



# **C.A.R. Reports**

## **Indian Wells, CA**

### **February 2010**



## C.A.R. Business Meeting Report Indian Wells, February 2010

The California Association of REALTORS® held the first of three business meetings for 2010 in Indian Wells. Sixteen of our NSDCAR members represent you in the CAR decision making process this year. **Anita Quillman, Century 21 Sea Coast in Encinitas serves as the Region 29 Chair**, heading your NSDCAR contingent, and **Gretchen Mitchell of Coldwell Banker in Encinitas serves as Assistant Chair**. All these members are contributing their time on your behalf to attend the C.A.R. business meetings. Their reports follow, along with the name of the committee member and their e-mail address. Please feel free to contact any of these members for additional information, or CEO Dianne McMillan ([Dianne@nsdcar.com](mailto:Dianne@nsdcar.com)) or Government Affairs Director Ernie Cowan ([ernie@nsdcar.com](mailto:ernie@nsdcar.com)) or phone us at the Association's Administrative Office (760) 734-3971.

If you have followed these reports over the past few years, you will note that committee names you are used to seeing may no longer appear. The committee structure of C.A.R. was revised and a new format put into place effective with this meeting.

### **EDUCATIONAL SERVICES ADVISORY**



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The Educational Services Advisory Committee held its first panel discussion immediately following an abbreviated meeting. The panelists were a combination of Lenders from Bank of America and Wells Fargo as well as two practitioners who focus on working short sales. It was an enormous success with standing room only. The individuals from the two banks spoke extensively on their efforts to streamline the process of the approval of short sales. Comments were made of the new government programs set up under the Making Home Affordable Program and the efforts by the government to streamline the process.

### **FEDERAL ISSUES**



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This Federal Issues meeting was very short and to the point and we were left with a lot of unknowns to start the year off.

One report was in Regards to the Second Session of the 111<sup>th</sup> Congress. As you may already know, Massachusetts has elected a Republican to Congress, Mr. Scott Brown. This long time Democrat-held seat has opened up a world of possibilities and may turn the ship with regards to health care reform and government spending. While it is too early to tell what exactly this means, there is no doubt that it is an interesting turn of events.

The Housing Committee brought forth 2 motions to be heard by the Federal Issues committee.

The first was that C.A.R. in conjunction with NAR opposed the discrimination based on sexual orientation for equal housing opportunities. This motion was passed. In California, this is a non-issue because state law prohibits discrimination based on sexual orientation. That is not currently the case on a National level and it was the committee's decision to support the NAR effort to make a national change.

The second item was that C.A.R., in conjunction with NAR support the reinstatement of the "spot approval process" for FHA loans. As many of the FHA approved condominium complexes across the U.S. were eliminated from the approved list, and with spot approval being eliminated, it has removed a tremendous amount of previously eligible homes from the FHA market. The reinstatement should bring back FHA financing in the condo market which is sorely needed.

Other items of concern were the health of Government Sponsored Enterprises, Fannie-Mae and Freddie-Mac. While it is unclear as to what will ultimately happen with these entities, there is no doubt that they are extremely important in providing

liquidity of capital to the market. NAR has had a political action group that has been allowed at the table to discuss restructuring. They have come up with 16 elements to ensure that once restored to health, that a collapse would not arise again. C.A.R.

Other battles for REALTORS® and the future of real estate include the mortgage interest deduction, a possible return to a \$417,000 maximum conforming loan limit, and the elimination of the 30-year fixed rate mortgage. The 30-year mortgage is something unique to the U.S. These three staples of our industry must be preserved and our Directors and our members need to understand that their input will be needed to ensure their future.

Last but not least, if you are a broker and you wish to make sure that your agents are well informed, please register with the Realtor Action Center for the broker involvement program. You can do so by log onto [www.realtoractioncenter.com/realtors/brokers](http://www.realtoractioncenter.com/realtors/brokers).

## **FORUM ON FORMS**



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What an exciting time to be a new C.A.R. Director! The experience was enlightening and educational. As a new C.A.R. Director, I tried to attend as many meetings as time would permit. I attended Risk Management, Federal Issues, DRE Forum, Public Policy and as a member, I also attended the California Expert Witness Association meeting. Unfortunately, their meeting is at 6:30 a.m.! Now that's dedication!

As your Regional Representative of the Forum on Forms, I had the opportunity to add input to the new forms, along with 32 additional comments that were submitted during that meeting. The meeting began with the introduction of a group of professionals, from attorneys to dedicated REALTORS® who spent many, many hours listening to C.A.R. members to help direct them in the development of the new Purchase Contract (RPA); the FHA/VA Notice and Addendum plus the (WPA) Wood Destroying Pest Inspection and Allocation of Cost Addendum. With input from REALTORS® all over the state, they brought us these new forms we can all use and one

that works with today's challenging trends. Look for these new tools In April 2010.

The earlier versions of the RPA did not contain many of the tools we need to address the issues of today. With the changes in our real estate transactions, we see many more FHA/VA transactions. The new forms NOW have the updates that are long overdue. For example, Page 1 of the RPA addresses the Who, What Where and How Much; Liquidated damages, mediations, arbitrations are further expanded. The new RPA is a better road map to the transaction.

A few highlights of the RPA include the incorporation of the loan approval and the appraisal removal time frames. Buyer's loan costs and any expenses paid by the seller must be disclosed within a 17-day period, giving the seller the option to approve or disapprove of the costs sellers must pay.

Sellers must agree to report the sales price. This concept is needed to maintain the integrity of the information we need to do a more accurate pricing on our listings.

One area addressed which has been a problem for so many, includes and excludes personal property with the mention of TVs and stereo speakers. The wording indicates TVs and Stereos are not part of the sale and are considered personal property. The "AS IS" clause is defined so parties understand, "in its present condition."

The "as is" phrase has always been a controversial term and is now better defined in the new RPA. This definition will hopefully explain to buyers this **does not** mean they do not have the right to inspect, rather the opportunity defines their rights and the seller's obligation to maintain the home in the same condition the buyer found it at the time of the offer. Even though we all wish there was less paperwork and addendums, in my opinion, an "AS IS" addendum would help explain the definition of the term more fully and the buyers and sellers understanding of what "AS IS" means with its implications. Personally, I feel more explanations and advice is needed for buyer and sellers in this area. Let's hope we will see some enhancements at a later date. Time frames relating to the Notice for Buyers to Perform (NBP) and Notice to Sellers to Perform (NSP) have changed from 48 hours to 2 days. In my opinion, this can cause some confusion with REALTORS®, buyers and sellers, as to when the "2 days" actually begins. I think it is important REALTORS® define the TIME when the two days begins - i.e. hour of the day for the deadline to begin or end.

There is a separate Liquidated Damages Form required on increased deposits. This form will explain what happens to the increase in deposit as it relates to the liquidated damages.

One great suggestion was made for zipForms; to add bar codes to the forms. This would be great when scanning the forms as the form name would automatically come up. Wow, great suggestion! Let's hope it is being considered and we may see it in the future.

Some Significant Proposed Changes to RPA also include the Agency being moved to the first page of the contract and best yet; the buyer and seller's initials are now separated at the bottom of each page and on all pages.

The Initial Deposit has two options; buyer may direct deposit to escrow or give the deposit to the agent. With the electronic age, wiring money is an everyday event today for most buyers and sellers. However, agents still have the opportunity to take the check directly from the buyer.

The Financing paragraph will be separate for the first and second loan with the default as a fixed term and an optional check box for an adjustable loan. One really remarkable change is FHA/VA buyers will be required to notify seller of the lender required costs. Seller has the option to NOT approve the costs.

The Appraisal contingency is based on preparation by a licensed or certified appraiser. The RPA now defaults the appraisal contingency removal to be automatically removed when the loan contingency is removed.

Wood pest inspection has an Allocation paragraph for inspection only. Reference is made to the WPA in an "Other Terms" paragraph. WPA requires repairs and separate section 1 and section 2, just as before and WPA requires Certification, just as before.

The Home Warranty coverage includes options to check upgrades for pool/spa, air conditioning, and code upgrade.

Possession now defaults to 5:00 pm on close of escrow.

One of my favorite new additions is the pre-printed list of commonly-used addendums for the seller disclosures and advisories, including WPA, ADM, PAA, SSA, SWPI, SPQ, SBSA, BIA, PAK, TA, and REO. This is great, as all you need to do is check the box for the addendums you wish to incorporate into the contract. Finally, we have a little help with the many addendums available.

