



By Lisa A. Tyler
National Escrow Administrator

In recent months, our industry has experienced theft of the packages and payments we ship daily from our offices, some of them containing non-public information. In order to protect our shipments from being the target of theft we are encouraging offices to change their online profile to shorten their company name to just initials. Read "SAFETY in shipping documents and payments" to discover why and how.

On occasion we deal with freaks. We do not know their motivation or their end game; we just know they are not normal or behaving normal in a real estate matter. When that happens our guard goes up and

instincts are heightened. That is the case in "WIRES are the way to go!" Something was just not right about the buyer and his constant lies. Read the story and see if you feel the same.

Thanks for your feedback! We have heard from many of you that you are learning from others' FIRPTA processing mistakes, after reading our monthly feature FIRPTA nightmares. This edition contains the fifth story in the continuing saga of FIRPTA nightmares.

In this month's story the closer deducted 10% of the gross sale price from the seller's proceeds at closing. The closer cut the check and sent it to the Internal Revenue Service (IRS) with no other documentation. How the heck was the IRS supposed to apply the payment?

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Editor
Lisa A. Tyler
National Escrow Administrator



SAFETY in shipping documents and payments

The nature of the title insurance business requires settlement agents to be responsible for timely payoffs and delivery of packages containing non-public information. Original documents containing social security numbers, dates of birth, account numbers, loan payoffs, etc. are regularly sent overnight to and from our offices. Securing these packages is a priority, which includes ensuring the packages are delivered safely and timely.

Criminals have realized packages to and from title insurance companies often contain personal non-public information, such as loan documents. One way to protect the documents is simply by changing the sender name on the shipping label.

Rather than listing the full Company name, change the sender to reflect only the Company's initials. Below are some examples:

Alamo Title Company *change to:* ATC
Chicago Title Company *change to:* CTC
Fidelity National Title *change to:* FNT
Lawyer's Title Company *change to:* LTC
Ticor Title Company *change to:* TTC
Commonwealth Land Title Insurance Company *change to:* CLTIC

It is very simple to change your profile in FedEx® or UPS® in order to ensure the shipping label reflects only your Company's initials. Follow the step-by-step instructions found in escrow tech memo #162-2014 entitled "Safety in Shipping Documents and Payments via FedEx and UPS."

When overnight packages contain time sensitive and/or non-public information, request an email notification when an exception occurs in the delivery. This way you will be notified if the package is not delivered as expected.

It is likely your online shipping profile is set to "no signature required" for outgoing packages. If so, change the default on outgoing packages containing customer's non-public information to "signature required" to ensure packages are not left on a porch or doorstep unattended.

Lastly, if you are notified of a theft or a lost package containing non-public information, follow the Privacy Incident Response Procedure in the FNF Privacy Policy:

1. Report the incident to your supervisor and the Corporate Compliance Department via privacy@fnf.com or the Compliance Hotline at (855) FNF-TIPS.
2. Do not take any action without first receiving direction to do so from the Corporate Compliance Department.
3. Should notice to the consumer be required, the Corporate Compliance Department will assist you with providing this notice.

WIRES are the way to go!

Ensuring we have unconditionally collected funds prior to disbursing on a real estate transaction is one of the most basic duties of the settlement agent. Wired funds are the best way to accomplish this. Funds sent via wire transfer are already collected by the bank; once the funds are credited to the trust account, they are immediately available for withdrawal.

Cashier's checks take at least 24 hours, and often longer, before they are unconditionally credited and we have received more than our share of fraudulent ones. In a perfect world, wires would be all we would accept for closing funds. This story emphasizes the importance of ensuring buyer's closing funds are unconditionally collected.

In 2013, one of the branches of Chicago Title in Dallas was in the process of handling the closing of a \$450,000 sale transaction. The sale was a spec

home built by a builder, who was a regular customer at Chicago Title. The buyer made an all cash offer and the seller quickly accepted. The transaction was scheduled to close two weeks later.

On October 31, 2013 the buyer came in to sign his closing documents. He brought his wife with him, although he was purchasing the property sole and separate. The signing went quickly. The buyer was only there for about 10 minutes.

In that short amount of time the buyer and his wife complained about how they had been living in a hotel, and kept asking when they could obtain the keys for their new home. They indicated they had already bought new furniture and could not wait to move in.

Escrow officer Andrea Venegas was handling the signing. The buyer assured her he wired in his



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[WIRES are the way to go! – continued]

closing funds. Andrea explained the bank had not yet received it and the seller would not release the keys until the funds were received and credited to Chicago Title's account. The buyer and his wife left.

All afternoon, the next day and even the day after that, the buyer and his real estate agent blew up the phone lines calling Chicago Title and the builder demanding the release of the keys.

Over and over again Andrea and her escrow assistant, DeAnna Thornton, verified the wire had still not arrived. The buyer provided a federal reference number in his attempt to prove the wire had been sent.

DeAnna contacted the Operational Accounting Center (OAC) with the number. The OAC contacted our trust bank, referencing the number provided by the buyer in an attempt to track down the buyer's closing funds.

Our bank had no record of a wire request from the buyer. In fact, our bank discovered the federal reference number provided by the buyer was not valid at all!

Andrea decided to confirm the wire instructions the buyer used. She discovered the builder gave the buyer outdated instructions for an old account which was now closed. The buyer was furious and demanded the builder release the keys to him. He wanted possession of the house immediately. He threatened to terminate the purchase contract. Then he said something no one believed.

