



REALTOR®
BROKER
SUMMIT

LEVERAGE YOUR ASSOCIATION FOR RISK REDUCTION

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National Association of REALTORS®



LEVERAGE MY ASSOCIATION?

- Legal hotlines
- Articles, checklists, guidelines, and other publications
- Forms
- Videos
- Courses
- Legal Action Programs (litigation support)

HOT TOPICS IN RISK REDUCTION

- Errors & Omissions Insurance
- Seller Disclosure & Misrepresentation
- Copyright Infringement
- Texting & Cold Calling (TCPA & DNC laws)

ERRORS & OMISSIONS INSURANCE

E&O INSURANCE

- 1 in 5 agents will face an E & O claim
- Settlements v. lawsuits
- Types of claims
- Newer areas of risk may not be covered

E&O CLAIMS

- Failure to Disclose/Misrepresentation
- Agent-Owned Properties/Flipping
- Property Management
- Cyber Fraud/Wire Fraud

ARE YOU COVERED?

- Cyber crime
 - Agent-owned home sales
 - Automobile accidents
 - Surveillance
 - Copyright
- Ask your insurance broker

E&O TAKEAWAYS

- Review your E&O coverage
- Consider additional types of insurance coverage
- Notify your insurance agent of potential claims
- Communicate, disclose, document

RESOURCES

- Window to the Law: Hot Topics in Risk Management
 - <https://www.nar.realtor/videos/hot-topics-in-risk-management>
- Real Estate E & O Insurance, Understanding the Basics
 - <https://www.nar.realtor/legal/risk-management/real-estate-eo-insurance-understanding-the-basics>
- The Legal Pulse (<https://www.nar.realtor/legal-pulse>)
- Cyber and Fidelity Insurance Report
 - <https://www.nar.realtor/reports/cyber-and-fidelity-insurance-report>

SELLER DISCLOSURE & MISREPRESENTATION

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- Plaintiffs sue agents for acts of the seller
- Defending yourself in a lawsuit is difficult
- Bad facts create bad case law

SELLER DISCLOSURE & MISREPRESENTATION

- Knowledge of past repairs does not establish knowledge of a present defect.
- When a buyer chooses not to inspect the property, the seller's agent could not have impaired or obstructed the buyer's right.
- Broker cannot be held liable for representations in the Seller's Disclosure Notice.

Van Duren v. Chife, No. 01-17-00607-CV, 1st Ct. App., TX

SELLER DISCLOSURE & MISREPRESENTATION

- Seller represented there were no leases.
- Listing agent made no representation.
- Lease was identified in the title disclosure that buyer received.
- Court imposed liability on listing agent based on the seller's representation.

Nelson v. McCall Motors, No. 11-17-00307-CV; 11th Ct. App., TX

SELLER DISCLOSURE & MISREPRESENTATION

- Does a seller providing property condition information above & beyond what is statutorily required impose additional statutory or contractual obligations???
- Current holding: NO
- 1 appellate court = 7 different opinions

