



By Lisa A. Tyler
National Escrow Administrator

According to the FBI, "Mortgage fraud is defined as a material misstatement, misrepresentation, or omission relied upon by an underwriter or lender to fund, purchase, or insure a loan."

In some instances, individuals commit mortgage fraud to obtain housing and in other instances for profit. Either way, it is still a crime. This type of fraud is slowly creeping back into our offices. Be alert and do not let your guard down. Read "MORTGAGE fraud" for one example.

When a lender intends to place a lien on a property and requests a loan policy of title insurance insuring that lien, title officers will

examine the real property records concerning that property. "EVERY detail matters" is a story that demonstrates some of the items title officers uncover during their examination.

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. Our colleagues are what differentiate 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 in the industry. Read about a few of the recipients of the All-Star Award in the article titled "ALL-stars."

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MORTGAGE fraud

With the current challenges in the U.S. real estate market, it should be no surprise that fraud schemes, such as the use of “silent seconds,” are once again popping up in title and escrow offices nationwide. A “silent second” is a second mortgage that is often used to secure a down payment, but is not disclosed to the first lender before, during, at, or post-closing.

The role of the settlement agent is to take and follow written instructions from the parties to the transaction in order to close the transaction. In many transactions, there is a first lien placed of record. The settlement agent should have written instructions from the lender providing the relevant loan charges to make, the terms of the loan, and the type of policy and endorsements that are required.

These instructions usually state that they are to be insured in a first lien position, subject to certain items on the preliminary report or title commitment, and there is to be **no secondary financing without their expressed written approval**.

This means the settlement agent cannot allow any other liens to be a part of our transaction without the first lien holder’s permission. The lender expects the full and entire down payment be placed in escrow as a part of the purchase price and terms of the sale.

It is imperative settlement agents make sure they have receipted in funds **from the buyer/borrower** equal to the amount required in to close the subject transaction. These funds cannot come from the seller, mortgage broker, real estate agent or another third party without the expressed written consent of the first lender.

At times, these parties may request the settlement agent take their funds and show them as the buyer’s funds to meet the requirement of the first lender. After the fact, they may have the buyer/borrower execute a note and mortgage/deed of trust to the seller/broker/agent and record it after the close of the transaction. **This act must not be performed by the settlement agent.**

In one recent transaction, escrow opened a sale for \$15 million. The buyer applied for a new, first loan in the amount of \$10 million. The buyer also separately negotiated with the seller to carryback a subordinate lien, which the buyer did not disclose to the primary lender. The buyer then tried to close on the sale and both loans simultaneously.



When the lender reviewed their loan documents, and learned of the previously undisclosed seller carryback, the entire transaction hit a roadblock. The buyer was forced to acknowledge the secondary financing that was lined up in violation of the primary lender’s instructions and restrictions, and our escrow officer made the right call to resign from the transaction, with support from her local management.

MORAL OF THE STORY

Disclosure is key to the prevention of mortgage fraud, and in particular fraud perpetrated through the use of “silent seconds” which borrowers attempt to hide from their lenders and sometimes even our closers.

Train your staff and new colleagues to recognize indicators of fraud, such as failure of borrowers to disclose key aspects of the financing of a real estate transaction, and speak up before proceeding to close.

Article provided by contributing author:
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TELL US HOW YOU STOPPED FRAUD

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EVERY detail matters

Cathy Clark, Senior Commercial Title Officer with the FNTG Concord Title Group, began to prepare a preliminary report in response to an order opened to refinance a loan. The borrower was a trust. The lender was a private individual.

The property was a vacant lot, but the order did not include the new loan amount. There were no comparable sales available, but the tax assessor valued the property at about \$75,000. The title search revealed the property taxes for the last five years were unpaid.

There were six deeds in the chain of title, which were all uninsured deeds. In addition, one state and two federal liens against the trustee of the trust were discovered. Their combined estimated unpaid balance was nearly \$95,000.

The escrow officer reached out to the trustee to obtain a copy of the trust agreement and obtain his authorization to order payoff demands from the IRS and California Franchise Tax Board. The trustee claimed that because he was not the beneficiary of the trust, the liens did not attach to the property and could be ignored. The escrow officer relayed the information to Cathy.

In performing her title examination, Cathy did not rely on the statements or opinions of the trustee. Instead, she reviewed the entirety of the trust agreement and documents relevant to creation of the trust itself, and modified her preliminary report accordingly.

Cathy did not stop there. She then searched the name of the trustor and found he was convicted of conspiracy. With the help of co-conspirators, he bilked investors to the tune of \$15 million. At Cathy's request, the Company resigned as escrow holder, and the lender's request for a title policy was denied.

The primary purpose of a title examination is to confirm the seller owns the property. In this instance, a review of the trust documents was a key step in the underwriting process when considering whether the Company would insure the lender's lien.

Cathy takes her responsibility seriously and understands why each step must be taken and not skipped. Her review of the trust documents stopped the transaction dead in its tracks. She never even had to address the uninsured deeds.

Because of her efforts, the Company avoided the risk of insuring a lien which could be considered unenforceable. Cathy has received \$1,500 as a reward for her thorough examination.

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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.

This month we are featuring four individuals who were recipients of the FNF All-Star award in 2023.



Lisa Nester

Escrow Officer
Lakewood, CO



The Lakewood, Colorado operation of Fidelity National Title, nominated Lisa Nester as their All-Star employee. Lisa is kind, committed, caring, capable and a model team player. She lifts everyone's spirits and provides the right amount of encouragement.

Lisa's interaction with her colleagues and customers is unrivaled. She approaches everyone in a gracious and competent manner. She carefully and thoughtfully evaluates challenges and finds a way to work through them.



Kerri Coveney

Branch Manager
Fountain Hills, AZ



Grand Canyon Title Agency nominated Kerri Coveney as their All-Star employee. Kerri is Manager of the Fountain Hills branch and is very active in the industry. She holds the designations of Certified Senior Escrow Officer and Certified Escrow Instructor. She is currently serving as the First Vice President for the Arizona State Escrow Association.

Kerri goes above and beyond for her customers. She provides Grand Canyon Title customers with a first class experience and is a wealth of escrow knowledge for her customers and fellow colleagues.



Shannon Stiener

Escrow Manager
Schereville, IN



Fidelity National Title nominated Shannon Stiener as their All-Star employee for her lifelong passion for the community and her tireless dedication to the operation, customers and the Company.

Shannon worked her way up from an entry level position and was promoted to other positions including searcher, escrow assistant, closer and county escrow manager. She possesses a stellar work ethic, coupled with extensive knowledge and unparalleled organizational skills, which have contributed to her success.



Amelia Jenkins

Escrow Manager
Colorado Springs, CO



Amelia Jenkins has proven to be an All-Star for Heritage Title Company in the Colorado Springs market. She moved from Denver and now manages two branches.

Amelia still handles her own closings for her loyal customers who followed her from Denver. She manages this challenging role with professionalism and a positive attitude.

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

