FRAUD Insights

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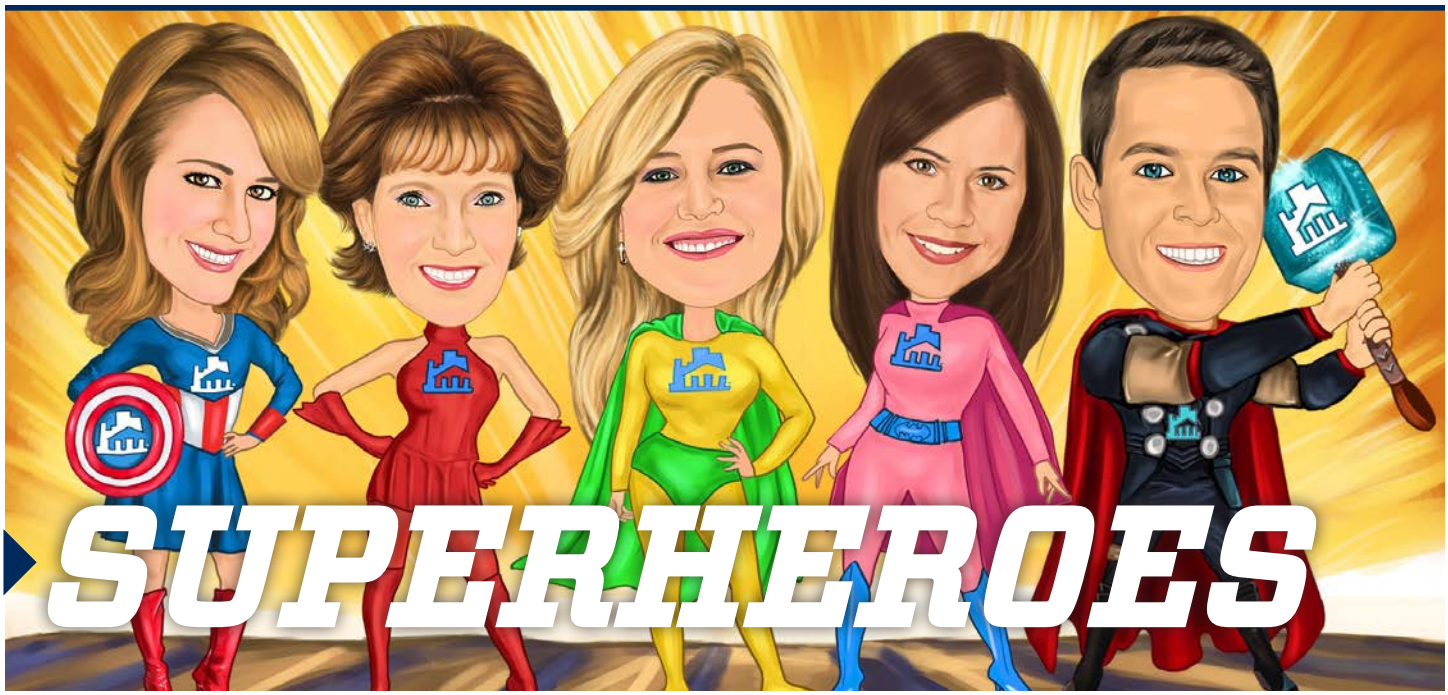

By Lisa A. Tyler
National Escrow Administrator

We have a claims officer who always says, "No one will do you in faster than your friends and family." His words rang true when Mary Gonzalez, owner of Emerald Title Group from Miami, shared the story of a recent sale transaction where a son was attempting to sell off the assets of his deceased parents without going through probate. You have to read "VENEZUELAN villain" to understand the incredible work Mary put into discovering the crime.

"WORLD travelers" is a story about an unfortunate series of events where the real estate agent and the closer took cautionary steps to prevent a property from being sold by parties from outside the country. In the end, the transaction did not close and a crime was averted. At the same time, the listing and selling agents never received a commission for the time they spent on the transaction. Neither the escrow company nor the title company was ever paid for the amount of work they put into the transaction and the buyer did not end up with their desired property. The transaction was a true waste of everyone's time.

We end the year with our last FIRPTA Withholding article. "FIRPTA withholding nightmare #12" demonstrates the power of the government to stop a company from conducting any further business, if they have unpaid tax obligations. It is scary to know that the acts of one employee can affect an entire company from receiving any new orders. Read the last story on this topic to make sure you are never the one that puts the Company at risk.

