

## There Is No RIGHT Way to DO the WRONG Thing!

By Lisa A. Tyler  
National Escrow Administrator

*This month's contributing author is Diana Williams, corporate escrow administrator. She has contributed two stories about notaries; "Never Buckle Under Pressure" and "There Is No RIGHT Way to DO the WRONG Thing!" Both stories involve mobile notary companies which appeared on the Company's approved notary list. These individuals were willing to risk their relationship with our Company and their notary commission. Both notaries back-dated loan documents and one was even willing to notarize a document where the signers did not personally appear in front of her.*

These were FNF approved mobile notary companies, which begs the question: What kind of training and screening do these outside companies make their notaries go through? Heck, it makes one wonder if these notaries even knew what they did was wrong. Just because a company or individual is shown on our approved list doesn't represent what kind of screening process or experience level they have. Review the "Notary Do's and Don'ts" article for some basic tips on performing notarial duties and selecting BancServ as your mobile notary provider.

As you will learn in this edition of *Fraud Insights*, if a Company approved notary is selected instead of BancServ, it is the employee's responsibility to make sure the approved notary has not been removed from the approved list before scheduling each and every signing. Approved notaries are regularly removed from the list for expiration of commission; expiration of errors and omissions coverage and for acts of misconduct.



### Inside This Issue

#### **Fraud Insights Quiz**

Our monthly *Fraud Insights* quiz has been a huge success! Thanks to all of you who have participated. Rather than publish the answers from the September 2009 quiz, we've published the names of last month's gift card winners:

- Erica Tutor from Lawyers Title Insurance Company in Amarillo, Texas
- Donna L. Lee from Ticor Title Company in Tampa, Fla.
- Eric Taylor from Chicago Title Company in Washington, DC

The *Fraud Insights* quizzes test your retention of the information learned in this and previous editions. Remember, all previous editions of *Fraud Insights* can be accessed at the Company's intranet under Internal Publications.

FNF associates can participate in this month's quiz by typing the link below into their Web browser to view and answer this month's quiz questions: <http://fraudquiz.fnf.com>

All quiz entries will be entered to win a Starbucks® gift card.

#### **Never Buckle Under Pressure**

When a loan package was returned from a Company approved mobile notary, the escrow officer began to review it to ensure the documents were executed properly when she noticed the documents were back-dated. She contacted the notary who admitted she buckled under the pressure of the mortgage broker and allowed the documents to be back-dated by the borrower, in her presence, and notarized them as such. Sadly, the unacceptable notary conduct didn't stop there.

#### **There Is No RIGHT Way to DO the WRONG Thing!**

Our lender customers expect the settlement agent to ensure documents are delivered and executed by the borrower in accordance with Regulation Z. If we select an outside notary to conduct the loan signing, that liability does not go away. It is never acceptable to allow documents to be back-dated.

#### **Notary Do's and Don'ts**

Two of the very basic don'ts were committed in this edition's two stories. Although the notary statutes vary from one state to another there are still some universal notary do's and don'ts which must be followed.



## Never Buckle Under Pressure

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The back-dating of documents has never been an acceptable practice. Sharron K. Burgum from Ticor Title Insurance Company in Portland, Ore. certainly understands this. Sharron scheduled a signing through one of our approved notary companies, Flex Closing Corp. The signing was scheduled for the evening of Wednesday, August 26, 2009, the last day the documents could be signed in order for the funding to occur on the last day of the month.

The documents were e-mailed to the notary too late for her to make the scheduled 6:30pm appointment. She immediately called the borrowers to inform them she needed time to print the documents and the appointment was rescheduled for 8:00pm. On her way to the signing the borrowers called to say it was too late, they wanted to re-schedule their signing for the next morning. The notary's company informed Sharron.

When the mortgage broker found out the borrowers did not sign, he was furious. He made arrangements to attend the signing in the morning. At the signing he pressured the borrowers and the notary to date the documents as if they were signed the previous day. After the documents were all signed and notarized he offered to hand deliver the documents to Sharron.

Upon receipt of the loan documents Sharron began to review them to ensure they were executed properly, that's when she noticed the date. Sharron contacted the notary who admitted she buckled under the pressure of the mortgage broker and allowed the documents to be back-dated by the borrower in her presence and notarized them as such.

Sharron immediately reported the incident to her manager, Jeanne Ayala. Jeanne contacted the National Escrow Administration department and a plan was formed. Sharron worked to set up a new signing appointment with a different notary and the National Escrow Administration contacted the mobile notary company, Flex Closing Corp.

