# AGENDA

January 23, 2014

## TRANSACTIONS AND REGULATORY COMMITTEE

Grand Hall B-Lobby Level Manchester Grand Hyatt San Diego, CA 1:00 p.m. – 3:20 p.m.

#### MISSION STATEMENT

The Committee is a Policy committee. Its mission is to develop C.A.R.'s overall policy agenda as it relates to the practice of real estate. It has original jurisdiction to evaluate transactional issues, legislation and regulation in the following issue areas:

Licensure
Liability and Risk Management
Real Estate Finance
Transactional

Each issue area is managed during the Committee's meeting by an Issue Chair, under the direction of a committee Chair and committee Vice-Chair. The Committee has jurisdiction over issues that are potentially real estate related that do not fall into another committee's jurisdiction. The Committee reports to the Legislative or Federal level of government committee(s), as appropriate, and to the Executive Committee and the Board of Directors.

#### PRESIDING:

Clay Sigg, CHAIR Michael Sibillia, VICE CHAIR

# **Issue Chairs:**

Darnella Barnes, Liability and Risk Management Kevin Birmingham, Transactional James Irving, License Kenneth Neufeld, Real Estate Finance

# Liaison:

Greg Galli, C.A.R. Executive Committee

## Staff:

Stan Wieg, Legislative Advocate Matthew Roberts, Federal Government Affairs Manager

I. OPENING REMARKS - Clay Sigg, Chair

# II. ACTION REQUIRED

## A. E-MAIL ADDRESS COLLECTION BY BRE\*

THE QUESTION: Should C.A.R. Sponsor legislation empowering BRE to collect e-mail

addresses as part of the required license information?

#### **B. HOME INSPECTOR LIABILITY LIMITATIONS\***

THE QUESTION: Should C.A.R. Sponsor legislation to expand the existing prohibition on a home inspector's ability to limit liability for his or her own fault by contract?

#### C. TEAM NAMES AT BRE\*

THE QUESTION: Should C.A.R. Sponsor legislation to clarify the rules for BRE to regulate the use of Team Names by licensees?

## D. Auction Company Liability\*

THE QUESTION: Should C.A.R. Sponsor legislation to require an auction company that is used to validate a short sale price to indemnify a listing agent for any liability that results from changes in a transaction imposed by the auction company taking over the transaction during the auction process?

# E. BOND DEDUCTIBLES FOR ACCESS TO TRUST FUND ACCOUNTS\*

THE QUESTON: Should C.A.R. Sponsor legislation to allow bonds that are required for non-licensees with access to trust accounts to include a deductible up to 5% when the Broker sets aside separate funds to cover the deductible amount?

## F. ELECTRONIC DOCUMENTS; STATUTE OF FRAUDS\*

THE QUESTION: Should C.A.R. Sponsor legislation to change the statute of frauds so that short-lived electronic communications (like text messages) do not qualify as contractual documents that must be preserved in a licensee's file?

#### G. SEPARATION OF COMMERCIAL AND INVESTMENT BANKING\*

THE QUESTION: Should C.A.R. support State Resolution ACR 73, Hernandez, a resolution to support federal legislation that would reinstate the Glass-Steagall Act's separation of commercial and investment banking?

#### H. OTHER ACTION ITEMS

## III. DIRECTION REQUESTED (Organized by Issue Area)

**A. CONFORMING LOAN LIMIT RESOLUTION -** Kenneth Neufeld, Real Estate Finance Chair

In November of 2013 the Federal Housing Finance Agency (FHFA) announced it was their intention not to reduce the loan limits of Fannie Mae and Freddie Mac (known as the conforming loan limits) for 2014. Because the FHFA had been threatening lowering the loan limits since the beginning of 2013 this was seen as a victory. Three weeks later on December 16, 2013, the FHFA announced they were seeking public input on decreasing conforming loan limits from \$417,000 to \$400,000, and a cap for high cost areas from \$625,500 to \$600,000. While these may seem like small decreases, they would impact

California more than any other state given our high cost of housing. Additionally, this could be only the first decline and lead towards further incremental declines.

Question: Should C.A.R. seek a resolution from the California state legislature that resolves that the FHFA not decrease the conforming loan limits?

#### **B. OTHER DIRECTION REQUESTED ITEMS**

IV. TASK FORCE / WORKING GROUP REPORTS – FHA Assumable Loan Working Group, Clay Sigg, Chair.

As the housing market begins to move into a rising interest rate environment, there is likely to be more consideration and attempts by home buyers to assume FHA loans. While Fannie Mae and Freddie Mac loans are NOT assumable, FHA loans are assumable for qualified homebuyers. How difficult is it to assume a FHA loan is unclear. Also unclear is what the impact of hundreds of thousands of assumable loans at historically low interest rates would be on California's housing market. Going back to the late 1970's and early 1980's C.A.R. has supported assumable loans.

