

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA

Appellant

vs.

PRECISION ASSETS and
ACRY DEVELOPMENT LLC and
WFG NATIONAL TITLE INSURANCE COMPANY}

Respondents

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Case # 84762
Electronically Filed
Jul 13 2023 07:46 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S MOTION FOR LEAVE TO SUPPLEMENT THE RECORD

PROCEDURAL SUMMARY

This appeal was docketed on May 26, 2022. An Order of Affirmance was filed April 21, 2023. Petitioner John Dattala [Dattala] timely filed a Petition for Rehearing on May 8, 2023. An Order Denying Rehearing was filed June 16, 2023. Petitioner timely filed a Petition for En Banc Reconsideration on June 29, 2023 and an Order Directing Answer to Petition for En Banc Reconsideration was filed July 10, 2023.

REASON FOR THE SUPPLEMENT

Dattala became aware of two articles by business reporter Eli Segall published on the Las Vegas Review Journal website on July 13, 2023.

One is titled A RISING FRAUD: SCAMMERS ARE SELLING OTHER PEOPLE'S REAL ESTATE and the other FRAUDSTERS TRY TO DIVERT MONEY FROM LEGITIMATE REAL ESTATE DEALS. See Exhibits 1 and 2 respectively.

These articles quote Assemblywoman Heidi Kaamata, a longtime real estate broker, stating that "title companies are tasked with confirming a seller's legitimacy before a deal closes." [Exhibit 1, 5] The articles note that criminals that rarely prosecuted, "it's unclear whether anyone has been arrested or prosecuted for the seller-impersonation scam in Southern Nevada." [Exhibit 1, 5]

Some of the red flags listed in Mr. Segall's article are that seller wants a quick sale and a cash buyer. Refuses to attend signings. Wants to use their own notary. [Exhibit 1, 10 - 11]

Heck, Mr. Segall quoted WFG's branch manager and escrow officer, Ashley Dickerson, stating that "she stopped two fraudulent sales and helped prevent others over the past several months." [Exhibit 1, 6]

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DATTALA'S PUBLIC POLICY ARGUMENT

The instant case involves a proven series of real estate scams. These are an increasingly common form of fraud.

The holding in the district court punishes Dattala, the innocent victim who acted immediately upon realizing what happened; the complaint was filed May 7, 2019 [JA Vol 1, 1] and all the fraudulent transactions occurred from April 15, 2019, three weeks prior, with the final deed being recorded May 2, 2019. [JA Vol 7, 1541:16-21] This is five days before Dattala filed his complaint.

Findings of Facts, Conclusions of Law and Judgment [FFCL] filed 10/15/2021 [FFCL] [JA Vol 7, 1532 - 1556] contains specific factual findings that notary Medina was an agent of WFG and she was within the scope of her agency when performing the notarial acts which resulted in Dattala's loss of his ownership interest in the Subject Properties [JA Vol 7,1546:8-18]

70. Medina at all relevant times was an employee or agent under the control of WFG.
71. Medina at all relevant times was either within the nature and scope of her employment as an employee of WFG or was acting as WFS's agent and was within

the scope of her agency when performing the notarial acts described above.

72. Dattala is in the class of persons whom NRS 240.120(1)(d) is intended to protect and the injury to him is of the type against which NRS 240.120(1)(d) is intended to protect.
73. WFG is liable for damages Dattala incurred as a result of Medina's negligence under the doctrine of respondeat superior.

Again, the findings of fact are that Notary Medina was (1) WFG's agent and (2) at all relevant times acting in her capacity as WFG's agent.

[JA Vol 7, 1546:8-18]

Precision acquired its ownership rights to the two subject properties at issue from Bursey, the fraudster. [JA Vol. 7, 1651 - 1659 and 1674 - 1677] The FFCL expressly and directly contains findings that Bursey had obtained his ownership interest by fraud.

26. Bursey arranged for Dattala to sign two documents on

April 5, 2019 being represented as a Warranty Deed and and a Deed of Trust and then Bursey had Dattala acknowledge his signatures on those two documents to Bonita Spencer [Spencer herein], a Nevada Notary Public, on the same date.

