

# C.A.R. Business Meeting Report

## San Jose, October 2009

The California Association of REALTORS held its final of three business meetings for 2009 in San Jose. Sixteen 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 CAR 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](mailto:Dianne@nsdcar.com))** or **Government Affairs Director Ernie Cowan ([ernie@nsdcar.com](mailto:ernie@nsdcar.com))**, or phone us at the Association's Administrative Office (760) 734-3971.

### COMMERCIAL ALLIANCE COMMERCIAL INVESTMENT



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Rebecca Vesconte NAR Staff Member and Development Manager for the National REALTORS® Commercial Alliance gave a Power Point Presentation of NAR Commercial Survey Highlights of market conditions and REALTORS® most pressing current challenges in this order: 49% Financing issues, 20% Local Economy, 19% National Economy, 4% Inventory.

The REALTORS® Commercial Real Estate Market Survey asked the participants to comment on current challenges and difficulties in their markets. Some of their comments were as follows:

- General fear and uncertainty with the political and economic climate is holding people back.
- Sales volume is down 30% from the previous year.
- Sales prices are down 20% from the previous year.
- Cap rates up 95 basis points from last year.
- Rent concessions up 11% from last year.

Financing continues to top the list of the most pressing current challenges. Existing commercial loans are coming due and the banks will not lend for commercial deals and the requirements are totally out in space. Comment from one bank- we are not lending for rental properties.

The restrictive local government zoning and occupancy codes and lack of reasonable relationships between banks, government, and the private sector in supporting market stability. Risk factors are increased due to government involvement and lack of clear directions of government participation.

On a positive note, the financially strong are starting to make some moves because they feel the pricing has hit bottom and they are taking advantage of REO's and deep discounts from the banks.

### COMMON INTEREST



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One of the most important items discussed in the Committee has to do with FHA's new requirements that in order to have the development approved for FHA loans, the CID must have an annual audit (instead of

only 3-5 years) and the reserves must be funded at 60% of what is required, with 10% of the annual budget being used towards reserves. What's more important is that unless the complex is 2-years old or younger, even though the complex was previously approved for FHA loans, the complex no longer is and must meet the above requirements. CAR and NAR are definitely working to redirect FHA's thinking on this as it will stall, if not kill, thousands and thousands of California loans.

As I am sure you are reading in these reports, politics is certainly being played in Sacramento this year. Because the Governor wants some special legislation to be produced from the Legislature, there are over 700 bills sitting on his desk, that at this writing, may be signed, or all 700 vetoed. So any of the bills in this report which have been sent to the Governor's desk may actually be vetoed in a few days.

**AB 313 (Fletcher) CID Assessment Procedures** - This bill is pending before the legislature and would seek to prohibit an HOA in a Common Interest Development from levying assessments based upon taxable value of separate interests (usually the value of the land and improvement) unless the declaration creating the HOA allowed such assessments are in practice as of 12/31/2009. There are only two existing HOAs that assess in this manner and one of them is the Rancho Santa Fe HOA, which is sponsoring the bill. The fees in Rancho Santa Fe range from \$261-\$65000. This bill passed and is on the Governor's desk.

**AB 899 (Torres) CID Disclosure Requirements** - This bill is sponsored by the Executive Counsel of Homeowners. The bill would seek to expand requirements of HOAs but the requirements the maker of the bill is asking for are already laws on the books and simply could be enforced. CAR originally had a Favor position on this bill, but when learning of the existing laws, the Committee reversed the position to an

Oppose. This bill has passed and it is on the Governor's desk.

**AB 927 (C. Calderon) Construction Defect Claims in CIDs** - The California Building Institute and the Civil Justice Association of California sponsored this bill. It extends the sunset, July 1, 2010, of The Davis-Sterling Common Interest Development Act. Extension of this would require pre-litigation procedures in a Common Interest Development for construction defect disputes, for seven additional years. It would simply maintain the status quo. This bill has actually been enacted and will go into effect on January 1, 2010.

**AB 1020 (Emerson) Anti-Entrapment Requirements for Swimming Pools** - This bill is sponsored by the State Department of Health to align California law with a new federal law which went into effect 12/19/2008. The federal law was created to prevent injuries in public pools and spas from people being trapped in the pool drain. It is unclear as to whether "public" includes HOA pools and spas. This bill is also on the Governor's desk.

**AB 1061 (Lieu) Water-efficient Landscapes in Common Interest Developments** - Currently there are some conflicts with the enforcement of water conservation laws and this bill would resolve those conflicts. There are some dessert communities, believe it or not, which do not allow dessert-type landscaping and require grass and other water hogs, and I am not just speaking of golf courses. This bill passed the Legislature and is on the Governor's desk.

**AB 1328 (Salas) Contract Authority for HOAs in Common Interest Developments** - Sponsored by the California Association of Community Managers, this bill proposes to clarify that a homeowner or condominium association may enter into a contract for more than one year, and up to a maximum of five years, if the Board reasonably

anticipates the contract will result in verifiable savings or other benefits to the association. Currently some association's governing documents prohibit contracts which extend beyond one year. The problem is that water and energy efficiency programs cannot, generally, be realized within one year. This bill is also on the Governor's desk.

**Some other items that we have been working on:** **1.** An effort to have the Secretary of State collect basic information on CID's, like who is managing it and where can we reach them, has been tabled because of the budget crisis. **2.** There is a training course coming up through CAR on CID's. **3.** There is an update in the SBSA Informs form, due out April 2010, which includes reference to the CID Guide, written by the Common Interest Development Committee. This is a basic guide for the agent and the consumer on CID's. You can find information on that at [www.car.org](http://www.car.org).

**EDUCATIONAL SERVICES  
ADVISORY**



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Report was made on the success of the Face2Face program introduced this year by CAR's REBS division. Classes have been delivered at associations from Sacramento, San Luis Obispo and Bakersfield as well as others using live video classes. Because of the program, National Association of Realtors designation courses have been offered at reduced rates, which has brought more students into the program. Also, associations who have difficulty getting

training because of their location in the state of the size of the association are now able to bring more opportunities in Education to their members. There will be an expansion of the program to include Risk Management, Economics and Legal courses being offered to associations throughout the state.

**Editor's Note:** *NSDCAR rolled out it's first Face-to-Face class on ZipForms 6 – September 30, 2009. Additional Face-to-Face classes at NSDCAR are scheduled for 2010.*

**EQUAL OPPORTUNITY  
CULTURAL DIVERSITY**



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**Legal update on Fair Housing:**  
10,552 complaints have been filed to date in 2009.

- 45% - discrimination based on disabilities
- 35% - racial discrimination
- 10% - discrimination against families with children
- 10% - all other

Leah Pears from CalHFA spoke about their first time homebuyers programs. CalHFA purpose is to provide safe and decent housing at low rates to moderate income people that have stable income, such as teachers, waiters to achieve their dream of homeownership. CalHFA is not a direct lender. There are many CalHFA approved lenders. CalHFA offers low, fixed interest rates, as well as closing cost and down payment assistance programs. You can visit [www.calhfa.ca.gov](http://www.calhfa.ca.gov) for more information.

## **FEDERAL ISSUES**



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The \$8,000 First Time Homebuyer Tax Credit is again at the forefront of discussion at the CAR business meetings in San Jose this year. To be eligible for the HTC the escrow cannot close past November 30, 2009. CAR in conjunction with NAR is working diligently to both expand and extend the credit to all home buyers through 2010. The word on the street is an extension is most likely but no expansion due to the cost. CAR research shows almost 40% of the buyers would not have bought a home had it not been for the credit. The HTC has accomplished its primary goal of creating homeowners.

The mortgage interest deduction is again under attack. The Congressional Budget Office has reported this as a good means to raise revenue. Several proposals currently exist, one of which suggests a flat tax approach, which would result in the elimination of the mortgage interest deduction entirely.

Effective in 2010, the estate tax will be repealed for one year. In 2011 the estate tax will revert to the laws that were in effect on June 6, 2001.

FHA 90-day anti-flipping rule was again a topic of discussion as was the Home Valuation Code of Conduct. CAR along with NAR feels the need for these to go away. Since the inception of the HVCC on May 1, 2009, consumers in California and across the country have seen the cost of appraisals go up, the quality of appraisals have been questioned, and the entire real estate transaction has seen delays. HR 3044 has been introduced to create an 18-month moratorium on the HVCC to allow Congress

and the GSE's to examine the problems the real estate industry is experiencing. Because of the huge push for health care legislation it is possible HR 3044 will be attached to other legislation to move it through Congress. FHA has also adopted a set of guidelines similar to the HVCC to be implemented January 1, 2010.

GSE reform and restructuring has been pushed back to the release of the proposed 2011 budget. It is still unclear how the administration will restructure the GSE's and what role the government will have. GSE and FHA loan limits included in the House passed Transportation, Housing and Urban Development bill would extend the current loan limits until the end of 2010. The Senate version of the bill does not include this provision but CAR and NAR are working to ensure it is included in the final bill. Please feel free to contact me on any of these items at [bob@bobpahlke.com](mailto:bob@bobpahlke.com).

## **HOUSING OPPORTUNITY**



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The current First-time Homebuyer Tax Credit (HTC) expires on November 30, 2009. This means that in order to be eligible for the HTC the escrow cannot close past November 30, 2009. The current HTC requirements are: The home was purchased between January 1, 2009 and November 30, 2009. The tax credit is 10% of the purchase price, capped at \$8,000. The tax credit does not need to be repaid - the only exception being if the property is sold within 3-years of purchase.

CAR and NAR are working diligently on both expanding and extending this Homebuyer Tax Credit. CAR and NAR want to see the tax credit expanded to all homebuyers and extended until the end of

2010. **Please make a phone call immediately to your Congressional Representative.** Dial 1-800-961-3302, enter your NRDS Number, leave a message for your representative to vote in favor of extending the First Time Homebuyer Tax Credit.

**An update on CAR sponsored housing bills that are of interest.**

**SB 206 (Dutton) Tax Credit for Purchasers of Foreclosed Homes as Principal Residence-** SB 206 proposes to establish a tax credit of limited duration for the purchase of foreclosed homes. This measure is intended to incentivize specified homebuyers, those that do not have adjusted gross income over ninety-five thousand dollars (\$95,000) or one hundred seventy thousand dollars (\$170,000) for joint filers, to purchase homes that have been foreclosed upon and returned to the lender. SB 206 could have a positive impact on our economy by contributing to reduction of the REO (foreclosure) inventory in California. Until the backlog of unsold foreclosed homes is significantly reduced, the housing market in California will not enjoy a full economic recovery

**AB 765 (Caballero) Revision of Franchise Tax Board (FTB) Computation Process re Allocation of Current Housing Tax Credit for Purchase of New Homes** -This bill is designed to correct an implementation problem with the State's Homebuyer Tax Credit Program. AB 765 proposes technical changes to existing law in order to fully utilize the \$100 million in funding that was authorized by SB 15XX (Ashburn) as part of the State Budget compromise. The effect of revision in the allocation process would be to free up roughly \$30 million in unused tax credit funds – enough to help as many as 4,200 more homebuyers to purchase a home. CAR supports this bill and it is currently on the Senate Floor.

**AB 1432 (Mendoza) Expenditure Control of TARP Funds** - Existing law authorizes the California Housing Finance Agency (CalHFA) to make loans to qualified mortgage lenders under terms and conditions requiring the proceeds to be used for construction loans and mortgage loans for the purpose of financing housing developments and residential structures. This bill provides that if the agency receives funds from the federal Troubled Asset Relief Program (TARP), established pursuant to the Emergency Economic Stabilization Act of 2008, the agency shall use the funds to make or refinance acquisition, construction, or development loans for housing developments or residential structures affordable to persons and families earning up to 200 percent of the area median income.

