



# REALTOR® Beware

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## AVOIDING Scams IN Real Estate Transactions

Fraudsters are now targeting real estate transactions to such an extent that it seems like every day we are seeing a new “scam de jour” (scam of the day, for those of you who do not speak French). There are likely two reasons for this. First, real estate is where the money is. Since homes are often a person’s largest asset, it is sometimes referred to as a “target rich environment.” Second, in the past, fraudsters have made

a lot of money scamming people in real estate transactions. This, unfortunately, appears to have encouraged other fraudsters to get in on the action. This article will review some of the more common real estate scams we are seeing so that REALTORS® are educated on spotting many of these red flags. Hopefully, this will reduce the success of some of these fraudsters and encourage them to ply their trade elsewhere.

### {SCAM No.1}

#### Selling Property You Do Not Own

We have seen an explosion of cases where fraudsters pretend to be the owner of a property and then try to sell it. The fraudsters are primarily targeting vacant homes and lots. This is particularly common with the sale of vacant lots in resort areas where the owner does not live locally and may own a lot for years before building a home on it. The fraudster searches the title, identifies the owner, assumes the owner’s identity, and hires a real estate broker to list the property for sale. A good fraudster obtains a fake driver’s license in the name of the true owner of the property. In many cases, the fraudster never meets in person with the sales agent but does everything over the phone. The listing agent gets the property under contract, and the transaction moves toward closing. The fraudster will oftentimes not want to attend the closing and will instead want the closing to be handled as a “mail-away” transaction (where the closing documents are signed and returned by mail and the parties do not physically attend the closing).

On other occasions, the fraudster will try to close through a power of attorney so that the fraudster does

not have to attend the closing in person. These requests should cause the broker and closing attorney to have a heightened level of scrutiny. If the fraudster wants the sales proceeds wired to a person other than the owner as listed on the deed, it is yet another clue that something may be fishy with the transaction. Of course, the challenge here is that there are often legitimate reasons for requesting a “mail-away” closing, closing through a power of attorney, and, in more limited cases, having proceeds sent to another party. Figuring out which transactions are normal business transactions and which are potentially fraudulent can, therefore, be tricky.

This same scam of assuming the identity of the seller is also often used to try to sell vacant homes where the owner is either deceased or the home is a second home where the owner lives elsewhere for part of the year. This is a riskier proposition for the fraudster because it usually requires the locks on the home to be changed and for someone representing the fraudster to be present at times in the home. Still, in one case, a couple returned to their second home after being away for six months only to discover that the home had been repainted a different color and a new family was living in the home. Fraudsters often will target homes that are not close to the prying eyes of neighbors.

Leasing a property without the permission of the owner and keeping whatever monies are paid is a variation of the above-referenced scheme. In other cases, some fraudsters go so far as to forge the owner’s name on a quitclaim deed to transfer title to a limited liability company owned by the fraudster. They then sell the property as the new owner of record.

## PREVENTING *the* FRAUD

In most of the cases where a fraudster assumed the identity of a property owner, a real estate broker was hired to sell the property. If the scam is discovered before closing, it means that all of the broker's efforts were for naught. Therefore, not being on guard for these types of frauds can result in a lot of lost time for the REALTOR®. The implications if the scam is not discovered are even worse for both the real property owner and the buyer if the transaction closes. So, what can the broker do to prevent this fraud from occurring? Here are my suggestions:

**1}** Be on the lookout for extremely low-priced properties or "deals" that may seem too good to be true. Fraudsters like everything to happen quickly to minimize the likelihood of getting caught. Additionally, people who are getting a great deal sometimes want that deal so badly, they let their good judgment that might otherwise suspect fraud, be clouded;

**2}** Try to meet with the seller in person prior to listing the property, obtain a copy of their driver's license, and compare it to the property owner on the Georgia Superior Court Clerk's Cooperative Authority ("**GSCCCA**") website or the county tax commissioner's website. While a fake driver's license can be obtained, some fraudsters do not have good fake IDs and will be tripped up at this stage. If a seller is not willing to share their ID with you, then that is another possible red flag to consider;

**3}** Send a letter to the address of the owner as shown on the tax records confirming that you are listing their property for sale. If the true owner has not listed the property for sale, they will usually contact you right away to find out what is happening;

**4}** If you suspect that you are dealing with a fraudster and have their picture ID, speak with neighbors or the homeowner's association to confirm whether they know the owner and whether their description of the owner matches the picture on the ID the fraudster gave you. If the picture on the ID matches the description of the actual owners, try to set up a video conference with the sellers to confirm that the people you are dealing with match the ID they provided you. Of course, most fraudsters will come up with an excuse as to why they cannot participate in a video conference. That should heighten your suspicions that it may be a fraudulent transaction;

