



C.A.R. Reports Monterey, CA



January 2009

North San Diego County Association of REALTORS®

TABLE OF CONTENTS

COMMERCIAL ALLIANCE/INVESTMENT.....	1
COMMON INTEREST.....	2
EDUCATIONAL SERVICES ADVISORY.....	2
EQUAL OPPORTUNITY/CULTRUAL DIVERSITY.....	2
FEDERAL ISSUES.....	4
HOUSING OPPORTUNITY.....	5
INTERNATIONAL REAL ESTATE.....	6
LAND USE & ENVIRONMENTAL.....	6
LEGISLATIVE COMMITTEE.....	7
LOCAL GOVERNMENT RELATIONS.....	9
MANUFACTURED HOUSING.....	10
MEMBERSHIP.....	10
MLS/COMPUTER & BUSINESS TECHNOLOGY.....	11
POLITICAL AFFAIRS.....	11
PROFESSIONAL STANDARDS.....	12
PROPERTY MANAGEMENT.....	13
REAL ESTATE FINANCE.....	15
REALTOR RISK MANAGEMENT/CONSUMER PROTECTION.....	17
RURAL FORUM.....	18
STANDARD FORMS ADVISORY.....	20
TAXATION.....	20
OTHER INFORMATION OF INTEREST.....	21

C.A.R. Business Meeting Report Monterey, January 2009

The California Association of REALTORS® held its first of three business meetings for 2009 in Monterey. Seventeen of our NSDCAR members represent you in the CAR decision-making process. **Chuck Smiar, Prudential California in Escondido, Region 29 Chair**, heads your NSDCAR contingent, and **Anita Quillman of Century 21 Sea Coast 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 as well as their e-mail address. Please feel free to contact any of these members for additional information, or **CEO Dianne McMillan (Dianne@nsdcar.com)** or **Government Affairs Director Ernie Cowan (Ernie@nsdcar.com)** or phone us at the Association's Administrative Office (760) 734-3971.

COMMERCIAL ALLIANCE/ COMMERCIAL INVESTMENT



Chip Bonghi
C.B. Properties
(858) 488-0900
chip@CBPropertiesInc.com

Christopher Carlisle, CAR Legislative Advocate, spoke on several issues, but stressed California's economic condition and how it may impact REALTORS®, due to the banking conditions, TARP monies not going to home loans, and the statewide 23% drop in home prices. He stated there is a short fall of 40% of the \$95.5B required. The website for California budget and departments is www.ebudget.ca.gov. He continued with we must keep on top of the issues concerning our business and respond to the call for actions we receive via e-mail, and that our voices must be heard, and heard in numbers.

Rebecca Vesconte spoke about the REALTORS® Commercial Alliance (RCA) membership, which was up 46% from March to approximately 81,000 nationwide. She stressed the need for all residential associations to be involved with some form of commercial entity. She announced that NAR's commercial website www.commercialsources.com has 632 listings and is free to REALTORS® by just registering.

Committee Vice Chair Julie Ho spoke on the RCA Accreditation and Mentor Program. I am pleased to say that our Association's Commercial Division was in the first group of commercial entities to be accredited by NAR. Once accredited, members can use the logo on their respective business cards and pins. Contact NSDCAR

Commercial Division Director Laura Briney at (760) 734-3971 if you are interested in our Commercial Division.

Vice Chair Paulina Lee talked about sponsorship opportunities. Basically, this is a fundraising platform for real estate firms and individuals to sponsor programs, such as education, seminars, etc. and receive advertising for their respective firms. Packages range from \$2,500 to \$20,000. For more information, contact Paulina at paulinaleelee@yahoo.com.

Chair Jared Martin spoke briefly about the CAR Commercial Connection, which was a follow-up to Paulina Lee's sponsorships. He talked about the four education classes and seminars coming in 2009. One is to be held at NSDCAR, and the rest will be posted on the RCA website. Watch for details as they become available.

We also heard about the AIR Essentials for WINForms. CAR and AIR have come to an agreement that REALTORS® can have access to 15 of the most used AIR commercial forms for \$99 a year. This is a tremendous savings over the cost of a full subscription to AIR forms if you are not a heavy user of commercial forms. For disclosure, I was on the Commercial Forms Committee last year, and as part of editing older commercial forms and developing new ones, which we did, it made more sense not to re-invent the wheel, but to strike a deal with AIR. Users should contact Rick Riemer, Counselor for AIR at (714) 835-1551, and AIR tech support at (213) 739-8227. Do not call CAR for any questions or tech support on AIR forms.

COMMON INTEREST



Gwynne Hodge,
McMillin Realty
(760) 729-2900
hodgegg@aol.com

As you may have read in other reports, very little legislation is going on in Sacramento these days, as our legislators are all busy trying to balance the budget. However, we are preparing for when we can introduce new legislation and respond to new legislation introduced by others.

One bit of legislation that the Committee talked about sponsoring would be to redirect in a successful way legislation, which would allow homeowners who have purchased in a common interest development (CID) to rent their property if when they purchased there were no restrictive CC&R's prohibiting rentals. Last year we sponsored such a bill, AB 2259 Mullin, but it was one of the bills (one of many) which the Governor vetoed. Currently there are many CID's which are prohibiting an owner to rent their property if the CID has reached the non-owner occupied saturation point for VA/FHA loans. While we realize that having the owner-occupied percentage be at acceptable levels for VA/FHA, in this market many homeowners have been forced into bankruptcy or short sales because they are transferred, have an illness etc., which requires them to move out of their home and they are not allowed to rent the property. So, we don't have a definitive answer yet, but a working group will be set up and we will be working on that issue before the next meeting in June. Let me know if you have any horror stories to tell in regards to the above. We always need them when we go to the legislature with bills.

As of January 1, 2009 AB 2846 (Feuer) became law. This bill allows a homeowner in a CID who has a dispute with the CID, to pursue existing dispute resolution, but additionally, the homeowner may pay the disputed fee and then pursue the CID in Small Claims Court.

In our October CAR Directors Meetings, the Common Interest Development Committee (I was Vice Chair and was able to assist in this pursuit) went to the CAR Education Committee and presented our reasons for wanting a CAR course specifically targeting CID education. Currently CAR and other CID associations do not have any courses addressing REALTORS® needs. We

received the news in the committee meeting that by the end of this year CAR will have put together such a course.

We also discussed the possible need for an HOA Registry. It is many times especially difficult for REALTORS® representing REO's to find out who the property management company is when they obtain a listing in a CID since there is no "homeowner" to provide them with the HOA information. If you are having that difficulty, you might try going to www.condocerts.com or www.cidregistry.com to track down the property management company or individual who handles the HOA you are trying to research. CAR will be working on finding other alternatives.

Contact me if there are any HOA issues or problems that you know of that might adversely affect REALTORS® or homeowners.

EDUCATIONAL SERVICES ADVISORY



Ginni Field
Coldwell Banker
(858) 794-3100
Ginni.Field@camoves.com

CAR is now offering great technology-based webinars for as low as \$9.95 depending on the course. The class choices are extensive and can easily be found by going to www.car.org/education.

There was a special roundtable session with subjects speaking to new types of marketing. Social networking sites are a huge benefit to REALTORS® and we discussed sites such as Facebook, LinkedIn, ActiveRain and a new one – RSNlink. We also talked about Constant Contact, which is an e-mail marketing system.

EQUAL OPPORTUNITY/CULTURAL DIVERSITY



Bonnie Frazier
Realty Executives
(760) 758-5800
bonnie@bonniesells.com

I. Legal Updates – Gov Hutchinson, Asst. General Counsel/Staff VP:

The Residential Segregation Fair Housing Reports that there are 4 million Fair Housing violations, but that only 1% get filed. Ongoing Federal Case against Roommates.com, which asks you to identify yourself, which then goes into a database. Case stands on the grounds that Roommates.com is steering because they set up categories. You are exempt from Fair Housing Laws if you rent a room in your own home. Discrimination of Families with children against a landlord of apartments when they put so many restrictions on the children, such as non-use of pool on certain days and times, can't walk on the grounds unaccompanied by an adult, no walking on the grass or playing in common areas, etc. The Court ruled against landlord saying they were not letting children be children and therefore discriminating against them. Landlord/owner fined \$600,000. In a Sexual Harassment case against the manager, the owner was sued. Apparently, the manager was offering free rent to some tenants for sexual favors. Complaints were made against the manager that the owner did not act on.

II. Political Update - Jeff Keller: Stimulus Package the New Congress and Obama Administration will introduce the package, which can range from \$700 billion to \$1.3 trillion; including tax breaks for lower and middle income, funding for infrastructure, creation of jobs. Additionally, can include Foreclosure Mitigation, GSE's and FHA increase in loan limits and Reform, Bankruptcy Reform, Homebuyer Tax Credit. For more details, see the Reports for the Legislation and Real Estate Finance Committees.

The National Commission on Fair Housing and Equal Opportunity Report held hearings in five major U.S. cities, Chicago, Houston, Los Angeles, Boston and Atlanta to assess the progress in achieving fair housing.