**CAR Position:** Favor

**AB 1459 (Davis) Multifamily Housing Program for Veterans** - The Multifamily Housing Program provides a standardized set of program rules and features applicable to all housing types based on the department's California Housing Rehabilitation Program. Under these rules, a sponsor of a supportive housing development can restrict occupancy to persons with veteran status if the development is located on property that is owned or leased by the United States Department of Veterans Affairs or the California Department of Veterans Affairs and is leased to the sponsor for not less than 55 years. This bill would delete the requirement that the development be located on property owned or leased by the United States Department of Veterans Affairs or the California Department of Veterans Affairs and establishes parameters for restricting occupancy in the development to veterans and veterans' families.

This bill is currently on the Governors desk for signing.

## **INTERNATIONAL REAL ESTATE**



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The International Real Estate Forum was held on Friday, October 9, 2009 in San Jose. The first guest speaker was Allen Chiang. Mr. Chiang spoke regarding investing in China. China's economic partners are Korea, Russia and Japan.

China is the second largest growing community with buying power. This trend appears to look even stronger for 2010. Six months ago the Government of China started allowing foreign buyers. Financing was very difficult with 40% down and a 45 month pay back. Recently, Hong Kong introduced to China 15 and 30 year fixed rate loans. Prior to investing in China it is highly recommended that you go there to investigate not only the builders, but the areas as well. Since 2004, 5% has been the rate of return for the investment. Homes in China are basically shells only. This means that most properties do not have kitchens. If you want a home with a kitchen you would be looking in the market for re-models. Prior to buying any property it is best to go to the Land Department to check ownership.

Once you buy a property, you must own it for three years prior to selling it. If you buy land it will take 2-3 years just to get approval on subdivisions. It takes approximately three years to get title to a property. All fees must be paid up front prior to building. To get city approvals and to build-out generally takes about 18-months.

You must have a license to sell property in China. In 2005 there were 200 licensees. Once you have a license, you can sell anywhere in China. The builders generally become licensed real estate agents. Most

real estate agents have only city licenses. Laws are continuing to change.

Closing costs run about 10% or about \$2,700. You must set up an account in China so that you can wire funds as needed. Each year China requires taxes to be paid on the property you own. If you represent a seller in China, request 8% commission or try and negotiate 5% plus expenses.

Mr. Art Carter, CEO of International IDX Alliance, talked about the service of ImmoTel which is a translation service. Currently the MRMLS has an IDX feed that translates into 12 different languages. In 2009, 2-million hits were received. Most of these hits came from outside of the United States (Canada, China and Japan), with the largest search from Vietnam. The newest translations are with France, Singapore, Brazil and Austria. Russia is now talking about starting this service. ImmoTel acts as a platform for cross-country referrals.

The next guest speaker was Anita Rodal, Director of Business Development, SBPI Services, Inc. This company deals in Worldwide Securities Based Loans. Securities Based Loan financing works great for Foreign Nationals, U.S. Citizens buying abroad, high net worth clients, Developers and Corporations. Two key questions in ascertaining if this type of loan would be best for your clients: "Do you have a stock portfolio that is not tied up in Retirement accounts?" "Did you know you can borrow against it?" In other words, SBPI will not loan against 401K's, IRA's, CD's, Cash, Money Markets, Bank Debentures or Notes. To see if your client qualifies and to request a quote, send recent bank statement and securities' statement and you will get an answer within 48 hours. If all information is acceptable, your client will get a commitment letter and application. The company will do its due diligence and legal compliance for the loan. They get an average of what your stock prices would sell for and they give a pledge agreement in about five days. It then takes about three

days for starker pricing and then two days to wire. Total time to get a loan is about ten business days.

Technically, SBPI puts your shares into a holding account so there is no sale considered and no trigger of tax. The original holder of the stocks remains the holder. This is a non-recourse loan. It is interest only and borrower picks their own terms (3, 5, 7, 10 years) and these terms can be extended. There is a minimum loan amount of \$100,000. Loan to value maximum is 80%. If your portfolio drops below the 80% of the loan amount, the loan is then called. It is considered in default and must be cured. You can cure the option by paying the difference, or you can keep the loan money and walk away. This is similar to marginal loans. Either way, you will have 5 days to decide.

Escrows are handled by attorneys. These loans are good when you need to have a cash buyer, or when you have underperforming income property, or a second home with fractional interest. Depending on the down payment, interest rates currently run from 2.5% to 4.9%.

The final speaker was Kelvin Wong, Broker and CEO of Resource Real Estate Service. Mr. Wong was born in Hong Kong and is the NAR liaison appointee to Singapore. To be successful in Singapore, one must wear professional business attire. Do not wear casual wear. Be nice. Shake hands and bow. Buy a lunch or dinner for your client. Enjoy the food, but do not put salt on the main food. Don't use your left hand to eat. Put chop sticks together on the side of your plate to indicate you are finished eating. Use red colored wrapping on gifts you give to your clients. If given a gift, never open in front of the hostess. Don't give flowers, because this means sickness or someone has passed away. Do not give scissors or knives. Buy your client a gift when you leave their country. No pointing gestures. Never pound your fists. Don't shake your feet or body. Never show public affection.

Let your client initiate greetings. Just remember it takes time to build relationships and trust. Always give a two week notice for appointments. Always observe body language. Do not sell guns in Singapore, you will go to jail. Don't smoke in public or express opinions of others. Most of all smile and learn the customs of Singapore.

## **LAND USE & ENVIRONMENTAL**



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The Presiding Chairwoman Lisa Muetterties opened the meeting with the General Legislation Update on the following Assembly and Senate Bills with brief commentary on each since these have been on discussed at length in previous meetings. Kim Boda & Phyllis Carmichael gave the following reports

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

### **General Legislation Update**

**1. AB 226 Ruskin (D) Coastal Resources Act of 1976 (Opposed)** - On the basis that it expands the Coastal Commission's enforcement authority by allowing them to impose civil penalties with retention of the penalties added to their budget. The authority would create a Bounty Hunter atmosphere any deny property owners due process. CAR opposed the passage of AB 226 on the premise that fines and penalties should remain in the courts where due process is afforded. Status: Senate Floor Inactive File.

**2. AB 291 Saldana (D) Coast Development Permits (Opposed)** - Would allow staff to deny permit applications solely based on a perceived violation may be in existence, creating a “guilty until proven innocent” until staff was satisfied that the alleged violation was cured. The thought was that a neighbor could thwart a project just by alleging a violation was in force. CAR opposed this bill because it halts the processing of otherwise valid Applications. Status: Senate Floor Inactive File.

**3. AB Fuentes (D) Subdivisions Maps – Expiration Dates (Support)** – Extends for 60-months the life of active tentative subdivision and parcel maps, the intent is to support new construction alive during this trying economic period. Status: Signed by the Governor on July 15, 2009.

**4. AB580 Huber (D) Onsite Sewage Treatment Systems (Support)** – This Bill amends the development of statewide septic regulations that would allow the State Water Board to develop exemption criteria for the proposed regulations. It was created to amend any less than desirable regulations proposed in the next version expected to be released this summer. Status: Senate Environmental Quality Committee.

**5. AB 1085 Mendoza (D) State Air Resources Control Board Regulations (Support)** – Because it will ensure open access to the public as the CARB develops new air quality and green house gas regulations. Status: Enrolled to the Governor.

**6. SB 310 Ducheny (D) Water Quality Stormwater and Other Runoff (Support)** – This bill coordinates local and state agencies and districts to address storm water drainage and watershed protection and management goals for an entire region. The current fractionalized management does address the needs of the drainage areas and has no impact on improving storm water management and unfairly impacts new

construction and the cost of those homes. Status: Enrolled to the Governor.

### **Green Legislation**

**1. AB 51 Blakeslee (R) Electrical Corporation Energy Efficiency Programs (Support)** – This bill is direct in increasing energy efficiency for homes and businesses without adding additional costs to existing utility mandated reduction programs. It requires at least 90% of energy efficiency funds to be used for outreach and implantation of energy efficiency programs. Status: Supported At Senate Energy, Utilities and Communications Committee.

**2. AB 210 Hayashi (D) Green Building Standards (Support)** – Clarifies local government willingness for adoption of standards that are more stringent than the State, they must use the same procedure that any other change to building codes must use, and there must be a finding of fact that a local climatic, geologic or topographic condition exists that creates the need for adoption of a local ordinance which must be filed with the state Building Standards Commission before adopting the ordinance. Supported- Status: Signed by the Governor on August 5, 2009.

**3. AB 300 Caballero (D) Subdivisions Water Supply (Support)** – Is a re-introduction of a previous 2008 Bill that allows developers to meet water supply requirements by introducing voluntary water reduction measures in the installation process in all new construction. CAR supported this Assembly Bill because it will help reduce the water demands needed to provide more housing in the state and by reducing water demands by implementing conservation. Status: Senate Natural Resources and Water Committee.

**4. AB 531 Saldana (D) Energy Consumption Data Disclosure (Support)** – Saldana AB 1103 signed into law, requires electric and gas utilities to provide energy consumption data for non-residential customers to be compatible with the U.S.

Environmental Protection Agency's Energy Star Portfolio Manager and to provide consumption information on behalf of the owner energy Star Portfolio Manager and to provide consumption information on behalf of the owner or operator upon their request. AB 531 streamlines and clarifies AB 1103 by giving guidance and setting a schedule for compliance. Support- Status Enrolled to the Governor.

#### **5. SB 407 Padilla (D) Point of Sale Plumbing Fixture Replacement (Oppose)**

– This Bill conditions the sale of real property on the completion of water efficiency upgrades and requires sellers to certify that the appropriate upgrades have been made prior to the close of escrow. The bill places additional requirements on the seller's agent to certify and disclose the energy efficient upgrades. CAR opposition was based on its point-of-sale approach. CAR amendments removed the point-of-sale provisions for the bill and instead required all properties to be retrofitted by 2017. Position: Watch as Amended. Status Enrolled to the Governor.

#### **Regulatory Update**

**1. California Energy Commission (CEC), AB 1103 (Saldana, 2007) Implementation.** CAR is a stakeholder in the development of the Commercial Building Energy Star Benchmarking program. The CEC is drafting an unauthorized secondary program to layer on top of the benchmarking and disclosure already required by AB 1103. CAR is working to counter this new requirement, as it is not legislatively authorized.

#### **LEGISLATIVE COMMITTEE**

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#### **I. Legislative Overview**

**A. Member mobilization report - DeAnn Kerr** – DeAnn pled with the group to not

only respond to the NAR call to action regarding the extension expansion of the home buyer's tax credit, but asked each of us to respond to the CAR call and go back to our groups and ask all of our directors to respond...she asked that we do it in San Jose and not wait until we got back home. She also asked that we let our members know that their responds were critical. Our members could also forward these calls to their clients and on the CAR call where it asks for member number, the clients can simply dial 999999999.

**B. Status of Current Bills on the Governor's Desk** – The Governor has indicated that he will not sign any of the bills on his desk until the water issue is acceptably addressed. There are over 700 bills on the desk, a few of which are of interest to us. Unlike the Federal guidelines whereby if the President does not sign a bill it is in essence vetoed, if the Governor does not sign the bills they would automatically become law unless he vetoes any or all of them. At this time he has said he will veto them all.

#### **II. 2010 Sponsored Legislation**

**A. SB 206 (Dutton) Homebuyer Tax Credit** - CAR is sponsoring SB 206, which as introduced, would have created a first time home buyer's tax credit, equal to 10% of the sale price of a home, not to exceed \$8,000. Because of the budget issues CAR's Board of Directors at its June 2009 meetings limited the credit to REO properties purchased as a principal residence by home buyers whose individual income does not exceed \$95,000, and married couples whose combined income does not exceed \$170,000. The bill had a one year life from enactment. It was amended to use federal stimulus funds instead of the state general fund. The stimulus funds were not available for this purpose. Other funding sources are being sought that will not impact the state's general funds but that will also not eliminate or reduce any tax deductions for which CAR has always fought (mortgage interest deductions, etc). The bill is eligible to be considered in January 2010.

## **B. Previously Approved Legislation to be Sponsored With Nothing New To Report**

### **1. Extending anti-deficiency protections to refinanced purchase money mortgages**

– Previously, CAR voted to sponsor legislation to expand the anti-deficiency protections to refinanced purchase monies (when the refinance was done for interest rate or other terms or combine the original notes into one), “recourse” junior notes that were part of the original purchase, or loans that were created to improve the property and increased the basis.