**5}** Alert the closing attorney know if you are suspicious so that they can investigate the identity of the seller further. Closing attorneys are increasingly on the lookout for sellers who avoid real or virtual face to face meetings, come up with excuses as to why they cannot attend the closing, want the sales proceeds wired to someone other than the seller or to a bank in a far off locale or whose telephone number does not match the area in which they are living. Many closing attorneys will not close transactions with sellers who do not fully cooperate in verifying their identities;

**6}** Tell your clients (sellers and buyers, once they close) to sign up for the new Georgia Filing Activity Notification System ("**FANS**") through GSCCCA (**fans.gsccca.org**). With this free service, the owner will receive an electronic notification via text or email about filings that involve the property or owner. Also, tell your buyers to purchase an owner's title insurance policy at closing. Enhanced owner's title insurance policies usually have post-policy coverage for forgery and impersonation;

**7}** If it is clear that you are dealing with fraud, call local law enforcement (although many police departments have limited resources to deal with what is viewed as white collar crime). In other cases, you may be referred to state or federal task forces dealing with these types of crimes;

**8}** Encourage the buyer to purchase an enhanced title insurance policy that protects the buyer against the risk of buying property from a fraudulent seller.

### { **SCAM No.2** }

#### **The Fake Mortgage Lender**

We are also seeing some cases where fraudsters are pretending to be mortgage lenders. Usually, this scam starts with a fake lender offering mortgages way below market rate. One might wonder how this results in the buyer losing money. In one recent case, the fake lender convinced the buyer to send the lender \$22,000 to confirm that the buyer had sufficient funds to close. What was really unfortunate about this situation was that the buyer not only lost the money she sent to the fake lender, but she also lost her earnest money when she failed to close because the fake lender never funded the loan. This sad tale confirms the old saying that if something is too good to be true (such as a very low mortgage rate), it usually is.

## PREVENTING *the* FRAUD

Obviously, the lesson here is to only work with established, reputable mortgage lenders who are offering good rates, but not rates that make no sense in the current market.

### {SCAM No.3}

#### “I Need Some of My Earnest Money Back”

This scam has been around for a while, but oldies can still be goodies. In this scam, the fraudster sends in an earnest money check or check for the purchase price in an amount larger than what is owed. The check is usually written on a foreign bank. When the holder informs the fraudster that he or she sent too much money, the fraudster simply asks the holder to refund the excess amount. The check appears to be good, and a refund is issued. Only later is it discovered that the check was not honored, and the holder is out the amount of the excess funds returned to the buyer.

## PREVENTING *the* FRAUD

The key to this fraud working is for the check to be written on a foreign bank. Some checks where the foreign bank initially indicates that the check is good are later returned for insufficient funds. Holders usually solve this problem by not accepting any check written on a foreign bank and insisting that funds coming from outside the United States be wired to the holder. Holders also should not refund any earnest money or other deposits until the funds have cleared their account. The GAR Purchase and Sale Agreement (GAR Form F201) gives the holder this right.

### {SCAM No.4}

#### The Revised Wire Instructions Fraud

This fraud is the one with which REALTORS® are most familiar. In this scam, the fraudsters hack into the victim's computer (and I suspect that millions of people have unknowingly had this happen to them) and, likely using super computers, search for evidence of ongoing real estate transactions. If the transaction is a real estate closing, they then send revised wiring instructions to the buyer that directs the buyer to send the funds to a new account. If the buyer is not paying attention, the buyer then sends the money to the fraudster where it promptly disappears. Not only have buyers lost huge sums of money this way, but sellers sending their sales proceeds to financial firms have similarly been scam-

med. Fraudsters in this area have grown increasingly sophisticated in recreating websites and standard forms of law firms, real estate brokerage firms and mortgage lenders to help fool unsuspecting consumers. They even provide phone numbers that are answered in the name of the institution they are pretending to represent.

## PREVENTING *the* FRAUD

REALTORS® have done a good job educating consumers of the risks in this area, including adding disclaimers in various GAR Forms regarding this scam. However, the fraudsters have gotten so good at assuming the identity of legitimate lenders, closing attorneys, and real estate brokers, that it is easy to fall prey to their scams unless you are really paying attention.

The best defense is never to send wiring information by email and to constantly remind your clients that this is not something you will ever do. Instead, such information should either be communicated over the phone or sent through a password protected website.

