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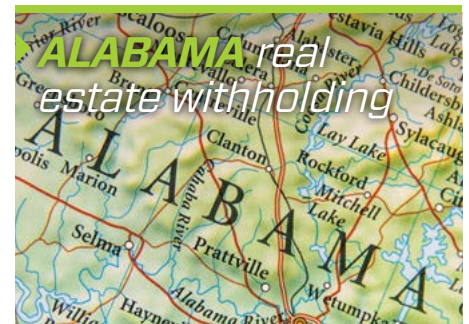
Fraudsters continue to target us from all angles. This story, titled “HOW a buyer stole \$10,000,” is unique and revealed how savvy these crooks are. The transaction contained all the characteristics of a scheme we continue to see. The buyer, located in a foreign country, contacts the seller’s real estate agent to make a cash offer to purchase property sight unseen. The seller accepts the offer and opens escrow. The dishonest buyer was in the process of sending a fraudulent check when this scheme took a whole new direction, enabling her to steal \$10,000. Read on for all the details.

How do you know if you have counterfeit money? A three-dollar bill is easy to spot; however, counterfeit checks are not as easy. The

industry continues to receive fraudulent checks from buyers trying to deceive settlement agents. The fraudsters then push the settlement agents into disbursing against uncollected funds. Most of the time they fail; but sometimes they succeed. This story features a win for the industry. Keep reading “FUNNY money” for all the details.

Our state withholding series features the great state of Alabama. Generally speaking, income from the sale of Alabama real property is required to be reported on an Alabama income tax return. The problem is nonresidents of Alabama do not typically file an Alabama state income tax return. As a result, buyers of Alabama real property are obligated to withhold 3% or 4% of the sales price from the seller, at the time they purchase the property. Read “ALABAMA real estate withholding” for more detailed information.

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HOW a buyer stole \$10,000

Anna Fender's offer to purchase a home for just under \$100,000 was accepted by the seller. The purchase agreement indicated the buyer would deposit \$10,000 into escrow, representing the earnest money.

The only contact information the listing real estate agent had for the buyer was an email address. The escrow officer, Sally, securely emailed wire instructions to the buyer. Soon, a wire for \$10,000 posted to the wire board. When Sally claimed the wire, she noticed the originator was not the buyer, but a third party by the name of Owen Cash.

Sally notified the buyer and listing agent that she received the earnest money. The buyer immediately responded, notifying Sally of her intent to cancel the transaction. Fender claimed she was unable to travel to the U.S. due to COVID-19 and it was not a good time to tie up so much money.

Fender asked Sally if she could simply wire the \$10,000 back to her once she received the fully executed cancellation instructions. Sally explained the funds must go back to the remitter, Owen Cash. Fender asked if the funds could be sent to her instead, since Owen Cash intended for her to use the funds for a different investment.

Sally consulted with management who advised the funds could not go to the buyer directly unless Owen Cash signed third-party deposit instructions. Sally relayed this information to Fender and asked for Owen Cash's contact information.

Fender provided an email address and phone number, and requested the instructions be signed electronically. Sally sent the instructions to Fender and Owen Cash for execution. Both signed electronically. Sally called Owen Cash using the provided contact information and confirmed his intent to send the \$10,000 to Fender.

Next, Fender told Sally she had an upcoming deal in Texas and asked Sally to send the \$10,000 to her attorney's client trust account. Sally stated she needed the attorney to provide wire instructions on their letterhead. Sally called the attorney to verbally verify the wire instructions and then sent the wire for the benefit of Fender.

A week later, Owen Cash contacted June, an escrow officer in the same operation, but at another branch. Owen Cash asked June why she had not confirmed receipt of his \$10,000 wire. She contacted her Operation Accounting Center; the wire from Owen Cash was found but June learned the funds were claimed by Sally.

June asked Owen Cash if he was involved in another real estate transaction at another

branch. He said he knew nothing about another purchase. June told him she found his wire and would send out a receipt.

June contacted Sally and was informed of the situation. They compared the contact information for Owen Cash, but none of it matched.

Fender had successfully defrauded the Company of \$10,000. She rolled with any changes or roadblocks throughout the process. She originally wanted to send a fraudulent cashier's check, but pivoted flawlessly once she was advised of the misidentified wire.

When informed the funds would have to be returned to the remitter, Fender again aptly responded. She asked who the remitter was and then improvised to steal Owen Cash's money.

When asked for Owen Cash's contact information, Fender set up an email account and internet phone number for him. Fender signed the third-party deposit instructions using the email account and enlisted a co-conspirator to answer Sally's call.

As soon as the operation figured out what happened, Sally reached out to Fender's attorney, who received the \$10,000 wire transfer. The attorney replied frankly, "The funds were received. I am not at liberty to discuss disposition without Ms. Fender's consent; however, I can tell you that the funds are no longer in our possession."

The operation filed a loss to cover the account shortage and credited the real Owen Cash under the correct escrow number.

Lessons Learned

Be sure to post anticipated deposits for funds coming into your file from a buyer or seller or other party in the Wires Management Application (WMA). When a wire is received, always review the wire details. Confirm the escrow number matches and if the funds come from a third party, obtain third-party deposit instructions.



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STOPPED
FRAUD**

settlement@fnf.com or
949.622.4425

[HOW a buyer stole \$10,000 — continued]

Proceed with caution when handling third-party deposits. Do not disclose the name of remitter of the funds to the principal. Ask them who remitted funds. Encourage the principal to tell you. Be cautious with parties you do not know or with limited contact information. Do not provide a roadmap for a fraudster.

If you have never dealt with the buyer or their real estate agent before, consider taking extra precautions to ensure the third party is properly identified and is, in fact, signing the instruction. Electronic signature may be acceptable with customers you know and regularly do business with. However, with new customers take precautions until you get to know them.

