

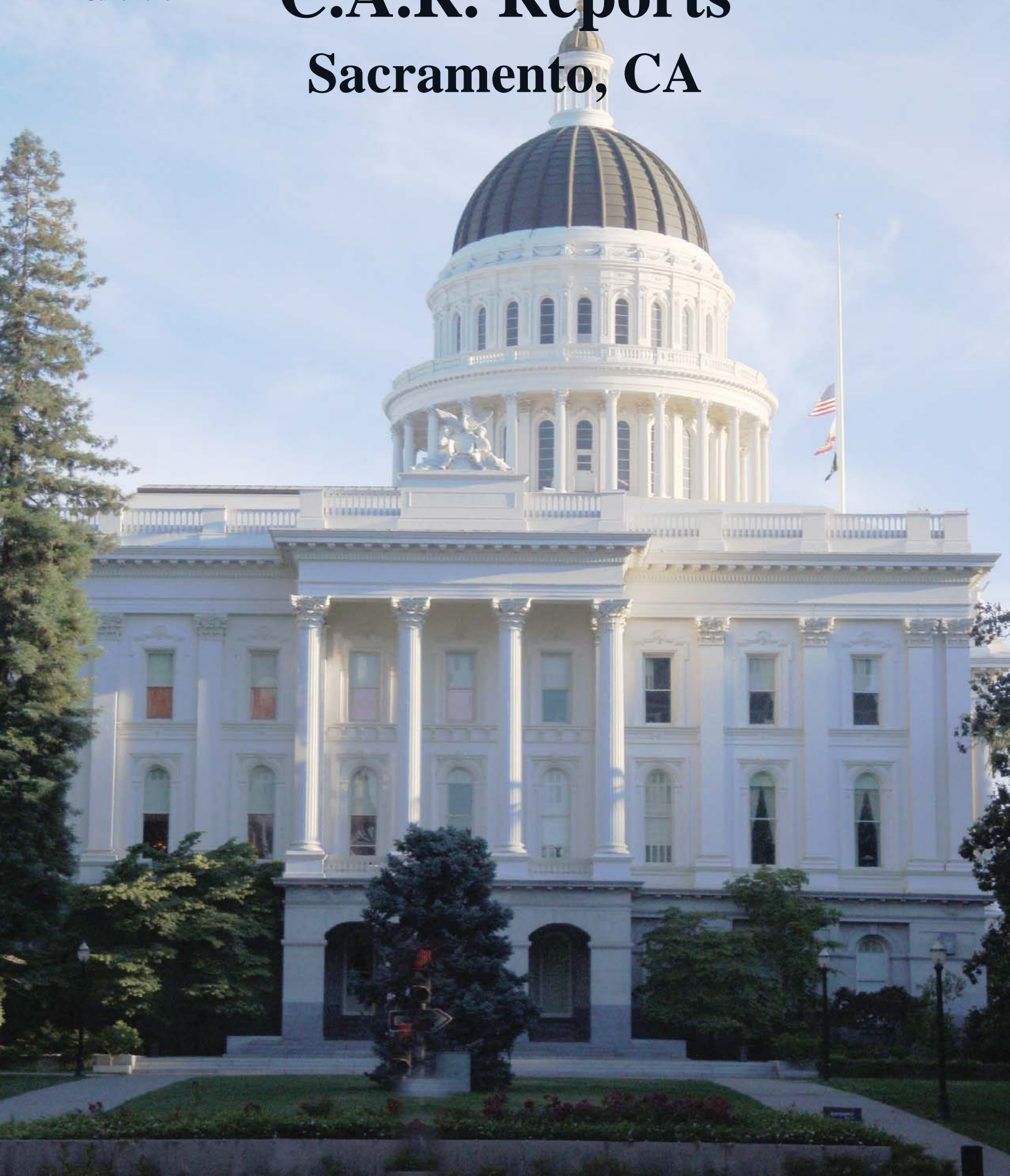


June 2010

North San Diego County Association of REALTORS®

# C.A.R. Reports

## Sacramento, CA



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**C.A.R. Business Meeting Report  
Sacramento, June 2010**

The California Association of REALTORS® held its Annual Legislative Day and the second of three business meetings for 2010 in Sacramento. Sixteen of our NSDCAR members represent you in the C.A.R. 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.

**EDUCATIONAL SERVICES ADVISORY**



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No report.

**FEDERAL ISSUES**



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This years Federal Issues committee was fairly quiet. More than anything else discussed was the fact that our cities and counties around the state are in serious financial trouble and that those municipalities will be looking closer at real estate, or more importantly, REALTORS® to help them make up for their lack of funding.

That being said, it is more important than ever that REALTORS® get into politics and help protect private property rights and our profession.

The most important information to come out of the Federal Issues committee was the report on **SB 1178** (Corbett). This bill is in regards to deficiencies on foreclosed property. Most of you are aware that there is anti-deficiency protection on purchase money loans. What most people, many REALTORS® included, don't know that when you refinance your home, you lose that protection and the lender can pursue the former

borrower personally for the deficiency. **SB 1178** prohibits lenders from coming after the borrower if they refinanced and did not take any money out of their home. It also protects those who took money out and improved their properties. The homeowner will have to show documentation on what improvements were made to the property. This protection is NOT extended to those who borrowed money on their homes and purchased cars, boats, or additional property. (This bill did actually pass at the end of June and is in place).

Other items of interest were **H.R. 5623** (the homebuyer tax credit extension) and the acceptance of FHA to honor electronic signatures on contracts.

**H.R. 5623** is an attempt to extend the home buyer tax credit for an additional three months. This does allow for any new purchases but does protect those who entered contract by April 30 and were unable to close by June 30. The extension, if granted will extend that escrow period until September 30, 2010. (This also has since passed).

With regards to electronic signatures, while FHA is permitting them on contracts, it may take awhile before lenders actually allow the electronic signatures on contracts. This is a story for sure to be continued.

Next year, our June meetings will actually occur in early May to allow us to actually meet with our Legislators prior to a vote. It will be nice to express our concerns and allow them to hear a REALTOR® and homeowner perspective prior to their votes. Our June meetings usually allow us to meet with them to ask them why they voted the

way they did on a bill or to thank them for voting the way they did. This should truly allow us to be ahead of the game.

Stay tuned, as this year and going into the next will surely be a bumpy ride. Keep your ear to the ground and please communicate any issues going on in your service area that you feel will need the attention of our Governmental Affairs Department.

## **FORUM ON FORMS**



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As your Regional Representative of the Forum on Forms, I attended the discussions on the new **TDS TO BE AMENDED FOR HOME SAFETY DEVICES**. As of January 1, 2011, the new Real Estate Transfer Disclosure reflects some changes to the home safety devices. The TDS will include a new disclosure of whether the seller has a carbon monoxide detector. This disclosure addresses a new law requiring California homeowners to install or plug in a carbon monoxide device in an existing single-family residence by July 1, 2011 and other existing dwelling units by January 1, 2013. The new TDS will specifically state that installation of a carbon monoxide detector, among other appliances and devices, *is not a precondition of sale or transfer of the dwelling*.

Second, the TDS will be amended to incorporate a seller's certification that, by close of escrow, the seller will be in compliance with existing requirements for smoke detector and water heater bracing. Effective January 1, 2011, the new TDS will eliminate the need for a separate standard form Water Heater and Smoke Detector Statement of Compliance (C.A.R. Form WHSD) for applicable transactions. However, it is imperative agents understand the Water Heater and Smoke Detector form is **STILL** a requirement until January 1, 2011.

The new requirement to install or plug in a carbon monoxide detector will apply to dwelling units

with a fossil fuel burning heater or appliance, fireplace, or attached garage. "Fossil fuel" means fuel gases, wood, oil, coal, kerosene, or other petroleum or hydrocarbon products that emit carbon. Since most homes have a fireplace, even if it is an all-electric home, a carbon monoxide detector will be required.

A new form will be released called the FHA Notice and Addendum. This document addresses and negotiates between buyer and seller regarding the costs and payment for lender required repairs and costs associated with FHA and VA loans.

The Cancellations of Contract, Release of Deposit and Joint Escrow Instructions have added language for "other" when an explanation is needed to help clarify a reason for cancellation.

The Wood Destroying Pest Inspection and Allocation of Cost Addendum have included a new paragraph explaining buyer's rights to inspect for wood destroying pests and organisms even if NO WPA is used. There is also a paragraph included regarding if there is more than one report obtained by the seller. Seller may choose which report to use as the basis of the Certification of Completion provided seller delivers to buyer all reports obtained by seller before buyer removes any contingencies for wood pest inspection.

Receipt and Delivery of Notices establishes the delivery of documents. By implementing this form, at the time of the offer, it will establish the means of delivery between buyer and seller. Delivery can be by many means including, personal receipt, facsimile, email or "other" means acceptable to both buyer and seller.

Look for these new disclosures and updates.

