Risk Management and Legal Issues
NAR General Legal Counsel Katherine Johnson Speaks to RMR Leadership Conference

One of the featured presenters in the Rocky Mountain Regional Leadership Conference in February was NAR General Counsel Katherine “Katie” Johnson. Katie presented a quick overview of several areas of Risk Management followed by state legal updates from NVAR CEO, Teresa McKee and Arizona Association of REALTORS® CEO, Michelle Lind and a short Q&A session. Teresa reported that Brokers and Agents in Nevada should pay particular attention to the Independent Contract issue which has been the subject of a couple of Supreme Court Decisions this year. It is crucial to maintain the independent contract relationship between broker and agent. Below is information provided by NAR which will help you maintain that relationship.

Below is a link or content for each topic covered by Katie.

**RESPA Webinar on Marketing Agreements on February 19th**
The webinar focuses on structuring marketing agreements and co-advertising arrangements that comply with the Real Estate Settlement Procedures Act (RESPA). The webinar features RESPA expert Phil Schulman of K&L Gates. The Consumer Financial Protection Bureau has issued tens of millions of dollars in fines in connection with RESPA violations, including for non-compliant marketing and services agreements. The webinar will help your members learn the appropriate way to structure these arrangements along with an article about CFPB targeting kickbacks RESPA Do's and Don'ts for Marketing Services Agreements (MSAs) [http://www.realtor.org/articles/cfpb-targets-kickbacks](http://www.realtor.org/articles/cfpb-targets-kickbacks).

Watch for details of another webinar coming on March 19th.

**Patent Troll Video and Link**

**Protecting your Listings from Rental Scams**

**Protecting your Listings from Rental Scams**

**Copyright Infringement Protection**
**Independent Contractor vs. Employees**  *Supervise but not control*

**MANAGING YOUR INDEPENDENT CONTRACTOR RELATIONSHIPS**

The relationship between brokers and real estate salespeople is unique. This fact has been widely codified in applicable federal and state laws, including many state unemployment insurance and worker’s compensation statutes. Under federal law, the Internal Revenue Code specifically carves out real estate salespeople from the definition of employee, provided the IRS’ three-factor test is met. Brokers should be aware that compliance with the IRS three-factor test does not necessarily exempt real estate salespeople from a state’s definition of employee. Approaches to this issue vary greatly by state, and emerging case law is continuing to shape the liabilities brokers may face when classifying their sales agents. In states where a specific test for properly classifying real estate salespeople as independent contractors has been adopted in a particular statute, brokers should ensure compliance with the applicable test. If no specific test has been adopted, brokers should at a minimum keep in mind the ten tips outlined below. **TEN TIPS FOR MANAGING INDEPENDENT CONTRACTOR RELATIONSHIPS WITH YOUR SALES AGENTS**

1. Have written independent contractor agreements with your real estate salespeople.
2. Don’t ever refer to real estate salespeople as employees of the broker in any broker written materials or otherwise.
3. Avoid paying for any job-related training or continuing education.
4. Pay your real estate salespeople on a commission-only basis; avoid paying them at regular fixed intervals.
5. Don’t require your real estate salespeople to report to the broker’s office on certain days or at certain times in order to perform general office administrative duties, such as answering phones.
6. Allow your real estate salespeople to work where, when and how they deem best.
7. Maintain control of broker-employed administrative support. Avoid allowing your real estate salespeople to exercise any authority over the hiring, firing or supervising of such staff.
8. Make attendance at monthly staff or training meetings voluntary.
9. Allow real estate salespeople to choose and purchase equipment, as necessary, to perform their jobs, such as computers or iPads.
10. Issue your real estate salespeople 1099s, rather than W-2s. Do not withhold any federal or state income taxes (including estimated taxes), social security, Medicare or any other applicable federal or state taxes.

Additional information on legal issues can be obtained by calling NVAR’s Legal Information Line 800-748-6999. (Thank you to Regional Vice President Linda Rheinberger for inviting Katie Johnson to the Conference and to NAR Risk Management Committee Chair, New Mexico REALTOR® Cathy Colvin for compiling the links.)