Use technology available to you. For example, set up a virtual meeting with the third party. Ask to view their identification and have them sign the instruction in front of you virtually.

Most video conferencing platforms can record and download virtual meetings, allowing you to save the video. Please note, however, that consent must be obtained from all participants to record any video call.

While on the video conference, you can have the individual scan and email the form back to you. This can be done with most smart

devices, such as phones or tablets. Step-by-step instructions are available on request for our direct operation employees.

Consider adding a notarial certificate to the instructions as another safeguard. Third-party deposit instructions are not recorded and not relied upon for insuring purposes. Therefore, the notary does not have to meet the Company's underwriting requirements.

Alternatively, the signing can be booked through a Company-approved remote online notarization (RON) provider, even if you are located in a state without an enacted RON law.

Trust your escrow gut. If you are uncomfortable with the circumstances, implement a more stringent procedure. If you need ideas or suggestions, contact settlement@fnf.com. Your National Escrow Administration team is here to help and to support your decision.

Article provided by contributing author:

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

FUNNY money

In March 2021, *Fraud Insights* included the story titled, "CASH purchases," which described a scheme where cash buyers purchased properties by official checks but also received sizeable refunds.

The official checks were drawn off an invalid account, but the Company only found out after the sale closed and all the funds were disbursed. The same buyers are featured in this story and they are not getting up.

Becky Lehmann, with Chicago Title Company in Illinois, was in the process of preparing to close a cash purchase transaction of a vacant lot. The buyer's own representatives were skeptical because the only means of communication with their client had been by email.

Becky prepared a closing statement and emailed it to the buyer. She was familiar with the schemes surrounding cash purchases and provided him with explicit instructions to call her for wire instructions.

The buyer responded, stating he already sent a cashier's check. Lehmann already determined she was not going to accept a cashier's check because this transaction had many red flags. The transaction also seemed similar to scams she read about in *Fraud Insights*.

As soon as the check arrived Becky's suspicions were confirmed — the buyer was an imposter. The check was not a cashier's check; it was a business check.

The company address on the check was from New York City. Becky searched for the company online; the company appeared to be legitimate, but their website reflected an address in Boston.

Becky reached out to the National Escrow Administration team via email at settlement@fnf.com. The team took one look at the memo



line of the check and confirmed the buyer was the same imposter featured in "CASH purchases" (March 2021 issue).

The purchase price was \$139,680 and the check was for \$155,000. The buyer explained via email that the extra funds were to cover costs and asked Becky to simply refund any overage.

Becky resigned as escrow holder; she did a terrific job protecting the Company and seller from this scheme. She knew something was not right and she has earned \$1,500. Congratulations and keep up the good work.

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ALABAMA *real estate withholding*

Sales by nonresidents of Alabama (for \$300,000 and above) are subject to withholding. Under the law, the buyer is liable if the estimated tax is not withheld and timely remitted to the Alabama Department of Revenue (DOR) after the sale of real property.

Typically, closing attorneys, settlement agents and title companies will handle the actual collection and remittance to the DOR, on behalf of the principals pursuant to their written mutual instructions.

This is neither a sales tax nor a real estate transfer tax; it is income tax withholding. The buyer is responsible for providing the seller with the appropriate forms from the DOR as receipt for the payment.

The seller will attach a copy of the form to their Alabama income tax return to claim responsibility for the withholding paid. The amount withheld and remitted by the buyer will be considered an estimated tax payment made on behalf of the seller.

Once the return is completed and filed, the actual tax liability will be determined. The taxpayer/seller either claims a refund for any overpayment or pays the amount of any underpayment. The same process as with any other income tax return.

Buyers are to withhold 3% of the purchase price or consideration paid for the sale or transfer of real estate by nonresident individuals and 4% for sales by nonresident corporations, partnerships, or unincorporated associations.

An alternative for calculating the withholding based on the sales price is to calculate based on the seller's gain. To calculate based on the gain, the seller must complete the appropriate DOR form attesting to the amount of the taxable gain.

If the amount for the withholding is more than the cash received at closing, the buyer must withhold and remit only the net proceeds otherwise payable to the seller. The completed Form is sent to the DOR at closing with the payment.

Sellers may be exempt from withholding if they execute a certificate of exemption, affidavit of seller's residence or affidavit of seller's gain on the appropriate form mandated by the DOR. These are available on their website at www.revenue.alabama.gov. Exemptions include:

- » **Principal Residence:** The sale of a principal residence (pursuant to Internal Revenue Code Section 121) is exempt from the withholding requirement.
- » **Residents of Alabama:** Individuals and business entities domiciled in Alabama are exempt from withholding. Business entities organized under Alabama law or who have their principal place of business in Alabama are considered domiciled. This also applies to tax exempt organizations where the income from the sale is not subject to Alabama income tax.
- » **Foreclosures:** If the property is being foreclosed upon or transferred via deed in lieu of foreclosure with no additional consideration, the buyer is not required to withhold.
- » **Federal and State Agencies, FNMA, GNMA, or FHLMC or Insurance Companies:** Sellers who are an agency or

authority of the United States or the state of Alabama, Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (FHLMC), a private mortgage insurance company or any insurance company which pays tax on its premium income to the state, are exempt from withholding.

- » **Non-Recognition Transactions:** Sales where the gain is not recognized by the seller for income tax purposes, such as a 1031 like-kind exchange, are not subject to withholding.
- » **Limited Ownership Interests:** Transfers of limited interests in real property, such as easements or rights of way, documents that secure indebtedness such as a mortgage or deed of trust, or certain leases are not subject to withholding.

For questions and additional information, contact the Alabama Department of Revenue at:

334.242.1300

www.revenue.alabama.gov

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