Preliminary report includes General Index search for certain liens against the seller. Contingencies and Cancellations are always a big issue. Verbiage now includes the requirement to exercise in good faith. Should the seller deliver disclosure documents late, the buyer has 5 days to respond from the date of receipt.

Last date of a contingencies and/or cancellation falls on Saturday, Sunday or legal holiday, then it will become effective on the next business day. A demand to close escrow is required before cancellation for failure to close.

The term "delivery" has needed more explanation. Well, we have it by defining it as a means by personal receipt by principal or agent, whether sent by fax, email or other. Previous version did not define delivery.

Here is my very favorite new addition: Presentation of offer box added so the listing agent can show that offer has been given to seller. I'm sure this will please most all agents!

All in all, we had a very informative time with many new forms and ideas on the horizon. How fortunate we are to have some of the most intelligent minds working to make our industry a model for all professionals. We serve our clients using the best available tools, thanks to those who have given their time to make us the best we can be. Thank you NSDCAR for the experience and education!

## **HOUSING AFFORDABILITY FUND**



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The Housing Affordability Fund (H.A.F.) was created several years ago so that C.A.R. could help provide money to help buyers purchase homes. Last year the fund raised \$1, 075,000. One program, the Mortgage Protection Program (insurance), was issued in 3,633 transactions, in case a buyer who purchased from a California REALTOR® and had signed up and been approved for the program, lost their job after purchasing a home. That program has been renewed,

but we expect that the funds will be used by April, so if this would help your buyer, check it out at [www.car.org](http://www.car.org).

Through other programs approved for California REALTOR® Boards, 1,860 housing opportunities were created and \$3,536,425 worth of programs funded. Our Region (the C.A.R. Directors) believed so much in the program that all of us have contributed to the program. If you would like to contribute, it's easy—and very reasonable. You can do your part starting for as little as \$25. Sign up at [www.car.org](http://www.car.org). Just look for information on H.A.F.

### **HOUSING COMMITTEE - COMMON INTEREST DEVELOPMENT, PROPERTY MANAGEMENT & MULTIFAMILY HOUSING**



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As I am sure you have read from my fellow C.A.R. Directors, we have a new committee structure. Under the Housing Committee are seven committees that in 2009 were separate. So three of us from NSDCAR sit on the Housing Committee and we have divided the responsibilities for reporting. I will be reporting on the above portions discussed in the Housing Committee. Also, let me say that being the first of the year, the California Legislature is not fully in the swing of things, partly because of the budget crisis and partly because it is the beginning of the Legislative year and they just don't have all of the bills out yet.

So, for Common Interest Development, there is one bill pending, which as yet is not numbered. It is actually a bill which is sponsored by C.A.R. Last year we sponsored a bill to require HOA's to adopt restrictions that limit the ability of owners to rent their dwellings in Common Interest Developments (CID). That bill passed almost unanimously through both houses of the Legislature, but was vetoed by the Governor. The Governor vetoed the bill because he said that when buyers purchase in a CID, they agree to abide by the rules in the CC&R's and if the CID changed the rules the owners would still have to follow those rules. C.A.R. is sponsoring this new bill, which would require the CID to have a two-thirds vote of the owners to prohibit owners from renting or leasing their unit.

For Property Management, as an update, there is a proposal from the Law Revision Commission to re-codify the Davis-Sterling Act in order to make some technical changes. In February 2010 they will approve a final draft of the revisions. They will then make the copies available and introduce a bill in January of 2011 devoted to the changes to the Act.

There were also two bills within the Property Management purview that died (gosh, that sounds so final-but that's the Legislature lingo) in the Legislature: AB 1170 (Calderon) which would have developed a Megan's Law Disclosure Booklet and AB 1171 (Ammiano) which would have required a 120-day Notice of Termination for residential rental properties in rent control areas. One other bill, AB 1263 (Strickland) which would revise the way of serving an unlawful detainer notice for commercial properties, requiring that the notice be made at the tenant place of business instead of their residence. That bill is stuck in the Assembly Appropriations Committee.

For Multifamily Housing, there was a bill carried by Senator Steinberg, SB 500, which would create a Housing Market Stabilization Fund for the state, however, the Senator pulled the bill.

### **HOUSING COMMITTEE – EQUAL OPPORTUNITY**



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The only Action Item voted and passed by the C.A.R. Board of Directors for Equal Opportunity was: That C.A.R. in conjunction with NAR "Oppose" discrimination based on sexual orientation for equal housing opportunity. The State of California has relied on the Unruh (Civil Rights Act) which was amended to include sexual orientation as a protected class. However, only twenty states have laws against this type of discrimination. At the NAR business meetings in San Diego, NAR Board voted to amend their existing housing policy to include opposition to discrimination based on sexual orientation.

**HOUSING COMMITTEE –**  
**REAL ESTATE FINANCE**



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The C.A.R. Board of Directors voted on the following Action item: That C.A.R. revise its current position of sponsoring SB 206 (Dutton) - REO Homebuyer Tax Credit; to also include sponsoring or supporting the Governor's proposed tax credit for the purchase of new or existing homes as the purchaser's principal residence, if a reliable source of funding is identified and a bill to create such a tax credit is introduced.

With the state's budget deficit, the Governor has stated that if funding can be found, he would sign into legislation the continuance of the Homebuyer Tax Credit.

**C.A.R. is "Sponsoring" the following Legislation:**

Local Property Maintenance Ordinances for post-foreclosure properties is pending introduction. C.A.R. will sponsor legislation that will make the existing statewide rule to be preemptive of local ordinances and will provide an REO owner notice and opportunity to repair the properties before fines can be attached. Amendments will ensure that the liability for pre-foreclosed properties follow the legal owner and not the foreclosing beneficiary or its agent. It will also be amended to modify the Notice of Default or Notice of Sale recording with contact information of the foreclosing beneficiary's designated property manager.

Anti-Deficiency Protection Legislation is pending introduction. It is believed that Senator Corbin will introduce this bill within the next 2-3 weeks. The Federal Law is a 4-year bill, whereas the State of California was a 2-year bill. C.A.R.'s Board of Directors have approved sponsoring legislation to expand the homebuyer's anti-deficiency protections to cover refinanced purchase monies and recourse junior notes created as part of the purchase, or loans which increase the basis of the property. Once again, it is unknown if this bill would pass due to the State's Budget Deficit.

Portable Appraisals Legislation is awaiting introduction. There is no author at this time. When an appraisal is ordered by one lender on a property, a second or subsequent lender would be required to

accept that appraisal if the buyer so chooses, even if the second lender did not order that appraisal. C.A.R. Board of Directors approved sponsoring of this bill in 2010.

Increasing AMC (Appraisal Management Companies) Regulatory Oversight is pending introduction from Assemblyman Hall within the next few weeks. C.A.R. sponsored Bill 237 (Calderon) in 2009 which was signed into law and makes the AMC's subject to registration and review by the Office of Real Estate Appraisers (OREA). This new legislation will clarify and enhance OREA's oversight of the AMCs.

The Administration is expected to release as early as February 2010 the GSE (Government Sponsored Enterprise) Presidential Advisory Group recommendations on reform. At the NAR November business meetings in San Diego, NAR adopted these policy recommendations.

The GSE's (Fannie Mae and Freddie Mac) buy or guarantee approximately 60-70% of the nation's home loan originations. Federal Regulators have taken a few major actions to ensure these entities vital role in the recovery of the housing market. As of this date the Treasury has given Fannie \$60 billion and Freddie \$51 billion. The original cap on aid was \$200 billion to each. On Christmas Eve, the Treasury lifted this cap to avoid Congressional approval that would have been mandated in 2010. It is uncertain whether or not the housing crisis will need more than the original amount of \$400 billion of assistance.

The second major action was to adjust the GSE's portfolio wind down. Based on \$900 billion dollars of portfolio loans in 2009, the original agreement was to decrease their portfolios by 10% in 2010. This could be difficult because private investors have yet to bring back capital to the secondary market which in turn makes it hard for Fannie and Freddie to find buyers for their loans. There is fear that if this reduction takes place, the government could utilize the 10% to buy banks' troubled assets. This would basically transfer loss to the taxpayer. The Regulators will not force the GSE's to reduce their portfolios.

