

**TO: North Carolina Chicago Title Approved Attorneys**

**FROM: Chicago Title, North Carolina State Office**

**DATE: January 20, 2021**

**RE: Cash Purchases – High Risk Alert**

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Chicago Title has identified a specific type of high risk transaction which exposes both closing attorneys and others to significant financial loss. Generally, the high risk transactions comprise some or all of the following circumstances:

- Cash purchase
- Payment is made by Official or Cashier's Check
- Payment is for much more than the amount required to close (example: sale price is \$80,000, buyer sends \$110,000 by Official Check)
- Low sales price
- No earnest money deposited
- Quick close
- Buyer is from out of state and purchasing the property sight unseen

These transactions follow this general fact pattern: After the file has closed, the closing attorney is notified the Official or Cashier's check is invalid. The payment is reversed and deducted from the trust account leaving a shortage. Based on the language in their banking agreements, banks have the ability to reverse any deposit credited to the trust account found to be fraudulent. This even applies to Official and Cashier's Checks disbursed against after waiting the recommended time period. Here is sample language from such an agreement:

*h) "Cleared" Checks and Cashier's Check Fraud Warning –Please be aware that fraud often occurs in relation to counterfeit cashier's checks that are presented to you as legitimate, and the fraudulent party seeks to acquire the funds from you at the time the Bank makes the funds available but before the fraudulent check is returned unpaid.*

It is then discovered the buyer is an imposter making it impossible to simply unwind the deal to recoup any losses.

In order to reduce the risk of the above scenario, and protect our approved attorneys and their clients, Chicago Title has the following recommendations:

- Any refund due to a buyer must go back to the buyer. A refund cannot be assigned to another person or entity.
- Any request to transfer the refund to a third party should be considered a red flag warning for potential fraudulent activity. Regardless of whether a transaction comprises all of the red flags listed above or not, attorneys should endeavor to accept wire transfers only.
- Notify the buyer immediately upon opening the order to allow sufficient time for the buyer to make any arrangements needed to close on time.
- Only send wire instructions securely and in accordance with your office's best practices.
- Follow any and all procedures put in place to alert buyers about wire fraud and how to protect themselves.

Should you have any questions or need assistance, do not hesitate to contact your local Chicago Title office.

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