

# 2015 LEGAL SEMINAR

November 12, 2015  
San Diego, CA



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Legal Affairs*



NATIONAL  
ASSOCIATION *of*  
REALTORS®

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## **X. “KNOW BEFORE YOU OWE” TRID PANEL**

MODERATOR: FINLEY MAXSON, SENIOR COUNSEL FRANK PELLEGRINI, ESQ., CEO PRAIRIE TITLE SERVICES, INC. SCOTT A. PETERSON, GENERAL COUNSEL, COLORADO ASSOCIATION OF REALTORS®.....	116
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## **XI. NO RESPITE FROM RESPA ENFORCEMENT**

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# 2015 Legal Seminar Agenda

Manchester Grand Hyatt  
Grand Hall A&B  
San Diego, CA  
November 12, 2015

Thursday, November 12, 2015

7:30 am – 8:30 am	Registration	
8:30 am – 8:35 am	Welcome/Opening Remarks	
	Annual Antitrust Compliance Program and Other Matters	Ralph W. Holmen Associate General Counsel
	Properly Classifying Instructors as Independent Contractors	Lesley M. Walker Associate Counsel
	Cyber Fraud and the Real Estate Professional/Issuing Safety Alerts	Jessica Edgerton Associate Counsel
10:00 am – 10:20 am	Break	
	Antitrust Video Preview	
	Copyrights and Listing Photographs	Chloe Hecht, Associate Counsel Mitchell A. Skinner, Managing Member Larson Skinner, PLLC
	Professional Standards and MLS Update	Kevin Milligan Vice President, Board Policy and Programs
	Core Standards Update	Cliff Niersbach Associate General Counsel, Board Policy and Programs
	REALTOR® Association Mergers and Dissolutions	Katie Johnson Senior Vice President, General Counsel
12:00 pm – 1:00 pm	Lunch Grand Hall B	
	“Know Before You Owe” TILA RESPA Integrated Disclosures/TRID Panel Moderated by Finley Maxson Senior Counsel	Frank Pellegrini, Esq., CEO Prairie Title Services, Inc. Scott A. Peterson, General Counsel Colorado Association of REALTORS®
	No Respite from RESPA Enforcement	Phillip L. Schulman, Partner K&L Gates, LLP
3:00 pm – 3:30 pm	Questions & Answers	



**Katie Johnson**  
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❖ **Areas of Expertise:**

- ❖ Agency/Buyer Brokerage
- ❖ Arbitration/Litigation
- ❖ Data Security/Privacy
- ❖ Information Technology/Licensing
- ❖ Intellectual Property
- ❖ Multiple Listing Services
- ❖ RESPA
- ❖ General Legal Questions

Katie Johnson is the general counsel for the National Association of REALTORS®, “The Voice for Real Estate,” and the nation’s largest professional association, representing approximately one million members involved in all aspects of the real estate industry.

Katie joined NAR in 2007 and was appointed as general counsel in 2014. As general counsel, she is responsible for assuring that the programs, policies and activities of NAR are in compliance with the law. She also is responsible for defending the Association against legal challenges and initiating litigation to protect and preserve association assets and policies as necessary. Prior to becoming general counsel, Katie focused on software and data licensing, trademark protection, contract drafting and review, data security and privacy, brokerage risk management, and providing legal advice to NAR’s technology initiatives including RPR and RAMCO. Katie recently completed her master’s degree for Information Technology and Privacy Law.



**Ralph Holmen**  
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❖ **Areas of Expertise:**

- ❖ Antitrust
- ❖ Campaign Finance/Association Political Activity
- ❖ Multiple Listing Services
- ❖ Arbitration /Litigation
- ❖ Tax Exempt Organizations
- ❖ Environmental and Land Use
- ❖ First Amendment Issues/Sign ordinances
- ❖ NAR Legal Action Committee
- ❖ General Legal Questions

Ralph Holmen is Associate General Counsel of the National Association of REALTORS®, and for over 37 years has advised NAR, state and local associations and members on a wide variety of real estate and association law issues, including antitrust, federal election law, First Amendment issues, not-for-profit taxation, land use and environmental issues and others. He has authored or co-authored numerous amicus curiae briefs filed in the U.S. Supreme Court as well as other courts, addressing land use and environmental law, fair housing, commercial speech restrictions, and other issues of concern to the real estate industry.

Ralph is admitted to practice before the United States Supreme Court, the Court of Appeals for the Federal Circuit, the United States District Court for the Northern District of Illinois, and the bar of the State of Illinois. Ralph received a Bachelor of Science degree in physics from the University of Illinois in Champaign-Urbana, and a Juris Doctor degree from Loyola University of Chicago.



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❖ **Areas of Expertise:**

- ❖ ARELLO
- ❖ Do Not Call/Fax/Email
- ❖ FCC Ruling
- ❖ Legal Pulse
- ❖ Professional Liability Insurance
- ❖ Realtor.org Case Summaries
- ❖ State Political Activity
- ❖ General Legal Questions

Finley Maxson has been with NAR since 1999. Prior to joining NAR, Finley worked at a Chicago law firm. He received his B.A. degree in English from Kenyon College, and his J.D. degree from the Washington University School of Law. Finley is admitted to the state bar of Illinois.

Finley helps to maintain the risk management materials on Realtor.org, Window to the Law, and The Legal Pulse. He is the main contact person for the professional liability insurance for state and local REALTOR® associations. Finley also assists the Community & Political Affairs division with state campaign finance issues as general in-house responsibilities (drafting risk management articles, reviewing contracts, and miscellaneous projects). In addition, Finley also serves as the liaison between NAR and ARELLO.



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❖ **Areas of Expertise:**

- ❖ Americans with Disabilities Act
- ❖ Employment law
- ❖ Independent Contractors
- ❖ NAR Constitution & Bylaws
- ❖ Risk Management Committee
- ❖ Trademark
- ❖ General Legal Questions

Lesley Walker has been with NAR since May 2010. Lesley focuses her work on matters including the Americans with Disabilities Act, fair housing issues, NAR Constitution and Bylaws, Risk Management Committee and general contract negotiation matters. Prior to joining NAR, Lesley's experience has focused on general corporate matters and financial services regulation, and includes three years at the North American Securities Administrators Association in Washington, D.C., where her work focused on securities regulation, corporate law, and association legal work. She received her J.D. from the Villanova University School of Law, and is a graduate of The Pennsylvania State University, where she earned a B.S. and a B.A. Lesley is admitted to the state bar of Pennsylvania.



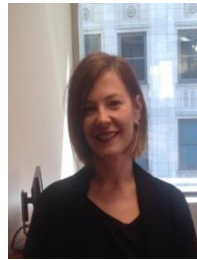
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- ❖ Appraisal/Valuations
- ❖ Broker Risk Management
- ❖ Contracts/ Licensing
- ❖ Cyber Security
- ❖ Licensee Safety
- ❖ Electronic Signature
- ❖ Leasing
- ❖ Risk Management Forum
- ❖ RPR
- ❖ General Legal Questions

Prior to joining NAR in 2013, Jessica Edgerton served as general counsel to an appraisal management company, where she was responsible for overseeing company-wide industry and regulatory compliance and general corporate legal matters. She received her B.A. from Oberlin College and her J.D. from the Indiana University Maurer School of Law. Jessica is admitted to the state bar of Illinois.

At NAR, Jessica focuses her practice on contracts, online copyright and intellectual property matters, environmental issues affecting the real estate practitioner, and the creation of member educational resources including the risk management materials on Realtor.org, Window to the Law, and The Legal Pulse. Jessica also serves as the staff executive for the Risk Management Forum.



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❖ **Areas of Expertise:**

- ❖ Contracts
- ❖ Copyright
- ❖ Intellectual Property Licensing
- ❖ Patents
- ❖ Trademark
- ❖ General Legal Questions

Chloe Hecht joined NAR in May of 2014. Previously, Chloe practiced at boutique intellectual property firms within Chicago where she focused on trademark enforcement and litigation, U.S. and international trademark prosecution, branding strategies and rollouts, intellectual property licensing, domain name disputes, DMCA matters, and Internet and social media policies.

Chloe focuses on NAR's intellectual property issues, including the trademark protection program, NAR's patent reform and education initiatives, copyright issues, and intellectual property licensing. Chloe also assists with NAR's .REALTOR top level domain and reviewing and negotiating contracts. Chloe received a B.S. degree in molecular biology from the University of Wisconsin – Madison and a J.D. degree from DePaul University College of Law. She is admitted to the state bar of Illinois



**Cliff Niersbach**  
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❖ **Areas of Expertise:**

- ❖ ADR ( Mediation, arbitration, and ombudsman)
- ❖ Professional Standards Enforcement
- ❖ Multiple Listing Services
- ❖ NAR's Organizational Alignment/Core Standards Initiative
- ❖ REALTOR® Code of Ethics

Cliff Niersbach joined the National Association of REALTORS® as a Policy Review Coordinator in 1975. Since then he has served NAR and its members in a variety of positions including Vice President, Board Policy and Programs.

From 1978 until 2014, Cliff was the staff liaison to the Professional Standards Committee, the Interpretations and Procedures Subcommittee, the Multiple Listing Issues and Policies Committee, and the MLS Technology and Emerging Issues Advisory Board. He currently serves as Associate General Counsel, Board Policy and Programs, with responsibility for implementing the Organizational Alignment/ Core Standards initiative. He is also NAR's Antitrust Compliance Officer.

Cliff is a graduate of Northwestern University and the John Marshall Law School. He is admitted to the United States Supreme Court and to the state bar of Illinois.



**Kevin Milligan**  
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❖ **Areas of Expertise:**

- ❖ Membership Policies
- ❖ Multiple Listing Services
- ❖ Professional Standards
- ❖ REALTOR® Code of Ethics
- ❖ Association Structure and Jurisdiction

Kevin Milligan joined the National Association of REALTORS® as a Policy Analyst in 1980. Since then he has served NAR and its members in a variety of positions, currently as Vice President, Board Policy & Programs.

Board Policy & Programs has oversight for the activities of NAR's Professional Standards, MLS, and Membership Policy Committees and assists local and state associations in administering these programs. Kevin is actively involved in the work of these committees, and has worked with various study groups, task forces, and presidential advisory groups.

Kevin is a graduate of Western Illinois University, and has a Master's Degree in Business Administration.



## **Guest Speakers**

### **Frank Pellegrini, President and CEO, Prairie Title Services, Inc.**

- ❖ Frank Pellegrini is a graduate of DePaul University College of Law, has practiced law in Illinois since 1976, and has been in the title insurance business since 1978. Frank and his wife, Mary, founded Prairie Title in 1983. Frank is active in the legal profession, in the title industry, in his community, and in social organizations. He was the 2012-2013 President of the American Land Title Association and continues to serve on the PR Committee, Government Affairs Committee, Agents and Abstracters Research Committee, and the Agents Executive Conference. Frank is also very involved with the Illinois Land Title Association. Having served as its president from 2004 until 2005, he continues to participate on various committees, including Legislative, Communications and ILTA-PAC.

### **Scott A. Peterson, General Counsel, Colorado Association of REALTORS®**

- ❖ Scott is an experienced real estate and business professional with an extensive background representing individuals and companies on a broad range of matters.

