



By Lisa A. Tyler
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Cash buyer scams are very common. So common, that a simple internet search results in an excess of matches and tips describing what to look for. The results all describe the scam similarly. Typically, the buyer claims to be foreign, and tends to only communicate by email in the middle of the night. The buyer also tends to provide too much information about themselves, especially about their finances. They describe their families, the source of their funds and other investment opportunities available to them. These buyers are very eager and send in all the money due at closing, before it is necessary. In many cases, they also send more than is required. Next thing you know, the buyer claims they made a mistake by sending too much money. They claim they need a portion of it refunded, or they will cancel the sale and request a refund by wire transfer. They are hoping the settlement agent has not yet been notified that the check they received was counterfeit. National Escrow Administration is notified about these scams every week by settlement agents everywhere. "CASH purchases – part ii" represents one of these stories reported by a title agency in Florida. Read the article for more details.

Fraudsters rely on more than email to try and gain access to sensitive information. Text messages are becoming another method for fraudsters to contact parties involved in escrow

transactions. The lack of security and context within text messages makes it an ideal avenue to conceal who the message is coming from. Raechelle Koetje found this out after her buyer received multiple texts requesting personal information, before being asked about a wire transfer. Luckily, Raechelle discussed this with her principal, thereby preventing a disaster. Read more in the article titled "ALTERNATIVE means of communication."

A title agency in Louisiana received a copy of a Birth Certificate Bond from a prospective buyer who was working with a local real estate agent to purchase a home. The buyer's price range was approximately \$375,000-\$400,000. He claimed to be a cash buyer, explaining he was awarded a trust in the amount of \$10,000,000 due to the fact he was a Native American. The real estate agent was unfamiliar with this type of trust and asked her contact at a local title company to explain how payment using a Birth Certificate Bond worked. Read "BIRTH certificate bond = \$10,000,000" to learn how it works.

South Carolina law requires the buyer to withhold a percentage of the gain on the sale of real property from nonresident sellers. A sale takes place when the benefits and burdens of ownership are transferred. The amount — either 7% for individuals or 5% for corporations — is forwarded to the South Carolina Department of Revenue at closing. Find out more in this month's article regarding state withholding, titled "SOUTH carolina real estate withholding."

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CASH purchases – part ii

Gina Grable, closer with Title Professionals of Florida, received a purchase agreement on March 8, 2021, for the purchase of a vacant lot scheduled to close on March 15, 2021. On March 9, 2021, her office received a cashier's check from the buyer for the full purchase price — \$190,000.

Gina asked the owner of Title Professionals, David Lanau, to review the check. He notified all parties his company would not disburse against the check until it was unconditionally collected. Because they were up against a short timeline, he said they would try to get it closed on time but made no promises.

Gina found it very suspicious that the cashier's check came in the mail. She wondered who would send a \$190,000 cashier's check, regular mail with no return address? Gina deposited the



cashier's check immediately, rather than waiting until the next business day.

David required Gina to contact a supervisor at the bank where the buyer purchased the cashier's check to confirm it was valid. Not even two days later, her bank returned the cashier's check because of a retired/ineligible routing number.

The sellers came in to sign their closing documents. David informed them that the buyer's check had been returned by the Company's bank. The listing real estate agent and Gina emailed the buyer several times but received no response. Once the buyer was notified the check did not clear, he undoubtedly moved on to his next victim.

Thank goodness Gina was so proactive!

As soon as Title Professionals of Florida knew the check was counterfeit, they knew how to protect their trust accounts from being overdrawn. In addition, Title Professionals has a policy for refunds: Funds will ALWAYS be returned in the same fashion they were received — whether it was received via wire or check — NO exceptions.

Article provided by contributing author:
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ALTERNATIVE means of communication

It is frightening to think of how criminals find out about specific transactions and the parties who are involved, and then capture the contact information for all of the principals. Such was the case in Michigan, where Raechelle Koetje, of Chicago Title Company, discovered fraudsters doing just that.

One day at the gym, one of Raechelle's buyers, Betty Buyer, received a text message — supposedly from Raechelle that stated:

Good Morning Betty Buyer, This is Raechelle Lamse from Chicago Title Co. We notice that the notary forgot to include your ID on your closing package he sent to us. Are there any possibilities you could snap and send me a copy of your Driver's License ID to avoid any closing delays. Please advise!

The customer responded that she could provide a copy later and asked whether "Raechelle" would prefer an emailed copy or a text. The response was, "Text it here pls." Unfortunately, Betty did text a copy of her ID and afterwards, the imposter further asked if she had sent a wire yet.

This triggered alarm bells for Betty, and she examined the text message more closely.

Betty realized the number had a 217 area code associated with Illinois, not the expected 616 area code for Michigan. Betty then picked up the phone and called Raechelle's office directly. Raechelle confirmed that she had not texted Betty and that it must be someone attempting to gain sensitive information, as well as potentially attempt to divert funds.

Raechelle jumped into action, calling all the agents and principals to make them aware there had been a potential breach, or at the least, that someone was able to gather enough public information regarding the transaction to contact the buyer and appear legitimate. Raechelle also notified the Company's security team to conduct a review of her computing system. The review confirmed a lack of intrusion into Chicago Title's system.

Raechelle further let the principals and parties know to only communicate via a known trusted phone number going forward and stated that all requests should be confirmed at the known trusted phone number of the requestor.

Luckily, through multiple warnings and initial disclosures enough red flags were present for the customer to realize a fraudster was attempting

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to intercede in the transaction. For her actions, Raechelle will be awarded \$1,500.

