Is It Fraud Or Ignorance?
By Lisa A. Tyler
National Escrow Administrator

You’ve got to wonder sometimes – are borrowers, who continue to draw against a line of credit post-closing, that oblivious? Or are they knowingly committing fraud? Do borrowers really think they will never have to repay the debt if they already sold the property securing the line of credit?

It might be a sign of the times, but frequently when the settlement agent fails to send the borrower’s instruction to close a line of credit paid at closing, the bank continues to solicit the borrower to draw against the available funds. The borrower, knowing full well he/she paid off the line of credit, frequently draws against the balance! A perfect example of this fraud is depicted in the story entitled “Is It Fraud Or Ignorance?”

The second story in this edition conveys how the FBI is taking an active role in cleaning up the real estate industry by apprehending criminals perpetuating mortgage fraud. In “Sting Operation,” the FBI used a Bancserv signer to assist in catching a ring of fraudsters that used other people’s free and clear property to close loans. The details of this story read like an episode of CSI – intriguing and encouraging.

Then, in “What’s Your Career Worth?” find out how an escrow assistant questioned a disbursement from an escrow file for exactly $1,000, only to find out a co-worker had committed a crime. The hero in this story received a reward for his keen awareness of wrongdoing and, more importantly, for escalating the issue to his manager – even though the manager’s signature was the second signature on the check. That took some guts.

Inside This Issue
Is It Fraud Or Ignorance?
During a refinance transaction a home equity line of credit was paid off – but not closed. Later the refinance lender foreclosed and sold the REO (bank owned) property to a new owner. A Fidelity National Financial (FNF) underwriter insured the refinance, issued the trustee’s sale guarantee and insured the new owner on the sale out. The former owner then ran up $172,622 in debt against his home equity line of credit, which was secured by a house he didn’t own. He made no payments, and the home equity lender started foreclosure!

Sting Operation
A fraud interception occurred that involved a mortgage broker who saved both Bancserv and Chicago Title from a scam and potential loss of $300,000. The mortgage broker set up a sting operation to catch fraudsters who tried to put a $300,000 mortgage loan against a free and clear piece of property they didn’t own!

What’s Your Career Worth?
On September 7, 2010, an escrow assistant with Lawyers Title - Inland Empire discovered a check issued from an escrow transaction in the amount of $1,000 with no supporting documentation (such as an invoice or instruction to pay). The assistant brought the check to his escrow officer, Robert Garcia. Out of curiosity, Robert ordered a copy of the paid check, both front and back, so he could determine which one of his co-workers issued the check and for what purpose.

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lien released. The claim was deemed an escrow loss and charged back to the operation dollar-for-dollar!

In an attempt to recoup our losses, the claims attorney sent a written demand to Gonzalez for reimbursement of the amount paid on his behalf to the HELOC lender. Gonzalez called in response to the letter and was friendly, but confused about what was happening. The claims attorney explained to him that Our Company expected full reimbursement for our losses. Gonzalez made it clear that he did not have the resources to pay back the Company. He stated he would retain an attorney.

Moral Of The Story

Does Gonzalez's decision to run up the HELOC after he lost the property constitute fraud? Yes! Gonzalez intentionally charged $172,622 against a mortgage on a property he no longer owned. It can be argued that many borrowers are oblivious and don't understand that they can't continue to draw on a line of credit after he/she has paid it off and/or no longer live at the property. The issue is that the bank continues to solicit the borrower to spend against the line of credit by providing debit cards and checks that enable more spending!

It is imperative that our settlement agents ensure the HELOC closure letter is signed and, more importantly, delivered to the payoff lender. There are plenty of instances where the payoff funds are transmitted via wire transfer and the payoff closure letter is not sent to the payoff lender at all, but rather left in the file. There are also plenty of instances where the HELOC payoff statement reflects a zero balance and, subsequently, the signed closure letter is not sent to the payoff lender.

When either instance happens, one of two things eventually occurs later – the lender never closes the line of credit and continues to solicit the borrower to charge against the available balance (which many borrowers do); or the lender continues to accrue annual fees. Either way, once the property is further conveyed, encumbered or foreclosed upon – the HELOC lender is contacted to release its lien and it insists on payment in full AGAIN! Settlement agents need to do their part to protect the Company from these types of losses by sending the closure letter.

Is It Fraud Or Ignorance?

During a refinance transaction, a home equity line of credit was paid off – but not closed. Later the refinance lender foreclosed and sold the REO (bank owned) property to a new owner. A Fidelity National Financial (FNF) underwriter insured the refinance, issued the trustee’s sale guarantee and insured the new owner on the sale out. The former property owner then ran up $172,622 in debt against his home equity line of credit, which was secured by a house he didn’t own. He made no payments, and the home equity lender started foreclosure!

As part of a refinance transaction the settlement agent paid, in full, a home equity line of credit (HELOC) in the amount of $149,392.71. The lender's payoff statement required the borrower, Mr. Gonzalez, to check either box:

- Payoff Only
- Payoff, Terminate and Satisfy/Discharge Mortgage

The payoff statement also provided:

If neither box is checked, the account will remain open and no satisfaction of mortgage will be filed.

The payoff statement further provided:

Notice to Borrower and Closing Agent: A Request to terminate/close your home equity line of credit account to satisfy the mortgage will be processed if (1) the second block is checked; (2) all amounts owed are paid in full; and (3) at least one borrower on the account signs this payoff request.

Gonzalez signed the payoff request, but due to an oversight on the settlement agent's part, neither box was checked. As a result the payoff check and request were sent, but the HELOC was not frozen and no reconveyance of the deed of trust securing the loan was ever recorded.

