

# *inside* REAL ESTATE

*Santa Cruz County's Real Estate News Source*

A publication of the Santa Cruz County Association of REALTORS®

June 2011

## **Time To Cast Your Vote!**

*For the 2012 SCCAR Officers and Directors*



*SCCAR Election and General Membership Meeting, June 24th*



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## INSIDE REAL ESTATE Newsletter

*Inside Real Estate* is the official monthly newsletter of the Santa Cruz County Association of REALTORS® provided as a member service to inform, educate and update REALTOR® and Affiliate members on local, state and national news, as well as the Association's calendar of events.

**Santa Cruz County Association of REALTORS®**

2525 Main Street, Soquel, CA 95073  
(831) 464-2000  
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## IMPORTANT NOTICE

### General Membership Meeting & Election

Members of SCCAR are invited to come to the SCCAR office on Friday, June 24th at 9 - 11:30 am to receive a legal update from SCCAR Attorney, Lloyd Williams, of Bosso Williams Law Firm and a C.A.R. Director report. During this time, we will also be holding our SCCAR annual election of the 2012 Officers and Directors. Come cast your ballot and show your support for the next group of SCCAR leaders!

**Slate of nominees:****President Elect (1 year)**

John Hickey, Monterey Bay Properties

**Secretary Treasurer (1 Year)**

Betty Danner, Coldwell Banker Residential Brokerage

**Directors (3 Years)**

John Peterson, Sterling Properties

Carol VanAusdal, Keller Williams Realty - SC

**Director (1 Year)**

Morgan Lyng, David Lyng Real Estate

A continental breakfast will be provided. Reservations must be received by June 17th. To register email the following information: name, office name, phone and number of attendees to Leslie Flint, [lflint@mysccar.org](mailto:lflint@mysccar.org) or Norma Milete, [nmilete@mysccar.org](mailto:nmilete@mysccar.org). A credit is required to hold your seat.



# From The President To Sacramento and Beyond!

*Candace Bradfield*  
*SCCAR President 2011*  
[bradfield@cruzio.com](mailto:bradfield@cruzio.com)





## When is a "Proposal" a Binding Lease?

Terry Rein  
Bosso Williams, APC

*Real Estate  
Legal  
Matters*

The 9<sup>th</sup> Circuit Court of Appeals recently held that a one page "Final Proposal" was a binding lease, even though the parties never agreed upon its final terms. In *First National Mortgage v. Federal Realty Investment Trust*, First National sought to recover damages for Federal Realty's anticipatory breach of a "Final Proposal" signed by the parties with respect to commercial property in San Jose, California. The court awarded First National \$15.9 million in damages, and Federal Realty appealed. The Court of Appeals upheld the decision of the lower court, even though the court acknowledged that there was conflicting evidence as to whether the "Final Proposal" was intended to be a binding lease.

The Final Proposal was a one-page, nine-paragraph document regarding a ground lease. It provided for a rent of \$100,000 per month, with increases of 3% annually. Under the Final Proposal, Federal Realty was to "prepare a legal agreement for First National's review to finalize the agreement." The last clause of the Final Proposal stated: "The above terms are hereby accepted by the parties subject only to approval of the terms and conditions of a formal agreement."

Following the signing of the Final Proposal, the parties engaged in extensive, but unsuccessful, negotiations toward a formal agreement. Soon thereafter, the real estate market took a turn for the worse, and, although the parties exchanged several more offers and counteroffers, they were unable to reach an agreement. When these efforts proved unsuccessful, First National brought an action for anticipatory breach of contract.

The key legal issue addressed by the Court was the conditional nature of the Final Proposal. The court acknowledged on one hand that an "agreement to agree," without more, is not a binding contract. On the other hand, an agreement is not necessarily unenforceable merely because it is subject to the approval of a formal contract. Whether writing constitutes a final agreement or merely an agreement to make an agreement depends primarily upon the intention of the parties. In the absence of ambiguity this must be determined by a construction of the instrument taken as a whole.

In examining the Final Proposal, the Court noted that the parties went from a "Counter Proposal," to a "Revised Proposal," to a "Final Proposal." The Court stated that it cannot be said that the Final Proposal was not meant to be binding as a matter of law. The Court felt that the Final Proposal was binding because it clearly stated that its terms "are hereby accepted by the parties' subject only to approval of the terms and conditions of a formal agreement".

The Court noted that where the parties have agreed in writing upon the essential terms of a lease, there is a binding lease, even though a formal instrument is to be prepared and signed later. The formal instrument may be more convenient for purposes of recordation and better designed to prevent misunderstanding than the other writings, but it is not essential to the existence of the lease. The mere fact that a written lease was in contemplation does not relieve

either of the contracting parties from the responsibility of a contract which was already expressed in writing.

The Court distinguished this situation from a "letter of intent" which specifically provides that it is of "no binding effect." The court stated that calling a document "letter of intent" implies, unless circumstances suggest otherwise, that the parties intended it to be a non-binding expression in contemplation of a future contract, as opposed to it being a binding contract. The Court stated that calling something a "proposal," instead of a "contract" or a "lease," does not necessarily mean it was not meant to be binding, especially where the circumstances suggest otherwise. In this case, the document specifically omitted Federal Realty's standard non-binding clause, which it had inserted in earlier drafts, reflecting its binding nature.

