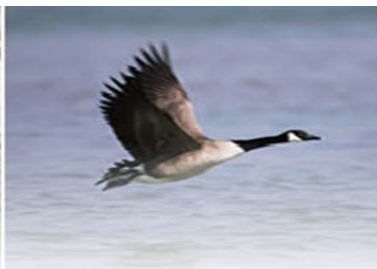


THE NC CONNECTION



AN INVESTORS TITLE COMPANY PUBLICATION



FRAUD UPDATE: Keep an Eye Out for the Signs

by Ryan Wainio, Title Attorney

Click [here](#) for Ryan's Bio

rwainio@invtitle.com



Fraud is defined as the intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. Real estate fraud

schemes come in all shapes and sizes. The title industry has seen numerous fraud scenarios over the last few

years. Recently we received notice of a claim based on the following fact pattern:

Owner receives title to a piece of property in the 1980s. The property is not encumbered with the lien of a deed of trust. Attorney receives a call from Forger who claims to be a relative of Owner. The names don't indicate any relation between Forger and Owner. Forger asks Attorney to prepare a deed from Owner to Forger. Forger gives Attorney a cell phone number and a post office box as contact information.

Attorney prepares the deed and mails it to the Post Office Box. The deed is executed and recorded. Upon review the deed appears to be properly notarized. No revenue

stamps are paid on the transfer.

Forger then places an advertisement in the newspaper asking for bids on the property. Forger claims he needs to sell the property because of illness.

Purchaser submits bid to Forger, who indicates he must run the bid by his children who help him look after his affairs. Forger ultimately accepts the bid and recommends an attorney to conduct the closing.

Purchaser calls the attorney and retains him to conduct the closing. All of this occurs within just a few months of Forger receiving title to the property for what appears to be no consideration. The attorney conducts the search in advance of closing and the search indicates the property is free and clear of liens. Forger advises that he is unable to attend closing due to his sickness and again requests attorney to mail him the deed for signature. Closing is conducted with Purchaser present and the proceeds of the sale are wired to the account provided by Forger.

The original Owners fail to receive the most recent tax bill. When they call the tax office they find out the property is no longer listed in their

name. An investigation ensues and it turns out Owner's signature on the deed is a forgery. The notary's signature is also forged and Forger obtained a fraudulent notary seal from an online source to help perpetrate the fraud. Forger immediately withdrew all closing proceeds from the account provided after receiving the wire. Purchaser does not have good title. New lender does not have a good lien on the property. The title insurer must pay policy limits for the total failure of title. Purchaser loses any additional money used for improvements post-closing.

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FRAUD UPDATE: Keep an Eye Out for the Signs (cont. from page 1).

This is only one scenario among dozens when it comes to real estate fraud. These scenarios are ever-evolving and have catchy names like Chunking, Double Selling, Equity Skimming, and the Buy and Bail; however, memorizing the fact pattern of the scenarios themselves is not as important as being able to identify the red flags that always seem to be a part of these transactions. There is little doubt that while you are reading this article some clever fraudster is dreaming up the next original scheme. That is why it is so important to be aware of the warning signs.

I can't stress enough that by themselves these indicators may not raise suspicion and can appear in perfectly legitimate transactions. Of course, we are now looking back at the schemes and hindsight is always 20/20, but, if you are aware of the warning signs, their existence may cause you to ask an additional question or take an additional step in an effort to make sure your client is receiving good title. The answer to that one additional question may be the difference between identifying the fraud and not identifying the fraud. In the fact scenario above, no single event in the sequence seems that out of the ordinary, but rather it is the totality of the circumstances or the combination of the factors which may raise suspicion:

Forger never goes into the Attorney's office and provides only a post office box for a contact address;

Forger claims to be a relative of Owner but his name bears no relation;

Property involved is unencumbered with a deed of trust;

No revenue stamps are paid on the deed into the Forger;

Forger seeks to sell the property within a few months of receiving title;

Property is advertised for sale in the newspaper. A realtor is not used;

Forger cannot attend closing no matter what date is set.

What can you do if you see these red flags?

Do your best to get to know the parties to the transaction. Ask questions.

If the seller cannot attend the closing refer him to an attorney in his local area to have the deed executed. If you feel it is necessary, send the deed directly to the attorney's office rather than to the Forger.

