



Law Office of

MICHELLE L. GLASS, PA

REAL ESTATE

Hot Legal Topics in Florida

Presented By:

Michelle L. Glass, Esq.

Where, What, What and How

- WHERE are you as a lender with a PACE Lien?
 - **PACE Liens:** Property Accessed Clean Energy Act - making your property more energy efficient and wind resistant – BUT can you lend
- WHAT are we dealing with now?
 - **Fraud update**
- WHAT is e-signing and notarizing?
 - **Electronic signing**
- HOW has COVID-19 impacted mortgage servicing?
 - **Foreclosure update**

WHERE are you as a Lender - to Lend or not to Lend?

PACE Liens - (Property Accessed Clean Energy Act)

- Encourages homeowners to make property more energy efficient and wind resistant
 - Solar panels
 - Insulations
 - Energy Efficient Doors/Windows
- Local government provides financing for the *qualifying* improvement
 - Financing agreement between homeowner and local government
 - Authorizes the local government to impose a recurring non-ad valorem annual assessment to repay the PACE loan, to be added to the annual property tax bill and collected by the county tax collector.
 - Financing agreement or a summary memorandum of the agreement must be recorded in the public records of the county where the property lies within 5 days after execution
 - Recording gives constructive notice that the assessment to be levied on the real property creates a lien of equal dignity to county taxes and assessments from the date of recordation. The financing agreement only contains an estimate of the improvement costs and is followed by the recording of an addendum which contains the final terms of the loan and the assessment.

PACE Liens cont'd

- A PACE financing agreement will usually be indexed as an “Agreement.”
 - MISLEADING as this does not indicate that the agreement actually creates a lien.
- NOTE: assessments may not appear on the tax bill the year the lien was created. Buyers of property subject to a recent PACE loan may not be aware that, if the PACE loan is not satisfied at closing, the property tax bill for the subsequent year could easily be double or triple the current bill amount. PACE loan assessments to add \$5,000 to \$10,000 to the annual property tax bill.
- **ISSUE** —
 - PACE liens have super-priority status, the same as property taxes. The PACE lien will have priority over any subsequently recorded mortgage. Moreover, when a PACE lien is created by the recordation of a financing agreement or summary memorandum of the agreement, it will gain priority over any previously recorded mortgage. Nothing in the PACE Act or the financing agreement subordinates the PACE lien to an existing or future mortgage. A PACE lien **cannot** be eliminated in a mortgage foreclosure.

PACE Liens cont'd

- CAN YOU LEND if a PACE Lien exists?
 - YES, but many lenders will NOT due to the priority issue.
 - The Federal Home Financing Agency (FHA) prohibits Fannie Mae and Freddie Mac from insuring or guaranteeing mortgages on property encumbered by a PACE lien.
 - The United States Department of Housing and Urban Development (HUD) issued Mortgagee Letter 2017-18 that stated properties encumbered with PACE obligations will no longer be eligible for FHA-insured mortgages.
 - It is unclear whether PACE-encumbered properties are eligible for Veteran's Administration loans since V.A. Circular 26-16-18, which granted eligibility, was rescinded July 1, 2018.
 - For closings, the Title Company is required to ensure your mortgage is in first lien position. With a PACE Lien, they will call for the lien to be paid at closing to ensure closing instructions of the lender are being met and that mortgage is in 1st position.

Fraud Update -

WHAT are we dealing with today?

- Wire fraud continues to be rampant and a multi-billion dollar a year industry for the scammers!
 - Two main ways personal information is obtained:
 1. Phishing – scammer masquerading as a trustworthy entity, usually in an email, to obtain confidential information
 2. Sensitive information sent electronically and unsecured is intercepted
 - Continuing to be mindful during our daily activities are a must.