In your transactions, you can help prevent fraud by setting expectations with your customers. Hopefully, the added emphasis

will help raise your customers' awareness just as Raechelle did, since most are unaware of the dangers.

- » Provide your contact information. Let the principals know you will never contact them from any other source.
- » Encourage your customers to check all communications and verify it is the correct source before responding.
- » Alert the principals that any change to wire instructions is an absolute indication of fraud.
- » Inform principals wire fraud is rampant and to be vigilant.
- » Share *Fraud Insights* with your customers and real estate agents. Help prevent fraud by raising the industry's awareness.

Fraudsters tirelessly work to conceal their identity and to assume the role of someone within the transaction. Setting a known and consistent means of communication between you and the principals may help raise awareness when a fraudster tries to intervene.

Article provided by contributing author:

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BIRTH certificate bond = \$10,000,000

Spoiler alert! It did not work. The theory of a Birth Certificate Bond is an old, but untruthful tale. Generally, the tale goes something like this: In 1933, when the United States went off the gold standard, somehow the U.S. also went bankrupt.

In an effort to recover from bankruptcy, the government — along with the assistance of the Federal Reserve Bank — supposedly became a corporation that used citizens as a basis for capital value. This was accomplished by trading their birth certificates on the open market, resulting in Americans becoming corporate assets. None of this is true.

Recently an escrow officer was presented with copies of one of these bonds. The buyer's real estate agent asked her to determine how to negotiate the bond. The escrow officer searched the internet and quickly confirmed what she thought all along: the Birth Certificate Bond was not worth \$10,000,000. It was not even worth the paper it was written on.

The escrow officer notified the real estate agent of her findings and advised that the buyer would have to provide proof of funds from a bank before her office would start a title exam. Hopefully, her research saved the real estate agent from spending more time with a buyer who could not afford to purchase the homes she was researching for him.



This, and similar variations of this scam, have been around for many years. For detailed information about Birth Certificate Bonds go to: <https://www.treasurydirect.gov/instit/statreg/fraud/birth-certificate-bonds.htm>.

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SOUTH carolina real estate withholding

Primary residents of South Carolina are exempt from real estate withholding, since they will be filing a South Carolina tax return, which will include the loss or gain from the sale. Generally, a nonresident seller is defined as one of the following:

1. An individual whose permanent home is in another state on the date of closing.

2. A corporation incorporated outside of South Carolina.
3. A partnership whose principal place of business is located outside of the state.
4. A trust administered outside of South Carolina.
5. An estate of a decedent who did not reside in South Carolina at the time of death.

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[SOUTH carolina real estate withholding — continued]

Any interest in real property transferred or sold is subject to withholding. This includes the sale of time shares, leases and minerals. However, there are some types of sales which are considered exempt. Examples include:

1. The real property being sold is the seller's or decedent's principal residence and the entire gain is excluded under Internal Revenue Code §121.
2. Gifts and inheritances considered tax free under Internal Revenue Code §102.
3. Like kind, tax deferred exchanges pursuant to Internal Revenue Code §1031.
4. Tax free exchanges of property for stock in a corporation under Internal Revenue Code §351.
5. Tax free exchanges of property for a partnership interest under Internal Revenue Code §721.
6. Sellers who are an agency or authority of the United States or the state of South Carolina and political subdivisions.
7. Transfers of property from organizations exempt from income taxes under Internal Revenue Code §501(a) or a tax-free corporate reorganization and any insurance company which pays tax on its premium income to the state.
8. Real property compulsorily or involuntarily converted under Internal Revenue Code §1033.

If audited, buyers must have evidence to prove the appropriate amount of money was withheld. An affidavit of fact provided by a nonresident seller, under penalty of perjury, to the buyer may relieve the buyer from withholding.

The affidavit must state the seller is a resident, or the sale is tax exempt, or it may allow the buyer to withhold on the gain stated instead of a higher amount. The affidavit must include the seller's name, address and taxpayer identification number, along with the date of the sale and description of the property.

When the seller does not qualify for an exemption or reduction, the amount of withholding depends on the type of taxpayer and other information provided by the seller. The withholding amount is based on one of the following amounts:

- » 7% of the gain recognized by a nonresident individual, partnership, trust, or estate, or 5% of the gain recognized on the sale by a nonresident entity, if the seller provides the buyer with an affidavit stating the amount of gain.
- » 7% of the amount realized by a nonresident individual, partnership, trust, or estate, or 5% of the amount realized on the sale by a nonresident entity.
- » 100% of the entire net proceeds if the amount due exceeds the net proceeds payable to the seller.

These terms used throughout the withholding requirements have the same meaning as defined in the Internal Revenue Code. The definitions provided are for illustrative purposes and should not be relied upon as a substitute for obtaining professional advice.



Sales price: Sales price is the gross selling price. It does not include the reduction for selling expenses, existing mortgage or other encumbrances on the property.

Selling expenses: Includes real estate commissions, advertising fees, legal fees, recording fees and termite or other inspections.

Amount realized: The selling price less selling expenses.

Gain: The amount required to be included in the seller's South Carolina gross income. If the amount realized is more than the adjusted basis, the difference is a gain. If the amount realized is less than the adjusted basis, the difference is a loss.

Net proceeds. Amount payable to the seller after deducting mortgages or liens paid and selling expenses from the sales price.

Although the buyer is liable for collecting and remitting the withholding, they may authorize the closing attorney to timely remit the withholding to the South Carolina Department of Revenue on their behalf. Withholding is due on or before the 15th day of the month, following the month in which the sale takes place. More information can be found at <https://dor.sc.gov/>.

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