

Minutes

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October 7 - 10, 2009

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CALIFORNIA ASSOCIATION OF REALTORS® EXECUTIVE COMMITTEE San Jose Convention Center San Jose, California

The meeting was called to order by President James Liptak at 10:00 a.m. on October 7, 2009.

CALL TO ORDER

Members Present: President James Liptak, President-Elect Steve Goddard, Treasurer Beth L. Peerce, Patricia Bouie Hinds, William E. Brown, David Cabot, Linda Carroll, Mary Funk, Michael Godfrey, James Myrick, Andy Nazaroff, Barbara Palmer, Leigh Rutledge, Emily Schwartz, Joel Singer (Ex-Officio), Rick Violett, Jeffrey Wright

ATTENDANCE

Also Present: 2009 Regional Chairs, 2009 Committee Liaisons

Parliamentarian: Tim Hegstrom

Staff Present: Helen Parrino, Rick Shumacher

It was Moved, Seconded and CARRIED to approve the minutes of the June 3 - 6, 2009 meeting in Sacramento, California, and to approve the minutes of the September 22, 2009 meeting in Los Angeles, California.

APPROVAL OF MINUTES

President Liptak reported on several of the significant issues expected to be discussed in committees during the week, including the 2010 budget and strategic plan proposal, progress being made by CALMLS and the election of the CALMLS Board of Directors, the MLS rules and REO properties, the Home Valuation Code of Conduct and FHA appraisal guidelines, political fundraising, PAC Trustee elections and PAC bylaws amendments, and the REBS Board of Directors election President Liptak made additional comments about the challenging market and economic climate.

REPORT OF THE PRESIDENT

President-Elect Steve Goddard spoke about the committee selection process for 2010.

REPORT OF THE PRESIDENT-ELECT

Treasurer Beth L. Peerce, Chair of the Strategic Planning and Finance Committee, reported that the Executive Committee reviewed and approved the budget and strategic plan proposal to be considered by the Board of Directors when the committee met in September, including the following.

REPORT OF THE TREASURER

To approve a 2010-2012 Strategic plan and 2010 budget with the following criteria:

Strategic Planning and Finance

A. C.A.R. Revenue of \$26,038,400 C.A.R. Cost \$25,949,400 Net Operating Surplus \$89,000

B. Political Activities Fund Revenue \$1,494,000

C. Issues Action Fund Revenue \$1,494,000 Issues Action Fund Transfer to IMPAC \$593,800

D. 120.5 budgeted C.A.R. staff positions

E. Membership dues, including \$115 for operating programs, \$10 for the Political Activities Fund and \$10 for the Issues Action Fund, are set at a total of \$135 per member (predicate on 2010 year end membership of 162,000)

F. New member fee be set at \$30 per new member

G. A 2010 Capital Budget (funded with Association reserves) totaling \$461,800

To approve for members in areas not serviced by local associations an additional \$30 in membership dues. This amount would be in excess of the dues approved for members coming through the local associations.

That \$188,000 be approved for an additional two percent pension contribution to the C.A.R. and REBS employee pension plan for 2009, augmenting the previously approved budget of 10 percent.

That up to \$12,000 be allocated from the 2009 budget to conduct a survey of magazine readership.

Action of Directors: Approved all of the above action items

See consent agenda, Attachment A, for additional Strategic Planning and Finance action items approved by the Directors.

Executive Vice President and State Secretary Joel Singer reported on the progress of the Association's subsidiaries.

REPORT OF THE EXECUTIVE VICE PRESIDENT/STATE SECRETARY

It was Moved, Seconded and CARRIED to approve the Consent Agenda as presented.

CONSENT AGENDA

See Consent Agenda Action Items – Attachment A

SPECIAL REPORTS

It was reported for information only that the REO Advisory Group had the recommendations set out below.

REO Advisory Group Robert Bailey, Chair

- 1. REALTOR(c) members are not adequately trained in the process of a short sale, especially in how it differs from an REO sale, and would profit from additional education in the form of more practice pointers, model forms, and educational panels or forums. Short Sales should be considered as a topic for the Public Policy Forums scheduled for January and June 2010.
- 2. C.A.R. should produce a consumer education publication that REALTORS(c) can use to inform potential clients and use as a risk management tool. It should include a readable listing of issues that a consumer ought to consider when contemplating a short sale request, loan modification, bankruptcy or default.

Both consumers and agents should be encouraged to begin whatever process they select as early as possible, and not wait until a property is in default.

