

CAR STATE DIRECTOR MEETING - Monterey - January 2018 Submitted by Cindy Doll

(Before acting on information found in this report, please confirm it with CAR legal hotline attorneys or other appropriate source)

PROFESSIONAL STANDARDS COMMITTEE - CAR is pursuing a change to the Code of Ethics with NAR to require REALTORS, when acting as listing agents, to provide written verification upon request from a cooperating agent that an offer submitted by the cooperating agent has been presented to the seller or that the seller has waived the obligation to have the offer presented. Although the Code of Ethics and the law already require all offers to be presented to sellers (unless specifically waived by the seller), REALTORS continually question whether this standard is being met in practice. If this change is pursued and adopted, it would require them to present written verification the offer was presented, or the listing agent would be required to present proof of any seller waiver.

Code of Ethics Standard of Practice 12.10 was changed at NAR to reflect that images must present a true picture in advertising. This sometimes can be violated by things removing power lines from images, using certain angles that distort the property, and more. If a formal complaint is filed for violation of Article 12, a local professional standards hearing panel would be interpreting the image against these rules/standards. During this discussion, some members shared local info that agents had advertised images with a swimming pool on the property, but no pool actually existed. The analysis to use is asking would an objective member of the public be misled by this image?

INVESTMENT HOUSING COMMITTEE - The committee is pursuing an effort to have CAR develop an education campaign that directs local Associations to proactively inform and gage REALTORS's and their residents, constituents and property owners on rent control and the Costa-Hawkins bill.

Support animals versus Service animals-a legislative bill will help clarify animals in rental units. CAR has been providing input to Fair Housing to help get this clarified-it helps clarify what constitutes sufficient qualification of a service or support animal.

Criminal history in rental housing-CAR wants to incorporate comments related to denials, discrimination, and wants housing available to everyone. Modifications need to be included in this legislative Bill.

Balcony inspections-elevated building structures & their supports and components-inspectors would have to be "destructive" testing in order to comply with this legislative bill, then would necessitate repairs after the inspection. Language isn't clear in the current version. There is also concerns, after inspection, that the repairs can be done in a water-tight manner. The inspections would also have to be conducted every 6 years. This would have significant costs to multi-unit owners. So far this bill has been amended 6 times, but needs more. Modifications need to be included in this legislative bill.

Cannabis control-This is a consolidation bill because other bills were under 6 different departments. The attempt will be to consolidate under 1 government department.

MLS COMMITTEE - IDX Sold data - In Nov of 2017 NAR passed a motion to require MLS's to avoid limiting the amount of Sold data included in IDX feeds to 3 years of data, but to provide it without limitation from 1/1/12. This requirement went into effect 1/1/18, but MLS's have up to 60 days to get their local Rules revised to reflect this new policy.

Remote orientation - In Nov of 2017 NAR adopted policy that requires an Association to make mandatory orientations available remotely. CAR is updating the language in the Model MLS Rules to more clearly reflect this policy. (NOTE...Our local Association has been offering the ability to complete orientations remotely for the past 16 years, and won't need to make any changes in our local process.)

Comp-Only Listing Submission - Over a long period of years, CAR's MLS Committee has discussed whether to allow comp-only listings to be submitted into the MLS, but has declined to allow it. CAR will appoint a work group to review the issues related to comp-only listing submission and report back to the CAR MLS Committee in May. Part of the argument in favor of allowing their submission is the desire of some agents to access the comp data on pocket listings, single party compensation agreements, FSBO's, etc. Part of the argument against allowing the comp-only data is because it encourages off-MLS transactions, more pocket listings, not exposing the property to

all agents to have a chance to sell it, more office exclusive listings, etc. MLS's gather and publish sale price info so there will be comprehensive, current, accurate comparable a to develop reliable valuations (CMAs, BPOs, appraisals, etc). The standard listing agreement includes seller authorization to submit listing & sold data to the MLS. A number of concerns/questions arise when considering this item. Some are allowing the reporting of non-MLS transactions can dilute the overall value of an MLS system, there can be technical and legal concerns, would this type of reporting fit within the main MLS system or should there be an abbreviated supplemental posting capability, would there be accuracy and true picture in advertising concerns in terms of values and time on the market, does it skew the look of who is the listing agent, do photo requirements and representations need to be adjusted, could it be submitted without any photo, etc. There are many potential ramifications and considerations to adoption of this type of policy, which will be explored by a work group.