He currently serves as General Counsel for the Colorado Association of REALTORS® (CAR), the state's largest real estate trade association. CAR is dedicated to serving more than 22,000 REALTOR members and 37 local associations statewide. Scott is admitted to practice law in California (1998) and Colorado (1999). He is also a licensed real estate broker with the Colorado Real Estate Commission. Scott is a graduate of the University of Southern California and the University of San Francisco School of Law

### **Phillip L. Schulman, Partner, K&L Gates**

- ❖ Phillip Schulman is a partner in the Washington, D.C. office of K&L Gates, where he has a national practice specializing in a range of matters related to real estate finance, mortgage banking and consumer finance in both the primary and secondary markets, including:
  - 1) developing and analyzing proposed business plans, and drafting the related agreements and disclosures, applicable to federal and state laws;
  - 2) representing companies in the mortgage lending, real estate and title insurance industries in connection with administrative and regulatory compliance matters, including those involving the CFPB, HUD, VA, Ginnie Mae, Fannie Mae and Freddie Mac; and
  - 3) defending companies in connection with governmental audits, investigations and enforcement proceedings, before the CFPB, HUD, the Federal Trade Commission and Department of Justice.

Mr. Schulman of course, is one of the nation's foremost experts on the Real Estate Settlement Procedures Act (RESPA) and related mortgage matters, and is a frequent lecturer for seminar and conferences sponsored by the National Association of Realtors (NAR), the Mortgage Bankers Association, the American Land Title Association and other industry-related groups.

## **Guest Speakers**

### **Mitchell A. Skinner, Managing Member, Larson Skinner PLLC**

- ❖ Mitchell A. Skinner is the managing member of Larson Skinner PLLC, a Minneapolis based law firm. Larson Skinner PLLC provides copyright, trademark, technology, and licensing counsel to individuals, trade organizations, standards settings bodies, and companies of all sizes. Skinner focuses his practice on providing legal and consulting advice to Multiple Listing Services and other real estate focused organizations. He counsels clients on software licensing, intellectual property portfolio creation, data licensing (including real estate listing syndication strategy and negotiation), and all matters related to MLS governance and data management. Skinner also provides counsel to the Real Estate Standards Organization and the Council of Multiple Listing Services.

# Annual Antitrust Compliance Program and Other Matters

Ralph Holmen  
Associate General Counsel

# I. Department of Justice Antitrust Compliance

1. **“An annual program for NAR Member Boards and their counsel that includes a discussion of the antitrust laws (as applied to Member Boards) and this Final Judgment.”**

- All MLSs must adopt (and have adopted) the VOW Policy and Rules.
- NAR must direct MLSs to correct any application, adoption, or enforcement of VOW rules that violates the Final Judgment, and deny insurance coverage for MLSs that fails to do so.

- NAR must provide quarterly reports to DOJ of any complaints of such violations.
- An MLS may not prohibit or restrict electronic transmission of property listing information that may be provided to consumers in other ways, and may not “unreasonably disadvantage or discriminate against” brokers in their use of VOWs to provide information to consumers.

## 2. VOW Compliance Issues

- Compliance with and application of the “Participation Rule”:
  - A Participant must “...actively endeavor(s) ... to list real property of the type listed on the MLS or to accept offers of cooperation and compensation ....”
  - The test is *effort*, not success; MLSs must apply enforcement efforts uniformly; brokerage listing/sales activity must be conducted with respect to properties in the market area of the MLS in which participation is sought.

## VOW Compliance Issues cont'd

- “Referral VOWs” not prohibited but require MLS participation.
- Continuing application of VOW Policy and Final Judgment/Decree after November 18, 2018.

### 3. Other Issues

- Listing Syndication - MLSs and Participants sharing listing data with publishers.
- New NAR Antitrust Video



## II. Antitrust Litigation

- *Metro. Reg'l Info. Sys. v. Am. Home Realty Network*, 2105 WL 4597529 (D.Md. July 6, 2015)
- *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, \_\_\_\_ U.S. \_\_\_\_, 135 S.Ct. 1101 (2015).

COESTERVMS.com v. Virginia State Real Estate Appraisal Board, No. 1:15-CV-980 (E.D.Va )

### III. Political & Lobbying Activities by 501(c)(6) Organizations

- 501(c)(6) trade associations, for the most part, are a subset of (c)(4), (c)(5), (c)(6) orgs for political and lobbying purposes – rules generally the same.
  - Rev. Rul. 2004-6 treats (c)(4), (c)(5), (c)(6) the same regarding political campaign activities and §527 disclosure and tax requirements. See also *IRS Technical Instruction Program Manual* (2003).

## Political & Lobbying Activities by 501(c)(6) Organizations

- Lobbying: Unlimited. Quintessential form of “improving conditions in the industry.” May be 100% of association’s budget.
- Political campaigns: Political campaign activity, including independent expenditures (“vote for” etc.), cannot be “primary” activity or purpose.

## Political & Lobbying Activities by 501(c)(6) Organizations

- Nov. 2013 - IRS published ANPR on political campaign activity by (c)(4) organizations. Withdrawn after 150,000 mostly critical public comments.
  - Any new regs likely to explicitly cover (c)(5) and (c)(6) orgs.
- (c)(4), (c)(5), (c)(6) orgs taxable on political campaign expenditures (up to amount of net investment income) under §527(f).

## Political & Lobbying Activities by 501(c)(6) Organizations

- §162(e) and §6033(e) lobby/proxy tax:
  - Expenditures by taxable person or entity for lobbying and political activity are nondeductible under §162(e).
  - Nondeductibility is “passed through” to taxable member companies when 501(c)(6) organization makes lobbying or political expenditures.
  - Association must provide notice to members in the dues statement of nondeductible portion of dues and must pay 35% “proxy tax” if it fails to give notice.

## §527 Political Organizations

- Must be organized & operated “primarily” to engage in “exempt function activities” (election or defeat of candidates for federal, state, or local office).
- Taxable income of 527 organizations excludes all income reserved for use for an exempt function; essentially taxed only on investment income.

## § 527 Political Organizations

- Must file notice under §527(i) (Form 8871) and periodic reports of contributions and expenditures under §527(j) (Form 8872).
- Federally (FEC) registered political committees and “qualified state or local political orgs” (“QLSPOs”) exempt from filing reports under §527(j)(5).

## §501(c)(6) Associations and Affiliated 527 Organizations

- Under 527(f), 501(c)(6) associations are taxed to the extent they act as political organizations.
  - Tax under § 527(f) imposed on lesser of “exempt function” (i.e., direct political campaign) expenditures or the organization’s net investment income.
  - Exempt function expenditures include contributions to political committees and other expenditures made directly to influence elections.
  - Tax rate is 35%.



## §501(c)(6) Associations and Affiliated §527 Organizations

- Separate segregated fund or PAC established and operated by a (c)(6) association treated as a separate entity not subject to §527(f) tax.
- Transfer of dues or other contributions to the SSF/PAC are not taxable to the association under §527(f) so long as transferred “promptly and directly.” Reg. §1.527-6(e).
  - Such transfers to SSF/PAC can be done “ad hoc” or “as needed” as determined by the association if transferred “promptly and directly” per Reg. § 1.527-6(e). PLR 8628001, 9622002.

## §501(c)(6) Associations and Affiliated §527 Organizations

- “Indirect expenses” (admin., overhead) and expenses “allowable” under federal or state election law not taxable under 527(f) under the “Reserved Regulations.” 1.527-6(b).
- Expenditures not taxable under Reserved Regulations include political campaign communications directed exclusively to members.
  - Does this tax exclusion also apply to independent expenditures permitted under *Citizens United*?

# PROPERLY CLASSIFYING INSTRUCTORS AS INDEPENDENT CONTRACTORS

LESLEY WALKER, NAR ASSOCIATE COUNSEL

# WORKER CLASSIFICATION

- Employee v. Independent Contractor
- State v. Federal Law

# IRS TEST:

- Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
- Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

# THE ECONOMIC REALITY TEST:

- The extent to which the work performed is an integral part of the employer's business.
- Whether the worker's managerial skills affect his or her opportunity for profit and loss.
- The relative investments in facilities and equipment by the worker *and* the employer.
- The worker's skill and initiative.
- The permanency of the worker's relationship with the employer.
- The nature and degree of control by the employer.

# THE ABC TEST:

(B) The service is either outside the usual course of the business for which it is performed, or the service is performed outside of all the places of business of the enterprise for which it is performed; and

(C) The individual is customarily engaged in an independently established trade, occupation, profession, or business.

# CONTROL



## Department of Labor Administrator's Interpretation No. 2015-1:

[http://www.dol.gov/whd/workers/Misclassification/  
AI-2015\\_1.htm](http://www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm)

# BEST PRACTICES

- Have a written Agreement.
- Do not discipline.
- Permit worker to take on other projects.
- Do not control the method of instruction.
- Allow instructor to choose or modify materials.
- Avoid mandatory daily check-ins.

# CONSEQUENCES OF MISCLASSIFICATION

- ✓ Unpaid federal, state and local income taxes.
- ✓ Unpaid workers compensation and unemployment insurance premiums.
- ✓ Unpaid work-related expenses.
- ✓ Overtime compensation.

# Cyber Fraud and the Real Estate Professional

Jessica Edgerton, NAR Associate Counsel

**GOV GODWIN EMEFELE <postmaster@cooky112.de>**

**URGENT NOTICE,**

Is my pleasure to inform you that your deliveryman has arrived with your cash trunk boxes value \$8.3 million dollars being your inheritance /compensation payment? Most importantly you are advised to send your full data to him, which include your Full Name, Current Residential Address, Direct Cell Number, and A copy of any identity card to verify that you are the right receiver to avoid mistakes and enable him deliver your cash consignment boxes to your house without any further delay.

**CONGRATULATIONS.**

MR.GODWIN EMEFELE,  
EXECUTIVE GOVERNOR,  
CENTRAL BANK OF NIGERIA

# Best Email Practices

- Avoid sending sensitive information via email.
- Use encrypted email.
- Don't open. Don't click. Don't reply.
- Clean out your email regularly.
- Use strong passwords.
- Change your password regularly.

# Best Business Practices

- Communicate and educate. Get all parties to the deal up to speed on fraud prevention.
- Call the intended recipient of wired funds immediately prior to sending the funds.
- Use an independently verified phone number.
- Implement technology security.
- Be paranoid.

# Damage Control

- If money has been wired, call the banks immediately to stop funds.
- Contact all other parties to the transaction.
- Contact the police.
- Change all passwords.
- Report to FBI Internet Crime Complaint Center:  
<http://www.fbi.gov/scams-safety/e-scams>
- Report to REALTOR® Association(s).



# Legal Exposure

- Negligence.
- Breach of fiduciary duty.
- Violations of state data security laws.
- Failure to maintain standards set forth in company security policy.
- FTC Action. (*FTC v. Wyndham Worldwide Corp.*, No. 14-3514 (3<sup>rd</sup> Cir. Aug. 24, 2015)).

# Cyber Insurance?

- Cyber Insurance still in “wild west” territory.
- Don’t purchase without consulting specialist.
- Policies for small businesses are available.
- Policies may become outdated quickly in light of new threats so review often.
- As applicable, review coverage under NAR policy prior to purchase.

# What to Watch For

**Email Phishing still popular, but numbers going down.**

**What's on the rise? Attacks via:**

- Social media
- Mobile devices: Apps, SMS
- Compromised websites

**...And what's next?**

- Wearables
- Automobiles

# Resources

- <http://www.realtor.org/videos/window-to-the-law-cyberscams-and-the-real-estate-professional>
- <http://www.realtor.org/articles/request-to-redirect-funds-should-trigger-caution>
- <http://www.realtor.org/topics/data-privacy-and-security>
- <http://www.realtor.org/topics/risk-management>
- <http://www.realtor.org/articles/internet-security-best-practice>
- <http://www.realtor.org/topics/realtor-safety/articles>

# Crafting a Safety Alert

Jessica Edgerton, NAR Associate Counsel

# Legal Exposure

- Defamation.
- Interference with sale.
- Fair housing laws.

