

**TOPIC: THE THREAT OF IMPOSTER SELLERS**

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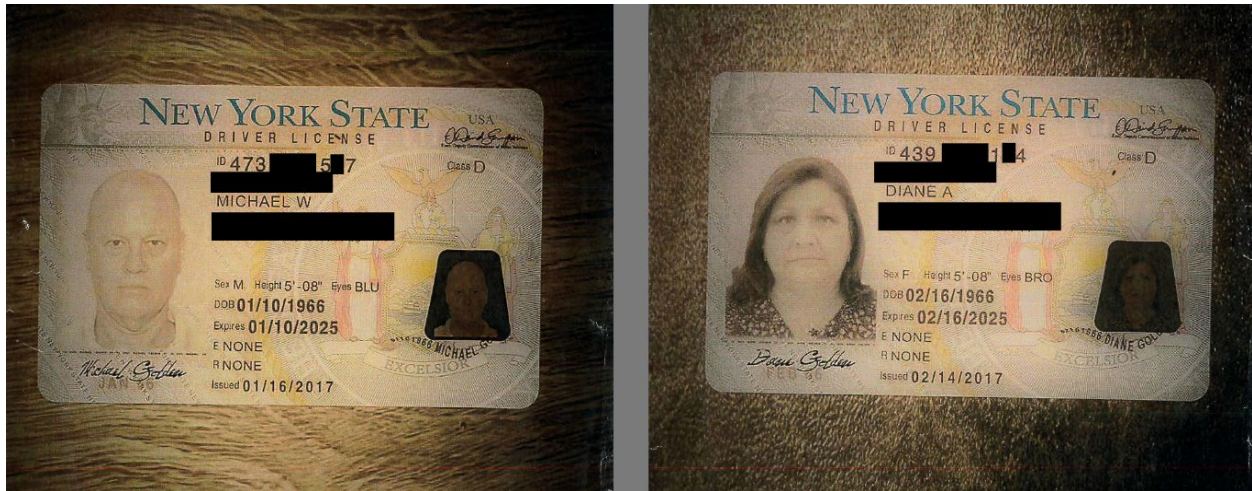
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Those of you who have been in the real estate business for a few years remember when wire fraud was just talk, but it didn't take long for it to become a reality here on the Grand Strand. Now we have a new and rapidly emerging criminal threat: Imposter Sellers. The US Secret Service has declared "seller identity fraud" (a/k/a "imposter sellers") the newest and fastest growing fraud in the real estate industry. The risk is especially keen along the Grand Strand because of the great number of non-owner-occupied properties in the area.

An imposter seller is, of course, a criminal. This brand of criminal spends a short time on the county website identifying a target property, then contacts and retains a listing agent; the property is then listed on MLS and soon under contract. From this point, completing the transaction involves a couple forgeries, a fake ID and a crooked notary (or someone impersonating a notary). If no steps are taken to verify the identity of the seller, the transaction closes and the sale proceeds are sent to the criminal. As a consequence, the buyer loses his purchase money and the true property owner no longer holds title. The true owner can recover title, but this will likely require an expensive lawsuit seeking to have the court declare the fraudulent deed void. Impersonating a property owner does not involve a data breach, so it might be considered "easier" to accomplish than wire fraud.

From among the differences between wire fraud and imposter sellers, I point to the fact that imposter sellers expose real estate agents to civil liability.

Let's move now to a real life example and one I know about personally. A listing agent (Agent #1) receives a call from a seller who says he and his wife own a parcel of land and would like to list it for sale. Agent #1 does a work-up on the property and recommends a list price. The seller agrees, signs the listing agreement and the property is listed on MLS. A couple days later, Agent #1 is contacted by another local agent (Agent #2). Agent #2 informs Agent #1 the listed property is not for sale. The true owners are personal friends of Agent #2 and neither is the person with whom Agent #1 spoke. Agent #2 further informs that a criminal made a previous attempt to fraudulently sell the same parcel. Agent #2 then forwards the counterfeit New York driver's licenses presented during the previous attempt along with the bogus phone numbers and email addresses. The driver's licenses are pictured here – in that the information (not the pictures) is that of the true owners, enough has been redacted to protect their privacy.



Though these driver's licenses appear perfectly legitimate, they are counterfeits. Counterfeits like these are easy to procure on the dark web.

The listing was, of course, terminated immediately and the experience rightly served as a conditioning experience for Agent #1 and those of us who knew about it.

This occurred a few months ago and, in the intervening time, the industry warned attorneys of this emerging criminal threat. The primary risk group was said to be unimproved land with no mortgage. This group was small enough that most attorneys were able to monitor it manually. In the months following, there were several similar occurrences in local law offices – some were successful (meaning the criminal received the sale proceeds) and some were not. They foreshadowed what would soon come ...

Change came in a series of events occurring over a 2-3 week period.

The following three real life occurrences illustrate the change.

