

Jon Biggs, Vice President & Director of Risk Management & Education, Investors Title

Jon Biggs oversees risk management functions related to Investors Title's approved provider system. In this role, he oversees the approval process, develops educational seminars and communications-based initiatives involving approved providers and agents, and manages provider data and analysis related to the company's risk management efforts. Prior to joining Investors Title in 2012, he was partner at a firm in Durham, North Carolina where he practiced residential and commercial real estate law for more than 20 years. Mr. Biggs holds a bachelor's degree from Duke University and a Juris Doctor from Wake Forest University School of Law.

Help! – Give Me the Right Tools!

In this hour, we will take a look at the expanded responsibilities of the real estate attorney that have been placed there by the bar, the insurance companies, the banks – but mostly by cyber criminals and how to protect yourself. There are so many risks, so many solutions, so many vendors, so many options and I do not know which way to go. This hour will help you answer these questions. All law offices are as unique as the attorneys themselves. Solutions need to be effective, compliant, ethical and right-sized for your needs. We are going to look at some of the tools and the features that are important in choosing the right solution without blowing the budget. These tools to be discussed will include password management, email encryption, multi-factor authentication, identity verification programs, wire verification programs, payoff verification programs.



Help! Give Me the Right Tools

Jonathan W. Biggs, J.D.

Vice President - Risk Management & Education

Investors Title Insurance Company

Continuing Legal Education Seminar

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Introduction

TOOL TIME

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~~Bank of America~~

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Home Improvement Tool Time clips (HQ)

<https://www.youtube.com/watch?v=NjzSga6yE>

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Maslow's Hammer

*A/K/A The Law of the Instrument or the Einstellung effect
Often misattributed to Mark Twain*

***When all that you have is a hammer,
everything looks like a nail.***

This occurs when a person's predisposition to solve a specific problem in a specific manner, even though better or more appropriate methods or tools exist for that very problem.



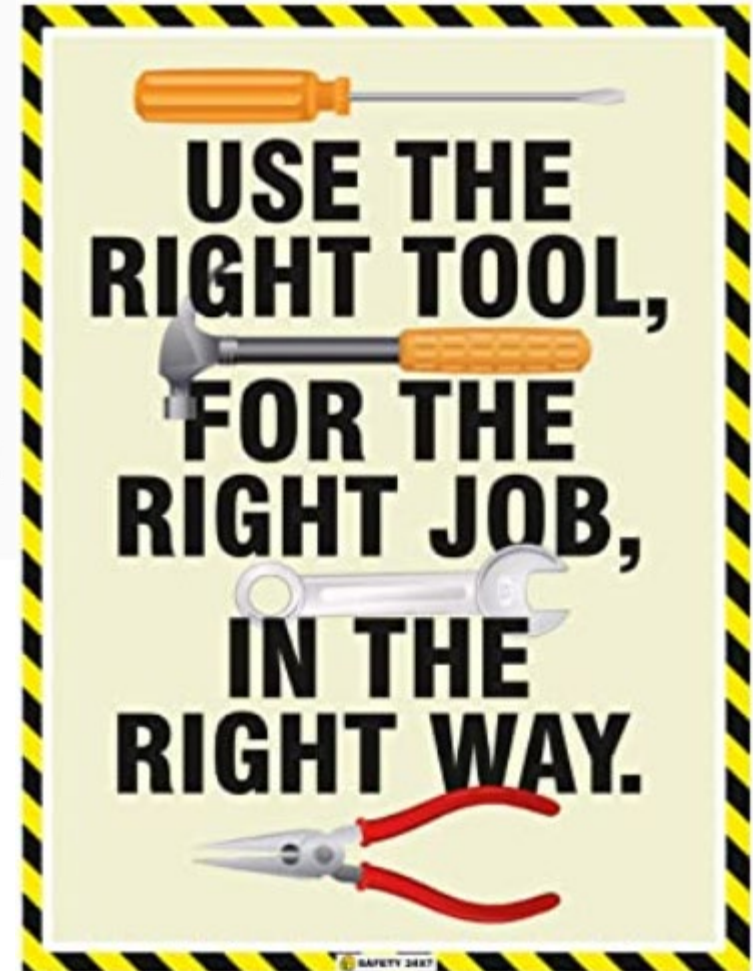
Where I come from...



this is also known as a flathead screwdriver.



