



MEMORANDUM

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TO: Association Executives / Professional Standards and Grievance Members FROM:
Crystal Peterson, Paralegal

DATE: October 3, 2024

SUBJECT: 2024 C.A.R. Fall Business Meetings | Long Beach

At the Fall C.A.R. Business Meetings in Long Beach, I attended:

- Professional Standards Committee
- MLS Policy Committee
- Member Legal Services Open Forum
- REALTOR® Risk Management and Consumer Protection Forum

MLS POLICY COMMITTEE

NAR Update

- Clear Cooperation Policy
 - Six (6) different presentations
 - Robust discussion
 - Wasn't structured to get rid of clear cooperation policy
 - Suggestions for changes and modifications were received
 - No decisions made – holding state meetings to discuss
 - Advisory Board will meet in October before NAR meetings to see what direction from leadership and may move a policy amendment forward – still “up in the air”
 - Send any suggestions to Andy Bencosme
- Not comingling is an optional rule
 - Some want to make it mandatory to allow
- MLS is vetting concept considerably, but nothing has been decided

RESO Update

- It's working • 93% MLSs certified
- Over 3 years
- 47% have converted
- 67% are committed
- Transformation completes in one day with a nine-minute conversion
- Before certification was only available to MLS new certification to brokerages

- RESO common format opens for brokers and their vendors to be certified
 - Seamless data transfers

Update on Accessibility Working Group

- MLS and RESO standards
 - RESO approval for 2.1 version

To: Association Executives/Professional Standards and Grievance Members

Date: October 3, 2024

Page: 6

Re: 2024 C.A.R. Fall Business Meetings | Long Beach

- NASR MLS tech and emerging issues advisory
- Education for these MLS fields
- MLS gives information to agents who can help clients
 - MLS Accessibility Fields and Information
 - Make available general information to aid differently abled
 - Descriptive fields should help sellers, and their agents identify and communicate features that may be of interest to differently abled buyers
 - Potentially adds value to the homes
 - HUD Specific fields in RESO
 - New fields to be added
- Recommended as a best practice that MLS include disclaimer requirement on data licensing agreements and be readily visible when the MLS is viewed
 - Not approved, but encourage
- Awareness and Education
 - Information with accessibility disclaimer for each field
 - Committee recommended that C.A.R. develop or offer education for brokers and agents regarding the accessibility features of properties
- Seller Disclosure and Forms
 - Recommended that the standards Forms Advisory Committee adopt forms to support disclosure of accessibility features
 - May include modification of the SPQ
 - The form could be designed to support RESO standard fields
- Next steps
 - Coming to RESO data dictionary
 - Promote adoption in MLSs
 - Referring to SFAC for inclusion in C.A.R. forms
 - C.A.R. education considering courses
 - Possible addition of disclaimer in MLS and forms
 - Marketing to public

Regional Reports

- Confusion around Open House
- Which Forms to use?
- Agents mandating BRBC prior to viewing Open House
- Agents still wanting to put compensation in RLA
- Confusion about what concessions actually are
- Who is responsible to police documents?
- Agents reporting other agents regarding compliance
- Many members belong to multiple MLSs
 - Large MLS: minimal issues
 - Smaller MLS: still navigating rules
- Listing agents still getting calls regarding compensation
- Different brokers are using different models
- Some brokerages would like to use old model of compensation

To: Association Executives/Professional Standards and Grievance Members

Date: October 3, 2024

Page: 7

Re: 2024 C.A.R. Fall Business Meetings | Long Beach

- Different consequences for violations – some are strict, and some are not •
- Not that many questions because very extensive education program
- Most commonly: can we have a concessions field? What can I put in concession field? •
- Reminding agents not to use text fields for random commission information (ex: 2.5) •
- Part of MLS alliance with other MLSs coordinating has not been made uniformly • Many brokers are volunteers, so there's been a drop in communication • Lot of participation
- Grateful for training
- A handful of smart brokerages are not doing business as they're used to. • Those that procrastinated and did not get education are struggling the most and causing the most problems.
- Negotiate forms differently
- Lot of education opportunities, but need more – or different
- Many worried about compensation
- What value does MLS bring?
- No clear understanding regarding compensation
- Buyers are turned off regarding the buyer/broker agreement
- Relying on verbal info
- Negative pushback from agents – too many forms, too many changes •
- Constant training
- Staff amount of time to oversee MLS compliance
- Brokerages are offering several options with training
- How can I search only listings offering commission?
- No major difficulty implementing policies
- Few brokerages have created internal checklists
- Some members still adding commissions to post sale
- Members not understanding forms and C.A.R. offering different solutions but not answers
- Buyers' agents are having to educate buyers regarding forms
 - More verbal communication between agents
 - Educating buyer/sellers regarding the value of having an agent

- One Region had 700k residential listings since 8/13/2024
 - 36 included verbiages regarding commission
 - 31 listings before changes found to add violating verbiage after
- Pretty much focused on less on stick more on carrot
- Voluntary compliance
- Point is to educate
- Some agents don't want to search for listings without commission
- CRMLS is building a guidance document with all new verbiage
 - Do/don't list
 - Provided upon request

