AGENDA
2013 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
WESTIN SAN FRANCISCO MARKET STREET
METROPOLITAN BALLROOM III - SECOND LEVEL
FRIDAY, NOVEMBER 8, 2013 & TUESDAY, OCTOBER 1, 2013
09:00 AM - 11:30 AM

Chair:	Brian Sears, MA
Vice Chair:	Michael Jewell, MA
Committee Liaison:	Robert Kulick, CA
Committee Executive:	Marcia Salkin, Melanie Wyne, Bill Gilmartin, Ken Trepeta, DC

I. Call to Order
II. Opening Remarks, Chair: Brian Sears
III. Conflict of Interest Statement
IV. RPAC Fundraising Challenge
V. Approval of Previous Meeting's Minutes
VI. Legislative Outlook for the Remainder of the 113th Congress
VII. Report of the Federal Technology Policy Advisory Board
    a. Data Privacy/Security Member Education Update
    b. Legislative/Regulatory Technology Issue Updates
        i. Data Privacy, Security & Breach Legislation
        ii. Patent Reform
        iii. Net Neutrality
        iv. Electronic Signatures
VIII. Other Legislative/Regulatory Updates
    a. RESPA Updates
        i. RESPA/Truth-in-Lending Disclosure Reform
        ii. 3% Cap on Fees and Points
    b. Immigration Reform Status
    c. Health Reform Implementation
        i. Realtor Magazine overview article
        ii. Exchange open enrollment dates
        ii. Employer exchange notice
        iv. Facebook lien rumor
IX. New Business
    a. Interstate Land Sales Act Reform – Request for Policy Direction
    b. Identification of 2014 Priority Issues & Assessment of Future Policy Needs
X. Announcements
XI. Adjournment

EXHIBIT FOR THE AGENDA OF THE
2013 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
OWNERSHIP DISCLOSURE AND CONFLICT OF INTEREST POLICY

Exhibit Title:
OWNERSHIP DISCLOSURE AND CONFLICT OF INTEREST POLICY

Exhibit Body:

OWNERSHIP DISCLOSURE AND CONFLICT OF INTEREST POLICY

Ownership Disclosure Policy

1. When NAR has an ownership interest in an entity and a member has an ownership interest* in that same entity, such member must disclose the existence of his or her ownership interest prior to speaking to a decision making body on any matter involving that entity.

2. If a member has personal knowledge that NAR is considering doing business with an entity in which a member has any financial interest**, or with an entity in which the member serves in a decision-making capacity, then such member must disclose the existence of his or her financial interest or decision making role prior to speaking to a decision making body about the entity.

3. If a member has a financial interest in, or serves in a decision-making capacity for, any entity that the member knows is offering competing products and services as those offered by NAR, then such member must disclose the existence of his or her financial interest or decision-making role prior to speaking to a decision making body about an issue involving those competing products and services.

After making the necessary disclosure, a member may participate in the discussion and vote on the matter unless that member has a conflict of interest as defined below.

Conflict of Interest Policy

A member of any of NAR's decision making bodies will be considered to have a conflict of interest whenever that member:

1. Is a principal, partner or corporate officer of a business providing products or services to NAR or in a business being considered as a provider of products or services ("Business:); or

2. Holds a seat on the board of directors of the Business unless the person's only relationship to the Business is service on such board of directors as NAR's representative; or

3. Holds an ownership interest of more than 1 percent of the Business.

Members with a conflict of interest must immediately disclose their interest at the outset of any discussions by a decision making body pertaining to the Business or any of its products or services. Such members may not participate in the discussion relating to that Business other than to respond

to questions asked of them by other members of the body. Furthermore, no member with a conflict of interest may vote on any matter in which the member has a conflict of interest, including votes to block or alter the actions of the body in order to benefit the Business in which they have an interest.

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*Ownership interest is defined as the cumulative holdings of the member, the member's spouse, children, siblings and to any trust, corporation or partnership in which any of the foregoing individuals is an officer or director, or owns, in the aggregate, at least 50% of the (a) beneficial interest (if a trust), (b) stock (if a corporation) or (c) partnership interests (if a partnership).

**Financial interest means any interest involving money, investments, credit or contractual rights.

MINUTES
2013 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2013 MIDYEAR MEETINGS
05/15/2013

I. Call to Order

The meeting was called to order by Chair Brian Sears at 10:00 AM.

II. Opening Remarks

Chairman Sears welcomed the committee members to the committee and introduced Vice Chair Michael Jewell and the NAR committee staff.

III. Conflict of Interest Statement

The Committee's attention was directed to the NAR Ownership and Conflict of Interest Statement. Members were asked to please honor the statement's terms during the meeting.

IV. RPAC Fundraising Challenge

The Chair thanked those who had contributed to RPAC for doing so. The goal for this year is to meet President Gary Thomas's 100% RPAC Challenge by the Annual Meeting.

V. Approval of Previous Meeting's Minutes

The minutes of the Business Issues Committee at the 2012 Annual Meeting in Orlando, FL were approved as presented.

VI. Approval of 2013 Committee Goals

The Chair presented draft 2013 goals for the Business Issues Committee, which were approved as presented.

