INSURING AGAINST MORTGAGE PAYOFF FRAUD

Presented by:
LEGAL EDUCATION DEPARTMENT
of
Attorneys' Title Fund Services, LLC

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INSURING AGAINST MORTGAGE PAYOFF FRAUD, BUSINESS EMAIL COMPROMISE FRAUD & OTHER SOCIAL ENGINEERING FRAUDS

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Fund Legal Education Manager

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Today's Town Hall: Overview

- BEC and social engineering frauds defined
- Traditional coverages vs. modern-day cyber frauds
- FBI statistics and anecdotal stories
- Mortgage payoff frauds
- Coverage and case law
- State and Federal laws and scope of risk
- Cyber policies, crime policies and SEF endorsements
- Exclusions, concerns, costs
- Best practices

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Business Email Compromise (BEC) fraud is a sub-set of cyber-crimes that fall within the definition of social engineering frauds

- Different from traditional forms of computer fraud, like hacking

Computer or commercial crime insurance policies came to be in the 1990's to insure against losses stemming from traditional hacking

- A typical policy from the 1990's may not cover today's social engineering frauds

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BEC frauds typically involve no hacking, at least as that term is understood in the traditional sense

- Social engineering frauds usually involves a knowing and intentional wiring of funds, albeit induced by fraud and deception
    - Traditional forms of commercial crime insurance policies did not contemplate losses arising from an insured's own wiring out of funds

A typical policy provision covering computer fraud might read as follows:

We will pay for loss of money resulting directly from the use of any computer to fraudulently cause a transfer of that money from inside the Insured's premises or banking premises to (a) a person outside those premises, or (b) to a place outside those premises.

- This language insures against traditional hacking
- Meant to cover **unauthorized entries** into the insured's computer systems or insured's bank's systems

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Insurers expanded coverage to cover “funds transfer frauds”

Fraudulent electronic instructions purportedly issued by the insured, and issued to a financial institution directing such institution to transfer, pay or deliver money or securities from any account maintained by the insured at such institution, without the insured’s knowledge or consent

- Meant to cover **instructions to transfer funds without the insured’s knowledge or consent**

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But, what if the loss results not from a hack (computer fraud) or from bogus instructions issued by a fraudster to the insured's bank (funds transfer fraud)?

- What if the loss occurs when the insured is tricked into directing its own bank to wire monies out from the insured's own account?
  - This is social engineering fraud!

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Definition of Business Email Compromise Fraud (also known as E-mail Account Compromise Fraud):

Type of scam targeting companies by which the attacker gains access to a corporate email account and spoofs the owner's identity to defraud the company or its employees, customers, clients or partners of money

Definition of Social Engineering Fraud:

A confidence scheme that intentionally misleads an employee into sending money or diverting payment based on fraudulent information that is provided to the employee in a written or verbal communication, such as an email, text, letter or phone call

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2018 FBI statistics involving BEC attacks are alarming:

- Total identified global exposed losses now exceeds $12.5 billion (up from $5.3 billion in Dec. 2016)
- More than 50,000 victim complaints submitted between June 2016 and May 2018 via the Internet Crime Complaint Center (IC3) complaint form

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August 2015 FBI PSA	June 2016 FBI PSA	May 2017 FBI PSA	July 2018 FBI PSA
More than $1.2 billion in identified exposed losses	Nearly $3.1 billion in identified exposed losses	More than $5.3 billion in identified exposed losses	More than $12.5 billion in identified exposed losses
8,179 global reported incidents	22,143 global reported incidents	40,203 global reported incidents	78,617 global reported incidents
BEC scams reported in 79 countries	BEC scams reported in 100 countries	BEC scams reported in 131 countries	BEC scams reported in 150 countries
Fraudulent transfers sent to 72 countries	Fraudulent transfers sent to 79 countries	Fraudulent transfers sent to 103 countries	Fraudulent transfers sent to 115 countries

The real estate sector is particularly vulnerable to social engineering fraud:

- In 2017, $969 million was diverted or attempted to be diverted from real estate purchase transactions and wired to criminally controlled accounts
- BEC scams targeting the real estate sector rose more than 1,100% between 2015 and 2017
- In same period, an almost 2,200% rise in the reported monetary loss
- May 2018 reported highest number of BEC real estate victims