**This case is an important reminder that a party to a transaction must clearly state whether or not a proposal or letter of intent is intended to be binding.** Courts will scrutinize transactions carefully when one party refuses to execute a lease or tries to negotiate a new contract after a preliminary agreement has been reached.



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EQUAL HOUSING LENDER



*The Santa Cruz County Association  
of REALTORS®*

*90th Anniversary Luncheon  
Celebrating 90 Years of Service  
to the Real Estate Industry in  
Santa Cruz County*

*Wednesday, July 13, 2011  
11:30 am - 2 pm  
Cocoanut Grove Sunroom*

*This event will feature exciting speakers, a  
delicious luncheon and a chance to reminisce  
and network with fellow members*

*Please RSVP by July 6, 2011  
\$35 SCCAR member, \$45 Non-member*



RSVP to SCCAR, 2525 Main St. Soquel, CA 95073 | Phone 831-464-2000 | Fax 831-464-2881 | www.mysccar.org

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\_\_\_ Check \_\_\_ Visa \_\_\_ Mastercard \_\_\_ American Express \_\_\_ Discover

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**MENU**

Grilled salmon and Chicken La Selva will be served. Please specify if you would like the vegetarian entrée: \_\_\_\_\_

# Welcome to The Neighborhood Corralitos

**Candie Noel,  
Bailey Properties, Inc.  
[cnoel@baileyproperties.com](mailto:cnoel@baileyproperties.com)**

When people say Corralitos it sounds like they are talking about a dream world. People love Corralitos and its warm, sunny, lazy days, rural atmosphere, and sense of community. It is everyone's ideal place to raise their family with a little elbow room, grow a few vegetables, and have a few chickens, and maybe a goat or two. And, oh yeah, the kids get to go to Bradley School too.

About 2,430 people reside in Corralitos. Its 815 households are spread out over 9 square miles. Only 0.001% is water which is probably Chandler Lake, aka Freedom Lake, aka Calabajas Lagoon. Water gourds or calabash used to grow wild around Calabajas Lagoon. Has anyone seen a calabash lately? At one time apple trees covered the landscape as far as the eye could see. In spring the air was filled with the scent of apple blossoms, and a continuous line of pink blossoms could be seen from one end to the other. Many of these historical apple orchards are slowly being replaced with raspberry farms and vineyards. Regardless of the changing crops, Santa Cruz County's large agriculture industry has strong roots in Corralitos.

Joseph and Jewell Hatton, and their two daughters were some of the earlier residents of Paradise Heights, later known as "Crow's Nest". In 1934 they purchased a 3 room house that included a kitchen, front room, dining room and a closed in porch. Lot 13 in the Crow Subdivision, Bowen Tract cost \$250.00. The monthly payment was \$2.00 with an interest rate of 6%. Property taxes were due monthly at \$2.00 a month. Insurance unknown. Estimated PITI was \$4.00 a month.

The Crow's Nest was surrounded by apricot orchards. People living on Crow, Bowen, Hatton, Whiteman, and Velazquez streets are fortunate to have some of these original trees on their land. They still produce sweet, juicy cots. There was a community well where people carried buckets of water to their home for household

use, and several small shared outhouses. The kids had a few favorite pastimes and they revolved around water buckets and the outhouses. I'm sure you can picture these impish events. I am just as sure you would never have participated in them.

Pastime number 1. Imagine carrying that heavy water bucket from the community well to your house. When the water carrier was almost home, kids would throw large dirt clods into the buckets full of water. And then run.

Pastime number 2. The kids would lay in wait for someone to go into the outhouse. And lock them in. Hee, Hee!

Pastime number 3. Toilet paper was a luxury and very hard to come by. It was not a good day for Mom's & Dad's when they would wake up to find the apricot trees had been T.P.'d. Again. Some things never change.

*Continued on Next Page*



## Welcome to The Neighborhood

*Continued From Previous Page*

Take a bike ride around Corralitos and picture how the original families and founders lived. Their homes and farms were in the Crow's Nest, and the streets of Varni, Amesti, Brodin, Brown (Valley Road), Aldridge, Hames, of course, Crow himself. Everyone knew each other, and shared a sense of community.

About one-third of the homes in Corralitos are sixty years old or more. Some of their small cottages that remain are pretty much close to their "original" modest appearance; 700 s.f. home on a 6500 s.f. lot. Some still have a closed in porch in the front of the home, or a packing plant in the back. Some have been remodeled or added onto.

Most of Corralitos' landmarks remain today. Five Mile House, Corralitos Market (Scotts Store), Mann packing shed, Hanson Feed, Alladin Nursery, the Corners. They are easy to find on your bike ride as they stick out of the open Ag land.