USE THE
RIGHT
TOOL!

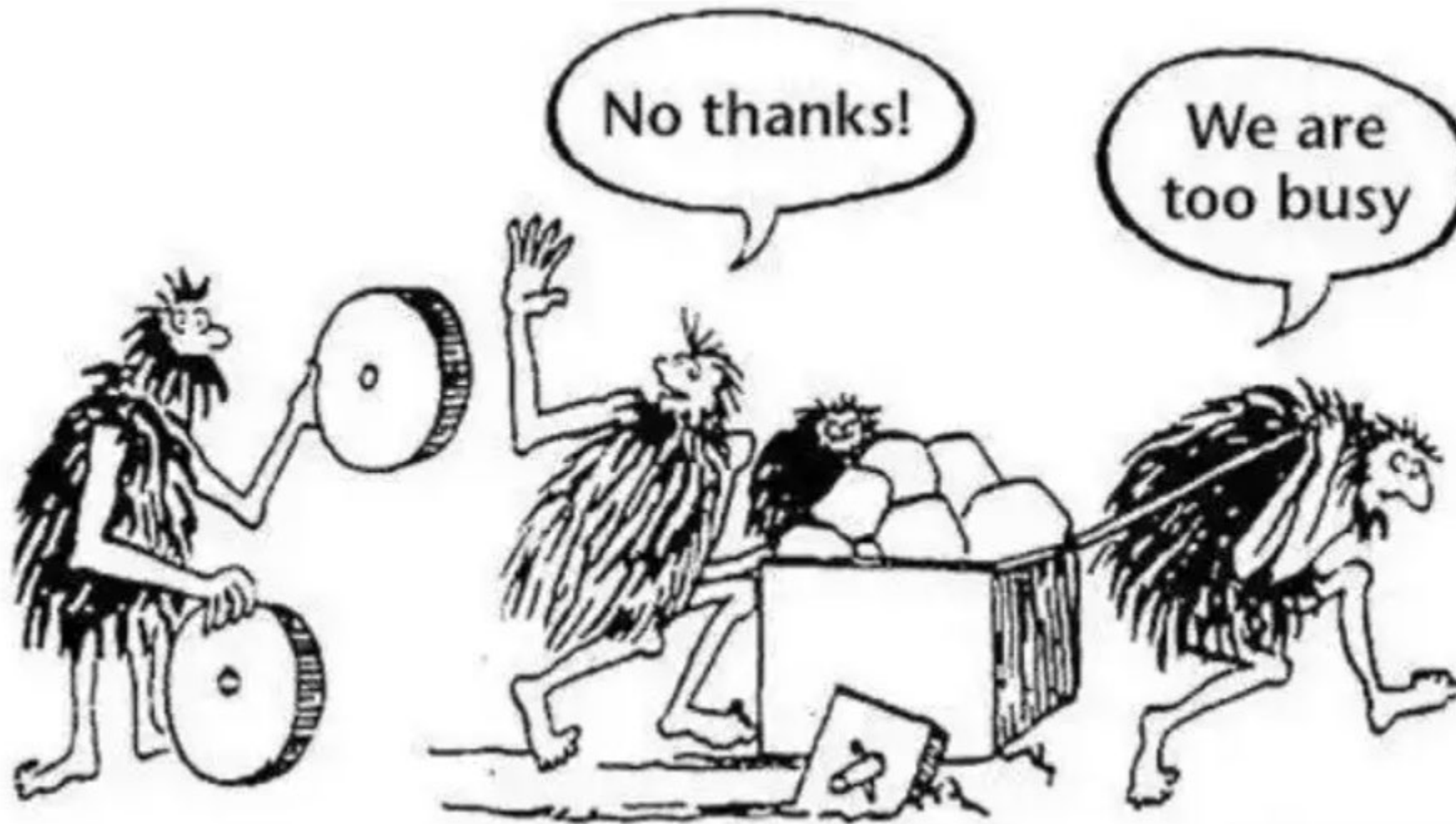


What do we do in the legal profession?

