



OLD REPUBLIC TITLE



Shared Success

LEARN * GROW * PROSPER



Fraud

I Did Not
See That
Coming!



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Part I



Agenda

- Forgery
- Wire Diversion
- Lack of Authority
- Imposter Fraud

Part II

Ethics in Title Transactions

Forgery

Definition

A false document, signature, or other imitation of an object of value with intent to deceive. Documents that are the object of forgery in our market include: deeds, mortgages, P.O.A's (discussed later in the presentation), satisfactions/releases.

Forgery

Title insurance coverage may be implicated when forgery is alleged in a legal proceeding and title to the property or enforceability/invalidity of a mortgage is challenged.

ORT's policy issuing agent closed multiple purchase and refinance transactions for local property developers.

In 15 transactions involving the improper release of 17 prior security deeds, three prior lenders allege that the developer obtained their execution on releases for other debts in which the signature pages were separate from the release pages.

The lenders allege that developer then swapped the signature pages with the releases for the 17 security deeds.

The agent's files reveal the following pattern among the transactions:

- The security deeds were listed on the title searches;
- The agent inconsistently listed release of the security deeds as a requirement in the commitments;
- The agent prepared releases for the prior security deeds;
- No payoffs were made to prior lenders for any of the 17 security deeds; and
- The agent accepted and recorded the executed release provided and obtained by the developer.



Forged Satisfaction Scenario

What Could Have Been Done



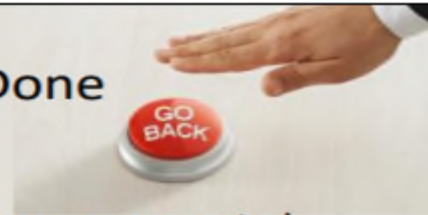
- Commitments must reflect the record.
- All outstanding mortgages should be listed as exceptions.
 - Payoffs should be requested by the agent or the seller as is customary.
 - The agent should always review the payoff.
 - Satisfactions should come directly from the lender.
 - Satisfactions almost never come before closing because that means the debt was paid off and not satisfied previously.
 - This practice should raise suspicions.
 - The reality is that if a mortgage is paid off and not satisfied, there is a process to follow with the lender.
- It should go without saying, but an agent should work independently from a developer to make sure title is properly cleared.
- It can be hard to say no to a good customer, but one who fakes satisfactions is not a good customer.

Forged Mortgage Scenario



- Insured lender gave a \$2M mortgage to two borrowers.
- The borrowers could no longer make payments and went into foreclosure.
- The insured lender files a foreclosure action in 2013. The foreclosure is delayed due to sale of the insured mortgage and changes of law firms. Pleadings were amended in 2018 and the borrowers filed an answer and defense stating that they did not sign the note and mortgage.
- The insured lender submits a claim and request for a defense to ORT.
- Further investigation showed that the borrowers had not paid the mortgage for close to seven years.
- The closing agent was located and recalled the borrowers signing.

What Could Have Been Done



You can't pick your opposing parties! While this borrower presented some issues, there are various anti-government groups throughout the country that raise numerous defenses regarding the legitimacy of lending and placing mortgages. They cloud the title with numerous false documents that need to be cleared. This risk often falls to the lender.

Here the agent did its job. It confirmed the identity of the borrowers and even got lucky after the passage of time that the closer remembered one of the parties coming to sign because they were relatives. This is another example of "this is what insurance is for."

Insureds buy our policies because there are unknown risks. When the agents do a good job and there is still a claim, that is the risk we as an underwriter take and are willing to because it is our business.

Audience Poll Question

Mortgage satisfactions should come from whom?

- a. The lender.
- b. The real estate agent.
- c. The seller's cousin who happens to be in law school.
- d. The real estate agent's assistant.





Wire Diversion

Wire Diversion

Definitions

Types of Schemes

Social engineering is the use of deception, through manipulation of human behavior, to target and manipulate you into divulging confidential or personal information and using it for fraudulent purposes.

Phishing, phishing campaigns, and spear-phishing are just a few **examples of social engineering**.

Wire Diversion



Scheme Variations

- Seller proceeds – Buyer funds – Third-party funds.

Red Flags



- Incorrect spelling and grammar.
- E-mail addresses slightly different.
- Embedded e-mail addresses, (shows name but have to click on it to see the e-mail address).
- Beneficiary on “new” wiring instructions does not match the proper party.



Timing

- Last minute changes to wires especially on Fridays or days before holidays.
- Fraudster entices parties not to check for disbursed funds right away.

Wire Diversion



Title Cases & Claims



**PREVENT
WIRE
FRAUD**

What Could Have Been Done



An ounce of prevention is worth a pound of cure. It's worth noting that this happened in 2016 and much has been done since to protect against this risk.