If you feel uneasy about any mail-away deed you receive, you can contact the notary to confirm they did in fact notarize the deed. Contact information for notaries commissioned in NC can be found through the NC Secretary of State. You can email the Secretary of State at notary@sosnc.com or call at 919.807.2219. If you provide the name, county of commission, and expiration date, they can provide you with the business contact information for the notary. If that is unsuccessful, the SOS's office will contact the notary through their personal email or phone number as it appears in their file.

If you need any assistance in obtaining this information please call me or one of the other title

attorneys at Investors to discuss.

There is no doubt that fraud is difficult to detect before it happens. The warning signs can be subtle and again, by themselves, show up in legitimate, everyday transactions. But when you see multiple warning signs it can be evidence of a fraudster at work. Trust your instincts— if it doesn't feel right, it probably isn't right. If you can't satisfy yourself that the transaction is above board, call a title attorney to get a second opinion.

You can find a desktop reference that includes a list of possible red flags that are common to fraud schemes along with a description of common fraud schemes on our website at: www.invtitle.com/resource/links/upload/fraudref.pdf. I encourage you to review the desktop reference, print it, post at your desk, and share it with others in your office. The better the chances you have, the better the chances you could prevent your clients from being the fraudster's next victim.



Benefits of a 1031 Like-Kind Exchange

by Anna Gregory Wagoner, Esq. (awagoner@invtitle.com)

In the wake of the changes in tax law that came as a result of the Tax Relief Act of 2010, we thought it would be helpful to remind taxpayers of the benefits of a 1031 like-kind exchange:

1. **Tax Savings.** By effecting a 1031 exchange, a taxpayer can defer the payment of capital gains taxes on the sale of property. This tax-deferral is almost like an interest-free loan from the government.
2. **Change the type of property owned.** Because any real property used for business or investment is like-kind to any other real property that is also used for business or investment, a taxpayer can sell one type of real property and buy a different type of real property.
3. **Change the property's location.** An owner of rental property may wish to sell his current property in an undesirable location and buy another rental property in a better location.
4. **Leverage.** A real estate investor may wish to take the equity out of one property and leverage it over multiple properties to increase rental income.

To properly structure an exchange, a taxpayer should seek expert tax advice from a knowledgeable tax or real estate attorney. He should also consult his CPA to discuss tax and basis calculations and reporting requirements. Choosing a competent, experienced Qualified Intermediary is another essential ingredient for a successful exchange, and Investors Title Exchange Corporation is available to help you with all of your 1031 exchange needs.

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NC FUN FACTS

Biltmore House is a Châteauesque-styled mansion near Asheville, NC, built by George Washington Vanderbilt II between 1889 and 1895. It is the largest privately-owned home in the US, at 135,000 square feet and featuring 250 rooms.



Prove It

By Michael Kelley, Senior Claims Counsel

In October 2005, Homeowners executed a

promissory note and a deed of trust in favor of Friendly Bank to facilitate the purchase of their

dream home. As part of the great recession,

Homeowners failed to meet their monthly payment obligations and defaulted on the terms of their promissory note.

In January 2009, an Appointment of Substitute Trustee was filed by Mean Bank as trustee for Unknown Bank Trust 2005-4 as “owner and holder of the Homeowners’ promissory note.” A foreclosure proceeding was initiated. After notice and hearing, the clerk authorized the Substitute Trustee to proceed with the power of sale foreclosure. Homeowners appealed the clerk’s order to superior court.

At the superior court hearing, foreclosing counsel presented an affidavit executed by Mean Bank’s assistant secretary. The affidavit stated that Homeowners were in default and that, because of the default, Mean Bank accelerated and declared the entire balance as due and demanded the foreclosure of Homeowners’ deed of trust. The superior court confirmed the clerk’s order.

Homeowners appealed to the NC Court of Appeals (“Court”). The Court analyzed the four elements of N.C. Gen. Stat. Sec 45-21.16(d). The Court focused on the requirement of competent evidence that Mean Bank was the holder of

Homeowners’ promissory note. The Court found that there was no evidence that Friendly Bank transferred or assigned its interest in the promissory note.