- 1) Charge for our time.*
- 2) Generally, throw people and time at every problem.
(That is our hammer)*

However, in Real Estate, a lot of fees are charged by the job.

- If you do the job more quickly and efficiently by using the best tool;*
- You can save time and money and increase your ROI.*



If you work smarter and harder

What Are We Going to Cover?

1. Common Challenges
2. Requirements of a Tool or Solution
3. Fraudulent Checks & Unauthorized Withdrawals
4. Verify Third Party Wire Instructions
5. Verify Payoff Wire Instructions
6. Create, Manage & Remember Passwords
7. Multi-Factor Authentication
8. Encrypt My Email
9. Emerging Threat – Seller Deed Fraud
10. Conclusion

Common Challenges

GIVE ME THE RIGHT TOOL!

They all have four things in common:

- 1) None of them were taught in law school;
- 2) None of them have anything to do with practicing law;
- 3) You cannot practice real estate law without mastering all of them;
- 4) Someone else has already created a solution for you.

THE HUNT FOR RED OCTOBER!

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Introduction



The Hunt for Red October (1990)

<https://youtu.be/FIjnTKr8FS0>

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Common Requirements of a Solution of Tool

Each Solution Must have five things in common:

- 1) Correct
- 2) Routine – Scalable
- 3) Easy
- 4) Efficient
- 5) Compliant &
- 6) Secure

CREECS

PROBLEM

GIVE ME THE RIGHT TOOL!

***Correctly, Routinely, Easily, Efficiently,
Compliantly and Securely Protecting the
Funds in the Trust Account from Fraudulent
Checks & Unauthorized Withdrawals***

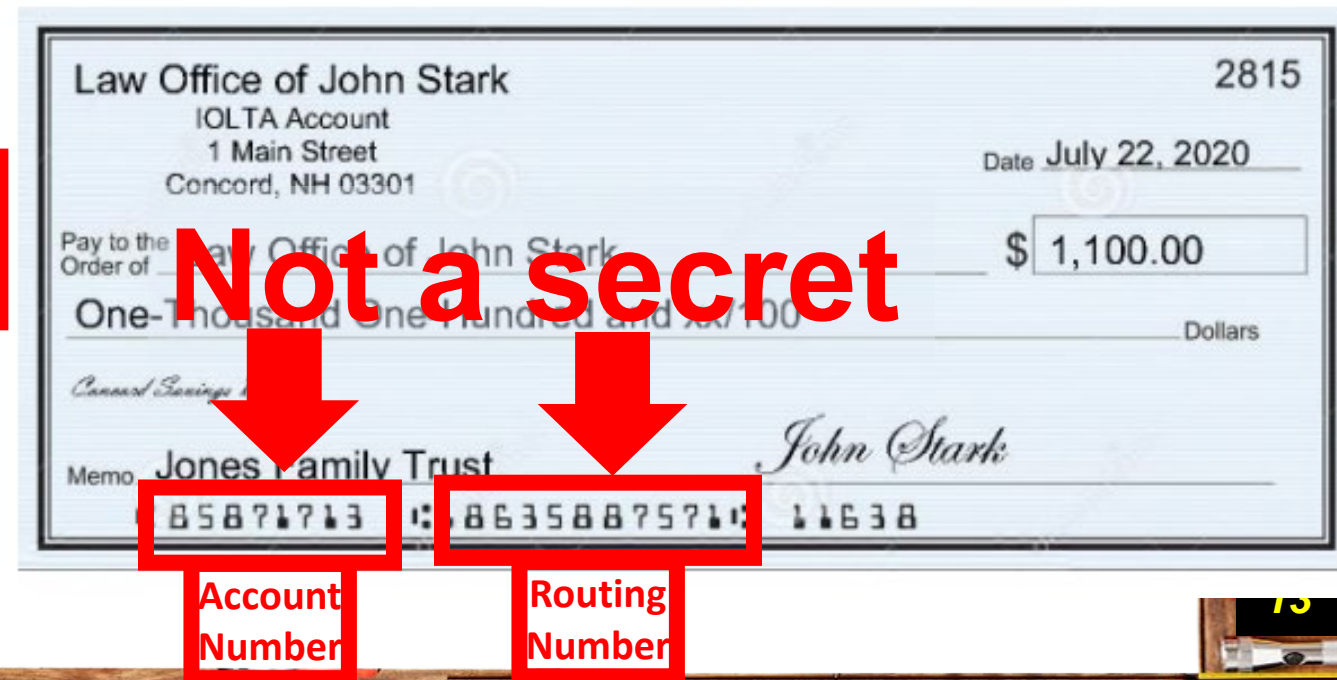
Fraudulent Checks & Unauthorized Withdrawals

