



WHITE PAPER · REAL ESTATE BROKERAGE

Why every brokerage should have a **verified** AI governance program.

Why every supervising broker needs an AI governance program, and why that program should be checked by someone other than the brokerage that wrote it.

EXECUTIVE SUMMARY

The question has changed. It is no longer whether your agents use AI. It is whether you can prove how they use it.

Nearly every brokerage in the United States now has agents using AI tools. Most of those brokerages still have nothing written down about how those tools may be used, and almost none can show an outsider that their rules are actually followed.

1. **AI use is already universal.** In the 2026 Delta Media survey of more than 100 brokerage leaders, 97% said their agents use AI, and only 3.9% of brokerages reported no AI use at all.¹
2. **Existing law already applies.** A broker is responsible for the acts of sponsored agents, and the Fair Housing Act does not care whether a person or a tool wrote the discriminatory listing. No new AI statute is needed for a brokerage to be exposed.^{2,3,4}
3. **The safety nets are getting thinner.** HUD has withdrawn its guidance on digital housing advertising, and insurers have begun adding generative AI exclusions to standard liability forms. Brokers are being left to set and defend their own standard.^{5,6,7}
4. **A written policy is necessary but not sufficient.** A policy shows intent. It does not show that agents were trained, that AI output was reviewed before publication, or that incidents were recorded. Those are the facts a regulator or opposing counsel will ask about.
5. **Verification turns intent into evidence.** An independent review of the brokerage's documents and records tests whether the program exists in practice. It also gives the brokerage a credible signal for clients, recruits and insurers that self-attestation cannot provide.

This paper explains the exposure, describes what a working AI governance program contains, and sets out the case for independent verification. It also states plainly what verification does not do, because a broker deciding whether to invest deserves the counterarguments as well as the argument.

This paper was written by NIRAP, which offers a verification program for brokerages. Readers should weigh it with that interest in mind. Every factual claim is sourced in the notes at the end. Where a statement is NIRAP's own reasoning or characterization rather than an established fact, the text says so.

AI is already inside your brokerage, whether or not you approved it.

Adoption in real estate did not wait for policy. Delta Media Group has surveyed brokerage leaders on AI every year since 2024, and its 2026 results show that the debate about whether to use AI is over. The firms in the survey were responsible for more than two-thirds of U.S. real estate transactions in 2025, so these figures describe the mainstream of the industry rather than its early adopters.¹



Source: Delta Media Real Estate AI & Leadership Survey, 2026, and Delta Media three-year analyses published August 2026.¹

The worry score matters as much as the adoption rate. Leaders' concern that AI lacks guardrails fell in 2025 and then rose again in 2026, to within 0.12 points of where it started in 2024. In other words, three years of experience with AI has not made brokerage leaders more comfortable with the risk. It has made the risk more concrete.¹

The most common uses are also the most exposed ones. Agents use AI most heavily for listing descriptions, marketing content and social media.¹ Each of those outputs is published under the brokerage's name and is subject to advertising, accuracy and fair housing rules. So the work AI does most often is the work a regulator is most likely to see.

Why a careful agent still gets caught

The risk does not come from careless agents. It comes from three flaws that are built into how today's AI tools work. Because the flaws come from the design of the tools, no software update will remove them. Each one produces work that looks finished and confident, which is exactly why capable people miss it.

Hallucination The tool invents facts and states them with confidence. NAR gives the examples of incorrect square footage and made-up property features. ⁸	Sycophancy The tool tends to agree with whoever is asking. An agent who asks it to support a pricing opinion will usually get support, which is the agent's own view repeated back.	Bias The tool repeats patterns in its training data. NAR warns this can surface as language about who a home is "perfect for" or as neighborhood descriptions that drift into steering. ⁸
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The defense against all three is the same, and it is not a better tool. The defense is people who know these traps exist and a rule that someone checks the work before it reaches a client or the public. That rule, and the record that it was followed, is the core of an AI governance program.

2 • THE EXPOSURE

You do not need a new AI law to be liable. The existing ones already reach you.

Brokers sometimes assume that AI liability will arrive with future legislation. That assumption is wrong, because the duties that matter most are already in force and they apply to the output regardless of how it was produced.

