



## **The Changing Face of Criminal Background Checks a/k/a There Are Limits to the “Get Out Of Jail Free Card” For Financial Institutions** by William T. Repasky & Brandon W. Gearhart of Frost, Brown & Todd. \*

Human Resource officers with banks and credit unions face unique professional challenges. While complying with the many general rules governing employment practices, they also must focus on the industry’s unique safety and soundness concerns. One area where this tension exists is in performance of pre-employment criminal background checks.

Financial institutions have both legal and reputational risk reasons for avoiding the employment of criminals to handle their customers’ money and confidential financial information. Yet the National Press has recently reported with great fervor about the Equal Employment Opportunities Commission’s (EEOC) new efforts to control the use of criminal background checks as a condition of employment. To bring a sense of order to such apparent disparate governmental directives, a fair starting point for the bank officer is 18 U.S.C. §1829. Here is found the well known

prohibition against the hiring of “any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering ....” by financial institutions. A financial institution that violates the statute can be liable for substantial penalties, with fines up to \$1,000,000 and potential criminal prosecution.

Leading to a perception of regulatory conflict is the EEOC’s Enforcement Guidance of April 25, 2012. In great summary, the Guidance announces the government’s intention to examine employment decisions upon discrimination grounds if the employer relies upon an individual’s criminal history in taking adverse pre-employment or post-employment action. And this same Guidance creates a new heightened standard for judging each employer’s reasons

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## iPad Basics

By: Julie Koehne, Systems Librarian

### Hand gestures on iPad screen:

Enlarge or reduce – move fingers on screen together or apart

Double-tap – use to enlarge some websites

Drag - Scroll up or down thru a screen

Flick (quickly swipe) – moves from one page to another

Tap – to activate an object such as a hyperlink, list item, or button

Tap and Hold – to insert the text cursor in a specific location in text

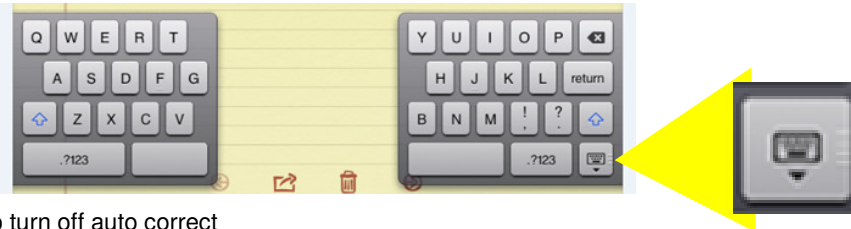


When you do so, a magnifying orb appears over the selected text, so you can more easily see the cursor location. With your finger still held down, move your finger within the text to the desired location. Release your finger when the text cursor is where you want it to be.

Four finger sweep up – shows you what apps you currently have running, so you can quickly move between them. This can also be achieved by pressing the home button twice. If you don't want an app open any longer, tap and hold the app until a red circle with a minus sign appears, then click the minus sign.

**Keyboard** – when you tap on an area that allows typing the keyboard with automatically appear. If you don't want the keyboard displayed tap on the keyboard retreat button in the lower right corner of the keyboard.

If you prefer to type with your thumbs you can split the keyboard.



**Auto-correction** – tap the X icon to turn off auto correct

**Auto-capitalization** – The iPad capitalizes the first letter of the first word you type after ending the preceding sentence with a period, a question mark or an exclamation point. You can tell when the iPad is about to auto-capitalize your text by watching the Shift key, it will turn **blue**.

**Select / Copy / Paste** – copy and paste text or images from one place to another. Double-tap a word or graphic to select it. A menu appears above the selection, and when you select a word, you have choices.

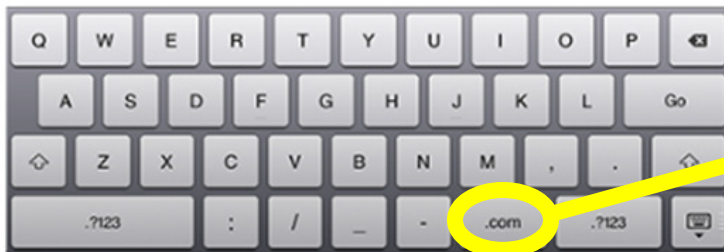
Tap Select to select the adjacent word.

Tap Select All to grab everything.

Tap and hold to get the selection handles, which you then drag to select the text.

After you have selected the text, tap Copy or Cut in the new menu that appears. When you decide where to insert the text or graphic you just cut or copied, tap and hold at the desired insertion point. Up pops a menu with commands that may include Select, Select All, Replace, and Paste. Tap Paste to paste the selection.

**Safari** – internet browser. Surfing the web begins with a web address, or URL. When you start by tapping the address field in the iPad's Safari app, the onscreen keyboard appears.



Because so many web addresses end with the suffix .com, the onscreen keyboard has a dedicated .com key.

For other common web suffixes, tap and hold the .com key and choose the relevant domain type.

