



**By Lisa A. Tyler**  
*National Escrow Administrator*

Have you recently had all your credit cards replaced with chip enabled cards? Us too. And it left us wondering how the new credit cards are more secure than our old cards. It is that small, metallic square you see on new cards.

The magnetic stripes on traditional credit and debit cards store unchanging data. Whoever accesses that data gains the sensitive card and cardholder information necessary to make purchases. That makes traditional cards prime targets for counterfeiters, who convert stolen card data to cash. If someone copies the data contained on a magnetic stripe, they can easily replicate that data over and over again because it does not change.

Unlike magnetic-stripe cards, every time a chip enabled card is used for payment, the card chip creates a unique nine digit transaction code that cannot be used again. If a hacker stole the chip information from one specific point of sale, card duplication would never work because the

stolen transaction number created in that instance would not be usable again and the card would be denied. Even with these new security features, credit cards are not widely accepted in real estate closings. Discover why in the story entitled "CREDIT cards."

Cyber-criminals are targeting lonely women. Read "DESPERATE women" and find out how these ladies are literally sucked into committing a crime while attempting to meet the love of their life in person, for the first time. It is a sad, but true story that should be shared with women you know who are engaging in online dating to ensure they do not become the next money mule.

Ever close a sale transaction involving a trust with no taxpayer identification number? It happens all the time, right? When the trust has no taxpayer identification number, the sale has to be reported to the IRS using a Form 1099-S. To discover how to report a sale for an entity with no taxpayer identification number read "HOW to properly report a sale by a disregarded entity."

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**Some title companies, such as those specializing in timeshare closings, accept credit card payments. Their closings are performed remotely, meaning the principals do not appear at the title company in person and the amount due at closing does not exceed most credit card limits.**

Then why do title companies not regularly accept credit cards as a form of payment at closing? Credit cards are not accepted in a real estate transaction for many reasons, here are just a few:

**Lenders typically do not allow borrowers to extend their debt ratio during the home loan process, since extending debt lowers the borrower's credit score.** The home loan approval process requires the borrower to have the down payment and closing costs in hand. Lenders do not want the borrower to have to also borrow the funds needed to close. If the borrowers are not using their own out-of-pocket funds as down payment, they are more likely to default on the loan.

**Cardholders retain the right to claw back their payment for 90 days.** Credit card companies are consumer friendly and allow the cardholder to dispute payments for up to 90 days. This presents a problem because title companies would have to open an account with the credit card company — the credit card company can withdraw any payments transmitted to the title company that their cardholder disputes.

That means the title company has to hire and train staff to reconcile the separate account and respond to any disputed payments quickly in order to retain payments.

**Costly secure software is required to process a credit card payment.** In order to process a credit card, the title company would need to subscribe to credit card processing software. The software would have to be maintained on secure workstations and the staff trained to process credit card payments.

**Funds can take up to four days before they are received.** Credit card companies do not remit funds immediately upon charging a cardholder's card. The funds can take up to four business banking days to show on the payee's account. Therefore, disbursements would not be able to be made immediately at or after closing.

**The credit card company deducts their fee from the payment.** When the payment is credited to the designated bank account, it is not for the full amount of the charge. The credit card company retains its percentage fee from each transaction. The title company would have to move money from their operating account to the designated bank account in order to make the deposit whole.

**Down payment and closing costs usually exceed the credit card limit.** The average credit card limit is \$5,000 while the average down payment and closing costs far exceed the limit, making the use of a credit card to remit payment not feasible.

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# **DESPERATE** *women*

**An escrow officer of a title company in Michigan received emailed wire transfer instructions from the listing agent on behalf of the seller. Five days later the escrow officer received another email from the listing agent stating the seller's bank account had been compromised and the wire should be re-directed to a credit union in Boston.**

The email contained new wire transfer instructions. The escrow officer failed to notice the email address was slightly different than the agent's real email address. The escrow officer transmitted \$96,449 to the bank account reflected on the emailed instructions.

The next day the listing agent called the escrow officer to inquire why the seller never received their proceeds. The escrow officer replied the wire was sent to the credit union as she instructed in her email. The listing agent confirmed she never sent wire instructions for a credit union.

The escrow officer panicked! She contacted the accounting center to recall the wire and reported the incident to the national escrow administrator. The national escrow administrator received the wire information from the escrow officer and noticed the account holder name was not the name of the seller. The escrow administrator obtained the credit union's account holder's contact information using an Internet search.