**Occurrence #1:** A close attorney friend happened to be representing both buyer and seller. The seller furnished the usual information and represented there was no mortgage on the property. When the title search revealed a mortgage, the attorney informed the seller and requested account information in order to procure a loan payoff. The seller casually replied saying he is aware there was formerly a mortgage, but it had been fully paid and the mortgage satisfaction simply had not been filed (this is not unusual). The seller said he was in possession of the “mortgage satisfaction,” which he then sent to the attorney for recordation at the courthouse. When the document arrived, the attorney felt it “didn’t look right” and after some further inquiries, realized the seller was, in fact, not the true owner and was, instead, a criminal. The transaction was immediately stopped, but something more happened in this would-be transaction that sent up a new alert. In the few short months prior to the occurrence, some attorneys had been sending letters to sellers at the address shown in the tax records – this allowed the true owner to verify the sale is legitimate (per the Rules of Ethics, this could be done only by the attorney representing the seller). In the transaction described here, the criminal had *changed the tax mailing address* to an address he controlled. Therefore, had a letter been sent to the tax mailing address asking for verification of the legitimacy of the sale, the criminal would have happily verified it. The use of a fraudulent mortgage satisfaction and the changing of the tax mailing address were extremely significant to those of us who knew of it – the threat deepened.

**Occurrence #2:** This occurred in the office of another attorney friend and, as with the first case, there was a mortgage. Strangely, the bank provided a mortgage payoff and the transaction closed with the mortgage being paid off and the criminal receiving the net proceeds. Those who believed only “no mortgage” properties were being targeted now realized the target group is much larger. In the weeks following the closing, a civil action was filed by the true property owner – both real estate brokerages (among others) are named as defendants.

**Occurrence #3:** An agent was contacted by a seller who owns property jointly with a friend. The property was listed, went under contract and was presented to my office to represent the sellers. Seller #1 had signed the contract himself and, on the strength of a Power of Attorney, had also signed as “agent” (f/k/a “attorney in fact”) for Seller #2. Seller #2 is an inmate in a New Jersey prison, hence the need for a POA. The agent had asked Seller #1 for a copy of the POA and was surprised when that Seller immediately sent two (2) POA’s. In each one, Seller #2 had clearly appointed Seller #1 to act on his behalf in all matters, including the sale. As the contract was presented to my office, the agent told me something felt slightly off because the seller “had a convenient answer for everything.” We received the contract and POA’s on February 7<sup>th</sup> – both POA’s were signed on January 31<sup>st</sup>. We first noted the signatures on the two POA’s didn’t seem to match, despite their having been signed in the same moment of the same day. Seller #1 furnished us with a phone number for the New Jersey notary and I spoke with her the same day; she (just as had been said of the seller) “had an answer for everything.” With suspicions increasing, we next spoke with the administrators of the New Jersey prison in which Seller #2 is incarcerated. They assured us the notary had not been to the prison and, even more, told us the notarization of an inmate’s signature requires a court order. I related this to Seller #1 and, of course, he had a story for it -- a story I wasn’t buying, but a story. He agreed to join me in a call to the prison in which I asked to speak with the inmate – my inmate interview was scheduled for the next day. Following this conversation with prison administrators, Seller #1 directed an email to my office in which he said Seller #2 “will screw me over any chance he gets” and will “tie the matter up in court for the next 5 years” (and more to a similar effect). He ended with an angry lecture on our duties as his attorney and demanded we close the transaction. In my reply, I pointed out “you ask me to believe your friend wants to screw you and, at the same time, ask me to also believe he appointed you to handle all of his affairs a mere 7 days ago.” I concluded with a reminder that his friend will have the opportunity to verify everything tomorrow [this exchange is only significant in showing criminals will sometimes try intimidation and, at other times, flattery – it is important to remain courteous, but clinical]. At this point (meaning prior to my interview with the inmate), the criminal finally capitulated and the transaction stopped. In the ensuing days, I exchanged personal letters with the inmate and learned the two POA’s and the two prior deeds are all forgeries.\*\* The important part of this occurrence is that the criminal wasn’t actually *impersonating* a property owner – instead, he presented himself as the legal *agent* of the owner. The threat had taken a different form – now every POA and at least the last deed in the chain of title (possibly the last two) must be independently verified. An article about this situation has already been published by a title insurance company we represent -- it warns attorneys across our state and beyond of this new criminal method of recording forged transfer deeds (those not involving an attorney) as well as forged POA’s.

Most agents reading this article know the MLS currently contains fraudulent listings – we just don't yet know which ones.

The question presented is this: How do we protect our clients from the criminals lurking behind fraudulent listings?

Rest assured, we can stop them if we're all doing our part. Before continuing, allow me to point out that, while stopping a criminal closing prior to its completion is the central goal, we need to stop it before the buyer spends time and money in preparing for the purchase (i.e. travel, bank fees, inspections, title search, etc.). I will now explain what my office is doing, but will not explain every aspect of our protocol because this article is not meant to serve as an instruction manual for criminals.