To: Association Executives/Professional Standards and Grievance Members

Date: October 3, 2024

Page: 8

Re: 2024 C.A.R. Fall Business Meetings | Long Beach

- Keep people up to speed
- Challenge to educate users on difference between concessions vs. compensation
 - How and where to use them
- Suggestion: Need to add an area to add some info regarding unrepresented buyers •
Confusion about who is responsible for BRBC not signed before showing • Need for significant training
- Smaller brokerages are feeling threatened by clear cooperation policy •
Improving interface of MLS to include pictures
 - Technology has advanced except we have not
 - Making more attractive
- Modifying data fields is significant issue
- Ongoing discussion regarding Rule changes and backlog of work •
Suggestions
 - Not enough training
 - Frustrated by how hard brokers are pushing to do education
- Questions
 - Why did NAR settle?
 - How do I correctly ask another agent for commission?
 - Why?
 - Will this cause our realtor dues to increase?
 - Am I allowed?
 - Is there a fine for breaking a rule?
 - Since the settlement, how do I tell everyone what the commission is?
 - How do I let agents know my seller is offering commissions?
 - Can I offer commission post sale?
 - What may or may not be in the MLS listing?
 - Lots of questions regarding forms
 - What do I use?
 - How do I use?
 - What can/can't be included on brokerage websites?
 - How is MLS going to monitor
 - Can't be on MLS why is it everywhere else
 - What forms to use -
 - How, where, why
 - Don't understand legalese and need to be put in plain language

Legal Update

- Litigation of Interest – seller litigation
 - *Burnett v. NAR*
 - Settlement pending, final approval set for 11/26
 - DOJ has not yet stated whether it will oppose the settlement
 - Brian Manson thinks they likely will
 - At least one person has filed objections

To: Association Executives/Professional Standards and Grievance Members

Date: October 3, 2024

Page: 9

Re: 2024 C.A.R. Fall Business Meetings | Long Beach

- Brian Manson doesn't think anyone except DOJ will get much attention
- Preliminary approval of HomeServices settlement also granted
- Court granted final approval to settlement with Anywhere, RE/MAX, and Keller Williams
 - Judge spoke positively of NAR settlement
 - Objectors have appealed
 - Many other seller side cases stated pending approve of *Burnett*
 - West Penn Multilist – judge decided not to stay the case, moving forward •

Practice changes

- Went into effect Aug 17
- C.A.R. modified forms to remove support for broker to broker offers of compensation, forms released in June/July support practice changes
- Pay attention to your MLS's communications
- Use buyer/broker agreements
- Other litigation of interest
 - Buyer litigation (Batton I, II) – ongoing
 - Cases reassigned to Judge LaShonda Hunt (9/5)
 - *NAR v. DOJ* – DOJ won
 - Won at appellate level; civil investigative demand allowed to proceed
 - NAR to file petition for writ of certiorari to US Supreme Court by 10/10
 - *Nosalek v. MLS PIN* – stayed pending hearing on main NAR settlement
 - Brian Manson stated that if NAR settlement is approved, that won't be end of story. There will be objections/appeals
 - DOJ is main body that will carry weight with appellate court
 - *TAN v. NAR, SFAR* (clear cooperation case)
 - NAR, MLS won dismissal, but private listing network pf appealed; DOJ intervened to argue the trial court was wrong; case reviewed
 - Revised pleadings due December 2024
 - Case expected to go to trial November 2024
 - Similar case (*ThePLS v. NAR, CRMLS, others*) was dismissed in February following settlement by MLSs
 - *REX v. Zillow, NAR* (comingling rule case)
 - At trial level, NAR dismissed, and Zillow won; REX appealed
 - Case is in pleading stage before 9th Circuit

Legal Q&A

- What can be included in the concessions on the MLS?

- Concessions is not meant to be code word for compensation
- Commissions are one small subset of larger body of concessions
- Through settlement, MLS cannot include any mention of commission or concessions tied to compensation

To: Association Executives/Professional Standards and Grievance Members

Date: October 3, 2024

Page: 10

Re: 2024 C.A.R. Fall Business Meetings | Long Beach

- Example: rate buydowns, roof leaks - seller doesn't want to fix willing to offer concession
- No seller offering x% for "you know what"
- Other concessions that relate to property/marketing
- In remarks on MLS, SPBB, and BRBC can be attached to purchase offer
 - The SPBB and BRBC are not mentioned, they're generic
 - Confirmation purposes – not a requirement
 - On the listing, you can add it on there, but because buyer has no obligation to provide not required, no enforcement
 - Should that be required when the offer first comes in
 - Case by case
 - People things do differently
 - Any buyer working in good faith to close transaction should provide that information
- Does the settlement restrict offers of compensation if related to rentals, property management, or commercial/other deals?
 - The settlement agreement is intended to cover primarily residential, but language is broad – it specifically says that MLS must remove ALL fields of compensation ○ NAR position – Brian Manson is confident – have looked at the language of the settlement agreement and strike ALL fields of compensation
- What if you have a commercial deal as far as practice changes – are they required to adhere?
 - MLS cannot have offer of compensation **anywhere**
 - Practitioners still can have broker to broker offer of compensation
 - Don't love idea
 - Talk to lawyer – helpline won't help w language
- Forms Advisory Committee working on including the appropriate forms • Concessions in an active listing, as these things start to close some MLSs are recording detailed information regarding concessions, including what amount was a buyer's agent compensation concession and other MLSs are recording nothing or MLS concession without a breakdown, so you don't know how much is agent compensation and when we look at that, what we're trying to figure out – what are the risk factors? What things should we be considering?
 - Data is not consistent
 - What is appraiser looking at?
 - What is agent looking at?
 - What the numbers really were without any violation of agreement?
 - Brian Manson: Because a lot of things are in flux, each MLS will make their own decision vs. the risks of publishing that data.