

# Scary stories from a closer

(You don't want to read them at bedtime!)



16621 E Indiana H 102, Spokane Valley, Washington 99216

[clockhoursbyangie@gmail.com](mailto:clockhoursbyangie@gmail.com)

(509) 216-3220

*A Washington State Approved Real Estate School for Clock Hour Education under R.C.W.18.85.*

# CORRESPONDENCE CLOCKHOURS

## INSTRUCTIONS:

1. Print out the class
2. Read the class booklet
3. At the end of the material there is a quiz (all the answers are in the material that you have read).
4. Answer the questions
5. Return to me the quiz, evaluation and a check for the class payable to **CLOCKHOURS BY ANGIE**, or complete your credit/debit card information on the sheet provided
6. Upon receipt, I will email you a certificate.

Disclaimer: I try very hard to have the latest known information on a subject in these classes, but, the real estate industry is forever changing with new updates all the time. The class materials are not to be used for legal advice. In our State, some items are handled differently in the different regions. If you have any concerns, please do not hesitate to contact me at 509-216-3220 or at [clockhoursbyangie@gmail.com](mailto:clockhoursbyangie@gmail.com)

## Scary Stories from a Closer Curriculum

<b>Hours</b>	<b>Topics</b>	<b>Method of instruction</b>
1 <sup>st</sup> hour	<ol style="list-style-type: none"><li>1. Trustee's sale</li><li>2. Cash or Bitcons?</li></ol>	Read material/ discussion
2 <sup>nd</sup> hour	<ol style="list-style-type: none"><li>3. Photocopy of earnest money check</li><li>4. Yes, I need current ID</li><li>5. Incorrect TIN'S</li></ol>	Read material/ discussion
3 <sup>rd</sup> hour	<ol style="list-style-type: none"><li>6. It's a rush, really?</li><li>7. You want me to do what?</li><li>8. Can I use your fax machine?</li></ol>	Read material/ discussion

# TRUSTEE'S SALES.....BEWARE, WHAT ARE YOU REALLY GETTING?

Ralph was a "seasoned" agent and helped many investors purchase homes by reviewing the lists of homes for sale each week from the "trustee's sale list" provided by the title company. He has been very successful over the years, searching records and coming up with suggestions for his clients to review and then search a little more before the purchaser bid on the property.

Here is a story of one home that was purchased this way and because a surprise for the investor in the end.

This deal was too sweet.

- Notice of trustee's sale said:  
*"The default for which this foreclosure is made is/are as follows:  
Failure to pay when due the following amounts which are now in arrears:  
\$85,495.40  
The sum owing on the obligation secured by the Deed of Trust is: The principal sum of \$28,901.56, together with interest as provided in the Note from 1/1/2008, and such other costs and fees as are provided by statute."*
- Ralph the realtor looked at this and thought, what is this about? Either this is the transaction of the century he just found or something was not posted correctly.
- Ralph called his favorite title company and asked to speak to the property information department employee who he talks to at least once or twice a week. He explained to Bob about this Notice of Trustee's Sale he is inquiring about. He asked Bob to look into this for him. Ralph knew that Bob was only able to assess limited information without actually opening a title report which he did not want to do just yet. Bob searched and found that there were two deeds of trust against this property
  1. \$108,436.00 in favor of ABC Lending dated June 1999

2. \$178,500.00 in favor of XYZ lending dated May 2007

He further checked the records and found the assessed value was \$177,900.00 for the tax roll year of 2013. He said the 2<sup>nd</sup> Deed of Trust had the Notice of Trustee's Sale filed against it. Ralph told Bob that he thinks that perhaps the 1<sup>st</sup> Deed of Trust was paid off when the second was taken out and never reconveyed as he knows this happens sometimes. Bob confirmed Ralph's suspicion, but without ordering a title report and doing further search on this, there was no way of knowing for sure, it was just an educated guess.

- Bob contacted his investor with all this information and asked the investor if he wanted Bob to open a title report on this property before he bid on it later that week. The investor said, no, I'm sure that the 1<sup>st</sup> Deed of Trust was never reconveyed – it happens all the time you know.
- The investor purchased the property for \$1.00 over the amount owed, paying just under \$30,000.00 for this assessed valued property of \$177,900.00 – he was delighted and could not believe his incredible luck for this purchase.
- Ralph called his favorite closer, Angie, and tells her the investor bought the property and would she open the title and start making some calls to help clear title on the 1<sup>st</sup> that was never reconveyed as the investor was going to list the property for sale really soon. He felt it would sell really quickly and this way they'd be ahead of everything making it “marketable title” for the new purchasers.
- Title was opened and a copy was sent to Ralph and to Angie. When Angie reviewed it, she immediately went to see the title manager as Red flags were all over the place! The title showed the following in order of date filed:
  1. \$108,436.00 deed of trust dated June 1999
  2. \$ 3,249.44 collection filed Feb 2003
  3. \$ 10,634.49 judgment filed November 2004
  4. \$ 178,500.00 deed of trust dated 2007

5. \$ 8,495.08 judgment dated December 2012
6. \$ 425.34 judgment dated September 2011
7. 4 1,928.39 Lien in favor of Spokane County Utilities

Wow, what was going on here? When the loan in 2007 was taken out they should have paid off the 1999 loan PLUS the two judgments. She could understand a Reconveyance being missed, but TWO missed release of liens????? The title manager said the obvious did not make any sense and she highly questioned it. She said that the Trustee's Deed to the investor had not been recorded yet and to wait a few days until it is recorded to see what they were able to clear off title.

