



February 2010

In this month's issue of The Giardinelli Law Group, APC Courtside Newsletter, we summarize the events of the recent California Association of REALTORS® (C.A.R.) Board of Directors meetings at Indian Wells, including the revisions to the California Residential Purchase Agreement & Joint Escrow Instructions (RPA-CA).

ACTIONS TAKEN AT FEBRUARY 2010 C.A.R. MEETINGS

Brokers and agents should be aware of the following actions taken by the C.A.R. Board of Directors at its recent February meetings at Indian Wells:

MLS/Computer and Business Technology

- A work group will be formed to address the issue of pre-listing marketing. Members of the work group will be from the MLS/Computer and Business Technology (CBT) Committee, the Professional Standards Committee, and the REO Advisory Working Group.
NOTE: In the January issue of *The Giardinelli Law Group, APC Courtside Newsletter*, we reported on "For Sale" signs on REO properties as a form of pre-listing marketing that violates the MLS Rules. It was reported at the C.A.R. meetings, for information only, that the new C.A.R. work group will consider pre-listing signage issues.
- A work group will be assembled to work with C.A.R. staff to consider a Model Citation Policy to present to the C.A.R. MLS/CBT Committee for further discussion and consideration at the next C.A.R. meeting.
- Changes will be made, upon approval by N.A.R., to the C.A.R. Model MLS Rules, which in turn will require changes to the local Association's MLS Rules, including the following:
 - A competency standard;
 - An interim training requirement;
 - Disclosure by the listing broker of the source of the offers (i.e. whether offers are obtained by that licensee or their office or a cooperating broker) only if asked;

- Additional clerical user requirements to enhance accountability;
- A declaration by a person with dual licenses of which one (or both) he/she is using to operate under the MLS;
- A Hearing will be required for denying participation rights using the California Code of Ethics and Arbitration Manual;
- Duplicate listings by the same Participant within the same property class will be prohibited;
- Listings must be submitted within 2 days after all necessary signatures of the sellers have been obtained on the listing or at the start date of the listing, whichever is later;
- The cooperating agent who deals directly with the seller has 2 days to notify the listing agent of pending and sold statuses, and then the listing agent has 2 days after notice to input the changes;
- The rules for use and misuse of remarks will include examples to allow for greater clarity for the Participants and Subscribers;
- An active listing may be immediately removed after suspension or expulsion if Participant fails to comply with the rules;
- A non-MLS Participant's name may not be placed as a co-listing broker;
- A DOM/CDOM (days on market/cumulative days on market) clause provides CDOM is based on APN numbers and DOMs are tied to the brokerage firm and MLS listing and the CDOM reset clock are set at 90 days after the property has been off the market without a listing agreement or change of ownership.
- Auction provisions will be added to require the following:
 - Clear identification as an auction listing;
 - Whether the auction is with or without the seller's right of reservation;
 - Date, time and place of the auction;
 - All the required procedures for Participants/Subscribers to register their representation of a potential bidder;
 - Compensation to be paid to the Participant representing the successful bidder;
 - Time or manner in which potential bidders may inspect the listed property;
 - Whether or not the seller will accept a purchase offer prior to the scheduled auction including compensation;
 - Any other pre-auction details and material rules or procedures for the auction;

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Political Affairs

The REALTOR® Action Fund Committee (formerly the Political Affairs Committee) approved the following mission statement:

The mission of the committee is to provide education and training for politically involved REALTORS® to develop appropriate structures for effective communication with elected officials at each level of government; and to provide support for REALTORS® in the areas of fundraising, education and the Member Mobilization Program. The committee's primary function is to raise funds through the REALTOR® Action Fund, train local associations and to provide political education to local members, as needed. (February 2010)

This mission is supported by the variable dues formula structure in the bylaws of C.A.R., N.A.R. and most local Associations. The formula is that dues are in an amount plus the same amount times the number of REALTORS® licensed directly or indirectly to the REALTOR® unless those licensees have joined as REALTORS® or REALTOR-Associates® directly. For example, if a REALTOR® has 100 agents and 80 of them join directly and the dues are \$50, then the REALTORS®' dues are 1 (the R) + 20 (the nonmembers) =21. The total dues for that member is \$50 x 21=\$1,050. Therefore, the Political Assessment in this same office would be \$49 x 21=\$1,029.

At the next regularly scheduled C.A.R. directors' meeting, there will be a vote on the proposal that each member be assessed for political purposes for 2011 and beyond the amount of \$49 by making a contribution to CREPAC or CREIEC for the assessed amount; or paying the assessment to C.A.R.'s Political Activities Fund (PAF).

Professional Standards

C.A.R. will advocate to N.A.R. that it expand its policy so that if one local Association suspends or expels a REALTOR® for violation of the Code of Ethics, all other local Associations where the REALTOR® concurrently holds membership may permissively uphold the suspension or expulsion.

Standard Forms

The revised forms to be released in April 2010 are as follows:

- California Residential Purchase Agreement & Joint Escrow Instructions (RPA-CA) [see detailed revisions below]
- Table of Contents- Residential Purchase Agreement (TOC-RPA) [see below]
- Other forms affected by the revisions to the RPA will also be updated
- Wood Destroying Pest Inspection & Allocation of Cost Addendum (WPA)

- Contains educational paragraph regarding rights of buyer to conduct inspections and ask seller to make repairs and get out of contract even if the WPA is not used
- Determines who pays for (separate sections) and prepares the report; default is specifications in RPA
- Determines scope of report, such as garage, decks, roofs, etc. (just as before)
- Clarifies that seller may obtain more than one report and choose which to follow, but must provide copies of all reports to buyer
- FHA or VA Notice and Addendum (FVA) [new form follows approach of the Request for Repairs form]

The Standard Forms Advisory Committee (SFAC) considered reports from 14 Regional Representatives and reviewed 32 comments submitted via the Forum on Forms, and made revisions to the RPA-CA form.