**H.R. 4173 (The Wall Street Reform and Consumer Protection Act of 2009)** – This Regulatory reform bill was passed by the House of Representatives on December 11, 2009. This bill was also amended on the floor to include H.R. 1828 (Mortgage Reform and Anti-Predatory Lending Act) which passed the House earlier in 2009. Chairman Dodd is working with Republicans and Democrats to

draft a Senate version. Both NAR and C.A.R. will work to ensure that Real Estate Agents and Brokers will not be impacted by this legislation. This bill will create a Consumer Financial Protection Agency to monitor any consumer financial products; create a Federal Insurance Office to advise Treasury on issues affecting major domestic and international insurance policy; sunset the HVCC by creating new appraisal rules within 60-days after the bill is enacted; create a council of Federal Regulators to oversee companies' financial systems that pose a systemic risk and; simplify regulations without eliminating the different regulatory bodies.

**FHA Solvency** – FHA announced proposed steps to address the dwindling reserve. Raise the annual insurance premium from .55 percent to .95 percent; increase upfront MIP from 1.75% to 2.25% on loans with FICO scores below 580; increase the down payment requirement to 10 percent; make lenders more accountable for loans that FHA insures; and limit the amount of seller paid closing costs. NAR met with FHA in December and urged them to not make any unnecessary changes that would negatively impact FHA borrowers and the housing recovery.

**FHA 90-Day Flipping Rule** – Effective February 1, 2010 there is a one-year moratorium on the 90-day flipping policy rule, unless extended or withdrawn by the Commissioner; all transactions must be at arms-length with no collusion between participating parties; if the sales price of the property is 20 percent or higher from the seller's acquisition cost, this waiver applies only if the lender meets specific conditions, including a second appraisal and/or documentation supporting the increased value, an inspection paid for by the lender (the cost of which may be passed on to the borrower). The entire waiver can be found with all conditions at the following link <http://www.hud.gov/offices/hsgsfh/waivpropflip2010.pdf>.

**VA Fees** – C.A.R. took the position at the October business meetings to "Support" the elimination of the VA pest certification requirement and the making of all fees negotiable in a VA loan transaction. NAR adopted the following position at the business meetings in November: "That NAR support elimination of certification requirements on VA loans, and allow VA borrowers to negotiate all fees and closing costs."

C.A.R. is in the process of drafting a comment letter to VA.

**Federal Reserve's MBS (mortgage-backed securities) Purchase Plan** – By the end of first quarter 2010, the Federal Reserve's \$125 trillion

program to purchase MBS will end. This has enabled mortgage rates to remain low during the recovery and helped stabilize the housing market in many areas. Many experts feel that the Federal Reserve will not take any drastic steps to stop funding, however, there is talk that the rates may raise ½-percent to 1-percent this year as a gradual step to wean the mortgage market off of the Federal Reserve's subsidy.

## INTERNATIONAL REAL ESTATE



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The International Real Estate Committee had two guest speakers share their experiences with international real estate. Mike Stoltz has owned property in France for about 20-years and spoke of the differences in purchasing and lifestyle. Non-Europeans purchasing in France must put at least 20 percent down while French citizens can finance 100 percent of the purchase price. France also has a state tax, capital gains tax, and a wealth tax for all assets worldwide. However, he emphasized the health benefits of walking or biking to market daily, eating less and relaxing more. In Canada, mortgage interest is generally not tax deductible and most loans have prepayment penalties.

Eddy Tsao Santoso spoke about several new housing projects in China. He stated that 6.6 million Americans live aboard for a variety of reasons. Some seek a mild, eco-friendly climate, others low health care costs. Still others seek total immersion in another culture. Local buyers in China can obtain a 70 percent mortgage while foreigners must pay cash. Contracts are written in Chinese and local attorneys handle the contracts and investigate title. Some cities restrict sales to foreign buyers altogether, while others require you to live there for a year before purchasing. Locals typically buy unfinished "raw" condos while foreigners usually buy them with "standard finish." Generally, foreigners cannot rent out their homes after they have purchased. It is important for each person to investigate the local ordinances for each area they intend to visit and/or purchase as they vary from city to city. He shared statistics that prices are up 8 to 24 percent over last year and buyers are purchasing new construction in first phases and then flipping them to the next buyer.

## **LAND USE & ENVIRONMENTAL**



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The Land Use and Environmental Committee met on February 4, 2010 at the Hyatt Grand Champions Hotel in Indian Wells California.

The meeting was opened by Phyllis Carmichael, Chair who restated the Land Use & Environmental Committees' Mission Statement:

This Committee is a Policy committee. Its mission is to develop C.A.R.'s land use and environmental policy. It has original jurisdiction to evaluate legislation and regulation in the following issue areas as they relate to real estate Environmental, Land Use and Zoning, Property Rights, Resources, and Subdivision and Development.

Phyllis continued with comments addressing the Reorganization of policy committee structure and the two action items that the committee would be addressing and voting on.

### **A. PROPOSITION NUMBER PENDING: Safe, Clean and Reliable Drinking Water Supply Act of 2010.**

Placed on the ballot in late 2009 by SB3VXX (Cogdill), this measure proposes to enact the Safe Clean, and Reliable Drinking Water Supply Act of 2010 which would authorize \$11.4 billion of general obligation bonds to fund water storage projects. The allocation of the bond funds would be as follows: \$3 billion for water storage projects, \$2.25 billion for Delta sustainability, \$1.785 for ecosystem and watershed protection and restoration projects, \$1.4 billion for regional water supply reliability, \$1.25 billion for water recycling and treatment technologies, \$1 billion for groundwater protection and water quality, and \$455 million for drought relief.

**Pro:** Proponents argue that there is an urgent need for comprehensive water reform, and this bond puts California on the path toward restoring the Sacramento-San Joaquin Delta, expanding water supplies and promoting conservation efforts that will ensure a clean, reliable water supply for the state.

**Con:** Opponents argue the state cannot afford another massive bond, especially one that contains so many

pet projects unrelated to solving the state's water crisis. Opponents further argue that those bond funds that would be used to improve the state's water supply may end up financing projects that have been previously discredited. Furthermore, this bond opens the door to the privatization of California's most precious resource by permitting private companies to own, operate and profit from reservoirs and other water-storage projects built with billions of taxpayer dollars and is tantamount to a giveaway to corporate farmers, and other special interests who will benefit from the water projects.

C.A.R.'s Board of Directors, at its October 2006 meeting, voted to take a "NEUTRAL" position on Proposition 84, of 2006, known as the Water Quality, Safety and Supply, Flood Control, Natural Resources Protection and Park Improvements Bond Initiative Statute. Proposition 84, which was approved by the voters, supplemented Proposition 1E and authorized \$5.4 billion in state general obligation bonds to fund projects relating to water quality, water supply reliability, flood control and coastal protection projects around the state.

The Land Use and Environmental Committee after lengthy discussion and trial motions both Pro and Con voted to take a Neutral Position on this issue.

### **B. THIS PROPOSITIONS NUMBER IS PENDING: New Two-Thirds Requirement for Public Electricity Providers Initiative Constitutional Amendment.**

Background: Current law permits local governments to aggregate and facilitate the purchase and sale of electrical energy to residents and businesses in their jurisdiction upon the approval of the locally elected officials. This measure, known as the "Taxpayer Right to Vote Act" would require local governments utilizing various forms of public financing to obtain the approval of two-thirds of the voters before creating a new municipal electric utility, providing electricity to new customers or expanding utility service to new territories. Additionally, the proposition requires the two-third vote requirement to be satisfied both in the local governments' jurisdiction and any new territory that will be served by the public utility.

**Pro:** The Proponents position is that California Law requires a two-third voter approval to increase taxes and that the use of public funds, borrowing, and bonds by local governments starting or expanding a public utility should be subject to that same voter approval.

Con: Opponents argue that this measure is nothing but a power play to restrict competition and financially benefit the ballot sponsors (Pacific Gas & Electric) who hope to stop the public utilities from undercutting their pricing and undercutting the utilities customers.

Some committee members voiced their Pro positions based on their feelings that this proposition would encourage competition and favorable pricing of utility costs. Others took the position that this trend to challenge utilities may backfire and when cities expand or need large increases in electric service a large utility that has the resources to do so may not be so inclined to provide the expanded service.

After much discussion and trial motions, the committee elected to take an AGAINST Position of this proposition.

C.A.R. Staff Legislative Advocate, Elizabeth Gavric answered questions from the floor asked by the committee members or additional supplemental information that was offered by individual committee members regarding present or potential issues of interest or concerns in their districts.

### **C. Environmental- Shari Setser, Issue Chair**

**a. AB 1085 Mendoza (D) – State Air Resources Control Board Regulations – Supported.** Because it will ensure open access to the public as the CARB develops new air quality and greenhouse gas regulations. Status: Signed by the Governor.