Recognition

is the **KEY!**

Ongoing Common Red Flags of Potential Wire Fraud

- **Emails requesting last minute changes to wiring information (i.e. change in beneficiary and/or receiving bank).**
- **Time of day the wire transfer was requested.**
 - End of the week or end of business day
 - Outside normal business hours
- **Emails from same sender that have significant changes to grammar, sentence structure or spelling compared to previous emails.**
- **Requests for secrecy or pressure to take action quickly.**
- **Sudden changes in business practices.**
 - Current business contact suddenly asks to be contacted via a different e-mail account

Suggestions for Protection

- **EDUCATION** – Best defense is to educate all parties of potential scam methods.
- Avoid sending sensitive or confidential information via unsecured email.
ALWAYS send secured!
- Be careful of what is posted on all social media and websites, including job duties and descriptions for your office.
 - This includes out of office details for all employees.
- **DO NOT** use the “REPLY” option to respond to business emails. Instead, use the “FORWARD” option and either type the correct email address or select it from your email address book to ensure the intended recipient’s correct email is used.

Suggestions for Protection (cont'd)

- **Establish other communications channels, such as a known, trusted telephone number to verify transactions.**
 - Establish early in the relationship
 - Establish outside the e-mail environment to avoid interception
- **Immediately report and delete unsolicited e-mail (spam) from unknown parties. DO NOT open spam e-mail, click on links in the e-mail or open attachments.**

Suggestions for Protection (cont'd)

- **ALWAYS verbally confirm requests of transfer of funds. Use previously known and trusted numbers, not the numbers provided in the e-mail request.**
- **Carefully scrutinize all e-mail requests for transfers of funds to determine if they are out of the ordinary.**
- **Regularly purge email**
 - Why? So the threat actor/hacker cannot look at your prior e-mails for information gathering purposes.
- **Consider implementing standard warning notice to your customers of the scam.**

Wire Fraud Alerts

Wire Fraud Alert

This Notice is not intended to provide legal or professional advice. If you have any questions, please consult with a lawyer.

Realtors®, Real Estate Brokers, Closing Attorneys, Buyers and Sellers are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification.

A fraudster will hack into a participant's email account to obtain information about upcoming real estate transactions. After monitoring the account to determine the likely timing of a closing, the fraudster will send an email to the Buyer purporting to be the escrow agent or another party to the transaction. The fraudulent email will contain new wiring instructions or routing information, and will request that the Buyer send funds to a fraudulent account.

Please be advised that the wire instructions listed below are the only wire instructions we will send you. If you receive another email or unsolicited call purporting to alter these instructions, please immediately call us at (insert phone number).

Insert Wire instructions

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. **DO NOT** use the phone number provided in the email containing the instructions; use phone numbers you have called before or can otherwise verify. **Obtain the number of your Realtor®, Real Estate Broker and your escrow officer as soon as an escrow account is opened. DO NOT** send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **DO NOT** forward wire instructions to other parties without first verbally verifying the instructions from the sending party.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do NOT reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire fraud scams or to report an incident, please refer to the following links:

Federal Bureau of Investigation: <http://www.fbi.gov>

Internet Crime Complaint Center: <http://www.ic3.gov>

ACKNOWLEDGEMENT OF RECEIPT

Your signature below acknowledges receipt of this Wire Fraud Alert.

Buyer 1

Signature _____

Printed Name _____

Address _____

Date _____

Phone Number _____

Buyer 2

Signature _____

Printed Name _____

Address _____

Date _____

Phone Number _____

WIRE SAFE.

IMPORTANT WIRE FRAUD ALERT FOR HOME BUYERS



Realtors®, real estate brokers, closing attorneys, buyers and sellers are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email.

A fraudster will hack into a participant's email account to obtain information about upcoming real estate transactions. After monitoring the account to determine the likely timing of a closing, the fraudster will send an email to the buyer purporting to be the escrow agent or another party to the transaction. The fraudulent email will contain new wiring instructions or routing information, and will request that the buyer send funds to a fraudulent account.

