CALIFORNIA ASSOCIATION OF REALTORS®

Minutes

www.car.org

January 25 – 28, 2006

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CALIFORNIA ASSOCIATION OF REALTORS® EXECUTIVE COMMITTEE
Anaheim Marriott Hotel
Anaheim, California

CALL TO ORDER

The meeting was called to order by President Vince Malta at 1:00 p.m. on January 25, 2006.

ATTENDANCE

Members Present: President Vince Malta, President-Elect Colleen Badagliacco, Treasurer James Liptak, Tony Agurs, Paula Colombo, John Cribb, Don Faught, Jim Hamilton, Linda Harrison, Ed Herold, Janet Houde, Dan Lanning, Susan Marshall, Art Nellessen, Tica O'Neill, Joel Singer (Ex-Officio), Frank Valletta

Also Present: 2006 Regional Chairs, 2006 Committee Liaisons

Parliamentarian: Tim Hegstrom

Staff Present: Lynette Flores, Helen Parrino, Rick Shumacher

APPROVAL OF MINUTES

It was Moved, Seconded and CARRIED to approve the minutes of the September 21 - 24, 2005 meeting in San Diego, California.

REPORT OF THE PRESIDENT

President Malta reported on the 2006 Presidential Appointments of the Executive Committee, Directors at Large, and Trustee Groups, to be presented for approval by the Board of Directors. *(See Attachment D)*

A special Executive Committee meeting has been scheduled for September 8, 2006 to review the 2007 – 2009 strategic plan and budget prior to the October meeting of the Board of Directors.

President Malta made note of the assignments each Executive Committee member has with respect to serving as a Liaison to the C.A.R. Regions.

President Malta reported on several of the significant issues expected to be discussed in committees during the week, and noted that the Property Information/MLS Task Force would sunset and present its final report to the Directors.

Resolution of Appreciation

It was Moved, Seconded and CARRIED to approve a special resolution recognizing Jim Hamilton's outstanding year as President of the California

Association of REALTORS® in 2005. *(See Attachment B)*

Jim Hamilton

Action of the Directors: Approved

It was Moved, Seconded and CARRIED to approve a special resolution of grateful appreciation in honor of the selection of Tom Carnahan as the recipient of the California Distinguished REALTOR® Award for the year 2005. *(See Attachment C)*

Resolution of Appreciation
Tom Carnahan

Action of the Directors: Approved

REPORT OF THE PRESIDENT-ELECT

President-Elect Colleen Badagliacco reported on the plans for the Regional Chairs Committee in 2006. She also spoke about the importance of using the National REALTORS® Database System (NRDS) identification number to access Association services.

REPORT OF THE TREASURER

Treasurer James Liptak, Chair of the Strategic Planning and Finance Committee, reported on the upcoming Treasurer's Forum.

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

Strategic Planning and Finance

REPORT OF THE EXECUTIVE VICE PRESIDENT/STATE SECRETARY

Executive Vice President and State Secretary Joel Singer reported on the status of the Association's subsidiaries, including Real Estate Business Services, Real Estate Business Technologies, Seniors Advantage Real Estate Council, and REFormsNet.

CONSENT AGENDA

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

See Consent Agenda Action Items – Attachment A

SPECIAL REPORTS

Consumer Services Task Force
Robert Bailey, Chair

It was reported for information only that the task force directed staff to research and prepare background materials in the following areas:

1. Existing standards already in California law
2. Consistent with the constraints of anti-trust law, explore existing mechanisms of the California market and other states markets
3. Internal industry issues
4. Consumer Issues

Eminent Domain Task Force
Bill Jansen, Chair

It was Moved, Seconded and CARRIED, that C.A.R. "SUPPORT" legislation concerning eminent domain that would:
-Prohibit the taking of single family property by eminent domain for any use other than for public use.
-Amend the eminent domain law to make it easier for property owners to transfer their existing property tax base
-Require courts to award the prevailing plaintiff attorney fees and costs should the plaintiff prevail in an eminent domain proceeding when challenging: a) the

validity of the taking of property; or b) the valuation of the property.
-Require: a) independent licensed appraisers to be used in eminent domain proceedings; and b) redevelopment agencies to reimburse property owners the cost of an additional appraisal in eminent domain proceedings.

Action of Directors: Approved

It was Moved, Seconded and CARRIED, that C.A.R. “SUPPORT” legislation concerning redevelopment law that would:
-Substantially tighten the definition of “blight” used by redevelopment agencies proposing to create or expand redevelopment project areas.
-Reduce the time period during which the initial finding of “blight” may exist in a newly created redevelopment project area.
-Reduce the time period during which redevelopment agencies may take property by eminent domain.
-Require a re-evaluation of the necessity of a redevelopment area on a periodic basis.
-Require redevelopment agencies to disclose to all property owners that they may transfer their property tax base if the qualified replacement property is within the same county.

