



## FOR mobile deposit only

**By Lisa A. Tyler**  
*National Escrow Administrator*

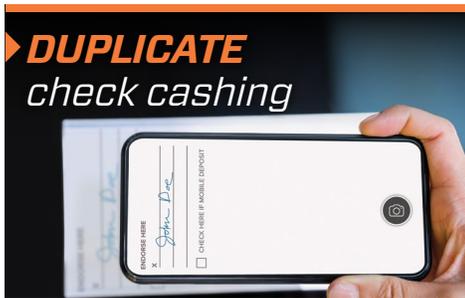
A real estate agent hired a landscaper she had never met. He performed the work on a listed property, and she paid him by check. Find out how he swindled her in the article aptly named "DUPLICATE check cashing."

"THIRD-party deposits" is an article suggested by our esteemed colleagues in the Dormant Solutions Group, because third-party deposits accepted into escrow continue to cause problems on transactions that fail to close. It is a must read for all settlement agents.

All-Star was the theme for the 2023 FNF annual escrow training events. National Escrow Administration chose this theme because of our deep belief that our colleagues are the All-Stars in the industry. They are what differentiates our Company from the competition.

Our settlement agents nationwide provide a top-notch customer experience, which is proven by our market share. They are the best of the best in the industry. Read the nominations for the February 2023 recipients of the All-Star Award in the article entitled "ALL-stars."

### IN THIS ISSUE



**Share Fraud Insights**  
via email, mail or word of mouth.



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## **DUPLICATE** check cashing

A real estate agent recently started out the day with a visit to her bank due to a collections letter she received from a check cashing center in her hometown. Someone she hired to perform landscaping on a listing prior to closing decided to deposit the check she gave him using a mobile app. Then, he took that same check to the check cashing center and cashed it again. %#!@.

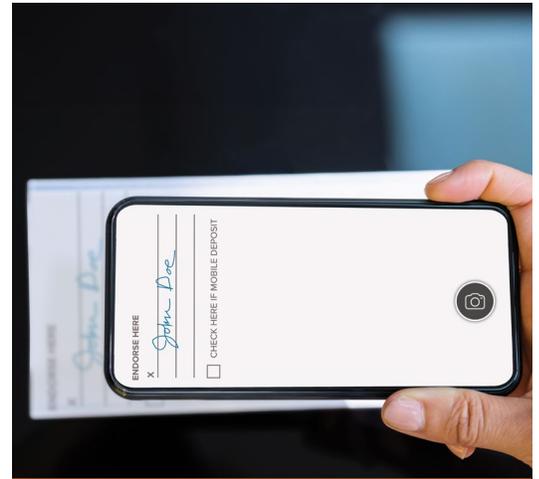
This landscaper was new to the agent, she hired him because her regular landscaper was not available at the time. Her bank sent her to the check cashing center, where she explained what the payee of the check had done.

The manager at the check cashing center told her to file a police report, which she had done prior to entering the check cashing center. The manager said the letter was sent to her because the payee on the check was not responding to the multiple phone calls, emails, text messages and certified letters sent to him.

Next, the agent tried to call the collections company that initiated the letter to report the incident as fraud. She could not talk to anyone, because the collections company does not have a fraud department.

These are the lessons she learned:

1. On the back of your checks, there is a box to check if it is a mobile deposit. If the payee does not check it or write in, "for mobile deposit only," check cashing places will cash the check because there is no stopgap to indicate, "Wait. This has already been cashed."



2. Whoever commits fraud when the value of the property misappropriated or taken is more than \$500 (but not more than \$2,500) is guilty of a fourth-degree **felony**, which is a sentence of up to 18 months in prison and a \$5,000 fine.
3. Real estate agents should use some type of identification verification, such as FOREWARN®. Had she checked out the landscaper, she would have seen he had a past criminal record of fraud.
4. The police officer at the front desk took less than 10 minutes to file the report. When she explained the situation, he looked at her and just shook his head. He asked, "Young guy?" She replied, "Nope, probably late 50s." He responded, "Just so you know, this happens a lot."

## **THIRD-party deposits**

In a recent commercial transaction, an initial deposit in the amount of \$90,000 was received. Under the terms of the agreement \$50,000 was released to the seller prior to closing. The buyer did not perform (bring in funds and documents to close) and required an extension.

The principals negotiated an extension fee of \$75,000. The buyer only paid \$35,000 of the \$75,000 and the money came in from a third party. The third-party depositor signed the Third-Party Deposit instructions, but the buyer did not. The instructions authorized:

1. Use of funds for this particular transaction; and
2. Release of evidence of deposit to buyer's new lender to source the funds; and
3. Forfeiture of the deposit under terms of the purchase agreement; and

4. Refund of the deposit to the contract buyer  
**Amendment to the Contract created by the real estate agent read as follows:**

1. Extension Fee. In consideration for the extension of the Expected Closing Date (as set forth below), concurrently with the execution of this Amendment, Buyer will deposit with Escrow Holder additional Cash made payable to Escrow Holder in the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) ("Extension Fee").

