

“Don’t Get Fooled Again!” - Refinance Borrower Imposter Fraud

Pete Townsend, the legendary guitarist penned the song, “Won’t Get Fooled Again” and was released by The Who in June of 1971. This song is universally regarded as one of the top ten rock and roll songs of all time. **Who** knew that they could be talking fraud in a real estate transaction half a century later. (Yes, the pun is intended.) For anyone that has been the victim of Wire Fraud or Seller Imposter Fraud and continued to work in this field, the following lyrics will really hit home:

“Just like yesterday, then I’ll get on my knees and pray, We don’t get fooled again!
Don’t get fooled again, No! No!”

(Admit it. If you are over 35, you just sang that last line in your head. However, probably did not imitate Pete’s signature counterclockwise windmill right arm motion.)

Seller Imposter Fraud

Nobody wants to get fooled the first time, but we sure do not want to get fooled **AGAIN**. By now most everyone knows a colleague that has been fooled by a fraudster at least once. Recently we have been screaming from the mountain top about Seller Imposter Fraud. If you have not heard about it, there are fraudsters pretending to be sellers and selling property that they do not own – victimizing real estate professionals and property owners alike. (Please refer to our **S.I.M.P.L.E.** – **S**eller **I**dentify **M**ust **P**recede **L**iterally **E**verything and prior alerts for more information. In this fraud, we have several elements and red flags:

- 1) **Remote Seller:** Remote seller that is not personally known to the real estate agent and/or the settlement agent and they want the proceeds wired.
- 2) **External Execution:** Conveyance documents are:
 - a. prepared outside of your office by and not know to the realtor or settlement agent; or
 - b. prepared in your office but executed and notarized outside of your office.
- 3) **Unknown Notary:** Notary is not personal known to the real estate agent and/or settlement agent.
- 4) **Vacant or Non-owner Occupied:** Investment property, vacation property or other vacant (including improved and unimproved) property, where a potential fraudulent sale would not draw the attention of the true property owner.
- 5) **Entity Ownership:** In many of these situations, the property is owned by a non-personal entity, such as a corporation, limited liability company or trust. In some cases, the entity was recently formed with the same name as a dissolved entity and purports to transfer the property of the dissolved entity.

The title examination reveals no issues as the fraudster is pretending to be the actual owner. We need to enlarge our thinking to include a broader definition of the parties. The remote seller can also be a borrower in a cash out refinance transaction. Presumably, the bank has vetted the borrower with all sorts of requests, but one cannot rely upon that alone. Do not delegate the protection of your livelihood and your net worth to what “someone else should have done.” Standard procedure would dictate that your standard procedures be followed.

The Old Fraud

The longer one continues to work in real estate, the longer one’s list of war stories of battle scars and near misses becomes. Most of these stories wind up with the storyteller being the hero of the story.

Here is one of mine, however, the hero was not me – the hero was “standard procedure.” 20 years ago, a friend and colleague at a local bank had referred me a client for a refinance. I had never met the couple before, which is not unusual. However, I had a comfort level with them because they were the customer of a good friend and referral source. He would never send me someone that was not on the up and up, right. Well, certainly not intentionally. Everything went according to standard procedure – title was good, payoffs were as expected, appraisal was strong and the couple had worked with my friend on the purchase. They came into my office and sat at the conference table and signed the documents, laughed at my jokes and were looking for a six-figure cash out to fund “some renovations.” As we concluded the signing, standard procedure – the hero of our story remained in control - I asked them for their respective driver’s licenses. The husband quickly complied. The “wife” began to pat herself down nervously as if there was an insect crawling up her sleeve. She indicated that she had left the ID in the car. I told her that I would wait for her to retrieve it. She came back after about five minutes, returned to her seat at the conference table across from the “husband” and apologized for leaving her ID on her dresser at home. In our conversations, I had noted that she worked at an office less than half a mile from my office. I suggested to her that she could bring it tomorrow. Afterall, we still had a three-day rescission period before we could proceed.

The mood changed as she started to get agitated with me and in a rather aggressive and disgusted tone demanded to know “Do you mean to say, that if I do not give you my drivers license, this deal is not going to happen?!” To which my response was, “No mam, I did not mean to say that. That is exactly what I am saying.”

I guess she expected me and my faithful companion, “Standard Procedure,” to stand down because she screamed at her “husband” across the table “YOU SAID I WOULDN’T GET IN TROUBLE!” (In her defense, it sounded like someone screaming at their husband.) Her outburst and incriminating statements immediately stopped the closing. I informed them that I had just saved them from committing bank fraud. Your welcome! They did not seem very appreciative for me stopping them from going to jail. (The “husband” did not think he had done anything wrong, because he signed his own name.) I informed them that if the actual wife was available, I could reprint the loan package; she could come into the office and sign; and we could proceed. It turns out that the co-conspirator “wife” was actually his sister. (Gladly) I never heard from either of them again. I told my banker friend that the wife was unavailable to sign.

