

CAR STATE DIRECTOR - February 2020 – Anaheim
Submitted by Cindy Doll

(Before acting on information found below, confirm with Legal Hotline attorneys or other appropriate parties)

COASTAL ISSUES GROUP – This group is called SMART COAST CALIFORNIA - Consultant Don Schmitz presented info-the primary purpose for group is to address the Sea Level Rise & Residential Adaptation Guidelines issue. Sea level rise is the most anticipated result of climate change and they estimate it will cause the sea level to rise 5 feet. The Coastal Commission (CC) mostly wants to see Managed Retreat...to retreat back in a managed fashion when a permit is needed on your coastal home. Many have no land to retreat into. One option is off shore reefs and soft armoring. The group has been distributing info on these options to cities and counties throughout the CA coastline. Building off shore reefs could slow the breaking of waves. Several cities have vulnerability studies in process which will later affect their Local Coastal Plans (LCP). The studies have already been completed for Pismo Beach, Grover Beach, and SLO County. The CC must give final approval to all LCPs. The city of Del Mar is currently negotiating with CC staff and will be the first to have a LCP adopted, which will have a big impact on all subsequent LCP adoptions. Funding for the Smart Coast CA is important. Last year CAR gave a grant of \$250,000 and several local coastal Associations have also contributed dollars (including Pismo Coast, Scenic Coast, and SLO). The group is also working with NAR for information and support.

HOME OWNERSHIP HOUSING CTTEE - Potentially sponsor legislation to mandate HOA's maintain websites to provide info to its members, for 50+ units or separate interests within a CID.
Potentially sponsor legislation to mandate HOAs who have obtained owner emails to communicate & deliver documents via email, unless owners revoke their consent in writing or by email.
Should CAR support AB1907 - support if amended to exempt from CEQA emergency shelters, supportive housing, or affordable rental housing up to 80% of the area median income.

CRMLS and NAR CLEAR COOPERATION POLICY – This new NAR mandatory policy/rule becomes effective on May 1st. If any type of marketing occurs (with the exception of an agents internal contact list for clients with whom you have a buyer representation agreement signed), that would constitute advertising, triggering the mandate that the office exclusive listing must be entered into MLS within 1 business day. CRMLS will likely have a Coming Soon category with several rules surrounding it. Coming soon has no DOM calculating and no showings allowed and can't be syndicated, and can't go out for IDX display. Coming soon status can only last for 21 days then will automatically go into active status. The CRMLS Ops cttee, Rules cttee, and board of directors must still work thru and establish all the details between now and the end of March, and will then conduct education efforts during April prior to final implementation on May 1st. Questions and concerns can be sent to clearcooperation@crmls.org.

CRMLS Compliance – For violations reported, 44% corrected, 21% duplicates, 16% no violation, 5% other, 15% are issued citations. Branded images & no photo uploaded are the most violated. Lowest fine is \$100. Highest fine is \$1500.

CRMLS will roll out a new way to select syndication website channels soon.

If a company's back office software will talk to the CRMLS server, all their office listings loaded into their back office software can be directly loaded into Matrix.

In 2019 there were 31 enhancements built into Matrix due to Ops Cttee decisions.

Long term vision includes Data Authority (additional data for use with MLS data...DRE data, listing views, product utilization, school & district data, solar installs) and Innovation Facilitator (help vendors and facilitates while ensuring compliance and giving them constant tech support so members gain better tools).

New product - CRMLS Connect - Search ability and agent websites (BoxMLS) and will be available in the 2nd quarter. It's an agent/client collaboration tool similar to CloudStreams. CloudStreams is more of a push technology but BoxMLS is real time data and the URL includes the name of the agent, plus it will eventually have an add/edit module, and will also provide an agent-Branded website. This is powered by BoxMLS but is branded as CRMLScconnect. This was the most top-rated product that came thru the focus group.

Realist will be modernized in March. Same features will exist plus additional features.

