

AGENDA
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
MARRIOTT WARDMAN PARK
WILSON ROOM A & B/MEZZANINE LEVEL
WEDNESDAY, MAY 13, 2015
10:00 AM - 12:00 PM

Chair: Eric R. Stegemann, MO
Vice Chair: Myra Zollinger, NC
Committee Liaison: Russell Grooms, FL
Committee Executive: Marcia Salkin, Melanie Wyne, William Gilmartin, Ken Trepeta, DC

I. Call to Order

II. Opening Remarks, Chair: Eric R. Stegemann

III. Conflict of Interest Statement

IV. RPAC Fundraising Challenge

V. Approval of Previous Meeting's Minutes

VI. Report of the Federal Technology Policy Advisory Board

A. Legislative/Regulatory Technology Issue Updates

i. Data Privacy, Security & Breach Legislation

- [NAR Issue Summary Paper](#)
- [H.R. 1770, "Data Security and Breach Notification Act"](#) (Blackburn, R-TN; Welch, D-VT)
- [Senate Draft, "Data Breach Notification Act of 2015"](#) (Warner, D-VA)
- [REALTOR.org Data Privacy and Security Resource Website](#)

ii. Patent Litigation Reform

- [NAR Issue Summary Paper](#)
- [H.R. 9, "The Innovation Act"](#) (Goodlatte, R-VA)
- [H.R. 2045, "Targeting Rogue and Opaque Letters \(TROL\) Act"](#) (Burgess, R-TX; Kaptur, D-OH)
- [H.R. 1896, "Demand Letter Transparency Act of 2015"](#) (Marino, R-PA; Polis, D-CO; Deutch, D-FL)
- [S. 1137, "Protecting American Talent and Entrepreneurship Act"](#) (Grassley, R-IA; Leahy, D-VT)
- [United for Patent Reform Coalition](#)
- [REALTOR.org Patent Reform Resource Website](#)

iii. Net Neutrality

- [NAR Issue Summary Paper](#)
- [Federal Communications Commission \(FCC\) Order](#)
- [Congressional Activities](#)
- [Next Steps](#)

iv. Electronic Signatures

- CFPB Actions

VII. Other Legislative/Regulatory Updates

A. RESPA Updates

- i. RESPA/TILA Integration (TRID) Rule Implementation*
- ii. RESPA Enforcement – Marketing Agreements*
- iii. H.R. 685, “Mortgage Choice Act” (Huizenga, R-MI; Meeks, D-NY)*

VIII. New Business

IX. Announcements

A. RESPA/TILA Educational Sessions

Regulatory Issues Forum: Closings are Changing: Countdown to August 1

Speakers: Richard Cordray; Penny Reed; Phil Schulman; Renee Gonzales

Marriott Wardman Park

Marriott Ballroom/Lobby Level

Thursday, May 14, 10:30 am – 12:00 pm

RESPA 2015: Big Changes Ahead

Speaker: Phil Schulman

Marriott Wardman Park

Virginia Suite/Lobby Level

Friday, May 15, 10:30 am – 12:00pm

B. 2016 Committee Recommendations - May 22, 2015 Deadline

X. Adjournment

**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
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.

*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.

Chris Polychron
2015 President

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Washington, DC 20001

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May 2015

Dear NAR Committee Members:

As a committee member for the National Association of REALTORS® , I cannot thank you enough for your service and commitment to the real estate industry. You are greatly valued and one of the reasons our association is as strong as ever. Your time, energy and ideas are sincerely appreciated.

The REALTORS® Political Action Committee (RPAC) is the backbone of the REALTOR® Party and we need your help. **I am launching the annual RPAC Committee Challenge and personally asking each NAR Committee member to invest in RPAC by making the minimum participation investment of \$15 by December 31, 2015.** Committees that reach 100% RPAC participation by the 2015 REALTORS® Conference & Expo in San Diego, CA will be recognized this November. If your committee reaches 100% by December 31 we will recognize your Committee when the final results are shared at the 2016 REALTOR® Legislative Meeting and Trade Expo in Washington, DC.

Your RPAC investment enables us to have our REALTOR® voice heard in city halls, state capitols and in U.S. Congress. Simply put, our business and livelihood depend on the strength of RPAC. Help us ensure our REALTOR® voice is heard at all three levels of government. Here are easy ways you can invest:

- Invest at the RPAC Table in the lobby of the Marriott Wardman Park during the 2015 REALTOR® Legislative Meetings & Trade Expo;
- Invest at your Local or State Association;
- Invest online at www.realtoractioncenter.com/rpac (You will need your realtor.org ID and password);
- Call RPAC Staff at (202) 383-7509 to make an investment over the phone; or
- Invest on the REALTOR® Party Mobile App

My personal goal is for every Committee to reach 100% RPAC participation. This would be the first time in the program's history and I know we can do it. ***Please note that it is illegal to solicit a non-member or inactive member for an RPAC investment, so only REALTOR® members and REALTOR® Affiliate members will be tracked in the RPAC Committee Challenge. Staff, non-members and inactive members are exempt from the challenge.***

On behalf of the entire NAR Leadership Team and RPAC Leadership, thank you in advance for your participation in the 2015 RPAC Committee Challenge. Should you have any questions or concerns about this challenge, including the eligibility of your members, please do not hesitate to contact RPAC staff member Desta Wallace at dwallace@realtors.org or 202-383-7509.

Sincerely,



Chris Polychron, CIPS, CRS, GRI
2015 NAR President



**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
Business Issues Policy Committee Meetings
2014 NAR Convention - New Orleans**

Exhibit Title:

Business Issues Policy Committee Meetings
2014 NAR Convention - New Orleans

Exhibit Body:

I. Call to Order

The meeting was called to order by Chairman Michael Jewell at 9:00 am.

II. Opening Remarks

Chairman Jewell welcomed the committee members to the committee and introduced Vice Chair Eric Stegemann 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 congratulated the Committee on achieving 100 percent participation in the 2014 President's RPAC Challenge. He noted that this was the first time the Committee had successfully made the Challenge target.

V. Approval of Previous Meeting's Minutes

The minutes of the Business Issues Policy Committee at the 2014 Annual Convention Meeting in New Orleans were approved as presented.

