



MULTIPLE OFFERS

Contributed by Lloyd Williams, SCAOR's Legal Counsel.

Each time the real estate market heats up and there is heavy competition to purchase a house, problems arise regarding multiple offers. This article will address some of the more recurrent issues.

1. Submission of Offers. Unless the listing broker receives written instructions from the Seller to not submit any more offers, the listing broker must submit all offers and counter offers to the Seller "as soon as possible, or give the cooperating broker a satisfactory reason for not doing so" (MLS Rules and Regulations 7.2). In addition, NAR Code of Ethics Standard of Practice 1-6 requires the submission of offers "objectively and as quickly as possible".

2. Presentation of Offers. Section 7.4 of the MLS Rules gives the cooperating broker the right to participate in the presentation of the offer unless the Seller, in writing, instructs the listing broker that the cooperating broker not be present. In the latter event, the cooperating broker is entitled to receive a copy of the Seller's instructions. Although there is no MLS Rule or Standard of Practice under the Code of Ethics requiring the listing broker to inform the cooperating broker whether or not the offer is accepted, in the spirit of cooperation it is common courtesy to let the cooperating broker know the status of the offer. Doing otherwise may promote ill will between agents which can adversely affect their relations in future transactions, sometimes to the detriment of their respective principals. Of course, if the time for acceptance has expired, the offer is automatically revoked.

3. Consideration by the Seller of Multiple Offers. Article 1 of the Code of Ethics provides that the listing broker is required to "promote the interests of their

client", and also "to treat all parties honestly." The amount of compensation a listing broker would receive from a particular offer is not a valid consideration in presenting multiple offers to the Seller, or in discussing with the Seller how multiple offers should be handled. The agent should present all offers as they come in, and discuss with the Seller how to respond, as it is the Seller's decision whether he/she wishes to accept or counter to just one offer, send out multiple counter offers, or request new offers without actually making a counter offer. The agent's duty is to fully inform the Seller of his/her options, so that the Seller can make an intelligent decision on how to respond.

4. Multiple Counter Offers. If the Seller wishes to make multiple counter offers, the listing broker needs to make sure that he/she does not draft the counter offers in such a way as to cause the Seller a risk of entering into binding contracts with more than one Buyer. C.A.R.'s form Counter Offer (CO, revised 10/02) is helpful in preventing this problem if Paragraph 4 is checked so that the Multiple Offer provision is included in the Counter Offer. Under the terms of Paragraph 4, the Seller is not bound by the Buyer's signed acceptance of the Counter Offer unless and until the Seller has signed in Paragraph 7. If the Seller receives back more than one signed acceptance, the Seller can decide which, if any, of the Counter Offers the Seller wants to accept and enter into a binding Contract.

5. Commissions. If a cooperating broker has submitted an offer which meets the terms of the MLS listing, is the cooperating broker entitled to the share of the commission offered by the listing broker when the Seller does not accept the offer? This question has been raised in the context of multiple offers, where more

than one cooperating broker has submitted an offer which meets the listing terms. Section 5.13 of the MLS Rules provides that the cooperating agent is entitled to the offered share of the commission if he/she procured a Buyer who enters into a contract with the Seller for the sale or lease of the Seller's property, with payment upon final closing or upon the listing broker's receipt of monies due to the default by the Seller or Buyer under the contract or lease. The mere fact that the cooperating broker presents an offer for a Buyer which meets the terms of the MLS listing, without it being accepted by the Seller, does not entitle the cooperating broker to the offered share of the commission.

CORRECTION:

In Paragraph 3 of the article entitled Broker Compensation, published in the March edition of Inside Real Estate, I described a "proposed" amendment to C.A.R.'s Model MLS Rules regarding conditional offers of compensation. Gary Gangnes, Vice Chair of C.A.R.'s MLS Computer and Business Technology Committee, has advised that this amendment was adopted by the C.A.R. Board of Directors during its January, 2004 meeting. The provision quoted in the article is, therefore, part of the Model MLS Rules.