27. Dattala did not know, and was never told, that Bursey intended to attach the signature page from one of the documents Dattala had signed and acknowledged to Spencer on April 5, 2019 to a Quitclaim Deed and that Bursey intended to, and did, record that Quitclaim Deed to attempt to obtain record title to the 50 Sacramento Property.
28. Dattala did not know, and was never told, that Bursey intended to attach the signature page from one of the documents Dattala had signed and acknowledged to Spencer on April 5, 2019 to a Deed of Reconveyance and that Bursey intended to, and did, record that Deed of Reconveyance to attempt to remove the lien created by the Deed of Trust described in Paragraph 14 above, which Deed of Trust encumbered title to the 50 Sacramento Property.
29. Bursey forged Dattala's signature on a document entitled NOTICE OF PURCHASE purportedly dated April 1, 2019 in an attempt to justify why Dattala would accept a total amount of \$10,000 from Bursey for the purported

purchase of the 50 Sacramento Property, when Dattala was entitled to receive payments under the Deed of Trust described in Paragraph 14 above.

[JA Vol 7, 1538:21 - 1539: 12]

...

43. Dattla was tricked and defrauded into signing the Quitclaim Deed for the 59 Sacramento Property to Bursey [JA Vol 7, 1540:2-3]

...

58. When Bursey transferred his interest in the 50 Sacramento Property on April 15, 2019, it was with actual intent to hinder, delay or defraud Plaintiff.
59. When Bursey transferred his interest in the 59 Sacramento Property on May 2, 2019, it was with actual intent to hinder, delay or defraud Plaintiff.
- [JA Vol 7, 1541:16-21]

...

84. Defendant Bursey engaged in criminal enterprise with at least one other individual and engaged in criminal activity by knowingly making false representations of fact to commit fraud on Plaintiff, forging Plaintiff's signature on real estate and financial documents, placing forged documents in the public record, committing perjury by executing and recording false Declaration of Value forms, and conspiring with Medina as a Nevada Notary Public to

fabricate signatures on documents, to sign and stamp real estate documents with notary seals to give the document the appearance of authenticity, genuineness and enforceability. [JA Vol 7, 1542:7-16]

Fourteen separate red flags were identified by Dattala which precluded summary judgment on Precision's claim to be a bona fide purchaser under NRS 111.180 [JA Vol 5, 1143 - 1150]. All were ignored by the district court judge. Three of them are listed in Mr. Segall's article.

NRS 111.175 was cited by Dattala in pleadings for the law that "Conveyances made to defraud prior or subsequent purchasers are void." [JA Vol 5, 1152:24] At the Motion for Reconsideration on January 20, 2022 Judge Escobar actually stated on the record "Mr. Childs, I heard what you have to say that we haven't specifically discussed 111.025, 111.175".

[JA Vol. 9, 2043:25 - 2044:1] So the court acknowledged not even

considering these statutes, which are directly on point for the exact fact pattern in this case, and directly state Nevada law, and the policy which would discourage real estate fraud by eliminating the financial incentive.

Together these statutes make clear that a fraudulent transfer of title to real property is void per se.

CONCLUSION

The two July 13, 2023 articles about real estate scams highlight the importance of making good policy decisions by enforcing the law to protect victims of fraud. The Court should reassure the public that real estate titles are valid and property ownership is safe.

Dattala was the victim of an ongoing criminal conspiracy involving fraud and forgery. The erroneous ruling of the trial court has resulted in

him losing ownership of two of his properties, which should be returned to him. This is exactly the opposite policy the Court should promote.

WFG's insulation from liability is unexplainable. WFG itself stated "Lilian Medina is an independent notary / signing agent ..." [JA Vol 5, 1132:9-10] WFG's words, not Dattala's. The FFCL expressly finds that "Medina at all relevant times was an employee or agent under the control of WFG... and ... acting as WFG's agent and was within the scope of her agency when performing the notarial acts described above". [JA Vol 7, 1546:10-13]

All of which goes directly to Dattala's public policy argument. Dattala argues that the court system encourages fraudulent activity when it allows the title company to avoid liability, despite the use of a crooked notary who was WFG's "signing agent" as in this case.

Also when the court system allows the recipient of the stolen real estate to keep the stolen real estate, which was proven in this case, this encourages fraudulent activity. The only loser is Dattala, the innocent victim of the fraud, who acted immediately upon discovery. Literally within 5 days of the last fraudulent transaction Dattala had filed his complaint.