# General Guidance for AEs, Brokers, MLSs

- Create a policy, and apply it consistently.
- Contact the police, and consider issuing an alert only if the police open a file.
- All alerts should be reviewed by an attorney.
- Notify state or local REALTOR® Association of the alert.

# Crafting the Alert

- Neutral tone.
- Facts only.
- Reference reputable external sources, e.g., police report.
- Avoid including:
  - Suspect's name;
  - License plate, driver's license, or other PII;
  - Photographs of suspects or their vehicles.
- Keep physical descriptions general.



# Copyrights and Listing Photographs



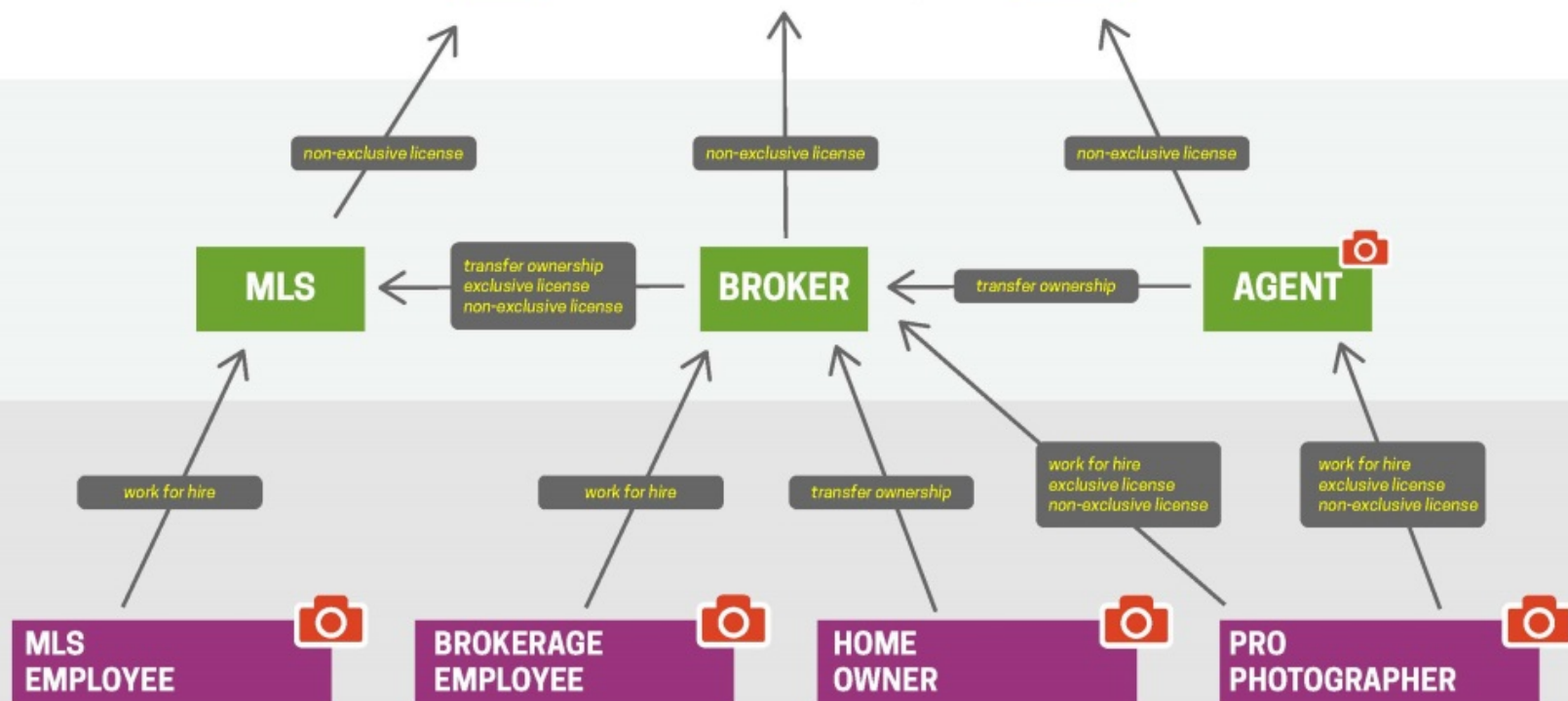
*By Chloe Hecht*

# Fractured Landscape

- The authors of listing photographs vary.
  - Professional photographer; real estate agent; MLS employee; homeowner
- Photographs may be owned or licensed in a variety of ways.

## PORTALS / VENDORS

have non-exclusive licenses for photos



# Fractured Landscape

- The fractured landscape...
  - Creates confusion over what rights were conveyed.
  - Increases difficulty enforcing against misuses.
- **Ultimately, a misunderstanding of the rights conveyed or granted increases the risk of a copyright lawsuit.**

# Recent Cases

- *VHT, Inc. v. Zillow Group, Inc.*, No. 2-15-cv-1096 (W.D. Wash. 2015)
- *Alexander Stross v. Redfin Corp.*, No. 1:15-cv-00223 (W.D. Tex. 2015)

# VHT, Inc. v. Zillow

- VHT grants a non-exclusive license to brokers to use photos solely in connection with marketing active property listings.
- VHT alleges that the limited scope of the license does not permit use Zillow's use of VHT's photos on "Digs" and in connection with "sold" properties.

# VHT v. Zillow: Umbrella Limited License

- Purpose limited to “the sales and marketing of the subject property or the company/agent representing the property”.
- The term of the license is by definition limited to the time the property is on the market and the agent/company is trying to sell it.

# VHT v. Zillow: One-off License

- Governed by the Terms of Use on VHT's website.
- “Content made available to clients for property specific marketing purposes only. Any publication of content for non-specific property marketing purposes is strictly prohibited.”



# VHT v. Zillow: Fair Use?

- Fair Use Factors:
  - Purpose and character of use
  - Nature of the copyrighted work
  - Amount and substantiality of the portion taken
  - Effect on the potential market

# Stross v. Redfin

- Copyright infringement between two Participants in the ACTRIS MLS:
  - Alexander Stross, photographer and real estate broker
  - Redfin, real estate brokerage

# Stross v. Redfin: Four Key Issues

- Exceeding scope of granted license versus violating ACTRIS Rules
- “Share” button and contributory infringement
- False CMI
- Application of the DMCA

# Stross v. Redfin: License

“7.10 Warranty and License to ACTRIS. By the act of submission of any Listing Content to ACTRIS or into the MLS Compilation, the Participant and/or Subscriber...thereby does grant, ACTRIS (and its service providers and licensees) an irrevocable, worldwide, paid-up, royalty-free, right and license to...authorize its use...for any purpose consistent with the facilitation of the sale, lease and valuation of real property or such other use...”

# Stross v. Redfin: License

- Did Stross grant a broad license to ACTRIS, who in turn granted a more limited license to Redfin?
- Did Stross grant a broad license to both ACTRIS and Redfin?
- Does Redfin's violation of the ACTRIS Rules violate the scope of the granted license?

# Stross v. Redfin: Contributory Copyright Infringement

- Users of Redfin's website can “share” property listing photos to their social media sites.
- Does the “Share” button create liability for contributory copyright infringement?

# Stross v. Redfin: False CMI

- DMCA: Illegal to remove, alter or provide false CMI or distribute a work containing removed, altered or false CMI if you have reasonable grounds it will induce, facilitate or conceal copyright infringement
- The listing photos are stamped with the wording “Courtesy of Alexander Stross”.
- False CMI or identification of listing agent?

# Stross v. Redfin: DMCA

- Does compliance with the DMCA protect an MLS participant?
- Are the photos on Redfin's website stored “at the direction of a user”?
- Did Redfin identify a copyright agent with the U.S. Copyright Office?



# Strategies to Reduce the Risk of Copyright Infringement

- Review agreements to assess what rights were granted or conveyed.
- Audit use of listing photos to ensure compliance with the relevant agreements.

# Strategies to Reduce the Risk of Copyright Infringement

- Determine how the photographs will be used and ensure future agreements permit those uses.
- Maintain records of all assignments and licenses.
- Include indemnity clauses in agreements.

# Strategies to Reduce the Risk of Copyright Infringement

- NAR created sample agreements:
  - Work Made for Hire Agreement
  - Assignment Agreement
  - Exclusive License Agreement
- Available online at [http://www.realtor.org/law-and-ethics/who-owns-your-property-photos.](http://www.realtor.org/law-and-ethics/who-owns-your-property-photos)

# Strategies to Reduce the Risk of Copyright Infringement

- Ensure compliance with the DMCA.
  - Designate a copyright agent and register with USCO.
  - Comply with takedown requests.
  - Develop and post a copyright policy.

# Thank you!

Chloe Hecht

[checht@realtors.org](mailto:checht@realtors.org)

312-329-8248

## Who Owns Your Property Photos?

Listing content fuels the real estate industry, and displaying photographs of real properties online is now a vital part of the real estate professional's marketing plan. Sellers use photographs to market properties, and buyers rely on those images to select which properties to visit. MLSs distribute property listings through proprietary databases that include the listing photographs. Moreover, MLSs in turn often license their property listing databases, including broker-provided photographs, to third-party portals, such as REALTOR.com, and other websites and vendors.

Improper use of listing photographs, however, can create legal problems for agents, brokerages and MLSs. Authorship and ownership of photographs within the real estate industry is "fractured". Who authored the photograph and who can use what photograph and in what way varies across the industry. Listing photographs may be taken by homeowners, real estate agents, MLS or brokerage employees, or professional photographers. Photographs may be owned or licensed to different parties in a variety of ways. A misunderstanding of how you may use the photographs for property listings could make you vulnerable to a copyright lawsuit.

For example, copyright infringement of listing photographs is central to the recent lawsuit *VHT, Inc. v. Zillow Group, Inc.*, No. 2:15-cv-1096 (W.D. Wash. 2015). VHT purportedly retains ownership in the listing photographs and only grants non-exclusive licenses to brokers to use the photographs solely in connection with marketing active property listings. In the complaint, VHT alleges that Zillow uses VHT's photographs without authorization in connection with "sold" properties and on Zillow's home design website, "Digs." VHT argues that these uses exceed the scope of VHT's limited license to use the photographs in connection with active property listings. The case is still pending.

It is crucial to know what rights you own in photographs and how those rights permit you to use the photographs. To reduce your risk of copyright infringement, you should:

- Review photography agreements to assess what rights were granted or conveyed;
- Audit your use of listing photographs to ensure compliance with the relevant agreements;
- Determine how you will use photographs and ensure future agreements permit those uses; and
- Maintain records of all assignments and licenses.

In order to assist members and member firms, NAR Legal Affairs created sample license agreements, which should be modified as necessary to fit your particular needs.

These documents are provided as a sample, and are not intended to be and do not constitute legal advice, or a substitute for specific legal advice or opinions. The user of this sample document should not use this document without consulting legal counsel. The use of this document should be modified to address the specific legal needs of the user.

**Work for Hire Agreement:** This sample agreement provides that the commissioned photographs are a "Work for Hire", which means the commissioning party is the automatic owner of the photographs from their creation.

**Assignment Agreement:** In this sample agreement, the photographer assigns all right, title and interest in the photographs to the broker.

Exclusive License Agreement: A photographer may want to retain its ownership of the photographs. In this sample agreement, the photographer grants to the broker an exclusive license to display and distribute the photographs in connection with the real estate industry.