Panel Discussion-Consolidation, Data Sharing and Meeting Broker Needs - consolidation and data share are different. Consolidation is bringing multiple databases into one. In a data share the data from one MLS is brought into another database. Reciprocal access is also another method to access data, and is accomplished by way of password access into the other system. NAR had created a consolidation/merger task force to help AORs who had a desire to merge. An 80,000 member organization offers exceedingly more products and services than a 500 member organization. Brokers need normalization of data, access to all data, access to products/tools that are integrated with MLS data, Need to stop wasting huge amounts of time and money trying to deliver tools to their agents, need to avoid having differences between MLS tools offered thru multiple broker MLS memberships when trying to determine what in-house tools to offer that supplement what the MLS offers when each MLS is offering something different. None of these issues are technology problems...they are political problems and mostly stem from a protectionist posture.

PROPERTY MANAGEMENT COMMITTEE - The following items were reported by Robert Bloom, Esq....

As of 7/1/18 the CalBRE will change back to DRE. BRE's unofficial policy says that to display your real estate license #, using DRE, BRE or CalBRE all acceptable, and also said RE Lic # could be appropriate. There needs to be a designation in front of the # (to indicate it is a license #). Agents can use up existing stock of advertising materials before changing. (Remember, this is BRE's unofficial policy. Any additional questions should be directed to BRE and/or to CAR Legal Hotline.). Legislative bill I SB173

Uniform standards in advertising-effective for 2018-Basic rule is all first point of contact solicitation materials must include name & license # of the sales agent or broker associate, the responsible broker's identity (the broker's license # is optional)-Responsible broker identity means the name under which the broker is licensed and conducts business in general or a substantial division of the real estate firm. Solicitation materials intended to be the first point of contact with consumers includes business cards, stationery, advertising flyers, advertisements on TV/print/electronic media, any other material designed to solicit the creation of a professional relationship between the licensee and a consumer, "for sale" signs "open house signs" lease/rent/directional signs however, there is an exception for the broker as follows...

There was previously an exception for ads in print/electronic media/or any classified rental ad which merely recited the phone # or address at the premise of the property offered for rent. NOTE...there is no longer an exception as outlined above. No the exceptions are...For Sale signs, Open House signs, rent signs, Lease signs, Directional signs but ONLY when "The Broker Exception"-The responsible broker's identity appears (license # is optional) and there is "no reference" on the sign to an associate broker or sales agent OR "The Generic Exception" (there is no licensee identification information at all). Legislative bill is AB1650

Broker Associates-Searchable Information-Obligation to report to BRE-Effective 1/1/18 the responsible broker must immediately notify CalBRE whenever a broker-associate is engaged or terminated; includes current broker-associates; new CalBRE form RE215 must be submitted in hard copy. Legislative bill AB2330

Trust Fund Withdrawal by Unlicensed Employees; Fidelity Insurance or bond ok- The new law permits the broker to take out a fidelity bond or insurance; insurance versus bond; Fidelity coverage-What Is it?...intentional wrongful acts, dishonest acts, theft, forgery. Legislative bill SB764

Rental Disclosures - when entering into lease or rental agreements on or after 7/1/18 the seller/manager must disclose in writing insurance issues, information about floods, legal sufficiency of general disclosure, renters insurance, owners actual knowledge of special flood zone or area of potential flooding. CAR will have a new form

available in June to help accommodate this set of requirements. You must also disclose if you maintain flood insurance. Legislative bill AB646

Landlords/Tenants Immigration Status Protections - This legislation prohibits threats to disclose and disclosure of immigration status, expands definition of "immigration status" to include PERCEPTION of immigration status, new penalties, and more. Currently a landlord is prohibited from inquiring into the immigration status of a prospective or actual tenant, but under present law the landlord can still require information or documentation necessary to determine or verify financial qualifications of a tenant or verify the identity of a prospective tenant. Legislative bill AB291.

Water Conserving Plumbing Fixtures - Effective 1/1/18 for single family properties built before 1994; effective 1/1/19 for multi-family residential AND commercial built before 1994; compliance requires installation of water conserving plumbing fixtures (toilets, shower heads, faucets, urinals).