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Excerpt from FBI's Public Service Announcement (July 12, 2018, Alert Number I-071218-PSA):

REAL ESTATE SECTOR TARGETS

BEC/EAC actors heavily targeted the real estate sector in recent years. Victims participating at all levels of a real estate transaction have reported such activity to IC3. This includes title companies, law firms, real estate agents, buyers and sellers. Victims most often report a spoofed e-mail being sent or received on behalf of one of these real estate transaction participants with instructions directing the recipient to change the payment type and/or payment location to a fraudulent account. The funds are usually directed to a fraudulent domestic account which quickly disperse through cash or check withdrawals. The funds may also be transferred to a secondary fraudulent domestic or international account. Funds sent to domestic accounts are often depleted rapidly making recovery difficult.

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BEC fraudsters have duped thousands of people, regardless of age, education and socio-economic status.

A New York State Supreme Court Judge lost more than $1 million to scammers after responding to an email she thought she received from her attorney. The person claiming to be her lawyer told her to send money to an account. She followed the instructions and wired $1,057,500 to that account, sources said. The money was then sent to Commerce Bank of China.

TripWire, June 22, 2017

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Fraudsters have infiltrated every aspect of the closing process, including the mortgage payoff process. Consider:

Liz Hazelbaker, a Naples, FL resident, sold her home and expected that her $400,000.00 mortgage would be paid off at closing. Two days before closing, fraudsters posing as her mortgage company emailed the settlement agent payoff instructions with bogus wiring instructions. The payoff funds were sent to the imposters.

Naples Daily News, Oct. 12, 2018

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And consider:

Amanda Riley of Henrico, VA sold her home and the mortgage payoff of $177,000 was to be wired to her lender, Chase. Her title agent unwittingly wired the payoff to the fraudsters, relying upon a spoofed payoff statement.

Commenting on this case, Laura Farley, General Counsel for Virginia Realtors, says it is also a good idea to question your potential realtor, title agent and settlement attorney about security measures they have in place. She says ask if they use two-step authentication and if they have a system in place for checking wiring transactions. She also says ask if they have cyber insurance; it could help.

ABC 8News, Richmond, VA, Nov. 29, 2018

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- Mortgage Payoff Fraud is another twist on a real estate BEC scam.

- According to a recent report from CertifID LLC, payoff fraud is being seen in a number of new and different ways:

- **Spoofed Lender Payoff Portals**

  - Fraudsters create outwardly identical portals utilized by mortgage companies, redirect the closing agent to the bogus portal, and then issue false payoff statements

    - Avoid ordering payoffs via portals; otherwise, call and verify authenticity

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Bogus Loan Payoff Statements Ordered by Closing Agent

- Email account is compromised and fraudsters are able to obtain the real Payoff Statement
- Using the real Payoff Statement details, the fraudsters re-create the Payoff Statement, changing only the account number
  - Assume all emails, including those sent internally within your office, are being monitored
  - Avoid scanning and emailing a Payoff Statement to anyone

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Bogus Loan Payoff Statements Ordered by Seller/Current Borrower

- Fraudsters infiltrate the seller's email and, posing as the seller, deliver a bogus Payoff Statement to the closing agent.
  - Need to confirm with the seller that he or she actually obtained and sent the Payoff Statement
    - Better yet – you order the Payoff Statement. Always!
  - One must now assume that any emails from the seller attaching a Payoff Statement is a spoof!

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Bogus Estoppel Letters from Private Lenders, Judgment Creditors, etc.

- As institutional lenders are increasingly utilizing encrypted emails, fraudsters are intercepting payoff requests to private lenders, judgment creditors, condo associations, etc., all of whom are less likely to use encrypted email
  - No longer can trust that the estoppel information received via non-encrypted email is legit
    - Need to call back and verify all payoffs

Payoff Trolling

- Fraudsters are actively monitoring properties as they move from a “listing” to a “pending” status. Then, taking advantage of the on-average 43 days to get to closing, the fraudsters will order a Payoff Statement, doctor it, and send it to the closing agent immediately in advance of closing as a revised Payoff Statement

  - Closing agents need be alert to receiving “updated” Payoff Statements ostensibly being sent by the seller

Mortgage Payoff Fraud “Tells”

- Use of word “kindly”
- Weird capitalization
- Payoff Statements missing key items
- Time aspect // urgency presented

Quicken Loans

1050 Woodward Avenue | Detroit, MI 48226

Mortgage Payoff Notice

Loan Information

Loan Number:

Property Address:

Notice Date:

Hi,

Enclosed is the mortgage payoff statement requested by To Whomever it may concern. We can only accept certified funds (e.g., wire transfers or cashier's checks), and the payoff figures are valid through 01/21/2019. Certified funds received after 01/21/2019 will require an additional $28.46 in interest per day. You'll need to call us for an updated payoff quote if we don't receive certified funds by 01/21/2019.