S.C.A.O.R. NEWS 1-4
LEGISLATIVE WATCH W1-W4
N.A.R. NEWS 5
C.A.R. NEWS 6-7
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DID YOU KNOW?

- Weekly Tour Cancellations are now posted on the SCAOR website (www.scaor.org – Click on "Members Only").
- Monthly InfoLink Classes are held at the Association office on the third Monday from 10am-12pm. Call 831.464.2000 or e-mail flint@scaor.org to sign up.
- It's a \$500 fine for attaching your PIN Code to your Super Key.
- The Monterey Association has converted to the I-Box, Call 831.393.8660 for more information.

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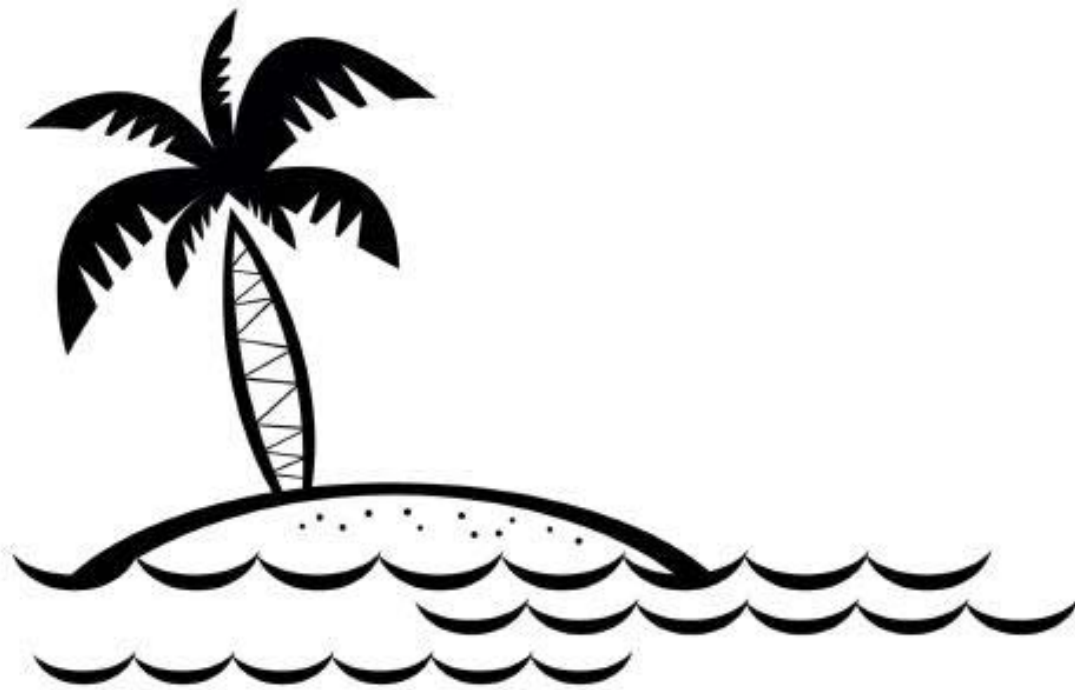
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PROPOSED HUD RULE LIMITS NONPROFITS' USE OF A FHA FINANCING

A provision in a proposed HUD rule that would limit the ability of nonprofits to use FHA single-family insurance to purchase two- to four-unit properties, primarily through the Section 203(k) program, would jeopardize the efforts of nonprofits to create affordable housing opportunities and revitalize neighborhoods, says NAR. Section 203(k) loan insurance enables homebuyers and homeowners to finance both the purchase (or refinance) of

a house and the cost of its rehabilitation through a single mortgage. In written comments to HUD, NAR agreed with other provisions of the rule that would tighten guidelines for the use of FHA single family insurance by nonprofits and prohibit nonprofits from using single-family insurance for large scale multifamily rental properties. For more info, CONTACT: Peter Morgan, pmorgan@realtors.org, 202/383-1233.

