

# Protecting the Operations of REALTOR® Businesses

## Congressional Action Needed:

Congress needs to act to address issues that negatively affect the real estate industry, the business of real estate and the consumers they serve every day. It needs to provide relief from patent trolls who game the system to extract money from real estate firms and other small businesses and address needed patent litigation reforms. Congress also needs to enact data security legislation that does not create onerous burdens for small businesses. Finally, Congress needs to end discrimination against affiliate businesses in the Qualified Mortgage (QM) rule.

## Congressional Actions To Date:

- **Patent Reform:** H.R. 9, “The Innovation Act” was introduced by the chairman of the House Judiciary Committee, Robert Goodlatte (R-VA), and Representative Peter DeFazio (D-OR) on February 5, 2015. The bill makes needed reforms to the patent litigation process. At the same time, the House Judiciary and House Energy & Commerce Committees are considering needed demand letter reforms. A comprehensive Senate patent reform bill was expected to be introduced in April.
- **Data Security:** The House Commerce Committee’s Subcommittee on Commerce, Manufacturing and Trade passed H.R.1770, “The Data Security and Breach Notification Act” (Blackburn, R-TN; Welch, D-VT) on March 24, 2015. Drafting of a Senate bill is underway.
- **Affiliate 3% Cap:** H.R. 685, “The Mortgage Choice Act” (Huizenga, R-MI; Meeks, D-NY) was passed by the House of Representatives on April 14, 2015, by a vote of 286-140.

## What To Tell Your Representatives And Senators:

- **H.R. 9, “The Innovation Act”:** NAR is supportive of H.R. 9’s patent litigation reforms. The patent troll problem continues to grow and amounts to extortion for REALTORS® and other Main Street businesses. Congress must pass comprehensive patent litigation reform legislation to address the abusive use of demand letters by patent trolls and to reform patent infringement claims.
- **H.R. 1770, “The Data Security and Breach Notification Act”:** While H.R. 1770 clarifies the rules for data protection and breaches, any final legislation must ensure that small businesses and entities are not unnecessarily burdened.
- **H.R. 685, “The Mortgage Choice Act”:** The Senate needs to take up and pass H.R. 685, “The Mortgage Choice Act.” The bill restores choices for low and moderate income consumers by fixing discrimination against affiliate lenders in the calculation of fees and points under the Qualified Mortgage (QM) rule.

## Issue Background:

### Patent Reform

- Patent trolls buy questionable, overly broad patents and use them to demand companies pay licensing fees turning common business practices into potential lawsuits.
- REALTORS® have been targeted by patent trolls for the use of common technologies such as website drop-down menus, map search function, copier scanners and new listing search alerts.
- NAR has joined the United for Patent Reform Coalition to pursue comprehensive solutions to abusive patent litigation.

- Without comprehensive patent litigation reform, REALTORS® and other small businesses will remain targets of extortion by unscrupulous entities that demand licensing fees or threaten frivolous litigation under the guise of patent infringement.

### Data Security

- Data breaches are a growing problem as American consumers conduct more and more activities online. Data breach costs consumers tens of billions of dollars each year and can have a longstanding impact on consumer credit reports.
- Forty-seven (47) states have data breach notification laws on the books. Consequently, anyone doing business across state lines must comply with a patchwork of state laws.
- The House’s “Data Security and Breach Notification Act” would simplify breach notification burdens for businesses and provide consistency for consumers.

### Mortgage Choice Act

- NAR survey data shows consumers like to have the option of one-stop shopping.
- The QM rule prevents buyers/borrowers from using in-house services, especially on loans under \$200,000 because it requires that affiliate charges be counted toward fees and points in the mortgage when unaffiliated charges are not.
- “The Mortgage Choice Act” would treat unaffiliated and affiliated title and insurance equally, giving consumers the choice to use affiliated services that comply with the Real Estate Settlement Procedures Act (RESPA).

## Opposing Viewpoints:

### Patent Reform

- Opponents argue that the 2011 America Invents Act and recent Supreme Court decisions have solved the patent troll problem and no additional legislation is needed. The real estate sector’s experience with growing litigation shows this view to be false.
- Universities and some small inventors claim that litigation reform will chill innovation. Balanced patent reform can both protect true innovation and prevent patent trolls from engaging in abusive litigation.

### Data Security

- Consumer advocates claim the House’s “Data Security and Breach Notification Act’s” definition of personally identifiable information is too narrow, and limiting breach notification to instances where a significant risk of financial harm or identity theft is present is too narrow. However, the bill is targeted to address the most critical instances of potential consumer harm.

### Mortgage Choice Act

- Critics of “The Mortgage Choice Act” claim the Qualified Mortgage (QM) 3 percent cap prevents “steering” by discriminating against affiliates. However, other rules, including RESPA, which bans unearned charges and referral fees, already prevent steering.
- Critics also claim that title insurance is too expensive. However, the QM rule’s purpose is to ensure that borrowers have the ability to repay the loan they are given; it was never intended to regulate title insurance, which is already regulated at the state level.