Bed Bug Disclosures-Last year as of 7/1/17 there was a new disclosure for new tenants, and to take effect on 1/1/18 for existing tenants. Landlord cannot show rent vacant units if they "know" it has current bed bug infestation; there is no duty on landlord to inspect a dwelling unit or common areas if the landlord has no notice of a suspected or actual infestation; requires landlords to provide copies of pest control reports to tenants who's units have been inspected and other tenants if infestation in a common area is confirmed. Civil Code Section 1954.600 et seq

Water Sub-metering - Sub-meters must be installed on all new instruction multi family residential units built after 1/1/18. Landlords must bill residents of these new units the increment of water they use - a myriad of rules apply, including various disclosures. use CAR form WSM (Water up meter Addendum). When multi-unit property has sub meters installed prior to 2018 and the landlord elects to charge a tenant separately for water service, then all the requirements of this new law must be complied with by 2018. Exceptions-When property is built prior to 2018 landlords may use "ratio-allocation system"; or landlords need not charge tenant separately for water service even if there are sub meters; existing ordinance or regulation if in effect prior to 2013, is grandfathered in (even where property is built after 2018); sub metering that measures only portion of dwelling's water usage for example, hot water only. Civil Code Section 1954.201 et seq.

Marijuana Law Update-May a landlord prohibit the use, cultivation, or possession of medical marijuana in a rental unit? Prop 64 specifically provides that landlords may prohibit or restrict cannabis use on their property; marijuana does not come within the protections for "personal agriculture" in portable containers under CC 1940.10; landlords should review their leases to ensure they prohibit plants and cultivation.

What about medical marijuana-must a landlord under fair housing law adjust their policies to reasonably accommodate a tenant's use of medical marijuana? Is this "discrimination" if the landlord refuses: Likely not. While nothing stops a tenant from making such a claim, that claim is unlikely to succeed.

DFEH does not enforce. Their website specifically says that permitting medical marijuana is not a reasonable accommodation.

Prop 65 Safe Harbor Warnings - Prop 65 applies when company or landlord has 10 or more employees; new regs beginning August 30, 2018; these warnings contemplate that there is an identifiable chemical from a particular source; designated smoking area exposure warning; Enclosed parking facility warning; go to <http://www.p65warnings.ca.gov/products-places>

(Question your tax preparer about this info)...Tax Cuts and Jobs Act: 20% deduction for pass-through entities including sole proprietors - Pass-through entities are eligible for a 20% above the line deduction including sole proprietors and independent contractors. 1). For agents, broker's and property managers the 20% deduction is available for taxable income up to \$157,500 for single filers (\$315,000 for joint filers) with a phase out over \$50,000 (\$100,000 for joint filers)-available for both itemizers and non-itemizers). 2). Above these thresholds, the deduction is available only to "non-personal service businesses". in that case, the deduction is the greater of 50% of the W2 wages paid by the business, or the total of 25% of the W2 wages paid by the business plus 2.5% of the cost ASIs of the tangible depreciable property of the business at the end of the year. For examples of how it works see the Q&A "The Tax Cuts and Job Act-Highlights and In Depth" at <https://www.car.org/riskmanagement/qa/tax folder/The-Tax-Cuts-and-Job-Act>

POLITICAL ACTIVITIES FUND COMMITTEE - Origin of PAF was a \$10 assessment included in dues annually to educate members about benefits received thru CAR's Govt and political affairs programs, enhancing Member Mobilization program, and optimizing CARs political involvement thru independent expenditures.

MOTION-\$657,484 to implement Member Education campaign in 2018 - will use social networking, video creation, earned media, email campaigns, message development, and voter registration initiative. (Encourage members to engage in political activities on CARs behalf) (member surveys show lobbying & political action received the highest satisfaction rating among CARs benefits and services)

MOTION-\$26,000 to enhance membership records with social networking profiles and other data & transfer cleaned data monthly to CARs web-based data system. It would also create a Predictive Modeling profile to better identify potential REALTOR activists. (Identify members social networking identities). CAR could use FB, Twitter, email in highly targeted efforts to engage embers in CARs red alerts or calls-for-action. CAR can also have a company create a predictive model to identify potentially untapped REALTOR activists by using both voter and contributor data as well as consumer behavior data to identify them. (\$11,000 to enhance member records...\$15,000 to create predictive model)