Action of Directors: Approved

Gary Thomas, Chair of MLS Working Group, presented an informational report.

MLS Working Group
Gary Thomas, Chair

COMMITTEE REPORTS

It was Moved, Seconded and CARRIED that C.A.R. include in its homeowner association reserve account legislation a provision to require homeowners to periodically approve a payment plan to fund their homeowner association reserve accounts.

Action of Directors: Approved

Common Interest Development
Dona Crowder, Chair

Homeowner Associations Reserve Accounts

It was reported for information only that the CREPAC Trustees provided funding support for seven State Senate candidates in the amount of $36,900.00 and support of twenty-three Assembly candidates for $84,600.00. CREPAC also made support available to both Republican and Democratic caucus groups in the amount of $192,500.00.

CREPAC Trustees
John Scarborough, Chair

CREPAC Funding Decisions

It was Moved, Seconded and CARRIED, that C.A.R. SPONSOR a bill this year that will:
a. Amend the permit streamlining act to apply to subdivisions that have an appropriate percentage of affordable housing
b. Require local governments to report to the state on their housing production
c. Clean-up the no-net-loss housing law by increasing enforcement options.
d. Rename the “anti-NIMBY” law to the “Housing Accountability Act”

Housing Opportunity
Nancy Troxell, Chair

Permit Streamlining, Housing Accountability and Development Fees

e. Repeal the Granny Flat law (which is not used due to the law on second units)

f. Defer local government's development fees until occupancy permits are issued for housing developments with at least 49% lower-income units in cities that offer meaningful incentives

Action of Directors: Approved

Housing Issues and Solutions

It was reported for information only that C.A.R. will embark on a campaign to educate and motivate candidates for Governor, State Treasurer, and the Legislature on housing issues and solutions.

IMPAC Trustees
Steve White, Chair

IMPAC Contributions

It was reported for information only that the State IMPAC Trustees approved the following contributions:
-- $4,886.70 to Pacific Southwest AOR for new GAD capital expenses.
-- $20,000 to California Natural Resources Group to support reform of Endangered Species Act.
-- $17,500 to support Pacific Legal Foundation's litigation program in defense of private property rights.
-- $15,000 to Civil Justice Association of California for annual membership dues and Board member position.

Legal Action Fund
Suzanne Yost, Chair

It was reported for information only that the following significant developments have taken place.
--Bakersfield AOR v. BLS. This involves a privately broker-owned MLS reproducing selected listings without the broker or other MLS' consent. The Trustees reaffirmed their previous financial support of this case upon certain conditions being met, and further allowed redirection of remaining funds previously allocated for an amicus brief upon those same conditions.
--Strebel v. Brenlar. This involves damages in a case involving two separate properties. One didn't close because of tax liens and the jury held that the agent concealed this causing the buyer to release contingencies and sell his existing home. He tried to find alternative properties in the new area, could not, but did not reinvest in the old area. The jury awarded actual damages, emotional distress damages and lost appreciation on the proceeds of the home sold but not reinvested. The trustees authorized filing a brief. C.A.R. filed its brief stating that emotional distress damages and lost appreciation were not proper in this case. The Court issue a ruling in January that lost appreciation is a proper method of evaluating damages in this case. The facts in this case were difficult to overcome.
--Colliau v. Williams. The Trustees authorized an amicus brief in a malicious prosecution against a lawyer. This case involves whether a buyer who cancelled a transaction because he was unable to qualify for a loan and then sued a subsequent purchaser (who also happened to be the property inspector on the failed transaction) had probable cause to sue the subsequent purchaser. The current litigation is a malicious prosecution against the lawyer in the case only since the buyer who cancelled because he couldn't qualify for the loan had since filed for bankruptcy. The lawyer/defendant did not win a motion to strike, a SLAPP motion typically the response to malicious prosecution lawsuits.

--Gravillis v. Reed. The Trustees authorized a brief on a case involving C.A.R.'s arbitration clause. The issue is whether a broker can compel arbitration using CAR's arbitration clause as a third-party opt-in when the principals in the transaction have chosen to litigate even though they initialed the arbitration clause.
--Pair v. Mogahavem. This case involves whether a person responding to a claim as a defendant is required to offer mediation to maintain the right to claim attorneys fees in the underlying litigation. C.A.R.'s concern is the possible ramification of multiple mediations in a single case. The owner of the property filed a malicious prosecution after the first lawsuit was dismissed without prejudice, drawing a renewed counterclaim on the transaction.

