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NAR Legal Update: Broker Can Be Liable for Salesperson's Violations of Fair Housing Act



In a light of an opinion of the Supreme Court of the United States, the United States Court of Appeals for the Ninth Circuit has considered once again whether a broker can be liable for violations of the Fair Housing Act ("Act") based on the actions of his salespeople.

To briefly summarize the facts, Mary Ellen and David Holley ("Buyers"), a mixed race couple, were looking to purchase property in Twenty-Nine Palms, California. The Buyers visited Triad, Inc., d/b/a Triad Realtor ("Brokerage") to help them with their search and spoke with Grove Crank, a Triad representative. The

Brokerage was a corporation whose sole shareholder was David Meyer ("Broker"), who was also the president of Triad and also the designated officer/broker for the Brokerage. The Broker had turned the day-to-day operation of the Brokerage over to Crank. During the Buyers' home search, Crank allegedly prevented the Buyers from purchasing a home for racially discriminatory reasons. The Buyers eventually built their own house in the town, and the home they intended to bid on sold for less than the Buyers' proposed offering price.

The Buyers filed lawsuits against both

the Brokerage and the Broker personally, alleging violations of the Act. Because Crank's license was held by the Brokerage, rather than the Broker, the trial court dismissed the allegations made against the Broker in his capacity as a corporate officer of the Brokerage. The court also entered judgment in favor of the Broker individually on the other alleged violations of the Act, ruling that Crank's actions could not be attributed to the Broker individually, only the Brokerage, because the Brokerage was a corporation.

The appellate court reversed the trial court's ruling, determining that the Broker had potential liability in his capacity as owner, president, or designated officer/broker for Crank's actions because the Broker's duty to conform with the Act was non-delegable. The Broker appealed this ruling, and the Supreme Court of the United States unanimously reversed the appellate court. The Court determined that the Act did not vary the traditional rules of vicarious liability (or, when an owner can be liable for the actions of its employees) and so directed the appellate court to consider the allegations against the Broker under the traditional principles of vicarious liability.

On remand, the United States Court of Appeals for the Ninth Circuit found that the Broker could be personally liable for

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Affiliate News

By Scott Pine, Vice Chair of the Affiliate Committee

After a couple of years of hard work, the Santa Cruz Association of REALTORS® published the "2004 Strategic Plan" which was approved on January 9, 2004. The Strategic Plan is a document that defines what the Santa Cruz Association of REALTORS® wants to be in the future and recommends specific strategies to accomplish this end. Incorporated in the Strategic Plan are specific recommendations for the Affiliate Committee.

The Affiliate Committee objectives fell under Goal 5: to market and communicate the benefits and value of the REALTOR® Association to both the public and our members.

Strategy Assignments for the Affiliate Committee included the following six areas of concentration.

- Sponsor public education workshops and real estate related topics (i.e. financing, first-time home buyers, proposed legislation, landlord-tenant etc.)
- Create and promote a Speaker's Panel (public resource center) to speak or appear at civic organization meetings (Kiwanis, Rotary, Elks, etc.), Chamber meetings, high school career days, etc.; develop talking points.
- Expand Office Liaison Program to CAR/Legal updates and Affiliate industry updates; invite general membership.
- Develop marketing materials to promote the benefits of SCAOR Association membership (What is an Affiliate?) for distribution to non-member Affiliates for the purpose of expanding membership.
- Conduct a membership outreach program to include representatives from all real estate related fields (appraisers, attorneys, builders, architects, insurance agents, septic, pest, home inspection and home warranty companies, plumbers, roofers, electricians, etc.).
- Prepare outgoing press releases on activities and accomplishments of Affiliate members.

The Affiliate Committee/Affiliates are participating in these types of activities, often times in the background. As we move forward into 2005, the goal is to expand our efforts in these specific areas and create an environment where we can better measure our impact. If you have suggestions for activities, events or programs, please forward them to our attention at the Board or you can email me at pinescott@hotmail.com.