We are urging everyone to **INQUIRE BEFORE YOU WIRE** and to never rely solely on email communication. Always follow these two simple steps:

**INQUIRE
BEFORE YOU WIRE.**

When in doubt, always call our office or your escrow officer.

For the best in service, remember to always insist on



STEP 1



Obtain the phone number of your Real Estate Broker, Realtor®, Closing Attorney (if applicable) and your Escrow Officer as soon as an escrow is opened. Complete the information below and keep this flyer in your escrow folder. If you are reading this at one of our offices and you don't have a copy of this flyer, simply ask the receptionist for a copy.

STEP 2



Prior to wiring, call the phone number you wrote down from step #1 above to speak directly with your Escrow Officer to confirm wire instructions. If you receive a change in wiring instructions supposedly from us or your Escrow Officer, be suspicious as we rarely change our wiring instructions.

ESCROW NUMBER

BROKER'S NAME/PHONE

REALTOR'S NAME/PHONE

ESCROW COMPANY

ESCROW OFFICER'S NAME/PHONE

Wire Account Notification

WIRE ACCOUNT NOTIFICATION

Property Address: _____

Project Reference: _____

Due to the increased wire fraud activity, the Company has instituted procedures to assist in the protection of parties to the Real Estate Settlement from these illegal activities.

Below you will find the wire account information for this transaction. Please be advised that the wire instructions, listed below, are the only wire instructions we will send you. **Verbally verify these wire instructions with us prior to forwarding to other parties.**

If you receive another e-mail or unsolicited call purporting to alter these instructions, please immediately call us at (____)____-_____.

BANK NAME: _____

ABA NUMBER: _____

ACCOUNT NAME: _____

ACCOUNT NUMBER: _____

ESCROW NUMBER: _____

EMPLOYEE TO NOTIFY: _____

EMPLOYEE PHONE NUMBER: _____

If you have any questions, contact the Employee listed above at the number shown above.

What To Do If a Party to the Transaction is a Victim

- **The account owner should contact the financial institution immediately upon discovering the fraudulent transfer.**
- **Request that the financial institution contact the corresponding financial institution where the fraudulent transfer was sent.**
- **Contact the local police department and Federal Bureau of Investigation (FBI) office.**
- **File a complaint with the Internet Crime Complaint Center at www.ic3.gov, regardless of the dollar amount.**

What To Do If a Party to the Transaction is a Victim (cont'd)

- **Inform all parties to the transaction via a known, trusted phone number, that electronic communications may have been compromised and that all further activity should occur outside of electronic methods.**
- **DO NOT continue to communicate with persons who believe may not be proper parties to the transaction. Ignore further e-mails or other requests for updates.**
- **Recommend all parties to the transaction review email account security, including changing passwords, reviewing email login history and conducting security reviews of computers and networks.**

ALWAYS:

Inquire before you wire!

FRAUD UPDATE cont'd

- Ransomware
 - Defined as: form of malware designed to encrypt files on device, rendering such files and systems that rely on them unusable. Hackers then demand ransom in exchange for decryption.
 - 2021 – estimated twenty billion dollars loss due to attacks, including the recent attack on the Colonial Pipeline in May, JBS Foods (largest meat processing company) in June, Kia Motors in February
 - Small number of ransomware groups responsible for almost 300 breaches
 - For larger companies, hackers are seeking high yielding amounts of money; smaller companies, which are most often targeted and less often reported, are hit with smaller demands
 - **NO MATTER THE SIZE OF YOUR COMPANY RANSOMWARE WILL HOLD YOUR BUSINESS HOSTAGE!**

FRAUD UPDATE cont'd

WHAT can I do to protect my networks from Ransomware?

1. Backup -
2. Risk Analysis
3. Staff Training
4. Vulnerability Patching
5. Application Whitelisting
6. Incident Response
7. Business Continuity
8. Penetration Testing

WHAT is e-signing/notarizing?