**HOUSING AFFORDABILITY FUND**



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The Housing Affordability Fund (HAF) is a committee dedicated to providing better affordability to our buyers. Recently the fund provided job loss insurance for buyers for a period of one year after purchase of their homes. The amount was up to \$1,500 if a buyer lost their job. This fund helped many California buyers feel more confident and actually paid out to several buyers caught in a bind.

The money raised by this committee is completely voluntary. REALTORS® have been asked to contribute as little as \$25, but, of course, more is happily accepted. On Monday, June 7, prior to the C.A.R. Director Meetings, HAF had a golf tournament in Sacramento, where our meeting would be, and raised money for this fund. The committee is looking at ways to impact our buyers in the most positive way and to generate business for our REALTORS®.

You would be proud to know that 100% of our C.A.R. Directors stepped up to the plate and contributed to this worthy fund. This is just another way that C.A.R. is working to make an impact on your business. Should you decide that you would like to contribute to providing for housing affordability within our great state, simply go to [www.car.org](http://www.car.org) or call me: Gwynne Hodge (760) 435-9862.

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



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We are supporting **AB 331** (Hall) which, if enacted, would require property owners and

landlords to notify, prior to executing a lease or month-to-month rental agreement, if the property has a notice of default pending. This bill has made it through the Assembly and is now in the Senate.

C.A.R. is also supporting **AB 1800** (MA) which, if passed, would make it a felony instead of a misdemeanor, to claim ownership of a residence without the owner’s permission, with the intention of renting or leasing the residence to another person.

We have an “Oppose” position on **AB 2337**, which would prohibit CalPERS and CalSTRS from investing in business operations that result in the displacement of renters living in rent controlled housing, either through significant rent increases or the destruction or replacement of the housing units. This bill discourages investment in rent controlled housing and also adds rent control restrictions that do not provide adequate financial incentives for businesses to build or improve housing in rent controlled communities. This bill is in the Assembly Appropriations committee.

**SB 782** has to do with residential tenancies and domestic violence. This bill would prohibit a landlord from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking against a tenant or a tenant’s household member, when the act is documented pursuant to a court order and the perpetrator of that act is not a tenant of the same dwelling unit. It also proposes to authorize a tenant, who is protected by a restraining order related to domestic violence acts, to immediately change the locks on his or her dwelling unit without the landlord’s permission or to make a written request that the landlord change the locks when the restrained person is a tenant of the same dwelling unit. We have an “Oppose” position on this bill.

**Property Management Issues/Other:**

**SB 183** has become law, and it would require that starting January 1, 2011 the TDS be amended to streamline the disclosure of home safety devices. The new TDS will include a new disclosure of whether the seller has a carbon monoxide detector or not, and also requires that as of January 1, 2011 that all residential detached homes are equipped with a carbon monoxide device. All other existing dwelling units would be required to have a carbon monoxide detector installed as of January 1, 2013.

The requirement to install a carbon monoxide detector will apply to dwelling units with “fossil fuel” burning heater or appliance, fireplace or attached garage. Fossil fuels means gasses, wood, oil, coal, kerosene or other petroleum or hydrocarbon products that emit carbon monoxide.

As a reminder, property managers are now required to withhold 7% of an out-of-state owner’s rental income, minus property management fees and repairs, each month for the California Franchise Tax Board (FTB). We are to then make payments on a quarterly basis to the FTB. Please go to [www.ca.gov/ftb](http://www.ca.gov/ftb) for more information. At that web site, you can find the forms you need including Form 592-B, which is used for the quarterly payments.

### **Common Interest Development/Pending Legislation:**

**AB 1927** is a bill sponsored by C.A.R. which would require a two-third majority of unit owners to prohibit owners from renting or leasing their units. There is a tendency within some CIDs to limit the number of units that can be rented out because of loan occupancy ratio requirements. But the concern is- what if someone needs to move, the market is bad and they cannot rent their house. They are either then forced into selling at a low price, possibly seeking a short sale, or leaving the unit vacant- neither one a good idea for most. Last year C.A.R. was able to get a bill through the legislature dealing with this issue but it was vetoed by the Governor. This new bill is taking into account the Governor’s comments on the last bill, which he vetoed, and hopefully this will pass the Legislature and be signed by the Governor. This bill has passed through the Assembly and is in the Senate.

**AB 1726** concerns “vote by mail” ballots and clarifies how those votes could be handled so as to assure accurate elections. It also clarifies that, unless stated differently in governing documents, that a quorum would be 33% of the association membership entitled to vote. This bill has passed through the Assembly and is in the Senate. C.A.R. has a “Watch” position on this bill.

**AB 1793** proposes to provide that any provision of governing documents of a CID would be void and unenforceable if it prohibits the use of artificial turf or any other synthetic material that looks like grass. The association would still be able to make

requirements as to design and quality standards. This bill is out of the Assembly and is in the Senate. C.A.R. has a “Watch” position on this bill.

**AB 2016** is sponsored by the Community Associations Institute and it would clarify the intent of **SB 1511**, a previously enacted bill, which permitted an HOA to record a request, that in the event of a foreclosure within the association, that the HOA would be notified. The Recorders office took the bill to mean that the HOA would have to record a document on every address in the HOA, instead of a blanket recording. **AB 2016** would correct the confusion, and provide that an HOA could record a blanket document to receive notice of a foreclosure for the entire HOA. C.A.R. has a “Favor” position on the bill. The bill has now passed from the Assembly to the Senate.

**AB 2502** deals with HOA assessment delinquencies and would have required that an HOA could not process a foreclosure for a delinquency, which is less than \$3,600. Currently, the amount is \$1,800. That bill is “dead” for this year—which means it could come back in the future.

### **Common Interest Development/Other Issues:**

C.A.R. and NAR tried to obtain approval from FHA to return to a “Spot” approval for HOAs when there is a direct lender involved. Currently, FHA is not willing to relinquish their opinion on that issue, but is open for other avenues, which we will try to get through to make it easier to obtain FHA approvals of HOAs.

### **Multi-Family Housing/Pending Legislation:**

**AB 1867** makes minor changes to current law that allows a local government to meet up to 25% of its regional housing needs obligation through the conversion of existing market-rate units to low, and very low-income units. It allows the existing market-rate units to be either rental or ownership housing prior to conversion, reduces from 4 units to 3 units the minimum size of a multifamily complex that is eligible for conversion, and requires that converted units must be rental housing. This bill has passed out of the Assembly and is in the Senate. C.A.R has a "Watch" position on it.

**AB 1975** would require that every water agency that provides water service to a multi-unit residential structure or a mixed-use residential and

commercial structure, for which the first occupancy permit for the newly constructed building is issued on or after January 1, 2013, to require the installation of meters or submeters on each individual dwelling unit as a condition of new water service to that property. Owners would then be required to charge tenants at the actual rate of water usage. C.A.R. has a “Watch” position on this bill, and it is still in committee at the Assembly.

**AB 2536** would allow for Emergency Housing and Assistance Program funds approved by the voters in Proposition 1C in 2002, and Proposition 46 in 2006, to be used for supportive housing programs. This bill has a “Watch” position by C.A.R., and is currently in “suspense” in an Assembly committee.

**SB 958** would dedicate funds that California receives from the National Housing Trust Fund to be directed primarily towards the Department of Housing and Community Development’s Multifamily Housing Program, except that the Legislature may appropriate up to 10% of the funds to the CalHome Program. C.A.R. has a Watch position on this bill. It has passed through the Senate and is now in the Assembly Housing and Community Development committee.

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



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The C.A.R. Housing Committee meeting was held on Thursday, June 10, 2010 in Sacramento, California. There weren’t any action items presented at that time.

**The following bills are on a “Watch” list:**

**AB 702 (Salas) - HCD and Homeless Veterans Programs:** The Department of Veteran Affairs and HCD are required annually to use existing data

to determine the percentage of veterans within the homeless population, and to allocate the same percentage of funds to pay for operational expenses in sponsors of veterans-only projects. This bill is in the Senate Transportation and Housing Committee.

**AB 1569 (Veteran Affairs Committee) - Creation of State Interagency Council on Veterans Affairs:** This would classify military members and their immediate families stationed in California as California residents for the purposes of tuition and fees at California Universities. If the military personnel move outside of California due to military orders, and as long as the children maintain continuous enrollment at the Universities, they will retain their California residency status. This bill is in the Senate Veterans Affairs Committee.

**AB 2709 (Blumenfeld) - CalHFA and Federal Subsidies:** This bill authorizes CalHFA to utilize Federal subsidies to issue loan guarantees, in addition to grants, that are provided by the United States Department of Housing and Urban Development for non-profit housing sponsors and local public entities. In conjunction, an award of a tax credit for low income rental housing by the California Tax Credit Allocation Committee will be given. This bill is in the Assembly Housing and Community Development Committee.