At the beginning of each year the incoming Chairperson for each committee is

appointed by the Chairman of the Board of the SCAOR and is responsible for recruiting committee members. The Affiliate Committee has an active membership and encourages both REALTORS® and real estate affiliates to join us for what promises to be a very active 2005.



Affiliate Spotlight

Woodward O'Connor Mortgage
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Woodward O'Connor Mortgage was born in 1989 when Stephanie Woodward decided to open her own business. Stephanie started in the real estate business in 1978 as a real estate agent and has held jobs in the real estate industry since then with experience in title, escrow, and mortgage loans. Woodward O'Connor Mortgage Associates moved to their present site at 4980 Capitola Road in Capitola in April 2000.

Mary Ann Robinson joined the staff as loan officer in May 2002, bringing with her experience in multi-family and commercial property lending as well as residential lending.

Woodward O'Connor Mortgage is a full service mortgage broker with a cheerful, dedicated, experienced staff here to serve your real estate loan needs.

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Santa Cruz County Statistics

Single Family Residences

2004	Current Inventory	New	Sold	Average	Median
August	821	387	257	\$740,612	\$639,000
Sept.	764	286	264	\$714,165	\$645,000
Oct.	657	248	251	\$706,196	\$660,000

Condos/Townhouses

2004	Current Inventory	New	Sold	Average	Median
August	106	79	62	\$447,439	\$425,000
Sept.	103	68	58	\$449,037	\$429,964
Oct.	96	54	48	\$459,692	\$455,000

Please visit <http://www.scaor.org/html/stats.htm> for more Santa Cruz County statistical information.

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State Home Sales at Second-Highest Pace Ever

Total state existing-home sales activity in the third quarter was at the second-highest pace on record, up 4.1 percent from a year ago, according to NAR. Total sales rose in 36 states, and 10 states saw double-digit increases in the third quarter compared with the same quarter in 2003. David Lereah, NAR's chief economist, said home sales will easily set a record this year. "The last six months is the strongest stretch of home sales ever recorded," he said. For more information, visit: www.realtor.org/PublicAffairsWeb.nsf/Pages/StateResales3rdQtr04.



NAR Legal Update

...continued from page 1

the actions of Crank and sent the case back to the trial court for further proceedings. The court first considered whether under a traditional brokerage relationship the Broker could be liable for the actions of his salespeople. Under the general principles of corporate law, a corporation is liable for the actions of its employees. However, the court found that a real estate corporation was different, as a corporation's designated real estate broker in California is legally responsible for the actions of the corporation's salespeople. So, the court found that a designated officer/broker in a California real estate corporation can be held personally liable for the actions of the corporation's salespeople. Therefore, the court ruled the Broker could be individually liable for the violations of the Act by his salespeople.

The court also considered whether the Broker was individually liable for the actions of Crank because the parties were in an agency relationship. Since the Broker had delegated the operation of the Brokerage to Crank, an agency relationship existed between the two, and Crank had a responsibility to assure that the Brokerage was in compliance with the Act as well as state housing laws. Due to the agency relationship between the

parties, the Broker could be individually liable for the actions of Crank.

Next, the court considered whether the Broker was liable for negligent supervision because of his failure to properly supervise Crank. To be liable for negligent supervision, a party must show that the principle was negligent in either the orders it gave to the agent or negligently failed to supervise the agent's actions. Since a jury could conclude that the Broker was negligent in delegating his responsibilities to Crank, the court sent these allegations back to the trial court for further consideration.

Finally, the court considered whether the Buyers had alleged sufficient facts to pierce the corporate veil. These allegations had been dismissed by the trial court and the Buyers sought to reinstate these allegations. "Piercing the corporate veil" is a legal doctrine which removes the "corporate shield" and makes an individual personally liable for the corporation's debts. This can occur when a single individual so controls all aspects of a corporation that it becomes the "alter ego" of that individual. A variety of factors are considered by courts when making this determination, such as observance of corporate formalities, capitalization of corporation, and percentage of corporate ownership.

