



Courtside *Newsletter*

C.A.R. Fall Business Meetings in Long Beach

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In September, our firm had the privilege of attending the 2016 California Association of REALTORS® (C.A.R.) Business Meetings in Long Beach. The following discusses some of the highlights from those meetings.

PROFESSIONAL STANDARDS COMMITTEE

Regional Reports

A representative from each of the 32 Regions answered four questions presented by the Committee:

- (1) Do your hearing panels consider whether or not a violation will be published on the C.A.R. website when determining what forms of discipline to impose in an ethics case?
- (2) Do hearing panels sometimes impose less harsh forms of discipline because they do not want members of their association to be published on C.A.R. website?
- (3) Are there any other ways C.A.R. Ethics publishing has an impact on the decision at the association?
- (4) Do your associations have any unique professional standards programs or ethics training within your region?

The majority of the Regions answered “no” to all four questions presented. A few Regions answered “no” to the first three questions but stated that their associations did have some sort of training or professional standards program in place. These training programs included the ombudsman program, citation policy training, or basic ethics training. Some associations stated they are reluctant to impose a violation that would result in publication because they do not want to harm the reputation of their agents or face their members outside of the association.

Crafting Ethics Discipline

There was a presentation on crafting discipline with the goals in mind to build education, establish a deterrent, and provide vindication of unethical behavior. It was stated that associations need to strictly adhere to their policies and provide consistency over caution. Discipline can include Letters of Warning or Reprimand, training requirements, reasonable fines, Cease and Refrain orders, suspension of membership, remedial suspensions or expulsion from membership. Information on

C.A.R.’s website should not be considered, and the violator’s membership file should not be reviewed until the hearing Panel finds a violation. Factors that should be considered when determining the sanction include, but are not limited to:

- the nature of the violation;
- the harm caused;
- whether the violation was intentional or inadvertent;
- any economic gain or loss;
- the experience of the person committing the violation;
- the violator’s previous history; and,
- any mitigating or extenuating circumstances.

MEMBER LEGAL SERVICES

New Laws—Brokerages

In advertising, two new laws will come into effect regarding brokerages. Assembly Bill 1650 addresses uniform advertising standards and amends California Business & Professions (B&P) Code § 10140.6. AB 1650 “requires a real estate licensee to additionally disclose his or her name, license identification number, and responsible broker’s identity on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting as an agent in those transactions.” The Bill also expands the definition of “solicitation material” to include: “business cards, stationery, advertising fliers, advertisements on television, in print, or electronic media, “for sale,” rent, lease, “open house,” directional signs, and other materials designed to solicit the creation of a professional relationship between the licensee and a consumer.” This law will come into effect on January 1, 2018.

Senate Bill 710 addresses real estate licensees, fictitious business names, and team names and amended B&P § 10159.7. Current law requires “advertising and solicitation materials using a fictitious business name or that contain a team name to display the responsible broker’s identity.” SB 710 defines “responsible broker’s identity” to include the name or both the name and associated license identification number. However, it is important for REALTORS® to note that the Code of Ethics requires that the broker’s name be provided.

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Under Assembly Bill 2330, which amends B&P §§ 10083.2 and 10161.8 and becomes effective January 1, 2017, the BRE will divide brokers, broker's associates, and salespersons into separate categories for identification purposes.

Lastly, current law allows for any record of disciplinary action to be placed on a broker's permanent record. AB 1807 will allow brokers to petition the BRE to have any disciplinary action removed after ten years and "for which the licensee provides evidence of rehabilitation indicating that the notice is no longer required to prevent a credible risk to members of the public utilizing licensed activity of the licensee." This amends B&P § 10083.20 and becomes effective January 1, 2018.

New Laws—General

Senate Bill 1173 will amend the Civil Code to require that any non-complaint indoor water fixtures and faucets must be replaced with water-conserving plumbing fixtures as defined by the Code. Commercial property is required to replace any noncompliant plumbing fixtures on or after January 1, 2017. The deadline for commercial real property replacement will be January 1, 2021. This change is a condition of ownership, not a point of sale. There will also be an update to the Seller's Questionnaire form that asks whether the seller is aware of any low-flow fixtures.

Finally, the Federal Aviation Administration (FAA) now requires drone users to have a Remote Airman's Pilot Certification, which can be obtained through an approved FAA facility. All drone activity must remain below four hundred (400) feet.

Recent Cases

- Horiike v. Coldwell Banker may be the most anticipated case for the real estate industry. The California Supreme Court heard oral arguments on September 7, 2016 to determine whether a listing agent working under the same brokerage as the buyer's agent would owe a fiduciary duty to the buyer through the concept of dual agency. The Court seemed to have trouble understanding the concept of dual agency during in oral arguments. A decision from the Court is expected by December 1, 2016.
- Gragg v. United States: The Court held that real estate professional may deduct rental losses from their taxable income only if they materially participate in rental activities. Without some record or evidence establishing the real estate professional as having material participated in the management of the rental property, the income is considered passive for tax purposes.
- Morlin Asset Management LP v. Murachanian: The Court held that a tenant cannot be held liable to a landlord for injuries sustained by a worker in common areas. The landlord still has the duty to inspect and make safe all common areas on the property.
- Weeping Hollow Trust v. Spencer: The Court found that a lender may be held liable for misrepresentation by its loan servicer. The Court found that this liability can be found under the theory of *respondet superior*.
- Vasilenko v. Grace Family Church: The Court held that a land owner may be liable for injury sustained on a third party's

property. In the instant action, Plaintiff sued the Church after he was struck by a car attempting to cross a street from the church's overflow parking lot to get to the church itself. The overflow lot was owned by a third party, but the court found that the church may be held liable for Plaintiff's injuries. In reviewing this case, it appears that the Court is expanding the concept of duty and liability of a landowner.

LEGAL AFFAIRS—NEW & REVISED FORMS

Below are the most recent forms created and provided by C.A.R. for real estate professionals. They will be released in December 2016.

- **Early Occupancy Addendum**
C.A.R. is creating a Buyer Early Occupancy Addendum to provide regulation to the practice of early occupancy in which the Buyer takes possession of the property prior to the close of escrow. There is a large amount of debate regarding this issue, and while the concept is faulty, the forum may go a long way in attempting to provide some guidelines for those who do practice early occupancy.
- **Shared Agency Commission Agreement**
The Shared Agency Commissions Agreement was created for agents who, while not a member of a team, agree to share their commissions with one another on a particular purchase or sale of property. This form will allow agents an express agreement for a common practice.
- **Seller Property Questionnaire**
The Seller Property Questionnaire has been updated to include the knowledge of low-flow water fixtures and faucets inside the home pursuant to law concerning Water Conserving Plumbing Fixtures, as discussed above. The Questionnaire will now ask whether the seller was aware of any noncompliant plumbing fixtures on the property and whether such fixtures are water-conserving. This change will also be made to the Exempt Seller Disclosure form.
- **Wire Fraud Advisory**
The Wire Fraud Advisory is intended to make buyers and sellers aware of the need to exercise extreme caution when using wire transfers of funds and also some practical suggestions for safeguarding their transaction and private information. It is highly encouraged for agents to have their client receive it, read and understand it, sign it, and return a copy to their agent.
- **Residential Lease Agreement**
Finally, an update will be made to the Residential Lease Agreement (RLA) in June in which the arbitration clause will be removed. Agents encouraging their clients to sign that segment of the form could be considered the unauthorized practice of law. However, the mediation clause will still be provided for in the RLA.

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Should you have any questions regarding any of the information contained herein, we urge you to speak to your local REALTOR® association and/or seek qualified legal counsel.

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