- After Angie and Ralph discussed this, Ralph decided he would take a drive over to the house to look around a bit, as he only did a drive by when he first found this home listed on the trustee's sale and thought he'd take a closer look as the investor was going to be in town this week-end and wanted to see inside. Boy was Ralph shocked when he pulled up to the house and found the garage open with a car in it and filled with all kind of things you find in a homeowner's garage. He went to the door and rang the bell. A man answered and Bob told him that his investor just purchased this home and wanted to know who he was. The man told him he was Frank, the homeowner, who Ralph recognized as the name vested in title of the report he looked at yesterday. Ralph told him that XYZ Lending foreclosed on this property and he represents the investor who purchased this property last week in the Trustee's sale. Frank told Ralph, I really don't know what you are talking about, I own this house and I am current with my mortgage company, who is not XYZ lender, it is ABC lending and I've owned this home since June 1999 when I purchased it. Ralph could not believe what he was just told. He didn't know what to say or do. He told Frank he was sorry for bothering him and needed to get a hold of the people who were the loan servicers and who commenced the foreclosure  
  
Then, Frank told Ralph, " Hey, I remember something about that name you said, XYZ Lending". I remember a few years back, can't remember if it was 2007 or 2008, I was going to refinance my home and applied for a loan with

them. Some company in Florida sent me a huge packet of closing documents to sign which I did, but then after I returned the documents I decided I did not want to go through with this loan and I executed the correct documents they gave to me in the 3 day period I had and I rescinded the loan. Ralph just couldn't seem to grasp what he was just told. How could this be?

So, he apologized once again to Frank and said he had some work to do to see just what happened as his investor who thinks he owns this home was flying into Spokane this week-end.

- The investor was immediately contacted by Ralph and was told of the events that just happened earlier that day. The investor contacted the legal department whom he worked through when he purchased the property. He explained what was told to him and wanted to know what the heck was going on it had been over 14 days since the purchase and he had not received his deed yet. They told him they would check this out and get right back to him. Two days passed and no one called. He then called back and was told there is a problem but they could not discuss it with him just yet as it was turned over to their attorneys and someone would be contacting him shortly.

- The attorney finally contacted the investor. Finally they explained, "Yes, there is a problem".

The loan from XYZ was never made. The rescission was signed properly by Frank and returned to the closing company in Florida in the correct time frame, but the closing company never told XYZ and the loan proceeds were funded to the closer. The closing company returned all of the loan proceeds to XYZ lending EXCEPT \$28,901.56 and no one was able to tell the lender why this amount was not returned when the loan was rescinded.

The file was shortly misplaced by the lender and never pursued, until recently when discovered. The \$85,495.40 amount that was the delinquencies on the trustee's notice were discovered to be for the delinquent payments from 2007 until 2013 if the loan was in place.

- The attorney told the investor they would have to start a law suit against the closing company in Florida for the \$28,901.56 plus costs and would he

like to join them in the lawsuit. The investor said, “For what, the homeowner never completed this loan. I don’t want to sue anyone, I just want you to return all my money and be glad that I’m going to sue you!”

- The \$30,000.00 the investor paid was wired to his bank account the next day.
- Moral of the story.....never assume the obvious.....we need releases.

I know many real estate agents review these “trustee lists” weekly that are provided by the title companies, in search of properties their investors or they themselves can purchase. If it’s too good to be true, it is probably too good to be true. Sure, there are those exceptions to the rule, the one you don’t want to let get away. But, beware of the obvious.....

#### **DISCUSSION OR TO THINK ABOUT:**

- 1. Is it too good to be true?**
- 2. Do you have ALL the facts?**

# CASH OR “BITCOINS”???

A home in Canada was listed for sale at \$405,000. The listing has a unique solicitation in it. The seller will accept offers to purchase for cash, new financing, or by trading in **BITCOINS**.

When asked about the bitcoins, the seller stated, “ I really wanted to get my hands on some bitcoins and they happen to be quite hard to get if you want to get a large number of them.” This made us wonder. What on earth is a bitcoin and how does it work? So we went to work researching bitcoins and here is what we discovered.

Bitcoins are virtual currency. They are not exchanged through a bank or any government agency. They are exchanged online. They are protected by cryptography which is the science of writing in secret code. It makes it necessary when communicating over any untrusted medium, and includes just about any network, particularly the Internet.

Cryptography is an indispensable tool for protecting information in computer systems. Since the transfer of bitcoins is done between the payer and payee, the payment is irreversible. Therefore there is no middle man such as a bank or agency which oversees the transfer. The only way to recover the transfer is if the recipient refunds the bitcoins.

