

Fraud Insights...

IN-credible witnesses



Lynn Dimas, Vice President of Chicago Title in Oakland, California, was handling a file for one of her colleagues. Her colleague was out on a much deserved vacation and Lynn was helping by covering her desk. The transaction was a sale, with a sales price of \$1.1 million dollars. The buyer was obtaining a purchase money loan from a hard money lender, Rushmyfile, Inc.

The listing agent directed the transaction to the Company and told everyone the seller would not sign any of his closing documents until the buyer had performed. The seller previously had a deal with this same buyer – which fell apart. Both the seller and his real estate agent called and emailed several times each day for updates.

The lender emailed the loan documents to escrow. The note and deed of trust referenced four exhibits: A, B, C and D. The exhibits, however, were not attached to either document. One of the exhibits was supposed to disclose to Lynn the beneficiary of the note and deed of trust.

Getting in touch with the lender was very frustrating since they would only provide an 888-phone number and a generic email address. Lynn was never given a contact name, direct phone, direct email or even mailing address but she called anyway and asked for the exhibits. The lender refused to provide them.

Lynn explained to the lender the exhibits have to be attached to the documents when the borrower signs them. The lender said they would attach them later and told her she was being difficult as they do this all the time. Although the loan officer and the buyer's real estate agent, Mr. Foldes, kept indicating this was a rush closing, the lender did not send the exhibits until a week later. Here is where the plot thickens.

Then Foldes notified Lynn that the buyer, Mr. Hole, had lost his driver's license. Lynn asked if Mr. Hole had a passport. She also noticed the lender required two forms of identification in order to comply with Federal Regulations and reminded the real estate agent of that requirement.

Mr. Hole assured Foldes he had a passport and the signing appointment was set with a mobile signing company. Everything was arranged through Foldes. Lynn did not have any direct communication with Mr. Hole. She did not even have his phone number.

The notary went to meet Mr. Hole and Foldes, but after waiting for a half an hour she called Lynn to tell her they did not show up. Lynn called Foldes and asked him for his client's phone number. Foldes said the buyer was on his way but eventually gave her Mr. Hole's cell phone number. She called Mr. Hole who said he was just pulling into the parking lot to meet the notary.

A little while later the mobile signing agent called Lynn back to tell her she was cancelling the signing, stating Mr. Hole brought an expired Peruvian Passport as his identification. Lynn apologized to the notary for wasting her time and they hung up the phone. Lynn immediately notified all parties to the transaction by email the signing appointment was cancelled and why.

The next day Lynn went to work and found the fully executed escrow instructions and loan documents on her desk. She immediately called the notary to find out what happened. The notary told Lynn that right after they talked two gentlemen who worked for Mr. Hole arrived to act as credible witnesses.

Foldes told the notary he had already called Lynn to tell her what was going on and that Lynn approved it. Foldes never called Lynn. The notary contacted the National Notary Association for guidance. They pointed her to the California Notary Handbook which says:

The identity of the signer can be established by the oaths of two credible witnesses whom the notary public does not personally know...The notary public first must establish the identities of the two credible witnesses by the presentation of paper identification documents...such as...a valid consular identification document issued by a consulate from the applicant's country of citizenship, or a valid passport from the applicant's country of citizenship.

...Under oath, the credible witnesses must swear or affirm under penalty of perjury...that each of the following is true:

1. The individual appearing before the notary public as the signer of the document is the person named in the document;
2. The credible witness personally knows the signer;
3. The credible witness reasonably believes that the circumstances of the signer are such that it would be very difficult or impossible for the signer to obtain another form of identification;
4. The signer does not possess any of the identification documents authorized by law to establish the signer's identity; and
5. The credible witness does not have a financial interest and is not named in the document signed.

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The credible witnesses must sign the notary public's journal and the notary public must indicate in his or her journal the type of identifying documents.

Each of the credible witnesses presented the notary with consular identification cards issued by the Mexican consulate. The notary did not identify them by any other means. It was all too convenient for Lynn's comfort, so she took the package to her title officer to review. Although the notary, technically did nothing wrong, she expressed to Lynn she was completely uncomfortable with the signing. At one point, she even asked Lynn to shred the documents she notarized rather than use them. In the end Lynn and her title officer agreed there were too many red flags to proceed and resigned from the transaction.

