

LAWYERS LINK



FRAUD INSIGHTS: WHAT NOT TO DO

An Anecdote of a Title Transaction Gone Awry

A title company around the corner was handling a refinance. They received a loan payoff statement from the new funding lender on an existing private loan. The new funding lender emailed the payoff statement with bank wire instructions for the existing loan in favor of "Long Gone." The payoff

statement was electronically signed by Long Gone, the beneficiary, and indicated the loan payoff proceeds should be sent to a bank account in the name of "XYZ Properties, LLC," who had nothing to do with the transaction.

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The title company employee certified the payoff statement was received directly from the payoff lender – when it was not. It was received from the new funding lender. Even though the payoff lender was a non-institutional, private lender, no lien release was obtained in advance of the payoff as is required by all title insurance underwriters.

The title company sent a payoff wire out on October 26, 2022, in the amount of \$97,205. Unbeknownst to the title company, the new lender had been receiving emails about changing the wire instructions from Long Gone, who they thought was the authorized signer for XYZ Properties, LLC.

On Thursday, November 3, 2022, the title company received a call from the new lender stating the borrower had just called claiming the payoff lender never received the wire transfer. The title company representative called Long Gone to verify the bank wire information and Gone confirmed the bank account number did not belong to XYZ Properties, LLC.

When the title company representative was asked why they did not verbally verify the bank wire information, the response was, "We work with this lender a lot. Typically, they verify the wiring instructions for us when they get them."

What did this title company do wrong?

- Accepted and certified the payoff statement was received from the payoff lender, when it was not.
- Failed to independently verify the bank wire information using a known, trusted telephone number.
- Paid the amount necessary to pay off the loan to an entity that had nothing to do with the loan transaction and was not reflected as the beneficiary on the deed of trust securing the loan.
- Did not obtain a lien release in advance of payoff, as is required by all underwriters when paying off a private, non-institutional lender.

Silver lining

The silver lining to the story is, luckily, the receiving bank recognized the wire transfer as fraud and held it without credit to the receiving account until it was recalled by the title company. Whew! They got lucky that time.



MONTHLY INDUSTRY TERMS

Certificate of Reasonable Value (CRV)

An appraisal issued by the Veterans Administration showing the property's current market value.

Deed

Written instrument which, when properly executed and delivered, conveys title.

Fee Simple Deed

The absolute ownership of a parcel of land. The highest degree of ownership that a person can have in real estate, which gives the owner unqualified ownership and full power disposition.