- 3. Training for REALTOR(c) members should emphasize that the agent must recommend that the client seek tax and legal advice at four points in the transaction:
 - When listing for a short sale;
 - When approving an offer or counter-offer, or a second offer;
 - Upon receipt of a lender's approval of a propose short sale; and,
 - Before transmitting the lender's approval to a prospective buyer.
- 4. Educational materials should emphasize that short sale negotiations do not stop the progress of a foreclosure action, and that lender personnel dealing with the foreclosure may not be in communication with the personnel working on the short sale. The agent should facilitate that communication in order to achieve the loan forbearance through the short sale.
- 5. Consumer materials should encourage a potential seller to ask the agent for copies of Legal Q&As that may be released to the public, particularly the article entitled "Taxation of REO and Short Sales,"
- 6. Agents should be prepared to warn REO sellers that they are responsible for material fact disclosures even if they are not required to supply a TDS.
- 7. REALTOR(c) offices and MLSs should develop a uniform policy on subsequent offers for short sales, and whether to characterize them as backup or "primary" offers. In addition, they should be encouraged to work out thoughtful procedures for when, and whether, and to whom a subsequent offer should be presented.
- 8. MLSs should be encouraged to develop a uniform and informative mechanism for:
 - Reporting a short sale that is pending;

- Disclosing and negotiating the cost of 3d party REO "facilitators" hired by the listing agent or seller.

COMMITTEE REPORTS

It was Moved, Seconded and CARRIED, that the CREPAC Bylaws Amendment be approved as noticed.

CREPAC Trustees
Judy Zeigler, Chair

Action of Directors: Approved

It was reported for information only that the following slate of CREPAC Trustees and Alternates has been nominated.

NOMINEES FOR CREPAC TRUSTEE (November 2009- November 2012)

Dennis Mason, Region 2 Jared Martin, Region 12 Irma Vargas, Region 17 Mary Funk, Region 18 Nancy Gilmore, Region 23

NOMINEES FOR CREPAC ALTERNATE (November 2009 - November 2010)

Leigh Rutledge, Region 3 Steve Reiser, Region 5 Gene Lentz, Region 9 Carol Facciponti, Region 16 Greg Pawlik, Region 17 Greg Haas, Region 19 Mark Marchand, Region 30 James Irving, Region 31 Cas Pinkowski, Region 32

Action of Directors: The Nominees were Elected

It was Moved, Seconded and CARRIED, that the IMPAC Bylaws Amendment be approved as noticed.

IMPAC Trustees Jim Irving, Chair

Action of Directors: Approved

It was reported for information only that the following slate of IMPAC Trustees and Alternates has been nominated.

NOMINEES FOR IMPAC TRUSTEE (November 2009- November 2012)

Cynthia Wood, Region 4 Leannah Hunt, Region 9 Les Fishman, Region 21 Michael Mercurio, Region 24 Nancy Hunt, Region 32

NOMINEES FOR IMPAC ALTERNATE (November 2009 - November 2010)

Anita Thede, Region 6 Lisa Muetterties, Region 7 Sandra Haney, Region 10 Lynn Heintz, Region 12 Patricia Douglas, Region 17 Carl San Miguel, Region 19 Erik Weichelt, Region 24

Action of Directors: The Nominees were Elected

It was reported for information only that IMPAC authorized the following contributions:

\$15,000 to the No on Measure B campaign to oppose a local ballot box planning measure in the City of Santa Barbara.

\$7,500 to the C.A.R. Association Executive (AE) Institute for the purpose of funding a portion of a three-day professional development program devoted to Governmental Affairs topics to include association management, strategic planning, IMPAC and BORPAC processes and utilization.

Up to \$160,000 to pay for legal experts for the analysis of local government ordinance proposals on behalf of local Associations subject to the condition that each local association pay at least 25% of the cost of their request using Local IMPAC funds.

\$32,860 to fund a C.A.R. outreach program to address the impacts of state and local budget shortfalls on real estate and the C.A.R. resources available to local REALTORS® address these issues.