Legislative
Steve Hanleigh, Chair

It was Moved, Seconded and CARRIED, that C.A.R. "SUPPORT" a legislative extension of the expiration date for existing enterprise zones.

Action of Directors: Approved

Enterprise Zones

It was Moved, Seconded and CARRIED that C.A.R. "SPONSOR" legislation to repeal the 4-year "Degree Broker" provision.

Degree Broker Provision

Action of Directors: Approved

Membership
Ray Rodriguez, Chair

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

MLS/Computer and Business Technology
David R. Tanner, Chair

It was Moved, Seconded and CARRIED, that C.A.R. Model MLS Rules be revised to revoke the VOW policy previously adopted into the C.A.R. Model MLS Rules (C.A.R. Model MLS Rule 12.19, and the parity provisions or other miscellaneous references to the VOW rules set forth in Rules 12.8, 12.11, 12.12, 12.14, 12.15, 12.15.1, 12.15.4, and 12.15.5) as set forth in strikeouts and underlines in Attachment E.

Model MLS Rules

Action of Directors: Approved

It was Moved, Seconded and CARRIED, that C.A.R. Model MLS Rules within Section 9 be amended to incorporate NAR Standards of Practice 1-8, 1-15, 3-2 and 3-8 as set forth in strikeouts and underlines in Attachment E.

Action of Directors: Approved

Professional Standards
Kathryn Kelly, Chair

It was reported for information only that the Professional Standards Committee will establish a Working Group to study and recommend changes to strengthen and streamline ethics hearing procedures.

Standard Forms Advisory
David Cabot, Chair

It was reported for information only that many comments were received on two forms (Buyer Inspection Election – BIE; Agent Inspection Disclosure – AID) that are currently being considered by an Inspections Study Group. These comments were presented to the Committee and are being forwarded to the Inspections Study Group. The Inspections Study Group is additionally reviewing the Seller Vacant Land Questionnaire (VLQ).

The Committee received comments from seven Regional Representatives. The drafts of forms scheduled for release in April were approved by the Committee. This includes four new forms, the Additional Signature Addendum (ASA), I Am a REALTOR (IMR), Mediation and Arbitration (MAA) and the Withdrawal Of An Offer (WOO). The Committee also decided to issue a revised Estimated Buyer Cost (EBC) and Estimated Seller Proceeds (ESP) in April that will be interactive on WINForms.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:50 a.m. on January 28, 2006.

ATTACHMENT A – CONSENT AGENDA

CONSENT AGENDA

Membership

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

Arcadia AOR
Maurice Orme
Mary Jean Valiquette

Beverly Hills/Greater Los Angeles AOR
Ronald H. Henry
Gary J. Herman
Doris Lazner
Harold Lazner
Mike Silverman
William Clifford Tavelman

Chico AOR
Boyd Joslyn

Fresno AOR
Kay Koelsch

Monterey County AOR
Jacqueline Y. Busby
Walter Eurich
Nick Marotta
Patricia C. O'Shaughnessy

Northern Solano County AOR
William Thompson

Pacific West AOR
Wanda Alley
Rachel M. Stone
Ardis Ronelle Thornley

Paradise AOR
Marie G. Lee

Plumas AOR
Dennis L. Swanson

San Diego AOR
James L. Bernhardt
Fred J. Cuthill
Crisanto M. Garrido
Robert Lowry Smith
James Vaughan

Emma Wilcoxen

Santa Clara County AOR
Louis Gairaud
Gerald E. Hamilton
David L. Scott

Santa Cruz AOR
Beverly Brown

Santa Maria AOR
Veda Joy Lasseter

Southland Regional AOR
Jennie Stabile

Southwest Riverside County AOR
Ralph Kirschmer

Tahoe Sierra BOR
John Wesley Howell, Jr.

Watsonville AOR
Bill Johnston

Yosemite Gateway AOR
Ruth C. Hunt

CONSENT AGENDA

Strategic Planning and Finance

2. That the Statement of Income and Expenses by program for the eleven months ending November 30, 2005 be approved.

Total C.A.R.
Revenue of $28,340,900
Expenses of $21,639,800
An excess of income over expenses of $6,701,100

Political Activities Fund
An excess of income over expenses of $985,500

Issues Action Fund
An excess of income over expenses of $1,140,000

The C.A.R. Balance Sheet as of November 30, 2005
Total assets of $33,636,500 (of which $24,108,300 are current assets)
Total liabilities of $3,838,500 (of which $3,705,900 are current liabilities)
C.A.R. Fund Balance of $29,798,000

3. That the Projected Statement of Income and Expenses by program for the year ending December 31, 2005 be approved.

CONSENT AGENDA

Strategic Planning and Finance

Total C.A.R.
Revenue of $28,959,500
Expenses of $25,698,100
An excess of income over expenses of $3,261,400

Political Activities Fund
An excess of income over expenses of $904,000

Issues Action Fund
An excess of income over expenses of $1,060,600. This amount will be allocated to IMPAC as approved by the Directors.

