FRAUD Insights

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The best thing about claims and losses is they offer a learning opportunity for others. Learning from other people's mistakes is so much better than learning hard lessons from your own mistakes. Take the time to read "WHAT not to do" to learn several lessons from another title company's mistakes in payoff processing.

Creative financing is back! Find out how home lending is changing in answer to the increasing interest rates offered by institutional lenders. Some of the terms discussed in this article have not been used in years, maybe even decades. Read about it in "SUBJECT to, assumptions and wrap-around mortgages."

One of the most widely read editions of *Fraud Insights* this year was the March edition where we shared frequently asked questions from the Company's nationwide network of settlement agents and answers to those questions. As a result of the popularity of that story, we are running the story again with all new questions and all new answers. Be sure to read "Q&A with your escrow administrators" to discover the types of questions submitted to the national escrow administration team.

Title companies are constantly scrambling to modify their internal security and controls and are on the lookout for new variations of fraud not seen before. One such attack is known as the "watering hole attack." The October 2021 issue of *Fraud Insights* contained the first article about this type of cybercrime. It continues to be a problem. For more information, read the article titled "WHAT'S next? watering hole attacks."

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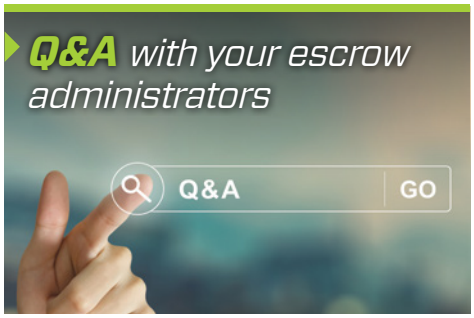

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WHAT not to do

A title company around the corner was handling a refinance. They received a loan payoff statement from the new funding lender on an existing private loan. The new funding lender emailed the payoff statement with bank wire instructions for the existing loan in favor of "Long Gone." The payoff statement was electronically signed by Long Gone, the beneficiary, and indicated the loan payoff proceeds should be sent to a bank account in the name of "XYZ Properties, LLC," who had nothing to do with the transaction.

The title company employee certified the payoff statement was received directly from the payoff lender — when it was not. It was received from the new funding lender. Even though the payoff lender was a non-institutional, private lender, no lien release was obtained in advance of the payoff as is required by all title insurance underwriters.

The title company sent a payoff wire out on October 26, 2022, in the amount of $97,205. Unbeknownst to the title company, the new lender had been receiving emails about changing the wire instructions from Long Gone, who they thought was the authorized signer for XYZ Properties, LLC.

On Thursday, November 3, 2022, the title company received a call from the new lender stating the borrower had just called claiming the payoff lender never received the wire transfer. The title company representative called Long Gone to verify the bank wire information and Gone confirmed the bank account number did not belong to XYZ Properties, LLC.

When the title company representative was asked why they did not verbally verify the bank wire information, the response was, "We work with this lender a lot. Typically, they verify the wiring instructions for us when they get them."

What did this title company do wrong?

1. Accepted and certified the payoff statement was received from the payoff lender, when it was not.
2. Failed to independently verify the bank wire information using a known, trusted telephone number.
3. Paid the amount necessary to pay off the loan to an entity that had nothing to do with the loan transaction and was not reflected as the beneficiary on the deed of trust securing the loan.
4. Did not obtain a lien release in advance of payoff, as is required by all underwriters when paying off a private, non-institutional lender.

Silver lining
The silver lining to the story is, luckily, the receiving bank recognized the wire transfer as fraud and held it without credit to the receiving account until it was recalled by the title company. Whew! They got lucky that time.

SUBJECT to, assumptions and wrap-around mortgages

With the increase in interest rates our customers are asking settlement agents nationwide about creative financing options. In many cases, the Company can close and insure these types of transactions with some limitations. First, we define these creative financing methods:

Subject To: The buyer purchases the property subject to the existing lien. Usually, the buyer agrees to make the payments to the lender on behalf of the seller, but the lender is not notified the property is being transferred. The seller remains obligated to the repayment terms of the note. Since the buyer has taken title subject to the lien, their incentive to repay the loan is to ensure the loan does not go into default subjecting the property to foreclosure proceedings.

Assumption: One party takes over the repayment of a loan originally incurred by another. In an assumption, the existing lienholder has full knowledge of the transfer of the property securing their loan. The lender approves the new buyer to take over the existing loan and the seller is no longer liable for the repayment of the note. The deed of trust or mortgage remains as a lien on the property being transferred.

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STOP

TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or
949.622.4425

[SUBJECT to, assumptions and wrap-around mortgages — continued]

Wrap-around Mortgages: A wrap-around mortgage, also known as an all-inclusive deed of trust or mortgage, is a form of secondary financing for the purchase of real property. The seller extends to the buyer a junior mortgage which wraps around and exists in addition to any superior mortgages already secured by the property.

Agreement For Sale: An agreement for sale is a contract for conveyance of real property and serves as an agreement in which a purchaser of real estate agrees to pay the seller a purchase price, usually with a down payment; the balance is payable in regular installments until the purchase price is paid in full. The seller retains a legal interest, referred to as legal or fee title, in the property as security for the payment of the purchase price. The buyer's interest in the property is referred to as an equitable interest.

