



## HAPPY holidayze

By Lisa A. Tyler  
*National Escrow Administrator*

Wishing all our readers a healthy holiday and a prosperous New Year! As reported in previous editions, payoff statements containing fraudulent bank wire information continue to plague the real estate settlement industry. Receiving unsolicited payoff statements via e-fax or from third-party sources, such as attorneys representing the borrower, continue to be a common factor in intercepted and altered payoff statements. Read “\$56 million reasons” to discover how our legal counsel on a commercial loan transaction was able to thwart the attempt to illegally divert a wire transfer of loan payoff proceeds.

Title officers in Southern California must rely on payoff statements obtained from independent escrow agents on their title only orders. The title officers do not have borrower authorization to verify the payoff statements, or the bank wire information

contained therein. Read “GREAT catch x 2” to discover how one title office was able to detect two altered payoff statements in two separate transactions where the bank wire information had been changed in an attempt to divert payoff funds.

This issue concludes the series on state withholding. If you have been following along all year, you can see the withholding rates and procedures vary quite a bit from one state to another. The article entitled “WRAPPING up real estate withholding — state by state” provides a sample of some states’ withholding requirements for non-residents — but it does not describe all the requirements for each state. The article provides only an overview of some exemptions or options for buyers and sellers. Every taxpayer should work with their own tax/legal advisor and review all the details of the state withholding rules and possible exemptions, before closing.

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## **\$56 million reasons**

**On July 14, 2021, the investment operations contact from a large commercial lending group emailed their borrower a payoff statement in the amount of \$56,941,212.03. The statement contained the payoff lender's bank wire information.**

The payoff statement was provided to Erik Davis, counsel for Chicago Title Insurance Company in Washington, DC, who was conducting the loan closing. The payoff statement was sent to Erik via email by the law firm representing the borrower in the commercial real estate refinance.

The commercial loan being paid at closing had a replacement reserve balance of \$5.2 million which was supposed to be refunded back to the borrower via wire transfer after the loan was fully paid.

The investment operations contact at the payoff lender emailed the borrower on July 14, 2021, July 19, 2021, July 29, 2021, and again on August 2, 2021, looking for the borrower's bank wire information to return the reserve balance post-closing. All this communication provided many opportunities for a message to be intercepted.

When the transaction was ready to close, Erik received an email from the law firm representing the borrower with an updated payoff dated August 3, 2021. Erik noted the bank wire information was different from the bank wire information reflected on the July 14, 2021, payoff statement.

Erik questioned the law firm about the difference in the payoff statements. The law firm then questioned the payoff lender. The representative of the payoff lender emailed the following

response, "The software that generates the payoff quotes has our two wire instructions; it adds them randomly."

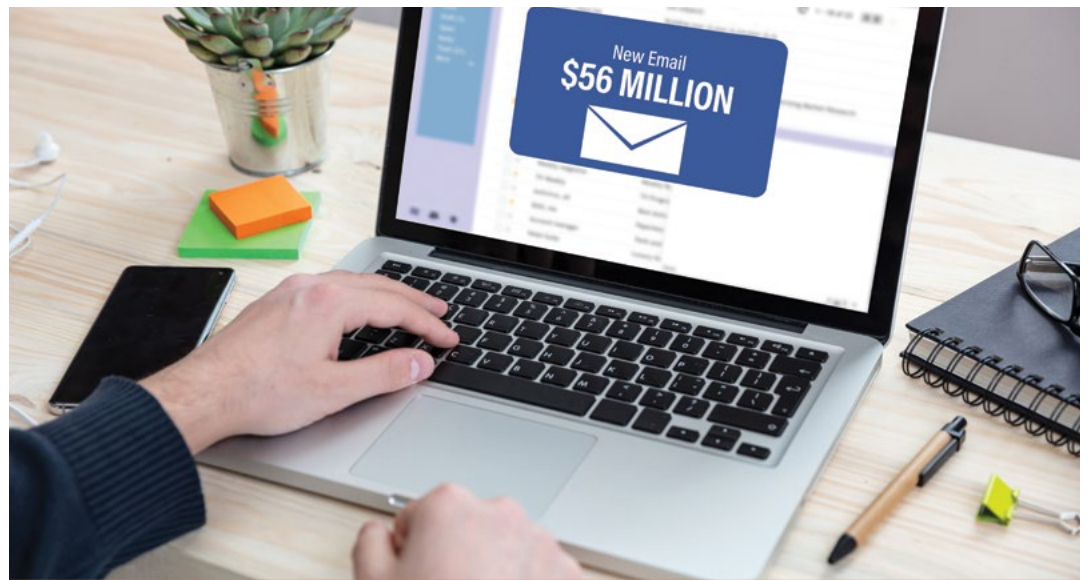
Huh? Erik took a harder look at both statements and planned to call the payoff lender to verify the bank wire information. Comparing both statements Erik noticed a person named Tim issued both payoff statements on behalf of the payoff lender, but the contact phone number was different on each statement. The email chains containing both payoff statements listed two slightly different email addresses for Tim as well.

Erik reached out to his associates in the National Commercial Services (NCS) division in Houston. The department regularly conducted business with the payoff lender and would have a reliable contact number to verify the bank wire information before transmitting more than \$56 million.

