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# HOT TOPIC ALERT

Prepared for NAR by Legal Research Center, Inc.

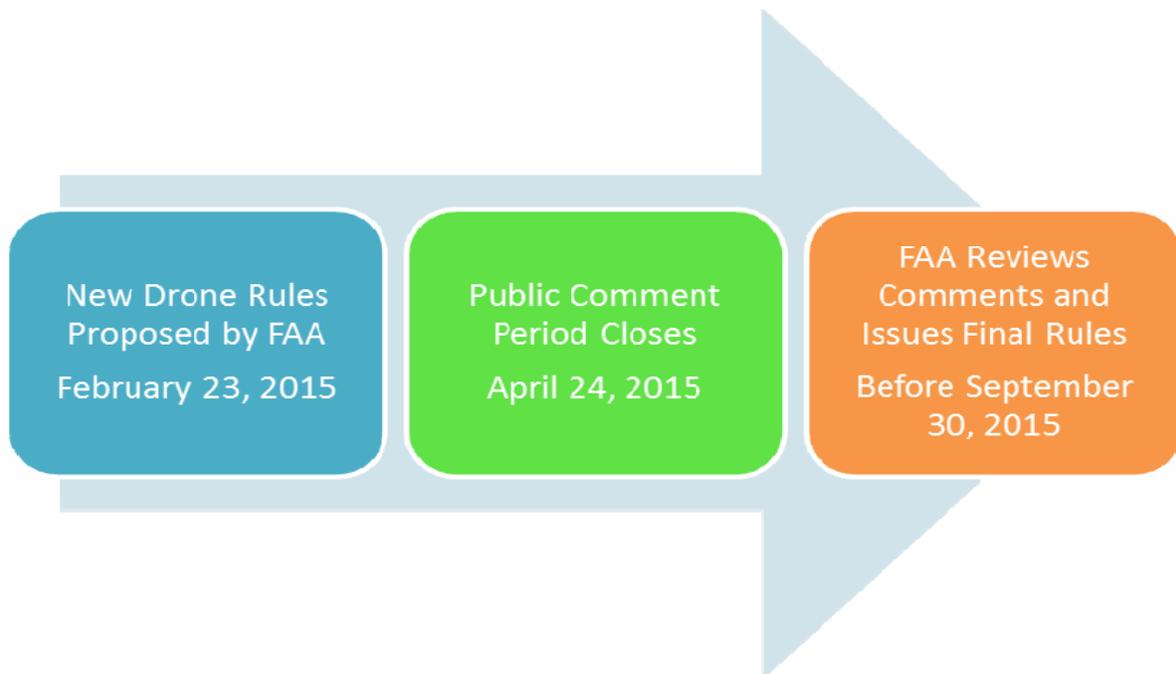
## Drones and the REALTOR®

Unmanned aerial vehicles (UAVs), commonly known as “drones” have received a lot of attention through the media, government agencies, legislative bodies and technology enthusiasts. In the early 21<sup>st</sup> century, the term “drone” was used to refer to UAVs, and the use of drones by the U.S. military was primarily for surveillance and targeted missile strikes. Recently, as inexpensive and lightweight drones have become commercially available to the public, the focus on UAVs has shifted to use by hobbyists and businesses.



Amazon.com [applied for permission](#) from the Federal Aviation Administration to test using drones for small deliveries, and at least one [pizzeria](#) has experimented with delivery drones. There are also many proposed uses of drones that are less attention-grabbing. For example, the FAA [approved the use of drones](#) for monitoring construction sites or inspecting oil rig flare stacks. Several media companies have formed a coalition to test drones for [news gathering](#). Google recently [acquired drone manufacturer Titan Aerospace](#), with plans to use the drones to provide internet access to remote areas.

Many real estate agents have expressed interest in using drones in their businesses. A drone is an excellent way of getting a [panoramic photo or video of a property](#). [Drones are also potentially useful](#) for doing visual surveys of undeveloped property, or for gathering images for architectural renderings of new buildings. Note that, although the [possibilities for using drones](#) continue to increase, operating a drone for commercial purposes without [FAA permission](#) is currently illegal. On February 23, 2015, the FAA [proposed new drone rules](#) that will simplify licensing and eliminate the requirement that prior approval be obtained. The rules probably will not be made final until at least 2017; in the meantime, the FAA advises users that the [old rules remain in effect](#).



[Civilian drones](#) appear like small helicopters with several rotors. They [can typically carry](#) only a few pounds, and have short flying ranges. Drone operators must obtain an [airworthiness certificate from the FAA](#).

As of March 2015, the FAA had granted [exemptions](#) to 39 companies. Douglas Trudeau, an associate broker with Tierra Antigua Realty in Tucson, was the first real estate professional to [receive an exemption](#). Mr. Trudeau sought to use a UAV “to enhance academic community awareness and augment real estate listing videos.” The permission allows Mr. Trudeau to operate a Phantom 2 Vision+ unmanned aircraft system at a maximum altitude of 300 feet, and at a maximum speed of 30 knots (approximately 35 mph). The aircraft must remain within the line of sight of the operator at all times, and may not be operated within five nautical miles of an airport. It took almost six months to receive the exemption.

On November 10, 2014, the NAR Board of Directors adopted a [policy](#) on the use of unmanned aerial vehicles. The policy advises NAR members “that the use of unmanned aerial vehicles for real estate marketing is currently prohibited by the Federal Aviation Administration.” The policy reminds members that unauthorized use of unmanned aerial vehicles could result in substantial fines and penalties. The [FAA is working](#) toward a system that will integrate small UAVs into routine aviation operations, and [federal law](#) requires that new rules be adopted no later than September 30, 2015. Representatives of NAR [met with the FAA](#) to urge that the process be expedited to allow Realtors® to make safe use of UAV technology.

