

[California Real Estate Journal](#) Newswire Articles  
www.carealestatejournal.com  
© 2009 The Daily Journal Corporation. All rights reserved.

• select Print from the File menu above

---

• Nov. 02, 2009

## **Stay One Step Ahead of Would-Be Scammers** **Fighting fraud helps real estate firms limit liability and protect reputation**

By JULIE NAKASHIMA

CREJ Staff Writer

Most companies spend years establishing themselves as legitimate businesses, and to have that reputation be jeopardized because of fraud committed by others is aggravating, to say the least.

That's what happened to **Bond Street Capital Cos.**, which recently reported that someone used its stationery to forge commitment letters in order to dupe two would-be borrowers into believing they had loans from the company. According to Joe Forman, the company's chief executive officer, it was the third time in two years that something like this had happened to Bond Street.

He places some of the blame on today's virtually nonexistent lending market, especially for real estate.

"The depletion of available capital has energized the fraudsters," Forman said.

As he explained, Bond Street received a call one day from a staffer at a brokerage firm, asking when the company was closing a deal. Forman said he knows all the deals that are in progress at his company but knew nothing about this particular one.

"I asked them to send me whatever they had in the way of documentation," he said. "She sent by e-mail two different LOIs [letters of intent] for properties for which we supposedly were going to provide loans."

Two separate borrowers thought they were getting loans for commercial properties through Bond Street. But Forman had never heard of either one of them, and he never would have approved a loan on at least one of the properties, located in Las Vegas, because it was not financeable, he said.

"It was our stationery, but the terms were not typical of what we would put in a term sheet and they were unsigned," Forman said. "I was a little put off by the fact that the deals went as far as they did."

After some investigation, he learned that a broker in Nevada who represented the two borrowers asked a broker in Florida to help her source the loans. That broker found somebody in Virginia. Forman said the Virginia broker was the one who supposedly was managing the deal from the capital side and purported to be working with Bond Street.

"When I confronted the broker, he claimed he was working with a Bond Street office somewhere," Forman said.

Forman asked to see some evidence of whom the broker had spoken with at Bond Street and got back numerous documents, none of which validated that he was working with anybody at the company.

"The whole thing was ridiculous," he said. "Meanwhile, the borrowers think they're getting close to a closing."

Forman believes that the interconnected nature in which many loans are put together these days, where a single financing transaction may involve multiple brokers in multiple locations, plays right into the hands of fraudsters. While he doesn't believe the borrowers' broker in Nevada had anything to do with the scam, he faults her for simply taking the word of one of the brokers in the chain that he was dealing with someone at Bond Street.

"If she had initially picked up the phone and asked, 'Are you guys going to do this loan?' this whole thing could have been avoided," Forman said.

### How to Spot a Scam

According to experts in real estate and Internet fraud, Bond Street's experience is unusual. Tom Pool, a spokesman for the state Department of Real Estate, said he has never heard of anything even remotely close. However, he said the department does see cases in which people put up a Web site that looks like, for example, **Wells Fargo's**.

"They try to duplicate Web sites of financial institutions to try to game the system and get personal information from borrowers," Pool said. "But the situation you described is not something that we've seen at all."

By far, he said, the biggest fraud facing California right now are loan modification or loan rescue scams, which have ballooned from fewer than 10 cases last June to more than 1,100 cases currently.

Frauds in which someone uses the name of a legitimate business to dupe others are not unique, according to Craig Butterworth, a communications specialist with the National White Collar Crime Center, or NW3C. He pointed to phishing and spoofing scams, in which the potential victims receive some sort of correspondence in their e-mail inbox with a message to click on an embedded link.

"The message reads something to the effect, 'We at **Bank of America** have noticed an error in your account, and in order to rectify this problem, please click on the link below,'" Butterworth said. "Once you click on the link, you're taken to a bogus Web site and asked to provide personally identifiable information [such as] your account number and Social Security number."

On the other hand, he said incidences in which a scam artist actually assumes the name of an established entity to defraud are extremely rare. In general, Butterworth said NW3C has seen a significant uptick in all types of fraud across the board, including a 30 percent increase in Internet fraud complaints during the first quarter versus the same period last year.

He doesn't waffle about the effect of the weak economy, noting that every recession over the past 50 years has had a corresponding increase in property crime.

"The bad guys aren't taking a holiday," Butterworth said. "They're essentially working 24/7 coming up with new and more sophisticated ways of defrauding hard-working Americans."

Forman thinks the bad economy plays a role in what he views as an increase in loan scam artists. Technology also is a factor.

As best he can tell, Forman said, the rogue broker in Virginia somehow got hold of a term sheet, letter of intent or commitment letter from Bond Street. At that point, it would be relatively easy to forge documents bearing Bond Street's logo and letterhead by running it through a scanner.

Then, too, he said, Internet-based broker information exchange forums - discussion boards for mortgage brokers - make these scams deceptively simple to pull off. Brokers go onto these exchanges, post their loans and look for capital sources.

"They want legitimate lenders to call them, and what they're getting are guys that are posing as lenders," Forman said.

According to Forman, anyone can put up a Web site claiming to be a lender, but when you go to the site there's no information regarding the company's principals, phone number, address or deals it has closed.