- 1) Outgoing ACH Blocks (*on the Pull*)
 - “**Push**” is different than a “**Pull**”
 - What is necessary to create an ACH Transaction?
 - Account Number
 - Routing Number

FREE

They are published every time that you send a check!

- 2) International Wire Blocks
 - Requires additional steps to override



Fraudulent Checks & Unauthorized Withdrawals

3) Positive Pay

- Check *ONLY* clears if it *MATCHES* :
 - Check Number
 - +
 - Check Amount
 - +
 - Check Date.

Ask for:

PAYEE MATCH
POSITIVE PAY

Set to "Reject" if :

- Does not match or
- Is not approved

Law Office of John Stark
IOLTA Account
1 Main Street
Concord, NH 03301

2815

Date July 22, 2020

Pay to the Order of Law Office of John Stark

\$ 1,100.00

One-Thousand One-Hundred and xx/100 Dollars

Concord Savings Bank

Memo Jones Family Trust

John Stark

⑆ 85871713 ⑆ 18635887571⑆ 11638

Fraudulent Checks & Unauthorized Withdrawals

PRIOR ALTA Best Practice#2

- ~~Utilize Positive Pay or Reverse Positive Pay, if available in the local marketplace, and have policies and procedures in place that prohibit or control the use of Automated Clearing House transactions and international wire transfers.~~

REVISED ALTA Best Practice#2

- Positive Pay or Reverse Positive Pay are utilized, if available for the payment type, and have policies and procedures in place that prohibit or control the use of Automated Clearing House transactions, international wire transfers, and electronic/digital receipt of funds from web based fintech applications.

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Verify 3rd Party Wire Instructions

PROBLEM

GIVE ME THE RIGHT TOOL!

***Correctly, Routinely, Easily, Efficiently,
Compliantly and Securely
Verifying Third Party Wiring Instructions***

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Verifying Third Party Wire Instructions

- The digital conveniences that your clients expect have created more vulnerabilities in your process.
- People are not present
- Relationships with Clients are shallower and more transactional
- Impersonal technological environment creates new attack vectors for cyber criminals to inject themselves in the process.
- Failure to verify these impersonal and digital communications is done at your own peril

Social Engineering Defined

GIVE ME THE RIGHT TOOL!

- Social engineering is the art of manipulating people so they give up confidential information. (passwords or bank info)
- The Fraudster “hacks an individual” and not necessarily the computer.

P-I-C-N-I-C

- Usually begins with the digital compromise of the computer or email of a person involved in the transaction.
- Fraudsters use social engineering it is usually easier to exploit your natural trusting nature than hack your system.

WIRE.
WHAT I REQUIRE EVERY TIME.

W. I. R. E. When you Wire

1. Proper Identification
2. Verbal Confirmation
3. Delivery Verification

**What
I
Require
Every
Time**

**WIRE
FRAUD
AHEAD**

SEND WIRE

THINGS TO CONSIDER IN
DEVELOPING YOUR WIRE
FRAUD PREVENTION PLAN

WIRE. WHAT I REQUIRE EVERY TIME. Proper Identification. Verbal Confirmation. Delivery Verification.