4. That amendments to the Legal Action Fund bylaws that would increase the number of trustees from 9 to 11 and change the quorum from 5 to 6 be approved.

CONSENT AGENDA

Legal Action Fund

ATTACHMENT B

CALIFORNIA ASSOCIATION OF REALTORS®
A RESOLUTION OF GRATEFUL APPRECIATION
TO JIM HAMILTON
January 27, 2006

BE IT KNOWN:	The Board of Directors of the CALIFORNIA ASSOCIATION OF REALTORS® does hereby adopt this Resolution as a means of recording for posterity its appreciation for your outstanding leadership as the 98th President of this great Association.
WHEREAS,	Jim Hamilton has established a lengthy and exceptional record of personal commitment and volunteer service to the real estate industry at the local, state and national levels; and
WHEREAS,	Your leadership was a guiding force for the implementation of programs, services and educational opportunities that benefit members as they conduct their daily business; and
WHEREAS,	Under your direction, the Association made important strides to reach out to a broad diversity of members and prospective members; and
WHEREAS,	During your term, the Association was well represented in its efforts to implement sound public policy at both the state and national levels; and
WHEREAS,	By virtue of your friendship, loyalty, dedication and commitment to the real estate community and the public, you leave this Association a legacy of leadership and progress that will endure; therefore, be it
RESOLVED,	That your fellow officers, directors and members of the CALIFORNIA ASSOCIATION OF REALTORS® do hereby convey to you, Jim Hamilton, our gratitude for your outstanding leadership, and look forward to your continued contributions in the future.

ATTACHMENT C

CALIFORNIA ASSOCIATION OF REALTORS®
A RESOLUTION OF GRATEFUL APPRECIATION
TO THOMAS CARNAHAN
January 27, 2006

RECIPIENT OF THE 2005 CALIFORNIA DISTINGUISHED REALTOR® AWARD

BE IT KNOWN: The Board of Directors of the California Association of REALTORS® does hereby adopt this resolution as a means of recording for posterity its appreciation for your outstanding contributions to organized real estate which led to your selection as recipient of the 2005 California Distinguished REALTOR® Award -- the highest honor the Association can bestow upon any member; and

WHEREAS, You have established a continued exceptional record of personal commitment and service to the cause of REALTORS® as an active member of the Southland Regional Association of REALTORS®, the California Association of REALTORS®, and the National Association of REALTORS®; and

WHEREAS, You have met or exceeded all of the criteria necessary to be considered for this award, including at least 20 years as a California REALTOR®, demonstration of outstanding service to the Association for at least 20 years, in particular serving as a C.A.R. Director-for-Life; and

WHEREAS, Your vision and many contributions have helped the Association and its members through many challenging years marked by a host of major housing issues and an ever-changing real estate environment; therefore, be it

RESOLVED, That the officers, directors and members of the California Association of REALTORS® do hereby convey to you, Thomas Carnahan, 2005 recipient of the California Distinguished REALTOR® Award, our gratitude for your many years of outstanding service and leadership, and look forward to your continued contributions in the future.

ATTACHMENT D

2006 PRESIDENTIAL APPOINTMENTS

2006 Executive Committee

1. Vincent Malta, San Francisco, President
2. Colleen Badagliacco, Santa Clara, President-Elect
3. Jim Liptak, Paso Robles, Treasurer
4. Joel Singer, Los Angeles, Executive Vice President (Ex-Officio)
5. Tony Agurs, E. San Diego County
6. Paula Colombo, Sacramento
7. John Cribb, San Luis Obispo
8. Don Faught, Bay East
9. Jim Hamilton, South Bay
10. Linda Harrison, San Francisco
11. Ed Herold, Contra Costa
12. Janet Houde, Santa Clara County, **RC**
13. Dan Lanning, Glendale, **AE**
14. Susan Marshall, San Diego
15. Art Nellessen, Humboldt County
16. Tica O'Neill, Beverly Hills, Greater /LA
17. Frank Valletta, North San Diego County

