



2017 REALTOR[®] BROKER SUMMIT

Navigating Legal Risks and
Managing a Successful Brokerage
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Real Estate Brokerage Essentials[®]

- Workplace Law and Office Policies
- The Independent Contractor in Real Estate
- Licensing Issues
- Agency/Brokerage Relationships with Consumers
- Antitrust and the Real Estate Brokerage Firm
- Fair Housing
- Misrepresentation and Failure to Disclose
- Intellectual Property, Technology and the Law
- Data Security and Privacy
- Emerging Risk Management Issues
(Drones and Money Laundering)
- Use of Other Professionals and RESPA
- Insurance
- Internal Complaint-Handling Procedures
- Alternative Dispute Resolution
- Litigation

Chapter 1: Workplace Law and Office Policies

- Pages 21-23: Is Your Website ADA Compliant?
- DOJ Position: All websites must be accessible.
- Circuit courts are split:
 - 3rd, 6th, 9th, and 11th Circuits: ADA only applies to physical structures, so there must be a “nexus”
 - 1st, 2nd, and 7th Circuits: ADA applies to both physical and electronic spaces.

What does “website accessibility” mean?

- Maximized compatibility with assistive technologies.
- Text alternatives for any non-text content.
- Content presented in different ways without losing information or structure.
- Separate foreground from background.
- All functionality available from a keyboard.
- Readable and understandable to web navigation tools.

ADA Website Accessibility

- Include an accessibility statement on your website.
 - May use NAR's statement on page 23
- Talk to your website provider.
 - Current accessibility of site
 - Plan for making it more accessible
 - Indemnity
- Stay tuned for DOJ guidance.

NAR Resources

- 5-min videos:
 - “Websites and the ADA” <http://www.realtor.org/videos/window-to-the-law-accessible-websites-and-the-ada>
 - “ADA Basics” <http://www.realtor.org/videos/window-to-the-law-ada-basics>
- Articles:
 - “Is Your Website ADA Compliant?” [realtormag/ADAwebsite](http://realtormag.realtor.org/for-brokers/network/article/2015/01/accessibility-broker-s-responsibility)
 - “Accessibility is a broker’s responsibility” <http://realtormag.realtor.org/for-brokers/network/article/2015/01/accessibility-broker-s-responsibility>

Chapter 2 – The Independent Contractor

- Page 36: Tips for Managing Independent Contractor Relationships
- Page 38: Sample Independent Contractor Agreement
- Page 42-45: Comparison of Employee and Independent Contractor Classification

Chapter 3 – Licensing Issues

Chapter 4 – Agency/Brokerage
Relationships with Consumers

Chapter 5 – Antitrust and the Real Estate Brokerage Firm

Chapter 6 – Fair Housing

Chapter 7 – Misrepresentation and Failure to Disclose

Chapter 8 – IP, Technology and the Law

- Copyrights
- Trademarks
- Patent trolls
- Social media
- Technology licensing
- Website Terms of Use

Chapter 8 – IP, Technology and the Law

- Page 254: Copyright
- Two easy ways to reduce your risk:
 - Obtain proper ownership or permission for photos
 - Comply with the DMCA Copyright Act Safe Harbor

Obtain ownership or permission for photos

- Use Sample Photography Agreements at:
<http://www.realtor.org/law-and-ethics/who-owns-your-property-photos>
- *Boatman v. Coldwell Banker Honig-Bell*, No. 1-16-cv-08397 (N.D. Ill. 2016)
- *VHT, Inc. v. Zillow Group, Inc.*, No. 2-15-cv-1096 (W.D. Wash. 2015)

Comply with DMCA Safe Harbor

1. Register a Copyright Agent with the US Copyright Office.
2. Implement a termination policy for repeat infringers.
3. Post DMCA Takedown Procedure notice on website. (May use NAR's)
4. Have no knowledge of infringing activity or facts that make infringing activity apparent.
5. Have no direct financial benefit attributable to infringing activity.
6. Comply with Takedown Procedure.

Chapter 9 – Data Security and Privacy

- Pgs 276-281: Do Not Call Registry & CAN-SPAM Act
- Page 282: How to implement a data security plan
- Page 285: Cyber Fraud Prevention: Best Practices

Wire Fraud in Real Estate

- Often perpetrated by email.
- Fraudster gained access via password.
- New instruction to redirect funds.
- Looks legit.
- Difficult to trace perpetrator and retrieve money.

Best Practices for Prevention

- Inform clients at the outset of this epidemic. Consider using written disclosures.
- Avoid sending wire instructions (and any sensitive financial information) via email.
- Instruct homebuyers to call the intended recipient of wired funds immediately prior to sending the funds.
- Use an independently verified phone number.

NAR Resources

- *Wire Fraud Alert:* <https://www.nar.realtor/videos/wire-fraud-alert-for-buyers>
- *Sample Email Notice:* <https://www.nar.realtor/law-and-ethics/wire-fraud-email-notice-template>
- *FTC – NAR Warning:* <http://realtormag.realtor.org/daily-news/2016/03/21/warning-your-buyers-closing-scam>
- *Urgent Alert:* <https://www.nar.realtor/articles/urgent-alert-sophisticated-email-scams-targeting-the-real-estate-industry>
- *NAR Window to the Law on Cyberscams:* <https://www.nar.realtor/videos/window-to-the-law-cyberscams-and-the-real-estate-professional>

Chapter 10 – Emerging Issues

- Page 288: FAQs about using drones for property photos
- Page 291: Anti-Money Laundering
 - FinCen Geographic Targeting Orders (GTOs)
 - High-end, all-cash transactions
 - True identities of beneficial owners

Chapter 11 – Use of Other Pros and RESPA

- Proceed with caution:
 - Making referrals
 - Do not make or accept referral fees
 - Provide list of at least 3 options
 - Marketing Service Agreements
 - Fees must be based on FAIR MARKET VALUE of service provided
 - Affiliated Business Arrangements
 - Disclosure should comply with Appendix D of RESPA regulation

Chapter 12 – Insurance


Chapter 13 – Internal Complaint-
Handling Procedures

Chapter 14 – Alternative Dispute
Resolution

Chapter 15 – Litigation

NAR Legal Action Program

Secure | <https://www.nar.realtor/programs/legal-action-program>

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Legal Action Program

NAR's Legal Action Committee provides financial assistance to support litigation of significance to the Association, including matters relevant to the practice of real estate, the operation of real estate associations, ownership and use of real estate, and private property rights. Financial support provided by NAR to litigants must be used exclusively to pay the legal fees, costs, and expenses, incurred in connection with the litigation for which assistance is requested and provided. To learn more about the Program and apply for assistance, please consult Program materials found in this section.

NAR's Legal Action Program



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Read "[Need Legal Funding?](#)" by Ralph Holmen from the Winter 2016 issue of *REALTOR® AE Magazine*.

In this section

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Legal Action Case Support Scorecard


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LOOKING FOR A QUICKER HOME INSPECTION?

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 HomeTeam INSPECTION SERVICE



Unread: 14

All folders are up to date. Connected to: Microsoft Exchange

THANK YOU