

Hot Topics in Broker Risk Reduction

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**COMPETITION IN REAL ESTATE | CYBERCRIME & WIRE FRAUD
COPYRIGHT INFRINGEMENT | DATA PRIVACY & SECURITY | FAIR HOUSING
ADA WEBSITE ACCESSIBILITY | TCPA & DNC: TEXTING AND CALLING**

COMPETITION IN REAL ESTATE

REALTORS® help foster competition through their participation in local MLS broker marketplaces. These marketplaces help create highly competitive real estate markets that are friendly to small businesses and new market entrants. REALTORS® work together for the benefit of consumers and help ensure buyers and sellers have the greatest access, transparency and choice in their homeownership journeys. As a result, brokerages of all sizes are able to compete and provide their services to consumers, who in turn have the freedom to choose between different service models and pricing that best meet their needs.

Call to Action

1. Educate consumers, policymakers, media and other interested third parties about [how the local MLS broker marketplaces work](#), and how they promote equity, transparency and market-driven pricing options for consumers.
2. Promote consumer understanding about the [value REALTORS® bring to the transaction](#), how REALTORS® serve as champions in their communities and as advocates for private property rights.
3. Use buyer representation agreements and continue to have transparent conversations with consumers about the [services buyer agents provide](#) and [how they are paid](#).
4. Use the fact sheets, FAQs, articles, infographics and other resources on [competition.realtor](#) to promote the value of local MLS broker marketplaces and how they work in the best interest of consumers.

Resources

- [Competition.realtor](#): A resource for REALTORS®, consumers, media, academics, experts on competition, and anyone that wants to know more about how competitive and consumer-friendly local broker marketplaces—another name for MLSs—are, and the critical role NAR members play in advancing consumers' interests. Consider this a go-to source to access a host of resources to facilitate conversations with consumers and other interested third parties about the local broker marketplaces, competition, the REALTOR® value. In addition, find the latest developments on legal and other challenges facing the industry.

- [Realestatecommissionfacts.com](https://www.realestatecommissionfacts.com): Use and share this website to access information and facts about how real estate commissions work, and why the listing broker paying the buyer broker a commission underpins the local broker marketplaces, and enables efficiency, effectiveness and accessibility for all homebuyers, and especially first-time, low- and middle-income buyers.

CYBERCRIME and WIRE FRAUD

Cybercrime continues to be a top concern in the real estate industry. In 2021, the FBI Internet Crime Complaint Center (IC3) reported a year over year increase in both the number of claims and total victim losses. with nearly 850,000 complaints with an estimated total loss of \$6.9 billion dollars. The top scams facing consumers and businesses are:

1. **Phishing/Vishing/Smishing/Pharming** whereby fraudsters use unsolicited emails, text messages and phone calls from a purportedly legitimate company to obtain personal, financial and login credentials;
2. **Wire Fraud** is carried out by fraudsters compromising email accounts to effectuate fraudulent fund transfers; and
3. **Ransomware** where cybercriminals install malicious software that locks users out of their systems or encrypts data making it inaccessible unless a ransom payment is paid.

Real estate professionals should be aware of the risks facing not only their businesses, but also consumers, and educate staff and clients about preventative steps they can take to prevent falling victim to cybercrime.

Risk Reduction Tips

1. Train staff to be suspicious before clicking on unknown links or attachments.
2. Routinely patch and update business software and equipment.
3. Distribute [consumer information](#) and remind consumers throughout the transaction about the threat of wire fraud and to always verify any wire or payment instructions with a known contact before sending any money.
4. Use multifactor authentication and require passwords to be updated regularly.
5. Backup data and files regularly, following the 3-2-1 backup strategy; 3 copies of the data in 2 different formats with 1 copy stored off-site.
6. Require vendors to adhere to good cybersecurity practices and obtain assurances in contracts.
7. Immediately report any suspected cyber crime incident by filing a report at www.ic3.gov, to the local FBI office, and local law enforcement.