The attached newspaper articles highlight the importance of the court system enforcing NRS 111.025 and NRS 111.175. Dattala should be allowed to supplement the record on appeal given this new evidence of the increasing frequency of real estate fraud and thus the importance of his policy arguments. WFG's own manager is a source in the articles for the statement that title companies can "ultimately thwart" fraud.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946
Attorney for Appellant

Exhibit	Description	Bates #
1	Review Journal Article July 13, 2023 A RISING FRAUD: SCAMMERS ARE SELLING OTHER PEOPLE'S REAL ESTATE	1 - 11
2	Review Journal Article July 13, 2023 FRAUDSTERS TRY TO DIVERT MONEY FROM LEGITIMATE REAL ESTATE DEALS	12 - 16

CERTIFICATE OF SERVICE

APPELLANT'S MOTION FOR LEAVE TO SUPPLEMENT THE
RECORD, with Exhibits, was served through the Nevada Supreme Court
File and Serve system to opposing counsel at filing on July 13, 2023.
Electronic service is in lieu of mailing.

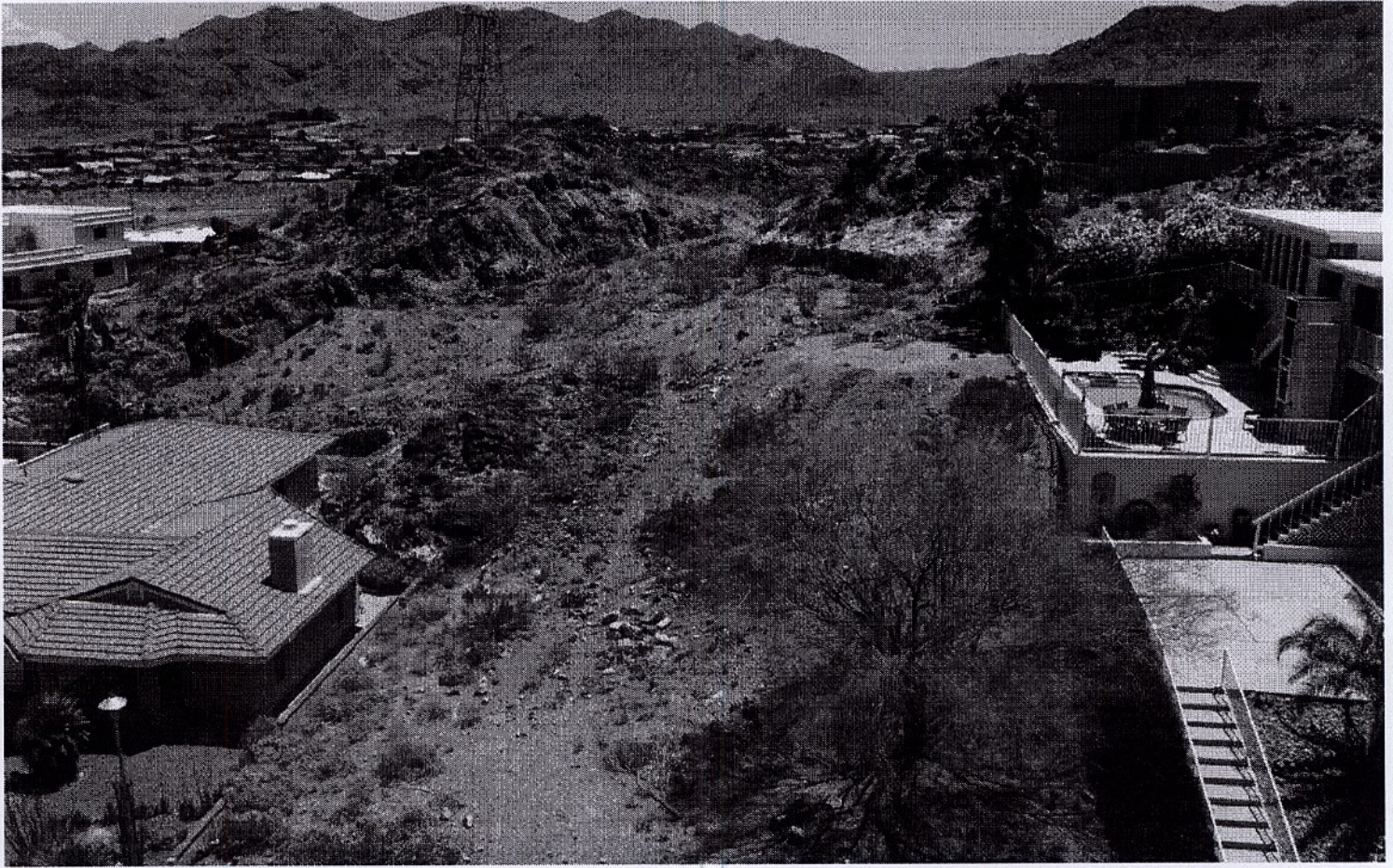
/s/ Benjamin B. Childs, Sr.

BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946

EXHIBIT 1

EXHIBIT 1

A rising fraud: Scammers are selling other people's real estate



A vacant homesite, center, is seen at the corner of Judi Place and Isabel Drive, on Friday, June 2, 2023, in Boulder City. (Bizuyayehu Tesfaye/Las Vegas Review-Journal) @btesfaye

By Eli Segall Las Vegas Review-Journal



July 13, 2023 - 12:48 pm

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Updated July 13, 2023 - 1:08 pm

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Bernie Gates was at home in Laguna Hills, California, when he received a disturbing letter — the land he had long owned in Boulder City was being sold.

Someone had listed the plot in March for \$175,000 with a real estate agency and found a buyer, prompting a title company to send Gates, the owner-of-record, a certified letter about the purchase.

But he wasn't looking to get rid of the property.

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“There’s no way,” Gates recalled thinking. “It’s not for sale.”

The deal was canceled, and Gates called the police. But he nearly fell victim to a growing type of fraud around the country: Scammers are trying to sell other people’s land behind their backs.

Greg Hulett, president of Landmark Title of Nevada, said the fraud is eye-opening in its brazenness.

“You hear about people stealing cars, but who the hell steals houses?” he said. “Who steals land?”

The notion of selling someone’s property without them knowing might seem far-fetched. But attempting the scam isn’t difficult, as fraudulent sellers may not initially be forced by anyone to prove they actually own the place.

Nevada law does not dictate that real estate agents verify that their clients own the properties they’re trying to sell, and anyone can go online to list a property without first showing it’s theirs. Sellers also are able to conduct transactions by phone and email and have used fake IDs to impersonate real property owners, industry sources said.

Seller-impersonation scams are often thwarted, like in Gates’ case. But a wire fraud security provider knows of multiple bogus sales outside Nevada that were completed.

In cases like that, the actual owners likely would be forced to claw back their real estate through the courts, and unsuspecting buyers would have to recoup their money through title insurance claims — a potentially lengthy, costly and nerve-wracking process.

Even an attempted fraud can, at the very least, force people to spend time swatting it down and grappling with concerns about identity theft.

A piece of land near North Las Vegas Airport was put on the market last year by someone who disappeared after the listing agent confronted him about not being the real owner. Authorities also are investigating an attempted land sale near Lake Tahoe after someone allegedly posed as the owner and listed the spread for almost \$11 million.

Movoto Real Estate broker Shannon Fitzpatrick, whose firm put Gates' land on the market for the still-mysterious seller, said his wife handled the listing that featured 30-plus photos and boasted an "opportunity to build your dream home (in) Boulder City!" She could not be reached for comment.

Fitzpatrick also noted that the market is rife with scams.

"It's absolutely crazy right now," he said.

Scam is 'nationwide'

Southern Nevada is no stranger to real estate fraud and other schemes, including bogus rental listings. Seller-impersonation fraud isn't new, and the Las Vegas Review-Journal could not find any data showing its prevalence locally or nationally. But the scam has garnered more attention lately amid a seemingly increased tally of cases that often involve vacant property.

Elizabeth Blosser, vice president of government affairs at the American Land Title Association, said the scam is not a common one but is "on the rise." She said members across the country are reporting the fraud.

Matt Troiani, senior counsel and director of legal affairs for the National Association of Realtors, also couldn't provide statistics but said his group's members are reporting it as well.

"This is nationwide," he said.

Nevada law requires that real estate agents disclose any "material and relevant" facts or information in the course of a transaction. But state law and regulations don't explicitly address whether they need to verify that their clients own the properties they put on the market, said Teri Williams, spokeswoman for the Nevada Department of Business and Industry.

Trade association Las Vegas Realtors told the Review-Journal that each brokerage firm has its own policies when it comes to owner verification, adding this is "not an association responsibility."

