

Member Appreciation Spring Fling

BBQ BASH



Hot BBQ & Cool Drinks
Live Music & Raffle
Baking Contest



Also in this issue:

Price Vs. Terms Tradeoff
Reforms: The new CFPB scrutiny of MSAs
Active Key Users Exchange Information

OFFICIAL PUBLICATION OF THE SANTA CRUZ COUNTY ASSOCIATION OF REALTORS®

REALTOR®

THE VOICE FOR REAL ESTATE IN SANTA CRUZ COUNTY

The REALTOR® is the official bimonthly newsletter of the Santa Cruz County Association of REALTORS® provided as a member service to inform, educate and update members on local, state and national news.

Santa Cruz County Association of REALTORS®

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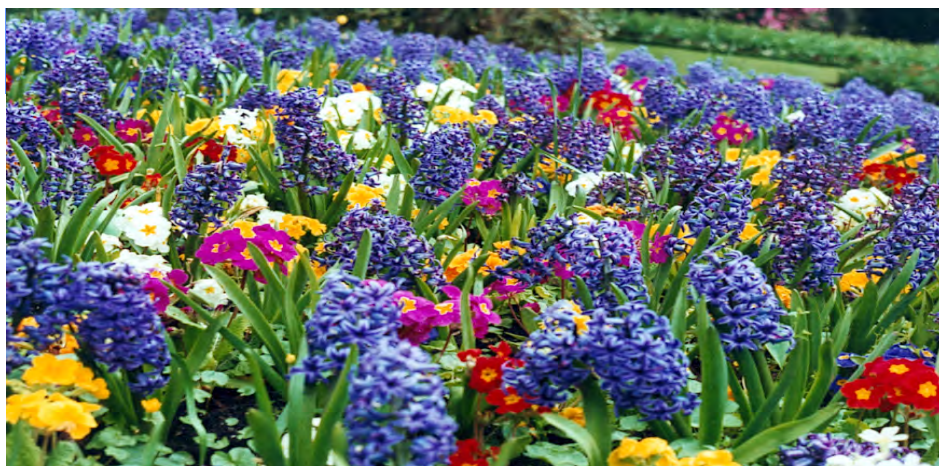
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REALTOR®

THE VOICE FOR REAL ESTATE IN SANTA CRUZ COUNTY

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Candie Noel
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Message From The President

DISRUPT YOURSELF: THE SWANEPOEL 2016 TRENDS REPORT

“I skate to where the puck is going to be, not to where it has been.” This famous Wayne Gretzky quote also applies to us REALTORS® and organized real estate. From the Blue Book to the internet. From the MLS internet to Zillow. From control to disruption. The consumer world, the MLS world, the Association world, and the REALTOR® world are continually changing. Where is “the puck is going to be” next?

We are fortunate to have a strategic thinking Executive Officer, Kathy Hartman, who is making (yes, fortunately making) our Board of Directors read the Swanepoel Trends Report 2016. Stefan Swanepoel, the author, is widely acknowledged as the leading expert on real estate trends and has been listed as one of the top most influential people in real estate. Trends Report 2016 is Swanepoel’s 11th trends report.

The 2016 report discusses ten mega trends that are shaping the future of organized real estate and how you do business. Some of these are very obvious and familiar to us. Others are eye opening. Here are the mega trends starting with number ten.

10. Millennials. What millennials want, where they want to live, their ability to obtain financing and how it will impact housing of the future.

9. The Social Media, Networks, and the Consumer Experience. The real estate industry has the opportunity to provide relevant search platforms, new tools, and search capabilities to enhance the consumer experience while maintaining the REALTOR®’s relevance to the transaction.

8. Lead Conversion. The growing use of the internet presents a steady stream of constantly changing opportunities. What is the best way to reinvent ourselves to win business and please consumers?

7. Smart Homes: On the Doorstep of Something Smarter. The smart home has arrived. What are the things REALTORS® need to be aware of to inform their customers?

6. Worldwide portals are reshaping the real estate industry. Global is the new local. How do global portals influence the home buying process and how do you maximize the opportunities they create?

5. Independent contractors. Who gets into the oval office could heavily affect the independent contractor status.

4. Technology & Mobile. The trends report recommends systems to make your life easier and meet your current needs while presenting new opportunities.

3. Predictive Analytics. Use of data driven decision making will heavily impact the future of the real estate industry and change the way we do business.