Here, the Broker was the sole owner of the Brokerage, had paid the Brokerage's

taxes using his personal social security number, and there was a failure to follow corporate formalities (such as shifting control of Brokerage to Crank). The court also found that fairness and equity allowed the disregarding of the corporate shield, as the Brokerage had few assets to pay a judgment in favor of the Buyers and also did not have insurance coverage for such a judgment. Thus, the court ruled the Buyers could re-file the "piercing the corporate veil" allegations and these allegations would be considered again by the trial court.



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Our heartfelt thoughts and prayers are with Peggy's family
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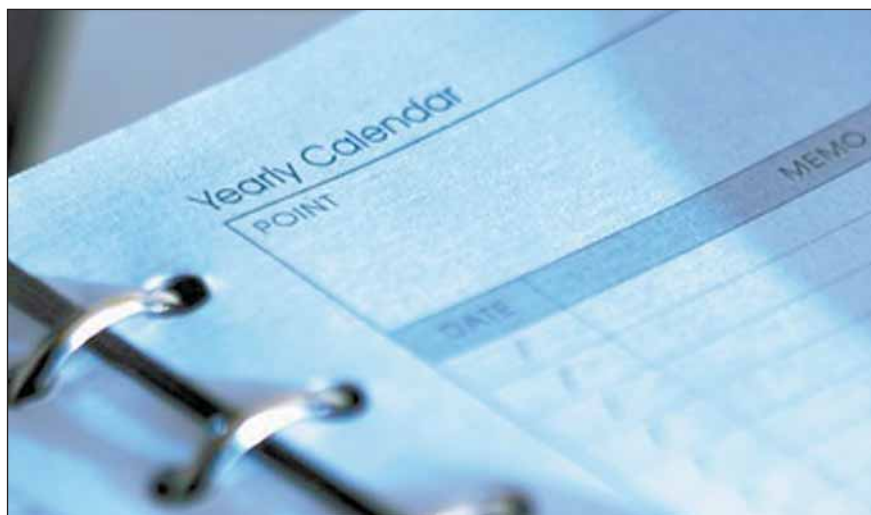
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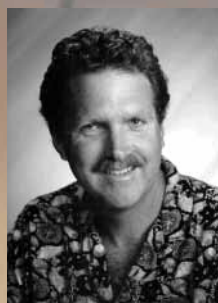
Celebrate Designation Awareness Month by starting a program toward an official REALTOR® designation and take your career to the next level. To learn more about the designations conferred by NAR and its affiliated Institutes, Societies, and Councils, visit www.scaor.org and click on 'Education' on the left side of the home page.



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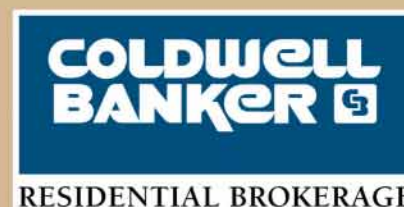


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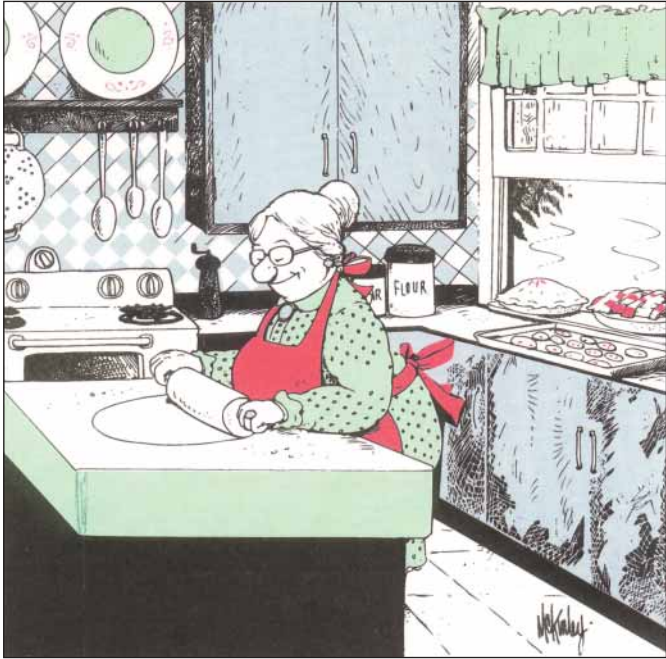
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Governor Arnold Schwarzenegger Appoints REALTOR® Jeff Davi DRE Commissioner