**b. AB 300 Caballero (D) – Subdivisions Water Supply – Support.** Is a re-introduction of a previous 2008 Bill that allows developers to meet water supply requirements by introducing voluntary water reduction measures in the installation process in all new construction. C.A.R. Supported this Assembly Bill because it will help reduce the water demands needed to provide more housing in the state and by reducing water demands by implementing conservation. However C.A.R. would oppose this bill if hostile amendments are adopted to require home owner associations to inspect and enforce interior water fixtures. The author is working to develop mechanisms to insure continued use of the water saving features.

**c. AB 580 (Huber) Onsite Sewage Treatment Systems - AB 885 (Jackson)** of 2000 mandated the State Water Resources Control Board (SWRCB) to create a statewide standard for operating and permitting septic systems. C.A.R. has actively participated in the development of the new standards since 2002 and continues to argue aggressively for the rights of property owners, while seeking to

alleviate the compliance costs AB 580 encourages the SWRCB to draft regulations that will ensure local control, address only failing septic systems and minimize costs to homeowners. The bill directs the statewide septic law away from a “one size fits all” regulatory approach by requiring septic systems to be classified into regulatory tiers based on the demonstrated risk each system poses to the public health and environment. The bill also empowers local agencies to certify that their local septic system ordinances are functionally equivalent to statewide regulations. C.A.R. supports AB 580 because it would legislatively create a more reasonable approach to the application of the proposed septic regulations if the SWRCB does not take this approach voluntarily. Committee Position: Support.

In my view this bill, without local control, would have a great deal of impact on many home and property owners, considering that a vast amount of NSDCAR’s customers and clients are not serviced by sewer systems and their current and future use and utility could have long range impact by the final reconciliation of this bill and standards imposed by the (SWRCB).

### **LEGISLATIVE COMMITTEE**



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C.A.R. is sponsoring SB 206 Dutton, which is a bill which would provide REO homebuyers a tax credit within the state and would be similar to the new federal law. That bill has been stalled in the Legislature; however, the Governor has a similar bill. We voted to go along with the Governor’s bill as long as it receives funding (a premium in Sacramento these days).

Senator Corria agreed to carry a bill which would require lenders to accept previous appraisals on a property and thus make the appraisal on that property, portable. Also on appraisals, C.A.R. last year supported legislation which created an Appraisal Management Company regulatory oversight which is under the Office of Real Estate Appraisers. We have sponsored another bill, to be carried by Assembly member Paul, which would clarify and enhance the oversight of Appraisal Management Companies.

During the 1990's the Governor and Legislature both raided and "borrowed" from the DRE reserve funds. So in response C.A.R. sponsored legislation to create a "poison pill" that if any state agency borrowed funds from the reserve fund again, that DRE fees would roll back to the fees charged in 1982. Well, last year the Department of Justice started up a new foreclosure consultant regulation program and also "borrowed" money from the fund. But because the DOJ foreclosure regulation program was another "fund," the poison pill was not activated (Boy, those guys are clever!). We are now sponsoring legislation to prevent loans to other special fund accounts.

C.A.R. is working to preempt overreaching local vacant property maintenance ordinances that are extremely costly and unfairly expose REALTORS® to liability.

C.A.R. is also working to extend the borrower protections against personal liability (beyond the property) for a purchase money mortgage to a refinance of that mortgage debt or additional for improvements to the extent that it increases the value of the property.

Last year SB 94 (Calderon) was signed into law. It prohibits "cash up front" loan modification contracts. Even though C.A.R. negotiated amendments to the bill which would clarify the definition of an advance fee and ensure licensees' ability to engage in a fee for service contract (for instance, a listing agreement), the law's language was still unclear. C.A.R. will sponsor legislation in 2010 to be sure that is clarified.

The Legislative Committee and the C.A.R. Board of Directors took the following positions on propositions for the June Primary: 1) a "For" position on (# pending) Proposition 13: Property Tax: New Construction Exclusion: Seismic Retrofitting. 2) An "Against" position on (#pending) New Two-Thirds Requirement for Public Electricity Providers. 3) A "Neutral" position on (# pending) Safe, Clean, and Reliable Drinking Water Supply Act of 2010. All other propositions, we either already took a position or were deemed "not real estate related."

## **LOCAL GOVERNMENT FORUM**



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The name and function of this Committee, which was Local Government Relations, has now been changed to Local Government Forum. As a Forum they do not make motions that go forward to the Board of Directors. The meeting is for sharing information only.

### **Staff Update:**

Rick Laezmann the staff coordinator for the forum gave the staff update. This is going to be a challenging year because of the state budget and how it will impact local governments. Using funds they received through IMPAC, staff plans 6 outreaches throughout the state this year. They will provide legal analysis of local policy. If you feel your city is proceeding on an ordinance which you think has legal issues call Rick. C.A.R. also received a grant from NAR to allow participation in foreclosure prevention. They will be co-facilitating public foreclosure prevention seminars throughout the state.

### **Presentations:**

#### **Indian Wells Home Energy Assistance Link (HEAL)**

Susan Weisbart from the city of Indian Wells presented their Home Energy Assistance Program. The city has approximately 5,000 residents. They have implemented an energy assistance program from their general fund where they issue a rebate to residents for installing energy efficient products. The cost to the city has been approximately \$150,000. The program is available for products purchased between July 1 2009 and June 30 2010. The only requirement is the property must be a single-family home with no HOA. There are no income restrictions or own/occupied requirements. Tenants may even apply with signed permission from the owner. Products qualifying for rebates are: energy saving appliances, windows (thermal pane or film), and air conditioners, to name a few. If installation of an energy efficient product requires a permit, they offer the permit for free. They are currently working with the water department to offer rebates for turf and sprinkler removal. A full list of items that qualify and the amount of the rebate can be found at [www.CityofIndianWells.org](http://www.CityofIndianWells.org) under the Go Green Tab and What Is Green.

### **Marin County Housing Turnover Index**

In Marin County they are fighting point-of-sale retrofit legislation pro-actively. They have purchased a tool, [www.housingturnoverindex.com](http://www.housingturnoverindex.com) that shows how long it takes for properties in a community to turn over. Now they are not just telling their legislators but are able to show them. It has been very successful. Their message is "If the problem is worthy, the solution should be timely." The website

shows how many years it takes for 100% turnover of properties. The website can be customized for other counties. There are IMPAC funds available to purchase the website for your area. If interested an Association can call Frank Sodo at 415-332-1639. For questions contact Edwards@MarinAOR.com.

### **Palmer/Sixth Street Properties v. City of Los Angeles**

This was a rent control and affordable housing issue. The plaintiff/developer had destroyed 60 rent control units and put in a parking lot. Years later he wanted to build a luxury apartment complex. The city wanted to force the developer to include 60 units of affordable housing to replace those that were previously destroyed. The courts upheld the preemptive status of the Costa-Hawkins Rental housing act which allows residential landlords to set the initial levels of rent at the commencement of tenancy. If the developer was tearing down housing to build new housing the City may have been able to enforce the affordable housing ordinance but since he was turning a parking lot into housing the newly constructed housing can be offered at market rents.

### **NAR's Ambassador For Cities Program**

Dave Stark from the Bay Area presented. Approximately 7 years ago the Tri-Valley Housing Opportunity Center opened. It is a non-profit, one stop source for affordable housing and homeownership information. It is a brick and mortar building. It turns potential homebuyers into educated homebuyers. It has educated over 600 families, produced 70+ new homeowners and had \$16,000,000 in loan activity. Several benefits: Benefit to individual REALTORS® involved is that they become part of the solution and not part of the problem; there are leadership opportunities; you have input into the Center's programs and curriculums and there are transaction opportunities. Overall Benefits of becoming an Ambassador For Cities; Solidifies relations with local staff, positive PR for REALTORS® and positive political ROI. There are several grants available if associations are interested.

### **Issues Updates:**

#### **Vacant Property Maintenance Requirements: Chula Vista**

The city created an ordinance requiring banks to secure and maintain properties. The fines for failure to do so are \$1,000/day. There have been significant changes made to the ordinance. The biggest change is that registration now happens at foreclosure not when the NOD is filed. This removes vacant short sales from the ordinance. Also, previously REALTORS® on REOs had to register the property. Now the bank,

thru the MER System, can register property online. The registration fee has been waived for online registration..

### **Business License Tax: Huntington Beach**

The city of Huntington Beach was going to require anyone working with a Broker license to pay a business license tax, even if working as a Broker Associate for another Broker. They were going to go back 3 years and collect fees. Independent contractor status should exempt those Brokers from paying a Business license tax. The local REALTOR® Association(s) fought the tax for 1-1/2 years and finally won. Ordinance was modified to only require a business license for the Broker of record.