2. Organized Real Estate is Reinventing itself. NAR is making strategic moves to become a meaningful industry business leader.

1. Disrupt yourself. Swanepoel considers Project Upstream the #1 trend in 2016 for residential real estate. It’s all about who controls the data.

Hoedown For Hunger

The Second Harvest Food Bank in Watsonville is the second oldest in the nation. Its impact on our community is amazing. Each month it feeds over 55,000 people in Santa Cruz County. Over 8 million pounds of food is donated by farmers and the food industry and over 600 nutrition classes are taught in 28 locations. One dollar provides 4 healthy meals, with \$0.95 of every dollar donated going to feed people.

Continued on Page 16

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THE NEW CFPB SCRUTINY OF MSAs

Are marketing and services agreements illegal under RESPA?

By Sue Johnson, strategic alliance consultant

Marketing and Services Agreements (MSAs), under which a company agrees to market the services of another company in return for a fee, have been common in the real estate industry for years. They long have been considered lawful under the Real Estate Settlement Procedures Act (RESPA) provided that the fees are for services actually performed and not a quid pro quo for referrals.

But today, MSAs are squarely within the sights of the Consumer Financial Protection Bureau (CFPB), and it is important to tread carefully.

The CFPB has targeted MSAs several times in the last few years, fining companies for allegedly disguising illegal referral fees under these agreements. The vagueness of this gotcha approach to rulemaking caused some in the industry to urge the CFPB to provide more guidance as to what constitutes a legal MSA.

The CFPB responded on October 8, 2015, by issuing a Compliance Bulletin, "RESPA Compliance and Marketing Services." But, the Bulletin is a powerful reminder of the adage, "be careful what you wish for."

The Bulletin stops short of saying that all MSAs are illegal under RESPA, but it clearly expresses the CFPB's dislike for the arrangements. It repeatedly warns against "the substantial risks" posed by entering into MSAs and states that the CFPB "intends to continue actively scrutinizing" MSAs as part of its enforcement and supervision efforts.

After having issued these warnings, the CFPB surprisingly fails to provide substantive guidance on how to properly construct an MSA or guidance as to what can and cannot be done in an MSA. Instead, it summarizes the facts of some of its past enforcement actions against MSAs and provides a few examples of activity to avoid, such as paying for services that are not performed.

So, where does that leave a company that has an MSA in place or which is approached with an MSA offer? First, it is important to examine the specific facts and circumstances surrounding any MSA with legal counsel who is familiar with the constant twists and turns of RESPA. Below are some other tips to help reduce your legal risks.

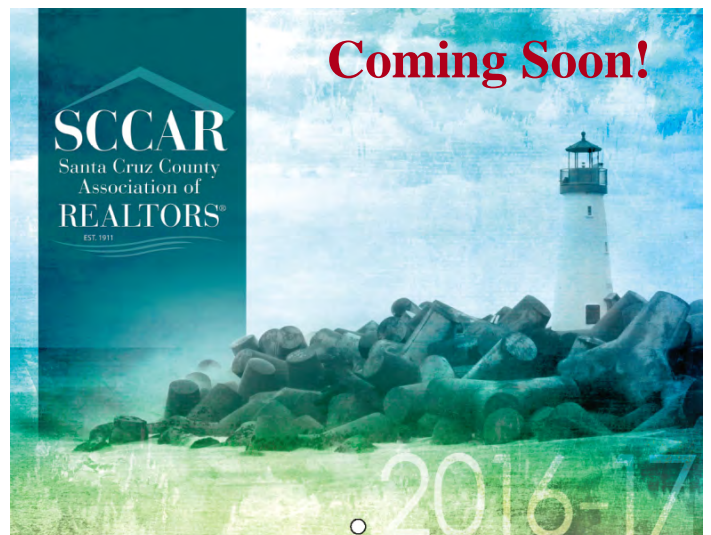
- Don't assume that real estate brokers can't be a CFPB target. It is true that Congress excluded real estate brokerage as a "consumer financial product or service" that is subject to certain CFPB regulatory, supervision, and enforcement activities under Dodd-Frank. But real estate brokerage is a "settlement service" that is covered under RESPA, and the CFPB can enforce (and has enforced) RESPA against real estate brokers.
- An MSA involving flat fees for the market value of consumer-direct advertising services (e.g., for banner ads on websites, links to websites, advertisements in email or direct mail campaigns) involves fewer risks than an MSA that could more easily lead to affirmative referrals by the company or its sales force.
- Obtain an independent analysis of market prices for advertising and any services being promoted. Don't assume that this review

will get you off the hook if you are investigated. The CFPB made clear in its Bulletin that independently-established market rate compensation for marketing services, alone, does not ensure the legality of an MSA.