The California Association of REALTORS® welcomed Governor Arnold Schwarzenegger's appointment of Jeff Davi to the post of Commissioner of the Department of Real Estate.

"C.A.R. has already expressed its congratulations to the new commissioner and looks forward to a productive relationship as Mr. Davi settles into his new role," said C.A.R. President Ann Pettijohn. "We're pleased that a REALTOR® is part of Governor Schwarzenegger's team in Sacramento.

"C.A.R. is confident that REALTORS® will find a receptive commissioner on the housing policy issues that matter most to Californians. We look forward to working together to develop solutions to our state's housing affordability crisis," she said. "With his extensive background in the real estate industry, Mr. Davi will bring a unique slate of experi-

ence to his role as DRE Commissioner."

In addition to being the broker/owner of A.G. Davi Ltd., in Monterey, Davi most recently served as president of the Monterey Association of REALTORS® and chairman of RE InfoLink MLS. He served on the Affordable Housing Steering Committee of Monterey County, as well as numerous charitable and community organizations in the state. He also is a member of the California Association of REALTORS® and serves on its board of directors.



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Median Price of a Home in California Increases 21.4 Percent in October—Sales Post .5 Percent Increase, C.A.R. Reports



The median price of an existing home in California in October increased 21.4 percent, and sales increased .5 percent compared with the same period a year ago, the California Association of REALTORS® (C.A.R.) reported last week.

"While the median price of a home continued to charge ahead in October compared with a year ago, sales moderated to a more sustainable pace, typical for this time of year," said C.A.R. President Jim Hamilton. "The inventory of homes for sale also increased to nearly a four-month supply, compared with about a two-month supply a year ago," he said. "This is giving buyers a greater number of options when looking for a home and is also reflected in the time it's taking to list and sell a home, which has increased to 37 days—its highest level since July 1999."

Closed escrow sales of existing, single-family detached homes in California totaled 639,570 in October at a seasonally adjusted annualized rate, according to information collected by C.A.R. from more than 90 local REALTOR® associations statewide. Statewide home resale activity increased .5 percent from the 636,690 sales pace recorded in October 2003. The statewide sales figure represents what the total number of homes

sold during 2004 would be if sales maintained the October pace throughout the year. It is adjusted to account for seasonal factors that typically influence home sales.

The median price of an existing, single-family detached home in California during October 2004 was \$460,370, a 21.4 percent increase over the revised \$379,120 median for October 2003, C.A.R. reported. The October 2004 median price decreased .7 percent compared with a revised \$463,620 median price in September. "Year-to-date sales are up 4.1 percent compared with the same period a year ago, in line with our expectations," said Leslie Appleton-Young, C.A.R.'s vice president and chief economist. "October was the ninth month where the year-over-year price has increased by more than 20 percent, with the most rapid appreciation occurring in the shrinking pockets of affordability in the state—the High Desert, Riverside/San Bernardino and Palm Springs/Lower Desert regions."

