

FROM THE COURTS

Attorneys Who Get Hacked Should Brace for Ethics Investigations

by Charles Toutant

Lawyers whose attorney trust accounts are cleaned out by cybercriminals should be prepared to answer to attorney-disciplinary authorities.

And such a theft could result in disciplinary action for a lawyer who is careless about safeguarding client funds.

That's what some attorney ethics experts said in response to the growing threat of hackers who target law firms. Attorneys who take reasonable precautions to protect their trust accounts are unlikely to be penalized. But those who are less vigilant run the risk of a disciplinary action in the event of a breach, those lawyers said.

With fraud against law firms seemingly on the increase, the lawyers involved should be prepared to find themselves in the hot seat.

The issue of disciplinary action for lawyers whose trust accounts are compromised is a timely one. On Friday, a suit was removed to federal court in Trenton, New Jersey, in the case of an East Brunswick law firm that had more than \$200,000 stolen from its trust account.

It's unknown if the law firm, Sapero Gottlieb & Kroll, or its attorneys will face disciplinary action as a result of the theft. The firm sued TD Bank, claiming that it issued a password allowing an unknown party to access the trust account and make a series of wire transfers.

Bennett Wasserman, a Hackensack, New Jersey, attorney and consultant with LegalMalpractice.com, said it's not hard to envision lawyers facing discipline for breaches of their trust accounts by hackers. Ethics authorities have made clear that lawyers must take advantage of standard security measures to protect client documents and assets, Wasserman said.

"I think the problem is going to be evident with attorneys who are in a transition phase, coming out of the 20th century and into the 21st. There are an awful lot of attorneys who are clueless when it comes to computer and internet issues, and that's very, very sad," Wasserman said.

Marc Garfinkle, a Morristown, New Jersey, defense counsel who represents other lawyers in disciplinary cases, agreed that a major theft from an attorney trust account was likely to trigger an investigation by the attorney discipline system, and that lawyers who take precautions against theft could expect more lenient treatment.

"If you have done everything as it should be done, the fact that you were attacked will probably not be held against you. If your security has been lax, if your procedures have been wanting, it's entirely possible that this will redound to your great disadvantage," Garfinkle said.

However, knowing exactly what precautions are proper can be a moving target, Garfinkle said.

"The level of security that you have to provide is not hard and fast. It depends



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on your firm, it depends on the complexity of your practice, it depends on the volume of your practice," Garfinkle said. "If you've done everything you can, your accountability will have a lot of mitigating factors incorporated. If you've been lax, if you don't have a good system, and something happens as a result, [the investigation] might go poorly," Garfinkle said.

Lawyers faced with the theft of client trust funds might be tempted to replace the stolen money using their own account.

But that could be considered intermingling of trust account funds with personal funds, which is a violation of court rules, Garfinkle said. He advises an attorney facing a theft from his trust account and wondering about replacing funds to contact the Office of Attorney Ethics directly, and ask for advice.

"Let them make the call, because you're far less likely to get criticized for it," Garfinkle said.

A lawyer in such a situation is likely to face an audit from ethics authorities, which can be unpleasant, but could ultimately act in the attorney's favor, he said.

But Garfinkle warns that an audit by the Office of Attorney Ethics can be stressful for the attorney and the duration is hard to predict.

Attorney disciplinary authorities, when investigating a theft from an attorney trust account, will want to know about a law firm's office procedures concerning that account, said Frederic Shenkman, an attorney at Cooper Levenson in Atlantic City who represents lawyers in disciplinary cases.

For instance, some firms have lax procedures for issuing wire transfers of funds, and let nonattorney staff have direct access to trust accounts, said Shenkman.