### **Point of Sale (2):**

Chico: The city has minor energy efficiency retrofit requirements - showerheads, insulation, etc. Recently looking at revising the ordinance to include flooring, pipes, etc. The City Council is currently meeting with the local Board of REALTORS® to discuss the proposed changes.

Los Angeles: Did you know, per state law, homeowners are responsible for sidewalk maintenance? The city of LA took on the responsibility (as most cities have) but then later split the cost 50/50 with homeowners. Now they want to make it a POS issue with the homeowner footing the entire bill. The Association's concern is the precedent of infrastructure repair becoming a POS item. They argued "How can any agency depend on POS funds?" It's inefficient. There is currently a projected 4,600 miles of sidewalks in LA in need of repair. The cost of repair is approx \$1.2 billion. They got the POS off the table.

Tools they used and recommend: Collaboration with other Associations in the area; Have a "seat at the table," research different funding options; provide housing turnover index; hire a professional consultant, who is an independent/non-biased company, for an impact study.

### **General Plan Update: Humboldt County:**

There is currently an issue with the No Growth Plan in Humboldt County taking away existing rights. There is currently a "Timber Permit Zone" (TPZ) which allows a house to be built on timberland. The County now wants to make it difficult to get the permit to build the house. They are increasing the land requirement to a minimum of 640 acres per dwelling for TPZ and the house must be necessary for the management of the timber. The County wants to limit building to a Housing Opportunity Zone around existing services. They would require a special permit

to build outside of that zone (in the TPZ). They are applying Urban Smart Growth to a Rural Community.

Green Building Ordinance: Los Angeles County  
Effective January 1, 2009, for new construction or major remodeling there is a "green building" covenant placed on the property. If a property is remodeled and it now covers more than 50% of permeable area of land the property owner will need to add a ground water retention system (water barrels or berm) to aid in water table changes.

## **MANUFACTURED HOUSING**



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Due to the state of the California budget, legislation proposed for manufactured housing was minimal. AB 481 (Ma) Mobilehome Park Rent Control Exemption was sponsored by the Western Manufactured Housing Association (WMA). C.A.R. supported the bill, as it would have expanded the exemption from rent control for those owners of manufactured homes that choose to rent theirs out when it is a second home. However, WMA withdrew their sponsorship of this bill so it is dead.

AB 761 (Calderon) Mobile Home Park Vacancy De-Control would extend vacancy decontrol to mobile home and manufactured housing communities. This would enable an owner to raise the space rent to market rent when the home is voluntary vacated due to sale or termination of a tenancy. Local rent control ordinances would still apply. C.A.R. supports this bill as it encourages investment in manufactured housing. It is currently being heard by the Senate Rules Committee.

## **HOUSING POLICY**

C.A.R. sponsored SB 206 (Dutton) a homebuyer tax credit for REO properties. This bill proposes a tax credit of 10% of the purchase price, up to \$8,000, for people purchasing an REO as their primary residence. C.A.R. is attempting to identify funding for this tax credit, and it is currently being heard by the Senate Revenue and Taxation Committee.

C.A.R. supported AB 765 (Caballero) a housing tax credit for new construction that was sponsored by the California Building Industry Association (CBIA).

Another bill (SB 15XX – bill number yet to be assigned) was introduced that would change the eligibility requirement so that only new homes under contract by March 1, 2010 that close escrow before December 1, 2010 would be eligible. However, due to the budget constraints within our state, the building industry has stopped pushing this bill forward. It is currently on the Senate floor.

The Governor has also proposed his own version of a tax credit for purchase of new AND existing homes. CA.R. is waiting to see how this proposal is drafted before lending support to it and possibly withdrawing support of the other bills or supporting all of them.

## **MEMBERSHIP**



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Statewide, REALTOR® membership in 2009 was down 3.2% over 2008. However, new membership is up 14%.

### **Some of the Benefits of being a C.A.R. member:**

1. zipFORMS, forms advisor, forms tutor and Epubs.
2. Wide range of classes being offered.
3. Professional development through certifications and designations
4. New RPA training classes.
5. Legal Hotline.
6. Legal update newsletter and blog.
7. Strategic Defense Program – attorneys available at discounted rates to members.
8. Representation in government affairs at Federal, State and local levels.
9. Red Alerts to fight legislation that adversely affects our industry.
10. REALTOR® Magazine.
11. Client Direct – free newsletter to clients.
12. Market Matters – weekly statistics and articles.
13. C.A.R. personalized webpage for members.
14. Insurance programs – business, life, health, legal expense reimbursement, personal and even pet insurance.

15. Partnership with vendors, such as T-Mobile, credit cards, Office Max, etc.
16. Market research available such as Clarus.
17. Commercial division – [www.carcommercial.org](http://www.carcommercial.org)
18. Disaster Relief Fund for REALTORS® in need.
19. Scholarship and education foundations.

Presentations were made by Young Professional Networking, AREAA (Asian Real Estate Association or America) and NAHREP (National Association of Hispanic Real Estate Professionals).

- The ethnic associations are not just for people of those ethnic descents. Their members are those people who work and serve those within those communities.
- Young Professionals (YPs) are looking for mentors for the younger REALTORS®. Mentors can help YPs get involved in leadership and teach the importance of political involvement.

Results of a Technology Survey by C.A.R. is available on line at [www.car.org](http://www.car.org)

## **MLS/COMPUTER & BUSINESS TECHNOLOGY**



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### **NAR REPORT:**

A summary from the NAR meeting in November in 2009 was presented. There were 4 items on the agenda. All were moved seconded, discussed and carried at the NAR meeting.

**Item 1:** Amendments to the Model Internet Data Exchange (IDX) Policy.

**Item 2:** Amendment to Model MLS Policy Statement 7.90, Real Estate Transaction Standards ("RETS").

**MOTION:** That staff be requested to develop companion amendments to the model MLS rules based on the amended IDX policy, with both being published in the 2010 *Handbook on Multiple Listing Policy*.

**Item 3:** Amendment to Section 17, Orientation,

model MLS rules, and establishment of a companion MLS Policy Statement. The following verbiage was added:

Participants and subscribers may be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize participants and subscribers with system changes or enhancement and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated additional training remotely.

**Item 4:** Standards of Conduct for MLS Participants / Possible addition of duties to mirroring Article 11 of the REALTORS® Code of Ethics.

**Motion:** Amendment to Section 16, Standards of Conduct for MLS Participants, model MLS Rules by the addition of the following new rule:  
 Section 16.25

*The services which MLS participants provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate. MLS participants shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.*

### **ISSUES BRIEFING PAPER:**

There were 3 Issues Briefing Papers prepared prior to the C.A.R. meeting for discussion and action at the Committee meeting.

#### **1) Pre-Listing Signage:**

REALTORS® had asked C.A.R. to explore the matter of pre-listing signage, sometimes known as "Coming Soon" riders. There was an issues Briefing Paper on the practice of pre-listing marketing activities. In areas of the State with a high percentage of REO listings, some brokers have begun to market properties prior to receiving executed listing agreements from the sellers. This was looked at from a legal, code of ethics and MLS viewpoint. The Issues Briefing Paper concluded, assuming the seller has consented, it is legally and ethically permissible to place a pre-listing sign on the property, and an MLS Rules are not violated for failing to submit the

listing because no listing agreement yet exists. This rests on the content of the sign. REALTORS® must be truthful when advertising property or services. It is illegal, unethical and a violation of MLS rules to place a "For Sale" sign on a property without having a signed written listing agreement in place. However if the sign were to convey a different message such as "Coming Soon" it would be permissible as long as the seller gave permission to the agent to place such a sign. Whatever the message conveyed on the sign, the test will be whether it presents a true picture or whether it is false or misleading.

There was MUCH discussion on the topic both in agreement and disagreement with the conclusion in the briefing paper. The Committee made a motion that a work group be formed drawing from MLS/CBT, Professional Standards and REO Advisory Committee members to address the issue of pre-listing marketing. It was moved, seconded and carried. This recommendation was subsequently approved at the February 5, 2010 meeting of the Board of Directors.

## **2) Citation Policy:**

Currently, the C.A.R. Model MLS Rules do not include a Model Citation Policy. Some C.A.R. members have expressed great interest in encouraging greater uniformity in this area. C.A.R. members - in particular brokerages whose markets span more than one MLS - have been frustrated by the great variation in rules enforcement and citation policies. They asked for a more uniform scheme. Which was the impetus for this Issues Briefing Paper initiating the development of a Model Citation Policy to be included in the C.A.R. model MLS Rules.

