



C.A.R. OUTLINES INITIAL 2013-2014 LEGISLATION

THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.) at its Winter Business Meetings in Monterey outlined a preliminary legislative agenda for the 2013-2014 session. Most bills at this point in the state legislative cycle have only working titles with no authors or wording yet assigned. Highlighted were the following:

SB 30 (CALDERON) The American Taxpayers Relief Act of 2012 was signed into law on Jan. 2. The law includes a provision to extend the Mortgage Forgiveness Debt Relief Act, which will for one more year exempt the taxation of mortgage debt that is forgiven when homeowners and their mortgage lenders negotiate a short sale or loan modification (including any principal reduction). However, the California exemption expired at the end of 2012, so forgiven mortgage debt is considered taxable state income for now. This could impact short sales in California, and that's why C.A.R. is sponsoring Senate Bill 30, which will conform state law to the federal law passed earlier. Upon passage of SB 30, the measure will be effective retroactive to Jan. 1, 2013.

NOTICE OF REGULATORY ACTIONS C.A.R. will SPONSOR legislation to promote transparency in the regulatory notice process. Current law requires regulatory bodies to post meeting notices and public reports on their individual websites. This bill will additionally require state agencies, boards and commissions to publish meeting notices in a single location to promote transparency and streamline costs to the state. Specifically, this bill will require state agencies, boards and commissions to post information related to informational hearings, workshops, scoping hearings, preliminary meetings, public and stakeholder outreach meetings, 15-day comment period notices and website links to public reports at least 15 days prior to any scheduled meeting in the California Regulatory Notice Register.

Targeted will be the use of web posting which some cities do not - or if the issue is controversial - will not post online. They resort to the legally sufficient but hardly expansive traditional posting (city hall and the local library).

RETENTION OF DRE STAFF In 2012 Governor Jerry Brown introduced and passed a government reorganization plan which, among other things, moved the Department of Real Estate (DRE) to Consumer Services Agency, effective July 1, 2013, under the Department of Consumer Affairs (DCA). The bill will confirm that the DRE will retain its regulatory, enforcement and legal staff; maintain its fiscal independence; and, maintain its influence with the retention of a "Commissioner" as opposed to a Bureau Chief.

APPRAISAL REFORM. Concerns have been raised that the trend toward concentration of appraisal business in appraisal management companies (AMCs) has degraded the quality of appraisals and interfered with the ability to close legitimate transactions. The explosive growth of AMCs came from the demand from financial regulators that lenders insulate mortgage loan originators (loan officers and loan brokers) from contact with, and control over, appraisers. Lenders responded by eliminating in-house appraisal departments and contract appraisers, and

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moving the appraisers to an AMC, which became a new profit center and met the requirement that appraisers be outside the control of loan officers.

As such, AMCs have effectively replaced independent appraisers. Unfortunately, industry polling reveals those appraisals have increased in cost, but decreased in quality (accuracy). Most AMCs are owned by a lender (or title company) involved in a transaction, thus the lender has a financial incentive to order the appraisal through its affiliated company.

To the subject of out of area appraisers; the assignment of unqualified appraisers from outside the general area of a transaction has risen and complaints that unfamiliarity with the area leads to improper valuation have also risen. Because the lender has a powerful financial incentive to use one of its own appraisers, even if they don't know the area, the lender may still use one of its own. If that "geographically incompetent" appraiser undervalues the property, it either results in the loss of loan approval or precipitates a demand for a larger down payment—either of which may cause the transaction to be lost. *(It should be noted that so-called geographic incompetence is already a violation of the Uniform Standards of Appraisal Practice (USPAP), and yet there seem to be few disciplinary actions brought against individual appraisers for a violation.)*

The bill will address, among other issues, "geographic competency."

DISCLOSURES IN SALES OF REO PROPERTIES. Some existing disclosure statutes, including the TDS statute, exempt foreclosing lenders from the requirement for completed statutory form disclosures; however, lenders are bound by the same obligation as any other seller to disclose material facts in their possession. Some have reported an unwillingness of lenders to make any disclosures and insist on an "as is" transaction that does not include formal disclosures.

Existing exemptions contained in Civil Code 1102.2 include a lengthy list of transfers that are not required to utilize a TDS. One of these exempt classes of transactions (CC 1102.2(c)) is for foreclosing lenders. As a result, an REO sale by a lender is not subject to the CC1102 Article, and a TDS need not accompany the sale. Note: the legislative intent of Section 1102.2 was not to affect the existing duty to disclose in transactions not covered by the statute (i.e., lenders are exempt from the TDS, but not from disclosure obligations.)

A foreclosing lender may possess a considerable amount of information. For example, a relatively recent appraisal may still be part of the bank's file; or, there may have been a home inspection report generated as part of an asset manager's activities. There may have been a citation for code violations to which the new owner (former lender) has responded, or there may have been inspections and reports generated from prior negotiations in connection with a transaction that did not close.

The TDS can only be completed based upon a physical inspection of the property, and requires information from both the agent and the seller. If the lender is to complete such a disclosure, unless it already has an inspection report, it will have to inspect the property... which most do anyway.

The bill would seek to repeal the exemption from the TDS requirements for REO properties and mandate foreclosing lenders to complete a TDS.

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