



By Lisa A. Tyler
National Escrow Administrator

If you read no other stories in this edition, please read "BOAT for sale." We want to share the tell-tale signs of a fraud that has caused severe losses in our industry. Do not be the next victim. Arm yourself with the tools you need to detect the crime before it happens.

Who thought back-dating documents was a thing of the past? I did!! "THE pressure" is a story about a notary that admitted she gave into the pressure of a mortgage broker and back-dated a borrower's signature by two days. Read the story to find out how our astute, experienced escrow officer discovered the crime.

We have not written a story about fake identification cards being presented at a signing in a long while – thank goodness! But, do not let your guard down. There are still signers out there that believe our notaries do not have the tools or the skills to recognize a fake

identification card when it is presented.

One such seller guessed wrong when he showed up at Fidelity's Salem, Ore. office. Read "LITTLE black box" to discover how the escrow officer recognized the identification as a fake and confirmed her suspicions with a black light.

If you deducted and paid 10% FIRPTA Withholding to the IRS at closing at the direction of the buyer and seller, and nothing bad happened...you got lucky! Nine out of ten withholding payments settlement agents remit to the IRS on behalf of our principals' end up a mess that cannot be easily rectified. It is true even when the settlement agent has followed the instructions provided by the principals and remitted the funds and forms, accurately and timely.

"FIRPTA withholding nightmare #7" describes one of those nine! The escrow officer THOUGHT she knew what she was doing, only to discover she did not – causing a loss exceeding \$65,000.

IN THIS ISSUE

► BOAT Cashier's Check

ile, PA 19372

 PAY ONLY **99,500.00**

NE THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS*

PROCES

► THE pressure



► LITTLE black box

FORGERY

Share Fraud Insights

via email, mail or word of mouth.



volume 9 issue 7
 July 2014

BOAT for sale

Imagine sending a wire to a seller for almost \$100,000 only to find out the cashier's check received from the buyer was fraudulent. That is exactly what happened to a title company and a completely unrelated independent escrow company located in different parts of the country. They were both victims of the same crime by the same criminals. Read on for more details...

An escrow manager received an email purporting to be from a longtime customer who was an attorney. The attorney regularly worked with the manager when she was an escrow officer. As far as she knew the attorney had retired.

The manager replied to her customer explaining she no longer worked on an escrow desk but would forward the request to Jane in the commercial department to see if she could assist. In her email to Jane, she explained she was referring her customer who was in need of some assistance with UCC searches.

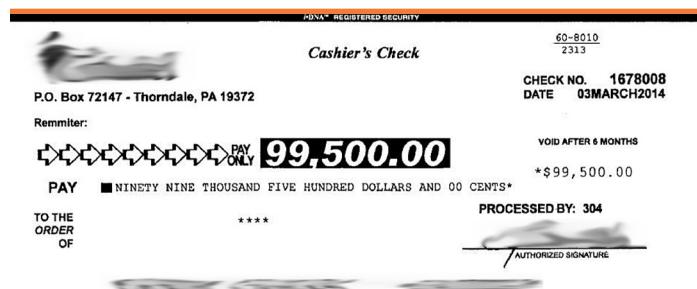
Jane received the email and responded directly to the attorney. The attorney put Jane in touch with her client, Joe Tuesday. Jane received an email from Mr. Tuesday. Jane asked Mr. Tuesday what kind of search he was seeking. His request quickly changed.

Mr. Tuesday explained he was purchasing a recreational boat and that he needed to make a good faith deposit with an escrow agent per the written Agreement he signed with the seller. Once he performed his due diligence, the funds on deposit would be released to the account of the broker for the seller. That is all Jane would need to do.

Jane agreed to accept the transaction and prepared escrow instructions required by her state regulator. She emailed them to the buyer and seller. They signed the instructions and emailed them back to her. The buyer sent in a cashier's check for \$99,500 which was deposited in the escrow trust account on March 6, 2014.

On March 13, 2014, Jane received an email from Mr. Tuesday instructing her to wire his good faith deposit to the seller's broker. Jane entered the wire into the system and sent it to her Operational Accounting Center (OAC). The OAC sent the wire on March 13, 2014 at 2:47 p.m. Forty-three minutes later (at about 3:30 p.m.) the OAC was notified the cashier's check remitted by Mr. Tuesday was a fake!

Here is a copy of the check:



As soon as the OAC received the notification, they instructed Jane to take the check to the bank and try to deposit it manually. She did. In the meantime, the OAC attempted to recall the wire. The receiving bank would not honor the request unless it was approved by the account holder.

The in-house attorney filed a lawsuit and an ex parte request for a Temporary Restraining Order, so the account holder could not drain the funds from the account. A judge approved the order and the funds were frozen. Notice was served upon the account holder who was given 30 days to respond and dispute the freeze. Failure to respond would allow the bank to return the funds to the operation.

