



▶ TAKE the cash quiz

By Lisa A. Tyler
National Escrow Administrator

We have been reporting regularly about the absentee owner scam and regulators nationwide are now distributing Advisory Messages to the real estate industry, specifically real estate agents, making them aware of the scam.

The essence of the scam is that a real estate agent is contacted about selling a property by a fraudster in an attempt to steal the proceeds from the sale. Initial contact is often made through email. The fraudster is looking to sell the property, usually on an expedited basis, because they need the proceeds for another investment.

In truth, the fraudster has selected this particular property, which they do not own, because it is undeveloped or overlooked by the actual owner. Fraudsters can go to great lengths to appear legitimate in these schemes, such as:

- » Contacting brokers via email to initiate the transaction. This might be the fraudsters attempting to cover up having an accent or cover-up not speaking the same language as the actual property owner.
- » Avoiding in-person appointments by explaining they are currently working out of state or working out of the country.
- » Developing a series of excuses for (1) why they want to sell the property, (2) why time is of the essence, or (3) why they do not want other family members to know about the transaction.

- » Emailing doctored documents. Copies, photographs or scanned images of driver's licenses or other government issued identification, have been presented to real estate licensees which purport to show the fraudster is who they claim to be. It is important to remember that when copies, photographs or scanned images are digitized and delivered, the quality of the image is degraded and, therefore, it is easier for the fraudster to doctor the image.

The last point is illustrated perfectly in the story entitled "RICKY sue racer." Read the story for more details.

Wire fraud is an ongoing threat to the industry. Thieves are attempting to steal homeowner's down payments, real estate agent's commissions and loan payoff proceeds. And they are still attempting to steal seller proceeds. Read "\$1.9 million reasons" to discover how a title company recently fell victim to the diverted wire transfer scam.

As discussed earlier this year in money laundering and real estate transactions articles, federal laws require that recipients of large "cash" payments report those payments to the Internal Revenue Service (IRS). The regulations require businesses that receive "cash" payments in excess of \$10,000 to report the funds received on IRS **Form 8300 – Report of Cash Payments Over \$10,000 Received in a Trade or Business**. What types of deposits fall within the definition of "cash?" To discover what is and what is not reportable read "WHAT is cash?"

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volume 18 issue 7
July 2023

Publisher
Fidelity National Financial
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RICKY *sue racer*

On a late Friday afternoon, Fidelity National Title Agency's Southern Arizona Oracle Office in Tucson, received a purchase agreement for the sale of vacant land with a purchase price of \$225,000. At opening, the listing agent provided a copy of the seller's driver's license.

While opening the transaction, Escrow Assistant Kylie-Jo Bigelow noticed the copy of the driver's license for the seller looked off. The license contained a photo that had a reflection (like a window). The pixelation on the license number, date of birth, sex, height, weight, eyes, hair, name and address looked inconsistent. The license indicated the seller was from Farnam, Nebraska.

Kylie-Jo found a government website that allowed her to put in the given driver's license information to see if the license was "active," which resulted in "the information couldn't be found."

Kylie-Jo enlisted the help of her colleague, Escrow Assistant Wendy Mendivil.

Wendy gathered the recorded deed which reflected "Ricky Sue Racer, a married woman as her sole and separate property," as the owner since 1992. Kylie-Jo and Wendy were caught off guard, because the driver's license clearly reflected the picture of a middle-aged man and the sex indicated he was a man named "Ricky Barnes Racer."

After bringing all their concerns to Escrow Officer Robyn Anderson's attention, they asked another colleague, Nicole Helton, to assist in pulling known contact information for the seller to see if it matched the contact information given by the agent. When the research team responded with the information it brought up more red flags, as the contact information did not match what was provided by the agent.

Since it was late in the day, the escrow officer decided to wait until the following Monday to speak to the agent. The Oracle team, however, still sent the Notice of Pending Real Estate Transaction via overnight delivery to the mailing

address listed on the county assessor's page, to ensure the rightful owner was contacted.

On Monday, when the escrow officer reached out to the listing agent, his office requested a hold on the file, as they verified on their end whether or not the purchase agreement was executed by the true owner. Robyn conveyed their office's findings, and it was agreed that the file would be cancelled.

The following day, Robyn received a call from the actual owner and discussed what happened. Robyn told the owner how her colleagues had become suspicious that the "seller" might be an imposter and how her office sent out the notice as a matter of policy on all vacant land transactions. The owner was grateful to Robyn and her team for informing her of the attempt to sell her property without her knowledge.