VI. Guest Speaker

The Committee had one guest speaker, Penny Reed, Vice President for Strategy and Financial Reform, Wells Fargo Home Mortgage. A 30-year veteran of the mortgage industry, Ms. Reed briefed the Committee on the outline of the new RESPA/TILA harmonization regulations developed by the Consumer Financial Protection Bureau (CFPB). The final rule was issued on November 20, 2013 and takes effect in August of 2015. While the timeline gives the industry and CFPB significant time to fine tune the rule, Ms. Reed indicated that, as currently drafted, the rule presents lenders and the real estate industry with significant challenges. NAR and Wells Fargo have and will continue to work together to identify problem areas and advocate for needed changes prior to final implementation.

VII. Report of the Federal Technology Policy Advisory Board

Eric Stegemann, Chairman of the Federal Technology Policy Advisory Board of the Business Issues Policy Committee, reported on the Advisory Board's meeting earlier in the week.

At its meeting, the Advisory Board received:

- (a) A briefing by Aleksandar Velkoski, NAR's newly hired data scientist, who is assisting in the collection and analysis of NAR member data to help the Association identify new ways to better serve the membership;
- (b) A briefing by NAR Regulatory staff member, Bill Gilmartin, on NAR's continued efforts to break down barriers to the adoption of e-signatures in real estate sales and mortgage transactions;
- (c) A presentation by Mark Birschbach from NAR's Second Century Ventures and the REach Technology Accelerator on the REach program. Mark also introduced two of the companies in the 2014 REach Class;
- (d) An update from Melanie Wyne, NAR's Senior Legislative Representative for Tech Policy, on the current status of Congressional efforts to enact comprehensive patent litigation reform, as well as a NAR Legal update from Chloe Hecht on the status of two recent Supreme Court decisions, *Limelight v. Akamai* and *Alice Corp. v. CLS Bank, Int.* that are helping to reduce the impact of patent trolls on NAR and its members;
- (e) An overview of NAR's advocacy efforts opposing the proposed network neutrality "fast lane" rule promulgated by the Federal Communications Commission (FCC). NAR is an active member of the Internet Future Business Alliance, a coalition of technology and Main Street businesses with a stake in the outcome of any net neutrality rulemaking; and
- (f) A brainstorming session on ways to increase enrollment in NAR's online Privacy Data Security course offered through Realtor[®] University.

VIII. Other Legislative/Regulatory Updates

The Committee was briefed on the status of other ongoing federal policy matters. These included:

- (a) Real Estate Settlement Procedures Act (RESPA) issues, including the Consumer Financial Protection Bureau's (CFPB) approach to RESPA enforcement, and the status of legislation to resolve the Dodd-Frank 3% affiliate cap issue;
- (b) Enactment of NAR-supported legislation to amend the Interstate Land Sales Full Disclosure Act (ILSA) and treat unit sales in condominium projects still under development in the same manner as sales of units in completed condo projects for purposes of the ILSA. The bill was signed on September 26, 2014, and will go into effect on March 25, 2015;
- (c) The November 15, 2014 beginning of the open enrollment period for the purchase of 2015 individual health insurance coverage offered via the state and federal health exchanges. The enrollment period ends on February 15, 2015. Members who purchased health insurance coverage in 2014 from the state or federal health exchanges were advised to review

their policy options as additional insurers have chosen to offer policies that may better suit a member's insurance needs; and

(d) The beginning of enforcement of the Affordable Care Act's employer mandate for firms with 100 or more full-time equivalent employees (FTEs) in 2015. Firms with 50-99 FTEs will not be subject to the employer mandate until 2016.

Erin Stackley, NAR's Commercial Legislative Policy Represented, and Stephanie Spear, NAR's Commercial Regulatory Representative, introduced both the Tech Advisory Group and the full Committee, to the issues surrounding the use of:

(a) Crowdfunding platforms in funding commercial real estate deals. Members were advised that, when used in a real estate context, crowdfunding may be considered to be the issuance of investment securities subject to Securities and Exchange Commission oversight. Federal regulations are currently under development;

(b) The Federal Aviation Administration (FAA) restrictions on the use of unmanned aerial vehicles (UAVs), aka "drones," for commercial purposes, including the prohibited use of UAVs by real estate professionals. NAR is working with the FAA to permit the commercial use of UAVs with proper attention to safety and privacy concerns; and

(c) The Committee was advised of a written update in the Committee's briefing packet on the status of the pending Marketplace Fairness Act, which would simplify the collection of state sales taxes by online sellers.

IX. New Business

The Committee also identified a number of issues that the members believe will be of key importance to the real estate industry in 2015 for inclusion in NAR's 2015 federal policy issue survey. These included patent litigation reform, data privacy and security, net neutrality, RESPA enforcement, RESPA/TILA disclosure integration, Dodd-Frank 3% affiliate cap, immigration reform, and EB-5 regional center pilot reauthorization.

X. Announcements

The Committee was apprised of a RESPA Educational Session, featuring Phil Schulman of K&L Gates.

XI. Adjournment

The meeting was adjourned by Chairman Jewell at 11:25 am.

**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
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. With the recent data breaches of Target, Home Depot and other large retailers, a number of privacy and data security bills are expected to be introduced in 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 (FTC), would create a safe harbor from regulation.

I am a real estate professional. What does this mean for my business?

Real estate professionals 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 real estate professionals 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 recognizes the importance of protecting client data entrusted to them and supports common sense data privacy and security safeguards that are effective but do not unduly burden our members' ability to efficiently run their businesses. Proposed regulations must be narrowly tailored to avoid burdening businesses, especially small businesses that lack the resources available to larger entities.

NAR Data Privacy & Security Principles

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](#)

Opposition Arguments:

Opponents to legislative and regulatory efforts generally oppose the scope of limitations on various business practices that may significantly curtail certain business models or create what is viewed to be excessive costs for business. Others believe that proposed legislation/regulations do too little to protect consumers.

Legislative/Regulatory Status/Outlook

On May 1, 2014, the White House issued a report on Big Data & Privacy. In the report it recommended that legislation be passed to give consumers a Privacy Bill of Rights as well as data breach notification legislation.

