

## **The National Association of REALTORS® Addresses Risk Management Issues**

On Wednesday, May 13, 2015, the National Association of REALTORS® Risk Management Committee met in Washington D.C. to discuss issues effecting REALTORS® across the country. At that meeting, significant attention was paid to the following five topics:

### **1. Drones and Unmanned Aerial Systems**

Unless in possession of a Federal Aviation Administration certificate of airworthiness, the FAA does not allow drones to be used for commercial purposes. For this reason, NAR “recommends against members use of drones for real estate marketing purposes and against hiring companies to do the same until such time as the FAA issues regulations providing for the commercial use of unmanned aircraft.” On February 15, 2015, the FAA issued proposed rules to allow for the commercial use of small commercial drones. Unfortunately, the FAA has extended its original 2015 deadline to issue its final rule by two years, meaning that a ruling is not expected until 2017. For more information, go to:

<http://www.realtor.org/articles/drones-soon-but-not-yet>; and  
<http://blog.aaronline.com/2015/01/the-use-of-drones-is-still-up-in-the-air/>

### **2. CFPB Enforcement Actions**

The Consumer Financial Protection Bureau continues to take action against settlement service providers that violate the Real Estate Settlement and Procedures Act (RESPA). Among the more common targets are: (1) marketing services agreements that base compensation on the volume of referrals received and not the value of the marketing services actually rendered; and (2) kickbacks pursuant to which one settlement service provider gives another something of value in exchange for the referral of business. Since such offenses are largely categorized as “illegal acts,” they are not typically covered by an errors and omissions insurance policy. For more information, go to:

<http://www.realtor.org/articles/cfpb-respa-action-in-md>; and  
<http://blog.aaronline.com/2014/10/marketing-services-agreements-under-the-microscope/>

### **3. Independent Contractors**

Recent litigation in Massachusetts has raised the question of whether real estate agents are governed by the state’s strict independent contractor law, which would entitle agents to minimum wage, overtime, and benefits. Similar litigation in California claims that a large brokerage misclassified current and former affiliated sales associates as independent contractors when they were actually employees and, in turn, violated several sections of the California Labor Code. As a result of these cases, the issue of worker classification has again been brought to the forefront. It is therefore critical for brokerages to properly draft independent contractor agreements so that the broker/salesperson relationship is not treated as an employment relationship. For more information, go to:

<http://www.realtor.org/law-and-ethics/independent-contractor-status-in-real-estate-2015-white-paper>; and  
<https://www.aaronline.com/2014/06/independent-contractor-agrmt/>

#### **4. TRID**

The Consumer Financial Protection Bureau has published revised final rules and forms that combine disclosures consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The new rules are often referred to as TRID, an acronym standing for TILA-RESPA Integrated Disclosure. By way of these new rules that take effect on August 1, 2015, the Truth in Lending Statement and Good Faith Estimate will be replaced by a new form titled Loan Estimate, and the HUD-1 Settlement Statement will be replaced with a form titled Closing Disclosure. For more information, go to:

<http://www.realtor.org/videos/window-to-the-law-trid-changes-coming>; and  
<https://www.aaronline.com/2014/11/planning-to-practice-real-estate-in-2015/>

#### **5. Coming Soon Listings**

“Coming soon” listings remain prevalent in many markets throughout the country. However, such listings can prove problematic if not in the client’s best interest. More specifically, if an agent recommends that their client withhold the listing from the MLS so that the firm or listing agent can have an exclusive window of opportunity to sell the property themselves, such may not be in the client’s best interest. Typically, properties achieve maximum exposure through the MLS, meaning that the listing is viewed by a larger pool of potential buyers. Since a greater level of interest often results in a higher sales price, coming soon listings should be carefully considered and agents should never place their own interests above those of their client. For more information, go to:

<http://www.realtor.org/articles/coming-soon-is-it-in-the-seller-s-best-interest>; and  
<http://blog.aaronline.com/2014/08/beware-of-pocket-listings/>

#### **About the Author:**

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For additional information about these issues, plus coverage of other meetings at the recent NAR meetings in Washington D.C, please see J.T. Tsighis’s article at <https://www.aaronline.com/wp-content/uploads/2015/06/NAR-May-2015-Conference-Notes-JT-Tsighis1.pdf>.