**C.A.R. is in Support of SB 1252 (Corbett) - Housing Discrimination Guidelines and Federal Parity:** This bill is on the Senate Floor. Currently Federal Law and California Law violate each other in terms of Federal Housing Programs, which state that one party must be 62 years of age or older to reside. Businesses may not discriminate in the sale or rental of housing accommodations based on age. The exception to the rule would be accommodations that are unique and specific to the needs of senior citizens. This bill would reconcile the differences between Federal and State Law by adding source of income to the list of protected classes in the existing law.

**HOUSING COMMITTEE –  
REAL ESTATE FINANCE**



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**The following “Action Items” were approved by the 528<sup>th</sup> Session of the C.A.R. Board of Directors:**

That C.A.R. change its position on **AB 2651** (Knight), a bill which creates a new debt service process that will lower costs to veterans participating in the CalVet Loan Program, from “Watch” to “Favor.”

The CalVet Loan Program was established in 1943 after World War I. This was to assist California war veterans in purchasing farms and homes. This bill is intended to dedicate monies derived from the 1943 Fund (General Obligation Bonds), to pay debt service and allow the rating agencies to take in account the assets of the 1943 Fund when determining payment of the General Obligation Bond. This would be similar to how CalVet Revenue Bonds are rated. By getting a higher Bond rating, costs of debt service would be lowered with a savings of several hundred million dollars over the life of the Bond. This savings would in turn lower costs to the veterans. This bill is currently in the Senate Rules Committee.

**The following Bills have been “Sponsored” by C.A.R.:**

**AB 1796 (Knight) – Appraisal Management Companies and OREA (Office of Real Estate Appraisers) Oversight:** This bill will enhance and clarify OREAs oversight of Appraisal Management Companies in connection with conflicts of interest, out of area appraisers, timeliness, accuracy of the appraisal, and would ensure compliance with other requirements of law applicable to licensed appraisers. **AB 1796** is being held in Assembly Business, Professions and Consumer Protection Committee with no vote being taken. Assembly Member Hayashi (Chair of the Committee) intends to have the committee conduct an “Oversight Hearing” in the fall, on all of the appraisal issues raised by this bill.

**SB 206 (Dutton) – Tax Credit for Purchase of REO Properties as Principal Residence:** Efforts to locate a federal funding source for this tax credit, is on-going. At this juncture, the bill is in the Senate Revenue and Taxation Committee and appears to be a “Dead” Bill.

**STATE ISSUES**

**AB 183 (Caballero and Ashburn) – Tax Credit for First-Time Homebuyers:** C.A.R. was in “Support” of this Bill, which allocated \$100 million for qualified first-time homebuyers of existing homes, and \$100 million for purchasers of new or previously unoccupied homes. These tax credits go into effect on or after May 1, 2010 and before January 1, 2011. These credits are available for taxpayers who purchase a qualified principal residence on or after December 31, 2010 and before August 1, 2011, as long as an enforceable contract is executed on or before December 31, 2010. The purchase date is defined as the date escrow closes. Tax credits are limited to the lesser of 5% of the purchase price or \$10,000 for a qualified principal residence. The tax credits must be applied in equal amounts over three successive tax years, beginning with the tax year in which the home is purchased. The Governor signed this bill into law on March 25, 2010 (Chapter 12, Statutes of 2010).

**AB 2043 (Torrico) – Redevelopment Funds and Mortgage Assistance to Troubled borrowers:**

This bill is currently in the Assembly Appropriations Committee and C.A.R. is in a “Watch” Position. **AB 2043** would create a five-year program to allow a redevelopment agency (RDA) to issue subordinate loans using the non-Low and Moderate Income Housing (L&M) Funds for qualified homeowners to prevent foreclosure inside or outside a project area. Subordinate loans cannot exceed 15% to reduce the principal balance of a primary loan if all the following conditions are met:

- Current lender must agree to modify the existing home mortgage to reduce the principal balance of the primary loan so that the LTV (loan to value) does not exceed 110%.
- The Redevelopment Agency would be subordinating the loan of qualified homeowners who live inside or outside the project area.

- The Redevelopment Agency would have to adopt a resolution establishing that the use of the funds outside the project area would benefit the project area.
- This subordination would be limited to loans for low and moderate income borrowers that are owner occupants.
- The subordinate loan, fees and interest charges would be repaid to the Redevelopment Agency upon the sale or refinance of the home.

### **FEDERAL ISSUES**

HUD issued proposed rules on how states should implement the SAFE Mortgage Licensing Act in December 2009. The rule contained exclusion for Seller financing on the sale of the sellers' principal residence. However, seller financing on second homes, vacation, and income properties may be subject to the SAFE Act's licensing requirements. C.A.R. and NAR have both written comment letters to HUD asking for all seller-financing to be excluded from the Safe Act requirements. HUD has not issued their final ruling.

The National Flood Insurance Program (NFIP) expired on March 28, 2010. After a successful "Call for Action" urging REALTORS® to contact their Representatives and Senators, the program was extended to May 31, 2010. Congress has not passed another extension because they want to consider issues of expanding coverage for wind and business damage and a phase-in of "full risk" premiums for those primary homes selling over \$600,000. Since September 2008, there have been seven short-term flood extensions. Nearly 20,000 communities nationwide cannot obtain a mortgage with flood insurance without the NFIP policy in effect. Catastrophic and/or flood insurance will not be addressed until next year, and extender bills will be placed in effect until December 1, 2011. We were told on June 12, 2010 that Lloyds of London will offer insurance in the interim.

As of January 1, 2010, Veterans can now pay the VA non-allowables.

### **GSE UPDATES**

The Federal Government has developed the Property Assessed Clear Energy Initiative (PACE) to address the high costs associated with energy upgrades for properties. PACE allows property owners to take out a 15 -20-year loan to make energy efficient retrofits to their properties. These

loans are funded through local governments that finance the loans through a municipal bond program. To ensure repayment, a special assessment will be added to the owners' property tax bill. Many times, PACE loans are placed as a senior lien on the property. Under Fannie Mae and Freddie Mac guidelines, Fannie and Freddie must be in the senior lien position on all properties they purchase or guarantee. C.A.R. will be looking at this carefully. Sonoma is the first County in California to have funds available for this program.

Fannie Mae announced on April 14, 2010, changes to their policy on how long a homebuyer has to wait to qualify for a Fannie Mae loan following a pre-foreclosure, short sale, and deed-in-lieu. This announcement also addresses the requirements for re-establishing credit. Please go to the following web site:

<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1005.pdf>

Brokers who sell Fannie Mae REOs are being required to follow the "First Look Program"; to only accept offers from buyers who intend to occupy the home as their principal residence for the first 15 days the property is listed. There is a discussion of extending this program from 15 days to 30 days. Due to the increasing number of complaints, that offers are not being received or responded to for two weeks or longer. The purpose of this program is to promote homeownership and to enhance communities with a higher rate of homeownership.

### **FHA UPDATE**

**H.R. 5072 (Reps. Waters and Capito) - FHA Legislation – FHA Reform Act of 2010:** This bill gives FHA the authority to increase the annual premium to strengthen its financial position. FHA had raised the up-front premium to offset the lack of authority to raise the annual premium. Once this bill passes, FHA plans to reduce the up-front premium and raise the annual premium instead. This bill includes a number of lender enforcement provisions.

### **FHA SHORT SALE PROGRAM**

If a homeowner has a mortgage insured by FHA (Federal Housing Administration), and is finding it difficult to make their payments or is in default on their mortgage payments, they may be able to take advantage of the FHA Pre-Foreclosure Sale (PFS)

Program to sell their home at current value, even if the sale proceeds would not be enough to pay off their mortgage in full. The homebuyer would be able to move to more affordable housing while avoiding foreclosure. In order to participate in this program, homeowners must actively market their property for a period of 3 months, during which time their mortgage lender delays foreclosure. If the homeowner receives an offer at or near current property market value and within the required time, the homeowner may receive a cash payment from FHA of up to \$1,000 to help that homebuyer transition into more affordable housing. If the property doesn't sell, the homeowner can choose to deed the property to the mortgage lender (deed-in-lieu of foreclosure).

### INTERNATIONAL REAL ESTATE



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The International Real Estate Committee had Carole Rodoni as its guest speaker to discuss international real estate. Carole gave a top-level view of the housing market around the world. There are vast differences around the world both in the way consumers view their real estate holdings and the current state of their housing market. For instance, in Mexico, Carole shared that prices are down 12-60% from their peak. Foreign investment has been strong in Mexico, especially with the creation of bank trusts in which foreigners can own the land as opposed to land leases, which are subject to the government's intervention.

In Italy, only 20% of the population has a mortgage, and homes are passed down through families for generations. In Egypt, foreigners can own two properties with less than 4,000 square feet but they most hold them for at least five years.

Carol shared information on the effect of the international market on the California real estate market. She said that 13% of the purchases in California were from foreign buyers. The purchasers were primarily from Mexico, the United Kingdom, India, and China. These buyers have traditionally flocked to Arizona, California,

Florida, and Texas. With such a large percentage of buyers coming from outside the United States, many real estate professionals may want to pursue education focusing on international real estate!