Payoff Statement

Loan Type: Conventional

Next Payment Date: 02/01/2019

Payoff Breakdown

Principal Balance as of 01/02/2019:	$230,860.36
Interest from 01/01/2019 to 01/21/2019:	$569.25
Fees and Costs:*	$0.00
Total Amount to Pay in Full:	$231,429.61

*Breakdown of fees and costs on page 3

The payoff balance above may change due to additional charges generated from today's date through the date of the payoff. You are entitled to call us to verify this amount at no additional charge. Additional charges may include escrow advances for taxes and insurance, late charges and other costs Quicken Loans may advance. Recording costs for filing the discharge of mortgage are considered estimated, not yet incurred.

continued →

Quicken Loans

1050 Woodward Avenue | Detroit, MI 48226

Mortgage Payoff Notice

We reserve the right to correct any errors or omissions in this payoff quote regardless of when funds are received. We also reserve the right to correct any portion of this statement due to changing balances and interest rates on this loan. A payment that is less than the full amount will delay processing, and you will be held responsible for any additional interest.

Please reference the client name, loan number and property address and send certified funds or a wire using the following information:

Wiring Instructions:

We prefer that funds are sent by wire as it is the fastest way to complete the payoff.

WHERE TO SEND FUNDS: LM BAUER ESQ, ON BEHALF OF QUICKEN LOANS
By WIRE: no checks

Bank Name: Bank Of New Hampshire
Account Name: LM Bauer & Co LLC
ABA/Routing #: 211770271
Account Number: 824856884
Beneficiary Address: 765 union Ave, Apt 104,
Laconia, NH 03246
Bank Address: 62 Pleasant Street,
Laconia, NH 03246
Reference:

NOTE: THIS LAW FIRM IS A DEBT COLLECTOR.

If you have any questions, please call the law firm at (216) 230-8681.

Wires and certified funds received by 6:00 p.m. ET will be processed on the date of receipt. All funds received after 6:00 p.m. ET will be processed on the next business day.

Important Notes to Remember

- If you're set up for automatic payments, your monthly payment will draft as usual if it's due before the payoff funds are received. Please notify Quicken Loans at least five days prior to your scheduled draft date if you'll be sending in the payoff funds within that period.
- This letter doesn't suspend your obligation to make your payments on time. A late charge may be assessed 16 days after a current payment is due in the amount of $62.83 and should be added to the payoff total if received after that time.
- Payoff figures are subject to final verification by the note holder. Figures may be adjusted if any check previously received is rejected by the institution upon which it was drawn. To the extent applicable, additional legal fees or costs associated with servicing your loan may accrue daily.
- If payoff funds received are insufficient to pay your loan in full, Quicken Loans will first use funds from your escrow account if applicable. If not, Quicken Loans will contact the sender of the funds to collect the shortage. If we can't make contact or if the remaining funds have not been collected within two business days, the original funds will be returned to the sender. To the extent permitted by state law, the note holder reserves the right to withhold the issuance of the satisfaction of mortgage until it receives all funds owed under the terms of the note.
- If this property is being sold, please provide the client(s)' new mailing address. Payoff overage funds will be mailed to the client(s) within 20 days of the loan being paid in full. A 1098 interest statement will be mailed to the client(s) no later than January 31 of the next calendar year.
- If taxes and/or insurance are escrowed, please reach out to your tax agency and/or insurance provider to ensure they are forwarding you the bill.

Sincerely,

Your Quicken Loans Team

continued →

Exhibit A - Authentic Payoff Instructions

[redacted] Payoff Department
[redacted]

Statement Date: July 5, 2018

Payoff Statement
Amended

Send to: PATRICIA [redacted]
#[redacted]
FOR INTERNAL USE ONLY

Mortgagor(s) PATRICIA [redacted]
Property Addr: 4307 ROUND [redacted]

Loan Nbr: [redacted]3229

The following statement reflects the estimated payoff amount required to prepay the above referenced mortgage in full. Interest will be collected up to the date payoff funds are received.