Noting that a foreclosure under a power of sale is not favored in the law and must be “watched with jealousy” and finding no indication that Friendly Bank negotiated, indorsed, or transferred Homeowners’ promissory note to Mean Bank, the Court reversed the superior court’s order authorizing the foreclosure sale.

The case *In re Adams* 693 S. E. 2d 705 (2010) is indicative that greater scrutiny of the foreclosure process is under way in North Carolina. Foreclosing Plaintiffs must prove that they are in fact the holder of the promissory note secured by the deed of trust they are attempting to foreclose.

Click [here](#) or visit www.invtitle.com/contact-us/ for information regarding the claims process.

RESOURCES

-  [Ethics Handbook*](#)
***Recently Updated**
-  [Practice Forms](#)
-  [EFLITE Link](#)
-  [ITIC Rate Calculator Link](#)
-  [NC Register of Deeds Info Links](#)
-  [Title Attorney Bios](#)
-  [Newsletter Archives](#)
-  [Newsletter Registration](#)
-  [Seminar Registration](#)



MEET OUR TITLE ATTORNEYS



Ryan Wainio
rwainio@invtitle.com

Ryan was born and raised in Durham, NC. He graduated from the University of NC at Chapel Hill in 1997, with a Bachelor of Arts in Political Science. Ryan received his Juris Doctor *cum laude* from the T.C. Williams School of Law at the University of Richmond in 2001. Prior to joining Investors Title in 2003, Ryan was a transactional attorney with a focus on real estate, business, and health care law for Adams, Porter & Radigan, Ltd., in McLean, Virginia. As a Title Attorney in the NC Home Office, Ryan supports NC approved attorneys by answering title related underwriting questions. He has been a speaker at continuing education seminars and has authored several articles for the real property section of *North Carolina Lawyers Weekly*. Ryan is a member of the real property section of the NC Bar Association. He is licensed to practice law in both NC and VA.

ALTA ENDORSEMENT 27-06

The American Land Title Association has provided a standard endorsement to take the place of the non-ALTA Usury endorsements that may have been used in the past. This new endorsement, the ALTA 27-06, provides coverage against loss or damage which the insured lender may sustain because of the invalidity or unenforceability of the insured mortgage or deed of trust because the loan secured by the insured mortgage or deed of trust violates the usury law of the state where the Land is located.

In order to obtain this endorsement, the Company requires that the interest rate or terms of the loan qualify for an express exemption from the applicable usury statutes and/or that the certifying attorney opine as to the usury statutes governing in the state where the property is located, where the borrower is located, and where the lender is located. Use of the endorsements must also be approved by a Investors Title Attorney.

ALTA ENDORSEMENT FORM 27-06 (Usury) (10/16/08)

This endorsement is made a part of the Policy to which it is attached.

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness because the loan secured by the Insured Mortgage violates the usury law of the state where the Land is located.

Investors Trust Company



Experience,
Personal
Service,
Performance.

Repath v. Dugger

In a case that was largely procedural, but illustrates an unusual way a constructive trust might arise, the North Carolina Court of Appeals has reaffirmed the procedural requirement that a trial court order must generally be a final judgment before it can be appealed. The case developed when Derek Repath bought a home in Catawba County, North Carolina, for \$272,000, and then titled it solely in the name of his girlfriend, Paula Dugger. According to Repath's complaint, he made the transfer because the two of them were engaged and were planning to

marry as soon as Repath's divorce was final. In the interim, Repath discovered that Dugger was already married, so he demanded that she transfer the property back to him. Instead, Dugger transferred the property to third parties, Jason and Julie Gladden. Repath sued all three parties, alleging that the Gladdens held the property in a constructive trust because they were aware of his potential claim at the time they acquired the property. But the trial court disagreed and issued summary judgment in favor of the Gladdens. Repath appealed. The appellate court found that the lower court order was interlocutory because it had not resolved all of Repath's claims—his claims against Dugger were still pending—so Repath's appeal was dismissed.

--*Repath v. Dugger*, No. COA 09-1404, N.C. Ct. App. 7/29/10

The above article is for information purposes only and does not constitute legal advice.

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- Over 200 years of combined experience from trusted investment and trust professionals who will work with you and your clients.



For more information, contact Ben Foreman at 877.327.9110 or bforeman@invtrust.com