



Legal Q&As

How can I protect my firm and myself from getting scammed by a “seller”?

QUESTION: I began working with a seller to list a vacant tract of land in my area. My client explained how he obtained the property and provided a detailed story of how the land passed down through his family across generations. After marketing the land successfully, we signed a contract to sell the lot for exactly the price I anticipated. It was a great success! The buyers paid the due diligence fee and an earnest money deposit immediately. When I asked the seller how the due diligence fee could best be delivered, he asked that his closing attorney be sent both checks and held in trust for closing. While the buyers were out at the property with their surveyor during the due diligence period, they were approached by some confused individuals who asked what they were doing. It turns out that the real owners were passing by the property and had no knowledge of the alleged sale. The closing attorney, buyers' agent and I quickly discovered that my seller was not who he claimed and the buyers were refunded the money that the closing attorney was holding. How could this happen and what can I do to prevent making this mistake in the future?

ANSWER: It is hard to admit, but we are all at risk of being scammed and sometimes there is nothing that could have prevented the loss. Some lessons in life are learned the hard way, after losing money or feeling betrayed. In this situation, the best advice is to implement a policy at your firm to always request some form of government-issued identification early in the real estate transaction. This policy should be uniformly followed with all prospective clients. A copy of the identification could be saved or the firm could choose simply to collect the name, address, and date of birth of clients to keep in your file. This information will go a long way to deter most scammers.

While there are still times when a fake ID could be used, or title to the real property could be held by a company where the ownership of the entity is not easily determined, simple policies like always checking IDs would help satisfy the requirement that agents do what is reasonable to protect the public. This scam is not isolated, and given the prevalence of large due diligence fees in purchase agreements, losses can be significant well before the transaction gets to the closing table.

Interestingly, a [2001 law](#) in Canada to prevent money laundering and the funding of terrorism requires all real estate agents there to obtain photo identification and retain records of such information. There are significant penalties for failing to follow the law, which requires agents to obtain the assistance of other agents to visually inspect client IDs when the prospective clients do not live nearby. While there is no similar legal requirement here in North Carolina, it is important to implement policies at your firm to help avoid becoming the victim of fraud.

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