In appreciation for the effort put forth by Kylie-Jo Bigelow and her colleague Wendy Mendivil, the Company has rewarded each of them \$750 and a letter of recognition from the Company. Sometimes protecting the Company from claims and losses is all-consuming, but in the end, it is worth the effort. Together, their keen senses were able to stop a fraudster right in his tracks!

The Company is encouraging settlement agents to always send the Notice of Pending Real Estate Transaction to the address where the property tax bills are sent. When the subject property is located in a planned community with a homeowner's association, settlement agents cross check the owner's mailing address by contacting the association for information on the seller, who is an absentee owner.

Do not stop there. Go one step further and schedule a meeting with the owner via Microsoft® Teams. If the seller is truly an imposter, they will likely decline a request for a face-to-face live meeting where they will have to answer questions about the purchase and sale of the subject property.



STOP

TELL US HOW YOU
**STOPPED
FRAUD**

settlement@fnf.com or
949.622.4425

\$1.9 million reasons

A title company in New York City was handling a sale transaction in the amount of \$3,715,000. The Seller sent her attorney bank wire instructions for the sale proceeds on May 2, 2023. The instructions directed the proceeds to be sent to Bank of America®. The title company closing the transaction never received these instructions nor were they included on any emails when the bank wire instructions were sent from the seller to their attorney.

On May 12, 2023, the title company received bank wire instructions from the seller's attorney directing seller proceeds to an account at Citibank®. On May 15, 2023, the bank wire instructions were verbally verified with the attorney.

The attorney did not mention to the title company that they received initial wire instructions for an account at Bank of America.

Later, the "Seller" (who was a fraudster using a spoof email account) switched the instructions to an account at Citibank.

On May 17, 2023, a wire transfer in the amount of \$1,944,378.86 was sent to the account at Citibank by the title company. The seller did not receive their proceeds and called the attorney.

The attorney called the title company to find out where the seller proceeds were sent and during the conversation, he mentioned the wire instructions changed from Bank of America to Citibank during the course of the transaction.

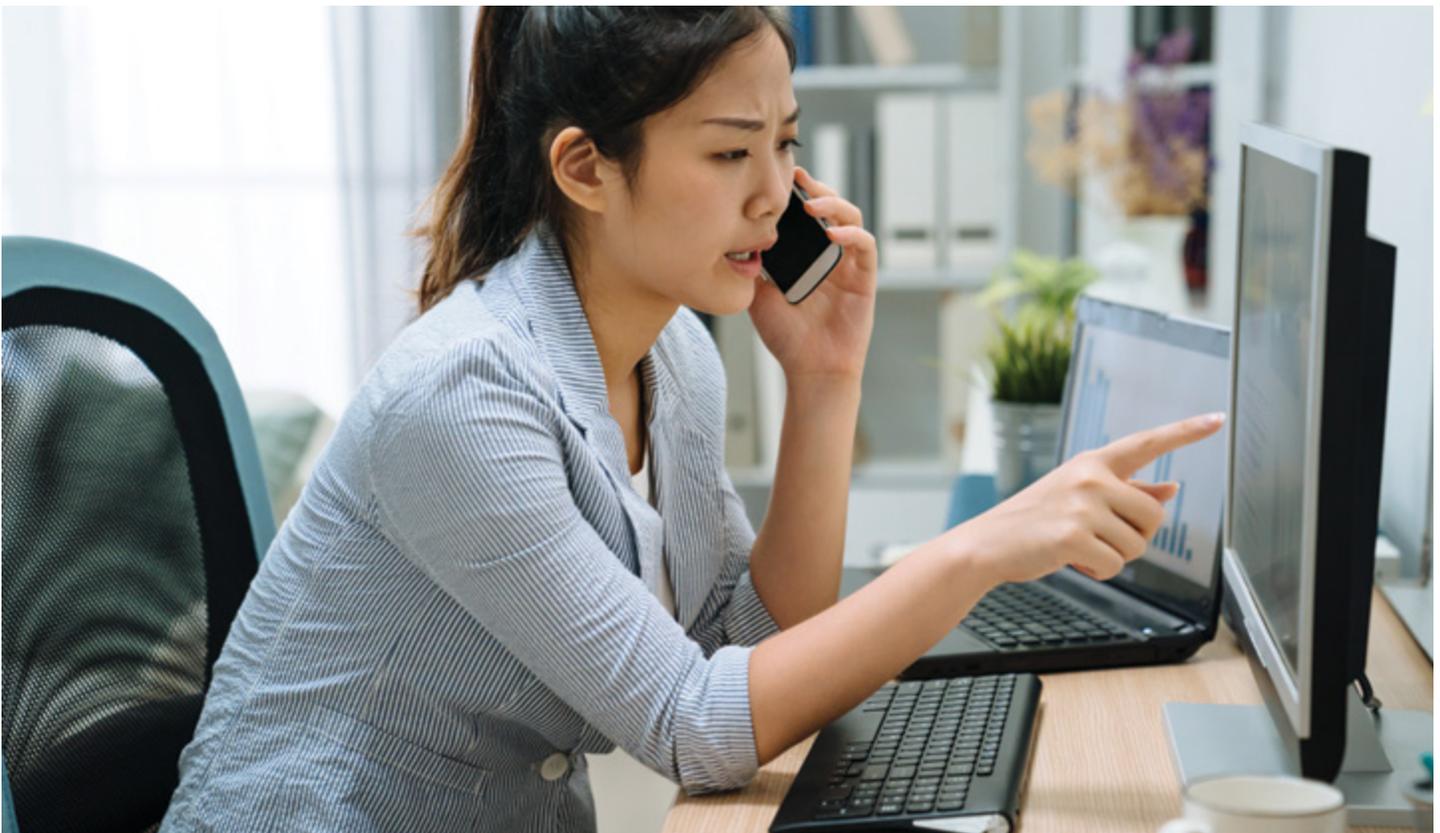
The title company placed a wire recall for fraud. Luckily, their escrow trust account was also a Citibank account, making the transfer a book transfer and not a wire transfer, which is easier to retrieve.

