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The Company has identified a specific type of high risk transaction which exposes the title industry to significant financial loss. The transactions recently surfaced as fraudulent sale transactions involving vacant lots that are zoned residential.

Read "CASH purchases" for detailed information about the types of fraudulent transactions causing the title industry claims and losses.

As discussed last month, diverted wire transfers have declined, but our settlement agents should not let their guard down or start disregarding standard operating procedures when it comes to verbally verifying bank wire information.

Chicago Title Company recently received an altered payoff statement via e-fax and an assistant escrow officer shared the

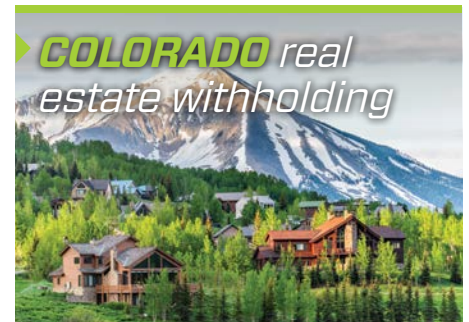
tell-tale signs of how he discovered the change in bank wire information in the story titled "FAX center."

In this issue, our state withholding series features the great state of Colorado. In the state of Colorado, sales of real property for \$100,000 or more are subject to withholding. The withholding is deducted from the seller at closing by the title insurance company providing closing and settlement services. The amount to be withheld shall be the lesser of:

- (a) Two percent of the selling price of the property interest or,
- (b) The net proceeds that would otherwise be due to the transferor as shown on the settlement statement.

Read "COLORADO real estate withholding" for detailed information.

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CASH purchases

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On December 4, 2020, an escrow was opened with a title company in Arizona for Mr. and Mrs. Smith in the amount of \$112,888 for the sale of a residential vacant lot to Mr. Jones.

On December 14, 2020, Mr. Jones sent via overnight delivery an official check in the amount of \$150,000. The title company deposited the official check in its trust account knowing it would have time for the check to clear the bank prior to closing. The issuing bank honored the official check and transferred the \$150,000 to the title company's trust account.

On December 22, 2020, the transaction closed, the deed recorded and the escrow officer disbursed:

\$102,590.30 to Mr. and Mrs. Smith
 \$9,031.04 in commission to the listing broker
 \$36,794.48 to an unrelated limited liability company (LLC) — supposedly owned by Mr. Jones — representing a refund of the overpayment

Then, on January 7, 2021, the bank that issued the official check informed the title company's bank the official check was counterfeit and demanded a return of the \$150,000. Ultimately, the bank had to return the \$150,000 leaving the trust account short. The title company had to immediately replace the funds using money from their operating account.

After an investigation, it was discovered Mr. Jones was using an alias. He bought the property sight unseen and was not represented by a real estate agent.

The title company found out there was truly no way to formally unwind the transaction.

The title company has initiated an action against Mr. Jones for the court to determine ownership of the subject property in the name of the title company (since it ultimately paid the purchase price) in order to resell it in an attempt to recover a portion of its \$150,000 loss.

Believe it or not, around the exact time of this crime, it was also being perpetrated in other states:

- » In California, on a residential vacant lot sale with an \$80,000 sale price and an \$110,000 deposit.
- » In Texas, with a \$41,995 sale price and a \$68,000 deposit.

The deposits were both official checks that were later recalled by the issuing bank as counterfeit.

Look for Red Flags

Generally, the high risk transactions comprise some or all of the following circumstances:

- » Cash purchase
- » Payment is made by official or cashier's check
- » Payment is for much more than the amount required to close
- » Low sale price
- » No earnest money deposited
- » Quick close
- » Buyer is from out of state and purchasing the property sight unseen

After the file has closed, the title company is notified the official or cashier's check is invalid. The payment is reversed and deducted from the trust account leaving a shortage.

Based on the language in their banking agreements, banks have the ability to reverse any deposit credited to the trust account found to be fraudulent. This even applies to official and



[Continued on pg 3]



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[CASH purchases — continued]

cashier's checks disbursed against after waiting the recommended time. Here is a sample of the language in one banking agreement:

h) "Cleared" Checks and Cashier's Check Fraud Warning —...Please be aware that fraud often occurs in relation to counterfeit cashier's checks that are presented to you as legitimate, and the fraudulent party seeks to acquire the funds from you at the time the bank makes the funds available but before the fraudulent check is returned unpaid.

The title company generally discovers the buyer is an imposter making it impossible to simply unwind the deal to recoup any losses.

MORAL OF THE STORY

As a result of continued fraud attempts in multiple states and effective immediately, only wire transfers can be accepted for cash purchases of a vacant lot intended for a residence. This does not apply to large vacant land intended for commercial use or vacant lot take downs by a builder from a developer.

Settlement agents cannot accept personal checks, Official Checks, Cashier's Checks or any other instrument other than a wire transfer. If earnest money is due it must be sent by wire transfer.

In addition, do not accept any overpayment creating a situation where the buyer is entitled to a refund of more than \$1,000 after

closing. If an overage is sent, reject the wire.