Bitcoins are still considered an experimental new currency. It does become less experimental as usage grows, but keep in mind bitcoins are a new invention exploring ideas never before attempted- which means its future cannot be predicted and the price can be volatile.

The price of a bitcoin can unpredictably increase or decrease over a short period of time due to its young economy, novel nature and sometimes illiquid markets. At the time of this article one bitcoin is equal to \$114.50 U.S. Dollars.

It will be interesting to see if the seller of the home in Canada succeeds in being the first to sell for bitcoins. Who knows, maybe it is a sign of things to come. If

you receive a transaction where a portion or the entire purchase price is being paid with bitcoins be sure the principals understand you cannot receive or hold the payment. The transfer will have to occur outside of escrow and you might show an offsetting debit and credit on the closing statement.

Be sure to point out the payment of your fees and other items such as the payment of property taxes will have to be done in “dollars”. The principals will have to provide you with confirmation the transfer has occurred and instructions as to when the documents can be recorded and when the balance of the funds can be disbursed.

#### **DISCUSSION OR TO THINK ABOUT:**

- 1. Have you heard of a BITCON?**
- 2. Do you know anyone who has purchased or sold based of this type of currency.**
- 3. Do you think BITCON’s have a place in real estate?**

# PHOTOCOPY OF EARNEST MONEY CHECK?

It is normal and customary practice at most escrow branches to make a copy of the earnest money check, issue a receipt and provide a copy of both to the listing agent, selling agent and lender.

In one escrow branch they did just that, only to find out from the buyers that the information from the earnest money check had been intercepted by fraudsters who attempted to write more checks using the same exact check number in various amounts to different payees.

In February 2013, the buyers wrote a check to a title company in the amount of \$12,000.00 as an earnest money deposit on a new house. The check was receipted by the escrow branch, copied at the bottom of the receipt and then sent via unencrypted email to all parties.

Five days later, the buyer's bank contacted them as several checks bearing the same account number and same check number were presented at the bank for payment to different payees, all in large amounts. In addition, the bank told the buyers their online account had been threatened and it was important they come to the bank to close the account and open a new one.

The buyers were very upset and were convinced their account was compromised due to the actions of the title company. The title company reacted swiftly to the allegations that they had anything to do with the exposure of the bank account information by providing the buyer with a free year's worth of CreditCheck@Basic through Experian.

The buyers were not satisfied with the gesture as they spent many hours at the bank and making phone calls to change account numbers on their online payments (including four hours at their bank and 10 hours following up with creditors). The buyers demanded a full refund of their escrow and title charges.

The title company might not have been the source of the theft, but they did expose the account information over the Internet by transmitting unencrypted

emails containing copies of the check to parties entitled (and un-titled) to the account information.

The escrow operations manager answered the buyer's demand for a refund of fees, letting them know fees cannot be discounted or waived in their state. They have to be collected in accordance with the rates filed with the State's Department of Insurance. The escrow manager requested a time and effort report reflecting the time expended by the buyers to change their compromised account, including any and all bank expenses.

The buyers provided letters from their employers and their bank verifying loss of work hours and production. The husband's employer reported the husband was unable to work for a total of 12 hours while dealing with financial issues brought on after his escrow with the title company. The employer went further to report that based the husband's salary and commission he would have earned close to \$1,600 during his absence.

The wife is a dental hygienist. Her employer reported she was unable to work for 12 hours while dealing with financial issues as a result of their escrow transaction with the title company. Her employer estimated a loss of wages in the amount of \$1,100.

The buyer's bank substantiated the loss of time by reporting that they spent several hours in their branch due to fraud committed on the account after the account holder wrote a check to the title company. The losses exceeded \$2,600.

### **MORAL OF THE STORY:**

Operations who mishandle a customer's non-public information can suffer much more than just embarrassment. In some cases, the costs are immeasurable. They face bad public relations with their customers, loss of business, the possibility of fines and loss of profit.

In this instance the customer was not satisfied with the first offer of the title company. As a result, the manager had to make a business decision which resulted in the loss of \$2,600 to the operation.

If the escrow branch is sending copies of the earnest money check to unentitled parties – meaning those individuals who should not otherwise have access to the buyer’s non-public information – the MICR line of the check should be whited out or blacked out prior to sending the check copy.

That said, most lenders will insist the escrow holder provide a copy of the earnest money check unaltered. The lender already has access to the buyer’s bank account information, since they had to supply the information to the lender in order to qualify for a new loan. The lender is entitled to the information.

The escrow holder complies with this request by sending an unaltered copy of the check and receipt using the Company’s encryption software.

#### **DISCUSSION OR TO THINK ABOUT:**

- 1. What is your practice of business regarding earnest money checks?**
- 2. Do you know what your title/escrow company practices?**
- 3. Are you aware of your company’s policy regarding encryption software?**

## **YES, I NEED CURRENT PICTURE I.D.**

It was a normal day at the office! Many people think a lifetime of ESCROW should be boring – NOT! Anything could happen at the signing table and anything does happen at this appointment, especially if the closer is paying close attention to details and ALWAYS following protocol.

