

## Within the Law 2018

1. **Advertising Rules – Before and After** – All advertising must include the licensed name of the broker. Effective January 1, 2018, an individual licensee's (or team) name cannot be in larger type size than the name of the firm. This requirement is met by either comparing block size or point size.
2. **Promotional Incentives – Rules to List By** – When marketing real estate services, Realtors need to be ever-mindful of the cross-sections of lottery, raffle, and impermissible referral fees to an unlicensed person.
3. **Marihuana and Real Estate** – Real Estate licensees should be well-acquainted with the federal and state divide when it comes to real estate intended to be used for the cultivation and sale of medical marihuana.
4. **Maintaining Your Corporate Shield** – Creating a corporation is not sufficient to protect against personal liability. The corporate veil may be pierced where the corporate owners did not: (1) operate the company as a legal entity, separate from themselves individually; or (2) conduct business in the name of the corporation (e.g., fail to advertise using the same type size for the corporate name as the individual licensee's name).
5. **Escalation Clauses** – Escalation Clauses (e.g., Buyer A will increase his offer by \$2,000 more than any competing offer) may be drafted in different ways to eliminate risk to the buyer but still make the offer attractive to the seller.
  - a. Limit the financial exposure by adding a "not to exceed" amount;
  - b. Eliminate "fake" offers by adding the words "bona fide" and "good faith;"
  - c. Make increase of offer contingent upon being provided a preapproval letter from the lender of the second buyer;
  - d. Make increase of offer contingent upon property appraises at higher price;
  - e. Add an extremely broad inspection clause;
  - f. Put a time limit (end date) on Escalation Clause;
  - g. Define competing offer amount so as to eliminate seller concessions and other separate consideration.
6. **Working with FSBOs** – When dealing with FSBO sellers, buyer's agents should make their agency status known early and often, should never offer the sellers advice or persuade them and encourage them to hire an attorney.