Customer service fielded 98,000 calls in 2019. There were over 11,000 chats with a 1 minute wait time.

There's not a lot of usage of Remine so it will likely be removed from the CRMLS offerings, but CRMLS has a plan for a replacement product. Remine is primarily a farming product. There's only about a 1% usage rate.

PROFESSIONAL STANDARDS CTTEE - Report/update given from NAR meetings, updates on changes to Standards of Practice (SOP). CARs pilot program extended for members/violators who have been disciplined and hold membership in 2 or more associations, then member drops membership in the disciplining association, must still comply thru other association where membership is held.

Two previously postponed motions had been passed in committee but still need to be approved by all Directors. One relates to making violators of the Code of Ethics (COE) viewable by the general public. The other relates to a peer-to-peer ethics phone line being implemented whereby members with COE questions could speak to a peer about those questions. Those objecting to the postponed motion feel agents should be contacting their broker rather than a peer.

CAR is forming a Work Group to determine whether MLS citations that request a full hearing should have an alternate abbreviated process adopted. CRMLS has 100,000 members and out of all violations reported, about 15% of violators are issued citations, and of that amount, about 2-3% of those request a hearing.

Changes to the Prof Standards Manual – NAR revised SOP 1-7. New SOP 3-11. SOP 12-1 and 12-2 were combined. Manual had changes to section 18a. Respondent can choose to not attend a hearing and send legal counsel on their behalf. Section 20b and 56b relates to use of an ombudsmen. Section 27a added to say it is disallowed to add more respondents after the complaint has been reviewed by the Grievance Cttee. Section 32 and 64 revised regarding continuance fees paid and ethics advocates. Section 42f outlines claims which cannot be arbitrated thru the association. Section 54a revised regarding representation in hearings. Section 56h revised regarding filing fees charged to Respondents in an arbitration, and if Respondent found to not be in violation they can request a refund of the filing fee. Implementation Guidelines and some of the filing forms were also modified.

TAXATION - There are 2 split roll tax initiatives currently being sought for the November ballot. The first one has already qualified for the ballot. The second one is in signature-gathering mode, and if it gathers enough to become qualified, it will replace the first initiative for the November ballot. On one of the proposed split roll tax initiatives there is a delayed implementation for small businesses with 50 or less employees until about 2025 due to recognizing the existence of NNN leases. CAR currently has a policy position to oppose split roll tax but CAR feels we need to consider some type of change in position so they have better negotiating power. Discussion was held for which position to take on both split roll tax ballot initiatives. A decision about which position CAR will take on both will be postponed until the April CAR meeting in Sacramento.

CARs tax portability initiative is showing thru polling that consumers strongly support the portability and intergenerational transfer provisions.

HOUSING AFFORDABILITY FUND - Will hold a fundraising golf tournament at Morgan Creek Golf Club in Roseville on the Sunday prior to the April CAR meeting. They will also hold a live music fundraising event during the Long Beach CAR meetings.

2020 CENSUS - By law everyone needs to respond to this year's census, which are conducted once every ten years. All info is protected by law and not shared with any govt. agency. New this year is the ability to respond online starting in March, or can be done in writing in April. Do NOT open anything that comes by email because that is NOT the Census Bureau!! They will send notices by mail. There will be door-to-door follow-up for non-responses, and they should have photo ID with a Dept. of Commerce watermark and expiration date. Census Bureau is also hiring for temporary jobs right now. Go to www.census.gov/jobs to apply.

CAR LEGAL STAFF - CAR will be updating their Model Bylaws to include NARs mandatory changes to code of ethics training, and will add more Bylaws language regarding harassment.

NAR Clear Cooperation Policy info - this will change the standard for when listings must be submitted as active in the MLS (within 1 business day immediately following any type of advertising). There is an implementation date of May 1st. Within 1 business day of public marketing, which is very broadly defined, the listing agent must submit the listing as active in the MLS. The ability to have Office Exclusives will be much more narrow.

