

**LAWYERS MUTUAL TO AMEND ALL POLICIES
Wire Fraud Covered IF: You Follow the Rules!**

On September 13, 2017, Lawyers Mutual Insurance Company began notifying their members that Professional Liability Insurance Policies will be amended to address wire fraud. They are adding a “**Financial Fraud Exclusionary Endorsement**” to all of their new policies and renewals effective November 1, 2017, (or later), that will generally exclude wire fraud from coverage. The endorsement does contain specific affirmative coverage in the form of a safe harbor, if certain procedures are followed. While your particular effective date may be months away, you should start following these new requirements now to protect yourself and your clients.

REQUIREMENTS FOR AFFIRMATIVE COVERAGE

1) Outgoing Wires:

You must disburse trust funds “**in accordance with a written, original, notarized disbursement instruction authorizing the wiring or electronic transmission of the funds**” (hereinafter “Disbursement Instruction and Authorization”) ([sample linked](#)). The Disbursement Instruction and Authorization should instruct and authorize you to send funds in a particular form of delivery to a particular account or address. While this protection was generally intended for wires, this should be considered a best practice for delivery of all settlement funds. The instructions cannot be changed except upon receipt of a new written original Disbursement Instruction and Authorization

Please note that there are several elements of the Disbursement Instruction and Authorization that require strict compliance for the safe harbor to apply:

a) Written Original

The safe harbor requires that an ORIGINAL of the Disbursement Instruction and Authorization be obtained. This would eliminate receipt of said document via fax, email, or other digital delivery. It would appear from this requirement that an electronically-executed, electronically-acknowledged document, or electronically-delivered document would **not** meet this requirement or was not contemplated.

b) Notarized

The original signatures on the written original Disbursement Instruction and Authorization must be properly acknowledged by a notary public (meeting all of the statutory requirements for acknowledgment) and bear the notary seal.

c) Receipt Prior to Disbursement

The document must be received prior to the disbursement or transmission of the wire. This document can be delivered prior to closing or executed at the closing ceremony.

What About Lender Payoffs?

Lender payoffs are not specifically addressed in the endorsement; therefore, you should assume that the misappropriation of funds on a payoff wire is NOT covered, unless you get Disbursement Instruction and Authorization. Lawyers Mutual acknowledges the difficulty of getting such a document from a lender and encourages payoffs to be made by trust account check or at a branch location of the lender.

2) **Incoming Wires:**

If funds are being wired into your IOLTA account, you can avail yourself of the safe harbor by utilizing a Client Engagement Letter or Agreement that meets **ALL** of the following requirements:

- a) **Client Must Sign Engagement Letter or Agreement**
- b) **Engagement Letter Must Identify the Firm IOLTA Account**
- c) **Engagement Letter Must Contain the Following Language**

“BEFORE SENDING ANY WIRE, CALL OUR OFFICE TO VERIFY THE INSTRUCTIONS. WE WILL NOT CHANGE WIRING INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIONS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED TO BE FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT OUR OFFICE IMMEDIATELY. FAILURE TO FOLLOW THIS PROCEDURE ENDANGERS YOUR FUNDS.”

The above or similar language would also be an excellent addition to your email footer; however, do NOT include your account number in the email footer or any unencrypted email.

Where Can I See this Information from Lawyers Mutual?

<http://www.lawyersmutualinc.com/risk-management-resources/articles/news-from-the-president-financial-fraud-exclusionary-endorsement-real-estate-with-safe-harbor>

What If I am Not a Lawyers Mutual Customer?

If you are not a Lawyers Mutual customer, you should still implement these protections in your trust account security policies. These policies are becoming the standard of the industry and will add additional security to your existing trust account security policies.

What About Cyber Fraud that is Not Covered by this Safe Harbor?

Investors Title encourages you to protect yourself by purchasing cyber fraud insurance. Wire fraud is just one type of cyber fraud.

What Else Should I be Doing to Protect Myself from Wire Fraud and Cyber Fraud?

Investors Title has developed a series of informational materials that can be found at <https://invtitle.com/wire>. These pamphlets are packed with steps to protect your practice, your clients, and your collective money.

1. **C.Y.B.E.R. – Can You Be Entirely Ready ([Click Here](#))**
2. **W.I.R.E. – What I Require Every time ([Click Here](#))**
3. **F.A.S.T. – Fast Action Stops Theft ([Click Here](#))**

Where Can I Get Sample Engagement Letters and Disbursement Instruction and Authorization?

Investors Title has prepared sample engagement letters to assist you. Before using them, please review in depth and tailor them to match the procedures in your office. There are three versions:

1. [Engagement Letter for Purchase](#)
2. [Engagement Letter for Purchase where the Attorney Represents the Builder](#)
3. [Engagement Letter for Refinance](#)

The sample engagement letters, together with a sample Disbursement Instruction and Authorization are linked above and located on the Investors Title website under forms for NC:

<https://www.invtitle.com/resources/nc>.