The Claims Corner: Wire Fraud and Property Theft Claims, and the Insurance Responses

Description

We do love our Realtors, and they are a vibrant and important part of the transfer of property from one party to another. However, a pattern arises in the outlines below, that many of these fraudulent situations are the result of the realtors being involved in the financial part of the transactions.

The additional risk comes from non-secure communications, sending wire instructions and sensitive information outside of a secure portal or secure share site. Also from not verifying that the person selling a property is the actual, physical person that owns the property.

When there is no recovery of funds by the FBI, Banks or insurance payments, the situation still needs to be solved. This usually happens by splitting the loss between the title agency, lenders, underwriters and other involved parties, personally.

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For these examples, when we use the term â??***recovered***â?• that means that the funds were pulled back by the bank and/or the FBI.

- **$500k â?? *recovered***
  - Crook issued wire out of client bank account. Just after getting a â??token deviceâ?• from their bank, title agent was trying to send a wire but kept getting system errors on their computer. Rebooted their computer and was able to log in. That reboot somehow allowed the crook access and the crook wired out $495,000. The title agency had dual notification on the wires, (only to notify), so the wire was able to go out.
- What happened?
  - The dual notified person asked why the wire was sent, and that alert allowed them to act fast and the wire was recalled, all but about $20k.
- Is there insurance for this?
  - E&O: NO â?? the E&O policy excluded anything to do with funds.
  - Cyber: NO â?? no policy in place.
  - Crime/Fidelity: â?? if needed, yes.
    - This would have fallen under Funds Transfer Fraud, NOT social engineering. The crook processed the wire, not the insured, nobody was tricked like in social engineering.
- Preventative: Worked with IT team to strengthen their network and keep them more secure.

- **$500k â?? *recovered***
  - Realtor was involved in payment part of the transaction. Only the realtor communicated with the seller. â??Newâ?• wire instructions sent to title agency via fax. All fraudulent communications were due to realtor sending and receiving wire instructions in a non-secure manner.
- What happened?
  - Due to fast action at the title agency the FBI froze the accounts and all funds recovered.

- Is there insurance for this?
  - E&O: NO â?? the E&O policy excluded anything to do with funds.
  - Cyber: probably not, there was no breach
  - Crime/Fidelity: NO â?? the wire instructions were not verified, that would prevent the policy from responding.
- Preventative:
  - Remove the realtor from the financial part of the transaction.
  - Do not trust a fax, faxes are is NOT secure. Emails can easily be faxed to look like a fax.
  - Verify the wire instructions prior to sending.

- **$1MM â?? *recovered***
  - Realtor involved in the payment of the transaction Realtor had the title agents wire instructions and would send to the buyers or sellers, via non-secured email. Mid-way through the email address sending the wire instructions, switched to something similar, but a different address, mid-email conversation, man in the middle, and nobody noticed.
- What happened?
  - Due to size of potential loss, FBI assigned an agent specifically to the case and they were able to seize the funds and return them.
- Is there insurance for this?
  - E&O: NO â?? there was no theft of funds endorsement
  - Cyber: NO â?? there was no breach.
  - Crime/Fidelity: Maybe â?? Potentially a very, very small amount may have been covered under the Social Engineering endorsement.
- Preventative:
  - Remove the realtor from the financial part of the transaction.
  - Verification of the wire instructions, prior to sending, would probably have prevented this loss.

- **$200k â?? NOT recovered**
  man in the middle â?? insurance responded
  - Title Agency communicated with the buyer via a known secure portal.
  - Buyer confirmed that they had the secure portal and understood the process.
  - Buyer received an EMAIL â??updated wire instructionsâ?• from the â??title agencyâ?• outside of the secure portal.
  - Buyer said that they â??called the title agency and spoke to staff that confirmed these new wire instructionsâ?• the ones that came OUTSIDE of the portal.
    - Since the wire instructions were not correct, there is no way the buyer talked to the title agency, potentially they called a number that routed to the crook.
- What happened?
  - The title agency was sued, for something they didnâ??t do. They did nothing wrong, followed all procedures, but the buyer went rogue and worked with a crook.
- Is there insurance for this?
  - E&O: the policy had the theft of funds endorsement.
    - The policy would not pay the wire loss, because title agency never had the funds and did nothing wrong. The title agency did not want the theft of funds paid, since it was not their fault and not their loss.
    - The policy did defend the title agency, to prove they did nothing wrong.
- Preventative:

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    - That is hard to say, other than continued education of all buyers and seller. The Buyers had been educated by the title agency, but they still fell victim to a fraudulent email. It is imperative that the consumers are educated about the potential for total loss of funds.

