



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

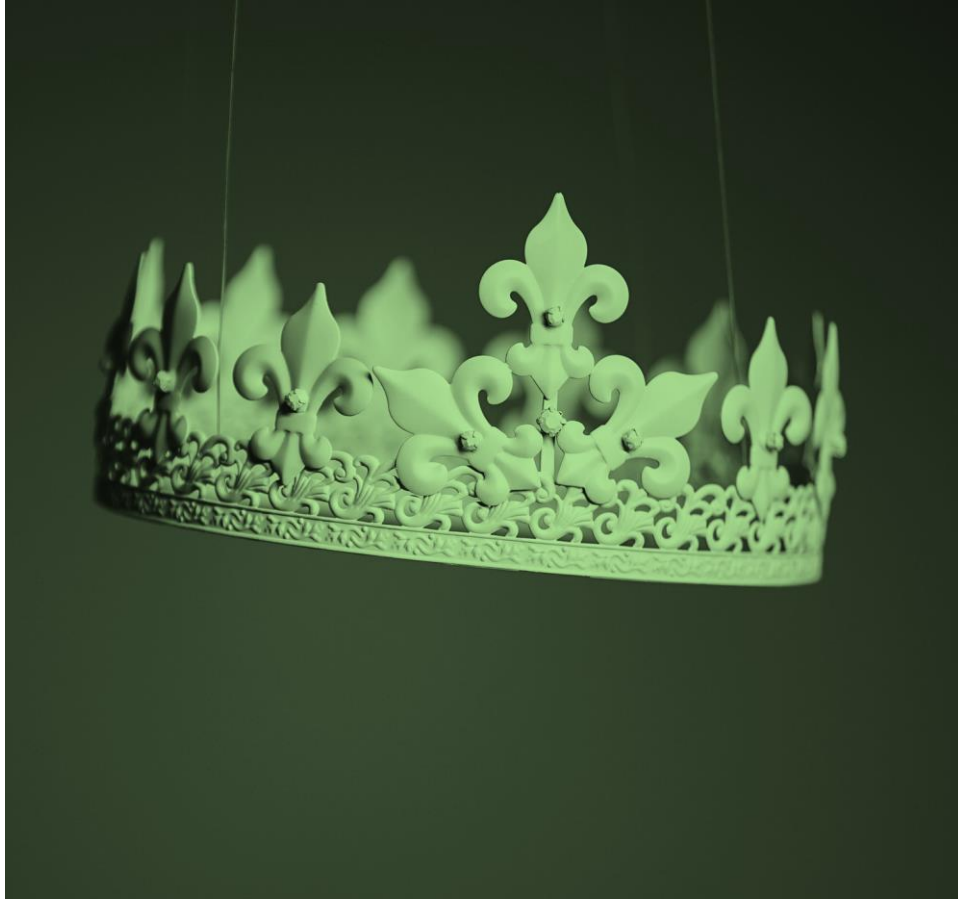
It's essential to educate your clients about wire fraud.

3

NAR has lots of risk management tools to help you in your business.