In his State of the Union Address on January 20, U.S. President Barack Obama featured his proposed Personal Data Notification and Protection Act, federal legislation that would replace the existing patchwork of state data breach notification laws with a unified national standard for companies responding to data security breaches.

Several data breach bills have been introduced in the House and Senate. NAR supports the approach taken by Senator Warner (D-VA) in his discussion draft. That draft bill:

1. Covers all entities handling sensitive information – there are no exemptions for banks, telcos, third parties, etc.
2. The scope of the bill is appropriate:
 - a) A breach of security is the acquisition of data (not access or acquisition);
 - b) Sensitive account/personal information are narrowly defined terms (not expansive); and
 - c) The trigger for notice is risk-based (requiring what is defined as financial harm).
3. Has reasonable data security standards for non-banks;
4. Has enforcement by banking regulators for banks, and by FTC for non-banks;
5. Has equivalent enforcement by all banking regulators and the FTC, with requirement that the agencies coordinate on equivalent enforcement and penalties; and
6. Gives all covered entities the benefit of solid preemption of state and common law.

NAR is working to refine the legislation and to encourage co-sponsorship.

Finally, NAR has developed an educational toolkit for members and has developed an online training course available through REALTOR® University. To view the toolkit visit:

www.realtor.org/law-and-ethics/nars-data-security-and-privacy-toolkit

Current Legislation/Regulation (bill number or regulation)

[H.R. 1770, Data Security and Breach Notification Act \(Blackburn, R-TN; Welch, D-VT\)](#)

[H.R. 580, Data Accountability and Trust Act \(Barton, R-TX; Rush, D-IL\)](#)

[S. 177, Data Security and Breach Notification Act \(Nelson, D- FL\)](#)

[S. , Data Breach Notification Act \(Warner, D-VA\)](#)

[S. 961 Data Security Act \(Blunt, R-MO; Carper, D-DE\)](#)

NAR Committee:

Federal Technology Policy Advisory Board

Business Issues Policy Committee

Legislative Contact(s):

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Helen Devlin, hdevlin@realtors.org, 202-383-7559

Regulatory Contact(s):

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Chris Polychron, CIPS, CRS, GRI
2015 President

Dale A. Stinton
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March 23, 2015

The Honorable Michael C. Burgess M.D.
Chairman
U.S. House of Representatives Commerce,
Manufacturing, and Trade Subcommittee
2336 Rayburn House Office Building
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
U.S. House of Representatives Commerce,
Manufacturing, and Trade Subcommittee
2367 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burgess and Ranking Member Schakowsky:

On behalf of the more than 1 million members of the National Association of REALTORS® (NAR) and more than 1400 local REALTOR® associations, I write to address the discussion draft bill entitled the Data Security and Breach Notification Act of 2015 (the “Bill”), dated March 12, 2015, that is the subject of the Energy and Commerce Committee Subcommittee on Commerce, Manufacturing and Trade’s hearing. The bill seeks to establish a single federal standard concerning data security and data breach notification.

NAR recognizes that for businesses operating in multiple states, compliance with a patchwork of state requirements creates confusion and uneven protection. For this reason NAR supports a single federal standard for data breach notification.

While REALTORS® support a single standard and have long been supportive of efforts to protect consumers’ sensitive personal information, NAR also strongly believes that any new federal data security requirements must be carefully and narrowly tailored to minimize the regulatory burden such a law could place on small businesses that are just now beginning to experience a fragile economic recovery.

Real estate firms vary widely in size, but the overwhelming majority is composed of very small entities. NAR’s most recent surveys indicate that more than half of all realty firms have less than twenty-five agents, and the typical sales agent is affiliated with an independent realty firm with only one office . This unique industry structure can make compliance with regulatory burdens crafted without consideration of the size and sophistication of the regulated entities particularly onerous.

Further compounding this concern is the independent contractor status of the overwhelming majority of real estate sales professionals. Any new data security requirements will necessarily impact the individual real estate agent who is a legal business entity separate from the real estate company with which they are affiliated thus making crafting realistic compliance requirements an especially important consideration for our industry.

For these reasons, I share the following concerns with the discussion draft Bill.

Reasonable Security Measures Standard is Vague

First, the Bill fails to articulate the minimum data security standards that would constitute “reasonable security measures and practices” as set forth in Section 2. As a result, we are concerned that the Bill would establish data security standards through litigation and multiple judicial interpretations. Since most of our members are small businesses without legal or compliance staffs, this vague standard is of significant concern. It is difficult to imagine how a small real estate firm or agent could determine what comprises a “reasonable security measure and practice” under the proposed law.



Expanded Enforcement Authority

Second, the Bill's information security requirement in Section 2 could be interpreted to expand the Federal Trade Commission's (FTC) enforcement authority rather than limit it by creating an additional four-factor test for reasonableness that considers 1) size 2) complexity 3) nature and 4) scope of a business's activities in addition to the general "reasonableness" standard that is the generally accepted standard measured under Section 5 of the FTC Act today. As a result, a business could be found to be unreasonable as to any one of these four factors specified in Section 2 rather than a general finding of unreasonableness. NAR believes that a general standard similar to the FTC Act's Section 5 prohibition on "unfair or deceptive" practices is a more appropriate standard to apply in this case.

Notice Obligations Should Apply to All Breached Entities

Finally, the Association is also concerned that the Bill exempts third party service providers from the requirement to notify affected consumers when the service provider experiences a data breach. In fact, under the Bill, if a service provider or third party suffers a data breach, all that firm is required to do is notify the business—which in our industry and others could be a one or two person business - whose data may have been hosted by the service provider. The result would be that the small real estate business is now responsible for the costs of notice and potential fines and penalties, while the business responsible for the breach nearly entirely escapes responsibility. This result is fundamentally unfair and does not create the proper incentives for service providers to create a sound data security environment. Only data security standards that apply to all businesses that handle sensitive personal information will allow Congress to achieve the data security ecosystem it seeks to create.

Given the importance of this issue to consumers and businesses of all sizes, it is extremely important the Congress fully assess the ramifications of any new requirements. We thank you for your work on these important security and consumer issues, and look forward to working with you and your staff to advance legislation that will both protect consumers and create an environment where businesses and innovation can flourish.