It was a typical closing file. There was a seller, a purchaser and a property. Pretty basic I'd say. There were no real estate agents....that does happen sometimes, even though closers love to have agents involved – someone else they can rely on to assist in the completion of the closing process.

John and Mary Smith had an appointment to sign at 10:00 that morning – they were the sellers and were selling their rental home for cash to James and Susan Brown. The Purchasers came in to sign the previous afternoon complete with their cashier's check and asked if they could have their keys right then and there. Of course they didn't know they could not get the keys right then and there since they did not have a real estate agent to "buffer" this question. I had to advise them that they needed to contact the sellers to arrange an exchange of the keys. I mentioned to them the sellers would be coming in to sign the next day at 4:00 and since that was Friday, it would not record until Monday morning. They needed the keys tomorrow, so I told them that since they did not have a real estate agent whom would normally handle this (prior to the signing appointment) they would need to contact the sellers and make the arrangements.

Now, you probably think this story is heading in the direction of possession and keys, and no, it is not. Here is the continuing story.

It is now Friday at 4:00 and the sellers have not shown up yet. About 4:10 a couple walks into the office and said they are John and Mary Smith. Now, looking out at the counter I see that John appears to be about 70ish and Mary is 40ish. I do not question this because I got in trouble with that scenario years ago and got very embarrassed and learned my lesson.

My assistant came into my office and let me know the clients had arrived but only the husband had current picture identification. I then asked her to ask the clients if they perhaps had a military ID or a passport. She came back into my office and said, no, they didn't. I went to the lobby and I introduced myself and lead them into my office. I asked the wife if she had the required identification and she said she did not bring her purse. She had run out of the house too quickly. The "husband" appeared nervous the whole time the "wife" was talking to me. I then explained that part of the closing process was that I would need to be notarizing the warranty deed that would be recorded at the courthouse thus transferring title to the purchasers. I asked if she could run home and get her purse. She said their home was over a 45 minute drive. I told them I would stay late and wait, and they left.

About 30 minutes later (45 +45 = 30 minutes?) I saw Mr. Smith walk into the office and behind him was a lady with her head down. When they approached the counter, I noticed it was not the same "wife" who appeared at my office earlier. This woman appeared to be 70ish and I thought to myself, now, this is the real wife!

She pulled out her wallet and threw her picture I.D. on the counter and I make a copy of it. I looked at it very carefully for the dates, name, address and then the picture comparing it with her, yes, this appeared to be Mary Smith. I then had them both follow me into my office. The husband looked down and did not say anything. The wife would not even look at me. What were they up to? Did they think I'd just "blow" this off?

I immediately looked at "Mr." and said okay, what is going on? You were here 30 minutes ago with a much younger gal and tried to tell me she was your wife and forgot her I.D. Now you show up with the REAL "Mrs." and expect me to just proceed as though nothing happened. The driver's license matches and I really do think this is Mary Smith sitting in front of me, but now I am highly suspicious and don't want to continue with this closing.

Mr. Smith looked up at me and said "I am so sorry I tried to deceive you. I really thought as long as one of us had our proper I.D. you would just skip that little

detail and notarize the document and complete our transaction. After all it is a cash transaction; the purchasers already came in with their money. Their money is good, right?”

“Yes, their money is good and it is already deposited into our trust account. And you came back to my office with the real wife! What were you thinking? “

Mr. Smith then proceeded to tell me that he got home to pick up his wife and she was out getting her hair done and would not be home until about 4:30, so I thought to myself, as long as I have my ID, it should be enough and asked my next door neighbor to do me a favor and pretend she was my wife, and we showed up at your office. All this time the real “Mrs.” was looking at the wall and would not look me in the face, nor would she look at her husband.

She looked at her husband and said, “I told you that was a stupid idea!”

And they proceeded to argue yelling back and forth.

I took another look at the I.D’s and then looked at them again... and then again (It must have been the 100<sup>th</sup> time I did that) and looked at my assistant standing in the doorway who had been watching all of this and decided, okay, he made a mistake and I really do think I have the right people in front of me.....I’m going with this. I had them sign, gave them their copies and told them it would record Monday morning and I’d call them when their check was ready! Enough of this, I’m going home. He then said,” When we pick up the check, do we have to bring our I.D.?”

#### **DISCUSSION OR TO THINK ABOUT:**

- 1. Have you looked at your own ID recently to see if it has expired?**
- 2. What would you have done if you were the agent and your client showed up to closing with a woman who was not his wife?**

# INCORRECT TIN'S

This particular closing was almost what I would call perfect. It was “Cash” and it was “Free and Clear.” When a closer hears that, red flags almost always go up! We read the purchase and sale agreement very carefully (more than twice) looking for something to jump out at us. Then, we reviewed the preliminary title (more than twice) just knowing something is going to pop up at the last minute to complicate this “EASY” transaction.

There were real estate agents involved, listing and selling, but no lender, because, yes, it really was cash. The selling agent attended the closing, but the listing agent was out of town and had me send him the closing statement to look at ahead of time.

So the closer worked up the closing statements and the few necessary documents for a “cash” transaction. The purchasers came into sign and brought with them their cashier’s check. No problems there.

