

# Ethical Obligations of Title Agents and Attorneys for Cyber Security

If you are not concerned about cyber security, you don't know enough about it.

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# Agenda

1. Ethical Obligations
2. Common Cyber Threats
3. Protecting Against Cyber Threats
4. Victim Response
5. Insurance Coverage

# Competence

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Technology Amendment to Comment [8] to ABA Model Rule 1.1 Competence

“It is also important that lawyers recognize their own competence limitations regarding computer security measures and take the necessary time and energy to become competent or alternatively consult available experts in the field.”

Arizona Bar Opinion 09-04 (December, 2009).

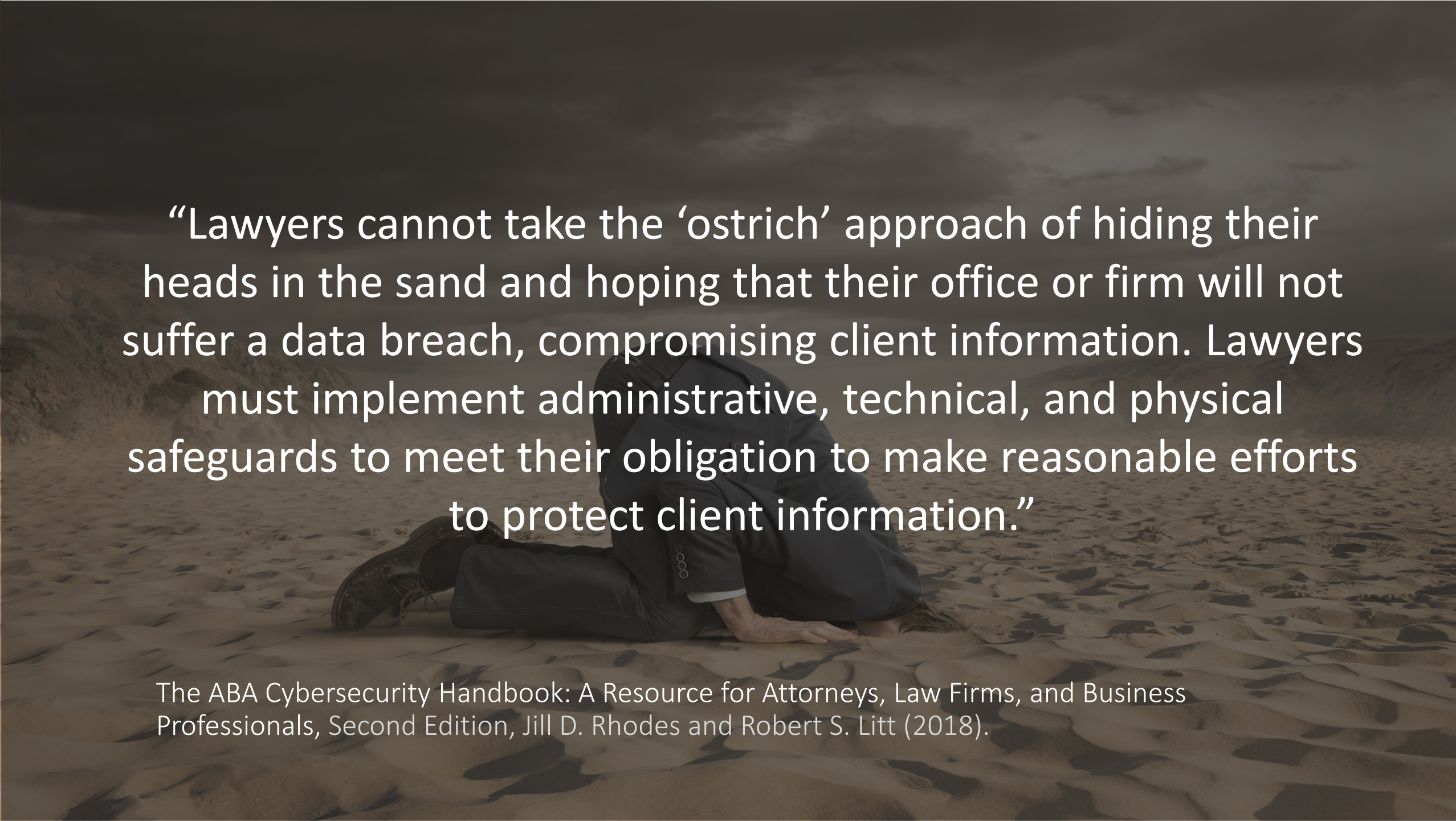
# Confidentiality of Information

“A lawyer shall make reasonable efforts to prevent the inadvertent, or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

2012 Amendment to ABA Model Rule 1.6(c)

The more sensitive the data being transmitted and the lower the legal or technological protection afforded by the method of communication, the more likely it is that special precautions may be reasonably necessary to protect client confidences.

