



BIAS for action

By Lisa A. Tyler
National Escrow Administrator

As reported in the April, July and October 2018 issues, the latest twist to diverted wire transfers is fraudsters are now targeting loan payoff proceeds. Fraudsters intercept payoff statements sent via email and e-fax, and then alter them before sending them on to the settlement agent. Read "HOW to avoid becoming a victim" to learn how to protect the Company from this scam.

Does the name Nate Hidalgo ring a bell? It should, he is a heroic employee who, along with Beau Johnson, helped shutdown a timeshare scam being perpetrated on a timeshare owner. Their story was published in the December 2016 issue, and as a result of their actions Nate and Beau split a \$1,500 reward. At that time, Nate was working as a property information specialist for Chicago Title and Fidelity National Title Company's offices in Vancouver, Washington. Well, Nate is at it again. This time his superpowers prevented a diverted wire transfer in the amount of \$150,522.58. Read "MOVIN' on up" for the details of his latest fraud prevention efforts.

Recently, ServiceLink in Texas received an order for a loan only, cash out transaction. The property, which was the subject of the transaction, was free and clear. The transaction had several red flags the title officer recognized based on previous communications from the Southwest Underwriting Team. Kim Pora followed the steps provided by the Underwriting Department and was successful in identifying the transaction as a risky one, so the Company was unwilling to close and insure. Read "MULTIPLICITY" for all of the details.

Throughout the year, we are publishing articles on the value of title insurance for our readers. The purpose is to provide history to our readers who are new to the industry. We are also publishing the articles for well-seasoned readers to provide simple talking points for our customers and the public we serve, and review the true value of the products and services we offer. This month's issue contains the details of the case that gave rise to the need for title insurance. Read "WATSON v. muirhead" to discover how our industry came about.

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HOW to avoid becoming a victim

Publisher
Fidelity National Financial

Editor
Lisa A. Tyler
National Escrow Administrator



Stealing loan payoff proceeds is the new trend that may significantly impact the industry and potentially exceed the losses from diversion of seller proceeds and buyer closing funds — by a wide margin.

Title companies across the nation have fallen victim to the crime. In one instance, the altered payoff statement appeared to come from a loan servicer on behalf of a private party loan. However, the payoff really came from a spoofed email account created to impersonate an employee of the loan servicing company.

In another instance, a nationally recognized bank sent a loan payoff statement. Then two days later, an unsolicited, updated statement came from someone whom the settlement agent thought was the lender modifying only the bank wire information. The statement and all other information contained in the email was identical.

In numerous other instances, the payoff statements appear to come from a related third party, when in fact, a fraudster compromised the email account of the third party and sent a modified payoff statement. Third parties have included the seller's attorney, real estate agent and other interested parties.

The fraudsters monitor real estate listings posted on the internet. When the property status is updated to "pending," which indicates that a closing is imminent, the fraudsters start watching the transaction by infiltrating one or more of the email accounts of parties involved in the transaction, which can be obtained from those websites.

Fraudsters watch the email traffic looking for payoff statements generated by a lender to the seller's attorney, seller's real estate agent or to the settlement agent directly. At that point, the fraudster intercepts and alters the statement, and then forwards it on with bank wire information for a "money mule" (someone who transfers money acquired illegally on behalf of others) instead of the actual lender.

How do you avoid falling victim to the crime?

1. Set up a repetitive wire transfer feature in your production system. Include the bank wire transfer information of the entities you repeatedly wire to the most, then lock down the wire information for that entity. If an employee receives a payoff statement containing bank wire information differing from the account information in your system, you will know they may have received fraudulent account information in an attempt to illegally



divert funds. Lenders seldom change bank accounts.

2. Disbursements should always make sense. If a nationally recognized bank supplies a loan payoff, the payoff should not direct the funds to another banking institution.
3. Pay attention to details of each payoff statement. The account name on the wire instructions should be that of the payee or corresponding bank — and no one else.
4. Order the payoff yourself and do not rely on payoff statements submitted by others, such as the borrower themselves, when possible.
5. When you must rely on a payoff statement received from outside third parties, verbally verify all bank wire information. Only use a known, trusted telephone number and not the number reflected on the payoff statement. Statements with differing contact information are a red flag of fraud.
6. Verbally verify every non-institutional payoff EVERY time, since the bank wire information is typically not available from previous successful wires.
7. When verbal verification is not possible, send a check via overnight delivery instead of transmitting a wire.

In addition, you should consider contacting your Information Technology (IT) professional to become educated about and to consider implementing email security measures which could include hard-to-guess passwords, regularly changing passwords and/or use of multi-factor authentication as additional ways to avoid falling victim.

Every wire transfer has become a target within real estate transactions. In order to protect our Companies and the entire industry, we must remain diligent. Verify all payoff statements are authentic before wiring funds.



TELL US HOW YOU STOPPED FRAUD

settlement@fnf.com or
949.622.4425

MOVIN' on up

In August 2017, Nate Hidalgo transferred up to Fidelity National Title's Whitefish, Montana operation working as an extraordinary escrow assistant. On November 13, 2018, he was working on a residential sale transaction where the seller had just emailed her payoff authorization, giving the payoff lender permission to send the payoff statement for her loan directly to Fidelity National Title.

Nate called the payoff lender and ordered the payoff statement using its automated system. The payoff statement arrived via electronic fax shortly thereafter and was placed in the file.

The following day, November 14, 2018, Nate received an email from someone who appeared to be the seller that read:

I made contact with my lender regarding the payoff and they told me the payoff has been fax to your office this morning. Can you please confirm if you received the payoff statement? If you have any questions, please drop me an email.