An agreement for sale is referred to in many different ways, such as contract for sale, land contract, contract for deed, contract to convey and installment contract, among others. The terms agreement and contract can be used interchangeably, and even when referred to as a land contract, an agreement for sale can be used on any type of property.

Creative financing can be tricky. But FNF employees are educated on how to close and insure these types of transactions. Web-based training modules are available to employees on the Company's intranet. The modules titled Assumptions, Land Contracts and Wrap-around Mortgages describe the dos and don'ts of these types of transactions.

Q&A with your escrow administrators

One of the most widely read editions of *Fraud Insights* this year was the March edition where we shared frequently asked questions from the Company's nationwide network of settlement agents. Below are all new questions from the settlement agents and all new answers from your national escrow administration team:

Q. Why can't I offer the seller in my transaction the ability to sign the **Certification for No Information Reporting**, rather than a **Substitute Form 1099-S**, if they hold title in their family trust?

A. Per IRS regulations we may choose to report any transaction whether it qualifies for an exemption or not. Filing a 1099-S does not remove the ability of the seller to claim any potential exemption they may qualify for on their tax return, including the one for principal residence. We have made it Company policy to not offer the certification to entities, as the entity would have to certify the entity resides at the property. We instead choose, within IRS regulations, to report the sale.

Q. How do I close a loan cross collateralized by properties in two different states?

A. You will have a loan escrow, title order, and a separate title-only order with the out of state office.

You need to confirm with the lender if the loans' liens should be in first or second position. Then be sure to coordinate with title there and in state to ensure the liens are recorded in the correct order.

You will have just one closing statement where you will collect the fees for the other loan policy and endorsements on the out-of-state property and their recording fees, along with all of your escrow and title fees.

Your title department will need a separate title-only order for the other loan being originated and closed by the out-of-county/state office. Title will need to ensure they know what lien needs to be recorded in what order and bill the out-of-state office for their fees.

Q. I have an outside audit firm requesting file copies and confirmation of documents, such as the settlement statement used to close the transaction. Can I provide them with the requested documents and confirmation?

A. No, your response should read as follows, "Our files are confidential, and our fiduciary responsibilities require that — without the express written consent of the principals — we not disclose to outside parties that we even have a transaction."

Q. The seller in my transaction is a foreign individual. He does not want to pay federal withholding at closing. Can I transfer the property to his non-foreign uncle prior to closing?

A. No, you should not provide an accommodation deed from the foreign person to the non-foreign person. This could cause issues with financing and insurability for the new buyer. Not to mention the IRS reporting requirements. Yes, you would be accountable to the IRS for reporting this transfer. Furthermore, it would be outside our scope as settlement agents to assist with transferring real property for tax planning or tax avoidance.

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[Q&A with your escrow administrators — continued]

Q. The seller in my transaction is a trust. The trustees have never opened a bank account in the name of the trust. They want to assign the proceeds to themselves as individuals. Is that acceptable?

A. We would not allow escrow to pay anyone other than the owner of record for the following reasons:

1. Legal reasons: We would have no idea if we had the trust agreement and all amendments thereto to know whether or not a third-party payment was allowed, nor do we want to jeopardize the Company getting dragged into post-closing litigation for paying unauthorized third parties.
2. IRS Reporting reasons: Distributions made on behalf of the trust to its beneficiaries are separately reportable on a 1099. The settlement agent is only responsible for reporting the transfer of real estate on a 1099-S. We would not know which of the 17 different 1099 forms used to report distributions, and we would not want to take on the responsibility or liability for reporting.
3. New lender: If there is a new lender on the transaction it is likely their loan instructions prohibit the payment of proceeds to anyone other than the owner of record since payments to

third parties out of the seller proceeds has historically proven to be a tell-tale sign of mortgage fraud. We would have issued a Closing Protection Letter (CPD) binding the Company to close in accordance with those instructions.

Alternatively, the owner of record could direct the escrow officer to pay the proceeds to the trust account of their attorney on their behalf to make the distribution and perform the necessary IRS reporting. Or, they could add the trust to their existing bank account.

WHAT'S *next? watering hole attacks*

A watering hole attack is one of the most dangerous because the risk is hidden within an otherwise legitimate website. Hackers identify websites visited the most by their intended victims.

Hackers then find vulnerabilities in those websites and embed the website with malicious software. This enables the criminals to target a particular group of companies or a specific industry.

Employees should only access forms and documents from their production systems or the Company's intranet. Employees in need of a document they do not have access to, should email National Escrow Administration at settlement@fnf.com rather than surf the web and risk falling victim to a watering hole attack.

As a result, the onus is on everyone to protect their computers and networks by learning more about cyberattacks. Below are several tips. Keep in mind these are only some of the steps that can be taken and not a complete list:

Install Software Patches and Updates: Watering hole attacks take advantage of software vulnerabilities in common applications, like operating systems and browsers. Updating software and browsers regularly reduces the risk of an attack. Always comply with any update notices from the FNF Information Security Office or system administrators.

Protect your online activities: When criminals are unable to track commonly used websites, they do not know which ones to plant their malware in. Be sure to utilize the VPN when working off of the Company's secure network. Social media sites can also be infected.

Stay informed: One of the best defenses against hackers is an informed user. Users who know what the newest threats are know how to avoid becoming a victim. Take the time to understand the risks and how to avoid them.

As demonstrated all year long, the hackers and the organizations they belong to have proven that any website can contain a watering hole attack. Remain vigilant and be cyber smart.

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