CYBERCRIME





Once upon a time,
there was a long lost
African prince



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CYBERCRIME BY THE NUMBERS

1,509,679

scam complaints 2014-2018

CYBERCRIME BY THE NUMBERS



7.45 billion

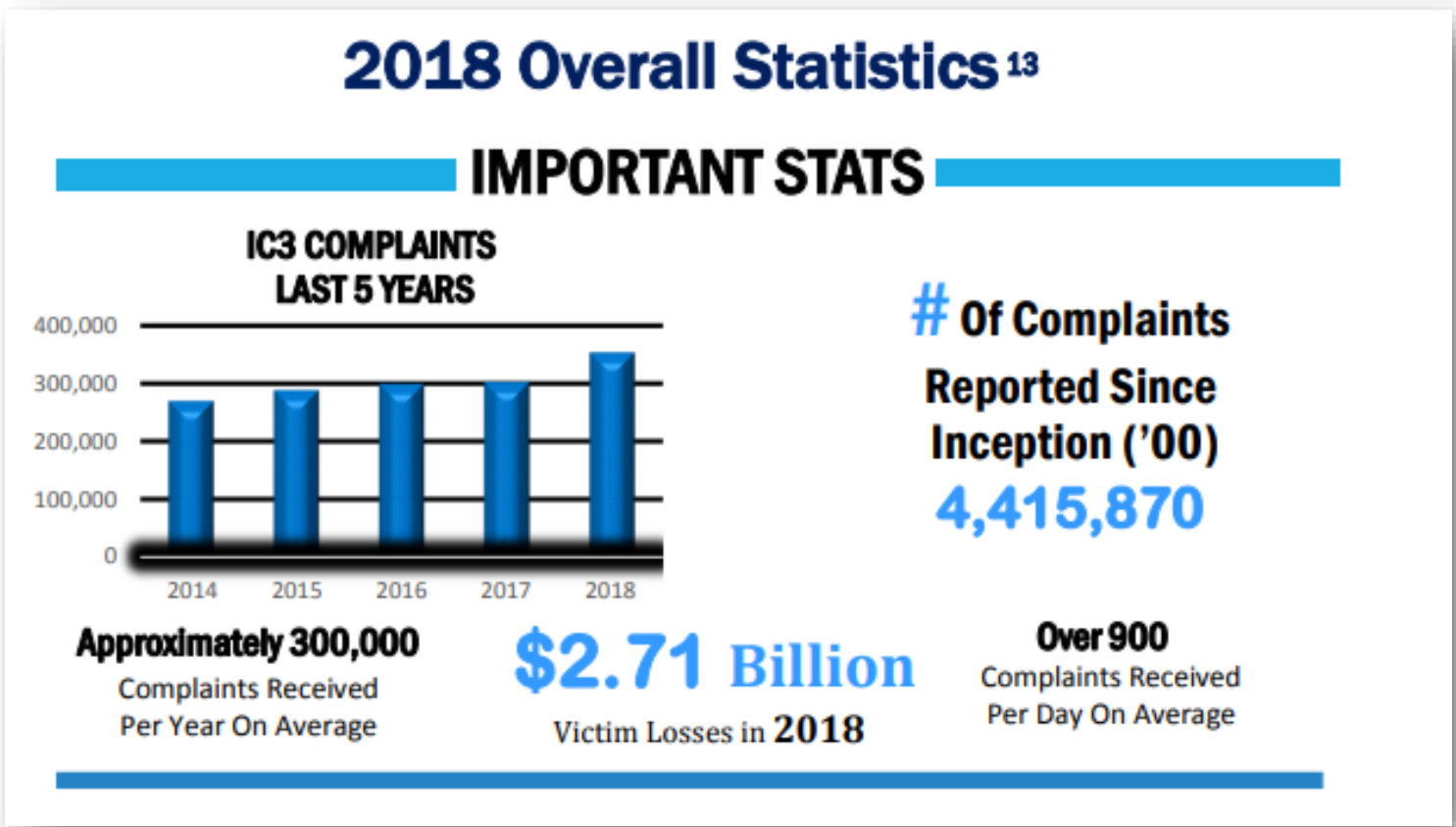
total losses
2014-2018



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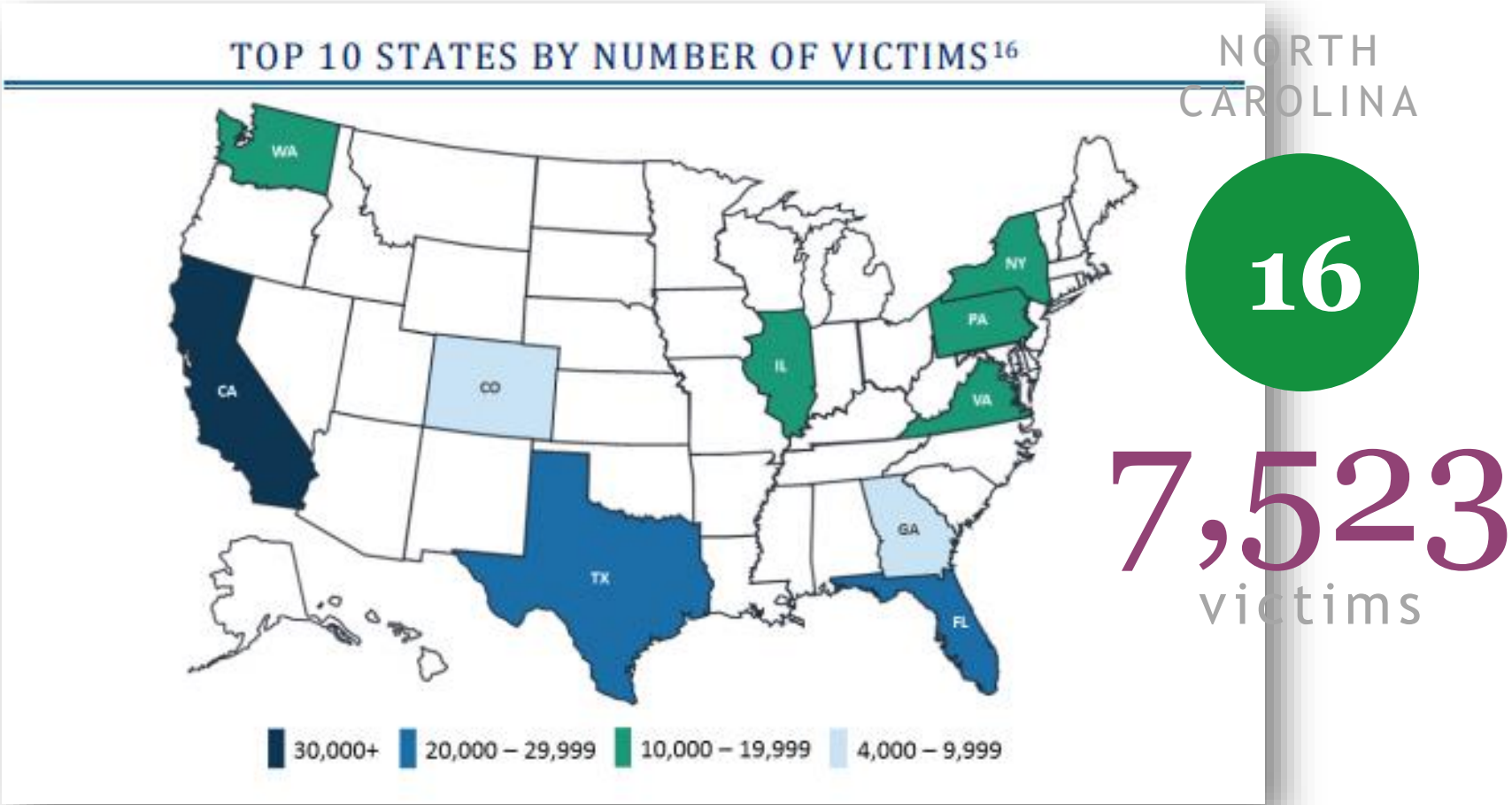
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CYBERCRIME BY THE NUMBERS



Source: 2018 IC3 Internet Crime Report

CYBERCRIME BY THE NUMBERS



Source: 2018 IC3 Internet Crime Report

CYBERCRIME BY THE NUMBERS



NORTH CAROLINA

5

\$137,230,998
total loss

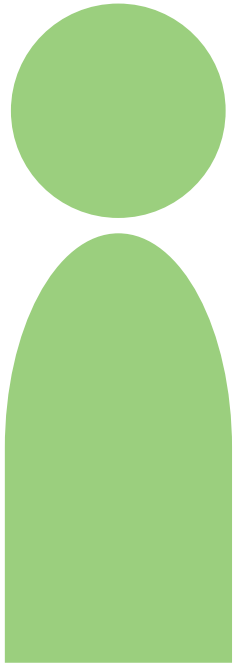
Source: 2018 IC3 Internet Crime Report



REAL ESTATE WIRE FRAUD

ON THE RISE!

11,300
VICTIMS



\$149.5 M
TOTAL LOSSES



IN 2018

1100%



Email victims

2200%



Monetary loss

SINCE 2015



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THE LONG GAME



WATCH



PROFILE



HACK



STEAL



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HOW IT WORKS

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.

HOW IT WORKS

Phishing/Vishing/Smishing/Pharming

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



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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.



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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):
<https://www.nar.realtor/law-and-ethics/wire-fraud-email-notice-template>



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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.



Contact
the bank
immediately.

Request a recall notice for the wire.



File a complaint
with the FBI at
IC3.gov.

Filing within 24-72 hours provides
the best chance of recovery!



Report to the
local FBI office.



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NAR RESOURCES



Home > Financing & Credit > Fraud, Negligence & Liability

OVERVIEW

REFERENCES

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.



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COMING SOON
& POCKET
LISTINGS

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



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FEATURES



COMING SOON

- When used appropriately, is completely legitimate
- Becomes a pocket if property is never made available to the general public



POCKET LISTING

- More risky
- Raises many questions



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COMING SOON - PROPER USES



- Appropriate when it helps the seller
 - Market generation
 - 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**

NAR RESOURCES

Latest on this topic

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nar.realtor/coming-soon-listings



The Code of Ethics: Article 2

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

POCKET LISTINGS - CONCERNS



- 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.



