

C.A.R. Meetings in Monterey

Winter, February 2024

Tim Townley

MLS Policy

Accessibility working group

Coming soon working group

Coming Soon Working Group

Purposes

- Transparency – users and consumers should know what “Coming Soon” is
- Competition – real estate agents should compete on services and value, not on their MLS’s rules
- Congruency – real estate agents listing in multiple MLSs should not face violations if their rules violate one but not another

Model Rules will be optional; NAR has no mandatory policy on Coming Soon

Coming Soon – Points of Consensus

- Written listing required for entry of Coming Soon into MLS
- Coming Soon listings must follow MLS’s rules regarding offer of compensation
- Coming Soon status should have a time limit
- Offers received must be presented while in Coming Soon status in accordance with fiduciary duties and seller instructions
- Public marketing allowed, but should be marked as “Coming Soon”
- Showings should *not* be allowed while in Coming Soon status
- If showings aren’t allowed, Days on Market (DOM) should not accrue

Coming Soon –Points of Consensus

- Properties in Coming Soon status should be viewable and searchable by all MLS participants, and should also be included in data shares
- Coming Soon listings should not be included in IDX feeds for public display
 - VOW display should be permitted by MLS participants
 - Recommended that MLSs not include in syndication, but outside Model Rules

2021 Issues Briefing Paper: <https://www.car.org/mlspro/mlsrules>



Coming Soon – Remaining Items

Items not yet discussed

- Limit on times a property may be in Coming Soon status
- Whether a property should move to Active status at end of time limit, or some other status

Definition – discussed, but final definition will flow from other discussion
by related topics

Buyer Representation

Which Forms are Available?

- Main Form: BRBC – Buyer Representation & Broker Compensation Agreement
- Ancillary Forms
 - ABCD – Anticipated Broker Compensation Disclosure
 - COBR – Cancellation of Buyer Representation
 - NBIP – Notice of Broker Involved Properties
 - SPBB – Seller Payment to Buyer's Broker
 - RPA paragraphs 3G(3) and 18
 - BTA – Buyer Transactional Advisory
- Form ABCD can be used with BRBC or separately

New form coming in June.

Legal Update

The Past

Sitzer v Burnett – W.D. Mo.

- \$1.785 billion jury verdict is pending vs. NAR and BHHS entities
- Post-trial motions are being briefed – decisions not expected until April
- BHHS has asked U.S. Supreme Court to consider arbitration issue

Settling parties:

Anywhere, Re/MAX, Keller Williams (new)

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The Present

Copycat lawsuits filed across the country

- Illinois, Missouri, Texas, Florida, Pennsylvania ...
... And California

California suits

- Grace v. NAR, BAREIS, REALTOR® associations, and brokerages
- Fierro v. NAR, C.A.R., CRMLS, CLAW, REALTOR® associations, and brokerages
- Willsim Latham v. Metrolist, REALTOR® associations, and brokerages

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The Future

Motion before the U.S. Judicial Panel on Multi-District Litigation (JPML)

- Seeks consolidation of existing cases
- Briefing still in progress
- JPML expected to decide in late March

In Other News

- REX v. Zillow – after jury loss, Zillow also lost its motion for a new trial; now appealing to the 9th Circuit
- Nosalek v. MLS PIN – still pending
- NAR v. DOJ – still pending

Rex lost, not Zillow

What Now?

- Know and present your value to your clients
- Review info and tools from C.A.R. Legal at <https://www.car.org/riskmanagement/tools/burnett-v-NAR>
- Use smartzone.car.org and competition.realtor to educate yourself and your brokerage, realestatecommissionfacts.com your clients
- Use buyer representation agreements to document agreements with buyers

Buyer Representation Forms course available at store.car.org. Free with promo code FREE25, 'buy' before end of year, complete within 1 year

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