



TRAINING TIP OF THE WEEK

Legal HOT Topics for Agents

Follow these tips to reduce risk of **WIRE FRAUD**:

- [Alert homebuyers at the outset of the transaction](#). Many brokers are requiring signed disclosures.
- Instruct homebuyers to call wire recipient using an independently-verified phone number.
- Avoid sending wire instructions (and any sensitive financial information) via email.
- Use a secure transaction management platform to share documents and information.
- Use good email security practices – never open unsolicited links or attachments, keep operating system and anti-virus updated, use strong passwords and two-factor authentication, purge regularly, and avoid using unsecured wifi.
- Create an e-mail rule to flag email communications where the “reply” email address is different from the “from” email address shown.
- Immediately report suspected fraud to the bank from which the funds were transferred.
- Get to know your local FBI field office and contact them immediately if fraud is suspected.
- Report fraud incidents to www.ic3.gov([link is external](#)).

Resources:

[How to Avoid Wire Fraud video](#)

[Wire Fraud Email Notice](#)

INDEPENDENT CONTRACTOR STATUS:

There has been an increase in litigation filed against real estate companies in California recently alleging their misclassification of licensees as independent contractor status of employees. Most claims are brought pursuant to the Private Attorneys General Act (PAGA) which authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations. While there is often an inherent conflict between common law independent contractor status and the traditional classification of real estate salespeople as independent contractors, some state statutes expressly address the unique status of real estate agents, permitting classification as independent contractors despite the required control and supervision the broker has over the licensees.

Risk Reduction Tips:

- Know your state law regarding independent contractor classification of real estate licensees. Statutes protecting this classification are the strongest defense to a legal challenge.
- Always have a written independent contractor agreement and consider including a mandatory arbitration and class action waiver provision in such agreements.
- Don't mandate meetings, administrative office duties, or use of certain tools.
- Allow salespeople to work where, when, and how they deem best.

Resources:

White Paper Report: [Independent Contractor Classification in Real Estate](#)

[State Statutory Approaches to Worker Classification](#)

[Key Provisions for Independent Contractor Agreements](#)

[Ten Ways to Manage the IC Relationship](#)

[FAQs](#)

This is a Publication of the Cache Valley Association of REALTORS®

TIPS OFFERED BY THE CACHE VALLEY ASSOCIATION OF REALTORS® ARE INTENDED FOR BROKER AND AGENT TRAINING. IN THE EVENT ADDITIONAL LEGAL ADVICE IS NEEDED, WE ENCOURAGE MEMBERS TO CONTACT THE UAR LEGAL HOTLINE AT (801) 676-5211 MONDAY, WEDNESDAY AND FRIDAY BETWEEN THE HOURS OF 8:30 AM AND 4:00 PM.



FTC/DOJ Workshop: Brokerage Competition

On June 5, 2018, the FTC and DOJ hosted a workshop to discuss competition in the real estate industry. Panelists included perspectives from brokers, MLSs, portals, an economist, a consumer advocate, and NAR. The discussions explored, distribution of listing data, diverse brokerage models, policies and regulations, and competition with respect to fees, services, reputation for quality.

Resources:

[NAR GC's opening remarks at workshop](#)

[NAR Comment Letter to FTC/DOJ](#)

[Consumer Federation of America's Agency Report\(link is external\)](#)

Class Action Antitrust Litigation:

Following the *Moehrl v. NAR* litigation filed in March, two additional lawsuits with similar allegations have been filed against the same defendants. Plaintiffs in all three cases allege home sellers unfairly pay the commissions of buyers' brokers. The complaints ignore how commissions are subject to negotiation. And they question the value buyers' brokers deliver in the home buying and selling process.

Often referred to as copycat lawsuits because the allegations are substantially similar to lawsuits already filed, such litigation is commonly brought by additional law firms whose ultimate goal is to combine their suits with others, in hopes they receive a portion of attorneys' fees. NAR remains confident these lawsuits are without merit. They are wrong on the facts, wrong on the law, and wrong on the economics. The MLS system is designed first and foremost with the buyer and seller in mind. It is pro-competitive and pro-consumer. And buyers' brokers play a very real and critical role in the home buying and selling process.

In the best interests of consumers, NAR will aggressively defend all three lawsuits – and any others that may be filed in the future. Discussions regarding these lawsuits should be grounded in the bigger picture of the value of REALTORS® and the MLS system to both buyers and sellers.

REALTORS® provide great value to their clients and communities. Every REALTOR® must adhere to a strict code of ethics, which is based on professionalism, consumer protection, and the golden rule of treating others the way we wish to be treated. REALTORS® use their unmatched knowledge of local markets and industry expertise to help buyers and sellers navigate and negotiate through what are often the most complicated and lengthy financial transactions of their lives.

REALTORS® are engaged community members and neighbors, committed to building and enhancing the neighborhoods they serve.

MLSs create efficient markets that benefit home buyers and sellers. With the vast amount of real estate information available today, it is more crucial than ever to have trained, local brokers helping consumers navigate their options in order to arrive at the best possible decision. MLSs create vibrant markets with numerous opportunities for residential buyers and sellers by enabling cooperation between listing and buying brokers. With all of this information in one place, MLSs are able to safeguard and manage market information, allowing all parties to complete real estate transactions with confidence and efficiency.

MLSs are pro-competitive and pro-consumer. MLSs benefit both buyers and sellers by providing increased exposure for sellers' properties while allowing buyers access to all MLS-listed properties through one broker of their choice. Because broker commissions are subject to negotiation, this system creates highly competitive, free markets, which ensure consumers receive superior service.

Over many years, courts across this country have validated the legality, efficacy and value of the MLS system.

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