- Develop a company-wide MSA policy and constantly monitor your operations and the operations of your partners to make sure the policy and the terms of any MSA are being followed. Regularly emphasize the importance of compliance. Conduct training sessions for the sales force. A properly-structured MSA and/or a sound MSA policy can be made irrelevant by unauthorized referrals or loose talk by sales representatives.
- Try to use any MSA as a catalyst for creating a better consumer experience. The CFPB's concern over MSAs is in part based on its belief that they prevent a consumer from shopping and that they involve high costs. Consider using voluntary, legitimate consumer discounts or rebates (within the applicable law) to make the price of the marketed services more competitive. Be ready to verify the consumer benefits of the MSA through documented customer feedback.
- Use the same regulatory caution needed for MSAs with office space rentals. While HUD issued specific guidance on office rentals in 1996 (saying that the rent must be at market rate without regard for referrals), it relied on the same RESPA exemption that the CFPB appears to ignore in its MSA guidance.

RESPA violations can subject the violator to civil penalties, consumer lawsuits, disgorgement of profits and even imprisonment. Significantly, both givers and receivers are liable under RESPA. Assuring that an MSA is RESPA-compliant in the CFPB's eyes can be costly and time-consuming, but it's better to be too careful than to be careless and regret it later.

This article originally appeared in the April 2016 issue of the REAL Trends Newsletter and is reprinted with permission of REAL Trends Inc. Copyright 2016.





Education & Professional Development



Register Online by visiting our [Web Portal](#)

May

[The Art of the CMA \(MLS\)](#)

Wednesday, May 11, 1 – 2:30 pm

Cost: Free with RSVP

This course teaches not only the fundamentals of creating searches within a variety of CMA tools, it also shows how advanced filtering and sorting of data produces well defined market valuations.

[Listing Management \(MLS\)](#)

Wednesday, May 11, 10 – 11:30 am

Cost: Free with RSVP

Attend this class and you will learn the structure of the MLS-Listings listing management input application, along with tools and techniques for enhancing your listing market exposure, keeping the data current and staying compliant with the MLSListings rules and regulations.

[Custom Displays & Exports \(MLS\)](#)

Friday, May 20, 10 – 11:30 am

Cost: Free with RSVP

Matrix can be customized to meet your viewing and exporting requirements to assist you with listing organization and deep data analysis.

[SCCP: Water Resources](#)

Friday, May 27

Member price: \$20

The fifth in a series of presentations designed to provide REALTORS® with knowledge and information to better assist their clients in buying and selling real estate in Santa Cruz County. Some of the points to be covered: long range water availability issues; minimum requirements for water availability; requirements and options for well; leach fields; septic options; sewage disposal/treatment issues that we will be facing in the future; current setbacks for septic or building from waterways and desalination plant update.

June

[Intermediate Matrix \(MLS\)](#)

Friday, June 17, 10 – 11:30 am

Build upon the skills learned in the Basic Class, with a focus on searching with maps, customizing data results to meet your specific needs, and communicating your findings to your client

[Advanced Matrix \(MLS\)](#)

Friday, June 17, 1 – 2:30 pm

Not all search tools return the same results. That's because zip code borders don't match to city lines and so on. Learn the features,

benefits and limitations of each search tool, and how map search allows you to create accurate search areas on your own.

[HomeSnap – MLS App](#)

Monday, June 27, 10 – 11:30 am

HomeSnap Pro provides an unprecedented amount of real-time information to agents on the go, giving them the flexibility to research homes, interact with each other, and collaborate with clients from their mobile devices. Now, agents and consumers can use the same platform to seamlessly share real estate information and communicate directly.

[Duane Gomer License Renewal](#)

Wednesday, June 29, 8:45 – 12 pm

What the program will cover:

- You will test on one 15-hour course, Property Management Success at the site and will receive instructions to test online later on additional courses.
- All students will receive the three hour mandatory courses of agency, ethics, trust funds, fair housing, risk management, management & supervision and one consumer protection course by textbook or pdf.
- Instructions for exams will be given at the seminar.
- All testing in accordance with current CalBRE rules.

Schedule: 8:45 am registration, 9 am course overview, 12 pm end of session.