Highlights of C.A.R.'s resale housing figures for October 2004: C.A.R.'s Unsold Inventory Index for existing, single-family detached homes in October 2004

See **Median Prices**, Page 14

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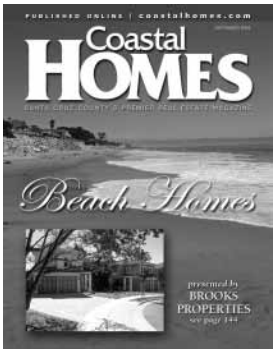
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December 2004

Sun	Mon	Tues	Wed	Thur	Fri	Sat
			1 <i>SCAOR HOLIDAY OPEN HOUSE 4-6:00 P.M.</i>	2 <i>TOURS Areas 23-43 9:30 A.M.-noon Areas 44-59 12:30-3:00 P.M.</i>	3 <i>BOARD OF DIRECTORS 8:30 A.M. DENNIS MCKENZIE Tax deduction for R.E. Agents 8:30 A.M.-noon</i>	4
5	6	7 <i>TOUR DEADLINE 2:00 P.M.</i>	8 <i>AFFILIATE COMMITTEE 8:30 A.M. MARKETING & PR COMMITTEE 2:00 P.M.</i>	9 <i>TOURS Areas 23-43 9:30 A.M.-noon Areas 44-59 12:30-3:00 P.M. GRI 114 Essential Concepts of the CAR Purchase Agreement</i>	10 <i>OFFICE CLOSED AT NOON Installation Dinner/Dance Seascape Resort</i>	11
12	13	14 <i>TOUR DEADLINE 2:00 P.M.</i>	15 <i>STRATEGIC PLANNING COMMITTEE 8:30 A.M. GRIEVANCE COMMITTEE 2:30 P.M. FOUNDATION FUNDRAISING COMMITTEE 3:00 P.M.</i>	16 <i>TOURS Areas 23-43 9:30 A.M.-noon Areas 44-59 12:30-3:00 P.M.</i>	17 <i>OFFICE CLOSED AT NOON Staff/Board of Directors Luncheon</i>	18
19	20 <i>RE INFOLINK CLASS 2-3:30 P.M. FOUNDATION TRUSTEES 3:00 P.M.</i>	21	22	23 <i>NO TOUR</i>	24 <i>OFFICE CLOSED CHRISTMAS HOLIDAY</i>	25 <i>MERRY CHRISTMAS</i>
26	27 <i>OFFICE CLOSED CHRISTMAS HOLIDAY</i>	28	29	30 <i>NO TOUR</i>	31 <i>OFFICE CLOSED NEWYEAR'S HOLIDAY</i>	January 1, 2005 <i>HAPPY NEW YEAR!</i>

Annual Calendar of Events

January 2005

- 1/3 Office Closed—New Year's Holiday
- 1/14 GRI 100-101/Agency Relationships & Ethics
- 1/17 Office Closed—Martin Luther King Observance

February 2005

- 2/2 Orientation—Day 1
- 2/4 Orientation—Day 2
- 2/11 GRI 102-104/Trust Fund Management/Fair Housing
- 2/16 Blood Drive—Assn Office
- 2/21 Office Closed—President's Day

Did You Know?

Santa Cruz Association of REALTORS® Housing Foundation

- The Santa Cruz Association of Realtors Housing Foundation is now accepting tax-deductible donations. If you wish to donate, please make your checks payable to SCAORHF and mail to the Santa Cruz Association of REALTORS®, 2525 Main Street, Soquel, CA 95073. Any amount you are able to donate is greatly appreciated.
- We would like to acknowledge you for your gift; please add your name or include your business card with your check. If you have any questions, please call Philip Tedesco, CEO, CAE at 831.464.2000.

Credit Cards

- The Santa Cruz Association of REALTORS® accepts Mastercard and Visa ONLY.

In a Pinch, You Can Manually eSYNC (update) Your DisplayKEY

- 1.) Press Enter to turn on your DisplayKEY.
- 2.) Scroll to the MANUAL eSYNC option and press Enter.
- 3.) Place the DisplayKEY in the Cradle. The Cradle light turns green indicating the DisplayKEY and Cradle are connected. The Cradle light flickers green and amber and then turns red indicating the modem is connected to KIM. The Key displays "CONNECTING TO CRADLE" during the entire eSYNC process. When the transfer of information is complete, the light turns GREEN and the key status is displayed to indicate the battery is charging. Once the key status is displayed, you may remove the Key from the Cradle.