The Five Mile House area has a special history of its own. In the late 1800's it was a stage stop, and a watering spot for the numerous teams of horses hauling lumber from the mountains, straw to the paper mill. It was complete with two saloons, a hotel, a public meeting hall, and blacksmith shop. Around 1919 the Jensens purchased property and started Alladin Nursery. Next they built and started a grocery store and service station. In 1929 the unique old-Spanish style service station was built for Frank Scott a Corralitos merchant. Mr. Scott named his service station 5 Mile House. It was the five mile point from Watsonville and was marked with a steel button in the center of Corralitos Road where it intersects with Freedom Boulevard. The button was home plate for the local kid's baseball games.

In 1941 the Sanders purchased the property containing the Five Mile House service station, house (Cadillac Café), and an old tin-roofed building which he converted into a local bar. Mr. Sanders also built a cage at the rear of the service station for his



2 pet lions. When necessary, Mr. Sanders would bring the lions into the bar to clear it out so he could close for the night. The four-unit hotel was added by Mrs. Sanders in the 1950's.

After touring the bottom section of Corralitos, stop for lunch at Corralitos Market and scarf down some of their infamous sausages. Relax at shady, little park across the street. Now you are ready to see the other side of Corralitos, and head up Eureka Canyon. A little way up, the landscape will change and you will be in an old redwood forest. As odd as it seems, at one time, most of Corralitos was covered with redwood trees, even around Calabasas Lagoon. The De Anza expedition traveled through Corralitos in 1774 and documented redwood trees 11 - 13 feet in diameter. A few of the trees can be seen today on Corralitos Road near Varni Road. These second growth redwoods were only five to six feet tall in 1878. To many old time locals these trees have an emotional significance. They mark the entrance to their lovely, quaint, little town of Corralitos.



# C.A.R. Meeting Reports

## Definitely Worthwhile

Renee Mello

Local Government Relation Chair

[renmello@aol.com](mailto:renmello@aol.com)

As the alarm went off at 4:00 and I trudged to the RV to take a shower (our community well had collapsed a few days earlier), I asked myself why I was putting myself through all this. I drove the three hours to Sacramento, just in time for the briefing.

There were four issues that we needed to address with our Representatives in Sacramento. The first issue had to do with Forced Over Withholding On Independent Contractors. Although this has not been formally introduced as a bill, C.A.R. is concerned in light of the current economic condition it is something that could come up. In addition to the Quarterly Tax Returns that most REALTORS® submit, the Broker would need to withhold an additional 3% of the commission and pay it to the Franchise Tax Board. I'm sure I don't need to explain why C.A.R. would be opposed to this bill. Our arguments were that there is no evidence that independent contractors are failing to pay their income tax obligations, it creates significant administrative burdens for individuals that are now required to file 1099-MISC reports with the FTB. The third argument was that there would be significant cost to the Franchise Tax Board.

The second issue was a Tax on Services. Again no formal bill introduced but we wanted to let them know we would oppose it if it should be introduced. This would not only affect REALTORS® but all of our service organizations, i.e., pest inspectors, home inspectors, appraisers, etc. This would increase the cost of housing because of the increase in services involved in the purchase. It would also decrease the amount of money we put in our pocket.

The third issue we addressed was preserving the Mortgage Interest Deduction. In light of the budget challenges both at a State and Federal Level this one keeps rearing its ugly head. We wanted Sacramento to know we would be against anything that would try to change the current Deduction limits.

Last but certainly not least was SB (Senate Bill) 184 (Leno), Rent Control. The Costa Hawkins Rental Housing act of 1995 prohibits rent controls on new construction. This bill would allow rent control on new construction, further negatively impacting our already challenged construction industry.

We met with Assemblyman Alejo's staff at 4:00, presented our sentiments on the above four issues and were told our recommendations would be taken under advisement.

Now consider that there were REALTORS® from all over California giving the same message to their representatives. Then consider how if even one of these ideas got passed how it would negatively impact our business.

On the drive home that evening, I reflected how it was worth it to get up at 4:00 and make the trip to Sacramento. I felt I had had impact on those issues that affect my ability to do business. Definitely worthwhile.

## Why Lenders Can't/Won't Lend & the Future of Fannie Mae & Freddie Mac

Lela Willet

C.A.R. Director

Joel Singer, C.A.R. CEO, spoke to a full house at the state meetings in Sacramento in May.

The Financial Market Overview presentation commenced with a long view of long-term rates. After FDR's New Deal and the birth of FHA, Fannie Mae and 30-year fixed rate mortgages, the homeownership rate rose to 44% in 1939. Freddie Mac was formed in 1970 and issued the first MBS (mortgage backed securities) on conventional loans. In 1974 housing in California was more affordable than the U.S. as a whole! Interest rates as high as 15% in the mid 80's spawned the 1984 Secondary Mortgage Market Enhancement Act, a "private sector existence bill". The Tax Reform Act of 1986 allowed for MBS's to be carved into tranches, and by 2000, the homeownership rate had jumped to 66%. Between 2002 and 2008 private issuers sold more than \$3 trillion in MBS. This dropped to \$4.5 Billion in 2010! The decrease in MBS is one of the most stunning changes in the timeline from 1920 to present. The Private Label market for MBS is best described as comatose. Today the value of mortgages purchased, securitized, and guaranteed by Fannie and Freddie exceeds \$5 trillion – approximately 50% of all US single –family residential mortgages and 90% of the mortgages originated in 2010.