THANK YOUR MEMBERS OF CONGRESS FOR RESPA HELP

After more than 250 members of Congress wrote a letter to the Office of Management and Budget asking for the return of the flawed RESPA rule to HUD for further review, HUD took notice and pulled its onerous final RESPA rule. Your members of

Congress who wrote OMB deserve your thanks. Send thank-you letters, and encourage your members to do so also, through the NAR Action Center at:

<http://www.naractioncenter.com>.

WE'RE 1 MILLION MEMBERS STRONG!

FROM: WALT McDONALD, NAR 2004 PRESIDENT

It is with great excitement that I announce a landmark achievement for the National Association of REALTORS®: NAR's membership now exceeds 1 million!

This is more than just another statistic; it is a true milestone in NAR's long-standing history as the collective Voice for Real Estate in America. Moreover, it is a testament to the enormous value that you — America's REALTORS® — bring to the nation and to your communities, and it solidifies NAR's stature as the most influential real estate organization in the world.

To celebrate and commemorate this achievement, NAR is launching a Million Member Campaign. New advertising and promotional materials will make it clear to the public and key constituencies that more REALTORS® than ever are working to help America's families achieve the dream of homeownership. Special television and radio ads will showcase the hard work you do to help more families find that place to call "home."

These spots also will highlight the important work that many people don't see, such as our efforts on Capitol Hill to promote and protect homeowner rights, including equal housing opportunity.

I ask all of you to share this great news with your own REALTOR® family. NAR is providing you with additional marketing materials to promote this achievement, and the underlying work in your communities.

On behalf of the entire leadership team, I congratulate all of you on your outstanding success. With a million members strong, NAR is poised to lead America's housing market well into the future.

CLARIFICATION ON IRS

MORTGAGE INTEREST DEDUCTION

REALTORS® preparing their estimated tax filings may be confused about some instructions in IRS Publication 505, which says that, unless Congress changes the law, "mortgage interest credits" cannot be used to offset the Alternative Minimum Tax (AMT) in 2004. The credit did offset AMT for 2003. The instructions do not clarify that the only affected mortgage interest is the tax credit subsidy that is available in some states under a program known as either Section 25 or the Mortgage Credit Certificate. This program has very limited application since not all states participate and only certain lower-income individuals qualify. The mortgage interest deduction itself (interest on up to \$1 million of debt for up to two homes) has not been modified and mortgage interest deductions do not have an adverse impact in the AMT. For more info, CONTACT: Linda Goid, lgoid@realtors.org.

MEMBER AFFILIATE SPOTLIGHT

First Net Mortgage



First Net Mortgage was established in July of 2000 with the desire to build a culture in the mortgage industry, one that would embrace professionalism, integrity and merge current mortgage technology with proven sales traditions. We decided that a "low drama, high excitement" work environment would fulfill the dreams of its President and Broker, Greg Flowers and the lives of those individuals that come on board. We opened our Capitola Branch with one employee and a desire to grow. In Santa Cruz we wanted to do un-traditional marketing like our television show "Real Estate Weekly" (Sunday nights, Chan. 27 @ 6:30pm) featuring Real Estate Professionals in the Santa Cruz area, "Prime Thursdays" our mixer at Michaels on Main (Main Street in Soquel) the first Thursday of each month and our many sponsored events (Aptos Chamber Tennis Tournament, SCAOR Golf Tournament). Currently, we have grown to 5 branches (Campbell, Capitola, Watsonville, Manhattan Beach & Gilroy) 12 employees and 36 Mortgage Professionals funding over 800 Million in loan volume in 2003. The most important thing is that we still love helping people find mortgage solutions and supporting the local real estate market! Thank You Santa Cruz!