MORAL OF THE STORY

Remember that fraudsters will communicate and provide fraudulent information to various transaction participants. When verifying bank information received from the seller's representative, such as his or her attorney, question how the instructions were received, whether the attorney called his or her client to confirm the information, whether there had been any changes to instructions received or if you can call the client directly to confirm prior to wiring funds.

In this case, the seller's attorney was looking at the bank wire information received from the fraudster, which was in turn sent to the title company. That same bank wire information was used to verify the fraudster's account when the title company called for verbal verification.

When verifying payoff statements received from a law firm, the bank wire information should be confirmed directly with the actual payoff lender, not the law firm. The law firm might be looking at a payoff statement that was sent to them electronically, which is vulnerable to being intercepted and altered to divert the payoff funds to a fraudster's account.



WHAT is cash?

Settlement agents who receive coins or currency that exceed \$10,000 must report the deposit. Regardless of whether the deposit of the currency is made piecemeal or all at once, as soon as total currency deposited by the person (or by someone on behalf of the person) exceeds \$10,000, the deposit must be reported.

However, since settlement agents generally accept only wires and other types of instruments and do not accept coins or currency, this article will primarily focus on the reporting requirements whenever they receive more than one instrument which is considered "cash."

"Cash," for purposes of this reporting requirement, also includes a cashier's check, official check, money order, bank draft or traveler's check. It is critically important to remember you need to report these deposits only if **both** statements below are true:

- » The individual instrument has a face value of \$10,000 or less, **and**
- » The total amount of that receipt and other such receipts exceeds \$10,000 total.

Since a cashier's check, official check, bank draft, traveler's check or money order is only considered to be "cash" if it has a face value of \$10,000 or less, more than one "cash" item must be received in the same transaction before the settlement agent is required to file Form 8300. The "cash" is reportable whether it is received all at once or by installments in the same transaction within a 12-month period.

Instruments **not** considered "cash" as defined by the IRS are:

1. Personal or business checks
2. Cashier's checks, bank drafts, traveler's checks or money orders with a face amount **GREATER than \$10,000**.

A cashier's check, official check, bank draft, traveler's check or money order with a face amount of more than \$10,000 is not treated as "cash," because the bank or other financial institution that issued them must file a report. Finally, "cash" also does not include any wire transfer, regardless of amount.

Quiz Time! Identify the types of instruments listed below which are considered "cash" (Select all that apply):

- A. Cashier's check in the amount of \$8,555
- B. Business check in the amount of \$9,950
- C. Wire in the amount of \$150,000
- D. Money order in the amount of \$800
- E. Personal check in the amount of \$10,000
- F. Cashier's check in the amount of \$10,500
- G. Wire in the amount of \$6,000

Correct answers are listed below photo.

The information provided herein does not, and is not intended to, constitute legal advice; instead, all information, and content, in this article are for general informational purposes only. Information in this article may not constitute the most up-to-date legal or other information.

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QUIZ ANSWERS: Items "A" and "D" are the only two items which qualify as "cash." Next month we will identify when reporting must be done. These deposits are only reported after more than one "cash" deposit has been received and together they total more than \$10,000.