

Modern Theft: Cybercrime in Real Estate Transactions

BY JULIA GASC BECKMAN

Wire fraud and cybercrime are disrupting and delaying real estate transactions across the country on an alarming scale, and have resulted in over \$15 million in losses annually since 2015 to purchasers and sellers of real estate, as well as third parties involved in the transactions. Advanced email phishing scams are affecting title companies, insurance underwriters, real estate agents, brokers, buyers, sellers, and their counsel, and there is little to no recourse for the parties, frustrated with the title companies, banks, and each other, to recover their losses.

As with any developing, modern crime, parties affected do not know what to do or who to blame. The first thought is often litigation, with seemingly any party in the

transaction at-risk of being named. This is born out of the victim's desperation to get such a large sum of money returned, with no way of determining who received the funds due to banking security restrictions and advanced cybercrime techniques.

Title companies are taking action in order to avoid being the target of these scams that become more advanced each month, real estate agents are educating their clients to safeguard their funds, and attorneys are taking measures to avoid allowing their clients to fall victim to these scams, but surprisingly, no industry-wide regulations in real estate, banking or title have been implemented to prevent these criminal acts.

As holders of funds in escrow for these transactions, title companies and insurance underwriters find themselves in a position that requires them to (i) be pro-

ficient in training their staff to recognize scams, (ii) take measures to ensure that losses are avoided, and (iii) when losses do occur, they must attempt to recoup funds for their customers in this uncharted territory that is just beginning to become apparent to individuals outside of the title and banking industries.

The typical scenario begins with one individual using an unsecured e-mail program such as a personal Gmail, Yahoo, or AOL account, to communicate with parties such as a title company, or real estate agent, regarding a transaction. Emails are monitored by unknown hackers that take advantage of an opportunity to instruct the individual to send funds to their bank account instead of the intended account such as the title company escrow account, or the account of the seller expecting proceeds, this is an act that falls into the category commonly known as phishing.

Advanced phishing tactics are identifiable by their convincing disguise as originating from a trustworthy entity, one such as an individual's real estate agent or someone employed by the title company they are working with on a particular transaction. Those less familiar with the red flags of phishing scams, including a large number of the general public that is unaware of the existence of these fraudsters, are susceptible to them. In cases that are most concerning, that are resulting in staggering financial losses, are those in which individuals are instructed to wire funds, a common practice in real estate transactions, and their funds are wired to a fraudster's account instead of the intended recipient. Many times, these funds are gone forever once the wire is sent.

Generally, parties will continue to ask if funds have arrived, and as hours and sometimes days, pass, parties realize they cannot determine where their funds are, nor can they get information from the receiving bank, or their own bank on the recipient account holder that stole their money. Horror stories of individuals losing their life savings and the equity in their homes that was to go toward a new home purchase, and businesses losing millions in acquisition funds that they cannot recover, have begun circulating as this problem worsens. Despite this, little to nothing has been done where change is desperately needed.

A disclaimer at the end of an e-mail signature block, and the vague mention of words like "wire fraud" and "cybercrime" are proving to be insufficient to educate consumers on the extreme risks they face when purchasing and selling real estate. There is a dire need for meaningful and preventative change across all members of the real estate industry, with few eager to work toward implementing change. Seemingly, the most apparent efforts are those of parties seeking to avoid liability.

With the responsibility being in the hands of realtors, title companies, banks, and attorneys, there are members of multiple industries in the position to implement change at different levels. The greatest difficulty in finding a solution likely results from the need for collaboration across these industries to come together with a solution.

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Julia Gasc Beckman is a Commercial Closing Attorney and Assistant Vice President of MBL Title and she can be reached at julia.beckman@mbl-title.com.



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About The Speaker – Susan Turnbull is founder and principal of Personal Legacy Advisors, LLC, which specializes in finding ways for high net worth individuals to communicate their feelings, values, advice and stories to future generations. Turnbull, author of *The Wealth of Your Life: A Step-by-Step Guide for Creating Your Ethical Will*, has also appeared in *The New York Times* and *USA Today*. She's known for popularizing "ethical wills" as a way to hand down family traditions and values, and for developing strategies to help discern and define donor intent.

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DVAP'S Finest



ADAM AUGUST

Adam August practices in the area of corporate and securities law with Akin Gump Strauss Hauer & Feld LLP.

How did you first get involved in pro bono?

As a first year associate, I had a strong relationship with Diane Couchman who led our pro bono efforts in the Dallas office. She was always extremely excited about pro bono opportunities and got me involved in DVAP and other pro bono work at the start of my career.

Describe your most compelling pro bono case.

One of the first cases I took involved an elderly woman who worked for minimum wage at a senior home. Notwithstanding her age, she showed up to work every day to help with the residents, cook their meals, and assist with their care. The owner and manager of the home turned out to be a scam artist that refused to pay her months of back wages. We were able to successfully obtain judgment against him for all back wages, plus treble damages for his intentional misconduct. Our client was obviously very thrilled with the outcome and the additional income, which she had not expected to receive, helped her enjoy her older years and it was a very satisfying case to be a part of.

Why do you do pro bono?

Not only do you get to help those in need and interact with people you might not otherwise serve as clients, but I think it broadens your sense of community, improves and expands your legal skills, and allows you to take on cases outside your area of expertise.

What impact has pro bono service had on your career?

It has allowed me to put my business and employment skills and training to use helping serve the underprivileged community, as well as increased my visibility both inside and outside the firm.

What is the most unexpected benefit you have received from doing pro bono?

The clients that I have stayed in touch with over the years. There are still folks who I receive holiday cards and updates on their life years after I have finished representing them.

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