



By Lisa A. Tyler
National Escrow Administrator

One of the best and brightest escrow officers decided to share her identity compromise story in an attempt to prevent it from happening to her colleagues...meaning you! She was working on a messy file and really was not thinking straight when she received a phone call from her bank. The call came across her cell phone and said the bank name. When she answered, a woman named Ms. Jones said she was from the bank and with the fraud department. Jones said she was going to text a code so she could confirm this was in fact the escrow officer.

The escrow officer received the text code and read it back. Jones asked if she authorized a \$1,000 transfer from her account. The escrow officer told her she had not. She told Jones she would go to her online banking, which Jones advised her they had already shut down. Jones then said she needed the escrow officer to read off one more code to authorize the shutdown. When the escrow officer read back the next text code she received — the phone line went dead.

The escrow officer immediately started receiving emails from her **real** bank. One said she changed her password and the second authorized a \$1,000 withdrawal via electronic funds transfer. The escrow officer called her bank to report the incident and later received a call back from the **real** fraud department. She was

informed that the thieves who stole the \$1,000 had used her Social Security number and they really did shut down the account. The escrow officer had to purchase credit monitoring, file a police report and is now contacting all three credit bureaus to make them aware of the incident. On top of it all, she is still out the \$1,000! Read about new phone scams and how to protect yourself from becoming a victim in "FRAUD alert."

Earnest money deposited by someone other than the buyer — otherwise known as a "third party" — comes with risks. Risks which can be mitigated by having the third party and buyer sign Third Party Deposit Instructions. Read "THIRD party or co-conspirator?" to discover the risks and how they are mitigated.

There are instances when a principal is unable to sign their closing documents in our offices and in some cases the principals may be in a remote area of the country where it is not feasible for a mobile signing agent to meet with them. When that occurs, settlement agents should encourage the principals to sign in the presence of an actively licensed attorney where the signing occurs. Read "SIGNING under the supervision of an attorney" to discover how an attorney can supervise the signing, and the Company can still record the documents and issue policies of title insurance.

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via email, mail or word of mouth.



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FRAUD alert

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Editor
Lisa A. Tyler
National Escrow Administrator



A new phone scam has been popping up recently, but with a strange new twist — your own number is calling you. Scammers are using this new tactic to phish for your personal information. Hundreds of residents in Central Valley, California, have reported receiving this scam phone call.

The “robodialer” dials and once the phone is answered, a person takes over on the other end asking them for personal information, like the last four digits of their Social Security number. The caller threatens that their AT&T® accounts have been compromised or will be closed, and that they must enter the last four digits of the account holder’s Social Security number for verification to keep it active.

In another variation, the scammer asks for information pertaining to setting up their voicemail account. No matter what variation of the call you receive, scammers are only after one thing — your personal information. This information can potentially help them hack your accounts or steal your identity.

The Better Business Bureau® (BBB) offers up the following tips to protect you from becoming victim to the next phone scam:

1. Do not trust caller ID

Victims fall for phone scams because they assume the number on their caller ID is the correct person. Scammers can easily spoof numbers to make it look like a certain person is calling you, when in reality they are not.

2. Do not give out personal information

Any legitimate person or business who reaches out to you will already have your information on hand. If they do not, or if you receive a call out of the blue asking for your personal information just hang up.

3. Scammers usually pose as a trusted source

Scammers usually pose as a trusted source to get any information they can out of you. If you hang up immediately on them, they will not be able to phish for that information.

4. Do not press buttons

Many “robocallers” will prompt you to “press 9” to be taken off their call list. This will only do the opposite and flood your phone with even more calls. Pressing a number on the keypad alerts them that they have reached an active number.

5. Beware of big name companies calling

Scammers impersonate big name companies, charities and legitimate businesses, hoping that you will be more inclined to give up your personal information to them. If you receive such a call hang up immediately, find the appropriate number on your own and call the business to verify.

6. Sign up for the Do Not Call Registry

To cut down on the amount of calls you receive, you can register your phone number for free through the Federal Trade Commission (FTC) Do Not Call Registry. The Do Not Call Registry prohibits sales calls, so you may still receive political calls, charitable calls, debt collection calls, informational calls, telephone survey calls and calls from companies you have recently done business with.

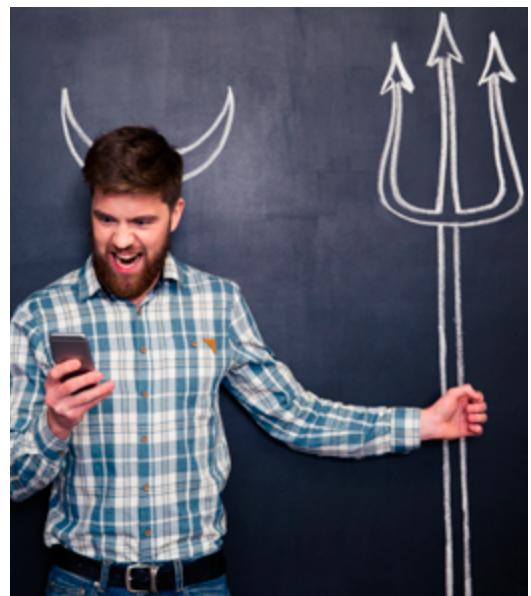
7. Do not answer

If you receive a phone call from a number you are unsure of, it is best to just let it go to voicemail. Any legitimate person or business will leave a message, but even if the scammer decides to leave you a voicemail, you will have time to think about what is being asked by them, instead of being pressured on the spot to give up your personal information.