Jeanne confronted the mortgage broker and informed him the borrowers would have to re-sign the loan documents. She also explained to him the Company chose to no longer work with him. In the meantime the lock expired, and the broker had to re-lock the loan at their expense. It turned out to be an expensive lesson.

The same mobile notary company selected a different notary to meet with the borrowers to sign a new set of loan documents. At the subsequent signing a few more errors occurred. The date inserted, which represented the expiration of the rescission period, was incorrect. It reflected an expiration date of four days out, not



three, and the husband failed to sign the Notice of Right to Cancel. Additionally, the Errors and Omissions form was not executed by either borrower. The notary attempted to contact the borrowers to have the Notice of Right to Cancel corrected and initialed (with the lender's consent) and execute the Errors and Omissions form which also needed to be notarized.

The wife told the notary her husband had left for a hunting trip. The notary explained the forms would have to be initialed and signed or their loan would not be able to fund on time. The wife asked the notary to e-mail the forms to her and she would drive it out to her husband.

The notary e-mailed the forms to the wife. The wife e-mailed the executed and initialed Notice of Right to Cancel back to the notary. It appeared the Notice was forged by the wife since the signature did not match any of the other documents signed by the husband while appearing extremely similar to the wife's signature. The other form, which had to be signed AND notarized, was not returned. Was the notary planning on violating the cardinal sin of notarization by not witnessing the signing of the document? Even if the form was returned the notary would not be able to legitimately notarize it since the signers did not personally appear in front of her as it related to this particular form. The rules of notarization apply to each and every form individually.

Sharron took the matter into her own hands and had the remaining two documents executed and notarized properly. She was able to fund and disburse her file. Thank goodness Sharron was alert and carefully reviewed the loan documents. This story could have had a much worse and costly ending. **Not only was the mortgage broker advised we chose to no longer work with him, but the approved notary company, Flex Closing Corp., was also removed from the Company list of approved notaries.**

It was Sharron's diligence that proved why the first and most important option of Document Execution Guidelines is to have the document executed in the presence of one of our employees. FNF settlement agents know back-dating documents is unacceptable and Sharron did not turn a blind eye to this unacceptable practice in her file. For her efforts she is being rewarded \$1,000 and a letter of recognition on behalf of the Company.

## There Is No RIGHT Way to DO the WRONG Thing!

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Jill Mason, Escrow Officer with our Chicago Title Office in Salinas, Calif. was very clear with the loan processor from the very beginning. Back-dating the loan documents was against the law. Read the e-mail chain below for all the details.

### **Loan Processor:**

Did the borrower sign docs today? Otherwise we would have to find a notary that is willing to back-date. We have to fund by Friday to make the lock.

### **Jill Mason:**

Notaries do NOT back-date. If he signs today it can fund and record on Monday, the last day of the month.

### **Loan Processor:**

We have a notary company that will do that. We cannot extend the lock because it will cost my broker too much money. I will send you the notary's company info soon. Please have these docs sent out today so we can fund on Friday.

### **Jill Mason:**

You are in luck, that signing company is a FNF approved notary. I will not ask anyone to back-date nor will I be a part of back-dating as it is against the law.

### **Loan Processor (to the signing company):**

Please find attached a request for a new signing. We would need a notary that is willing to back-date to yesterday since we have to fund on Friday due to lock expiration. I understand you should be able to assist us with that. Please let me know if you have anyone and I'll get escrow to send you the docs.

### **Owner of signing company:**

Ok no problem. We will get set up now. Thanks for the signing.

### **Scheduler of signing company:**

Just an update - I have notaries willing to get the signing done today but no one is willing to back-date because they don't want to lose their notary commission. I will continue to try and find someone to back-date.

### **Loan processor:**

Thank you, please keep me posted.

### **Scheduler of signing company:**

I have a notary willing to back-date but he is asking for an additional \$30.00 and he will need documents ASAP. Let me know.

### **Loan processor:**

That's fine. Please proceed. Nice work!

### **Scheduler of signing company:**

Please send the documents to him ASAP.

### **Loan Processor (to Jill Mason):**

Please send the docs to the notary as soon as you can.

### **Jill Mason:**

Okay, will do!