CA Consumer Privacy Act-nothing has changed from her previous updates. It elevates the burden on businesses to protect consumer data. Personal info will be very broadly defined. Businesses who must comply are for-profit entities. Non-profit corporations are exempt. Articles of Incorporation should tell you whether you are non-profit, regardless of whether you are tax exempt. Enforcement will be done by the Attorney Generals office, not thru private attorneys. CAR members can use the CCPA form to notify the consumers/customers about these issues. The data which is collected for inclusion into the MLS for listings is subject to this law except the portions that are NOT considered personal info. Most of the MLS data is considered public data and therefore not subject to this CCPA law, except for things like photos and remarks. CAR has created a Legal Q&A, and is creating legal tools for this.

MEMBER LEGAL SERVICES OPEN FORUM - Updated fair housing regulations regarding animals-

Emotional support animals-must reasonably accommodate disabilities, but how is that done with animals. They must give to a potential landlord a written request with supporting information from a reliable 3rd party who is basing their opinion on personal knowledge and a determination about the disability and need for emotional support animal. They must tell you there's a disability need & give the functional limitation but you can NOT ask what the

disability truly is. New change...the 3rd party giving an online certificate is presumptively invalid, unless it's from a medical professional who treats people remotely. Animal doesn't have to be a dog or cat. You can reject them if they don't have a disability. The 3rd party verification must tell you how they qualify to give the verification. You do not have to accept them as a tenant if the animal creates a threat of safety to others, must have recently caused harm to others, or animal has caused damage to property that can't easily be mitigated, or if animal poses an undue cost or burden on the landlord. Then you have to do an interactive process trying to resolve the burden. Larger multi-unit landlords (not sure of unit count) are required to accept a higher level of cost or burden. You can have requirements...leash, no excessive noise, etc.

Service animals-No written request is required. Landlord can only ask 2 questions... You have a disability? What disability related task has your animal been trained to do? You can NOT ask what is the disability. You can require proof the animal has been trained. If they can't answer what the animal was trained to do, you can NOT just say "no". If they switch to emotional support animal, use the above guidelines. Service animal must be a dog or miniature horse only.

40% of all fair housing complaints in CA or on this topic support/service animals. CAR has a legal Q&A on this topic.

Criminal backgrounds - You can conduct background check-can consider it, but not until after all the other checks have been done like credit checks, etc. Reject if they have criminal record? No blanket rejections. Must consider when it happened, evidence of rehabilitation, and other factors.

Hostile environment harassment - Tenant violates rules and you can evict but you don't. You have a bad tenant mistreating another tenant. Now you're liable to the victim tenant if you don't do anything about the bad tenant. This doesn't necessarily mean evict the bad tenant, but you can't let it go. Same applies in a HOA, and the board of directors better take action.

Moratorium on fire insurance policies being issued – The insurance commissioner determined the companies cannot fail to renew policies if you're in an area where there was a fire. Both the CAR website and insurance commissioner has a list of zip codes where this applies. The commissioner also requested the companies apply the same rule to all other areas, but it's not a mandate. The State Fair Plan will begin offering comprehensive coverage along with the fire coverage.

Independent Contractors – Real estate licensees, attorney's and dog-walkers can remain independent contractors. But non-licenses people doing things like transaction coordination and assistant work probably can't meet the 3-point rule for who qualifies as exempt, and therefore are employees.

Accessory Dwelling Units (ADUs) – The state is making it easier to build ADUs, and the state rules supercede local rules. Converting garages are entitled to automatic approval, but no impact fees can be charged. Non-permitted conversion for ADUs get a 5 year period to bring them into compliance with current codes. This all applies to HOAs and multi-unit properties.

Harassment in the workplace – REALTORS® must be nice to everyone everywhere all the time, because the REALTORS® workplace is everywhere, and everyone is a potential client. "Abusive conduct" is the new category of harassment – it can't be repeated or aggressive. The sexual harassment class must be completed by the end of 2020, then every 2 years, or within a short time period after being hired.

