



▶ **SEE** who takes the bait

By Lisa A. Tyler
National Escrow Administrator

Three different purchase agreements were received simultaneously by three offices in the state of Montana – a Fidelity office, a title issuing agent of FNTIC and a Chicago Title office – all from the same buyer attempting to deposit counterfeit cashier's checks into escrow. In each transaction, the buyer attempted to direct the escrow office to release the deposit money to the seller prior to close of escrow and before the cashier's check could be returned as counterfeit. Read all about it in "MONTANA escrow officers cannot be fooled."

"ONCE bitten, twice shy" is a story about the Albuquerque, New Mexico accounting center receiving outgoing wire transfer requests from a spoofed email account that looked like it belonged to one of their escrow officer's. Luckily for the Company, the story has a happy ending. This accounting center was hit with the same crime two years ago, so the

employees knew something was suspicious about the wire requests and refused to process the outgoing wires.

The Financial Crimes Enforcement Network (FinGen) has money launderers in their crosshairs. They are issuing orders to title companies to discover names of individuals who might be hiding behind an entity, such as an LLC, in order to perpetrate the crime. Read "LAUNDERING dirty money" to discover the transactions and geographic areas being targeting.

Did you know foreign sellers would be perjuring themselves if they completed and signed the Substitute Form 1099-S? Did you know foreign sellers are not eligible to sign the Certification for No Information Reporting form? To learn the reasons read the article entitled "1099-S reporting for foreign sellers."

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MONTANA *escrow officers cannot be fooled*

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On January 20, 2016, the county manager of Fidelity's Flathead County, Montana operation received an email request for escrow services on a purchase transaction. She forwarded the message to Michael Longfield, an escrow officer with Fidelity's Kalispell, Montana office.

Michael responded to the message and requested a copy of the purchase and sale agreement. The next day, Michael received an email from the buyer who purported to be from Bethlehem, Georgia with a signed Real Estate Purchase and Sale Agreement and Escrow Instructions for purchase of property in Kalispell in the amount of \$825,000. The buyer requested Michael's office address to send the required earnest money deposit.

Michael provided the office address and asked for the contact information for the seller. The buyer responded to Michael with the email address for the seller. Michael noticed the word "message" in the subject line being misspelled as "massage" on emails from the buyer as well other grammatical errors. Out of curiosity Michael performed an Internet search on the seller, which revealed she was a local physics teacher. Michael proceeded to order a title commitment.

On February 4, 2016, the post office delivered an express post from Canada containing an earnest money check in the amount of \$45,000 drawn from a bank in The Woodlands, Texas. The agreement called for a deposit in the amount of \$42,900.

Because he was now suspicious, Michael found the contact information for the issuing bank, scanned and emailed a copy of the \$45,000 cashier's check to the bank and inquired whether or not the check was valid. A representative at the bank responded the very next day stating the check was not valid.

Michael performed an Internet search on the property address and found the contact information for a listing agent who had the subject property listed for sale. Michael called the agent who immediately confirmed the property was not under contract. The listing agent mentioned another local title agent had received the same bogus purchase agreement.

Michael called the manager of the other title agency who issues policies on behalf of the Fidelity family of underwriters. The manager said she actually knew the real property owner who had confirmed she did not execute the purchase agreement.

According to the bogus purchase agreement, the \$42,900 deposit was to be released to the seller prior to close of escrow upon inspection of the property by the buyer. The "buyer" released all contingencies on February 4, 2016, and directed Michael to release the funds to the "seller" as soon as he received the seller's wire transfer instructions.

On Monday, February 8, 2016, the person posing as the seller/property owner emailed Michael the wire transfer information to transmit the \$42,900 deposit (not the full \$45,000). The email he received from this purported seller stated her wire transfer information was attached, but she forgot to attach it.

The next day he received an email from the buyer with the seller's bank information, which was unusual to say the least. To top it off, the wire transfer information directed escrow to wire the deposit to an unrelated third-party entity's account in Boston.

Michael knew this deal was a scam so he cancelled his file, and forwarded the details to his county manager and the National Escrow Administration team. Michael's message, with the transaction details, was perfectly stated, "Hopefully everyone in the Fidelity Family can spot this a mile away. We certainly have been coached well enough."

The fraudsters were clearly attempting to throw enough lines in the water to see who would take the bait. On January 22, 2016, the same buyer reached out to Douglas Teders, the escrow officer and branch manager of Chicago Title's Helena, Montana office. He sent over the same exact purchase and sale agreement as used in Michael's transaction, only the seller name and property address were changed, the purchase price was lowered to \$635,000 and the required deposit was lowered to \$35,000.

