

MLS/Computer and Business Technology Committee

Submitted by: Bruce Engles, C.A.R. Director.

At the MLS meeting, two briefing papers were brought forward from CAR staff.

The first briefing paper had to deal with **Pre-Listing Signage**:

BACKGROUND:

Bakersfield, Kings County and Yosemite Gateway AORs have submitted a letter to CAR stating their opposition to the practice of pre-listing marketing activities and have asked C.A.R. to explore the matter.

1. Pre-Listing Marketing Activities

In many areas of the State, especially those with a high percentage of REO listings, some brokers have begun to market properties prior to receiving executed listing agreements from the sellers. This phenomenon is a byproduct of institutional lenders desiring to quickly sell their REO inventory. The most typical form of pre-listing marketing is the placement of “coming soon” or other types of signs on the property in question, presumably under the direction or with the consent of the owner which is typically an institutional lender which has foreclosed upon the property. Because there is no listing agreement yet in place, the listing has not been submitted to the MLS and the agent posting the sign may not be formally empowered to act (i.e. accept offers, etc) on behalf of the seller. Nonetheless, the agent’s sign advertises him as the point of contact on the property while interest on the part of the public and amongst potential cooperating agents is being generated.

Some of the dynamics in play resemble those arising with pocket listings where the listing agent works the listing outside of the MLS – although a key difference exists, and that is that in the pre-listing arena, the pre-listing agent may or may not have legal authority to further represent the seller or may choose not to exercise any of it until a listing agreement is secured. This disconnect creates additional dilemmas for submitting offers on the property, commissions, and possible damage (or perceived damage) to the spirit of cooperation.

This matter was assigned to a Working Group and would be studied further and any recommendations brought forward at the June CAR meetings.

The full Briefing paper can be found at: <http://www.car.org/meetings/carmetings/committee-materials-archive/2010winter/403988/405485/>

A second Briefing paper was brought forward by CAR staff that had to deal with:
Should CAR establish a Citation Policy and Fine Schedule in CAR MLS Model Rules?

BACKGROUND:

Currently, the C.A.R. Model MLS Rules do not include a Model Citation Policy, but C.A.R. members have expressed great interest in encouraging greater uniformity in this area. C.A.R. members - in particular brokerages whose markets span more than one MLS - have been frustrated by the great variation in rules enforcement and citation policies. They have asked for a more uniform scheme. That is the impetus for this endeavor.

This matter was assigned to a Working Group and would be studied further and any recommendations brought forward at the June CAR meetings.

The full Briefing paper can be found at:

<http://www.car.org/meetings/carmetings/committee-materials-archive/2010winter/403988/405487/>

The committee then looked at Miscellaneous Changes to the CAR Model MLS Rules.

Several changes were approved and one motion was brought forward (ultimately passed by the CAR Board of Directors).

PROPOSED MOTION: To make changes to the C.A.R. Model MLS Rules which reflect the following policy decisions, such rules to be effective upon NAR approval:

- a. That the Model Rules be revised to adopt an Article 11 competency standard;
- b. That the Model Rules be revised to adopt an interim training requirement;
- c. That the Model Rules be revised to conform to NAR's revised COE so that where disclosure of the existence of offers on the property is authorized, that the listing broker's duty to disclose the source of the offers (i.e. whether offers are obtained by that licensee or their office or a cooperating broker) arises only if asked;
- d. That additional clerical user requirements which enhance accountability be added to the California Model MLS Rules;
- e. That the rules require a person with dual licenses to declare which one (or both) they are using to operate under the MLS;
- f. That the Model Rules provide a process for denying participation rights by using the California Code of Ethics and Arbitration Manual (which would have some minor provisions added for this) so that specifics of a hearing would be in place;
- g. That there be a rule prohibiting duplicate listings by the same Participant within the same property class;
- h. That the Model Rules setting forth the timing for submission of listings be amended to provide

that the listing should be submitted within 2 days after all necessary signatures of the sellers have been obtained on the listing or at the start date of the listing, whichever is later;

i. That the rules governing timing for status changes when cooperating agents deal directly with seller “model” the current 2 day requirement, i.e. that the cooperating agent has 2 days to notify the listing agent of pending and sold statuses, and then the listing agent has 2 days after notice to input the changes;

j. That the rules regarding use and misuse of remarks be expanded to include examples to allow for greater clarity for the Participants and Subscribers;

k. That a rule be added that allows the MLS to immediately remove an active listing remaining on the system after suspension or expulsion if Participant fails to comply with the rules;

l. That auction provisions be added to the Model MLS Rules which include the following specifications:

1. it must be clearly identified as an auction listing;

2. Whether the auction is with or without the seller’s right of reservation;

3. date, time and place of the auction;

4. all the required procedures for Participants/Subscribers to register their representation of a potential bidder;

5. compensation to be paid to the Participant representing the successful bidder;

6. time or manner in which potential bidders may inspect the listed property;

7. whether or not the seller will accept a purchase offer prior to the scheduled auction including compensation;

8. any other pre-auction details and material rules or procedures for the auction;

m. That the Model Rules prohibit placing a non-MLS Participant’s name as a co-listing broker;

n. That the Model Rules adopt a DOM/CDOM clause where CDOM is based on APN numbers and DOMs are tied to the brokerage firm and MLS listing and the CDOM reset clock be set at 90 days after the property has been off the market without a listing agreement or change of ownership.