The hearings exposed the fact that despite strong legislation, past and ongoing, discriminatory practices in the nation's housing and lending markets continue to produce extreme levels of residential segregation that result in significant disparities between minority and non-minority households, in access to good jobs, quality education, homeownership attainment and asset accumulation. While what was learned about the state of fair housing was sobering, this report is by no means gloomy. We have made progress. Most states and many localities have fair housing laws, some of which provide greater protection than the federal Fair Housing Act. The National Commission on Fair Housing and Equal Opportunity proposed the following recommendations:

Create an Independent Fair Housing Enforcement Agency – Revive the President's Fair Housing Council – Ensure Compliance and the "Affirmatively Furthering Fair Housing" Obligation – Strengthen Compliance with the Affirmatively Furthering Fair Housing Obligation by Federal Grantees – Strengthen the Fair Housing Initiatives Program (FHIP) – Adopt a Regional Approach to Fair Housing – Ensure that Fair Housing Principles and Emphasized in Programs Addressing the Mortgage and Financial Crisis – Create a Strong Consistent Fair Housing Education Campaign and Create a New Collaborative Approach to Fair Housing Issues.
New HUD Secretary, New York City Department of Housing Commissioner Shaun Donovan, appointed by President Obama.

III. NAR Update – Winnie Davis, NAR Representative: AREAA, Asian Real Estate Association of America is having a Real Estate and Policy Conference in Washington D. C. on March 14-15, 2009. For more information go to the web site at www.AREAA.org to register for the conference. President Obama appointed Jim J. Park, the President and CEO for AREAA, to chair a Housing and Lending Committee.

IV. Lender Panel – Miguel Garcia – Panelist; Richard Duncan, Sr. V. P., Regional Executive for Bank of America and Tom Swanson, Retail Regional Sales Manager for Wells Fargo Home Mortgage:

Q. Why don't banks sell homes back to the owners on a short sale?

A. Practice of short sale to the current owner (borrower) can create problem backlash. The moratorium on foreclosures over the 4th quarter (holidays) found that a lot of the homeowners that were making their payments on time stopped paying their mortgages.

Q. What are the banks doing to prevent fraud and bad loans?

A. Reinstate the strict practice of Employment and Salary Verification, no more 100% financing. Looking for fraud, especially on stated income, P O Box for address on Hazard Insurance is red flag, asking for the seller's side of HUD 1 before closing.

Q. What can banks do to help qualify more people for loans and improve the current situation?

A. Our purpose is to promote homeownership and community revitalization. Helping people to succeed financially by verifying employment and income.

Consider incomes that are non-traditional. Restructuring: Wells Fargo had 309 policy changes in 2008. There is a fiduciary responsibility by the lender and the REALTOR® to make sure the borrower is qualified and that there is no fraud. There is a difference between the people that are able to pay but are unwilling to pay and those that are unable to pay. Better prepare people for the loan process. Compared to the total outstanding loans, the foreclosures are actually a small percentage. Wells Fargo is very strict about paying overages (the percent paid to mortgage brokers and charged to buyer).

Q. What kind of loan programs do you see now and in the future?

A. FHA is very popular \$25 million per month in loans. Mortgage Insurance Companies will be back when the market stabilizes. Current Treasuries will start to come back into the market as it stabilizes. FHA is more user friendly now. The Acorn Program always verified income and those outstanding loans are still doing well. Hopefully they will be back in the future. FHA increased to 38% more loans.

Q. What is your overview for 2009?

A. The volatility was caused by highly leveraged companies with 7 to 8 times their credit limit. We should be on the mend by the 4th quarter. Sales in Los Angeles County are up 53%. Housing has to lead the way in order to pull out of this recession. Homeownership is still number one in creating family wealth. Don't fight the new guidelines these will allow us to make many more new loans in the future. The 3rd and 4th quarter will show measurable improvement and we will be well positioned for 2010 and 2011. REALTORS® need to be vigilant of keeping it honest and report any suspicious activity by lenders or borrowers.

FEDERAL ISSUES



Bob Pahlke
Prudential California Realty
(760) 431-3330
bobpahlke@roadrunner.com

There are many issues at the federal level that will be affecting us as REALTORS® this year. One of them is health care reform. CAR believes having a health care reform policy is in the best interests of membership, in that

it impacts a REALTORS® cost of doing business and quality of life. Rising health care costs can restrict a person's ability to afford health insurance and thus in turn the dream of homeownership. The Federal Issues Committee created a working group to develop policy guidelines on health care issues that can be used to evaluate legislation as it is introduced; then analyzing legislation and reporting recommendations to the committee. CAR believes NAR should support health care reform.

CAR has discussed at length the current stimulus package that is currently in front of the President. One of the items is what will Fannie Mae and Freddie Mac look like when they emerge from conservatorship? They will not look like they did before restructuring. Best guess is a hybrid or combination of government presence and private shareholders. However, the shareholders should not be able to grab the profits while the taxpayers take all the risk. There needs to be a secondary mortgage market with sufficient capital in all economic conditions. Qualified buyers deserve the best interest rates. The GSE's should be required to pass the savings on to taxpayers in the good markets as well as be subject to rigorous oversight with tighter regulations, underwriting and high lending standards.

CAR is working closely with NAR on the four-point plan for the stimulus package. It contains elements for the \$7,500 tax credit, revising FHA, Fannie and Freddie, government purchase of mortgage backed securities to stabilize housing and keeping banks out of real estate. The complete plan may be found on NAR's website.

Other topics discussed were high-speed Internet access. This has been billed as an infrastructure project that would help create jobs and stimulate community growth. CAR believes every American deserves access to high-speed Internet. Bankruptcy laws were discussed and no action was taken at this time. Senators Boxer and Feinstein have signed on to the Durbin bill that would let judges modify mortgage loans including reducing the principle. This is known as a "cram down" and could have a negative effect on lending.

The issue of allowing troubled homeowners access to their retirement plans without penalty was discussed and no action was taken at this time.

CAR is busy monitoring the new administration with regards to tax extensions, tax reform and the AMT, and

private transfer taxes. We should have more information on these items as time passes.

If you have comments or issues with everyday business and would like them discussed in Washington, e-mail Matt Roberts mathewr@car.org or Jeff Keller jeffk@car.org

HOUSING OPPORTUNITY



**Jim Aldredge, JTA Realty Professionals
for Committee Representative
Gretchen Mitchell
(760) 597-9464
jim@jtarealty.com**

At the time of this meeting, there was only one bill up for discussion; the SB 49 introduced to the California Legislature that involved our real estate industry. This bill introduced by the California Building Industry Association (CBIA) would create a “Homebuyer Tax Credit” for purchases of newly constructed homes, as well as homes that have never been occupied in California, which close escrow by December 31, 2009. The discussion of action taken in this committee, if any, was a two-part discussion. Part 1 of the discussion was to decide on the position we believed the California Association of REALTORS® (CAR) should take on this legislation as written, and discuss any amendments to the legislation. Part 2 of the discussion was to make a recommendation to the CAR, should the CBIA accept any proposed amendment to this legislation.

The options discussed were to:

- 1) Support the CBIA proposed legislation.
- 2) Oppose the CBIA proposed legislation, unless it is amended to encompass purchases of all homes.
- 3) Oppose the CBIA proposed legislation, unless it is amended to encompass all first-time homebuyer purchases for both new and resale homes.

Option 1 was debated and quickly dismissed for reasons ranging from the perception of this being nothing more than a job stimulus for the home building industry, to the belief that it is discriminative to first-time homebuyers.

Options 2 and 3 were discussed with concerns that if we made a recommendation, would the state budget crises potentially prevent the consideration of any proposed legislation? Would the time frame for the expiration of the proposed legislation even allow consideration?

A motion to accept Option 2 as written was passed. A second motion to support SB 49 if the CBIA accepted our proposed amendment was passed.

Ultimately, the action item this committee would submit to the CAR directors for a vote would be the following motion: “CAR OPPOSE SB 49, unless amended to apply the proposed tax credit to sales of all single-family residences intended to be the principal residence of the purchaser, and if so amended, CAR SUPPORT SB 49.”

The Legislative Committee presented an amendment to this motion to the CAR directors for a vote that read as follows:

“CAR OPPOSE SB 49, unless amended to apply the proposed tax credit to all sales of all single-family residences intended to be the principal residence of the purchaser, and if so amended, will remove its opposition.”

Discussion for the amendment was with regard to the resources CAR would be committing to if we took a support position, rather than simply informing the CBIA that we would not spend time and resources to oppose.

The amendment was approved by the CAR Directors and the Motion passed.

CAR Staff: Matt Roberts presented a brief report on the Federal issues to watch for in 2009. These issues included the new administration’s economic stimulus package; loan limits; continued support to make the existing \$7,500 first-time homebuyer’s tax credit permanent and applicable to all homebuyers; and bankruptcy reform that would allow judges to modify the loans on a principal residence. He also stressed the need to improve participation of our REALTOR® community when the “call for action” e-mails are sent. We need to stress the importance of these e-mails and attempt to increase response from more REALTORS® when called for action.

Georgia Richardson, Vice Chair gave a report on the State Housing & Community Development (HCD) and the search for permanent funding. Of the more than 50 sources suggested, the HCD narrowed sources to ten, of which CAR was identified as one of the top five “players” in this discussion. Of the options identified by this group, three were being considered by the HCD for recommendation to the Governor and they are as follows.

1. Creation of a California secondary market to purchase or guarantee home loans that are outside the parameters of the National FHA guarantee.

2. Imposing a Document Recording Fee, to be paid by the party recording the real estate transaction document and collected at the close of escrow for all real estate transactions.
3. A loan guarantee fund for loans between \$625K and \$1.5M. The fees for such loans would go to the Affordable Housing Fund.