**2. CID Right to Rent** – Because of concerns that some homeowner associations are adopting or attempting to adopt restrictions that limit the ability of unit owners to rent their dwellings in common interest developments, thus taking away an owner’s property rights, CAR voted to sponsor legislation in 2010 to require two-thirds of the unit owners a complex to approve, by written ballot, any amendment of the governing documents that would prohibit owners from renting or leasing their unit. A bill we sponsored in 2008 AB 2259 (Mullin) was approved, almost unanimously, by the legislature, but the Governor vetoed it because he felt that it did not leave this decision up to a vote of HOA members. It was hoped that with the new specificity to be included, the legislature, as well as the Governor, would find a bill acceptable.

**3. Local vacant property maintenance ordinances** – The concept behind this action was to make the statewide rule that exists preemptive of any local entities’ ordinances. It would provide that: 1) An REO owner could not be fined for violations cited on the property before being given a notice and the ability to make repairs and/or corrections. 2) Any liability for maintenance prior to the foreclosure would belong to the legal owner. 3) The Notice of Default or Notice of Sale recording would have to include contact information for the foreclosing entity’s designated property manager.

## **III. Appraisal Issues**

**A. Portable appraisals** – The discussion on this issue centered on two basic issues:

1. Currently, the lenders have control of whether to accept a previous appraisal. They, if they chose to do so, may use an appraisal of another lender or they may require the borrower to pay for another appraisal. Home Valuation Code of Conduct (HVCC) is supposed to keep the appraisers separate from the lenders, the borrowers and the agents. If this is so, then why should a borrower have to continue paying for appraisals?

2. How big a problem is this issue for REALTORS® and their clients? Could mandating that a lender accept a previous appraisal end up “biting” a borrower? Would this be a benefit to the borrower? The majority of the members in the committee believed that we were not talking about the ability of a borrower to “shop” appraisals, but rather, simply to have the ability to take a valid appraisal to another lender when the first lender could not perform.

A motion was made and seconded, “That CAR ‘Sponsor’ legislation to require lenders to accept a ‘portable’ appraisal at the request of the borrower.” There was a second and it was passed. The motion was sent to the Board of Directors as passed and it was passed by the B.O.D. Additional information can be found at <http://www.car.org/meetings/carmetings/curentmeetingmaterials/legmem1009/355874/>.

### **C. Appraisal Management Company**

**(AMC) regulation - SB 237 (Calderon)** has passed the legislature and is one of the 700+ bills on the Governor’s desk to be signed. It requires AMCs to register with the Office of Real Estate Appraisals (OREA), mandates the principals of the AMCs undergo background checks, clarifies “undo influence” applied to appraisers, and retains the ability to communicate with an appraiser to share comps and correct errors. What is unclear is whether the OREA is given the power to regulate the use of out of area appraisers, audit the timeliness or accuracy of their work product, or prevent conflicts of interest in referrals from a controlling lender or title company.

The discussions we had centered around whether we should wait until the January meetings to see if the Governor signs the bill and what OREA's position will be on the extent, if any, of OREA's control over AMCs. The nightmare stories from the committee members about out-of-area appraisers being used, the AMCs being spun off but still controlled by the lenders and/or the title companies, and various other issues resulted in a motion.

“That CAR ‘SPONSOR’ legislation to subject Appraisal Management Companies (AMCs) to increased regulatory control by the Office of Real Estate Appraisers to be reviewed by the Transaction and Regulatory Committee at the February 2010 meetings.” (The Transaction and Regulatory Committee is the new CAR committee that will review these actions starting in 2010). The motion was seconded and passed and was sent to the Board of Directors as passed and was passed by the B.O.D. Additional information can be found at

<http://www.car.org/meetings/carmeeetings/curentmeetingmaterials/legmem1009/356717/>

#### **IV. Unconstitutional Property**

**Restrictions; Electronic Redaction** – This issue was discussed at the last meeting and the committee wanted more information. At issue was AB 985 (De La Torre) that would have required all documents recorded on a property be “scubbed” at the time of ownership transfer of any unconstitutional restrictions. The cost of this was high and the law already has a provision that voids these restrictions. Currently, there is an electronic scanning system that is used to redact property records of private information such as social security numbers. One of the concerns raised at the last meeting was the loss of historical records. The Housing Opportunity Committee indicated that, while these restrictions may be deemed offensive by some, they are a part of the historical journey made by races, sexes, etc. AB 985 was amended to instead provide an enhanced procedure for non-owners to request the county recorder to remove an illegal restriction from the

property record. You could have a neighbor request the restrictions removed from your property. It also set up an expensive program to cover the costs related to the removal of the already illegal and unenforceable covenants by surcharging every recorded real estate document an additional fee to cover the costs "related to" the program. It has no limit on fees and will allow overcharging and potential diversion of the fund. AB 985 is on the Governor's desk for signature. With an Issues Briefing Paper prepared by staff, the committee revisited this whole issue. The considerations with the current bill, if signed, or any subsequent bill (this isn't the first of it's kind) were: 1) It's a point-of-sale requirement. 2) Anyone could have your property record changed. 3) The cost added to a transaction is not acceptable. 4) The historical content will be lost. 5) There is an alternative that seems to address all of the other concerns.

The committee made the motion, “That CAR “SUPPORTING’ legislation setting up a program to use electronic scanning technology to scan the records for unconstitutional transfer restrictions and redact the illegal restrictions in a way that does not add prohibitive costs to the recording process.”

The motion was seconded and passed. It was sent to the Board of Directors as passed and was passed by the B.O.D. Additional information can be found at

<http://www.car.org/meetings/carmeeetings/curentmeetingmaterials/legmem1009/354592/>

#### **V. Point of Sale Updates**

**A. SB 407 (Padilla), Toilet retrofit** – This has been amended to remove the point-of-sale requirement for retrofitting with low-flow toilets, shower heads and faucets and mandates all properties be retrofitted by 2017. It also called for some disclosures to be made, but those requirements were also removed so that this bill would have no conflicts with other bills (SB183).

**B. SB 183 (Lowenthal), Disclosures and Carbon Monoxide Detectors** – This bill,

like SB 1386 in 2008, would have required a separate disclosure indicating the property was in compliance for having carbon monoxide (CO) alarms installed when a property was sold. CAR obtained amendments that: 1) Provide for all existing single family properties to have CO alarms installed by January 1, 2011 and all other dwelling units (i.e. multifamily, new homes, etc.) by July 1, 2012 (the deadlines will be extended at least a year because the bill will not pass until at least 2010). 2) The T.D.S. being amended to add a check box for CO alarms with a footnote indicating the requirements (like the auto-reversing garage door opener), and eliminating the current law for having the water heater strapping and smoke detector compliances as a separate form and changing the T.D.S. to include the certifications. The bill has been stalled in the assembly and is on track to pass in 2010.

**C. AB 758 (Skinner), Comprehensive Home Energy Conservation Program** – This bill, unlike AB 2678 (Nunez) in 2008 which gave the California Energy Commission the right to require energy audits and recommended retrofits to be made at point-of-sale, contained no point-of-sale requirement which was removed at CAR's request. The bill ensures that any home energy audit or improvement will not unreasonably or unnecessarily affect the home purchasing process and must be cost effective. It calls on the State Energy Commission and Public Utilities Commission to create a campaign to encourage voluntary cost-effective improvements that will make existing homes more energy efficient. The bill is awaiting action by the Governor.

## **VI. Department of Real Estate**

An update on the DRE task force review of examination questions and license exam revision project was given. Unfortunately things are not going well. The DRE has not been able to get 400 licensees to fill out the survey on the DRE website. A plea was made to ask our members to take the time to

do so. It takes about a half hour. If you haven't done it...and there are only about 500,000 licensees in California...please take the time to do so.

**A. "Poison Pill" statute changes\*** - Back during the Wilson administration, a budget crisis prompted the DRE fund to be "raided" and money was transferred into the general fund to help balance the ailing budget. CAR protested on the grounds that this was double taxation on real estate licensees and that the resulting strain on the DRE budget would require an increase in fees. A lawsuit was filed and the result was the return of funds. Unfortunately, the DRE had to raise fees anyway. In order to get CAR to sign-off on the proposed fee increase the "Poison Pill" statute was negotiated. There were two parts to this new statute...if there was a raid on DRE funds by the general fund or if the DRE were to accumulate more than six months in operating reserves, licensing fees would be rolled back to the 1982 level. When a budgetary crisis exists, legislators can become extremely creative. The next time funds were needed the money needed was "borrowed" from the DRE fund with a promise to repay it (most of it has actually been repaid and the repayment at one point triggered the poison pill because the DRE reserves experienced a sudden swell to exceed the six months). CAR subsequently sponsored legislation to amend the poison pill to cover loans to the general fund as well as transfers. CAR also consented to a change in the statute to increase the allowable reserves to eighteen months to allow the DRE the ability to save up for new technology. That brings us to the current crisis and another creative move by Sacramento. In order to fund the new Department of Justice's foreclosure consultants' registration program created by AB 180 (Bass), a \$500,000 loan was made from the DRE funds to the DOJ. DRE became concerned about both the loss of reserve funds and that when it was repaid it might trigger the poison pill and roll back the recently set fee structure. A bill was actually being written to repeal the loan, but

the Governor voiced his disapproval. The implication was that the Governor was aware of the deal, or at least didn't want anything to undo what was done. In the broad picture, this is not an outrageous amount of the DRE's reserves – particularly if you consider the \$10.9M that the general fund still owes the DRE and says it can repay at any time. The concern is that this new means of funding will be looked at more closely as more funds are needed. The claim that this "loan" doesn't trigger the poison pill was based on the fact that: 1) This was not a loan to the general fund, as provided for in the statute, but rather a special fund. 2) The bill contained verbiage that said, "notwithstanding any other law" which arguably exempts the transfer from the poison pill anyway. The discussion within the committee was that this is an avenue that may be broadened. We could ask CAR to sponsor legislation to reduce the maximum allowed reserves and thus make the fund less appealing or change the statute to include any "loans." A motion was made, seconded, and passed that said, "That CAR SPONSOR legislation to apply the so-called 'poison pill' of Business and Professions Code Section 10226.5 to loans from the DRE to other special fund accounts." It was sent to the Board of Directors as passed and was passed by the B.O.D. More information on this can be found at <http://www.car.org/meetings/carmeetings/curentmeetingmaterials/legmem1009/354785/>

#### **B. Loan Modification Restrictions**

##### **SB 94 (Calderon) and AB 764 (Nava) –**

Both prohibit "cash up front" loan modification contracts. However, SB 94 was amended at CAR's request to clarify the definition of an advance fee to include the flexibility to engage in fee for service contracts (i.e. listing agreements) and a 2013 sunset date. AB 764 was not amended and CAR's concern is that without clarification the bill could be interpreted to include listing agreements, buyer-broker agreements, etc. It also prohibits payment or fee until the borrower becomes obligated on

a new loan for either loan modifications or arranging loans. Real Estate Commissioner Davi has indicated that he does not believe that this is so. The concern is how the next commissioner will have a different interpretation. Both bills are on the Governor's desk for signature.

The committee made the following motion, which was seconded and passed, "That CAR 'SPONSOR' legislation to redraft the existing 'advance fee' statute so that it more clearly captures the concept of receiving payment before the services are performed." It was sent to the Board of Directors as passed and was passed by the B.O.D. Additional information can be found at <http://www.car.org/governmentalaffairs/statelgislation/statelegprogram/>

#### **C. AB 33 (Nava) - Consolidation Into New Department of Financial Services Super-Agency –**

CAR was able to negotiate an amendment to this bill to keep the DRE as a separate entity and send the regulation of mortgage loan originators to the new agency. The bill has been held in the senate as a 2-year bill pending resolution of objections by banks and other lender groups.

