

Top 10 Legal Issues Facing Brokers Today

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National Association of REALTORS® General Counsel Laurie Janik has reviewed legal cases brought against REALTORS® and compiled the 10 top issues affecting brokers today. Here they are.

1. **Misrepresentation and failure-to-disclose** issues make up over 69% of the lawsuits against REALTORS®, according to the NAR-endorsed errors and omissions insurance program.
2. **Agency problems or breach of fiduciary duties** are the second largest source of complaints. The problem of course is that very few agents really understand what their “statutory duties” to clients really mean. The first module of the ABR (Accredited Buyer’s Representative) course is all about agency and related statutory duties. That module should take about three hours to teach, but it always takes five hours minimum because of questions and concerns voiced by students. How much training is too much training? Apparently there is no such thing as too much training.
3. **Fair housing** violations account for only 1% to 2% of litigated cases, but result in the most costly judgments- especially for those who are in the rental business.
4. **Antitrust** laws are intended to prevent unreasonable restraints of trade. With today’s competitive environments for sellers- brokers falling at their feet with all sorts of competitive rates to get the listing- a big question for brokers is, “Do you know what your agents are saying while they are out competing for listings?” When was the last time you did antitrust training in your office?
5. **False or misleading advertising** lawsuits may result from such issues as “For Sale” sign bans. Internet advertising is a hot topic right now.
6. The **employment or independent contractor** status of salespeople and personal assistants can impact your tax liability. Over 90% of salespeople are independent contractors, but is the same true of their assistants?
7. **Environmental issues** are only number seven on this list, but I can guarantee you that, since the list was generated, environmental issues have climbed to one of the top spots. The main complaint? The agent’s failure to recommend persons with the expertise to evaluate hazards. With the Lead Paint disclosure form alone worth \$66,000 in fines (\$11,000 per line not checked/initialed/or signed) a broker cannot let agents’ compliance with environmental disclosures go unchecked.
8. **Real Estate Settlement Procedures Act** violations occur when mortgage brokers, lenders, title services, or real estate brokers give or receive anything of value in return for referrals. With many brokers today offering mortgages services as well as home protection plans, conflicts of interest are everywhere!
9. **Unauthorized practice of law** spawns lawsuits whenever brokers or salespeople provide legal advice. Having been a broker/owner for years, I shutter when I think of the “legal advice” given out by me as well as my agents. Adding addendums to purchase agreements, drafting agreements between the parties at the closing, or just giving a legal opinion on what should be done regarding inspections can create a huge problem for the broker later.
10. **Americans with Disabilities Act** complaints have been brought against brokers who fail to do what’s readily achievable with reasonable effort and expense to serve clients with disabilities.

The NAR 2003 Legal Matrix lists the top issues brokers think they are facing and compares that list to the list that real estate commissions have developed as well as a list of issues from “real estate insiders” who have predicted future developments in real estate. Compare these lists to each other as well as to the list above to see how the focus of real estate has changed over the last couple of years. The list from the real estate commissions concentrates on those issues where they have seen an increase in disputes based upon these individual issues.

Real Estate Commissions	Brokers	Insiders
1. Buyer Agency Issues	Commission Disputes	Technology
2. Dual Agency Issues	Disclosure: Structural Defects	Affinity Groups
3. Commission Disputes	Technology: Advertising	RESPA
4. Deceptive Trade Practices	Disclosure: Mold	Ethics
5. Escrow Mishandling	Disclosure: Roof	Third Party Liability
6. Licensing Issues	Frivolous Lawsuits	Agency
7. Technology: Advertising	Internet Advertising	Relocation COs.
8. Disclosure: Structural	Licensing Issues	Fair Housing
9. Disclosure: Septic	“As is” clauses	Employment issues
10. Personal Assistants	Technology: Privacy	Property Management

Add up all of the issues raised by these sources, and it is clear that it is definitely not as easy to be a broker today as it was 32 years ago, when I started in the business.

HELP IS ON THE WAY!

The North Shore – Barrington Association of REALTORS® is presenting an ABR-M (Accredited Buyer’s Representative for Managers/Brokers) course on Saturday, October 11, at the Northbrook classroom, 450 Skokie Blvd, Bldg 1200. The course is a must for brokers who really want to safeguard their agents and their income. By the way, you can take the course even if you don’t want to complete the designation requirements. The class day begins at 8:30 AM and ends at 5 PM. Cost is \$150 for registration by Oct 3; late registration is \$175. Need an additional incentive? The class offers three elective hours of continuing education credit!

The ABR-M course will help you:

- Manage risks
- Develop training systems for risk management skill building by applying the use of the many forms available to you through your association
- Organize your information-keeping systems so that you can track the buyers that your agents work with in order to forecast future income streams from buyers and sellers
- Survey your clients as to their satisfaction level and develop a strategy to increase your rate of repeat clients
- Focus on a company ideology that truly represents your company’s mission and objectives
- Identify company agency policies that will help reduce your liability
- Challenge you to encourage your agents to work with buyers only under exclusive buyer representation agreements so that you know who you clients are at all times”.
- Work the FSBO market to increase your inventory for buyers
- Create marketing systems
- Recruit the agents that will fit into your ideology and be less of a liability to you
- Adapt to the changes that lie ahead.

I am the instructor for this program and guarantee you that it will be a day well spent. I am bringing the latest NAR data with me to show you where your training needs to be focused in the next two years. I sincerely hope that you will join me.

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