VII. Report of the Federal Technology Policy Advisory Board

Michael Jewell, chair of the Federal Technology Policy Advisory Board of the Business Issues Committee reported on the advisory board's meeting earlier in the week. The advisory board meeting included discussions/updates on :

a. "E-Signature Summit" that was hosted by NAR on March 21, 2013 - The summit brought together representatives from throughout the real estate industry to discuss problems with implementation/use of E-signatures throughout the home buying and selling process, and to better understand how to make use of E-Signature more widespread. NAR will survey members later this month to help NAR understand who is using E-Signature, for what purpose(s) they are using it, who is *not* using E-Signature, and their reasons for that, among other things;

b. Federal patent litigation reform - The advisory board discussed the recent development of members being vulnerable to a suit being brought by patent assertion entities ("PAEs"), better known as "patent trolls," which are broadly targeting businesses that use certain scanner/copier devices. Thus far, in the 113th Congress, the SHIELD Act (which NAR submitted a letter in support of) has been introduced, which would reverse the fee structure of patent suits;

c. Federal copyright reform efforts - The Chairman of the House Judiciary Committee has stated that copyright reform is a priority, and is planning a series of hearings which NAR will closely monitor;

d. Federal data privacy and security – There is a continued need to educate members on best practices and safety precautions for collecting and storing personally identifiable information. NAR staff and committee members were directed to continue to use the resources available on realtor.org, including the data privacy and security toolkit, and to disseminate the information to other members; and

e. Miscellaneous federal tech-related issues - Members were also briefed on the outlook for pending legislation to facilitate the collection of state sales taxes on internet sales to state residents and the status of legislative/regulatory efforts to facilitate unlocking mobile devices. NAR policy supports legislation to level the playing field between "bricks and mortar" and internet merchants when it comes to local tax collections. On the issue of efforts to require that mobile devices be "unlocked", the Advisory Board concluded that market forces will bring a timely resolution to the issue and that NAR should not actively engage in legislative initiatives.

VIII. Other Legislative/Regulatory Updates

Members of the Committee were briefed by staff on RESPA, including developments in rulemaking on the home warranty issue, RESPA/TILA harmonization, and the 3% cap on fees and points. The immigration reform issue was discussed, with an overview of NAR's immigration and visa principles, and a discussion of the aspects of S. 744 which address them, including H-2B visas and the EB-5 visa and Regional Center Pilot Program; staff also briefed members of the committee on language not in the bill they have pushed for and hope to see in a manager's amendment when it is brought to the Senate floor. Finally, the state of health reform rulemaking was discussed, including the new insurance marketplaces and small business exchanges being set up, the recent rulemaking mandating that employers with 50 or more employees make an offer of health insurance to employees and cover a portion of the cost of that, and the treatment of real estate agents as independent contractors (i.e. "non-employees") under the law.

IX. New Business

A question was raised about possible federal legislation allowing American Indian tribes to expand their reservation land by purchasing land contiguous to it, and the potential threat to the states' tax bases and independent businesses outside of the reservations this may pose. Staff will investigate the matter and report back to the Committee. Also raised was a question about escrow companies and RESPA that was discussed.

X. Announcements

No announcements were made.

XI. Adjournment

The meeting was adjourned by Chair Brian Sears at 11:30 am.

EXHIBIT FOR THE AGENDA OF THE
2013 FEDERAL TECHNOLOGY POLICY ADVISORY BOARD
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
Data Privacy and Security Issue Summary

Exhibit Title:
Data Privacy and Security Issue Summary

Exhibit Body:
What is the fundamental issue?
Public concern about the confidentiality of personal medical, financial and consumer data has put pressure on policy makers to increase regulation on the uses of this information. The recent popularity of marketers to use online advertising targeted to individual consumers has also concerned members of Congress. We can expect a number of privacy and data security bills to be introduced in this Congress. Many of these measures will likely: apply privacy regulations to both online and offline data collection, storage and flow; require privacy notices and impose other information safeguards. Some bills may also permit industry to develop their own self-regulatory privacy programs that, if endorsed by the Federal Trade Commission, would create a safe harbor from regulation.

I am a real estate professional. What does this mean for my business?
REALTORS® collect, store and share a great deal of consumer information. Often, the collected data is of a sensitive financial nature. The current proposals for comprehensive privacy legislation would require nearly all REALTORS® and REALTOR® Associations to comply with the new rules. NAR is working to ensure that any future privacy law takes into account the burden on small businesses and is narrowly tailored to reduce its impact on members.

NAR Policy:
NAR adopted the following data privacy and security principles in 2010:

REALTORS® recognize that as data collection continues to become a valuable asset for building relationships with their clients, so does their responsibility to be trusted custodians of that data. Consumers are demanding increased transparency and control of how their data is used. For this reason, REALTORS® endorse the following Data Privacy and Security principles:

Collection of Personal Information Should be Transparent
REALTORS® should recognize and respect the privacy expectations of their clients. They are encouraged to develop and implement privacy and data security policies and to communicate those policies clearly to their clients.

Use, Collection and Retention of Personally Identifiable Information
REALTORS® should collect and use information about individuals only where the REALTOR® reasonably believes it would be useful (and allowed by law) to administering their business and to provide products, services and other opportunities to consumers. REALTORS® should maintain appropriate policies for the, reasonable retention and proper destruction of collected personally identifiable information.

Data Security
REALTORS® should maintain reasonable security standards and procedures regarding access to client information.

Disclosure of Personally Identifiable Information to Third Parties
REALTORS® should not reveal personally identifiable data to unaffiliated third parties unless 1) the information is provided to help complete a consumer initiated transaction 2) the consumer requests it; 3) the disclosure is required by/or allowed by law (i.e. investigation of fraudulent activity); or 4) the consumer has been informed about the possibility of such disclosure through a prior communication and is given the opportunity to decline (i.e. opt-out.)

