



## **PAY** close attention

By Lisa A. Tyler  
*National Escrow Administrator*

Romance scams never seem to stop. Scammers often target elderly individuals due to their isolation or loss of a spouse. This can make them eager for companionship and new relationships. They are not even aware the new “love of their life” is nothing more than a scammer or a group of scammers looking for money and not love. Read “ROMANCE scams” to find out about one escrow officer’s closing situation.

Handling the payoff of a lien secured by real property is one of the primary responsibilities of a settlement agent. The payoff also causes the most losses because there are so many things that can go wrong. If the payoff check is lost in transit, then the lender

pays the property taxes from the impound account — resulting in a shortage. Or perhaps the borrower places a stop payment on the most recent payment not accounted for in the payoff statement. These are only two examples. To complicate these risks even more, fraudsters often try to intercept payoffs. The story titled “PRESTO change” demonstrates just how they attack.

In 2002, real estate capital gains withholding in California was added to legislation on the last day of the legislative session in an attempt to balance the state budget. At that time, it was estimated to accelerate collection of \$285 million in additional state revenue, since withholding is paid at closing to the California Franchise Tax Board (FTB). Find out more about withholding by reading “CALIFORNIA real estate withholding.”

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## **ROMANCE** *scams*

**Finding true love can be a tricky task in today's digital age. Technology has made the ability to connect with people across the world amazingly easy. From a simple swipe on a phone or a few clicks on the computer, you can talk to anyone who shares a similar interest or simply has the desire to talk.**

The connections can sustain long distances because of the numerous means of communication. While this may be a boon for singles, it makes it easy for scammers to identify potential targets.

The Consumer Financial Protection Bureau (CFPB) states romance scammers target older adults, often widows or widowers, looking for a relationship or, in some cases, who are feeling isolated and longing for a new connection.

Our story involves an 80-year-old single woman we shall call "Susie." She had recently become acquainted via the internet with a gentleman who supposedly lived in Dubai. Over time, their long-distance relationship grew and Susie fell in love. The gentleman, now Susie's "boyfriend," said he would be retiring. They planned to move together to New Mexico and get married.

Susie enlisted the help of a real estate agent to sell her Las Vegas home. She planned to use the proceeds to start a new life. An offer was accepted on her home and escrow was opened at Fidelity National Title with Senior Escrow Officer Jennifer Hubbard.

At closing, Susie adamantly instructed Jennifer to cut a check and not wire the proceeds from the sale, as her bank account had been frozen.

Susie explained she had been sending money to her "boyfriend" in Dubai and this had triggered the bank's unusual activity alert. She did not have any immediate family and was rather alone, apart from this new beau.

Susie praised her new boyfriend, as well as their plans. Once Susie cashed out her equity, she would be off to an extended stay hotel in Las Vegas to wait for her future husband to arrive in the states.

To Jennifer, Susie seemed completely aware of the situation despite the red flags of a romance scam. Jennifer was concerned about this situation and discussed it with management and the National Escrow Administration (NEA). The Company decided to withdraw from the transaction. NEA also reached out to the Nevada Aging and Disability Services Division (ADSD), a state agency that investigates reports of potential exploitation of persons 60 years and older.

Jennifer and her management resigned from the transaction. The red flag warnings were present of a romance scam being perpetrated on an isolated, elderly individual. For Jennifer's efforts, she will be awarded \$1,500 for upholding the Company's values in protecting a potential victim.

For more information on romance scams and the warning signs, see the CFPB's article: [www.consumerfinance.gov/about-us/blog/guard-your-wallet-well-your-heart-romance-scams/](http://www.consumerfinance.gov/about-us/blog/guard-your-wallet-well-your-heart-romance-scams/)

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TELL US HOW YOU  
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# PRESTO *chango*

The transaction was a refinance. The lender for the existing loan being paid off as a result of the refinance was a private lender. The new loan was scheduled to close in just one week. The escrow officer made a payoff demand to the private lender which was received that same day.

The next day, however, the escrow officer received a new payoff demand. Shannon Snead Cabe, Escrow Officer for Chicago Title in Charlotte, North Carolina, compared the two side-by-side. She noticed the payoff numbers were the same, but the contact information and wire instructions had changed.

It appeared that both payoff letters were provided by the managing member of the private lender. However, the phone numbers were completely different. Not even the area code was the same. In addition, the email addresses on each demand did not match. They were not even similar. Shannon also thought the message from the managing member was odd:

John,

Ensure that you added it to the file, and put a note on the file for your funding/post-closing department for proper funding to Chase account ending in 7519.

I'd appreciate you adding the title to this conversation for them to be aware of the recent changes on the payoff statement. I have also attached the updated payoff statement and wire instructions.

Fax was sent. Feel free to email me anytime if you have questions. I'm always happy to help.

Please confirm receipt of this email.

Thank you in advance!