#### **D. SAFE Act compliance; separately licensing loan originators - SB 36**

**(Calderon), AB 34 (Nava) License Endorsement –** This is to bring state law in compliance with the federal requirements, both would require an endorsement to a real estate license. CAR has supported both bills and both are awaiting action by the Governor.

#### **E. SB 496 (Maldonado) Barring Licenses to Sex Offenders –**

Under this bill the DRE could either revoke or deny and individual's application for licensure, renewal or reinstatement if that individual is required to register as a sex offender. If a licensee is convicted of a sex offense and required to register as a sex offender, they would be required to notify the DRE within five days of that conviction. Maldonado decided not to pursue the passage of this bill 2009.

## **X. Formaldehyde and Proposition 65**

**Update** - Update on the threatened action to require real estate licensees to warn prospective purchasers of the risk of formaldehyde exposure by visiting open houses. There was an "expert" in Northern California that was going to homes and surreptitiously placing meters in cabinets, retrieving them and then notifying agents they were in violation of Prop 65 because the readings are above allowable levels and she had intentions of filing litigation. There were 53 known instances and it appeared as though she was will to settle rather than draw out a lengthy case. CAR put her on notice that it was having discussion with the Attorney General on the basis of harassment and malicious prosecution. By the end of the meetings word had come to CAR from the A.G.'s office that indications were no actions would be filed by this individual.

**VII. Bills of Others** – Agenda Items that were not discussed in any detail

**A. AB 255 (Anderson) Prohibiting Google Earth street views** – This would prohibit Google Earth© and similar internet resources from showing high resolution street views and aerial views of churches, schools and public buildings, including mapping services used by REALTORS® for driving directions, MLS links and property profiles. The author has indicated willingness to work with CAR on these and other "legitimate" uses, but Anderson also is unwavering in the position of keeping "strategic" information from terrorists. The bill has not moved, but has until January 2010 to pass the Assembly.

**B. AB 260 (Lieu) Higher Cost Loan Originator Restrictions** - AB 260 is a re-introduction of AB 1830, which was opposed by CAR and vetoed by the Governor last year. This creates new restrictions on mortgage brokers and applies only to mortgage brokers. It also allowed only successful plaintiffs to collect attorney fees in suits over violations- which was amended out. CAR has opposed AB 260 unless it is further amended to apply to all

loan originators and not just mortgage brokers. It is on the Governor's desk for signature.

**C. AB 329 (Feuer), SB 660 (Wolk); Reverse Mortgage Restrictions** - These bills would both enact reverse mortgage regulation that would have adversely affected legitimate credit. In both cases the author removed objectionable provisions that would have swept up legitimate transactions and exposed transactions to new liability.

**D. AB 350 (Lieu), Debt Payment Services** - The bill legitimizes bill payment services by creating a statutory regulatory scheme. CAR amendments were accepted that exempt real estate licensees.

**E. AB 457 (Monning); Notice to Owners of Lien Actions** – This would give property owners more protection notice of mechanic's liens. It requires the county recorder must be given proof that a Notice of Mechanic's Lien was served to the property owner before the lien can be accepted for recording. Also, if the mechanic's lien holder intends to foreclose on the lien, a lis pendens must be filed at the recorder's office within twenty days of filing the foreclosure action. CAR supported AB 457 because it requires an improved notice to property owners about their rights in regard to mechanics' liens.

**F. AB 919 (Nava) Mortgage Information and Records Retention** - AB 919 would have voided any residential real property transaction that did not include a rider that identified the name and license number of the appraiser, lender, loan originator, and real estate broker involved in the transaction. CAR opposed AB 919 because it would have invalidated transactions with technical non-essential document defects, increased administrative burdens and created unnecessary delays in a transaction. In light of opposition, AB 919 was amended to prohibit county recorders from recording a deed of trust without a rider that includes the

name and license number of the appraiser, lender, loan originator, and real estate broker involved in the transaction. CAR continues to oppose AB 919 because it imposes unworkable requirements on real estate transactions and creates new liability for licensees. The bill will be eligible to move in 2010.

**G. AB 957 (Galgiani); "Buyer's Choice" in Selection of Escrow** - CAR supports AB 957, which enacts buyer protections in California law that are modeled after the federal RESPA rules for selection of title insurance and escrow services. CAR strongly supports fair negotiation of all terms of a transaction, and has opposed earlier versions of the bill that ran afoul of that policy, and helped the author draft compromise language. AB 957 will now allow state enforcement of buyer protections, and buyers can seek a civil penalty of up to \$5,000 for violations. AB 957 has twice been the subject of misleading lobbying campaigns directed to REALTORS® that mischaracterized or omitted CAR's position. For example, CAR opposed amendments that tried to change the rules for Natural Hazard Disclosure (NHD) reports and reduce REALOR® liability protections. The bill was eventually returned to its previous version and included evenhanded language. Local REALTORS® and CAR both worked closely with the author. If AB 957 is signed by the Governor it will take affect immediately.

**H. AB 1118 (Hayashi); Licensing Home Inspectors** - The bill is designed to create a regulatory scheme to license home inspectors, a concept that CAR has supported in the past. The author is attempting create a consensus among home inspection providers, and has not yet moved the bill. The bill will be eligible to move in January 2010.

**I. AB 1160 (Fong); Translation of Contract Disclosures** - Existing law requires parties negotiating selected contracts in a foreign language to provide

translated copies of that agreement if the negotiations were conducted in Spanish, Chinese, Tagalog, Vietnamese, or Korean. This bill requires a supervised financial institution that negotiates loans in these languages to provide a translation of that contract or translated summary produced by a regulator, to the borrower in the contract's primary language. The bill would also impose civil penalties against any person who fails to deliver the translation. The bill has a delayed effective date of July 1, 2010, or 90 days after the regulators produce the required translated notices. The bill now applies only to "supervised financial institutions."

**J. SB 109 (Calderon); Real Estate Auctions** - This bill will apply the consumer protections of the auction law (refunds of deposits, notices of reserve requirements) to real estate auctions. CAR favors the bill; it is awaiting action by the Governor.

**K. SB 306 (Calderon); Short Pay Beneficiary Statement Request** - This bill makes technical changes in the pre-foreclosure workout process required in connection with a notice of default. It sets up a process for a prospective short sale purchaser to request a short payout statement modeled after the beneficiary payout demand statement currently used in conventional sales. Compliance with the process is voluntary on the part of the lender. The bill has been chaptered into law.

**L. SB 318 (Calderon); Dog Fighting Forfeitures** - This bill sets up a forfeiture process modeled after the drug forfeiture law to punish illegal dog fight promoters by seizing and forfeiting their assets related to the offense. CAR sought and received amendments that protect innocent landlords or owners, similar to the protections in the drug law. The bill is awaiting action by the Governor.

**Additional information** can be found at: <http://www.car.org/meetings/carmetings/currentmeetngmaterials/legmem1009/359898/>

For a complete listing of pending legislation and CAR positions, please see the Legislative Program Report, which is updated every other month and available online through the Government Affairs section of car.org.

The CAR State Legislative Program report is available on the web. The Program contains brief summaries of CAR-sponsored legislation and state legislation related to the real estate industry, and is prepared by the Association's Governmental Affairs staff for use by CAR policy committees. The 2009 State Legislative Program can be found by clicking here:

<http://www.car.org/governmentalaffairs/statelegislation/statelegprogram/>

What is considered when Evaluating Legislation

<http://www.car.org/meetings/carmetings/currentmeetingmaterials/legmem1009/358372/>

## **LOCAL GOVERNMENTAL RELATIONS**



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The REALTOR® Local Government Relations Committee (LGR) met on Thursday, October 8, 2009. Dave Stark, the Government Affairs Directors (GAD) Subcommittee Chair, began the meeting with his subcommittees report. Members of the committee presented the following 5 topics.

### **Issues Update:**

The First Time Home Buyer Tax Credit is set to expire 11/30/09. NAR has issued a call to action via email. CAR has also issued a call to action via phone. These are not exclusive. Everyone is encouraged to act through both avenues. We were also encouraged to have our friends, family and clients call.

### **Vacant Foreclosed Properties**

The city of Hayward was considering requiring foreclosed properties to be registered. It was recommended that instead the city should leverage current policies in place. They have hired retired police officers to identify foreclosures using [www.foreclosureradar.com](http://www.foreclosureradar.com) and inspect those properties. A training seminar is being put together between the website and the city.

Murrieta was considering an abandoned property ordinance to deal with dead lawns, broken windows, etc. They were going to require properties be registered when the NOD was filed. Instead they implement a law requiring the property be registered when sold at the trustee sale. There is a registration fee of \$75-\$120 is paid by the bank. The properties must be reasonably maintained. The fine structure allows fees up to \$1,000/day. Currently no fines have been levied.

It was strongly suggested that we proactively get involved with our local city staff to work on alternatives to ordinances or at least minimize the effect of any ordinances passed.

### **Point-of Sale Updates**

CAR is fighting POS on a number of fronts, mostly successful. They are arguing that POS charges are inefficient and ineffective.

### **Neighborhood Stabilization Funds**

City of Hayward received \$1.5 million in funding through the Neighborhood Stabilization Program (NSP) to help with abandoned REO's. Habitat for Humanity, through the NSP, is purchasing REO's fixing them up and then selling them. They are slated to purchase 25-35 properties. They will sell them to qualified first time homebuyers earning 60-120% of the area medium income. The properties were identified by contacting local banks, (Bank of America, Wells Fargo and Chase), and through the MLS. Habitat hired REALTORS® for the purchase and sale.

REALTORS® had to apply for the positions. Many donated at least part of the commission back.

### **Foreclosure Prevention**

CAR has received funds from NAR create a campaign to conduct foreclosure prevention seminars. They team with non-profit councilors and lenders who work on loan modifications.

The city of Chula Vista has partnered with Fannie Mae and the Federal Reserve to bring in housing and loan counselors, attorneys and REALTORS® to speak to homeowners about Foreclosures, Short Sale, and bankruptcy. Chula Vista, through their Neighborhood Stabilization Program (NSP) is training REALTORS® in First Time Home Buyer programs then posting the agents names on the city website.

Dave Cortese, a County Supervisor for Santa Clara County, was a guest speaker. He began his presentation with a quote from Tip O'Neill, "All politics are local." With a history in the real estate industry he has encouraged the county to use private experts in their real estate deals. He challenged the audience to define their values and convert those values into political positions. His final message was for us to tell state elected officials to "stop raiding local government".

### **MANUFACTURED HOUSING**



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Due to the state of the California budget, the legislation for Manufactured Homes that was proposed was enrolled to the Governor's desk or stalled within its house of origin. Several of the bills of local interest were SB 23 (Padilla) which would have required Emergency Prepared Plans for

Mobile Home Parks and SB 804 (Leno) which stated that mobile home parks cannot mandate which real estate brokerage is required to sell the homes within a particular park.

This committee, like all of the housing policy committees, will be part of CAR's reorganization for next year. This reorganization will hopefully lessen or eliminate redundant discussions and action items when a policy affects several different committees. For instance, housing legislation is frequently discussed within the taxation committee in addition to its originating committee. I will be the Issues Chair representing Manufactured Housing on the newly reorganizing Housing Committee for 2009-2010.

### **MEMBERSHIP**



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It was reported at the October meetings that overall membership in CAR has dropped from 176,101 members in 2008 to 166,229 members in 2009. However, new membership is actually up from 14,728 to 16,549. Rather than an increase in new licensees this number reflects that more licensed real estate agents are recognizing the importance of adopting our code of ethics and the benefits of being a Realtor by joining CAR.

One of the most popular member benefits just got even better. The CAR Legal Hotline service will now be available on Saturday. Members can call the CAR Legal Hotline Saturdays, between 10 a.m. and 2 p.m., and speak live with an attorney on transaction-based question. Calls will be taken on a first-come, first-served basis. Members may call the Hotline at (213) 739-8282 anytime during the Saturday hours of operation.

The CAR Legal Hotline offers members free, confidential legal advice over the telephone on a vast array of real-estate related topics, such as contract interpretation, arbitration, litigation, tax issues, commission disputes, disclosure requirements, fair housing issues, and laws governing homeowners' associations.