Resources

- [Mortgage Closing Scam Client Advisory Brochure](#)
- [Window to the Law: Avoiding Wire Fraud in Transactions](#)
- [Window to the Law: Protecting Your Business from a Ransomware Attack](#)
- [Window to the Law: Cybersecurity: What You Need to Know](#)

- [Cybersecurity Checklist: Best Practices for Real Estate Professionals](#)
- [NAR Emerging Technology Series: Episode 3 – Ransomware](#)
- [Drive with NAR: What to Do If Your Business Faces a Ransom Threat](#)
- [AEI Year-Round Virtual Sessions: Cybersecurity Best Practices in the Era of COVID-19](#)
- [Cyber and Fidelity Insurance Report for Real Estate Brokers](#)
- [FBI Internet Crime Center: Internet Crime Report 2021](#)
- [Directory of Local FBI Field Offices](#)

COPYRIGHT INFRINGEMENT

It is easier than ever for unauthorized uses of third-party works to be discovered. To avoid costly copyright infringement demands, real estate professionals should be sure to obtain permission to use any third-party work and comply with any license terms to avoid copyright infringement. Be sure to maintain records to easily confirm rights, if challenged. Be sure to confirm that any rights received align with the current and planned use of photographs or other third-party work before using it, including on a website, in the MLS, and marketing materials. Real estate professionals should also ensure proper rights to any music used at live events, such as an open house, and before incorporating into recordings. Keep in mind that specific types of licenses must be obtained before incorporating music into a video recording. In addition, real estate professionals should comply with the Digital Millennium Copyright Act safe harbor to reduce risk when third-parties post on their websites, including photos and music that appear through an IDX display.

Risk Reduction Tips

1. Obtain ownership or a broad exclusive license for photographs.
2. Secure a performing rights license to play music at a live event and a synchronization and master recording license before incorporating music into a video, such as a listing video.
3. Be sure to understand the rights granted in license agreements and consider any future use of copyrighted material when securing the license.
4. Comply with the Digital Millennium Copyright Act safe harbor.
5. Keep records of ownership, license and other agreements to easily confirm rights, if challenged.

Resources

- [Window to the Law: Protect Your Website from Copyright Liability](#)
- [Window to the Law: Copyright Best Practices for Listing Photos](#)
- [Window to the Law: How to Avoid Copyright Infringement](#)
- [Listing Photo Sample Agreements](#)
- [NAR Risk Management Webinar Series: Copyright: Best Practices to Avoid Costly Claims](#)
- [NAR Article: "Who Owns Your Property Photos?"](#)
- [Make NAR's Marks Remarkable & Quick Copyright Best Practices](#)

DATA PRIVACY AND SECURITY

The amount of consumer data collected by businesses has dramatically increased, and with increasing rates of cyber and other types of theft, data privacy and security needs to be top of mind. Keep in mind, the REALTOR® Code of Ethics requires REALTORS® to maintain the confidentiality of clients' personal information, both during and after the transaction. Although there is no comprehensive federal data security law that applies to real estate brokerages, at least 35 states have enacted laws addressing the proper disposal of personal data and all 50 states have laws requiring businesses to provide consumers with notice of security breaches involving a consumer's personal information.

Risk Reduction Tips

1. Have a written data security plan that addresses how a business will respond in the event of a data breach.
2. Be familiar with applicable state laws that may require notification to affected parties following a breach involving personal information.
3. Educate and train staff and licensees about the importance of data security, how to identify suspicious activity and about the business' data security plan.
4. Take inventory of the information that the brokerage handles, including what information is being collected, where it's being stored, why it's being collected and who has access to it.
5. Create and follow a document retention policy that covers what information should be retained and for how long according to legal requirements and the business' needs.
6. Implement measures to prevent unauthorized electronic and physical access to sensitive information.
7. Properly dispose of personal information to ensure it cannot be read or reconstructed.

