



► **EVERYONE** has a story - what is yours?

By Lisa A. Tyler
National Escrow Administrator

The National Escrow Administration team travels the country informing and training our escrow settlement professionals on new trends, regulatory changes and updates, to Company policy and procedure. During our travels we continually hear hair-raising stories of fraud, forgery and theft, which provide much of the content for this newsletter. In this edition read what we heard on the road in the story entitled "POSER."

Ever wonder how houses that were once used to manufacture methamphetamines (meth) will ever be re-sold and lived in? Almost six pounds of toxic material is produced for each pound of cooked meth. Houses used as meth labs are often rendered uninhabitable due to the toxic chemicals used to produce the meth. Cities involved in meth lab busts often do not bother seizing the property, since nobody in their right mind would purchase it at an auction, even at a

steep discount. Find out more about "METH labs and properties for sale" in this edition.

"BT1 = be the one" explains how one escrow officer views her job, not only as the closer in a transaction, but as a team player who is on the lookout for losses of any kind. She steps out of her role as a closer to make sure her examiner has not missed any liens or encumbrances. How many escrow officers do that? Not many! Learn how her extraordinary efforts paid off by saving the company from a potential loss of more than \$6,000.

Why does the company have a requirement to only send a cashier's check for FIRPTA Withholding to the IRS? Why does the company have a requirement to write a taxpayer identification number (TIN) on the face of the cashier's check? Read "FIRPTA withholding nightmare #10" to learn just one example of how payments are misapplied, resulting in unhappy buyers and sellers. You will discover why those processes have been put in place.

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► **BT1** = be the one!



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POSER

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In this day and age every escrow and title office carries the burden and expense of shredding documents containing a consumer's non-public information. The work is farmed out to vendors with the proper equipment to destroy hundreds of pounds of documents at once rendering them illegible. This is a horror story we heard while on the road regarding a shredding company "poser."

One Thursday a uniformed man from the shredding company entered a title company office and removed the shredding bin packed full of documents - loan applications, tax returns, financial statements and settlement statements. Hours went by and the uniformed man still had not returned with an empty bin.

Finally, someone picked up the phone to call the shredding company. They relayed the story and asked when a replacement bin would arrive? Much to the caller's dismay the shredding company employee on the other end of the phone said, "We did not send an employee to pick up your bin. Your office is not scheduled for pick up until Tuesday!"

The person who wheeled the bin full of non-public information was posing as an employee of the shredding company and stole the documents along with the bin. The title company is now faced with a data breach. They had to contact local law enforcement, as well as consumers, to make them aware of the incident.

Luckily FNF has conducted a full evaluation of national vendors who provide secure bin shredding. The Company's preferred provider was selected to service our operations based on assessment of security, risk and cost.

Most importantly, the provider is certified by the National Association for Information Destruction (NAID), which significantly limits the liability and exposure related to the secure destruction of the Company's and our customer's personal information. Services are contracted with the provider through FNF Purchasing.

MORAL OF THE STORY

When letting someone into your office, do not be shy about asking for credentials. Be on guard, especially if a representative from a company that you have never met arrives. Know when your office's regular shred pick-up is scheduled to take place. Be alert, any vendor or customer walking through the office could be a potential threat for stealing our customers' non-public information.

In addition, all employees should adhere to the Clean Desk Policy ensuring physical documents containing non-public and confidential information are secure while in the office and securely destroyed as soon as the documents are no longer necessary or required to be kept.



STOP

**TELL US HOW YOU
STOPPED
FRAUD**

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949.622.4425

METH labs and properties for sale

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Sellers have to disclose known material defects and complete a Seller's Property Disclosure form when listing property for sale. There can be health risks associated with living in a house where methamphetamine (meth) was produced or used.

Some telltale signs that a property could be contaminated by meth include discolored walls, strong ammonia-like odors, empty over-the-counter drug packets and areas of dead vegetation in the yard. Homebuyers have the right to have a house tested for meth during the contractual inspection process, whether or not any of these signs are present.

If a buyer tests a property and meth is found, the buyer can terminate the contract, ask the sellers to remediate, or agree to buy the property and assume liability for remediation (typically after negotiating a discount on the selling price).

Buyers assuming liability must notify the State Department of Health and finish the cleanup within 90 days after closing. Buyers who purchase property without testing it and later discover that sellers

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[METH labs and properties for sale - continued]

knew it was contaminated, can sue sellers if sellers knew and did not remediate. Sellers who fail to disclose or remediate are liable for the cleanup costs, as well as attorney fees and resulting healthcare costs.



BT1 = be the one!

When a title examiner misses a lien or encumbrance or taxes on the report, who is the first person to hear about it? The closer! If you have ever had a disgruntled customer call post-closing regarding a missed lien or taxes, then you know you always want to double-check your examiner's work prior to closing. An escrow officer from Dallas does exactly that.

Kelly Stamp, an escrow officer from Fidelity's Dallas office, saved the Company from a potential loss. Kelly always looks at the run sheets when she receives title work, to make sure the title examiner did not miss any liens, encumbrances or taxes. According to her supervisor, she is very thorough and really knows how to read a run sheet/chain of title to any property.