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URGENT STATE TO ENFORCE WORKERS'

COMPENSATION LAWS AGAINST REAL ESTATE BROKERS

The California Labor and Workplace Development Agency has informed C.A.R. that it intends to take aggressive action against any real estate broker that does not carry workers' compensation insurance on its salespersons, even if they are independent contractors. The Agency is responding to a complaint alleging that real estate brokers are failing to carry workers' compensation insurance, and has announced that it will take this sweeping action to enforce the workers' compensation requirement within sixty days (i.e., by June 15, 2004). The Agency says that, for enforcement purposes, it is able to access and compare databases of those brokers carrying workers' compensation insurance against a list of all real estate licensees.

C.A.R. has always recommended that brokers carry workers' compensation insurance, even though some older cases indicate that it may not be necessary under some circumstances. The penalties for noncompliance, coupled with the potential enforcement action by California Labor Agencies, make the risk of not carrying insurance extremely high. The California Labor Agencies have been consistent over the decades in insisting that all real estate brokers carry workers' compensation insurance, and have backed this position with aggressive enforcement actions dating back to 1978.

The penalties for not carrying workers' compensation insurance

on covered workers include:

- A misdemeanor punishable by up to one year in jail and up to \$10,000 in fines
- Citations and enforcement issued by the California Labor and Workplace Development Agency
- Issuance of a stop order prohibiting further operation of the business or use of "employee labor"
- Private actions based on other statutes

Finally, the law does not allow an employer to make the employees pay for workers' compensation insurance. In light of these risks, C.A.R. urges all real estate brokers to take immediate action to verify that they have obtained workers' compensation insurance for all of their salespersons, even if they are independent contractors.

C.A.R. currently endorses the State Compensation Insurance Fund as its carrier, but they are only writing new policies for those who have been declined by three different insurance carriers. Therefore, check with your insurance agent first and if you have three declines, then call State Fund at 877-405-4545. When completing the application, note the California Association of REALTORS® as the group (C.A.R. Group #206). We will continue to keep you posted as other options develop.

C.A.R. ADVERTISING CAMPAIGN HIGHLIGHTS DIFFERENCES BETWEEN REALTORS® AND REAL ESTATE AGENTS

"REALTOR® — The Most Important Title in Real Estate™" campaign reinforces the value of using a REALTOR® when buying or selling a home.

LOS ANGELES (April 21) - The California Association of REALTORS® (C.A.R.) today launched its 2004 Consumer Awareness REALTOR® Differentiation Advertising Campaign, designed to highlight the differences between REALTORS® and real estate agents who are not REALTORS®. The campaign originally hit the airwaves in 2003 and met with overwhelming success among consumers and REALTORS® alike. Research conducted at the conclusion of last year's campaign showed the first appreciable, significant improvement in recall of, and appreciation for, the REALTOR® designation in the nine years C.A.R. has been conducting consumer market research.

The research also showed that consumers are assigning an increasing importance to working with a real estate agent who is a REALTOR®.

"Based on the success of the campaign last year, we are again focusing our marketing efforts on the continuation of the

differentiation message between REALTORS® and real estate agents," said C.A.R. President Ann Pettijohn. "Titled 'REALTOR® — The Most Important Title in Real Estate™,' the campaign again features 60-second radio spots being aired throughout the state that communicate those differences and enhance the REALTOR® image.

"This campaign was a great success for C.A.R. last year," she said. "We feel it's very important to continue the momentum behind the message by communicating directly with consumers about the added value they receive by working with a REALTOR® when buying or selling a home. The campaign really hits home on the differences between REALTORS® and real estate agents and emphasizes the level of professionalism that California's more than 135,000 REALTORS® bring to the real estate transaction. "Our research showed us that consumers were unclear about—or unaware of—the difference between REALTORS® and real estate agents prior to launching this campaign last year," Pettijohn said. "The campaign was designed to empower consumers to

Continued on pg. 7



SANTA CRUZ ASSOCIATION OF REALTORS® C . a . r . n e w s

Continued from pg. 6

be more proactive and more selective about the person they would be working with to buy or sell their home. The research conducted last fall clearly indicated that our message is making an impact with our consumer audience. They understand that there is a difference - that only REALTORS® follow a strict code of ethics and that all real estate agents are not REALTORS®."