Sincerely,



Chris Polychron
2015 President, National Association of REALTORS®

cc: U.S. House of Representatives Commerce, Manufacturing, and Trade Subcommittee

NAR Data Privacy & Security Resources Website

www.realtor.org/data-privacy-security

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Data Privacy and Security

Information on privacy and data security, the government's efforts to address these challenges, and tools to help you manage and secure your customer/employee information.

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Draft Data Breach Bill Passes Subcommittee

MARCH 27, 2015

On Wednesday, March 25, 2015, the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade approved a discussion draft bill entitled "The Data Security and Breach Notification Act of 2015."

Topics: Data Privacy and Security

Congress Introduces New Data Privacy Bills

FEBRUARY 6, 2015

Late last week, Congress introduced two new data privacy security bills. H.R. 580, "The Data Accountability and Trust Act (DATA), introduced by Representatives Bobby Rush (D-IL) and Joe Barton (R-TX), is substantially similar to a bill which has been introduced several times in previous Congresses.

Topics: Data Privacy and Security

New Resources for REALTORS® on Internet Security

JANUARY 15, 2015

NAR's Information Central has released a three-part report which recommends a number of security practices to help keep REALTORS® and their business safe online.

Topics: Data Privacy and Security

President Proposes Stronger Data Privacy Laws

JANUARY 13, 2015

In a speech to the Federal Trade Commission on Monday, January 12, President Obama unveiled new proposals to address how consumers' personal data is handled

Topics: Data Privacy and Security

Identity Theft Red Flags and Address Discrepancies

MAY 29, 2014

The Identity Theft Red Flags and Address Discrepancy Rules, which became effective in 2008, require all users of credit reports to take certain actions whenever a credit report contains a notice of an address discrepancy.

In this section

- Data Privacy and Security Home
- Background
- Resources

Related

- Identity Theft Red Flags and Address Discrepancies

Political Advocacy

- Issue Summary
- NAR Letters to Congress
- NAR Letters to Federal Agencies

Learn More

- Course: Enhance Your Brand & Protect Your Clients
- What Data Privacy and Security Resources

**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
Patent Reform Issue Summary Paper**

Exhibit Title:

Patent Reform Issue Summary Paper

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 the 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 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 large brokers have been sued for alleged infringement of a patent dealing with property valuation. 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:

Curbing questionable patent litigation is a needed reform. However, improving patent system transparency and patent quality are equally important. While the Patent Trademark Office (PTO) has taken important steps to improve the system, more work is needed.

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.

Opposition Arguments:

Opponents argue that proposed reform could sweep in legitimate business practices, reducing the value of patent assets and chill innovation.

Legislative/Regulatory Status/Outlook

NAR has been [lobbying on our own behalf](#) and as part of the United for Patent Reform Coalition to support common sense patent litigation reforms. We hope to see a comprehensive patent reform bill passed in this Congress.

In the House, HR 9, the Innovation Act (Goodlatte, R-VA) contains a number of the reforms NAR seeks, while separate legislation, H.R. 2045, the Targeting Rogue and Opaque Letters (TROL) Act (Burgess, R-TX; Kaptur, D-OH), to reform demand letter abuse is moving through the House. These bills are expected to reach the House floor in May or early June

In the Senate, S.1137, the Protecting American Talent and Entrepreneurship (PATENT) Act, (Grassley, R-IA; Leahy, D-VT) was recently introduced. A Senate floor vote is anticipated in late May/early June.

Current Legislation/Regulation (bill number or regulation)

[HR 9, The Innovation Act](#)

[HR 2045, Targeting Rogue and Opaque Letters Act \(TROL Act\)](#)

[S 1137, Protecting American Talent and Entrepreneurship Act \(PATENT Act\)](#)

NAR Committee:

Federal Technology Policy Advisory Board
Business Issues Policy Committee

Legislative Contact(s):

Melanie Wyne, mwyne@realtors.org, 202-383-1234

Helen Devlin, hdevlin@realtors.org, 202-383-7559

Regulatory Contact(s):

Melanie Wyne, mwyne@realtors.org, 202-383-1234

Chris Polychron, CIPS, CRS, GRI
2015 President

Dale A. Stinton
Chief Executive Officer

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April 23, 2015

The Honorable Fred Upton
Chairman
House Energy and Commerce Committee
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
House Energy and Commerce Committee
237 Cannon House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Member Pallone:

On behalf of the more than one million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), I write to express NAR's concerns with the Targeting Rogue and Opaque Letters Act ("TROL Act") recently approved by the Commerce, Manufacturing and Trade Subcommittee. This legislation is intended to strengthen enforcement and reduce the number of bad faith demand letters that our members receive. Unfortunately, for reasons explained in detail below, the current draft provides too many options for trolls to continue their patterns of harassment with little consequence. As we explained in our written testimony provided by Vince Malta, NAR's Liaison for Law and Policy, before the Commerce Manufacturing and Trade Subcommittee hearing on February 26, 2015, this bill must be strengthened if it is to adequately and properly address the problems our members experience with abusive demand letters.

Real estate businesses, tenants, and service providers have been threatened and targeted with spurious patent infringement claims, in contexts that include the following:

- Real estate brokers implementing website technology to allow zooming in to located points of interest on a map and creating a home search alert function;
- Building owners and tenants using standard, off-the-shelf routers to provide Wi-Fi access for hotspots in lobbies, restaurants, atriums, and other common areas of buildings;
- The Multiple Listing Service, a critical tool for real estate agents, using location-based search capabilities to identify homes and other properties available for sale or lease; and
- Businesses attaching scanned documents to emails to execute contracts, closings, and other commonplace real estate transactions.

Rather than researching and litigating patent infringement claims, our members wish to channel their resources to serve their core functions to satisfy the real estate needs of the American people – and create jobs in the process.