File Number: _____ Closing Date: ____ / ____ / ____ Buyer(s): _____ Seller(s): _____

INCOMING WIRE

OUTGOING WIRE

STEP 1: PROPER IDENTIFICATION

Wire Instructions Sent to or Received from: _____

Contact Name _____

Party In Transaction

Buyer Seller Lender Other _____

Verified Contact Phone _____

Encrypted Email _____

Fax Number _____

Date Instructions Sent ____ / ____ / ____

Date Instructions Received ____ / ____ / ____

Format of Delivery of Instructions

Encrypted Email Fax

Mail/Overnight Seller Docs/Affidavit

Hand Delivery Other _____

Initials _____

STEP 2: VERBAL CONFIRMATION

Date Confirmation Call Made ____ / ____ / ____

**Call the Verified Contact Phone indicated in Step 1.
Do not rely on individuals that call you.**

Wire Amount: \$ _____

INCOMING WIRE

Which Trust Account: _____

OUTGOING WIRE

Account Name _____

Account Number _____

Routing Number _____

Bank _____

Wiring Instructions Verbally Confirmed and Attached

Initials _____

STEP 3: DELIVERY VERIFICATION

Wire Authorized by (If Outgoing Wire) _____

Wire Initiated by (If Outgoing Wire)

____ / ____ / ____ ____ / ____ / ____

Date Wire Sent

Date Wire Received

Date of Receipt of Wire Confirmation

____ / ____ / ____

Receipt of Wire Confirmed by _____

Type of Wire

Loan Payoff Seller Proceeds

Other _____

Equity Line Payoff **Remember the Block & Close Letter**

Initials _____

CHANGE IN OUTGOING WIRING INSTRUCTIONS? **CHANGES TO WIRING INSTRUCTIONS SHOULD REQUIRE A SECONDARY REVIEW**

Change Requested by: _____ Buyer Seller Lender Other _____

Was Change Requested by Contact: Yes No

Date Change Request: ____ / ____ / ____

Manner of Change Request: Encrypted Email Telephone Fax Other _____

Initials _____

Was Change Verified Independently through Steps 1 and 2? Yes No

Who Confirmed Change: _____ Date Change Confirmed: ____ / ____ / ____

Manner of Confirming Change: Verified Contact Phone (Recommended) Encrypted Email Other _____

Change Approved By: _____ Date Change Approved: ____ / ____ / ____

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INNOVATIVE BY INSTINCT

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Verify 3rd Party Wire Instructions

GIVE ME THE RIGHT TOOL!

CertifID Introduction - Wire Fraud Stops Here. Guaranteed.

<https://youtu.be/UWtz886pl8I>

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Verifying Third Party Wire Instructions

CertifID is

- 1) *Correct*
- 2) *Routine – Scalable*
- 3) *Easy*
- 4) *Efficient*
- 5) *Compliant &*
- 6) *Secure*

PROBLEM

GIVE ME THE RIGHT TOOL!

***Correctly, Routinely, Easily, Efficiently,
Compliantly and Securely
Verifying Payoff Wiring Instructions***

Verifying Payoff Wire Instructions

Mortgage Payoff Fraud is REAL

In 2020, the average mortgage balance in the U.S was \$229,242,

Fraudsters:

- Trick parties involved in a real estate transaction by redirecting the destination for a loan payoff.
- Spoof legitimate information about an upcoming payoff
- Pretend to work with a title agent or represent a buyer or seller
- Directly alter key data about an upcoming mortgage payoff
- Using various methods to attack:
 - Business Email Compromise (BEC)
 - Spoofed Bank Web Portals
 - Fake Urgency or Issues (“Updated” and/or “Revised
 - Manipulated Faxes



Payoffs are being intercepted by fraudsters.

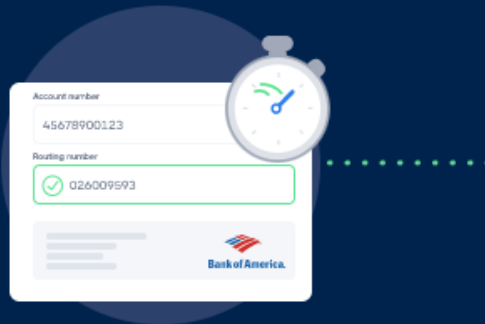


Process is manual.

It can take hours to validate a payoff.

A FIRST-OF-ITS-KIND SOLUTION

PayoffProtect eliminates the risk of fraud, streamlining the process across all payoffs.



**Your work is done, in
less than 2 minutes**

Input wiring details,
PayoffProtect does the rest.

**Receive valid & safe
payoff instructions**

CertifiD status is achieved via the
proprietary PayoffProtect solution.