If you receive a scam phone call, report it to BBB Scam Tracker at www.bbb.org/scamtracker or the FCC at www.fcc.gov.

STOP
TELL US HOW YOU
STOPPED
FRAUD

settlement@fnf.com or
949.622.4425



THIRD party or co-conspirator?

Third Party Deposit Instructions authorize the settlement agent to apply the earnest money for the benefit of the buyer. The third party acknowledges the funds are subject to forfeiture and confirms they do not expect a lien against the property to secure re-payment of the funds by the buyer.

The instructions also provide the settlement agent with authorization to share the details of the depositing instrument with the buyer's lender; if necessary. Once executed, the funds are credited for the benefit of the buyer and are considered non-refundable to the remitter.

Without signed Third Party Deposit Instructions, the funds cannot be used and the seller has no ability to recover damages from the buyer, if the buyer defaults under the terms of the purchase agreement. This is why it is imperative settlement agents who receive earnest money from a third party do two things:

1. Immediately notify the seller, buyer and their respective real estate agents funds have been deposited by a third party but cannot be credited to the transaction until the third party executes Third Party Deposit Instructions.
2. Send Third Party Deposit Instructions to the remitter of the funds and buyer for execution.

Failure to do these two things puts the Company at risk. Below is just one example:

A buyer makes an offer to purchase a property for sale. The offer states the buyer will deposit \$5,000 in earnest money into escrow upon the acceptance of their offer. The seller accepts the offer.

The earnest money is deposited with the escrow agent but the funds are not from the buyer named on the purchase agreement; instead the funds come from a limited liability company (LLC). The buyer is the sole member of the LLC.

The funds are received into the file and the escrow officer notifies everyone funds have been received. Next, the escrow officer sends Third Party Deposit Instructions to the remitter and buyer for execution. Neither the buyer, nor the third party return the instructions to escrow.

Several weeks later, the buyer and seller agree to cancel the transaction. The listing real estate agent instructs the escrow officer to prepare cancellation instructions wherein the earnest money is forfeited to the seller. The instructions are signed by the buyer and seller, and returned to escrow.

As soon as the escrow officer receives the fully executed mutual cancellation instructions the buyer calls. He informs the escrow officer he is demanding the earnest money be returned to the LLC. He informs the settlement agent he knows she cannot use the funds since he, as the managing member of the LLC, never authorized her in writing. No wonder the buyer quickly signed the cancellation instructions — he had nothing to lose.

The escrow officer had no choice but to return the funds to the LLC and notify all other parties the third party demanded the funds be returned. The seller was mad. The seller and the listing real estate agent demanded the escrow company pay the seller their \$5,000 in damages since the escrow officer never notified them the funds came from a third party. The branch had to file a loss and pay the seller.

Unfortunately, this is not the first time something like this has happened. As a matter of fact, there have also been serious issues where the third party deposit came in at the last minute representing closing funds.

The funds were received in for the benefit of the buyer and the file is closed. Years later, the third party contacted the escrow company wanting to know why they did not have a lien against the property to secure the re-payment of their loan.

No one knew the funds were a loan because the third party was never contacted. The funds were used without authorization. Stories just like this are expensive and completely preventable.



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[THIRD party or co-conspirator? - continued]

MORAL OF THE STORY

In the above story, the buyer was an investor who seemed to know exactly how to work the system. He managed to secure the property, but when he defaulted and the deal fell apart he lost absolutely nothing. Meanwhile, the escrow company worked hard on the file opening the order, sending communications out to the principals and obtaining demands in order to clear title.

In the end, the escrow company was out their time and \$5,000. Do not let this happen to you. Always be sure to obtain signed Third Party Deposit Instructions.

Settlement agents have an obligation to notify the parties to a transaction immediately when funds come from anyone other than the buyer. Sellers and real estate agents need to be sure they review the communications received from the settlement agent, to ensure whether the earnest money is in fact on deposit with no strings attached.

If the funds are closing funds, they cannot be applied for the benefit of the buyer until the remitter has signed Third Party Deposit Instructions. The closing may even have to be delayed or the funds returned if the third party refuses to sign the instructions.

Remember, it is imperative settlement agents who receive earnest money or closing funds from a third party do two things:

1. Immediately notify the seller, buyer and their respective real estate agents funds have been deposited by a third party but cannot be credited to the transaction until the third party executes Third Party Deposit Instructions.
2. Send Third Party Deposit Instructions to the remitter of the funds and buyer for execution.

This article was provided by contributing author, Diana Hoffman.

SIGNING under the supervision of an attorney

When principals cannot appear in our offices and are located in such a remote area a mobile signing agent cannot reach them, the principals are encouraged to sign their closing documents in the presence of an attorney who is actively licensed where the document signing takes place.

The attorney does not also have to be the commissioned notary. The attorney just needs to supervise the signing to make sure it is conducted appropriately under the laws of that state. Many times principals return to the attorney who drew their family trust, last will and testament, and/or other legal documents to conduct the signing of their real estate closing documents.

The attorney needs to provide either a letter, statement, business card or other evidence they supervised the signing of the documents in order to satisfy underwriting requirements to insure the transaction.