1. Develop a procedure for changing wiring instructions.
 - Require in-person telephone conversations.
 - Require written directives by fax.
 - Require multiple employees to sign off before a change is made.
 - Refuse to reissue paper checks without getting the original back.
 - Don't switch the method of delivery from wire to check or vice versa.
2. Put notices in emails stating that wire instructions will not be changed and stick to it.
 - Some agents put this note in their commitments.
3. Be suspicious of emails that come from free servers like Gmail, Yahoo, Hotmail, etc.
 - Request that real estate brokers use their office email, as opposed to a free email server.

Audience Poll Question

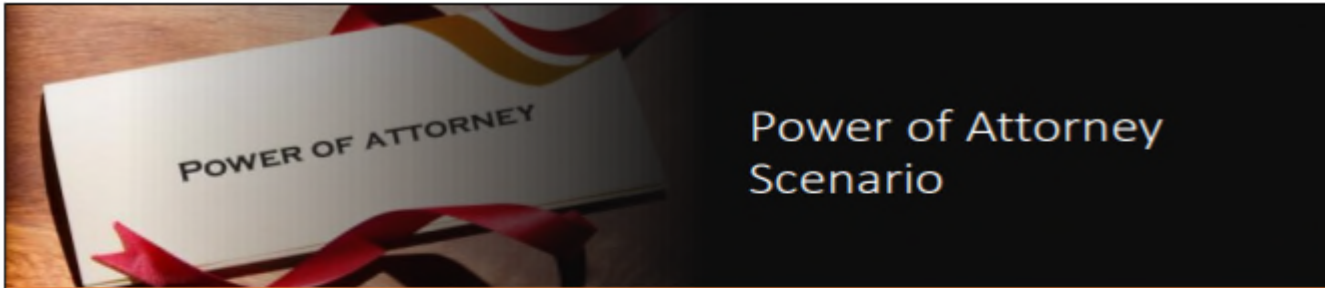
Which of the following are wire diversion red flags?

- a. Embedded and/or slightly different email address.
- b. Correct spelling and grammar and verified sender.
- c. Verified email address.
- d. Properly matched and verified beneficiary.





Lack of Authority



Power of Attorney Scenario

- **Husband and wife** hold title as joint tenants.
- **Wife** tells **REALTOR™** and **title agent** that **husband** is working in another city, which is why they are moving.
- **Title agent** sends Power of Attorney form to **husband** using the address given by **wife**.
- Closing takes place and **wife** deposits sale proceeds with **court** due to **husband and wife's** pending divorce.
- **New owner** receives demand from **husband's attorney** and submits claim.
- **Wife** admits to having someone else execute the POA.
- **Husband** wants to undo the sale so he can keep the property.

What Could Have Been Done



This is a tough one because it is a reasonable explanation. When things are suspicious, however, we need to be skeptical of a POA.

- Inquire about why the principal can't attend.
- Ask to talk to the principal.
- Make sure the principal understands the transaction.
- Be particularly skeptical of self-dealing.
 - The party shouldn't be allowed to transfer to themselves without further investigation.

Audience Poll Question



What should you do when you have suspicions about a POA?

- a. Ask why the principal can't attend and request to speak to him/her.
- b. Ignore your suspicion.
- c. Never question when a POA transfers property to self.
- d. Proceed without verifying so not to delay a closing.

Grantor Imposter Scenario

- Vacant tract of land owned by a foreign owner.
- Agent received a deal from a local REALTOR™.
- Closing was to be a mail away closing, as the owner lived in Sweden. The agent sent documents to the address provided by the owner.
- Received documents back from owner that were notarized by a London notary.
- Also, the agent received instructions that all sale proceeds should be wired to a bank in the Benin Republic.
- Agent closed the transaction. Policy issued to new owner.
- The new owner began constructing a home on the vacant tract.
- Lawyer for real owner sent a letter to our insured, alerting of the fraud scheme and demanding return of the property or funds.
- Insured filed claim.



What Could Have Been Done



There are so many red flags.

- Had someone considered the FIRPTA implications?
- Trying to figure out FIRPTA taxes would have brought the fraud to light.
- British notary should not have been accepted.
- Shouldn't someone have wondered why a Swedish citizen was using a British notary?
- Apostille would have been required.
- American notary at a US embassy or consulate.
- Wiring instruction to Africa should be a red flag.
- Remember that just like the check has to be cut to the titled party, the receiving account should be in the name of the titled party.

Borrower Imposter Scenario



- Insured lender filed foreclosure action for the insured mortgage.
- The owner/borrower died two weeks before origination.
- The insured lender believed the borrower's son signed the mortgage.
- The closing was a mail away closing.
- The agent did not know the notary.
- The insured loan went into default and the insured lender discovered the issue and filed the claim.