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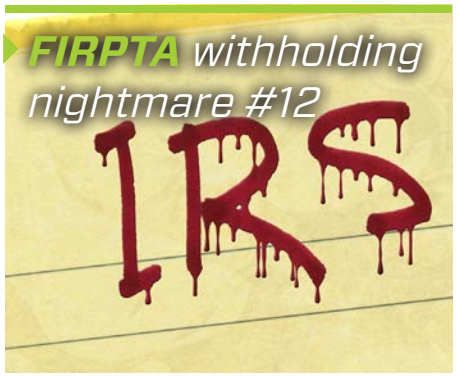

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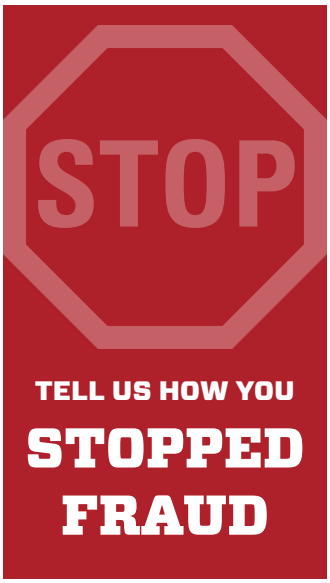
Editor
Lisa A. Tyler
National Escrow Administrator



settlement@fnf.com or
949.622.4425

VENEZUELAN villain

The administrative assistant for a real estate agent made an offer to purchase a home for $200,000. As part of the contract negotiations, the seller agreed to pay for the owner's policy of title insurance in exchange for being able to select the title agent. The buyer normally pays for the owner's policy in Miami where the property was located.

The administrative assistant making the offer consulted with her real estate agent, who encouraged her to pay for her own policy and take the order to someone they worked with regularly, Mary Gonzalez at Emerald Title Group. The real estate agent told his assistant there were too many criminals in the world and Emerald Title Group would help protect the biggest investment of her life.

That is how the order ended up with Mary. She ordered a title report which came back with some probate documents and conditions concerning the probate. Mary questioned the seller about the probate.

The seller said he knew nothing about a probate; that his parents had died a long time ago and their estate was not in probate. The title report was amended to remove the probate conditions and the transaction moved forward.

The buyer and seller came to the signing appointment at Emerald Title's offices. Everyone produced identification, so their signatures could be notarized. The seller's identification card was recently issued within the last 30 days. Mary had always been taught to take a closer look at identification issued so close to the signing date and to ask for a second out-of-wallet identification card from the signer. A closer examination by Mary revealed the seller's identification did not contain all his names.

The seller of the property was from Venezuela where often times a man's last name is followed by his mother's maiden name. The only identification the seller could produce did not have the mother's maiden name, although the title to the property was held in his mother's maiden name. Mary asked for another form of identification reflecting the maiden name.

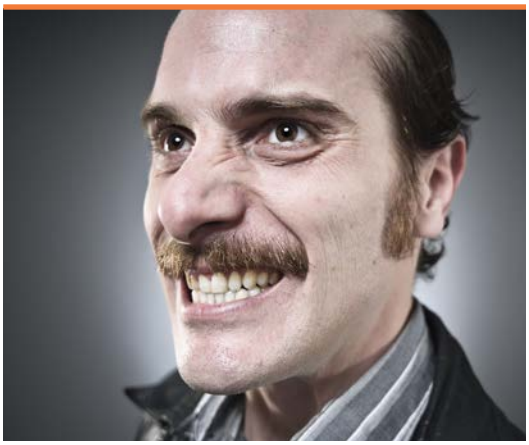
The seller pulled out his wallet and even said out loud, "Oops! Not that one," when rifling through it for a previously issued identification card. He found the card issued prior to the most recent.

Mary copied it along with the current card, but could not use either as the cards only contained his first name, middle initial and last name – but not followed by the maiden name of his mother.

Mary finished the signing but instructed all parties that she would not be able to complete the closing without proper identification from the seller. The seller left the office promising to return with acceptable identification. He returned the next day with a piece of paper reflecting the location of the filing of his birth certificate in Venezuela, but no other identification.