The final FAA regulations must address several issues. Safety is, of course, the largest concern. [Anecdotal evidence](#) suggests that civilian drones cause problems for pilots of regular aircraft. [Privacy](#) is another concern. The final regulations should acknowledge these concerns while allowing the technology and its uses to develop. While enthusiasm for drones is [less than universal](#), the use of UAVs by the real estate community will expand, and this important new marketing tool will become a part of the routine.

## UAVS AND PRIVACY

The potential uses for UAVs stagger the imagination. The units are relatively inexpensive, so the possible pool of users is much larger than for conventional aircraft or helicopters that historically have been used for aerial monitoring or photography. Drones can go many places a plane or helicopter cannot, such as over fences and next to windows, and that ability raises serious privacy issues. Intentions might not even be an issue: an agent using a UAV to take a panoramic video of a listed property might find that he or she accidentally recorded a view of the neighbors inside their home.

In 2013 and 2014, 15 states enacted laws relating to UAVs and privacy. Of these, most initially focus on law enforcement drones. Eleven states ([Alaska](#), [Florida](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Montana](#), [Oregon](#), [Tennessee](#), [Texas](#), [Utah](#), and [Wisconsin](#)) passed laws that specifically require law enforcement to obtain a warrant before conducting a search with a UAV. In Iowa, the state law also prohibits the use of UAVs to enforce traffic laws.

States also moved to protect individual privacy from private drones. Laws in Indiana and Louisiana make it a criminal offense to use a UAV to monitor or photograph property without the property owner's consent. In Illinois and Tennessee, it is unlawful to use UAVs to interfere with hunters and fishers. Idaho law allows a person to bring a lawsuit against one who uses a UAV to photograph or record the person without his or her written consent, if the operator intends to publish or publicly disseminate the photo or recording. North Carolina also grants a private right of action to a person who is photographed without their consent by a drone operator. In Oregon, the law allows an owner or occupant of property to bring a civil action against a person who flies a UAV over the property at an altitude of less than 400 feet in certain circumstances.

In states without specific laws, existing privacy laws could apply to UAV activity. California's anti-paparazzi law ([Cal. Civ. Code § 1708.8](#)) makes it a "constructive invasion of privacy" for a person to attempt to capture:

*in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity, through the use of any device . . . if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used.*

Note that this law would *not* apply to a drone merely flying near someone's property without attempting to capture images or video.

Laws in [Rhode Island](#) and [Wisconsin](#) allow lawsuits for invasion of privacy. To bring a lawsuit under the Wisconsin law, the plaintiff would have to show that the invasion was “highly offensive to a reasonable person.” A lawsuit may be brought under the Rhode Island law if the invasion was “offensive or objectionable to a reasonable man.” Neither law defines the term “offensive.”

Court decisions in other states allow lawsuits for [intrusion upon seclusion](#). As in Rhode Island and Wisconsin, these cases depend on the intrusion being “offensive.” Whether an intrusion by a UAV would be offensive is a question that would be decided on a case-by-case basis.

The FAA [stated](#) that it would take privacy concerns into account when finalizing its drone regulations. The Agency has little authority to protect privacy, but says that its experience overseeing UAV test sites “will present an opportunity to inform the dialogue . . . concerning the use of [UAV] technologies and the areas of privacy and civil liberties.” The [general unpopularity of UAVs](#) makes it more likely that *any* intrusion by a UAV would be considered offensive. The features that make drones especially useful to real estate licensees are those that could lead to invasions of privacy—proceed with care.

### DRONE OF MY OWN?

If you want to use a UAV in your real estate business, don't. At least, don't *yet*. As of this writing, you would need special permission from the FAA, and that's far from a rubber-stamp process. New rules that allow wider use of drones are still in the initial stages, and the earliest they will be finalized is in 2017. Even if you receive that permission, the FAA may impose stringent limitations. The [exemption](#) granted to Douglas Trudeau of Tierra Antigua Realty in Tucson is a good example: the exemption states that the “pilot in command” of the UAV must have “at least a private pilot certificate and at least a current third-class medical certificate [showing that the [certificate holder](#) has no medical condition that would interfere with the safe operation of the aircraft].” The pilot must also have at least 25 hours of drone training. Operating a UAV is [complicated](#) and [potentially dangerous](#)—training and experience requirements are included in the federal regulations proposed in 2015.

Legal restrictions extend beyond the FAA. Three states—[North Carolina](#), [Tennessee](#), and [Texas](#)—have laws that limit private citizen use of UAVs. The Texas and Tennessee laws allow UAVs to capture an image of real property “with the consent of the individual who owns or lawfully occupies the real property captured in the image.” The North Carolina law is similar, except the law is phrased as a prohibition: it is unlawful to conduct surveillance of private real property or a dwelling without consent.

State UAV laws generally do not include licensing requirements. One exception is North Car-

olina, which requires a license from the Division of Aviation to operate a UAV for commercial purposes. Licensing requires passing a knowledge and skills test, and may set geographic limits on activity. Regulations may address the collection, storage, and use of data collected by a drone.

It remains to be seen whether new federal regulations will impose stricter requirements than state laws. If you remain interested in drone use, learn what state law says you may or may not do, and remember that you may not operate one for commercial purposes without FAA permission.

Additional resources from NAR Government Affairs on UAVs: <http://www.realtor.org/topics/drones>

**Contact for NAR Hot Topic Alerts or State Issues Tracker**

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