At the start of each transaction, the identity of each seller is tested through Knowledge Based Authentication (KBA). This is a relatively new term to many, but we've all participated in KBA without knowing what it is called. The user (client) logs into our Adobe product and enters his name, address, last 4 of SSN, etc. He is then presented with three (3) multiple choice questions. For example, a question might ask "which of the following cars did you purchase in 2014?" -- six (6) possible answers are presented. The questions are computer-generated by Adobe (there are other KBA providers) and my office sees neither the questions nor the answers. Obviously, the questions are unique to each person. While the user is logging his personal information and answering the questions, Adobe automatically employs geo-location markers to track the user's digital footprint (i.e. IP address, physical location, geo-masking VPN's, etc.) The geo-location markers evaluate risk separately from the answered questions. The experience takes roughly 20 seconds. At the conclusion, we are automatically provided with a printout stating "identity verified" or "identity could not be verified."

We do this for our own seller clients as well as non-client sellers. In that attorneys are ethically prohibited from contacting a non-client seller, Adobe created a special program at our request. Through it, we send a transmission to the seller's attorney and that attorney then "delegates" the KBA to their client. When the client completes the KBA, both offices are automatically sent the identity verification printout.

In case you happen to be interested, the chance of a criminal guessing correctly to all three (3) questions is  $1/6 \times 1/6 \times 1/6$ . In other words, they have a 1 in 216 chance of guessing correctly and, while they're guessing, they are also being geo-tracked.

All of our fellow attorneys have embraced the system and many are already using a system of their own (we're lucky to have so many fine offices here in Horry County). KBA, though, only works for US citizens, so where we have a foreign seller, we choose from among our other identity verification methods. In some cases, we require the production of specific documents only the true property owner would have. In addition, we may send a "coded letter" to an independently verified address (if we do not represent the seller, this requires permission from the seller's attorney). We have other methods, but they are intentionally omitted from mention in order to retain their effectiveness.

The methods used by my office and some of the other leading offices protect everyone -- buyers, true owners, both real estate agents and both attorneys. The attorneys along the Grand Strand



take these matters seriously and have a special need to do so in that our area has so many non-owner-occupied properties.

#### OBVIOUS QUESTIONS:

**1. What types of property are at risk?**

Response: All non-owner-occupied properties – this includes second homes and rental properties. Unimproved land remains the greatest risk in that it doesn't involve access to a structure.

**2. How do clients feel about participating in KBA?**

Response: They love it. We get compliments all the time – people appreciate knowing their transaction is being handled with the seriousness it deserves.

**3. Where an imposter seller is successful, why would an agent be sued?**

Response: In a current lawsuit against the agents, the cause of action is “Negligence” and primary allegation is: “Failing to Take Reasonable Steps to Verify the Seller’s Identity.”

**4. Does an Owner’s Title Insurance Policy cover the buyer’s loss?**

Response: To the extent of the purchase price, a title policy *should* cover the buyer. This, though, will almost certainly not fully compensate the buyer because he has also paid inspection fees, bank fees, closing costs, HOA transfer fees and prepaid dues, travel costs and, in addition, has been put to personal inconvenience. Therefore, even if the purchase price is refunded to the buyer, he may turn to the attorneys and agents to recoup these additional losses.

**5. Does the Owner’s Title Insurance Policy held by the true owner of the property help him recover title?**

Response: No, the title policy of the true owner does not cover him for events that *occur* after closing. The policy only covers events that occurred *prior* to closing, but are *discovered* after closing.

**6. What can an agent do to protect his client against an imposter seller?**

Response: The agent’s brokerage can get a KBA program. Also, the listing agent can require the seller produce items only the true owner would have (carefully consider what they are). A buyer’s agent can include a document stipulation as part of the offer requiring various “true owner items” be produced within 48 hours of contract ratification. Driver’s licenses should be required because they are an *indication* of identity, but counterfeits are abundant, so they are no longer actual proof of identity. And finally, where an imposter seller is unsuccessful, the agent can contact CCAR by email ([CCARinfo@ccarsc.org](mailto:CCARinfo@ccarsc.org)). The property will then appear on a list of properties on which fraud attempts have been made. This will be a valuable tool and thanks is owed to CCAR.

**7. Can the Register of Deeds stop the recording of fraudulent deeds, fraudulent mortgage satisfactions and fraudulent POA's?**

Response: The role of the ROD is to ensure each document meets the recording requirements (witnesses, notary, etc.), but is not responsible to test the legitimacy of the documents nor the identity of the signer.

\*\* The two prior forged deeds were both recorded in April of last year. In the first, title was conveyed from the inmate's wife to the inmate and, in the second, a 50% interest was transferred to Seller #1 (the criminal). The title should still have resided with the inmate's wife. Through the prompting of the inmate, we later verified Seller #1 is affiliated with a Philadelphia crime family and, in fact, his deceased father was one of the crime family kingpins.