CAR, in a meeting with HCD, indicated that it would support Options 1 and 3 noted above however, they would vigorously oppose Option 2. CAR is awaiting response from the HCD regarding our opposition of Option 2 of the HCD recommendation.

INTERNATIONAL REAL ESTATE



Peggy Yeomans
San Diego Homes & Finance
(760) 966-9191
PeggyYeomans@yahoo.com

“Think Globally... Sell Locally...” is the theme of the International Real Estate Forum committee. Due to the nature of our housing industry, many investors from foreign countries will look to invest in the United States.

Ray Park (Korean/American) was the guest speaker regarding the traits and buying protocol of the Korean buyer. Korean money is coming into the United States for investments even though Korea is in trouble economically. In generality, Koreans are direct and to the point. The Korean people are more outgoing than the Asian buyer. However, the Asian buyer is more patient. You must build trust with Koreans. Advise them of all criteria and then sit back and listen. They tend to move fast with their decisions once you have built that trust. They tend to be more skeptical than optimistic. Do not rush or talk too loud. Always show the positive and negative sides and facts to all issues. Pamper them. Serve them. The extra care you give to them will give you more respect. If they are silent, chances are they are lost or confused. Ask questions why they are silent and talk slow enough for them to catch your thought process. It is better to use simple verbs rather than adverbs and adjectives. They tend to be reluctant to ask questions, so ask them what is going on and make them comfortable. If you build the trust, the door is wide open. Actions must follow words. Be polite. They will respect you if you achieve your goals or become

successful. They want to belong to something and be included as a “group thing”. Most important is what others think of you as compared to what you think of yourself. Always negotiate on their behalf if properties are over-priced. Always look to see if price is fair, or is there a better price to be obtained. They will look at the big picture and tell you what they want. Listen. A “deal killer” for the Korean is if they are cheated, mistreated or the agent is not kind and gentle with them. They will easily walk away from a transaction even if it is an incredibly great deal.

The older Korean can tend to be superstitious and may want to go to a “fortune teller”. The Korean buyer likes a home facing south because it is lighter and brighter. They tend to not like the numeral 4 in most addresses because it means death, conversely, the number 8 means love.

The second half of the forum dealt with the economic forecast from C.A.R. Deputy Chief Economist, Robert Kleinhenz, Ph.D. Currently treasury bonds and treasury yields are the safest forms of money. First and second quarter of 2009 will still be in decline with growth expected in second half of 2009. In California we are experiencing approximately 22-25% increase in “solds” from previous 2007 figures. The International real estate housing market is tied to the General Economy. There was a housing upswing in the international market in 2002-2005. A downturn started in 2006 to present day. This downturn is tied to the lack of real estate financing. For more information on Economic Forecasts, please refer to www.car.org.

LAND USE & ENVIRONMENTAL



Dee Snow
Snow Properties, Inc.
(858) 756-8500
dsnow@snow-properties.com

There were no action items in this committee, whose mission is to make policy recommendations and monitor state and federal legislative proposals, state ballot propositions, proposed state regulations, and the activities of state administrative agencies relating to land use and the environment. It reports through the Legislative and Federal Issues Committees and to the Executive Committee and

the Board of Directors.

There was considerable discussion on the impact of Land Use Regulations and the unintended consequences of imposing Point of Sale regulations in an attempt to enforce what communities see as necessary to protect the environment. Examples are the Lake Tahoe Regional Plan that imposes erosion control regulations at Point of Sale. The desired result of improving erosion control in the entire basin never occurs because it will take 40 years for the majority of the homes to change hands and the practices implemented. Another example is the retrofit of soft story structures that is moving forward in Alameda. Soft story structures are those in which the living unit is over a garage. For buildings with five or more units, all of the units must be retrofitted over the next 5-year period. In some instances the costs are estimated to be anywhere from \$10,000 to \$200,000. Although the current action is localized, it is expected to expand and become a statewide issue. In Lomita, a Point of Sale passed that required all plumbing fixtures to be changed at Point of Sale. Once again, Lomita is looking at it taking 40 years to achieve the desired result. A final comment is that CAR's argument(s) against POS do not resonate with the voters and that C.A.R. needs to develop a new message.

LEGISLATIVE COMMITTEE

Sandi Adelson

Homeland Properties GMAC

(760) 591-3090

sandi_and_the_hometeam@hotmail.com

This meeting was full of discussion and debate. There are many areas of concern and the committee let no issue that had time-sensitivity go unnoticed. These are interesting and challenging times...especially in the legislative arena. CAR will take a defensive stature and be reactive, rather than aggressive and offensive. This is for two (2) primary reasons – first, until a budget is adopted in California and the federal government passes economic stimulus packages, little energy will be spent anywhere else - secondly, political action fund contributions are down, so resources must be managed wisely.

I. Extraordinary legislative session -

The Budget - Sacramento is reaching a deadline on this emergency session. There will have to be action by the end of the month and we can anticipate another new budget proposal. At this time, there is little reason to believe that the Governor will approve this one either and that he will

veto the new proposal as he did the last budget. As much as C.A.R. would like to believe that the 3% withholding tax for independent contractors was behind the veto, it was not because of what was in the budget, but rather what was not. This action makes no sense because of the paperwork nightmare it creates for both the brokers and the state and because most of the funds would be returned. The independent contractors withholding may reappear. Also, while there has been no indication of instituting a sales tax on services, anything is possible. On these issues CAR will remain vigilant.

II. Anniversary Inspections and Point of Sale - Since 1990, C.A.R. has been successful in defeating twenty point-of-sale bills (the first was toilet retrofit). It is becoming more and more difficult to fight these issues. The governing bodies are finding ways to generate fees with licensing, inspection and/or certification fees. An argument that C.A.R. has always made is that if something is important enough to mandate a point of sale trigger, it should be important enough to apply to all property. An option was presented to the committee. C.A.R. could sponsor legislation that would institute anniversary inspections. EXAMPLE: If a home was built in 1990, every five (5), ten (10), or whatever anniversary decided upon, a home would need to be inspected to make certain that whatever retrofit mandates have been completed. So, if the legislation was passed with a ten (10) year anniversary inspection and took effect this year, the example home would have the first inspection in 2010.

The debate was lengthy – Who would do the inspections or would it be a compliance statement from the homeowner – what if the homeowner misrepresented the retrofit statement – this may not be an issue with “small” retrofit issues like water conservation through toilets, shower heads, etc. but what if those proposals were energy issues with replacement of windows, doors, or even installing siding or roof retrofit for fire protection - what if the homeowner complies with retrofit notices quickly and within that ten (10) years a more restrictive or new retrofit is instituted on the same equipment. When the dust settled, a motion was made, seconded and passed that “CAR maintain existing policy to oppose point-of-sale mandates and continue to study the issue in a working group and bring further options back at the June 2009 meeting.” A copy of the briefing paper presented on this issue can be found at

<http://www.car.org/meetings/carmetings/committee-materials-archive/jan2009committees/leg0109cvmemo/pointofsaleibp/>

III. Pilot program to purge unconstitutional CC&Rs -

How many times have your Buyers received CC&Rs with the bold print disclosure that certain restrictions are unconstitutional and unenforceable (references to ownership restrictions based on race, ethnic background, sex or religion)? The question put forth on this issue was whether CAR should sponsor a bill to create a pilot program to have these restrictions deleted. Software has been created that allows county recorders to go through documents to delete such information as social security numbers. Last year there was a bill introduced that would have required attorneys to review all documents and delete such verbiage. CAR opposed it because it would have added significant costs to the transaction. Those who spoke in favor of such an action argued that it is demeaning and offensive to read the documents...even with the disclaimer. Those who argued against any action felt strongly that these documents in their existing state where a reference to history and a reminder of what was and how we need to remember this. A motion was made and seconded but failed

“That CAR support legislation of others to electronically purge unconstitutional covenants from title records in a way that does not add prohibitive costs to the recording process. Please see the Issues Briefing Paper for more information at

<http://www.car.org/meetings/carmetings/committee-materials-archive/jan2009committees/leg0109cvmemo/unconisitutionalcovenantsibp/>

IV. Reports of Committees and Task Forces -

A. Housing Opportunity – This group brought two (2) action items forward. The first was that “CAR oppose SB 49 unless amended to apply the proposed tax credit to all sales of single family residences intended to be the principal residence of the purchaser.” Our committee supported and passed this motion providing a clarification be made that “single family residence is understood to include all 1-4 homes.” (SB 49 is a bill sponsored by the California Building Industry Association for a tax credit that would be given only on the purchase of new construction.) The second item brought discussion and debate, and in the end the committee voted against the motion. It read that “CAR support SB 49 if amended, as provided in action 1.” Our committee felt strongly that CAR most definitely had to oppose the bill as written, but with the current climate in Sacramento, it was unlikely that the bill would pass. CAR should save its resources to fight another day. (See the Housing Opportunity Report for more insight).

B. Taxation – There were two (2) action items brought forward and with little discussion, the Leg Committee

passed both of them to go forward. The first was that “CAR support legislation informing homeowners via their tax bill of the benefit available under Propositions 60 and 90. The second was that “CAR support the Property Tax: New Construction Exclusion: Seismic Retrofitting. Legislative Constitutional Amendment. to appear on the next general election ballot.” (More information can be found in the Taxation Report.)