The Paper proposed creating 4 tiers of offenses. Tier 1 being the lesser offenses and Tier 4 being the most serious offenses. Specific offenses and fine schedule were identified in each tier. In Tier 1 the first violation receives a warning letter and subsequent violations in the same calendar year receive a maximum fine of \$300. In Tier 4, the first offence receives 120-day suspension AND \$5,000 fine and a second offence receives expulsion. There was a lot of discussion at the Committee meeting. Some members didn't like the detailed defining of the offences. Some felt violations were in the wrong tier.

The Committee made a motion that a work group be assembled to work with staff to consider a Model Citation Policy to present to the C.A.R. MLS/CBT Committee for further discussion and consideration at the next C.A.R. meeting. It was moved, seconded and carried. This recommendation did not need a vote at the Board of Directors meeting and was presented as

a Report Only item at the February 5, 2010 meeting of the Board of Directors.

## **3) Miscellaneous Changes to Model MLS Rules:**

An Issues Briefing Paper was completed to address a variety of miscellaneous potential revisions to the C.A.R. Model MLS Rules. There was not time to get through the whole paper. Some items were discussed and put on hold for prior discussion and some items were deferred to the next meeting of the Committee.

It was moved, seconded and carried by the Committee to make the following changes to the C.A.R. Model MLS Rules. This recommendation was subsequently approved at the February 5, 2010 meeting of the Board of Directors. Such rules to be effective upon NAR approval:

- a. That the Model Rules be revised to adopt an Article 11 competency standard;
- b. That the Model Rules be revised to adopt an interim training requirement;
- c. That the Model Rules be revised to conform to NAR's revised COE so that where disclosure of the existence of offers on the property is authorized, that the listing broker's duty to disclose the source of the offer (i.e. whether offers are obtained by that licensee or their office or a cooperating broker) arises only if asked;
- d. That additional clerical user requirements which enhance accountability be added to the California Model MLS Rules;
- e. That the rules require a person with dual licenses to declare which one (or both) they are using to operate under the MLS;
- f. That the Model Rules provide a process for denying participation rights by using the California Code of Ethics and Arbitration Manual (which would have some minor provisions added from this) so that specifics of a hearing would be in place;
- g. That there be a rule prohibiting duplicate listings by the same Participant within the same property class;
- h. That the Model Rules setting forth the timing for submission of listings be amended to provide that the listing should be submitted within 2 days after all necessary signatures of the sellers have been obtained on the listing or at the start date of the listing, whichever is later;
- i. That the rules governing timing for status changes when cooperating agents deal directly with seller "model" the current 2 day requirement, i.e. that the cooperating agent has 2 days to notify the listing agent of pending and sold statuses, and then the listing agent has 2 days after notice to input the changes;
- j. That the rules regarding use and misuse of remarks

be expanded to include examples to allow for greater clarity for the Participants and Subscribers.

k. That a rule be added that allows the MLS to immediately remove an active listing remaining on the system after suspension or expulsion if Participant fails to comply with the rules;

l. That auction provisions be added to the Model MLS Rules which include the following specifications:

1. it must be clearly identified as an auction listing;
2. whether the auction is with or without the seller's right of reservation;
3. date, time and place of the auction;
4. all the required procedures for Participants/Subscribers to register their representation of a potential bidder;
5. compensation to be paid to the Participant representing the successful bidder;
6. time or manner in which potential bidders may inspect the listed property;
7. whether or not the seller will accept a purchase offer prior to he schedules auction including compensation;
8. Any other pre-auction details and material rules or procedures for the auction.

m. That the Model Rules prohibit placing a non-MLS Participant's name as a co-listing broker;

n. That the Model Rules adopt a DOM/CDOM clause where CDOM is based on APN numbers and DOMs are tied to the brokerage firm and MLS listing and the CDOM reset clock be set at 90 days after the property has been off the market without a listing agreement or change of ownership.

There were 4 additional items in the Issues Briefing relating to Auction Listings item l which the Committee put on hold for a future meeting. They are:

9. The Listing price shall be the reserve
10. Mandatory inclusion in private remarks of the statement that compensation to cooperating agents is for a successful bid be only
11. Mandatory statement in the public remarks that the list price is the reserve or minimum bid subject to the seller's acceptance.
12. All action contracts must be provided to the AOR/MLS.

Due to time restrictions the following items on the Issues Briefing were deferred to a future meeting:

- 1) Intellectual Property Protections (Data Base, Copyrights and Other Issues; and Photographic Protection)
- 2) Security (Presence of Participant and Security; and Lockbox and Key Use)
- 3) Property Types and Status

### **calREDD Update:**

Four Associations were launched in January. Things are going smoothly. Five more Associations are slated for launch in February.

### **MLS User Authentication:**

There was a presentation by Jim Reno, CTO Arcot Systems, Inc. on the current and future types of authentication. He spoke to the importance of identity authentication and the trade off between strength and cost. Factors used can be something you know (password), something you have (fob), or something you are (fingerprints). When using multiple factors they must be independent; like our password and fob. The requirements to consider when choosing an authentication system are ease of use, strength and cost, and adaptability.

Our current MLS tokens are considered OTP tokens - one time password. They are chosen due to ease of use but are somewhat expensive. One day we may be able to use our cell phones as an OTP, receiving a text with our one time password.

### **POLITICAL AFFAIRS**



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One of the most crucial duties given our political affairs team is getting the word out to the members of impending legislative issues affecting our clients as well as agents. Our newest tool to accomplish this is The Broker Involvement Program. This program was specifically designed to allow brokers to communicate to their agents the State and Federal issues impacting them. When brokers contact their agents they will see the current Call for Action issue. Coming from the broker it will be more familiar to the agent. Then the agent clicks on the link to respond and then done! Currently 14% of REALTORS<sup>®</sup> nationally respond to calls for action. We have a goal of 20%. That would mean over 200,000 REALTOR<sup>®</sup> voices would be heard by our legislators! As more brokers and agents get involved they will clearly understand the issues impacting us today. We currently have 3,000 brokers signed up and 6,000 is our goal this year. Understanding and questioning important issues is a right belonging to us all as agents and citizens.

With constant challenges confronting us, legislative education is now more important than ever. Federal,

state and local governments are devising new ways to balance their budgets with the largest pot of gold being the property owner. We face issues concerning transfer taxes, mortgage interest deductions, VA fees, estate taxes, conforming loan limits, health care, plus a myriad of municipal ordinances including business licenses. Point-of-sale issues are a daily battle. The good news is with your contributions to the REALTOR® Action Fund, we are able to exert tremendous influence and defeat many of the proposals that threaten the real estate business. We successfully lent a hand in the election of Johnny Isakson of Georgia who campaigned for the Homebuyer Tax Credit extension and expansion. We also defeated a landmark recall election in Oceanside and Prop “O” in San Marcos requiring a public vote for any development not contained in the general plan. We could not have done this without your contributions to the REALTOR® Action Fund. But we are far from finished. We need to continue to be major players at the local state and federal levels. Maintaining our influence in real estate related issues is critical to our success as agents. Using these tools wisely protects our clients and us as homeowners to the constant attacks we face on private property rights. If you haven’t contributed yet this year please visit the website at NSDCAR.com and follow the link. Look for us after the June C.A.R. business meetings in Sacramento as The REALTOR® Action Fund Committee as it was time to change from Political Affairs to a more fitting name.

## **PROFESSIONAL STANDARDS**



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The main Professional Standards Committee discussion, and action, at the February meeting involved REALTOR® Association membership qualifications and events that may result in a member’s suspension or expulsion.

Currently, REALTOR® Association Boards of Directors “may consider the following in determining an applicant's qualifications for membership: (1) all final findings of NAR Code of Ethics violations and violations of other membership duties in any other association within the past three ... years; (2) pending ethics complaints or hearings; (3) unsatisfied discipline pending; (4) pending arbitration requests or

hearings; (5) unpaid arbitration awards or unpaid financial obligations to any other Association or Association Multiple Listing Service ("MLS").” (Bylaws of the North San Diego County Association of REALTORS®, Incorporated, Article V, Section 9(a).)