He said it's simply good practice to validate the legitimacy of a capital source. But given the shortage of capital, he thinks some brokers may not be doing enough due diligence, such as the broker in Nevada.

"I think she was duped, and perhaps in her desperation to find money for a very challenging loan, she grasped at a fraud," Forman said. "Even if they're not intentionally trying to defraud the client, they may be so desperate to earn a fee that they don't take all the steps to protect the client."

### **Mixed Motives**

Forman said he is seeing a proliferation of people claiming to be lenders, but who are nothing more than front-end fee scammers.

In another case, Forman said someone used his relationship with Bond Street as an affiliated broker to bring credibility and business for a hard money fund he had started.

"He took in well over \$1 million without ever funding a loan, just in front-end fees," he said.

While people perpetrating lending scams usually are after front-end fees, there weren't any such fees in the Bond Street case involving the document forgery. Forman believes the Virginia broker was trying to "tie up" the borrowers while he tried to find a lender to do the loans. But his company still was harmed.

"It's essentially like identify theft," he said.

The experience stirred Forman to file a complaint with the Internet Crime Complaint Center, a partnership of the FBI, the National White Collar Crime Center and the Bureau of Justice Assistance. The center was established to serve as a vehicle to receive and research criminal complaints connected to "cyber crime" and refer them to federal, state, local and international law enforcement and regulatory agencies for investigation.

To David Harris, a shareholder in the law firm **Miller Starr Regalia**, the scam sounds more like a classic escrow fraud involving forged documents than an Internet fraud. However, the lack of front-end fees makes the motivation difficult to fathom.

"If there's a transaction involving a loan, certainly with real estate, most of the time it goes through an escrow company or a title and escrow company," Harris said. "Anyone who's going to get any money receives that money at the close of escrow."

The escrow officer would receive instructions from all the interested parties regarding who is supposed to be paid what in commissions and fees, he explained. But in Bond Street's case, the dishonest broker apparently was only pretending that there was a loan.

"It sounds like there is no pot of gold at the end of the rainbow," Harris said. "I would think the company whose good name has been hijacked would want to prosecute both civilly and criminally."

If there's a spike in commercial lending fraud, they're not seeing it at the **California Mortgage Bankers Association**, according to Chairman Tup Fisher. He said a straw poll of the board of directors' commercial members indicates that this is the first any of them had heard of it.

In the absence of any first-hand experience with this issue, he said the commercial members only could speculate that some borrowers may be paying upfront fees to intermediaries who may not be the most scrupulous business people.

"I guess there are opportunists in any kind of economy, and I would assume that this is no different," Fisher

said. "For the mainstream guys, that's our reputation out there. I think you will find the upstanding mortgage bankers and mortgage brokers will probably not be for upfront fees."

Shortly after Forman wrote about Bond Street's most recent brush with fraud in the company newsletter, the company was hit with another case. In that example, he said, Bond Street had a bridge loan that was set to close when one of the attorneys determined that a letter of credit posted by a tenant was fraudulent.

### Stay Suspicious

Unfortunately, there's not much a legitimate company can do to prevent itself from being used as part of a scam perpetrated by others. As Tim Scott, a partner in **McKenna Long & Aldridge LLP**, pointed out, the company wouldn't know it had been targeted for a fraud scheme until after the fact. And anybody can lift the company's logo from its Web site without its knowledge.

Forman agreed. All it can do is publicize the fact that it happened, he said.

"There's no simple or practical way to protect ourselves, except to try to do our best to put the word out there," Forman said. "If you have a deal you think is with us, feel free to call us and verify it."

Even the nation's top law enforcement agency has been unable to prevent its name from being used in an attempt to defraud. A recent e-mail scam alert from the Internet Crime Complaint Center warns about a "flurry of spam" targeting the FBI and even invoking the names of several high-ranking officers. Claiming to be an official order from an FBI unit in Nigeria, it notifies recipients they are the beneficiaries of millions of dollars, directs them to furnish their personally identifiable information and threatens them with prosecution if they fail to do so.

Last Tuesday, the Federal Deposit Insurance Corp. sent out a special alert about fraudulent e-mails claiming to be from the FDIC.

While there may not be much a company can do to prevent its name from being used to dupe others, Butterworth said there are some things people can do to keep from ending up among the duped:

Always be suspicious of unsolicited e-mail, especially e-mail that contains embedded links.

"If they don't have a Web site, that should raise a red flag immediately," Butterworth said.

As it relates to phishing scams, first and foremost, a bank is never going to notify someone by e-mail about a problem regarding an account.

"That's going to be via snail mail," Butterworth said.

Also, a bank is never going to ask for your personally identifiable information online or over the phone.

If you're being asked to put up money or send a fee, always make sure the business has a bricks-and-mortar presence as well as an Internet presence.

Always maintain a healthy dose of skepticism if information regarding the principal players involved and contact information such as addresses and phone numbers are unavailable.

"If none of that information is readily apparent, it's meant to be obscured by design," Butterworth said.

- *E-mail Julie\_Nakashima@DailyJournal.com*

\*\*\*\*\*

© 2009 Daily Journal Corporation. All rights reserved.