Resources

- [Window to the Law: Creating an Effective Data Security Plan](#)
- [Window to the Law: Managing Business Records Efficiently](#)
- [Window to the Law: Know the Rules for Using Consumer Reports](#)
- [NAR Data Security & Privacy Toolkit](#)
- [Creating a Record Retention Program for Brokerages](#)

FAIR HOUSING

NAR's [Fair Housing Action Plan](#), abbreviated 'ACT,' emphasizes (A)ccountability, (C)ulture Change, and (T)raining in order to ensure America's 1.5 million REALTORS® are doing everything possible to protect housing rights in America. Fair housing laws prohibit discrimination, the refusal to rent or sell real property and other actions, to a party because of a protected characteristic. Steering, blockbusting, and refusing to provide equal services to all clients are obvious fair housing violations, but liability may also arise when a policy or action disproportionately harms a protected class. It's imperative that all real estate professionals incorporate fair housing compliance and implicit bias training into their strategic plans.

Risk Reduction Tips

1. Implement an Equal Services Report and Checklist for all customer interactions.
2. Ensure any prerequisites are objectively based and consistent applied.
3. Focus on objective characteristics of a property and avoid giving personal opinions about a neighborhood or community.
4. Warn of fair housing concerns related to poorly drafted letters buyer love letters and avoid reviewing or delivering them.
5. Incorporate regular [implicit bias](#) and fair housing compliance into your ongoing training plans.

Resources

- [Window to the Law: Advertising within the Fair Housing Framework](#)
- [Window to the Law: Housing Vouchers and Fair Housing](#)
- [Window to the Law: Criminal Background Checks and Fair Housing](#)
- [Window to the Law Video: Creating a Diversity, Equity & Inclusion Policy](#)
- [Window to the Law Video: NAR's Fair Housing Action Plan](#)
- [Window to the Law: Fair Housing Update](#)
- [Real Estate Brokerage Essentials: Chapter on Fair Housing with training materials](#)
- [Fair Housing Handbook](#)
- [At Home with Diversity Certification](#)
- [Fair Housing social media assets available via Photofy](#)
- [Fairhaven: A Fair Housing Simulation](#)

ADA WEBSITE ACCESSIBILITY

Americans with Disabilities Act (ADA) website accessibility claims continue to grow, with a reported 14% increase in federal lawsuits filed in 2021 as compared to 2020. Additionally, the real estate industry has continued to see a wave of demand letters alleging a business website's inaccessibility in violation of the ADA and unsupported claims that it also violates the Fair Housing Act (FHA). Businesses continue to wait for the Department of Justice to issue regulations addressing this issue. In the meantime, in March 2022, the DOJ issued website accessibility guidance and a new webpage with information about website accessibility. In the guidance, the DOJ provided information on how businesses can use existing standards to make their websites accessible to people with disabilities. Real estate professionals should continue to work with website vendors to conduct accessibility audits of their websites and use existing technical standards, such as the [Web Content Accessibility Guidelines](#), to ensure accessibility of a website's features. NAR will continue to advocate for regulations with clear standards that take into consideration the challenges that businesses face in developing and maintaining accessible websites.

Risk Reduction Tips

1. Assess your website's current accessibility and create a plan to address and enhance any accessibility issues.
2. Ask your website provider how they are addressing your site's accessibility and be sure to address ADA website accessibility and indemnification issues in your contract with the provider.
3. Consult a website accessibility expert to create a plan for addressing website accessibility issues.
4. Include an accessibility statement on your website, along with contact info where individuals with disabilities may report difficulty accessing the website and can seek additional assistance accessing information or services. Feel free to copy NAR's [accessibility statement](#) on its website.