### LAND USE & ENVIRONMENTAL



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### Federal Issues - Climate Change Legislation

**1. Pending before Congress** is climate change legislation that includes energy efficiency provisions for commercial and residential buildings. Last summer, the House of Representatives approved **H.R. 2454**: the American Clean Energy and Security Act, which includes energy efficiency provisions for new construction only. REALTORS® succeeded in making a number of positive changes affecting the real estate provisions of the bill passed by the House. Currently, the Senate is working to develop a Climate Change bill called the American Power Act.

**2. Clean Water Act Changes** - Pending before Congress is legislation to amend the Clean Water Act to replace the term "navigable waters," which are subject to non-tidal wetlands permits, with "waters of the United States" defined as "all... intrastate waters, including all tributaries." Opponents of the change, including REALTORS®, strongly believe that this will expand the scope of the Act to all U.S. waters (including roadside ditches and storm drains), not just the navigable ones, which will likely result in further restrictions on property development or make the process more cumbersome where wetlands are discovered.

### Environmental

**1. Naturally Occurring Asbestos** - C.A.R. has been working with a broad coalition of organizations representing the construction materials and building industries, housing, labor, manufacturing, forestry, agriculture, geologists, scientists, and engineers to address a recent proposal by the California Air Resources Board's (CARB) to redefine naturally occurring asbestos (NOA) for the purposes of instituting control measures. C.A.R. and the coalition are fighting to

preserve the existing definition of “asbestos,” which is well-understood by the regulated public, testing laboratories, and other state and local agencies. Changing the definition will limit economic potential, increase regulatory burdens, and increase public stigma that will functionally prevent a variety of permitted uses from being undertaken. These effects could seriously hinder state and local recovery projects.

**2. Lead Based Paint and Renovations** - The new federal rule affects construction contractors, residential landlords, property managers and others who perform renovation for compensation in housing that may contain lead-based paint in housing built before 1978. Renovation includes most repair, remodeling, and maintenance activities that disturb painted surfaces. The new rule requires that no more than 60 days prior to commencing the renovation, renovators must give to the owner or occupant of the dwelling a pamphlet and obtain written acknowledgment that the owner or occupant has received the pamphlet. The rule also establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators (and others); for accrediting providers of renovation training; for renovation work practices; and for recordkeeping.

### **Land Use and Zoning**

**1. National Flood Insurance Program** - On March 28, the National Flood Insurance Program (NFIP) expired for several weeks due to the House and Senate’s failure to agree on how to pay for reauthorization of the NFIP along with an extension of several other programs. An all-member Call for Action was issued, urging REALTORS® to contact their Representatives and Senators. On March 2, the program was extended to May 31, 2010. Congress has been approving a series of short-term extensions of the NFIP while discussions continue over comprehensive reforms to improve the program’s actuarial and financial foundations. The program insures more than five million properties nation-wide.

**2. Alluvial Fan Task Force** - The Department of Water Resources Alluvial Fan Task Force released guidance documents for alluvial fan floodplain management, largely intended to affect future development in the Southern California region where high-velocity, debris-laden flows, resulting from storms, particularly following wildfires, are

common. C.A.R. monitored the development of the guidance documents, which are voluntary and intended to be locally adopted model ordinances for communities subject to flooding on alluvial fans. The guidelines are imposed when the building is sold, leased, financed or refinanced. Currently the draft language for the proposed regulations is being finalized and will be released to the public for review in June, and should be adopted in December. The regulations, which are anticipated to become effective January 1, 2011, will go into effect on a tiered schedule based upon building size.

### **Subdivision & Development**

- **State Water Board: Statewide Septic Regulations** - CAR has been working with the State Water Board (SWB) on the development of statewide septic regulations since the process began in 2002. A strong response by the regulated community over past proposed regulations, coupled with recent staff changes at SWB, has resulted in a new approach to regulating septic systems. The soon to be released regulations will be risk-based and include three tiers of regulation.
- **Tier 1** will be for systems that meet ideal site conditions.
- **Tier 2** will be for most systems, where ideal conditions do not exist, but where surface and/or groundwater are not impacted by nitrates or bacteria from septic systems.
- **Tier 3** will be for sites where water quality has been impacted by septic systems.

Existing systems in Tier 1 or Tier 2 will not have any new requirements imposed. The SWB anticipates adoption of the new regulations early 2011. Septic Working Group 2010- Members of the Land Use & Environmental Committee were encouraged to volunteer for a working group charged with reviewing and providing comments on the impending regulations, developing recommendations for future development on alluvial fans, and encourages the evaluation of hazards, resources, storm water management, and public safety.

### **Property Rights**

**1. Property Assessed Clean Energy (PACE) Program** - The Property Assessed Clean Energy initiative (PACE) allows property owners to take a

15 to 20-year loan to make energy efficient retrofits to their properties. The loans are funded by local governments, which finance the loans through a municipal bond program. As a general remedy to ensure repayment, a special assessment is added to the owner's property-tax bill.

### Resources

#### **1. California Energy Commission: AB 1103**

**Implementation** - Since the passage of **AB 1103** (Saldana, Statutes of 2007), C.A.R. has been actively participating as a key stakeholder in the development of the Commercial Building EnergyStar Benchmarking program which will require building owners to register and benchmark all nonresidential buildings within the US EPA EnergyStar program, and disclose this information to a prospective buyer, lessee, or lender when a building is sold, leased, financed or refinanced. Currently the draft language for the proposed regulations is being finalized and will be released to the public for review in June, and should be adopted in December. The regulations, which are anticipated to become effective January 1, 2011, will go into effect on a tiered schedule based upon building size.

### LEGISLATIVE COMMITTEE



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In the configuration of committees at C.A.R., most of the legislation or issues are discussed in other committees (for instance, my report on my portion of the Housing Committee), and then brought to the Legislative Committee, Federal Issues Committee or the Executive Committee. I will not try to repeat what has already been reported in those other committees, but I will try to provide for you information that was not brought forth to those committees.

I'll start with what might be considered the most interesting. There is a ballot proposition coming up in the November 2010 election, which is called "The Regulate, Control Ad Tax Cannabis Act of 2010." This would allow, if passed, individuals over the age of 21 to possess and transport up to

one ounce of marijuana for personal use. The proposition would permit the cultivation of marijuana on private property in a area not to exceed 25-square feet per residence or parcel, and requires the property owner's approval for the cultivation on leased and rented properties. Because it would require the owner's approval, it then becomes "real estate related," and C.A.R. then would consider taking a position on this proposition. Gee, I know this will be a surprise to you, but the Legislative Committee, and after the committee, the C.A.R. Board of Directors took an "Against" position on this proposition.

### Legislation:

**SB 1123**, if enacted, would prevent the Governor or Legislature from raiding the DRE reserve funds when there is a budget crisis—like now. There was a bill passed years ago that was supposed to have insured that, but the Legislature "loaned" the Department of Justice \$500,000 from the fund in 2009. This bill would clarify that loans would also be prohibited from the DRE reserve funds. The bill is stalled in the Senate Appropriations Committee.

**AB 1762** would clarify that an "advance fee" is not included in a bill passed last year, **SB 94** (Calderon), which would prohibit "cash up front" loan modification contracts. The language of **SB 94** was unclear, and it could be taken that it would interfere with our ability to collect fees on, for instance, a listing contract. This bill has passed the Assembly and is in the Senate Banking, Finance and Insurance Committee.

**AB 1796** has to do with the regulatory oversight of Appraisal Management Companies (AMC), which have sprouted up since Fannie Mae and Freddie Mac enacted the Home Valuation Code of Conduct. This bill is sponsored by C.A.R. and would clarify and enhance the oversight of Appraisal Management companies, specifically in connection with conflicts of interest, "out of area" appraisers, timeliness and accuracy of work product, and to ensure compliance with other requirements of law applicable to licensed appraisers. This bill has been held in committee, but the chair has committed to an oversight hearing on appraisals and AMCs, and pending Office of Real Estate Appraisers regulations.

## LOCAL GOVERNMENT FORUM



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There were two, 1-hour programs, being presented on Friday in the Convention Center: 1) Primary and General Election 2010 Review and Preview. 2) Running For Local Office – Five Questions to Ask Yourself. Our NSDCAR GAD, Ernie Cowan, taught the second class. I strongly encourage anyone interested in running for local office to speak to Ernie.

### Local IMPAC Interboard Solicitation Campaigns

Local boards have gone beyond their local resources and have gone to the state for funds for local campaigns. The Issues Mobilization Political Action Committee (IMPAC) can award funds to be used for ballot measure campaigns. The funds may not be used for candidates.

