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HACKERS PERPETRATE WIRE TRANSFER FRAUD IN REAL ESTATE TRANSACTIONS

by Cleve Clinton
Real Estate Industry Team, Gray Reed
October 22, 2018



Picture this nightmare:

A buyer, excited about closing on his first real estate transaction, received an email from his broker realtor providing wire transfer instructions for full payment to the title company. Complying with the broker's email, the buyer emailed his lender the wiring instructions which were executed. When the title company called the buyer the next day looking for the funds, the buyer confirmed that the lender executed the wire as directed. However, upon further investigation, it was discovered that the wiring account was not the title company's account. The wiring instructions were bogus and did not come from either the broker or the title company but rather a hacker who hacked into the broker's email account and sent bogus wiring instructions to the buyer.

According to the FBI, crimes involving compromised emails, including attacks such as the one outlined above, have been "spiking" in the past year. Between December 2016 and May 2018, businesses and consumers reported a 136 percent increase in losses related to these crimes. Fraudulent transfers have been sent to 115 countries, the FBI reports, and since 2013, losses to these types of crimes have exceeded \$12 billion.

Is anyone besides the hacker or the buyer responsible for the missing funds? If so, who? The title company? The mortgage broker? The real estate broker?

Apart from the hacker, who committed wire fraud and is likely living offshore, it is improbable that anyone else is responsible. However, that neither stops someone from filing a lawsuit nor trashing the reputation of everyone involved. And, if there is a claim, it is most likely "negligence." Was there a duty owed that was breached and proximately caused the buyer to lose his hard-earned money?

Starting with those who are not likely to be responsible – the lender. The lender received directions from the buyer specifying the amount and where the funds were to be wired which were executed. As for the title company, they received neither an errant email nor any money. What about the broker? If it was their first time to be hacked, probably not. Sad as it may be, the buyer was the only one who – upon closer inspection of the email address purportedly from the broker – could have discovered the hack.

Yet, the broker (or the title company if they were hacked, as can also be the case) might be liable if they (i) knew they had been hacked before, (ii) failed to take reasonable steps to keep it from happening again and (iii) got hacked a second or third time. Or, the broker might be liable the first time if they habitually checked their emails over public Wi-Fi (for example, a coffee shop). Without detailing how it can be done, just know that using public Wi-Fi can jeopardize disclosing all online data usage going over the public Wi-Fi.

WHAT TO DO?

If you are buying, lending, closing or brokering a transaction that will have funds exchanged by wire transfer, you would be well advised to manage your cybersecurity:

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1. Verbally confirm – both as sender and recipient of any email instructions – both the amount and the wire transfer payment destination, specifically the financial institution and account number.
2. Better yet, establish a dual control policy requiring that a wire transfer request originated by one person will not be initiated without a call back to another person. Just make sure you are talking to the right person at the right place.
3. Consider using a completely different email address to direct wire transfers, thereby avoiding hacking of online personal emails, like those on company websites and Facebook.
4. If the email is important, pay particular attention to grammar, spelling and word usage. Even better, pay attention to the email address which, if hacked, will be different from the sender you know. Falsification of an email e.g., cclinton@grayreed.com; cclinton@greyreed.com rather than the correct cclinton@grayreed.com can be subtle and chillingly effective.
5. Likewise, logos can be exactly copied and help to bolster the fraud. Pay attention and generally beware of social engineering and if compromised, notify all parties involved.
6. If, for some reason, you are using a public Wi-Fi (for example, a coffee shop), beware. Falsification of a public Wi-Fi landing page, which often includes a logo, is increasingly common.
7. If your business is large enough, consider setting up an office VPN (encrypted Virtual Private Network) to which you can securely connect remotely, even when using a public Wi-Fi.

ABOUT THE AUTHOR



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With a client list full of family businesses, Fortune 500 companies and maverick risk-takers who won't take "no" for an answer, Cleve Clinton knows what it takes to develop creative solutions when big ideas result in big problems. Whether he's serving as lead counsel in one of the growing number of fiduciary litigation claims within family businesses, advising a family in transition or helping a developer sidestep a legal and public relations disaster in a new residential community, Cleve's focus is always the same – achieve the client's goals, either in or out of the courtroom. His clients span nearly every industry, including beverage distribution, real estate, manufacturing, telecommunications and transportation.

Many lawyers claim they can strike the perfect balance between legal strategy and a client's practical goals, but Cleve demonstrates it every day. After 40 years of litigation practice, Cleve has learned one absolute truth – there's no one-size-fits-all solution. His starting point with every client is to fully understand their motivations and concerns so he can mirror their judgment. When the initial legal answer won't solve the problem or is too costly, he seeks practical solutions that reveal new legal paths that minimize both the financial and emotional impact. And most important – if it's not simple, it's not the best solution.

Always putting his clients' interests first, Cleve explores every resource available to ensure each case is in the right hands. It's often as simple as making an introduction to another lawyer in the firm who can take the lead and achieve the ideal outcome. When a deal or controversy has a lot of moving parts and requires a multi-disciplinary approach, Cleve assembles a team of lawyers and other professionals with the perfectly-matched skill set – tax, employment, real estate, construction, regulatory plus more – and then quarterbacks strategic planning and execution every step of the way.

Cleve is dedicated to keeping clients informed about the latest legal and industry trends that impact their businesses. As a regular contributor on the firm's blog, [Tilting the Scales](#), he focuses on analyzing new and interesting business issues from a legal perspective.

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