- **$500k â?? Recovered**
    - Money stollen directly from the Title Agencyâ??s escrow account, allowed by bank. The bank allowed a crook to open an account and then allowed that crooked account to connect with the bank accounts of the title agency, as the â??ownerâ?• of the title agency. Then the crook transferred all the money out.
- What happened?
    - Title agency saw the missing $500k, first thing Monday morning. Called the bank and had the accounts all frozen.
    - This was clearly a bank error and they made the title agency whole within 5 days.
- Is there insurance for this?
    - E&O: NO â?? the E&O policy excluded anything to do with funds.
    - Cyber: NO â?? there was no breach
    - Crime/Fidelity: YES â?? if the bank had not accepted their responsibility in the matter, the Crime policy had Funds Transfer Fraud: â?? a crook transfers funds out of your account. (this is NOT social engineering, as the crook did all the work).
- Preventative:
    - Ask bank for what other controls you can add to the escrow accounts to prevent ANY access other than what you have now.

- **$357K, $234k, $384k â?? *mostly recovered*.**
    - Title agency received wire instructions from a law firm, one settlement, but three different wires. The Law Firm had received the fraudulent wire instructions first and did not verify on their end. They recovered all but $112k.
- What happened?
    - Title agency verified all of the wire instructions with the Law firm, and documented that verification. This loss fell on the side of the law firm.
- Is there insurance for this?
    - E&O: the policy had the theft of funds endorsement.
        - The policy might have paid out, if needed, because the title agency was the one that sent the wire.
    - Cyber: the policy would not pay because it was determined that the law firm was the breached party, so no liability on the part of the Title Agency.
    - Crime: the policy would have paid out, if needed, because the Title Agency DID verify the instructions and did document those instructions, as a requirement of the policy.
- Preventative: They had documented wire instructions, but maybe a 3rd party wire verification platform would have helped.

- **$800k â?? NOT Recovered**
    - Seller side title agency collected the lender payoff and seller proceeds data and provided it to the buyer side. The title agent for the buyer side (B) did not verify what they received and sent the funds to a crook.
- What happened?
    - The wire instructions sent from seller side agency were intercepted on the way to buyer side agency, and not verified. Buyers side sent all the proceeds to a crook.

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- Is there insurance for this?
  - E&O: NO â?? the E&O policy excluded anything to do with funds.
  - Cyber: NO â?? there was no breach
  - Crime/Fidelity: Maybe, for the buyers side, if they had verified. Seller side didnâ??t make errors so no expected coverage.
- Preventative:
  - Educate the other parties you are doing business with, about fraud and verification processes.

- **2023 â?? $555k â?? NOT recovered**
  man in the middle.
  - The biggest error on this one, the buyer never ever spoke with the title agency. The buyer only talked to the realtor, but there was a man in the middle, that would intercept the emails and provide different responses to the buyer or realtor, depending on the topic.
  - When they got to closing, the title agency asked for the money, buyer said â??I already sent it to youâ?•, and that was it.
    - The title agency didnâ??t do anything wrong, because the realtor never connected the buyer to the title agency, they didnâ??t even know this was all going on, until it was too late.
- What happened?
  - The title agency was sued, for something they didnâ??t do, they never knew about the conversations between the crook and the seller.
- Is there insurance for this?
  - Not likely, maybe defense, but if nothing was done wrong, it is hard to have a policy respond.
- Preventative:
  - Keep the realtor out of the financial transaction, do not share wire instructions with them.
  - Introduce title agency to buyer directly.

