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OLD REPUBLIC INSURANCE GROUP

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# Outline

- Trust Account Issues (Slides 4-9)
- FAQ and Hypothetical (Slides 10-17)
- Common Cyber Threats (Slides 18-23)
- Protecting Against Cyber Threats (Slides 24-30)
- Victim Response (Slide 31)
- Insurance Coverage and Summary (Slides 32-33)

# Trust Accounts



***The Fastest Way to Lose Your License with the State Bar and for us to cancel your Agency is to Mismanage Your IOLTA/Escrow/Trust Account!!***

# Intent to Repay

- In a recent criminal case, the government successfully argued that “intent to repay” is not a defense to wire fraud charged
- “Borrowing” from the escrow account is actually a crime and possibly a felony.


# Trust Accounts

## Rule 1.15


- A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Rule 1.15(a), Alabama Rules of Professional Conduct.
- A lawyer shall designate all trust accounts, as well as checks and deposit slips, as an "Attorney Trust Account.
- Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation. Rule 1.15(e), Alabama Rules of Professional Conduct.

# Don't Assume Your E&O Policy Will Cover Losses


- Exclusions in E&O Policies

 Conversion, misappropriation, and unethical commingling of escrow funds.


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 Loss of escrow funds because of negotiation or deposit of fraudulent, counterfeit, or forged checks or wire transfers.

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 Loss of escrow funds due to failure to timely deposit or disburse escrow funds.

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 Loss of escrow funds caused by the insured being defrauded by an imposter.

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# Trust Account Designation

- Trust Designation – A Trust Account, checks and deposits slips must be designated as a trust account by use of terms such as “trust account,” “fiduciary account,” or “escrow account.”



# Who Signs The Checks?

- Only a lawyer or a person under the direct supervision of the lawyer may be an authorized person to sign IOLTA/Escrow/Trust Account checks.

# FAQ#1

- Title Agent X tells our auditors that they have done some real estate closings and unfortunately they have extra money in their trust account after the documents have been recorded. The Title Agent is confused about what to do with the extra money when the person to whom the money is owed won't cash the check.

# FAQ#1

- As you all know, you should attempt to send the money back to the party to whom it is owed. Unfortunately, in many situations, the party to whom the money is owed will not cash the check. In these situations (generally 2-5 years after first attempted check was mailed), you will want to turn the money over to the Alabama Department of Revenue.

- [https://www.alabar.org/assets/uploads/2016/09/Trust-Accounting-2016\\_v2.pdf](https://www.alabar.org/assets/uploads/2016/09/Trust-Accounting-2016_v2.pdf)

# FAQ#2

- Are lawyers subject to discipline for misconduct as a result of the mismanagement of a title company?

# FAQ#2

- Answer: Yes

# Hypothetical 1

- May an attorney use websites such as Groupon or other “daily deal” websites to market discounted legal services in the form of redeemable certificates to prospective clients?
- No. The use of daily deal websites, such as Groupon, violates or potentially violates a number of rules of Professional Conduct.

# Hypothetical 2

- Lawyer X does real estate closings and is expanding their practice to include estate planning. They wanted to know if at closing they could hand the buyer and seller a flier advertising these services.
- Whether or not Lawyer X may handout the advertising flier depends on whether the buyer and seller are his actual clients at the closing. If Lawyer X is representing only the lender during the closing, then the handing out of fliers would constitute impermissible in-person solicitation in violation of Rule 7.3

# Hypothetical 3

- A lawyer has been approached by a real estate company with a proposal that he be the "preferred closing attorney" for the company. This means that the company would recommend him to close the loans on properties the company has sold. The lawyer would not represent the real estate company at closing nor would he otherwise have any attorney-client relationship with the company. The lawyer's client in the closing would, in most instances, be the lender. The real estate company would provide the lawyer with office space in its building; however, the office space would be rented at fair market value compared to similar space in the same area. The advantage to the real estate company in this arrangement would be having the lawyer available in close proximity to its office to close loans on properties it sold. The lawyer would also provide seminars for the company's agents, apparently without charge, to instruct them in matters involving contract writing, closing preparation and agent liability. Is such an arrangement ethically permissible?