2006 Directors at Large

1. Bob Ausherman, Tulare
2. Cindy Baker, Pacific West
3. Donna Bayet, Santa Barbara
4. Virginia Butler, Palos Verdes Estates
5. Billie Jean Chadwick, Lompoc Valley
6. Lowell Flemmer, Lodi
7. Janet Halliburton, Oakland
8. Jeannie Hamann, Solano
9. Lois Harris, Oakland
10. Janene Klocek, Yucaipa
11. Carol Kruckenberg, Santa Barbara
12. Brian Malone, Glendale
13. Dawn O'Rourke, Humboldt County
14. Georgia Richardson, Oakland
15. Debbie Rodgers, Conejo Valley
16. Norma Scantlin, E. San Diego County
17. Lenny Sciacca, Tulare County
18. Margaret Svec, Shasta County
19. Sherry Tietjens, Tulare
20. Steve Weiss, Scenic Coast

Scholarship Foundation/Education Foundation (2006-2010)

Yin Bihr, W. San Gabriel Valley
Jackie Crowley, Palos Verdes Peninsula
Margaret Svec, Shasta County

Mark Consalvo, South Bay (Filling a vacancy through 2009)

Legal Action Fund Trustees (2006-2010)

Michael Ferlisi, Arcadia
Bill Podley, Pasadena Foothills

ATTACHMENT E

MLS/Computer & Business Technology

1. ACTION ITEM

That C.A.R. Model MLS Rules be revised to revoke the VOW policy previously adopted into the C.A.R. Model MLS Rules (C.A.R. Model MLS Rule 12.19, and the parity provisions or other miscellaneous references to the VOW rules set forth in Rules 12.8, 12.11, 12.12, 12.14, 12.15, 12.15.1, 12.15.4, and 12.15.5) as set forth in strikeouts and underlines below:

12.8 Advertising of Listing Filed With the MLS. A listing shall not be advertised by any participant or subscriber, other than the listing broker, without the prior consent of the listing broker except as provided in Section~~s~~ 12.16 ~~and 12.19~~ relating to display of listings on the internet.
…

12.11 Use of MLS Information. In recognition that the purpose of the MLS is to market properties and offer compensation to other broker participants and r.e. subscribers for the sole purpose of selling the property, and that sellers of properties filed with the service have not given permission to disseminate the information for any other purpose, participants and subscribers are expressly prohibited from using MLS information for any purpose other than to market property to bonafide prospective purchasers or to support market evaluations or appraisals as specifically allowed by Sections 12.14, 12.15~~,~~ <u>and</u> 12.16 ~~and 12.19~~. Any uses of MLS information inconsistent with these Sections is expressly prohibited. Nothing in this Section, however, shall limit the A.O.R. from entering into licensing agreements with MLS participants and subscribers or other third parties for use of the MLS information.

12.12 Confidentiality of MLS Information. Any information provided by the service to the participants and subscribers shall be considered and treated as confidential by participants and subscribers and shall be for the exclusive use of the participants and subscribers for purposes described in Sections 2, 12.7, 12.11, 12.14, 12.15~~,~~ <u>and</u> 12.16~~, 12.19~~ and this section. Participants and subscribers shall at all times maintain control over and responsibility for each copy of any MLS compilation leased to them by the A.O.R. and shall not distribute any such copies to persons other than participants and subscribers. Participants and subscribers are responsible for the security of their passcodes and shall not give or allow use of or make available their pass codes to any person. Participants and subscribers may reproduce or display the information as provided in these rules.
…

12.14 Display. Subject to Sections 12.15~~,~~ <u>and</u> 12.16 ~~and 12.19~~, broker participants and r.e. subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bonafide prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation. Broker participants and r.e. subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bonafide sellers or prospective sellers only in conjunction with their ordinary business activities in listing properties. Appraiser participants and appraiser subscribers shall be permitted to display the MLS compilation to the person requesting the appraisal only in conjunction with their ordinary business activities of producing a written appraisal. Such displays under this section shall be only in the immediate presence of the MLS participant or subscriber.
…

12.15 Reproduction. "Reproduction" shall include, but not be limited to, making photocopies, computer printouts, electronic transfers (including email), or downloading of MLS data or compilations. Participants and subscribers or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof except as provided in Section~~s~~ 12.16~~, 12.19~~ and in the following limited circumstances:

12.15.1 Copies to Prospective Purchasers. Broker participants and r.e. subscribers may reproduce from the MLS compilation, and distribute to prospective real estate purchasers, copies of those portions of the MLS compilation consisting only of a description of the property, including the address, features, financing and price. ~~Such "client copies" shall also comply with the following:~~

~~a. No advertising may be visible except that the name, company logo and contact information of the Participant and/or the name, company logo and contact information of the non-principal broker or sales licensee, and any other information required by California law or regulation may not be prohibited.~~

~~b. Permissible MLS data may be augmented with additional data not otherwise prohibited from display, provided the source of any additional data is clearly identified.~~