The future of Fannie and Freddie is unclear. Political rhetoric does not match industry views and needs. Quick elimination will harm a still unstable housing market. With over \$5 trillion owned or guaranteed by Fannie & Freddie there is no easy solution. Without government guarantees, it is projected that mortgage rates could be hundreds of basis points higher, that investors would not consider mortgage pools unless they were accompanied by high down payments (30%), and that the 30-year mortgage would become an endangered species. Without the 30-year mortgage, mortgage payments would rise and affordability would fall.

Several high-profile Federal issues were outlined. The high-cost loan limit of \$729,750 expires 9/30/11, returning to \$625,500. What will this do to the Santa Cruz County market? How will "QRM" Qualified Residential Mortgage tests affect lending? The mortgage interest deduction is facing the worst threat since 1986. Will a plan evolve for handling mounting short sales?

Joel Singer ended by predicting that the U.S. private market will come back, but not in a few years, so getting rid of Fannie and Freddie quickly cannot work. The emphasis should be on developing a completely new lending model. The silver lining is that Mr. Singer recommended that today is a great time to invest in real estate.

*See also Pages 9 & 10*

# C.A.R. Meeting Reports

## Taxation and Government Finance Committee

Steven Allen

Immediate Past President and C.A.R. Director

steven@allenginc.com

The attitude of the spring Taxation and Government Finance Committee Meeting was that the real estate industry is currently a legislatively "target rich environment" and that C.A.R. needs to carefully choose our battles. Some of the more egregious matters being discussed were as follows:

**AB 350 (Solorio) Displaced Property Service Employees** - Existing law, the Displaced Janitor Opportunity Act, requires contractors and subcontractors, that are awarded contracts or subcontracts by an awarding authority to provide janitorial or building maintenance services at a particular job site or sites, to retain, for a period of 60 days, certain employees who were employed at that site by the previous contractor or subcontractor. The act requires the successor contractors and subcontractors to offer continued employment to those employees retained for the 60-day period if their performance during that 60-day period is satisfactory. The act authorizes an employee who was not offered employment or who has been discharged in violation of these provisions by a successor contractor or successor subcontractor, or an agent of the employee, to bring an action against a successor contractor or successor subcontractor in any superior court of the state having jurisdiction over the successor contractor or successor subcontractor, as specified.

This bill would rename the act the Displaced Property Service Employee Opportunity Act and make the provisions of the act applicable to property services, which would include licensed security, as defined, landscape, window cleaning, and food cafeteria and dietary services in addition to janitorial and building maintenance services. The bill would extend the 60-day period in the act to 90 days. The bill also would make conforming changes. If passed, this bill would eliminate an investor's right to terminate a contract with existing service providers that maintain a newly transferred building. After the initial waiting period, contracts could then only be terminated for cause. This bill would apply to any non-residential properties (regardless of property size) in which vendors are employed at will. The committee went so far as making a motion that C.A.R. issue a Red Alert to membership when AB 350 is being considered on the Assembly and Senate Floors. This motion was ultimately defeated in the Legislative Committee as C.A.R. Chief Lobbyist Alex Creel advised that as an Association, we need pick our battles carefully.

**Sales Commission/Purchase Price** – C.A.R. recently investigated a matter in Santa Barbara County regarding the technical definition of "purchase price" whenever there is some type of credit given for a real estate commission. C.A.R. made the determination that the definition of "total purchase price" also includes any commissions paid by buyer.

**AB 1090 (Blumenfield) Senior & Disabled Citizens Property Tax Deferral** – This bill would allow qualifying seniors and disabled citizens to defer property taxes until their home is ultimately sold. The program would be optional and any loss of revenue would ultimately be incurred by the participating counties.

## Federal Committee Report

Barbara J Palmer

Chair and C.A.R. Director

The lobbying effort by REALTORS® has been an important part of the National Association of REALTOR® Mid Year Meetings in Washington DC for many years. Other groups send paid lobbyists to Washington, REALTORS® show up from all over the United States to meet with nearly every member of congress to lobby for private property rights and REALTOR® related issues. Large numbers of people on the same day speaks volumes. This year we had 5 major issues that we took to Capitol Hill on May 11<sup>th</sup> and 12<sup>th</sup>.

**First, preserving mortgage interest deductibility.** The Commission on Fiscal Reform issued a report identifying mortgage interest deductibility be reduced from the current \$1 million, or \$500,000; and to take away deductibility of interest on mortgages for second homes. We asked to keep the current law.

**Second, Short Sales issues.** We lobbied for passing H.R. 1498, "Prompt Decision for Qualification for Short Sales Act of 2011" – if passed it would mandate that banks or their servicers give the homeowner an answer for a decision on a short sale 45 days from receiving the completed package.

**Third, Access to Affordable Mortgage Products.** NAR opposes the banking lobby proposal of mandating 20% down payment for residential purchases. This 20% would be in addition to closing costs. Statistics show that high performing loans are not necessarily tied to high down payments.