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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



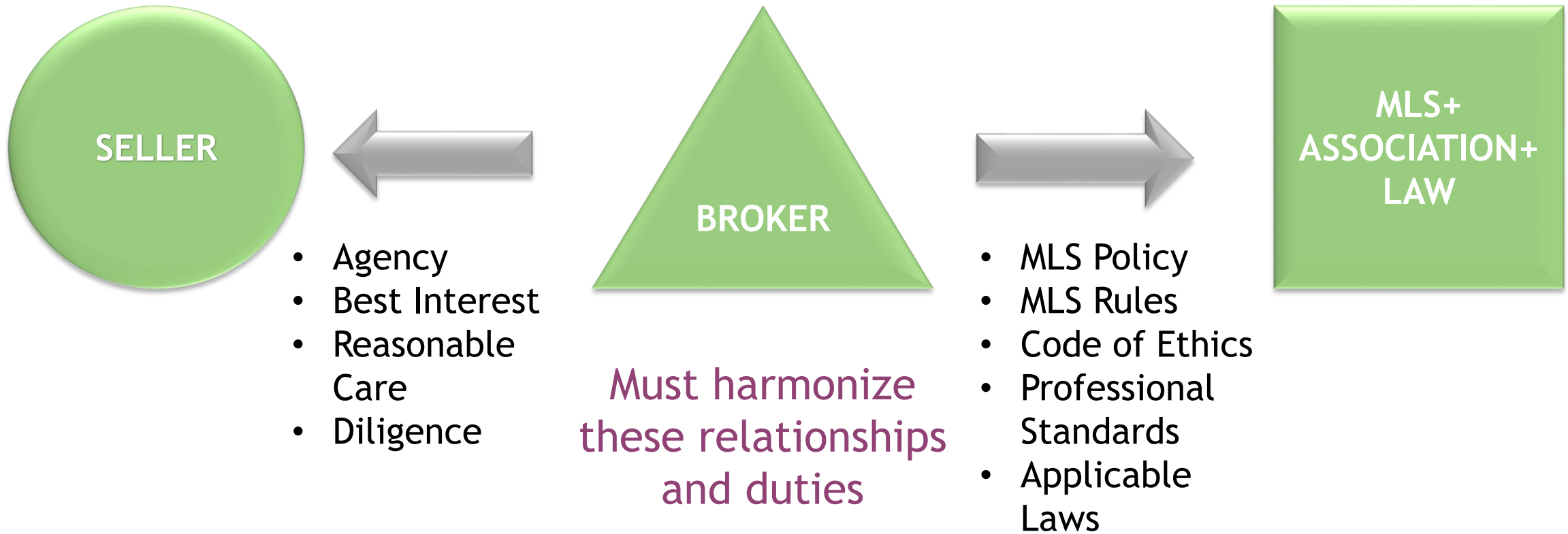
- Rarely in the best interest of the seller.
- Seller wants privacy (e.g. celebrity, divorce).
- Seller wants a quick transaction.
- Seller wants control and to limit the number of strangers walking through seller's property.
- Seller wants to test price.

POCKET LISTINGS - LEGAL RISKS



- ✓ Breach of Agent's Duties
- ✓ State Laws and Regulations
- ✓ Fair Housing
- ✓ Antitrust

DYNAMICS



CODE OF ETHICS



- 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)

POCKET LISTINGS - BREACH OF DUTIES



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*

POCKET LISTINGS - BREACH OF DUTIES



Reasonable Care and Diligence
Competent
Superior skill and expertise
Same duty as doctor or lawyer

POCKET LISTINGS - BREACH OF DUTIES



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.



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NAR LEGAL RESOURCES



WHAT WE OFFER



Risk Management
EDUCATION & SUPPORT



**Trademark
Protection**



**Litigation
Support**



Library & Archives



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RISK MANAGEMENT



WINDOW TO THE LAW

Monthly Video Series

LINK IN YOUR MEMBER'S EDGE EMAIL!