V. Ballot Propositions – Six (6) propositions have qualified for the June 2010 primary ballot, however budget negotiations may result in a special election as early as March of 2009, in which case these propositions would appear on that ballot. You can see the Propositions in the Briefing Paper at

<http://www.car.org/meetings/carmetings/committee-materials-archive/jan2009committees/taxcvr/primelecibp/>
The Taxation Committee dealt with the first. Leg Committee took a “Not Real Estate Related” position on the remainder. The briefing paper also explains the possible actions and their meanings.

VI. State Preemption of Foreclosure Property

Maintenance – SB 1137 was passed and outlined the necessity for lenders to maintain foreclosed properties. It did not preempt local governments from passing more restrictive ordinances. This discussion was stimulated by ordinances (in particular Chula Vista’s) that impose requirements on lenders and/or listing agents prior to the actual trustee’s sale date. Reports of fines up to \$1,000 per day have surfaced. The governing entities are creating liens on the properties for the fines but the liens are not always recorded prior to C.O.E. As a result, the Buyer is notified at some point after closing that they have these fines and must pay them or suffer further fines and penalties. Guess who the Buyers are going looking to for remedy! There is a major question as to whether these liens, assessed prior to the sale, are enforceable. The time, energy and money involved in removing them and/or fighting them is still of issue. How can a lender or agent enter a property prior to the lender becoming the legal owner? One option would be to sponsor legislation to give the lenders a “landlord’s” right to maintain and enter with proper notice. It would mandate that the governing entity notify the lender with a time frame to make corrections. Failure by the lender to do so would result in a direct fine of the lender, and not a lien against the property. A positive for lenders would be that they could gain access to properties that needed repair prior to sale and could make those repairs so that when the sale took place the property would be immediately ready for market. Conversations with other groups (such as lenders)

have shown they favor extending SB 1137 to preempt any local ordinances. Cities might be opposed to this because they currently enjoy assessing fees to inspect and levy fines for poorly conditioned properties. The committee finally took the action that "CAR review and report back in June 2009 on a proposal to sponsor or support legislation to make the property maintenance rule of SB 1137 preemptive of local government ordinances." Further information can be found at

<http://www.car.org/meetings/carmeeetings/committee-materials-archive/jan2009committees/leg0109cvmemo/foreclosurepropertyibp/>

VII. "Shortclosure" Proposed Legislation - The complaint for members has been heard over and over again on the legal hotline...lenders take too long to respond on a short sale. In some cases, members say they are being completely ignored. The question is whether CAR should sponsor legislation to place guidelines on expediting the process. On proposal was to place a time limit on response with the "threat" that if a response is unreasonable or not made at all, the lender would receive a deed-in-lieu of foreclosure. This new mechanism of returning the property would also have in it the stipulation that the lender would receive the property free of junior liens. The fear is that this may cause homeowners to leave their properties more quickly than ever...not attempting to work things out. A motion to sponsor such legislation failed. Briefing Paper information can be found at

<http://www.car.org/meetings/carmeeetings/committee-materials-archive/jan2009committees/leg0109cvmemo/shortclosureibp/>

VIII. Department of Real Estate

A. The Department of Real Estate – The State Legislature has "borrowed" from the D.R.E. fund and there is no evidence of when the money will be repaid. The D.R.E. reserves are being spent at an average of \$1,000,000 per month. It is anticipated that licensing fees will be increased to the maximum allowable limit. (Broker's are currently paying \$165, it could go to the maximum of \$300.)

B. Proposed restriction on licensing of listed sex offenders - DRE is aware of proposed legislation to ban Megan's List registered sex offenders from obtaining or holding a real estate license. The D.R.E. wants to extend that to include the ability to revoke a license if someone is convicted after obtaining a license.

C. It is important that everyone remember that effective July 1st, 2009 your license number must appear on first contact materials – business cards, stationary, and mailings. Note: not required on signs.

IX. Mortgage Broker Regulation

A. The Federal Regulation (H.R. 3221) has been passed. It requires states to adopt a mortgage loan originator program, and adopt at least one (1) of the features called for in the bill:

1. Background check
2. Examination-based license
3. Annual "maintenance" of the resulting license (i.e. continuing education)
4. Annual reporting to the regulator
5. Net worth or bonding (a client recovery fund like California's can satisfy this requirement)
6. Registration on the national registry maintained by federal regulators.
7. Applies to all individual "loan originators," but employees of depository institutions are only required to register and need not acquire a license.

These regulations apply to anyone who originates loans and does not work for a depository. CAR's dilemma is whether to spend resources on an issue that has a great deal of traction with the other "lending" organizations. CAR has opposed separate licensing for "specialties." An endorsement seems like the acceptable compromise. A registry has already been set up and the cost of that registry was \$150. It is safe to assume that an endorsement would cost at least that.

The committee sent forward an action item that "CAR support a D.R.E. license endorsement, allowing loan origination by a real estate licensee, implementing the federal S.A.F.E. Act. Please see Issues Briefing Paper at <http://www.car.org/meetings/carmeeetings/committee-materials-archive/jan2009committees/leg0109cvmemo/loanoriginatoribp/>

LOCAL GOVERNMENTAL RELATIONS



Dee Snow
Snow Properties, Inc.
(858) 756-8500
dsn@snow-properties.com

This committee monitors local legislative and regulatory actions and trends, and interprets for REALTORS®, local Associations, and the public their impact on the real estate industry and property ownership. The committee

recommends approaches to influence the course and form of local legislation, and works with the Legislative Committee in the formation of Association policy and implementation of state-mandated legislation at the local level. It assists Boards in the development of proactive strategies to address local government housing policies. It also aids in establishing the Government Affairs Directors program on an individual Board and/or geographical basis.

The meeting on January 22, 2009 focused on reports from the Governmental Affairs staff members of boards throughout the state. They focused on the various challenges and elections this past November. The conclusion is that while some campaigns were successful in specific locations, such as the defeat of the no growth ballot measure in San Marcos, the majority (over 50%) of no-growth ballot measures are successful. REALTORS® should also continue to be aware of the various Point-of-Sale measures that continue to be put forward. CAR is considering support of what is being referred to as anniversary inspections and upgrades, instead of imposing Point-of-Sale requirements to meet the latest water restriction regulations.

Another area of focus is the California Air Resources Board, ARB. In order to meet the regulations under AB 32, which has the state returning to 1990 emission standards by 2020, the ARB is considering adding POS restrictions to new yet to be released regulations.

Ernie Cowan, NSDCAR's Government Affairs Director, spoke on the importance of first polling the community where the no-growth issue is being proposed to determine what the "message should be"; secondly, hire professionals to guide the effort/campaign and thirdly, develop a clear message that resonates with the community.

Other Government Affairs Directors spoke on the importance of focus groups when issues are difficult to define and the unintended consequences of some issues. For example, in the South County of San Diego, a ballot measure to limit heights was supported by a REALTOR®. The issue was defeated after the issue was clearly defined to show that hospital expansions, and much needed student housing would be adversely impacted.

One of the final discussion points was that REALTORS® want to protect the environment and protect property rights, and the two are not mutually exclusive.

MANUFACTURED HOUSING



Diane Conaway
Re/Max United Escondido
(760) 749-2888
dianeconaway@remax.net

Due to the state of the California budget, there was no new legislation for Manufactured Homes. The California Manufactured Housing Institute (CMHI) provided a presentation and handouts to help attendees understand the similarities and differences between mobile and manufactured homes. Attendees were encouraged to visit the CMHI website for archive articles and up-to-date information on issues affecting manufactured homes.

MEMBERSHIP



Gretchen Mitchell
Coldwell Banker
(760) 753-5616
cbgretch@aol.com

While not all of the numbers are in yet, it appears that CAR membership will not have as great a drop in membership for 2009 as we predicted. Most of the regions have reported a 10% to 13% drop from last year. This is good news for our organization. Our committee focused on increasing membership by stressing the importance of being a REALTOR® to MLS-only offices and agents. We felt this was a good source of potential new members for individual associations to focus on. In addition to raising their membership level, they would be raising the professional level of business in their area at the same time.

We also wanted to increase our member's awareness of the many benefits and discounts offered to CAR and NAR members. One of the newest benefits is CAR's new affiliation with CSI to offer competitive and comprehensive insurance products specifically designed for REALTORS®. They provide the coverage and services you need as a real estate professional, including E & O, workers' compensation, and home and auto insurance. You can even get insurance for your pet through VPI Pet Insurance! It provides health and accident insurance for your cats, dogs, birds and other pets. Or, if you are in the market for a new car, Carperks is another member benefit.

It provides buyers a stress free purchasing experience while saving them money. As a CAR member you have exclusive discounts at over 5,200 auto dealerships nationwide, including over 850 dealers in the state of California alone. UPS also offers CAR members a discount. You can save up to 28% on shipping services. In addition, Avis offers members up to 25% off your car rental just by mentioning the discount code (AWD#A009700) when making your reservation. Another great member benefit is an exciting new program with Lowe's. Lowe's will send valuable coupons and rebate offers to your clients, on your behalf, via a customized direct mail program featuring your photo and company logo. Best of all, it is absolutely free. As an added benefit, REALTORS® can purchase gift cards in any amount and receive a 5% discount. This can only be done online at www.LowesRealtorBenefits.com. When you log on you will need your NRDS number. These are just some of the member benefits offered to you. Log on to www.car.org and click on member benefits to see more.