It was also reported that CAR now has its very own "app." Designed for the iPhone/iTouch, with a companion version available for BlackBerry® and other web-enabled mobile devices, the My CAR mobile application features: market data for twenty-one regions in California, current loan information, highlights from CAR's Market Matters newsletter, association resources, the ability to search for license renewal and continuing education courses, hot item news alerts, and links to information that may be of interest to CAR Directors. Wow!

The results of the 2009 California Home Buyers Survey were discussed at great length and there were interesting insights as to what our customers want and in what ways we can serve their needs and expectations better. Communication was the number one recurring comment in the survey. When asked why they were satisfied with their agent, 73% responded it was because they were quick to respond. They expect a response within 30 minutes. Just replying the same day is no longer acceptable! It is no surprise that 92% thought that the internet was a significant part of their real estate experience whether buying or selling. When you compare that to the 2003 survey when asked the same question only 12% thought it was significant. The clear message to our members: You need a web presence and a better phone than I have so you can respond via text or email no matter where you are.

At the Board of Directors meeting four candidates from NSDCAR were granted CAR Membership for Life status. As such

they will also become honorary members for life of NSDCAR and as such will have both their local and state dues waived. To qualify you must have been a REALTOR® in good standing for at least 25 years and reached the age of 75 years. Congratulations to James Connolly with Century 21 Mission in Oceanside, Don Stafford with Coldwell Banker in Vista, Dick Tibbetts with Willis Allen in Rancho Santa Fe, and Irene Grahn with Realty Executives in Carlsbad.

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



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The MLS/Computer & Business Technology Committee received an update on the progress of the statewide MLS initiative, CalREDD. A demo of the system is available on the web at <http://www.CalREDD.com>. The system is now live in several regions with others in the planning stages of implementation.

The committee had a panel discussion representing several MLS throughout the state. The discussion centered on timelines for required data to be entered into the MLS (2 days), timeline for status changes (2 days) and whether holidays and/or weekends were to be counted as days (no). Much discussion was held on the timeframe in which the cooperating broker may contact the seller if the listing agent does not respond. Current rules state 24 hours (1 day). This rule along with the others is now expressed in terms of days. The committee then drafted recommendations for model MLS rules which are in the parenthesis with each rule above. These rule recommendations are to be forwarded to NAR for approval.

## **POLITICAL AFFAIRS**



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It's the economy!! Absolutely! I don't believe you can be in the real estate business and not be affected by the tumultuous roller coaster pretending to be the economy. This report should not be about a negative economy but there is no way to get around the fact that local, state and federal governments are scrambling for revenue. The largest pot of revenue in this country is of course the homeowner which also affects other government revenue streams. The Political Affairs Committee is charged with raising funds to prevent government from stripping equity from homeowners and to preserve private property rights.

One of the many duties performed by this committee is monitoring REALTOR® investment in the REALTOR® Action Fund and the results are very sobering. The RAF relies on voluntary contributions from its members to maintain a 'major player status.' This in turn allows us leverage in our never ending amount of government challenges. For the year so far in 2009, we as an organization of approximately 172,000, have a 19% member involvement rate for contributing to the RAF. This means a whopping 82% of our membership invests zero dollars protecting our business and preserving private property rights.

We couldn't have met these challenges without member contributions. But, participation rates are falling faster than the temporary membership decline. The numbers for North San Diego County are at 10% participation, significantly lower than the California average. San Diego is at 3%. The bottom line is that we are finding it harder than ever to continue the influence needed to be a major player in local and

state politics. There is an important election cycle coming next year with land mines everywhere that could define our business for the next decade. Service and split roll taxes, mortgage interest deduction, flat tax and predatory selling to name a few. The Legislative Analyst Office in Washington stated that the mortgage interest deduction is an unnecessary windfall and an ineffective means of increasing homeownership! Transfer taxes have increased in Berkeley and Oakland, which are charter cities and not subject to \$1.10 per thousand. The resources we have to meet these issues lie in your Board of Directors, Lobbyists, Legislative Liaisons, Key contacts, Federal Political Coordinators and Political Action Funds.

The good news is we are winning the critical battles. Some of our 2009 victories include defeating POS (point of sale) retrofit issues, including energy audits, carbon monoxide detectors, restrictive covenants, transfer taxes, archiving records, preserved the DRE and property profiles from title, plus we defeated the 3% withholding tax for independent contractors. Please take time to invest in your business and the future of real estate when dues statements hit your mailbox. Remember, we can't do it without you!

## **PROFESSIONAL STANDARDS**



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A new California law may compel additional arbitrator disclosures.

The "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" adopted by the California State Legislature pursuant to Code of Civil Procedure section 1281.85, effective July 1, 2002, requires any

person who is nominated or appointed as an arbitrator to “disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial.” These required disclosures include, as you would expect, any existing family, personal or professional relationships between the arbitrator or a member of the arbitrator’s immediate or extended family, and any party or lawyer in the arbitration and members of the party’s or lawyer’s family or the lawyer’s law firm. The disclosures just described are quite comprehensive in their own right, but it is the further requirement that neutral arbitrators disclose their service as an arbitrator within the preceding five years, or as other compensated dispute resolution neutral (mediator, referee, etc.) within the preceding two years, in cases involving a party or a lawyer for a party to the current arbitration, that caused a problem with arbitrations conducted at local Associations of REALTOR® under the guidelines of the California Association of REALTOR®.

If an arbitrator to a current arbitration has served within the preceding five years as described above, that arbitrator would be required by California statutory law to disclose:

“(i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney representing the party in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case.”

“(ii) The results of each prior case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties’ attorneys.”

(Ethics Standards for Neutral Arbitrators, Standard 7.)

These statutory disclosure requirements have been seen to be in direct conflict with the CAR Code of Ethics and Arbitration Manual which provides that “all proceedings, findings, recommendations and decisions in arbitration proceedings are confidential . . . .” (Section 53, Confidentiality of Proceedings.)

CAR and the local Associations have for years been avoiding this conflict by making it a duty of Association or MLS membership to waive the disclosure requirements, and by using a written waiver of California’s statutory disclosure requirements.

The conflict issue re-emerged, however, on August 5 of this year, when Governor Schwarzenegger approved an amendment to Code of Civil Procedure section 1281.85 adding the following section:

“The ethics requirements and standards of this chapter are nonnegotiable and shall not be waived.”

On October 8, 2009, CAR’s Professional Standards Committee voted to instruct the CAR legal department to amend the Code of Ethics and Arbitration policies and procedures to bring them into compliance with California law. The revised policies may result in the disclosure of information previously deemed confidential by CAR policy, or in arbitrators avoiding the disclosure requirements by declining to serve on arbitration panels. This information will be reported out to you as it becomes available.

## **PROPERTY MANAGEMENT**



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Controversy also was evident in the Property Management Committee. I will tell you about the bills in a minute, but first let me tell you about something which will affect all property managers, and all agents who rent a property for a client, even if you are not managing it and even if you handle this task only one time. The Franchise Tax Board (state of California—results of terrible budget) has decided that they are now interpreting a law in this manner: if, an agent, rents out a property (even if it is for that one time) or is managing a property for an owner who does not live in the state of California, as of January 2010 we must collect 7% of the owner’s money which exceeds \$1,500 annually, and pay that amount to the FTB. Yes, that’s right! We are now tax collectors. CAR has had many discussions with the DRE and the FTB to try to avoid placing our REALTORS® in this position. Obviously, our discussions did not work.

So, brokers may now want to decide whether they will allow their agents to participate in property management for out-of-state owners. If brokers do want to continue; the following language is suggested (from CAR attorneys, not me) to be inserted into the Property Management Agreement or the Lease Listing Agreement until we can change the wording in Informs: “\_\_\_\_\_ (the “Principal”) authorizes \_\_\_\_\_ (the “Property Manager”) to remit trust funds of the Principal—which funds may consist in whole or part of rent or rents and other taxable income collected for the Principal by the Property Manager—to the California Franchise Tax board as and for withholding taxes, when the Principal is subject to the Non-Resident Withholding Requirement under the statutory mandate of

California Revenue and Taxation Code sections 18662, 18664, 18666, 18668, and 17951.” Forms from the FTB can be found on their website, [www.ftb.ca.gov](http://www.ftb.ca.gov), as well as Publication 1017, Resident and Non-resident Withholding Guidelines. Please don’t shoot the messenger!

I will update you on the bills which we were working on through our Committee as of this writing. But I need to tell you, as has been mentioned in my other report and I am sure other Director’s reports, that if the bill was on the Governor’s Desk, it could now be signed and become a bill, gone back to the Legislature or vetoed by the Governor.

### **AB473 (Blumenfeld) Recycling Services Requirements for Multi-Family Dwellings**

- This bill was passed by the Legislature. If approved by the Governor it would be in effect on July 1, 2020. It would require that 5 or more units provide recycling services, appropriate for multi-family dwellings, and in accordance with local agencies. It seems that 26% of our “residential waste stream” is from multi-family units, but only 15% of their waste is currently diverted. Governor’s desk.

### **AB1020 (Emerson) Anti-Entrapment Devices Required in Swimming Pools -**

This bill seeks to prevent people from being trapped in the drains of swimming pools (a noble cause). There is already a Federal law which went into effect at the end of 2008, but this bill, if made law, would give local jurisdiction. It would cover “public” pools and spas, and that would include condos as well as apartments. This bill passed the Legislature and is also on the Governor’s desk.

### **SB120 (Lowenthal) Notice To Tenants Regarding Utility Service -**

This bill would authorize a tenant or occupant who has already made a utility payment to a public utility because the landlord failed to make the payment, to deduct the amount of the payment from the rent. It also says that where there is a landlord-tenant relationship

and the landlord is to pay the bill, that an electrical, gas, heat or water corporation must make a good faith effort to inform the occupants of the dwelling (most any kind of structure) that the account is in arrears. And that notice must be in English, Spanish, Chinese, Tagalog, Vietnamese and Korean.

**AB1171 (Ammiano) “Attack” on Ellis Act**

- The Ellis Act requires rental owners in rent controlled jurisdictions to provide tenants with a 120 day notice of termination of tenancy when removing the residential rental property from the rental market. Tenants who are either disabled or over 62 years of age are entitled to a 1-year notice. The bill was amended to say that ALL tenants should receive a 1-year notice. Because of this amendment CAR has an “Oppose” position on this bill, and is in the Assembly Housing and Community Development Committee.

**SB782 (Yee) Restrictions on Unlawful Detainer Actions Involving Domestic Violence**

- Briefly, the City and County of San Francisco recently enacted a law which would provide protections for tenants who are victims of domestic violence. Because of the way this bill is worded CAR has taken a “Not Favor” position on the bill and it is currently in the Assembly Judiciary Committee.

**AB530 (Krekorian) Controlled Substance and Firearms on Rental Property**

- There are currently two pilot programs that authorize city attorneys and prosecutors in Los Angeles, Long Beach, San Diego, Oakland and Sacramento to bring an eviction action against a tenant for allegedly committing nuisance violations arising from unlawful possession or sale of firearms or ammunition or unlawful possession of controlled substances (so the landlord doesn't have to do it with scary people!). This bill would extend the date to 1/1/2014. CAR has a Favor position on this bill and it is on the Governor's Desk.

**SB290 (Leno) Repeal of Sunset on 60-Day Notice for Terminating 1-year+ Tenancies**

- Existing law says that until January 1, 2010 landlords are required to give a 60-day notice when terminating a tenancy of 1-year or more. This bill made this 60-Day notice to tenants permanent. CAR opposed this bill, and I am sorry to say that it was signed by the Governor.

