LEGAL AND RISK MANAGEMENT:
What to Know Now

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NAR Associate Counsel
KEY TAKEAWAYS

1. Every challenge is an opportunity to show your value.
2. It’s essential to educate your clients about wire fraud.
3. NAR has lots of risk management tools to help you in your business.
Once upon a time, there was a long lost African prince ....
CYBERCRIME BY THE NUMBERS

1,509,679 scam complaints 2014-2018
CYBERCRIME BY THE NUMBERS

$7.45$ billion total losses 2014-2018
CYBERCRIME BY THE NUMBERS

2018 Overall Statistics

**IMPORTANT STATS**

- **IC3 Complaints Last 5 Years**
- **# Of Complaints Reported Since Inception ('00)**
  - 4,415,870
- **Approximately 300,000 Complaints Received Per Year On Average**
- **$2.71 Billion Victim Losses in 2018**
- **Over 900 Complaints Received Per Day On Average**

Source: 2018 IC3 Internet Crime Report
CYBERCRIME BY THE NUMBERS

Source: 2018 IC3 Internet Crime Report
$137,230,998

Source: 2018 IC3 Internet Crime Report
REAL ESTATE WIRE FRAUD
ON THE RISE!

IN 2018

11,300 VICTIMS
$149.5 M TOTAL LOSSES

SINCE 2015

1100% Email victims
2200% Monetary loss

VICTIMS $149.5 M TOTAL LOSSES
THE LONG GAME

WATCH  PROFILE  HACK  STEAL
Business E-Mail Compromise (BEC)

Targets businesses working with foreign suppliers and/or businesses regularly performing wire transfer payments.
HOW IT WORKS

E-Mail Account Compromise (EAC)

Targets individuals. These sophisticated scams are carried out by fraudsters compromising email accounts through social engineering or computer intrusion techniques.
Phishing/Vishing/Smishing/Pharming

Unsolicited email, text messages, and telephone calls purportedly from a legitimate company requesting personal, financial, and/or login credentials.
HOW IT WORKS

Spoofing

Contact information (phone number, email, and website) is deliberately falsified to mislead and appear to be from a legitimate source.
RECOMMENDED PRACTICES

- Educate buyers about possible scams.
- Use a transaction management platform or secure email to communicate with clients.
- Never send wire instructions (or any personal or financial information) via e-mail.
- Verify instructions with a phone number independently obtained.
RECOMMENDED PRACTICES

Use smart email practices.

• Double check the sender’s email addresses and call the sender if you’re unsure they actually sent the email.
• Monitor your email account for unrecognized activity.
• Keep your operating system and anti-virus programs updated.
• Avoid using unsecured (public) wifi.
• Never click suspicious attachments.
RECOMMENDED PRACTICES

Include a wire fraud notice in your email signature.

“IMPORTANT NOTICE: Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.

Email Notice Template available on nar.realtor: https://www.nar.realtor/law-and-ethics/wire-fraud-email-notice-template
RECOMMENDED PRACTICES

Use strong passwords for your email and all online accounts.

- At least 8 characters;
- A mix of letters and numbers;
- A mix of uppercase and lowercase letters; and
- At least one special symbol (i.e., ! @ # $).
- Plus, use two-factor identification where available.
IF FRAUD OCCURS

- Notify the other parties.
- File a complaint with the FBI at IC3.gov. Filing within 24-72 hours provides the best chance of recovery!
- Contact the bank immediately. Request a recall notice for the wire.
- Report to the local FBI office.
NAR EFFORTS

MBA  ABA  NAR  ALTA  FBI  FBI

RESPRO  AEAA
One of the fastest-growing cybercrimes in the U.S. is wire fraud in real estate. About 11,300 people were victims of wire fraud in the real estate and rental sector in 2018 (a 17% increase over 2017), with losses of more than $150 million, according to FBI data.
FEATURES

**COMING SOON**

- Signed listing agreement
- Property is not available for showing or sale until a later date.

**POCKET LISTING**

- Signed listing agreement
- Seller opts-out of listing on the MLS
When used appropriately, is completely legitimate

Becomes a pocket if property is never made available to the general public

More risky

Raises many questions
COMING SOON - PROPER USES

• Appropriate when it helps the seller
  o Market generation
  o Provides seller extra time
• Presents a true and accurate picture
• All buyers are treated equally and fairly
• Complies with state laws, regulations and MLS rules
COMING SOON - IMPROPER USES

- Never lists on the MLS
- Shown only to a select few
- Without seller permission or consent
- No signed listing contract
- Accept bids or offers before advertised time
- No logical or reasonable reason
- Only appropriate if it’s not misused
The Code of Ethics: 
REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and...

January 1, 2018

Window to the Law: "Coming Soon" Listings...

September 6, 2017

The Latest on ‘Coming Soon’ Listings

States issue new guidance on what makes these listings legal or not.

July 28, 2017
Most experts agree that sellers (majority) are best served by MLS listing.

MLSs facilitate transactions by creating a consolidated source of accurate property information, and function best when information is complete.