Maintaining Consumer Privacy in Business Relationships with Third Parties
If a REALTOR® provides personally identifiable information to a third party on behalf of a consumer, the third party should adhere to privacy principles similar to the REALTOR® that provide for keeping such information confidential.

Single Federal Standard
NAR supports a single federal standard for data privacy and security laws in order to streamline and minimize the compliance burden.
View NAR's page on Data Privacy and Security

Legislative/Regulatory Status/Outlook
Privacy and data security will remain a hot topic in this Congress and on the regulatory front. We can expect new legislation to be introduced shortly--in addition the FTC and the Commerce Department continue to focus on the issue as a top priority.

Both the Commerce Department and the FTC recently released reports on consumer privacy. The Commerce report recommends legislation to implement a consumer privacy bill of rights and a multistakeholder process to recommend industry self-regulatory practices.

NAR has developed an educational toolkit for members and is exploring the possibility of developing a real estate industry self-regulatory program.

Current Legislation/Regulation (bill number or regulation)
House Judiciary Draft Cybersecurity Bill

Legislative Contact(s):
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Regulatory Contact(s):
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EXHIBIT FOR THE AGENDA OF THE
2013 FEDERAL TECHNOLOGY POLICY ADVISORY BOARD
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2013 REALTORS® CONFERENCE
Patent Litigation Reform--Issue Summary

Exhibit Title:
Patent Litigation Reform--Issue Summary

Exhibit Body:
What is the fundamental issue?
In 2011, Congress passed legislative reforms to patent law in response to growing concerns that the patent system was unable to deal with challenges presented by the ever growing number of patent applications being submitted and increasing complexity of the technology for which a patent is being requested. In addition, the growing number of cases of licensing demands being made by holders of obscure software patents as well as number of patent lawsuits being filed pointed to the need for reform. Many in the tech industry believe that 2011's reforms did not adequately address the issue of "patent trolls" and that additional legislation is necessary to reduce the costs of litigation caused by "non-practicing patent entities."

I am a real estate professional. What does this mean for my business?
The real estate industry is more and more dependent on the use of information technology and software products to market properties and manage their businesses. An increase in patent-infringement claims can drag unsuspecting real estate professionals into expensive and time-consuming litigation putting all REALTORS® at risk. The recent CIVIX lawsuit is a good example. CIVIX owns a very broad patent on any online service that provides "systems and methods for remotely accessing a select group of items from a database." As a result of this patent infringement lawsuit a number of MLSs have been required to pay licensing fees to this patent holder. Patent reform could help to more narrowly tailor patents and reduced the scope of future infringement lawsuits.

NAR has recently learned that several members have been sent draft complaints in a patent litigation suit involving their use of scanner copiers. News reports indicate the holder of these patents believe that 99% of businesses are violating their patent. New "trolls" pop up all the time and increasingly REALTORS® and MLSs are the subject of their demands to license bogus patents. The problem is only growing worse over time.

NAR Policy:
Without needed reforms that assure that asserted patent rights are legitimate, the ability of businesses owned by REALTORS®, many of which are small businesses, to grow, innovate and better serve modern consumers will be put at risk. NAR believes that while curbing questionable patent litigation is a needed reform, improving patent system transparency and patent quality are equally important. While we recognize that the Patent Trademark Office (PTO) has taken important steps to improve the system, more work is needed.

Legislative/Regulatory Status/Outlook
Recently several bills addressing various patent litigation issues have been introduced in both the House and the Senate. House Judiciary Chairman Goodlatte and Senate Judiciary Chairman Leahy circulated a discussion draft containing several areas of patent litigation reform. NAR believes that the draft is a good first start, but that further refinement is needed.

Current Legislation/Regulation (bill number or regulation)
H.R. 845, the SHIELD Act
S. 866, the Patent Quality Improvement Act
S. 1013, the Patent Abuse Reduction Act
Goodlatte/Leahy Discussion Draft

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EXHIBIT FOR THE AGENDA OF THE
2013 FEDERAL TECHNOLOGY POLICY ADVISORY BOARD
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
Network Neutrality--Issue Summary

Exhibit Title:
Network Neutrality--Issue Summary

Exhibit Body:
What is the fundamental issue?
Net neutrality is shorthand for the concept that Internet users should be in control of what content they view and what applications they use on the Internet. More specifically, net neutrality requires that broadband networks be free of restrictions on content, sites, or platforms. Networks should not restrict the equipment that may be attached to them, nor the modes of communication allowed on them. Finally, networks should ensure that communication is not unreasonably degraded by other communication streams.

I am a real estate professional. What does this mean for my business?
The business of real estate is increasingly conducted on-line. Streaming video, virtual tours and voice-over-internet-protocol are just some of the technologies that are commonly used by REALTORS® today. In the future, new technologies will be adopted which will no doubt require unencumbered network access.

Some real estate professionals, realty website operators and real estate industry affiliated content providers believe net neutrality provisions are necessary to prevent broadband providers (cable and telephone companies, primarily) from implementing possibly discriminatory practices that could negatively impact real estate professionals' use of the Internet to market their listings and services. Some possible examples include practices that would (1) limit the public's access to real estate websites, (2) limit a real estate firm access to online service providers who may be in competition with network operators' own services, e.g. Internet phone services, or (3) charging certain websites more for the broadband speeds necessary to properly transmit or display audio or video content such as online property tour, podcast or phone services.