In particular, we urge the Committee to:

1. **Remove the requirement of "a pattern or practice of sending" demand letters.**
The "pattern or practice" language creates unnecessary ambiguity about the number of letters that must be sent. Removing the term would make clear that even a single communication sent in "bad faith" would be considered an unfair or deceptive act or practice and allows a court more flexibility in identifying misconduct covered by the statute.
2. **Remove the definition of "bad faith."** In the original proposed text, "bad faith" was defined in terms of the sender's knowledge or awareness of the false or misleading nature of representations or omissions. In the mark-up, this definition was removed to be more consistent with current consumer protection law, which focuses on the effect on consumers rather than the knowledge of the violator. Indeed, recipients of demand letters can be harmed by misrepresentations or omissions regardless of whether the party making them knows them to be false or misleading. Instead of defining bad faith, we



suggest listing misconduct that can be considered “factors” in determining bad faith, including making representations without basis in fact or law, seeking compensation for invalid, unenforceable, expired patents or licensed activity, or failing to include critical information regarding the asserted patent and alleged infringement.

3. **Remove the separate “bad faith” requirement from the listed factors.** In the original bill text, certain factors evidencing “bad faith” also required a separate showing that the listed conduct was performed in “bad faith.” Requiring that “bad faith” be demonstrated to establish a violation, however, could nullify the Act’s provisions. For example, under the original draft, the failure to include any of the information required by section 2(b) (5) would have been a violation only if the information was omitted with knowledge or awareness of a high probability to deceive. This would have the effect of nullifying the Act’s disclosure requirements.
4. **Separate misrepresentations relating to third party licensees (factor 2) and prior knowledge of non-infringement (factor 3).** We suggest separating these items as their own factors instead of including them within factor 1, which requires a separate showing that assertions were made without a reasonable basis in fact or law. The conduct covered in factors 2 and 3, on the other hand, is, by definition, without reasonable basis in fact such that a separate showing is not necessary.
5. **Add a list of material information (factor 5).** We suggest adding a fifth factor that, in effect, requires the sender to identify allegedly infringed claims. The Supreme Court’s *Twombly* and *Iqbal* decisions require that a complaint include a plausible basis for relief, which, in the patent context, would require a specific identification of infringed claims. Failure to include such information in a demand letter is evidence that the assertion is objectively baseless and thus made in bad faith
6. **Remove the affirmative defense.** The affirmative defense would create a loophole that avoids application of the Act even if the sender was found to have acted in bad faith. Instead of an affirmative good faith defense, we propose a list of factors relevant to showing a sender has not acted in bad faith.

NAR appreciates your consideration of these much needed changes to the TROL Act and look forward to working with you further. Without these changes, the TROL act may in fact cause more difficulties for our members who are the victims of demand letter activity by patent trolls.

Sincerely,



Chris Polychron
2015 President, National Association of REALTORS®

cc: House Energy and Commerce Committee

Chris Polychron, CIPS, CRS, GRI
2015 President

Dale A. Stinton
Chief Executive Officer

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April 28, 2015

The Honorable Tom Marino
U.S. House of Representatives
410 Cannon House Office Building
Washington, DC 20515

The Honorable Jared Polis
U.S. House of Representatives
1433 Longworth House Office Building
Washington, D.C. 20515

The Honorable Ted Deutch
U.S. House of Representatives
2447 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Marino, Polis, and Deutch:

On behalf of the more than one million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), I wish to thank you for introducing H.R. 1896, the “Demand Letter Transparency Act of 2015.” This bill will help to advance discussions in the Judiciary Committee as to how to address the problems that REALTORS® and other Main Street businesses face with abusive patent troll demand letters.

Real estate businesses, tenants, and service providers have been threatened and targeted with spurious patent infringement claims, in contexts that include the following:

- Real estate brokers implementing website technology to allow zooming in on points of interest on a map and creating home search alert functions;
- Building owners and tenants using standard, off-the-shelf routers to provide Wi-Fi access for hotspots in lobbies, restaurants, atriums, and other common areas of buildings;
- The Multiple Listing Service, a critical tool for real estate agents, using location-based search capabilities to identify homes and other properties available for sale or lease; and
- Businesses attaching scanned documents to emails to execute contracts, closings, and other commonplace real estate transactions.

Rather than researching and litigating patent infringement claims, our members wish to channel their resources to serve their core function of satisfying the real estate needs of the American people – and create jobs in the process.

Our members know firsthand that “patent trolls” divert significant time and money from their businesses. Without needed reforms that assure that asserted patent rights are legitimate and frivolous litigation schemes are curtailed, 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.



While we support the transparency and disclosure requirements of H.R. 1896, we are concerned that limiting this provision to instances where 20 or more letters are sent from the same entity will create a loophole that trolls will easily game by creating additional shell corporations. We believe that all fraudulent demand letters should be subject to the bills transparency and disclosure requirements.

Thank you again for the introduction of the Demand Letter Transparency Act. NAR looks forward to working with you to improve this legislation and create needed reforms to the patent system that will truly promote innovation and expand job creation.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Polychron". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Polychron
2015 President, National Association of REALTORS®

Chris Polychron, CIPS, CRS, GRI
2015 President

Dale A. Stinton
Chief Executive Officer

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April 29, 2015

The Honorable Chuck Grassley
Chairman
U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable John Cornyn
Member
U.S. Senate Committee on the Judiciary
517 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Amy Klobuchar
Member
U.S. Senate Committee on the Judiciary
302 Hart Senate Office Building
Washington, DC 20510

The Honorable Charles E. Schumer
Member
U.S. Senate Committee on the Judiciary
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
U.S. Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Orrin Hatch
Member
U.S. Senate Committee on the Judiciary
104 Hart Office Building
Washington, DC 20510

The Honorable Mike Lee
Member
U.S. Senate Committee on the Judiciary
361A Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley, Ranking Member Leahy, Senators Cornyn, Hatch, Klobuchar, Lee and Schumer:

On behalf of the more than one million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), we wish to thank you for the introduction of the “Protecting American Talent and Entrepreneurship Act (PATENT Act).” We view the reforms in this bill as a meaningful way to protect American businesses from broad claims of patent infringement based on patents of questionable validity.

NAR, whose members identify themselves as REALTORS®, represents a wide variety of real estate industry professionals. REALTORS® have been early adopters of technology and are industry innovators who understand that consumers today are seeking real estate information and services that are fast, convenient and comprehensive. Increasingly, technology innovations are driving the delivery of real estate services and the future of REALTORS® businesses. As a result, NAR members know firsthand that “patent trolls” divert significant time and money from their businesses and strongly support legislation to curb patent troll abuses.

