

RESTRICTIONS ON COMMERCIAL USE OF DRONES

I. FAA proposed rule for small drones issued on February 15, 2015; not likely to be final until August 2016 at the earliest.

A. Regulation on Drones, includes:

1. Weigh less than 55 lbs;
2. Maximum speed 100 mph;
3. Maximum altitude 500 feet;
4. Must be registered with FAA;
5. Display registration numbers on drone;
6. Minimum weather visibility 3 miles; and
7. Cannot fly within 5 miles of airport.

B. Regulation on Use, includes:

1. Must remain within sight of operator;
2. Daylight operation only;
3. Operator may not operate more than one drone at a time;
4. May not fly directly over persons; and
5. Must yield right-of-way to other aircraft.

C. Regulation on Operator

1. Operator must obtain small drone operator certification; requirements include:

- (a) Vetted by TSA;
- (b) Pass initial aeronautical knowledge test, retest every 24 months; and
- (c) Be at least 17 years old.

II. Until FAA Final Rule is Adopted:

A. Commercial use of drones is prohibited unless the operator obtains a Section 333 waiver from FAA. Commercial use is defined to include “a real estate agent using a model aircraft to photograph a property he or she is trying to sell and using the photos in the property’s real estate listing.” Realtors® who wants to use drone photos/videos of his or her listings can either obtain a Section 333 waiver or hire an operator who has a Section 333 waiver.

B. Section 333 grants authorization to use drones for commercial purposes on a case-by-case basis. The Section 333 process involves filing a petition of exemption with the FAA. The FAA advises that the process can take up to 120 days. The FAA’s website contains a list of

all of the individuals and companies that have been granted Section 333 waivers. http://www.faa.gov/uas/legislative_programs/section_333/333_authorizations.

1. Initially, a Section 333 exemption was granted for operations generally, and an exemption holder then had to apply for a discrete certificate of waiver for each individual operation. Also required pilot to have a FAA issued pilot's license and medical certificate.

2. Now an operator can obtain a blanket certificate of waiver for drone flights where:

- (a) Drone weight is less than 55 lbs;
- (b) Daytime flight;
- (c) Within visual sight of pilot;
- (d) Below 200 altitude; and
- (e) Recreational or sport pilot license and valid driver's license is sufficient.

III. NAR Comments on Drone Use

A. Use of drones without Section 333 waiver does not violate the Realtor® Code of Ethics. "While REALTORS® are encouraged to always abide by local, state, and federal laws, it is not a REALTOR® association's role to adjudicate whether a REALTOR® has violated a local, state or federal law."

B. MLS does not have an *obligation* to investigate or to remove images that it suspects were not taken pursuant to a Section 333 waiver.

C. An MLS *may* create a policy prohibiting images taken without a Section 333 waiver. "Before creating a policy on this issue, an MLS should consider its ability to consistently police and thoroughly investigate whether such images are compliant with FAA rules and regulations."

IV. State Regulation

A. FAA rules do not address or attempt to address privacy concerns (only safety concerns). A number of states have enacted laws aimed at addressing privacy concerns. For example:

1. Arkansas prohibits the use of drones to commit voyeurism or to otherwise film someone without their knowledge.

2. California enacted legislation aimed at stopping the use of drones by paparazzi.

3. Florida prohibits the use of drones to photograph private property without the consent of the owner.

4. Texas lists the permissible uses of taking photographs with a drone – permitted uses include, for example: use by surveyors, engineers and photographs of property taken with owner’s consent.

B. Michigan has a drone statute which was not directed at any privacy concerns, but prohibits the use of drones to harass or interfere with a person who is hunting.