It was reported for information only that since the June meetings the Legal Action Fund Trustees approved an amicus on one case:

Harrison v. Sierra Dawn HOA. Isabelle Harrison, owned 22 mobile homes in Sierra Dawn Estates, large common-interest development for mobile homes for persons 55 and over. Ms. Harrison lived in one of the mobile homes, and rented the remaining homes to tenants. The Sierra Dawn Homeowners Association voted to change the covenants, conditions and restrictions (CC&Rs) to prohibit any one owner from leasing more than 3 homes, as well as imposing other restrictions, including that no more than 20% of the total amount homes could be rented at any one time. The amended CC&Rs exempted existing tenancies. Ms. Harrison filed a lawsuit against the HOA on several grounds including restraints on alienation. The HOA prevailed at trial and Ms. Harrison's representatives appealed. The trustees authorized an

Legal Action Fund Trustees Michael Ferlisi, Chair amicus brief supporting the plaintiff property owner on the issue of HOA amendments that restrict the rights of an existing homeowner to rent its properties.

Since the June meetings, there was a development in one case as follows:

Hovanesian v. Couveau. A buyer contracted to buy a residential property owned by the Couveaus using the CAR RPA for \$750,000. The appraisal contingency had been checked. Five days later, an offer came in for \$859,000. The first buyer received an appraisal at \$720,000 and wrote a letter stating that they would only go forward with the transaction at the appraised value and gave a deadline for a reply. The sellers said they would not sell at the lowered price. The sellers then countered to buyer #2 that they would accept the \$859,000 subject to cancellation of the previous escrow. This offer was accepted. Buyer number one said they received a new appraisal of \$750,000 and demanded that the transaction proceed at that price. Buyer number 2 concluded the sale.

The court indicated that when a party exercises their right to cancel the contract, the party no longer has the right to waive the right and proceed with the agreement. The court further went on to acknowledge C.A.R.'s Request for Repair form and indicated when parties proceed to draft their own documents, it may have unintended consequences and that had the form been used, the options and communication would have been more clear. The decision is unpublished, however, and cannot be cited for authority.

There are four cases in which C.A.R. participated as amicus that are either awaiting decision or have briefs due but there are no specific outcomes on these cases to report.

It was Moved, Seconded and CARRIED, that C.A.R. "SPONSOR" legislation to subject Appraisal Management Companies (AMCs) to increased regulatory control by the Office of Real Estate Appraisers, to be reviewed by the Transaction and Regulatory Committee at the February 2010 meetings.

Legislative Heath Hilgenberg, Chair

Action of Directors: Approved

It was Moved, Seconded and CARRIED, that C.A.R. "SPONSOR" legislation to require lenders to accept a "portable" appraisal at the request of a borrower.

Action of Directors: Approved

It was Moved, Seconded and CARRIED, that C.A.R. "SUPPORT" legislation setting up a program to use electronic scanning technology to scan title records for unconstitutional transfer restrictions and redact the illegal restrictions in a way that does not add prohibitive costs to the recording process.

Action of Directors: Approved

It was Moved, Seconded and CARRIED, that C.A.R. "SPONSOR" legislation to apply the so-called "poison pill" of Business and Professions Code Section 10226.5 to loans from DRE to other special fund accounts.

Action of Directors: Approved

It was Moved, Seconded and CARRIED, that C.A.R. "SPONSOR" legislation to redraft the existing "advance fee" statute so that it more clearly captures the concept of receiving payment before the services are performed.

Action of Directors: Approved

See Consent Agenda (Attachment A) for an action item from the Membership Committee.

It was Moved, Seconded and CARRIED, to make changes to the C.A.R. Model MLS Rules which reflect the following policy decisions, such rules to be effective upon NAR approval:

- a. That, as a general rule, all reporting time frames not include an exclusion for weekends and holidays;
- b. That all time frames be stated in terms of calendar days instead of hours (i.e. 2 days rather than 48 hours) with staff formulating a definition for calendar days;
- c. That the time frame for submission of listings be 2 days [existing rule provides for 48 hours with exceptions for weekends and holidays];
- d. That the time frame for a change of listing information, correcting inaccurate information, listing status changes, reporting of sales, cancellation of pending sale be 2 days [existing rules provide for 24 hours with exceptions for weekends and holidays or 24 hours or "immediately" for cancellation of pending sale];
- e. That the time frame for documentation of a listing agreement upon demand or of evidence of extension of listing be 1 day [existing rules provides for 24 hours];
- f. That the time frame after which a cooperating broker can contact the seller directly after being unable to reach the listing broker be 1 day [existing rule provides for 24 hours];
- g. That the time frame for reporting of unaccountable lockbox key be immediately upon discovery [existing rule states "immediately"];
- h. That the time frame for reporting DRE discipline be 1 day [existing rule states 24 hours];
- i. That the time frame for attending orientation remain at 30 days.