- **2024 â?? $150k â?? NOT recovered**
  Property stollen from â??nursing homeâ?•
  - Realtor did not verify they had the owner of the property
  - Fake owner of property â??had to sell and was too sick to go to closingâ?• and had to use their own notary.
  - The crook played on the heart of the title agency, to feel sad for sickness. The Title Agency did not do the due diligence to find out if they had the actual owner of the property.
- What happened?
  - The title agency was sued.
- Is there insurance for this?
  - E&O â?? If the policy has a â??theft of fundsâ?• clause and IF it does not require verification and documentation, the policy may pay.
  - Cyber â?? If the title agency was hacked and there was a breach of the system that caused this, and IF there was funds coverage under the policy, it may pay.
- Preventative:
  - Just like wire instructions, it is imperative that all property ownership is investigated, confirmed and verified. In some cases, you may need to send a letter to the property that is being sold, or find another online source to confirm who the actual owner is and IF they are selling their property.

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- **2024 â?? $315k â?? NOT recovered.**
- What happened?
  - Legitimate Realtor listed a property on the MLS and brought fraudulent seller to the title agency, but no one ever met this seller in person.
  - Vacant land, No mortgage
  - The â??sellerâ?• used the exact name and address of the actual owner of the property. The â??sellerâ?• is probably using the same fake ID channels that college students use.
- Is there insurance for this?
  - E&O: If the policy has a Theft of Funds clause, we can expect the policy to respond up to that limit.
  - Cyber: If there was no breach at the title agency, unlikely that cyber will respond.
  - Crime/Fidelity: If there was no verification of the wire instructions, the policy would likely not respond.
- Preventative:
  - Verify the seller of property, the same way wire instructions need to be verified, sellers need to be verified.
  - Send a welcome letter or the closing documents to the residence of the owner of the property.
  - Insist on meeting your seller in person.

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Most of the E&O policies on the market specifically exclude theft or loss of funds and have done so for decades. The intent of and E&O policy is to cover Errors or Omissions in the title work, not including money. There are a few E&O policies that have started offering an endorsement, for a fee, to cover low limits of stollen funds, and this sometimes includes transfers of stollen property. Most of these E&O endorsements require verification and documentation of the financial information.

The Cyber policy is intended to cover the agency for a breach of their system, ransomware and extortion. The Cyber policy was not intended to cover loss of funds outside of a breach, and MOST cyber policies will cover the â??insured fundsâ?• not â??funds of othersâ?• such as an escrow account. A cyber policy is a very important coverage to have for the sake of your business, but not to be relied of for escrow funds. Some cyber will cover escrow funds, but ALL cyber policies require verification and documentation of all financial information, prior to the wire being sent.

The Crime/Fidelity policy can offer very broad coverage, depending on what parts are purchased. This policy is designed to cover money, but of course there are conditions to each line of coverage, most of which will require verification and documentation of the wire instructions.

There is a new crime policy on the market, that can offer up to $1MM in loss of funds, the deductible is $200k, and the premiums start around $20,000, annually. The coverage is broad and valuable, but clearly has the drawbacks of cost and deductible.

Additional known incidents:
$80k January 2021 â?? not recovered
$250k August 2021 â?? not recovered
$2.2MM, October 2021 â?? ***recovered*** most of it.
$258k February 2022 â?? not recovered
$2.2MM March 2022 â?? recovered
$70k August 2022 â?? not recovered

$2MM, August 2022 â?? ***recovered***
$350k August 2022 â?? $250k insurance covered
$95k September 2022 â?? not recovered
$227k October 2022 â?? not recovered
$300k, $250k and $400k one title agency November 2022
$387 same title agency as above. (***recovered*** $137k)
$1.5MM â?? Bank allows crook to wire 55 wires out of title agent accounts. (recovered 1.3MM) This is bank fault, but a very big bank and they did not accept responsibility.

Michele Blanco
Michele has been working to support the Title and Real Estate Industry for almost 30 years, and has become a specialist in the area of insurance and bonds for this industry. She attends and supports industry specific seminars and education events, so as to keep abreast of changes, so that she can provide the information and answers to the industry. She supports and stays up to date with Best

Practices and how they affect the title agent. Michele lives with her family of three, her daughter just graduated from the University of Maryland and is starting her career in Science. Michele loves to compost and create soil, what worms can do with old food, cardboard and other household wastes is amazing. An active member of the VLTA, MLTA, and DCLTA.

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