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.

REALTORS® continue to experience the pain that patent trolls inflict as they continue to file lawsuits at historically high rates, forcing our members large and small to divert resources that could otherwise go towards innovation and growth. The comprehensive reforms



proposed in the PATENT Act will strengthen and restore an essential balance to the patent litigation system that has been urgently needed for years.

Parties across the political and economic spectrum agree that the problems caused by patent trolls and abusive patent litigation must be addressed. A diverse group that includes businesses, consumer groups, legal scholars, economists, state legislatures and attorneys general have all come out in support of strong patent reform legislation.

We thank you for this important first step and look forward to working with you on this issue.

Sincerely,

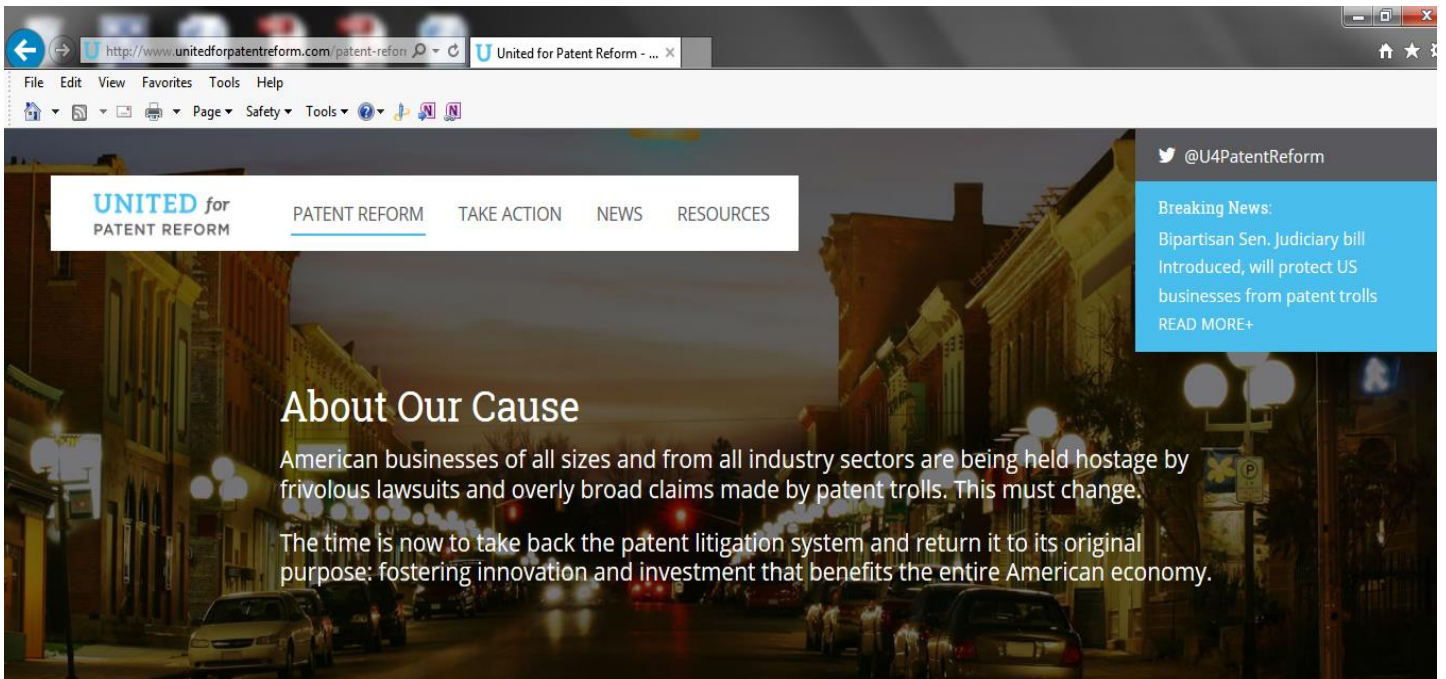
A handwritten signature in black ink, appearing to read "Chris Polychron". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Polychron
2015 President, National Association of REALTORS®

cc: United States Senate Committee on the Judiciary

United for Patent Reform Coalition

www.unitedforpatentreform.com



Our Goals for Reform

Reform abusive demand letters



Require that patent demand letters include truthful, basic information. Patent trolls send vague and deceptive letters alleging patent infringement to demand unjustified payments from innocent individuals and businesses. Vague demand letters should not be used to bully innocent businesses into paying what amounts to protection money.

Make trolls explain their claims

Protect innocent customers

Make patent litigation more efficient

Stop discovery abuses

Make abusive trolls pay

NAR Patent Reform Resources Website

www.realtor.org/patent-litigation-reform

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Patent Litigation Reform

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.

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Senate Introduces PATENT Act

MAY 1, 2015

On April 29, the Protecting American Talent and Entrepreneurship Act, or "PATENT Act" was introduced in the Senate.

Topics: Patent Litigation Reform

Keep Trolls Away from Productive Businesses

MAY 1, 2015

It's vital that Congress passes patent reform bills without delay, to keep patent trolls from taking their toll on job-creating businesses.

Topics: Patent Litigation Reform

Polychron Op-Ed Hits "The Hill"

APRIL 30, 2015

NAR President Chris Polychron laid out the problems that the real estate industry is experiencing with patent trolls

Topics: Patent Litigation Reform

Senate Patent Reform Bill a Good First Step

APRIL 29, 2015

NAR supports reforms in the PATENT Act to protect American businesses from claims of patent infringement based on patents of questionable validity.

Topics: Patent Litigation Reform

REALTORS® Going on Offense Against Patent Trolls


APRIL 29, 2015

In this section

- [Patent Litigation Reform Home](#)
- [Background](#)

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- [United for Patent Reform Coalition](#)
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**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
Net Neutrality Issue Summary Paper**

Exhibit Title:

Net Neutrality Issue Summary Paper

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 real estate professionals 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 legislative and regulatory efforts to ensure that broadband providers adhere to net neutral practices. NAR is concerned about the FCC's "fast lanes" proposal and has commented in opposition to the current proposed rule.