Exemptions from solar mandate on new construction – If you are in a wildfire area, new construction is exempt from the mandate until 2023.

Application process to live in mobile home park – Management must tell you what standards they will use for approval, and what documents they will use. The can't limit based on cash – they must also consider other assets.

Recycling bins – they are required if you have 5 or more units.

Persons at risk of homelessness – You can bring a temporary roommate into your rental unit even if it violates the terms of your lease if the person is at risk of being homeless. The landlord can charge more rent. That person isn't a tenant and must leave within 24 hours of receiving notice to vacate.

Rent cap and just cause eviction – There are 14 reasons you can evict, 10 of which are a breach of contract. The others are when the tenant is not at fault, including things like the owner or immediate family member is going to occupy the unit, a major/substantial renovation will take place making it uninhabitable for a while. Relocation assistance payments will be owed when tenant is terminated for a no-fault reason.

Rent cap and just cause eviction – Exemptions – Single family homes and condos are exempt if the proper notice is/was given. Not exempt if property is owned by REIT, Corporation, LLC when one of the people for the LLC is incorporated. Exempt if a certificate of occupancy was issued within the past 15 years. Exempt if it is a duplex and one of the units is owner-occupied. But remember that the written notice is required to be given in order to maintain the exemption.

Rent cap and just cause eviction – RCJC form/content and delivery – It must go to all tenants subject to the law. There's no mandate about how the notice is delivered, but you should get the tenant to sign acknowledgement to prove they received it.

Military service members and veterans – Active military, reserve, veterans are a protected status now as of 2020. You can only collect one month security deposit (or 2 months for a furnished unit).

Mandatory Section 8 – you can't discriminate based on "source of income". Rejecting section 8 housing vouchers is discrimination and is enforced for DFEH. You can't advertise that you don't take section 8 vouchers. You can still charge the amount of rent you see fit. Not required to lower the rent to HUDs fair market rent amount. Can still consider the same screening process used for everyone. Can still charge a security deposit. You can NOT reject them just because they are section 8, and can NOT treat them differently than any other tenant.

90-day notice to increase rent over 10% - For properties exempt from 1482, you must give 90 days notice to increase rent over 10%. But be aware of price gauging in and around natural disaster areas. Use "change in terms of tenancy" form to notify tenants.

MLS COMMITTEE - CAR has a joint work group set up between the MLS and Prof Standards Committees to study alternatives to citation hearings. When MLS citations are received and the member feels they want to challenge it, the current process is to go thru a full prof standards hearing. The joint work group will explore alternatives for offering an abbreviated process.

Broker Entitlement to Data Portability - Some have encountered constraints impeding the process of leaving and transferring to a different MLS, such as associations trying to join a new regional MLS. CAR is seeking to have NAR develop a policy mandating that MLSs provide an electronic data transfer upon request. This motion was tabled until the next CAR meeting to allow time for a work group to discuss recommendations about related issues such as transfer costs, copyrights, existing contracts, etc.

Display of listing agent commissions offered to buyer brokers - This topic comes up more and more due to federal examinations and investigations, antitrust lawsuits, and recent MLS and broker policy shifts. CAR is examining their current practice and rules on this issue. NAR policy requires an offer of compensation and cooperation be made thru the MLS. Amount of compensation can't be set or controlled by the Association or MLS. The buyer compensation data field in most MLSs is treated as confidential information. Some feel keeping it confidential is a lack of transparency which they feel potentially harms consumers. The FTC and DOJ held a joint workshop in June 2018 to discuss this topic. Some workshop participant brokers feel a lack of commission transparency, especially on the buyer side, is resulting in the consumer knowing less about the process of how agents are paid. Since the time of that workshop, the DOJ issued a Civil Investigative Demand to CoreLogic, a major MLS vendor, looking into software functionality and broker searches based on compensation. This indicates their concern about the confidential nature of buyer broker compensation. CAR is looking into revisions to their Model MLS Rules as well as other options. Future updates will be forthcoming.