Interest Paid to Date:	6/01/18	Next Payment Due Date:	7/01/18

QUOTE DETAIL

Unpaid Principal	231,925.54	Mortgage Escrow Bal*	796.76
Interest Due (From 6/01/18 to 7/31/18 at 3.875%)	1,487.59		
		*items cannot be used as a credit	
		Prin and Interest	1,418.81
		Mthly Escrow Pymt	277.72
COUNTY RECORDING FEE	28.00		
Balance Due	233,441.13	Mortgage Payment	1,696.53

If payoff funds are submitted after 7/31/18, the applicable per diem interest of $ 24.62 must be added for each day thereafter. Continue to make your scheduled mortgage payments. DO NOT PLACE A STOP PAYMENT ON ANY CHECK PREVIOUSLY REMITTED. If any scheduled payment is received after the Late Charge grace period as set forth in the applicable Note, a Late Charge of $ 70.94 will be assessed.

Estimated Disbursements:	Due Date	Amount
HAZARD SFR	12/17/18	1,607.63
COUNTY TAX	2/28/19	858.25

PAYOFF FUNDS MUST BE REMITTED USING CERTIFIED FUNDS OR BY WIRE TRANSFER ONLY. If using wire transfer, forward to: Wells Fargo Bank, N.A., Routing # 121000248, for credit to [redacted]. If mailing certified funds, make payable to [redacted] and forward to the address listed at the top of page. Funds received after 3:00pm Central Time may be posted on the following business day. Please include the Mortgagor's Loan Number on all correspondence.

We will continue to make disbursements of all escrow items (hazard, flood, PMI/MIP, taxes, etc.) up to the date of payoff. It is the responsibility of the borrower(s) and their closing agent to obtain a refund should a double payment occur.

IMPORTANT NOTICE

We reserve the right to adjust any portion of this statement at any time for one or more of the following reasons, but not limited to: recent advances, returned items, additional fees or charges, disbursements made on your behalf, scheduled payment(s) from an escrow account, transfer of servicing and/or inadvertent clerical errors.

This payoff estimate does not waive our rights to collect any funds which become due on this account as a result of any subsequent adjustments. Additionally, [redacted] will not provide reconveyance or release of the Security Instrument until the account is paid in full. Upon payment in full and within state specified guidelines, the necessary documents will be forwarded to the Trustee and/or County Recorder's Office to release our lien. Any overpayment will be refunded to the mortgagor(s) within 30 Business Days after payment in full.

[redacted] is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you are currently in bankruptcy or have received a discharge in bankruptcy, this communication is not an attempt to collect a debt from you personally to the extent that it is included in your bankruptcy or has been discharged, but is provided for informational purposes only.
[redacted]

Exhibit B - Spoofed Payoff Instructions

[redacted] Payoff Department
[redacted]

Statement Date: July 12, 2018

Payoff Statement
Amended

Send to: PATRICIA [redacted]
FOR INTERNAL USE ONLY

Mortgagor(s) PATRICIA [redacted]
Property Addr: 4307 ROUND [redacted]

Loan Nbr: [redacted]3229

The following statement reflects the estimated payoff amount required to prepay the above referenced mortgage in full. Interest will be collected up to the date payoff funds are received.

Interest Paid to Date:	6/01/18	Next Payment Due Date:	7/01/18

QUOTE DETAIL

Unpaid Principal	231,925.54	Mortgage Escrow Bal*	796.76
Interest Due (From 6/01/18 to 7/31/18 at 3.875%)	1,487.59		
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COUNTY RECORDING FEE	28.00		
Balance Due	233,441.13	Mortgage Payment	1,696.53

If payoff funds are submitted after 7/31/18, the applicable per diem interest of $ 24.62 must be added for each there after. Continue to make your scheduled mortgage payments. If any scheduled payment is received after the late charge grace period as set forth in the applicable Note, a Late Charge of $ 70.94 will be assessed

Estimated Disbursements:	Due Date	Amount
HAZARD SFR	12/17/18	1,607.63
COUNTY TAX	2/28/19	858.25

PAYOFF FUNDS MUST BE REMITTED USING CERTIFIED FUNDS OR BY WIRE TRANSFER ONLY.