There is not now, however, any policy that allows REALTOR® Associations to suspend or expel members who concurrently hold membership in one or more other REALTOR® Associations, if and when that member is suspended or expelled by another REALTOR® Association in which they hold concurrent membership. After a great deal of discussion that focused primarily upon whether suspension or expulsion should be mandatory or permissive if and when a member is suspended or expelled by an Association in which they hold concurrent membership, the following motion was made, passed in committee, and eventually passed by the entire Board of Directors:

“That CAR advocate a position to NAR that NAR expand its policy so that a suspension or expulsion that is imposed by one AOR for violation of the Code of Ethics may be permissively upheld by all other AOR’s where the REALTOR® concurrently holds membership.” (Emphasis added.)

In other words, if and when NAR agrees to change its policy as we have requested, it may become possible for REALTOR® Associations to suspend or expel their own members who are suspended or expelled for violation of the Code of Ethics by other REALTOR® Associations in which they hold concurrent membership. Until then, REALTOR® Associations are limited to denying membership to prospective members for reasons including those listed in the NSDCAR Bylaws quoted above.

## **PUBLIC POLICY FORUM**



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The panel addressed the following issues with Short Sales and REOs:

1. Buyers and their agents are still complaining to the DRE that listing agents are not presenting all offers. However, the panel did

note that sellers can make the decision not to accept any more offers.

2. It is imperative that third party negotiators be vetted by the listing agent before they are hired. Third party negotiators must be licensed.
3. No separate monetary agreements between buyers and sellers. No money should be exchanged outside of escrow. Lenders have begun suing escrow companies for facilitating these transactions. This includes buyers agreeing to pay for "personal property" outside of the transaction.
4. First lien holder must approve all payouts either on HUD-1 or term sheet. There cannot be two different HUD-1's (one for the lien holder and one for the buyer). Term sheet should mirror the HUD-1.
5. Buyer s or their agents cannot be responsible to pay third party negotiator.
6. All fees paid in a transaction must be disclosed.
7. If transaction is not arms length (buyer is somehow related to the seller) it must be disclosed to the lenders.
8. Not allowed to ask for credits for the buyer that will be paid to the second lien holder or given back to the seller.

Since lenders have the right to go after sellers if there is a deficiency on a recourse loan, it is imperative that as a listing agent, you advise the short sale seller to get legal and financial advise at the time of the listing, just prior to accepting an offer and before accepting the lien holders terms to the short sale. Agents are urged to visit [www.realestateriskmgmt.blogspot.com](http://www.realestateriskmgmt.blogspot.com) for updated information and packages on short sales.

Shannon Jones, attorney reported on the rise of legal actions based on the following:

1. Personal injury claims are being filed against lien holders for injuries that occur while on the property. Brokers are asked to defend the lenders because of the indemnification clause in the listing agreement.
2. Lenders addendums have shortened contingency periods and passive contingency removal clauses. This is leading to loss of clients deposits. Agents unaware. Lenders

addendums have language that says their addendums prevails over the RPA.

3. Occupants residing in the REO. The buyers need to evict occupants after COE. This has lead to lawsuits against the buyers for wrongful evictions, especially when there exists rent control laws.
4. Non-disclosure suits against lenders due to the poor condition of the properties being sold.
5. Suits against listing agents for failure of agent to properly advise clients to seek legal and financial advice on the ramification of a short sale. Sellers have various options, depending on whether or not the loans are non-recourse or recourse loans. There are various tax and legal consequences for the seller.

The panel was against agents submitting multiple offers for buyers, even though it takes so very long for a response when there is a short sale. Lenders are seemingly waiting for the economy to improve before going after sellers who had recourse loans for the deficiencies. There is a 4-6 year statute of limitations for the lenders. The three most important items in a short sale are: Honesty, integrity and negotiation skills.

## **REALTOR® RISK MANAGEMENT/ CONSUMER PROTECTION**



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The REALTOR® Risk Management and Consumer Protection Forum met on Friday, February 5, 2010. Our panel of speakers included Jeff Davi, Commissioner, and California Department of Real Estate; Jim Larsh, Investigator for the Riverside County District Attorney's Office; Miles Weiss, Sr. Deputy District Attorney, Ventura County District Attorney's Office.

Our panel was moderated by John Giardinelli, The Giardinelli Law Group, APC and the discussion revolved around the topic of Mortgage Fraud. While the State and Federal offices are actively pursuing

and prosecuting those individuals involved in fraudulent practices; they are seeing a morphing of sorts in the types of cases they are prosecuting.

Southwest Riverside County began to see offers on listings that had been on the market for a lengthy period of time with a number of price reductions. These offers were for several thousand above the original list price in some cases over 100K above, and were accompanied with the CBC (Cooperating Broker Compensation) form asking for a commission that equaled the difference of the list price and the offer price. When REALTORS® brought this to the District attorney's attention an investigation began. When the buyers were questioned if they knew of the commissions being paid, they informed the investigators office that they, in fact, were aware of the excessive commission and that they trusted the broker completely, and wanted him to receive the commission. As the number of cases began to increase, investigators began to see a pattern and identified the company responsible for obtaining the buyer and submitting the offers. The US attorney's office prosecuted all parties for Mortgage Fraud and the Riverside Prosecutors' office used the State Securities Law for the District Attorney to go after the heads of the company with the charge of securities fraud.

Jeff Davi, Commissioner, California Department of Real Estate reminded everyone that upfront fees for Loan Modifications are illegal; PERIOD. He also spoke of the types of fraud his office is seeing. He referred to data collected that shows that NODs peaked in 2009 although he predicts that we are going to continue to see foreclosures for the next 24 to 36 months and believes this is the fuel for the types of fraud we are seeing. In October of 2008, the DRE saw less than 10 complaints relating to fraud. From November 2008 to date they have seen over 2,000 complaints. In an attempt to educate both members of the public and REALTORS®, the DRE has added a "Desist and Refrain" page to their site. This page identifies names of the individuals who have had actions taken against them. You can click on the name of the individual and it will take you to the actual refrain order to see exactly what the offence was. Jeff also noted that he believes with the continued Short Sales and the approval letters retaining the rights to pursue deficiencies; his office is going to be seeing and taking action against more debt collection companies who are attempting to collect the debts that they may not actually have been hired to collect or bought rights to collect the deficiencies. He suggests that REALTORS® provide their client with the names of three attorneys for their client to choose from for Short Sale advice, and

remind them to also ask about collections advice should the lender come after the deficiencies.

Gov Hutchinson, Assistant General Counsel, C.A.R. Legal Department gave a legal update on some new laws and new C.A.R. forms that are now in effect or will take effect in 2010. The first, being that as of February 1 2010 FHA has waived the anti-flipping rule for a period of one year. Agents were reminded that beginning July 1, 2009, their DRE license number is required on all business materials such as business cards, stationary, letterheads, agent flyers, and car signs. The font size used for the DRE License number may not be smaller than the smallest font used on piece. The new law prohibiting any upfront fees for loan modification also includes charging any fees charged and paid on an as you go basis.

2010 is going to be the year of regulations in lending.

1. Mortgage Fraud is now a California felony as well as a Federal offense.
2. Any licensee involved in loan origination or brokering must have registered by January 31 and must complete a state and federal exam by December 31. Any licensee deciding to get involved in loan origination or brokering after January 31 2010, will have 30 days from the start date of involvement to register and must complete the 2 exams by December 31, 2010.
3. The State DRE can now take disciplinary action for any violations of Federal lending laws.

SB 290 - Repeals the sunset of the law requiring notices to evict and makes the 60-day notice to evict permanent. There are 2 exceptions to this law.

1. A tenant on a month-to-month that has been in the property less than one year.
2. If the seller of a tenant occupied property has an offer that the buyer has specifically written on the RPA contract that they intend to live in the property for at least one year.

SB 237- California can now regulate appraisal companies. Example: Appraisal companies may now, no longer be allowed to send appraisers from out of area in order to appraise the property.

And finally; Property managers who managed property for any out of state owners and collect more than \$1,500 annually, are now required to deduct 7% of the monthly payment paid to that owner for tax purposes. They must have the property owner's written permission for this deduction.

C.A.R. has provided Q&A on these and many other topics. For more information go to [www.car.org](http://www.car.org).

## **TAXATION & GOVERNMENT** **FINANCE POLICY**



**Jim Aldredge**  
**JTA Realty Professionals**  
**(760) 798-2415**  
[Jim@JTAREalty.com](mailto:Jim@JTAREalty.com)

This report will cover the Commercial Investment & Property Tax segments discussed in this meeting.

