

REBA Practice Standard No. 11

Disbursement of Funds

All disbursements shall be payable to the individual(s) or entity (ies) disclosed in the Closing Disclosure and/or settlement statement unless written instructions authorizing otherwise are signed by such individual(s) or entity(ies), or the individual(s)' or entity(ies)' attorney at closing.

The following are recommended practices to protect against the disbursement of funds based on fraudulent wire instructions. The attorney should take appropriate steps to confirm that wire instructions are genuine. Such steps may include one or more of the following:

- a) Verbally confirming wire instructions with the individual(s) or entity (ies) or the individual(s)' or entity(ies)' attorney at a known number not obtained from an email;
- b) Requiring delivery of wire instructions by mail, dedicated fax¹, secure or encrypted email, or hand delivery;
- c) Requiring a "wet signature" on wire instructions at or prior to closing;
- d) Requiring signature confirmation of the wire instructions by the individual(s) or entity (ies) or the individual(s)' or entity (ies)' attorney at closing;
- e) Refusing to accept a change of wire instructions, especially after closing but before disbursement has occurred, unless appropriate steps have been taken to confirm that the change is genuine;
- f) Refusing to disburse funds via wire if (1) confirmation of the accuracy and legitimacy of the wiring instructions cannot be made to the satisfaction of the attorney responsible for disbursement, or (2) if the request is made after release of a disbursement check;
- g) Developing a law firm policy relative to the receipt of wire instructions and wire protocols, including the right to refuse to disburse via wire if the instructions cannot be satisfactorily confirmed;
- h) Communicating the firm's policy with all parties in the transaction as soon as practicable, most preferably at the time of signing the purchase and sale agreement;
- i) Obtaining coverage for social engineering fraud / email compromise fraud via endorsement if not already part of the firm's malpractice insurance policy; and
- j) Including a specific reference to the firm's wire policy in purchase and sale agreements.

¹ A "dedicated fax" is a telephone line set to only send or receive paper faxes.

Notes and Comments

- (1) The increase in wire and disbursement diversion fraud is alarming, and conveyancing attorneys are a prime target. In a typical scenario, the closing attorney receives an email shortly after closing which requests a change in disbursing instructions. The new disbursing instructions seemingly come from a legitimate party in the transaction. The scam, however, is not limited to changing instructions, but can equally occur with the initial disbursement instructions received by the attorney. It is recommended that attorneys develop and follow written office protocols to protect escrow funds. These protocols should be communicated to all employees, clients, and other firms so that in each transaction expectations of how disbursing and wire instructions are communicated and followed are known.*
- (2) See REBA Form No. 65 for a recommended form for Wire Transfer Authorization.*
- (3) See REBA Ethical Standard No. 5.*

Adopted November 19, 1984

Amended November 5, 2018 (Expanded to focus on fraudulent wire instructions)

Amended May 6, 2019