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Entry Forms are due by June 3, 2016

Fax Entry Form to 831-464-2881 or call 831-464-2000

Bring your baked items to the Association no later than 11 am the day of the BBQ

Choose a category below (or categories if you're feeling really inspired)

- ◇ Cakes
- ◇ Cookies
- ◇ Pies
- ◇ Breads
- ◇ Surprise Us!

* Cash prizes are given to overall bake-off winners, not by category.



Residential Tenancy in Common Agreements A Good Idea?

*Terry Rein
Rein & Rein
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With skyrocketing real estate values, it is extremely difficult for buyers to be able to purchase a home in the Central Coast. Frequently, people ask me if I would recommend a tenancy in common (TIC) agreement between two unmarried buyers. The idea presented is that both parties would contribute funds for the down payment (sometimes in varying amounts), apply for financing, jointly pay the mortgage, taxes and maintenance costs, and happily live in the house together for the long run.

While it is indeed a creative form of ownership, I am not too fond of residential TICs. Too many times these purchases end up in a disaster for at least one of the parties.

What is a TIC?

Civil Code Sections 685 and 686 state that an “interest in common” is one owned by several persons, but not held in joint tenancy, a partnership or as community property.

Each Party Has the Right of Possession

A “unity of possession” is required to create a TIC. Each co-owner has an equal right of possession and, in absence of an agreement to the contrary, one cotenant cannot exclude another from the property. If one tenant in common is in possession alone, the other tenant in common generally cannot collect the rental value of the property from the party in possession. Cotenants can enter into agreements providing for exclusive rights of occupancy by one or more of them.

How is a TIC created?

A TIC is created by a conveyance or inheritance to more than one person. All cotenants in a TIC do not need to acquire their interests simultaneously.

Do Ownership Interests Need to Be Equal?

No, ownership interests do not need to be equal in a TIC. Unlike a joint tenancy, where the ownership interests must be equal, each owner of a TIC can have a different percentage ownership interest. Often, tenants in common own an interest in the property proportionate to his or her unequal contribution to the costs of acquisition.

Is there a Right of Survivorship?

No. Because the right of possession is the only requirement for a TIC, tenants in common may acquire title from different sources and at different times. There is no right of survivorship, and the estate of each tenant in common passes to the heirs and devisees of the decedent, and not to the surviving tenants in common.

What Could Possibly Go Wrong?

Over time, people change, and differences inevitably crop up. Disagreements come in a variety of shapes and sizes, and include deep-rooted disputes over the use of the property; resentment over unequal financial contributions; disputes over budgeting, assessments and expenditures; the unexpected loss of a job; a failure by one owner to follow the rules; and the development of animosity between former friends and partners. One co-owner may want to “move on” while the other may want to continue to reside in the property but does not have enough funds to “buy out” the other co-owner. I have even seen a situation where a co-owner “walked out”, refused to pay the mortgage, and the house was lost to foreclosure after the remaining co-owner desperately spent all of her income and assets trying to keep up with the mortgage, taxes and expenses.

When Things go South, What Can Be Done?

Unless there is a dispute resolution process in the TIC agreement, any owner can pursue “partition” and the most common result is the sale of the property. Partition is the procedure for segregating and terminating common interests in the same parcel of property, either by judicial decree or a voluntary agreement of the parties. Ordinarily, in absence of equitable defenses including waiver or estoppel, each cotenant has an “absolute” right to partition the common property.

Often partition involves a complicated (and sometimes expensive) accounting analysis. Even though a cotenant who is not in possession cannot collect the rental value from the tenant in possession, on partition, the court can offset the rental value against the claim by the cotenant in possession for amounts advanced for interest, taxes, and insurance premiums before distribution of the sale proceeds. The court can also credit the cotenant in possession for the amounts advanced for loan payments and improvements of the co-tenancy property. The costs of partition, including possibly an accountant and a referee appointed by the court, are deducted from the sale proceeds.

Conclusion

If a TIC is being considered, it is important to make sure that buyers fully understand the risks involved in a residential tenancy in common form of ownership. At a minimum, buyers should be counseled to enter into a written TIC agreement outlining their respective rights and obligations.

Terry Rein is a Santa Cruz attorney specializing in transactional real estate matters. This is prepared for educational purposes only and does not constitute legal advice.