~~c. All listings provided shall identify the name of the listing firm and the name of the listing agent in a manner designed to easily identify such listing firm and agent.~~

~~d. No more than _____ (insert number that will be the same as the number in 12.19.10) active listings may be provided in response to any inquiry.~~
…

12.15.4 Downloading into Computers. Participants and subscribers may download MLS information into a computer or computer system as long as:

a. Access to the computer or computer system receiving the information is strictly limited to authorized participants, subscribers and clerical users as defined in these rules; and
b. The information is only retransmitted to the participants, subscribers and clerical users authorized to access the computer or computer system by these rules; and
c. The information is not reformatted or used to create another product except as may be used by the participant or subscriber who downloaded the data and such use strictly complies with sections 12.7, 12.11, 12.15~~,~~ and 12.16 ~~and 12.19~~.

12.15.5 Sold Information. Individuals legitimately in possession of current listing information, "sold" information, "comparables" or statistical information may utilize such information to support an estimate of value on a particular property for a particular client. However, only such information that the MLS has deemed to be nonconfidential~~,~~ and necessary to support the estimate of value ~~and used in conjunction with work product (i.e. more than a mere recitation of raw data)~~ may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.
…

~~12.19 Virtual Office Websites ("VOWs"):~~

~~12.19.1 VOW Defined. A VOW (1) means any participant's Internet website (and, where authorized, any subscriber's website, subject to the participant's permission, oversight, supervision and responsibility), other than an IDX site as set forth in section 12.16, through which consumers receive real estate brokerage services, including the opportunity to search for MLS data conditional on the participant's oversight, supervision and responsibility and (ii) not withstanding anything in these rules and regulations to the contrary, is subject to paragraphs 12.19.1 through 12.19.13 below:~~

~~12.19.2 Authorization and Opt Out. Participants' and subscribers' use of listings of other participants on VOWs is subject to the consent of such other participants. Participants' consent for display of their~~

~~listings by other participants and subscribers on VOWs pursuant to these rules is presumed unless a participant independently and affirmatively withholds that consent ("opts out").~~

~~Participants may independently "opt out" of the VOWs of other participants and subscribers on (a) a blanket basis ("blanket opt out") or (b) on a selective basis ("selective opt out").~~

~~(a) "Blanket opting out" can be accomplished by either: (i) notifying the MLS, which shall withhold (or instruct the VOW vendor to withhold) the listings of any "blanket opt out" participant from its VOW download of listing information; or (ii) notifying the MLS, which shall compile and maintain a list of the names of any "blanket opt out" participants and make such list available to all participants and subscribers operating VOWs in which case it is the responsibility of participants and subscribers to refrain from displaying the listings of "blanket opt out" participants on their VOWs.~~

~~(Note: The MLS must select one of the two options [either (i) or (ii)] shown immediately above.)~~

~~(b) "Selective opting out" can be accomplished by the "selective opt out" participant providing written notice to another participant or subscriber operating a VOW of the "selective opt out" participant's independent decision to withhold consent for display of that participant's listings on the VOW. In the event such opt out notice is directed to the participant, the participant is responsible for notifying all of its subscribers of said opt out. An opt out notice directed to a specific subscriber, however, must also include a written notice to that subscriber's responsible participant. Any "selective opt out" is solely the responsibility of such selective opt out participants and shall not be published by the service.~~

~~12.19.3 Operational Compliance. Participants, and subscribers acting on their behalf, operating VOWs must establish a broker-consumer relationship with each consumer seeking to receive information from a participant's or subscriber's VOW ("Registrant") evidenced by and in compliance with the following:~~

~~(a) Confirmation and Verification: Participants and subscribers must (1) obtain the name and valid email address of each Registrant and (2) send an email to each Registrant in order to confirm that the Registrant has received and agreed to the VOW's Terms of Use. Participants and subscribers can provide access to their VOW only after a Registrant's email address is verified as valid and the Registrant's agreement to the VOW's Terms of Use is confirmed.~~

~~(b) Terms of Use: Participant's and subscriber's Terms of Use shall include the following terms:~~

~~1. That the Registrant acknowledges entering into a consumer- broker relationship with the participant;~~

~~2. That all data obtained from the VOW is only for the Registrant's personal, non-commercial use;~~

~~3. That the Registrant has a bona fide interest in the purchase, sale or lease of real estate of the type being offered through the VOW;~~

~~4. That the Registrant will not copy, redistribute or retransmit any of the data or information provided; and~~

~~5. That the Registrant acknowledges the MLS's ownership of and the validity of the copyright in the MLS database.~~

~~6. That the Registrant authorizes the MLS and the other MLS participants to access the VOW for the purpose of monitoring the site's compliance with the applicable MLS rules and policies.~~

