

## 4 Tips to Protect Yourself Against Wire Fraud in Leasing

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Wire fraud can result in significant loss, and it is permeating all types of transactions, including leasing. With tenants more frequently wiring funds to pay for security deposits and rents, it is important to take precautions against wire fraud to ensure the safety of payments and to avoid potential disputes between landlords and tenants over who is responsible for such a loss. Ideally, payments should not be considered to have been made until they actually reach the recipient.

While there are various forms of wire fraud with different scenarios, it most often begins with a person receiving an email that contains fraudulent wiring instructions related to an actual business deal. The wire transfer is then sent to a fraudulent account, only for the relevant parties to later find out that the instructions were not authentic. Frequently these emails are coupled with claims that “there is no time to talk” or “I am not reachable,” both of which are hallmarks of fraud.

The point is that these frauds are real, are increasing in frequency and sophistication, and can happen to you if you’re not careful. Here are four tips to help landlords and tenants avoid becoming victims of wire fraud:

1. **Include in the lease how wire instructions are going to be sent, received and changed** (unless wires are specifically prohibited by the lease). Preferably the discussion of such a clause includes how the tenant will communicate with the landlord about wires, and also how wires are to be handled.
2. **Discuss at the outset how changes to wire instructions are going to be implemented and authenticated.** This is important to address, since leases can have lengthy terms and it is not unusual for landlords to change banks, especially if they refinance a mortgage loan encumbering the leased property with a new lender.
3. **Require two forms of authentication to prove that instructions are authentic and document that those safeguards were carried out.** Once wire instructions are given, either in the lease or in a separate written communication from the intended recipient to the sender, a typical second safeguard requires a phone call from the sender to the relevant person at the recipient’s office, where the sender establishes

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that the person with whom they are speaking is the correct person, and that the instructions they otherwise received are both accurate and authentic.

4. **Be cautious if a supposed party is “cranking up” the urgency of a wire.** Rarely are there situations where a few extra minutes of verification time is going to make a difference.

Once agreed upon, these practices should be put in writing in the lease. It is important that the parties verify that the instructions for each wire are actual, authentic instructions, and that the verification process not become just another bureaucratic or ministerial act.

Below is a sample clause that can be included in a lease to protect a landlord from a claim that the tenant made a payment by wire, when the landlord did not receive it:

*“To the extent that the tenant initiates any payment to the landlord via wire transfer, ACH payment or similar electronic means, the tenant bears the burden and responsibility of assuring that such payment reaches the landlord, with risk of loss shifting to the landlord only at time of actual receipt by the landlord. Prior to initiating the first electronic payment or making any changes in payment methodology, a representative of the tenant shall speak to a known representative of the landlord via a known telephone number in order to verify the details of such payment. The tenant may not rely on any changes in wire instructions or other payment details received via an email or other unverified or unconfirmed source.”*

When indicating the representative of the landlord that the tenant should call, it is probably best not to include a person’s name and telephone number in the lease since company personnel and phone numbers change over time. If the representative has a particular title, then it is probably a good idea to specify in the lease that the tenant should call the person with that title at the landlord’s office. Ideally, the parties should also communicate from time to time about who holds the title so that the tenant can match a name with the title.

The bottom line is that some attention to this issue in the lease and in the subsequent dealings between the parties can potentially save them a lot of trouble down the road.