Again the buyer asked for Douglas' office address to send the deposit by courier. Again, an express delivery arrived at Douglas' office containing a cashier's check in the amount of \$35,000 drawn from a bank in The Woodlands, Texas.

Douglas had already grown highly suspicious of the transaction, since the subject property was owned by two individuals according to the public records, but only one had signed the purchase agreement. The one signature on the purchase agreement did not come close to matching the signature shown on documents of public record.

Douglas reached out to the real property owners and confirmed their home was on the market, but they did not have a written offer yet and were not in contract with this particular buyer.

Douglas faxed the check to the issuing bank in Texas and asked if the check was valid. The bank quickly responded the check was not valid. In the meantime, Douglas received authorization from the buyer to release the funds immediately and prior to close of escrow to the seller, in accordance with the contract.

The seller emailed Douglas the wire information. Not so ironically, the account holder on the wire information was a totally-unrelated entity located in Boston. Yes – the same wire information Michael had received on his fraudulent transaction.

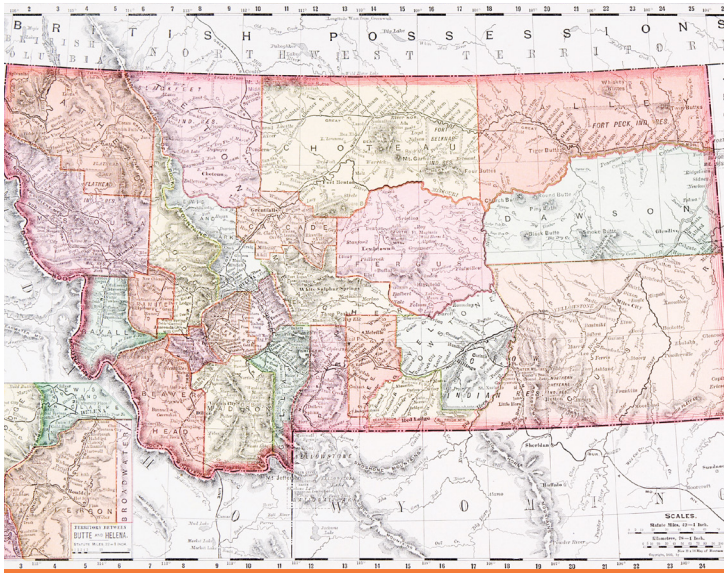


TELL US HOW YOU STOPPED FRAUD

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[MONTANA escrow officers cannot be fooled - continued]

Michael and Douglas both felt they were doing their jobs, by following their gut instincts. They reviewed signatures for a match, they reached out to the real property owners and listing agent, and they contacted the issuing bank for verification of the cashier's check. Their efforts were not rewarded with an actual closing, but they will each be rewarded for their separate efforts with \$1,500 from the Company, as well as a letter of recognition.



MORAL OF THE STORY

Settlement agents should not be foolish enough to think a deal with these red flag warnings would ever come to a successful close:

1. Buyer from out-of-state, is attempting to buy a property unseen, often without a real estate agent or attorney.
2. Contact with buyer and seller is primarily, or exclusively, by email with possible evidence their native language is not English.
3. The buyer sends a large deposit via check (usually more than the amount called for in the purchase agreement) to be released prior to close of escrow.
4. The cashier's check is often drawn from an out-of-state or even Canadian bank.
5. The cashier's check is often delivered from an address in Canada.
6. The funds are often requested to be released to a totally unrelated third-party via wire transfer.

When any of these tell-tale signs occur in a transaction, the settlement agent should notify their manager and escrow administration at settlement@fnf.com.

ONCE bitten, twice shy

On January 13, 2016, two outgoing wire requests were sent to a shared email account used by the Albuquerque, New Mexico accounting center – one for \$70,429.90 and the other for \$125,175.

Robin Overmyer, an extraordinary assistant in the Albuquerque accounting center, noticed the two outgoing wire requests in the junk mail folder. The two requests appeared to be sent from an escrow officer at a branch office in New Mexico.

Robin contacted the escrow officer to let her know she needed to send her outgoing wires to the new email account established for receiving outgoing wire requests. Her response was, "What wires?" She had not sent any wire requests that morning.

Robin was very concerned. She printed the outgoing wire requests and reviewed them. There were several different type fonts used on each request form, fields were empty and incorrect information was input in some of the fields.