**AB603 (Skinner) Statewide Just Cause for Eviction in Foreclosure Situations-**

This bill would have prohibited anyone who acquired foreclosed rental property from terminating a tenancy unless the new owner had owned the property for a minimum of 1 year or demonstrated a “just cause” (non-payment of rent, for instance) for the eviction. CAR opposed the bill because, obviously, this would be a disincentive to purchase a foreclosed property, in a very down market. If passed, this bill would sunset January 1, 2013, but it is currently in the Inactive File for the Assembly. (Good job CAR lobbyists)

**SB781 (Leno) Required Notices to Tenants of Licensed Residential Care Facilities for Elderly**

- The State Department of Social Services regulates and licenses Residential Care Facilities for California. This bill would set forth notice and other requirements that must be met before such a facility could evict a resident. This bill is on the Governor's desk.

**In other discussions:** 1. Standard Forms (Informs) will be looking at Property Management forms sometime this month. I will sit on this committee, so if you have any issues, suggested changes etc. for property management forms that you would like me to carry forth, call me at my office: (760) 435-9862. There are many forms already lined up for corrections and updates, but I would be happy to receive your calls in case we have missed something. 2. Beginning in April of 2010 federal law will require that contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities and

schools built prior to 1978 must follow specific work practices to prevent lead contamination. Until that time it is recommended that your contractor should follow these three simple procedures: contain the work area, minimize dust, and clean up thoroughly.

### **REAL ESTATE FINANCE**



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Two Action items originated from this committee and were sent to the CAR Board of Directors for a vote. These items were overwhelmingly approved and/or amended as follows:

That CAR in conjunction with NAR, “Support” the elimination of the FHA 90-day anti-flipping rule and that CAR write and publish a letter to the FHA Commissioner in Opposition to the FHA 90-day anti-flipping rule.

That CAR in conjunction with NAR, seek to eliminate the mandatory VA Pest Certification and Mandatory Seller Fees.

With multiple offers, we need now, more than ever, all government loans, to be on an even playing field with conventional offers.

**Report Only:** That CAR prepare a Q&A and Advisory piece on FHA’s new Common Interest Development Financing Rules. As of October 1, 2009, FHA is no longer giving common interest properties spot approvals due to reserve studies needed. A minimum of 60% must be in the reserve account of the Homeowner Association. If the Common Interest Development has been approved with FHA within the last year, then a reserve study may not be necessary. It will take approximately eight weeks to get a common

interest development approved once the reserve study is completed. Many of the Homeowner Associations management companies are performing these studies for a fee. This CAR Q&A will certainly be a useful tool.

We were all asked to tell our fellow REALTOR® and clients to call 1-800-961-3302 to request from our Legislators the need to extend the First Time Home Buyer Tax Credit for another year. The current tax credit ends on November 30, 2009. When you call, you will need your NRDS number and your zip code. If you do not know your NRDS’ number, then just use nine, 9’s. Your clients can also use the nine, 9’s. This in turn will forward you to your correct Congressman so you can tell them you want the extension.

This is a Call for Help. Please take the time for this most important phone call.

Robert Bailey, Chair of the CAR REO Advisory Group discussed the need for legal handling tips for REO’s and Short Sales based on the last three months of sales: The complaints and comments are as follows:

- Need more educational forums.
- Consumer Education, Risk Management and Showing Options.
- Disclosures and Duties of Agents (Disclosing material facts)
- Ask Sellers what reports do they have and pass those on to the purchaser.

Portable Appraisals were discussed and the Legislative Committee brought an Action Item to the Board of Directors for the sponsoring of legislation requiring acceptance of Portable Appraisals by the lenders at the request of the borrower. For further information, please see report by the Legislation Committee Representative.

Appraisal Management Company (HVCC) regulations were discussed. Many complaints have been logged into CAR regarding higher costs, inability to correct

appraisal errors, and out of area appraisers. These AMC's are not regulated. Senate Bill 237 (Calderon) - Appraisal Management Company Regulation was signed into law by the Governor on 10/11/09. The Appraisal Management Companies (AMCs) will require registration and background checks of owners of the AMC's with the Office of Real Estate Appraisers (OREA).

**SB 36 (Calderon) Mortgage Loan Originator** was signed into law by the Governor on 10/11/09 - The law will require a License Endorsement to implement the S.A.F.E. Act requirements for real estate licensees.

**AB 33 (Nava) Financial Services (Super Agency)** - This Administration sponsored bill to consolidate all financial services under the Department of Financial Services has been amended at CAR to keep the Department of Real Estate as a separate entity. Mortgage Loan Originators would be regulated and transferred to the new Department. This bill is in the Senate and is designated as a 2-year bill pending resolution of the banks and other lending groups' objections.

**AB 260 (Lieu) Higher Cost Loan Regulation** was signed into law by the Governor on 10/11/09. Current law did not take into account loans that exceeded Fannie Mae loan amounts. This bill will limit prepayment penalties and it will prohibit negative amortization loans. It also prohibits false or misleading statements or representations. This bill authorizes civil penalties for violations. CAR had been opposed to this bill because it unequally burdened the mortgage loan broker.

**SB 94 (Calderon) – Loan Modification** was signed into law by the Governor on 10/11/09. This bill prohibits “cash up front” on loan modification contracts. However, the bill was amended with flexibility to engage in fee for service contracts. This bill will sunset in 2013. AB 764 (Nava) was a similar bill, except that it did not contain the

flexibility clause and it also prohibited compensation until the borrower was bound in a new loan. AB 764 was vetoed by the Governor on 10/11/09.

**HR 3044 Home Valuation Code of Conduct** - As of September 22, 2009, there were 91 co-sponsors of this bill (including 16 from California). This legislation would create an 18-month moratorium on the HVCC and it would allow Congress and the GSE Regulator to re-examine the appraisal industry and the problems associated.

**HR 3126 (Barney Frank- Chair of the House Financial Services Committee) The Consumer Financial Protection Agency Act** - This legislation is just a single piece of regulatory reform for Consumer Protection with more legislation to follow. Frank believes that the Regulators who are responsible for safety and soundness of a financial institution can not adequately protect consumers. The argument against this legislation is that the goals set forth run counter to each other in many cases. On the other hand, Christopher Dodd, Chairman of the Banking, Housing, and Urban Affairs Committee has released details of his Regulatory Reform which would also include the creation of a single Regulator for the entire financial industry. Most likely this bill will be introduced in 2010 and will incorporate many issues under one large bill.

FHA Appraisals will technically change as of January 1, 2010. The new requirements will incorporate many of the same guidelines as the current HVCCs:

- Mortgage Brokers or commission based lender staff will be prohibited from choosing the appraiser.
- Appraisals will be allowed through either AMC's or other third party ordering.
- New procedures will eliminate improper influences on appraisers.

HUD reaffirmed in a Mortgagee Letter that an appraiser should have knowledge of the market area and have geographic

competency where the home is located. Nothing in the Mortgagee Letter forbids the lenders from using the same current HVCC practices for FHA loans. The only difference is that FHA appraisals have to be portable.

The FHA Reserve Fund has dropped below the two percent level required by Congress. The FHA total reserve is more than \$30 billion (4.4% of its booked business) as per David Stevens, the FHA Commissioner. He believes the reserves will rebound above the 2% within two years. A Chief Risk Officer will be hired to address the reserves. No additional premiums or down payments will be raised at this time. However, additional steps may be taken in the future.

**HR 3146 The 21<sup>st</sup> Century FHA Housing Act** – This legislation passed the House and will ultimately fix technical errors of the Housing and Economic Recovery Act that passed in 2008. Some of these errors include implementing the new dollar limit on energy efficient mortgages, and streamlining condominium purchases. This legislation also includes the resources and tools needed for FHA to ensure recovery (i.e. expansion of staff, technology upgrades, and target reviews of loan performance). Authorization will also be given to the Secretary of HUD, to implement new programs to minimize foreclosures (i.e. short sales and deeds-in-lieu).

**GSE Reform** – It looks like the Administration will put the future of Fannie Mae and Freddie Mac on hold until they release their proposal in February 2010. The Mortgage Bankers Association has put forth a proposal similar to Ginnie Mae that would guarantee timely interest and principal payments to bondholders. This proposal would create a privately-owned, government-chartered and regulated Mortgage Credit Guarantor Entities (MCGEs). It is expected that more proposals will come forth from other sources.

**GSE and FHA Loan Limits** - The House passed the Transportation, Housing and Urban Development (THUD) appropriations bill. This bill would extend the current loan limits until the end of the fiscal year (October 1, 2010). The version of the Senate passed bill does not include provisions for the loan limits. CAR and Nar will continue to work towards inclusion on the final version of the legislation.

**Foreclosures and FICO Scores** – CAR staff was asked to investigate the impact on credit scores when a short sale, foreclosure or deed-in-lieu is placed on a consumer's credit report. If a Foreclosure is a single negative item and other debt obligations are current, FICO scores can begin to rebound in approximately two years. It will stay on the credit report for seven years. If the foreclosure is isolated, it will be much less damaging to the FICO score.

**Short Sales and Deed-in-Lieu are considered the same as a foreclosure (“not paid as agreed”)**. It is unknown at this time how a loan modification will affect the FICO score. It all depends on how the lender reports to the credit bureaus and whether the borrower has kept the loan current. In most cases, it will probably decrease the score.

**New RESPA Rule, Regulation Z (TILA)** – The new rules adopted by the Federal Reserve Board took effect on October 1, 2009. The new law is to protect consumers from Predatory Loans, addresses Advertisement of loans, loan servicing, appraisal process, and defining higher-priced loans and what protections for consumers these loans will carry.

**Higher-Priced Loans are defined as a first lien that is at least 1.5 % or more above the Fed's prime rate. Subordinate-Liens can have spreads of 3.5% or more. Below are the new rules:**

- A lender can not make a loan without regard to a borrower's income and assets and the ability to

repay the loan. A lender cannot rely on the home's value.

- A lender must assess repayment ability based on the highest scheduled payment in the first seven years of the loan.
- The lender must verify income and assets to determine repayment ability.
- If the loan terms change within the first four years, no prepayment penalties are allowed. For other higher-priced loans, pre-payment penalties cannot last longer than two years.
- The lender must establish an escrow impound account (taxes and insurance) for first-lien loans. The lender can after one year, offer to the borrower the ability to cancel the escrow impound account.

**Rules for all closed-end mortgages secured by a borrower's principal residence:**

- Servicing Lenders must credit a payment to a borrower's account as of the date the payment is received.
- Lenders must provide a demand (payoff statement) within a reasonable period of time.
- Lenders are prohibited from pyramiding late fees.
- A Broker or Creditor cannot coerce or encourage an appraiser to misrepresent the value of a home.

Creditors must provide a GFE (Good Faith Estimate) of loan costs (including a schedule of payments) within three days after a borrower applies for any mortgage loan secured by a consumer's principal dwelling. This includes home improvement loans or refinancing out of an existing loan.

**Rules for all Mortgages:**

Advertising must contain information about rates, monthly payments and other loan features. A lender is banned from seven deceptive or misleading advertising practices.

A lender cannot advertise or represent an interest rate that is "fixed" when it can change.

**Foreclosure Rescue** – The newest piece of information is that the Federal Trade Commission (FTC) has filed multiple civil actions regarding the charge of "up-front" fees and non-performance or assistance by companies. There is still encouragement and advertising by the government to take advantage of free resources through the Hope Now Alliance and HUD approved Counselors.

**Making Home Affordable Program** – The U.S. Treasury Department released a statement in August of 2009 detailing whether this program was working. As of that time, 230,000 trial modifications had started. Based on these figures, they believe we will be on track to assist 3 to 4 million homeowners within the next three years. The Administration set a goal by November 1, 2009 to have 500,000 modification loans started. Many of the original loan modification plans met with high default rates. This new program permanently reduces the debt-to-income ratios unlike the original modifications; thus hoping to ensure a much higher success rate.

At this time, more than 85% of servicing lenders are included in this program. There is a subtle threat from Congress that the lenders need to work harder to modify loans or Congress will bring Bankruptcy Cram-downs back to the floor for another vote.

**National Flood Insurance Program** – Up until September 30, 2009, Congress had consistently passed short term extender packages to ensure the continued availability of the mandatory insurance for federal mortgages on properties in flood plains. At this time, I have not been able to ascertain if the Senate passed the bill to extend and reform the program until the end of March 2010 or whether the program is under another "Extender Package".