MOTION-\$27,800 to fund Voter Registration drive. 36,000 members aren't registered to vote. NAR can provide records of those unregistered. Distribute displays to every AOR and the 100 largest firms (CAR will contact each AOR to ask preference about materials, to receive printed versus electronic materials)...create inserts for new member orientation packets...provide materials at all out reaches...create specific voter reg web page on CAR's site...train local AOR staff to link local websites to CAR's web page...create messaging to the unregistered and use phone banks or other means to reach them...distribute materials at trade shows.

MOTION-\$35,000 to continue a web-based mobilization data system called PDI. Transition from one cloud-based database to another to improve CARs ability to quickly mobilize members and better integrate political & advocacy mobilization efforts. Member mobilization & political affairs have been using 2 different systems but this will integrate both. CARs current Govt affairs system is unsupported by the vendor. CAR can use the data collected to mobile members on other Govt affairs topics. Email has become a less effective method of mobilizing members. The PDI database will replace the use of the Rapattoni database for member mobilization.

MOTION-\$100,000 to set aside from the existing budget for a Consumer Mobilization Fund, with Joel Singer signing off when it is proposed to be used. CAR needs funding for mobilizing consumers. Currently the database being used takes several days to generate the information which puts CAR behind many tight time frames. When CAR knows legislators in certain districts are workable on an issue but need to push hard, they need the ability to act quickly to mobilize consumers.

CAR's leadership team signs off on all these actions - they don't go to the floor of Directors for voting.

Regional Captains are being appointed around the state to mobilize members to gather consumer signatures on the petition for the Tax Portability ballot initiative. Staff in AORs cannot spend hardly any time on promoting consumer signatures or else it is legally consider an in-kind political contribution and that needs to be avoided.

Randall Communications has mailed "2017 report to REALTORS" showing legislative successes - should arrive in mail next week - mailed to NRDS "preferred" mailing addresses.

Randall Communication built website www.HousingforCalifornia.com to share what we are "for" a it relates to housing and also include what we are against - include video, fact sheets, graphics, ways to mobilize members and contact legislators. Will likely be available in a month -this is a consumer-focused website for education and engagement.

REALTOR RISK MANAGEMENT & CONSUMER PROTECTION - Attorney Shannon Jones presentation sharing info about claims/issues coming thru her real estate practice...Recommendations appearing below are Shannon's recommendations-all of these have occurred in the past 60 days -

Disclosures re: granny units/altering garages...be extremely careful how you represent them...often agents call them "legal second units"...there's no definition for that and don't use that terminology...consider language like "seller represents" and "agent has not verified"...advise buyers to go research with government entity. If a buyer had a perception of rents to be collected from a granny unit, then fails to get appropriate disclosures or gets wrong disclosures then files a lawsuit, damages can include lost rents which can be significant.

Creeks-there's significant restrictions with properties that have creeks running thru them...may need approvals from Fish & Game and/or other government agencies...buyers need to be told to go investigate the ramifications of having a creek.

Flooding is another issue when there is a creek and brings up another group of disclosures and issues to be aware of.

Water intrusion/drainage issues-became significant last year following years of drought-window leaks, roof leaks, basement floorings, etc.

Recent fires and mud slides will also be creating lots of new lawsuits. Many sellers during drought didn't experience water issues and therefore didn't disclose anything, but often home inspections included notes about potential issues but people missed those notes because it was during a drought. If you recommend an inspection to a buyer and buyer says no, the attorney felt it is a good idea to give them a Buyers Advisory form and ask them to review it before making a final decision about rejecting additional inspections.

Roots-plumbing/septic/sewer lateral issues-consider recommending sewer lateral inspections as a best practice.