Fast forward two years later: Gonzalez fell behind on his payments, and the refinance lender foreclosed, obtaining a Trustee's Deed upon sale. Subsequently the lender re-sold the property to a new buyer. The sale transaction was handled by one of our offices. The preliminary report showed the HELOC still of record in first lien position as well as a recorded Notice of Default. A claims attorney allowed the title office to insure around the outstanding HELOC, since Our Company had insured the previous transactions involving the refinance lender, the trustee sale guarantee to the refinance lender, and now the ultimate re-sale to the new owner. An endorsement was issued to the final policy of title insurance deleting the exception of the HELOC loan.

The HELOC lender moved forward with its Notice of Default and set a date for Trustee's Sale. When the new owner received the notices of an impending foreclosure, she opened a claim with Our Company, as she was about to lose her home. The claims department contacted the HELOC lender for a new payoff statement. When the payoff statement was received, the claims attorney noticed Gonzalez (the former owner) had run up $172,622 against his line of credit!

In order to protect the insured's interest in the property, the Company paid the HELOC lender off again and this time demanded the HELOC be closed and the lien released. The claim was deemed an escrow loss and charged back to the operation dollar-for-dollar!

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Sting Operation

A fraud interception occurred that involved a mortgage broker who saved both Bancserv and Chicago Title from a scam and potential loss of $300,000. The mortgage broker helped the FBI with a sting operation to catch fraudsters who tried to put a $300,000 mortgage loan against a free and clear piece of property they didn’t own!

Bancserv is the only FNF Company dedicated solely to conducting mobile notary signings nationwide. It provides experienced notary signing agents who take documents to a client’s home, office or other public meeting place to have them signed, notarized and promptly returned to the settlement agent.

Bancserv had a service order placed with it on a Friday for a signing appointment that was to occur the following Monday. The service order was placed by a mortgage broker that handled its own closings in California. The title insurer was Chicago Title Company in San Diego County.

A couple of hours before the signing appointment the Bancserv notary received a call from an FBI agent. He indicated the FBI was investigating the people who he believed would be arriving at the signing appointment. The FBI agent suspected the people were not the actual homeowners, but rather imposters.

The FBI agent requested to be present at the signing under the ruse of being a "notary in training" to be able to view the ID’s of the "homeowners" and witness what transpired as part of the investigation. He indicated the FBI planned to have a team waiting in the wings at the signing to take whatever further action was required. The FBI agent indicated that at the conclusion, the notary would need to surrender his journal and the documents to the investigation team.

The notary initially contacted the mortgage broker to confirm the FBI agent’s request – since the mortgage broker had to have given the Bancserv signing agent’s name and number to the FBI agent. The mortgage broker advised the notary he was aware of this situation and instructed him to cooperate. The notary also contacted the National Notary Association and confirmed the procedure for surrendering his journal. The reason the mortgage broker didn’t make the title company, Bancserv, or the notary aware of the situation prior to this point was because he had been given instructions by the FBI not to discuss this with anyone, and the FBI didn’t want its hand tipped beforehand.

The notary met the borrowers at a café where the FBI had several different officers positioned throughout the restaurant pretending to be customers. The notary indicated that even without the foreknowledge from the FBI, he would have recognized red flags at the signing. He said the ID’s presented appeared to have an unusual font and when the wife was filling out information on the Statement of I.D., she had to ask for her I.D. back to copy the address. There was also a third party that attended the signing with the supposed borrowers, who appeared to be there to guide them on what to do. The wife turned to him several times to ask what to fill in on certain documents.

The three suspects were apprehended at the signing by the FBI agents. The agents told the notary they thought these people were part of a very big ring and they’d just scratched the surface.

At least they caught these bad guys, and the title order and loan have both been cancelled without anyone suffering a loss! Mortgage brokers often get a bad rap for being part of the fraud, and we are sure Fraud Insights readers enjoy hearing a story where mortgage brokers actually helped prevent it!

After the fact, the title officer at Chicago Title updated the preliminary report, and it turned out that a $300,000 deed of trust had just been recorded in the past week by First American Title. It looked like these people were trying to get several loans recorded in a short time before they showed up for the other parties to see.

The mortgage broker was shy about not wanting his name or his company’s name advertised as being the instigators in this situation. Even though he remains anonymous, we celebrate everyone who helps prevent fraud – and he’s a hero to Our Company!
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When Robert received the cancelled check he realized another assistant in the office issued the check to what appeared to be a member of her own family, since she and the check’s payee had the same last name. He immediately took the check copy to his branch manager – who was the counter signature on the check.

The branch manager realized her signature had been forged as the second live signature on the check. She immediately contacted the human resources department and her manager to inform them of the misappropriation of funds.

The very next day the human resources administrator and regional escrow administrator met with the assistant who had issued the check. The assistant admitted to making the $1,000 check payable to her husband and to forging the branch manager’s signature on the check. The escrow administrator advised the assistant that she would be required to repay the funds and then she was immediately terminated for theft.

Following her termination, the Company replaced the $1,000 in the file and disbursed it to the rightful owner. The escrow administrator performed an audit on all checks issued by the assistant in the previous eight months and found no other irregular disbursements.

For Robert’s keen awareness of wrongdoing and for following his instincts, the Company has rewarded him $1,000 and a letter of recognition. Had Robert not stopped the defalcations quickly, the Company could have been exposed to a greater liability than the initial $1,000. His actions should serve as a reminder to others about noticing and questioning irregular payments from escrow.

Moral Of The Story

FNF actively looks for and investigates employee theft and files police reports in all cases – no matter how big or small. As a result, FNF has reported this theft to the local authorities. For $1,000 the assistant lost her employment and her career, and now has a rap sheet with the authorities. And of course, she also has to pay back the stolen funds!