She received title work on a purchase transaction and noticed a privileged lien filed by the City of Dallas back in 2000. Kelly looked for a corresponding lien release. She did not find one, so she brought this up to the examiner's attention. The examiner reviewed the lien and the run sheet again, and determined Kelly was right. The lien had been missed and was still valid.

Kelly called the City of Dallas to obtain the lien payoff amount. The payoff exceeded \$6,000. Kelly then began working with the previous title company who issued the owner's policy to the contract seller, to extinguish the lien.

If Kelly had not exercised caution and caught the lien, then Fidelity would be facing a potential claim from the new owner to pay the lien, once the new homeowners received a bill for non-payment. For her extraordinary efforts, Kelly has been rewarded \$1,000, as well as a letter of recognition from the Company.

What rights do owners have? Sellers may do a second test, and if it is also positive, they may clean up the property to meet state standards. Sellers who remediate and report to the state will not be liable to buyers, a future owner, renter or neighbor. Property owners may instead choose to demolish the property.

Sellers must either bring the property up to state standards or give written notice to buyers. Brokers are required to disclose if they know of contamination and should direct their clients to seek professional assistance from an experienced attorney, an experienced and credible Industrial Hygienist (IH), or Certified Industrial Hygienist (CIH), and get information from the local health department or governing body that handles meth.

There may be public records of meth lab locations and, depending on the county, they may be kept by the police, the health department or another agency. People can use available resources and testing to avoid the health and financial risks of meth labs.

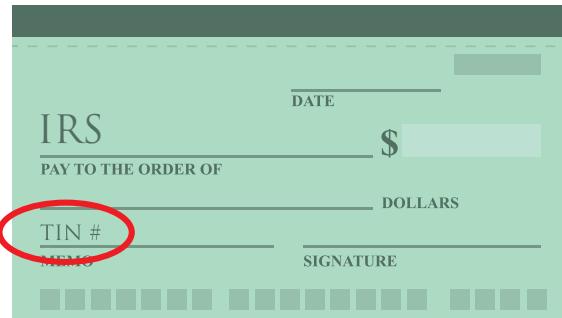
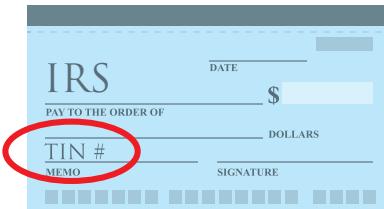
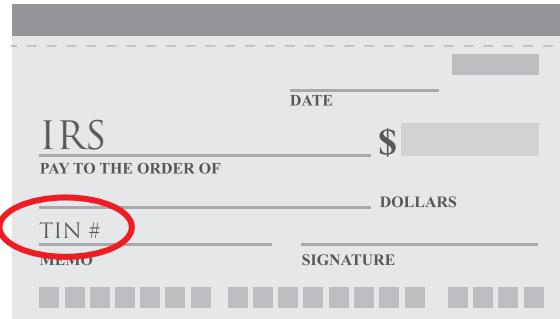
If buyers or owners decide to test, state law requires that the tester be either a CIH or an IH. Choosing the professional should be done carefully.

This article is only meant to provide a current, brief summary of some issues that arise in real estate transactions regarding meth. Please consult an attorney or other qualified professional experienced in this area for further information, advice and changes to the law.



FIRPTA withholding nightmare #10

An escrow company in Las Vegas sent in a timely FIRPTA withholding payment, along with forms 8288 and 8288-A (copies A and B) as completed by the buyer. Because the Internal Revenue Service (IRS) separates the checks from the forms upon receipt,



it has been a long-standing Company policy the seller or buyer's taxpayer identification number (TIN) be written on the face of the cashier's check, so that proper credit is applied. In this instance, the escrow officer failed to write the TIN and instead wrote the seller's nickname on the face of the check.

Lo and behold, seven months after closing when the IRS got around to processing the Forms 8288 and 8288-A, the buyer (as the withholding agent) received a penalty notice for failure to pay, since no payment was credited to either the buyer or seller's TIN.

The buyer of the property was a large investor with many properties who did a lot of business with the escrow company. Notice the word "did." They were furious when they received the penalty notice and demanded the escrow company contact the IRS, to prove timely payment of the withholding and pay any penalties.

The office contacted the bank to obtain a copy of the front and back of the cashier's check to send to the IRS as proof of timely payment. The IRS stamps the TIN where the payment is applied on the backside of the check.

Unfortunately, the bank could only render an illegible copy of the back of the check, so it did not help in tracking down where the TIN payment was applied. The escrow company had no choice but to

file a loss and pay the withholding amount again to the IRS along with the outstanding penalties, since they could not prove payment and how it was applied.

MORAL OF THE STORY

If instructed to deduct 10% withholding from the seller's proceeds and pay it to the IRS on behalf of the principals at closing, the settlement agent should exchange the check for a cashier's check. This policy is in effect due to the volume of withholding checks that are incorrectly applied to our corporate TIN.

Next the settlement agent should write the seller's TIN on the face of the cashier's check. If the seller does not have a TIN, then the settlement agent should write the buyer's TIN on the face of the check.

If the buyer does not have a TIN (it happens), then the buyer and seller need to sign a hold harmless agreement in favor of the Company acknowledging the payment might be misapplied, causing penalties and interest to be assessed against the withholding agent. Settlement agents can obtain a Hold Harmless Agreement by emailing settlement@fnf.com.