NAR Policy:
NAR supports seven principles to guide lobbying efforts on any legislation to require broadband providers to adhere to net neutral practices:
1. consumers are entitled to access the lawful Internet content of their choice;
2. consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
3. consumers are entitled to connect their choice of legal devices that do not harm the network;
4. consumers are entitled to competition among network providers, application and service providers, and content providers;
5. network providers should not discriminate among internet data transmissions on the basis of the source of the transmission as they regulate the flow of network content;
6. Broadband providers must be transparent about the service they provide and how they run their network and;

7. These principles should apply to both wireless and wireline networks.

Legislative/Regulatory Status/Outlook
On December 21, 2010 the FCC issued new rules on Net neutrality. Under these rules, wired broadband providers are "prohibited from blocking lawful content, applications, services and the connection of nonharmful devices to the network." Wireless broadband providers, however, are allowed more flexibility, reflecting the technical limitations on the amount of traffic a wireless network can handle. Both wired and wireless broadband providers are subject to transparency requirements, which require them to let consumers know how they manage network activity. The new rules also allow internet service providers to charge usage-based fees for broadband, so customers using more bandwidth may be charged more for service than customers using less bandwith.

The new rules have been challenged in court by the incubent phone companies. The Federal Court of Appeals in DC heard the challenge to the FCC's authority to implement net neutrality rules in September, 2013. The court is expected to issue its ruling later this year or early next year.

Current Legislation/Regulation (bill number or regulation)
N/A

Legislative Contact(s):
Melanie Wyne, mwyne@realtors.org, 202-383-1234
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Regulatory Contact(s):
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EXHIBIT FOR THE AGENDA OF THE
2013 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
Don't Forget RESPA/TILA Changes are Coming

Exhibit Title:
Don't Forget RESPA/TILA Changes are Coming

Exhibit Body:
In all the excitement over the qualified mortgage, qualified residential mortgage, and Basel III capital rules, as well the introduction of GSE and FHA reform, it is easy to forget that a major rule still remains to be finalized - the RESPA/TILA harmonization rule. Some may have forgotten the 1100 page proposal, but the Consumer Financial Protection Bureau (CFPB) most certainly has not and a final rule has been promised for Fall 2013.

The rule was proposed in late Summer 2012, and then largely forgotten as the CFPB scrambled to finalize rules that had 2013 deadlines. As with any proposal of its length, it was a mixed bag of good, bad, and ugly. The good was the upfront disclosure. While it was a far cry from the simple one page form promised by CFPB when it began its "Know before You Owe" campaign, it did seem to do a reasonable job aligning the RESPA Good Faith Estimate (GFE) and the TILA disclosure (TIL) in the document they refer to as the "loan estimate." It remains to be seen what changes the CFPB makes in the upfront disclosure, but of all the elements of the proposal, this seemed to be the most well thought out.

The bad or ugly was the proposed transformation of the two laws and the attempt to create a unified settlement statement incorporating the HUD-1 and the final TIL called the "closing disclosure." The CFPB decided to propose implementing a three day waiting period for the combined document meaning it must be in the consumers hand and accurate three days prior to closing. NAR strongly discouraged changing the settlement process, or in the alternative, encouraged the CFPB to give consumers the ability to waive the three day period. Many in the industry say we should be able to get these documents together and finalized three days prior to closing. It is certainly something to aspire to, but real estate transactions remain complex and decisions are not always made promptly, especially by consumers. Therefore, it is essential that consumers have the flexibility to at least waive issues that might cause closing delays.

CFPB should also maintain the flexibility in the issuance of the loan estimate instead of requiring it when only six pieces of information are collected. The practical effect of this is that information essential to properly evaluating a loan prospect will either not be collected and/or estimated closing costs will be outlandishly high in order to avoid tolerance infractions. The result could very well be that lenders with the least expensive ultimate closing costs will not appear that way to consumers because their loan estimates appear more costly. This would not ultimately benefit consumers.

There are numerous other proposed changes that could be adopted or scrapped. NAR believes most should be scrapped and CFPB should focus on simply improving the loan estimate that ensures it provides consumers with timely and accurate information. In terms of implementing new regulations, 2014 will already be a costly and confusing year. There is no need to make it even worse by piling on massive changes to the closing process, some of which were unworkable as originally proposed.

EXHIBIT FOR THE AGENDA OF THE
2013 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
HR 3211 and S. 1577 - QM Fees and Points Cap

Exhibit Title:
HR 3211 and S. 1577 - QM Fees and Points Cap

Exhibit Body:
Summary of HR 3211, S. 1577 – The Mortgage Choice Act

H.R. 3211 is bipartisan legislation introduced by Representatives Bill Huizenga (R-MI), David Scott (D-GA), Ed Royce (R-CA), Gregory Meeks (D-NY), Spencer Bachus (R-AL), Mike Doyle (D-PA), Steve Stivers (R-OH), Gary Peters (D-MI), Patrick Murphy (D-FL), and Betty McCollum (D-MN). It replaces H.R. 1077, "The Consumer Mortgage Choice Act." The Senate companion is S. 1577 sponsored by Joe Manchin (D-WV), Mike Johanns (R-NE), Carl Levin (D-MI), Debbie Stabenow (D-MI), Mark Kirk (R-IL), and Pat Toomey (R-PA).