## WORK MADE FOR HIRE AGREEMENT

This Agreement ("Agreement") is made and entered into as of < date > by and between \_\_\_\_\_ ("Brokerage") and \_\_\_\_\_ ("Photographer"). Brokerage has commissioned Photographer to photograph, visually record or otherwise create graphics or other images (collectively, "Images") of the properties identified in the attached Appendix A. The parties hereby agree, for good and valuable consideration received, the receipt and sufficiency of which is hereby acknowledged, as follows:

1. Brokerage agrees to pay Photographer in consideration of all services rendered by Photographer and the creation of the Images as set forth below the total amount of \_\_\_\_\_.
2. Photographer acknowledges and agrees that all Images are proprietary works of Brokerage. To the extent permitted under applicable law, all Images shall be considered a Work Made for Hire (as such term is defined under the Copyright Act, 17 U.S.C. §101 and following, as amended) by Photographer for Brokerage, and as such, shall be exclusively developed for the benefit of and owned by Brokerage. Brokerage shall exclusively own all worldwide right, title and interest in and to the Images, including without limitation copyrights.
3. To the extent that it should be determined that any of the Images do not qualify as a Work Made for Hire under U.S. law, Photographer hereby irrevocably assigns and transfers to Brokerage all of Photographer's worldwide right, title and interest, including without limitation all copyrights, whether now existing or hereafter acquired, in and to all Images. Photographer agrees to cooperate and take all action reasonably requested by Brokerage, including executing and delivering to Brokerage all documents, or providing information pertaining to the Images, in connection with the assignment of Photographer's rights to Brokerage under this Agreement. Specifically, but without limitation, Photographer agrees to assist in filing copyright applications in the United States or elsewhere if necessary.
4. Photographer hereby represents and warrants that no third party has any rights in, to, or arising out of the Images, and Photographer has full right and power to enter into this Agreement.
5. Photographer acknowledges and understands that it is in no way permitted to use the Images in any manner whatsoever, and no other royalty or other consideration will be due to Photographer. Photographer agrees and warrants that Brokerage is under no obligation to credit Photographer or any other third party as author of the Images.
6. Photographer understands and agrees that it is an independent contractor of Brokerage and nothing in this Agreement shall be construed to create a partnership, or joint venture, between Photographer and Brokerage.
7. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of \_\_\_\_\_. The terms and conditions set forth herein constitute the entire agreement between the parties and shall supersede all prior agreements. This Agreement may not be amended except in writing signed by the respective parties. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

IN WITNESS WHERE, the Parties have executed this Agreement as of the date first above written:

<Insert Photographer name >

<insert Brokerage name >

Signature: \_\_\_\_\_

Signature \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_



## APPENDIX A

[List applicable properties]



## ASSIGNMENT AGREEMENT

This Assignment Agreement ("Agreement") is made and entered into as of < date > by and between \_\_\_\_\_ ("Brokerage") and \_\_\_\_\_ ("Photographer"). Brokerage has engaged Photographer to photograph, visually record or otherwise create graphics or other images (collectively, "Images") of the properties identified in the attached Appendix A. The parties hereby agree, for good and valuable consideration received, the receipt and sufficiency of which is hereby acknowledged, as follows:

1. Brokerage agrees to pay Photographer in consideration of all services rendered by Photographer and the assignment of the Images as set forth below the total amount of \_\_\_\_\_.
2. Photographer hereby irrevocably assigns and transfers to Brokerage all of Photographer's worldwide right, title and interest, including without limitation all copyrights, whether now existing or hereafter acquired, in and to all Images. Photographer agrees to cooperate and take all action reasonably requested by Brokerage, including executing and delivering to Brokerage all documents, or providing information pertaining to the Images, in connection with the assignment of Photographer's rights to Brokerage under this Agreement. Specifically, but without limitation, Photographer agrees to assist in filing copyright applications in the United States or elsewhere if necessary.
3. Photographer represents and warrants to Brokerage that it owns all right, title and interest in and to the Images, including copyright, is capable of assigning said rights in the Images as set forth in this Agreement, and has full right and power to enter into this Agreement.
4. Photographer acknowledges and understands that it is in no way permitted to use the Images in any manner whatsoever, and no other royalty or other consideration will be due to Photographer. Photographer agrees and warrants that Brokerage is under no obligation to credit Photographer or any other third party as the author of the Images.
5. Photographer understands and agrees that it is an independent contractor of Brokerage and nothing in this Agreement shall be construed to create a partnership, or joint venture, between Photographer and Brokerage.
6. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of \_\_\_\_\_. The terms and conditions set forth herein constitute the entire agreement between the parties and shall supersede all prior agreements. This Agreement may not be amended except in writing signed by the respective parties. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

IN WITNESS WHERE, the Parties have executed this Agreement as of the date first above written:

<Insert Photographer name >

<insert Brokerage name >

Signature: \_\_\_\_\_

Signature \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

## APPENDIX A

[List applicable properties]



## EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement ("Agreement") is made and entered into as of < date > by and between \_\_\_\_\_ ("Brokerage") and \_\_\_\_\_ ("Photographer"). Brokerage has engaged Photographer to photograph, visually record or otherwise create graphics or other images (collectively, "Images") of the properties identified in the attached Appendix A. The parties hereby agree, for good and valuable consideration received, the receipt and sufficiency of which is hereby acknowledged, as follows:

1. Brokerage agrees to pay Photographer in consideration of the services rendered and exclusive license granted below the one-time total amount of \_\_\_\_\_.
2. License Grant.
  - a. Photographer hereby grants to Brokerage an exclusive worldwide royalty-free license in perpetuity to reproduce, distribute, display, prepare derivative works of, and publicly perform the Images in connection with the real estate industry, including without limitation such uses of the Images in connection with advertising real property and to authorize and sublicense such rights to third parties at Brokerage's discretion.
  - b. This exclusive license grant shall include the right to sue for copyright infringement, including without limitation past infringement. To that end, Photographers agrees to assist Brokerage in preparing and filing any copyright applications that cover the Images, including providing any information necessary to prepare such applications.
3. Brokerage acknowledges that Photographer retains title and ownership of the Images.
4. Photographer hereby represents and warrants that it owns all right, title and interest in and to the Images, no third party has any rights in, to, or arising out of the Images, and Photographer has full right and power to enter into this Agreement and grant the license set forth in Section 2. The parties agree that Brokerage is under no obligation to credit Photographer or any other third party as the author or owner of the Images.
5. Photographer understands and agrees that it is an independent contractor of Brokerage and nothing in this Agreement shall be construed to create a partnership, or joint venture, between Photographer and Brokerage.
6. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of \_\_\_\_\_. The terms and conditions set forth herein constitute the entire agreement between the parties and shall supersede all prior agreements. This Agreement may not be amended except in writing signed by the respective parties. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

IN WITNESS WHERE, the Parties have executed this Agreement as of the date first above written:

<Insert Photographer name >

<insert Brokerage name >

Signature: \_\_\_\_\_

Signature \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

## APPENDIX A

[List applicable properties]



# Policy Update

**Kevin Milligan, Vice President  
Board Policy & Programs**

# COMMITMENT TO EXCELLENCE

## ADVISORY BOARD

# Commitment to Excellence Advisory Board

- History
- Goal - increase professionalism



# Commitment to Excellence Advisory Board

## – Key competencies:

- *knowledge of laws and regulations affecting real estate;*
- *understanding of the Code of Ethics;*
- *advocacy;*
- *technology (including data privacy); and*
- *customer service.*

# Commitment to Excellence Advisory Board

## – Charge of the Advisory Board:

- to develop systems to ensure the competencies remain relevant;
- develop educational materials and training resources to administer the Commitment.

# Commitment to Excellence Advisory Board

- **Advisory Board reports to NAR's Professional Standards Committee**

# PROFESSIONAL STANDARDS UPDATE

# Professional Standards Update

## – Code of Ethics Training Course – CE Version

- ARELLO Certified
- Approved for CE credit in 23 states and counting (375,000+ members)

# Professional Standards Update

- Joint work group of the PS Committee & MLS Committee (solds)
- Grievance Committee work group
- Case Interpretations of the Code of Ethics

# MLS UPDATE

# MLS Update

- IDX display of pending sales data
- RESO Data Dictionary (December 31, 2015 adoption date)
  - Standardizes all available data fields for software programming



# MLS Update

- RESO Web API (June 30, 2016 adoption date)
  - Application Program Interface
  - Data transfer method that eliminates the need to copy listings between servers.

# MEMBERSHIP UPDATE

# Membership Update

- Association merger activity since adoption of Core Standards:
  - 73 mergers involving 169 local associations
  - Merger grants (minimum \$15,000 – maximum \$25,000) remain available until May, 2016
- Chapter Work Group



## Sample

# NAR Organizational Alignment - Core Standards Certification Form

**Association ID:** 0001

**Association Name:** National Association of Realtors

**President:** Sample President

**President Elect:** Sample President Elect

**Executive Officer:** Sample Association Executive

430 N. Michigan Ave

Chicago, ILL 60611

Phone: 222-222-2222

Fax: 333-333-3333

E-Mail: mail@mail.com

*Please save your data as you complete this form. If you lose connectivity, you will lose your work.*

### **Mandatory Core Standards for Association of REALTORS®**

Note: State Associations may, at their discretion, request additional documentation from local associations to confirm compliance with the Mandatory Core Standards for Associations of REALTORS®

Save and Return Later | --or-- Submit Core Standards Certification form

## Section I - CODE OF ETHICS

**A. Core Standard:** Every association will enforce the new and continuing member Code of Ethics training requirement established in Article IV of the NAR Bylaws.

1. Does the association track member compliance with the requirement of 2.5 hours of training on the REALTOR® Code of Ethics for new and existing members.

Yes    No

**B. Core Standard:** Every association will maintain a viable professional standards process to enforce the Code of Ethics and provide arbitration and mediation as member services. Associations must have a fully functioning professional standards committee with administrative capability to conduct the program, or must administer professional standards enforcement through a multi-board (or regional) professional standards agreement with other associations or with the state association.

2. Does the association have a professional standards committee?

Yes    No

3. Does the association participate in a multi-board (or regional) professional standards agreement with other associations or with the state association?

Yes    No

If yes, list the names of the other participating associations

**C. Core Standard:** Every association will link its website to the Code of Ethics/professional standards resources available online by the NAR and the state association if available. These materials will be available to members and to consumers at the website.

4. Website URL:

**D. Core Standard:** Every association will provide mediation services to members as required by Article IV of the NAR Bylaws. Starting January 1, 2016 every association must offer ombudsman services to members and their clients and customers and may implement a "citation" enforcement policy.

5. Does the association provide mediation as a member service?

Yes    No

Please list the name(s) of the association's mediators

6. Does the association currently offer ombudsman services?

Yes    No

Please list the name(s) of the association's ombudspersons

7. While not required by NAR, does the association utilize a "citation system of discipline?"

Yes    No

## Section II - ADVOCACY

### A. Core Standard:

8. Unless prohibited by state law and in recognition of state law differences, each association will include in their dues billing a voluntary investment for RPAC in an amount adequate to meet the NAR RPAC established goal. Please upload a sample dues billing statement. (Note: If you checked either of the first two boxes, proceed to #11)

RPAC Dues Billing "above the line" (strongly recommended)

RPAC Dues Billing "below the line"

N/A

 **Attach Document**

9. Associations may instead include in their dues billing a voluntary investment for the Political Advocacy Fund (PAF) in an amount adequate to meet the NAR RPAC established goal. Please upload a sample dues billing statement. (Note: If you checked either of the first two boxes, proceed to #11)

PAF Dues Billing "above the line"

PAF Dues Billing "below the line"

N/A

 **Attach Document**

10. Alternatively, the association can meet the NAR RPAC established goal by other legal means.

The association did not include an RPAC contribution option for members in its dues billing but instead met this requirement by (check one):

Corporate contribution in the full amount of the NAR established goal

PAC to PAC transfer in the full amount of the NAR established goal

N/A

Note: Funds are to be sent to RPAC or the PAF (individually or collectively by/through the State Association). The intent of this Standard is to provide the best opportunity for every association to meet its goal.

