

ChicagoBlog

where we share our *knowledge and experience.*

April 2014

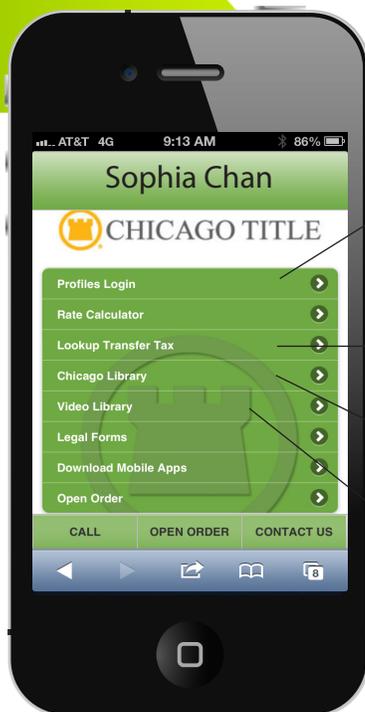
Featured Product

By  CHICAGO TITLE

April Fun Facts & Events

1. April Birthstone: Diamond
2. Zodiac Signs: Aries - 03/21 - 04/19 & Taurus - 04/20 - 05/20
3. April Flower of the month: Sweet Pea or the Daisy
4. Fruits for the month of April: Bananas, Kiwi
5. Good Friday (4/18) - Friday before Easter Sunday
6. Veggies for the month of April: Broccoli, cabbage, cauliflower, leeks, purple sprouting broccoli & spring onions
7. April 1 - April Fool's Day
8. April 10 - 2nd INSTALLMENT¹ OF REAL ESTATE TAXES BECOMES DELINQUENT AFTER 5:00 PM
9. April 13 - Thai & Cambodian New Year
10. April 15 - Deadline to file individual tax return
11. April 22 - Earth Day

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Information Library

Escrow Video Library



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- Need to email an article about "1031 Exchange" to your Seller? No problem! Simply click on Chicago Library, find article and email
- How about sending a "What to expect at Closing" video to your Buyer? Simply go to Video Library, select video and send
- Quick Access to California's City and County Transfer Tax and Assessor's website, lookup who pays for what?
- Full library of Legal Forms available at your fingertips
- How about "Opening an Escrow Order" anytime of the day?

Try it today! From your Smartphone, go to my website at:

ESCROW CORNER

IN the big house

The vesting on the open order sheet did not match the vested owner of record. That is not an unusual discovery in the title industry, but this time it triggered the title examiner to dig deeper and to uncover a forgery! One of our sister's branch in Denver opened a sale transaction in the amount of \$450,000 and ordered the title report/commitment.

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The title examiner, Venita Ogle, noticed the open order sheet reflected the property owner as an Estate of a named individual. The most current deed, however, reflected the owner as an LLC.

There was no death certificate of public record for the decedent, so Venita was unable to determine if he died prior to the deed to the LLC. She looked at previous deeds of trust in the chain of title to compare the decedent's signature to the signature on the deed to the LLC.

The signatures were not the same at all. It had been seven years from the date of the deed of trust to the most recent deed and signatures. Signatures change over time, but the discrepancy was drastic. Venita was even more suspicious the deed to the LLC might contain a forged signature for the decedent.

Venita contacted her title underwriter, Andy Baker. He agreed the signature on the deed had to have been forged. He advised Venita to prepare the title report showing title vested in the Estate and the LLC.

Venita prepared the report showing both entities and called for a deed from the Estate and the LLC. She created a second requirement for the death certificate for the decedent, as well as the organizational documents for the LLC. She noted under the requirements the documents would have to be further reviewed by underwriting prior to closing and insuring of this transaction.

When the listing agent and the attorney selling the property and settling the Estate of the decedent received the report they were shocked. Not only was the decedent a client of the attorney, but he was also a former colleague. The decedent had been a partner at the same law firm.

The attorney knew the decedent had not deeded the property prior to his death. The deed was executed in May 2013 and the decedent died in June, which raised more questions so the attorney began to investigate who signed the deed.

The attorney started with the notary – who would not return his calls or mailed requests for more information. After much investigation, the attorney discovered the managing member of the LLC is currently serving time in the big house for forgery and a list of other crimes. The listing agent and the attorney were thankful to Venita and Fidelity National Title for catching the forged deed and showing the additional requirements on the deed.

The attorney is working to file a Quiet Title Action to remove the effects of the forged deed, so he can sell the property. He also contacted the secretary of state to report the notary's bad deeds and requested her current address so he can take further action against her.

FIRPTA Nightmare

The sellers were foreign and knew they were subject to FIRPTA Withholding, but they were not completely prepared. They wanted to file form 8288-B, Application for Withholding Certificate, requesting a reduction or waiver, but they did not yet have a U.S. Taxpayer Identification Number (TIN) and the file was ready to close. The sellers did have an attorney they were working with.



The escrow officer of the title company (a competitor of us), agreed to close the deal and hold 10% of the gross sale price totaling \$31,200 in escrow file until the sellers received their U.S. TIN and Withholding Certificate from the IRS. The buyer knew nothing about this. There were no holdback instructions in the file. There was not a completed 8288, 8288-A or even an 8288-B in the file.

Three months after closing, the sellers' attorney sent over the W-7 Application for IRS Individual Taxpayer Identification Number and a Form 8288-B Application for Withholding Certificate. The forms had never been sent to the IRS for processing. Per the regulations, the seller had to file the W-7 and 8288-B PRIOR to the closing.

The escrow officer panicked and escalated the file to the escrow manager who contacted the buyer and seller to obtain the 8288, 8288-A so they could send the \$31,200 to the IRS. Obviously the withholding would be late which means the IRS would issue a penalty notice to the buyer since the buyer was never even notified of the seller's foreign status, much less had agreed to the holdback.

Moral of the Story

If a foreign seller is going to file a Form 8288-B Application for Withholding Certificate requesting a reduction or waiver of the withholding prior to closing, the buyer must agree to hold back the entire withholding amount in escrow, along with the completed forms. It will take the IRS at least nine months to answer the request and issue a Withholding Certificate.

The buyer has to be involved in the agreement to hold funds, because the IRS names the buyer as the withholding agent. They have 100% responsibility to make sure the funds are timely remitted to the IRS once the 8288-B has been processed and a certificate has been issued reducing the amount of the withholding. The buyer only has 20 days from the date of the certificate to send in any funds due the IRS, along with the completed Forms 8288 and 8288-A.



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