The Most Common Spring Cleaning Mistakes (Plus 8 Others)

Jamie Wiebe



Once there's even a glimmer of spring, you're ready to throw open your windows and let the breeze blow away the winter funk. Well, you might want to rethink that spring cleaning ritual this year. If you're an allergy sufferer (and who isn't?), that's the last thing you want to do, says Dr. Neeta Ogden, a spokesperson for the American College of Allergy, Asthma and Immunology. "It will allow pollen to settle in your home."

If you really can't skip that spring breeze, avoid opening them in the morning, pollen counts are highest in the morning; they decrease late in the day and at night. And that's not the only common spring-cleaning mistake homeowners make. Here are eight more to avoid:

1. Not Looking Up

You've worked up a sweat and everything's starting to sparkle, but then you realize your ceiling fan is coated in dust. Uh, oh. Once you start wiping the fan, dust will scatter on what you've already cleaned. That's why you should always look up to see what needs dusting before you start cleaning at eye level. Tackle hard-to-reach places like the tops of bookshelves, crown molding, and window ledges.

2. Starting to Clean Without a Plan

You wake up motivated — today you're going to get all your spring cleaning done! But by noon, your house is in disarray, and not one single room is finished. Ugh. That's why Briana Norde, owner of Caliber Cleaning Inc. says it pays to break up the biggest cleaning project of the year into smaller, more manageable tasks.

She recommends conquering your hardest job first, like the kitchen, which she calls the "most time-consuming room." With that first accomplishment under your belt, you'll have the momentum to take on the remaining tasks. The key is to give yourself plenty of breaks. And there's nothing wrong with spreading it out over several days.

3. Ignoring That Weird-Looking Vacuum Attachment

Don't let your carpet hog the vacuum. The crevice tool, Norde says, "is not used nearly enough." Use it between your wall and refrigerator to get out the accumulated dust that's otherwise unreachable, and run it around the edge of your baseboards to clean where standard upright vacuums can't reach.

4. Skipping the Mattress

Think of how much time you spend in your bed. Yet, you probably clean the top of your fridge more often than your mattress. Your mattress harbors millions of dust mites, which cause various respiratory conditions including sneezing, a runny nose, itchy eyes, and skin rashes (not to mention just being plain gross).

"Dust mites' food is human skin scales, so the bed is just heaven for them," says Ogden. She recommends using a vapor steam cleaner to root out the itchy devils, then wrapping it in an anti-allergen mattress protector. At the very least, sprinkle your mattress with baking soda and let it sit for awhile. Then (using the attachment mentioned above) vacuum it up.

5. Relying on Harsh Cleaners

There's a reason many commercial cleaners have the words "danger," "hazard," or "caution," on their labels. Something in the ingredients is toxic in one form or another, and most all could aggravate allergies and asthma. So, "don't go crazy with cleaners you don't need," says Ogden. Moldy bathrooms may scream for bleach, but most surfaces do not. Ogden recommends making your own solution of water and vinegar (use a fifty-fifty ratio), which will keep most surfaces clean and germ-free.

6. Using Chemical Air Fresheners

You want your home to smell fresh, so it's tempting to reach for that mountain-rain-spring-fresh-scent in a can. But aerosol air fresheners contain high levels of toxic pollutants like phthalates, which can affect hormone levels, cause reproductive abnormalities, and increase allergies and asthma. Yikes. Try homemade (and less-expensive) alternatives, such as potpourri, or essential oils and water in a spray bottle.

7. Leaving the Clutter

All of the spring cleaning tips and advice are useless if you don't declutter first.

"We tend to not clean well around clutter," says Ogden. "You're not going to reach the dust there."

Make sure toys are put away, books are back on the bookshelf, and paperwork is filed before you begin the cleaning process. Otherwise, you're leaving room for dust and pollen to hide — making spring cleaning all for naught.

8. Treating It Like a Chore

If you dread spring cleaning, this should make you feel better: a Harvard study found those who treated cleaning as beneficial exercise saw a decrease in weight, body mass index, blood pressure, and more. That's what we call a trifecta: living in a clean home, breathing allergy-free air, and feeling great!

