



SANTA CRUZ ASSOCIATION OF REALTORS® LEGISLATIVE WATCH

N.A.R. UPDATE

NAR Says Regulators' High Standards and Consumer Education Important for Non-traditional Mortgages

Guidance on non-traditional mortgages issued last week by federal banking regulators will help ensure that lenders inform consumers about the risks related to nontraditional financing options, including interest-only and option-payment adjustable rate mortgages, said the National Association of REALTORS® (NAR).

NAR strongly supports efforts to educate consumers about these mortgages, and REALTORS® have been educating would-be homebuyers about nontraditional mortgages for quite some time.

"The National Association of REALTORS® is very concerned that some borrowers are using nontraditional mortgages without fully understanding the risks involved, and supports the federal banking agencies' new guidance requiring lenders to explain these mortgages and their associated risks to consumers," said Thomas M. Stevens, NAR president from Vienna, Va., and Senior Vice President of NRT Inc.

"It is imperative that borrowers fully understand the risks associated with such products, which is why last year, NAR and the Center for Responsible Lending created the consumer education brochure, "Specialty Mortgages: What are the Risks and Advantages?" to help our REALTOR® members counsel their clients and customers, adding value to the real estate transaction," said Stevens.

In addition to proposing that lenders educate consumers about the risks of nontraditional mortgages, the final guidance also recommends that lenders review current underwriting standards and improve risk management strategies. While lauding consumer education efforts, NAR cautioned federal regulators in its submitted comments on the proposed guidelines

not to restrict innovation in mortgage lending and, by extension, opportunities for homeownership.

"When used correctly, nontraditional mortgages are viable options for many qualified homebuyers, and NAR supports lenders that make these loans responsibly," said Stevens. "We encourage both regulators and lenders to monitor the impact of these new guidelines closely to determine if the guidelines unintentionally limit financing options for consumers who would otherwise benefit from nontraditional mortgages."

You may access the brochure "Specialty Mortgages: What are the Risks and Advantages?" at www.realtor.org by searching for the keywords "Specialty Mortgage."

C.A.R. UPDATE

NEW LAW ENHANCES REAL ESTATE LICENSING REQUIREMENTS

Future real estate agents will have to comply with stricter requirements before they can receive their license, according to AB 2429 (Real Estate Salesperson Licensure), a new law signed by California Governor Arnold Schwarzenegger.

AB 2429 eliminates the "conditional" real estate license and will require prospective agents, beginning October 1, 2007, to complete all three of the Department of Real Estate –mandated (DRE) pre-license courses prior to taking the license examination.

Currently, there are two ways to qualify for a real estate salesperson license. The first option requires an applicant to take three real estate classes and then pass the exam to receive a four-year license. The second option requires an applicant to take only one class and then take the exam. If the applicant passes the exam, the individual may obtain a "conditional" license and finish the rest of the required coursework within the next 18 months while still engaging in real estate activity. According to the DRE, 85 percent of new licensees came in under the conditional license option last year.



Due to the incredible influx of new licensees in the industry, the California Association of REALTORS® is seeking to raise the bar so all licensees can become excellent REALTORS®. AB 2429 will increase the foundational knowledge of real estate licensees entering the profession.

California now has 512,000 licensed real estate agents and the DRE expects the number to reach 600,000 by next year. The need for sophisticated management, effective referral networks and well-trained licensees is more important than ever as many licensees do not have any experience with an evolving market, according to real estate officials.

"AB 2429 will increase the foundational knowledge of sales licensees entering the profession, and prevent ill-equipped licensees from engaging in licensed activity," said California Association of REALTORS® President, Vince Malta.

CHANGES IN THE MARKET MAY LEAD TO NEW LEGISLATIVE CHALLENGES

A changing market inevitably changes the issues faced in the legislative arena. For example, without steep appreciation to continuously increase equity, non-traditionally financed properties are more likely to end up in foreclosure. Similarly, a market in transition means more marginal transactions will be attempted and without appreciation to buffer a loss, are more likely to lead to a lawsuit. This means legislators or consumer advocates may call for legal restrictions on financing, or mandate new and more burdensome inspections and disclosures in each transaction.

As foreclosures occur in the new transitional market, REALTORS® are likely to be drawn into foreclosure-related issues (for example, the role of an agent in a "distress" sale), or the unworkable bonding requirement for agents of investment buyers that was imposed during a previous economic downturn. C.A.R. will be vigilant to

protect against legislation that sweeps legitimate agents up in new rules against predatory lending practices. There may also be additional legislation attempting to protect borrowers from themselves by restricting sub-prime loans or specialty financing – but with the end result of drying up credit availability for sub-prime buyers. There may also be legislation (which C.A.R. has supported in the past) to eliminate the tax penalty that imposes the so-called "double whammy" on a seller in a short sale.

Finally, the need for sophisticated management, effective referral networks and well-trained licensees will be more important than ever before as so many licensees have no experience with an evolving market. C.A.R.'s 2006 legislation raising the standards for license education and experience has already begun to address the issue, but more improvements in the license may be required.

VOTERS HAVE MIXED REACTIONS TO LOCAL TAXES

The California Taxpayers Association reports mixed results for several local tax proposals in August. Members of the Cazadero Community Service District board asked their constituents to approve a \$225 parcel tax for a community center. In one of the most lopsided defeats in parcel tax history, the vote in the mailed ballot election, announced August 29, was 50 yes to 366 no. This is a 12 percent to 88 percent rejection. Voter turnout in this mailed ballot election was relatively large, with 69 percent of the voters in this Russian River-area hamlet participating.

In nearby Sausalito, voters on August 29 cast their votes in favor of a proposed \$15.5 million public safety bond. With a 45 percent voter turnout, high for a special election, the measure passed easily with an 81 percent "yes" – 19 percent "no" margin.