Question: Should C.A.R. continue to support assumable loans and push the FHA for clear and easy guidelines for assuming FHA loans?

#### V. STATE ISSUES UPDATES AND REPORTS

# A. APPROVED SPONSORED LEGISLATION FOR 2014

- **1. Anti-Squatter Remedies** Creates enhanced penalties for trespassing squatters and facilitates law enforcement ability to remove.
- **2. Regulatory Registry** New legislation related to C.A.R.-Sponsored SB 771 (Galgiani), C.A.R. sponsored legislation introduced in 2013. While SB 771 is technically alive in the Assembly, the author will re-introduce a version of it rather than revive the original bill.
- **3. Independent Contractor status** Legislative proposal approved between meetings that, if required by court decision, will clarify the validity of independent contractor agreements between brokers and salespersons.

#### **B. BILLS OF OTHERS**

1. AB 1164 (Lowenthal) Employee Liens - Under current law, an individual who works on the creation or improvement of a property can record a mechanic's lien against the property to ensure payment. AB 1164 would authorize an employee to record a lien for unpaid wages against their employers real or personal property. C.A.R. is opposed to this measure because it jeopardizes financing of properties by the creation of a new superpriority lien "clouding" title and endangering due process for property owners.

Position: Oppose

Status: Assembly Appropriations Committee

**2. SB 803 (DeSaulnier) Void Document Falsification** - Currently, individuals can be tried and convicted of felonies for crimes in which documents pertaining to the right, title or interest in real property were falsely completed. SB 803 would allow the judges presiding over such cases to declare void any documents completed by the convicted individuals as part of the fraudulent scheme. C.A.R. is seeking amendments to SB 803 to protect the rights of bona fide purchasers.

**Position:** Oppose Unless Amended **Status:** Senate Public Safety Committee

## VI. FEDERAL ISSUES UPDATES AND REPORTS

A. Real Estate Finance:

1. GSE Update

## a. PATH Act

Texas Republican Congressman, and Chair of the Financial Services Committee, Jeb Hensarling continues to lobby fellow Representatives in an attempt to gain enough votes to pass H.R. 2767. However, as of the posting of this agenda this bill continues to lack enough support from both Democrats and Republicans to move to the floor for a full vote. On July 23 the House Financial Services Committee approved H.R. 2767, the Protecting American Taxpayers and Homeowners Act of 2013 (PATH). C.A.R. and NAR strongly oppose this bill because it would severely reduce the flow of capital to the mortgage market.

Specifically, H.R. 2767 would:

- o Eliminate Fannie Mae and Freddie Mac
- Make the 30-year, fixed-rate mortgage less readily available
- Eliminate the conforming mortgage due to the abolishment of a government guarantee
- Limit FHA financing to first-time home buyers or low- and moderate-income home buyers
- Lower loan limits in high-cost states, such as California, forcing California home buyers to pay higher mortgage rates.

H.R. 2767 passed out of committee along a party-line vote, with the exception of Gary Miller (R) and Mike Fitzpatrick (R-PA) being the only two Republicans to oppose the bill.

#### b. Corker-Warner

The Senate Banking, Housing, and Urban Affairs committee has yet to address any specific piece of legislation on GSE reform; however, one Senate bill has garnered most of the attention and support on both sides of the isle. Senators Bob Corker (R-TN) and Mark Warner (D-VA) have introduced a bipartisan bill that would reform the housing finance market by eliminating Fannie Mae and Freddie Mac and replacing them with a single entity that would still place a government guarantee (though limited) on qualified mortgage backed securities. While this bill is an improvement over the PATH Act there are still provisions with the bill that C.A.R. would like to see amended. These include reduced loan limits in high-cost areas and mandatory risk sharing of mortgage backed securities.

## c. GSE Fees

In December, the FHFA announced an increase in both guarantee fees and delivery fees (also known as loan level price adjustments) for both Fannie Mae and Freddie Mac. These fee increases are intended to make mortgages so expensive that private capital will return to the mortgage market. The impact on homebuyers is they will pay more for their mortgages. Additionally, the cost of a mortgage no longer appropriately reflects the risks of the buyer, but instead overcharges the buyer in an attempt to lure private capital back. C.A.R. and NAR are both strongly opposed to these fee increases.

New FHFA Director Mel Watt has publicly stated it is his intention to NOT implement these new fees so he may review their impact and necessity.