1. **Amendment to TILA Points and Fees Definition**

The revised legislation makes the following changes to the Truth in Lending Act to ensure more consistent and fairer treatment of mortgage lenders with affiliated businesses under the Ability to Repay/Qualified Mortgage rule. The effect of the additional language would be to modify the definition of "points and fees" and level the playing field for affiliates. Here are the three main sections-

1) Language to clarify that amounts paid into escrow for the future payments of taxes and hazard insurance are excludable from the definition of "points and fees," making the provision consistent with the exclusion of tax and insurance escrows for purposes of calculating "finance charges" under TILA Sec. 106 (See §103(bb)(4)(C));

2) Language to permit the exclusion of charges for title insurance regardless of the title company's affiliation with a creditor or mortgage originator provided i) the charge is reasonable and ii) in the case of an affiliated title company, that it and its affiliates are operating in compliance with RESPA's conditions for affiliated business arrangements.

3) Language to give CFPB power to promulgate appropriate regulatory changes.

What Has Been Removed from H.R. 1077

1) To address the concerns of Ranking Member Waters (D-CA) and Rep. Watt (D-NC) the provision regarding mortgage broker and creditor paid compensation has been removed. This provision while justified was nevertheless removed because of fears that some kind of license would be given to mortgage brokers to recreate the market of 2005-2007. Other provisions of Dodd-Frank and the ATR/QM rule prevent this- nevertheless the provision was removed.

2) Also, the provision regarding the treatment of Fannie and Freddie Loan Level Price Adjustments

(LLPAs) which was not in the Senate version (S. 949) has also been removed. Industry believes counting LLPAs toward fees and points needlessly drives consumers to more costly loans, particularly FHA loans with higher insurance premiums. Nevertheless, organizations purporting to represent consumers and CFPB believe these charges are a measure of risk and are appropriately counted in fees and points. Therefore, the provision has been removed.

Conclusion:

H.R. 1077 has more than 60 Bipartisan Cosponsors. Still some concerns remained about its provisions. Sponsors and Industry worked with Ranking Member Waters and other concerned Members of Congress (as well as Consumer groups) for more than five months to achieve this compromise to remove their opposition. It is hoped that it will be passed on suspension in order to ensure consumers have broad choices in credit providers in January 2014 when the QM rule becomes effective.

Health Care Reform: A Guide to Your Coverage Options

Starting Oct. 1, brokers and agents will face decisions and obligations concerning insurance. Are you ready?

September 2013 | By Robert Freedman

Key aspects of the major health insurance reform law enacted three years ago take effect as early as next month and it's important for you to know what parts of the law affect you as a real estate professional.

To start, one of the goals of the law, called the Affordable Care Act, is to ensure that as many people as possible have insurance coverage, whether it's through an employer plan, a government-sponsored health program such as Medicare or Medicaid, or a plan purchased by you directly from an insurance company or using the new state exchanges that are being set up under the law.

To that end, the law established what's known as the individual mandate, the requirement, starting in 2014, that every person be covered by a qualifying health care plan or pay a penalty.

As a result, if you're one of the approximately 48 million Americans without health insurance, the time to look at your options and make a decision for 2014 is right around the corner. The law gives you a number of ways to get coverage and also makes resources available to you through your state and the federal government.

Open enrollment

If you're an independent contractor, as most real estate practitioners are, the most important thing for you to know right now is that a six-month period, called the state exchange open enrollment period, begins Oct. 1 to make buying that coverage as easy as possible. The open enrollment period is when the new state insurance exchanges are open for business, enabling you to use these online marketplaces to shop for and buy your coverage and, if you're eligible, receive a premium credit to help you reduce the cost.

If you already have coverage, then the open enrollment period is not critical for you. But you'll want to consider checking out your new state insurance exchange to see if you can find a better deal. Also, it's possible you'll see a few changes to your existing coverage starting in 2014 because your

insurance provider must make sure your policy complies with the minimum requirements that the law put in place for health insurance plans. These requirements are all good things in the sense that they help make sure you have access to quality coverage and can't be turned down because of your age or health status.

Health Reform Notice Deadline Nears

If you're a broker-owner with at least one employee and at least $500,000 in business volume, you have until Oct. 1 to let your employees know about coverage options available on the online healthcare exchanges that are launching under the Affordable Care Act. The U.S. Department of Labor has model forms you can use. Use one form if you offer a plan for your employees; use the other if you don't. More on those forms.

Credit Eligibility

For many of you, because you're an independent contractor (and assuming you don't have coverage through a spouse's employer, veteran's benefits, or some other source of group coverage), any existing coverage you have now is likely to be through what's known as the individual market, because you're not getting your insurance through an employer. This has typically been one of the most expensive ways to get insurance. It's possible you'll be eligible for premium credits starting next year, depending on your income, and if you replace your current coverage with a 2014 policy you buy through your new state exchange. That's something to keep in mind as you renew your coverage. The subsidies are generally provided in in the form of credit. If you're eligible for that credit to help offset the cost of insurance, then you will want to take that into account in your decision regarding how you'll obtain your coverage.

In general, you're eligible for a premium credit if you earn between 100 percent and 400 percent of the poverty rate, which in late 2013 was about $24,000 for a family of four. That means a household of four can earn up to about $96,000 and be eligible for some level of credit.

You can find out more at Healthcare.gov, the government's main portal on the health reform program, and on the state online exchanges that are being created under the law. Also, by Oct. 1, employers are required to send out notices, regardless of whether they offer insurance or not, letting their employees know about coverage options available on the online healthcare exchanges and through their jobs.

If you don't have insurance, then next month's start of open enrollment is important to you, because that's the beginning of the period in which you have to get insurance for 2014 or face a penalty. That said, you don't have to jump into the market immediately and find coverage; you're not required to have insurance until 2014, and there are several ways you can do this.