The most significant changes to the RPA are the following [taken from C.A.R. Memos provided at the Legal Affairs Forum]:

- Table of Contents – separate form (not automatically attached) lists the title of each paragraph and the page where the paragraph begins for use as a reference to find applicable provisions
- Agency moved to paragraph 2 on page 1 from paragraph 27 on page 7, so that agency is addressed at the commencement of the purchase discussion rather than the end
- Buyer and seller initials separate on all pages [this will be done on all forms as revised]
- Deposits
 - Initial Deposit – two options [deposit still must be placed in escrow within 3 business days]:
 - Default: buyer direct deposit to escrow, or
 - Option: buyer gives deposit to agent/broker
 - Increased Deposit – Language added regarding need to sign a Receipt for Increased Deposit (RID) if Paragraph 3B applies and the liquidated damage paragraph is initialed
- Financing –
 - Separate paragraphs for first and second loan
 - Default is conventional financing with options for FHA, VA, seller, assumed or “other” financing
 - Loan terms default is fixed term financing with optional check box for adjustable
 - Amortization period and length of loan have been deleted
 - Buyer specification of maximum loan points to be paid remains
 - FHA/VA buyer submits a form (FVA) to seller within 17 days specifying lender required costs; seller may not approve (similar to request for repair form)
 - Buyer Stated Financing – Paragraph 3K specifies seller reliance on type of financing (cash or loan) buyer indicated would be pursued, if buyer unsuccessfully seeks alternate financing, buyer is not excused from the obligation to close escrow
- Balance – the words “down payment” were added in Paragraph 3E.

- Verification of Down Payment and Closing Costs – An optional check box added to Paragraph 3G to indicate the verification is attached to the offer
- Loan Terms – Paragraph 3G contains 4 paragraphs:
 - Loan Applications – optional sentence to indicate if lender prequal or pre-approval letter is attached to offer
 - Loan Contingency – specifies buyer to act in good faith, and deposit, down payment and closing costs not part of contingency (just as before)
 - Loan Contingency Removal – makes it easier to locate option to keep contingency open until funding
 - No Loan Contingency
- Appraisal Contingency and Removal –
 - Appraisal preparation by a licensed or certified appraiser
 - Default is removal of loan contingency automatically removes appraisal contingency (can opt out of this)
- Wood pest inspection [to treat as any other inspection, moved from separate section to general category for Inspection and Reports] –
 - Allocation paragraph, inspection only
 - Reference to WPA in Other Terms paragraph
 - WPA requires repairs and separate section 1 and section 2 (just as before)
 - WPA requires Certification (just as before)
- Private Transfer Fees – Added a line in Paragraph 4D5 for private transfer fees that may be charged
- Home warranty -- coverage includes option to check for upgrade for pool/spa, air conditioning, and code upgrade
- Possession –
 - Title changed from “Occupancy” to “Possession”
 - Default is possession delivered 5 pm on date of close of escrow
- Withholding Taxes – moved up from prior location; now provides the seller delivers the necessary affidavit to either buyer or a qualified substitute within the time specified in Paragraph 14
- Items Included and Excluded -- TVs and speakers specifically excluded from sale in Paragraph 8
- Buyer’s Investigation –
 - added language to clarify that buyer obligated to turn over reports to seller even after termination of agreement
 - added buyer indemnity language from prior location as it relates to buyer entry on property and buyer investigations
- Other Terms and Conditions–
 - Moved to paragraph 11 on page 4 from paragraph 25 on page 6
 - Separate sections with check boxes for commonly-used addenda, disclosures and advisories, including WPA, ADM, PAA, SSA, SWPI, SPQ, SBSA, BIA, PAK TA, and REO
- Present condition is parenthetically defined as being “as is”

- Title and Vesting -- Preliminary report to include a search of the general index search for certain liens against seller; may require seller to give statement of identity at start rather than at end of transaction
- Time Periods, Contingencies and Cancellation Rights –
 - Requires exercise in good faith
 - 5 days for buyer response if seller delivers late
 - Last date not to fall on Saturday, Sunday or legal holiday
 - Demand to Close Escrow required before cancellation for failure to close
 - Notice to Perform – 2 days instead of 24 hours
- Defines delivery to mean personal receipt by principal or agent, whether sent by fax, email or other (previous version did not define delivery)
- Presentation of offer box added so listing agent can show that offer given to seller
- Dispute Resolution –language previously appearing below the arbitration paragraph is inserted into the substantive mediation and arbitration paragraphs separately (Paragraphs 26A and 26B), and language added to Paragraph 26C2 specifying that brokers cannot be compelled to arbitrate unless they have agreed to do so in writing

Additionally, the Property Management Study group will be reviewing the C.A.R. property management forms and provide an update of its study to the SFAC in June 2010.

Transaction & Regulatory

C.A.R. will modify its sponsored legislation regarding local government vacant property maintenance ordinances to allow actual and reasonable local government nuisance abatement assessments to survive foreclosure, and to require local government to publish a schedule of fees that may be recovered for services rendered to the property.

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