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Mortgage Paymt:	\$6,972	\$9,777	\$6,089
Rate:	4.625%	3.625%	3.500%
APR:	4.651%	3.669%	3.460%
Taxes: (Est.)	\$1,766	\$1,766	\$1,766
Ins./HOA Dues:	\$268	\$268	\$268
PMI:	\$0	\$0	\$0
Mo. Payment:	\$9,006	\$11,811	\$8,123

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 Down Payment: Amount or Percent: 20%
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Listing Details:
 MLS #: ML1500648
 Beds: 5
 Baths (F/F): 4 (4/0)
 Approx Bldg: 4,808 Sqft (tax)
 Approx Lot: 45,000 Sqft (Other)
 Approx Acres: 1.031 (Other)
 Agent's BR: 25/1990 (New)
 Parcel#: 634-18-032
 DOM: 198
 Time Fc: Yes
 Green Doc: Walk Score: 0

Listing Description:
 Luxury Estate features 3 Suites, nestled in Quiet Safe Primary Location in the Most Desirable Neighborhood with Grand Scenic 360 views of the City and Hill Large Windows Offer Escape and Great View Throughout the whole house from Every Room. Grand Master Suite Features Beautiful Triangular Window, Spacious Walk in Closet and A Separate Home Office. Fabulous Master Bath Full of Natural Light and Equipped with Dual Vanity, Jacuzzi Tub & 2 Showers, trail Amazing Backyard and Deck with Breathtaking view. A Must See!

UPCOMING MLSLISTINGS CLASSES AT SCCAR

- First Class June 6 1:00 pm [Register](#)
- Intermediate Matrix Search June 17 10:00 am [Register](#)
- Advanced Matrix Search June 17 1:00 pm [Register](#)
- Homesnap Pro Mobile App June 27 10:00 am [Register](#)

SCCAR Welcomes the Following New Members!

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March 2016

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THE PRICE VS. TERMS TRADEOFF

How do you get to a win-win?

Steve Murray, Real Trends publisher

All sellers want the highest price when they are selling their businesses. Sellers also prefer that they receive all of their proceeds in cash at closing. Buyers want to pay the lowest price they can to achieve their goals. In residential brokerage, buyers know that any time a change is being made in ownership, branding, and leadership, there is a likelihood of the loss of sales agents and their production. So, they want to have some monies paid over time based on the retention of those agents.

TRADEOFF: PRICE VS. TERMS

These are all normal tensions in a transaction. What most don't realize is that there is a distinct tradeoff between the price of a transaction and the terms of a transaction. As one buyer once put it, your price; my terms, and my price; your terms. What this means is that the higher the price a seller wants for their company, the more generous the terms must often be offered by the seller.

So, a high price might mean that more of the proceeds will be in an earn-out, payments made over one to four years based on either the retention of sales agents and their production or the maintenance of a certain level of operating income. Earn-outs are done both ways by buyers of residential brokerage firms. But, this also means that the more reasonable a seller is on price; the more likely it is he or she can receive more of the purchase price in cash or guaranteed notes. The corollary is that the more cash a seller wants; the greater the tendency is that the purchaser will pay a lower price.

FACTORS OF PRICE VS. TERMS

There are many factors that bear on the price vs. terms discussion. Is the seller going to stay involved and active? Does the seller have to change its brand name and are there any other significant changes to the commission program, or office locations? Are the cultures of the two firms alike in most regards? Are there overlapping operations? Does the seller have core services and how well developed are those?

So the price vs. terms issue is not just about the money but about the risk of the transaction. Both parties want the other to take as much of the risks of the transaction as possible. Sellers wanting all cash are saying they want the buyer to take all of the risk. Purchasers wanting the seller to take 50 percent of the deal in an earn-out are asking the seller to take more of the risk. No two deals are alike for all of these reasons.

Should you be in the market to purchase a brokerage or sell your own, understand that risk sharing drives the structure more than any other factor. When planning for a potential sale, sellers need to grasp that the less risk a transaction poses to a purchaser the higher the likely price they are going to receive. And lastly, despite what you may have heard, fewer than 1 percent of all transactions of any size in the last 15 years were all cash. And, multiples are not as high as some say they are.

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LGR Committee Report

Robert Singleton, GAD
gad@mysccar.org

Passage of New Development Sets Stage for Infill Housing



Last week the Santa Cruz City Council unanimously approved a new mixed use housing development at 1800 Soquel Avenue. This 3-story building will provide ground floor commercial space facing Soquel Avenue, while also providing 32 much needed housing units. However, what makes this development so important and symbolic for the future of housing in the City is that it is the first project in a long line of expected projects to be built along the main transit corridors.