### **Federal Taxation Issues**

Commercial Investment - David Zigal, Issue Chair reported the new H.R. 4213 is a 1-year extension of what is known as the annual "Tax Extenders". These taxes and the 1-year extension include:

- the standard deduction for state and local property taxes
- 15-year leasehold improvements
- Contributions of capital gain real property for conservation purposes
- Brownfield Deduction
- Low-Income Housing Credit

Under the House rules, these extensions had to have offsets. One of the offsets included a change in the taxing of carried interest from being taxed at capital gains rates to being taxed at regular income rates. While the Senate has not yet addressed this issue, they are expected to do so this year. The Senate has voted against the need to offset the extenders in the past and could likely remove the provision when they do address the issue.

At this time C.A.R. does not have a policy on carried interest.

### **Federal and State Property Tax - Federal Issues**

In December 2009, the House passed H.R. 4154, which if passed by the Senate would permanently extend the 2009 exemption and tax rate; however, because the Senate hasn't addressed this legislation yet with regard to the estate tax it is only repealed for 2010 and is now "carried over." Congress is expected to finalize estate tax legislation early this year and make it retroactive to the start of 2010. It has not yet been determined if it will be a one-year fix, or permanent fix.

### **Mortgage Interest Deduction**

There have been some proposals to change the MID such as changing the present \$1.1 million cap (\$1 million for a home and \$100,000 for a home equity line of credit) to \$500,000, phasing in the reduction by \$100,000 annually starting in 2013. Other

proposals include eliminating the deduction for all state and local taxes, including property taxes. And replacing the MID with a flat tax credit that is 15% of mortgage interest paid.

C.A.R. will continue to monitor and oppose, as our current policy states, any proposals made that would reduce or alter the MID.

### **State Issues**

**AB 321 (Niello)** Addresses the inequality of Proposition 60 that currently allows a homeowner aged 55 or older to transfer their property tax base one time when they purchase another home of equal or lesser value. Married homeowners can qualify based on the qualifications of one spouse and the other would lose the ability to transfer; while unmarried individuals were both given the ability to transfer the base year value of their home one time. AB 321 preserves the ability of the non-qualifying spouse to subsequently transfer the base year value of that, or another home subsequently owned by that individual.

C.A.R. supports AB 321.

**SB 274/SCA 11 (Dutton)** This measure would allow senior homeowners under Proposition 60 to transfer their property tax base year value to a more expensive home, and the difference in value between the original home and replacement home would be added to the base year value.

C.A.R. supports SB 274/SCA 11 because it protects seniors on limited or fixed incomes and purchasing a new home from property tax increases that can occur.

**AB 157 (Anderson) Property Tax Base Year Value Transfers for Disaster Relief** - AB 157 would extend the time period for homeowners whose homes are damaged or destroyed by a disaster from five years to seven years. The replacement property must be located in the same county as the original property.

C.A.R. supports AB 157.

## **TRANSACTION AND** **REGULATORY COMMITTEE**



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The California Association of REALTORS® winter meetings held the very first meeting of the Transaction and Regulatory Committee. The

committee's Mission Statement is: The Committee is a Policy committee. Its mission is to develop C.A.R.'s overall policy agenda as it relates to the practice of real estate. It has original jurisdiction to evaluate transactional issues, legislation and regulation in the following issue areas; Licensure, Liability and Risk Management, Transactional. The committee reports upwards to the Legislative Committee.

California Association of REALTORS® Chief Lobbyist, Alex Creel, spoke to the committee regarding the budget and ballot propositions that will be brought forward in 2010. He expressed his deep concern about the state budget and stated the state will be running in defensive mode. Great issues are protecting the real estate industry on issue such as mortgage interest deductibility, service taxes on real estate commissions, point-of-sale retrofit requirements and other similar concerns.

An important issue discussed in the meeting was a change in the C.A.R. sponsored legislation regarding maintenance fees on REO properties imposed by communities. Additions were added to the bill that spoke to the fees and costs charged to maintain REO properties be absorbed by the lender through the foreclosure. It also added language to require the communities to provide a schedule of reasonable fees for the maintenance. This issue was the only Action Item submitted to the Legislative Committee which did approve it and then it was moved forward to the Board of Directors where it was approved by the BOD.

An additional bill being pursued by the California Association of REALTORS® will expand the anti-deficiency rules on short sales and foreclosures to include loans which had been refinanced.

C.A.R. is also sponsoring a bill which will be pursued in 2010 regarding the Appraisal Management Company Regulatory Oversight. This bill would facilitate the REALTOR'S® ability to share comparables and correct obvious errors.

On the issue of Advanced Fees, legislation is being brought forward that would eliminate the issue of advanced fees to exclude "fee for service" is not included under the current legislation. Relative to licensing issues, after passed legislation, the California Department of Real Estate has issued regulations for mortgage loan originators. All DRE licensed loan originators much have the new license endorsement by fall of 2010.

## OTHER INFORMATION OF INTEREST



**Dianne McMillan, CEO**  
(760) 734-3971  
[Dianne@nsdcar.com](mailto:Dianne@nsdcar.com)

Use "My C.A.R." version 1.2 Smartphone application- now available FREE for iPhone users from the Apple iTunes store, and join over 2,400 users who have downloaded the application since its release last July. You can acquire a members-only access code by visiting <http://www.car.org/tools/mycar>. The application for BlackBerry will be available in the very near future.

ePUBS for WINForms is now a FREE member benefit in 2010.

Form Changes include the California Residential Purchase Agreement and Joint Escrow Instructions (usually referred to as the RPA). Changes include the initial deposit, the notice to perform, FHA/VA Notice and Addendum (FVA), financing, the appraisal contingency, the wood pest inspection (WPA), home warranty coverage, and contingencies and cancellations among others. The release date for new forms is April 28. Watch for classes to be held on the RPA changes.

Free zipForm® 6 software, an upgrade to the WINForms, is mandatory effective March 31. Please avoid the last minute rush by upgrading today. Call your friendly and knowledgeable NSDCAR staff if you need assistance.

Legal Hotline is now open on Saturdays from 10:00 a.m. to 2:00 p.m. Call (213) 739-8282 to speak live to a C.A.R. attorney about a transaction-based question, on a first-come, first-served basis.

Dianne Buran, broker in Vista, was granted C.A.R. Honorary Member-for-Life status based on 25 years of uninterrupted CAR membership and having attained the age of 75.

Full banking service is available through the Virtual REALTOR® Credit Union. Go to [www.realtorsfcu.org](http://www.realtorsfcu.org).

Please be aware that your C.A.R. Directors serve as volunteers on your behalf and thank them for the time they contribute away from their families and business, and for the valuable information they bring

back to you! Are YOU interested in serving as

a Director of the California Association of REALTORS® in 2011? I know this seems like a very early time to ask you that question, but the Director selection process takes a bit of time to complete, and our 2011 Director contingent must be named by July. Watch for the announcement and a link to the application for in Quick Facts in the near future.

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~Annette Graw, South Bay Brokers, Inc.

**DATE:** Tuesday, May 18, 2010

**TIME:** 9 am - 4 pm  
(check-in: 8:30 am)

**WHERE:** NSDCAR  
906 Sycamore Ave.  
Vista, CA 92081

**COST:** \$79 NSDCAR members  
\$99 non-member agents

*Continental breakfast and lunch provided*

**ABOUT THE INSTRUCTORS:**



**Carolyn D'Agosta** She has been an owner/broker since 1975. Ms. D'Agosta is a nationally recognized trainer and a leading expert in the field of Professional Standards and Risk Management education. She has served as the National Association of REALTORS® (NAR) Chairman of Legal Action Fund Trustees, the NAR Professional Standards Chairman, and the NAR Risk Management Chairman. Ms. D'Agosta is currently serving as Chairman of CAR's Legal Affairs Committee. For more than 30 years she has been an active and respected leader with NAR, CAR, and North San Diego County Association of REALTORS®.



**David Bright** has been a partner in the law firm of White & Bright since 1981. He is a seasoned trial attorney with 34 years of civil litigation experience and an emphasis on Broker defense. Mr. Bright is a member of the California Association REALTORS® (CAR) Strategic Defense panel of attorneys. Mr. Bright is counsel to the North San Diego County Association of REALTORS®. He has been a member of the San Diego County Bar Association and the Bar Association of Northern San Diego County. Mr. Bright has been a member of the California Association REALTORS® Legal Affairs and Standard Forms Committees.

Seating is limited! Register early, Register online at [www.nsdcar.com](http://www.nsdcar.com), under "education", or by faxing to: (760) 734-3976 Or mail to: 906 Sycamore Ave. Ste 104, Vista, CA 92081 for more information call: (760) 734-3971

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NSDCAR North San Diego County Association of REALTORS®

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