



By Lisa A. Tyler
National Escrow Administrator

Offices closing commercial transactions are not immune to the diverted wire transfer scam. In fact, in most cases they are more vulnerable since they are usually wire transferring funds in the millions of dollars. Read “MULTI-MILLION dollar loan payoff scam” to discover how a manager of a title agency recently prevented a diverted wire transfer scam in a commercial refinance transaction.

Escrow and title companies do not accept cash of any kind. There are far too many risks involved. It is unsafe for employees to accept cash at an office since they do not have a place, such as a theft

proof safe, to store the cash. In addition, they do not have the means to secure the cash for delivery to the bank for deposit.

Banks are highly regulated and must report cash deposits to federal agencies. Cash deposits at a bank trigger reporting which would be done in the name of the remitter or settlement agent — not the customer. Read “CA\$H money” for the last and biggest reason why settlement agents cannot accept cash at their offices.

In this month’s article on the value of title insurance, we provide a detailed description of the industry’s most commonly issued report called the Commitment. Discover what it is and what it is not in the article entitled “WHAT is a commitment for title insurance?”

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MULTI-MILLION dollar loan payoff scam

Andrew Zankel, with Core Title Services in Lake Success, New York, was handling the closing of a multi-million dollar refinance of a commercial property in Brooklyn, New York. The refinance transaction was originally supposed to close on April 17, 2019.

On April 10, 2019, an attorney, at a large law firm in New York, sent the office a payoff letter for a private mortgage secured by the subject property. The payoff letter indicated the \$1,700,000 payoff of the short-term loan was to be wired to a bank account at a bank in New Jersey. The lender was also based in the same area of New Jersey and the contact info for the lender was a phone number in New Jersey.

The afternoon before the closing, Andrew received an email from the payoff attorney's office stating that his client had supplied him with a new payoff letter. The wire instructions changed to a bank in the Netherlands and the contact information for the lender changed from a New Jersey area code to a foreign phone number. The email stated that the lender would also fax Andrew the payoff letter directly to his office, but they never did.

The closing did not happen as planned on April 17, 2019, as it was postponed to a later date. Andrew was concerned by the change in instructions but did not question them, as he would have to reconfirm the information when it was rescheduled.

When the closing was rescheduled for April 22, 2019, Andrew emailed the attorney and his assistant and inquired about the change in bank wire information. The response from the attorney came back confirming everything that was sent on April 16, 2019, was correct. Andrew was asked to contact his assistant when the wire was sent, as he would be out of the office for a few days.

Something did not feel right to Andrew. He decided to look more closely at the emails he received from the attorney. While investigating, he noticed that the domain name in the attorney's email had an extra "s" in it starting with the emails on April 16, 2019, and continuing through the emails he received that morning. All the emails prior to that did not have the extra "s" in the email address.

The attorney's email signature block was also partially cut off starting on that date and going forward, which was odd since he was a partner at a prestigious law firm in New York City. His assistant, who was copied on all the emails, always had the correct email address which was puzzling.

At this point Andrew knew something was wrong and went to consult with Ethiel Melecio, Jr., who he had been working with on this file. Ethiel is the legal counsel in his office.

Andrew showed him the evidence and Ethiel agreed something was not right. He said he felt something was different about the emails received prior to April 16, 2019. The ones prior were written by a knowledgeable attorney; while after April 16, 2019, they were well written, but not quite the same.

At this time, which was about two hours before the closing, Andrew received an email from the assistant of the attorney asking if the wire had been sent. He did not want to alarm her as he suspected that her email had been compromised so he responded that the closing was happening shortly, and he would be in touch.

Andrew then proceeded to perform an internet search for the law firm, as he felt he could not trust the contact information in the email. He called the main number and asked for the assistant directly. She answered her phone



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[MULTI-MILLION dollar loan payoff scam - continued]

and Andrew inquired about the bank wire instructions. She was confused by what he was saying and insisted the wire instructions had not changed since April 10, 2019, when the original payoff letter was sent.

Andrew asked about the email he just received from her and she said she had not sent anything. Andrew started to fill her in on the details. The assistant was shocked, as she and her boss had not sent any of the emails in question.

The assistant stated the attorney was in court and she said she would call him to relay the information. Andrew asked her to please not email him as that would alert the scammers that they were on to them. A minute later the assistant emailed the attorney and her information technology team telling them everything. At that point, the scammers knew everyone was aware of the scheme.

Andrew spoke to Underwriting Counsel Scott Spinner, at the New York Fidelity agency office, and Scott gave his thoughts on the situation. Andrew and Scott concluded they could not trust any wire instructions on this transaction and would only make this payoff by bank check to the attorney and have the check hand delivered to their office in New York City.

Andrew called the assistant back and as he started speaking to her, he received yet another email from her with new wire instructions for the payoff. Andrew asked if she had sent the email as they were speaking, and she said she did not send anything. Andrew and the assistant were both in shock as he then received

yet another email from her email account demanding he call the lender immediately to confirm the new wire instructions.