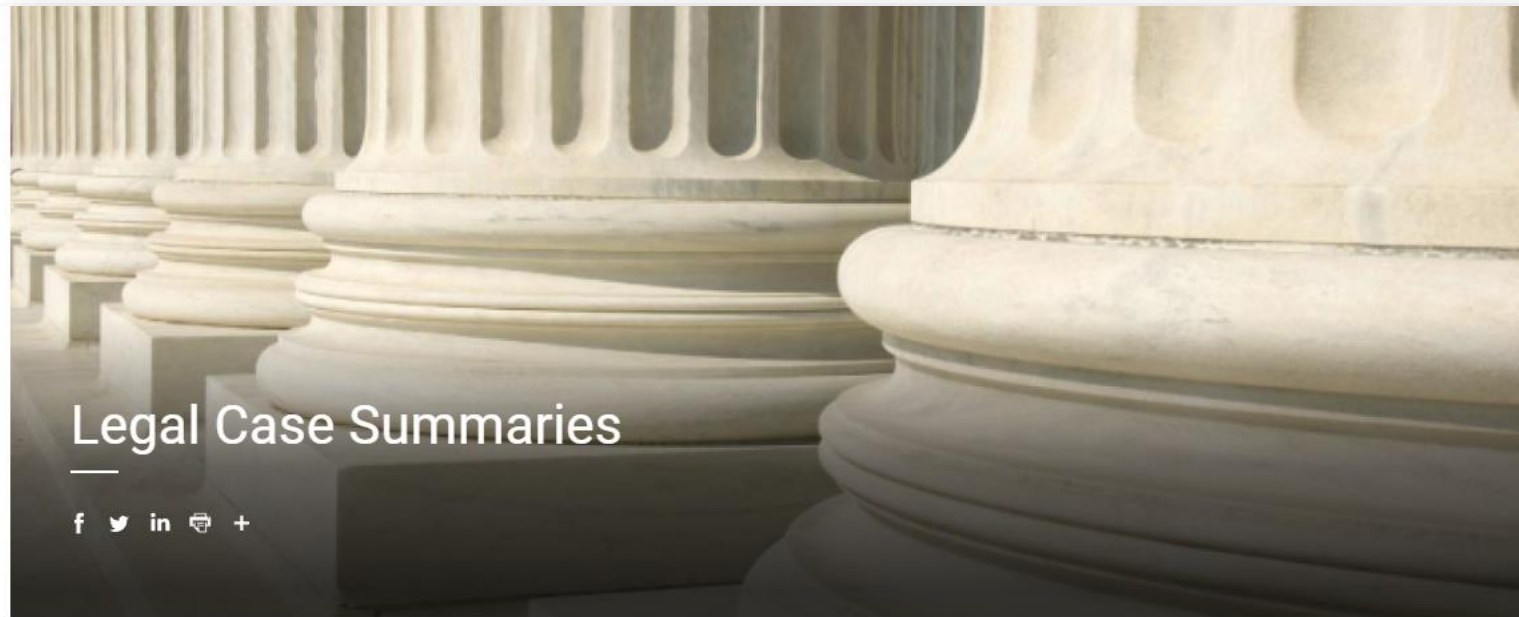
nar.realtor/window-to-the-law



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RISK MANAGEMENT



Legal Case Summaries

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CASE SUMMARIES

State and Federal Courts

Search Legal Case Summaries

nar.realtor/legal-case-summaries



ADA Website Case Dismissed

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



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Not all real estate professionals are REALTORS®.

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[Farming & Prospecting](#)

[Women in Real Estate](#)

[License Reciprocity & License Recognition](#)

[Ethics and Professionalism](#)

[Data Privacy & Security](#)

Land Use & Property Rights

The freedom to buy, sell, and utilize property, as protected in the 5th amendment, underlies all real estate transactions and markets.

[Hazards & Disclosures](#)

[Sustainability](#)

[Transportation and Infrastructure](#)

[Eminent Domain](#)

[Environmental Issues](#)

[Zoning](#)

[Cell Phone Towers](#)

[Effects of Low-Income Housing on Property Values](#)

[Trails and Greenways](#)

[Golf Courses](#)

[Agricultural/Farm Land](#)

[Endangered Species Act](#)

Taxes

National Association of REALTORS® works vigilantly to protect property owners and the real estate industry when changes to the tax code are proposed.

[Tax Reform](#)

[Qualified Opportunity Zones](#)

[Sales Tax on Services](#)

[Property Taxes](#)

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[Section 1031 Like-Kind Exchange](#)

[Capital Gains Tax](#)

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Technology

TOPIC PAGES

From Accessibility to Zoning

nar.realtor/topics

RISK MANAGEMENT



PUBLICATIONS

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



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TRADEMARK PROTECTION

REALTOR® LOGOS

And the rules to use them!

nar.realtor/trademark

Logos and Trademark Rules



[Download the REALTOR® Logo](#)

[Video: Make Our Marks Remarkable](#)

[Trademark Use in Social Media](#)

[Membership Marks Manual](#)

[Frequently Asked Questions](#)

It is important to use NAR's membership marks—including the REALTOR® logo and the terms REALTOR®, REALTOR-ASSOCIATE®, REALTORS®—correctly and according to the rules outlined in the [Membership Marks Manual](#).