Broker supervision

State license law makes the supervising broker answerable for the agents the broker sponsors. In Texas, for example, 22 TAC §535.2 makes a broker responsible for the authorized acts of sponsored sales agents, and it requires any delegation of supervision to be in writing.² California's Department of Real Estate addressed AI directly in a March 2026 licensee advisory. It stated that using AI does not change a licensee's existing duties and that AI does not shield a licensee from liability under real estate law or fair housing and lending laws.³ Other states' rules differ in wording, but the principle that the broker supervises the work is common to license law.

The practical consequence is simple. When an agent publishes AI-written content, the broker is supervising AI-assisted work whether the broker knows it or not. A broker who has no rule for that work has no way to show the supervision occurred.

Fair housing

The Fair Housing Act prohibits discriminatory advertising, and it does not contain an exception for advertising written by software. The federal civil penalty for each violation in an administrative case is set by regulation.⁴ HUD announced in September 2026 that it would not make an inflation adjustment for 2026, so the amounts below remain in effect.⁹

\$26,262	\$65,653	\$131,308
Maximum civil penalty per violation, respondent with no prior violation	Maximum with one prior violation	Maximum with two or more prior violations

24 CFR §180.671. These amounts are in addition to actual damages, attorney fees and injunctive relief. Private lawsuits under 42 U.S.C. §3613 carry no statutory cap on damages.^{4,10}

Intent is not the test. A listing that says a home is "perfect for young families" signals a preference based on familial status even if nobody meant it that way, and that is precisely the kind of phrase AI tools produce without being asked.

Accuracy, data and duty of care

NAR's own guidance to brokers says that if hallucinated information ends up in a listing or client communication, the agent and the brokerage are still responsible. The same guidance warns that client information typed into an unapproved consumer AI tool may be stored or reused in ways the brokerage cannot control.⁸ Both risks fall on the brokerage because the brokerage is the party that owes the client a duty of care.

THE QUESTIONS THAT FOLLOW AN INCIDENT

After an AI-related complaint, the questions a regulator or opposing counsel would reasonably ask are predictable. Did the brokerage have a rule for AI-written content? Did a person review this content before it was published? What did the brokerage do when it found out? A brokerage that cannot answer with documents is answering with recollection, and recollection is not evidence. (This list is NIRAP's characterization of foreseeable questions, not a quotation from any regulator.)

3 • THE SHIFTING GROUND

The official guidance is getting thinner, so brokers are left to set and defend their own standard.

It would be reasonable to expect that federal regulators and insurers would carry more of this burden over time. In 2025 and 2026, the opposite happened.

Federal guidance has been withdrawn, but the statute has not changed

In May 2024, HUD issued guidance explaining how the Fair Housing Act applies to housing advertising delivered through digital platforms and to AI-assisted tenant screening.¹¹ HUD withdrew the advertising guidance in a memo effective September 2025 and confirmed the withdrawal in a Federal Register notice published in April 2026. HUD stated that withdrawn documents should no longer be relied upon as authoritative.⁵

This change does not reduce a brokerage's exposure, because the withdrawal removed an explanation of the law rather than the law itself. The Fair Housing Act still prohibits discriminatory advertising, and private parties can still sue. What the withdrawal does remove is a federal reference point that a broker could point to when explaining how the firm decided what was acceptable. NIRAP's reading is that this places more weight on a brokerage's own written standard and on its evidence that the standard was followed.

Insurers are writing AI out of standard policies

In January 2026, the Insurance Services Office, which drafts the standard forms that sit beneath most U.S. commercial liability policies, introduced generative AI exclusion endorsements for commercial general liability coverage.⁶ The law firm Fenwick has described a broader trend in which some insurers are adding broad AI exclusions to management liability lines as well.⁷

Brokers should be precise about what this means. The ISO endorsements apply to commercial general liability, not to real estate errors and omissions coverage, and they are optional forms that a carrier may or may not attach. However, the direction is clear. Insurers are separating AI risk from general coverage so that they can price it. NIRAP's expectation, which is a projection and not an established fact, is that a brokerage able to show documented AI controls will be in a stronger position when that pricing conversation reaches its own policies.

NAR has shown what to do, but nobody checks whether it was done

NAR published an AI policy template for brokers in 2026. NAR describes it as a fully customizable starting point, and its accompanying guidance lists what a policy should cover: approved and prohibited tools, data protection, human review of all AI-generated content, fair housing review, training, supervision, and incident reporting.⁸ That guidance is sound, and NIRAP recommends that every broker read it.

