



Courtside *Newsletter*

C.A.R. Winter Business Meetings

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Our office once again had the privilege of attending the California Association of REALTORS® (C.A.R.) winter business meetings. Below is an overview of some of the topics that were touched upon in those meetings.

Legal Affairs Forum

Copyright and Trademark Issues Affecting REALTORS®

Shuan Lue, a C.A.R. Staff Attorney, provided a general presentation of Intellectual Property for REALTORS®, which discussed the basics of copyright and trademark law. The main takeaway from the presentation was that almost any original material produced by an individual that has some level of creativity to it can be considered copyrighted or a trademark. In order for employers and agents to protect themselves against copyright or trademark infringement, they should make sure to seek permission prior to the use of any material that would not be considered fair use, or common to the general public. This can be done through an assignment of rights and licenses.

Cyber Threats Involving Real Estate Transactions

FBI Supervisory Special Agent, Michael Sohn presented on the topic of Cyber Threats Involving Real Estate Transactions. Per Mr. Sohn, small businesses, companies with 100 or fewer employees, are at a higher risk for being a victim of cybercrime because there is less of a risk for the cybercriminal in getting caught.

One of the most popular methods of cybercrime currently taking place is through “Business Email Compromise” (“BEC”), in which a cybercriminal is able to obtain thousands of dollars fraudulently in just five simple steps.

1. The cybercriminal searches the internet for programs which generates email lists for a particular industry.
2. The cybercriminal then sends a “phishing email,” or an email that is legitimate on its face but is actually fraudulent, to thousands of the email addresses he just received from the internet site. (For a real estate agent, it could be a document download under a client’s name.)
3. When the email recipient opens the email and clicks the link, he will be directed to input his or her username and password into the account in order to download the document. The recipient has now unknowingly sent the hacker the ability to access his account.
4. The cybercriminal will send an email to a client that will provide

the client with new instructions on how and where to wire money for transactions.

5. The client then sends the funds through the wire instructions as part of the real estate transaction. He is often unaware of the fraud until they speak with his real estate agent and it becomes known that the appropriate parties did not receive any money. Usually by then it is too late.

Mr. Sohn stated that the only way to protect yourself and your clients is to notify your clients to not respond to any email that appears to be sent by you or your company regarding wiring money or the payment of client bills. Also, it is essential that a small business have a two-step authentication security system. Such systems require dual certification through the use of a computer and a mobile device. For further information on protecting your business from cybercrime, see our [September 2016 Courtside Newsletter](#).

Currently, firms and agents are not being held liable for BEC crimes. However, there is a potential for individuals to become liable if reasonable security measures are not taken.

Standard Forms Advisory Committee Forum on Forms

- Water-Conserving Plumbing Fixtures and Carbon Monoxide Detector Notice (WCMD): One of the topics that caused significant discussion and debate was the law behind the new WCMD form regarding low-flow water fixtures. Many agents are concerned with the possible effect this law will have on their clients and how to advise them properly. C.A.R. has developed numerous tools available on their website to deal with this topic, such as a training PowerPoint for real estate agents as well as an informative flyer and video for clients. The Standard Forms Advisory Chair, Jeff Kahn, also stated that it was important to note that there is no enforcement mechanism for this law and that it is a condition of ownership requirement, not a point of sale.
- Team Agreement: C.A.R. has announced that it is in the process of creating a Team Agreement form for this year that will better define the scope and responsibilities of agents participating in a Team relationship. There was no release date given for this form.

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Member Legal Services

For detailed information regarding new California laws, please see our [December Courtside Newsletter](#).

One issue of note that arose in the meeting was with regards to the Department of Housing and Urban Development’s (HUD) [“Guidance on Fair Housing Protection for People with Limited English Proficiency”](#) released in September 2016. Ultimately it was advised that agents should not be translators. Instead, agents should speak to the translator in English and rely on the translator to translate.

Property Management

C.A.R.’s Robert Bloom presented the Property Management Legal Open Forum: New Laws and Recent Developments. The presentation focused on the following:

Commercial Leasing Certified Access Specialist Program (CASp) Disclosure and Cancellation Right

Effective on September 17, 2016, new disclosure language is required when there is no CASp report. This information is included in the new form, which is titled, “Commercial Lease Construction Accessibility Addendum” (CLCA). This does not require meeting applicable standards as a condition of the lease. If there is a report, Landlord should provide this form 48 hours prior to the tenant signing the lease. Otherwise the lessee has a 72-hour cancellation right.

Unlawful Detainer Masking

Public access to Unlawful Detainer records is no longer permitted unless the plaintiff/landlord prevails within sixty (60) days of filing the unlawful detainer action. Previously, it was the defendant/tenant who had to prevail within sixty (60) days of filing to bar access. The practical effect of this is the ability of property managers to know which tenants have been sued for unlawful detainer will be compromised.

Criminal Screening

The HUD’s General Counsel restricts criminal screening and blanket refusals to rent based upon criminal records or conviction as having disparate impact on protected groups. There is no requirement that a landlord or property manager intends to discriminate. A policy or practice, even a facially neutral one, may constitute illegal discrimination unless it is necessary to serve a substantial, legitimate, nondiscriminatory interest of the landlord or property manager. Such a policy may also be allowed if the landlord or property manager adopts a practice that has less discriminatory effect. The landlord or property manager must consider when a conviction occurred, the underlying conduct and what the convicted person has done since. (This is a very difficult and subjective burden.)

It is still legal to take into consideration a criminal record. HUD provides further information and guidelines that should be followed on its website in an [“Office of General Counsel Guidance on](#)

Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.”

Marijuana law

Proposition 64 legalized recreational marijuana use under certain requirements. However, marijuana remains a schedule 1 substance under the federal Controlled Substance Act (CSA) with no accepted medical use. The Department of Justice (DOJ) may prosecute under the CSA for the production, sale, and distribution of marijuana. One of the penalties landlords and property owners should be aware of is property forfeiture. Because of this, landlords may still prohibit marijuana use because marijuana does not come within the protections for “personal agriculture” in portable containers under Civil Code § 1940.10. Landlords should review their lease to ensure they prohibit or control marijuana use, tobacco and e-cigarettes. Landlords may wish to add a provision to their lease to prohibit plants and cultivation. Landlords who do not currently want to prohibit smoking may want to at least prohibit marijuana use.

Professional Standards Committee

Some of the highlights from the Professional Standards Committee meeting included:

- Beginning January 1, 2017 through January 31, 2018 and for successive two (2) year periods thereafter, REALTORS® are required to complete biennial ethics training of not less than two hours and thirty minutes of instructional time. The new Code of Ethics classes will be available in the spring and will fulfill quadrennial requirements.
- The National Association of REALTORS® (NAR) Code of Excellence has been approved. The goals of the Code of Excellence will be to work with REALTORS® to improve from the standard of “good enough” and link participation to consumer view of superior performance, thus increasing overall competence.
- Some changes to the NAR Manual include:
 - If a member resigns/terminates membership with a pending disciplinary complaint, the complaint will still be heard but any disciplinary sanction imposed will be stayed until the member rejoins.
 - A complainant may withdraw his/her complaint up to the time a decision is made, even during the hearing.
 - Disputes between two listing brokers where no contract exists between the parties and the dispute is not specified in Article 17, Standard of Practice 17-4 are non-arbitrable.
 - Before an arbitration hearing is closed, the parties should be given an opportunity to discuss settlement amongst themselves

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Should you have any questions regarding any of the information contained herein, we urge you to seek qualified legal counsel.

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