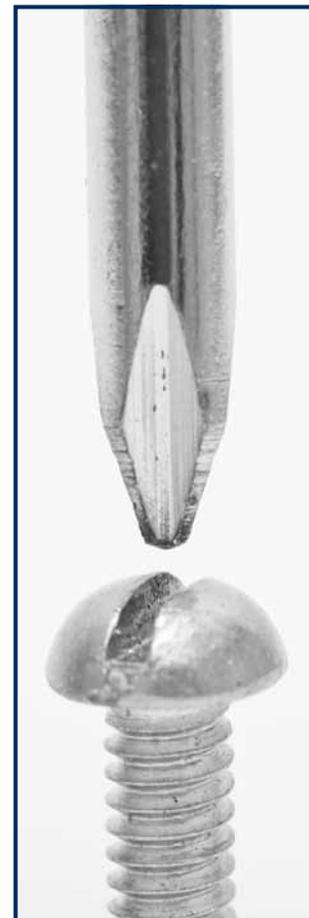
### **Jill Mason:**

Please be advised we cannot accept the loan documents signed and dated for August 24, 2009 as we have knowledge they have been back-dated. I've contacted the borrowers who will be in my office today at 3:15 to re-sign the documents with a date of today. Should you have any questions, please contact my manager, Carolyn Wylie.

As unbelievable as the above conversation seems, it was printed verbatim from a chain of e-mails. National Escrow Administration reported the incident to the funding lender's fraud department for further investigation. They did not feel back-dating the loan documents was acceptable either. Back-dating the loan documents violates Regulation Z of RESPA which clearly states each borrower must be given a three day right to rescind their loan before any loan funds are disbursed. If the borrower is not given three days the rescission period lasts for three years.

**This mobile signing company was Loan-Closers.com and they have been removed as an approved notary for FNF, which is a shame since it was an entire company.** There were several other notaries for that company who would not conduct the signing because of the request to back-date the documents. One notary ruined the entire account for all their notaries.

Jill's ethics were clear from the very beginning. She informed the loan processor from the start she would not participate in the back-dating of documents. The loan processor called her bluff and in the end it was Jill's highest standard of conduct which prevailed. For her efforts she has been rewarded \$1,000 and a letter of recognition on behalf of the Company.



## Notary Do's and Don'ts

*Two of the very basic don'ts were committed in this edition's two stories. Although the notary statutes vary from one state to another there are still some universal notary do's and don'ts which must be followed.*

### Do's

- Require the signer to appear before you
- Place the signer under oath for a jurat
- Positively identify the signer
- Carefully review I.D. provided
- Keep a journal
- Protect your seal and journal
- Know and follow your state-specific laws

### Don't

- Notarize anything you didn't witness
- Notarize anyone you can't properly identify
- Notarize anyone who appears to be under duress, under the influence or incoherent
- Falsify a notary acknowledgment in any way
- Notarize a document that is incomplete
- Notarize a document before it is signed
- Pre-sign and seal blank jurats and acknowledgments
- Loan out your notary seal or journal

The Company has its own wholly owned mobile notary company, BancServ. BancServ has a comprehensive quality control process which includes a screening process, test and rating system. They handle, on average, about 5,000 signings per month.

The information sheet or application asks the notary to provide some personal information about themselves and their experience level as a notary. Applicants are tested on their state-specific notary rules, signing procedures and are even asked ethical questions which measure their level of honesty.

The signing procedures section also asks candidates questions related to the Notice of Right to Cancel to ensure they understand the importance of ensuring the form is completed and signed properly. Lastly, they gather evidence proving the notary is properly commissioned and licensed as required.

Once employed as a contract notary, BancServ continues to monitor the notary's performance. They solicit and gather information regarding their true level of experience and feedback on their performance. If a notary makes a mistake, BancServ is active in resolving the issue. If an acknowledgement is reported as missing or incorrect, BancServ asks to see a copy of the document in question. They carefully review the document in order to ensure the solution meets the statutory requirements and the notary has an opportunity to learn from their mistake.

This checks and balances system has enabled BancServ to intercept unreasonable requests, such as requests for executed acknowledgments to attach to documents never included in

the initial document package. The results of their constant monitoring are tracked by using a rating system for each notary. A notary's rating is dependent on his/her level of experience and overall customer satisfaction. The database includes over 7,500 notaries nationwide.



Lastly, BancServ customers are protected by a \$15 million Errors & Omission Policy and a \$15 million Crime Policy. No one else can say that. Plus, they are wholly-owned by our parent Company, FNF. The items outlined emphasize the reason the Company prefers all employees use BancServ for their mobile notary needs.

*For client distribution,  
please attach business card.*