Resources:

- [REALTOR® Magazine: "ADA Demand Letters: A Vexing Reality for Real Estate Pros"](#)
- [REALTOR® Magazine: "Is Your Website ADA Compliant?"](#)
- [NAR Risk Management Webinar Series: ADA Websites: What Associations Need to Know](#)
- [Window to the Law: ADA and Website Accessibility Update](#)
- [Window to the Law: Accessible Websites and the ADA](#)
- [Department of Justice March 18, 2022: Guidance on Web Accessibility and the ADA](#)

TCPA & DNC: TEXTING AND CALLING

To avoid costly legal actions, including class action lawsuits, alleging a violation of the Telephone Consumer Protection Act (TCPA) and Do Not Call (DNC) laws be sure to obtain any necessary consent prior to sending text messages and placing phone calls. Specifically, the TCPA requires prior express written consent before using an automatic telephone dialing system (ATDS) to place telemarketing calls or texts to wireless numbers.

In a recent ruling, the United States Supreme Court¹ recently narrowly defined the TCPA's ATDS definition to require that the call technology not only store or dial numbers, but actually use a random or sequential number generator to place the calls. Thus, calls using random or sequential number generators still require prior express written consent, which involves a signed agreement clearly and conspicuously disclosing the text recipient's permission to receive call and text messages from the sender. However, now it is clear that calls generated individually - not using a random or sequential number generator - need not obtain prior consent at all, even if the device has the ability to store and dial call lists. Keep in mind that DNC laws should always be followed, which prohibits individuals from contacting phone numbers contained in the DNC registry.

RISK REDUCTION TIPS: TCPA

1. Consent is the gold standard to avoid TCPA liability and must be obtained before using technology that employs a random or sequential number generator.
2. Required consent should be clearly stated and preserved.
3. Include language on forms stating that recipients who submit wireless numbers agree to receive calls and text messages from or on behalf of the sender.
4. Allow recipients to easily cancel or opt-out of receiving communications (e.g., by responding "STOP" or "UNSUBSCRIBE"). Promptly remove individuals from messaging lists if they opt out, and record the date the person opted-out, along with the date the person was removed.
5. Talk to your vendors about TCPA and DNC compliance and indemnification.

RISK REDUCTION TIPS: DO NOT CALL

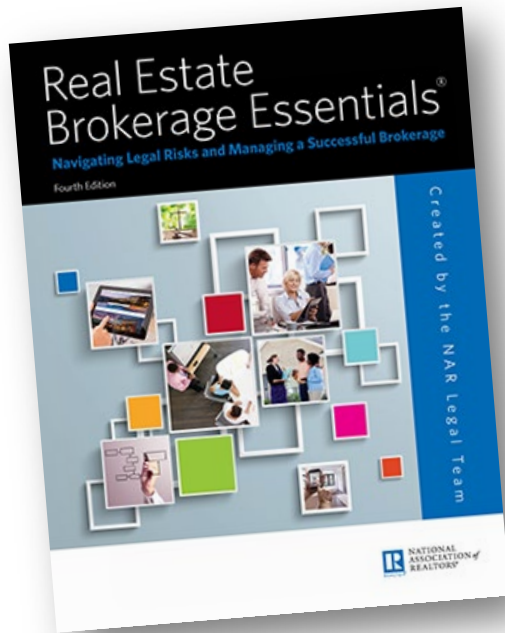
1. [Create an office policy](#) for compliance with DNC rules and implement a method to monitor ongoing compliance.
2. [Obtain an updated DNC list monthly](#) and cross reference with your company customer relationship management platform.

RESOURCES

- [Window to the Law: Comply with The Do Not Call Registry](#)
- [Window to the Law: TCPA and Texting](#)
- [Window to the Law: TCPA Update on Cell Phone Marketing](#)
- [TCPA Quick Reference Guide](#)

¹ https://www.supremecourt.gov/opinions/20pdf/19-511_p86b.pdf

- [REALTOR® Magazine: “Do You Know Who You Are Calling?”](#)
 - [National Do Not Call Registry](#)
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Go to the REALTOR® Store to get a copy of Real Estate Brokerage Essentials®, a comprehensive tool to help brokerages navigate important issues while minimizing legal risk.