

## **How to Avoid Property Fraud**

Protecting consumers' personal information, financial data and real property are top priorities and require more education and vigilance than at any time in the past. Fraud and identity theft are commonplace problems in today's world. Technology is a tool like any other, which works both for legitimate businesses and for those who prey on unsuspecting consumers. Many of the basic defensive principals of the past still apply, but there are no unbeatable or fool-proof systems to avoid becoming a fraud victim. Fortunately, consumers have many tools available to keep one step ahead of the bad guys. An escrow holder is a neutral third party whose purpose is to hold documents and funds pertaining to a specific property transaction until all conditions written in the instructions of the principals are satisfied. In the world of real estate, businesses, equipment and just about any other thing that can be bought or sold, the neighborhood Escrow Company can be the consumer's biggest asset to protect against fraud. Escrow has played an important role protecting consumers as they sell and purchase property. The escrow process has become even more vital today with the advent of internet-based transactions with parties often times living halfway around the world.

### **Look for the License**

Escrow companies are licensed by the California Department of Business Oversight (DBO). The DBO Escrow Division serves as the primary regulator for the escrow industry in California and has vigilantly protected consumers and maintained the integrity of the state's escrow industry.

- DBO licensees are required to have every stockholder, officer, director and employee fingerprinted and subjected to a criminal background check by the California Department of Justice.
- DBO licensees are required to have a qualified escrow manager with at least 5 years' experience as an escrow officer onsite at each office location.
- DBO licensees are required to belong to the Escrow Agents Fidelity Corporation which provides Fidelity Coverage to its member companies of up to \$5 Million. EAFC also has a screening and certification program for escrow company employees.
- DBO licensees are prohibited from employing any person who has been barred from the industry by the DOC.
- DBO licensees are subject to a minimum of one audit per year.
- DBO licensees only provide escrow services and serve as a neutral third party working exclusively for the benefit of the parties involved in the transaction. Having a neutral party involved increases the chances for fraud and other abuses to be exposed.

### **Detecting Real Property Fraud**

The experienced and well-trained escrow officer develop a "sixth sense" for situations that just don't feel right and can often identify problems before they occur. Many of the time-honored tools of the escrow officer— such as personal appearances by sellers and buyers at the escrow office — are becoming more difficult to employ as people opt to work exclusively through their agents and use mobile notary signing services. Of course, convenience comes with a price tag. According to law enforcement, personal appearances with an escrow officer would prevent a large amount of the real estate fraud perpetrated today. Schemes in real property fraud range from:

- (1) criminals posing as the owner of a piece of property (usually non-owner occupied) and attempting to sell or refinance it to pull out equity (leaving the real owner to pay the bill);
- (2) criminals posing as the owner of a piece of property and attempting to sell it to a legitimate buyer and run off with the money leaving the real owner and buyer to sort out the ensuing legal mess;
- (3) criminals using "straw" buyers who are basically renting out their identity and credit to someone else who may be using the property as part of a larger scheme. Identity theft and forgery are often a large part of these fraudulent schemes.

Home sellers and buyers can get drawn into activity they don't even realize is illegal. For example, a seller might be offered \$50,000 to \$100,000 over their asking price with the stipulation that they will pay that overage to the buyer or some third party after the close of escrow. In another example, a sales price is inflated and the seller is asked to participate in a scheme of recycling the buyer's deposit for redeposit into escrow, making it appear that the buyer has put in more of a cash down payment than they actually have. These kinds of schemes are loan fraud and constitute a federal crime punishable by fines and imprisonment. These schemes also expose the seller to a higher capital gains tax liability. It is important to note that everyone pays the price for real property fraud. Mortgage lenders must increase their rates to cover losses due to fraud, thereby making it more difficult for some consumers to qualify for a loan and/or purchase a home. In addition, fraudulent transactions that artificially increase sales prices can have the collateral effect of running up prices across the board for comparable properties. Once again, as prices go up some consumers will be unable to purchase the homes they desire. A reputable escrow company would not knowingly participate in these types of schemes and would raise the red flag for all parties to the transaction.

### **The Notary Public**

The Notary Public plays a vital role in a real estate transaction. As previously discussed, more and more consumers don't want to take the time away from their busy lives to appear in person at the escrow company. Signing Agents are now prevalent and have taken on an ever larger role in real property transactions, serving as a critical link in fraud prevention. Their function is to certify (for everyone's protection) the identity of those appearing before them to sign whatever document is being notarized. Notaries also attest that those signing documents appeared to be capable of understanding what they were signing and were doing so of your own free will (no duress by a third party was evident). When personal appearance is not made in the escrow office, the escrow holder must rely on the Notary Public to validate those issues.