**B. Core Standard:** Each association will share with its members information and communications from NAR and from the state association,

regarding the value of investing in and the benefits received from the individual's participation in RPAC at all three levels (local, state and national).

11. The association met the above requirement by educating and communicating with members about RPAC.

- ☐ Yes
- ☐ No

If yes, please check the method(s) used to communicate with your membership about RPAC.

- ☐ RPAC Brochures/flyers
- ☐ Newsletter (online or print)
- ☐ RPAC on Website
- ☐ RPAC Email Campaigns
- ☐ RPAC presentations at membership meetings
- ☐ RPAC presentations at office meetings
- ☐ Other digital materials
- ☐ Other print materials

**C. Core Standard:** Every association will demonstrate significant participation in NAR Calls for Action delivered through the REALTOR® Action Center.

12. Please check the method(s) used to promote participation, and upload at least one example:

- ☐ Promoted on Association Website
- ☐ Promoted in Association newsletter
- ☐ Promoted by separate email
- ☐ Promoted using social media (Facebook, Twitter, etc.)
- ☐ Posted on MLS sign-on page
- ☐ In Person (e.g. Membership Meetings, Sales Meetings, etc.)
- ☐ Delivered via the Realtor® Action Center
- ☐ Other digital materials
- ☐ Other printed materials

(Note: State associations can monitor local association participation through the REALTOR® Action Center Response Reports <http://www.realtoractioncenter.com/for-associations/cfa-report/> .)

**D. Core Standard:** Every association will demonstrate significant participation (if applicable) in State Calls for Action delivered through the REALTOR® Party Hub or other program for the distribution of Calls For Action.

13. Please check the method(s) used to generate participation, and upload at least one example:

- ☐ Promoted on Association Website
- ☐ Promoted in Association newsletter
- ☐ Promoted by separate email
- ☐ Promoted using social media (Facebook, Twitter, etc.)
- ☐ Posted on MLS sign-on page
- ☐ In Person (e.g. Membership Meetings, Sales Meetings, etc.)
- ☐ Other digital materials
- ☐ Other printed materials

13a Please check if there were no State Calls to Action as of the date this certification was completed.

☐ No State Calls to Action

(Note: State associations will determine the methods used to monitor participation.)

**E. Core Standard:** Every association shall demonstrate advocacy engagement.

14. Please check the REALTOR® Party initiatives conducted by the association and upload at least one example:

- ☐ Conducted Candidate Independent Expenditure Races
- ☐ Requested and used Candidate Polling & Research

- ☐ Hosted a Candidate Training Academy
- ☐ Submitted comments or had members testify on proposed real estate related legislation or regulation
- ☐ Issues Mobilization Program
- ☐ Issues Polling & Research
- ☐ REALTOR® Party Hub for Call for Action or other Advocacy Engagement
- ☐ Promoting participation in the Broker Involvement Program
- ☐ Polling & Research (members)
- ☐ Voter Registration Initiative (members)
- ☐ Advocating for public policy in other ways (please upload an example)
- ☐ Conducted a Choosing REALTOR® Champions course
- ☐ Use the Land Use Initiative to advocate on a proposed local land use initiative
- ☐ Other (please upload materials)

(Note: Associations can verify activity, get ideas from other associations, and find information about REALTOR Party programs by visiting the REALTOR Party Tracker at <http://www.realtoractioncenter.com/realtor-party/tracker/>)

(Note: You can attach multiple files, one at a time)

## Section III - CONSUMER OUTREACH

**A. Core Standard:** Every association will engage in not less than four meaningful consumer engagement activities annually, reflected by:

(i) **Being the "Voice for Real Estate"** - promoting market statistics and/or real estate trends and issues (e.g., release through press releases, interviews, etc. of MLS statistics, local market statistics, NAR research reports, local/state analysis of NAR statistics, etc.);

(ii) **Community involvement** - promoting the value proposition of using a REALTOR® and/or engaging in community activities which enhance the image of the REALTOR®;

(iii) **Advocacy efforts** - engaging the public in legislative/political issues that impact real estate and related issues; and

(iv) **Community investment** - Organizing human resources (i.e., assisting in a Habitat for Humanity build, etc.) or fundraising for the benefit of charitable/community organizations.

(Note 1: To meet this requirement, every association must conduct four(4) activities with a minimum of one activity in 3 of the 4 categories shown immediately above. For example, an association could meet the requirement by conducting one "Voice for Real Estate Activity", one "Community involvement" activity, one "Advocacy effort" activity, and one "Community involvement" activity from the suggested activities that follow. Or, an association can engage in two (or more) activities in the same category provided that activities are also conducted in at least two other categories from the list of four categories shown above.)

(Note 2: 15-39 that follow is a non-exclusive list of examples of activities that evidence compliance with the Core Standards Consumer Outreach criteria. Associations are not expected to have conducted every activity offered as examples, and the fact that most are answered with "no" or are left blank will not affect compliance, provided that at least four (4) compliant activities in at least three (3) of the categories shown above have been conducted.)

### (i) Being the "Voice for Real Estate"

Check any of the following activities your association has completed:

15. ☐ Highlighted local, state or national real estate data in a news release or direct outreach to local reporters.

If checked, upload a sample news release, copy of an e-mail pitch to reporters, screen capture of an exchange on Twitter or other social media venue, or copy of an article or news segment that mentions your association in connection with real estate market data.

16. ☐ Arranged interviews with association leadership to provide context to local real estate data.

If checked, upload a copy of an e-mail pitch to reporters, screen capture of an exchange on Twitter or other social media venue, or copy of an article or news segment that mentions your association's leadership in connection with real estate market data.

17. ☐ Identified local angles of data from NAR research reports (residential, commercial or global/international) and reach out to local reporters.

If checked, upload a sample news release, copy of an e-mail pitch to reporters, screen capture of an exchange on Twitter or other social media

venue, or copy of an article or news segment that mentions your association's leadership in connection with real estate market data.

[Attach Document](#)

18. ☐ Used social media (Twitter, LinkedIn and Facebook) to share local real estate data insights, and retweet NAR Economists' Outlook. If checked, upload a screen capture of any related social media exchange.

[Attach Document](#)

19. ☐ Conducted deskside briefings with local editors to share insights from the local MLS, commercial information exchange, and association-generated real estate data.

If checked, provide a brief summary of briefing attendees (outlet, editor, association representatives), date of meeting and topics discussed.

Other: Please describe below other activities conducted demonstrating how your association is the "Voice for Real Estate". Supporting documentation may be attached.

[Attach Document](#)

## (ii) Community involvement

20. Check any of the following activities your association participated in or completed, and attach at least one example demonstrating community involvement.

- ☐ Leading with Diversity Workshop
- ☐ Expanding Housing Opportunities Class
- ☐ Employer-Assisted Housing Class
- ☐ Workforce Housing Forums
- ☐ Smart Growth for the 21st Century Course
- ☐ Other

[Attach Document](#)

Please check each of the following activities your association conducted:

21. ☐ Ran a TV, radio or print ad from NAR's Consumer Advertising Campaign or the state association's consumer advertising campaign in a local media outlet.

If checked, upload a scanned copy or screen capture.

[Attach Document](#)

22. ☐ Reached out to reporters to suggest stories that demonstrate members' value to home buyers and sellers.

If checked, upload a sample news release, copy of an e-mail pitch to reporters, screen capture of an exchange on Twitter or other social media, or a copy of an article or news segment that mentions your association or association spokesperson in connection with a story about Realtor® value to home buyers and sellers.

[Attach Document](#)

23. ☐ Reached out to reporters to suggest stories that demonstrate members' value to small business owners, retailers and other commercial businesses.

If checked, upload a sample news release, copy of an e-mail pitch to reporters, screen capture of an exchange on Twitter or other social media venue, or copy of an article or news segment that mentions your association or association spokesperson in connection with a story about Realtor® value to business owners or commercial investors.

[Attach Document](#)



24. ☐ Sponsored or participated in job or small business fairs.

If checked, upload a copy of the promotional material that mentions your association.

[Attach Document](#)

25. ☐ Sponsored homeownership fairs.

If checked, upload a copy of the promotional material that mentions your association.

[Attach Document](#)

26. ☐ Sponsored a tour of vacant commercial property.

If checked, upload a copy of the promotional material that mentions your association.

[Attach Document](#)

27. ☐ Sponsored a seminar on investing in commercial property.

If checked, upload a copy of the promotional material that mentions your association.

[Attach Document](#)

28. ☐ Promoted an open-house weekend.

If checked, upload a copy of the promotional material that mentions your association

[Attach Document](#)

29. ☐ Provided material that helps members reach out directly to consumers.

If checked, upload a sample of the material.

[Attach Document](#)

30. ☐ Reached out to consumers and homeowners to tell them what your association has accomplished in public policy issues that they might be concerned about.

If checked, provide an example (e.g. a press story, a Tweet or Facebook posting, or a summary of the legislation or regulation) that demonstrates what your association accomplished.

[Attach Document](#)

31. ☐ Provided materials that help members reach out directly to businesses.

If checked, upload a sample of these materials.

[Attach Document](#)

Other: Please describe other activities conducted demonstrating your association's "Community Involvement". Supporting documentation may be attached.

[Attach Document](#)

### **(iii) Advocacy efforts**

32. Check any of the following activities your association participated in or completed, and attach at least one example demonstrating


advocacy engagement.

- Utilized the Land Use Initiative
- Conducted a poll using the State & Local Growth Polling Program
- Distributing On Common Ground Magazine to public officials
- Candidate Independent Expenditure Races
- Candidate Polling & Research
- Candidate Training Academy
- Issues Mobilization Program
- Issue Polling & Research
- Other (please upload materials)

 **Attach Document**


33. ☐ Submitted an op-ed or letter to the editor of the local newspaper addressing the issue at hand.

If checked, upload a copy of the op-ed or letter to the editor, or a copy of the placement itself.

 **Attach Document**


34. ☐ Conducted a town hall meeting to address relevant local issues.

If checked, upload a copy of the promotional materials for the town hall meeting or media coverage of the meeting.


 **Attach Document**

35. ☐ Mobilized members to ask their clients and customers to contact their local representative about an issue.

If checked, upload a copy of the materials and/or communications provided to members.

 **Attach Document**

Other: Please describe other activities conducted demonstrating your association's "Advocacy Efforts". Supporting documentation may be attached.

 **Attach Document**

#### **(iv) Community investment**


36. Check any of the following activities your association has participated in or completed, and attach at least one example demonstrating community investment.

- Diversity Initiative Grants
- Housing Opportunity Grants
- Smart Growth Grants
- Placemaking Micro-Grant
- Commercial Innovation Grant
- Global Achievement Award
- Other activity (please upload examples)

 **Attach Document**

37. ☐ Participated in a Habitat for Humanity build.

If checked, upload a copy of related member communications, photos or news coverage of the association's participation in the build.

 **Attach Document**

38. ☐ Organized REALTOR® participation in a community fundraising drive or event, such as a local walkathon, donation drive, or

volunteering at a homeless shelter.

If checked, upload a copy of related member communications, photos or news coverage of the association's participation in the event.

