

Legal Update

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Hot Topics in Risk Management

- Cybercrime
- Copyright Infringement
- ADA Website Accessibility
- Drones

CYBERCRIME

It's Not Just The Big Guys.

- In 2015, forty-three percent of all cyberattacks were leveraged at small to mid-sized businesses (250 or less employees.)*
- Cybercriminals know that the small guys are less protected.
- 60% of small businesses victimized by cyberattacks go out of business within 6 months.**

*Source: Symantec 2016 Cybersecurity Report

**Source: Ponemon Institute.

Cybercriminals Real Estate

- Smaller to mid-sized companies.
- Busy professionals focused on clients, deals.
- Multiple separate players during transactions: Buyer, seller, buyer's agent, seller's agent, escrow agent, lawyer, mortgage broker, banks.
- Real estate purchase = large sums of money.

Scams of the Past

- Bad grammar and spelling
- Weird syntax
- Outrageous claims
- Quick money
- In your spam folder

GOV GODWIN EMEFELE <postmaster@cockycookie12.de>

!!!***+++ URGENT NOTICE +++***!!!

Dear <insert name>,

Is my pleasure inform YOU that your deliveryman has arrived at the airport with your cash trunk boxes value \$8.3 million dollars US currency being your inheritance /compensation payment. \.>>

Most importantly you are advised to sending your full data to him on this email address reply, which include **your Full Name, Current Residential Address, DIRECT CELL NUMBER, AND *A COPY OF ANY IDENTITY CARD WITH SOCIAL SECURITY NUMERICALS*** to verify that you are the right receiver to avoid mistake and enable him deliver your cash consignment boxes to your house *without any further delay.*

CONGRATULATION!!!

MR.GODWIN EMEFELE,
EXECUTIVE GOVERNOR,
CENTRAL BANK OF NIGERIA

New Scams

- Highly sophisticated organized crime.
- Virtually indistinguishable from legitimate email:
 - Comes from hacked account; or
 - Tiny difference in email address.
- Looks to be from trusted source.
- Right timing, right tone, right information.
- Devastatingly successful.

From: Jack Lawyern <jack@lawyem.com>
To: Brenda Buyer <Brenda@buyer.net>
Cc: Eddie Escrow; Rinda Real Estate
Subject: New Wiring Instructions

Hi Everybody,

We're almost to the finish line. Just got the heads up that there's been a tweak to the wiring instructions – please see attached for new info. Let's get this baby wrapped up today. Congrats again to all. Brenda, you and Roger and little Susie are going to love your new place on Franklin Road.

Cheers,
Jack

Jack Lawyern
Lawyern & Lawyern

Hand in Hand with Texas Homebuyers for Three Generations

Wire Fraud in the RE Transaction

- Hacker breaks into email account undetected.
- Sends email to buyer just before a money transfer.
- Looks like legitimate email from agent, attorney, other trusted participant.
- Claims last minute change to wiring instructions.
- Buyer wires money to criminal.
- Difficult to trace perpetrator and retrieve money.

Best Practices for Prevention

- Inform clients of this epidemic at the outset of the transaction. Consider using written disclosures.
- Avoid sending wire instructions (and any sensitive financial information) via email.
- Instruct homebuyers to call the intended recipient of wired funds immediately prior to sending the funds.
- Use an independently verified phone number.
- Observe good email hygiene.

Best Email Practices for Prevention

- Check junk mail, sent mail, and settings regularly for anomalies.
- Regularly purge email.
- Use strong passwords.
- Consider using a password manager.
- Use two-factor (or multi-factor) authentication.
- Avoid doing business over unsecured wifi.
- Avoid sending sensitive information over email.
- Think before you click.

Damage Control

- Contact local FBI field office and local police.
- Contact financial institutions.
- Change passwords.
- Run anti-virus software.
- Contact insurance carrier as appropriate.