Why is this important? The City is in the middle of developing, and soon to be implementing, a Corridors Plan, which outlines the development priorities for the 4 main commercial corridors in the city: Soquel Ave, Ocean St, Water St, and Mission St. These areas are likely going to be where the lion's share of new housing will be

built over the next decade, making this new project at 1800 a test case of sorts about what can be expected to happen.

The project has faced steep resistance from the surrounding neighborhood. The plan calls for building *at least* 3 stories in most places, while calling for up to 6 stories along some areas on Ocean Street, so it is unfortunate to see this level of public resistance this early on, and against such a relatively small project. The positives are that our City Council stood their ground in the face of this backlash and approved the project anyway. Yet this goes to show how important it is for our members to publicly support these types of projects, and support candidates who will continue to stand up for new housing. In this context local REALTORS® have a real opportunity to lead when it comes to providing housing for our community.

Real Estate and Land Use Law Update

Miles J. Dolinger, Esq.

Landlord cannot terminate a residential tenancy based on a violation of a lease term that is not “material”.

In Boston LLC v. Juarez, (2016) 245 Cal.App.4th 75, the court held that it was not proper for a landlord to terminate a residential tenancy and evict a tenant under a three-day notice based on the fact that the tenant failed to obtain renter’s personal injury and property damage insurance, as required by the lease. The court further held that in order to enforce a forfeiture provision in a lease, the tenant’s breach must be “material”, i.e., substantial, even if the forfeiture provision does not require a breach to be material. In this case, the court reasoned that the breach was not material because the insurance requirement only protected the tenant’s interests, not the landlord’s, and because the landlord otherwise failed to prove how it was harmed by the tenant not obtaining renter’s insurance after having lived at the premises for 15 years without this term being enforced.

The lesson that landlords should glean from this case is that a lease provision stating that any violation of the lease by the tenant is cause for the landlord to declare a forfeiture or otherwise terminate it is not necessary sufficient to justify a termination, but rather, the actual violation must be “material”. Furthermore, it is probably not sufficient for the parties to agree in the lease that all terms are deemed to be material. Landlords should be prepared to argue how a breach of a lease term is “material” because of the significant, actual or potential harm caused to the landlord.

Wrongful foreclosure plaintiff can challenge the validity of the assignment of the underlying note and deed of trust.

In Yvanov v. New Century Mortg. Corp., (2016) 62 Cal.4th 919, the California Supreme Court resolved a split of authority in the appellate courts and held that a borrower who has suffered a nonjudicial foreclosure has standing to sue for wrongful foreclosure based on an argument that the foreclosing loan beneficiary and trustee lack foreclosure authority because the loan was not properly assigned. Generally speaking, “standing” is a constitutional requirement that a

plaintiff in a lawsuit have a legally protectable and tangible interest at stake in the litigation.

The underlying facts in this case were these: In 2006, the plaintiff executed a note secured by a deed of trust in favor of lender/beneficiary New Century. In 2007-08, New Century filed for bankruptcy and all its assets were liquidated. In 2011, New Century purported to assign the deed of trust to Deutsche Bank, as trustee for the Morgan Stanley investment trust. The Morgan Stanley investment trust had a “closing date” of January 2007, which was the date by which all loans, mortgages and trust deeds were to be transferred into this investment pool. In 2012, Western Progressive substituted itself for Deutsche Bank as trustee, and then gave notice and conducted the foreclosure sale. The plaintiff alleged that the 2011 assignment from New Century to Deutsche Bank was void because: 1) all its assets were previously transferred to the bankruptcy trustee; and 2) the Morgan Stanley investment trust had closed to new loans in 2007.

A prior appellate case, Jenkins v. JP Morgan Chase Bank, N.A. (2013) 216 Cal.App.4th 497, held that a wrongful foreclosure plaintiff had no standing to challenge an improper assignment because it was not a party to the assignment. However, another prior case, Glaski v. Bank of America, National Association (2013) 218 Cal.App.4th 1079, held to the contrary. The California Supreme Court adopted the reasoning of the Glaski decision, which was this: an invalid assignment is “void” (meaning without ever having legal force or effect), and if the assignment of a deed of trust is void, then the purported new beneficiary and trustee do not have legal authority to undertake the nonjudicial foreclosure process, and such an authorized sale constitutes a wrongful foreclosure.

Miles J. Dolinger is a land use and real estate attorney with over 22 years of legal experience.