Insurance Broker

First, you can do it the traditional way by going through an insurance broker or directly to an insurance company and seeing what you can get. The important thing to remember is the law has put in place restrictions on insurance providers so that they cannot deny you coverage because of your age, health history, preexisting condition, type of job, or clams history. They also have limits on how much they can charge you if you're, say, older and have health issues, compared to what they

charge a younger person with no health issues. They can still charge you more, but they're subject to limits now, so the gap can't be as wide as it sometimes was in the past. Note, though, that unless the broker is selling you coverage that is available on the new state exchange, you cannot claim your premium credit, even if you're eligible; you can only get the premium credit if your insurance is offered through the online state exchange.

Insurance Exchange

Second, you can go online and shop for coverage on the new individual insurance exchange for your state—each state will have one. In some states, the exchange is operated by the state, and in others, it's operated by the federal government. You can get to your state exchange through the federal government's health reform portal, *Healthcare.gov*. The exchange is intended to make the shopping experience much simpler than before by standardizing all the products into groups (Bronze, Silver, Gold, and Platinum) so no matter the coverage level you're looking for, you're able to make apple-to-apple comparisons. What's more, information on premium credits is built into the exchange, so based on your income and household size, you should get an automated response on what credit amount, if any, you're eligible for. You should also be able to choose how you want the credit provided. For example, you can have it sent directly to the insurance provider each month, while you're billed the reduced premium amount, or you can pay the full year of premium yourself and have the credit recognized at year-end when you file your taxes.

As part of your online shopping, you can work with what are known as "navigators" who are available on the exchange via a live chat function or by phone to help guide you through the process. These "navigators" are support people who you contact in real time and with whom you get questions answered through text messaging. Their job is just to help you; you don't pay them and they have no financial interest in which coverage you select, and they can't actually enroll you in your plan. You can also work with navigators who work outside the exchanges and other helpers, called "enrollment assisters," who are often affiliated with nonprofit groups and have also been trained to be familiar with the health reform law and the exchanges.

You want to be sure that the navigator or enrollment assister you're working with is not out to make money from you by charging for their services. Although traditional insurance brokers charge for their services, and that has always been and continues to be standard practice, designated navigators and enrollment assisters whose job is just to help with the new exchanges are not to charge for their services or otherwise have a financial interest in insurance products.

Insurance Marketplace

There is a third option you can consider as well, and that's buying coverage through a private health insurance marketplace developed by NAR and operated by SASid, the administrator of NAR's core health and dental insurance programs. The marketplace features products that all meet the law's requirements. You can find more about the option in this article, but you'll want to note that premium credits will be available under this option only if the plan you purchase is one that is available on your state exchange.

Medicaid

Separate from these options, you might qualify for an expanded version of Medicaid that was also created as part of the big reform law, although not all states have passed laws to accommodate this expanded program.

Medicaid is publicly assisted health insurance at the state level that's traditionally been for the elderly, persons with disabilities, and, depending on income, children and pregnant women. Under the expanded version of the health reform law, the universe of eligible recipients is broadened to include adults who meet income restrictions, which is defined as earning 138 percent of the poverty level, or about $33,000 for a household of four. So, even if you don't meet the traditional criteria for Medicaid eligibility, you might get the benefits of the Medicaid coverage by virtue of your income.

[Find more information on tax issues related to health reform from the IRS.]

As of late 2013, about half of the states had passed the expanded eligibility. If you're in a state that hasn't, then the traditional Medicaid eligibility rules apply and, unless you're elderly or disabled or otherwise a covered person, you can't get Medicaid coverage. You can find out about your state by going to Healthcare.gov and searching for expanded Medicaid states. More states are considering the expanded program, so by next year the number of states might be larger.

Employer Mandate

Finally, starting in 2015, some employers will be subject to what's known as the employer mandate, which means that employers with 50 or more full-time equivalent employees are required to provide insurance to their employees if they don't already or face a penalty. This is probably less relevant to real estate practitioners than to many others because practitioners that have complied with the tax law's requirements for "qualified real estate agent" status are not considered employees under the health care law, but are independent contractors. This means they are not included in the broker's employee count, making it far less likely the broker will meet the 50-or-more-employee threshold.

Of course, brokerages are free to provide insurance whether they meet the threshold or not, and in fact very small employers (fewer than 25 full-time equivalent employees) can get tax credits to help offset the cost of coverage purchased through the state small business exchanges if they choose to provide it. The credits are available for two years and they have to meet a few other requirements, but that incentive is there for those who want to offer coverage.

Penalties

You need to be aware that if you decide not to get coverage, whether through the state exchange, directly from an insurance company or broker, or in any other way, you can be assessed a penalty. Starting in 2014, the penalty is $95 per individual in your household who isn't insured or 1 percent of your household income, whichever is greater, although the maximum penalty you pay is capped at the level you would pay for a standard insurance policy for you and your family. The penalty amount will rise in subsequent years, to $695 or 2.5 percent of income. But the limit based on a standard policy cost will also remain in effect.

Exceptions

There are also exceptions to the individual mandate and its penalty rules. The law includes nine exemptions for people who don't have insurance. These include citizenship status, whether you're incarcerated, and religious-based objections, among others. One exception of particular note is based on cost burden. If you simply can't find affordable coverage, defined as paying no more than 8 percent of your income, even after calculating the credit that the government will be making available, then you won't be charged a penalty.