NAR Clear Cooperation Policy - NAR has mandated new rules to become effective on May 1st that dictate when a listed property must be entered as an active listing into the MLS. Generally all listed properties (residential 1 to 4 plus vacant land) must be entered within 1 business day of a signed listing agreement, or 1 business day of any type of public advertising. Public advertising is defined in a very broad manner. See the notes in this report under the CRMLS section for more details.

RISK MANAGEMENT AND CONSUMER PROTECTION FORUM - Legal update - One way to evict a tenant is to get out of the rental business. How long before you can get back into business? There's no fixed amount of time. But most cities with rent control have a provision dictating a time frame, so courts may decide it for everyone soon, based on the rent control area models. Same issue exists about how long it must be used as an owner occupied property before being converted back to a rental.

If an owner of a multi unit property wants to sell it, that doesn't constitute getting out of the business. If they sell, the buyer inherits the tenants, and rent cap just cause eviction still applies.

Can the RCJC be signed electronically? It's a grey area so get wet signatures.

Section 8 is not exempt from RCJC, and Section 8 is a protected class so they can't be evicted just because they are Section 8.

California Consumer Privacy Act (CCPA) form in zipForm is attached to the Agency form to ensure you are making the required disclosures about the CCPA. But it isn't automatically attached to the property management related forms so you need to manually include it in all your rental transactions.

Give the RCJC to every single tenant before July 1st.

Give the CCPA to every single person you do business with for both sales and rentals. It will automatically attach to sales but not rental forms.

Important changes have been made to several rental forms. To notify tenants about the RCJC before July 1st,

you can attach the RCJC to the CTT for (change in terms of tenancy).

To increase rent on a month to month tenant, you must either do it with personal service or certified mail, although making other changes in terms of tenancy can still use the previous methods.

Listing Agreement now talks about how you may be hiring a person to take photos or videos and that person may retain ownership of those photos or videos.

The SELM form has revisions, much of which is based on NAR's new clear cooperation policy.

A new law says if you're in an area declared a state of emergency due to wildfires, your fire insurance company can't refuse to renew your policy until approx December 5 (check into this date).

FAIR HOUSING - Overview of new fair housing regulations - CA was the first state to adopt fair housing regulations. To have a claim it will be based on one of the protected classes. Federal has about 7 protected classes. CA has many more. Race now includes hair styles such as dreads, braids, etc. Source of income now includes section 8 plus other programs such as veterans program vouchers. Military veteran status is a new protected class. For claims filed, the majority are based on disability, followed by race then age then familial status then national origin. The 2 basic varieties of complaints are housing and employment, but the majority result in actions related to housing. As of January 1, 2020 the fair housing laws existed but new regulations were enacted. The new regulations can be accessed at Dfeh.ca.gov, and click on rule-making actions, then go to the lower right portion of the page. It includes a section with practical examples. You can't deprive someone's ability to enjoy their housing. The regulations include all types of housing like single family, HOA, floating homes, etc. Vicarious liability flows to owners from acts done by someone else like a manager, or acts done by one tenant against another tenant, and owner should be taking action. Owners can no longer do nothing. The owner of the property isn't just the owner, but could include a manager or others. Regs now extend to managers and HOA directors being treated as owners.

There's intentional and unintentional discrimination. Unintentional is often language appearing in policies and land use ordinances. Harassment includes quid pro quo as well as hostile environment. You can't make people in a protected class feel uncomfortable. Hostile environment is defined in a very broad way. You don't have to prove medical or psychological harm in order to file a successful complaint. Blackmail is also potential harassing conduct, as is retaliation. For retaliation, there is a burden-shifting test conducted.

"Assistance Animal" is a trained service animal. It's an animal trained to perform a specific task for a disability. You can only ask 2 questions - Do you have a disability? What service is the animal trained to perform? Can't ask any other questions.