**Get \$1M of insurance and
peace of mind**

Say goodbye to time-consuming
and risky payoff verification.

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Verifying Payoff Wire Instructions



CertifID Kickoff and Training

2022 | Investors Title

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Verifying Payoff Wire Instructions

CertifID Payoff Protect is

- 1) *Correct*
 - *Over 3 Million Verified Payoff Wiring Instructions*
 - *Backed with \$1,000,000 in direct insurance*
- 2) *Routine – Scalable*
 - *Eliminate Phone Tag*
 - *Lender's Do Not Have to Participate*
- 3) *Easy*
 - *Lender's Do Not Have to Participate*
 - *If Lender needs to be contacted, CertifID will do it*
- 4) *Efficient*
 - *Monthly Subscription, use it as much as you like without per item charges*
- 5) *Compliant & Secure*

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Those &\$% P@\$s\$words

PROBLEM

GIVE ME THE RIGHT TOOL!

***Correctly, Routinely, Easily, Efficiently,
Compliantly and Securely
Create, Manage and Remember Passwords***

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Those &\$% P@\$words



In 2022:

- Each user averaged of 70 - 80 passwords in personal and work life
- 75% of Americans are frustrated with passwords
- Only 45% would change a password after a breach
- 42% of organizations rely on sticky notes for password management
- Over 40 million Microsoft users were found to have reused passwords
- 42% rely on memory for work passwords

Password reuse is still a common practice



2019 Google Survey

<https://storage.googleapis.com/gweb-uniblog-publish-prod/documents/PasswordCheckup-HarrisPoll-InfographicFINAL.pdf>

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Those &\$% P@\$ \$words



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ALTA Best Practice #3

- Password management plan that requires unique login names and system passwords to access systems containing NPI. System passwords must meet minimum standards which include:
 - re-entry of the password after system idling;
 - passwords that expire after a certain period of time;
 - difficult-to-guess passwords that include a combination of uppercase letters, lowercase letters, special characters, with a minimum length of eight total characters.

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Those &\$% P@\$words

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1Password - No More Sticky Notes

<https://youtu.be/mcly2-b1W20>

Cyber News Top 10 Password Managers

(<https://us.cybernews.com/lp/best-password-managers-us>)

- 1) NordPass (<https://nordpass.com/>)
- 2) RoboForm (<https://www.roboform.com/>)
- 3) Keeper (<https://www.keepersecurity.com/>)
- 4) Dashlane (<https://www.dashlane.com/>)
- 5) 1Password (<https://1password.com/>)
- 6) StickyPassword (<https://www.stickypassword.com/>)
- 7) Norton (<https://us.norton.com/>)
- ~~8) LastPass (<https://www.lastpass.com/>)~~
- 9) TotalAV (<https://www.totalav.com/>)
- 10) Enpass (<https://www.enpass.io/>)

Those &\$% P@\$words

“There is no doubt that over time, people are going to rely less and less on passwords. People use the same password on different systems, they write them down and they just don't meet the challenge for anything you really want to secure.”

~ Bill Gates

So What is Next? What is Better?

MFA blocks 99.9% of all attacks

If Multi-Factor Authentication (MFA) is enabled on an account, this means you need to complete two or more steps to access it. The multiple factors could be, for example, a password, a text or email code, or biometric solutions.

PROBLEM

GIVE ME THE RIGHT TOOL!

***Correctly, Routinely, Easily, Efficiently,
Compliantly and Securely
Limit Access To Systems with
Multi-Factor Authentication***

Multi-Factor Authentication

Something
you know

Which might be a
password or the
answer to a security
question



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Multi-Factor Authentication



Authenticate with Duo Mobile

Authenticate with Duo Push on iPhone - Duo Security

<https://youtu.be/rv12VryxlcE>

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PC Magazine's Top 6 Multi-Factor Authentication Programs

(<https://www.pcmag.com/picks/the-best-authenticator-apps>)

- 1) **2FAS (from Google)** (<https://play.google.com/>)
- 2) **Duo Mobile** (<https://duo.com/>)
- 3) **Google Authenticator** (https://play.google.com)
- 4) **LastPass Authenticator** (<https://www.lastpass.com/>)
- 5) **Microsoft Authenticator** (<https://www.microsoft.com/en-us/security/mobile-authenticator-app>)
- 6) **Twilio Authy** (<https://www.twilio.com/authy>)

ALL OF THESE ARE FREE!