Assemblywoman Heidi Kasama, R-Las Vegas, is a longtime real estate broker and said she pulls tax records and seeks other documentation to verify ownership. Not all

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agents take those steps, she said.

She also noted that title companies are tasked with confirming a seller's legitimacy before a deal closes.

"I believe the system is working," she said.

Kasama and others interviewed for this story said new legislation would not be effective in stopping the scams. But multiple people said increased awareness and more training for real estate agents would help protect property owners and buyers.

"Laws are usually written terribly," said Hulett of Landmark Title. "I don't have a lot of faith in that being a fix to anything."

'We talk about this scam a lot'

It's a felony under state law to fraudulently sell real estate, though it's unclear whether anyone has been arrested or prosecuted for the seller-impersonation scam in Southern Nevada.

The Las Vegas Metropolitan Police Department, Henderson and North Las Vegas police all said they don't track complaints of real estate theft and declined to speak with the Review-Journal for this story.

Clark County District Attorney Steve Wolfson's office did not respond to a request for comment.

Nevada Attorney General Aaron Ford's office said it has brought charges in real estate cases involving theft of funds and mortgage lending fraud, but it has not received any complaints of seller-impersonation fraud.

The Nevada Department of Public Safety's Investigation Division doesn't investigate claims of real estate fraud. And the U.S. attorney's office in Nevada said it has prosecuted mortgage fraud but not seller-impersonation fraud.

Still, police in Southern Nevada are aware of the increasingly common scheme, said Boulder City police Detective Sgt. Tiffany Driscoll.

"We talk about this scam a lot," she said.

The buyer for Gates' land was not suspected of being involved with the ploy, Driscoll said. She also said police never learned the seller's identity because the suspect's email was no longer active and the phone numbers were untraceable.

Scammer's playbook

Bogus sellers follow a similar playbook around the country.

They search property records for real estate that's owned free and clear — without loans or liens — and often pick empty land. A vacant plot can go unseen or largely ignored by the owner for years. Fewer people also are involved in the sale if no liens have to be paid off, meaning there's less chance someone will catch the con.

Posing as the actual owner — whose identity also can be found through public records — the scammers contact a real estate agent to put the site up for sale. They communicate only by email or phone, and claim they can't meet face-to-face or on video.

They also typically list properties below market value to drum up immediate interest and then quickly accept an offer, preferring cash sales. To close the deal, they seek a remote notary signing, impersonate the notary, and provide falsified documents, according to CertifID, a wire fraud protection firm.

Title companies or others involved in the sale can ultimately thwart it, as they might get suspicious about the seller and catch them in lies or seek additional layers of confirmation that prompt them to pull the plug.

Ashley Dickerson, branch manager and escrow officer with WFG National Title Insurance Co. in Southern Nevada, said she stopped two fraudulent sales and helped prevent others over the past several months.

In one case, a seller claimed he couldn't meet with her because he was in a Florida hospital awaiting surgery to provide his niece with a life-saving organ.

"They're all pretty outlandish," she said of the red flags.

Still, bogus sales have been completed, said Tom Cronkright, CertifID co-founder and executive chairman.

In one case, he said, a Michigan property owner learned his site was purchased after he drove by and saw flag stakes in the ground because the buyer was planning a housing project.

The Clark County recorder's office needs a court order before it can remove a deed — the document that transfers real estate ownership — from its records, said county spokesman Erik Pappa.

Buyers in fraudulent sales can get their money back through title insurance coverage. But insurers will assume the buyer is part of the scam until proven otherwise, Hulett said.

All told, it could take months before the real owner and buyer are made whole, he said.

Terri Lawson, chief operations officer of Meridian Title Corp. in Indiana, agreed.

"It won't be easy-peasy to figure this out," she said.

Seller disappears

Last year, Realty One Group agent Maryam Mohavvelaty was looking to drum up some business when she saw a for-sale-by-owner listing online for land near North Las Vegas Airport. She contacted the seller, who hired her to find a buyer.

At her request, he provided a copy of his driver's license, which showed his name matched the landowner's, she said. She asked to speak with him over Zoom, but he said he couldn't, so they corresponded by phone and text message.

However, she soon learned the land was actually owned by someone else — a nearby auto-shop owner.

Mohavvelaty said she immediately withdrew the listing and called her client to say she had met the real owner. He replied that it was his uncle and they have the same name. He promised to call him right away, hung up and disappeared.