A template, however, is a set of instructions. It does not include any independent check that a brokerage adopted it, trained its people on it, or follows it. So two brokerages can both say they "use the NAR template" while one has a working program and the other has an unread file. From the outside, a client, a recruit or a regulator cannot tell them apart.

4 • WHAT A PROGRAM CONTAINS

A governance program is a small set of working documents and the records that show they are used.

The phrase "AI governance" can sound like an enterprise project with a compliance department behind it. For a brokerage it is much smaller than that. In plain terms, governance means deciding which AI tools are allowed, deciding what they may be used for, making sure a person checks the output, keeping a record, and making sure everyone knows the rules.

The table below maps the elements NAR recommends to the documents a brokerage would need in order to show that each element exists. The mapping in the right-hand column is NIRAP's, not NAR's.

What NAR says a policy should cover ⁸	The document that puts it in writing	The record that shows it is followed
Approved and prohibited tools	Approved AI tool register	Dated approvals, and the named person who approved each tool
Scope, data protection and use limits	Firm AI policy	Signed acknowledgments from every agent and staff member
Human review and fair housing review	Work review standard	A review log for listings, marketing and client communications
Incident reporting and enforcement	Records retention schedule and incident procedure	An incident log with the correction made and the originals kept
Training and supervision	Rollout plan	Training completion records and scheduled check-ins

The middle column is what most brokerages picture when they think of an AI policy. The right-hand column is what makes the policy defensible. A brokerage can have every document in the middle column and still have nothing in the right-hand column, and that gap is invisible unless someone looks for it.

GOVERNANCE IS NOT A BRAKE

A program does not exist to stop agents from using AI. The productivity gains are real, and a brokerage that bans the tools will simply push their use out of sight. A good program approves the right tools so agents can use them openly and with confidence. NIRAP's position is that adoption and governance should run side by side rather than one after the other.

5 • WHY VERIFICATION

A policy shows what you intended. Verification shows what you did.

Every brokerage that writes an AI policy believes its policy is followed. That belief is not evidence, because the person who wrote the rule is also the person grading compliance with it. Independent verification breaks that loop. A reviewer who did not write the program examines the documents and the records against a published standard and reports whether the program exists in practice.

The difference shows up most clearly in the three questions that follow an incident.

1. Did the brokerage have a rule for AI-written content?	
POLICY ON FILE ONLY A policy exists. Nobody can say who received it or when.	VERIFIED PROGRAM A policy, plus signed acknowledgments that a reviewer has already checked.
2. Did a person review this content before it was published?	
POLICY ON FILE ONLY The policy says review is required. There is no record of whether it happened.	VERIFIED PROGRAM A review standard and a review log, and a reviewer has confirmed the log is kept.
3. What did the brokerage do when it found out?	
POLICY ON FILE ONLY The response is reconstructed from memory after the complaint arrives.	VERIFIED PROGRAM An incident procedure that existed beforehand, a dated log, and retained originals.

What a broker gains from verification

Benefit	Why it follows
A documented track record	The brokerage builds its record before an incident rather than assembling one under pressure afterward. A program that was examined by an outsider before anything went wrong is easier to explain than one written after a complaint. (NIRAP's reasoning; verification is not a legal defense.)
Gaps found by a friendly reviewer	The review identifies missing documents and missing records while fixing them is cheap. The alternative is having the gaps found by a regulator or opposing counsel.
A signal outsiders can check	Clients and recruits cannot evaluate a policy they will never read. They can check a credential that someone other than the brokerage issued.
A clearer answer for insurers	As carriers separate AI risk from general coverage, a brokerage can show documented controls rather than describe good intentions. (A projection, as noted in Section 3.)
Consistency across offices and teams	A program checked against one standard means every office and team operates from the same rules, which matters most for multi-office and multi-state firms.

What makes verification credible

Not every badge carries the same weight, so brokers should ask four questions of any verification program. First, does a person review the evidence, or does software score the brokerage's own answers? Second, is the reviewer independent of the tools being used, or is it a vendor certifying its own product? Third, is the

standard published, so an outsider can see what was checked? Fourth, does the credential expire and require renewal, so it reflects current practice rather than a single moment years ago? A program that fails any of these tests is closer to self-certification than to verification.

6 • THE LIMITS AND THE OBJECTIONS

What verification does not do, and the strongest arguments against it.

A broker considering verification should understand its limits before paying for it. Overstating what a credential means would damage the brokerage that relies on it, and it would damage the credibility of the program that issued it.

