



By Lisa A. Tyler
National Escrow Administrator

If a married couple has not filed their marriage license with the clerk of the court, are they considered married? The loan officer on a recent purchase money loan attempted to convince the settlement agent, a marriage was not legal or recognized because the blissful couple had not yet filed the certificate.

The loan officer was trying to coerce the settlement agent to close the purchase money loan for the borrower as an unmarried man so that he would not have to go back and underwrite the loan with a borrower and co-borrower. He was worried with her added debt the couple would not qualify for the loan. Find out how the settlement agent handled this mess in "MARRIED or not."

"ALTERED judgment lien payoffs" serves as a great reminder that payoff statements delivered into escrow by anyone other than the

payoff lender or creditor must be verified. The risk of a fake payoff letter or an altered payoff letter being delivered to the escrow holder is too great. In order to prevent losses, the statements delivered by the sellers/borrowers and their agents require additional verification.

Are you convinced yet? This edition contains the 9th FIRPTA Withholding nightmare story involving loss of money and reputation. If the readers have not been convinced they do not know enough to determine if withholding is due or to complete the forms on behalf of the principals, then hopefully this one does the trick.

This story involves a closer that did not realize withholding requires at least two separate IRS forms: the 8288 U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests and 8288-A Statement of Withholding by Foreign Persons of U.S. Real Property Interests (in triplicate). She only sent one form and the withholding agent was penalized as a result. Who is considered the withholding agent? The buyer!

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Editor
Lisa A. Tyler
National Escrow Administrator



MARRIED or not

How would you feel if the man you just married invited you to attend the closing of the purchase of your new home and at the signing ceremony he declares he is not married? That is exactly what happened at a recent signing in Mesa, Ariz. The escrow officer called the lender to correct the vesting once she learned the borrower had just married one week prior to the closing.

Tami Horne, an escrow officer for Lawyers Title in Mesa, Ariz., was in the process of closing a purchase transaction with a sale price of \$331,500 and a new VA loan in the amount of \$342,439. The loan documents arrived with the borrower listed as an unmarried man. The borrower showed up for his signing appointment with a new bride he had just married one week prior to the closing.

The escrow officer halted the signing to call the lender to see if the marital status on the deed of trust could be corrected to reflect the borrower as a married man. Tami told the funder over the phone she would correct the vesting, have it initialed by the borrower and ask the wife to sign a disclaimer deed disclaiming any community interest she might have in the subject property.

The funder instructed Tami not to change the deed of trust; instead she would have a new one drawn and send it over after she discussed this matter with the loan officer. Believe it or not the loan officer was at the signing appointment and stepped out to speak to the loan funder privately. He was overheard telling the funder he did not want to re-underwrite the loan because it was a VA loan and even if the wife did not hold title, her income and liabilities would have to be considered for that loan program.

Shortly thereafter the funder called back and said per the loan officer, the borrower was not married. Tami was curious, so she went to Facebook® and found dozens of pictures from the wedding posted less than a week ago. In fact, Tami recognized the maid of honor in the online photos; it was the borrower's real estate agent.

Tami went back to the signing room and told the borrower and loan officer she would not be able to close. The loan officer admonished the borrower saying, "I told you not to get married." He looked at Tami and said the borrower was not legally married, since the certificate of marriage had not been filed with the clerk of the court.

Tami stuck to her guns and would not allow the borrower to continue signing documents with his marital status reflected as an unmarried man. The loan officer became irate and said he would rip up the marriage license if that is what it would take to complete the closing. Tami was shocked, thinking if it was that easy to be "unmarried" divorce attorneys would go out of business!

The real estate agents were furious. They drew an amendment to the purchase contract changing title companies and moved the transaction. They had the buyer make a new earnest money deposit and closed the transaction after a few days.

Later, the agents bragged to Tami how the other title company did not care the borrower was married and told her to release her deposit back to the buyer, since the deal was now closed. Tami confirmed the closing had occurred at another company, so she released the deposit. She also discovered the loan had already been sold to a large loan servicer.

As a result of Tami's honesty, integrity and tenacity, she has been rewarded \$1,000 by the Company and has received a letter of recognition. Going the extra mile to protect the lender and the Company from fraud is not easy and sometimes all-consuming. It had to be hard for her to refuse to close and upset her customers but her decision was easy with blatantly false information staring her in the face.

Had she closed this transaction and the borrower failed to repay the loan, the lender would have probably discovered the pre-closing marriage and added debt of the new wife and attempted to make a claim against the Company for allowing the closing to occur.