- Big Bear has requested funds to fight a lawsuit filed by the ADA that would require all private home rental properties (60-70% of their real estate market) to be ADA compliant. They have been awarded \$25,000 from IMPAC to fight.
- Orange County was awarded funds and successfully defeated a land use measure in Mission Viejo. Measure D would have required a majority vote of the people on “major amendments” which required changes to the city’s general plan or zoning code. “Major amendments” included projects like a church adding a day care, a hospital adding an oncology wing or a restaurant adding an outside seating area.
- Los Angeles received funds from the IMPAC on two issues. The first was to conduct a rent study to counteract renters association. The second was a point of sale (POS) sidewalk issue, which I wrote about at our February meeting. They came to a compromised solution (amended AB 811). The sidewalk would be identified, fixed, and assessed with payment over time. The

bill allows the payment to be spread over 15-20 years and paid on the property tax bill. It eliminates the need for upfront, out of pocket expenses.

### Issues Updates

- Los Angeles Rent Increase Moratorium  
There was a proposed rent increase moratorium, May – October 31. Normally on July 1 they can increase rent by 3%. The City Council sent the issue to committee to study.
- Vacant Property Maintenance  
Foreclosure property lenders are being fined up to \$1,000/day for blight properties. The cities thought is that the banks need to sell these properties so they will pay the fees. To address this issue in Chula Vista, a schedule of fines was created. Fines were reduced and short sales were made exempt from these fines. For investors, any repairs made will reduce the fee dollar for dollar. In Glendale FHA is refusing to pay these fees resulting in many escrows being unable to close.

### NAR Grant Programs

Several Associations are taking advantage of the NAR Grant Program. The type of programs receiving funding are: Foreclosure prevention programs; Bike friendly designations for a city from the League of American Cyclists; Homebuyer’s fairs; Fundraisers for PA funds; Zero waste workshops; to name a few.

### Elected and Appointed REALTORS®

C.A.R. offers a Candidate Training School for anyone who is thinking of running for office.

### Information Sharing

Air Quality (**AB 32** – green house gas initiative). There has been an initiative petition to suspend AB 32, due to its cost while in a bad economy, until California unemployment reaches 5.5%.

### **SB 375 (Sustainable strategy)**

Provides emission-reducing goals by reducing land use and car use (anti-sprawl) by 2012. One option mentioned is telecommuting. Recommending as reasonable and achievable.

## MANUFACTURED HOUSING



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With the current legislative session ending, four of the five bills sponsored for manufactured housing failed to make it out of their house of origin and are therefore dead.

The only bill that successfully moved to the Senate was **AB 761** (Calderon) Mobile Home Park Vacancy De-Control. This bill would extend vacancy decontrol to mobile home and manufactured housing communities. This would enable an owner to raise the space rent \$100 or 20% of the previous tenant's rent, whichever is greater when there was a new tenant. Owners would be prohibited from increasing space rent more than once in a 36-month period. It is currently being heard by the Senate Judiciary Committee.

### **HOUSING POLICY-**

**Assembly Bill 2207 (AB 2207 – Fong)** Utilities and Restrictions on Termination of Service would require a utility company to create a payment plan for customers who are having their utility service terminated for not paying their bill. It would also require a customer service representative to contact their customer to explain their right to extend repayment of the past due amount for a minimum of three months, with potential for more than a 12-month repayment plan. The customer would be responsible for additional charges due to the payment arrangement. C.A.R. took a "Watch" position on this bill, which is currently in the Senate Rules Committee.

**Assembly Bill 2406 (AB 2406 – Blakeslee)** Redevelopment Agencies and Pooled Housing Funds would allow redevelopment agencies in adjoining cities to form a joint powers authority (JPA) in order to pool their Low and Moderate-Income Housing (L&M) funds. These monies would be used to construct, rehab and preserve extremely low-income housing. This bill was written to replace AB 2041, which was created for the same purpose in 2000, passed but expired on January 1<sup>st</sup> of this year. The main difference in this

bill is the use for extremely low-income housing units instead of very low or low-income units as was in the previous bill. This bill moved to the Senate Rules Committee where C.A.R. is taking a "Watch" position.

## MEMBERSHIP



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Opening remarks from Steve Goddard, President of C.A.R. reported that Association mergers were on the upswing. There are 113 associations today as compared to 170 only a few years ago. There are 62 MLS's as compared to 120 a short time ago. The number of C.A.R. members are about the same as last year – less than 1% lower. Fifty-seven percent of REALTORS® had not sold one property last year. C.A.R. is financially healthy.

The theme of the meeting was Stepping into the Future ---Look Back to Look Forward.

RAF 2010 Chair, Wendy Furth reported that \$2.7 million has been raised so far this year. The goal is \$3 million. The Spa Day at the meetings raised \$9,000. Eleven Regions and 60 Associations have 100% contribution.

Art Luna discussed dressing for success. REALTORS® are professionals and should dress, act, and feel like a professional. Education is the key to success – recommend getting designations and learning how to utilize technology.

Eighty-seven REALTORS® were made Honorary Directors for Life. Requirements are 25-years of service and minimum age of 75.

The C.A.R. website has a DRE Broker Compliance database. You can search for Brokers by Primary Association, by City, by Zip or by Broker's license number to find agents whose licenses are with that Broker.

C.A.R. offers a Leadership Symposium to Association Executives and Board Presidents. The program is 1-½ days. C.A.R. also offers a local

Board of Directors orientation and association management tools at local leadership retreats. Albert Tran – update on ZipForms. E-Pubs – Disclosures online. Saving about 80 sheets of paper per transaction. Client needs to only print the signature page.

**New Foreclosure Prevention Library** – providing California REALTORS® with information needed to help homeowners avoid the pain of foreclosure.

**Digital Ink** – electronic signature program for ZipForms. The cost is \$40 per year and is based on transactions not envelopes. Subscribers receive 10 transactions per year with unlimited envelopes per transaction. For 10 additional transactions, the cost is \$35. This program only works with forms on ZipForms and no outside forms may be added for e-signatures.

REALTOR® major ad campaign will be running from April thru August. **“Your Piece of California”** gives clients the opportunity to write on the website and share their home buying experiences with a REALTOR®.

**Asian Real Estate Association.** This is an international networking association open to all REALTORS®. Their goals are to provide education, networking opportunities, leadership development, scholarships and grants.

## MLS/COMPUTER & BUSINESS TECHNOLOGY



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### ISSUES BRIEFING PAPER:

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

#### **1) Pre-Listing Marketing Work Group Report and Recommendation:**

Members had asked C.A.R. to explore the matter of pre-listing signage, sometimes known as "Coming Soon" riders. There were complaints associated with these listings. No new MLS rules

were recommended. The Work Group concluded it was not an MLS issue but rather a code of ethics issue. It was noted:

- 1) A pre-listing sign is okay as long as you have seller/owner permission.
- 2) If offers are not being presented or calls to the pre-listing agent are not returned, yet suddenly the just-submitted listing shows up as “Sold” in the MLS the listing agent is in violation of the Code of Ethics Article 3 and a formal grievance should be filed.
- 3) If the pre-listing broker tells an Agent there is no asking price and no buyer can see the property but mysteriously when contacted directly by the potential cooperating broker’s client they are shown the property and willing to write an offer on the buyers behalf they could be in violation of the Code of Ethics Article 16. This is where a Buyer Broker Agreement comes in handy.
- 4) Once a listing agreement has been signed, if the Listing Broker fails to submit an offer to the Seller/Owner they are in violation of our SANDICOR MLS Rule 9.2 and a formal grievance should be filed.

The Work Group recommended that Members be assertive in filing grievances against those who violate the COE or MLS Rules. It is believed that more assertive prosecution of violations can have an overall deterrent effect and raise the bar in the process.

#### **2) Citation Policy:**

The Work Group made recommendations, stressing they were for the C.A.R. Model MLS Rules, and each Association could determine if and how they would implement them. They set ranges for fines instead of a specific amount to address anti-trust issues. The recommendation passed the Committee, however the topic was pulled from the Board of Directors agenda for further research.

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

The Issues Briefing Paper was not discussed. The Work Group decided to review the issues again and report back at October’s business meeting.

#### **4) IDX Rules:**

There were five changes mandated by NAR. They were voted on in Committee and Approved. They were then voted on by the Board of Directors on June 12, and Approved. They are as follows:

- 1) Striking the IDX requirement for a participant to take reasonable efforts to prevent scraping and replacing it with language, which provides that participants may not use IDX provided listings for any purpose other than display on their websites, and expressly clarifying that partaking in IDX does not require participants to prevent indexing of IDX listings by recognized search engines.
- 2) Removing the ability of a listing broker to display his sellers listing on the listing broker's site if that seller opted out of internet display – this restriction will then match the VOW prohibition in this regard so that an Internet Opt Out applies to ALL Internet sites.
- 3) Reducing the time that participants must refresh all MLS downloads from seven days to three days.
- 4) Adding to IDX policy the VOW requirement that a Participant maintain a means (email address, phone #, etc) to receive comments about data or information on the IDX site, and requiring the Participant to correct or remove false or inaccurate information on the site.
- 4) Prohibiting deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings. For purposes of these rules, co-branding will be presumed not to be deceptive or misleading if the participant's logo and contact information is larger than that of any third party.
- 5) Allowing co-mingling of data on IDX sites only from multiple MLS sources.