Mary was suspicious of the seller after the signing appointment and began to examine the copies of the identification cards in her file. One of the identification cards contained an address, other than the property address, that looked strangely familiar.

Mary searched for the probate documents the title underwriter had provided earlier in the transaction. When she found them she discovered the address on the identification card matched the address of one of the properties that was the subject of a probate. In fact, it matched the decedent's principal place of residence! How could the man sitting right in front of her at the signing be dead?



Mary researched the other properties included in the probate, including running a chain of title. She discovered one of the properties had recently been sold. Mary called the title agency that closed on the original purchase of the property by our Venezuelan principal back in 2009. She asked if they retained a copy of the identification used at the signing and if so, what was the birth year of the buyer. The title agency confirmed the identification showed a year of birth as 1962.

Mary called the title agency that closed the recent sale of that same property by the Venezuelan principal. She asked if they retained a copy of the identification presented at closing and if so, could they verify the year of birth for the seller as 1962. The title agency pulled their file and stated the birth year for the seller was 1985! Mary knew it! The son was posing as his father.

Mary took a closer look at the deeds from those two transactions. She discovered the initial sale of the property was with the real estate agent she had been working with all along. He sold the property to the father. He had to have known the son, who was a junior, was forging his father's signature.

Mary contacted the listing agent and presented the facts and asked him why he was allowing the son to forge his father's name. The agent back-peddled quickly and claimed he knew nothing of it and that he never met the father.

Mary notified the buyer and the buyer's agent

[Continued on pg 3]

[VENEZUELAN villain – continued]

of the most recent events. The buyer was disappointed she lost the home of her dreams and was angry she had just paid money to terminate the lease early on the property she was currently occupying. However, she was happy Mary had saved her from having bought the property from someone other than the rightful owner.

Next, Mary contacted the attorney probating the estate. The attorney indicated the real seller died on November 18, 2013 with a valid will. He was survived by a spouse and five children, two of who are minors.

The attorney said it was a difficult probate which involved six properties that became exceedingly more complicated when the wife died five months later, without a valid will. The attorney stated during the conversation she intended on withdrawing as the attorney for the probate, as it was evident the son was working to defraud his family and steal proceeds from the sale of his parents' properties. She added that she was working with the siblings to stop the actions of their brother and after her most recent conversation with the siblings, left the office only to discover her car had been vandalized. She was afraid to continue as the attorney. Before Mary hung up the phone the attorney verified the son perpetrating the fraud was born in 1985.

Can you believe it? Mary went above and beyond the call of duty to discover the criminal acts of the son. Internal notices were placed to try to prevent similar schemes involving these properties from occurring.

WORLD travelers

A real estate agent in Cape Coral, Florida was contacted by the owners (husband and wife) of a vacant lot desiring to sell the property. The agent exercised caution when dealing with the sellers, as they were out of the country and he did not have the opportunity to meet them face-to-face when presenting the listing agreement. He only spoke with them by telephone.

He sent the listing agreement to the property owners and out of caution asked they return the agreement with their email address, physical address and copies of their passports. The sellers sent the information, including copies of their passports.

The sellers explained to the listing agent the passports were issued in Australia, but they had moved to Sweden. The mailing address in Sweden matched the address listed on the Lee County Tax Collector and Property Appraiser website, so it gave the agent a level of comfort he was dealing with the real property owners.

The lot sold quickly and the order for title and escrow services was placed by Marianne Jackowski, a director and closer with Total Title & Escrow, Inc. During the processing of the sale transaction Marianne communicated with the sellers by email and telephone. She prepared and sent the closing package via overnight delivery, and emailed the sellers to announce the package was on the way, along with the tracking information.

The sellers responded to her email immediately wanting to know why the closing package was sent without contacting them first. They demanded the closing package be stopped and redirected to a new address in the United Kingdom. Their story was that they were sailing and would be at a certain location in the United Kingdom where they could receive the package, execute and return the documents.

The first package of closing documents could not be re-directed to the address in the United Kingdom, so Marianne prepared and shipped a new package of closing documents. She also flagged her file for further security checks, as the sellers' reaction was unusual. Sellers are typically overjoyed to learn their closing package has shipped – it means their transaction is coming to an end and they soon will be receiving proceeds.