**Fourth, The Future of the Secondary Mortgage Market.** The Government Sponsored Enterprises (GSEs) are critical to ensuring mortgage market liquidity. Their elimination without a viable replacement for their secondary mortgage market mission would severely restrict mortgage capital for creditworthy borrowers. We lobbied for Congress to enact a comprehensive legislation to restructure the secondary mortgage market in a manner that provides the federal government with a continued role to insure a continual flow of mortgage liquidity in all economic conditions.

**Fifth, Affordable and Available Property Insurance.** The flood insurance is due to expire again, for the 9<sup>th</sup> time in as many years, in September. We lobbied to pass HR 1309, a bill to extend the flood insurance for 5 years. This is a sustainable program, and as planned should not cost the tax payers any money. Within 5 days of our lobbying effort the bill was marked up out of committee.

It is expected that many counties not opt in as an increasing number of homeowners have no equity in their homes.

**HR 4/Required 1099 Repeal** – I am happy to report that the Senate passed HR 4 into law, which entirely repealed the previous Landlord 1099 reporting requirements. It was thought by many of us that the previous requirement created unnecessary burdens on small businesses and real estate investors.



# Education & Professional Development



Register Online by visiting our [Education Calendar](#) or our [Online Registration Center](#)

### [Matrix Essentials](#)

Fri. June 17, 10:30 - 12 pm  
Cost: Free to SCCAR members who RSVP  
Instructor(s): MLS Listings, Inc.

This 90 minute course will provide you with the basic skill requirements for the Matrix search application. Upon completion you will have learned: Application Navigation, Inputting Search Queries, Map Search, Reporting & Results Options, Driving Directions, Adding Search Fields, Saving Searches, Emailing & Printing.

### [REALTORS®Property Resource™](#)

Fri. June 17, 1 - 2:30 pm  
Cost: Free to SCCAR Members who pre-register  
Instructor(s): MLSListings, Inc.

RPR offers REALTORS® the competitive edge via comprehensive property data and powerful presentation tools within a single website that includes: Tax Assessment MLS Content Foreclosure

Data Liens / Permits Neighborhood Information Economics Mortgage & Deed Recordings REO / Short Sale Data Property Zoning Flood Plain Maps School District Data Demographics

### [Use a Renovation Loan to Close More Escrows!](#)

Mon. June 20, 10 - 11:30 am  
Cost: \$10 SCCAR Member, \$35 Non-member  
Instructor(s): Tai Boutell, Santa Cruz Home Finance

Ever had a client interested in an REO that needed upgrades? Ever had a listing that couldn't be financed due to required repairs or termite damage? The FHA 203(k) Renovation Loan is the loan program of 2011. This program will allow escrow to close before any repairs are completed by combining the purchase loan with funds for upgrades and repairs

*Unless otherwise stated, all Education & Professional Development offerings are held at the SCCAR offices at 2525 Main Street, Soquel, CA 95073*

## C.A.R. Meeting Reports

### **Professional Standards**

**Bobbie Nelson**  
**C.A.R. Director**

The committee presented two motions to the Board of directors for their support:

1. That C.A.R. advocate a position to NAR that NAR amend Article 17 to give local associations the option to require that their REALTOR® members mediate a dispute before they can arbitrate. This was approved at the NAR meeting last week.

2. That C.A.R. advocate a position to NAR that NAR expand its policy, so that a suspension or expulsion that is imposed by a local Association of REALTORS® for a violation of the Code of Ethics or membership duty shall be mandatorily reported to the state association to be reviewed by a panel of state directors, for possible enforcement on a state-wide basis.

### **REALTOR® Action Fund**

Broker owners are requested to sign up for the broker call to action alerts. This system is free and allows the broker to brand their

communication with their agents. Call to action alerts request that they contact their representatives on important issues that face our industry.

One of our very own was inducted to the Hall of fame last week! Robert Bailey joined 23 other members at NAR with his name being engraved on the Washington, DC NAR office building in recognition of his major investments over the years to support the Action Fund.

I am proud to report that our region 10 was one of 4 regions that were at 100% participation of its directors. Region 10 understands the value of Homeownership and the value these funds give to our REALTOR® party agenda. We are officially calling ourselves the REALTOR® Party and we had pins to celebrate the fact that we are part of this lobbying group. Funds are given not by party but to those representatives who support and carry or sign on to bring bills forward that support property rights. Join the REALTOR® Party on line at [www.car.org/getinvolved](http://www.car.org/getinvolved).

**It's free.....**

# Legislative Watch



## NAR Report from Washington

Renee Mello, Local Government Relation Chair  
[renmello@aol.com](mailto:renmello@aol.com)

After returning from Sacramento and attending a Rotary Convention the following weekend, I was off to Washington to do my work there. Once a year, a midyear NAR meeting is held in Washington D.C. and one day is spent lobbying our Representatives.

