

Dear Policyholder:

Re: An Important Change to Your Lawyers Mutual Coverage

Over the past 20 months, wire fraud losses involving residential real estate transactions have skyrocketed. Lawyers Mutual is aware of losses (prior to any recoveries) totaling in excess of \$4 million over that time period. To date, virtually all losses of which we are aware have involved residential real estate transactions. Residential real estate transactions are clearly targets of these scams.

These scams and the recommended risk management procedures have been detailed and discussed in many articles, alerts and seminars over the past several years. Most lawyers have implemented the necessary procedures, which has enabled them to avoid these losses. Unfortunately, not all have. As a result, lawyers and clients continue to suffer losses from these scams.

Due to the increasing frequency of such losses, your board of directors and management necessarily reviewed a number of options and, after extensive discussion and analysis, determined that Lawyers Mutual will add an exclusionary endorsement with limited waiver to all policies issued on and after November 1, 2017. Please note that the endorsement **applies only to wire fraud involving real estate transactions and contains safe harbors. If your firm complies with the safe harbors, the endorsement will not apply to the loss, misappropriation or attempted misappropriation of funds.** (See the attached **“Financial Fraud Exclusionary Endorsement (Real Estate with Safe Harbor)”** for specific exclusionary and safe harbor language).

If you have not yet done so, we strongly encourage you to amend your policies and procedures so that you are in compliance with those specified in the endorsement. We suggest that you use the precise language set forth in the safe harbor in your firm’s engagement letter.

We will continue our educational efforts to help avoid these losses. (Please see our website for risk management resources: <http://www.lawyersmutualnc.com/risk-management-resources>.) We will also continue to use our resources to assist in efforts to recover misappropriated funds.

Please see the attached **Common Questions** for additional details. Do not hesitate to contact us if you have any additional or unanswered questions.

Sincerely,

Daniel M. Zureich

President

Common Questions

1. What type of scams are you seeing?

To date, the scams have involved someone posing as a seller of real estate or a closing attorney. When posing as a seller, the criminal calls or emails the closing attorney and changes the wiring instructions. When posing as a closing attorney, the criminal emails the buyer and changes the wiring instructions. The scams continue to evolve and increase in sophistication.

2. Why is this type of loss different?

These losses are very different from legal malpractice claims. Unlike legal malpractice claims, they are due to an intervening criminal act committed by a third party. They can also involve technical IT issues.

3. What is a safe harbor?

In general, a safe harbor is an exception to an exclusion. If you follow the two safe harbors detailed in the exclusionary endorsement, the endorsement does not apply to the loss, misappropriation or attempted misappropriation of funds that would otherwise be excluded.

4. What are the safe harbors?

See the exclusionary endorsement for specific details. However, for client wires and transmissions, the safe harbor requires inclusion of specific language in your firm's engagement agreement. For firm disbursements or transmissions, the safe harbor requires that you obtain written, original, notarized disbursement instructions authorizing the transfer.

5. Do the safe harbors contemplate wiring funds to a lender for a loan payoff?

They do not. Lenders will not likely cooperate in providing notarized statements as required by the safe harbor. In these cases, we suggest that you either overnight a physical check to the lender, or if possible, present payment to a local branch. If you must wire funds to a lender and are unable to obtain notarized instructions, we recommend that you verify the instructions by initiating a call to the lender at a telephone number you know to be reliable, or if that is not possible, carefully compare the instructions to those from a prior transaction with that lender.

6. Is there coverage available for these types of losses?

Lawyers Insurance Agency offers several products that provide cyber, crime and social engineering fraud coverage. To determine which product best meets your needs, please contact Adam Pierce at (800)662-8843 Ext. 163 or adam@lawyersmutualnc.com.

7. What do I do if I suspect fraud or am a victim of fraud?

Please call us immediately. We will use our experience and relationships to work with you to attempt to recover misappropriated funds. Time is of the essence. The success rate in recoveries dramatically increases if the loss is reported to us within 24 hours of transfer or disbursement.



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Financial Fraud Exclusionary Endorsement **(Real Estate with Safe Harbor)**

This Endorsement, effective 12:01 A.M. on **00/00/0000** forms a part of Policy No. **0000000-00** (the "**Policy**") issued by LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA.

It is hereby understood and agreed that as a condition of the issuance of this **Policy**, the **EXCLUSIONS AND LIMITED WAIVER I. Exclusions**, section of the **Policy** is hereby amended to add this Specific Acts Exclusion. All **Policy** provisions, terms, and conditions, except as expressly provided otherwise in this endorsement, remain in full force and effect.

Irrespective of whether the act(s) or omission(s) alleged in support of a **claim, suit**, or theory of liability presented in a **suit**, would fall within **INSURING AGREEMENT, I. Coverage - Attorney, II. Coverage - Fiduciary** or **III. Coverage - Arbitrator & Mediator**, this **Policy** does not afford to any **Insured** any coverage or benefits whatsoever, including, but not limited to, any right to any defense, with respect to:

any **claim**, or any theory of liability asserted in a **suit**, based in whole or in any part upon any act(s) or omission(s) of any **Insured** arising out of, related to, or on account of the loss, misappropriation, or attempted misappropriation of funds, through any dishonest, deceitful, or fraudulent scheme or means, including but not limited to written, electronic, telegraphic, cable, teletype, facsimile, or telephone communications or access to, use of, or change to any software, application, data, or information within any computer, server, electronic device, or electronic account of an **Insured**. This exclusion applies regardless of whether any other act(s) or omission(s) contributed concurrently or in any sequence to the loss, misappropriation, or attempted misappropriation of funds. This exclusionary endorsement shall apply only to funds directly or indirectly connected with or related to any purchase, sale, financing, or refinancing of real estate.

Provided, however, that this endorsement shall not apply to the loss, misappropriation or attempted misappropriation of funds (1) wired or electronically transmitted by or on behalf of a client if any **Insured** had previously obtained the client's written agreement to terms of engagement applicable to the representation that identified a specific IOLTA Trust Account as the only bank account to be used, and that warned the client substantially as follows: "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," or (2) disbursed by or on behalf of any **Insured** in accordance with a written, original, notarized disbursement instruction authorizing the wiring or electronic transmission of the funds.

Authorized Agent