The national escrow administrator called the account holder and demanded the wire transfer in the amount of \$96,449 be returned immediately. The account holder, a 61-year old widow residing in Boston, said the wire was sent legitimately on behalf of her boyfriend. She said her boyfriend sold some real estate in California and had the proceeds directed to her account, because his accounts were frozen.

The national escrow administrator asked the widow if she had ever met the boyfriend face-to-face. Her response was, "No, I met him online. He is out of the country, but we talk every night. He told me to withdraw the money and send it to him immediately through an international money transfer. He said he was going to use the money to come to Boston so we could be married."

After being advised of the transaction details and the diversion of the funds, the widow immediately went to her credit union and instead of sending the money to her boyfriend, she returned the proceeds to the title company that sent the wire.

At the same time, an escrow officer in Houston received an email from one of the sellers in her transaction. Without verifying the legitimacy of the email, the escrow officer sent a wire transfer in the amount of \$80,879.

Later that same day, the seller entered the escrow branch and asked to pick up his check. The escrow officer responded that a wire transfer was sent to his account. The seller asked how she was able to obtain his banking information. She said she sent the wire to the account shown in his email. He said he never sent an email. The seller left the office without his proceeds and was clearly upset.

The escrow officer contacted the accounting center to put an immediate recall on the wire transfer. She then contacted the national escrow administration department with the details. The national escrow administrator reviewed the wire transfer information and confirmed the account holder name matched that of the seller in this transaction. Contacting the real account holder seemed impossible, since due to banking privacy laws the receiving bank would never turn over the account holder name without a court-issued subpoena.



Luckily, the escrow branch manager received a call from a woman claiming the title company had frozen her account and she desperately needed it unfrozen. The branch manager knew the caller was the account holder that had the diverted \$80,879 wire transfer. She took down her name and number and turned it over to the national escrow administrator. The escrow administrator called the account holder who had her adult daughter with her. She put the phone on speaker so they both could inquire why the mom's account had been frozen at the bank.

The escrow administrator listened as the mother explained the funds had been sent to her for a sale conducted by her boyfriend and that she was obligated to withdraw the funds and send them to him overseas. The escrow administrator asked if the mother met her boyfriend online and the mother answered, "Yes." The escrow administrator asked if she had ever met the boyfriend face-to-face and she responded, "No." She was supposed to send the money to him so he could come to the U.S. so they could be married.

The escrow administrator told her and her daughter the \$80,879 was diverted illegally from the sale of someone's property in Houston. They both gasped! The escrow administrator asked that they go directly to the bank and return the funds to the sending bank. They hung up and went to the bank and returned the wire transfer.

## **MORAL OF THE STORY**

**Settlement agents should never send a wire transfer based on instructions received via email. Email communication is not secure. Sending an email is like sending a postcard. Everyone who touches the postcard can read it, and the postcard you get might not be what was initially mailed. The same goes for email messages, except the number of people who can read the message is multiplied by millions.**

**Settlement agents should never wire transfer proceeds to a party unrelated to the transaction. They should only pay proceeds to the seller/owner of record and no one else. Payments to unrelated parties has long been a tell-tale sign of fraud.**

**In addition, you must ensure any emailed wire instructions are validated verbally through a trusted telephone number directly with the payee.**

## **HOW** to properly report a sale by a disregarded entity

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When an entity such as a trust or LLC sells property, the owner may elect to treat the entity as disregarded for tax purposes. A disregarded entity is an entity not treated separately from an individual for the purposes of tax liability and does not have an Employer Identification Number (EIN). Essentially, a disregarded entity's tax liability is taken on by the individual so any IRS reporting should reflect the individual's name and U.S. Taxpayer Identification Number (TIN).

The most common example of this occurs when property is held in a trust and the seller is the trustee. The trustee completes the Substitute 1099-S with their personal social security number rather than an EIN for the trust. This means the trustee has elected to treat the trust as a disregarded entity for tax purposes. The trustee is personally responsible for the tax liability of the trust.

To report the sale by a disregarded entity, the total consideration is reported under an individual's name and U.S. TIN. Settlement agents will most likely not know the entity is disregarded until the seller completes a Substitute 1099-S and the entity selling does not have an EIN or the seller's personal U.S. TIN is entered on the form.

To avoid errors and penalties, the proceeds must be reported with the correct name and matching U.S. TIN. Keep in mind this is an assignment of tax liability — not an assignment of proceeds; therefore proceeds may only be paid to the seller of record.

For answers to questions on how to properly report the sale in your escrow production system contact [settlement@fnf.com](mailto:settlement@fnf.com) for instructions. Be sure to indicate which production system for a system specific job aid.