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Those &\$% P@\$swords

PROBLEM

GIVE ME THE RIGHT TOOL!

***Correctly, Routinely, Easily, Efficiently,
Compliantly and Securely
Send and Receive Encrypted Email***

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Encrypt My E-Mail

The
Secret
Number
is:

4

POST CARD

THIS SPACE FOR ADDRESS ONLY



U Ben Took

1 Unprotected Lane

Vulnerableville, NC

Unsuspecting Suckers
Of America

***Always
Encrypt
Email
Containing
Sensitive
Information***

PC Magazine's Top 8 E-Mail Encryption Programs

(<https://www.pcmag.com/picks/the-best-email-encryption-services>)

- 1) **Preveil** (<https://www.preveil.com/>)
- 2) **Skiff** (<https://skiff.com/>)
- 3) **ProtonMail** (<https://get.proton.m>)
- 4) **StartMail** (<https://www.startmail.com/>)
- 5) **Tutanota Premium** (<https://tutanota.com>)
- 6) **Virtru** (<https://www.virtru.com/lp-email-encryption-demo/>)
- 7) **Private-Mail** (<https://privatemail.com/>)
- 8) **SecureMyEmail** (<https://www.securemyemail.com/>)

PROBLEM

GIVE ME THE RIGHT TOOL!

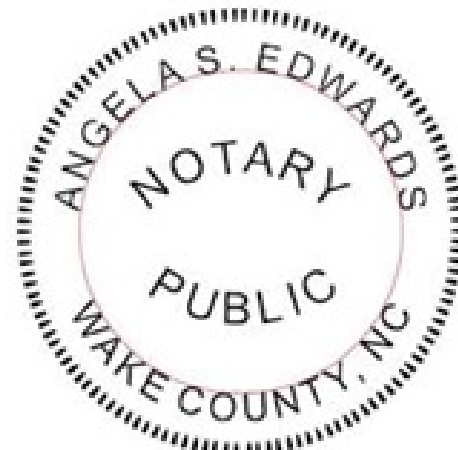
***Correctly, Routinely, Easily, Efficiently,
Compliantly and Securely
Combatting Seller Deed Fraud***

What Do We Need?

What do we need to have a solid enforceable transaction?

1. *Good Signatures*
2. *Good Notarization / Acknowledgment*
3. *Good Recordation*

Santa Claus



20080307000054550 AMD
Bk:RB4474 Pg:171
03/07/2008 12:00:27 PM 1/3

FILED Joyce H. Pearson
Register of Deeds, Orange Co., NC
Recording Fee: \$20.00
NC Real Estate TX: \$0.00

LB

Emerging Threat – Seller Deed Fraud

How it Works:

- 1) **Remote Seller**: Remote seller that is not personally known to the real estate agent and/or the settlement agent and they want the proceeds wired.
- 2) **External Execution**: Conveyance documents are:
 - a) prepared outside of your office by and not know to the realtor or settlement agent; or
 - b) prepared in your office but executed and notarized outside of your office.
- 3) **Unknown Notary**: Notary is not personal known to the real estate agent and/or settlement agent.
- 4) **Vacant or Non-owner Occupied**: Investment property, vacation property or other vacant (including improved and unimproved) property, where a potential fraudulent sale would not draw the attention of the true property owner.
- 5) **Entity Ownership**: In many of these situations, the property is owned by a non-personal entity, such as a corporation, limited liability company or trust. In some cases, the entity was recently formed with the same name as a dissolved entity and purports to transfer the property of the dissolved entity.

