



DON'T get duped

By Lisa A. Tyler
National Escrow Administrator

The absentee owner and seller imposter scams do not just affect individual owners of residential properties, it affects entities owning all types of properties, including agricultural land. Discover how a religious ministry had their property stolen out from under them by reading “HOLY moly.”

Orders are down due to rising interest rates and low inventory. Settlement agents, however, should not be so desperate for orders they ignore all the signs of a fraudulent transaction. Find out how an escrow officer was duped into depositing and disbursing against uncollected funds in the story titled “FICTITIOUS checks.”

After reading the eleven articles shared this year, readers should have a general understanding of how criminals and their co-conspirators launder money and how real estate transactions may facilitate their efforts.

Therefore, title companies and settlement agents have been the recipient of Geographic Targeting Orders adding additional reporting requirements for certain types of real estate transactions. To wrap up this series of articles on cash reporting, be sure to read “CONCLUSION.”

IN THIS ISSUE



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HOLY moly

Many real estate investors refer to themselves as wholesalers. These are individuals who find properties to purchase. They enter into a purchase agreement, but prior to closing find a different buyer to ultimately purchase the property; usually for a fee or increase in the original sales price.

The property is not listed for sale with licensed real estate agents which is why the wholesaler is able to sell the property to another buyer so quickly.

Amanda Clower, escrow operations director for Alamo Title Company in Irving, Texas, was working with a long-time customer who was purchasing a property with seven agricultural acres in Colleyville, Texas, from a wholesaler.

The wholesaler was purchasing the land for \$925,000 and then reselling it to Amanda's customer for \$1.4 million. The wholesaler insisted both deals close with "Hole-in-the-Wall Title Company."

After some questions and answers between the ultimate buyer and the less qualified escrow officer about the structure of the transactions at Hole-in-the-Wall Title, the wholesaler allowed the ultimate buyer to move the second leg of the double escrow to Amanda's office.

For a double escrow transaction to successfully close, both parts of the transaction must be handled by the same office using the same escrow trust account since the proceeds from the second sale have to fund the first leg of the transaction. As a result, the first leg eventually transferred to Amanda.

Amanda thought it was odd the ultimate buyer was able to easily negotiate a \$74,000 reduction in sales price due to roll-back taxes that would become due and payable after closing. She then noticed the property owner was listed as a Church Ministry from South Carolina in the public

records, however, the seller listed on the initial purchase and sale agreement was an individual who purportedly owned Way Below Retail, LLC.

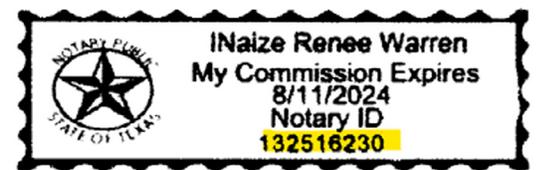
The deeds in the chain of title reflected the ministry took title to the property on October 4, 2019. But there was a second deed dated February 2, 2021, that was not recorded until August 11, 2023. This is why the public records had not been updated to reflect the owner as Way Below Retail, LLC.

It seemed strange to Amanda that the LLC would hold the deed for two and a half years without recording it. She questioned the representative of Way Below Retail, LLC, who explained he had been making payments in cash to the ministry in a church parking lot for the last two and a half years and, per their agreement, he could not record the deed until the loan was fully repaid.

The seller claimed he would meet the secretary from the church in the parking lot every month. The seller had no evidence of a note or deed of trust securing that loan.

Amanda looked closer at the deed recorded in 2023, and it appeared to be signed by the pastor and secretary of the church in Tarrant County, Texas, even though the church was located in South Carolina.

Her gut was telling her something was awry. The grantee on the deed, Way Below Retail, LLC, included a completed notarial certificate for the owner, but the owner never signed the deed. Amanda looked up the commissioned notary using the Secretary of State website.



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STOP

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settlement@fnf.com or
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[HOLY moly - continued]

The notary identification number listed on the website was one digit off.

Name:	Inaize Renee Warren – ID: 132616230
Address:	908 Audelia Rd Richardson, Tx 75081
Expires	Aug 11, 2024
County	Dallas
Agency:	American Association Of Notaries Inc
Surety Company:	Western Surety Company

Amanda reached out to the title company that closed and insured the 2019 purchase by the South Carolina Ministry and discovered the purchase price at that time was \$500,000 less than the purchase price in her first transaction.

Amanda called the attorney who represented the church in that transaction and was able to obtain an email address for someone in the church ministry. She reached out to confirm they had really sold the property to Way Below Retail, LLC, but the message came back as undeliverable.

Amanda was leery of the deals and then out of nowhere her undeliverable email was answered by someone at the church. They

provided the contact information for the real estate agent who represented the church in the 2019 purchase.

Amanda reached out to the real estate agent who confirmed the deed recorded in 2023 was forged, the property was never legally conveyed to Way Below Retail, LLC and the property was not currently for sale either.

Amanda was relieved her suspicions were confirmed. She immediately resigned from both transactions returning the funds on deposit back to their original remitters. The real estate agent who confirmed the church never sold the property to Way Below Retail, LLC is also a commercial broker. The broker was so appreciative of Amanda's determination to discover if the transaction was legitimate and that she protected the church's ownership — that he committed to bring his next transaction to Alamo Title Company.

Amanda's investor customer who would have been the ultimate purchaser was equally as ecstatic for Amanda's sleuthing abilities and the fact she saved him from purchasing a property from a fraudulent seller.

