

Wire Fraud

Hello, Michigan Realtors® and welcome back to the “Letter of the Law”, a monthly video series designed to provide a primer on various legal issues impacting your industry. I’m Brian Westrin and today’s legal primer will be on the topic “Wire Fraud”.

It is important for Realtors® to be aware of common wire fraud schemes known to occur during the closing process on single family residences. These types of wire fraud incidents appear to be on the rise and typically end with devastating results, especially for cash buyers. In order to provide clients with the most protection possible in completing their real estate transactions, it is important for you to not only be aware of common wire fraud schemes, but also to understand how fraudulent schemes work and how to put your best foot forward in implementing best practices to prevent your clients from becoming victims to such schemes. ***

The Scam

Wire fraud scams typically result from electronic hacking – either into email systems or into other databases which store clients’ personal information. Hackers obtain personal client information and use that information to trick clients into wiring closing funds into fraudulent accounts. The most common scenario occurs when a client receives fraudulent closing and wire transfer instructions, typically in email form, from a sender who purports to be affiliated with the client’s Realtor® or title agency. In actuality, the sender isn’t connected with the Realtor® or title agency at all, but is actually a scammer looking to steal the buyer’s closing funds. Cash buyers are the most at-risk group when it comes to these types of wire fraud schemes as they stand to lose very large sums of money which are, unfortunately, not always recoverable. Further, cash buyers are more vulnerable than lenders, as typically there is a once in a lifetime experience and they have no safeguard in place.***

Preventative Practices

There are a number of best practices that can help Realtors® protect members and help to protect themselves from wire fraud.

1. Brokerages should make sure that every individual employed within their firm is aware of these types of scams.
2. Realtors® should make certain that their clients are also aware of these types of scams (especially when representing cash buyers).
3. Realtors® should avoid electronically storing personal, identifying client information, such as wire instructions. The best way to avoid information hacking is to avoid having the information in the first place.
4. Realtors® should implement brokerage policy on network security and the use of secure internet connections.
5. If a Realtor® must collect electronic information which personally identifies a client, the Realtor® should only keep the information for as long as absolutely necessary, and then take appropriate steps to ensure that the information is properly disposed of.

6. A brokerage should implement protocol, which is understood and followed by all employees, and that lays out a course of action in the event of a wire fraud scheme or electronic data breach. Such protocol would consist of:
 - Immediately notifying any bank/financial institution that could stop the wire transfer
 - Notifying the FBI and local police via the Internet Crime Complaint Center
 - Notifying the National Association of Realtors® and Michigan Realtors® so that alerts can be sent out to other Realtors®

Laws/Regulations

There are no current state or federal regulations which specifically require Realtors® to implement mandated safeguards to prevent wire fraud; however, Michigan has a number of laws that dictate the treatment of personal data held by businesses. Our state requires that such data must be destroyed by “shredding, erasing, or otherwise modifying the data so they cannot be read, deciphered, or reconstructed through generally available means”. Michigan’s Social Security Number Privacy Act requires that businesses who obtain social security numbers in the ordinary course of business must enact a privacy policy to protect that information. Furthermore, Michigan (as well as 46 other states) requires that victims of a security breach involving personal information must be notified if their personal information becomes compromised.***

Consumer Alert

As wire fraud scams continue to occur, even with extensive industry efforts to educate the public and clients on best security practices, the American Land Title Association recently made an unprecedented request of the Consumer Financial Protections Bureau. In a letter dated April 3rd, 2017, the ALTA solicited a consumer alert from the Bureau to educate all consumers on the existence and evolution of this kind of fraud. This kind of request highlights the fact that industry best practices alone cannot eliminate this kind of criminal behavior. Consumers and clients need to be proactive and self-aware, taking great care to verify both instructions and the destination, whenever transferring money online or via a wire.

Litigation

Insofar as can be determined, the first lawsuit against a Realtor® by a buyer for losses occurring from a wire fraud scheme was filed in May in Michigan. It is alleged in the lawsuit that a scammer hacked either the Realtor®’s email or the title company’s email and then sent the buyer an email in the Realtor®’s name advising him that the wireless instructions had changed and directing him to initiate a wire transfer to the scammer’s bank. By the time the scam was discovered, the bulk of the funds were gone from the scammer’s bank. In the lawsuit it is alleged that NAR and MR have gone to great lengths to warn Realtors® of the dangers of this scam. Reference is made to a white paper that was prepared by MR which contains a template notice that could be provided to buyers to warn them about the scam and steps they can take to avoid losing their money. Presently, there is no such duty in Michigan. Thus, it is alleged that the Realtor® in this case was negligent and breached both the statutory and common law fiduciary duty to the buyer by not warning and educating him about the possibility of this scam. The case

has just begun and its outcome cannot be predicted. However, it is anticipated that the Realtor® will vigorously defend by denying any duty to educate, warn or otherwise protect a buyer from criminal acts of a third party. The Michigan Realtors® Legal Action Committee will be following the case closely, should an adverse ruling come from the lower court. ***

Final Thoughts

In summary, wire fraud is by no means a daily event, but when it does occur, the results are devastating, since many buyers may never recover their stolen funds. Realtors® shouldn't undertake the duty to become "the guardian" of their client's funds, but they should consider helping to educate their clients on the dangers of fraudulent scammers, as well as take the time to implement certain procedures to minimize the threat of scammers to protect themselves and their clients.

As always, thank you for tuning in and watching this legal video primer. If you have questions or would like to suggest topics for future videos, please send suggestions to the email below. The white paper referenced in this video is also linked beneath the transcript. Again, thanks for watching and see you next time.