In Northern Nevada, Coldwell Banker Select Real Estate agent Trevor Smith said someone listed a 14.5-acre land tract in Incline Village with his office this year. It was priced at almost \$11 million.

The seller's name matched the owner-of-record. But other details were sketchy, and the seller, who never met in person with the listing agents, had what looked like a Photoshopped passport, Smith said.

The agents withdrew the listing, and authorities are now investigating, he said.

Washoe County Sheriff's Office spokesman Bryan Samudio declined to comment, saying it was an ongoing investigation.

'Large amount of fraudulent schemes'

Gates, who also owns a vacation house and a rental property in Boulder City, bought the 0.2-acre plot of land that was nearly sold from under him in 2003, property records show. He wants to build a house on it one day, adding that if he builds high enough he would get an unobstructed view of Lake Mead.

The land, squeezed between two houses in a quiet neighborhood, was put up for sale on March 30 by the fraudulent seller. It went under contract with a buyer on April 10, but the listing was removed on April 24, according to real estate sites. Gates called the police the next day.

In the police report, the title company stated that when it works on a purchase involving out-of-state owners, it sends them a certified letter because of the "large amount of fraudulent schemes" with such properties.

The listing agent got the seller through an "internet hit," the report says, but police suspended the case after the investigating officer came up empty trying to find the client.

Driscoll said the case was closed at the patrol level and never came to Boulder City's detective bureau. She chalked this up to a possible training issue and indicated she might send the case to the attorney general's office.

Despite the drama of it all, Gates is fine with how it ended for him.

"I didn't have to go to court to get the property back," he said.

Contact Eli Segall at esegall@reviewjournal.com or 702-383-0342. Follow @eli_segall on Twitter. Segall is a reporter on the Review-Journal's investigative team, focusing on

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reporting that holds leaders, businesses and agencies accountable and exposes wrongdoing.

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Red flags and prevention

According to the American Land Title Association, you should consider increasing scrutiny of a real estate transaction or halting it altogether when a seller:

- Wants a quick sale and a cash buyer.
- Refuses to attend signings and claims to be out of the state or country.
- Is difficult to reach by phone, refuses to meet over video, and only wants to communicate by text or email.

Valley of Paradise Assets LLC
Data provided by Valuelogic

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- Demands proceeds be wired.
- Refuses or is unable to complete multi-factor authentication or identity verification.
- Wants to use their own notary.

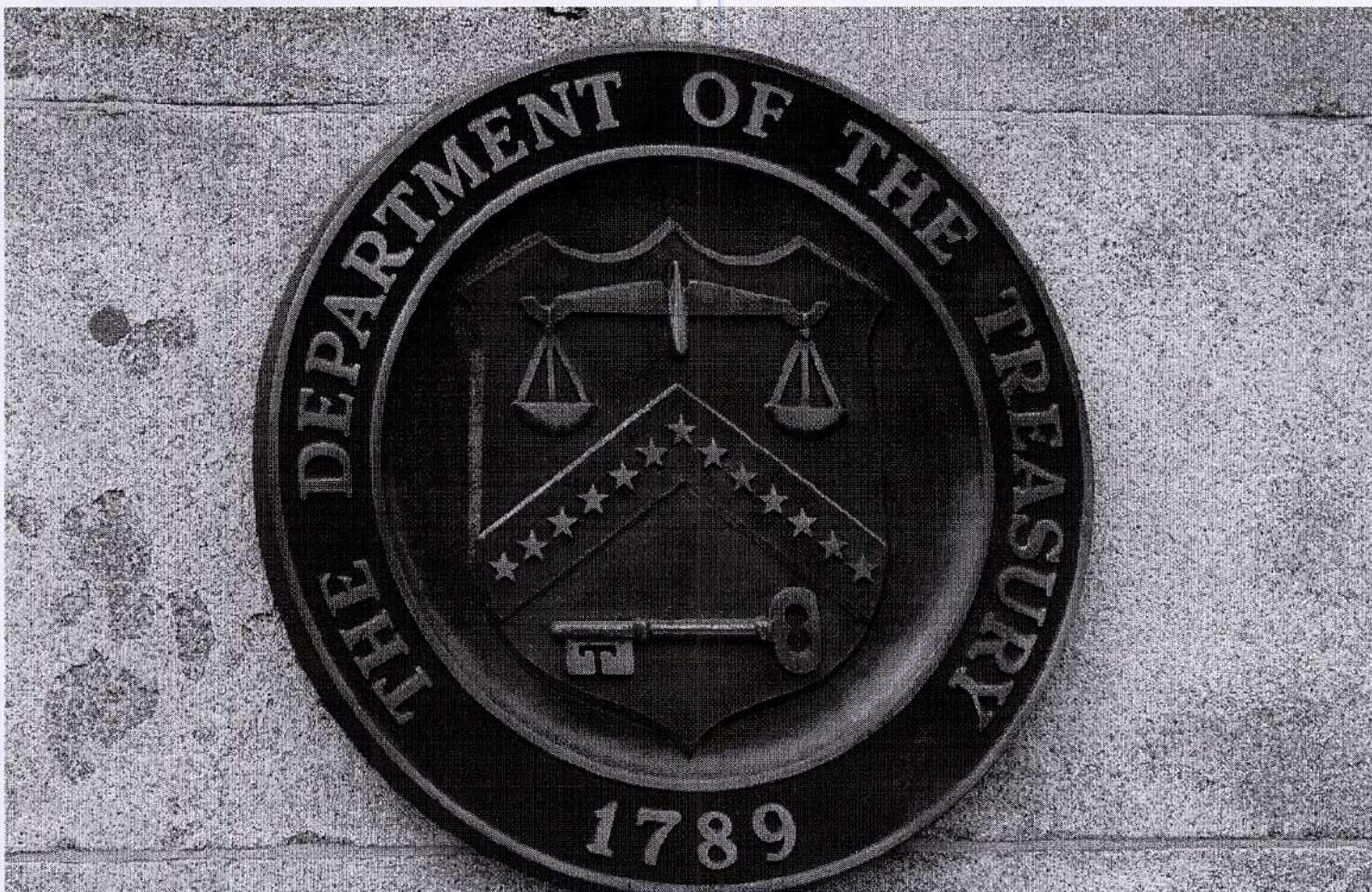
Here are precautions to take, according to the association:

