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Achieve 2016

EMAIL SCAMS TARGET REAL ESTATE INDUSTRY

On December 15, 2015, NAR issued an urgent alert advising members and local associations to be on high alert for email and online fraud.

Hackers are hacking into the email accounts of real estate agents/title companies and using information gained to dupe a party into a fraudulent wire transfer.

For example:

> *Cash buyer receives closing documents and wiring instructions via email from her buyer's agent. Soon thereafter, the same closing documents and different wiring instructions are received from the same agent. The buyer wires funds in accordance with the second set of wiring instructions only to find that the second email was fraudulent and DID NOT come from her agent. Of course, by the time this is discovered, the money is long gone.*

There are a number of technological security measures that can be taken, and brokers and title companies are strongly encouraged to seek advice from computer technology experts on their implementation. **In addition, however, there are a number of practical steps that brokers and other real estate professionals can implement as part of their daily routine:**

1. If you are a broker or a title company, make sure every agent in your office is aware of these types of scams.

2. Advise clients/customers about these types of scams. We have put together a proposed handout (attached).

3. If you do not have a legitimate need for personally identifying information, then do not collect it.

4. If you do have a legitimate business need for personally identifying information, then keep it only as long as necessary. Once the business need is over, then properly dispose of it.

5. Avoid re-sending personally identifying information. For example, there is simply no need for the buyer's personal identifying information to be sent from the buyer to the buyer's agent to the listing agent to the title company. The title company and the buyer should communicate directly.

6. If you become aware that money has been wired via false wiring instructions:

   (a) Immediately call all banks and financial institutions that could possibly put a stop to the wire.

(b) Report the crime to the local police and the FBI via the Internet Crime Complaint Center.

(c) Contact your local association, MR and NAR so that the associations can send out alerts.

Laws

Federal:

Currently, there are no federal laws regarding data privacy that specifically apply to real estate associations or brokerages.

FTC takes the position that the failure of a business to maintain reasonable and appropriate data security may constitute an "unfair and deceptive trade practice," in violation of the Federal Trade Commission Act. In *FTC v Wyndham Worldwide Corp*, 799 F3d 236 (2015), the FTC focused on the following behavior on the part of the hotel chain:

> Stored credit card information in clearly readable text;
> Used easily guessed passwords;
> Failed to use firewalls;
> Did not restrict employee access to information;
> Did not set up any monitoring; and
> Falsely advised guests that they were using "industry standard practices" to safeguard personal information.

State:

29 states, including Michigan, have laws that govern the disposal of personal data held by businesses. MCL 445.72a. Data is to be destroyed by "shredding, erasing, or otherwise modifying the data so that they cannot be read, deciphered, or reconstructed through generally available means."

46 states, including Michigan, have laws requiring notification of victims of security breaches involving personal information. MCL 445.72.

Michigan also has a "social security number privacy act," MCL 445.81, et seq., that requires businesses who obtain social security numbers in the ordinary course of business to enact a privacy policy to protect that information.

Although there are no known cases, NAR warns that victims of these scams may seek to recover against the title company and/or brokerage based upon possible common law type claims such as negligence or breach of fiduciary duty.

Cyber insurance is available; NAR says use caution when purchasing.

ATTACHMENT

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IMPORTANT REMINDER TO OUR CLIENTS AND CUSTOMERS

While we all appreciate the convenience of transacting business via email, it is very important to remain diligent when doing so.

Unfortunately, the following scenario is not only a real life scenario, but it has occurred on a number of occasions in Michigan alone:

> *Cash buyer receives closing documents and wiring instructions via email from her buyer's agent. Soon thereafter, the same closing documents and different wiring instructions are received from the same agent. The buyer wires funds in accordance with the second set of wiring instructions only to find that the second email was fraudulent and DID NOT come from her agent. Of course, by the time this is discovered, the money is long gone.*

IMPORTANT RULES TO KEEP IN MIND:

1. Never transmit confidential information over free Wi-Fi.

2. Do not wire money until you have confirmed wiring instructions via telephone call initiated by you.

3. Never trust contact information in unverified emails.

4. Review all emails carefully. Remember that a fake email can appear to be from someone you have been corresponding with regularly. Often (but not always) these types of fake emails can be spotted on the basis of style, tone, grammar and/or awkward sentence structure. Trust your instincts. If a message looks at all suspicious, follow up with a phone call and check it out. It only takes a few minutes.

5. Beware of last minute instructions, particularly if those instructions contradict earlier instructions.