### **Online Transactions**

Internet transactions for personal property have become a prime target for criminals, including organized crime syndicates in other countries. There are several ways that these scams are perpetrated. In many instances, the bad guy sets up a website that appears to be a legitimate escrow holder. The fraudulent operator then posts an item for sale, attracts a buyer and lures the buyer into using a sham escrow company. E-mails to this company are actually to/from the bad guy and once the buyer has sent their funds (usually by wire transfer) the scam artist is never heard from again. The same scam works in reverse where the crook lures a legitimate seller to ship property by luring that seller into using a sham escrow site and, posing as that escrow company, sending the seller confirmation that funds have been deposited into escrow. Of course, once the shipment of property is received, the fraudulent buyer/escrow operator provides neither further communication nor the funds for the purchase.

These sham websites are usually only online for a few weeks, after which the crook moves on to another sham site. Sites such as these pose a very difficult problem for law enforcement and regulators because most of the perpetrators are not on United States soil.

Most fraud victims don't take the time to call the escrow company beforehand to check its authenticity, but wait until after their money or property does not arrive before starting to investigate what happened. The moral of the story is that sellers and buyers must perform their own due diligence, make sure that the escrow company actually exists, and ensure that they are sending money or receiving verification of funds deposited from a legitimate (non-spoofed) company. Legitimate escrow businesses are continuously working with law enforcement and regulators at the DBO to stop scam artists as quickly as possible, and to educate the public about checking the credentials of the escrow service they are using before they become fraud victims. The DBO website has information regarding internet escrow fraud: <http://www.corp.ca.gov> and a database to check the license status of escrow companies and identify enforcement actions taken against escrow companies or employees:

<http://www.corp.ca.gov/FSD/licensees/default.asp>. Consumers can also contact the DBO Consumer Services Office directly at 1-866-275-2677. As mentioned above, some scam artists spoof legitimate escrow company websites and/or operate under stolen license numbers, so consumers should check and re-check the credentials of any escrow company with which they do business.

### **Bad Guys Don't Wear Black Hats**

Any real estate sale or purchase is a major transaction and should be accorded the care, attention and inconvenience necessary to protect the financial interests of the involved parties. Beware; the bad guys don't wear black hats. They often appear to be charming and endearing. These scam artists work hard to gain the trust of consumers so that they can take advantage of the unwary. The red flags are almost always present if consumers don't let themselves get conned into ignoring them. The most important thing to remember: if it sounds too good to be true, it probably isn't true.

### **The Warning Signs of Fraud**

- If it sounds too good to be true, it probably isn't true.
- Power of attorney is used without explanation.
- No property inspection.
- Seller procures appraiser.
- Request to avoid escrow.
- Request to avoid title insurance.
- Cash payments made outside escrow.
- Disparity in document dates.
- Recent liens on property.
- Post office box listed for borrower or employer.
- Sudden or last minute changes to escrow.
- Escrow instructions not sent to lender.
- Terms or fees that don't make sense.
- Unauthorized inquiries on your credit report.
- Mail from creditors you don't recognize.

## **Tips for Avoiding Fraud**

- If it sounds too good to be true, it probably isn't true (this one bears repeating).
- Know exactly what you are signing.
- Don't be afraid to ask questions and expect a reasonable answer.
- Get an attorney or neutral counselor to explain documents.
- Avoid pressure to sign anything quickly without reviewing it.
- Never sign blank documents or those with missing details.
- Understand promised mortgage terms and check them against actual documents.
- Check references of real estate professionals.
- Check out anyone you are asked to do business with (especially online) is an actual company and you are actually communicating with and sending money to that business.
- Conduct business at your escrow company office.
- Beware of business people who are "mobile" with no office.
- Beware of telephone solicitations.
- Check comparable home sales in area.
- Review ownership history of the property.
- Beware of promises of outrageous profits.
- Sign up for a credit service that allows you to monitor your credit report.
- Consider purchasing ID theft insurance.
- Do a "who is" search for websites you visit or do business with – or e-mail addresses. If the search shows an owner other than the company listed or an offshore address – BEWARE!