

FRAUD

THE REAL REASON FOR TITLE INSURANCE

By Steven Schiff

Given the right circumstances, a person can be persuaded against his or her better judgment to abandon a normal behavior pattern and engage in criminal conduct that would otherwise be unthinkable.

Years ago, when I was practicing law as a single practitioner in my office in the Bronx, I had occasion to be in my office at 6:00 a.m. on a Sunday morning. I received a telephone call from my panicked client, Harry. The conversation went sort of like this:

MR. SCHIFF, MR. SCHIFF! Last night I went to visit my kids, they weren't there. My ex-wife wasn't there and some strangers answered the door! I gotta see ya!

Here is the rest of the story...

Holly H. is a homemaker living in a small co-op apartment in New York City. She has been married to her husband, Harry H., for seven years. They have two small children, five and three years old.

Harry is frustrated by what he believes to be a boring and dead end job. He decides he can no longer cope and informs Holly that he needs his space and is leaving her and the children. Harry proceeds to move out but continues to pay the loan and minimal support. Distraught, Holly files for divorce, seeks maintenance, child support and other ancillary relief. A divorce is granted awarding Holly exclusive possession of the marital residence, a two-bedroom apartment in Co-op Gardens called Apartment 2T, custody of their

children, maintenance and child support. The judgment of divorce further provides that Harry and Holly are equal owners of the marital residence as tenants in common.

Harry claiming that the maintenance and child support awards are excessive, quits his job and disappears. Holly's liquid assets are insufficient to pay the loan and her current bills for more than a few months. She begins praying for a man of better than moderate means who will rescue her from this nightmare.

Enter Frankie T., a small time forger, attracted by Holly's assets, both personal and financial. He romances her, smiles at her kids and plants an idea in her head: a simple, yet perfect, way to acquire the money Harry owes her and then some, a little nest egg if you will. Under ordinary circumstances, Holly would never consider such a plan.

However, Holly is tired of watching herself and her children living on peanut butter and wearing hand-me-down clothing, succumbs to Frankie's plan, rationalizing that only banks and insurance companies, who can well afford it, will be affected.

Frankie sets to work on doing what Frankie does best. At the New York City County Clerk's Office he found a satisfaction of loan form filed on another piece of property by the ABC Bank, which is the same bank which has the loan on Apartment 2T. He typed information on a blank UCC form. He then forged the signature of the ABC Bank's assistant vice president. Frankie took the forged UCC Termination to the Clerk's office and filed it.

Now Frankie and Holly find another bank. They walk in, sit down and apply for a new loan. Frankie, representing himself as Holly's husband submits their joint tax returns filed for the years immediately preceding the divorce. To keep ABC Bank unaware of their scheme Holly continues to submit the monthly payments on the existing loan for which they

have filed the fraudulent termination. With the apartment valued in excess of \$275,000.00, they easily qualify for a \$225,000.00 loan and take it. After paying the closing expenses, they are \$215,000.00 richer. They provide the new bank with a forged stock certificate to collateralize the loan.

Immediately after the loan closing, they call a real estate broker. Holly and Frankie claim they want to leave the city for a warmer climate and better quality of life for the kids. Hoping for a quick sale, they price the residence moderately and within two months find a buyer. Of course, Frankie and Holly continue to make payments on both the new loan and the ABC Bank Loan for which they filed the fraudulent UCC.

At the closing, they receive \$280,000.00 for the sale of Holly and Harry's residence. They pay off the new loan. After paying the closing expenses and real estate commissions, they net a profit of roughly \$35,000.00. Adding the \$215,000.00 from the first scam, they abscond with nearly \$250,000.00.

Harry happened to appear at the new owners' door before they got notice of a foreclosure from ABC Bank, the bank that was holding Holly and Harry's original loan. The new owners immediately called their attorney who conducted a thorough investigation. Counsel ascertains from ABC Bank that it never executed the UCC termination pertaining to Apartment 2T. A handwriting expert is engaged to examine the signatures of all documents of record pertaining to the residence from the date Holly and Harry purchased it to present. The handwriting expert confirms that the UCC termination was forged. Counsel is left with the unenviable task of informing his clients of the ramifications of the frauds committed by Holly and Frankie.

Absent title insurance, the only remedy the owners would have had is against Holly and Frankie. However, since people who commit fraud rarely stick around so that they can be

held accountable for their action, for practical purposes, they would have no remedy at all. The ABC Bank and the new bank, would have to protect their loans and would foreclose.

Since the new buyers have purchased title insurance, their outlook is much brighter. As previously stated, the title insurance policies insure the genuineness of documents, hence the title insurance company would pay ABC Bank's loan notwithstanding the fraud, probably taking an assignment thereof. In the absence of co-op owners title insurance, the bank would sue the new owners on their promissory note. The new owners would owe on Apt 2T to ABC Bank \$115,000 and to Harry one half of \$280,000.00. They would also owe the new bank for the loan they obtained on the purchase. Bankruptcy and a malpractice lawsuit would be their only remedy.

Frauds like this fictionalized account and their aftermath happens too frequently today. Cutbacks and layoffs in government staffing have reduced the number of workers in the municipal and county office resulting in a backlog of recordings and filings. The local County Clerks' offices and Registers' offices are all over 6 months behind in recording documents, which gives people like Frankie ample opportunity to forge satisfactions of mortgages and perpetrate other types of fraud. This may prompt title insurance companies to adopt similar requirements that presently exists when one seeks to sell or transfer stocks or bonds, and require signature guarantees from a commercial bank or brokerage house having a seat on the stock exchange, on all deeds and mortgages.

As a vigilant party in this process, we see the many different circumstances of fraud and error either intentional or negligent. **DON'T BE CAUGHT EMPTY HANDED.**

*If you have any questions, please call
1-800-281-TITLE (8485).*