It was my first trip to Washington and I was struck by the history and power all situated in one area. I had been warned that Wednesday was going to be one long day but I was not really prepared for what it was really like. The first briefing, NAR, was at 7:00 a.m. It was followed by a C.A.R. briefing at 8:00. After breakfast it was off to the Capitol.

I want to acknowledge Barbara Palmer and all the hard work she does to prepare for these meetings. She sent us talking points ahead of time, asking for people to be responsible to present one point. We knew who was going and where they were staying. If you weren't prepared it was your own fault.

For this particular trip there were five items we needed to cover with our Congressman. The first was asking our Congressman to Cosponsor H.R. 1498, the "Prompt Decision for Qualification for Short Sale Act of 2011". This legislation makes it mandatory for mortgage servicers to reply to a short sale request within 45 days of a complete submission.

The second issue was the Future of the Secondary Mortgage Market. We were asking our representatives to enact comprehensive legislation to restructure the secondary mortgage market in a manner that provides the federal government with a continued role in the secondary mortgage market in order to ensure a continual flow of mortgage liquidity in all markets under all economic conditions.

The third issue was under the heading "Access to Affordable Mortgage Products". The threat is twofold. The first is in the current mortgage limits for FHA and the GSE's. We are fighting to keep them the same. The second part of this was to oppose mandatory increases in mortgage down payments proposed by financial regulators through narrow definition of Qualified Residential Mortgage (QRM). This would require that all loans have a minimum down payment of 20%. This would stop housing in its tracks.

The fourth issue was Affordable and Available Property Insurance. We were asking Congress to reauthorize the National Flood Insurance Program (NFIP) to ensure access to affordable insurance. According to NAR data, during the June 2010 lapse of flood insurance, 47,000 home sales were delayed or cancelled. NAR is looking to reauthorize the NFIP through 2016.

Last, but certainly not least is the continuation of the Mortgage Deduction Tax credit as it currently stands. I didn't realize that the deduction has been around for over 100 years and at its \$1,000,000 limit since 1987. This is another item, if passed, that would affect Real Estate Values in California.

We were scheduled to meet with Congressman Farr at 2:00 but that time found him in session voting. We ended up meeting him in the halls of Congress asking for his support of our position. He has always been supportive of the needs of the real estate market and said he would continue his support.

Once again, I felt honored to be a participant in voicing the opinions of the trade organization in which I belong.



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## *From the desk of Dale Gray*

*Government Affairs Director*

### *NAR Washington DC Meetings, May 2011*

#### **The Impact of MARS on Earth!**

NAR Legal Affairs has posted a document with answers to some common questions about the "Mortgage Assistance Relief Services" rule ("MARS rule") and what it means for disclosures, fees, and short sale negotiations. The MARS rule, issued by The Federal Trade Commission ("FTC"), affects most REALTORS® who represent clients involved in a short sale transaction. NAR is discussing additional MARS guidance with the FTC. The FTC is considering possible options to help make the rule more applicable in a real estate brokerage context and is continuing to discuss the issue with NAR staff.

#### **New FTC Rule Requires Short Sale Disclosures**

In November 2010, the Federal Trade Commission ("FTC") issued a final rule that took effect on January 31, 2011 that may impact REALTORS® who represent clients involved in a short sale transaction. Depending on certain factors, the rules may require REALTORS® to make certain disclosures to consumers if they negotiate a short sale with a lender, advertise short sales experience, or take upfront fees from short sale sellers.

#### **Final MARS Rule**

The MARS rule covers short sale negotiations, and so this is the area where REALTORS® acting in their licensed capacity may need to comply with these rules. FTC staff has determined that "negotiate" will include communications with a lender about the possibility of a short sale transaction involving a consumer's loan. A short sale is a transaction where the title to the property changes, the sales price is insufficient to pay all the liens, the seller does not provide funds to clear the liens on the property, and the lender agrees to allow the sale to occur by releasing the liens on the property. In some cases, the lender may hold the seller liable for the shortfall, which is called a "deficiency".

The MARS rule can have an impact on a real estate professional that represents clients involved in a short sale transaction or markets himself/herself as a MARS provider (i.e. short sale specialist). This is a "heads up" for REALTORS® who, while acting in their licensed capacity as a real estate professional, provide services that may fall within the MARS rule. If so, there are three types of disclosures that a real estate professional may need to make consumers.

#### **MARS Scenarios**

##### *REALTORS® with Possible Short Sale Listings*

Negotiating a short sale with a lender will cause the real estate professional to fall within the definition of a MARS provider and so would be subject to the MARS rule. As stated above, negotiation will include communications with a lender about a short sale transaction on behalf of a client. How the broker will need to comply with MARS will depend on the facts and circumstances of

the broker's business and how the broker has conducted the negotiations. A brokerage which promotes itself as a MARS provider will need to fully comply with MARS. A broker that becomes involved in a short sale transaction listing during the normal course of his/her real estate brokerage operations and doesn't otherwise promote himself/herself as a MARS provider will need to comply with the MARS rule for the specific transactions involving a short sale if the broker will negotiate the loan with the lender or otherwise arranges for such negotiations. The broker will provide the Consumer-Specific Commercial Communications disclosure to consumers as soon as he/she is aware of the need for a short sale transaction.