MLS/COMPUTER & BUSINESS TECHNOLOGY



Diane Conaway
Re/Max United Escondido
(760) 749-2888
dianeconaway@remax.net

The MLS/Computer & Business Technology Committee received a legal update on Virtual Office Websites (VOWs) from Laurie Janik, Chief Legal Counsel for the National Association of REALTORS®. The Department of Justice (DOJ) vs NAR Final Settlement Order set forth model MLS rules and policies that are to be adopted by each association. VOWs are websites that act as a real estate office and establish a relationship with the consumer. The IDX, which many of you use, is an advertising mechanism and does not establish a relationship with the consumer. VOWs may or may not have a traditional brick and mortar office. The model rules and policies set forth that VOWs and non-VOWs must follow the same rules such as prohibiting expired, withdrawn or pending listings, compensation offered, listing type, personal seller information and broker-only showing instructions. Further, both must identify the name of the listing firm and broker or agent in a reasonably prominent location, readily visible color and in typeface not smaller than the median typeface

used in the listing data. The rules also require that a MLS "Participant" must be actively involved in assisting buyers and/or sellers of real estate. This is a key outcome from the settlement that prohibits websites from soliciting buyers or sellers if the company is not actually involved in buying or selling real estate.

Mike Silvas, Chairman of CALMLS, gave an update on the statewide MLS. Concentric, a new software company, has been selected to develop the software, now called CalREDD. The software's capabilities were demonstrated as "a day in the life of a REALTOR®" showing how the software is compatible with our daily workflow and enhances productivity. CalREDD was met with much enthusiasm. The Board of Directors approved a motion to fund development of the statewide MLS with a \$3-million line of credit from CAR, to be repaid with interest. Some of the initial funds may be used to acquire existing databases/software to jump start creation/implementation of the statewide MLS.

POLITICAL AFFAIRS



Bob Pahlke
Prudential California Realty
(760) 431-3330
bobpahlke@roadrunner.com

Invest in your business and your future. It's more important now than ever. This is one of the most interesting and challenging times in our history. Politics as usual will most certainly be hotly debated. Our Political Affairs Committee exists to provide support for REALTORS® in the areas of fundraising, education, and the Member Mobilization Program (Red Alerts and Calls for Action). We raise funds through IMPAC (real estate related issues) and CREPAC (state and local candidates supporting real estate issues), and provide education to politically involved REALTORS®. They in turn develop ways to effectively communicate with all levels of elected officials. Private property rights and real estate related issues are a mainstay of the committee.

Your annual dues include a request for funds that is essential for your political survival. We spend thousands of dollars yearly supporting candidates and issues relative to our business of real estate. There continues to be property rights issues that need our support as an industry.

We must make sure we have the means to debate these, and at the same time leave our industry in the most positive light. It is now more critical than ever to “Invest” in the Realtor Action Fund (RAF) so that we may continue to provide the political protection our industry needs and you, as REALTORS[®], deserve.

CAR has calculated that \$197 (\$16.42 mo.) is the true cost of doing business as a REALTOR[®] and to continue representing your clients rights as well as your own. Monthly payments are available; “Get the whole pizza for just the price of a slice.” Your investment will combine with thousands of REALTORS[®] throughout the state of California to provide the punch we need in Sacramento and Washington. There are many options for payment now available on the CAR website that should fit your budget. Invest what you can, but please invest. By the way, your CAR Directors for NSDCAR have again received an award for 100% participation at the \$197 level! We as Directors realize the importance of the RAF and see firsthand the effect our efforts have on our legislators.

We need to put our strongest foot forward and prove to our legislators that we are ALL in this together. Strength comes in numbers and CAR is a strong voice that is heard in Sacramento and Washington D.C.

Cities and counties are running low on funds and they will be looking for the collective deep pockets of homeowners and real estate practitioners as targets to fill their coffers. We all need to support the REALTOR[®] Action Fund to help our volunteer members connect with our legislators to move our real estate issues into their focus. Our successes have been many. RPAC (REALTORS[®] Political Action Committee) funding led to a 94% success record! 6 of 8 IMPAC requests for funds resulted in wins! We must have a voice in government designed to achieve our crucial role in advancing CAR’s legislative agenda. Please make sure you “Invest” in your future and your business. Sign up today at www.car.org, go to the REALTOR[®] Action Fund section under Government Affairs and click on “Pay RAF Contribution Online.” Remember we are all in this together. Please feel free to contact me concerning investing in the REALTOR[®] Action Fund or any questions you might have.

PROFESSIONAL STANDARDS



**Kevin Forrester,
Attorney at Law
(760) 944-1918
kforrester@psmkr.com**

In October 2008, the CAR Board of Directors approved the adoption of an “Ethics Advocate Program” to allow local associations to appoint an “Ethics Advocate Subcommittee” whose members would assist parties to a disciplinary complaint navigate the filing and hearing process. The National Association of REALTORS[®] has now approved the Ethics Advocate Program, and implementation documents are being distributed to local associations, which will be the first in the nation to offer a program such as the one summarized here:

Ethics Advocate Program, in Summary:

- An Ethics Advocate (“EA”) will be available to represent and advocate for a party to a disciplinary hearing.
- Professional Standards Rules already allow any party at a disciplinary hearing to be represented by a REALTOR[®]; the Ethics Advocate Program will formalize this concept.
- EA’s will be specially trained members of the local Professional Standards Committee, appointed by the Chair of the Committee, as part of an EA Subcommittee.
- EA training will be done by CAR attorneys or CAR certified professional standards trainers, in conjunction with regular professional standards training for volunteers.
- Each EA will be appointed to a one-year term.
- Meetings for EA roundtable discussions will be held at CAR business meetings.
- Regions are also encouraged to host collaborative meetings.
- If a complainant and/or respondent wishes to utilize the services of an EA, the Professional Standards Chair or designee will select a person from the EA Subcommittee.
- An EA will help the complainant draft his or her complaint or the respondent draft a response, as well as assist with other required procedural documentation, and will represent the respective

party at any hearing (if the party desires such help).

- An EA will be permitted to participate at any hearing, as much as a party would desire, including in a role similar to an attorney.
- The EA program will be optional for local associations.

It is expected that the Ethics Advocate Program will result in an increase in the number of ethics complaints filed and followed through to a hearing, a process that now experiences an 80% fallout rate.

PROPERTY MANAGEMENT



Gwynne Hodge
McMillin Realty
(760) 729-2900
hodgegg@aol.com

As I mentioned in the Common Interest Development Committee report, CAR is really not facing any new legislation at this time as the Legislature is totally focused on trying to balance the state's budget. We know legislation, which we will want to examine, is coming this year, but we have none now. Some of that legislation will most likely take the form of an extension of the 60-day notice to terminate tenancy that is in excess of 1-year (due to sunset in 2010); a repeal or modification of the Ellis Act; the re-introduction of a bill to require owners of substandard multi-family residential property to provide identifying information and a plan of correction to the local code enforcement agency on an annual basis; and a bill which would mandate direct utility billing systems for all units in newly constructed multi-family residential buildings.

So what did we talk about during the meeting? Actually, in October we had asked several questions from the CAR Legal Department, and much of the meeting was spent in providing the answers we received. We were also fortunate to have Gov Hutchinson, who is the head legal counsel for the CAR Legal Hot Line (among his other duties), attend the meeting to answer even more questions. My job during the meeting was to facilitate the first three questions, which are below. The other questions were handled either by the chair of the committee or the other vice chair, and I have included those as well.

Here are the answers to the question:

What does the property manager or landlord do if...

1. A Landlord Discovers Tenant is, or has become, a Sex Offender-

If there is a lease or if the property is located in a rent control area, there does not appear to be grounds for eviction, unless the tenant lied on the application or committed the act on the property. If the sex offender is already registered, then the information contained in the Megan's Law database can be disclosed to protect a "person at risk." The "person at risk" terminology comes into question, as it is not clear in the law whether a "person at risk" is the actual victim or a category of victims. For instance, if the act were committed against a child, is that one child "a person at risk" or are all children "people at risk?" In the same example, if there were children in the complex, it would warrant a disclosure by the landlord or property manager. Weighing the odds of being sued and a property manager's odds of winning, the property manager would probably do better to risk being sued by the sex offender than by the family of a child. I also asked Gov, what happens if the property is a single-family residence instead of a complex, should we notify the neighbors and he said yes. I asked do we disclose that we are in the process of eviction to the neighbors, SFR or complex, and he said that was not necessary.

2. A Landlord Receives an Application from a Sex Offender-

It is not clear that a registered sex offender is a legally protected class. But it appears a landlord could deny housing because of several precedents, and also Penal Code Section 290.46 which prohibits a sex offender from living within 2,000 feet of schools or parks where children congregate. Because there is no specific case law, a landlord can probably be safe in denying a rental to a registered sex offender, especially if there are children in the area. I asked Gov, "If a prospective tenant does not reveal he/she is a registered sex offender do property managers have any duty, as a regular business practice, to search the Megan's Law database? Or is it better to not do any such research?" His answer was that we should not research the database. (A few meetings ago we took a straw poll of our committee of property managers and found that approximately 50% of them were searching the database as part of their regular business practice, so his answer was important).

3. **Medical Marijuana Found in a Tenant's Rental-**

If a doctor provides a note to allow a patient to possess and cultivate marijuana; it is legal under California law. However, possession and cultivation of marijuana are against the federal law. If a federal authority found marijuana on a landlord's property, then the federal government could seize the property. CAR leases, and most other leases, prohibit using the property for unlawful purposes. Federal law prohibits marijuana possession and/or cultivation, and thus this could be the basis for a landlord to evict a tenant. There is a California Supreme Court decision, which determined that the California marijuana law was passed to keep medical marijuana users and their caretakers from being prosecuted criminally rather than giving a general protection to medical marijuana users in other areas of the law. CAR believes there should be no problem disallowing the use of medical marijuana or cultivation. However, it may be difficult to evict the tenant. An unlawful detainer court could take the position that they will not consider a federal law which conflicts with a California law a violation of the lease, especially in certain counties or if there is a sympathetic tenant (suffering from cancer, for instance).