Action of Directors: Approved

It was Moved, Seconded and CARRIED, that C.A.R., beginning with the 2011 dues billing cycle, implement a new REALTOR® Action Fund collection mechanism, above the line with "opt-over" provision. An issue briefing paper

MembershipJohn Torres, Chair

MLS/Computer and Business Technology Committee David Barca, Chair

Political Affairs
John Cribb, Chair

will be prepared to include specific recommendations for the technical implementation, legal requirements and dollar amount, which will be decided by the Board of Directors at the February, 2010 meeting.

(Note: The "opt over" provision allows the member to determine whether the investment amount shall be directed towards the REALTOR® Action Fund or "moved-over" to an alternative account. In any event, the amount would be paid by the member.)

Action of Directors: Approved

It was Moved by Jim Keith, Chair of the Professional Standards Committee, Seconded and CARRIED, that C.A.R. adopt a procedure, to be drafted by staff for the California Code of Ethics and Arbitration Manual and Interboard Arbitration Rules, to comply with California Code of Civil Procedure Section 1281.85, which specifies that the right to arbitrator disclosures of specific information is non-negotiable and non-waivable, even though that information is confidential under NAR policy.

Professional Standards Jim Keith, Chair

Action of Directors: Approved

It was Moved, Seconded and DEFEATED, that C.A.R., in conjunction with NAR, "SUPPORT" the elimination of the FHA 90-day anti-flipping rule.

Real Estate Finance Skip Zeleny, Chair

Action of Directors: Amended and Approved as follows

That C.A.R., in conjunction with NAR, "SUPPORT" the elimination of the FHA 90-day anti-flipping rule, and that C.A.R. write and publish a letter to the FHA Commissioner in opposition to the FHA 90-day anti-flipping rule.

It was Moved, Seconded and CARRIED, that C.A.R., in conjunction with NAR, seek to eliminate the mandatory VA pest certification and mandatory seller fees.

Action of Directors: Approved

It was reported for information only that C.A.R. will prepare a Q&A and advisory piece on FHA's new Common Interest Development financing rules.

It was Moved, Seconded and DEFEATED, that the Committee become the REALTORS® Commercial Alliance Forum in 2010 and thereafter, and that it be given meeting facilities equally convenient to all other Association meetings and receive an appropriate level of staff support and funding to carry out its role as a Forum.

REALTORS®
Commercial Alliance
Commercial
Investment

Action of Directors: Defeated

It was reported for information only that Commercial Investment practitioners and others interested in this specialty area would have the ongoing opportunity to hold a forum at future C.A.R. Business Meetings.

It was reported for information only that the Standard Forms Advisory Committee (SFAC) received reports from 7 Regional Representatives. Generally comments commended the Standard Forms RPA Study Group for their work so far on proposed revisions. The SFAC was updated that the Commercial Forms Study group will propose revisions to some of the C.A.R. commercial forms for the SFAC's consideration in February 2010. Additionally, the SFAC will expect to receive a status update of the newly appointed Property Management Study Group, which is expected to host their first conference call in the coming months. The SFAC presented the latest draft of the RPA at the Open Forum on Forms. The RPA Study Group met and has some additional changes to the draft that was presented. The study group will continue to review comments from both the membership and SFAC prior to proposing a suggested final draft which will be made available prior to the February business meetings. It is anticipated that the final version will be released in April, 2010. Finally, the SFAC reviewed all of the approximately 80 comments received.

Standard Forms Advisory Ken Neufeld, Chair

See Treasurer's Report and the Consent Agenda (Attachment A) for action items and reports from the Strategic Planning and Finance Committee.

Strategic Planning and Finance Beth L. Peerce, Chair

There being no further business, the meeting was adjourned at 7:50 a.m. on October 10, 2009.

ADJOURNMENT

ATTACHMENT A - CONSENT AGENDA

1. That the following applicants be granted C.A.R. Honorary Member-for-Life status:

CONSENT AGENDA

Alameda AOR Don Patterson

Membership

Amador County AOR Edwin Pease

Arcadia AOR Peggy Allison

Bakersfield AOR James Dandy Melvin Davis David Segesman

Bay East AOR Eugene Foppoli Ray Herman

Burbank AOR
Martha Hughes
Herman Rassp
California Desert AOR
Beth Grossman
Helen Martin
Bernice Westberg