The time when these disclosures need to be made will depend on the facts of each transaction. If the broker learns that a short sale will be required during its initial meeting with the seller, the broker will need to make the required disclosures at that time. A broker who doesn't learn that a short sale is required until the first offer is received will not need to make disclosures until that time. The time for disclosure is similar to the requirement that many MLSs impose upon participants. Under those rules, a participant has a duty to let other MLS participants know about the possibility for a short sale when it is "reasonably known" by the listing broker. Realtors® should follow a similar process in making MARS disclosures to their clients.

#### *MARS & Marketing Materials*

The MARS rule require an entity who specifically markets MARS to consumers to make certain general disclosures in all advertisements promoting MARS services. So, any brokerage that specifically solicits business from short sale sellers will need to include these disclosures in all of its advertisements, including telephone solicitations. An advertisement listing the accomplishments of a licensee and the types of services that the licensee provides to his/her clients which mentions experience with short sale transactions, among other services, may not need to comply with the MARS advertising rules. Similarly, an advertisement identifying a licensee as having the SFR designation, without more, is also likely outside of the MARS advertising rules. However, an advertisement promoting a real estate professional's short sales brokerage business will likely need to comply with the rules, since the average consumer would have the impression that these advertisements are from a MARS provider.

#### *Licensees Accepting Upfront Fees*

The MARS rule bars the receipt of upfront fees. Therefore, brokers whose business model involves upfront fees need to be aware that if they take an upfront fee from a client and then later help the client negotiate a short sale, they will be in violation of MARS.

*Continued on Page 13*

## Government Affairs Report.

Continued From Page

### Buyer's Representatives

Buyer's representatives may need to make the Consumer-Specific Commercial Communication to sellers if they negotiate a modification of the seller's loan with a lender while representing a potential buyer. Despite the fact that the buyer's representative does not otherwise represent the seller in the transaction, the buyer's representative will be seen as a MARS provider once he/she begins negotiating the terms of the short sale with the lender(s). Additionally, the buyer's representative cannot charge a separate fee to the seller for this service, unless the buyer's representative has entered into a separate agreement with the seller and this agreement meets the other conditions of the MARS rule (no upfront fee, can only receive payment if the loan is modified, and the other relevant provisions of the regulation).

### Referrals

The MARS rule also includes in the definition of MARS provider "any person that...arranges for others to provide any mortgage assistance relief service." Therefore, any licensee referring a client to MARS provider in exchange for a referral fee will need to be careful that it is not "arranging" the mortgage relief services for its client; otherwise, it will need to comply with the MARS disclosure requirements.

### In Conclusion

If a real estate professional represents clients in short sales, takes an upfront fee for his/her services, or promotes himself/herself to potential short sale sellers, the real estate professional needs to be aware of the MARS rule and the disclosure requirements.

### Recent Update

Laurie Janik, NAR Legal Counsel, reported that the FTC realizes that its current disclosure language does not make sense when a real estate broker is representing a consumer in a short sale transaction. Therefore, the FTC has told NAR that brokers' listing a property that they believe is/will be a short sale need not make the consumer specific disclosure nor do real estate professionals need to make the disclosure called for at the time the lender approves the short sale. However, no broker should charge an upfront fee if the broker's services include short sale negotiations. Additionally, any broker advertising himself/herself as a short sales specialist should make the advertising disclosure.

NAR anticipates receiving additional guidance from the FTC shortly and will get it out to REALTOR® members as quickly as possible.

C.A.R. will review the revised materials once they are released and provide an update as soon as possible. The current MARS disclosures are on zipForm6™ but they will likely be changing after the FTC issues its revised statements to NAR.

For answers to some common questions regarding this issue, please [click here](#).



## Affiliate Spotlight

Wendy Taylor



Wendy Taylor has been a Mortgage Consultant for 12 years. In that time, she has successfully helped many clients obtain the dream of homeownership. Wendy has the training and experience to close FHA, VA, 203(k), Homepath as well as your typical Conventional loan. Her primary goal is to make the home buying experience as easy and smooth as possible for everyone involved in the transaction.

Wendy realizes the importance of remaining connected and involved in the community. She is a member of the Santa Cruz County Association of REALTORS®, Pajaro Valley Association of REALTORS®, Sunrise Notary Club, Audit Committee for Second Harvest Food Bank and Scholarship Committee for the Santa Cruz Ballet Theatre.

Let her patience, ability to listen to her client's needs and her desire to be your mortgage professional for life, help you or your friends and family with the financing of your next home purchase. Wendy can be reached at 831-425-1250 (o); 831-247-4024 (c); [wendy@santacruzhomefinance.com](mailto:wendy@santacruzhomefinance.com)

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# Affiliate News

**Dennis Spencer**  
**WIN Home Inspection**  
[dspencer@wini.com](mailto:dspencer@wini.com)



The RSVP (REALTOR® Service Volunteer Program) occurred on May 18<sup>th</sup>. This is a wonderful event where REALTORS® and Affiliates volunteer their time to perform household tasks for people in our community who need assistance. It's an opportunity for us to give back to the community that we depend on for our livelihood. But, I must say, it's much more than that! Please let me take a minute to tell you about my experience with RSVP.

