TUTE Spring 2024

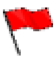
Description

The Unknown Title Examiner

TUTE departs from the usual dive into the land records to discuss what is in this electronic age an all-too-frequent occurrence of fraud in the marketplace.

â??Hello, Ms. Jetson? My name is Spacely and I own a lot in Bedrock subdivision. I see from your credentials that you list and sell properties in that county through your company, Flintstone Realty. I want you to list my property for sale. Please send me everything electronically because Iâ??m not in the area.â?•

â??Hello, Ms. Jetson? My name is Spacely and Iâ??m a realtor with Flintstone Realty. I noticed that you own a lot in Bedrock subdivision, and I have a purchaser who is willing to pay [FMV -x%] if you can close in 10 days and youâ??ll have your money then. Weâ??ll arrange a Notary to come to you so you wonâ??t be inconvenienced.â?•



These are just two of the scenarios that may result in what is now called â??deed theft.â?• Common to many of these crimes is a non-resident owner; in most cases, the land will be unimproved, and in almost all cases it will be unencumbered by a mortgage. Even rental and vacation properties may be targeted for theft. 1031 exchanges are signals to a thief that the owner doesnâ??t occupy the property, necessary for compliance with tax-free exchange rules.

It can be difficult to ascertain exactly who is participating in the fraud; the fraudster may be acting as a lone seller or may have co-conspirators in a Notary (real or fraudulent) and even the â??realtor,â?• although realtors are more often pawns in the scheme than knowing accomplices.

With the increased vulnerability in identity theft comes a similar rise in deed impersonation and theft. Title agents are likely to be the firewall between the criminals and the true property owners. Agents should be alert when:

- The contract is for vacant land or other non-owner occupied property.
- The â??sellerâ?• claims to be out of state and/or out of the country.
- The â??sellerâ?• has never had an in-person meeting with the realtor.
- The â??sellerâ?• insists on using his own Notary and/or refuses RON, likely because of inability to meet multi-factor ID requirements.
- â??Sellerâ?• is difficult if not impossible to reach by phone and insists on communications only by text or email.
- â??Sellerâ?• requires proceeds be wired.

- The buyer is not known to the realtors but is someone procured by the seller.

Of course, these are not all the possible red flags. Title agents should trust their instincts and if something about a deal seems a bit off, take appropriate action to resolve the uneasiness. What can you do?

First, the tax records are your friend. If tax bills are being sent to an address other than that of the â??seller,â?• try to contact the person at the address on the tax bill, preferably by mail or overnight certified delivery, like FedEx. (Phone calls can be intercepted.) Donâ??t take on faith a statement from a seller of something along the lines of, â??Oh, I just moved.â?•

Second, if the listing agent is with a recognized brokerage, ask the agent if he/she has personal knowledge of the identity of the seller, or if the agent has been able to verify the identity of the seller.

[Similarly, inquire if the selling agent has met with or knows the buyer and/or has verified his/her identityâ??especially if the buyer is not local. There being no selling agent is even more of a warning sign. Fraudsters peruse on-line listings and often contact the listing agent directly. There have been reported instances in which a realtor has been engaged by the thief to facilitate a FSBO transaction.]

Third, set up a video call with the seller and insist that the person display a government-issued ID. Although driverâ??s licenses can be forged, they can also be verified in many states.

Finally, control the closing. If the seller complains about the pace of the process, that should trigger concern that the deal isnâ??t legitimate. Title agents are always encouraged to send the closing documents to another agent for the same underwriter in the state where the seller claims to be located. Tell the seller that they must complete the closing at that office.

Remember, if you build a better mousetrap, the bad guys will build a better mouse.

There was a recent case in which the fraudster identified the property and owner of record, then found a person *with the same name* in another state whom he convinced had inherited the property, thereby getting her unwitting cooperation in the scheme. Of course, the identification was perfectâ??it really was that person, just not the person of same name who was the true owner. What didnâ??t match? The tax records.

[Note: Subscribers to October Researchâ??s *The Legal Description* can access the article â??Ways to Stop Seller Impersonation Fraud in its Tracks,â?• a reprint from *Cybersecurity Industry News, The Blotter,* September 18, 2023]

Category

1. Record Room
2. Title Examination
3. Uncategorized

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