Unfortunately, a second transaction involving the same criminals and an independent escrow company who handled the transaction were not as lucky. They were not able to respond as quickly and the funds were withdrawn before they could freeze the account.

As we wrote this article, we received notification of a third transaction from an attorney agent located in yet another state that became victim to this same crime with the same perpetrators. The attorney agent does not reconcile his trust account on a daily basis. It was only when the office performed its monthly reconciliation that they realized the shortage. More than 15 days had elapsed. The trust account was overdrawn by almost \$100,000. The money was long gone.

What a scam! The perpetrators in this instance were very savvy. First off, they hacked into the email account of a reputable, but retired attorney. Since the attorney is no longer associated with a law firm she uses a Gmail™ account.

By using the attorney's reputation and email account, their request was automatically granted some legitimacy. And, it appears there is another retired attorney with the same name in one of the other states where a similar crime was committed!

Next, they sent the request to the manager of the operation purporting to be one of her longtime customers. When the manager passed the request on, Jane responded immediately in an effort to impress her boss's customer. She did not question the legitimacy of the transaction.

In this instance the seller was named as a real person with previous business ties to the state where

[Continued on pg 3]



TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or
949.622.4425

[BOAT for sale – continued]

Jane's branch was located. Her mailing address listed on the Agreement was once her legitimate mailing address. She was in no way actually involved in the transaction and had no idea her name was being used. The perpetrators set up a Gmail account in her name and sent emails purportedly from this seller to make the transaction appear even more legitimate.

Mistakes and Red Flags

Unfortunately the only communication Jane had with anyone was by email. All the parties used Gmail accounts, which can be set up by anyone using any email address. She never spoke to the buyer, seller, seller's broker or attorney who referred the customers by phone or in person.

The check contained many red flags. The MICR line was incorrect. The check number is listed first when it should be last. The ABA number is listed second when it should be listed first. Did you notice the glaring typo? The word "Remitter" on the check is misspelled.

In addition, the bank account for the operation which deposited this check is not within the same Federal Reserve District as the bank that purportedly issued this cashier's check – so the forged cashier's check took additional days to be returned as counterfeit. The thieves counted on this fact.

In this day and age we have a wealth of information right at our fingertips to verify a check. Simply searching the Internet for the issuing bank or credit union will at least reveal their contact information.

Settlement agents who are unsure about a check they receive should call the issuing institution and ask them to verify whether the instrument is valid. The bank will not verify funds are on deposit, but they can and do look at an instrument and verify whether it is valid or not.

The Agreement had poor grammar and typos in it. Here is an example:

"Escrow holder will release said funds to seller upon receipt by Escrow holder of a written authorisation from buyer that he is satisfied with the inspection of said product and will complete the sale."

The escrow was for personal property – an expensive recreational boat. Although some operations have proper approval from management to handle floating home transactions, our Company

does not handle transactions for the transfer of a recreational boat.

Settlement agents asked to handle a transaction which is out of the norm or does not include real property should only proceed with management approval which includes management approval of the parties' written agreement.

Do not assume your manager has all the facts just because they forwarded the original request to you. In this instance the manager had no idea the original request changed from a UCC search to an escrow-only for the purchase of a boat.

The last red flag was the assignment of the proceeds. Anytime a seller or borrower requests an assignment of their proceeds to another party it should be considered a big red flag. In this file the good faith deposit was sent to the seller's broker. Why? If the broker was to hold the funds, why did they need an escrow anyway? The assignment of the due diligence deposit in this instance is the only reason the scam worked.

MORAL OF THE STORY

In this day and age it is important to slow down and pay attention to the details. Be sure to review the checks you receive. If you are uncomfortable or unsure of a cashier's check's validity, contact the issuing bank or credit union to see if it is valid.

Do not venture outside of the normal scope of transaction types without management approval of the transaction type and any written agreements describing the services you are being asked to provide.

If you are asked to send proceeds to anyone other than a seller or borrower, ask questions to find out why. In this instance, if Jane insisted she speak directly with the seller or the seller's broker, the whole scheme might have fallen apart. It is amazing what you might uncover if you ask a few questions.

P.S. The fraudsters' real names are not used in this article. However, FNF has issued a Confidential Memorandum containing their real names.

THE pressure

We are publishing yet another story about a notary who succumbed to the pressure and agreed to back date loan documents. Our sharp settlement agents keep catching them over and over again. So why do we keep publishing these stories? Because it is the most efficient way to notify settlement agents to check the approved notary list before using a mobile signing company.

Cathleen Hill, escrow officer with Chicago Title, was working on a refinance transaction. There were three borrowers; two located in Indiana and one in California. The loan documents were received and Cathleen scheduled a mobile signing service to meet with the borrowers in Indiana first.