~~Participant's and subscriber's Terms of Use may also include other provisions determined by the~~

~~participant.~~

~~(c) Financial Obligation: Participants' and subscribers' Terms of Use may not impose a financial obligation on a Registrant. Financial obligations, if any, must be established separately from the participants' and subscribers' Terms of Use, must be prominently labeled, and may not be accepted solely by a "mouse click." (The term "mouse click" denotes a purposeful action by a computer user with a pointing device, such as a computer "mouse" or functionally equivalent mechanism, or simply a keyboard entry, by which the user affirmatively makes a selection or choice.)~~

~~(d) Representation Agreement: Participants' and subscribers' Terms of Use may not create any representation agreement between a Registrant and the participant. Representation agreements, if any, must be established separately from the participants' and subscribers' Terms of Use, must be prominently labeled, and may not be accepted solely by a "mouse click."~~

~~(e) User Name and Password: Participants and subscribers must obtain from or supply to each Registrant a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW.~~

~~(f) Protection from Misappropriation: Participants' and subscribers' VOWs must protect MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" and other unauthorized accessing, reproduction or use of the MLS database.~~

~~(g) Seller Withholding: Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or their property address from display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) shall not be accessible to Registrants. This does not preclude listing participants or subscribers from displaying on their VOW or their other website(s) the listing or property address of consenting sellers.~~

~~(h) Source and Update: MLS information available on any VOW must indicate the source of the information being displayed and the most recent date uploaded and must be refreshed at least once every seven (7) days.~~

~~(i) Distribution of Database: No portion of the MLS database shall be distributed, provided to or made accessible to any person except as provided for in these rules and/or in the National Association of REALTORS VOW policy.~~

~~(j) Privacy Policy: VOWs must display the participant's and subscriber's privacy policy informing Registrants how information they provide may be used.~~

~~(k) Objective Exclusions: Not all listings from the MLS must be displayed as long as any exclusions from display on participants' and subscribers' VOWs are based on objective criteria, e.g. type of property, listed price or geographical location.~~

~~(l) Referral Fees: Participants and subscribers may not provide the identity of Registrants to any other entity for compensation except where (1) the participant's residential real estate brokerage activities principally consist of listing or selling the types of properties required to be filed with the MLS; (2) Registrants are seeking property in a price range or in a location for which the participant ordinarily does not provide real estate brokerage services; and (3) the number of Registrant identities provided, or the corresponding revenue generated, is an insubstantial portion of the participant's real estate brokerage activities. For purposes of this rule, "selling" does not include making referrals of prospective purchasers~~

~~to other real estate brokers and agents and "listing" does not include making referrals of prospective sellers to other real estate brokers and agents.~~

~~(m) Notice of Intent to Establish VOW: Participants and subscribers (as authorized in accordance with Section 12.19.4 below) must notify the MLS of their intention to establish a VOW, and must make their VOW directly accessible to the MLS and other MLS participants for purposes of monitoring/ensuring compliance with applicable rules and policies.~~

~~12.19.4 Subscriber Authorization. Subscribers are authorized by the Service to operate VOWs subject to their participant's written consent submitted to the Service, expressly permitting said subscribers to have VOWs. Notwithstanding, VOWs remain subject to the participant's control, and both the participant and the subscriber operating the VOW shall be accountable under these rules.~~

~~12.19.5 Confidential Information Fields. Participant's and subscriber's VOWs may not make available for consumer self-directed search by or display to Registrants the following data intended exclusively for other MLS Participants and their affiliated licensees:~~

~~1. Off market comparable data such as expired, withdrawn, pending or sold listings.~~

~~[However, use of "sold" information, in conjunction with work product, to develop or support opinions of real property value or price (ex: appraisals, broker price opinions and Comparable Market Analysis ("CMAs")) is permissible as long as such opinions of real property value or price consist of more than a mere recitation of raw data].~~

~~2. The compensation offered to other MLS Participants.~~

~~3. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.~~

~~4. The seller(s) and occupant(s) name(s), phone number(s) and email address(es) where available.~~

~~5. Instructions or remarks intended for cooperating brokers only, including but not limited to showing instructions or security references (ex: lock box, burglar alarm or security system, vacancies) regarding the listed property.~~

~~6. Any other information that goes beyond a description of the property.~~

~~12.19.6 Advertising vs. Contact Information. No advertising may be visible on a page displaying any portion of the listings of other Participants except that the name, company logo and contact information of the Participant operating the VOW and/or the name, company logo and contact information of the non-principal broker or sales licensee operating the VOW, and any other information required by California law or regulation may not be prohibited.~~

