



SANTA CRUZ ASSOCIATION OF REALTORS® LEGISLATIVE WATCH

Advertising Fax Must Have Permission to Send and Opt-Out Notice

REALTORS® may fax advertising materials if they have the fax recipient's oral or written permission, however, additionally, the Federal Communications Commission (FCC) began requiring any advertisement fax to include an opt-out notice as of August 1, 2006.

The FCC defines "advertisement" very broadly to include "any material advertising the commercial availability or quality of any property, goods, or services." The opt-out notice must be on the first page of the advertisement and apparent to the reasonable consumer. It must be separate from the advertising copy or other disclosures and placed at either the top or bottom of the fax. It must be distinguishable from the advertising material through, for example, use of bolding, italics, different font, or the like. If a cover page accompanies the advertisement, the FCC encourages senders to include the notice on the cover page as well.

C.A.R.'s Legal Department has drafted the following sample language for an opt-out notice for REALTORS® to use:

"Our company does not send junk faxes or unsolicited advertisements. Federal law, however, requires the sender of an advertising fax to notify the recipient of the right to opt out of future unsolicited advertisement faxes. You may send us your opt-out request, along with the fax number to which your request relates, by e-mail at [e-mail address], by telephone at [telephone number] or by fax at [fax number]. A failure to comply with an opt-out request within 30 days is unlawful."

Before adopting this sample language, make sure it comports with your business practices. Insert your contact information where indicated and make sure your e-mail address, telephone number and fax number allow anyone to make an opt-out request 24 hours a day and 7 days a week. Do not make any changes to the sample language without reviewing the FCC requirements. The FCC rules, which are set forth at 47 C.F.R. section 64.1200, are available at www.gpoaccess.gov/fr/index.html. The FCC also has a publication, "Fax Advertising: What You Need to Know," which is available at www.fcc.gov/cgb/consumerfacts/unwantedfaxes.html.

Aside from advertisements faxed with permission, the

federal rules allow unsolicited advertisements if the sender and recipient have an established business relationship as defined. An established business relationship exception, however, is not recognized under California law for faxes sent within state boundaries. California's "Do-Not-Fax" law is set forth at California Business & Professions Code section 17538.43.

As background, in July 2003, the FCC enacted a new rule that would have prohibited anyone from faxing advertising materials (e.g. a listing flyer) to someone requesting that information, unless the fax recipient gave prior written permission to send the fax. Amid pressure from business organizations including C.A.R., the FCC repeatedly postponed the effective date of this unworkable rule. By July 2005, Congress enacted the Junk Fax Prevention Act which changed the law and the FCC subsequently amended its rules accordingly as mentioned above. On July 26, 2006, the FCC announced that, with the recent approval of key provisions by the Office of Management and Budget, the new rules went into effect on August 1, 2006.

Bill Would Raise Ceiling on FHA Mortgages

A bill that retools the Federal Housing Administration home loan program has passed the U.S. House of Representatives. However, it still must pass the Senate, where at least some opposition awaits. Even with resistance in the Senate, most observers believe that the bill will pass before Congress adjourns for Labor Day.

The bill allows FHA to offer no-down-payment mortgages, make the cost of mortgage insurance reflective of a buyer's credit score, and raises the ceiling on FHA mortgages — making them a possibility for high-cost areas of the country like New York City and California.

FHA Commissioner Brian D. Montgomery believes that passage of the bill before Congress heads home for elections is essential in a market environment where financially stretched home buyers need the lowest rates and best consumer protections available. "We think we are on the side of the consumers," Montgomery said in an interview following the House vote.



C.A.R. UPDATE

**General Election Ballot Propositions--
November 7, 2006**

C.A.R. has considered the following ballot initiatives, which have been qualified for the upcoming ballot. C.A.R. will continue to consider additional measures as they qualify. For additional information, please see the Secretary of State's website:

www.ss.ca.gov/elections/electionsj.htm#2006General
Positions are defined as follows:

FOR: This ballot measure is consistent with C.A.R. policy and its passage would be beneficial to the real estate industry.

AGAINST: This ballot measure conflicts with C.A.R. policy and its passage could have a harmful effect on the real estate industry.

NEUTRAL: This ballot measure may be real estate related, but C.A.R. has chosen not to take a position.

NOT REAL ESTATE RELATED: This ballot measure may be significant, but is deemed to not be related to property or real estate transactions.

PROPOSITION 83: Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute.

Summary: This measure would increase penalties for violent and habitual sex offenders and child molesters. The initiative would require that child molesters — if the victim was under 14 — be imprisoned for at least 15 years and increases the penalties across the board for all other sex crimes, including luring minors through the internet. If released from prison, sex offenders would be monitored with a GPS tracking device for life, and would not be allowed to live within 2,000 feet of a school or park. Finally, the measure would expand the definition of a sexually violent predator, and change the current two-year involuntary civil commitment for a sexually violent predator to an indeterminate commitment, subject to annual review by the Director of Mental Health and petition by the sexually violent predator for conditional release or unconditional discharge.