Bank Name: Wells Fargo Bank, N.A.
Bank address: : 420 Montgomery St., San Francisco, CA 94104
Account Name: Asgard Group
Beneficiary Address: 74 Montgomery St San Francisco, CA 94104
Account Number: 7019139968
Routing number: 121000248
Wire Reference: Payoff 411283229

We will continue to make disbursements of all escrow items (hazard, flood, PMI/MIP, taxes, etc.) up to the date of payoff. It is the responsibility of the borrower(s) and their closing agent to obtain a refund should a double payment occur.

IMPORTANT NOTICE

We reserve the right to adjust any portion of this statement at any time for one or more of the following reasons, but not limited to: recent advances, returned items, additional fees or charges, disbursements made on your behalf, scheduled payment(s) from an escrow account, transfer of servicing and/or inadvertent clerical errors.

This payoff estimate does not waive our rights to collect any funds which become due on this account as a result of any subsequent adjustments. Additionally, [redacted] will not provide reconveyance or release of the Security Instrument until the account is paid in full. Upon payment in full and within state specified guidelines, the necessary documents will be forwarded to the Trustee and/or County Recorder's Office to release our lien. Any overpayment will be refunded to the mortgagor(s) within 30 Business Days after payment in full.

[redacted] is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you are currently in bankruptcy or have received a discharge in bankruptcy, this communication is not an attempt to collect a debt from you personally to the extent that it is included in your bankruptcy or has been discharged, but is provided for informational purposes only.
[redacted]

Scammers are so attuned to their frauds, that they'll now assume the role of the victim's banker!

Scammers posing as the seller's real estate agent sent the buyer, Tom Erickson of Grand Haven, MI, false wiring instructions for his cash-to-close wire. After learning he had been defrauded, Erickson called and emailed his bank in a frantic effort to retrieve his funds. Soon later, he received an email from the fraudsters, now posing as Erickson's banker, telling him not to worry, that "we are going to start the retrieval process right away."

-HousingWire, May 21, 2018

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Will traditional computer and commercial crime insurance policies cover losses occasioned by social engineering frauds?

- No. See:
  - *Apache Corp. v. Great Am. Ins. Co*., 662 Fed. Appx. 252 (5th Cir. 2016)
  - *Taylor & Lieberman v. Federal Ins. Co.,* 681 Fed. Appx. 627 (9th Cir. 2017)

Apache Corp. v. Great Am. Ins. Co

- Apache's employee received an email appearing to come from a vendor
- The email directed Apache to change the vendor's wiring instruction
- Apache's employees wired out over $7 million to fraudsters, believing they were paying legitimate obligations of Apache to the vendor
- Appeals Court denied coverage under a computer crime policy because (i) the loss did not result directly from the use of a computer, and (ii) there was no hack involved, and while the fraudster's email was part of a scheme, it was merely incidental to the occurrence of the authorized transfer of money to pay a real obligation

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Taylor & Lieberman v. Federal Ins. Co.

- Taylor & Lieberman, an accounting firm, had power of attorney over client's funds
- Posing as the client, and using its email address, the fraudsters directed the firm to wire out nearly $100,000 of client funds
- Appeals Court denied coverage on firm's claims for computer fraud and funds transfer fraud
- Court found that the "mere sending" of emails did not amount to actionable trespass to a computer system. No malicious code was introduced and the fraudulent email did not insert a virus
- And, since the insured requested that the wire be sent, no liability under funds transfer fraud, which required an unauthorized direction

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Common Defenses Raised by Insurers to Computer Fraud and Funds Transfer Fraud Claims:

- The loss was not caused by the fraudster using a computer
  - Rather, the insured's own employees directed that a wire be sent
- No hack, no virus
- Coverage is only afforded for a "direct loss" and in these cases the losses are attenuated
- Failure of the insured to meet policy requirements mandating that the insured commit to certain verification processes
- Policy exclusions
  - Where insured directs that the wire be sent
  - Where the stolen funds do not actually belong to the insured or under the insured's control

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Will traditional cyber and commercial crime insurance policies cover losses occasioned by social engineering frauds?