- Contact the seller at an independently discovered and validated phone number.
- Mail the seller at an address listed in tax records.
- Ask the real estate agent if they verified the seller's identity.
- Require notarization from a vetted and approved notary. If a remote option is unavailable, arrange for the seller to sign papers at an attorney's office, title agency or bank.
- Email the seller a link for identity verification through a third-party provider.
- Ask conversational questions to learn their knowledge of the property that's not readily available in public records.
- Compare the seller's signature to previously recorded documents.

EXHIBIT 2

EXHIBIT 2

Fraudsters try to divert money from legit real estate deals



The Department of the Treasury's seal outside the Treasury Department building in Washington on May 4, 2021. (AP Photo/Patrick Semansky, File)

By Eli Segall Las Vegas Review-Journal

July 13, 2023 - 1:06 pm



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Scammers are finding ways to profit from real estate fraud even beyond posing as owners to sell their property.

Last year, the FBI reported that criminals were posing as parties to ongoing, legitimate real estate transactions to steal sales proceeds.

Once a deal reaches the point where money begins changing hands, criminals insert themselves in the process and direct funds to their accounts, typically by sending an

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email that appears to be from a title company, real estate firm or other interested party, the report said.

People at all levels of a transaction have reported this kind of activity, including law firms, real estate agents, buyers and sellers.

As the FBI noted, the loss of these funds is “potentially catastrophic for the victims and their families.”

According to the bureau’s Internet Crime Report, victims of real estate crime reported nearly \$397 million in losses last year, up from \$350.3 million in 2021 and \$213.2 million in 2020.

The U.S. Treasury Department’s Financial Crimes Enforcement Network reported in March that “individual homebuyers suffer disproportionately” from so-called business email compromise in the real estate sector.

Sarah Alwine, supervisory special agent of the FBI’s Las Vegas cyber squad, said people can go online to find a house for sale, determine the owner’s identity and then find their email address and phone number, letting them easily assemble a dossier on a potential victim.

A scammer might send the sellers a text message designed to look like it’s from their listing agent, instructing them to send over account information.

It may not sound right, but since it’s from the agent they’ve been working with, they do it, she said.

Contact Eli Segall at esegall@reviewjournal.com or 702-383-0342. Follow @eli_segall on Twitter. Segall is a reporter on the Review-Journal’s investigative team, focusing on reporting that holds leaders, businesses and agencies accountable and exposes wrongdoing.

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