

UNDERWRITING BULLETIN

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NY000481

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To: All New York State Policy Issuing Offices

From: Agency Legal Services

Re: Check Fraud Involving Smart Phones

This bulletin advises you of a check fraud scheme involving smart phones and other check scanning technologies.

Recent legal and technological advances allow consumers to deposit checks by scanning the check image and emailing it to their bank. It isn't necessary to deliver the paper check to the bank in order for the depositor to receive credit for it. The speed and convenience of this capability has given rise to a new form of check fraud which can affect escrow offices.

The check fraud scheme begins with an office issuing a paper check in the ordinary course of business. Unbeknownst to the check maker, the perpetrator/recipient immediately deposits the check to their bank electronically, using a smart phone or another image scanning technology. Promptly after the electronic deposit, and before the check maker becomes aware that the check has been deposited, the perpetrator/recipient returns the original paper check to the check maker, and claims that the check was damaged, unsuitable for deposit, rejected by their bank, or too slow to clear. The original check may be intentionally damaged (after scanning and electronic deposit) to add credibility to the scam. The perpetrator/recipient requests either a replacement check or a wire transfer instead of the original check.

Since the original paper check is returned to the check maker, and since there is no physical indication that the check has been deposited, the check maker is unaware that the original paper check has been electronically deposited. The check maker mistakenly believes that he or she can issue a replacement check or initiate a wire transfer to the perpetrator/recipient without any further action regarding the original paper check. The check maker voids the check in the office's internal system only, and promptly issues a replacement check to the perpetrator/recipient or wires replacement funds. If a replacement check is

issued, the perpetrator/recipient immediately deposits the replacement check by smart phone as well. This entire process can occur within hours, or even minutes. The scheme is complete when the original check as well as the second check or wire clears the bank before the original check is voided and a stop payment effectuated.

You may be able to reduce the likelihood of losses from this scheme by adopting the following practices:

1. Implement a Positive Pay or Reverse Positive Pay system and continually monitor the system, on a daily basis. These systems allow you to exchange lists of issued or received checks with your bank before they are paid by your bank. Under a Positive Pay system, an issuer sends to its bank a list of checks that were issued that day, and the bank will not honor any checks that are not on the cumulative list. Under a Reverse Positive Pay system, a bank will send to its customer a list of checks that the bank receives each day, and the customer has an opportunity to approve or reject the checks before the bank pays them.
2. If you use a Positive Pay system, promptly remove any check that will be replaced from Positive Pay authorization, i.e., issue a negative positive pay for the returned check.
3. Immediately put a stop payment request on any check that will be replaced, whether it is physically returned to you or not.
4. Inquire if your bank is able to run a current day report to confirm that the original check has not cleared.
5. Wait at least one full business day before issuing a replacement check or payment of any kind, e.g., a wire.
6. Prior to issuing a replacement check or wire, confirm with your bank that the original check has not cleared, and that the stop payment request remains in effect.
7. Keep all checks in your possession until they are delivered to the payee. If a check is out of your possession at any time, for any reason (for example, if you leave the closing room, even briefly), consider the possibility that a check can be scanned and electronically deposited, even while the closing is still taking place.

If you have any questions please contact Stewart Title Insurance Company Agency Legal Service at 212-922-0050.

References:

Bulletins Replaced:	None
Related Bulletins:	SLS2011015
Underwriting Manual:	None
Exceptions Manual:	None
Forms:	None

Attachments: None

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