*Clarification of item 3:* Item 3 was intended to address Appraisers. As the rules stand an Appraiser could partake in IDX. Meaning, they could have a website where the public could search for properties. This issue arose due to other MLS rule changes that looked at the sites as a place where a participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a "broker-consumer" relationship. An Appraiser does not fit this definition.

*Clarification of item 5:* There was a great amount of discussion on co-mingling of data. It became apparent there was not a clear understanding of just what co-mingling is. Co-mingling of data would allow one "Search the MLS" button on an IDX website to search multiple MLS' if the Participants subscribed to more than one. As an example, as it is now if you were a member of SANDICOR and SoCal MLS you would need two separate buttons on your website. This would allow you to have one button. You could co-mingle the data from both IDX feeds into one search. The rule restricts co-mingling to MLS data. You could not add "For Sale By Owner" data into the MLS IDX data as one search button. Separate buttons would still be required.

The issue that did not make it to a vote was to modify the C.A.R. Model MLS Rules to include "Sold" data in the IDX compilation. Currently the model Rule only allows "Active" listings to be included. Although many local MLS' have changed their IDX rules to allow "Sold" (and even pending) listings, no motion was made so the issue was not addressed.

#### **calREDD Update and Report:**

There was a proposed agreement between CALMLS (calREDD) and Multi-Regional Multiple Listing Service Inc (MRMLS) to merge and operate as the statewide MLS as one entity. A

There were additional changes proposed to the C.A.R. Model MLS Rules. They were voted on in Committee and five were approved; one did not get a motion and did not move to a vote. Those approved by the Committee were then voted on by the Board of Directors on June 12, and Approved. They are as follows:

- 1) Added additional clarifying language to the requirement to identify the name of the listing firm and listing agent so that it be in a reasonable prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data and that it contain an exception to the IDX name display requirement for a one-line or thumbnail search result as long as there is one or more additional display formats available for the listing.
- 2) Limiting the number of listings to 500, that a consumer can retrieve or download in response to an inquiry.
- 3) Limiting IDX participation to Broker Participants and R.E. Subscribers rather than to all Participants and Subscribers.

presentation was given to the Committee. The proposal was presented in two parts to the Board of Directors at the June 12, 2010 business meeting. Both items were approved.

The first item was to extend a line of credit in the amount of \$750,000 to CALMLS to be assumed and repaid by Holding Company as a seven-year fully amortized loan with 6% interest.

The second item was to approve the proposed merger of CALMLS and MRMLS into a new Entity, which would be known as New CALMLS. The proposal included the new Bylaws, approval to transfer of assets of CALMLS to New CALMLS, and creation of a new Holding Company to retain the line of credit obligation; fund database integration work, software development work, and transition expensed; utilize tax credits against future revenue, and capture endorsement and software royalty payment revenue.

### **REALTOR® ACTION FUND**



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The REALTOR® Action Fund (Formerly Political Affairs) has been extremely active and very successful in 2010 so far. Our political involvement goal for the year is 3M and we are at 2.3M to date – the same for entire 2009! This is a very positive result given the current state of the economy. The Broker Involvement Program has experienced similar success. This program was specifically designed to allow brokers to communicate to their agents the State and Federal issues impacting them. When agents are contacted by their brokers 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 15 percent of REALTORS® nationally respond to calls for action. We have a goal of 20 percent. That would mean over 200,000 REALTOR® voices would be heard by our legislators! As more

brokers and agents get involved they will clearly understand the issues impacting us today. California is currently in first place nationwide with 328 brokers signed along with approximately 30,000 agents. The nationwide goal is 6,000 brokers and 500,000 agents. Nationally we stand at 4,400 brokers and 275,000 agents enrolled. The REALTOR® Political Action Committee (RPAC) has a goal of 5.1M and is currently at 3.9M. This fund is for the issues and candidate challenges we continuously face in our industry. We are up to 23 percent agent participation from 19 percent last year. A definite improvement! Major donor goal is 684 and we are at 415. A definite positive direction. In Sacramento C.A.R. directors voted to make the 2-year goal of a mandatory political assessment a reality. This will insure that all REALTORS® share in the responsibility of the political successes we enjoy as an industry. Over the last few years we have gone from being ranked in the top five for political action committees down to #33 because of funding challenges. With 100% participation we will once again be a major force to protect our business from the onslaught of transfer tax threats, POS fees and endless government interference and regulation. Everyone should remember Senator Johnny Isakson from Georgia. Without the political action fund and the Senator there would have been no \$8,000 first time homebuyer tax credit. He was also instrumental with the expansion and extension of the tax credit!

We will continue to be forced into action to preserve our industry and our client's property rights. The economy is still 'under the weather' and cities and states are devising new ways to get into our clients pockets as well as our own. The real estate business will always need REALTOR® volunteers to be involved at the political level. Without volunteers we would cease to be a viable industry. I am constantly amazed at the sheer number of REALTORS® who attend the C.A.R. business meetings and give their time year after year without compensation. Maybe more REALTORS® can make that a consideration! When C.A.R. wins we all win.

Please contact me with any questions or concerns at: [Bob@BobPahlke.com](mailto:Bob@BobPahlke.com)

## PROFESSIONAL STANDARDS



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### **Code of Ethics Article 10; Standards of Practice 10-3:**

It was reported to the C.A.R. Professional Standards Committee at our June meeting that, at the NAR midyear meetings in May 2010, the NAR Professional Standards Committee approved the following changes to Article 10 and Standards of Practice 10-3 of the Code of Ethics:

Article 10 of the Code of Ethics  
*REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex handicap familial status ~~or~~ national origin, or sexual orientation. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color religion, sex handicap familial status ~~or~~ national origin, or sexual orientation.*

*REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color religion, sex handicap familial status ~~or~~ national origin, or sexual orientation.*

### **Standard of Practice 10-3**

*REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color religion, sex handicap familial status ~~or~~ national origin, or sexual orientation.*

These changes are expected to be approved by the NAR Delegate Body in November and become effective January 1, 2011.

A further report item at our June 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 RELATORS, 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.

You will recall that, in February 2010, the following motion was made, passed in committee, and eventually passed by the entire Board of Directors:

"That C.A.R. 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.

It was reported to us on June 10 that our February request has been received favorably by NAR and will receive further consideration, and possibly approval in September 2010.

There were no action items at the June CAR Professional Standards Committee meeting.

## **PUBLIC POLICY FORUM**



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### **Appraisals/Appraisers**

A presentation was made from a representative from OREA (Office of Real Estate Appraisers). OREA was formed to license appraisers through a certification program, so appraisers would have uniform standards. Appraisers must be competent or turn down an assignment. Appraisers are to be objective, impartial, and independent. All Appraisal Management Companies must be registered. Any violations of uniform standards can be reported through [www.orea.ca.gov](http://www.orea.ca.gov). Complaints were up during 2009. Work files are submitted immediately to investigators once a complaint is filed. OREA response to offenders is effective discipline by issuing fines and mandating education.

### **Gayle Bruce from Freddie Mac – What is the focus for mortgage lenders today.**

1. Practice responsible lending – HARP/HAFSA/HAMP programs
2. Top priority is to keep people in their homes when possible – meaning they can afford the house and keep up with the payments.
3. Responsible lending standards. Loans purchased by Freddie Mac in 2009 were loans issued to borrowers with an average FICO score of 751 and loan to value ratio of 69%.
4. Eliminated stated income/asset loans.
5. Outreach efforts

Lenders are working with NAR/C.A.R. to learn best practices regarding lending. There is a need for underwriting standards and loan processing.

### **Bill Moran – Deputy Commissioner for Enforcement at the DRE and Joe Carrillo, Head of Benefit of Doubt Program at the DRE.**

**Top investigations:** trust fund violations – comingling of funds and Broker supervision task force to investigate poorly managed office by absentee Brokers.

### **Benefit of Doubt Program**

If a Broker turns in an agent who is in violation, the Broker will not be named as a respondent, unless it is found that the Broker had knowledge or was involved. However, Brokers who dismiss agents because of violations but do not report them will be investigated when the current Broker reports on the agent who is violating standards. The DRE will go back to the previous Brokers during a 2-year period and investigate any misdoings while that agent was under the past Broker. Brokers are being held accountable to turn in bad agents.

DRE has a complaint form available on their website.

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



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With several highly respected attorneys and risk management professionals, a highly productive discussion was given regarding the following:

Whether you represent a buyer or seller, be sure to negotiate a home warranty for the buyer, even if the seller must pay for it. Many times the banks won't pay for a home warranty, but to reduce liability for all parties involved, it should be mandatory on all sales to include a home warranty. Check with your home warranty representative to see if a payment plan is available for a first-time home buyer. A home warranty may help save a lawsuit and should be a necessity on all home sales.

*Lead-Based Paint Renovation Rule* is a rule affecting construction contractors, residential landlords, property managers, and others who perform renovation for compensation in housing that may contain lead-based paint--housing built before 1978. Renovation includes most repair, remodeling, and maintenance activities that disturb painted surfaces.