The \$1.6 million radio campaign also features customizable print advertising components available for local REALTOR® associations and individual REALTORS® use that compliment the

radio ads. The ads emphasize that consumers have a choice when selecting an agent to represent them when they're buying or selling a home, that REALTORS® adhere to a strict code of ethics, and that they're more likely to get results when working with a REALTOR®.

For complete information on the 2004 Consumer Awareness REALTOR® Differentiation Advertising Campaign, go to <http://www.car.org/index.php?id=MzE4MzA>.

RIGHTS TO REALTOR® TRADEMARK UPHELD

In a major victory for REALTORS®, a three-judge panel of the U.S. Trademark Trial and Appeal Board has unanimously ruled that "REALTOR®" and "REALTORS®" are not generic terms. The ruling came as part of the panel's denial of two petitions to cancel the rights in these terms held by NAR. In the 39-page opinion, the judges made the affirmative finding that the terms are not generic, meaning that they are not synonymous with real estate agent or real estate agents, and concluded that the petitioner failed to prove otherwise. The judges also pointed out that NAR had consistently taken steps to emphasize its ownership of the collective membership marks and to contest improper uses. Since 1916, when the term "REALTOR®" was coined, the term has come to be recognized as identifying NAR members. NAR registered the trademarks in 1949 and 1950, soon after a new trademark law went into effect.

"This is a tremendous victory for REALTORS® everywhere, affirming our right to the terms 'REALTOR®' and 'REALTORS®,'

which designate the highest standards of professionalism and commitment to a strict Code of Ethics. The trademark decision puts to rest any question about NAR's exclusive rights to the use of these terms," said NAR President Walt McDonald. The Trademark Board's decision was issued in a case involving a challenge brought by Jacob Zimmerman, a former hotel management student at Cornell University who registered approximately 1,900 domain names containing the word "REALTOR®" in hopes of making money selling the URLs. The challenge was the most recent in a series of unsuccessful challenges to NAR's right to use the terms "REALTOR®" and "REALTORS®." For more information, visit:

[http://www.realtor.org/RMODaily.nsf/files/Trademark_decision.pdf/\\$FILE/Trademark_decision.pdf](http://www.realtor.org/RMODaily.nsf/files/Trademark_decision.pdf/$FILE/Trademark_decision.pdf)

SENIOR ADVANTAGE REAL ESTATE COUNCIL ACCREDITS C-21 MATUREMOVES PROGRAM

The Senior Advantage Real Estate Council (SAREC) last week announced that it has approved the CENTURY 21 MatureMoves program training curriculum as an alternative to the two-day live lecture required to earn its Seniors Real Estate Specialist (SRES) designation. CENTURY 21 affiliates who complete the CENTURY 21 MatureMoves training course in lieu of the live lecture portion must also pass the related SRES course examination and fulfill all SAREC membership requirements. The CENTURY 21® MatureMoves certification program is available to CENTURY 21 System associates interested in servicing the mature consumer market and includes proprietary training focusing on understanding and servicing the unique needs of the mature homebuyer and seller.

"The SRES designation allows senior homebuyers and sellers

nationwide to identify those REALTORS® who understand their unique real estate needs and who are dedicated to helping seniors as they transition to a new stage in their lives," said SAREC Chairman of the Board Mike Silvas. "We are very pleased that Century 21 Real Estate Corporation has recognized the value that the SRES designation can bring to CENTURY 21 MatureMoves Specialists throughout the United States."

The Senior Advantage Real Estate Council (<http://www.seniorsrealestate.com>) is the organization that confers the Seniors Real Estate Specialist designation upon REALTORS® nationwide. SAREC's mission is to assist REALTORS® in meeting the unique real estate needs and concerns of maturing Americans. SAREC is owned by Real Estate Business Services Inc. (REBS), a C.A.R. subsidiary.

THE NEWSLETTER OF THE SANTA CRUZ ASSOCIATION OF REALTORS®
inside real estate

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