

PENN ATTORNEYS

TITLE ALERT

DATE: 06/18/10

RE: Title Alert 2010-08

Inherent Risks even in “Good Funds”

NOTICE: significant losses are occurring relating to fraudulent cashier's checks. This alert describes new methods being used by the bad guys to rip off lawyers and title agents. To be forewarned is to be forearmed.

For example, a December 2009 article in The Florida Bar News was entitled “Swindlers Hit Lawyers With Sophisticated Schemes.” It describes how scammers use special magnetic inks to alter the nine-digit number that identifies the bank (usually a well known bank) on fraudulent cashier's checks. The effect of the altered number is to delay processing of the check for several days. During the delay, the depository bank may make the funds available to an escrow or trust account although the funds have not actually cleared. Further, the “Good Funds” rules of the applicable state may authorize disbursement from an account into which a cashier's check has been deposited prior to final clearance of funds. As a result, by the time the dishonored cashier's check is discovered, it may be too late to reverse the payments to minimize or eliminate the liability for the losses.

A recent closing reveals that even a valid cashier's check can be part of a swindler's scheme. In this case, the agent took receipt of a buyer's \$400,000 cashier's check to cover nominal closing costs. The balance was to be refunded to the buyer. The cashier's check was NOT drawn on buyer's account. The agent did not question why an unrelated third party would supply the closing funds. It was the mortgage broker who contacted the issuer to verify the validity of the cashier's check. Still not satisfied, the broker then contacted the unrelated third party on whose account the cashier's check was drawn only to discover that the cashier's check had been fraudulently obtained. The agent was saved from a substantial loss by the wits and determination of the mortgage broker. Extreme caution should be taken to verify checks from a party unrelated to the transaction represent good funds.

Even wired funds carry risks. A mere Federal Reference Number does not ensure funds have been finally credited to your account. If account information for the wire is incorrect, the wire may be rejected. If funds are received after the receiving bank's cut-off time, funds are not credited until the next business day. If the issuing bank suffers insolvency in the interim, the wire might be reversed.

Do you know that funds received through an Automatic Clearing House credit are *not* a wire transfer and may be reversed after being credited to your account? As a result, you need to establish a mechanism with your bank, for notice and your consent prior to any reversal of a credit. Consider arranging to have the your bank credit the initial wire to a separate account and then immediately transfer the funds to a disbursement account if this is permitted under applicable law or ethics rules. If so, this may prevent loss due to a subsequent reversal of the wire or ACH transfer.

Remember: disbursing on anything other than “cleared funds” which are finally credited to the disbursement account by your bank should be made only after serious consideration is given to the risks and liabilities that could result from a fraudulent or dishonored cashier's or other check, or even from a reversed wire. Please contact us immediately for assistance if a problem is suspected.

Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

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