

UNDERWRITING BULLETIN

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NY000323

Date: August 23, 2007

To: All New York State Office Counsel, Managers and Agents

From: Harold Boxer, Vice President and Senior Agency Counsel

Re: ACH Transfers

We have been advised of two concerns relating to ACH Transfers. First, they may be subject to unilateral recall by the Payor for a period of time after deposit into an account. Second, they may be used to make unauthorized withdrawals from an account.

ACH FUNDS ARE NOT THE SAME AS WIRED FUNDS. ACH FUNDS MAY NOT BE AVAILABLE FUNDS UNDER YOUR STATE TITLE INSURANCE CODE OR REGULATIONS. There is a distinction between “wired funds”, which are generally available funds under state title insurance requirements, and ACH transfers, which may not be. They are both electronic transfer of funds, but they are distinctly different.

The ACH Network is a nationwide batch-oriented electronic funds transfer system providing interbank clearing of electronic payments for participating depository financial institutions. ACH stands for Automated Clearing House transactions. They are a form of Electronic Funds Transfer to and from bank accounts using a batch processing system and can involve consumers or businesses. What makes them unusual is that they CAN BE RECALLED by the Payor up to 90 days after the transfer. Wired funds are managed by the Federal Reserve System. ACH transactions are governed by rules established by NACHA, a private financial industry trade association. Different NACHA Operating Rules apply to consumer ACH and business ACH transactions.

ACH payments have been available and used for years and typically include direct deposit of payroll, social security and other governmental benefits and tax refunds, direct payment of consumer bills such as through a bank bill payment

service, business to business payments, e-checks and payment of federal, state and local tax payments.

(1) With regard to use of ACH transfers to place funds into a title agent's escrow account, be aware that an ACH transfer can be unilaterally recalled by the originator of the transfer up to 90 days after the transfer. For a non-business bank customer, the recall can occur up to 60 days after receipt of the transferee's bank statement.

With this recall component of ACH transfers, they may not be "available funds" under your state title insurance laws or regulations and you may not be authorized to disburse funds provided by an ACH transfer.

We suggest you contact the bank or banks that hold your escrow accounts and discuss with them the way in which an ACH transfer is credited to your escrow account (versus a wire transfer). You, in discussion with your bank, could decide to "block" all incoming ACH transfers attempting to deposit funds into your company's escrow account or otherwise "flag" or alert you to incoming deposits made by ACH transfers. Usually these ACH transfers are referred to as ACH debits/credits transactions on your bank statement or on-line bank account activity screen.

(2) With regard to the unauthorized use of ACH transfers to take funds out of your escrow and operating accounts, all a person needs to attempt an ACH transfer out of your escrow or operating account is your account number and the bank routing number. This information may be obtained when the title company writes a check or authorizes a wire transfer. It may be possible for someone to call in or initiate Web based payments and purchases and provide the title company's account number and bank routing number to the unsuspecting creditor or business and unknown to you.

This is also a matter that you should discuss with your escrow account bank or banks. You might consider placing a block on all outgoing ACH transfers from your escrow account. You may be using ACH transfers to pay certain bills or payroll out of your operating account. Therefore, a total block of your operating account may not be appropriate. Other options are to authorize certain companies to take money by ACH transfer out of your operating account, or you may choose to review all ACH transfer withdrawals and decide whether to accept or reject them. If you don't timely accept, usually these ACH transfers are rejected. Another option is to limit the ACH activity to one account and review it daily.

(3) To avoid any possibility of a recall, title agents are advised to set up a special account to receive incoming wire transfers which should immediately upon receipt be further transferred into a secure account from which no third parties may make withdrawals.

If an unauthorized ACH withdrawal is made on one of your bank accounts, you must act quickly to notify your bank in order to get the unauthorized withdrawal

reversed. Most banks require notification within one or two days of the unauthorized withdrawal for business ACH transactions and 60 days for consumer ACH transactions.

This concern serves as a reminder to monitor and reconcile all of your bank accounts (escrow and operating) constantly for any unusual or unauthorized activity.

We suggest you immediately take steps to protect your company and your bank accounts from misuse of the ACH transfer process.

If you have any questions regarding this bulletin, please contact the following Stewart Title Insurance Company Agency Legal Service.

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Please email SticMarketing@stewart.com to put your name on the Legal distribution lists for alerts and bulletins.

References:

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

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