MORAL OF THE STORY

Arizona is one of nine community property states in the U.S. In community property states, married persons are considered to own their property, assets, income and debts jointly. If the borrower starts the loan process as an unmarried person and then during the process becomes married, their debt-to-income ratio is affected. The ratio could have a detrimental effect on the borrower's ability to repay the loan.

Tami knew the funder, loan officer and even the real estate agents were upset with her decision not to close, but she did the right thing. Had she closed and the borrower defaulted on the loan, the lender would probably look to our Company to attempt to recoup any losses they sustained from foreclosing and selling the property – which is a costly and time consuming process for a lender, especially on a VA loan.

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ALTERED judgment lien payoffs

How many times do sellers want to negotiate and provide their own judgment lien payoffs? It happens often. The seller does not want the creditor to know they are involved in a real estate matter or do not want the creditor to know the transaction details – such as how much they might be receiving in proceeds – so they demand to negotiate directly with the creditor and provide the payoff statement themselves.

That is the exact scenario for a sale transaction recently insured by one of our offices. The seller had many liens against him, including judgment liens and tax liens. He would not allow the escrow officer handling the sale of his property to contact the creditors on his behalf to obtain payoff statements. He demanded to obtain the payoff statements himself. The escrow officer allowed the seller to do just that.

a call from one of the judgment creditors claiming the payoff funds were short. Thinking that was odd; the title officer asked for a fax of the payoff statement originally issued by the creditor.

While the title officer waited for the payoff statement, another judgment creditor called claiming their payoff was short as well. Both creditors sent the payoff statements they originally issued; the payoff statements in the title file were clearly altered. The payoffs were short \$29,925.91.

The title officer alerted his manager and escrow officer. The escrow officer attempted to recall the wire transfer of proceeds to the seller's daughter. The escrow officer told the sending bank the wire was connected to a fraud perpetrated by the seller in the transaction.

The sending bank told the receiving bank the wire was connected



The seller negotiated with the creditors and then provided payoff statements from each one of them, addressed to him. The escrow officer, who works for an independent escrow company, did not have the seller's authorization to call the creditors to verify the amounts shown on the payoff statements – so she took them as valid.

At closing, the buyer's new lender wired loan proceeds to the title company. It is common for the new lender to wire proceeds to the title company to pay off existing encumbrances, taxes and the title invoice. The balance of the proceeds is then sent to the independent escrow company to disburse.

The title company paid off the existing encumbrance, as well as tax liens, judgment liens and property taxes. The balance was sent to the independent escrow company. In this transaction, the seller provided a written assignment of proceeds instruction to the escrow officer to wire the proceeds to his daughter in New York. Ironically the proceeds were \$666,000.

All funds were sent out. A few days later the title company received

to a fraud. Since the fraud was perpetrated by someone other than the account holder (the daughter), the receiving bank indicated they would need the account holder's permission to return the wire. Needless to say the account holder refused to return the wired funds.

The title officer turned the matter over to his manager, who reached out to the actual seller. He denied altering the judgment lien payoffs and refused to bring in the \$29,925.91 to pay the liens in full. The title company had to take a loss in order to obtain lien releases and deliver free and clear, marketable title to the buyer in the transaction.

MORAL OF THE STORY

A payoff statement (of any kind) received into escrow by anyone other than the creditor/payoff lender should be verified verbally by the escrow and title companies, to ensure the statement was validly issued and was not altered.

FIRPTA *withholding nightmare #9*

A closer had a sale transaction involving a foreign seller subject to FIRPTA Withholding. The closer went to the Internal Revenue Service (IRS) website and found Form 8288; she completed the form and had the buyer sign it at closing. She sent in the withholding along with the form within the 20 days allowed by the IRS.

The closer failed to have the buyer also complete Form 8288-A in triplicate, not realizing this was a totally separate form. She also failed to have the buyer and seller sign any instructions authorizing the deduction and payment of the withholding. The only item she had signed was the 8288.

The buyer did not really understand what the form was for, so he was shocked when he received a penalty notice for \$40,405.94 from the IRS. Incomplete or incorrect packages are subject to the same penalties and interest as if the payment was not made at all.

The IRS is not sympathetic either. In this case, they did reduce the penalty down to \$1,405.94 since the penalty notice included the withholding in the amount of \$39,000 which was timely paid. The closer had to file an escrow loss to cover the penalty and work with management, the buyer and the seller to file corrected forms with the IRS.



MORAL OF THE STORY

The Escrow Instructions for FIRPTA Withholding are available in the escrow production system and provide step-by-step instructions for the buyer, the seller and the closer. Had the instructions been used in this transaction, the principals and the closer would have noticed a form was missing from the package. It also would have provided an explanation as to the responsibilities of everyone involved in remitting the withholding amount to the IRS.