Afterwards, Lynn found out this was the second time a title company resigned from this transaction. A competitor had also resigned but for a different reason – the buyer's wife was nowhere to be found.

Wife? What wife? The loan documents said Mr. Hole was a single man. Looks like the decision to resign was the right one. Hooray for Lynn in protecting the Company from so many potential risks.

A Word of Caution!

Settlement agents should always obtain underwriting approval before closing a transaction where a credible witness or witnesses were used to identify the signer. Keep in mind, underwriting approval should not be confused with a notary's obligation to know and understand their duties as a commissioned notary public to identify the credible witness before accepting their assertion the signer is who they say they are.

For example, in the State of Texas, the notary must personally know the credible witness. In other states, the credible witness must have a current driver's license or state issued I.D. card and there must be at least two credible witnesses.

In the end, it is the notary who has to be completely comfortable with the circumstances surrounding the need to rely on a credible witness. A notary should be sure he or she knows and understands the state specific regulations. A notary also always has the right to ask the signer for additional, out of pocket identification, such as a bank card or club membership card which would have a name and picture on it.

An imposter would rarely, if ever, have other forms of identification on them in the same name as a fake I.D. Keep in mind, it is the notary's commission and therefore his or her personal liability.

This article was provided by contributing author, Diana Hoffman, Corporate Escrow Administrator Fidelity National Title Group National Escrow Administration

MORE FRAUD...SHADY LADY

On February 9, 2017, one of our Las Vegas offices closed the purchase of a property. Twelve days later, the bank that wired the funds to close tried to recall the wire for some unknown reason. The receiving bank notified our escrow branch of the attempted recall. The escrow branch called the sending bank to tell them the transaction had already closed and the funds had been disbursed. The bank teller the escrow branch representative spoke to indicated the account holder was an elderly gentleman who came in to authorize the wire and was with a lady that appeared to be his girlfriend. She said he executed the wire authorization.

Fast forward to July 26, 2018 (more than a year after the closing), our offices received a heart wrenching letter from the third-party depositor that read, in part, as follows:

To whom this may concern:

I am a World War II veteran. I was born December 16, 1920. I would like to report and make notice to something that happened to me. There is a lady I met at Costco® last year. Shady Lady is her name. She approached me and we started a friendship. My wife had just passed. She told me that she was a nurse/caretaker. So, I hired her thinking she would cook, clean and help with the necessities of my house. Well the rest of the story is a total nightmare.

I was too embarrassed to tell my son and his wife, or a niece that lives out of state, but I did break down and told a neighbor that I've known for over ten years.

Shady Lady no longer lives in Las Vegas. All the charges that she has for fraud are showing as a Georgia resident. She has taken knowledge of all my accounts; investment funds; pass codes and social security number.

These are the following acts she has committed against me:

- 1. Wrote a check for \$3,000 for the earnest money deposit on the house.*
- 2. Transferred \$341,319.86 from my family money market account. She had the funds wired out and transferred to a broker where she purchased a house in Las Vegas. Then she flipped it by selling it in less than a month and then ran off to Georgia with the proceeds.*
- 3. My 2006 Dodge Ram® truck that was paid in full with 14,000 miles she went into my file cabinet where I kept the registration papers and my pink slip and took over my trust. She had her son come by the house one day with the keys and just took my truck. He lives in San Diego. I was too shocked and frightened to stop him. As of today, I have registered a report with the police department for the stolen truck.*
- 4. She opened a Citibank® Costco credit card in my name and charges were continuing until I notified Citibank that I did not open the account nor have I made the purchases resulting in over \$7,000 in charges.*
- 5. Shady Lady opened a Home Depot® Project loan under my name in Georgia. She had some work done on her house and charged it to the card in my name. I am in the process of contacting Home Depot to let them know the account was not opened by me.*
- 6. Shady Lady used my name to get internet service through Cox® Communications.*

He sent copies of the same letter to the Attorney General, all three credit bureaus and the Social Security Administration. We received a copy of the letter as well, because we closed on the home purchase mentioned in the letter. The escrow officer reviewed the file and found third-party deposit instructions executed by the depositor. She reached out to him after receiving the letter to see if he was making a claim. He was not. He wanted everyone involved to know Shady Lady was a crook and there was an ongoing law enforcement investigation of her criminal acts.