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Property owners in the unincorporated area of Wildomar in Riverside County have approved the establishment of an assessment district and a \$45 assessment in a mail ballot election. County officials announced the results on August 30, with 1,129 votes in favor and 891 votes against. Funds are to be used to acquire and maintain parks.

BUILDER FEES MUSHROOM

The California Taxpayers Association reports that local governments around the state are making housing more expensive by boosting fees on builders. Among recent fee hikes:

Fee for Arts is Approved: Increasing the cost of housing, the Calexico City Council has approved a 1 percent fee on new building projects to pay for more arts programs. Developers said the fee amounts to millions of dollars in unfair taxation on their projects. The building industry challenged the increase on the basis of a February 2005 study on impact fees in the region. But an environmental attorney, Malissa McKeith, said, "Developers need to pay because they're making millions of dollars here. Either they pay their fair share, or the town needs to say that it doesn't need another house." (Source: *Imperial Valley Press*, September 6.)

American Canyon Fee Soars: The City Council of American Canyon voted 4-1 on September 5 to increase the current \$3,000 fee to \$38,770 per unit for developers of five or more units unless they set aside 10 percent of all homes for affordable housing. The money goes into a fund to rehabilitate houses and build more affordable dwellings. A fee hike on nonresidential developments was not decided at the meeting because the city manager requested an economic study. (Source: *Napa Valley Register*, September 7.)

Plumas County Builder Costs Go Up: The Plumas County Board of Supervisors on August 15 approved an increase of close to \$4,000 in fees to build a house.

The board approved a public facilities fee of \$1,392 per dwelling and a traffic facilities fee of about \$2,437, depending on where the unit is located. The new fees take effect in 2007. (Source: *Plumas County News*, August 30.)

NOVEMBER 2006 ELECTION UPDATE

REALTORS®: It is vitally important that you participate in the legislative process by exercising your right to vote this November 7th! The people elected to local and state office can directly affect the real estate industry and your ability to conduct business. Here is a list of statewide candidates and ballot measures that are either endorsed by C.A.R. or pose an impact to real estate:

Statewide Candidates:

Arnold Schwarzenegger, Governor
John Garamendi, Lt. Governor
Bruce McPherson, Secretary of State
Chuck Poochigian, Attorney General

State Ballot Propositions:

NO on Proposition 88
NO on Proposition 90
YES on Proposition 1A
YES on Proposition 1B
YES on Proposition 1C
YES on Proposition 1E

If you have any questions or need more information regarding these candidates or ballot measures, please contact the Santa Cruz Association of REALTORS® for assistance at (831) 464-2000 or ptedesco@scaor.org.

HELPFUL TIPS FOR YOUR CLIENTS!

Be careful about hiring unlicensed contractors to perform work on your property

A California court recently included a homeowner in its definition of "employer," sending a strong message to homeowners that they should be extremely careful about hiring unlicensed contractors.



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In the case of *Mendoza v. Brodeur* (2006), Glenn Brodeur hired his neighbor Ernesto Mendoza, an unlicensed roofer, to replace the roof of his house. On his first day on the job, Mendoza fell from the roof, broke his leg and suffered other injuries. He then sued Brodeur, seeking compensation for his injuries.

Mendoza asserted he was an employee and, because he was not eligible for workers' compensation due to his limited amount of work hours with Brodeur, believed he could sue Brodeur. Brodeur, on the other hand, claimed Mendoza was not his employee because he was a contractor, and therefore, Mendoza could not sue him. He also claimed the no-fault workers' compensation coverage from his homeowner's insurance applied, and that he was not responsible for the costs of Mendoza's injuries. The trial court agreed and dismissed the case.

The Court of Appeals, however, reversed the trial court's decision and noted that California law says a person who hires an unlicensed individual to perform duties that require a license is in fact an "employer." Once an employment relationship is created, the hiring individual may be sued for any injuries sustained on the job. There is no workers' compensation protection for the homeowner in this case because Mendoza had not worked enough hours to be covered by it. The Appeals court then sent the case back to trial to determine the extent of the homeowner's liability to the injured worker.

"The case is significant to homeowners because it subjects them to potential liability if they hire an unlicensed contractor to perform work on their property for which a license is required, if that employee is injured on the job, even if the homeowner has workers' compensation coverage in place," according to D. Kent Westerberg, an attorney with Atwood, Haiman & Westerberg in Saratoga.

"Hiring unlicensed contractors can expose homeowners to liability," said Westerberg. "As can be

seen from the *Mendoza* case, simply having workers' compensation insurance is not enough to protect the homeowner. While most homeowners will probably continue to not be overly concerned about the contractors they hire to perform minimal tasks or work on relatively inexpensive projects, because in most cases, the chances of an injury or something going wrong are minimal, the *Mendoza* case reminds us of the problems that can arise when that one project goes awry."

In light of the court's decision, Westerberg cautioned, "It is better to be safe than sorry and homeowners need to be prepared and cautious in their selection of laborers or contractors who will perform services on their property."

When hiring an independent contractor to do work on your property, Westerberg recommends the following to homeowners:

1. Only hire licensed contractors for work which requires a license.
2. Make sure the person you hire has appropriate general liability insurance coverage in place for all work or activities occurring on the property.
3. Put all contractor agreements in writing. Make sure the written agreement confirms an independent contractor relationship and protects you with release of liability and hold harmless and indemnity provisions by specifying whose responsibility it is to obtain proper licensure and insurance.
4. If you are entering into a contract with a business entity or employer, make sure the business entity or employer also has workers' compensation coverage of their own.
5. Ensure that your insurance is up to date and covers all activities that may occur at your workplace.

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.