Clients and customers should also be reminded to make a phone call to verify wiring instructions, particularly those received via email. Buyers should only need to wire money to the holder of the earnest money or to the closing attorney. Lenders generally do not accept funds directly. Remind your clients that they should call the broker or closing attorney at the number listed in the GAR Purchase and Sale Agreement. Of course, the call could also be made to the telephone number of the company obtained through an internet search, rather than to the telephone number, email, or website listed on a suspicious communication from a possible fraudster. Sellers should also verify at closing that the closing attorney has the correct wiring instructions for proceeds.

REALTORS® can also stop this sort of fraud before it starts by regularly updating their virus software, checking for “rules” they did not create in their email applications, never clicking on unfamiliar links or opening unexpected attachments, and watching for suspicious or awkward wording in emails.

### {SCAM No.5}

#### The Squatter Who Pretends to be Renting Your Home Scam

One of the more insidious scams is squatters who break into homes and claim them for their own, often selling off household possessions and trashing the

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ciation of REALTORS® (NAMAR) and was named their REALTOR® of the Year in 2009 and 2022 (Management), and their Captain of Industry in 2010.

For over 40 years, Peggy has been a tireless champion for REALTOR® causes and issues. Her passion for political advocacy began in 1983, and has only grown stronger over time. Peggy is deeply devoted to the REALTORS® Political Action Committee (RPAC). For the past 14 years, she has been a major investor and earned induction into the prestigious RPAC Hall of Fame in 2018. Currently, she is at the Crystal R level for the elite and passionate group of REALTOR® major investors.

Beyond financial support, Peggy lends her time and talents to advance REALTOR® issues within her local community. She has also been a distinguished member of NAR's President Circle since 2015. For decades and counting, Peggy has proven herself a REALTOR® leader who transforms vision into reality through her steadfast political advocacy.

Peggy has received many accolades over the years including Best Gwinnett County REALTOR® from 2013 through

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2022, Christian City Children's Village Humanitarian Award in 2014, Greater Atlanta HBA Sales and Marketing Sales Manager of the Year in 2007, Home of Hope at Gwinnett Children's Shelter "Power of One" Award, and was a nominee for the Gwinnett Chamber of Commerce Small Business of the Year in 2019.

Peggy's decades of exemplary service and advocacy have cemented her place as a pillar of the real estate community. Her passion, integrity, and commitment to excellence continue to inspire fellow REALTORS® across Georgia. As the newly crowned 2023 Georgia REALTOR® of the Year, Peggy's legacy of leadership and giving back will no doubt motivate the next generation of agents to follow in her footsteps.

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property. However, when the rightful owners return to their property and call the authorities, the squatters pull out a fake lease claiming to be the rightful tenants. With the squatter possessing the property and the home being furnished, many police will treat the possession as a civil matter and tell the owner that they must evict the squatter. If the squatter remains in the property for more than 20 years, and certain other conditions are met, the squatter can even obtain legal title to the property through adverse possession.

Evicting a squatter can be a long process in Georgia due to current backlogs in our court system. There is a state statute that may allow the sheriff to use a much faster procedure to get rid of a squatter. Specifically, O.C.G.A. § 44-11-30 allows the property owner to swear out a notarized affidavit claiming in good faith the right of possession of the property. When this is presented to the sheriff, the statute gives the sheriff the right to put the squatter out without going to court. Unfortunately, some sheriffs are unfamiliar with this statute and are reluctant to exercise the power the law gives them. Moreover, if the squatter submits a sworn counter-affidavit to the sheriff making the same representations that they have the right to the lawful possession of the property, then the sheriff will cease from putting the person out. In other words, this particular law is really only of benefit if the squatter is unfamiliar with the law.

#### **WHERE WE GO from HERE?**

While not yet something we have seen in real estate scams, tech companies are warning that voice cloning is on the horizon for making scams that much more effective. Imagine if a consumer gets a call from a fraudster who has cloned the REALTOR®'s voice and gives new wiring instructions to the consumer over the phone. While this may seem far off, voice cloning has already been used to steal large sums of money.

REALTORS® need to be on guard for potential fraudsters. We are moving into a world where verifying a person's identity is something we should do as a rule, not an exception. A client or customer who is outraged at a request for such information may simply be using their outrage as a cover for their nefarious schemes. Legitimate customers and clients should, hopefully, understand that verifying a person's identity is for their own protection. If we focus on ferreting out the fraudsters in real estate transactions, they will, hopefully either get caught and go to jail or seek greener pastures elsewhere.