What Could Have Been Done



- Be skeptical of mail away closings. Call or make contact with the signers.
 - Especially where the borrower is local.
 - If they want to sign early, why can't they do that with the agent?
 - Should still require proof of identity in mail-away files. There should have been an ID in the package to confirm the proper signatory.
 - On a mail-away closing consider checking the signature on the ID with the signature on the documents. That could be a signal of the fraud.

Part II



Ethics in Title Transactions

*What did you know
and when did you
know it?*

Overview of Comparative Ethical Standards



Ethical
standards
as they relate
to parties in
the transaction

- Attorneys
- Title Professionals
- Real Estate Agents

Regulatory Requirements of Attorneys



- American Bar Association rules
 - Every State has its own set of rules
 - Most developed from the ABA rules
- Enforcement by the State Supreme Court
- Lawyers are always lawyers
 - Must report criminal violations while not practicing law
 - Must report bankruptcy filings

Important rules to be aware of for real estate practice.

- **1.1 Competence.** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- **1.3 Diligence.** A lawyer shall act with reasonable diligence and promptness in representing a client.
- **1.5 Fees.** Fees must be reasonable and in writing.

One-Stop Verification

https://www.americanbar.org/groups/legal_services/flh-home/flh-lawyer-licensing/

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Lawyers are licensed by a state agency in each state. That agency can help you to find out if a person has a law license and is permitted to practice in a particular state. Select a state from the list below for the agency in your state.



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Wells Fargo v. Wagner

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graph TD; A[Wells Fargo v. Wagner] --- B[Attorney was hired to close and fund]; A --- C[Attorney was running a Ponzi scheme out of his trust account]; A --- D[Argued he shouldn't face discipline because he wasn't acting as an attorney in the closing];
```

Attorney was hired to close and fund

Attorney was running a Ponzi scheme out of his trust account

Argued he shouldn't face discipline because he wasn't acting as an attorney in the closing

Poll Question

An attorney attends the closing on the refinance of his own property. He is in the process of a divorce and his wife does not want to participate in the transaction. The attorney presents the title agent with a Power of Attorney purporting to be from his wife, but she did not execute it and he knows that.

Is the attorney subject to discipline for this action?

Regulatory Requirements of Title Professionals



- Regulated by different entities other than lawyers
- Varies from state to state
 - The Insurance Commissioner regulates title insurance in Alabama
 - Other states use the Department of Commerce
 - Generally regulate multiple insurance licensees
 - Title is mostly a small part of the industry

- Examinations
 - Some states, (not all)
- Continuing education
 - Some states, (not all)
- Only apply to those who are licensed
 - Depending on the state, not every employee needs to be licensed
- What are the ethics of unlicensed employees?

01

Changing wiring instructions without following procedure

02

Reviewing Power of Attorney for proper authority

03

Reviewing identification

- a. Recognizing the parties are not always ethical
- b. Isaac Sawyer II

Poll Question

A seller has contacted the title agent after closing to ask for funds to be wired. The agent has already provided a check to the seller at closing so the agent requests that the check be returned. The seller says they have shredded the check. The agency has a policy that checks should be returned before funds are sent another way.

Should the agent wire the funds?

Regulatory Requirements of Real Estate Agents



Basic Requirements:

- 1) At least 18 years of age
- 2) Complete certain number of real estate or college courses
- 3) Pass state licensing exam

Once licensed certain states offer reciprocity

State Specific
License

Licensing

Ethical Obligations

When requests push the limits

- The commitment correctly identifies a judgment lien as a requirement, but the broker calls you and asks you to insure over the judgment because they know a lawyer who thinks it might not apply.
- The commitment identifies an old mortgage and requires a release. The broker calls and asks that you remove it because it has expired.



ETHICAL
TITLE-RELATED
CASE STUDIES

Girlfriend Uses Wife's ID

- Refinance transaction, husband and wife appear with identification.
- The mortgage went into foreclosure and the wife contested the foreclosure stating that she did not sign the mortgage.
- Discovery in the litigation revealed that while the wife's ID was used at the closing, the wife was NOT present at the closing.

Black v. Metro Title

- Victoria and Gunnar Black get divorced, he remains in the home
- Divorce decree entitled Victoria to proceeds upon sale
- Title agent determined Gunnar refinancing was not a sale

Double-Sided Sticky Tape and Ethics

- Agent made several mistakes in the closing process and had to have the parties back three times.
- Upon finding another mistake they literally lifted the signature from one document to another.

Thank you!

Should you have any questions or need additional information, please contact either your Old Republic Title representative or Agency University via email to:
AgencyUniversity@OldRepublicTitle.com.