The sellers came in to sign and had the customary picture I.D. – their Washington State Driver’s License which I took a copy of to keep in my file so that I had proof to notarize their signatures – everything was in order there.

We got to the non-foreign status form from the IRS that had to be signed stating they were U.S. Citizens and they both looked at each other when I told them they needed to fill in their social security numbers and sign and date. The wife said I don’t remember mine, but the husband said “no problem honey, I have both of ours memorized and he completed both the documents with the numbers and he signed his and she signed hers. I turned the paper upside down (as I was doing with all the documents as we signed them.) The next form was the 1099 reporting form where the sellers complete if this was a primary home or not by answering some questions, then complete the name, address, and social security number. Mr started to complete both, then went to flip over the previous page and said I need to see what social security numbers I wrote on the previous page. Then realized what he said to me and stated, “I mean, I want to make sure they match

what I wrote, no I mean, I'm not sure if I wrote the correct ones on the previous pages and want them to match". By that time he was not looking me in the face as he was talking and his wife was looking at the wall. I felt something was wrong. I knew that I could not ask to have a look at his social security card – besides most people do not carry them with them. We finished signing all the documents and they left, knowing I would process this to the title company and fund it tomorrow when recorded.

I called my company attorney to tell him I suspected a fraudulent social security number and he said to make sure those forms were identical with the numbers and completely filled out so that in case there was ever a problem, my bases were covered.

It recorded and funded.

Well, at year end, I prepared 1099 forms and sent copies to the sellers with the original to the IRS. About two years later (yes, the IRS was that far behind in processing 1099 forms) I got the usual stack of incorrect 1099's. This was a pretty common occurrence in our industry because sometimes we cannot read the handwriting of the client and then need to re-check our input form to compare it or call the client to have them review the number with us. If a closer does not have a social security number for a seller, the closer is fined \$50.00 each. When I got to this particular 1099 I remembered so well the incident that happened at the closing table.

The numbers written were very clear, there was no way that I could have read the numbers wrong and input them incorrectly. I then called the sellers and told them who I was and that I needed them to review with me the numbers again so I can do an amended form to the IRS. The husband told me that I was never to call this phone number again and hung up on me.

So I immediately contacted my company attorney and told him about this transaction and he wrote a letter to the IRS on my behalf and stated the facts of my trying to get the sellers to review the incorrect TIN (Taxpayer Identification Number)

And, I never heard from anyone after that.

**DISCUSSION OR TO THINK ABOUT:**

- 1. Were you aware that we could not ask to look at the clients social security card, even though we thought they might be writing down an incorrect number?**
- 2. The fine for a closing company by the IRS is \$50.00 for each incorrect TIN number we submit, but if we produce the paper the client signed at closing as proof, they will waive the fine.**

## IT'S A RUSH, REALLY?

“RUSH” is a word which often results in the opposite effect. It is a word which can make people stop dead in their tracks, especially escrow people. RUSH almost always raises a red flag. It causes you to ask: Why is this transaction a rush? Is it because someone is trying to hide something?

Settlement agents have excellent instincts. A closer I know had a file where the seller was in a very big RUSH to close on the sale of his home. Turns out he had 95,000 reasons to close quickly.

The sales price was \$95,000 and the seller was in a big hurry. The title report was ordered. Once it was received the closer began clearing title. The report revealed the property had only one mortgage recorded against it, but there was also a promissory note recorded against it which was highly unusual. The closer contacted the seller and asked about this promissory note and the seller told him there was no balance due and he would get his friend to sign whatever she needed to clear this off the title. The note had a balance of \$55,000.00.

The seller provided the closer with the information to contact the private note holder to get a statement telling her that she would remove this lien against the property for no payment. When the closer called the private holder to arrange for this statement and told her that it would need to be signed and notarized, they talked for quite a while. The closer mentioned that she was doing a closing for the seller and would need this statement by the end of the week in order to accommodate the closing in the time frame. The private party said what closing, what do you mean he is selling the property? He told me he was refinancing the property in order to get a small loan he needed to fix up the house so he could pay me the \$55,000.00 he owes me. Do you mean if I sign this statement, I won't have any security left? Who will get the proceeds of this sale? The closer knew she had to say her words very carefully and told the private party “I think there may be a misunderstanding of some kind going on here and I need to talk to the seller”.

She called the seller to tell the seller where the conversation between the closer and the private note holder was heading and the seller yelled at the closer and told her she had no business telling the private money lender that he was selling this property. He further told her that if she messed this sale up for him, she would have hell to pay.

The closer called the selling/listing agent to explain to him what had just occurred and that she would not be doing this closing that they needed to move it to another closer or perhaps an attorney. The listing/selling agent said that was not an option as this needed to close by Friday before the other contract was recorded! Oops a slip of the tongue.

The agent was soon relieved to clear the air with the closer. It seems that the seller had previously entered into another purchase and sale agreement and received \$10,000.00 earnest money that was paid directly to the seller. This was a sale the seller did himself with no agents. That offer was only for \$87,500.00 and it would be \$10,000.00 down with a balloon due in 6 months. A few days later a selling agent brought an offer to the seller for \$95,000.00 and it was a cash transaction and they wanted to close in two weeks. The seller took that one and never returned the \$10,000.00 to the previous purchasers. The first purchasers were threatening to record the purchase and sale agreement to “cloud” the property.

