



Courtside *Newsletter*

Overheard at the C.A.R. Winter Business Meetings

BY: THE GIARDINELLI LAW GROUP, APC

Last month, our team had the privilege of attending the California Association of REALTORS® Winter Business Meetings in Indian Wells. This month's *Courtside Newsletter* will highlight some of the information gathered at that event.

California Bureau of Real Estate Forum

Real Estate Fraud:

- CalBRE is currently seeing 7 kinds of fraud:
 1. Advance Fee Scams (still)
 2. Unlicensed Pre-Rental Scams
 3. Online Rental Fraud-hijacking from rental listings (taking up-front money for deposits)
 4. Unlicensed Real Property Management (without broker's involvement or knowledge)
 5. Timeshare Advance Fee Scams
 6. Self-Dealing with Property Management Funds & Other
 - Seeing shortages, conversions and trust fund commingling
 7. Deep Fraud (stealing properties, putting liens on properties-usually on second homes)
- CalBRE is also seeing a lot of scammers using real estate agents' license numbers and names
 - What an Agent Can do to Prevent This:
 - Monitor on-line profiles
 - If an agent sees something that is not theirs, the agent should contact the police, contact his/her internet provider to remove, as well as contact the FTC and the FBI.

Audits:

- 5 Types of CalBRE Audits:
 - Investigative – New (55%)
 - Investigative – Follow up
 - Investigative – Other
 - Routine (45%)
 - Routine – Follow up
- The Audit Areas:
 - Property Management (75%)
 - Mortgage Loans (11%)
 - Broker Owned Escrows (5%)
 - Other (9%)

- Greatest Areas for Audits:

- Private Money/Hard Money
- Property Management
- Broker Owned Escrow

- Findings of Audits:

- Major Violations (Accusations) (33%)
- Corrective Action Letter (31%)
- Cite & Fine (2%)
- No Violations (16%)
- Minor Violations (19%)
 - 45% of Audits find Trust Fund Violations
 - \$6.5 million in shortages in 2014

Broker Supervision:

- Considerations Auditors Look For:
 - Does Broker have a Policies and Procedures Manual?
 - P&P Manual depends on size of brokerage
 - Is the Broker Monitoring Compliance of its Policies and Procedures?
 - Does the Broker have Training Program for Salespersons?
 - Are the Client Files Secure?
 - Broker and Agents must protect private information
 - Civil Code § 1798.84-outlines the proper way to dispose of records (shredding, modifying, erasing)
 - How records are disposed is becoming a growing problem
 - Does the Broker have a Trust Account and Does it Reconcile?

Professional Standards

Potential New Code of Ethics Training Requirements:

- It was reported that the National Association of REALTORS® Presidential Committee has recommended changing the four-year requirement for Code of Ethics training for every REALTOR® to training every two years.
 - The goal would be to start the program in 2016 in an effort to enhance professionalism.

Continued...

REALTOR® Code of Excellence:

- The Presidential Committee is also considering the implementation of a REALTOR® Code of Excellence, which would develop a set of goals for high-end REALTORS® to target.
 - It would be different than the Code of Ethics since it would be voluntary compliance only.

Changes to the ethics complaint process:

- Shorter time frames
- Development of a written policy where the Association of REALTORS® (AORs) can adopt more aggressive time frames
- Improvement of the processes under which continuances are granted.
- Upgrade of the remote testimony policies

NAR Code of Ethics Core Standards.

- Effective 2016, AORs will track compliance.
- After being found in violation of a publishable offense (reprimands, fines, suspension, and expulsion) the disciplined member must provide a photo to C.A.R. and the local Association within 10 calendar days from when the local association’s Board of Directors adopts the discipline recommendation.
 - Failure to provide the photo and authorization within 10 days will result in suspension of membership until the photo and authorization are provided.
 - All AORs in California must submit the photos and discipline for publication by C.A.R. or face sanctions in the C.A.R. bylaws.

Member Legal Services

New California Laws

- Record Retention (Effective 1/1/15): Brokers and agents do not need to keep texts, tweets, etc. Correspondence and emails must be kept for three years, including those related to negotiations.
- Team Names and Fictitious Business Names (Effective 1/1/15): It is okay to market as a team; the team must be at least two members. The marketing must include word “team” and no reference to the word “broker.” It must also include the surname of one of the agents, plus the BRE number, and name of the brokerage. The team must file a FBN with the County, which salespersons can obtain with written permission of broker (BRE Form 247).
- Homeowners Associations and Delivery of Documents (Effective 1/1/15): There are now two separate forms—mandatory vs. non-mandatory reports, which indicate how much is being charged for mandatory reports and must give estimates. The seller can’t charge the buyer for cost of mandatory reports. Per paragraph 10F of the Residential Purchase Agreement, the seller may put money into escrow

to pay HOA costs or have seller pay directly to HOA. The seller can notify the HOA what they already have, and therefore cannot get charged.

- Email addresses collection by CalBRE: AB 2540, Business and Professional Code Sections 10150, 10151, 10162 and 10165; effective 1/1/15: CalBRE now requires email address from licensees.
- Electronic Communications (Effective 1/1/15): A landlord and/or tenant may use electronic communications for the security deposit, inspection requests, and to sign leases. However, they cannot electronically sign a notice of how much is taken out from a security deposit. This notice must still be mailed or personally delivered.
- Anti-Bullying Training (Effective 1/1/15): Companies with 50+ employees must have training every two years consisting of a two hour class. The class will include sexual harassment and anti-bullying training. Agents are considered as employees for anti-bullying purposes.
- FHA Anti-Flipping Rule: Unless the property is a government REO or disaster, you must own a house for at least 90 days before reselling (aka flipping) it to a new buyer at a higher price using FHA financing.
- Eminent Domain: FHA cannot participate in mortgages that are obtained via eminent domain.
- FHA Signatures: Lenders can accept e-signatures except on promissory notes.

Forms Update

February 2015 Forms Release:

- Independent Contractor Agreement
 - New dispute resolution paragraph—initially this was only required by the agent. Parties must attempt to resolve disputes through mediation. In a commission dispute, if both parties agree, they will use an Association program. If they do not agree, they will use binding arbitration through JAMS and the broker will pay all costs for the arbitration. Indemnity disputes do not fall into this category. Furthermore, if there is a class action waiver, agents can be required to sign a new agreement.

* * *

As always, if you have any questions about the new, old, or revamped laws or forms, seek out your local REALTOR® Association or qualified legal counsel.

This Newsletter is a copyrighted publication and may not be reproduced or transmitted in any form or by any means without written permission. This article does not necessarily reflect the point of view of The Giardinelli Law Group, APC, or other person or entity who publishes it. This article provides legal information abridged from statutes, court decisions, and administrative rulings and contains opinions of the writers. Legal information is not the same as legal advice, which is the application of law to an individual’s specific circumstances. Although every effort is made to ensure the information is accurate and useful, it is recommended that you consult with a lawyer to obtain professional assurance that the information provided and your interpretation of it is appropriate for a particular situation. To request further information or to comment on this newsletter, contact us at (951) 244-1856 and visit our website at www.glawgroupapc.com.