Here is a side-by-side comparison of the wire instructions:

Correct	Fraudulent
WIRE ROUTING TRANSIT NUMBER (RTN/ABA): XXXXXX248	WIRE ROUTING/TRANSIT NUMBER (RTN/ABA): XXXXXX021
SWIFT/BIC code WFBIUS6S	SWIFT CODE/BIC CODE CHASEUS33
WELLS FARGO BANK, N.A. 420 MONTGOMERY ST. SAN FRANCISCO, CA 94104	CHASE BANK, N.A. 401 CALIFORNIA ST. SAN FRANCISCO, CA 94104
WELLS FARGO ACCOUNT # XXXXXXXX3298	CHASE BANK ACCOUNT # XXXXXXXX6738
ABC PROPERTIES, LLC 9090 Funding Lane Anywhere, USA 10101	ABC PROPERTIES, LLC 9090 Funding Lane Anywhere, USA 10101
CHIPS Participant 0407	CHIPS PARTICIPANT 0407

Shannon tried to verify the managing member's contact information through a trusted known source but was unable to find any information using the secretary of state's website. She reached out to the loan officer for help. Shannon explained what occurred and why she needed to confirm the contact information and wire instructions with the private lender.

Shannon also discussed the possibility that someone's email account may have been compromised in some way. She asked the loan officer to communicate with her going forward only by phone at her known office number.

The loan officer then reached out to the borrower at a known trusted phone number. The borrower described a phone call he recently had with someone claiming to be the managing member of the private lender.

The borrower said he became suspicious and started asking the gentleman who called him specific questions about the loan. The person on the phone was unable to answer simple questions — revealing he was an imposter. This information seemed to indicate that the second payoff demand the loan officer received was fraudulent.

Since then, the borrower, loan officer and escrow officer were able to talk to the real managing member and the file has been rescheduled for closing. Shannon took the time to stop, concentrate and observe the discrepancies. Her thorough review saved the Company from a potential loss. She is being rewarded \$1,500 for her efforts.

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## CALIFORNIA *real estate withholding*

California law requires real estate withholding whenever a transfer of title on California real property occurs. Transfers include, but are not limited to:

- » Sales or transfers of real property (including gifts and exchanges)
- » Leaseholds/options
- » Short sales

- » Easements
- » Personal property sold with real property (if not stated separately)
- » Vacant land

[Continued on pg 4]



[CALIFORNIA real estate withholding — continued]

These are key definitions of terms used relating to real estate withholding:

- » Buyer refers to the buyer or any other transferee of real property.
- » Seller refers to the seller or any other transferor of real property.
- » Real estate escrow person (REEP) refers to any attorney, escrow company, or title company responsible for closing the transaction, or any other person who receives and disburses payment for the sale of real property.
- » Qualified Intermediary (QI) refers to the entity that facilitates a deferred like-kind exchange. A QI is also known as an accommodator or buyer.

California Code makes the buyer responsible for ensuring withholding is collected and remitted at the time of the sale. Settlement agents are always responsible for providing a notice to the buyer and seller. The notice states:

“In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to 3 1/3% (.0333) of the sale price, or an alternative withholding calculation amount certified by the seller in the case of a disposition of California real property interest by either:

- » A seller who is an individual, trust, or estate, or when the disbursement instructions authorize the proceeds to be sent to a seller’s financial intermediary.
- » A corporate or partnership seller with no permanent place of business in California immediately after the transfer of title to the California property.

The buyer may become subject to penalty for failure to withhold. The penalty is an amount equal to the greater of 10% of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

- » The sale price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000).
- » The seller executes a written certificate under the penalty of perjury certifying that the seller is a corporation or a partnership with a permanent place of business in California.
- » The seller, who is an individual, trust, estate, partnership, or a corporation without a permanent place of business in California, executes a written certificate under the penalty of perjury of any of the following:

- The California real property being sold is the seller’s or decedent’s principal residence (within the meaning of Section 121 of the Internal Revenue Code [IRC]).
- The last use of the property being sold was by the transferor as the transferor’s principal residence (within the meaning of IRC Section 121).
- The California real property being sold is, or will be, exchanged for property of like-kind (within the meaning of IRC Section 1031), but only to the extent of the amount of gain not required to be recognized for California income tax purposes under IRC Section 1031.
- The California real property has been compulsorily or involuntarily converted (within the meaning of IRC Section 1033) and the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under IRC Section 1033.
- The California real property transaction will result in a loss or net gain not required to be recognized for California income tax purposes.”

REEPs often accept written instructions from the transferor and transferee to remit the withholding and forms to the California FTB on their behalf but doing so does increase their liability. The FTB assesses a penalty for failure to file complete, correct and timely information returns. Late filings are subject to the following amounts:

- » \$30 if filed 1 to 30 days after the due date.
- » \$60 if filed 31 days to 6 months after the due date.
- » \$100 if filed more than 6 months after the due date.

The FTB assesses a penalty for failure to furnish complete, correct and timely copies of the filed forms to the seller or transferor by the due date. The penalty is \$100. Any person, including the buyer and REEP, who intentionally disregards the filing or correct information reporting requirements may be assessed a fine of the greater of \$250 or 10%. When the REEP fails to withhold they are liable for the greater of \$500 or 10% of the amount required to be withheld.

The Withholding Services and Compliance Section of the FTB handles withholding. The phone number is 888.792.4900. Always refer to the FTB website for specific instructions and forms and for any updates:

<https://www.ftb.ca.gov>

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