There are a lot of moving parts to the new health insurance law, but for you, there are only a few matters you need to be aware of now: the start of the individual mandate in 2014 (that's the mandate that you have coverage), the exceptions the government recognizes for people who are exempt from the mandate, the open-enrollment period for the state exchanges starting in October to shop for coverage, the premium subsidies you can qualify for based on your income if you buy coverage in the state exchange, and any changes to your coverage that your insurer must let you know about if you already have coverage and it changes to comply with the law.

EXHIBIT FOR THE AGENDA OF THE
2013 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
Key Health Reform Dates

Exhibit Title:
Key Health Reform Dates

Exhibit Body:
Key Health Reform Dates

• **October 1, 2013**
Open enrollment for health insurance starts in the online exchanges.

• **January 1, 2014**
New exchange healthcare insurance coverage begins.

• **March 31, 2014**
Final day of 2014 open enrollment period for health insurance plans offered through the exchanges and last day to apply for coverage in order to avoid penalties.

• **January 1, 2015**
Employer mandate takes effect.

EXHIBIT FOR THE AGENDA OF THE
2013 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2013 REALTORS® CONFERENCE
ACA Employer Disclosure Deadline

Exhibit Title:
ACA Employer Disclosure Deadline

Exhibit Body:
Affordable Care Act Employer Disclosure Deadline

September 16, 2013

October 1st marks not only the date that insurance exchanges ("Marketplaces") open under the Affordable Care Act ("ACA"), but also the date by which certain employers are required to provide their employees notice of coverage options available through the Marketplaces. Covered employers are those with at least one employee and at least five hundred thousand dollars in business volume. ("Business volume" for a REALTOR® association includes dues payments, income from sale of items to members, and, subscription fees and dues for Association operated MLSs.)

The notice should inform employees about the health insurance Marketplace; that, depending on their income and the coverage offered by the employer, they may find lower cost private insurance in the Marketplace; and that if they buy insurance through the Marketplace, they may lose the employer contribution (if any) to their health benefits. Sample notices are available on the Department of Labor (DOL) website, for both employers who do not offer a health plan and those who do. There is no fine or penalty for failing to provide the notice to employees, but the ACA does classify them as a requirement.

For further specifics on the ACA notice requirement, including links to the DOL sample notices, please read the NAR legal department article on the requirements.

NATIONAL ASSOCIATION of REALTORS®

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Busting a Health Care Reform Myth: Penalties Can't Be Recouped With a Lien on Your House

On October 23, 2013, in Breaking News, Consumers, Law & Policy, Politics & Government, by Graham Wood

A false Facebook post is making the rounds claiming that if you don't pay the penalty for not buying health insurance, the IRS can file a lien against your home.

The health care reform law requires individuals who don't meet one of the law's exemptions to buy an insurance plan that meets minimum requirements or face a penalty. The law set up online state insurance exchanges to simplify cost comparisons among plans and to make purchasing a plan easy. Open enrollment for these insurance plans on the online exchanges began Oct. 1 and runs through March 2014. We've outlined all your options in a separate blog post.

Those who choose to have no insurance at all by the open-enrollment deadline will be penalized $95 or 1 percent of their income (whichever is greater). That penalty will go up to $695 or 2.5 percent of income in 2016.

However, it is not true that the IRS can file a lien against your home for failing to pay the penalty.

Though the IRS does have authority to garnish wages and file liens to collect unpaid taxes, the **Affordable Care Act explicitly prohibits it from using such measures to collect health-insurance penalties**, according to Kaiser Health News, an independent nonprofit news organization dedicated to covering U.S. health policy.

Instead, the IRS will withhold the penalty from your tax return, Kaiser Health News reports. Read the KHN piece here.

EXHIBIT FOR THE AGENDA OF THE
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The Interstate Land Sales Full Disclosure Act ("ILSA"

Exhibit Title:
The Interstate Land Sales Full Disclosure Act ("ILSA"

Exhibit Body:

The Interstate Land Sales Full Disclosure Act ("ILSA")

What is the fundamental issue?
The Interstate Land Sales Full Disclosure Act (ILSA) was created to help protect consumers looking to buy subdivision lots from purchasing swampland or deserts without full knowledge. It requires developers to provide complete information about the land for sale, and provides the consumer with extensive rights to rescind a contract.

Over the last several years, there has been an increase in the number of consumers cancelling contracts for condo units (as much as 2 years after signing the sales contract) on the basis of a developer's failure to include the complete legal description for the unit purchased. In many jurisdictions, that unique legal description is not available at the time of sale since that unique description for units is only assigned once the entire project is completed.

In many cases, purchasers who have gone to court to rescind the sale contracted to buy their unit early when the market was at or near the top of the market. When the great recession ensued, developers were forced to lower the price of units sold subsequently. As a result, these early purchasers paid a price that was higher than those who came later, became upset with the loss in value, and used the rescission provisions of the ILSA to successfully cancel their purchases.

NAR Policy
NAR currently has no applicable policy.

What is the Question?
Should NAR support amendments to the ILSA that would treat large condominium projects during the construction stage in the same manner as completed condominium projects?

What is the Status?
The ILSA is currently construed broadly by the courts, resulting in many cases where condominium developers are ordered to rescind purchase agreements due to the lack of a legal description when the contract is signed, or when additional units are added to the complete project. These cases have been concentrated in larger urban areas, notably New York City and Miami.

In order to address the condo-related issues that have arisen, H.R. 2600 (Mahoney, D-NY; McHenry, R-NC) was introduced; the bill passed the House by a vote of 410 to 0 on September 26, 2013 that would treat condominiums that are being developed in the same manner as completed condominiums for purposes of the ILSA. It would not exempt the projects from the anti-fraud

provisions of the ILSA that prohibit misrepresentations or practices that would defraud purchasers. The House passed the bill.