No more than 60-days prior to commencing the renovation, renovators must give to the owner or occupant of the dwelling the EPA pamphlet, "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools," found at <http://www.epa.gov/lead/pubs/renovaterightbrochure.pdf>. The renovator must obtain written acknowledgment that the owner or occupant has received the pamphlet. If there is more than 6-square feet of paint per room in the interior or more than 20-square feet of paint in the exterior in pre-1978 housing is disturbed, then you are a renovator for the purposes of the Lead Renovation Rule.

New fumigation rules are in effect. When tenting a home, it is now required the tarp be left on the home three days. Fumigation companies must place fans in the home on the second day, while the tarp is on. These fans are intended to circulate the air more rapidly. REALTORS® must now allow sufficient time for termite work and fumigation with the new rules. The cost to fumigation companies will drastically be increased, as the cost of added equipment will run approximately \$20,000 to \$25,000 per company. This cost will most likely be passed on to the consumer.

Agents, who leave their clients in a home and leave, can be charged a \$1,000 fine. Public is being warned of those persons advertising homes on Craig's List and other internet sites to be cautious of persons renting vacant homes they have no interest or contract to rent or lease. Public is advised to have the home checked for notice of default or foreclosure.

Unlicensed contractors who do bid on jobs in excess of \$600 may be fined three-times the amount of the bid.

Gov Hutchinson talked about the TDS being amended to incorporate a seller's certification that,

by close of escrow, the seller will be in compliance with existing requirements for smoke detector, and water heater bracing. Effective January 1, 2011, the new TDS will eliminate the need for a separate standard form Water Heater and Smoke Detector Statement of Compliance (C.A.R. Form WHSD) for applicable transactions. However, it is imperative agents understand the Water Heater and Smoke Detector form is **STILL** a requirement until January 1, 2011.

The new requirement to install or plug in a carbon monoxide detector will apply to dwelling units with a fossil fuel burning heater or appliance, fireplace, or attached garage. "Fossil fuel" means fuel gases, wood, oil, coal, kerosene, or other petroleum or hydrocarbon products that emit carbon. Since most homes have a fireplace, even if it is an all-electric home, a carbon monoxide detector will be required

A discussion regarding short sales was given by Kimberly Dawson - Bank of America, Kathy Mehringer - Coldwell Banker, and Erik Weichert - President of Weichert REALTORS®.

Ms. Mehringer talked about the need to prepare a complete package from a seller of a short sale. It is imperative to have a complete package, as any changes or missing documents can cause extensive delays. The seller must be cooperative and be willing to provide whatever documents needed in a timely manner. Her website: [www.realestateriskmgmt.blogspot.com](http://www.realestateriskmgmt.blogspot.com) will provide the information a REALTOR® needs to assist them in taking a short sale listing.

As a listing agent, you must provide a seller with a minimum of three disclosures regarding the need to consult an attorney and or/CPA. One at the time of the listing; one at the time of the offer; and one just prior to close of escrow.

It was also discussed the problems with BPOs and the need to be truthful. Many times a BPO agent is trying to help get a home sold and provides a low estimate of value. This causes the entire neighborhood to diminish in value. BPOs must be a true opinion of value with no influence from REALTORS® or seller.

A very important issue discussed is the need to educate REALTORS® to NOT suggest to a seller to stop making payments on his/her loan (s). The

liabilities can be great, and REALTORS® do not give tax advice.

A hot item is the use of a third party negotiator for short sales. Ms. Mehringer discussed the pitfalls of using a third party negotiator, which may cause a dual agency in some cases and who is being asked to foot the bill for this negotiator. Ms. Mehringer suggested if you cannot do the short sale yourself, then do not take the short sale listing. It was said they are expecting a “tsunami” of lawsuits stemming from short sales and the use of a negotiator.

The panel discussed the ins and outs of short sales. There was a great deal of different opinions from the panelist, but the information from each was informative and helpful. Look for more articles at [www.car.org](http://www.car.org) on short sales.

Premarketing seemed to be a hot issue on the minds of REALTORS®. The unfair practice of REALTORS® with REO properties and marketing those homes prior to submitting them to their local MLS, has caused a great deal of discussion. It is now required on premarketed properties the real estate signs must say, “Coming Soon.” There is a perception is available, but in most cases, it has not been submitted to the MLS due to lack of a price of actual listing.

Gov Hutchinson discussed the Administration Fees charged by some brokerages. He suggested if there are other charges above the commission charged; put them all together in the commission. It should show on the HUD-1 as one fee.

The need to have your DRE license number is not required on pens, refrigerator magnets, and marketing items. Landowners cannot be required to be a Section 8 landlord.

Mr. Hutchinson discussed the law not being clear regarding if the banks can go after the homeowner after close of escrow for money owned on loans that have not been paid in full. He feels there will be cases in court that will make for case law. Until then, the questions remain unknown.

There will be much more information coming from C.A.R. in the next few months. Be sure to check their website [www.car.org](http://www.car.org) for updated information.

## TAXATION & GOVERNMENT FINANCE POLICY



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On June 11, 2010, the 528<sup>th</sup> Session of the C.A.R. Board of Directors voted and Approved the following “Action Items”:

**That C.A.R. “Sponsor” legislation** that would amend the **Brown Act** to require local governments to post meeting agendas and summaries of staff reports on their website 72-hours prior to the scheduled meeting. This law would only apply to local governments that have a website presence. The requirement in state law would allow individuals to regularly check that local government’s website to get complete information about upcoming meetings.

**That C.A.R. “Oppose” legislation that imposes a property insurance surcharge to fund emergency response preparedness.** If passed, commercial and residential property insurance policies would contain a 4.8% surcharge. The funds would be used in three state departments with emergency response capabilities, as well as supporting a grant program for local agency emergency first responders. Governor Schwarzenegger proposed this surcharge, and Senator Christine Kehoe has introduced the bill as **SD 1258**. The Legislative Analyst’s Office (LAO) does not believe that the proposed surcharge ties directly to the beneficiaries of these services. Therefore, this surcharge would be considered a tax. The LAO recommends that a fee be assessed only to the primary beneficiaries who reside in State Responsibility Areas (SRAs) that are handled by CalFire.

**That C.A.R. “Support” AB 2654 (Hill)**, a bill which requires private solicitations that resemble official documents to prominently disclose that they are from a non-government entity. This bill would require a bold print statement on the body of the letter/form as well as on the exterior of the envelope that is mailed to the consumer from a non-government entity. The wording would be basically that “this product or

service has not been approved or endorsed by any governmental agency and this offer is not being made by an agency of the government.” “This is not a government document.”

### **TRANSACTION & REGULATORY**

#### **That C.A.R. “Support” a proposal to repeal the statute allowing a “masking” of transfer taxes paid.**

C.A.R. is choosing to support the doctrine of all properties’ transfer tax and sales price be public information. Currently, individuals (homebuyers) can request that the amount of Transfer Tax due, be shown on a separate paper, thereby, keeping the sales price confidential. Attorney General, Jerry Brown published an opinion in July of 2007 that the internal accounting records of county recorders are subject to inspection under the Public Records Act. No current legislation is planned for 2010.

#### **That C.A.R. “Oppose” AB 2038 (Eng), a bill which would allow suspension of a professional license for failure to pay income tax.**

This legislation would authorize state licensing entities and the Franchise Tax Board (FTB) to suspend occupational and professional licensees (approximately 25,000) whom are delinquent in paying their income tax liabilities. This accounts for about \$1.4 billion in uncollected income tax for the State of California. Currently Illinois, Massachusetts, Minnesota, Missouri, Oregon, Pennsylvania, and Wisconsin provide for the suspension of licensees for unpaid income tax liabilities. This license suspension could only occur after a state tax lien has been recorded. A licensee can avoid suspension if they are in an installment payment agreement or the licensee could provide documentation that they would experience financial hardship.

### **GOVERNMENT FINANCE**

January 8, 2010, Governor Schwarzenegger had announced the budget deficit at \$19.9 billion. In May of 2010, the Governor revised the budget gap at \$19.1 billion. To close the budget gap, the Governor has proposed \$3.4 billion in shifting funds and using alternative funding, and another gap closer of \$3.4 billion through reliance of Federal Funds. The remaining gap has been proposed by reducing expenditures in child care programs except for pre-school and after school care, eliminating the California Work Opportunity and Responsibility for Kids Program (CalWorks),

and reducing funding for mental health services by approximately 60%.

#### **SB 1123 (Negrete McLeod) – Expansion of DRE “Poison Pill” to Special Funds.**

As previously discussed in C.A.R.s February meetings, we are “Sponsoring” this bill. It is currently in the Senate Appropriations Committee as a “Suspense File.”

#### **SB 401 (Wolk) – Federal Tax Conformity/Debt Forgiveness.**

This Legislation was signed into law by our Governor on April 12, 2010. This law conformed State to Federal Law, which does not require borrowers to pay income tax on debt forgiven on “Short Sales” through December 31, 2012.