Also, the wire requests were signed by two check signers that work in different office locations. The time printed at the bottom of the wires was also two hours ahead of the Albuquerque time zone. It all looked very suspicious and Robin was sure it was an attempt at fraud.

She called the accounting center in Arizona to make sure they had not received the outgoing wire requests. They had not.

She forwarded the wire requests to the accounting manager for her reference. That way if they did receive the same outgoing wires, they would not process them.

For her keen sense of wrongdoing, she saved the Company from a potential loss of \$195,604.90. For her efforts she has been rewarded \$1,500 and a letter of recognition from the Company.

MORAL OF THE STORY

When processing an outgoing wire, the accounting center personnel should examine the request form thoroughly, looking for inconsistencies and inaccurate information. In addition, the accounting center should ensure the wire is going to a party to the transaction and there are sufficient funds in the file to fund the outgoing wire.

The fictitious outgoing wire requests received by the accounting center in Albuquerque were all posted on closed files with a zero balance and the wires were directed to parties completely unrelated to the transaction.

LAUNDERING *dirty money*

Is investing in high-end real estate through a limited liability company the loophole criminals have been utilizing to launder their dirty money? The Financial Crimes Enforcement Network (FinCEN) is concerned it might be.

Per their website, FinCEN's mission is, "...to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis and dissemination of financial intelligence and strategic use of financial authorities."

They have identified a very specific transaction type and geographic area of the investment in U.S. real property as a potential risk. The risk involves the ability for corrupt foreign officials or transnational criminals to launder dirty money through the purchase of high-end U.S. real estate.

FinCEN recently issued a press release discussing new requirements for certain title insurance companies to comply with Geographic Targeting Orders (GTO) to report specific real estate transactions. According to the press release they have identified three components which are their focus:

1. Limited liability companies or other entities used to conceal the names of individuals who make up the entity.

2. Properties are located in the Borough of Manhattan in New York City and Miami, Florida.

3. Cash purchases.

These GTOs are effective for 180 days and took effect March 1, 2016. They will expire on August 27, 2016. The specific details of the types of transactions and reporting requirements are described in the GTOs. The list of title insurance companies was not published by FinCEN, so it is important for employees and agents to look to their underwriter for guidance when handling cash purchases of properties located in New York and Miami.

FinCEN identified title insurance companies as the best source to collect this information from since title insurance is usually purchased as a part of a real estate transaction – even if the buyer is paying cash and not utilizing bank financing. The reporting will include requirements to disclose the true beneficial owner of the entity purchasing the property. Per FinCEN, "These GTOs will produce valuable data that will assist law enforcement and inform our broader efforts to combat money laundering in the real estate sector."

1099-S *reporting for foreign sellers*

The IRS requires a settlement agent to solicit the seller's taxpayer identification number (TIN) for 1099-S reporting. There are three ways to properly solicit the seller's U.S. TIN for 1099-S filing purposes:

1. Provide the seller with a W-9 to complete
2. Use the Substitute 1099-S.
3. Provide the seller with IRS Form W-8BEN.

Company Policy is for settlement agents to use our Substitute 1099-S, but it does not work for all sellers.

As required by the IRS the statement above the seller's signature says, in part, "...I certify that I am a U.S. person or U.S. resident alien...." As a result, those persons or entities who are neither a U.S. person nor U.S. resident alien cannot sign the Substitute 1099-S form, whether or not they have a U.S. TIN.

Instead, properly solicit the TIN from a foreign seller using IRS Form W-8BEN for individuals or IRS Form W-8BEN-E for a foreign entity. These forms should be given to the seller completely blank. In many cases, the seller cannot fully complete and should not give the form back because they do not have a U.S. TIN

The settlement agent should explain to the seller the sale will be reported to the IRS regardless of whether they have a U.S. TIN or not. Be sure they understand if they receive a U.S. TIN at a later date, to return the completed W-8BEN and the Company will file a corrected 1099-S.

At closing if the seller does not have a U.S. TIN, send the unsigned solicitation and any signed escrow instructions relating to the 1099-S to the National 1099 Department. Be sure to mark the sale as exempt

in your production system. If the seller does have a U.S. TIN, and completed and returned the W-8BEN, report the sale as usual in your production system.

Lastly, a Certification for No Information Reporting should not be offered to any foreign seller. Settlement agents should always report the sale of a U.S. Real Property interest by a foreign person.