## d. Update on GSE Financial Health

Fannie Mae and Freddie Mac have now paid the government \$146 billion dollars in dividends since being placed in conservatorship in September of 2008. When the GSEs were placed in conservatorship the government spent \$188 billion keeping Fannie and Freddie afloat. While many expect Fannie and Freddie to have paid back profits to the Treasury exceeding what they borrowed by late 2014 or early 2015, under the preferred-stock agreement between the Treasury and the GSEs, none of that money goes towards "paying back" the government. Instead the government takes all the profits from the GSEs (minus an operating cushion) until Congress determines how to reform them. This has raised concerns with existing shareholders who are left out of these GSE profits, affordable housing advocates who want the National Housing Trust Fund to begin receiving a share of GSE profits as mandated under HERA, and others.

# 2. FHA Update

#### a. Senate Reform Efforts

On July 31, 2013, the Senate Banking, Housing and Urban Affairs committee marked up S. 1376, "The FHA Solvency Act of 2013", sponsored by Senators Johnson (D-SD) and Crapo (R-ID) by a bipartisan vote of 21-1. The bill promotes FHA's financial solvency with common sense financial reforms, while still retaining FHA's critical historic mission. REALTORS supported the bill that provides FHA with tools to rebuild its capital reserves, protect taxpayers, and continue its mission of providing responsible qualified borrowers with affordable mortgage financing.

## b. House Reform Efforts

House Financial Services Chairman, Jeb Hensarling, has included FHA reform in the Protecting American Taxpayers and Homeowners Act (PATH). The proposed legislation would drastically alter the FHA program by:

- Limit FHA availability to first-time homebuyers, and low- and moderate-income homebuyers,
- o Lower FHA loan limits, including the FHA floor,
- o Reduce FHA coverage from 100 percent to 50 percent, and
- Mandate risk sharing.

C.A.R. and NAR are strongly opposed to the PATH Act.

# c. FHA Loan Limits

In December 2013, the FHA announced it was reducing the loan limit for FHA-insured loans from \$729,750 to \$625,500 beginning Jan. 1, 2014. However, while the FHA is

required by statutes under the Housing and Economic Recovery Act (HERA) to lower its cap on loan limits, it has also interpreted HERA to require it to reset metropolitan statistical (MSA) median home prices.

Since 2008, FHA has based its MSA median home prices on the highest median home price for a county over time (which for many counties has meant 2007 home prices, when prices were at a peak). According to FHA's announcement, FHA believes it must use 2008 price levels. If an area's median home price has increased since 2008, FHA will use the higher median price. However, home prices in many areas are still below 2007 levels, which has resulted in the drastic reduction of FHA's MSA median prices. In California, it has resulted in reductions of an average of more than \$100,000 statewide.

View FHA's announcement and the new FHA median home prices.

# d. FHA Actuarial Report

On December 13, 2013, the FHA released its Annual Report to Congress and the FY 2013 Independent Actuarial Assessment of the FHA Mutual Mortgage Insurance Fund. The review shows that the fund has gained \$15 billion over the past year and the current economic net worth has improved to a negative \$1.3 billion. FHA's current cash reserves total \$48 billion. This does not cover 30 years' worth of reserves as required by the statute, but is almost double what FHA had in reserves in 2012. The capital reserve ratio is required to be at or above 2 percent and FHA is expected to meet that obligation by 2015. Improvements can be attributed to:

- Early Payment Defaults are at their lowest levels in seven years
- An 18 percent drop in serious delinquency rates and a 20 percent drop in foreclosures starts are a result of enhanced loss mitigations policies.
- FHA REO recovery rates are up 28 percent from last December, and this figure does not account for the future impact of FHA's new streamlined short sale program which was launched in July.
- FHA has tightened credit standards, increased premiums, eliminated mortgage insurance cancellation options for most loans and expanded use of loss mitigation

#### 3. QM & QRM

The Qualified Mortgage (QM) and Qualified Rule Mortgage (QRM) rules are scheduled to go into effect starting in January of 2014. Required by the Dodd-Frank Act, the QM rule is intended to ensure a borrower has the ability to repay their loan. This is done by defining sound underwriting standards which, if followed by the lender, would create a safe-harbor from litigation by the borrower should they default. The QRM rule is also known as the "risk retention" rule which requires lenders to keep a percentage of risk on their books from loans they sell off into the secondary mortgage market. The exemption to the risk retention rule are qualified residential mortgages which meet the QRM rule quidelines.

Originally proposed as separate rules, the six federal regulators in charge of the QRM rule have aligned it with the QM rule which was proposed and finalized by the Consumer Financial Protection Bureau (CFPB). While the final rules are drastically less restrictive than originally proposed, it is still unclear what their full impact will be. Non-QM or QRM loan will still be originated, but with the additional risk and capital required it is not yet known what the additional cost of these mortgages will be.