A Senate companion bill will be introduced shortly. A coalition of real estate groups, with which NAR typically partners, are asking NAR to sign onto a letter of support for the Senate bill. Among the groups supporting the bill are the Real Estate Roundtable, Real Estate Board of NY and the National Associations of Real Estate Investment Trusts. The National Association of Home Builders and the Multifamily Housing Council are considering the matter.

Background
The Interstate Land Sales Act requires developers to disclose extensive information about lots for sale to the Consumer Financial Protection Bureau (CFPB) and to potential buyers to protect consumers from fraud and abuse. Unless an exemption applies, any contract for the sale or lease of a lot that does not make the required disclosures may be revoked at the option of the purchaser or lessee for **two years** from the date of signing the contract. Additionally, it provides an absolute right to rescind a contract for the sale of a non-exempt lot for **seven days** from the date of signing by the purchaser.

Basic Requirements of ILSA
Any sales contract under ILSA must provide a *description of the lot* which makes it *clearly identifiable* and is in *a form acceptable for recording* by the appropriate public official responsible for maintaining land records in the jurisdiction, and must include that in the event of default or breach by the purchaser, they have a right to be provided written notice by the seller and twenty days to remedy the breach. Developers must also provide the CFPB with a statement of record and the purchasers with a property report.

Statement of Record: Developers must submit this to the CFPB prior to selling and marketing their lots. It must include detailed information about the property being offered, including: a legal description of the property, its total area, topography, the dimensions of its lots, access to the lots, copies of the deed, and other information or documents as the Director of the CFPB may require to protect purchasers.

Property Report: Property reports must be supplied to potential purchasers in advance of signing a sales contract or agreement. It must contain the information provided in the statement of record, excluding certain governing and financial documents of the developer, copies of the deed, and information on easements and forms of conveyance for the lot.

Exemptions

The ISLA contains an extensive list of properties that are exempt in part from the law's registration and disclosure requirements. The list of exemptions is extensive and includes in part (with caveats in some cases): properties that contain less than 100 lots and are advertised as such at the time of sale, completed condominium projects, undivided interests, improved lots, scattered lots, industrial/commercial projects, and reservations/non-binding agreements used to gauge market feasibility for a developer.

It should be noted that sales or leases that are exempt from the required CFPB filing and property report to potential purchases **are still subject to the Act provisions that prohibit**

misrepresentations or practices that would result in defrauding purchasers if the sales include 25 or more lots offered pursuant to a common promotional plan, which is the case in these types of developments.

For a full list of exemptions, go here.

Treatment of ILSA by the Courts

ILSA is liberally construed by the Courts, which favor broad coverage for the act and narrow constructions of the exemptions. ILSA is a strict liability law, so a developer's good faith and adherence to standard industry practices are irrelevant. When a developer violates the disclosure requirement, courts have consistently found for purchasers and allowed them to revoke their agreement within two years of signing the purchase contract.

The courts generally acknowledged that ILSA was becoming "an increasingly popular means of channeling buyer's remorse" (*Stein*, 11th Circuit, 2009). But while courts have expressed sympathy for the developers' position, many courts have felt compelled to apply the language of the statue literally, allowing buyers to escape valid contracts.

In the well-known 2010 case, *Bacolitsas v. 86th & 3rd Owner, LLC*, it was held that a purchase agreement which was unable to be recorded under the laws of New York was revocable, allowing plaintiffs to rescind it. State law, then, factors in to whether or not ILSA's revocation provisions apply to some contracts, as it controls what is required for recording. In *Rai v. WB Imico Lexington Fee, LLC*, a 2012 case, the Court reiterated that ILSA does apply to condominiums, and that the 100-lot exemption is controlled by the number of units planned for a condominium at the time a purchase agreement is signed, not the number of units it actually ends up containing.

EXHIBIT FOR THE AGENDA OF THE
2013 BUSINESS ISSUES POLICY COMMITTEE
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2013 REALTORS® CONFERENCE
Issue Discussion - 2014 Issues and Policy Positions

Exhibit Title:
Issue Discussion - 2014 Issues and Policy Positions

Exhibit Body:

Discussion on Most Important 2014 Issues and Sufficiency of Existing Committee Policies for the Future

Please note the final agenda item for our 2013 Business Issues Policy Committee meeting at the Annual Conference in San Francisco.

Each of the NAR committees that report to the Public Policy Coordinating Committee (PPCC) is being asked to engage in important discussions about the following items:

1. Input from the committee regarding what the members see as the most important 2014 policy issues in the Business Issues Policy Committee's area of jurisdiction.
2. A discussion during the committee meeting about whether the committee's policies are where they need to be for the future.

On the first item, the goal is to identify the issues under the Committee's jurisdiction that committee members believe will be the most important 2014 issues in the federal arena. This information will assist NAR staff in identifying and prioritizing the issues expected to be paramount next year in advocating on behalf of NAR members on Capitol Hill and with the Administration.

For the second item, the idea is to engage the committee in a discussion about the current and future housing and real estate environment and the issues that the committee's policies will need to address. The goal is to determine if existing committee policies are sufficient to position NAR to serve consumers and business clients in the future. Given some of the regulatory and legislative policy challenges NAR is addressing, this is a good opportunity to engage committees regarding any visionary policy prescriptions they believe are necessary to better serve consumers and to sustain real estate markets for the future.