Standard procedure saved the day and kept this (probably soon to be divorced) “husband” from depleting all of the equity out of the marital home without the wife’s knowledge and going to jail in the process. These people were sitting in my office. Imagine how much easier it would be if it were a mail away and all that I had were copies of the IDs and no opportunity to compare them to the actual individual face or signature.

Meet The New Fraud, Same as the Old Fraud

Recently we have seen a new twist to the Seller Imposter Fraud – being Refinance Owner Imposter Fraud, which is essentially just like what I encountered 20 years ago. However, it is easier to do because they can send in copies of IDs via fax or email and most people would take them. Afterall, the bank only required that the settlement agent “get copies” of the proof of identification. Imagine someone saying, “The bank did not require that I look at them.” In fact, the bank requires that the actual borrowers sign the documents. The bar requires that the actual borrowers sign the documents. For that matter, so does the law and common sense.

This refinance fraud happened last month. A bank referred a settlement agent a refinance closing, which involved a cash back to the borrower of over a half million dollars. This was a mail away – a nonsensical term for a transaction involving someone’s home, someone’s career and over \$500,000. We are not talking about sending away box tops to get an Annie Oakley decoder ring. We are talking about life and career altering consequences. The settlement agent received copies of the IDs from the fraudster – check. Forget the fact that there was no verification or validation of the IDs. Forget that the fraudster/borrower sent them by facially anonymous means. Anyone who has seen NBC’s “To Catch a Predator” knows that anyone on the other side of the internet connection can pretend to be anyone. Reality is merely an arbitrary inconvenience to a cyber-criminal.

The settlement agent received the refinance documents back from the borrower refinance imposter and disbursed the wire. After all, the agent had IDs and the documents were notarized by someone who may be dead or alive, may or may not have a commission, may or may not have ever met the borrower to acknowledge the documents, may or may not even know that the transaction took place. See where we are going here? There are many bank robbers that have shot people over \$10,000 or less. Does anyone really believe that a criminal is going to draw the moral line at forging a notaries signature? (To see related alerts click here.)

Mail-Aways – Kill Them Before They Kill You

When a nuclear weapon goes missing, they call it a “broken arrow.” Which leaves us to wonder which is more disturbing: 1) the fact that a nuclear weapon is missing or 2) the fact that it is so common that we have a term for it. Mail aways are a similar term. Is it more disturbing that: 1) people are transacting this type of business transaction without ever validating the people in the transaction or 2) that it is so common that we have a term for it and everybody seems to do it?

If you are handling a Mail-Away transaction, what protections do you have in place? Did the documents go to the property address or the tax address? Did you select or otherwise in control of the notary? If the borrower (whether real or fraudulent) controls the notary, then you have an open door to get compromised. Do you merely request copies of the IDs or do you compare them to the individual in real time? If you just get copies and pass them along, then you have an open window as well. Do you know whether the actual borrower executed the documents or not? If you allow the borrower (whether real or fraudulent) to control these vital and fundamental pieces of the transaction, you are playing with a broken arrow that can blow up your entire world.

Who Are You?

To borrow another phrase from the **Who** and Pete Townsend, just ask “*Who are you? Who, who, who, who?*” He really wanted to know and so should you. The **Who** used the word “who” in this classic tune 150 times. If you are closing a mail-away and not even asking this question in earnest once, you need to take a step back and ask this question over and over again.

“So, I still have to do mail-away closings, what do I do to protect myself?” If you find yourself in this situation, first you can control the notary. Do a little research, arrange for a notary in their town and require the use of that notary. For example, hire an attorney or title agent to handle the acknowledgement. This will cost the borrower a little money, but it’s probably cheaper than time off of work and a plane ticket to your office. You could even find a bank in their neighborhood who probably has a notary with the confidence that they were vetted upon hiring. You might not know any of these notaries, but one thing is for certain – the borrower does not either. **It is more important the borrower does not know the notary than it is that you know the notary.** Of course, you will want to go over the

documents with the signers in real time. Have the notary present while you have the borrowers on screen or on the phone. If you are in a state where Remote Online Notary (“RON”) is permissible, then use RON to conduct the closing. Each of these solutions takes a little more thought and planning, but well worth the time for a little piece of mind that you know “who, who, who, who” is signing the documents.

Some things never change. You need to know your customer – your client. Meet the new boss; Same as the old boss!

Note: I am truly sorry about the additional time you spent after reading this article going online to watch or listen to these songs before being able to get back to work, not to mention the repeating chorus in your head for the rest of the day.