Central Valley AOR Jean Lee Boehm

Coastal Mendocino AOR Benny Booth Mavis Mathews

Contra Costa AOR Betty Karris Leo Saunders

East San Diego County AOR Laura Houle

El Dorado County AOR Carol Manning

Fresno AOR Queenie Haron

Imperial County AOR Nancy Steen Inland Valleys AOR Gene Carlstrom Velia Delgado Mary Louise Zuppardo

Lompoc Valley AOR Marno Goetsch Sally Goetsch

Madera AOR Della Densmore Billy Miracle

Marin AOR Lou Broderick David Egan Brigid O'Toole Berit Parker

Merced County AOR Peggy Carter Gail Mc Cullough David Shewey Ellie Wooten

Montebello District BOR Edna Montes

Monterey County AOR
Charles Aucutt
Theodore Blocker
Theresia Blue
Alan Cordan
Richard Fowler
Janet Garman
Marlene Provence
Donna Rico
Salvatore Riso

Newport AOR Jo Ann Kenton

North San Diego County AOR James Connolly Irene Grahn Don Stafford Dick Tibbetts Northern Solano County AOR Frank Dembski

Oakland AOR Mo Khatibi Virgie L. Smith

Orange County AOR Anna Alderete James Larkin Terry Ontiveros Norine Pesceone

Pacific West AOR Cynthia Dean Diane Horton Jim Scott

Palm Springs AOR Howard Krieger

Palos Verdes Peninsula AOR Lyn Dakin

Paradise AOR Andy Mital

Pasadena-Foothills AOR Alla Griffin

Paso Robles AOR Ken Johnson

Placer County AOR Joanne Engle Joyce Hinkey Boyce Thelen

Rancho Southeast AOR Iris Pygatt Franklin Lee

Rim O The World AOR Helen Hausmann

Sacramento AOR
John Bramow
Mary Campoy
Robert Del Ponte
Georgianna Driscoll
Joan Iljana
Jerry Kirrene
Ralph McGrew
Patricia Meredith
Allyn Sandos
Dorothy Smith
Roosevelt Sullen

San Benito County AOR

Agustin Garcia Diane Mattson

San Diego AOR Edward Cramer Jane Morgan Lee Rens

San Luis Obispo AOR Lynn Cooper

San Mateo County AOR
Judith Barton
Helen Cross
Betty Decter
Jack Ditty
Jean Dominguez
Elizabeth Hulsey
Mary Hunt
Ray Lombardi
Jean Mac Donald
Ray Marcotte
James O'Connor
Phyllis Outzen

Santa Cruz AOR Helen G. Ackerman Gail Degnan Gerald Eidam Charles Rogers Frances G. Slebir Lorraine D. Wallace

Mary Roach Edie Switzer Joseph Zucca

Santa Maria AOR Mary Brown

Shasta AOR Diane Abair Larry Klempner June Macey Mickey Rehberg

South Bay AOR Pauline Powers Norm Quient

Southland Regional AOR Kathleen Boudreau Franklyn Burns Norma Garutso Selwyn Ginsburg **Edward Hulac**

Julia Jones

Eileen Kenyon

Marilyn Mandel

Helen Poulos

Lester Sandusky

Estelle Schneider

Clarence Senger

Charles Shoda

Tuolumne County AOR Lawrence Miller

Devearl Stanphill

Ventura County Coastal AOR

Rudy Monte

Jan Osborn

2. That the Statement of Operating Income and Expenses by program for the eight months ending August 31, 2009 be approved.

CONSENT AGENDA

Strategic Planning and Finance

Total C.A.R.

Revenue of \$23,453,500

Expenses of \$15,957,700

An excess of operating income over expenses of \$7,495,800

Political Activities Fund

An excess of income over expenses of \$2,074,000

Issues Action Fund

An excess of income over expenses of \$1,155,600

The C.A.R. Balance Sheet as of August 31, 2009

Total assets of \$64,823,100 (of which \$47,728,500 are current assets)

Total liabilities of \$3,559,500 (of which \$2,966,400 are current liabilities)

C.A.R. Fund Balance of \$61,263,600

3. That the Projected Statement of Operating Income and Expenses by program for the year ending December 31, 2009 be approved.

CONSENT AGENDA

Strategic Planning and Finance

Total C.A.R.

Revenue of \$26,761,300

Expenses of \$25,665,700

An excess of operating income over expenses of \$1,095,600

Political Activities Fund

An excess of income over expenses of \$2,090,900

Issues Action Fund

An excess of income over expenses of \$651,400. This amount will be allocated to IMPAC as approved by the Directors.