What a mess! The closer is so glad that she ended up talking to the private money lender for quite a bit and discovered what was going on. It could have ended up with her not asking any questions, the private money lender would have sent a notarized letter telling the title company to delete the “recorded note” off the records, and it would have closed, perhaps before the “cloud” was placed on the title.

This closer was not one to be “RUSHED” and because of her following normal protocols and questioning everything saved the title company and the parties from a lot of future problems.

Moral of the story.....always follow your office or personal protocol. It makes total sense and what your “gut” thinks usually is correct!

**DISCUSSION OR TO THINK ABOUT:**

- 1. What do you think could have happened if the closer did not have a chance to really talk to the party on the phone and get a signed, notarized statement that said there was no money due on the note, then signed a release. Could this happen? Has this happened? Who would have had the problem?**

# YOU WANT ME TO DO WHAT?

I was introduced to a mortgage broker who was well known in town for the huge amount of transactions he was producing each month. He told me he'd like to give me a try on a few of them as he was looking to change who does all his closings. I was so excited to possibly add this lender to my client list. He said he had six new transactions right now that there are no closers assigned and he'd have them all faxed over to me this afternoon. Wow, this was exciting!

Later in the day, I received the 6 closings. I noted they were all pretty similar. Sales prices varied between \$150,000.00 - \$225,000.00 – they each had an 80% first loan and a 20% carry back by the seller.

I set up all the files and got titles opened and ordered the payoffs.

About 3 weeks later, I got the first set of loan documents from a lender on the West side and worked up the HUD-1. Here are some of the details:

- \$200,000.00 sales price
- \$160,000.00 first Deed of Trust in favor of West side lender with interest at 7.5 amortized over 30 years.
- \$ 40,000.00 second Deed of Trust in favor of seller (20%) with interest at 8% per annum and payments of interest only for first five years, then amortized over 10 years.

I worked up the HUD-1 settlement statement and it showed the purchaser was to bring in a check in the amount of \$5,672.32 I called the purchasers to let them know the amount to bring to their appointment in a cashier's check. There was a silence on the phone and then he said, "I think there is a problem here, can you call our loan officer about this amount to close because he told us that we would not have to bring any money to closing. Matter of fact, he told us we'd get most of our \$1,000.00 earnest money back".

I called the loan officer and told him of my phone call with the purchaser and he said that he forgot to tell me these closings are done a little differently.

He continued to tell me how this works. On the closing statement, there are some fees that he, as the mortgage broker, earns that amounts to about \$6,600.00 with the yield spread premium the lender pays them for the loan, they will be getting approximately \$11,000.00 in fees for this loan.

He said that on the day of funding, as soon as I cut him a check for this \$11,000.00 in fees they earned, he will immediately go to the bank, deposit this money into their account and then have them issue a cashier's check to my trust account in the amount of \$5,672.32 which is the amount the purchaser was to bring to closing. He further told me the check would be a cashier's check and it would say on it the purchaser's name as the "remitter".

And, he further assured me I'd have this money in time to be deposited in my trust account so that my account would balance on that day.

I said, "You want me to do what? Are you crazy?" He said, "Oh, I thought my partner told you when he sent you over the 6 closings that this was part of the deal in order for you to do our closings?"

I told him that there was no way I was doing the transaction his way. There would be no closing if the purchaser did not deposit the funds to close ahead of time. I could not "balance" with the lender to fund this loan if I did not have all the monies in my trust account.

He was not very happy with me and I felt that he was going to pull all six of the files from me and if that was the case, well, then, so be it. I had been in business for over 20 years by that time and protocol was protocol.

Later that day, the purchasers came in to sign and said they would get a cashier's check first thing in the morning and would bring it by. The next morning the loan broker brought in a cashier's check and it had the purchasers name on it and I thought nothing of it.

The transaction closed and funded.

About two weeks later, I closed the other 5 transactions, all pretty much similar transactions.

Since the company I owned was both a closing and escrow collection company, I got to set up the 6 seller carry-back notes and trust deeds on these files. I never heard from the mortgage broker after that for a couple of months.

Then, one day, two men in suits came into my office and showed me their badges.....they were from Department of Financial Institutions and had a subpoena for those six files. They didn't say much, just wanted to have me take complete copies of those files, including front and back covers and anything in between. They took my original files and gave me a receipt for them.

My husband ran the escrow collection side of our business and he pulled the six - seller carry back escrows and brought them to my attention. He said isn't it strange that the first two payments on each of these are delinquent. I bet they never intended to make payments on these escrows. They were created so the purchasers could get an 80% loan and not pay the MIP.

A little more time went by and then it was in the news how a mortgage broker company in Spokane had been under investigation for quite some time now.

Turns out there were lots of players in this investigation, not only the mortgage brokers, but an appraiser and a real estate agent. They were quite a team and put hundreds of transactions together over the past 3 years.