Yes. See:

- *Medidata Solutions, Inc. v. Federal Ins. Co*., 2018 WL 339245 (2nd Cir. July 6, 2018)
- *American Tooling Center, Inc. v. Travelers Casualty and Surety Co. of America*, 895 F.3d 455 (6th Cir. 2018)

Medidata Solutions, Inc. v. Federal Ins. Co.

- Posing as senior-level executive of the insured, and using his email address, fraudsters directed accounts payable employees to unwittingly wire out $4.7 million to fraudsters, believing it was a company-approved transaction
- Appeals Court affirmed coverage for Medidata despite lack of a traditional hack resulting in an unauthorized instruction
- Insurance policy at issue covered losses from “entry of data or change to data elements or program logic of a computer” that resulted in loss
- Court found spoofing attack met policy language
- Court also ruled spoofing attack was proximate cause of the loss and that actions of the employees were insufficient to sever causal relationship between attack and loss

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American Tooling Center, Inc. v. Travelers Casualty and Surety Co. of America

- Posing as insured's vendor, fraudsters sent series of emails inducing wires totaling $834,000 to fraudster's account
  - ➢ Factually similar to *Apache* case
- Appeals Court reversed lower court's ruling for insurer, finding that the loss was sufficiently a "direct loss"
- Court also ruled that if the insurer meant for coverage only to apply to a traditional hacking scenario, policy should have had such limiting language – and it did not

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With divergent court decisions, reliance on standard commercial crime policies, with their “computer fraud” and “funds transfer fraud” coverages, may not be sufficient to insure against growing threat of social engineering frauds.

The legal landscape imposes multiple demands on those in the real estate sector to secure confidential personal information:

- Federal laws and regulations, including:
  - Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. Sec. 6801-6827
    - regulating financial institutions, including real estate settlement service providers and appraisers

- Florida laws, including
  - Florida Information Protection Act (FIPA), Sec. 501.171, F.S.
    - Applies to sole proprietorship, partnership, corporation, trust, estate, association or other commercial entity that acquires, maintains, stores, or uses personal information

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Gramm-Leach-Bliley Act and real estate closings:

- Cannot disclose details of the buyer's mortgage at the closing table in front of other persons without buyer's affirmative consent
- Cannot share copy of buyer's Closing Disclosure with the real estate agents without buyer's affirmative consent

Florida Information Protection Act, Sec. 501.171, F.S.

- Defines a security breach
- Covered entity must give notice to each individual in Florida whose private information was, or which the entity reasonably believes to have been, accessed as a result of a security breach
- Covered entity must provide notice to the Department of Legal Affairs of any security breach affecting 500 or more Florida individuals
- Notification to Consumer Reporting Agencies required if security breach affects more than 1,000 persons at a single time

Average Data Breach Costs (mean expense)

- Forensics investigation -- $141,000+
- Notification -- $234,000+
- Credit monitoring (where applicable) - $112,000+

Appropriate cyber insurance policy may cover these costs.

Source: NetDiligence 2017 Claims Study

Insurance Products

- Errors & Omissions
  - Covers acts of negligence committed by the insured
    - Does not cover third party crimes or crimes generally
    - Computer theft endorsements offered, but provide very limited coverage
      - Often contains social engineering fraud exclusion
      - Look carefully at policy exclusions
      - Lots of carve-outs in modern-day policies
- Fidelity Bond
  - Meant to cover employee theft, forgery, identity theft
    - Does not cover third party crimes

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Insurance Products

- Crime Policy
  - Covers employee theft, forgery and third party crime, e.g. hack
  - Theft of money
  - Direct loss of your funds
  - Fraudulent instruction fraud (b/w crooks & your bank)
  - May cover certain forms of social engineering loss
    - Oftentimes by endorsements
    - But typically requires call-back verification
      - May be able to negotiate limitations on call-back requirement

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Insurance Products

- Cyber Policy
  - Theft of data – third party claims
  - Failure of network security or privacy controls causing indirect losses
  - Privacy/NPI breaches
  - Cyber extortion
  - Legal liability and defense costs
  - Data breach management expenses, P.R. expenses, notification costs
  - Regulatory investigation
  - Business interruption
    - But does not typically cover social engineering frauds

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Insurance Products

- Social Engineering Stand Alone Policy and Endorsements to Crime Policy
  - Until recently, endorsements contained sub-limits ($250k) and high deductibles
    - Now higher amounts of coverage available
      - But expensive, depending on type of policy/coverage
      - "Call back" vs. "no call back" policy

      - Less than 60% of title companies have some form of cyber insurance
      - ONLY 25% of title agents have social engineering endorsements

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Who is providing insurance that offers coverage for social engineering frauds?