Investigations and Litigation

- FTC actions for unfair and deceptive trade practices
- State law and regulations
- Private Lawsuits alleging:
 - Negligence.
 - Failure to take appropriate IT precautions when conducting business electronically.
 - Breach of contract.
 - Breach of fiduciary duty as a real estate professional; failure to protect client's assets.
 - Failure to warn about cybercrime.

Cyber Insurance

- No standard policy.
 - Crime (“fidelity”) riders
 - Social engineering endorsements
 - Breach coverage
- Be fully aware of what’s covered and what’s not covered.
 - Defense for suits related to alleged negligent acts leading to breach or other cyber crime.
 - First-party losses for social engineering fraud
 - Third-party losses for social engineering fraud
 - Post-breach services (e.g., consultation, breach notification)

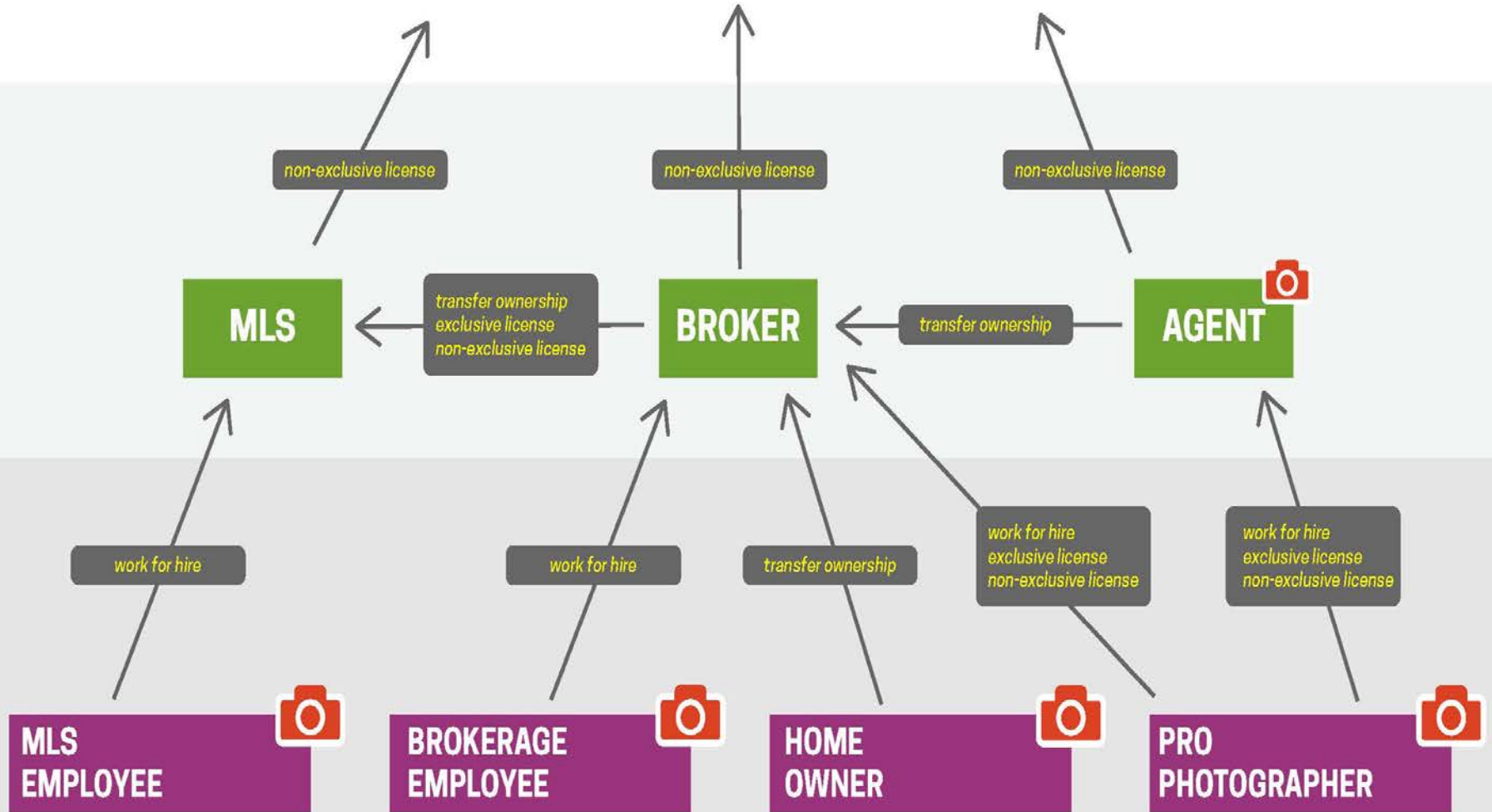
NAR Resources

- Wire Fraud Landing Page: <https://www.nar.realtor/topics/wire-fraud>
- Video Alerts and Education:
 - <https://www.nar.realtor/videos/wire-fraud-alert-for-buyers>
 - <https://www.nar.realtor/videos/window-to-the-law-data-security-program-basics>
 - <https://www.nar.realtor/videos/window-to-the-law-cybercams-and-the-real-estate-professional>
- Cyber and Fidelity Insurance Report:
 - <https://www.nar.realtor/reports/cyber-and-fidelity-insurance-report>
- Articles:
 - <http://www.nar.realtor/articles/request-to-redirect-funds-should-trigger-caution>
 - <http://www.nar.realtor/articles/internet-security-best-practice>
 - <https://www.nar.realtor/articles/urgent-alert-sophisticated-email-scams-targeting-the-real-estate-industry>

COPYRIGHT INFRINGEMENT

PORTALS / VENDORS

have non-exclusive licenses for photos



Fractured Landscape

- The fractured landscape...
 - Creates confusion over what rights were conveyed.