The Director of the Federal Housing Finance Agency, James Lockhart, resigned from his position in August 2009. He was originally appointed by the Bush Administration with hopes from the current Administration; he would remain in this position until the end of 2009. It is not yet known who will replace Mr. Lockhart.

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



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The reports from the regions throughout the state were all similar in that agents are dealing with poor quality of service, questionable ethics, unlicensed agents doing licensed activities and many other issues in their real estate transactions.

Additional issues discussed were major fines for individuals who converted their primary residences to investment properties and neglected to change the homeowner's tax exemption; some communities in the state are attempting to create as much as \$9.00 per thousand transfer taxes and point-of-sale mandates on real estate.

Open enrollment for the new CAR insurance program runs from 10/15/09 through 11/30/09 and it includes everything from E&O Insurance to Medical, Dental, and even Pet Insurance.

Extensive discussion took place of being sure you are fully aware of what your E&O insurance covers and does not. This such as if an agent can represent themselves in selling their own property or if an agent is permitted to choose their own attorney if a case happens.

### **Gov Hutchinson spoke on several issues such as:**

- Writing multiple offers at the same is not illegal but should be disclosed. There is not yet a case on this yet, but could be in the future.
- When working with a limited service situation, use should always use a Seller Non-Agency form to be sure you don't create implied agency.
- For clarification purposes, Short Sale Negotiators must be licensed as a broker or have their license with a broker.
- There is a class action lawsuit case in Alabama where the class complained about being charged a \$149.00 transaction fee. The case was won by the class but has been appealed. The case represents a \$13,000,000 refund to the class. The courts thought was the consumer is paying for the work you were doing anyway.
- Always remember to use the NOD contract if the buyer is an investor/non-owner occupied and the seller is still in the home.
- There will be no new forms coming in November
- There will be adjustments made to the RPA for the April changes and now is the time for you to go onto the CAR website to review and made suggestions.

### **RURAL FORUM**



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The Rural forum grew out of the Land Use & Environmental Committee. This meeting at the October session was the last meeting as a separate forum. They are merging back into the Land Use & Environment Committee. There were no action items taken at this meeting.

**Septic Update:** The septic regulations are being completely re-written. A new outline should be up for discussion by the State Water Resources Control Board by Nov-Dec 2009. The early stakeholder meetings will be held Jan-Mar 2010. The regulatory process could begin sometime in April or May 2010. More information should be available in the Land Use & Environment Committee report.

There was a guest speaker, Bob Rohde, from the Natural Resources Conservation Services (NRCS). NRCS is a non-regulatory organization that was established by Congress to work with private landowners to protect the Nation's soil and water resources in a voluntary, incentive-based approach. They work with ranchers and farmers on issues of soil erosion, crop rotation, irrigation, weed management, flooding, and wildfires. The NRCS staff is 90% technical specialists; biologists, civil and agricultural engineers, soil and water quality experts and conservation planning specialists. They partner with the landowner to produce a report focusing on how to address the above issues. The report is confidential. The landowner may choose to ignore the report, implement some of the recommendation or implement all of the recommendations. The NRCS will share the cost of implementation with the landowner. The cost-share percentage depends on the number of years the landowner has been in business and the landowner's profitability. For more information see [www.ncrs.usda.gov](http://www.ncrs.usda.gov).

There was a second speaker, Dan Sharp, the Governmental Affairs Director for the Northern Solano AOR. With him was an agent, Nancy, from the same AOR. They spoke about how they stopped the Transmission Agency of Northern California (TANC) from putting in 340-miles of 500kV transmission lines known as the California-Oregon Transmission Project. Nancy first heard of the project when a client she had sold a property to called about a letter she had received from the TANC. They were declaring an easement on her property for

the project. It seems the 500kV towers require a 1,000 ft. easement on either side of them. This was also affecting high quality agricultural land and orchards. Current law prohibits growing crops or orchards beneath these lines. The local AOR opposed the project based on the violation of private property rights and that they were targeting low population areas which meant low representation and presumed low resistance. They also brought to light that there were alternatives that were never made public. A grass roots effort was born. They won! The lesson they wanted everyone to learn is the importance of building and sustaining coalitions. They banded together with the local Farm Bureau, Chambers of Commerce and Downtown Associations. Through coalitions, REALTORS® Win.

#### **STANDARD FORMS ADVISORY**



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There are no new forms being released in November 2009. There are slight revisions that have been made to seven forms. However, it is permissible to use the current version of these until they are depleted.

- **(AD) Disclosure Regarding Agency Relationships** - An explanation box has been added the bottom of the form to address an alternate method of compliance for buyer's agent to give only one AD form for signature of both buyer and seller.
- **(BES) Buyer's Intent to Exchange Supplement** - Language has been added to clarify that the Buyer's deposit is to be returned if the transaction is cancelled.
- **(LRA) Application to Rent Fee** - Add license number for broker
- **(SES) Seller's Intent to Exchange** - Language added to clarify that Buyer's

deposit is to be returned if the transaction is cancelled.

- **(SPQ) Seller Property Questionnaire** – Statutory and contractually required/related questions are relocated to the first page.
- **(SSD) Supplemental Statutory and Contractual Disclosures** – Added question regarding awareness of methamphetamine contamination.
- **(WHSD) Water Heater and Smoke Detector Compliance** – Added language to remind seller of a HCD requirement if the property is a manufactured or mobile home.

Remember, the CAR User Protection Agreement only applies to the most current version of a form. All CAR forms are developed by practicing real estate professionals and attorneys working together to develop standard forms that are dependable real estate transaction tools which are user-friendly yet comprehensive to aid your business.

The committee focused most of its time working on the proposed revisions to the **RPA Residential Purchase Agreement**. These revisions are scheduled for 2010. The study group is currently underway and meets to review all comments regarding the proposed revisions. Your input is important and invaluable to us. You can review the proposed changes by logging onto [www.car.org/legal/standard-forms/](http://www.car.org/legal/standard-forms/). Any comments, modifications, or corrections can be emailed to [carforms@car.org](mailto:carforms@car.org), or, feel free to contact me directly.

## **TAXATION**

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### **I. State Taxation Issues**

With the Governor refusing to sign any of the bills on his desk without water bill, over 700 bills are in limbo. Allowing them to sit

and taking no action would allow them to become law. As of Friday, the 9<sup>th</sup>, he is threatening to veto every one of them. The veto could be overridden with a two-thirds vote. The other option is for the bill to be withdrawn and brought back as a two-year bill. These issues make it difficult to give a clear and accurate update...

### **A. A Flat Tax is Again Proposed - Senate Bill 328 (Dutton):**

This was simply to put it on the record that there was intent to establish a flat income tax. Under this concept a single flat income tax rate is applied to all taxpayers. The downside is two-fold: **1)** It eliminates the progressiveness of the current system where the higher income the larger percentage of income paid in taxes and **2)** There are no allowances for deductions of any kind. The impact to lower-income taxpayers can be mitigated by providing a large personal exemption. As a result, it is projected that a flat tax would result in an income tax increase for middle-class taxpayers. Both NAR and CAR oppose a pure flat tax. Originally this bill allowed for deductions for mortgage interest payments, charitable donations, and rental payments for renters. Also, social security, unemployment benefits, and other transfer payments would have been tax exempt. Businesses and independent contractors would have paid a flat tax on the value of all sales minus purchases and allowable depreciation of business assets. By the time the bill went to a vote everything was amended out and it became the statement of intent for both flat personal and corporate tax at a revenue-neutral rate. More information can be found at

<http://www.car.org/meetings/carmeeetings/currentmeetingsmaterials/oct09taxcvt/355658/>

### **B. The Commission on the 21st Century Economy**

– The commission was established last October with the task of leveling out the revenues of the state in an attempt to make the availability of funds more predictable for the budgetary process. The Governor charged the group to consider

any and all possibilities...including the flat tax. They were given one (1) year to complete this mission and when it became apparent that the deadline would not be met, the Governor said he would call the legislature back into session when the report was presented. While the report has not yet been presented, a draft that has been circulated contains the following options:

**1. Two Personal Income Tax Rates -** Two income tax rates; 2.75% for incomes up to \$56,000 for joint filers and up to \$28,000 for single filers, and 6.5% for incomes above those amounts with a standard deduction of \$45,000. Itemized deductions would be limited to mortgage interest, property taxes and charitable contributions.

**2. Phase Out of State Portion of Sales and Use Tax -** The state portion of the sales and use tax would be phased out at the rate of 1% per year between 2012 and 2017.

**3. New Business Net Receipts Tax -** 4.2% new net receipts tax would be levied on all businesses except for those with less than \$500,000 in gross receipts or \$250,000 net revenue.

**4. Elimination of Corporation Tax -** The corporation tax on businesses would be eliminated in 2012.

Another rumored proposal was a flat tax where all Californians would pay a 6 percent income tax rate (the state's wealthiest taxpayers currently pay 9.3 percent). Deductions for mortgage interest, charitable contributions and property taxes would be allowed and for taxpayers who do not itemize, a \$5,000 personal exemption would be granted. As a result, it is forecast that the proposal would lead to an increase in income taxes for Californians earning less than \$100,000.

### **C. Split Roll is Again Being Discussed** –

The split role system sets a higher rate for commercial property than residential. Under Prop 13 all property is reassessed at the time of sale – 1% of the value of the property. The reasoning behind the split roll is that commercial properties change ownership less frequently and therefore a larger tax burden is being placed on residential

properties. With the growing state deficit, split role becomes more and more attractive as a means to generate more revenue. When the language for Prop 13 was originally being considered, verbiage for a split role was debated, but was rejected. Proponents of a split role contend this would not be the first time that a language change has been made to Prop 13. In the late 1970s – after the passage – it was felt that “change of ownership” was not clearly defined. The Assembly Revenue and Taxation Committee formed a task force to look into this. The committee considered two theories...the “separate entity theory” whereby as long as the entity that owned the property remained in existence there was no reassessment and the “ultimate control theory” which considered not the entity in “ownership, but rather where the actual control of the entity and its assets lay. The example given was Disney sells ABC – which owns Blackacre – to Paramount, under the “separate entity theory” Blackacre would not be reassessed because ABC still owns Blackacre. With the “ultimate control theory” the control has been transferred from ABC to Paramount and a reassessment is triggered. The task force recommended “the separate entity theory” because it believed that the “ultimate control theory” would create an administrative nightmare and the definition was adopted in 1979. More information can be found at

<http://www.car.org/meetings/carmeeings/currentmeetngmaterials/oct09taxcvt/355664/>

### **D. REO Property Sales are Inconsistently Used as Comparable Sales when Residential Property is Reassessed -**

According to the Center for Responsible Lending foreclosures this year will cause over 70 million nearby homes to decline in price by an average of \$7,200 per home nationwide...the figure for California will probably be higher...and the loss in property values could be as much as \$500,000,000,000 (that's \$500 BILLION). We all realize that this decline in values is exacerbated by appraisers' foreclosure sales as comps. At issue is that some county

property tax assessors will consider the foreclosure comps for reassessing properties and assessors believe they are prohibited by law to use them. Prop 13 limited property taxes to 1% of the assessed value of the property upon change of ownership. Prop 8 (adopted in 1978) allows for a tax reduction by a reduced assessed value when a property suffers a decline in value. County assessors are supposed to automatically reassess a residential property when there has been a decline in value; however, it's ultimately the homeowner's responsibility to apply for reassessment. The Board of Equalization (BOE) has held that for a decline in value to qualify, the property purchased must be in an open market transaction. The BOE's position is that, "it is clear that 'forced sales', like execution or foreclosure sales, fall short of meeting the ... conditions necessary to establish an open market transaction. Further, we have long held that the price paid at execution and/or foreclosure sales does not equal fair market value." However, some within the BEO have acknowledged that because of the enormity of the foreclosure problems within the state, REO sales should be included in the reassessment. Unfortunately, there has been nothing in writing from the BEO at this time. More information can be found at <http://www.car.org/meetings/carmetings/currentmeetingmaterials/oct09taxcvt/355670/>

#### **E. Home Purchase Tax Credits**

**1. SB 15XX (Ashburn) Housing Tax Credit** - SB 15XX gives an additional tax credit for new home purchasers that equals 5% of the sale price of a home, not to exceed \$10,000. It's available for new or previously unoccupied only, must have been or will be purchased between March 1, 2009 and March 1, 2010, and must be lived in by the buyer for at least two years or the credit will have to be repaid to the state. \$100 million from the state's general fund was set aside for these tax credits. Already all of the funds have been used. However, the numbers are being recomputed. The original figures were simply based on \$10,000 per transaction. Because there has been such a

decline in property values it appears as though the 5% maximum may free some of the funds and there may still be time to benefit. CAR sought amendments to expand this credit to all homes. The Governor signed the bill on February 20, 2009 (Chapter 11, Statutes of 2009).