# Hypothetical 3

- The ethical concern presented by the proposed arrangement is the possibility that the real estate company could be perceived to be acting as the lawyer's agent for the purpose of soliciting clients on the lawyer's behalf. Paragraph (a) of Rule 7.3 of the Rules of Professional Conduct.
- Another concern is the prohibition against giving something of value to someone for recommending your services. Rule 7.2(a)
- The providing of free legal instruction to the employees of the real estate company could conceivably be construed as giving something of value in exchange for the company's recommendation.

# Email Account Compromise Scheme

Resource Real Estate Services, LLC v. Evanston Ins. Co., 2017 WL 6608000 (D. Md. 2017).



# Email Account Compromise Scheme – Numbers

480%

title companies



Increase in EAC scams reported by title companies to the FBI in 2016.



2,370%

exposed losses



Increase in exposed losses between January, 2015 and December, 2016.



103

countries



Fraudulent transfers have been sent to 103 countries.



# Email Account Compromise Scheme

\$16,000,000

\$969,000,000

2016

2017

Amount of real estate purchase funds “diverted or attempted to be diverted” from real estate purchase transactions, and wired to “criminally controlled” accounts.

[Here's another cyber scam that could cost you thousands](#), Miami Herald, October 30, 2017 (data provided by FBI).

# Phishing and Social Engineering

## The Human Problem

### Phishing Emails

- Mass emails sent by cyber criminals that seek to obtain sensitive information such as usernames, passwords, bank account details, or credit card details.

### Spear Phishing

- Phishing emails sent to specific individuals or companies. Cyber criminals gather personal information about their target to increase their probability of success.

### Social Engineering

- Psychological manipulation of people to get them to perform specific acts or divulge confidential information.



# Payoff Fraud

- What is Payoff Fraud?
- How do we avoid / stop Payoff Fraud?

# Ransomware



# Password Security

Length of Password

Password Reuse & Sharing

Keystroke Logging

Brute Force Attack

Data Breach





# Password Manager

Editor's Choice – PC Magazine

1 Dashlane

2 Keeper Password Manager

3 Sticky Password Premium

4 LogMeOnce

[The Best Password Managers of 2018](#), PC Magazine, Neil J. Rubenking, December 7, 2017