Any refund due to the buyer must go back to the buyer. A refund cannot be assigned to another person or entity. Any request to transfer the refund to a third party should be considered a red flag warning for potentially fraudulent activity.

Regardless of whether a transaction comprises all the red flags listed above or not, settlement agents must accept wire transfers for cash purchase transactions for vacant residential lots. Notify the buyer immediately upon opening the order to allow sufficient time for the buyer to make any arrangements needed to close on time.

FAX center

Brian Peterson, an escrow assistant with Chicago Title Company's Danville, California office, received a payoff statement via e-fax on January 6, 2021, from a prominent loan servicing company.

On January 14, 2021, (completely unsolicited) another payoff statement was received by e-fax. Brian examined the second payoff statement thinking it was odd an updated payoff was received without anyone ordering it from the loan servicing company. Below is what he discovered on the second payment statement he received.

1st Page:

- » Fax cover letter from a number printed as, **"Fax Center 855-573-0894," (this is important to note).**
- » Fax cover mentions the mortgage broker and the Chicago Title Company file number.

2nd Page:

- » Another fax cover sheet with a future date of 01/21/2021 referencing Chicago Title Company's fax number. This page is an exact copy of the first payoff statement cover letter, with the same time stamp, only the date has been changed from 01/06/2021 to 01/21/2021.

3rd Page:

- » Loan servicer's phone number was changed by one digit, the loan servicer's fax number was removed and loan servicer's email address was missing.
- » There were no changes in the payoff figures. These words at the bottom of the page were removed, "Please call the number listed on this form to update figures prior to remitting funds as they are subject to change without notice."

4th Page:

- » Loan servicer's fax number and email address were missing.
- » Bank account number on the bank wire information was completely different.

5th Page:

- » Loan servicer's fax number and email address were removed.

This Chicago Title branch previously received an altered payoff statement on a different transaction. Brian looked at the altered payoff from the other file and discovered the, **"Fax Center 855-573-0894,"** was the same number as shown on the payoff statement he was working on.

After comparing the two e-faxes, Brian notified his escrow officer, and the transaction was halted until the bank wire information could be validated on the first payoff and confirmed as fraudulent on the second payoff statement.

Brian's actions saved the Company from a potential significant claim. For his brilliant efforts, he has been rewarded \$1,500.

MORAL OF THE STORY

If your office receives a payoff statement from, **"Fax Center 855-573-0894,"** it is an indication the original payoff has been intercepted and altered, in an attempt to illegally divert the payoff funds to a fraudster's account. The scary thing is, if the funds were sent to the fraudster's account, the settlement agent would not know until the borrower's next monthly payment became delinquent — giving the fraudster more time to syphon off the loan payoff funds.

Just a reminder that verbal verification via a known, trusted number is required for all outgoing wires, except payoffs to institutional lenders (e.g., Wells Fargo, Bank of America, etc.) and repetitive wires made to previously verified accounts.

Verbal verification is always required when there has been a change in disbursement instructions, including the changing of bank information within a payoff demand.

COLORADO *real estate withholding*

Just like other states, Colorado withholding is simply an estimate of the tax due on the gain from the sale. Generally speaking, gain occurs when the selling price of the property exceeds the total of the taxpayer's adjusted basis in the property, plus expenses incurred at the time the property is sold.

The adjusted basis will normally be the taxpayer's total investment in the property, minus any depreciation previously claimed for tax purposes. The transferor claims credit for the withholding payment on their Colorado income tax return.

Withholding is not required when:

- » The seller is an individual, estate, or trust and will remain in Colorado after the sale; or
- » A bank or corporate beneficiary acquired the property in judicial or non-judicial foreclosure or by deed in lieu of foreclosure; or
- » The seller is a governmental agency; or
- » The seller is a Colorado domestic corporation, if it is qualified by law to transact business in Colorado, or if it maintains and staffs a permanent office in Colorado; or
- » The seller certifies under penalty of perjury by providing a written affirmation to the title insurance company one of the following:
 - The 1099-S shows a non-Colorado address but the individual, estate or trust affirms Colorado residency at the time of sale, or
 - A corporation or partnership selling signs the affirmation of permanent place of business within Colorado, or
 - Individual sellers sign the affirmation stating the property was his/her principal residence immediately prior to the transfer, or
 - The seller affirms no Colorado income tax will be due on the sale, or

- There will be no net proceeds due to the seller at closing, or
- The seller is a partnership, required to file an annual return of income for federal income tax purposes.

If withholding is due at closing, the title insurance company is required to remit the withholding and applicable forms to the Colorado Department of Revenue within 30 days of the closing date of the transaction. The amount withheld should be rounded to the nearest dollar or the net proceeds from the sale if the proceeds are less than two percent of the sales price.

Failure to withhold and remit timely comes with a penalty of the greater of five hundred dollars or ten percent of the amount required to be withheld, not to exceed twenty-five hundred dollars.

Detailed instructions and the appropriate forms are all available on the Department's website: <https://www.colorado.gov/REVENUE>.

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