Comment [17] to ABA Model Rule 1.6(c)



“Lawyers cannot take the ‘ostrich’ approach of hiding their heads in the sand and hoping that their office or firm will not suffer a data breach, compromising client information. Lawyers must implement administrative, technical, and physical safeguards to meet their obligation to make reasonable efforts to protect client information.”

The ABA Cybersecurity Handbook: A Resource for Attorneys, Law Firms, and Business Professionals, Second Edition, Jill D. Rhodes and Robert S. Litt (2018).

# Safekeeping Property – Nondelegable Duty

Only a lawyer admitted to practice in this jurisdiction or a person under direct supervision of the lawyer shall be an authorized signatory or shall authorize transfers from a client trust account.

Rule 1.15(f)(1), Alabama Rules of Professional Conduct

A lawyer should hold the property of others with the care required of a professional fiduciary.

Comment to Rule 1.15, Alabama Rules of Professional Conduct

# Ethical Guidance

- Formal Ethics Opinion 477R (revised May 22, 2017), ABA Standing Committee on Ethics and Professional Responsibility.
- In re Anderson, 685 S.E.2d 711 (Ga. 2009).
- Tennessee Board of Professional Responsibility Formal Ethics Opinion 2015-F-159 (2015) (“The security precautions that lawyers take need not be infallible; they must be reasonable under the circumstances.”).
- 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.

# Email Account Compromise Scheme

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

**Legitimate email address:**

john-doe@abc.com

**Fraudulent email address:**

john\_doe@abc.com



Directs the escrow agent to wire the seller's proceeds to the imposter's bank account.



# 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**

**2016**

**\$969,000,000**

**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).

# Errors and Omissions Insurance

## Policy Exception

“arising out of any actual or alleged conversion, misappropriation, commingling, defalcation, theft, disappearance, [or] insufficiency in the amount of escrow funds, monies, monetary proceeds, funds or property, or any other assets, securities, negotiable instruments or any other thing of value.”

Resource Real Estate Services, LLC v. Evanston Ins. Co., 2017 WL 660800 (D. Md. 2017).

# 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.



# 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



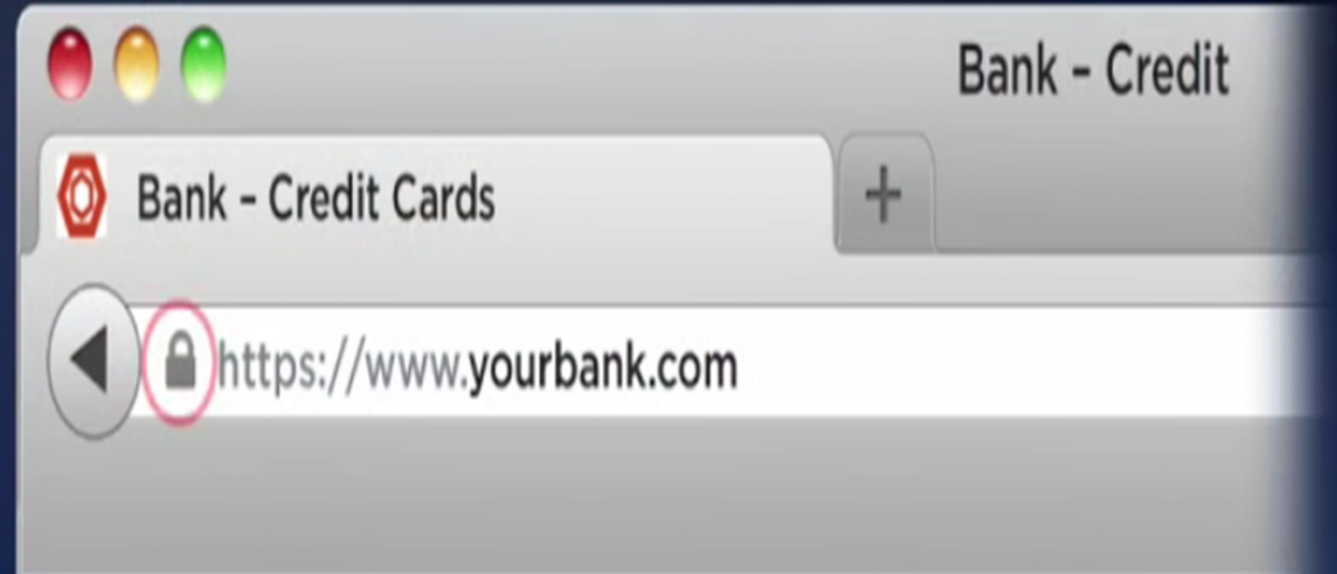
# Two-Factor Authentication (2FA)





# 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.



# 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.

# Banking and Wire Transfer Controls



Positive Pay



Dual Controls



ACH Blocks and Filters



Dedicated Computer



# 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.



# 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.

# 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.

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There are only two types  
of companies: Those  
that **have been hacked**,  
and those **that will be**.

Robert Mueller, FBI Director, 2012





QUESTIONS & ANSWERS

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