The buyer claimed the bank told him his money was gone. He claimed the old account number was already assigned to someone new, the funds were transferred into their account and now they belonged to the new account holder.

The buyer claimed his bank told him it was no different than depositing cash into someone's account and although the wire came through in the name of Chicago Title, they simply credited the funds to the account number and he was out of luck. He even went so far as to state his bank gave him the new account holder's name and contact information so he could track them down.

The buyer tried to convince the builder this was their fault and claimed his bank representative said the recipient of his closing funds had no legal obligation to return the wire. He called Andrea and asked her if she would accept a cashier's check. He purported he had a meeting set up with the account holder and would be getting his money back and wanted to remit his closing funds via cashier's check instead of wiring them again. Andrea explained Company policy is only to accept wired funds but she would check with her manager and get back to him.

None of this made sense to Andrea. Her escrow instincts were telling her something was not right. She decided to do some research. She opened her browser to Google™ and entered the buyer's name and immediately found a match – his mug shot!

According to the results of her search he had been charged with property theft. Andrea was smart. She did not share this information with the seller or real estate agents, but she did stick to her guns and told the buyer she would only be able to close upon the receipt of wired funds. A cashier's check would not be acceptable.

The buyer claimed he wired his closing funds, again. The buyer and buyer's real estate agent called many times a day for weeks to confirm receipt of the wire. The buyer demanded the seller release the keys to the house – threatening to cancel.

No one budged until over a month later, the first part of December. The builder sent the buyer a termination of contract. The buyer still did not give up. The buyer called the builder very upset. He could not believe they were terminating the agreement. He claimed his delay was over the recent death of his father.

The buyer explained he was going to open a new account at the same bank where Chicago Title's trust account is held. Once his new account was opened he would instruct the bank to do an internal transfer and deposit his closing funds into Chicago Title's bank account. Next he sent this receipt which was his way of trying to prove he opened the account with them:



The funny thing is: Chicago Title's account was never credited with the closing funds. The buyer and his real estate agent continued to call the builder and Andrea demanding the keys. He claimed the manager at Bank of Texas was going to call to confirm the transfer of funds.

Andrea gave him the name and phone number of her county manager, John Tannous. She explained to the buyer the bank manager needed to speak with him directly. That was on December 3, 2013. She never heard from him again.

The builder and Andrea were baffled. What made him finally give up? What was he up to? Was he just trying to obtain possession of the house so he could squat there?

The builder contacted their attorney. Turns out in the state of Texas it could take up to six months to get a squatter out of your property. Once successful, who knows what condition the property would be left in? He could have taken the appliances, fixtures and anything not nailed down.

In the end Andrea and DeAnna did not back down from their operation's policy to accept only wired funds. For their efforts they are splitting the reward of \$1,000.

The closer cut the check and sent it to the IRS with no other documentation. The disbursement was not attached to Forms 8288 or 8288-A, no taxpayer identification number was written on the face of the check. Nothing! The IRS received the check, which was written on the title company's trust account, so the IRS credited the payment to the title company's taxpayer identification number.

The seller filed their tax return, expecting to receive a refund of most of the FIRPTA withholding remitted the previous year by the closer. The IRS had no record of the payment, since they had credited the payment to the title company's taxpayer identification number.

As a result, the seller hired a Certified Public Accountant (CPA) who specializes in FIRPTA Withholding matters. The accountant worked for many, many hours with the IRS to have the payment credited to the proper taxpayer identification number.

At one point the CPA contacted the closer, informing him of his failure to send in the Forms 8288 and 8288-A with the check. The closer quickly prepared the forms and sent them to the IRS listing the title company as the withholding agent, not the buyer, as required by the IRS. This prompted a penalty notice to the title company (the withholding agent) which has to be paid for failing to timely file the forms.

The seller's CPA was able to clear up the situation for their customer, but the seller and CPA felt the title company was responsible for paying the CPA's bill. The CPA remitted the bill (thousands of dollars) and the title company filed a loss and paid the bill, since admittedly the payment was mishandled by the closer.

MORAL OF THE STORY

If the buyer and foreign seller in a transaction desire to have 10% of the seller's proceeds deducted and paid to the IRS at closing in compliance with FIRPTA, they need to provide the escrow holder with detailed written instructions to do so. The instructions need to address the following:

1. The amount to deduct and remit to the IRS;
2. Buyer's written agreement to provide completed Forms 8288 and 8288-A to escrow holder to forward with the remittance; and
3. Buyer's and seller's written agreement to each provide completed Forms 8821; and
4. Seller's authorization to send the package by some traceable means at their expense; and further
5. Instructions for filing the 1099-S for the foreign seller.

Those detailed instructions can be found in your escrow production system and attached to escrow technical memorandum #120-2010, entitled "FIRPTA Tax Withholding." The Company has launched a Web based training module entitled "FIRPTA Compliance" to take the guesswork out of processing a closing involving federal withholding.

In addition, the company has launched a "FIRPTA for Real Estate Agents" module to make customers aware of the process involved with FIRPTA withholding. Both modules can be found on the company's intranet at home.fnf.com under escrow administration Web page.

The "FIRPTA for Real Estate Agents" module can be delivered on a USB portable drive to employees and agents who want to view the module with their customers outside of the office. Request the module on a USB portable drive by sending an email to settlement@fnf.com.