Download REALTOR® Logos and get information on how to use the logos correctly:



REALTOR® logo



Commercial logo



Equal Housing
Opportunity logo



MLS logo

Read the top 5 things you need to know about using the REALTOR® trademarks correctly, then take this quiz to test your knowledge.

Get tips for using the term REALTOR®, REALTOR-ASSOCIATE®, and REALTORS®:

• With a member's name



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TRADEMARK PROTECTION

Videos
Great for meetings!

Make Our Marks Remarkable

f t in +


Download the REALTOR® Logo

Video: Make Our Marks Remarkable

Trademark Use in Social Media

Membership Marks Manual

Frequently Asked Questions



Since it identifies you as a member

YouTube

The term REALTOR® is not only a trademark owned by NAR and protected by federal law, it is also a valuable membership benefit that distinguishes members from all others in the real estate business. Watch this entertaining, three-minute video to learn how members can protect the value of the mark by using it properly. Remember, a REALTOR® isn't "just

REALTOR® Content Resource powered by HouseLogic

FREE consumer content ready to use for your SOCIAL MEDIA, WEBSITE, NEWSLETTER

Why NAR Protects the REALTOR® Trademark


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MEMBERS

CHARLES N. CHADBOURN

REALTOR® Badges Here!



YouTube

TRADEMARK PROTECTION

Social Media

Using the REALTOR® trademark online.



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LEGAL ACTION PROGRAM

LITIGATION SUPPORT

*Financial assistance for court cases
that impact the industry*

nar.realtor/legal-action



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Legal Action Program



Purpose

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.

Legal Action Program Request Form

Financial Assistance from the Legal Action Committee

State Associations & Local Board Legal Action Programs

Legal Action Committee Procedures

Case Reports


Legal Action Case Support Scorecard



Read ["Need Legal Funding?"](#) by Ralph Holmen from the Winter 2016 issue of *REALTOR® AE Magazine*.

LIBRARY AND ARCHIVES

Yes, there are lots of
REAL ESTATE BOOKS
but there's also ...



Library & Archives

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Founded in 1923, the National Association of REALTORS® Library & Archives offers a variety of research services and thousands of print and digital resources for use by NAR members and state and local association staff.

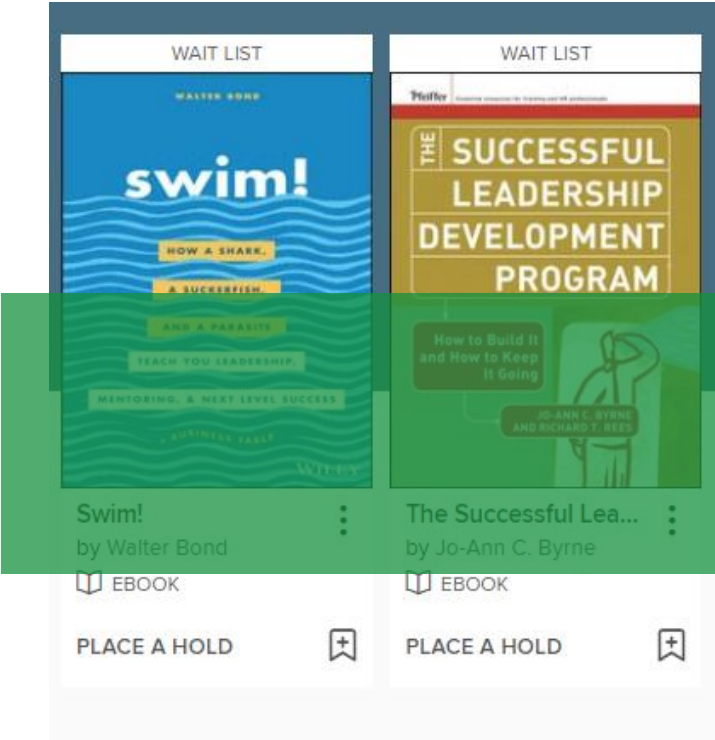
eBooks Catalog	Contact Us:
Business Letter Templates	800-874-6500
Library Catalog	Library Hours: 8:30 - 11:30 am & 12:30 - 4 pm Central, Monday to Friday
NAR Archives	— Librarians@realtors.org
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Business Letter
Templates



Magazines/Newspapers

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THANK YOU.

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