[Attach Document](#)

39. Organized a fundraising activity such as a golf tournament, with proceeds benefitting a community organization.

If checked, upload a copy of related member communications, photos or news coverage of the association's participation in the event. (Note: You can attach multiple files, one at a time)

[Attach Document](#)

Other: Please describe other activities conducted demonstrating your association's "Community Investment" involvement. Supporting documentation may be attached.

[Attach Document](#)

## Section IV - UNIFICATION EFFORTS AND SUPPORT FOR THE REALTOR® ORGANIZATION

**A. Core Standard:** Every association's bylaws and MLS bylaws (if incorporated) and MLS rules and regulations must be reviewed and approved by NAR at least every two (2) years.

40. Association Bylaws - Date of most recent approval by NAR:

40a. MLS Rules and Regulations - Date of most recent approval by NAR (if applicable):

40b. MLS Bylaws - Date of most recent approval by NAR (if applicable):

**Note:** If any of the governing documents shown above have been submitted to NAR and review/approval is pending, please identify the document(s) and the date submitted to NAR.

**B. Core Standard:** Every association will maintain, have access to or will have legal counsel available.

41. Name and Contact Information for Association Legal Counsel:

**C. Core Standard:** Every association's policies and procedures shall conform to local, state and federal laws, including the filing of necessary reports and documents (e.g., corporate documents, state and federal tax returns, etc.).

42. Date of last filing of state and federal tax returns or other required forms:

43. Date of last filing of any corporate documents required by state law:

**D. Core Standard:** Every association shall have a business or strategic plan, including an advocacy component and a consumer outreach component.

44. Date of adoption of current strategic plan:

44a. Date of most recent approval by NAR:

Attach the association's current strategic and/or business plan.

(Note: Beginning July 1, 2015 associations are not required to submit their strategic plans or business plans to NAR for review, except where revisions/amendments are made to the plan's "Advocacy" or "Consumer Outreach" components. Strategic Plans should be sent to [csgrantrequest@realtors.org](mailto:csgrantrequest@realtors.org))

[Attach Document](#)

**E. Core Standard:** Every association's chief paid staff must attend at least six hours of REALTOR® association professional development on an annual basis (i.e., state, regional or national).

45. Program(s) completed and date:

(Note: You can attach multiple files, one at a time)

 Attach Document

## Section V - TECHNOLOGY

**A. Core Standard:** Every association must have an interactive website (defined as a website with the ability to move between websites and create active links); provide access to professional standards and arbitration filing processes on the website; and includes links to the websites of the other levels of the association for promotion of member programs, products and services.

46. Website URL:

**B. Core Standard:** Every association must utilize an email and/or internet based means for member communication.

(Note: This requirement is met by maintaining an interactive website.)

## Section VI - FINANCIAL SOLVENCY

**A. Core Standard:** Every association must adopt policies to ensure the fiscal integrity of their financial operations. These financial policies might cover topics and subjects such as:

- fraud awareness and prevention
- budgeting
- dues collection
- financial information disclosure
- officer, member, and staff travel
- investing
- reserve levels
- payment policies
- compliance reporting
- compensation
- revenue recognition
- asset capitalization
- financial reporting
- conflicts of interest
- whistleblower
- document retention

47. Attach a copy of the association's financial policies

 Attach Document

**Note:** Associations are not required to adopt all of the financial policies suggested above, but must adopt and attach those deemed necessary to ensure the fiscal integrity of the association's operations.

**B. Core Standard:** Every association must have an annual audit, review or compilation conducted by a CPA. Please refer to the FAQs available on Realtor.org for definitions/explanations.

**Note:** Only those associations with gross revenue of less than \$50,000 are permitted to meet the Standard using a compilation report. State and national dues and assessment amounts are not considered to be revenue for purposes of this measurement.

48.

- Date of last financial audit/review/compilation:
- Name of the individual or firm conducting the review:

- Year end to which the report relates:
- If an audit, what type of opinion was received:

 Attach Document

## Core Standards Certification Form Agreement

I confirm that the Association President, President-Elect and Association Executive of this association have reviewed and approved this application.

Save and Return Later --or-- Submit Core Standards Certification form

Update History

cliff niersbach 09/23/2015 02:20:01 PM

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National Association of REALTORS®.

800-874-6500  
Headquarters: 430 N. Michigan Avenue Chicago, IL 60611-4087  
DC office: 500 New Jersey Avenue, NW Washington DC 20001-2020



CORE STANDARDS FOR STATE AND LOCAL  
ASSOCIATIONS

## Core Standards Resources

Code of Ethics | Advocacy | Consumer Outreach | Unification Efforts  
and Support of the REALTOR® Organization | Technology | Financial  
Solvency | Additional Publications and Videos

### Code of Ethics

#### **Code of Ethics Training Toolkit for AEs**

This toolkit helps AEs administer and implement required REALTORS®  
Code of Ethics Training Requirements.

### Advocacy

#### **RPAC Dues Billing**

The RPAC Dues Billing document contains detailed information on  
preparing and collecting RPAC investments as well as communication  
and transfer of RPAC funds in order to meet the organizational  
alignment core standards.

#### **REALTOR® Party Resource Guide**

The REALTOR® Party Resource Guide provides resources, funding,  
and turn-key implementation tools to help state and local REALTOR®  
associations run successful advocacy and community outreach programs.

#### **RPR® Resources for Organizational Alignment Core Standards**

RPR® offers a number of resources to help associations meet these  
standards in the areas of communication, technology, education, and  
advocacy.

### Consumer Outreach

#### **Consumer Outreach Strategic Plan Templates**

Get help with your consumer outreach efforts. These strategic plan

In this section

[Core Standards Home](#)

[Core Standards FAQ](#)

[Compliance Criteria](#)

[Core Standards  
Resources](#)

[Grants](#)

[Facilitators](#)

[Compliance Tool](#)

templates are specifically geared towards small, medium, or large associations.

#### **Shared Services Toolkit**

Shared services programs can help REALTOR® associations expand services and streamline management through strategic partnerships. Sharing services with other local associations can help all involved meet the Organizational Alignment Core Standards.

#### **RPR® Resources for Organizational Alignment Core Standards**

RPR® offers a number of resources to help associations meet these standards in the areas of communication, technology, education, and advocacy.

## **Unification Efforts and Support of the REALTOR® Organization**

#### **New Member Orientation Materials**

NAR provides member associations with the tools and resources needed help welcome new members into the REALTOR® family, including online orientation.

#### **Strategic Planning Resources Toolkit**

The NAR Strategic Planning Resources toolkit will help familiarize you with the strategic planning process and provide resources for you to meet the core standards strategic planning requirement at your association.

#### **Core Standards Professional Development Opportunities**

View a list of professional development programs and courses available from NAR to help you meet the Core Standards Professional Development requirement.

#### **RPR® Resources for Organizational Alignment Core Standards**

RPR® offers a number of resources to help associations meet these standards in the areas of communication, technology, education, and advocacy.

#### **Shared Services Toolkit**

Shared services programs can help REALTOR® associations expand services and streamline management through strategic partnerships. Sharing services with other local associations can help all involved meet the Organizational Alignment Core Standards.

#### **Association Merger Procedure**

NAR's Association Merger Procedure page features guidelines and a

complete Merger Kit for associations wishing to explore the process of merging.

Alternative to Merging - Jerry Matthews presents a simplified merger process for small associations.

Geographic Chapter Bylaw Language - Sample bylaw provision authorizing operation of chapters – courtesy of the REALTORS® of Central Colorado.

Checklist of Merger Documentation - provides a sample list of essential documents associations will want to compile/complete prior to merger discussions and submission of merger application to NAR. Provided courtesy of Rick Harris.

### **Hearing Process**

If an association does not meet NAR's core standards, it will be given an opportunity to appear before a hearing panel of the NAR Association Executives Committee to show cause why the association's charter status as a member board should not be terminated.

## **Technology**

### **Core Standards Technology Resources**

The Core Standards require associations to have an interactive website that gives members and consumers access to information and resources related to filing ethics complaints and initiating dispute resolution.

Access this at NAR's Member Policy area: Ethics Complaints, Arbitration Requests and Related Information.

Download or play back the recording of the Core Standards Website Building Webinar with Nobu Hata, NAR's Director of Digital Engagement.

Download Nobu Hata's presentation from the webinar.

### **RPR® Resources for Organizational Alignment Core Standards**

RPR® offers a number of resources to help associations meet these standards in the areas of communication, technology, education, and advocacy.

## **Financial Solvency**

### **Core Standards Financial Resources**

State and local associations can use these model financial policy documents to help meet the Financial Solvency element of NAR's Core



Standards for State and Local Associations.

### **Additional Publications and Videos**

"Standards & Beyond" - from the Summer 2014 issue of REALTOR® AE Magazine.

"Core Standards: What Comes Next" - In this video, NAR President Steve Brown explains the next steps for implementing core standards for ensuring associations provide a professional level of services to members.

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# REALTOR® Association Mergers and Dissolutions

Katie Johnson

Senior Vice President & General Counsel

[kjohnson@realtors.org](mailto:kjohnson@realtors.org)

312.329.8372

# What are we talking about?

- Merger
  - <http://www.realtor.org/policy/association-merger-procedure>
- Dissolution
  - <http://www.realtor.org/policy/requirements-for-voluntary-dissolution-of-a-member-association>

# Why merge?

- Increase the association's appeal to area members.
- Deliver services more efficiently or more effectively.
- Reduce overhead and other costs.
- Enhance services and availability.
- Increase operating income.

# How do associations merge?

- Exploration – involve members and local legal counsel
- Identify Plan of Merger
- Board of Directors approval
- General Membership approval
- Submit Application for Merger to NAR (copy state assn.)

# Business Considerations

- Employment (including pension and profit-sharing plans)
- Existing vendor, supplier, or other contracts
- Leases, mortgages, loans, notes
- MLS bylaws, rules, data sharing, vendor agreements
- Bank accounts and other financial or credit accounts
- Subsidiaries, affiliates, foundations
- Insurance policies

# Legal Considerations

- Confidentiality Agreement
- Governance of surviving association
- Merger Agreement
- Compliance with Secretary of State
- Notify IRS

# Merger Grants

- Individual grants of \$15,000 to \$25,000 are available to successfully-merged associations.
- Calculated at \$25 times the number of primary REALTOR® members in surviving entity.
- Available through June 30, 2016.



# Dissolution

- Identify Plan of Dissolution
- Board of Directors approval
- General Membership approval
- Written notice to NAR (copy to state association)
- Jurisdiction reverts to unassigned territory

# NAR Contacts

- Katie Hunter  
Manager, Membership and Association Jurisdiction  
[khunter@realtors.org](mailto:khunter@realtors.org) / 312-329-8355
- Finley Maxson  
Senior Counsel  
[fmaxson@realtors.org](mailto:fmaxson@realtors.org) / 312-329-8381

# Association Litigation

Typical year: 30 lawsuits, 60 threats, \$1.5m in claims paid

	<b>Lawsuits</b>	<b>Threats</b>	<b>Claims paid (projected)</b>
<b>2012</b>	19	40	\$1.5 million
<b>2013</b>	12	36	\$621K
<b>2014</b>	14	27	\$468K
<b>2015 (to date)</b>	14	24	TBD

# T.R.I.D. Best Practices

A Guideline for Lenders, Title & REALTORS®



# Overview

- ▶ Colorado Inter-Industry TRID Task Force (CIITTF) created December, 2014
- ▶ Intention to develop Best Practices guidelines for REALTORS®, Lenders & Title Companies
- ▶ August 28, 2015 – Document distributed to 50,000 Real Estate, Mortgage and Appraiser licensees throughout State of Colorado by licensing authority.
- ▶ Participants include:
  - Colorado Association of REALTORS® (CAR)
  - Colorado Mortgage Lenders Association (CMLA)
  - Land Title Association of Colorado (LTAC)
  - Colorado Association of Hispanic Real Estate Professionals (CAHREP)
  - Colorado Association of Mortgage Professionals (CMAP)
  - Colorado Association of Certified Closers (CACC)

# REALTOR® Best Practices

## ***Highlights:***

- ▶ Communicate! Make sure all parties (B/S/L/T/R) set realistic expectations with respect to transaction time line and respective obligations.
- ▶ Obtain Buyer credit approval BEFORE contract.
- ▶ Make sure Buyer is receiving LE document AND aware of timeline for Notice of Intent to Proceed.
- ▶ Perform walk-throughs early (6-7 days before Closing).
- ▶ Be very cautious of stacked/contingent closings.