- Pocket Listings can compromise information accuracy and undermine cooperation.
POCKET LISTINGS - CONCERNS

- MLSs ensure max exposure and provides the best chance for highest offer.
- General perception that pocket listings only benefit the listing firm.
POCKET LISTINGS - PROPER USES

- Rarely in the best interest of the seller.
- Seller wants privacy (e.g. celebrity, divorce).
- Seller wants a quick transaction.
- Seller wants control and to limit the number of strangers walking through seller’s property.
- Seller wants to test price.
POCKET LISTINGS - LEGAL RISKS

- Breach of Agent’s Duties
- State Laws and Regulations
- Fair Housing
- Antitrust
DYNAMICS

- Agency
- Best Interest
- Reasonable Care
- Diligence

Must harmonize these relationships and duties

- MLS Policy
- MLS Rules
- Code of Ethics
- Professional Standards
- Applicable Laws

SELLER

BROKER

MLS+ ASSOCIATION+ LAW
• Protect and promote client’s interest while treating all parties honestly. (Article 1)

• Advise seller of policies regarding cooperation and any compensation amounts to be offered. (SOP 1-12)

• Cooperate and make property available for showing when in the seller’s best interest. (Article 3 & SOP 3-10)

• Do not misrepresent availability to show or inspect property (SOP 3-8)

• Be honest and truthful in communications and present true picture in advertising, marketing and other representations. (Article 12)
**Loyalty**

Act solely in the principal’s best interests at the exclusion of all others including broker’s self interest.

- Dual Agency *(NYC Lawsuit - Houlihan)*
- Conflict of Interest: Self Interest *(Double Commission)* vs. Seller’s Interest *(Highest Price)*
  - *Sweetwater v. Umansky*
Reasonable Care and Diligence

Competent
Superior skill and expertise
Same duty as doctor or lawyer
Cooperation

Duty to cooperate when in the client’s best interest. 
*Rooted in the premise that broad exposure and cooperative marketing produce best result.*
POCKET LISTINGS - BEST PRACTICES

Don’t advertise a property without written consent of the seller.

Get a listing agreement that is legally compliant and fully executed.

Know and follow your state laws, regulations and MLS submission rules.

Make sure the seller understands the pros and cons of an exclusion.
WHAT WE OFFER

Risk Management
EDUCATION & SUPPORT

Trademark Protection

Litigation Support

Library & Archives
RISK MANAGEMENT

WINDOW TO THE LAW
Monthly Video Series
LINK IN YOUR MEMBER’S EDGE EMAIL!
nar.realtor/window-to-the-law
RISK MANAGEMENT

CASE SUMMARIES
State and Federal Courts

Search Legal Case Summaries

nar.realtor/legal-case-summaries

An SDNY court dismissed an ADA website lawsuit filed by NY plaintiff against an Ohio based grocery chain based on mootness and lack of personal jurisdiction.

August 20, 2019

Complying With the Americans With Disabilities Act (ADA), Legal
RISK MANAGEMENT

Real Estate Topics

- Being a Real Estate Professional
- Land Use & Property Rights
- Taxes

- Not all real estate professionals are REALTORS®.
- The freedom to buy, sell, and utilize property, as protected in the 5th amendment, underlies all real estate transactions and markets.
- National Association of REALTORS® works vigilantly to protect property owners and the real estate industry when changes to the tax code are proposed.

- Starting Your Career
- Hazards & Disclosures
- Tax Reform

- Being a Broker
- Sustainability
- Qualified Opportunity Zones

- Being an Agent
- Transportation and Infrastructure
- Sales Tax on Services

- Professional Development
- Eminent Domain
- Property Taxes

- Agent Finances
- Environmental Issues
- Mortgage Interest Deduction

- Work/Life Balance
- Zoning
- Independent Contractor Status

- Outreach
- Cell Phone Towers
- Depreciation of Real Property

- Safety
- Effects of Low-Income Housing on Property Values
- Technology

- Personal Assistants
- Trails and Greenways
- Agricultural/Farm Land

- Farming & Prospecting
- Gulf Coastal
- Endangered Species Act

- Women in Real Estate
- License Reciprocity & License Recognition

- License Reciprocity & License Recognition
- Ethics and Professionalism
RISK MANAGEMENT

PUBLICATIONS

Legal Pulse
Hot Topics for Brokers
Sample Photography Agreement
Real Estate Brokerage Essentials

store.realtor/rebe
TRADEMARK PROTECTION

REALTOR® LOGOS
And the rules to use them!

nar.realtor/trademark
TRADEMARK PROTECTION

Videos

Great for meetings!
TRADEMARK PROTECTION

Social Media

*Using the REALTOR® trademark online.*
LEGAL ACTION PROGRAM

Legal Action Program

NAR’s Legal Action Committee provides financial assistance to support litigation of significance to the Association, including matters relevant to the practice of real estate, the operation of real estate associations, ownership and use of real estate, and private property rights. Financial support provided by NAR to litigants must be used exclusively to pay the legal fees, costs, and expenses incurred in connection with the litigation for which assistance is requested and provided. To learn more about the Program and apply for assistance, please consult Program materials found in this section.

LITIGATION SUPPORT

Financial assistance for court cases that impact the industry

nar.realtor/legal-action

Read "Need Legal Funding?" by Ralph Helmen from the Winter 2016 issue of REALTOR® AE Magazine.
Yes, there are lots of REAL ESTATE BOOKS but there’s also ...
LIBRARY AND ARCHIVES

E-books
The Successful Leadership Development Program
Swim!

Business Letter Templates

Magazines/Newspapers

nar.realtor/library
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THANK YOU.

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