Emerging Threat – Seller Deed Fraud

Problems

- 1) Title is Good, but does not belong to person selling
- 2) Standard of Care is to not validate the notary public acknowledging the document
- 3) Rely only on the notarial certificate
- 4) Funds Wired and not hope for return

Result if not mitigated:

- 1) Lawsuit between the Rightful Owner and the Bona Fide Purchaser for Value
- 2) Primary Fact at issue in the case is that Closing Attorney recorded a fraudulent deed

1) Seller:

- a. Resides out of state and does not attend closing.
- b. Only has a digital presence and only communicates by text or email.
- c. Contacted the real estate agent on the internet or lists the property “For Sale by Owner.”
- d. Demands that proceeds be wired (often to an account in a different location than the property).
- e. Signature does not match or resemble previous signatures in the chain of title.
- f. Refuses to meet online in a virtual video call.
- g. Cannot produce identification.
- h. Refuses to adhere to routine protocols and procedures put in place by the settlement agent.
- i. Only wants to receive documents via email.
- j. Uses P.O. box for address.

2) Notary

- a. Notary is not known to the settlement agent.
- b. Notary is in a state other than where the property is located.
- c. Notary is in a state other than where the seller is located.

3) Vacant or Non-Owner-Occupied Property

- a. Investment property, vacation property, or rental property.
- b. Rental property where the seller does not discuss assigning the lease, pro-rating rents, or transferring security deposit.

4) Entity Ownership

- a. Owned by a non-personal entity such as a corporation, limited liability company, or trust.
- b. Entity may have been formed after the acquisition of the property.
- c. Entity with the same name existed prior to the formation of the seller entity and is now dissolved.
- d. Entity with very similar name also exists (e.g., Seller, Inc./Seller, LLC, or Property Owner, Inc., and Prop. Owner, Inc.).

5) Others

- a. No outstanding secured debt.
- b. Below-market sales price – goal of a quick sale.
- c. Back taxes unpaid.
- d. Property offered for sale online by another real estate firm.

PRECAUTIONS AND MITIGATION EFFORTS

1) **Verify or select the notary:**

- a. Require that the notarization be performed by a vetted and approved notary, which could include RON, when authorized.
- b. Verify the notary's credentials with the commissioning authority.
- c. Contact the notary directly, at an independently discovered phone number, to confirm or arrange the execution of the documents.
- d. Request a copy of the notary's errors and omissions insurance or notary bond.
- e. Arrange for the seller to go to an attorney's office, title agency, or bank to execute the deed. (It is more important that the seller does not know the notary than it is for the settlement agent to know the notary.)

2) **Control the disbursement:**

- a. Compare that wire instructions match account detail on seller's Disbursement Authorization Form.
- b. Require a copy of a voided check with the Disbursement Authorization Form.
- c. Require that a check be sent for seller proceeds rather than a wire.

3) **Investigate the property:**

- a. Search the property address online to see what information is available, such as whether it is publicly advertised as being on the market for sale.

4) Verify the seller's identity:

- a. Contact the seller directly at an independently discovered and validated phone number.
- b. Ask the seller for a copy of their government issued identification.
- c. Ask the seller to meet you online (Zoom or other platform) to share identification.
- d. Use an identity verification platform, such as CertifID, to validate the seller's credentials.
- e. Check to see where the tax bill is sent and compare it to the seller's contact information.**
- f. Ask a neighbor how to contact the property owner.
- g. Upon receipt of documents, compare the seller's signature to the seller's signature in previously recorded documents (whether in the chain of title or, if an entity or trust, with the secretary of state or on trust documents).
- h. If the property is leased:
 - i. Ask the tenant for the landlord's (property owner's) contact information.
 - ii. Ask the property owner or the tenant for a copy of the lease.
 - iii. Ask about the assignment of the lease.
 - iv. Ask about the rent payments.
 - v. Ask about the transfer of the security deposit.
- i. If the property is owned by an entity:
 - i. Compare the address of the officer(s) and/or the registered agent to the seller's contact information.
 - ii. If the registered agent is the seller's attorney, contact them for verification of the seller's legitimacy and authority.
- j. If the property is owned by a trust, request a copy of the trust document and contact the beneficiary(ies).

How do you handle Mail-Away Closings?

How do you handle Deeds and Affidavits not executed in your office?

**It is more important
that the Seller NOT know the notary
than it is that you know the notary**

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Seller Imposter Deed Fraud





If you are using the wrong tool, you could go hungry

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Conclusion

**Coming to America
Paramount Pictures
1988**



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Conclusion

Thank You