**Screen Shot** – if you like what you see on the screen you can take a picture of what you see and email or share it. Do this by holding down the power button and pressing the home button at the same time. The picture is stored in the Photos app. Go to the Photos app. and tap the picture. In the upper right and of the screen there is a Share icon.

**Free CLE**

**Free to subscribers; \$50 for non-subscribers**

To register, call 513.946.5300 or via email [reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org)

**Ohio Divorce CLE: Using Experts for Property Division and Spousal Support**

Presenter: Craig Newburger

Thursday, May 9

Noon-1pm

Approved for 1.0 hour of general CLE for Ohio and Kentucky

**Malingering**

Presenter: Dr. Kenneth Manges

Tuesday, June 25

Noon-1pm

The program will focus on:

- What is Malingering?
- How to tell the truth from the lies.
- Tips and tricks forensic psychologists use to tell if someone is malingering.

1.0 hour of general CLE credit is pending in Ohio and Kentucky

**FDsys Replaces GPO Access for Government Information**

By Charles Kallendorf

Created and having grown out of Public Law 103-40, known as the "Government Printing Office Electronic Information Enhancement Act of 1993," GPO Access was launched in June 1994 and quickly became America's principal source for online federal government information. In 2009, GPO unveiled the next generation of government information online with its Federal Digital System (FDsys). The transition from GPO Access to

FDsys was completed with the official shut down of GPO Access on March 16, 2012.

FDsys is that service of the Government Printing Office that provides improved, free electronic access to a wealth of important information products produced by the federal government in official, published versions which can be used without restriction, unless otherwise specifically noted.

Some of the materials included are:

- Code of Federal Regulations and List of CFR Sections Affected, 1996 to Present
- Congressional Bills and Public and Private Laws, 103rd Congress to Present
- Congressional Committee Prints and Hearings
- Congressional Hearings, 104th Congress to Present
- Congressional Daily Record, 1994 to Present
- Federal Register, 1994 to Present
- GAO Reports and Comptroller General Decisions
- United States Code, 1994 to Present
- United States Statutes at Large, 1951 to 2009
- Supreme Court Decisions (FLITE) Bulk Data, 1937 to 1975
- United States Courts Opinions, Select Courts from 2004 to Present

A complete list is available at "Browse Government Publications" on the FDsys site. For more information about FDsys, see

<http://www.gpo.gov/fdsys/search/home.action>

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for choosing not to hire criminals into its workforce.

Yet even with this new EEOC directive, financial institutions understand their business enjoys a limited statutory exemption in this brave new world. The EEOC Enforcement Guidance acknowledges that banks and credit unions will be treated differently, as they operate under an express statutory requirement to verify the background of their employees, set out in 18 U.S.C. §1829. And criminal background screening is a recognized time tested method for complying with that statutory duty.

However, financial institutions' personnel departments must understand that they cannot simply ignore the EEOC's new Enforcement Guidance. The Guidance comes with at least three caveats to the "get-out-of-jail-free card" exemption for banks and credit unions. First, only federal laws or regulatory grounds exempt the employer. For example, 18 U.S.C. §1829 is such a law. But a state's law differing from federal law may not be. Second, the EEOC is clear, "... if any employer decides to impose an exclusion that goes beyond the scope of a federally imposed restriction, the discretionary aspect of the policy would be subject to Title VII analysis." In other words, banks can go up to, but not beyond 18 U.S.C. §1829. And if they go further, regardless of management's perceived rational, full compliance with the Enforcement Guidance's standard will have to be proven by the bank for the extra scrutiny. Third, the rules for what 18 U.S.C. §1829 does and does not require have recently changed.

On December 18, 2012, the FDIC promulgated a new, more lenient, policy that effectively narrows the offenses that will automatically bar employment at banks without FDIC consent and waiver. One of the changes is how the FDIC now views the de minimis exclusion under the Act. The de minimis exception allows individuals with petty criminal convictions that do not pose a significant danger to the institution to be hired without FDIC consent and waiver. The old de minimis exception required the maximum fine for the offense to be less than \$1,000 and that no jail time be served as part of the conviction or sentence. The new promulgated policy raised the maximum fine to \$2,500 and allows an applicant to serve 3 days or less due to sentencing or conviction. In addition to the more lenient standards, the conviction must be more than five years prior to the date an application for waiver would be required under normal circumstances and the offense not involve an insured depository institution or insured credit union. A conviction based upon a "bad" check is de minimis, even though it involves an insured institution, if, in addition to all other de minimis requirements being met, the aggregate total face value of the bad or insufficient funds cited in the conviction were \$1,000 or less and no insured depository institution or insured credit union was payee of any of the bad or insufficient funds. Should a de minimis exception applicant become hired, the bank must make sure its fidelity bond provides appropriate coverage.

In conclusion, the FDIC has adjusted the out-of-bounds markers and the EEOC intends to punish out of bounds play. Thus personnel departments that follow old understandings of the FDIC's rules may inadvertently find

their companies newly exposed to EEOC enforcement actions. FDIC insured financial institutions should examine their procedures if disqualifying candidates under 18 U.S.C. §1829, to ensure their practices remain compliant with the FDIC's statement of policy, and if not, then under the EEOC's Enforcement Guidance and state/local unified discrimination laws.