Aflalo v. Harris, No. 05-16-01472-CV, 5th Ct. App., TX

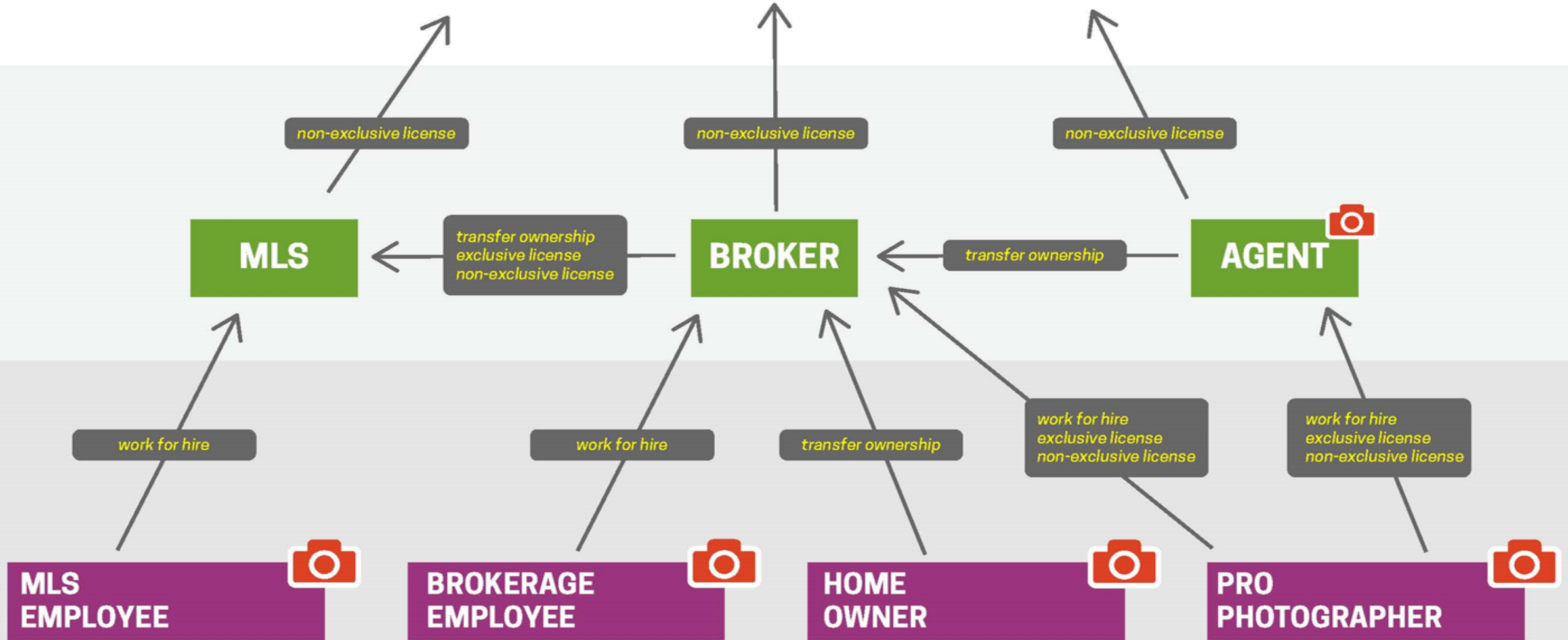
COPYRIGHT INFRINGEMENT

THE THRESHOLD QUESTIONS ALL BROKERS SHOULD ASK

1. Do you own the photos used in your listing?
2. IF NOT, do you have permission to use them as you do?

PORTALS / VENDORS

have non-exclusive licenses for photos



WHY CARE? BECAUSE YOU COULD GET SUED.

- Boatman v. Coldwell Banker Honig-Bell, No. 16-08397 (N.D. Ill. 2016).
- Boatman v. Kepple Premier Real Estate, The Kepple Team, Linda Kepple, Tricia Yocum, James Corkery and Ann Corkery, No. 1:17-cv-01009-JES-JEH (C.D. Ill. 2017).
- Alexander Stross v. Redfin Corp., 2016 WL 4718197, (W.D. Tex., 2016).
- Alan J. Goldstein v. Metropolitan Regional Information Systems, Inc., No. 8:15-cv-02400-TDC (Dist. MD, 2015).

VHT V. ZILLOW

“With respect to the vast majority (and perhaps all) of the images at issue, **brokers or MLSs have granted Zillow “perpetual” unrestricted permission** to display the VHT photographs under representations and warranties that they have the right to do so . . . **The providers also agree to indemnify Zillow** for breach of these warranties.”

- *VHT, Inc. v. Zillow Group, Inc.*, No. 2-14-cv-1096 (W.D. Wash. 2015)(Zillow’s Motion for Judgement on the Pleadings for Failure to Join Indispensable Parties)

VHT V. ZILLOW

“The crux of this lawsuit is whether VHT’s clients -- not Zillow -- committed wrongdoing by providing downstream rights they didn’t have. Because VHT’s claim requires the Court to pass judgment on the actions of VHT’s clients, those clients must be joined.”

- *VHT, Inc. v. Zillow Group, Inc.*, No. 2-14-cv-1096 (W.D. Wash. 2015)(Zillow’s Motion for Judgement on the Pleadings for Failure to Join Indispensable Parties)

OBTAIN OWNERSHIP OR PERMISSION.

- Use NAR sample agreements with photographers
 - Work Made for Hire Agreement
 - Assignment Agreement
 - Exclusive License Agreement
- Available at: <https://www.nar.realtor/law-and-ethics/who-owns-your-property-photos>

OBTAIN OWNERSHIP OR PERMISSION.

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

RESOURCES

- Copyright topic page
 - www.nar.realtor/topics/copyright
- Listing Photo Sample Agreements
 - <https://www.nar.realtor/law-and-ethics/listing-photo-sample-agreements>
- Window to the Law Video: Listing Photo Copyright Issues
 - <https://www.nar.realtor/videos/window-to-the-law-listing-video-copyright-issues>

TEXTING AND COLD CALLING

THRESHOLD QUESTIONS EVERYONE SHOULD BE ASKING

1. Is this a commercial message I want to send?
2. Do I have permission from the recipient to send it?
3. Am I using an auto-dialer?

BEST PRACTICES

- Get prior written consent before sending a text message.
- Allow text recipients an easy way to opt-out.
- Be cautious about using auto-dialers.
- Ask vendors about TCPA compliance.
- Always check the Do Not Call List.

RESOURCES

- Window to the Law: TCPA and Texting
 - <https://www.nar.realtor/videos/window-to-the-law/window-to-the-law-tcpa-and-texting>
- Telemarketing and Cold Calling
 - <https://www.nar.realtor/telemarketing-cold-calling>
- National Do Not Call Registry
 - <https://www.donotcall.gov/>

P.S. WIRE FRAUD & CYBERCRIME

RESOURCES

- Wire Fraud topic page
 - <https://www.nar.realtor/topics/wire-fraud>
- Sample Wire Fraud Notices
 - <https://www.nar.realtor/data-privacy-security/wire-fraud-notice>
- Video Alerts and Education
 - <https://www.nar.realtor/videos/wire-fraud-alert-for-buyers>
 - <https://www.nar.realtor/videos/window-to-the-law-data-security-program-basics>
 - <https://www.nar.realtor/videos/window-to-the-law-cyberscams-and-the-real-estate-professional>

RESOURCES

- Data Privacy and Security
 - <http://www.nar.realtor/topics/data-privacy-and-security/resources>
- Bain v. Platinum Realty
 - <https://www.nar.realtor/legal-case-summaries/licensee-liable-for-wire-fraud-losses>
- Articles:
 - <http://realtormag.realtor.org/technology/feature/article/2018/03/don-t-get-pwned-keep-your-data-secure>
 - <http://www.nar.realtor/articles/request-to-redirect-funds-should-trigger-caution>

REALTOR® ASSOCIATION LEGAL ACTION PROGRAMS

LEGAL ACTION PROGRAMS

- Litigation Support
 - Financial
 - Amicus Curaie
- Issues impacting the practice of real estate, ownership and use of real estate, and private property rights.
- NAR's Legal Action Program:
 - <https://www.nar.realtor/about-nar/grants-and-funding/legal-action-program>

THANK YOU

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