 - Increases difficulty enforcing against misuses.
- Ultimately, this increases the risk of a copyright lawsuit.

VHT v. Zillow

- *VHT, Inc. v. Zillow Group, Inc.*, No. 2-15-cv-1096 (W.D. Wash. 2015).
- \$8.23 million jury verdict against Zillow, reduced to \$4 million, now on appeal.
- **Agents and brokers need to know what rights they have in photographs**

VHT v. Zillow

“With respect to the vast majority (and perhaps all) of the images at issue, **brokers or MLSs have granted Zillow “perpetual” unrestricted permission** to display the VHT photographs under representations and warranties that they have the right to do so . . . **The providers also agree to indemnify Zillow** for breach of these warranties.”

- *VHT, Inc. v. Zillow Group, Inc.*, No. 2-14-cv-1096 (W.D. Wash. 2015) (Zillow’s Motion for Judgement on the Pleadings for Failure to Join Indispensable Parties)

VHT v. Zillow

“The crux of this lawsuit is whether VHT’s clients -- not Zillow -- committed wrongdoing by providing downstream rights they didn’t have. Because VHT’s claim requires the Court to pass judgment on the actions of VHT’s clients, those clients must be joined.”

- *VHT, Inc. v. Zillow Group, Inc.*, No. 2-14-cv-1096 (W.D. Wash. 2015) (Zillow’s Motion for Judgement on the Pleadings for Failure to Join Indispensable Parties)

Copyright Infringement

- *Boatman v. Coldwell Banker Honig-Bell*, No. 16-08397 (N.D. Ill. 2016).
- *Boatman v. Kepple Premier Real Estate, The Kepple Team, Linda Kepple, Tricia Yocum, James Corkery and Ann Corkery*, No. 1:17-cv-01009-JES-JEH (Cent. Dist. Ill. 2017).

Copyright Infringement

- Two easy ways to reduce your risk:
 - Obtain proper ownership or permission for photos.
 - Use Sample Photography Agreements at:
<https://www.nar.realtor/law-and-ethics/listing-photo-sample-agreements>
 - Comply with the DMCA Copyright Act Safe Harbor.