4. **Lead Based Paint-**

There have been certain instances in other states where some landlords and property managers have been exorbitantly fined (\$150,000+) for not properly removing lead based paint from a property. So our question was whether there had been any changes in the law. And the answer is, there have been no changes. If you are a property manager/landlord for a property, which was built prior to 1978, you must still provide the tenant with the pamphlet "Protect Your Family from Lead in the Home." Also, of course, you would provide the CAR form FLD, which complies with the law for the landlord statement. NAR may be providing a webinar on Lead-Based Paint in the near future, so you may want to watch for that. Also, CAR will be coming out with an updated Q&A on the subject. Nevertheless, if you are aware that there is lead-based paint in a property and you have a repair, say a leak in the drywall, you must properly remove the lead-based paint per the guidelines, which are published. There are contractors who are certified to handle such repairs and it is recommended that you contact them for the repairs rather than have someone complete the repairs that are not certified.

5. **Processing Security Deposits and Rents When the Rental Property is in Foreclosure-**

Under current California law there are no provisions, which permit a tenant to stop paying rent to his or her landlord, even if the landlord is not paying his or her mortgage, and/or a notice of default is recorded. A property manager would still need to collect the rent and give it to the landlord. If the property manager is a dual agent, he/she would need to inform the tenant that the property is in foreclosure proceedings. If the property manager has knowledge of the owner's failure to pay the mortgage, the property manager should inform the tenant of that fact, but cannot advise the tenant to stop paying rent or other options (He/she should advise the tenant to speak to an attorney).

If a financial institution forecloses on the rental property while the tenant is still on the property, the property manager would then need to stop collecting rent as of the effective date of the foreclosure, as he/she is no longer the agent for the owner of the property. If per the property management agreement, the broker has control over the security deposit, once a foreclosure occurs the deposit needs to be returned in full to the tenant. Since the previous owner no longer owns the property, he or she cannot spend money to improve/repair/fix the property and cannot deduct funds from the deposit for such purposes. If the landlord controls the deposit, the tenant should be advised to speak to an attorney regarding the options for recovery of the deposit.

There is one big caveat, however, to the above-stated treatment of security deposits: if the owner of the property is in the 1st year of ownership of the property and is not making payments on the rental property mortgage, the landlord is actually engaged in what is called "rent skimming." In such a situation, the REALTOR® who is a property manager would need to stop collecting rent and also terminate his or her agency relationship with the landlord. Otherwise, it could be interpreted by the court that the property manager was participating in a conspiracy to rent skim (Note: this is only for the 1st year of ownership).

6. **Electronic Payment of Security Deposit/Payment and Payment Dates-**

The effective date of an electronic payment of rent or a security deposit, to some extent, depends on the type of electronic transfer. For certain types of electronic

payment, e.g. ones using America Clearing House (ACH), there should be an electronic funds transfer agreement between the landlord and tenant, which addresses this issue. If however, it is a simple wire transfer of funds from the tenant's bank to the landlord's bank, the payment is considered to have been made as soon as the landlord's bank receives the money. Landlords should be very wary about offering wire transfer possibilities. If, for example, the landlord serves a 3-day notice to pay rent or quit, and then the tenant does not pay within the 3-day period, normally a landlord has a strong unlawful detainer case. Landlords are usually advised not to accept rent after that 3-day period if they wish to pursue an unlawful detainer as that could, and usually will, be ruled to be a waiver of the 3-day notice. However, with a wire transfer option, the tenant can deposit the money in the landlord's account after the 3-days and suddenly has an argument for the waiver by the landlord. Unlike, for example, if the tenant mailed a rent check after the 3-days which the landlord does not cash. In the case of wired funds, the landlord cannot argue that he or she did not actually receive the cash. The landlord could try to send it back, but depending on the landlord-tenant judges in the area, the receipt of funds in the landlord's bank account could end up voiding any 3-day notice.

legislation of others. CAR will look at each piece of legislation to determine how significant the proposed change is to the real estate industry and the everyday activities of REALTORS®. To read more about this subject go to www.car.org, State Legislative Issues Report.

Lender Pre-Foreclosure Access to Default Properties: Currently under SB 1137 (Perata) local governments can assess penalty fines up to \$1,000 per day for lack of maintenance on vacant properties. Many cities want the lenders to register homes that are vacant and in the foreclosure process. However, the city of Chula Vista is levying these fines on the property or with the foreclosing lender. Until the foreclosure is complete, the lender cannot interfere with the foreclosure process by entering the property and changing locks and maintaining that property. These fines are imposed during the foreclosure process, and even though these liens would be wiped out upon the foreclosure, the cities are waiting until the bank takes possession and then they place the lien on the property. This is difficult for both lender and REALTOR®. In some cases, the lender has given the REALTOR® a set fee for their services, which may include maintenance liens. Therefore, any expense above and beyond may need to be paid out of the REALTOR'S® commission. After discussion in the Real Estate Finance Committee, CAR Legislative Committee decided to reject the proposal to consider creating lender access to pre-foreclosure properties, and directed staff to explore making the maintenance of REO property provisions of SB 1137 preemptive of local government property maintenance ordinances.

Shortclosure Legislation: Currently, short sales can take months to complete and sometimes the delays by the lenders result in the property going into foreclosure. This proposal would obligate the lender, within a set period of time, to either accept or reject the offer. This process would also give incentives similar to those when they foreclose; which would be taking the property back free of junior liens and speeding up the foreclosure process of 111 days by taking a statutorily authorized deed in lieu from the seller along with the house keys (jingle letter). The lender would have a first right of refusal on the short sale. The lender is prevented from going after the borrower personally, with the exception that this new law would prevent the lender from reporting the transaction as a borrower's default. Even though junior liens would be wiped out, they would still retain their rights to pursue the borrower for personal liability on their note. This issue was brought before the Legislative

REAL ESTATE FINANCE



Peggy Yeomans
San Diego Homes & Finance
(760) 966-9191
PeggyYeomans@yahoo.com

The Real Estate Finance Committee met in Monterey on January 22, 2009. The first order of business was to talk about state legislative issues. What strategic questions should CAR consider in evaluating proposals for sponsored legislation? We can sponsor a bill, piggyback onto a bill, co-sponsor, support, but not sponsor, and/or sponsor as an amendment. CAR can take a neutral position or simply rate a bill as "not real estate related." Many of our bills have come at the expense of reactive or defensive legislation. Because of term limits and the turnover in the legislature, reactive ability is increasingly important. Therefore, CAR has reduced the amount of sponsored bills and is focusing on "targets of opportunity" presented by

Committee and they rejected the motion to sponsor legislation creating a "Shortclosure" process. Instead, the Committee recommends that the C.A.R. President's Distressed Property Advisory Group consider ways to expedite short sales raised in the "Shortclosure" issues Briefing Paper for the January 21, 2009 Legislative Committee.

Mortgage Broker Regulation:

S.A.F.E. (the Secure and Fair Enforcement of Loan Origination Act):

This is a Federal mandate that requires loan originators' legislation in 2009. AB 33 (Nava): This bill is in intent form, awaiting an amendment, which will consolidate regulation of financial services into one agency or under the same rules.

AB 34 (Nava):

This bill is also in intent form and will serve as the vehicle for implementing the S.A.F.E. Act requirements. When H.R. 3221 passed in August of 2008, one of the many provisions required states to set up a licensing and regulatory program for mortgage loan originators. Banks are exempt from this law with the exception that they must join a national registry. CAR Board of Directors unanimously voted the following action: That CAR "Support" a DRE license endorsement implementing the federal S.A.F.E. Act allowing loan origination by a real estate licensee. The S.A.F.E. Act (the Secure and Fair Enforcement of loan origination Act) requires state law regulating loan originators to include: Pre-license education, passage of an examination, annual maintenance of continuing education, and effective regulation by the state licensing authority.

Governor's Foreclosure Restriction and Loan Workout Proposal:

Legislation was proposed in November of 2008, but was defeated. This proposal would have required that mortgage lenders institute a loan workout program modeled after FDIC or Bank of America. This proposal would not regulate federally regulated lenders, but it could assert jurisdiction and change rules for enforcing mortgages.

Federal Issues

Bankruptcy Reform:

S. 61 (Durbin) Helping Families Save Their Homes in Bankruptcy Act. This bill would allow primary residences to be included in Chapter 13 Bankruptcies. It would also

allow judges to modify the terms, interest rate, prepayment penalties, length of the loan, and mortgage principal reduction. California Senators Feinstein and Boxer have already signed onto this bill as cosponsors.