~~12.19.7 Modification. MLS data fields authorized for display may not be changed. MLS data may be augmented with additional data not otherwise prohibited from display provided the source of any additional data is clearly identified. This rule does not restrict the format of MLS data display or display of fewer than all of the listings or fewer authorized data fields.~~

~~12.19.8 Notice and Disclaimers. Display of MLS data must include a notice indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. Participants' and subscribers' VOWs may include other appropriate disclaimers necessary to protect the participant, subscriber and/or the MLS from liability.~~

~~12.19.9 Identity of Listing Broker and Agent. All listings displayed on VOWs shall identify the name of the listing firm and the name of the listing agent in a manner designed to easily identify such listing firm and agent.~~

~~12.19.10 Viewable Number of Listings. Registrants may view, retrieve or download not more than _____ (insert number that will be the same as the number in 12.15.1) active listings in response to any inquiry.~~

~~12.19.11 Source of Other Listing Data. Participants and subscribers displaying other brokers' listings obtained from sources other than this MLS (e.g. from other MLSs, from non-Participant brokers, etc.) shall display the source from which each such listing was obtained.~~

~~12.19.12 Password Validity Period. Registrants' passwords may be valid no longer than 180 days, after which such passwords must be reconfirmed or changed.~~

~~12.19.13 Right to Charge for Download. The MLS has the right to charge the costs of adding or enhancing its downloading capacity to participants and subscribers who request downloading of listing information pursuant to Section 12.19.~~

2. ACTION ITEM

That C.A.R. Model MLS Rules within Section 9 be amended to incorporate NAR Standards of Practice 1-8, 1-15, 3-2 and 3-8 as set forth in strikeouts and underlines below:

9. SELLING PROCEDURES.

9.1 Showings and Negotiations. Appointments for showings and negotiations with the seller for the purchase of listed property filed with the service shall be conducted through the listing broker except under the following circumstances:

(a) the listing broker gives the cooperating broker specific authority to show and/or negotiate directly with the seller, or
(b) after reasonable effort and no less than 24 hours, the cooperating broker cannot contact the listing broker or his representative. However, the listing broker, at his option, may preclude such direct negotiations by the cooperating broker by giving notice to all participants through the MLS.

In the event all showings and negotiations will be conducted solely by the seller, the listing broker shall clearly set forth such fact in the listing information published by the service.

9.2 Disclosing the Existence of Offers. Listing brokers, in response to inquiries from buyers or cooperating brokers, shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, the listing broker shall also disclose whether offers were obtained by the listing licensee, by another licensee in the listing firm, or by a cooperating broker.

9.3 Availability to Show or Inspect. Listing brokers shall not misrepresent the availability of access to show or inspect a listed property.

9.~~2~~4 Presentation of Offers. The listing broker must make arrangements to present the offer as soon as

possible, or give the cooperating broker a satisfactory reason for not doing so. In the event a listing broker will not be participating in the presentation of offers, the listing broker shall clearly indicate this fact in the listing information published by the service.

9.~~3~~5 Submission of Offers and Counter-offers. The listing broker shall submit to the seller/landlord all offers until closing unless precluded by law, governmental rule or expressly instructed by the seller/landlord otherwise. The cooperating broker acting for buyer/tenant, shall submit to buyer/tenant all offers and counter-offers until acceptance.

9.~~4~~6 Right of Cooperating Broker in Presentation of Offer. The cooperating broker has the right to participate in the presentation of any offer to purchase he secures. The cooperating broker does not have the right to be present at any discussion or evaluation of that offer by the seller and the listing broker. However, if the seller gives written instructions to the listing broker requesting that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker shall convey the offer to the listing broker for presentation. In such event, the cooperating broker shall have the right to receive a copy of the seller's written instructions from the listing broker. Nothing in this section diminishes or restricts the listing broker's right to control the establishment of appointments for offer presentations.

9.~~5~~7 Change of Compensation Offer by Cooperating Broker. The cooperating broker shall not use the terms of an offer to purchase to attempt to modify the listing broker's offer of compensation nor make the submission of an executed offer to purchase contingent on the listing broker's agreement to modify the offer of compensation. However, failure of a cooperating broker to comply with this rule shall not relieve a listing broker of the obligation to submit all offers to the seller as required by Section 9.~~3~~5.

9.~~6~~8 Cooperating Broker as a Purchaser. If a cooperating broker wishes to acquire an interest in property listed with a listing broker, such contemplated interest shall be disclosed to the listing broker prior to the time an offer to purchase is submitted to the listing broker.

(**NOTE:** Nothing in these rules shall preclude the listing broker and cooperating broker from entering into a mutual agreement to change cooperative compensation.)