If you have any questions about pre-employment screening procedures or other employment law issues, please contact Bill Repasky ([brepasky@fbtlaw.com](mailto:brepasky@fbtlaw.com)) or Brandon Gearhart ([bgearhart@fbtlaw.com](mailto:bgearhart@fbtlaw.com)).

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## **New Books on Practice Management and Client Relations**

If you would like to borrow any of these books, just call. We'll retrieve and hold them for you.

The 2013 solo and small firm legal technology guide : critical decisions made simple  
KF320.A9 .N45 2013

Advising the small business client  
Ref KFO234.Z9 A39 2012

The Attorney-client privilege and work product doctrine today  
Ref KFO541.3.A77 A988 2012

Building document assembly systems for complex legal documents  
Ref KFO77.5.A95 B85 2012

Digging for buried treasure : how a search

through the rules of ethics and professionalism reveals the seven secrets to attorney success  
KF306 .T45 2012

Financial planning for lawyers  
KF1072 .R62 2012

How to understand and analyze financial statements : taking the mystery out of financial statements  
Ref KFO77.5 .S64 2012

Professionalism, law office management, and client funds management : and, Ohio notary law : your role, responsibilities, and risks as an Ohio notary  
Ref KFO526.N6 .P765 2012

The technology you need to start a practice or overhaul the one you have  
Ref KFO77.5.A95 H4 2012

Transition to retirement : do you have an exit strategy?  
Ref KFO334.5.P4 .T725 2012

Understanding your business clients  
KF1414.85 .S64 2013

Your law office : don't leave home without it!  
Ref KFO77.5.A95 Y68 2012



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5 meeting rooms with speaker phones

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Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

## You and the Legal System: Foreclosure

Attorney Thomas Richards is our next speaker in the *You and the Legal System* series for the public. Mr. Richards will discuss Foreclosure on Friday, May 17 at noon at the Law Library.

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

*You and the Legal System* is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series: Dennison Keller will discuss elder law on June 21.



## Real Estate Resources

The Law Library offers a variety of print and online resources on Real Estate Law. If you have questions about access to any of these resources, just call us at 531.946.5300.

### Books

Anderson's Ohio real estate law handbook  
KFO112.Z9 O45

Commercial real estate law  
KFO126 .C65 2011

Ethics for title agents and attorneys  
KFO126 .E8 2012

Foreclosures: mortgage servicing, mortgage modifications, and foreclosure defense  
KF1040.Z9 S542 2012

Introduction to real estate practice  
KFO126 .I65 2012

Jury Instructions in real estate litigation  
KF8984. E25 2011

Land Use and Zoning  
KFO458 .L26 2012

Law of distressed real estate: foreclosure, workouts, procedures  
KF1524 .D85 2013

Legal Issues in real estate foreclosure  
KFO126 .T521 2011

Negotiating real estate loan terms and workout options (in Ohio)  
KFO126 .L63 2011

Ohio Condominium Law  
KFO114.C6 C663  
2012

Ohio real estate law  
KFO112 .H38 2013

Ohio residential real estate manual  
KFO126 .W54 2013

Residential real estate transactions  
KFO126.Z R47 2012

Titles to real estate in Ohio  
KFO126 .T52 2012

### Online Resources-Remote Access

#### **ALI/ABA**

Practical Real Estate Lawyer

#### **Aspen/Loislaw Real Estate Library**

Commercial Real Estate Transactions Handbook

Commercial Real Estate Leases: Preparation, Negotiation and Forms State-by-State Guide to Commercial Leases

Law of Title Insurance

Law of Real Estate Brokers

#### **EBSCO**

Buying a Second Home

Complete Guide to Purchasing a Condo, Townhouse or Apartment

Essential Guide for First-Time Homeowners

First-Time Homeowner's Handbook

Foreclosure Survival Guide

Home Mortgage Book

How to Buy Real Estate Without a Down Payment in Any Market

Inspect Before You Buy

Nolo's Essential Guide to Buying Your First Home

Reverse Mortgage Book: Everything You Need to Know Explained Simply

Selling Your House in a Tough Market

Your Real Estate Closing Explained Simply: What Smart Buyers & Sellers Need to Know

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Reverse Mortgage Book: Everything You Need to Know Explained Simply

Selling Your House in a Tough Market

Your Real Estate Closing Explained Simply: What Smart Buyers & Sellers Need to Know

#### **National Consumer Law Center**

Includes access to info on foreclosures, repossessions and other consumer credit information.

### Upcoming Events:

May 9: Ohio Divorce CLE: Using Experts for Property Division and Spousal Support

May 17: You and the Legal System: Foreclosure

June 21: You and the Legal System: Elder Law

June 25: Malingering CLE

### Holidays

The Law Library will be closed on Monday, May 27th in observance of Memorial Day.



## May 2013 Law Library Newsletter

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