You can have reasonable restrictions for the animals, even though the law is still very broad. You can hold the pet owner responsible for acts of the pet. Just the fear that the accommodation will cause a problem is not enough to disallow the pet. When the animal is observed being a direct threat there is reason to take action, but you must try to resolve the threats and conflicts first. The regulations include a list of specific reasons an animal can be rejected.

There's new standards being established by HUD for standards on unique animals, and HUD is saying you need a substantial justification for the unique animal (which they refer to as barnyard animals).

CA has a definition of disability which is a much lower level definition than the federal definition. It is a very broad definition. It's not defined by the DMV vehicle hanger, but by an assessment.

Anyone can ask for an accommodation at any time during residency, not just when moving into a unit.

If an HOA is dealing with an accommodation request, it must be kept confidential. Therefore the item/request can't be placed on their meeting agenda and must be discussed in a closed meeting. But closed meetings can violate the CC&Rs. The fair housing reps speaking in today's meeting said you must hold the closed meeting to keep it confidential, and they are working toward making the fair housing regulations be modified to take care of this conflict.

Who can establish the necessity for the accommodation? Any reliable 3rd party who knows the potential tenant, and can attest to the need for the accommodation.

Regs establish how and why requests can be denied.

You can't simply deny criminals. See the regs for specifics. Do a background check and credit check and determine if they qualify to become a tenant, after which time you can then do a criminal background check. If they have a criminal background, you must go thru an assessment process to determine if you will rent to them.

The CA fair housing regs are still being expanded. Contact info for today's 2 speakers are...

Branden.butler@dfeh.ca.gov

Kelly@rodllp.com

DEPT OF REAL ESTATE - The acting Commissioner is Sandra Knau. They are awaiting appointment of a new Commissioner and Deputy Assistant Commissioner. They are still becoming a fully functioning "Department" again. They've been hiring all the positions at all levels.

Statistics for 2019 - 47,716 salesperson exams taken. 5,441 broker exams taken. 22,063 original salesperson licenses issued. 4,745 original broker licenses issued. 52,382 (79%) salesperson licenses renewed. 27,493 (92%) broker licenses renewed. Total licensee count at 12/31/19 is 425,161 (294,100 salespeople and 131,061 brokers).

Public reports - 2,676 public reports issued, 259 renewals, 549 amendments.

Enforcement - 151 license denials. 641 disciplinary actions. 25 desist & refrain orders. 125 citations. 293 investigative audits.

Effective January 27, 2020 the broker & salesperson exam times and formats will be revised

The Enforcement section takes care of complaints, investigations, and referrals to legal section recommending disciplinary action.

Citations and fines-\$2500 maximum, order of correction, over 3000 citations since 2014, have collected \$2.5 million in fines since then which goes into the recovery fund.

Changes are underway for team names and mega teams, virtual real estate brokerages, and iBuyers. But what hasn't changed is the obligation of brokers to supervise.

Every broker must maintain a physical place of business, even if you function as a virtual broker.

Enforcement Field Program-DRE is actively going out to monitor the activities of those holding restricted licenses. They are also sampling transaction files, and are monitoring trust accounts. They have a Broker Compliance Evaluation Manual and Checklist available online which were recently updated and are available online. They are also conducting outreach visits to Associations.

Enforcement Support Office-created for petition intake, cite & fine, and statistical data to provide analytics about the types of complaints being filed from around the state.

Audit report - Audits closed in 2019...33 auditors operating statewide, most of which are conducting trust fund audits (69% prop management), 11% mortgage loans (private money loans and servicing), 11% broker escrow (there's about 200 brokers who are supposed to be reporting but aren't currently doing so).

Audit findings-24% had major violations, 2% cite & fine, 11% corrective action letters, 37% minor violations, 26% no violations. Found \$7.7 million in shortages in 2019, 32.5% had shortages, out of 483 about 60 had shortages of \$10,000.

Audits reveal lack of broker supervision, broker failure to report escrow activity, delays in providing records which are most often red flags. Top 5 audit violations consistent every year. Accounting records, then lack of supervision.

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