The name of the company was Century Mortgage.

Moral of the story, never deviate from protocol.

#### **DISCUSSION OR TO THINK ABOUT:**

- 1. How many of you have heard of Century Mortgage**
- 2. Were you involved in any of their transactions and never knew what was really going on behind the scenes until you heard about it in the news?**

# CAN I USE YOUR FAX MACHINE?

A simple question, huh? That's what I thought.....

I had attended a Christmas Party for the Spokane Association of Realtors and was introduced to a man who recently opened a Mortgage Brokers office in our area. He was known as a "shaker and mover", as he already had quite a few loan officers working for him and was producing large numbers of loans in our area. I thought to myself, I'd sure like to add this guy to my client list.

A week later he contacted me and asked if I would like to go to lunch. We met and he told me he'd like me to be his closer. I was very excited to add this client to my list as my numbers would increase immediately.

He not only generated loans through various West side lenders, but he also had a lot of investors and did a fair share of "hard money loans". I had been involved in this "arena" for quite some time so knew the ins and outs of "hard money lending".

Immediately, he set up around 15 transactions with me, all in the same day. Yikes, how exciting I thought. Most of them closed fairly fast since they were hard money loans and the players were all local. Seemed like pretty normal closings. All of them had escrow collections with them, so I not only got the closing we got the long-term escrow collection, even though most of them were short lived, all due and payable in one year, so money was constantly being moved.

After doing closings for him for about one year (probably 50 closings later) most of them closed in a timely manner, he asked if he could use my fax machine. He explained that my office was very central and from time to time could he use the fax machine and perhaps a room with a desk in it. We had an extra room in our office that I would let agents or loan officers use if they needed to, so I had no problem in saying that would work. He stopped in two or three times a week and used the fax machine and the room with the phone for about 15-20 minutes and continued to bring transactions our way. This went on for about 6-8 more months.

Then one day, he told me he has a big project for me. It involved 4 pieces of property that had notes with a face value of \$450,000.00 each. These were notes he actually owned. He wanted to generate some cash flow for the business for additional “hard money loans” he had in the pipeline and thought this would be a great way to generate the money. He said he had 4 promissory notes secured by first position Deeds of Trust on some “lake front” property in Idaho. The payments were \$2,500.00 a month on each of the notes and the borrower was a builder in Idaho. The escrow collections on these notes were at an escrow collection company in Post Falls.

He gave me written instructions to open title on the 4 properties and to order information from the escrow holder as he was going to find 4 or more investors that he could borrow money from and offer to them as security an assignment of payments from these notes and trust deeds that he owned.

I opened up the title and obtained the information from the escrow collection. The title was clean, only the one Deed of Trust on it for the \$450,000.00 and the escrow was newly established, only 8 payments had been made over the last 8 months and they were all received between the 1<sup>st</sup> and 5<sup>th</sup> of the month, so they all looked in order too.

He found two investors willing to loan money. One only wanted to loan \$300,000.00 and took one of the properties as their security. The other investor loaned \$1,000,000.00 and took the other 3 properties as security. He was able to produce appraisals showing each of the properties appraised for \$500,000.00 each and the appraisals were not that old, only a few months old. I don't know what else occurred in their negotiations.

The transactions both closed the following week.

Because both of the investors were in town and they had other escrow collections with our company, they asked if the underlying escrows where the payments are assigned from could be transferred to our office. They were transferred.

It was the 10<sup>th</sup> of the month and the investor that was supposed to get 3 payments of \$2,500.00 each called to see if the payments came in. I checked and

saw they did not. I also checked on the other one and found that none of the payments had been paid. The other investor called the next day and I looked it up and said, no, no payments had been made. Another week went by and still no payments. It seemed so strange, the payments were made in a timely manner for 8 months straight, all on about the same day of the month, a few days prior to the due date and now that the first payment that has been assigned is due to the new investor, no payment was made.

Another month went by and still no payments were made. Now all four escrows were 2 months delinquent totaling \$20,000.00

I told the investor that as a normal course of our business, we mailed out late notices after they were 10 days late, per the terms of our escrow collection agreement.

I thought it was strange that I had not seen or heard from the mortgage broker who put those transactions together. I was continuously receiving new transactions to do from other loan officers from his office, but I had not seen him.

One of the investors called me and asked again if a payment had been made as he was very concerned because he had left numerous numbers for the mortgage broker and no return call. He even went to his office and found he was out of the country at the moment.

I called over there and talked to the front end gal who didn't seem to want to give me too much information. She always was so friendly before and seemed very uncomfortable on the phone talking to me. I decided to take a drive over to the office. When I got there I learned that they were about ready to close their doors. It seemed that the mortgage broker I had been working with had left the country and no one was able to get a hold of him. It was like the "house of cards" started to fall apart. Many of the loans were due (remember, short term, one year hard money loans) of which he'd always be able to replace with new blood, new money.

But, he had been gone for over two months (seemed he left within the week of getting the \$1,300,000.00 from the sale of the 4 notes in Idaho)

The two investors that loaned him the money on the notes now were very concerned as the payments were 3 months behind. They both hired attorneys to look into these transactions.