IMPORTANT! Do not remove the DisplayKEY from the Cradle while the RED light is illuminated.

MAKE YOUR RESERVATION TODAY

**You are invited to the 83rd Annual
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**Honoring Dan Sedenquist,
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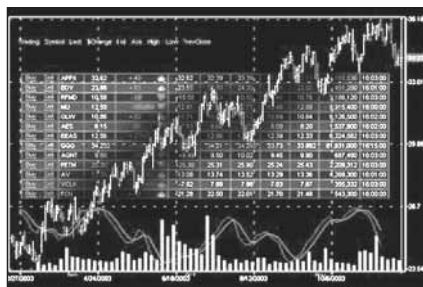
...continued from page 11

was 3.7 months, compared with 2.1 months (revised) for the same period a year ago. The index indicates the number of months needed to deplete the supply of homes on the market at the current sales rate. Thirty-year fixed mortgage interest rates averaged 5.72 percent during October 2004, down from 5.95 percent in October 2003, according to Freddie Mac. Adjustable mortgage interest rates averaged 4.02 percent in October 2004 compared to 3.74 percent in October 2003. The median number of days it took to sell a single-family home was 37 days in October 2004, compared with 26.2 days (revised) for the same period a year ago.

Regional MLS sales and price information is contained in the tables that accompany this press release. Regional sales data are not adjusted to account for seasonal factors that can influence home sales. The MLS median price and sales data for detached homes are generated from a survey of more than 90 associations of REALTORS® throughout the state. MLS median price and sales data for condominiums are based on a survey of more than 60 associations. The median price for both detached homes and condominiums represents closed escrow sales.

Statewide, the 10 cities and communities with the highest median home prices in California during October 2004 were: Laguna Beach, \$1,400,000; Los Altos, \$1,399,000; Newport Beach, \$1,278,250; Burlingame, \$1,180,000; Palos Verdes Estates, \$1,170,000; Beverly Hills, \$1,155,000; Calabasas, \$1,137,000; Coronado, \$1,125,000; Saratoga, \$1,108,000; Mill Valley, \$905,000.

Statewide, the 10 cities and communities with the greatest median home price increases in October 2004 compared with the same period a year ago were: Victorville, 54.6 percent; Redlands, 54.6 percent; Hesperia, 53.3 percent; Barstow, 53.3 percent; West Sacramento, 53.3 percent; Calabasas, 51.7 percent; Adelanto, 51.2 percent; California City, 50 percent; Newport Beach, 48.6 percent; Desert Hot Springs, 47.2 percent. For more information, visit: www.car.org/index.php?id=MzQzNjA=.



Reverse Mortgages Continue Dramatic Growth

The number of reverse mortgages endorsed by the Federal Housing Administration (FHA) during the fiscal year 2004 was 37,829, more than double the fiscal year 2003 production of 18,097. Reverse mortgages represented 3.8 percent of FHA's entire single-family volume during 2004. With 10,045 endorsements, California was the state with the greatest number of reverse mortgages,

followed by Florida and Texas.

FHA's Home Equity Conversion Mortgage (HECM) program, created by Congress in 1987, allows homeowners over the age of 62 to tap into the equity in their homes without having to repay the loan until they move out. For more information, visit www.mortgagebankers.org/industry/news/04/1104.html.

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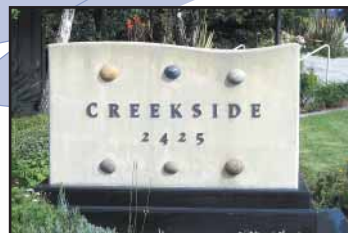
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the opening of our career training center located in the Creekside Office Suites, at 2425 Porter Street, Suite 12, Soquel. We have taken our commitment of career development to the next level. We look forward to our peers and vendors within the real estate community having the opportunity to do business with our ever growing team of real estate professionals.



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