FRAUD Insights

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# FBI recommendation

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An excerpt from the Federal Bureau of Investigation's (FBI's) 2022 Congressional Report on Business Email Compromise (BEC) and Real Estate Wire Fraud reveals a recommendation to change the Uniform Commercial Code (UCC) governing the banking industry to prevent wire fraud. The much-needed recommendation is contained in the article titled "UNIFORM commercial code issue."

Settlement agents are experts in completing real estate transactions. They know how to clear up clouds on title, follow written instructions, prorate taxes, track down old lien releases, balance a file, etc. They help buyers, sellers and borrowers realize the American dream of home ownership every day. Sometimes a transaction comes their way which causes concern. In their heart of hearts, they feel something is not right and they just cannot close the deal. The story titled "WHAT to do?" is one example.

Real estate agents, settlement agents and title agencies nationwide continue to be contacted by imposters posing as legitimate property owners and attempting to list properties for sale. The good news is the industry has been educating everyone regarding scam warning signs. We receive reports daily from settlement agents who have tracked down the real property owner before real damage has been done. This story is no different. Read "WE'RE on to you" for the details.

Money laundering involves disguising financial assets so they can be used without detection of the illegal activity that produced them. It is considered laundered once the "dirty" money is "cleaned" — making it appear to come from legitimate, legal sources. Criminals launder money that is illegally received for many different types of criminal offenses, such as human trafficking, dealing in narcotics or arms, terrorism activity and so forth. It provides them with a method to conceal the proceeds, sources and/or the nature of their crimes. Laundering threatens the integrity of the financial system. Read the article titled "WHAT is money laundering?"

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# UNIFORM commercial code issue

**Since 2013, the FBI has led the charge against Business Email Compromise (BEC) and money mule threat actors and remains on the forefront of tackling these crimes. The FBI states it will proudly continue to lead the U.S. Government's efforts to combat these threats by educating employees, the public, and private and public sector partners.**

In their latest report to Congress, the FBI reported the Uniform Commercial Code (UCC) 4A-207 Misdescription of Beneficiary states:

> If the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order.
>
> The beneficiary's bank does not need to determine whether the name and number refer to the same person. When a diverted wire transfer occurs, the bank does not have to verify the transfer beyond the number.

In other words, the payee's name and bank account name associated with the bank account number do not have to match. In order to address this shortcoming, the FBI is recommending the UCC 4A-207 be redrafted to require banks to properly identify the name and number of the beneficiary and to determine they are, in fact, the same individual or entity.

The FBI's recommendation would assist in efforts to reduce wire fraud in real estate transactions.

# WHAT to do?

**Toward the end of November 2022, Escrow Officer Michelle Polk, from Fidelity National Title Company in San Bernardino, California, scheduled an appointment with a buyer to open escrow. He and his wife negotiated a deal to buy their neighbor's home.**

Since the buyers know their neighbor, they did not engage a real estate agent to assist them. The neighbor was elderly and recently moved into an assisted living facility. They agreed to purchase the property for $425,000. The seller agreed to finance $375,000 of the purchase price. The payment terms were unusual. The seller agreed to charge no interest, with annual payments in the amount of $50,000 for eight years.

Michelle prepared her escrow instructions while the husband buying the home was in her office. He shared with Michelle that he and his wife have known the seller for many years. The seller did not have any family she was in contact with, which is why he and his wife have been assisting her with some of her duties.

The buyer offered to obtain the seller's signature on her paperwork when he and his wife visited her in the next few days. Michelle put a package together for the seller and sealed it in an envelope. She included a return envelope the seller could use.

A week later, the buyer came back to return all the completed paperwork — his and the seller's. He explained he and his wife helped the elderly seller with hers. Michelle asked the buyer for the seller's phone number so she could call her to schedule a time for the notary to meet with her to

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sign the deed. The buyer gave her his number and said he would set it up when the notary called.

Michelle reached out to schedule the signing. She asked the notary to call her first so she could provide special instructions. She informed the notary the signer was living in an assisted care facility and she wanted to attend the signing, but she did not want the notary to tell the buyer.

The signing appointment was set, and Michelle attended. When she walked into the seller's room, she was greeted by both of the buyers. She observed the seller was on oxygen, but dressed and visiting with the buyers.

Michelle introduced herself to the seller and then asked her if she understood she was signing documents that day to sell her home. The seller immediately said, "No," and looked at the buyers.

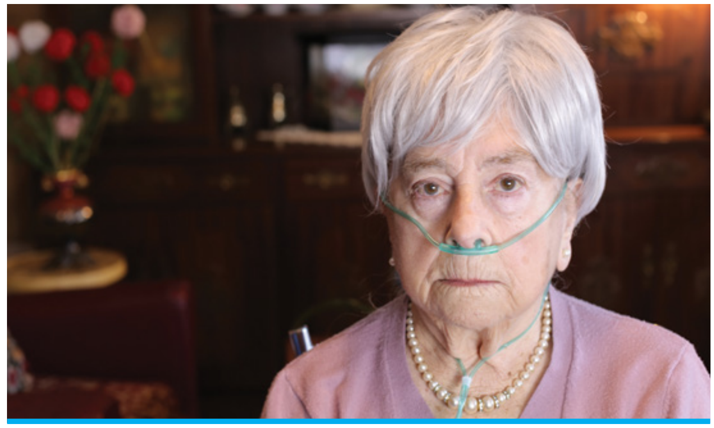
The buyers quickly responded by reminding the seller they are buying her home. Michelle believed the seller was confused but then the seller said, "Yes," she remembered.