Here is what was discovered after a process of many, many months and numerous attorneys:

1. The appraisals were bogus appraisals.....the property was worth about \$90,000.00 each, not \$500,000.00
2. "Lake front" was not really "lake front" - yes, you could see the lake from a cliff. Why neither investor did not do their due diligence is beyond me, but they did not. Now, understand, they had done other transactions with this broker and were paid in a timely manner and re-invested their money, over and over, so they established working business relationship.
3. The notes were bogus notes. The maker of the note was a builder in Idaho under his business name and the beneficiary of the note was in favor of the builder's wife who had a different last name. An assignment was done on this note and trust deed to the mortgage broker who put the whole transaction together and owned the company in Spokane.
4. After a very thorough investigation of the escrow that started out at the escrow collection company in Idaho, it was discovered that no actual payments were ever made on this collection. Each month, the mortgage broker who owned the notes, would write out a receipt that he received a payment in the amount of \$2,500.00 outside of escrow from the parties and would they please mark the account as paid in full for that month. And, he would "fax" a letter to the escrow holder each month, for the 8 months of payments. No money every exchanged hands. And, guess whose fax was used and whose name was at the top of each and every one of those faxes each month.....my company!

So, needless to say, I was drawn into this lawsuit and had to have my E&O represent me.

**DISCUSSION OR TO THINK ABOUT:**

- 1. Would you ever think you could be drawn into a lawsuit just because you were a kind person and let someone use your fax machine?**
- 2. How would you handle this situation?**

## Scary Stories from a Closer

### QUIZ

<b>1</b>	Any agent can receive Notice of Trustee's sale lists from the title company.	<b>True</b>	<b>False</b>
<b>2</b>	When purchasing a property on a trustee's sale the trustee will always provide the purchaser with an owner's title policy to review PRIOR to closing.	<b>True</b>	<b>False</b>
<b>3</b>	If there are two deeds of trust on a property you can assume that one of them just never got reconveyed.	<b>True</b>	<b>False</b>
<b>4</b>	Buying property on the courthouse steps through a trustee is always the safest way to buy a property because it comes with a 100% guarantee.	<b>True</b>	<b>False</b>
<b>5</b>	Butcoins is a new lending company in Canada.	<b>True</b>	<b>False</b>
<b>6</b>	Cryptography is an indispensable tool for protecting information in computer systems.	<b>True</b>	<b>False</b>
<b>7</b>	The escrow agent or attorney must give both the selling agent and listing agent a full copy of the earnest money check for their records.	<b>True</b>	<b>False</b>
<b>8</b>	NPI means "non public Information.	<b>True</b>	<b>False</b>
<b>9</b>	All companies who handle money on behalf of their clients should be sure they have their Company's encryption software in place.	<b>True</b>	<b>False</b>
<b>10</b>	At closing, the escrow agent or attorney does not need a picture ID for identification to be able to notarize the documents.	<b>True</b>	<b>False</b>
<b>11</b>	A military ID or a passport are also acceptable ID as long as they are current and there is picture ID.	<b>True</b>	<b>False</b>
<b>12</b>	A seller does not have to submit proof to the escrow of their Social Security Card.	<b>True</b>	<b>False</b>
<b>13</b>	At the end of each year, the closer must do reporting to the IRS on a form described as a 1099 on the sale of the property.	<b>True</b>	<b>False</b>
<b>14</b>	The closer or attorney is the responsible party to see that all liens of record are cleared through the closing process.	<b>True</b>	<b>False</b>
<b>15</b>	The closer or attorney always reviews the appraisal to be sure it is in order prior to completing the closing transaction.	<b>True</b>	<b>False</b>
<b>16</b>	80/20 loans are loans where there is no risk to the seller for their 20% loan.	<b>True</b>	<b>False</b>
<b>17</b>	DFI stands for Department of Financial Institution.	<b>True</b>	<b>False</b>
<b>18</b>	An escrow collection is used for "seller financed transactions".	<b>True</b>	<b>False</b>
<b>19</b>	"Hard Money Loans" can be very risky.	<b>True</b>	<b>False</b>
<b>20</b>	Sometimes payments can be made on escrow collections "outside of escrow".	<b>True</b>	<b>False</b>

I hereby attest that I have read the material and answered the questions.

\_\_\_\_\_ x \_\_\_\_\_

(name)

(date)



## Mandatory Evaluation

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Please fill out the following form and return with your completed clockhour class quiz.

Name/ Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: (personal) \_\_\_\_\_ (work) \_\_\_\_\_

Email: \_\_\_\_\_

License Renewal Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

1. What are 3 things that you learned from this course?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

2. Do you feel the clockhour material was easy to follow? \_\_\_\_\_

3. Did the material give you information to help you in your profession? \_\_\_\_\_

4. Will the material help you with future transactions? \_\_\_\_\_

5. Why did you choose to take this course? Topic \_\_\_ Time \_\_\_ Cost \_\_\_ Ease \_\_\_ Other \_\_\_

6. How long did this class take you to complete? \_\_\_\_\_ (a "clock hour" is 50 minute)