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 real estate professionals today. Net neutral practices will be essential to ensure that real estate content may be freely and efficiently distributed online.

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.

Opposition Arguments:

Opponents of network neutrality fear that excessive regulation of Internet Service Providers will create a disincentive to invest in new or additional Internet infrastructure ultimately leading to poor service for consumers.

Legislative/Regulatory Status/Outlook

On December 21, 2010 the Federal Communications Commission (FCC) issued new rules on net neutrality. Under these rules, wired broadband providers were "prohibited from blocking lawful content, applications, services and the connection of nonharmful devices to the network." Wireless broadband providers, however, were allowed more flexibility, reflecting the technical limitations on the amount of traffic a wireless network can handle. Both wired and wireless broadband providers would have been subject to transparency requirements, which require them to let consumers know how they manage network activity. The new rules also allowed 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 bandwidth.

On January 14, 2014, the U.S. Court of Appeals for the District of Columbia ruled that key elements of the FCC's 2010 Open Internet Order are invalid. By tossing out these rules, ISPs are now free to charge content companies higher fees to deliver Internet traffic faster or otherwise more efficiently. On May 15, 2014, the FCC issued a proposed rule for comment. This rule would allow large content providers like Netflix and Facebook and others to negotiate separate, exclusive deals with Internet Service Providers to carry their content on faster connections. This has been termed "Internet fast lanes."

NAR filed comments opposing the Commission's "fast lanes" proposal. In addition the Association organized a broad real estate coalition including over 100 MLSs, large firms and industry associations opposing the FCC's proposal. NAR will continue to let members of Congress know about our concerns and urge them to weigh in with the FCC.

The FCC published its Open Internet order in March 2015. The Order seeks to prevent Internet Service Providers from blocking Web traffic, slowing it down or setting up paid fast lanes. Several ISPs and their industry associations have filed lawsuits challenging the FCC's authority to implement this order. It is likely to take several years for these lawsuits to wind their way through the courts.

Finally, both the House and Senate have produced discussion drafts of legislation that purport to create net neutrality protections. NAR is working with both chambers to strengthen the drafts by addressing loopholes that could weaken consumers' protections. To date, this legislation has not progressed in either house.

Current Legislation/Regulation (bill number or regulation)

FCC Notice of Proposed Rulemaking entitled “Preserving the Open Internet” and “Broadband Industry Practices, GN Docket No.09-191, WC Docket No. 07

NAR Committee:

Federal Technology Policy Advisory Board
Business Issues Policy Committee

Legislative Contact(s):

Melanie Wyne, mwyne@realtors.org, 202-383-1234
Helen Devlin, hdevlin@realtors.org, 202-383-7559

Regulatory Contact(s):

Melanie Wyne, mwyne@realtors.org, 202-383-1234

**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
RESPA/TILA (TRID) Integration**

Exhibit Title:

RESPA/TILA (TRID) Integration

Exhibit Body:

RESPA/TILA Integration Remains a Learning Experience

By Ken Trepeta – Director – Real Estate Services – National Association of REALTORS®

Over the last several months, NAR has been conducting webinars and education sessions, as well as participating in several industry forums, to educate real estate professionals on the upcoming RESPA/TILA integration. Through this outreach, it is clear that the RESPA/TILA integration is going to be a learning experience for everyone. To paraphrase one participant – “there are things we still don’t know that we don’t know” as the August 1, 2015 implementation date approaches.

However, there are some things that can be anticipated. First, there is potential for disruption as lenders figure out what will and will not require a new 3-day waiting period for the new Closing Disclosure (CD). Second, settlement service providers are unsure as to whether RESPA or more stringent TILA liability and recourse will apply in a given circumstance. And, in some states, there will be confusion around the disclosure of owner’s and lender’s title insurance premiums.

Real estate professionals should ensure that the need for last minute changes is minimized and prepare their clients accordingly. In the event last minute changes are unavoidable, it is hoped that lenders will be prepared and that they will be able to quickly discern whether a change requires a new waiting period or is clearly within the exception laid out by the Consumer Financial Protection Bureau (CFPB).

For the above reasons, as well as many others, it is clear that more guidance is necessary from CFPB. First, additional consideration should be given to laying out liability standards. RESPA standards should apply to what have historically been RESPA issues and TILA standards should apply to historically TILA issues. Clearly stating what the liability standards should provide lenders and other market participants some additional security that relatively minor issues will not invoke private rights of action and potential draconian penalties.

CFPB should also address the disclosure of title premiums under “simultaneous issue” of lender’s and owner’s policies. This will help avoid needless confusion and paperwork, as well as perhaps avoid additional disclosure documents.

Finally, August, September, October, and even November, are heavy closing months. Given the implementation concerns that continue to arise, industry groups think CFPB should consider making August 1 the beginning of a probation period, where everyone has to follow the rules, but legal liability will not be incurred. This would give the industry (and CFPB) time to catalog the issues that arise and share them with the CFPB so it can make adjustments without impeding transactions. The final rule could then go into full legal effect for liability purposes in January or February when

there are fewer transactions and there will be much greater knowledge of how to avoid problems and still comply.

When HUD implemented RESPA reform, it also issued a 400 questions and answers to explain the rule. Industry had hoped that would be unnecessary with the new RESPA/TILA rule, but it appears more written guidance is not only unavoidable but would be a great benefit. NAR and its industry partners will continue to work with the CFPB to ensure lingering questions get answered so consumers only benefit from these new rules and disclosures.

**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
Marketing Agreements Under Scrutiny - Best Practices**

Exhibit Title:

Marketing Agreements Under Scrutiny - Best Practices

Exhibit Body:

Dos and Don'ts for Marketing Agreements

By Phillip Schulman Esq., Partner, and Holly Bunting Esq., Partner, K&L Gates

Real estate brokers must comply with the Real Estate Settlement Procedures Act, or RESPA, which prohibits brokers from receiving anything of value in return for the referral of settlement service business. RESPA, however, permits brokers to receive reasonable payments in return for goods provided or services performed by brokers. Marketing Services Agreements (MSAs), therefore, may be lawful under RESPA if carefully structured to comply with the Act. Violators of RESPA are subject to harsh penalties, including triple damages, fines, and even imprisonment. MSAs also have come under increased scrutiny after the CFPB issued a consent order related to MSAs. Thus, when contemplating an MSA, careful consideration must be given to structuring the agreement under RESPA. Below are some of those considerations.