Amanda saved the Company from two potential claims — one from the wholesaler and another from the ultimate buyer — totaling more than \$2 million. Her efforts are being rewarded by the Company with a letter of recognition and a \$1,500 reward.

FICTITIOUS checks

At a title company around the corner, an escrow officer received an email from an unknown party requesting escrow and title services. The email had been sent on Sunday morning and reviewed by the escrow officer on Monday, August 21, 2023.

A purchase and sale agreement came attached to the email request reflecting a sale price of \$2,175,000. The purchase and sale agreement stated it would be an all-cash offer with a required earnest money deposit in the amount of \$217,500. The agreement called for a 90-day closing.

It appeared the seller's and buyer's signatures were completed by the same person and the signer did not even attempt to forge the names.

SIGNATURE AREA	
Buyer's Signature Richard Aaron Bailey	 Date 8/14/2023
Seller's Signature John S Leno	 Date 8/14/2023

On Tuesday, August 22, 2023, a title report was ordered by the escrow officer and an escrow number was emailed to the buyer affirming that escrow and title services would be provided.

On Tuesday, August 29, 2023, the earnest money check arrived;

it was an official check drawn from a bank in Canada. The escrow officer informed the buyer that the check would have to be replaced, since he was unable to deposit checks drawn from a foreign bank. The escrow officer returned the check to the buyer who provided a Canadian mailing address.

On Tuesday, September 12, 2023, a new official check arrived via overnight delivery drawn from 1st Bank. The check was deposited on Wednesday, September 13, 2023.

On that same day (Wednesday, September 13, 2023), the escrow officer was notified through a chain of emails between the buyer and seller that the transaction was cancelled. A Termination of Purchase Agreement was attached to the email containing the same two signatures as the purchase and sale agreement.

According to the termination, the seller agreed to release the deposit back to the buyer. The emails were all sent in the middle of the night, so the escrow officer did not read them until Wednesday, September 14, 2023.

In the emails, the buyer demanded a return of the earnest money deposit via wire transfer to a bank different from 1st Bank. The wire transfer instructions required the funds be sent to Teller Systems, Inc., which did not match the buyer's name. On Thursday, September 14, 2023, the funds were wired out to Teller Systems, Inc., less \$200 retained by the title company for fees.

On the morning of Friday, September 15, 2023, the bank contacted the accounting center at the title company to let them know the official check in the amount of \$217,500 had been returned as fictitious.

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[FICTITIOUS checks - continued]

The message from the bank did not make it to the escrow officer until 11:42 a.m. that day. A recall was immediately placed on the wire transfer, but it was too late. The account holder had already syphoned off the funds before the crime was discovered.

MORAL OF THE STORY

The escrow officer should have recognized the scam when the earnest money was tendered drawn from a Canadian bank. This transaction had all the same characteristics of the scam which has been perpetrated against the title industry for decades:

- » The order is placed via email from an unknown person.
- » Purchase and sale agreement is generic in format.
- » All communication is through email; no phone contact or in-person contact.
- » The property was purchased sight unseen by a buyer in Canada.
- » The earnest money deposit was drawn from a foreign bank.

There were steps the escrow officer could have taken to stop the fraudulent transaction, they include:

- » The property was in the same area as the title company. The property was owner occupied. The escrow officer could have easily reached out to the seller to confirm whether the transaction was fraudulent.

- » The escrow officer should not have disbursed against uncollected funds. An official check drawn from a federal reserve outside of the area where deposited checks can take up to five business banking days to clear. The check was deposited on Tuesday, September 12, 2023, and the wire went out on Thursday, September 14, 2023.
- » The escrow officer should have recognized the second check as fictitious, by checking the ABA routing number in the top right-hand corner to see if it matched on the MICR line of the check.
- » The buyer tendered funds by check, the refund should have also been tendered by check. The escrow officer should not have returned funds via wire transfer.
- » The funds should not have been wired to an unrelated third party instead of the purchaser named in the purchase and sale agreement.

CONCLUSION

Remember, the receipt of “cash” instruments for deposit does not automatically mean the remitter of the funds is participating in illegal activity. There are legitimate reasons the remitter may be making these types of deposits.

For example, if two different people are buying a property together and each deposits a cashier’s check in the amount of \$8,000 for their portion of the purchase price from their separate accounts. Their remittance of these “cash” instruments is not because they are attempting to launder funds, but simply indicative of the fact they have separate bank accounts.

Cashier’s checks, official checks, money orders, bank drafts or traveler’s checks for more than \$10,000 are considered “cash.” Only those instruments with a face value of \$10,000 or less are considered “cash.”



Settlement agents are only required to report when multiple “cash” instruments have been received with a combined total of more than \$10,000. Additional information may be obtained in IRS Publication 1544, which can be accessed at www.irs.gov.

Always adhere to the hard and fast rule of making only one disbursement per payee from a transaction and understand the reporting requirements are not proof a customer is involved in illegal activity.

Settlement agents may have an obligation to report certain types of deposits. The information gathered from these reports is collected by law enforcement agencies and used to link the persons named in said reports with other suspicious or criminal activity. If you are still unclear about what is considered cash refer to the Company’s resources on this topic.

The information provided herein does not, and is not intended to, constitute legal advice; instead, all information, and content, in this article are for general informational purposes only. Information in this article may not constitute the most up-to-date legal or other information.

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