In the meantime, the first package was successfully delivered to the address in Sweden. The people receiving the package called Marianne to find out why the documents were sent. They had no knowledge their lot in Cape Coral had sold and in fact they had no desire to sell! To their knowledge it was not even listed for sale.

Marianne had been suspicious of the contract sellers all along. This conversation proved her suspicions to be right! She asked for some identifying information from the real property owners.

The husband was born in 1967 and had a full head of hair. The man with the same name pictured on the passport provided to the listing agent and Marianne, was born in 1965 and balding. His wife was also born in 1967 and was blond and beautiful. The woman with the same name pictured on the passport provided to the listing agent and Marianne, was born in 1970 and looked nothing like the wife.

Marianne assured the property owners she would report the incident to the local police. She stopped the transaction and notified the real estate agents and the buyer that the sellers were imposters. She cancelled her file, returned the buyer's deposit and provided all the information in her file to local law enforcement, as well as the title insurance underwriter.

As a result of her fraud detection, Marianne has been rewarded $1,000 from the Company as well as a letter of recognition. She could have turned a blind eye to the crime and closed her file upon receipt of the signed documents from the second package, but she did not. She paid attention to all the warning signs and acted swiftly to protect the Company from a potential claim.

Had Marianne closed the transaction and the real owners later established their ownership rights, the Company could have had an obligation under the owner's policy to protect the ownership rights of the buyer.

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FIRPTA withholding nightmare #12

And last but not least, is the horrifying story about another FIRPTA mishap. In this transaction the seller was subject to FIRPTA Withholding and did not have a taxpayer identification number (TIN). The escrow officer and her assistant held the money after close of escrow in May 2013, instead of sending it right away to the Internal Revenue Service (IRS). They were waiting for the sellers to provide their assigned TINs.

Finally, at the end of December 2013, the escrow officer decided to remit the funds without a TIN, since she had not heard from the sellers. The forms were filled out with the escrow company named as the withholding agent and reflected the escrow company's TIN. The officer sent in a trust check with "no TIN" written on the face.

The check was cashed right away. The following year in March 2014, the Forms 8288 and 8288-A were processed by the IRS and no payment was associated with the Forms, so the IRS notified the withholding agent (the escrow company) that withholding was due in the amount of $105,000.

The escrow officer contacted the IRS and according to the IRS, they had no record of receiving the initial $105,000 payment and the account had gone to collections. The escrow officer supplied the IRS agent with a copy of the cancelled check. The account was put on hold, so that no additional notices would be sent.

The IRS assigned the case to a Hardcore Payment Tracer to locate the $105,000 and apply it to the correct account. The IRS eventually found the payment applied to the escrow company's account. The IRS assessed the following penalties and interest:

Penalty for filing tax return after the due date	$23,625.00
Interest charged for late payment of tax	$4,725.00
Interest charged for late payment	$2,810.58
Total	$31,160.58

The penalty notice was sent to another office of the escrow company and never directed to the correct office for payment. The bill was left unpaid until October 2014. All of a sudden lenders alerted the escrow company that they could no longer open new orders with them as they had been placed on the Limited Denial of Participation (LDP) list.

An LDP is an action taken by a specific representative of the U.S. Department of Housing and Urban Development (HUD), for failure to comply with the specific standards for a HUD program or for delinquent federal debt.

An LDP excludes lenders from participating in the origination or closing of a mortgage backed by the federal government. The LDP does not just affect the office that failed to timely pay the withholding and not just one escrow officer, but the entire company!

The office scrambled to find out how much was due and to overnight a check in the amount of $31,160.58 to the IRS, so lenders could continue opening new orders with the Company.

MORAL OF THE STORY

Holding FIRPTA Withholding money while waiting for a foreign seller to obtain a taxpayer identification number is NEVER an option. The withholding amount can be remitted using the buyer's taxpayer identification instead.

A Company check can NEVER be remitted to the IRS, because they automatically credit the payment to the company's TIN, instead of the taxpayer's account. The check for withholding funds must ALWAYS have the buyer or seller's TIN written on the face of the check so it can be properly applied. Otherwise the buyer and seller will need to sign a waiver of liability, releasing the escrow company of any responsibility for a misapplied payment.

The IRS frequently changes the address for a company, based on the latest tax documents received. If your office receives a tax notice that does not affect a transaction your office closed, it should be directed to the National Escrow Administration team via email at settlement@fnf.com.