The Extension Fee is separate from the Deposit and shall be immediately released to Seller without the need for further instruction.

The Extension Fee will be applied against the Purchase Price and is non-refundable to Buyer.



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## [THIRD party deposits - continued]

2. Release of Deposit. The Buyer previously deposited with Escrow Holder the Deposit in the amount of \$90,000. A portion of the Deposit, in the amount of \$50,000, was previously released to Seller.

Upon execution of this Amendment, Escrow Holder will release the remaining Deposit, in the amount of \$40,000, to Seller without need for further instruction.

Buyer acknowledges that in the case of a default by Buyer, including a failure to close Escrow on or before the Closing Date, the Deposit will be considered liquidated damages as provided in the Purchase Agreement and Buyer shall have no claim to the Deposit.

The buyer never signed the third-party deposit instructions and despite the wording in the purchase agreement another set of Release of Funds Prior to Close instructions were required to release the extension fee and they were never signed.

### What does the Release of Funds Prior to Close actually say?

1. The settlement agent makes no warranty or representation of any kind, express or implied as to the ownership of or title to the property described in this escrow, nor as to any encumbrances or liens thereon, nor as to the condition and/or the ultimate outcome of this escrow nor in any manner or form as an inducement to make the above payment.

2. Buyer fully realizes that no instruments have been filed or recorded in his favor, and no policy of title insurance has been issued to protect his interest in said property. Buyer nevertheless desires to accommodate Seller and release funds.

3. Settlement agent is not to be held liable or responsible for any loss or damage which Buyer may sustain by reason of making the payment, nor for failure of any of the conditions of this escrow, nor for the recovery of said money for any reason whatsoever.

The buyer could not come up with the down payment and the lender will not send documents without proof of funds deposited into escrow.

The buyer wants the extension fee returned to the depositor, so they do not have to repay it. The seller wants all the money in escrow. The transaction is definitely cancelling.

For this transaction, we are stuck making the decision to release the funds without proper instructions (\$40,000 initial deposit and \$35,000 partial extension fee); or hold the funds pending written mutual instructions; or interplead the funds with the court.

## MORAL OF THE STORY

**Always make the buyer, seller, agents and lender aware of third-party deposits received without fully signed instructions. Let them know the funds cannot be used for the transaction without fully signed instructions.**

**Always send out RELEASE OF FUNDS PRIOR TO CLOSING INSTRUCTIONS when the contract or any amendments call for a NON-REFUNDABLE deposit of any kind.**



# ALL-stars

All-Stars are highly effective and productive individuals. They are often self-starters, who are trustworthy, compassionate and demonstrate a high standard of conduct. They are tenacious and possess the ability to work with different personality traits.

Each month read the words of managers throughout the nation who nominated their employees (at one of the 2023 FNF annual escrow training events) as an All-Star in the industry. Maybe you know or work with one of these individuals:



### Tracy Tinsley

**Escrow Officer**  
Napa, CA



Fidelity National Title recognizes Tracy Tinsley as an extremely dedicated escrow officer. She focuses on providing exceptional service to her real estate and lender customers. She has established herself as an expert in her field.

Tracy begins her workdays at 7:00 a.m. She always passes her audits. Tracy is a Certified Escrow Officer with the California Escrow Association, which demonstrates her commitment to her chosen career. She is highly recommended to receive the recognition of an All-Star.



### Lisa Miller

**Escrow Officer**  
Portland, OR



Lisa Miller is Ticor Title's nominee for the All-Star award. She builds her business and manages her desk all alone and looks forward to guiding the parties of a real estate transaction smoothly to achieve successful closings and educate those involved along the way.

Most recently, Lisa embraced the rollout of inHere. As a result of her clear understanding of its benefits she became the Operation's Master Tasker for inHere. She works with each Super Tasker to encourage, train and share all of her knowledge. Lisa is always the first person to volunteer and assist on any projects or reports needed for the operation.

In her spare time, she volunteers at her local library to help their staff with grant research and writing. She is an asset to our operation and is always ready for the next challenge!



### Michael Davis

**Jr. Escrow Officer**  
Denver, CO



Michael Davis, Jr. Escrow Officer, is a rising All-Star. Michael is eager to learn and help those around him thrive. He is committed to challenging himself to excel more today than yesterday. With a humble attitude, he always jumps in to help.



### Kelli Vos

**Senior Commercial Escrow Manager**  
Phoenix, AZ



Kelli Vos, Senior Commercial Escrow Officer, has a reputation of strict professionalism, displaying an unparalleled devotion to her customers. Kelli closes challenging, multi-site transactions with style, professionalism and grace. These qualities have enabled her to grow her business and continuously cultivate her long lasting work relationships.

Kelli sets the bar high for herself and her colleagues. She is an ideal example for the next generation of escrow officers. Anyone would be lucky to learn from her.

Article provided by contributing author: Diana Hoffman, Corporate Escrow Administrator • Fidelity National Title Group • National Escrow Administration