Prior to COVID, Florida was moving toward becoming more digital in many facets of business. Although, some of the digital signing has been around many years, it has not been used as much as it has in the last 18 months.

NOTARIZATIONS:

1. TWIN – Traditional Wet Ink Notarization
 - Standard in-person wet ink signing we are familiar with pre-COVID
2. E-Notarization
 - Notary uses electronic signature to notarize a digital document; notary required to use same procedures as with paper notarizations (i.e.: parties must be in the same room)
3. RON – Remote Online Notarization
 - Allows parties to connect using secure audio-video communications to execute/notarize documents throughout the U.S.
 - Identity is verified, video is recorded and saved on the RON provider website, documents are signed and stamped digitally then stored online. Notary's journal of remote online notarizations is also digital.
4. RIN – Remote Ink Notarization (not available in Florida)
 - Similar to RON where parties use audio-video communication, notary uses standard identification methods, both signer and notary must be *physically located in the state the notary is commissioned in*
 - Signer signs wet ink documents, notary will execute a "certificate of notarial act" either via electronic delivery or by receiving the original, signed documents from the signer and completing the certificate that disclosed notarization was taken remotely using two-way audio-video

HOW has COVID-19 impacted mortgage servicing?

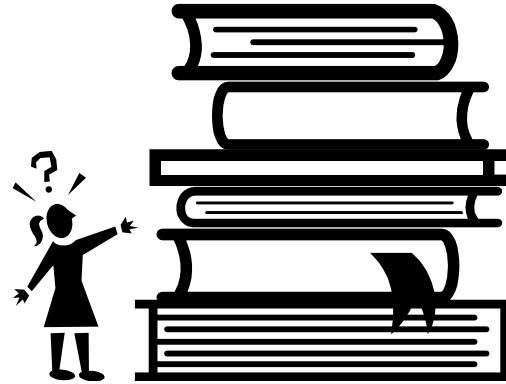
On April 2, 2020, Governor Ron DeSantis issued [Executive Order 20-94](#) in response to the COVID crisis. The Order suspended foreclosure actions and evictions for 45 days. Shortly before its scheduled expiration, Governor DeSantis issued an additional extension for 30 days. The Governor continued to extend the Order each month for 30 days. On September 30, 2020, Governor DeSantis announced he would not be extending the order and allowed it to expire on October 1, 2020.

Neither Executive Order 20-94 nor any subsequent Orders release homeowners from rent or mortgage obligations. Homeowners were required to continue to pay their mortgage during the Florida COVID foreclosure suspension.

Servicing/COVID-19 cont'd

- The [CARES ACT](#) was passed by Congress in response to help alleviate the financial hardship caused by COVID. Under the CARES ACT, government-backed [mortgages may be eligible for a mortgage forbearance](#) of up to 180 days. A forbearance is when your lender suspends payments for a limited amount of time. Forbearance does not forgive or eliminate payments; it only delays them. Any missed payments during the forbearance period will need to be addressed when the forbearance ends. The CARES ACT also prevents foreclosure of government-backed loans currently through July 31, 2021. No foreclosure case for a government-backed mortgage may be filed until after that date. If a foreclosure case was already filled, the CARES ACT would prevent the foreclosure sale from occurring.
 - **ISSUE** – State Judges are not adhering to this Act in State Court. If you are not moving your foreclosure, they will dismiss the case and you can refile at a later date.
- CFPB (Consumer Financial Protections Bureau) – wanted to step into the action and pass its own temporary protections for “COVID-19 related hardship” with this 2021 Mortgage Servicing COVID-19 Rule. Effective date – 8/31/2021 and it is for borrowers **with COVID-19 related hardship.**

Any Questions?



Michelle L. Glass, Esq.

Telephone: (904) 606-3903

Facsimile: (904) 606-3936

michelle@glass-law.net

Sources:

Fidelity National Financial; Title Resources Guaranty