Comply with DMCA Safe Harbor

- **Designate a Copyright Agent to receive takedown requests.**

- New procedure.
- Previously designated agents will need to re-register by Dec. 31, 2017.
- Agents will need to renew every 3 years.
- Fee reduced from \$105 to \$6.
- Additional info:

<http://www.copyright.gov/rulemaking/onlinesp/NPR/>

Comply with DMCA Safe Harbor

- **Implement a termination policy for repeat infringers.**
 - Check out the Terms of Use on www.nar.realtor for sample language under “Termination”:
<https://www.nar.realtor/terms-of-use>.

Comply with DMCA Safe Harbor

- **Must not have knowledge of infringing activity or facts that make infringing activity apparent.**
 - Cannot turn a “blind eye” to any infringing activities.

Comply with DMCA Safe Harbor

- **Must not control the infringing activity and receive a direct financial benefit from the infringing activity.**
 - More than the ability to remove or disable access (e.g. prescreened websites; exercise of quality control; extensive content advice).
 - Direct financial benefit = infringing activity is a draw for users and not just added benefit.

Comply with DMCA Safe Harbor

- **Comply with the DMCA Takedown Procedure.**
 - Develop and post a takedown policy on your website.
 - Check out the Terms of Use on www.nar.realtor for sample language under “Digital Millennium Copyright Act”. <https://www.nar.realtor/terms-of-use>

www.nar.realtor/topics/copyright

The screenshot shows a web browser window with the URL <https://www.nar.realtor/topics/Copyright>. The page features a navigation bar with categories like News, Blogs & Videos, Research & Statistics, Member Benefits, Education, Events, Political Advocacy, Law, Ethics & Policy, Business Specialties, and About NAR. Social media icons for Facebook, Twitter, LinkedIn, YouTube, and Email are also present.

Copyright

Window to the Law: Copyright Infringement Safe Harbor

Chloe Hecht

Window to the Law: Listing Photo Copyright Issues

Chloe Hecht

TRUCK MONTH MEANS HUGE SAVINGS FOR NAR MEMBERS

FCA | NAR | TRUCK MONTH

General

- [Who Owns Your Property Photos?](#)
- [NAR Files Comments with US Copyright Office Regarding Photo Scraping](#)
- [Do You Understand Online Copyright Law?](#)

MLS Compilation Copyright Information

- [MLS Copyright Compilation Registration](#)
- [Managing Listing Content](#)
- [Copyright Registration Procedures for MLSs](#)
- [Copyright Considerations for MLS Photographs](#)

Most Recent | Most Popular

NAR Seeks DCMA Improvements

FEBRUARY 24, 2017

The Digital Millennium Copyright Act ("DMCA") of 1998 endeavors to balance the interests of internet service providers and copyright owners when copyright infringement occurs in the digital environment.

Copyright.

ADA WEBSITE ACCESSIBILITY

Title III Americans with Disabilities Act

- Prohibits discrimination against disabled at any place of public accommodation.
- “Place of public accommodation” means business that provides goods and services to the public.
- Issue: is a website a place of public accommodation that must comply with the ADA?

What does “website accessibility” mean?

- Website interacts well with adaptive technology.
- Maximized compatibility with assistive technologies.
- Text alternatives for any non-text content.
- Content presented in different ways without losing information or structure.
- Readable and understandable to web navigation tools.
- All functionality available from a keyboard.
- Separate foreground from background.

Differing Opinions

- Case law varies by jurisdiction:
 - 3rd, 6th, 9th, and 11th Circuits:
 - ADA only applies to websites with a “nexus” to a public-accommodation physical structure. E.g., Target and Winn-Dixie websites have nexus to physical stores; Netflix does not.
 - 1st, 2nd, and 7th Circuits:
 - ADA applies to both physical and electronic spaces; no “nexus” test.
- DOJ position requires all websites to be accessible.
- Plaintiffs’ attorneys capitalizing on this uncertainty.