Charles Toutant is a litigation report for the New Jersey Law Journal, an ALM affiliate of the Daily Business Review. Contact him at ctoutant@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **March 23, 2022 beginning at 6:00 PM** to consider an amendment to the Future Land Use Map (FLUM) of the City of Doral Comprehensive Plan to rename the "Doral Design District Core" to "Doral Décor District" (DDD), consistent with Policy 2.1.2 of the Future Land Use Element, and to eliminate the Downtown Mixed Use (DMU) and Community Mixed Use (CMU) opportunity areas from the FLUM. The City Council will consider this item for **SECOND READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2021-38

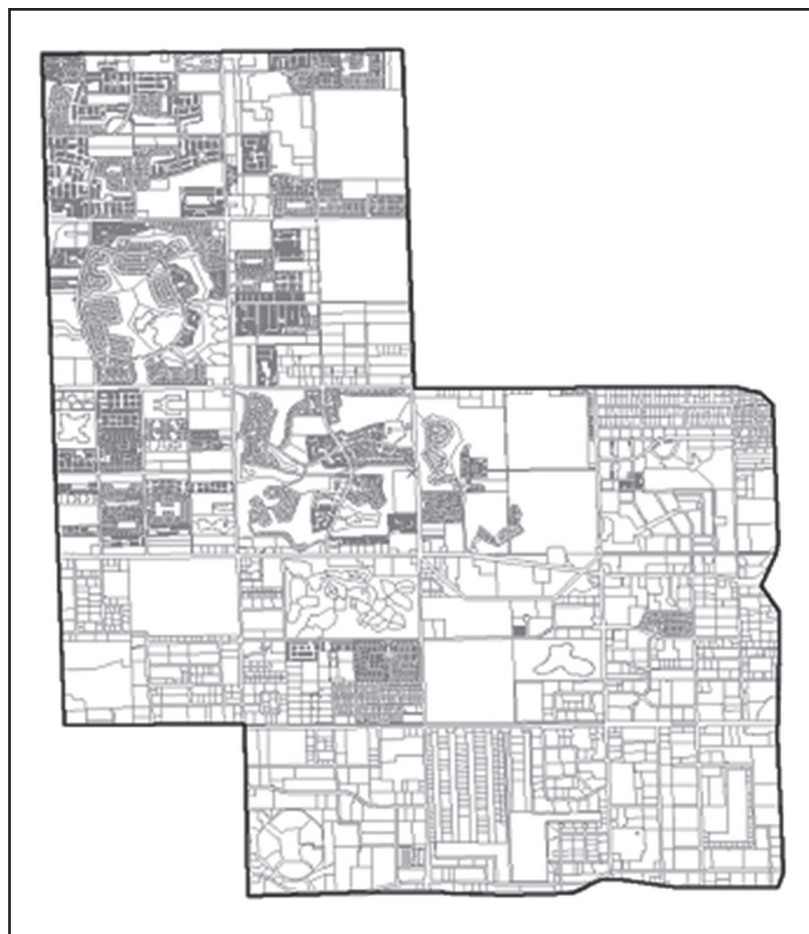
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE FUTURE LAND USE MAP (FLUM) OF THE CITY OF DORAL COMPREHENSIVE PLAN, RENAMING "DORAL DESIGN DISTRICT CORE" LAND USE CATEGORY TO "DORAL DÉCOR DISTRICT" CONSISTENT WITH POLICY 2.1.2 OF THE FUTURE LAND USE ELEMENT, AND ELIMINATING THE DOWNTOWN MIXED USE (DMU) AND COMMUNITY MIXED USE (CMU) OPPORTUNITY AREAS FROM THE FLUM; AUTHORIZING THE TRANSMITTAL OF THE FLUM AMENDMENT ADOPTION PACKAGE TO THE STATE LAND PLANNING AGENCY IN THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY AND OTHER REQUIRED GOVERNMENTAL REVIEWING AGENCIES PURSUANT TO THE PROVISIONS OF SECTION 163.3184, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 22-03-DOR-07

APPLICANT: City of Doral

REQUEST: The City Manager's Office respectfully recommends that the Mayor and City Councilmembers approve an amendment to the Future Land Use Map (FLUM) of the City of Doral Comprehensive Plan to rename the "Doral Design District Core" to "Doral Décor District" (DDD), consistent with Policy 2.1.2 of the Future Land Use Element, and to eliminate the Downtown Mixed Use (DMU) and Community Mixed Use (CMU) opportunity areas from the FLUM.

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who is disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral

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