Pro: Proponents argue that this measure is necessary to protect children from sex offenders and child molesters and appropriately increases the penalties for committing such crimes against children.

Con: Opposition to this measure has yet to register with the Secretary of State's Office.

Position: NOT REAL ESTATE RELATED

PROPOSITION 1A: Transportation Funding Protection. Legislative Constitutional Amendment.

Summary: Proposition 42, of 2002, required that the funds generated from the sales tax on motor vehicle fuels be deposited into the General Fund and then transferred to the Transportation Investment Fund (TIF). This transfer may be suspended if (1) the Governor issues a proclamation stating that the allocation would have a "significant negative impact on the function of government," and (2) the legislature enacts a statute, passed by a 2/3 vote in each house, suspending the transfer. Proposition 1A would change the provisions for suspending the transfer from the General Fund to the TIF by requiring (1) the Governor's proclamation to declare that the suspension is necessary "due to a severe fiscal hardship," (2) the legislature enacts a statute, passed by a 2/3 vote in each house, suspending the transfer, and (3) the legislature enacts a second statute to repay the TIF with interest by the end of the third fiscal year of the original suspension. Further, the measure would allow the transfer to the TIF to be suspended only twice within a 10 year period, and prohibit the withholding of the transfer to the TIF if the previous suspension has not been repaid. Finally, Proposition 1A requires that all funds that were not transferred to the TIF prior to July 1, 2007 be repaid by June 30, 2016, and makes the tax on motor vehicle fuels, and the TIF allocation formula for the distribution of the revenues, permanent.

Pro: Proponents argue that measure will protect transportation funding for traffic congestion relief projects and safety improvements, and prohibit the state sales tax on motor vehicle fuels from being used for any purpose other than transportation improvements.

Con: Opposition to this measure has yet to register with the Secretary of State's Office.

Position: FOR

PROPOSITION 1B: Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006.

Summary: This measure would enact the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006 to authorize a \$19.975 billion general





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obligation bond. The bond authorizes specified amounts for various transportation related projects including: \$5.5 billion for transportation corridor improvements; \$3.1 billion for California ports infrastructure, security, and air quality improvements; \$200 million for school bus retrofit; \$2 billion for transportation improvements; \$4 billion for transit and rail improvements, \$1 billion for state-local transportation projects; \$1 billion for transit security and disaster response; \$125 million for local bridge retrofit; \$250 million for highway-railroad grade and crossing projects; \$750 million for highway rehabilitation; \$1 billion for local streets and road improvements; and finally \$1 billion which will be set aside for county improvements. The measure is estimated to require an annual repayment amount of \$1.2 billion over a 30-year period.

Pro: Arguments in support of this measure have not yet been submitted to the Secretary of State's Office.

Con: Opposition to this measure has yet to register with the Secretary of State's Office.

Position: FOR

PROPOSITON 1C: Emergency Housing, Community Planning and Farmland Preservation Bond Act of 2006.

Summary: This proposition would enact the Emergency Housing, Community Planning and Farmland Preservation Bond Act of 2006 to authorize the issuance of \$2.85 billion in general obligation bonds for state housing programs including: \$1.5 billion deposited into the Affordable Housing Account to finance existing housing programs; \$850 million deposited into the Regional Planning, Housing, and Infill Incentive Account to finance regional planning for infill development and brownfield clean-up; \$300 million to fund and create the Transit-Oriented Development Implementation Program to provide grants to local governments for infrastructure necessary for the development of higher density uses within ¼ mile of a transit station, and loans for the development and construction of affordable to very low or low-income households; and, finally, \$200 million to fund and create the Housing Urban-Suburban-and-Rural Parks Account. [Note: Approximately \$ 950 million of this bond would be allocated for homeownership opportunities.] This measure is estimated to require an

annual repayment amount of \$182 million over a 30 year period. Additionally, this measure makes specific findings and declarations that the approval of the Housing and Emergency Shelter Trust Fund Act of 2002 has helped nearly 18,000 families to become homeowners, and assisted in the construction and rehabilitation over 17,000 affordable apartments and over 9,000 shelter spaces. Finally, Proposition 1C declares that California is home to 21 of the 25 least affordable metropolitan areas in the U.S. for homeownership, and home to 9 out of the 10 least affordable counties in the U.S. for rent, thereby increasingly forcing California families to endure longer commutes from affordable housing.