Flipping-For the past 30 years, 80% of all her lawsuits relate to lack of disclosures and failure to get additional inspections. About half of those suits relate to flipped properties or investor resale properties. Investors haven't lived in the property so have no knowledge of the property, even though they have to complete a TDS. When they complete a TDS and say No they aren't aware of whatever issues it is asking about, those are likely true answers because they don't have that personal knowledge. But when a buyer looks at that TDS it can be misleading since that investor never lived in the property. Make sure your buyer needs to be careful about relying on the property TDS from the investor. The top 2 issues with flipped properties are related to using a handyman and lack of permits, so agents should not say there are permits, but may want to consider the "seller represents there are permits" and recommend to the buyer they go investigate for permits. When an agent goes to search for permits, the agent has made themselves the expert in that arena so consider not doing it. If a handyman is being used, it needs to be disclosed.

Buyer Material Issues form developed by CAR. This can be a useful form, but most agents don't realize it exists. If your buyer has a particular issues that is really important to them, they can make that statement on this CAR form. If buyer writes something down, make sure to address it....if they change their mind on what they wrote down, make sure to address it in writing to have them confirm they changed what they wrote in that CAR form.

Buyers purchasing property sight unseen-many more people are writing these offers, and it usually leads to deposit issues...many buyers then turn on their agent and say "you didn't tell me what it meant to make a sight unseen non-contingent offer" and agent ends up kicking in money to make the lawsuit go away. Be very careful of writing these type of offers.

Deposit disputes-many are coming out of the recent fires. Many homes in escrow burned down-CAR contract says seller has to sell home in it's current condition, but if they burned down the escrow can end but there are still deposit disputes.

Verifying buyers ability to purchase-Sellers are suing the sellers agent alleging the selling agent failed to verify the buyers ability to purchase-Ultimately buyer didn't get the funds into escrow-buyer agents aren't actually verifying their buyers have the funds to perform-use the tools in CAR's contracts to follow thru on these tasks. Then the home is taken off the market for a while and seller misses the high point of value in the market which can cause perceived financial losses-in addition, seller agents aren't always issuing a Notice to Perform and taking actions to make things happen in a timely manner.

Parties signing for each other-it is never ok for an agent to tell one party in a transaction that it's ok to sign on behalf of the other party-2 parties using the same email account is problematic when getting electronic signatures, so do all you can to get 2 different email addresses for contract signatures and consider using a verification of signatures form.

Transmitting key documents by DocuSign-the action of communication is critical-Be careful about using electronic signatures on documents that may be better handled differently, or a blank one should first be sent ahead of time via email or other methodology and discuss with that client then send for electronic signatures later.

Handling emails and texts-agents "think" you don't need to keep texts in your files, but you need to keep meaningful texts related to the property in your files-agents aren't putting them into files and is causing legal problems-emails are the same-BRE requires emails be kept in files, but it's mostly only happening when agents are using a system like SkySlope-get them into your files-attorneys may refuse to take on your legal suit because a file that lacks the emails is a red flag that the agent has incomplete information-part of the legal implication is that the Broker cannot manage the agents and transactions because the files are incomplete when emails and pertinent texts aren't included.

Burglaries during showing-be careful monitoring who is coming in & out of the homes.

Social media-There have been huge financial legal settlements for agents making disparaging remarks about competitors, properties, etc and it is creating huge liability to Brokers-while there are laws protecting free speech, you still don't have freedom to say anything you want without consequence-Brokers should monitor & manage the social media of their agents.

Security cameras-Sellers are installing cameras in the property-agents, buyers are in the homes making comments-if you are the listing agent, state in the agent comments the existence of cameras and if they have audio-buyer agents forewarn buyers about the cameras and audio. When landlords install cameras and monitor tenants, cameras shouldn't be in private yard/inside house/etc and be careful of where cameras are installed when there is an expectation of privacy by tenants.

Fire coverage-Some insurance carriers are pulling out of CA and becoming much more conservative about what policies they write-talk to buyers right away about obtaining fire insurance.

BRE updates-In the past couple years they found over \$22 million missing from trust accounts and BRE commissioner has taken it very seriously-access the BRE website document about Trust Fund Management-the agent should avoid talking with the BRE investigator but have their attorney handle it-Brokers establish ahead of time with agents how they should respond to a direct call from a BRE investigator-agents tend to want to be helpful and answer the questions then says things that likely aren't accurate, which comes back to haunt them-agents should tell investigator they will get back to them, then go report to their Broker who can choose to obtain an attorney-many E&O policies may cover some costs of an attorney without a deductible if you get an attorney involved right away.

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