Nate responded to the seller and let her know the payoff was received. Another email from someone who appeared to be the seller read:

Okay good. If you have any question, please drop me an email.

Nate responded that he needed to clarify where to send the funds for the payoff and that he was on hold with the payoff lender. The supposed seller responded:

I am sure the details will be in the payoff letter, but I will also try to get a hold on them to clarify as well and see if I can have a copy of the payoff letter.

As you read this exchange, it might make you wish all sellers were as helpful in obtaining payoff statements from their lenders — right? The next message from the person purporting to be the seller read:

Here is the payoff statement I received from them and they

said the funds for payoff should be send to the law firm debt collector of Kappa. The information's are in the payoff letter, let me know if you need anything else.

A payoff statement was attached, just like the one Nate had received previously. He compared the two. The payoff statement the seller supposedly emailed was dated November 14, 2018, but:

1. The per diem was removed
2. The mailing address for the payoff lender was removed
3. The contact email and telephone number for the payoff lender was removed
4. A new contact number for "Kappa" was inserted
5. The bank wire information had been changed directing the payoff proceeds to another bank in an account under the name of "Kappa"

Nate picked up the phone and called the payoff lender. They confirmed the payoff figures and the bank wire information was correct on the first payoff statement, not the second. For Nate's efforts to verify the bank wire, he has received a \$1,500 reward and a letter of recognition from the Company.



MULTIPLICITY

In October 2018, a deed of trust which secured the construction loan for a home located in a luxury golf course neighborhood was released by a reconveyance recorded of public record. The release was not recorded as the result of an insured transaction, which caused Kim Pora, Escrow Associate with ServiceLink, to look closer at the details.

Kim reviewed the file carefully keeping in mind the following tips provided by her Underwriting Department:

- ✓ If a property is free and clear of any loan and the owner has owned it for less than 10 years, conduct appropriate due diligence to confirm the property is unencumbered. Some factors to consider: Was the prior transaction a cash purchase with no vendor's lien or deed of trust? Was the property recently foreclosed?
- ✓ If a deed of trust has been released of record without a corresponding sale or refinanced within the prior 12 months, contact the lender for confirmation that the deed of trust

has been released. A "corresponding sale or refinance" would involve a conveyance of the land for value with an accompanying deed of trust or a refinance deed of trust. In either event, the new deed of trust should be in an amount sufficient to satisfy the released deed of trust.

- ✓ If the seller, buyer or third party presents a release for an outstanding deed of trust either at or prior to closing, contact the lender for confirmation that the loan has been released. Use independent means to obtain the lender's telephone number. Do not rely upon a number supplied by the parties to the transaction.
- ✓ Any time a recent quit claim deed is found in the chain of title, conduct appropriate due diligence to determine its validity (call the grantor, check with the notary, etc.).

Kim started her due diligence by looking over the signatures found on the deed of trust, grant deed and reconveyance. She noticed the same person signed a lot of the documents in the chain of title.

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She began to note the different entities involved in the purchase of the lot as the borrower and the lender, so she accessed the Texas Secretary of State website.

She discovered that one person, Homan Provement, was named as either the President, Trustee or Managing Member of at least nineteen entities. She did more research and discovered the same

Homan was recently indicted for allegedly defrauding investors out of millions of dollars.

Kim also discovered there were four other orders opened on the same day with very similar parties and circumstances. The combined liability of these orders was \$9,000,000.

Kim shared her findings with her management team and the orders were immediately cancelled. Management shared her story with us stating, "She exhibited a Bias for Action in looking at the data and taking the proper measures to ensure the Company's risk was minimized."

Way to go Kim! It is examples such as these which prove how prudent the underwriting requirements and thorough title examination are to protect the property rights of our customers. We thank you by presenting you with a \$1,500 reward and a letter of recognition from the Company.

This article was provided by contributing author:

Diana Hoffman, Corporate Escrow Administrator
Fidelity National Title Group
National Escrow Administration

WATSON *v. muirhead*

The issuance of title insurance began after the 1868 case of Watson v. Muirhead was filed in Pennsylvania. Muirhead was a conveyancer who had searched and abstracted a title for Watson, who was purchasing a parcel of real property.

Muirhead found a lien on the title during his search. He supplied a copy of the lien to an attorney for a legal opinion. The attorney advised the judgment was not a valid lien. With this assurance, the purchaser completed the transaction.

Shortly thereafter, the property was sold at a Sherriff's sale in order to pay off the lien. Watson sued Muirhead to recover his losses. The Pennsylvania Supreme Court did acknowledge the lien and subsequent Sherriff's sale was indeed lawful, but dismissed the case.

The court determined the conveyancer was not liable for misinformation since the legal standard in those days for a conveyancer to be held liable, required the buyer to prove the conveyancer was negligent or failed to act with due care. Since the conveyancer had relied upon an attorney's opinion it was determined the conveyancer had used due care, even though the opinion was incorrect.

Watson, an innocent purchaser who had suffered financial damages because of the encumbrances on his title, had no recourse. The decision demonstrated the existing conveyancing system could not provide total assurance to purchasers of real property.

As a result, the Pennsylvania legislature passed an act, "...to provide for the incorporation and regulation of title insurance companies." The first title company was founded in Philadelphia in 1876. This new type of insurance provided:

1. Responsibility without proof of negligence;
2. Financial protection through a reduction of the risk of insolvency; and
3. The assumption of risks beyond those disclosed in the public records (for which the conveyancer was not liable).

Since then, the title insurance industry has become an essential component in real estate transactions in this country.