# Lender Best Practices

## ***Highlights:***

- ▶ Set Borrower expectation on transaction *process* early.
- ▶ Provide LE & CD Disclosures in a e-Signature compliant manner to truncate delivery timeframes.
- ▶ Do not put Property Address on pre-qual/pre-approval letters due to more stringent “application” definitions.
- ▶ Maintain consistent disclosure distribution policy (mail/overnight/hand delivery/etc.)
- ▶ Require Buyer rate lock a minimum of 10 days prior to Closing for sufficient time to prep final CD.
- ▶ Coordinate early with title company regarding all settlement figures.

# Title Best Practices

## ***Highlights:***

- ▶ Preparation! Be prepared to close early (10 Days!).
- ▶ Communicate as early in transaction as possible with the Lender to exchange closing costs and other fees.
- ▶ Determine early who will be responsible for delivering CD (Lender or Title) and make sure expectations are consistent.
- ▶ Coordinate actual delivery of CD with Lender (regardless of who is delivering) 10 days pre-close.



FEBRUARY 7, 2014

# TILA RESPA Integrated Disclosure

## H-25(B) Mortgage Loan Transaction Closing Disclosure – Fixed Rate Loan Sample

This is a sample of a completed Closing Disclosure for the fixed rate loan illustrated by form H-24(B). The purpose, product, sale price, loan amount, loan term, and interest rate have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.



Consumer Financial  
Protection Bureau

# Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

## Closing Information

**Date Issued** 4/15/2013  
**Closing Date** 4/15/2013  
**Disbursement Date** 4/15/2013  
**Settlement Agent** Epsilon Title Co.  
**File #** 12-3456  
**Property** 456 Somewhere Ave  
 Anytown, ST 12345  
**Sale Price** \$180,000

## Transaction Information

**Borrower** Michael Jones and Mary Stone  
 123 Anywhere Street  
 Anytown, ST 12345  
**Seller** Steve Cole and Amy Doe  
 321 Somewhere Drive  
 Anytown, ST 12345  
**Lender** Ficus Bank

## Loan Information

**Loan Term** 30 years  
**Purpose** Purchase  
**Product** Fixed Rate  
**Loan Type** ☒ Conventional ☐ FHA  
☐ VA ☐  
**Loan ID #** 123456789  
**MIC #** 000654321

Loan Terms	Can this amount increase after closing?	
<b>Loan Amount</b>	\$162,000	<b>NO</b>
<b>Interest Rate</b>	3.875%	<b>NO</b>
<b>Monthly Principal &amp; Interest</b> <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	<b>NO</b>
<b>Prepayment Penalty</b>	<b>Does the loan have these features?</b> <b>YES</b> • As high as \$3,240 if you pay off the loan during the first 2 years	
<b>Balloon Payment</b>	<b>NO</b>	

## Projected Payments

Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <i>Amount can increase over time</i>	+ 206.13	+ 206.13
<b>Estimated Total Monthly Payment</b>	<b>\$1,050.26</b>	<b>\$967.91</b>
<b>Estimated Taxes, Insurance &amp; Assessments</b> <i>Amount can increase over time</i> <i>See page 4 for details</i>	<b>\$356.13</b> a month	<b>This estimate includes</b> <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>
		<b>In escrow?</b> <b>YES</b> <b>YES</b> <b>NO</b>

## Costs at Closing

<b>Closing Costs</b>	<b>\$9,712.10</b> Includes \$4,694.05 in Loan Costs + \$5,018.05 in Other Costs – \$0 in Lender Credits. <i>See page 2 for details.</i>
<b>Cash to Close</b>	<b>\$14,147.26</b> Includes Closing Costs. <i>See Calculating Cash to Close on page 3 for details.</i>

## Closing Cost Details

Loan Costs		Borrower-Paid		Seller-Paid		Paid by Others
		At Closing	Before Closing	At Closing	Before Closing	
<b>A. Origination Charges</b>		<b>\$1,802.00</b>				
01	0.25 % of Loan Amount (Points)	\$405.00				
02	Application Fee	\$300.00				
03	Underwriting Fee	\$1,097.00				
04						
05						
06						
07						
08						
<b>B. Services Borrower Did Not Shop For</b>		<b>\$236.55</b>				
01	Appraisal Fee to John Smith Appraisers Inc.					\$405.00
02	Credit Report Fee to Information Inc.		\$29.80			
03	Flood Determination Fee to Info Co.	\$20.00				
04	Flood Monitoring Fee to Info Co.	\$31.75				
05	Tax Monitoring Fee to Info Co.	\$75.00				
06	Tax Status Research Fee to Info Co.	\$80.00				
07						
08						
09						
10						
<b>C. Services Borrower Did Shop For</b>		<b>\$2,655.50</b>				
01	Pest Inspection Fee to Pests Co.	\$120.50				
02	Survey Fee to Surveys Co.	\$85.00				
03	Title - Insurance Binder to Epsilon Title Co.	\$650.00				
04	Title - Lender's Title Insurance to Epsilon Title Co.	\$500.00				
05	Title - Settlement Agent Fee to Epsilon Title Co.	\$500.00				
06	Title - Title Search to Epsilon Title Co.	\$800.00				
07						
08						
<b>D. TOTAL LOAN COSTS (Borrower-Paid)</b>		<b>\$4,694.05</b>				
Loan Costs Subtotals (A + B + C)		\$4,664.25	\$29.80			
<b>Other Costs</b>						
<b>E. Taxes and Other Government Fees</b>		<b>\$85.00</b>				
01	Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02	Transfer Tax to Any State			\$950.00		
<b>F. Prepaids</b>		<b>\$2,120.80</b>				
01	Homeowner's Insurance Premium ( 12 mo.) to Insurance Co.	\$1,209.96				
02	Mortgage Insurance Premium ( mo.)					
03	Prepaid Interest ( \$17.44 per day from 4/15/13 to 5/1/13 )	\$279.04				
04	Property Taxes ( 6 mo.) to Any County USA	\$631.80				
05						
<b>G. Initial Escrow Payment at Closing</b>		<b>\$412.25</b>				
01	Homeowner's Insurance \$100.83 per month for 2 mo.	\$201.66				
02	Mortgage Insurance per month for mo.					
03	Property Taxes \$105.30 per month for 2 mo.	\$210.60				
04						
05						
06						
07						
08	Aggregate Adjustment	- 0.01				
<b>H. Other</b>		<b>\$2,400.00</b>				
01	HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02	HOA Processing Fee to HOA Acre Inc.	\$150.00				
03	Home Inspection Fee to Engineers Inc.	\$750.00				
04	Home Warranty Fee to XYZ Warranty Inc.					
05	Real Estate Commission to Alpha Real Estate Broker			\$450.00	\$750.00	
06	Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07	Title - Owner's Title Insurance (optional) to Epsilon Title Co.	\$1,000.00		\$5,700.00		
08						
<b>I. TOTAL OTHER COSTS (Borrower-Paid)</b>		<b>\$5,018.05</b>				
Other Costs Subtotals (E + F + G + H)		\$5,018.05				
<b>J. TOTAL CLOSING COSTS (Borrower-Paid)</b>		<b>\$9,712.10</b>				
Closing Costs Subtotals (D + I)		\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.00
Lender Credits						

## Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	\$8,054.00	\$9,712.10	YES • See Total Loan Costs (D) and Total Other Costs (I)
Closing Costs Paid Before Closing	\$0	– \$29.80	YES • You paid these Closing Costs before closing
Closing Costs Financed (Paid from your Loan Amount)	\$0	\$0	NO
Down Payment/Funds from Borrower	\$18,000.00	\$18,000.00	NO
Deposit	– \$10,000.00	– \$10,000.00	NO
Funds for Borrower	\$0	\$0	NO
Seller Credits	\$0	– \$2,500.00	YES • See Seller Credits in Section L
Adjustments and Other Credits	\$0	– \$1,035.04	YES • See details in Sections K and L
<b>Cash to Close</b>	<b>\$16,054.00</b>	<b>\$14,147.26</b>	

## Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION				SELLER'S TRANSACTION			
<b>K. Due from Borrower at Closing</b>				<b>M. Due to Seller at Closing</b>			
01	Sale Price of Property		\$189,762.30	01	Sale Price of Property		\$180,080.00
02	Sale Price of Any Personal Property Included in Sale		\$180,000.00	02	Sale Price of Any Personal Property Included in Sale		\$180,000.00
03	Closing Costs Paid at Closing (J)		\$9,682.30	03			
04				04			
05				05			
06				06			
07				07			
08				08			
<b>Adjustments</b>				<b>Adjustments for Items Paid by Seller in Advance</b>			
09	City/Town Taxes	to		09	City/Town Taxes	to	
10	County Taxes	to		10	County Taxes	to	
11	Assessments	to		11	Assessments	to	
12	HOA Dues	4/15/13 to 4/30/13	\$80.00	12	HOA Dues	4/15/13 to 4/30/13	\$80.00
13				13			
14				14			
15				15			
16				16			
<b>L. Paid Already by or on Behalf of Borrower at Closing</b>				<b>N. Due from Seller at Closing</b>			
01	Deposit		\$175,615.04	01	Excess Deposit		\$115,665.04
02	Loan Amount		\$10,000.00	02	Closing Costs Paid at Closing (J)		\$12,800.00
03	Existing Loan(s) Assumed or Taken Subject to		\$162,000.00	03	Existing Loan(s) Assumed or Taken Subject to		
04				04	Payoff of First Mortgage Loan		\$100,000.00
05	Seller Credit		\$2,500.00	05	Payoff of Second Mortgage Loan		
06				06			
07				07			
08				08	Seller Credit		\$2,500.00
09				09			
10				10			
11				11			
12				12			
13				13			
<b>Other Credits</b>				<b>Adjustments for Items Unpaid by Seller</b>			
06	Rebate from Epsilon Title Co.		\$365.04	14	City/Town Taxes	1/1/13 to 4/14/13	\$365.04
07				15	County Taxes	to	
08				16	Assessments	to	
09				17			
10				18			
11				19			
<b>Adjustments</b>				<b>CALCULATION</b>			
12	City/Town Taxes	1/1/13 to 4/14/13	\$365.04	<b>CALCULATION</b>			
13	County Taxes	to		Total Due to Seller at Closing (M)			
14	Assessments	to		Total Due from Seller at Closing (N)			
15				Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Seller			
16							
17							
<b>CALCULATION</b>				Total Due to Seller at Closing (M)			
Total Due from Borrower at Closing (K)				Total Due from Seller at Closing (N)			
Total Paid Already by or on Behalf of Borrower at Closing (L)				Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Seller			
<b>Cash to Close</b> <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower							

## Additional Information About This Loan

### Loan Disclosures

#### Assumption

If you sell or transfer this property to another person, your lender

☐ will allow, under certain conditions, this person to assume this loan on the original terms.