Minutes later a man called Andrew's office asking for legal counsel to confirm the instructions. Ethiel, fully aware of the situation, answered the phone and the man on the other end insisted he was the lender and wanted to verbally confirm the wire instructions which were just sent via email. Andrew and Ethiel played along and hung up the phone. Andrew then left for the closing with the new plan to just send the payoff as a bank check to the attorney by messenger.

Andrew verbally confirmed receipt of the payoff funds, received the release documents and recorded them with the County Clerk. The borrowers — who were in shock at everything that happened — also confirmed with the lender the check was received and the loan was paid off in full.

Andrew said, "It is a pretty crazy experience to go through. We try to be on the edge of technology and what is happening out there in the industry. I take all the webinars on cyber-crime and read as much literature as possible on the topic to be aware of their methods. This is how I was able to pinpoint the discrepancies in the emails and notice the extra "s" in the email address. I know what a threat wire fraud is to our industry and am a big supporter of education on the topic."

This story, as told by Andrew, was submitted in hopes it will help others be on their toes in similar situations. Thanks Andrew!

CASH money

Recently, an office received a request from a very good customer who was in the process of purchasing an investment property. He asked his escrow officer, Linda Hand, to accept \$12,400 in cash towards the purchase.

Linda knew she would have to file IRS Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, but it had been a while so she picked up the phone and called National Escrow Administration for guidance. The Corporate Escrow Administrator explained she would have to let her customer know she was unable to accept the cash.

Linda did not want to say "no" to her good customer so she did what any successful escrow officer would do; she pushed for approval to accept the cash. The Corporate Escrow Administrator walked her through all the issues by asking her some key questions.

Q: How will you secure the cash at the office in case you are robbed, or someone comes back for the cash?

A: It will be locked up.

The escrow administrator was concerned about where it would be locked up and how, so she pressed on.

Q: Who would be the one taking the cash to the bank and does that person know the bank will report the large cash deposit to the IRS and other federal regulators in their name, not the buyer's name?



A: Why? What difference did that make?

The Corporate Escrow Administrator advised Linda to be sure that person takes their identification with them because the bank will need it along with their social security number in order to properly report the cash deposit.

Linda said she would be sure to pass that information on.

Q: How will the person taking the cash to the bank get there safely? What if someone is watching them, waiting for just the right time to mug them?

A: I will talk to my branch manager about that.

Q: How will she know if any of the funds were counterfeit or not?

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[CASH money - continued]

A: We must have one of those testing pens laying around the office.

The escrow administrator advised her if they miss a counterfeit item, the bank would catch it and the person making the deposit would have to explain this to the authorities, since the bank will call the local police.

Q: Have you contacted the bank to ensure they would be willing to accept that much cash?

A: (Long pause) Why wouldn't they accept the cash?

The escrow administrator explained banks often do not accept large amounts of cash. The only place to remit large sums of cash is at a Federal Reserve Bank. Linda hung up the phone and called

the bank to confirm they would not accept the cash. She called her customer and gave him the bad news.

Safety is the number one reason the Company does not accept cash payments. Ensuring the safety of the Company's number one commodity — our employees — is top priority. Accepting cash at our offices could jeopardize the safety of our employees and could create a potential IRS mess for an employee depositing cash on the behalf of a customer. The Company's stance is to explain to your customer why we do not accept cash.

Article provided by contributing author:

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National Escrow Administration

WHAT is a commitment for title insurance?

A Commitment for Title Insurance is:

- » Solely an offer by the title insurer to issue a title insurance policy based on the conditions, exceptions and specified requirements, including the payment of premium, set forth therein
- » Only effective when the identity of the proposed insured and the amount of the policy or policies have been inserted in Schedule A
- » Generally expires six months after the effective date

A Commitment describes liens, defects, encumbrances and other matters recorded in the public records or other information that has been disclosed to the Company:

- » Vested owner's name and how title is held
- » Legal Description
- » Tax status
- » Exceptions from coverage
- » Requirements — matters that must be met or cleared at or prior to closing to insure title or loan priority
- » Other terms and conditions

It also identifies the proposed insured(s) and the types and amounts of policies to be issued:

- » Proposed Owner, type and amount of policy
- » Proposed Lender, type and amount of policy

Each item must be reviewed carefully to ensure that we know what documents or other information must be obtained before the closing and a policy of title insurance can be issued.

A Commitment for Title Insurance is not title insurance or a certification of title. It is not a representation of the condition of title. It is neither an assumption of liability by the title company for the condition of title nor is it an assumption of responsibility by the title company for clearing title problems or removing disapproved exceptions.

Parties to a transaction should be sure to carefully and thoroughly read the Commitment for Title Insurance and make note of any questions they might have. Parties should ask the settlement agent or title officer their questions prior to closing. Some may wonder what title insurance costs. We will discuss that topic next month.