A companion bill was introduced in the house by Representative Conyers. "Cramdown" is the concept of reducing the principal of the loan. The amount reduced on the original principal then becomes unsecured, which is a lower priority in the bankruptcy courts, and would most likely be discharged. Citibank has agreed to support a bankruptcy proposal, as long as the legislation would require borrowers to contact their lender to seek modification at least 10-days before filing for protection, and loans would have had to be originated before the bill enactment date. The lending industry was surprised at Citibank's willingness to secure a deal without the inclusion of a sunset date, a longer notification period than 10-days, and the application should have been only to nontraditional mortgages (Alt A and Subprime loans). In the long run, this could drive up the interest rates and decrease the amount of capital in the market for mortgages. CAR and NAR have opposed "cramdowns" since the early 1990's. However, at this time neither are objecting to bankruptcy reform. The Board of Directors of CAR unanimously voted in favor of the following Action Item: That CAR "Favor" proposed Bankruptcy Law revision that would allow loan modification for owner occupied primary residences undergoing Chapter 13 Bankruptcy including, but not limited to, "cramdown."

Stimulus Package:

As of January 1, 2009, GSE's and FHA loan amounts were reduced. CAR and NAR are working to extend the 2008 loan limits until the end of 2009 within the new stimulus package. The President has asked for bankruptcy reform to be included. NAR has a four-point plan that they are requesting Congress to include. First-time home buyers would receive a tax credit and all repayment requirements would be eliminated; Make the 2008 FHA, Fannie Mae and Freddie Mac loan limits permanent; Target more funds for mortgage relief; Create a Federal below market interest rate buy-down program; Permanently ban banks from engaging in real estate management and brokerage. The buy-down interest rate and the banks in real estate will probably not be addressed in this stimulus package.

Senator Feinstein and Representative Waters have both introduced companion bills that systemizes the FDIC mortgage workout program currently being used by Indy Mac. This would enable troubled mortgage loans to be

identified and all could be modified at one time. There could be \$300-billion in tax breaks for businesses and individuals. This could include a tax credit on the first \$8,100 of wages (\$500 individual, \$1,000 couple), decrease in payroll tax, redefining enhancements to the Child Tax Credit, and an extension of the carry-back provisions to a 5-year period, extended bonus depreciation, and an extension of the \$250,000 small business-expensing limit. Funding for infrastructure projects and other projects to create jobs and stimulate the economy.

GSE Reform (Fannie Mae and Freddie Mac):

As of September 2008, the GSE's were taken into conservatorship. They currently either own or guarantee \$6-trillion worth of home mortgages. Congress must decide what role or future the GSEs will hold. CAR continues to support a strong secondary market to the nation's mortgage market. Our current down market demonstrates the need for a government presence in the mortgage market to fill the void created by the private market's tightening of available capital.

Financial Regulation Reform:

In March of 2008, the Treasury Department and Secretary Paulson released a reformed blueprint with simplification and streamlining of the current Financial Regulatory System. Regulators currently oversee different depository institutions, insurance companies, securities and futures trading, and finance companies. This leads to confusion for the public and a slow and cumbersome system. Congress is now charged with restructuring the regulatory oversight and safety of new instruments for these companies, which will incorporate speed and flexibility into a new system.

RESPA (Real Estate Settlement Procedures Act):

HUD announced on November 17, 2008, the release of their new final rule for RESPA. Mandatory compliance begins January 1, 2010. Effective January 16, 2009, the rules for the new GFE (Good Faith Estimate) and HUD-1 (Housing and Urban Development) become effective; the revised definition of required use; the use of average charges, and certain miscellaneous modifications. The remaining components will become effective January 1, 2010; use of the new GFE, including disclosure of yield spread premiums and the tolerance restrictions; use of the new HUD-1; and all revised definitions (except required use) in Section 3500.2 of RESPA's regulation. In essence, effective January 1, 2010, a GFE must be provided within 3-days of receiving a "loan application." The GFE must be kept for 10 business days to enable comparison shopping.

Lenders will be able to charge for a GFE, but this charge must be limited to the cost of a credit report only. There will be three separate components to the GFE with different levels of tolerances. The first category is subject to a zero tolerance. The fees included in this category would be lender's or broker's origination charge and transfer taxes. The second category HUD will allow a maximum 10% tolerance on the total sum of all fees. These fees will include government recording fees and fees for settlement services where the lender selects the provider or the borrower selects a provider recommended by the lender. The final category is under no restriction. The fees are not subject to a limitation. These fees will include settlement services where the borrower shopped for his own provider, daily interest charges, and homeowner insurance. If categories 1 or 2 are violated, the lender will be allowed 30 days to remedy any excess fees. The HUD 1 will be revised to show a "credit" field for "yield spread premiums" and a "charge" field for "discount points." Consistency with the GFE and the final HUD-1 will make it easier for the consumer.

**REALTOR RISK MANAGEMENT/
CONSUMER PROTECTION**



Jim Aldredge
JTA Realty Professionals
(760) 597-9464
jim@jtarealty.com

The Regional Representatives from around the State were asked to give a report of the local issues. An overwhelming number of representatives reported having issues related to REOs and short sales. The issues related to REO properties ranged from: combo boxes; signage prior to the listings appearing on the MLS; bank addendums and commissions that differ from the CAR Offer to Purchase and MLS offers of compensation; and refusal of listing agents to provide the required disclosures. On the topic of short sales, the issues reported remained the same as our last meeting, which were: when should a property be marked pending; and the length of time lenders take to reply to offers.

Our guest speaker was Shannon B. Jones, Principal of Shannon B. Jones Law Group. The topic of her discussion was current risk management issues affecting real estate professionals. Ms. Jones was a plethora of information with regard to the issues REALTORS® are faced with in

the current market of REO properties, short sale transactions, and loan modifications. She stated that while the number of claims and demand letters are down, she expects to see these numbers increase over the next couple of years, due to the lack of disclosures in the REO transactions and deposit disputes in the short sale transactions. On the recurring issue that agents had noted during the Regional Representatives Report, in which lenders are failing to provide the legally required disclosures, it was suggested to use the CAR REO Advisory form. While this form does not guarantee that the lender will cooperate, it may prompt them to provide the legally required forms by simply reminding them that the buyer is aware of the forms they should be receiving. At the beginning of an REO transaction, selling agents should be certain that the buyer is aware of disclosures they should be receiving. If the lender refuses to provide the required disclosures within the time frames set in the bank addendum, the buyer should be given the option to move forward without them. Furthermore, the buyer should understand that the deposit could be at risk. It is important that this be in writing. Agents were also reminded that while the TDS is exempt from the seller in an REO transaction, the buyer's agent should not fail to provide an Agent Visual Inspection Disclosure (AVID).

The following were recommended to the buyer's agents:

1. Complete page 3 of the TDS and attach it to the CAR forms REO Advisory and AVID.
2. For those agents involved in short sales, one of the best recommendations given in addition to always using the CAR SSA (Short Sale Addendum), was to include a cancellation clause and apply it to the SSA. In the event the lender fails to respond to the offer in a timely manner, this clause should give buyer an out.
3. Most importantly, agents should educate their buyers as to the process of both REO and short sale transactions. They should understand that most REO transactions will require them to sign bank addendums that will reduce inspection timeframes, and release the deposit at the expiration of these time frames. It is critical buyers have a clear understanding that most bank addendums include passive timeframes, and that they understand what this means. Educate them on the process of a short sale and explain the lengthy process.
4. Most importantly, keep detailed communication logs. E-mails are a fantastic tool for risk management. Agents should always remain professional

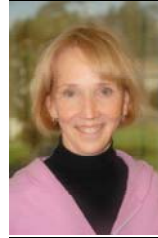
in their communication, and never say anything derogatory about their client or another REALTOR®.

Loan modifications, lease options, and creative financing were briefly discussed. Agents were urged to discuss these transactions with their office managers and/or broker before getting involved in these types of transactions.

Gov Hutchinson, Assistant General Counsel, CAR Legal Department gave a legal update on a couple of new laws that are now or will take affect in 2009. The first being, that agents were reminded that beginning July 1st their DRE license number is required on all business materials such as business cards, stationary, letterheads, and agent flyers. Secondly, there is a new disclosure required within the NHD reports if the property is located within one mile of farmland. NHD companies will automatically include this disclosure within their reports. If your seller is going to fill out the NHD, be sure they are provided with this disclosure. Thirdly, liquidated damages have been increased from 3% to 6% for condos in high-rise buildings of at least 8 stories in height, and at a cost of over 1-million dollars.

CAR has provided Q&A on these and many other topics. For more information go to www.car.org

RURAL FORUM



Dee Snow
Snow Properties, Inc.
(858) 756-8500
dsn@snow-properties.com

This forum monitors issues and action items of importance to CAR members in rural areas of California, and provides a network for the exchange and dissemination of information affecting rural real estate. The most important issue that the group has monitored has been the pending regulations that will impact every home that has a septic system.

The state of California has released the proposed regulations for onsite wastewater treatment systems (OWTS) and the accompanying Draft Environmental Impact Report (DEIR); evaluating the impacts of the implementation of the regulations on the people and environment of California. CAR is concerned that, if enacted, these regulations will make it too burdensome to

own a property with a septic system. There is even a new point-of-sale requirement to transfer technical documents.

These proposed regulations and Draft Environmental Impact Report (DEIR) have been released to the public for review and can be found at:

http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/

CAR is opposing the current draft of the proposed regulations because the cost of achieving compliance is too burdensome and costly, and hurts housing affordability.

Groundwater testing and routine inspections will be required whether there is evidence of septic-related problems or not, adding an unnecessary cost burden to property owners - many of whom are low income.

The separation to groundwater standard and loss of sidewall infiltration will require new and existing homebuyers to install tremendously expensive "alternative systems"- if they are even locally allowed. This will make homeownership unachievable for many people throughout the state.

The regulations need to allow for an effective, pragmatic variance process, where local government regulators can make site-specific exceptions to the regulations and determinations of "functional equivalency" for local conditions.