Michelle asked the seller if she understood she was loaning the buyers the funds to purchase the home. Once again, the seller said, "No." The buyer looked right at Michelle and proceeded to tell her she did not explain it right.

When the notary entered the room, the seller asked the buyer how much they were buying the house for. The seller said she thought the house was worth $700,000. The buyer said, "No, we agreed the price is $425,000."

The notary identified the seller, had her sign the deed and left with Michelle. The notary never affixed his notarial seal to the deed. Instead, he tore it in half. Both he and Michelle agreed they would not proceed but chose not to create a scene at the signing.

Michelle went back to the office, researched the property and determined it had a current value of approximately $710,000. She formally resigned from the transaction, but she did not feel that was enough. She reached out to National Escrow Administration



who provided her with the information to report the incident to the local Adult Protective Services.

No one actually knows if the neighbors were truly taking advantage of the seller or not, which is why Michelle contacted the state. They are experts with the professional skills and resources to assist the elderly.

The title insurance policy the Company would have issued to the buyer in this instance provides coverage for competency and duress. It was unclear to Michelle whether the seller truly was selling her home of her own free will and understood all the terms of the transaction. She was uncomfortable closing a sale which could be subject to scrutiny and chose to resign.

No one should ever close a transaction they are uncomfortable with. Michelle took the extra step of traveling to the seller and did not like what she heard. She made the difficult decision to resign. Her efforts have earned her a reward of $1,500.

**Article provided by contributing author:**
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# WE'RE *on to you*

**Escrow Assistant Kali Asencio, with Chicago Title in San Antonio, was working on a transaction that opened in her office for the sale of a vacant lot. The transaction opened on Monday, December 5, 2022, and was scheduled to close Friday, December 9, 2022.**

Kali jumped into action and immediately looked up the address on the county's website, to find where the property tax bill is sent. She overnighted a notice to the owner of the property at that address.

Next, Kali deposited the earnest money check so it would be collected in time for closing. When the commitment for title insurance was ready, Kali quickly reviewed it. She emailed a statement of information, along with third-party information, to the seller to complete and sign via SmartSign™ so she could order the payoff demand.

The seller returned the completed forms to Kali who noticed the seller indicated he was single. When he took title in 2017 he was a married man. Kali explained his wife needed to complete and sign the forms, too. The seller understood and soon Kali received the paperwork. Kali ordered the payoff demand.

The commitment for title insurance reflected an old lien which attached to the property long before the seller purchased the property. Kali called the seller. She explained there was an old lien in the chain of title which was not released.

Kali asked the seller if he could send over a copy of his owner's title policy so she could confirm he did not take title subject to the lien. He said he did not have access to it because he was currently traveling for work. Kali suggested he call the title company he closed with when he purchased the property and ask them for a copy of his title policy.

The seller asked if it could wait until he was back home. He said he would provide his real estate agent with the policy in a few weeks, after the deal has closed.

Kali explained she needed the owner's title policy prior to closing and the seller's response became agreeable, robotic and scripted. He clearly did not want to call the prior company but kept saying, "I can try to call them but we will see."

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Kali was alarmed by the seller's lack of urgency and disregard of the situation. He attempted to distract her explaining again he was out of town for work stating the background noise was him driving. The phone call was very strange to Kali.

Something about the sale was nagging Kali. The sales price did not seem appropriate for two (2) acres of vacant land, so she did some research online. First, she used Google Maps™ to view the property, which confirmed it was vacant.

Next, Kali looked up the appraised value which indicated the value of the property was $430,000 — nearly double the sales price of $275,000. This is part of the vacant lot scheme. The imposter lists the property below the market value, which attracts real estate investors who have cash on hand and can quickly close. The imposter hopes no one figures out the seller is not the real owner until the fraudster receives the sales proceeds and disappears!

The next day, the letter Kali sent to the owner's address on the tax bill was returned undeliverable. That is when she escalated the file to her manager who called the seller, but he never answered her call. Her manager emailed him, but he did not reply.

Kali compared the seller's signature on the purchase agreement to the signature on the deed of trust and they did not match. They contacted the listing agent who reached out to the real estate agent who represented the sellers when they purchased the lot.

The real estate agent put them in touch with the real owner of the property who confirmed the lot was not for sale. He indicated he would hire an attorney to investigate the matter and file a police report.

Although this sale was rushed, Kali never strayed from sound escrow practices. She worked quickly to clear title but took the time to listen to the voice in the back of her mind and put in the extra work to prevent the closing. In addition to receiving our gratitude, Kali has been rewarded $1,500.

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# ***WHAT*** *is money laundering?*

**Criminals and criminal syndicates regularly utilize the services of professional money launderers to assist them in "cleaning" money. These are individuals or organizations who do not participate in the crimes which resulted in the illegal proceeds. They only launder the money for a fee. They are typically paid a commission or percentage from the funds they clean.**

Al Capone is one of the most famous professional money launderers. You may not know that he cleaned much of the dirty money through actual laundromats. Hence the phrase money laundering.

Today, professional money launderers are much more sophisticated. They have a network of individuals who may appear to have a legitimate business — but are corrupt in nature and work with the professional money launderer to wash the funds to make it appear as if they came from legitimate sources. These individuals are often white-collar professionals such as bankers, lawyers and accountants.

Professional money launderers also utilize financial institutions, such as banks or crypto currency. They may also utilize real estate or international trade to clean their money.

The U.S. Government, including the FBI and the Financial Crimes Enforcement Network (FinCEN), focuses many of its resources and efforts on identifying individuals or organizations who work as professional money launderers.

Because a money launderer works with a network of individuals and organizations, a successful indictment and prosecution usually affects multiple criminals.

*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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