

▶ **WOULD** you close and disburse?



▶ This publication has written at least seven stories regarding the dangers of closing and insuring non-owner-occupied properties. All the articles expressed the dangers of properties that are not owner-occupied. Any time a vacant property is being sold, all parties in the transaction should be on high alert for red flags. Here is a story about a sale transaction at a title company around the corner — for a vacant land.

The property was obtained by the seller in 1972, and they had held title in the name of a trust until 2011, when title transferred to a limited liability company (LLC). The purported managing member of the limited liability company (LLC) submitted the operating agreement, and the title company ordered the certificate of good standing.

The LLC was a special purpose entity created solely to hold title for the subject property. The members of the LLC reside in Boca Raton, Florida. The property was free and clear of any encumbrances and the transaction, an all-cash deal, was set to close. The escrow officer contacted the seller to schedule the signing appointment.

The managing member requested the signing be scheduled for June 6, 2022, in Perry, Georgia. The purported managing member did not realize he would be required to sign under the supervision of an attorney in Georgia.

▶ When the attorney who agreed to conduct the signing called to confirm the signing appointment, the signing was cancelled by the managing member, as he said he was leaving town and was too busy.

▶ The following week, the managing member scheduled a new signing appointment to be conducted by a mobile signing agent on June 14, 2022, in Indianapolis. The signing appointment was scheduled to occur in a hotel lobby.

▶ On the way to the signing appointment, the managing member called the mobile signing agent and said he left the hotel to get something to eat and wanted to meet her on the sidewalk outside of a building to conduct the signing.

The managing member presented a copy of his driver's license, but the signing agent insisted he produce the original. He produced the original but according to the signing agent he seemed rushed to get to his next appointment.

The signing agent demanded a second form of identification. The managing member produced a social security card bearing the same name. She asked him to remove his face mask and sunglasses, and she properly identified him based on the documents he provided. She conducted the signing and returned the documents to the title company for closing.

The signed documents contained wire transfer instructions for sending the seller proceeds. On June 17, 2022, the transaction closed, the documents recorded and the proceeds were wired to the account indicated on the Disbursement of Proceeds instruction signed by the managing member.

- █ The wire transfer in the amount of \$76,175.97 was rejected by the receiving bank because the account number referenced on the wire transfer did not belong to the LLC.
- █ On June 21, 2022, the managing member called the title company claiming he was having problems with his bank and needed the wire transfer sent to an entirely different bank. The title company received revised Disbursement of Proceeds instructions, called the number on file for the managing member and sent a new wire transfer in the amount of \$76,175.97.
- █ The wire transfer was rejected again due to the name and account number not matching. The title company sent the wire transfer to the same bank account again. This time, the bank credited the account.

On Friday, June 24, 2022, an attorney at the property management firm in Boca Raton that managed the subject property, contacted the title company. He received the seller's closing package in the mail and wanted to know how the property was sold without their knowledge.

The attorney noted the copies of the closing documents contained the signature of a purported managing member of the LLC. He stated the managing member of the LLC was a trust — not an individual — and the Operating Agreement presented to the title company was a complete FAKE. The escrow officer escalated the issue to her management team.

This imposter pulled off a bold triple crime:

1. Sold property belonging to someone else
2. Changed the organizational documents for the entity that owned the property
3. Used fake identification to sign as the managing member

The title company around the corner had to stop working on all other transactions and start the process of unwinding the sale of the vacant lot by:

1. Recalling the wire transfer for fraud
2. Providing indemnifications to the sending and receiving banks
3. Opening a title claim
4. Contacting the buyer to let them know the transaction would have to be reversed
5. Voiding all other disbursements from the file, including the commission check
6. Redrawing and recording the deed back into the rightful owner's name
7. Contacting the tax collector to let them know there was no legitimate transfer of the subject property

It is a painful exercise to unwind a transaction and the parties to the transaction are never happy to participate. We hope after reading this article you will agree these were all red flags, and this transaction should have never closed.