# B. License and Regulation:

## 1. Eminent Domain

At the suggestion of a San Francisco based venture capital firm, Mortgage Resolution Partners (MRP), cities and counties are exploring the idea of local governments using eminent domain authority to seize performing mortgage notes of "upside down" or "underwater" homeowners, and then refinance them at the homes' current value, and sell that new note to a new investor. A number of cities throughout the state and the country continue to look at this issue. Below is an update on where the issue is:

Considering it:

-City of Richmond -City of San Francisco -City of La Puente -City of Pomona -City of Salinas -City of San Joaquin -City of El Monte -City of Orange Cove

Decided not to pursue it:

-County of San Bernardino -City of Ontario -City of Fontana -City of Oakland

#### C. Transaction:

#### 1. Flood Insurance

On Oct. 29, 2013, Senators Robert Menendez (D-NJ) and Johnny Isakson (R-GA) introduced the REALTOR supported "Homeowner Flood Insurance Affordability Act" (S. 1610), to delay unintended rate increases under the Biggert-Waters law and its implementation. Representatives Michael Grimm (R-NY) and Maxine Waters (D-CA) have introduced an identical bill in the House (H.R. 3370). The bipartisan measure calls for a 4-year "time out" on further implementation of the rate structure until Federal Emergency Management Agency (FEMA) completes the affordability study required by Biggert-Waters and also proposes a regulatory solution to issues found in the study. The bill's delay would apply to any property that is grandfathered or purchased after July 2012, including second homes and commercial properties. The other property owners will still see any rate increases capped at 20-25% a year. The bill would also create a Flood Insurance Advocate within FEMA to investigate and assist property owners with verifying the accuracy of flood insurance rate quotes.

# 2. Mortgage Debt Forgiveness

On December 31, 2012, Congress passed budget solutions to avoid the "fiscal cliff," which included an extension of the debt forgiveness protections sunset date to January 1, 2014. C.A.R. sponsored SB 30 and AB 42 to make conforming changes in California law retroactive to January 1, 2013. In late 2013, C.A.R. received opinion letters from the Internal Revenue Service and the Franchise Tax Board clarifying that under California law debt forgiven in a short sale is not subject to income tax by the federal or state governments. As a result, C.A.R. will not pursue enactment of SB 30 or AB 42 with regard to debt forgiveness in a short sale. However, the federal legislation which expired at the end of 2013 also included debt forgiveness protection in the case of a loan modification. It is unclear to C.A.R. staff whether to continue to seek enactment of that aspect of SB 30/AB 42.

C.A.R.'s Taxation and Government Finance Committee is looking at the question of whether C.A.R. should seek debt forgiveness protection for loan modifications.

## 3. RESPA/TILA Rule

On Wednesday Nov. 20, 2013 the Consumer Finance Protection Bureau (CFPB) issued the final Real Estate Settlement Procedures Act/Truth in Lending Act (RESPA/TILA) rule. The CFPB followed many of NAR's suggestions to improve its initial proposal. For example, the initial proposal would have required a three day waiting period for virtually any changes to the settlement statement (HUD-1). Now, only major changes to loan type, terms, or pricing will require a waiting period, similar to current TILA rules.

The CFPB gave industry more than a year and a half to implement the rule. It becomes effective in August 2015.

RESPA TILA Rule

#### 4. 3% Fee

On Monday, Oct, 28, 2013, Senators Joe Manchin (D-WV), Senator Mike Johanns (R-NE), Carl Levin (D-MI), Pat Toomey (R-PA), Debbie Stabenow (D-MI) and Mark Kirk (R-IL) introduced S. 1577: The Mortgage Choice Act. The legislation is identical to H.R. 3211 in the House. It would make adjustments to the Truth in Lending Act's (TILA) definition of fees and points to ensure greater consumer choice in mortgage and settlement services under the Ability to Repay/Qualified Mortgage (QM) rule. S. 1577 endeavors to restore a competitive market among lenders by clarifying and rationalizing the definition of fees and points to reduce this discrimination. It is believed that without S. 1577, both choice and access will be severely reduced, affecting countless consumers and those who serve them. NAR was asking both the Senate and House to ensure the legislation is enacted before the QM rule takes effect in Jan. 2014, but as of this agenda posting the bills have not moved.

**CFPB Proposal** 

# D. OTHER ITEMS

## VII. OTHER BUSINESS

#### VIII. ADJOURNMENT

Note: the symbol \* next to an item indicates that it is accompanied by Public Policy Paper contained in the committee meeting materials.