Robles v. Dominos Pizza LLC,

No. CV1606599SJOSPX, 2017 WL 1330216 (C.D. Cal. Mar. 20, 2017), appeal filed (9th Cir. Apr. 13, 2017).

- Case dismissed based on the primary jurisdiction doctrine:
 - Allows courts to stay proceedings or dismiss a complaint without prejudice pending resolution of an issue within the special competence of an administrative agency.
- Court called on Congress, the Attorney General, and the Department of Justice to take action.
- Court acknowledged 1-800 hotline as potential “reasonable accommodation” compliant with ADA.

ADA Website Accessibility

- Include an accessibility statement on your website.
- Talk to your website provider.
 - Review current accessibility of site
 - Establish plan for making it more accessible
 - Discuss indemnification
- Stay tuned for DOJ guidance.

NAR's Accessibility Statement

Accessibility

The National Association of REALTORS® (NAR) is committed to providing an accessible website. If you have difficulty accessing content, have difficulty viewing a file on the website, or notice any accessibility problems, please [contact NAR](#) to specify the nature of the accessibility issue and any assistive technology you use. NAR will strive to provide the content you need in the format you require.

NAR welcomes your suggestions and comments about improving ongoing efforts to increase the accessibility of this website.

Web Accessibility Help

There are actions you can take to adjust your web browser to make your web experience more accessible.

- ▶ I am blind or can't see very well
- ▶ I find a keyboard or mouse hard to use
- ▶ I am deaf or hard of hearing

www.nar.realtor/accessibility

NAR Resources

- NAR Response to DOJ Notice of Proposed Rulemaking:
 - <https://www.nar.realtor/articles/nar-comments-on-ada-website-accessibility>
- 5-min videos:
 - <http://www.nar.realtor/videos/window-to-the-law-accessible-websites-and-the-ada>
 - <http://www.nar.realtor/videos/window-to-the-law-ada-basics>
- Articles:
 - realtormag.com/ADAwebsite
 - <http://realtormag.realtor.org/for-brokers/network/article/2015/01/accessibility-broker-s-responsibility>

DRONES

Small Unmanned Aircraft Rule

- Effective August 29, 2016.
- Permits commercial use of drones.
- Eliminates requirement for waiver/exemption.
- Requires remote pilot certificate with sUAS rating.
 - Eligibility Requirements
 - ~\$150
 - Must retake test every 2 years

Operational Limitations

- sUAS weights < 55 pounds.
- Daylight operations only.
- “Visual Line of Sight” requirement.
- One sUAS at a time.
- Max speed of 100 mph; Max altitude 400 ft.
- No operations over persons.
- Preflight visual and operational check.
- Must register sUAS with the FAA.
- If within 5 miles of airport, must give prior notification to airport and air traffic control.
- Over no moving vehicles.



Privacy Considerations

- Small Unmanned Aircraft Rule does not address privacy issues.
- Be familiar with patchwork of state and local laws.
- National Telecommunications and Information Administration:
 - “Voluntary Best Practices for UAS Privacy, Transparency, and Accountability”
 - <http://bit.ly/1XS2HSX>

Resources

- **NAR.REALTOR:**

- Window to the Law video: “Small Unmanned Aircraft Rule”
 - <https://www.nar.realtor/videos/window-to-the-law-video-faa-issues-drone-rules>
- “FAQ for Small Unmanned Aircraft Rule”
 - <https://www.nar.realtor/law-and-ethics/faqs-for-small-unmanned-aircraft-rule>
- “Drones” page
 - <http://www.nar.realtor/topics/drones>

- **FEDERAL AVIATION ADMINISTRATION:**

- “Operation and Certification of Small Unmanned Aircraft Systems; Final Rule”
 - <http://bit.ly/292D3L0>
- Summary of Small Unmanned Aircraft Rule
 - https://www.faa.gov/uas/media/Part_107_Summary.pdf

- **NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION:**

- “Voluntary Best Practices for UAS Privacy, Transparency, and Accountability”
 - <http://bit.ly/1XS2HSX>

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THANK YOU