**2. SB 49 (Dutton) Housing Tax Credit** – This bill is supported by CAR because it would extend the \$10,000 or 5% of sales price tax credit to all homes purchased prior to December 1, 2010 and would remove the \$100 million funding cap for the tax credits for homes.

Status: Senate Revenue and Taxation Committee

**3. AB 765 (Caballero) Housing Tax Credit** - AB 765 does not eliminate the \$100 million cap, but rather changes the eligibility criteria for the tax credit by requiring purchasers to execute an enforceable contract by March 1, 2010 and to close escrow before December 1, 2010. It also requires the Franchise Tax Board (FTB) to amend process for calculating the number of tax credits available. For each certification received from a seller, FTB is required to reduce the total amount of credit available for allocation by an amount equal to 70% of the credit allocated to a taxpayer. CAR supports AB 765 because it will allow approximately 5,000 more home buyers to access this tax credit.

Position: Support Status: Senate Floor Inactive File

**4. AB 902 (Torres) Foreclosed Homes Income Tax Credit** – The road to hell is paved with good intentions. AB 902 would give a tax credit of 2% of the purchase price (not to exceed \$3,000) to buyers whose annual gross income is no more than 120% of the area's median income. The property must be used as a principal residence if the purchase is made after January 1, 2009, and before January 1, 2012. The rub is that the bill was amended to offset the cost of the bill by repealing the mortgage interest deduction on second homes for January 1, 2010, through January 1, 2012. CAR will oppose AB 902 unless it is amended to utilize an alternative funding source.

Position: Oppose Unless Amended Status:  
Assembly Revenue and Taxation Committee

#### **F. Cancellation of Mortgage**

**Indebtedness: SB 97 (R. Calderon) and AB 111 (Niello)** - The federal Mortgage Debt Relief Act of 2007 forgave debt relief as a result of a short sale for three years and then extended that forgiveness through December 31, 2012. California's forgiveness under SB 1055 provided the same forgiveness, but only for the 2007 and 2008 tax years. If passed, the state would fully conform to the federal rule and extend debt forgiveness on "phantom" income through December 31, 2012.

Position: Support Status: Assembly Rev. and Tax. Committee and Senate Rev. and Tax Committee, respectively

#### **G. Recording Fee Increases**

**1. SB 676 (Wolk) Recording Fees** – This increases the cost for recording the first page of a document from \$4 to \$10. CAR opposed it because it does not seem to reflect the actual cost of the service and appears to be a means to increase local revenues. It was amended to limit the recording fee to actual costs up to a maximum of \$10. Status: Enrolled to the Governor – Awaiting signature with the other 700+ bills

**2. AB 827 (Yamada) Recording Fees to Fund Historical County Records** – It allowed for an additional per page recording "fee" of up to \$3 for the first page of a document and \$1 each for the remaining pages for the archiving of documents of historical interest (this could be anything from the minutes of local city council meetings to any document believed to have "significance"). An amendment was made to limit the recording fee to the actual costs of providing archival services up to a maximum of \$3 per property-related document. CAR opposes this bill because by state statute, a fee must be reflective of the services provided. CAR believes that this is, in fact, a tax and as such the bill is an attempt to circumvent the requirements for local governments to have taxes passed by

the voters.

Position: Oppose Status: Senate Floor  
Inactive File

#### **H. Property Tax Base Year Value Transfers**

**1. SB 274 and SCA 11 (Dutton) Transfer to More Expensive Home** – This would expand the ability of Prop 60 and would allow homeowners 55 and over, on a one-time basis, to transfer their property tax base to any property value. Under Prop 60, if the property is of equal or lesser value their tax base is transferable. Under this bill, a home of greater value could be purchased with the tax base transferred and the difference between the original home and the new, more expensive home would be added to the base CAR supports SB 274 and SCA 11 because they protect seniors who are often on a fixed and/or limited income from property tax increases that can occur when purchasing a new home.

Position: Support Status: Senate Revenue and Taxation Committee

**2. AB 157 (Anderson) Property Tax Base Year Value Transfers for Disaster Relief** – This extends the time frame from five to seven years for a homeowner whose home is damaged or destroyed by a disaster to transfer the property tax base year value of that property to a replacement property of comparable value, provided the replacement property is located in the same county as the original property. CAR supports AB 157 because disputes with home insurers regarding compensation can be extremely protracted in the wake of a disaster.

Position: Support Status: Senate Revenue and Taxation Committee

#### **I. Miscellaneous**

**1. 3% Withholding for Independent Contractors** – In an obvious attempt to relieve some of the state's budget gap, a budget proposal was introduced to require all payments made to independent contractors have a 3% withholding to be paid to the state This would be in addition to the quarterly estimated tax payments independent contractors must pay. Any

overpayment would be refunded to the tax payer after filing tax returns. This provision was included in several proposals (SB 17xxx, AB 19xxx and SB 19xxxx) intended to increase revenues to the state. The Governor vetoed one of these and the others were defeated in the legislature.  
Position: Oppose Status: Defeated

## **II. Federal Taxation Issues**

**A. Homebuyer Tax Credit** - The First-time Homebuyer Tax Credit (HTC) expires on November 30, 2009 and NAR and CAR are working hard to get this extended to the end of 2010. Every REALTOR® should have received two Calls to Action...one from NAR asking you to respond via email (you also may want to forward this to your current buyers and ask them to also respond) and one from CAR asking you to make a phone call. You can forward this to your buyers also and let them know to just enter 9s when it asks for the member number.

### **B. Estate Tax**

In 2011, the estate tax laws will revert to the laws that were in effect on June 6, 2001. The Economic Growth and Tax Reconciliation Act of 2001 expires at the end of 2010. Under this act the estate tax has been reduced from an exemption maximum of \$1.5M and a top rate of 48% to \$3.5M and 45% in 2009. In 2010 there is a full repeal of estate taxes. As a result of the expiration of this act, the maximum exemption will become \$1M and the top estate tax rate will become 55%. One other major change will be that through 2009 there is a “stepped up” basis. In 2010 there will be no such benefit and the heirs will receive a “carried over” basis. It appeared as though these issues would be addressed before the expiration, but with the current economic situation it doesn’t appear as though this will happen. There is still a hope that an extension to the 2009 levels may happen as a band-aid or perhaps a permanent compromise may be reached. It cannot be predicted what, if anything, will be done when everyone in Congress is looking for revenue.

### **C. Mortgage Interest Deduction**

Not surprisingly with the search for revenue the mortgage interest deduction (MID) is being looked at once again. Currently the deduction for homeowner mortgage interest is capped at \$1.1 million (\$1 million for a home and \$100,000 for a home equity line of credit). The Congressional Budget Office (CBO) has suggested that this be reduced to \$500,000, reducing the current amount by \$100,000 annually starting in 2013. This would generate an additional \$41 billion in revenue over 10-years. The alternative recommendation that the CBO has made is to give a flat tax credit of 15% of the mortgage interest paid in lieu of the MID. This would increase revenue by about \$390 billion over six-years.

### **D. Other Tax Deductions at Risk** –

Another \$862 billion by 2019 is projected if the following taxes are eliminated

1. Deduction for all state and local taxes
2. Property taxes

NAR and CAR are consistently monitoring any and all proposals that would limit or eliminate these.

### **E. Expiring Tax Breaks**

1. The expiring Bush income tax cuts
2. Capital gains rate possibly returning to 20%
3. The expiration of tax extenders - which includes the leasehold improvement

**F. Miscellaneous** issues that were not discussed by were agenda items...more information for these items (as well as any other item contained in this report may be found at

<http://www.car.org/meetings/carmmeetings/currentmeetingsmaterials/oct09taxcvt/358017/>

### **1. Property Tax Base Year Value**

**Transfers** - AB 321 (Niello) Retention of Spouse’s Eligibility Under Proposition 60  
Position: Support Status: Assembly Appropriations Committee

**2. Vote Threshold Reductions** (Note: Constitutional amendments require approval of both houses of the legislature by a two-thirds vote) – These bills would reduce the required two-thirds vote to 55%

**a. SCA 6 (Simitian) Vote Threshold Reduction for Parcel Taxes** – For a school district to impose a parcel tax  
Position: Oppose Status: Senate Floor

**b. SCA 12 (Kehoe) Special Tax and Bonded Indebtedness Vote Threshold Reduction** – To fund emergency and public safety services  
Position: Oppose Status: Senate Floor

**c. ACA 9 (Huffman) Property Tax and Special Tax Vote Threshold Reduction** - To change Proposition 13 for the imposition of property taxes and special taxes  
Position: Oppose Status: Assembly Floor

**d. ACA 15 (Arambula) Local Transportation Project Special Tax Vote Threshold Reduction** - For local transportation projects  
Position: Oppose Status: Assembly Floor  
Inactive File

**3. Vote Threshold Reductions** (Note: Constitutional amendments require approval of both houses of the legislature by a two-thirds vote) ACA 10 (Torlakson) Education Finance District Special Tax Vote Threshold Reduction - Special taxes for education finance districts from a two-thirds vote to a simple majority  
Position: Oppose Status: Assembly Floor

**4. SB 279 (Hancock) Mello-Roos Districts/Energy Efficiency** - This bill would authorize a Mello-Roos District to finance the acquisition and installation of energy efficiency improvements on public and privately owned real property. CAR opposed SB 279 until it was amended to allow Mello-Roos districts to finance energy efficiency improvements, but only if those districts are formed through an alternative method that assesses only those homeowners who opt-into the district.  
Position: Watch as Amended Status: Enrolled to the Governor

**5. AB 474 (Blumenfield) Water Efficiency Improvements** - Existing law, created by AB 811 of 2008, permits cities and counties to designate an area within its jurisdiction where local government officials and willing property owners can enter into contractual agreements to finance the installation of energy efficiency improvements on existing homes. AB 474 will permit these contractual agreements to also be applied to water efficiency improvements made to real property. CAR supported the passage of AB 474 because it offers a workable alternative to point-of-sale for water efficiency upgrades to existing property. Utilizing a voluntary contractual obligation between property owners and utilities through both public and private incentives allows homeowners to more affordably make the appropriate upgrades to their homes.  
Position: Support Status: Enrolled to the Governor

#### **OTHER INFORMATION OF INTEREST**



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

**ePUBS for WINForms** will be a FREE member benefit in 2010.

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

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

**2010 Economic Forecast** by CAR Chief Economist Leslie Appleton Young is always a highlight of the Conference. Highlights include: Although August marks the end of the recession, consumers are still not spending. 2012 is expected to be a problem as commercial loans re-set. Jobs are the Achilles heel with 12.2% unemployment in California. Dollar volume of sales is expected to be flat in 2010. It's a great time to be a 1<sup>st</sup> time homebuyer, but we need to extend the \$8,000 tax credit. Studies show that 52% of the buyers would not have bought without the tax credit. Young cites as wild cards impacting the 2010 market: the 1<sup>st</sup> time buyer tax credit, job creation, foreclosures, commercial defaults and their impact on the credit market, and whether the Fed will monetize the deficit. Leslie's PowerPoint presentation can be accessed at <http://www.car.org/media/pdf/econpdf/10-07-09Forecastexpo-FINAL.pdf>

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



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**“Increasing the Success and Profitability of Those We Serve”**