Dos

- Be aware that RESPA permits payments for services performed by a broker only if actual services are performed and the fee is fair market value for the services performed.
- Memorialize an MSA in a written agreement that states in detail the marketing and advertising services to be performed and the fee to be paid in return for such services.
- Ensure that marketing and advertising services identified in a written MSA are, in fact, performed.
- Consider including a reporting and/or audit obligation in a written MSA that requires the service provider to document or otherwise provide evidence that services were performed.
- Provide a disclosure to consumers notifying them of the MSA relationship.
- Document how the parties arrived at the amount of the marketing fee and the determination of fair market value.
- Consider engaging an independent third party to establish the fair market value of the marketing and advertising services.
- Modify the amount of the marketing fee under an MSA only when objective changes are made to the services performed and/or other terms of the agreement. Verify the basis for the increase or decrease

Don'ts

- Do not include “services” in the MSA that require a broker to market a lender or title company directly to a consumer, like a sales pitch to a consumer or distributing lender or title company brochures or other materials directly to a consumer.
- Do not designate a settlement service provider as the broker’s “preferred” company as part of the MSA.

- Do not enter into exclusive MSAs such that the broker agrees to perform marketing and advertising services for only one lender or title company.
- Do not accept fees that are in excess of the fair market value of the marketing services actually performed.
- Do not base the amount of marketing fees on the volume of referrals or success of the referrals.
- Do not accept fees under an MSA for allowing access to sales meetings, conducting customer surveys, or creating monthly reports.
- Do not make frequent changes to the fees paid under an MSA based on the volume or success of referrals or any other non-objective criteria.
- Do not enter into an MSA with a company that is an affiliate of the broker.
- Do not enter into an MSA with a month-to-month term.

Disclaimer: The DO's and DON'Ts listed above are not all-inclusive and small variations in the facts can lead to different outcomes. They also do not take into consideration any additional regulations that may have been imposed in your state, which may prohibit activities that are permissible under RESPA. Speak with a RESPA attorney to make sure you comply with all applicable laws.

**EXHIBIT FOR THE AGENDA OF THE
2015 BUSINESS ISSUES POLICY COMMITTEE
NATIONAL ASSOCIATION OF REALTORS®
2015 REALTORS® LEGISLATIVE MEETINGS
H.R. 685 Issue Summary**

Exhibit Title:

H.R. 685 Issue Summary

Exhibit Body:

The Dodd-Frank Ability to Repay/Qualified Mortgage (QM) discriminates against various business models including mortgage bankers, mortgage brokers, and affiliates. Specifically, for a mortgage to be a QM and receive safe harbor protections, fees and points cannot exceed 3% of the loan amount. The problem is that under the Consumer Financial Protection Bureau's (CFPB) rule, mortgage bankers, broker, and affiliated companies have to count many more items towards fees and points than large retail financial institutions. The CFPB needs legislation to change this because of the specificity of the Dodd-Frank legislative language.

I am a real estate professional. What does this mean for my business?

Real estate professionals and their clients will have fewer choices in where they can obtain a mortgage or other settlement services and what level of service they can rely on. Some will not be able to obtain loans at all.

NAR Policy:

NAR supports greater access to mortgage credit and consumer choice. The Dodd-Frank Qualified Mortgage definition of fees and points needs to be fixed in order to ensure continued access to a broad range of lending institutions and options that meet consumer needs.

The current definition of fees and points creates an un-level playing field between different types of lenders. Other laws and rules already in effect prevent the apparent harms the current 3% rule is supposed to address. It is not necessary to discriminate against mortgage companies and their affiliates in order to protect the consumers from such issues as steering. They are protected via the Real Estate Settlement Procedures Act (RESPA) which makes kickbacks illegal and other rules such as the loan officer compensation rule which forbids compensation to be based on loan terms or conditions, removing any incentive to steer.

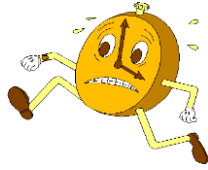
Opposition Arguments:

Opponents of NAR policy believe consumers do not receive enough protection and need additional protections to control the prices they pay for title insurance, mortgages and other settlement services.

Legislative/Regulatory Status/Outlook

H.R. 685, the "Mortgage Choice Act", introduced by Representatives Bill Huizenga (R-MI), Gregory Meeks (D-NY), Steve Stivers (R-OH), , David Scott (D-GA), Ed Royce (R-CA), Mike Doyle (D-PA), Patrick Murphy (D-FL), David Joyce (R-OH), Betty McCollum (D-MN) and Steve Fincher (R-TN) has now passed the House Financial Services Committee with a bipartisan vote of 43-12 and passed the House 286-140. Companion legislation is expected in the Senate once cosponsors are secured.

TIME IS RUNNING OUT...



...TO MAKE COMMITTEE RECOMMENDATIONS FOR 2016!

Deadline: Friday, May 22, 2015

Don't know where or how to place a recommendation?

- ✦ Log onto REALTOR.org
- ✦ Click the "About NAR" tab at the top of the page, and click "Governance"
- ✦ Click "Committees" (right hand side)
- ✦ Click "Selection Process for 2016 Committees Open"
- ✦ On the committee recommendation landing page, Click "Enter a recommendation" either for someone you know or a self-recommendation

Did you know?

- ✦ Members *can and should* make recommendations for themselves
- ✦ Members should seek quality recommendations from: NAR leadership figures (including Officers, Committee Liaisons, Regional Vice Presidents), current Chairs/Vice Chairs, NAR Directors, State and Local Associations, etc.

Have You Completed/Updated Your Expertise Profile?

Members interested in serving on NAR's committees are encouraged (but not required) to complete an Expertise Profile.

- ✦ From the committee recommendation landing page, click "Enter Your Expertise Profile"
- ✦ Create a new profile or edit an existing one
- ✦ **You can add a photo to your profile!**
- ✦ **Expertise Profiles are independent of the recommendation process - they can be completed or updated at any time!**

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