☒ will not allow assumption of this loan on the original terms.

#### Demand Feature

Your loan

☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.

☒ does not have a demand feature.

#### Late Payment

If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

#### Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

☒ do not have a negative amortization feature.

#### Partial Payments

Your lender

☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.

☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.

☐ does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

#### Security Interest

You are granting a security interest in

456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

#### Escrow Account

For now, your loan

☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	\$2,473.56	Estimated total amount over year 1 for your escrowed property costs: <i>Homeowner's Insurance</i> <i>Property Taxes</i>
Non-Escrowed Property Costs over Year 1	\$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: <i>Homeowner's Association Dues</i>  You may have other property costs.
Initial Escrow Payment	\$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	\$206.13	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

#### No Escrow

Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

#### In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

**Loan Calculations**

<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	\$285,803.36
<b>Finance Charge.</b> The dollar amount the loan will cost you.	\$118,830.27
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	\$162,000.00
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

**Questions?** If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at [www.consumerfinance.gov/mortgage-closing](http://www.consumerfinance.gov/mortgage-closing)

**Other Disclosures****Appraisal**

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

**Contract Details**

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

**Liability after Foreclosure**

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- ☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- ☐ state law does not protect you from liability for the unpaid balance.

**Refinance**

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

**Tax Deductions**

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

**Contact Information**

	<b>Lender</b>	<b>Mortgage Broker</b>	<b>Real Estate Broker (B)</b>	<b>Real Estate Broker (S)</b>	<b>Settlement Agent</b>
<b>Name</b>	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
<b>Address</b>	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
<b>NMLS ID</b>					
<b>ST License ID</b>			Z765416	Z61456	Z61616
<b>Contact</b>	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
<b>Contact NMLS ID</b>	12345		P16415	P51461	PT1234
<b>Contact ST License ID</b>					
<b>Email</b>	joesmith@ ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@ epsilontitle.com
<b>Phone</b>	123-456-7890		123-555-1717	321-555-7171	987-555-4321

**Confirm Receipt**

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

# TODAY'S AGENDA

1. RESPA enforcement on the rise
  - CFPB pronouncements have had a chilling effect on industry
2. CFPB's PHH Decision
  - attempts to gut Section 8(c)(2) exemption
3. CFPB Bulletin 2015-05
  - causing industry to rethink MSAs



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# PHH DECISION



## BACKGROUND SURROUNDING PHH MATTER

1. PHH Mortgage creates captive mortgage insurance companies
  - Refer PMI to 3 or 4 companies
  - MI companies cede portion of premium to PHH
  - PHH assumes portion of risk
2. PHH relies upon 1997 HUD Letter
3. CFPB brings action claiming violation of Section 8(a) of RESPA
4. ALJ relies upon HUD Letter, but finds PHH violated RESPA
  - \$6.4 million penalty
5. Appeal to Director Richard Cordray
  - Cordray rejects HUD Letter, ALJ recommendations and court decisions regarding Section 8(c)(2)
  - Orders \$109 disgorgement
  - PHH appeals to DC Federal Circuit Court

## Director Cordray holds that Section 8(c)(2) merely

- **“clarifies section 8(a), providing direction as to how that section should be interpreted, but does not provide a substantive exemption from section 8(a)”**
  - In essence, CFPB guts Section 8(c)(2)’s safe harbor
  - Hard to square that with plain language of the statute

## Thou Shall Not....Provisions

### Section 8(a) reads

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

### Section 8(b) reads

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

These subsections constitute RESPA's prohibitions, and serve as the bases for enforcement proceedings and private litigation

# Permissible Conduct

Section 8(c) sets forth RESPA's permissible conduct

- . lists conduct Congress identified as acceptable

Importantly, the subsection begins “Nothing in this section [i.e., sections 8(a) and 8(b)], **shall be construed as prohibiting...**”

- the “payment of a fee” to attorneys, title company agents, or lender agents “for services actually performed” (Section 8(c)(1));
- “the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed” (Section 8(c)(2));
- “payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers” (Section 8(c)(3)); and
- Affiliated business arrangements “so long as [safe harbor requirements are satisfied] (Section 8(c)(4))

## CFPB Upsets the Apple Cart

When read together Section 8(c)(2) stands for the proposition that

- “bona fide” payment for services actually performed
- falls outside the sphere of conduct prohibited by Sections 8(a) and 8(b)

Not so says Director Cordray

- Section 8(c)(2) may not pre-empt Section 8(a)
- Despite HUD, federal court holdings or plain language of Act

# HUD Uniformly Concluded that Section 8(c)(2) Provides an Exemption to Section 8(a) Liability

## HUD pronouncements

1. 1997 Letter to industry explaining how 8(c)(2) applies to captive mortgage insurance
2. Statement of Policy 1999-1 explains interplay between Sections 8(a) and 8(c)(2) regarding payments between lenders and mortgage brokers
3. Statement of Policy 2001-1 reiterates HUD's long standing policy on mortgage broker compensation under Section 8(c)(2)
4. 2011 HUD files appellate brief in *Carter v. Wells-Bowen Realty* (6<sup>th</sup> Cir.)
  - The prohibition of kickbacks and unearned fees does not apply to “bona fide \*\*\* payment(s) \*\*\* for services actually performed.” *Id.* § 2607(c)(2)

## Federal Courts Have Long Held Section 8(c)(2) Creates a Safe Harbor to Protect Conduct Otherwise Actionable Under Sections 8(a) and 8(b)

See, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 11<sup>th</sup> Circuit Court opinions

1. In Howland (7<sup>th</sup> Cir.), Court stated as long as defendant provided only services...they are allowed a reasonable fee under Section 8(c)(2)
2. In Glover (8<sup>th</sup> Cir.), Court held that Section 8(c) clearly anticipates payments to individuals for goods or facilities
  - “excludes these payments from the Section 8(a) prescription”

3. In Edwards (9<sup>th</sup> Cir.) – August 2015

“Notwithstanding the general prohibition of exchanging anything of value for a referral, a statutory safe harbor exempts a payment from RESPA violation if the payment – despite being made simultaneously with a referral – was for goods or facilities actually furnished or for services actually performed.” See, Id. §2607(c)(2).

# PHH Decision Charts a New Course

According to PHH Decision

- Section 8(c)(2) “does not provide a substantive exemption from Section 8(a)”
- Section 8(a) prohibits “a payment that is tied in any way to referral of business”

In other words, CFPB’s rationale is that:

- even if payment was for services rendered at or even below market rate
- Section 8(c)(2) “does not insulate parties from liability under Section 8(a) if there is a referral in the transaction”
- if there is a referral in the transaction then payments would be a “pretext to provide compensation for a referral”

CFPB guts the Section 8(c)(2) safe harbor



## CFPB Holding in this Decision Has ENORMOUS IMPACT on Lenders

- Marketing and Services Agreements
- Co-advertising Arrangements
- Lead Generation Agreements
- Desk and Room Rentals
- Payments to Mortgage Brokers
- Any payments by settlement service providers to other settlement service providers for goods or services

## PHH DECISION APPEALED TO DC CIRCUIT COURT

1. PHH appeals Cordray's June 2015 decision
2. DC Circuit Court stays Cordray Order
  - PHH not required to place \$109M in escrow
3. PHH brief submitted on September 28
4. Six Amicus Briefs filed in support of PHH
  - NAR
  - ALTA
  - MBA
  - US Chamber of Commerce
  - Consumer Mortgage Coalition
  - RESPRO, to name a few
5. CFPB brief due November 5<sup>th</sup>
6. PHH reply brief due November 23<sup>rd</sup>
7. Oral argument not yet scheduled

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# **Marketing and Service Agreements (MSAs)**

## MSAs BACKGROUND

1. MSAs been around for 20-25 years
  - Popular with real estate brokers
  - Lenders and title companies pay brokers to advertise their products and services to public
  - Brokers typically paid flat monthly fee
2. Section 8(c)(2) relied upon for RESPA compliance
3. HUD issued Interpretive Rule in June 2010

## HUD Interpretive Rule June 2010

1. HUD stuck with 8(c)(2) Exemption
2. But HUD chips away at Exemption
  - opposes direct consumer solicitations
  - opposes directly handing consumer information
  - opposes exclusivity
  - prefers referrer be an agent
  - prefers written agreement
  - prefers written disclosure

## CFPB Views on MSAs and Section 8(c)(2)

1. Lighthouse Title Consent Order
  - September 2014
2. PHH Appeal Decision – June 2015
  - 8(c)(2) does not exempt prohibited conduct under Section 8(a)
3. CFPB Bulletin 2015-05
  - October 2015

## Lighthouse Title Consent Order

1. CFPB finds Lighthouse MSAs violate Section 8(a) of RESPA
  - quid-pro-quo arrangements for pay
  - no determination of FMV under the MSA
  - no verification that broker performed any services
2. Contract is a “thing of value” even if fees paid under contract are at FMV
3. Entering into a contract with understanding that brokers will refer business violates Section 8(a)
  - any referral of business for a fee violates 8(a)
4. In CFPB review MSAs considered toxic
  - not illegal, but toxic

## CFPB's PHH DECISION

1. Although not a case involving MSAs, PHH relies on Section 8(c)(2) to justify compliance with RESPA
2. CFPB holds Section 8(c)(2) does not exempt conduct that violates Section 8(a)
  - CFPB guts Section 8(c)(2)



## CFPB Bulletin 2015-05 on MSAs

1. There's no "there" there
  - industry hungers for guidance
  - but Bulletin neither provides legal clarity nor a clear roadmap for what can and cannot be done
2. Bulletin can best be summed up by this quote:
  - **"In sum, the Bureau's experience in this area gives rise to grave concerns about the use of MSAs in ways that evade the requirements of RESPA. In consequence, the Bureau reiterates that a more careful consideration of legal and compliance risk arising from MSAs would be in order for mortgage industry participants generally."**
3. Translation
  - MSAs not per se illegal
  - Difficult to administer
  - We don't like them – many are disguised compensation for referrals
  - Think twice before undertaking

## CFPB Bulletin 2015-05 on MSAs (cont'd)

4. CFPB acknowledges determining validity of MSA requires evaluation of:
  - facts and circumstances surrounding creation of each agreement
  - as well as its implementation
5. CFPB makes clear
  - any agreement that entails exchanging thing of value for referrals of SS business violates RESPA
  - whether or not MSA is part of the transaction
  - veiled reference here to PHH Decision

# MSAs Best Practices For Those Engaged in MSAs

1. Avoid quid-pro-quo agreements
  - payments never for referral of business
2. Independent third party valuation a must
3. Trust but Verify
  - have Broker certify to services performed
  - but conduct periodic on-site audits
4. Services should be geared to advertising to general public
  - not individual consumers
5. Do not pay for direct consumer solicitations
  - nor access to sales staff

## MSAs Best Practices (cont'd)

6. Avoid exclusive arrangements
7. Avoid preferential designations
8. Disclosure Statement to consumers encouraged
9. Justify reasons for adjusting monthly fees
10. Comply with Section 8(c)(2)

## Alternatives to MSAs

1. Co-advertising arrangements
2. Lead generation arrangements
3. Co-sponsorship of training sessions
  - for professionals
  - for consumers
4. Affiliated business arrangements
  - joint venture mortgage companies
  - joint venture title agencies

## What's a Settlement Service Provider to Do?

1. Again, CFPB careful not to say MSAs per se illegal
2. But they warn:
  - MSAs are risky
  - many are disguised compensation for referrals
  - difficult to monitor
  - CFPB will continue to actively scrutinize MSAs
3. CFPB cautions careful consideration of legal and compliance risks for those choosing to engage in MSAs