More than 20 volunteers met at the Association at 9 am and we were divided into 5 teams, given T-shirts with the RSVP logo, a light breakfast, some cleaning supplies, and a list of addresses where we would be working. We gathered for a group photo and headed out. We performed our duties and went home. End of story? Not even close! Here's the great part!

I was part of an awesome team! Linda Darrigo and Teresa Marlow of Monterey Bay Properties, Dimitri Timm of Princeton Capital,

Leilani Williams of American Dream Realty, and my lovely wife Kori came together instantly and we had a great time. We went to three homes in the Santa Cruz area and met three wonderful residents that were very appreciative of our efforts. Two of the residents were over 90 years old! We were "paid" with homemade cookies, high fives, and hugs all around. It was a fantastic way to connect with people. I made some new friends and strengthened relationships with others. I'm still energized from the positive buzz! I'm certain that if I surveyed the other volunteers they would all share similar stories. It is as I have always said that when one volunteers they receive far more than they give. So, come out next year for RSVP, meet some new people, make some new friends, give back to our community, you'll be glad you did! And who knows, maybe your team leader will treat you to burgers at Snow White Drive In!

Thanks Linda!

*Continued on Next Page*



**RSVP**  
*Continued*

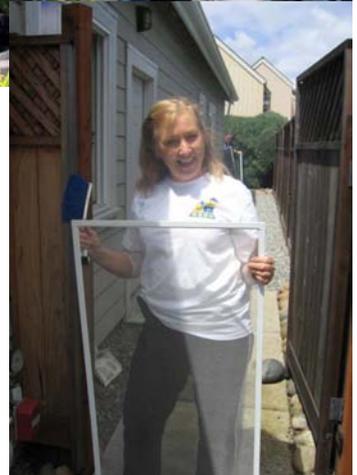
# Thanks To All Our Volunteers

A very special thank you to all of our volunteers who selflessly donated their time and supplies, it wouldn't happen without them!

RSVP Chair, Linda Darrigo, Monterey Bay Properties  
Gloria Behman, Bailey Properties, Inc.  
Carla Richmond, Century 21 Showcase Realtors, with her two daughters, Danielle and Kelly Libbey and husband Kent!  
Dennis Spencer, WIN Home Inspection, and Mrs. Spencer, Kori  
Lori Strusis, Century 21 Showcase Realtors, and friends Carl Hoyt and Don Roth  
Dimitri Timm, Princeton Capital  
Dick Cornelsen, Wells Fargo Reverse Mortgage  
Candace Bradfield, SCCAR President  
Susie Stelle, Century 21 Showcase Realtors  
Chris Clayton, Century 21 Showcase Realtors  
Cari Wade, Russell E. Gross Real Estate  
Barbara Townend, Monterey Bay Properties

Winnie Johnsen, Monterey Bay Properties  
John Hickey, Monterey Bay Properties  
Teresa Marlow, Monterey Bay Properties  
Lela Willet, Unique Homes and Land  
Leilani Williams, American Dream Realty  
Honora Robertson, Robertson Real Estate  
Caroline Roberson, Bailey Properties, Inc.  
Bobbie Herteman, Real Options Realty  
Lauren Spencer, Coldwell Banker Residential Brokerage  
RSVP Leave Behind Bag Donations: Michael Gruber, DDS, Soquel and Mike Demars, [Central Fire Protection District of Santa Cruz County](http://www.centralfire.org)

We look forward to next years RSVP and helping even more homeowners! Please visit [www.scaor.org/rsvp](http://www.scaor.org/rsvp) for more information and photos!



# June 2011

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3 LGR Meeting 8:30 am New Member Orientation 8:30 am—4:30 pm	4
5	6 <a href="#">ATOSC Booth</a> Kickoff: 9:00 am Mail Merge Training 1-2:30 pm	7 ATOSC Committee Meeting 3:30 pm	8 Broker Meeting 1-2:30 pm Fundraising Meeting 1:15 pm	9	10 Board of Directors 8:30 am	11
12	13 Affiliate Meeting 8:30 am Rental Ordinance Seminar 10-11:30 am	14	15	16	17 <a href="#">Matrix Essentials</a> 10:30 am-12 pm <a href="#">RPR Training</a> 1-2:30 pm	18
19	20 Education Meeting 9:30 am <a href="#">Renovation Loan</a> <a href="#">Seminar</a> 10-11:30 am	21	22 Budget & Finance Meeting 8:30 am	23	24 General Election & Meeting 8:30 am	25
26	27	28	29 SCCAR Office Closed	30		

## Welcome New SCCAR Members May 2011

### REALTOR® Members

*Bailey Properties*  
Toni Stratos

*Friday Realty*  
Dale Friday

*Keller Williams Realty*  
Larry Fogelquist

*Unique Homes and Land*  
Virginia Lee Roberts

### Affiliate Members

*Santa Cruz Home Finance*  
Wendy Taylor

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