



MISSING money

Tara Riesterer, A.V.P., Senior Escrow Officer, Branch Manager, and Assistant Kimberly McBryde, both of Fidelity National Title in Albany, Oregon, opened an escrow where the purchase agreement stated: “Buyer agrees to deposit full purchase price amount into escrow account in the form of a cashier’s check within seven business days of an accepted offer.” The sales price was \$287,000.

The buyer’s real estate agent hand-delivered a personal check in the amount of \$126,500. The check was from a third party, not the buyer. Kimberly receipted in the check; then she sent a copy of the receipt to the buyer, seller and their real estate agents. She also notified them the funds could not be applied to the sale until the remitter of the funds signed Third Party Deposit Instructions. Kimberly questioned the fact the check was a personal check instead of a cashier’s check, so she immediately showed it to Tara.

The buyer asked Kimberly to send the instructions to him and he would get them signed. After Kimberly spoke to Tara, they insisted the instructions be sent directly to the third party. The buyer indicated Fidelity was unprofessional for demanding the email for the third party depositor and he felt they should not need all of that information.

The buyer reluctantly provided an email address for the remitter of the funds. The instruction was executed via DocuSign® by the buyer and the alleged third party depositor, and returned to Fidelity the same day. No one ever questioned the fact the check was a personal check instead of a cashier’s check; no one except Kimberly, who immediately showed the escrow officer.

As the neutral third party, there was not much, if anything, Fidelity could do. Both Tara and Kimberly knew the buyer should have deposited the full sales price by cashier’s check, not a personal check. It was up to the seller to enforce the terms of the purchase agreement. If the buyer’s performance was not satisfactory it was up to the seller to send out a notice of default or a notice to perform.

The buyer’s real estate agent told Kimberly the buyer would deposit the balance of the funds within 10 days, but the buyer never did. Instead the buyer contacted Tara’s office by email full of compliments for their wonderful service. He asked they keep the account he had established open by leaving a balance of \$2,000 in the account, but instructed they wire \$124,500 to him right away.

Tara responded to the buyer. She explained she was unable to send him any of the funds at this time because the personal check was an out-of-state check written on a different federal reserve than her trust account. She advised him it would take 10 business banking days before the funds would be available.

Next, Tara and Kimberly looked closer at all of the details. They were both nervous about who actually signed the Third Party Deposit Instructions since the email was provided by the buyer who originally protested the request.

Tara and Kimberly decided they needed to track down the third party themselves. They contacted National Escrow Administration and asked them to perform a search for him using specialized software. The search revealed the email address provided by the buyer is not a known email address of the third party.

Tara picked up the phone and called the third party. She identified herself and then explained why she was calling. He was confused by her call, because he knew nothing about the purchase or that half of the purchase price had been remitted from his checking account. He wrote down Tara's full name, Company name and her phone number. He even expressed he thought maybe she was in on the scam.

About 10 minutes later the third party called back. He did his own internet research and called Fidelity National Title and realized the Company is legitimate. Since he had called her, Tara asked him to verify his date of birth and address. He did and they matched the results of the skip trace. The third party then verified with Tara \$126,500 had cleared his personal bank account.

Next, Tara received a call from the fraud department of the third party's bank. Their account holder had filed a fraud report and they were investigating the circumstances. They provided Fidelity with a copy of the front and back of the cashed check. The bank also reimbursed their account holder. They deposited \$126,500 into his account but did not return the check as fraudulent to Fidelity's trust account.

The bank honored the check. It appeared the buyer "washed" a real check by erasing the details on it, in order to rewrite it to use as payment of the purchase price. The buyer's real plan was not to purchase a house. Instead, the buyer was simply trying to steal the money at someone else's expense.

Another sign that this was a fraudulent transaction was the buyer was consistently emailing the office asking if the funds he requested had been sent to him. His emails were signed by "Mr.," but then he used his first name and not his last.

The buyer's emails were full of bad grammar and missing words. He even provided wire instructions for three separate accounts and two of the account holders were from Nigeria. He regularly emailed and called his real estate agent to inquire about the funds being released.

In the end, Tara and Kimberly resigned from the transaction and, after receiving confirmation the funds had been unconditionally collected by their trust account, sent the money back to the third party's bank. Everyone was made whole and no one suffered a loss except for the seller who lost valuable marketing time of the property.

Tara and Kimberly felt uneasy about this transaction early on. They worked closely together to thwart the scammer. Their adherence to the Company's policy not to disburse against anything other than collected funds proved to be a crucial step in protecting the Company, third party and their bank.

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