10% of the gross sale price and pay it as FIRPTA withholding to the IRS, it is imperative the check be sent within 20 calendar days of the closing and by some traceable means. Both FedEx® and UPS® will deliver to the IRS without a known street address. Simply address the package to the post office box address shown on Form 8288-A.