- AIG, Chubb, Travelers, Great American, Underwriters at Lloyd's of London, among others
  - May be named "Social Engineering," Business Email Compromise," Fraudulent Impersonation" endorsement or something similar

➢ Experienced agent may be able to (i) bundle E&O, Crime with SEF, Cyber and Fidelity policies, and offset cost of SEF coverage, (ii) negotiate away exclusions

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Policies are primarily rated on gross revenues and record count (i.e. the estimated amount of information collected and maintained by the proposed insured)

Insurers also look at three major factors:

- People (culture of security and employee training)
- Processes (information governance, storage & disposal policies, who has access to PII)
- Technology (infrastructure, firewall, encryption)

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Premiums can range between $500 - $15,000 depending on above criteria

Most insuring products covering social engineering frauds include:

- Sub-limits (typically $250,000 per occurrence)
- Retention ($5,000+)

Some endorsements cover a loss of funds resulting from a fraudulently induced transfer, but only if the fraudulent instruction was ostensibly sent by a corporate insider. Such limiting language might read:

The fraudulent instruction must have been transmitted by a purported director, officer, partner, member or sole proprietor of the insured or other employee, but which was in fact fraudulently transmitted by someone else …

- This limiting language will preclude coverage for loss arising from the insured wiring out on the basis of a bogus instruction from someone impersonating a client or vendor

Some policies will require that the insured institute internal controls, policies and procedures before coverage is afforded.

- To what extent?
- At what expense?

Some policies will require that before coverage is afforded, the insured must demonstrate that it followed a series of defined steps to verify the transfer request prior to the transfer of funds. Example:

The insurer will pay the insured for social engineering fraud loss resulting directly from a social engineering fraud, in excess of the applicable retention and within the applicable limits of insurance …

It is a condition precedent to coverage under the social engineering fraud coverage that the insured attempted to authenticate the fraudulent instruction prior to transferring any money or securities

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Some policies limit coverage to losses of the insured's own funds – and not monies belonging to third parties (e.g. client funds). Example:

We agree to reimburse you for loss first discovered by you during the period of this policy as a direct result of any third party committing:

Any phishing, vishing, or other social engineering attack against any employee or senior executive officer that results in the transfer of your funds to an unintended third party

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Suggestions for Protecting against BEC and Best Practices

- Avoid free web-based email accounts. Establish company domain and use it to establish company e-mail accounts
- Be careful what is posted to social media and company websites, especially job duties/descriptions, hierarchal information and out of office details
- Be suspicious of requests for secrecy or pressure to take action quickly
- Do not use “Reply” option when answering business emails. Instead, use “Forward” option and manually type in known, trusted address of recipient
- Implement Two Factor Authentication for company e-mail accounts
- Confirm requests for transfers of funds and treat all emailed wire instructions with suspicion
- Train all employees!

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Thank You!
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Certificate of Accreditation for Continuing Legal Education

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January 15, 2019

Reference Number:	1900356N
Title:	Insuring Against Mortgage Payoff Fraud etc.
Level:	Intermediate
Approval Period:	02/19/2019 - 08/31/2020

CLE Credits

General	1.0

Certification Credits

Business Litigation	1.0
Real Estate	1.0

NALA – The Association of Paralegals, Inc.

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Phone: 918-587-6828
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CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to submit evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate should be completed and submitted with relevant documentation for the event. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at http://www.nala.org/CPinfo.aspx.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Hours	Session Topics (Description and Speakers)	Validation of Attendance
1.0 General	Insuring Against Mortgage Payoff Fraud	MR

Name of CP (Please Print)

Signature of CP

Address

Preferred e-mail address

NALA Account Number (On Mailing Label)

Attorneys' Title Fund Services, LLC

Name of Seminar/Program Sponsor

Michael R. Pluma

Authorized Signature of Sponsor Representative

Date of Educational Event:

Webinar

Location:

For Office Use Only	
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Non-substantive hours	
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