The documents were sent out and signed with a mobile signing agent on Saturday. Later that same day the notary sent the documents directly to the mobile signing agent in California. The third borrower signed the documents and the fully executed loan package was delivered back to Cathleen on Wednesday.

Cathleen reviewed the documents to ensure nothing was missed. She noticed the third borrower signed the documents on Sunday.

She double checked the calendar, which reflected the third borrower's signing appointment was scheduled for Tuesday. She realized there was no way the loan documents could have been delivered to California from Indiana on Sunday. She confirmed this when she tracked the package online.

Cathleen called the signing company the notary worked for, to inquire about the discrepancy. The owner contacted the notary who admitted he allowed the documents to be back dated because the mortgage broker, who attended the signing, pressured both him and the borrower. Cathleen immediately reported this to the lender.

The lender sent out a new set of loan documents to be re-executed by the borrowers. This time Cathleen set the signings up with a notary through BancServ. She also reported the incident to her manager.

An escrow administrator with National Escrow Administration contacted the owner of the signing service company to notify them they were being removed from the Company's approved

[Continued on pg 4]

[THE pressure - continued]

signing agent list; permanently.

Good catch Cathleen! Back dating loan documents is never acceptable. For her efforts she is being rewarded \$1,000. Remember to always check the approved notary list, even when you are scheduling a signing with an approved notary you have worked with before, in order to ensure they are still approved.

LITTLE black box

The real estate agent opened escrow with KimberLee Chasteen, an experienced escrow officer at Fidelity's Salem, Ore. office. About a week and a half before closing, the agent came in to the office and explained the seller was not really the true seller, but instead his boss was the actual owner.

The boss had transferred properties to various people as he was going thru a nasty divorce. KimberLee became suspicious right then and started asking questions in order to sell – did the seller have a valid, unexpired ID? Where will the funds go at closing?

Over the next week or so, the agent in an attempt to ensure the closing would happen, sent KimberLee an expired driver's license, one that had been taken away from the seller by the Department of Motor Vehicles.

The agent also sent a Mexican Matricula Consular identification card, which she told him was not an acceptable form of identification. The pictures between the two identification cards did not match up (probably because they were taken years apart).

The agent gave KimberLee various scenarios such as, "Would we take a Washington driver's license," and what other type of identification would be acceptable. KimberLee thought the agent was being very naïve (not devious) and just trying to help his client.

Being on high alert by all this, the seller, his boss and the agent came in for the scheduled signing appointment. When KimberLee went to show them to a closing room, she was pretty sure there would be an issue – just by the signer's body language.

KimberLee requested the signer's driver's license and headed to the copy machine and the Fraud Fighter™ black light purchased from UVeritech. She felt the card was an obvious fake.

Someone had taken the picture from the Mexican Matricula Consular identification card, and cut and pasted it to the new driver's license. The feel of it was off and putting it under the black light confirmed KimberLee's suspicions. "Oregon" is supposed to be diagonally repeated on front of license and is also visible under UV light. There was nothing visible under the black light.

KimberLee did not stop there! She called the Department of Motor Vehicles and they confirmed the identification number did not match up with the name. She asked them if we should keep the license and they said for her to call the police.

She contacted her manager, Ted Urton, and he advised her not to call the police but instead give the license back to the seller and send them on their way as quickly as possible, to remove the potentially violent customer from our office and our employees from harm's way.

KimberLee did have some alternatives. She could have used a credible witness acknowledgement for the seller. However, the definition of credible witness in her notary handbook reads as follows, "A believable witness worthy of confidence who personally knows the signer of a document."

KimberLee felt that no one involved in the sale of the property was being completely honest and elected to resign as escrow holder rather than jeopardize the company by insuring a deed that might have been forged.

Luckily for KimberLee this is the first time anything of this nature has happened in her 36 year career. For her diligent effort to prevent a possible forgery, KimberLee has been rewarded \$1,000 on behalf of the Company as well as a letter of recognition.

FIRPTA withholding nightmare #7

Last year an escrow officer closed two sales where the sellers were foreigners, selling their properties to their children. The transactions each involved seller carryback financing.

The closer applied the state withholding rules to the FIRPTA Withholding and only withheld based on the down payment amount of \$15,000 rather than the full sales price \$475,000 for each home. The escrow officer advised the principals herself, rather than advising them to consult with a tax professional.

Post-closing, each buyer received a Notice of Intent to Levy their properties for the balance due \$32,500 plus penalties. The sellers did not have the money to send to the IRS because they did not receive that much in proceeds.

The sellers looked to the escrow officer, who had advised them on how to complete the forms and how much needed to be remitted, to protect their daughters from having their homes and bank accounts levied. The escrow officer's escrow company had to pay more than \$65,000 to protect the buyers from an IRS levy.

