“POS PAY” Pays Off

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Last summer two fraudulent checks were presented for payment against our escrow account. Both were detected by “positive pay,” a service offered by many banks to help prevent fraud, and the checks were returned unpaid. Recently, the same fraudulent check form was again presented for payment. Again, it was caught by positive pay and returned unpaid. For those of you unfamiliar with “positive pay,” the process entails a daily reconcilement of a company’s issued checks to checks presented for payment to our bank in order to identify potentially fraudulent checks.

All three checks were sophisticated replicas of our company’s escrow check form and contained many of the same safety features. At first glance these checks looked identical to the checks produced from our escrow system, including the reproduction of a patented protected font and two signatures closely matching specimen signatures on file with the bank.

Without positive pay, these checks would have been paid and the probability of recovery would have been remote. In addition, we would be in the middle of an unpleasant process to determine liability – whether the bank of deposit, our bank and/or our company should be held responsible for the loss. In this case our bank may have been able to avoid some or all responsibility because the check documents were such close replicas of our actual check form and the signatures were such close replicas of actual specimen signatures on file with the bank.

When the courts are asked to make a determination of loss responsibility, case law suggests their rulings are frequently based on the theory of contributory negligence (who could have or should have been able to prevent the loss). This usually means companies that routinely maintain large dollar bank accounts (title company escrow accounts) will be held to a high standard regarding treasury management procedures/ controls, to include check stock with adequate safety features, proper control of the check inventory, timely reconcilement and positive pay. Title companies also need to make sure any check fraud is reported to their bank within the timeframe prescribed in the bank’s Deposit Agreement. (In recent years, this deadline has continuously been shortened to the point where some banks will require accounts to be fully reconciled by the 15th of the following month in order to comply with their time constraints.)

Fortunately, treasury products/systems, including positive pay, are readily available and affordably priced. Our check fraud experience nationwide would indicate title company escrow accounts are favored targets of criminals. Almost every one of our offices has had at least one fraudulent check attempt. Many have had multiple attempts and it is impossible to determine how many additional attempts may have been thwarted because the first check presented was caught by positive pay and returned. (It is common for criminals to present a small fraudulent check early in the month, and if it is paid, to immediately present additional checks for larger amounts.)

With today’s reasonably priced technologies such as color copiers, scanners, laser printers and sophisticated computer software, high-quality check forgeries have become routine. Title companies that manage escrow accounts with significant balances without using positive pay are taking a great risk. Generally speaking, it isn’t **if** the account will ever suffer a fraudulent check attempt, it is more a matter of **when**, how much and what form of legal recourse might be available. Avoid the risk, use positive pay!

If you would like more information on positive pay systems call your bank or Renea Thompson or Missy Wolf in our Tampa office.