Pro: Proponents to this measure argue that the funds provided under Proposition 46 will be exhausted by the end of 2006 and, if these funds are exhausted, the state will lose a critical weapon in the fight to maintain some level of affordable housing. This measure seeks to maintain the funding for the essential programs that provide resources to assist in the development and protection of affordable housing. Neither non-profit or private housing developers build enough units to satisfy the need for affordable housing. Proposition 1C seeks to offer new incentives to build affordable housing on infill parcels as well as near public transit stations.

Con: Opposition to this measure has yet to register with the Secretary of State's Office.

Position: FOR

PROPOSITON 1D: Kindergarten – University Public Education Facilities Bond Act of 2006.

Summary: This measure would establish the Kindergarten – University Public Education Facilities Bond Act of 2006 to authorize \$10.416 billion in state general obligation bonds to provide aid to school districts, county superintendents of schools, county boards of education, the California Community Colleges, the University of California, the Hastings College of Law, and the California State University to construct and modernize education facilities. This measure is estimated to require an annual repayment amount of \$592 million over a 30 year period. Additionally, this measure would delay the provision in current law that would allow local governments to condition the approval of new residential developments on the basis of the adequacy of school



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facilities until 2012.

Pro: Proponents to this measure project an unmet need of \$10.6 billion in new construction eligibility and \$3.3 billion in modernization eligibility. According to The Office of Public School Construction, only \$3.656 billion remain for new construction and modernization of school facilities from the passage of Propositions 47 and 55, and estimate the need for the next five years to be \$12.2 billion in order to keep up with the growing demands on the educational system for facilities.

Con: Opponents contend that California still faces a financial crisis, and while the state needs new schools, it does not need to accumulate more debt for taxpayers. Just like the prior ballot measures, Proposition 1D favors Los Angeles Unified School District at the expense of the rest of the state and it will raise our taxes.

Position: NEUTRAL

PROPOSITION 1E: Disaster Preparedness and Flood Prevention Bond Act of 2006.

Summary: This measure would enact the Disaster Preparedness and Flood Prevention Bond Act of 2006 which would authorize \$4.09 billion of general obligation bonds to fund infrastructure projects for flood protection and levee repair. The allocations are as follows: \$3 billion for levee repair; \$500 million for the state flood control subvention program; \$200 million for the state flood corridor program to establish floodplain corridors and set back levees in areas where annual flooding takes place; \$90 million for floodplain mapping; and \$300 million for the storm/flash flood protection program.

Pro: Proponents argue that a catastrophic levee failure in urban areas of the state would flood tens of thousands of homes and major transportation corridors, and would result in long lasting devastation to both local and state economies. Further, proponents contend that Proposition 1E will rebuild and repair California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failures, flash floods, and mudslides; it protects California's drinking water supply system by rebuilding delta levees that are vulnerable to earthquakes and storms.

Con: Opposition to this measure has yet to register with the Secretary of State's Office.

Position: FOR

Local Associations Meet with Congresswoman Anna Eshoo

Earlier this month, Federal Political Coordinators (FPC's) from the Santa Cruz, San Mateo and Silicon Valley Associations met with Congresswoman Anna Eshoo to discuss key pieces of legislation that are of concern to our industry. Congresswoman Eshoo was informed of REALTOR® positions on H.R. 5746, H.R. 111/S. 95, and National Disaster Reinsurance.

H.R. 5746, supported by C.A.R., is legislation that would ensure the separation of banking and commerce. This bill would prevent commercial businesses from exploiting a loophole that allows them to own and operate industrial loan companies. This legislation would prevent companies such as Wal-Mart, Home Depot and other commercial businesses from entering banking. C.A.R. and N.A.R. believe that Congress needs to send clear guidelines to federal regulators who have used broad interpretations of existing law to blur the line between banking and commerce.

H.R. 111/S. 95, also supported by C.A.R., makes clear that banks are NOT allowed to engage in real estate related activities. C.A.R. and N.A.R. are both supporting these bills because home sellers and homebuyers need to be protected from a consolidation of the real estate brokerage and property management markets by a few national banks. Through these bills, Congress should continue to support small business by preventing the unwarranted consolidation of two vastly different industries, banking and real estate.

C.A.R. and N.A.R. are strongly supporting a federal reinsurance program to act as a backstop for companies that offer natural disaster insurance. C.A.R. and N.A.R. are urging Congress to pass a federal reinsurance program to encourage more participation by insurance companies in the homeowner's insurance market.

Congresswoman Eshoo, who has been a strong supporter of REALTOR® interests, listened to our concerns and will continue to work closely with our Associations on these and other issues in the future.

Please Note: The Legislative Watch is prepared by the Santa Cruz Association of REALTORS®. The Legislative Watch is only a summary not intended to provide legal advice and should always be verified for accuracy. For more information on a local agency, please call SCAOR at (831) 464-2000 to contact the Local Governmental Relations Liaison assigned to that agency or municipality.