

10-27-2011Insight

The Check is in The Mail and a Second Scam

We have all heard the cliché “The check is in the mail” and of course, it never comes. We have seen what we thought was every type of variation possible so that people didn’t have to give us escrow deposit checks including:

1. “It’s being held by my escrow agent” is the most common one and if this happens, call the escrow agent and ask for an Escrow Letter to be sent by email or fax.
2. “Check is in the mail” is the seller’s fault for not setting the standard of Money Order or Cashier’s Check or best of all, wired funds.
3. “I wired the funds you should have them in minutes and I emailed the signed contract but I am having trouble getting it through.” Ask the buyer to get a wire confirmation number when he wires funds because the receiving bank can hold the funds overnight to ride the float on the interest earned by investing the funds for a few hours. If you believe the email excuse, have the contract faxed or emailed to a different address.
4. “I’ll bring the deposit by your office today” but late in the day you get a call that he couldn’t get away, couldn’t find your office, a family member died or some other reason. If this is the first time dealing with this buyer, set an appointment as soon as possible and stay on top by calling him to confirm he is on the way. If he isn’t, consider going and getting the check.
5. “I’m sorry, I didn’t sign the check!” that’s because the check is likely no good. Again, this is the seller’s fault for not asking for a cashier’s check or money order.

The scam that we got caught in recently was where the buyer signed our contract on behalf of his LLC and emailed it back immediately. We started taking back-up offers only which is a distant second in terms of quality of their offer. Most investors don’t like back-up offers because they think they are getting a deal someone else turned down, so something must be wrong with the property. Additionally, if they have multiple offers out and unexpectedly, two come in, the investors may not have enough money to do both.

The deposit check came in by email as a copy of a corporate check written by the buyer. The check was made out to our closing agent and the email stated it had been sent by mail. RED FLAG – this was personal (corporate) check and should have been a cashier’s check or wired funds. Second mistake was that we didn’t follow-up to see if the closing agent got the check and he never received it. We got too busy and this dropped through the cracks – which resulted in a \$5,000 mistake.

As is always a huge warning sign, the investor buyer didn’t return emails or telephone calls and seemed to disappear from the face of the earth. We had done a goodly number of deals with him so we didn’t have a trust issue. But,

after the fact, we noted in the public record that he had closed on another deal during the time we couldn't contact him.

We did resell the property for a larger profit than we would have sold it to the first investor. However, the issue is that we have a breach of contract that cost us \$5,000 and the first investor took advantage of our trust in him. In simple terms, law suit to follow but it is a civil matter and doesn't rise to the level of fraud unless the investor does this over and over.

The bigger issue here is that you have a property for sale that has a time constraint on selling it if you are wholesaling in the inspection period. You need to get a signed contract and a deposit as soon as possible or turn back the property to the seller. Investors know that this is a problem for you and often wait for you to lose the property to go to the seller and get it from them. First-time buyers may not understand your urgency, but stress getting the signed contract and the earnest money deposit ("EMD"), but you shouldn't explain it to them or they may get scared away!

We get it all the time from a few old pros, "I like it but what's the best you can do?" and we get offers that are \$20,000 below what we have it under contract for. Expect this, as it is what you should be doing when you make offers. If you want the property, be prepared to get it under contract with a real deposit and plan on closing. If you are reselling it before closing, expect to lose your deposit and make sure you have your buyer's deposit in hand! Never take actual cash as a deposit. This may sound like the ideal situation, but you could be charged with laundering money. Never agree to have your buyer bring a briefcase of cash to a closing – the closing agent won't accept it and you will be investigated for money laundering when someone brings cash to the bank for a deposit – you, the closing agent or buyer.

The second scam is the result of the convenience of the electronic age. Remember the TV commercial of the newlyweds sitting in bed and "cashing" their gifts from the wedding party? The bride and groom take turns photographing their checks (gifts) with their cell phone and transferring the funds into their account. Even I have a phone app for doing this, the technically challenged investor!

The scammers in this case closed on a sale and received a check from the closing attorney's trust account – not a cashier's check. Attorneys can't issue cashier's checks or money orders and wouldn't want to if they could. Their trust accounts have money for and from multiple closings so the accounting of what is where and what belongs to who is very important. Some attorneys do this account balancing daily; others do it at the end of the month. If done weekly or monthly, it opens the closing agent to finding any fraud perpetrated against him very late to get started resolving it.

The scammers took their closing check to their car and photographed it with their cell phone and deposited it into their bank account. Then they went back inside and asked the closing agent to wire the money to their bank account – likely a different one from the photo deposited check. The wired funds can be withdrawn the next day, the other account may have to hold the check 10 days to clear, but if the closing is early in the month, this isn't a problem for the scammers. This is clearly bank fraud and does rise to the level of getting the State's Attorney involved – you'll have no legal fees but the scammers will!

Some of you might be thinking why am I telling scammers how to perpetrate fraud. I am telling you so you don't get defrauded. Smart scammers will know what I have told you and dumb ones will figure it out. In both of the above cases, the results could have been avoided by strict standards of accepting wired funds only and disbursing wired funds only. We make choices to accommodate "trusted" parties and the result can be costly but not fatal. Review your professional standards of accepting deposits and how your closing agent pays proceeds and accepts payments.

I wanted to mention this one last thing – whenever I am a seller, I don't like sending the buyer a signed contract. Let the buyer sign your contract before you sign. The problem is that with your signed contract, you have obligated yourself to this specific buyer who may be slow in returning your signed contract if he returns it at all. You now have a contract floating in the clouds and not be sure if he will even accept it.

If you don't hear from him and say you are cancelling the contract, it doesn't mean you can without cause. The contract stipulates these causes and you may find yourself at closing with another investor sitting in the other room explaining to the closing agent that he has a valid contract on the property – you now have a BIG problem because he has a viable breach of contract action which can be expensive for you to resolve.

Coincidentally, your other buyer also has a breach of contract issue so another problem to solve! It only took me only once to change my business practices, how many times do you need to be stung? Always get your buyer to sign your contract first and don't sign your contract until you absolutely know his EMD is solid! If the buyer protests, give him your signed contract at the same time you get the EMD.

To your limitless success,
Dave Dinkel

PS – Many thanks to Phyllis Curtis for bringing me the following quote that was very impactful to me –

"Nobody cares how much you know until they know how much you care"