The limits

- **It is a point-in-time attestation.** Verification confirms that governance practices were in place when the review took place. It cannot confirm that every agent followed every rule every day afterward.
- **It is not a guarantee of legal or regulatory compliance.** No private credential can promise that a brokerage complies with every law in every state.
- **It is not a safe harbor.** No statute or regulation currently gives a verified brokerage reduced liability. Verification produces evidence, and evidence is all it produces.
- **It is not insurance or legal advice.** Brokers should still review their coverage with their carrier and their obligations with counsel.

The objections

"NAR's template is free. Why pay for anything?"

The template is free, and a broker should use it. The template answers the question of what the rules should be. It does not answer whether the rules are in use, and that second question is the one asked after an incident. The fair comparison is therefore not template versus verification. It is a written policy alone versus a written policy plus independent evidence that it works.

"My agents are experienced and careful."

Experience does not protect against the three flaws described in Section 1, because those flaws produce output that looks correct. Careful people are caught precisely because the mistake does not look like a mistake until someone checks it. In addition, a broker's confidence in the agents is not something the broker can show to a regulator.

"We are too small for this to matter."

Small firms have the least margin to absorb a single penalty or claim, and Delta Media found that three quarters of leaders at firms with 20 or fewer agents already name regulatory compliance as their leading AI concern.¹ A small firm's program is also small. It is a handful of documents, not an enterprise binder.

"A badge is just marketing."

This objection is correct about many badges. A badge that the brokerage awards itself, or that a software vendor issues for using its product, is marketing. That is why the four credibility tests in Section 5 matter. If a verification program cannot pass them, a broker should not buy it.

"We should wait until regulators require it."

Waiting has a cost that is easy to miss. The liability already exists under current law, so waiting does not avoid the risk. It only postpones the record. A brokerage that starts now has months of acknowledgments and review logs by the time anyone asks. A brokerage that waits will be writing its first policy at the moment it most needs an established one.

7 • GETTING STARTED

Six steps any brokerage can take, with or without NIRAP.

These steps follow NAR's implementation guidance and the documents described in Section 4. A brokerage can complete them with its own staff.⁸

- 1 Find out what is already in use.** Ask agents and staff which AI tools they use and for what. The answer is the realistic baseline, and it is usually longer than the broker expects.
- 2 Name an owner.** Assign one person, usually a managing broker or compliance lead, to approve tools and keep the program current.
- 3 Approve tools and write the policy.** Decide which tools are allowed, what they may be used for, and what client information may never be entered into them.
- 4 Require review, and log it.** Make it a rule that a person checks every listing, advertisement and client communication drafted with AI before it goes out, and keep a simple record that the check happened.
- 5 Train everyone who touches AI.** Include assistants, transaction coordinators and marketing staff, not only licensed agents. Collect signed acknowledgments.
- 6 Have it checked.** Ask someone who did not write the program to examine the documents and records against a published standard, and repeat that review on a fixed cycle.

About NIRAP and RAICB™ certification



The National Institute for Responsible AI Practice is an independent standards and certification body for professional services firms that use AI tools rather than build them. NIRAP sells no AI software. Its V-AGE™ standard contains more than 100 control practices drawn from the NIST AI Risk Management Framework, ISO/IEC 42001 and NAR guidance, each rewritten for a firm that deploys AI rather than develops it.

NIRAP's brokerage program has three parts. The **Responsible AI Toolkit** guides a brokerage's own staff through five sessions that produce the governance documents described in Section 4. **AI Governance 101** is an on-demand course of about an hour for every staff member who uses AI tools. **RAICB™ (Responsible AI Certified Business)** certification follows: a NIRAP assessor, who is a person and not software, reviews the brokerage's evidence against the V-AGE standard. A brokerage that meets the standard earns a trust badge that anyone can verify online. Certification runs for a two-year term.

Details and current pricing are at **brokers.nirap.org**. A free AI governance gap assessment is available at **tools.nirap.org**. Questions can be sent to **contact@nirap.org**.

NOTES AND SOURCES

Sources

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AI-assisted  Human-led

How this paper was made

A person at NIRAP initiated this paper, and AI tools helped produce it. After the paper was first published, a person at NIRAP reviewed it, including its facts against their sources. It was reviewed and approved on October 28, 2026.

The label does not guarantee that this paper is free of mistakes or errors. It means a person applied due diligence to verify the output.

If you find an error, email contact@nirap.org. Read how NIRAP uses AI at nirap.org/how-we-use-ai.