The Houston office provided the contact information for the real Tim, who confirmed the second payoff letter contained fraudulent bank wire information. The incident was reported to the payoff lender and the bank named on the payoff statement.

Due to Erik's efforts the transaction successfully closed, and the loan was fully paid. Erik's efforts saved the Company from a potential loss of more than \$56 million. As a result, he will receive a reward of \$1,500 and a letter of recognition.

The fraudsters are not letting up, they are finishing out 2021 with more attempts to illegally divert wire transfers. Settlement agents need to continue their diligent efforts to protect the Company from losses due to diverted wire transfers.



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## **GREAT** catch x 2

**Lori Prescott, a subescrow officer working for Fidelity's Centralized Subescrow Division in Riverside, California, was getting ready to record documents on two separate residential transactions. Both transactions were closing with the same independent escrow company. The independent escrow company provided the payoff statements required to clear title in each transaction.**

On November 2, 2021, Lori received two payoff statements, one dated October 4, 2021, and another dated November 2, 2021. Each contained different bank wire information for the same loan payoff.

Lori halted the recording and picked up the phone to call the payoff lender. The payoff lender was able to verify the bank wire information on the first payoff statement issued had been altered on October 4, 2021, in an attempt to illegally divert \$241,972.42 in loan payoff proceeds.

The payoff lender confirmed the bank wire information contained in the second payoff statement was accurate and Lori was able to proceed to record and disburse funds. The loan was successfully paid in full due to her efforts.

Then on November 4, 2021, Lori was recording a second transaction closed by the same independent escrow company. Lori reviewed the payoff statement forwarded by the escrow officer and

noticed the bank wire information was not consistent with the bank wire information she normally used to wire funds to the payoff lender.

Lori picked up the phone and was able to verify the bank wire information had been altered in an attempt to illegally divert loan payoff funds in the amount of \$377,634.30. She obtained corrected bank wire information and was able to record and disburse the payoff funds to pay the loan in full.

Lori and her colleagues have done an incredible job of protecting the Company from wire fraud. Members of the Centralized Subescrow Division have received numerous rewards for their heroic efforts, including Karen Arredondo in December 2018, Wendy Troxel in August 2019 and Anna Ortiz in November 2019. Keep up the good work team!

For her efforts, Lori will receive a \$1,500 reward along with a letter of recognition from the Company. If you or one of your colleagues detects and prevents a crime from occurring in a transaction closed and insured by your office, be sure to share the details with the National Escrow Administration team by emailing [settlement@fnf.com](mailto:settlement@fnf.com). If the story is published in a future edition of *Fraud Insights*, the heroic employee will receive an award just like Lori and her colleagues.



## **WRAPPING** up real estate withholding — state by state

There are 16 states with some type of state withholding requirements or reporting for nonresident sellers. Those states are:

STATE:	WITHHOLDING RATES:
<b>ALABAMA</b>	3% of the sales price withheld for individuals and 4% of the sales price withheld for business entities
<b>CALIFORNIA</b>	3.33% of the sales price withheld if the property is more than \$100,000
<b>COLORADO</b>	2% of the sales price if the property is more than \$100,000
<b>GEORGIA</b>	3% of the sales price if the property is more than \$20,000
<b>HAWAII</b>	5% of the sales price
<b>MAINE</b>	2.5% of the sales price if the property sold is more than \$50,000
<b>MARYLAND</b>	8% by nonresident individual and 8.25% by nonresident entity
<b>MISSISSIPPI</b>	5% of the sales price if the property sold is more than \$100,000
<b>NEW JERSEY</b>	Nonresident individuals, estates and trusts are subject to paying a minimum of 2% of the consideration stated in the deed
<b>NEW YORK</b>	8.97% on the gain from sales of real property
<b>NORTH CAROLINA</b>	4% of the sales price
<b>OREGON</b>	The lesser of 4% of the consideration or 8% of the gain or proceeds
<b>RHODE ISLAND</b>	6% of the sales price for nonresident individuals and 9% for nonresident corporations
<b>SOUTH CAROLINA</b>	7% for individuals and 5% for corporations
<b>WEST VIRGINIA</b>	2.5% of the sale proceeds or estimated capital gain
<b>VERMONT</b>	2.5% of the sales price

Did you notice a lot of the states are hot spots for vacation homes? They are the states which have beachside properties or nearby ski slopes. Many of these states realized they had homeowners who



were not full-time residents and, therefore, had no incentive to file a tax return to report the gain on the sale of the real property. Real estate withholding provides the incentive by ensuring the state receives a prepayment on the estimated tax due.

In all instances, all the seller must do is file a tax return in that state to properly report the gain on the sale and obtain a refund of any amounts they are due. It is not simply a tax for non-residents to pay when they sell.

**Fun Fact:** Our country is not the only one that taxes nonresidents at the time of sale. In Canada, when the seller is a nonresident, they are subject to as much as 25% of the sales price withheld at closing.

Investing in real estate can be profitable or expensive if you do not know the requirements of each state or country where the property is located. Be sure to fully investigate or consult with qualified individuals prior to investing and selling to ensure it makes sense for you.

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