

# REALTOR® Risk Management and Consumer Protection Report

## C.A.R. Meeting - Winter 2024

**Kelly G. Richardson, Partner, Richardson Ober LLP**

1. Failure to document changes in the transaction, conditions, etc.
  - last minute discovery.
  - boundary dispute at the last minute.
  - handshake agreements.
  - document advice you give to your clients.
2. Enduring disclosure responsibility myths:
  - If I don't know it by visual inspection, I don't know it.
  - If I don't know it from THIS transaction, I don't know it.
  - Michel v. Palo Verde, Horike - It doesn't matter if somebody else in the office knows something.
3. Not paying attention
  - Obvious issues
    - discrepancies between Assessor and actual square footage.
    - failure to note obvious additions/major modifications.
4. Not documenting client issues to client.
5. Lack of active monitoring of progress of the transaction and client's compliance with deadlines.
6. Continued overreaction to mold incidents.

### **MOLD**

It is not what we have been told.

- California Department of Public Health (CDPH) – “We recommend against measuring indoor microorganisms or using the presence of specific microorganisms to determine the level of health hazard or the need for urgent remediation. [CDPH Statement](#)
- Environmental Protection Agency (EPA) – “If you already have a mold problem – ACT QUICKLY. Mold damages what it grows on. The longer it grows, the more damage it can cause. [A Brief Guide to Mold, Moisture and Your Home](#)
- Centers for Disease Control and Prevention (CDC) – Does not recommend mold testing. [CDC Information on Mold](#)

Outcome of Mold testing

- Extra expense
- Disembodied date
- Panicked resident/tenant/buyer
- Urge to start demolishing walls to find mold

Clean with diluted bleach. If the area is greater than 30 square feet, call an expert to assist with cleaning. No emergency, hire the best bid.

Avoidance of mold claim lawsuits

- Act decisively, do not delay.
- Show the complainer that you share their concern, but don't let them over-react. If necessary, provide copies of government information regarding mold health impact.
- Emphasize importance of locating the water leak.
- Encourage the immediate repair of the water intrusion source.

### **C.A.R. Regional issues:**

- Insurance and unable to obtain coverage.
- Low inventory.
- Lack of broker oversight with agents in their office and out of area agents.
- Farmers Insurance is requiring owners to install automatic water shut off devices.
- Sellers are not being transparent with multiple offers and using the SMCO when there aren't multiple offers.
- Eureka now has 5 point of sale items.
- Impersonator using agent's license number to conduct business.
- Transaction Coordinators doing work they are not licensed to do.
- Issues with clear cooperation and "coming soon"
- Fortress Fire on the RPA. This item showed up with no education or information and is causing issues.
- Region 21 – Palos Verdes, drainage pipes are failing with homes on the hillside with the amount of rain.
- Region 6 - loans falling through due to balcony inspections/repairs not being done.
- Buyers not understanding the buyer representation agreement and signing multiple agreements with multiple agents.
- Listing agents list a home and then not available or returning phone calls for questions, etc.
- Buyers are communicating through WhatsApp type group chats and divulging details/terms of their offers if they do not get an accepted offer in a bidding war.
- Leased land issues (Palm Springs area) and out of town agents no knowing area issues.
- Homes listed in the MLS without a listing agreement.
- Sea level rising, causing damage.

### **Gov Hutchinson**

- **AB12** – Cap on security deposits - July 1, 2024 – Not to exceed one month's rent for furnished/unfurnished. Landlords with fewer than 4 units/properties are exempt. Discussed labeling deposits for different things: (i.e. cleaning, pet, etc) Can label whatever you want, but don't go over the cap. This could limit what you can use the deposit for. [AB 12](#)
- **Tenant Protection - Evictions**
  - Fault – did not pay the rent.
  - No Fault
    - Government order to evict (never happens).
    - Owner takes the home permanently off the rental market and leaves it vacant. Home must be off of the rental market for 2 years.
    - Owner moves into the home. Owner must live in the home for 12 months.
    - Substantial remodel. Large enough that it cannot be safely accomplished within 30 days and rendered uninhabitable.
- **NHD** - Some reports include a local fire zone where the box will be checked "yes." This will not trigger the Fire Hardening Disclosure
- **Disclosure Law** -starting July 1, 2024, If there is fewer than 18 months ownership in a residential 1 – 4 units, there will be a higher level of scrutiny. Also, if more than \$500 worth of work has been done.
- **Forms** - will be discussed at the next meeting.
- **ADUs**
  - Easy to get approved.
  - Right to rent out the ADU.
  - Possibly sell separately without a lot split. Selling as a condo. Not aware of any City adopting this. Would need to create an HOA, CC&R etc. Lienholder would need to approve the sale. HOA could deny.

- **Short Term Rentals/Hotels** - SB 644 allows a reservation for a hotel accommodation or a short-term rental located in California to be canceled without penalty for at least 24 hours after the reservation is confirmed if the reservation is made 72 hours or more before the time of check-in.
- **Storing of micro mobility devices** (scooters, ebikes) – SB 712
  - Cannot prohibit storing and charging as long as the battery is approved by the consumer product safety commission. If not, can store devices, but cannot charge the battery.
- **Balcony Inspections**
  - New paragraph to address in the June release of the RPA.
  - [C.A.R. Balcony Quick Guide](#)
- **Workplace Violence** – Prevention plan for any workplace with at least 1 employee. C.A.R. will have a sample plan. [C.A.R. Workplace Violence Quick Guide](#)
- **Independent Contractor** - NAR is working to delay and resolve. They have a bill ready to go for the real estate industry, if needed. [C.A.R. Independent Contractor Quick Guide](#)
  - Brokers need to be careful about telling agents how to do their job. They can implement risk management policies. Should not be paying for agent's education, marketing etc.
- **Corporate Transparency**
  - Entity paying more than \$300K all cash. Title is required to inform the government the names of all of the people involved. New law applies to everyone if the business is a corporation or LLC who has substantial control (25%) or manager. [C.A.R. Beneficial Ownership Quick Guide](#)
- **NAR lawsuit update**
  - CAR deciding whether or not they will mandate buyer broker agreements.
  - Moving to greater transparency with commissions.
  - Free webinar on buyer broker agreements until October 2024.
    - [C.A.R. Buyer Representation Agreement Course](#)
    - [NAR ABR® Course at No Cost](#)
    - [C.A.R. Buyer Representation Agreement Quick Guide](#)