The owners of existing septic systems with supplemental treatment systems will now be required to maintain and transfer technical documents at point-of-sale. This is a problem because:

- Thousands of systems would already be out of compliance due to lost or misplaced documents.
- Real estate professionals will be required to purchase additional lost instrument bonds and will be exposed to increased liability.

The requirement to install groundwater-monitoring wells for new systems is too costly and will prevent building on otherwise usable lots.

The groundwater testing requirements are overkill. Testing should be changed to fecal and bacteria sampling, which show a direct nexus to a failing system.

CAR has concerns about the draft environmental impact report (DEIR) because

The DEIR does not give adequate proof that all septic systems are causing water quality problems.

The DEIR does not adequately consider the true financial impact of these regulations on property owners, especially those who are low income.

The DEIR does not adequately address the impact of the new disclosure responsibility, increased liability exposure and added uncertainty on real estate transactions created by the proposed regulations.

The DEIR failed to adequately address funding options available for low-income property owners to allow them to comply with the proposed regulations. Instead, it asks this population to rely on a fund, which may not have enough money available to help all those who will need it.

The DEIR failed to recognize that the proposed regulations will, in fact, curtail the ability for property owners to develop their lots and therefore will slow or stop growth in some areas. The report also failed to evaluate the impact of the proposed regulations on the ability for local governments to achieve their Regional Housing Needs Allocation (RHNA) goals.

The DEIR failed to quantify and analyze the increased greenhouse gas (GHG) emissions that will be generated from all the well testing, tank inspections and septic waste hauling, contrary to AB 32.

Please contact CAR legislative advocate Elizabeth Gavric for more information. She can be reached at elizabethg@car.org or (916) 492-5200.

Other issues discussed generally are the animals that are being left behind when homes are abandoned due to foreclosures. If you encounter such a situation, it is best to first check with the local municipality regarding any requirements they have in place for notification. Other resources are the society for the prevention of cruelty to animals (SPCA) and the Humane Society. Each area is managing this issue differently so it is imperative that you follow the guidelines established in your community.

STANDARD FORMS ADVISORY



Gretchen Mitchell
Coldwell Banker (760) 753-5616
cbgretch@aol.com

REALTORS® know the importance and complexity of the various state and federal laws governing real estate transactions in California. In an effort to protect REALTORS® and make our transactions (at least the paperwork part of them) easier, the CAR forms committee is constantly revising old forms and introducing new ones. Most of the new forms scheduled for release the first week in April are aimed at commercial transactions. In partnership with AIR Commercial Real Estate Association, we are now offering 15 core AIR commercial forms as a WINForms Online add-on library. This is ideal for the residential REALTOR® who does a limited number of commercial transactions per year. For details or to purchase this set of forms go to www.winforms.com/airesentials.

The new commercial forms that will be released in April are:

- **BOS - Bill of Sale** Serves to document the transfer of personal property accompanying the sale of real estate of a business.
- **CNDA – Confidentiality of Non-Disclosure Agreements** This form allows the buyer or seller to give information to the other with a contractual assurance that the information will be kept confidential.
- **EIA - Environmental Issues Addendum** This addresses how environmental inspections will be conducted
- **LEC - Landlord’s Environmental Consent** Landlord permission form when environmental inspections are included and the property is leased or rented.
- **REL - Release Agreement** Formal release and waiver of liability agreement used with repair or credit requests or with the cancellation of an entire agreement.
- In addition, new forms being released for residential transactions are:

- **CFK - Cash for Keys** Used with an occupied foreclosure sale to try to get the occupant to move out without the need to pursue a legal eviction.
- **CND – Confidentiality and Non-Disclosure Agreement Simple** form to document that price and terms of the offer or names of principal is confidential.

TAXATION

Sandi Adelson

Homeland Properties GMAC

(760) 591-3090

sandi_and_the_hometeam@hotmail.com

On a Federal level, energy is directed at the economic bailout. The State level finds most of the energy turned toward the budget. In Sacramento a normal two (2) year legislative cycle usually has between four thousand (4,000) and six thousand (6,000) bills introduced. Four (4) months into this cycle only three hundred (300) have been introduced, with between sixty (60) and seventy (70) being budget related. Experts say nothing substantive will happen outside these areas until Washington has its plan approved and California has a budget. As a result, our committee discussed that CAR should be, and would be, taking a passive/responsive approach rather than an active/aggressive approach to our issues.

I. State Taxation Issues

Action Items:

A. Transfer of Property Tax Base Year Value: Notice to Senior Homeowners – At past meetings we have been given reports on whether or not CAR should sponsor legislation to expand the current benefits under Propositions 60 and 90 (Senior’s ability to transfer their property tax basis to replacement property). The final report of the work group on this issue can be found at <http://www.car.org/meetings/carmetings/committee-materials-archive/oct2008committees/taxcvr/ptbptfrpt/>

The decision was that the economic situation was not one that might foster such a proposal and it was decided to discuss with some of the more forward thinking Tax Assessors throughout the state to encourage pilot programs in this area. However, during the task force’s investigations it was discovered that most seniors, and many agents knew little or nothing about the benefits of these two propositions. At the last meeting, we took action to recommend that an element be included in the Senior Residential Specialist designation training on the

propositions. We also asked staff to prepare a paper on the options available to make seniors more aware. A copy of this report can be found at

<http://www.car.org/meetings/carmeeetings/committee-materials-archive/oct2008committees/taxcvr/ptbptfrpt/>.

“The action that the Taxation Committee took was to have CAR support legislation informing homeowners via their property tax bill as to the tax benefit available under Propositions 60 and 90.” The members believed that an organization such as A.A.R.P. would make an ideal sponsor of such a bill...if and when Sacramento gets back to governing the state.

B. Ballot Propositions -

There are several propositions already listed, although not numbered, for the Primary Election Ballot of June 8th, 2010. There is also a strong belief that there may be a special election prior to that and that these propositions will be on that ballot. Our group considered only one (1). Property Tax; New Construction Exclusion; Seismic Retrofitting. Legislative Constitutional Amendment. This would exempt a property from reassessment if the work done was for seismic retrofit. We voted to take a FOR position on this issue. For more information on this Proposition and the others, go to

<http://www.car.org/meetings/carmeeetings/committee-materials-archive/jan2009committees/taxcvr/primelecibp/>.

III. Federal Taxation Issues

A. Action Items:

Withdrawing From 401(k) Plan Without Penalty –

This was discussed at the last meeting about sponsoring a bill to allow for early withdrawal (you would still have to pay the taxes). The committee voted to do nothing. A briefing paper was done by staff for this meeting. The sense of the group was that there were too many other issues and that no action should be taken again. For that paper, please go to

[http://www.car.org/meetings/carmeeetings/committee-materials-archive/jan2009committees/taxcvr/401\(k\)acpt/](http://www.car.org/meetings/carmeeetings/committee-materials-archive/jan2009committees/taxcvr/401(k)acpt/)

B. Discussion/Reporting Items:

1. Homebuyer Tax Credit –

It appears that if the stimulus package is passed in Washington there will be an elimination of the payback provision in the tax credit and it will be extended. Sacramento has a bill (Dutton) that would give a tax credit for state tax purposes, however it is being sponsored by the California Building Industry Association (CBIA), and as written would apply only to new construction.

2. Real Estate Related Taxes –

With the current economic climate, and while there are no specific proposals publically being considered, it is clear that certain real estate tax benefits may come under attack. Interest deductions for second homes, investment properties, and primary residence lines of credit fall into this category. CAR and NAR are keeping watchful eyes and ears on such issues and updates will be sent as they become available. The Pay-Go policy of the House has been amended to mirror that of the Senate. Now, you don't have to have either revenue generation or spending reduction in a bill to offset the cost of the bill, but rather, you must now “find” the money before the end of the session.

OTHER INFORMATION OF INTEREST



Dianne McMillan, CEO
(760) 734-3971
Dianne@nsdcar.com

CAR's EVP Joel Singer reports that thus far 2009 is a slow legislative year in terms of number of real estate related bills CAR is tracking. In a typical year, CAR tracks approximately 4,000 bills. This year there are only 250 at present. However, he also pointed out that what comes to attention will come quickly and our members will need to respond to “Calls to Action” quickly.

For those of you who are looking for good business-related books, recommended reading from CAR's Strategic Planning & Finance Committee is Tom Friedman's *Hot, Flat and Crowded* and Niall Ferguson's *The Ascent of Money*.

Please be aware that your CAR Directors serve as volunteers on your behalf. Please thank them for the time they contribute away from their families and business and for the valuable information they bring back to you!



North San Diego County Association of REALTORS®



Vista Administrative Service Center

906 Sycamore Avenue, Suite 104
Vista, CA 92081
(760) 734-3971 phone
(760) 734-3976 fax

Carmel Valley Service Center

12707 High Bluff Drive, Suite 125
San Diego, CA 92130
(858) 350-1600 phone
(858) 350-0380 fax

Coastal Service Center (Carlsbad)

6183 Paseo Del Norte, Suite 150
Carlsbad, CA 92011
(760) 929-2100 phone
(760) 929-2115 fax

Escondido Service Center

1802 S. Escondido Boulevard, Suite E
Escondido, CA 92025
(760) 745-2299 phone
(760) 745-3842 fax

Fallbrook Service Center

429 South Main Avenue
Fallbrook, CA 92028
(760) 728-5811 phone
(760) 728-0646 fax