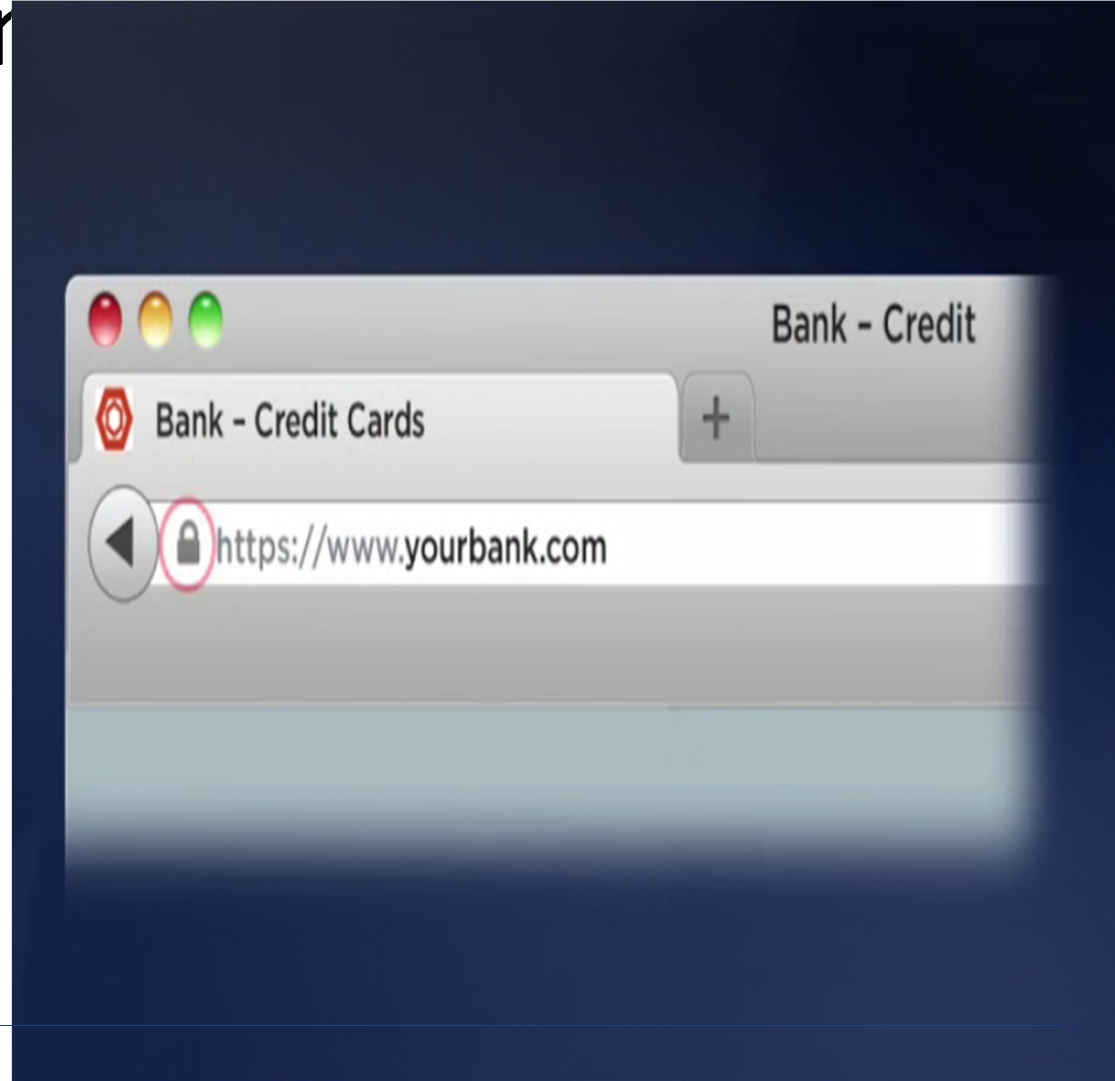


# Two-Factor Authentication (2FA)



# Internet Security

- Make sure any website that you visit that contains or requests personal information is secure.
  - Look for the **https** in the web address or a padlock icon in your browser window.
  - Consider setting up a Virtual Private Network.
- Enable WPA2 encryption on your wireless router.
- Enable the firewall on your network.
- Avoid using WI-FI hotspots and free wireless charging stations.



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# Employee Training

## The Human Problem

- **Responsibilities of a Partner or Supervisory Lawyer**
  - Rule 5.1, Alabama Rules of Professional Conduct
- **Responsibilities Regarding Nonlawyer Assistants**
  - Rule 5.3, Alabama Rules of Professional Conduct
- In re Anderson, 685 S.E.2d 711 (Ga. 2009).

# Bank Account and Wire Transfer Security

Choice Escrow and Land Title, LLC v. BancorpSouth Bank, 754 F.3d 611 (8<sup>th</sup> Cir. 2014).

## ATTACKER



Created a wire transfer for \$440,000 to a bank account in the Republic of Cypress.

## TROJANS Horse



Creates email message that includes a link that link, when clicked on, will download a virus to the victim's computer.



## Choice title and escrow



Choice employee clicks the link and downloads a computer virus that allows the attacker to take control Choice's Computer.

# Victim Response to Email Account Compromise Scheme

- 1 Notify your bank and the corresponding bank.
- 2 Notify local FBI office and file a complaint with IC3.
- 3 Consider civil injunction against corresponding bank.
- 4 Refer to FBI PSA on Business Email Compromise Schemes.
- 5 Financial Fraud Kill Chain for international wire transfers.

# Understanding Cyber Insurance

- Broad cyber coverage is not currently available.
- Failure to follow minimum required practices exclusion.
- Exclusions for losses directly or indirectly caused by “the input of Electronic Data by a natural person having authority to enter the Insured’s Computer System.”
- May not cover important losses, such as the cost of a company’s damaged reputation or stolen intellectual property.
- Premiums on cyber policies are expected to soar to \$20 billion in 2025, up from \$3 billion in 2016.



# Summary

## Security Checklist

|   |   |
|---|---|
|   | Avoid clicking links or downloading attachments in untrustworthy offers and emails.                       |
| ✓ | Train your employees in cyber security principles.  |
|   | Install current antivirus, firewall, spam filtering, anti-phishing, and anti-spyware software.            |
|   | Keep offline backup copies of important business data and information.                                    |
| ✓ | Turn your computer off at night.  |
|   | Avoid sending sensitive information accessing banking websites over unsecured WIFI connections.           |
|   | Confirm wiring instructions by phone (using phone number obtained from an independently verified source). |
|   | Enable two-factor authentication on email and bank accounts.  |



# Outline

- Transactions with Legal Entities (Slides 4-7)
- Common Underwriting Questions (Slides 8-36)

# Thank You!