### **CAPITAL GAINS**

#### **SB 1416 (Walters) – Senior Capital Gains Exemption.**

Beginning January 1, 2010, individuals 65-years of age or older will be exempt from paying capital gains tax on the sale or exchange of their principal residence. Current law reduces capital gains by permitting individuals to exclude up to \$250,000, and married couples to exclude up to \$500,000 of the net gain from the sale of their principal residence. C.A.R. “Supports” this bill because it will protect our seniors who are often on limited income.

#### **SB 10 of the Sixth Extraordinary Session (Dutton) – Capital Gains.**

Unlike SB 1416, this bill would apply to all age brackets and would exempt 50% of any net capital gain from the sale or exchange of a capital asset that was held for more than three years. This would begin on January 1, 2013 and end on January 1, 2016. This includes residential as well as commercial property. C.A.R. “Supports” this bill. This bill is currently in the Senate Revenue and Taxation Committee and is a “Suspense” file.

### **COMMERCIAL INVESTMENT**

#### **AB 1103 (Saldana) – Commercial Building Energy Star Benchmarking Program.**

C.A.R. has been participating as a stakeholder in developing the “Commercial Building Energy Star Benchmarking” program since the passage of AB 1103 in 2007. The draft language for the regulations is currently being finalized and will be released to the public this month. Building owners will have to benchmark the energy usage in non-

residential buildings and must disclose this information to prospective buyers, lessees or lenders when an entire building is sold, leased, financed or refinanced. Buildings that will be solely occupied by the owner, or which are more than 50,000 square feet, must comply with these regulations on January 1, 2011. The regulation schedule for buildings with square feet of 10,000 to 50,000 will take effect on January 1, 2012, and buildings with less than 10,000 square feet will begin on July 1, 2012.

### **1031 PROPERTY EXCHANGE**

#### **AB 2640 (Arambula) – 1031 Property Exchanges.**

Originally introduced to eliminate state conformity with federal tax law in regards to 1031 exchanges. In early April 2010, C.A.R. obtained amendments that removed this provision from the bill. At this point, the bill is in the Assembly Revenue and Taxation Committee and C.A.R. is in a “Watch” position as amended.

#### **SB 1316 (Romero) – 1031 Property Exchange Limitation.**

This bill was recently amended to create a state tax credit for investments in low-income communities. This bill would eliminate the capital gains tax on property tax deferred exchanges out of state. Even though this is allowed under federal law, investors would not get the same tax deferred treatment for state tax purposes. This bill is in the Senate Revenue and Taxation Committee and is scheduled for a hearing in the next couple of weeks. C.A.R. is “Opposed” to this bill.

#### **AB 2492 (Ammiano) – Split Roll.**

The bill as written originally, created reassessment for commercial property whenever a transfer of ownership of a corporation, partnership, limited liability company or other legal entity occurred. The bill, recently amended, changed the wording to “sale or transfer of 100% of the corporation owning the property in any single transaction.” This bill is in the Assembly Appropriations Committee, and C.A.R. is “Opposed” due to the separation of commercial from residential and a possible creation of a split tax roll.

### **PROPERTY TAX**

#### **SB 1415 (Walters) – Property Tax Portability.**

Proposition 60 allows a homeowner aged 55-years or older to transfer (one time basis) their property tax base year value to another home of equal or

lesser value within the same county, or to a different county, if that county has adopted an ordinance permitting transfer of that tax base. Beginning January 1, 2011, **SB 1415** would allow homeowners who are 65-years or older to transfer their property tax base year value to a home located in another county regardless of the adopted ordinance by that county. This bill is currently in the Senate Revenue and Taxation Committee. C.A.R. is in “Support” of this bill.

#### **SB 1430 (Walters) – Senior Citizen Property Tax Exemption.**

Current law provides for a homeowners’ exemption of \$7,000 of the full value of their home. This bill would increase the exemption to \$27,000 for homeowners 62-years of age or older and would require the county assessors to annually adjust the tax credit by the percentage change in California’s Housing Price Index. Currently, under the Personal Tax Law, renters receive a \$120 credit if they are married with an adjusted gross income of \$50,000 or less, and individual renters with an adjusted gross income of \$25,000 or less receive a tax credit of \$60. Under **SB 1430**, seniors 62-years of age or older that are renting would receive a tax credit of \$151 if married, and \$75 if single. This bill is in the Senate Revenue and Taxation Committee as a “Suspense” file. C.A.R. is in a position of “Support.”

### **TRANSACTION TAX**

#### **AB 1919 (Davis) – Survey Monument Preservation Fund.**

Your Board of Directors ascended on the Capitol on June 9, 2010 and requested your Assembly persons to defeat this bill which is currently on the Assembly Floor. **AB 1919** allows the County Board of Supervisors to create a survey monument fund by charging a fee of up to \$10 to be charged upon the recording of a grant deed. Under current law, conveying lots created by recorded tract maps cannot be charged. This bill would eliminate that exemption and allow for the additional \$10 recording fee on all recorded grant deeds. This bill is in the Senate Revenue and Taxation Committee as a “Suspense” file. C.A.R. is “Opposed” to this disguised form of “Transfer Tax.”

### **GOVERNMENT FINANCE**

Congress is proposing possible changes to the “S” Corporations to ensure that their owners are paying their fair share of Social Security and

Medicare taxes. Congress is trying to prevent owners of "S" Corporations (Corporations engaged in a professional service business with 3 or less individuals) from paying themselves small salaries and pulling additional proceeds by methods that are exempt from employment taxes. This would also apply to "S" Corporations with fewer than 2 individuals that are partners in a professional service business.

Many of the Bush Tax Cuts; Capital Gains rate returning to 20%, and the one-year elimination of the estate tax, are expiring in 2010 and Congress is facing many decisions. In the year 2011, Estate Tax could be returning to a \$1,000,000 exemption with a 55% tax rate.

In the end of May 2010, the Senate and the House appeared to have a draft compromise of the Tax Extenders bill **H.R. 4213**. These one-year tax extenders include the standard deduction for state and local property taxes, 15-year leasehold improvements, contributions of capital gain real property for conservation purposes, and the Brownfield deduction. Congress is also proposing a change in the taxing of carried interest that is currently being taxed at the capital gains rates. The new change would allow carried interest to remain unchanged if it reflects a return on invested capital. If it does not reflect a return on invested capital (like sweat equity), the provision would treat 75% of the remaining carried interest as ordinary income. It is unknown at this time if Congress will accept in total, the draft compromise or if additional changes and revenue raisers will be required.

### **COMMERCIAL INVESTMENT**

The recently passed healthcare reform bill is causing confusion about the provision that creates a 3.8% Medicare Tax on unearned income for taxpayers with adjusted gross income of \$200,000 or more for individuals, and \$250,000 or more for married couples. The new tax is for all unearned net investment income and includes interest income, dividends, rents and capital gains. It will not include the capital gains exclusion for principal residences. To read more about this topic, go to [www.realtor.org](http://www.realtor.org).

### **OTHER INFORMATION OF INTEREST**



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NSDCAR REALTOR®, Kenneth Lane of Coast Realty in Escondido, was granted Honorary Member for Life status in recognition of his 25-years of uninterrupted membership. Congratulations, Kenneth.

The way was paved for a statewide MLS in California. See the calREDD segment of the MLS/Computer & Business Technology report above.

The Legal Action Fund Trustees authorized amicus briefs for several cases. Guggenheim v. City of Goleta involves rent control in mobile home parks and whether a restriction, which does not allow for vacancy decontrol is valid under federal law. Lange v. Segerstom is a question of failure to disclose that a home on a lakefront was not on the lakefront the entire (i.e. the lake dried up during portions of the year). There is concern for the potential for huge extensions of the statute of limitations. Tarrant Bell Property, LLC et al. v. Superior Court has CAR siding with the mobile home park owners where unit owners filed an action against the former and current park owners alleging that the owners failed to maintain the park in good working order and condition resulting in damages suffered by unit owners. An update was given on a landmark decision in the case of Steiner v. Thexton previously supported by the Legal Action Fund. C.A.R.'s concern was the impact on the RPA due to the ability of a buyer to cancel a contract due to the failure of a contingency ... but did not have to state a reason. The Court's acknowledgement of C.A.R.'s concern combined with C.A.R.'s newly inserted good faith clause reinforces that C.A.R. contracts should not be impacted by The Supreme Court's decision regarding an option and that significant sums constituted adequate consideration.

Joel Singer, C.A.R.'s EVP, addressed members attending the Economic Update luncheon. He pointed out that the long-term odds are always in favor of buying a home. Although this is the longest low-end dominated market, he sees us being past the bottom in almost all sectors. San Diego is up 18.9% from the trough. He says delinquencies are leveling off and REO sales are declining and will not be flooding the market. For additional market information go to [www.car.org](http://www.car.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!



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