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2016-17



Santa Cruz County Association of REALTORS® Housing Foundation

Charity Poker Tournament

Texas Hold'Em

Friday, May 20, 2016

Santa Cruz Elks Lodge, 150 Jewel Street, Santa Cruz
Doors open at 5:30 pm

Cards fly at 7 pm sharp!

\$75 Buy-in Tickets (\$100 at the door) | Re-buys: \$40 | Add-on: \$35
Tickets can be purchased at SCCAR, 2525 Main St., Soquel - 831-464-2000



Prizes for
"final table"



Beginners learn to play
5:30 - 6:30 pm!



Spectators welcome!
Tickets \$15

All proceeds benefit first time home buyers through the Santa Cruz County Association of REALTORS® Housing Foundation grant programs.



SCCAR Election is Going Electronic



SCCAR will be holding our elections in June 2016 and will be accepting and tracking votes electronically. As with the key billing this year, we are trying to do our part to be more conscious of our impact on our environment. Look for more information coming soon!

Hot October Event!



Leslie Appleton-Young, Vice President and Chief Economist for the California Association of REALTORS®, will be coming to SCCAR in October! More details coming soon.

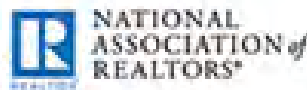
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BROKERAGE

DO YOUR ASSOCIATES HAVE THE NO. 1 SKILL?

*Teach your agents how to negotiate.**Larry Kendall, chairman of The Group, Inc. and author of Ninja Selling*

Have you seen the latest National Association of Realtors® (NAR) survey? Eighty-nine percent of buyers and sellers rate *negotiation* as the key skill they are looking for in selecting a real estate professional. This high percentage may be related to the shortage of inventory and multiple contract negotiations in many markets. How are your team's negotiation skills? What can you do to help them perfect this skill?

Start by helping your associates understand the five basic negotiation points of a real estate contract. Most real estate contracts are lengthy. All the pages of legalese are designed to help buyers and sellers agree on just five negotiating points. Here they are:

1. Price. Are you in a seller's market with multiple offers? Will buyers need to offer full price or above to compete for this property? What about a price escalation clause?

2. Terms. Cash is king, as long as it can be verified. Conventional loans are next in line, followed by FHA and VA. If you are in a competitive seller's market, and your buyer is a low-down payment buyer (FHA or VA), can he or she get help from a family member to raise his or her offer to conventional financing to be more competitive?

What about the earnest money? In some markets, a winning strategy is to release all or a portion of the earnest money to the seller upon contract acceptance. This strategy is effective in markets with a history of buyers making offers on multiple properties, then deciding which one they want and using the inspection clause to walk away from the others.

3. Dates. Closing and possession dates can often be the most important negotiating point of all. Sellers don't like to make a double move. Sometimes they want time to find another home. Buyers who match their closing and possession dates to the seller's goals are more likely to win. Often a closing with a seller rent back (sometimes at reduced or free rent) for up to 60 days makes the difference.

4. Inclusions and exclusions. Remember the buyer's markets in the 1980s where the price sometimes included the cars in the garage? Fortunately, those days are over. However, in many resort markets, the price may include the furnishings.

5. Contingencies. This one is a biggie. The cleaner the buyers can make their contract (and still be comfortable); the more likely they are to win in a multiple offer situation. The two biggest contingencies generally involve the loan and the inspection. A buyer who is pre-approved (not just pre-qualified) has an advantage. However, the property will still need to appraise. Do the buyers have enough extra cash that they can agree to buy the property so long as it appraises for a minimum amount? If so, they can modify the appraisal clause unless they are buying FHA or VA.

On the inspection clause, if the listing real estate professional had the property pre-inspected by a reputable inspector, and the seller is also offering a Homeowner's Warranty, would the buyer be willing to accept these inspections and waive the inspection clause? If the buyer is competing for a property where contracts will be collected and then presented to the seller at one time several days later, is there time for the buyer to get his or her inspector into the property and have an inspection done BEFORE he or she writes the contract? If the property inspects, they can write an offer waiving the inspection clause.

The strategies mentioned here can be used by buyers to compete in a multiple offer market. They can also be used by sellers to request concessions from buyers when they receive multiple offers. These strategies are generally unnecessary in buyers' markets and may vary by state law.

Regardless of the market, your associates should be familiar with the five negotiating points. We recommend you have them rehearse their strategies and share best practices, so they become master negotiators. After all, it is the No. 1 skill for which customers are looking.

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Message From The President

Continued From Page 3

One of Second Harvest's biggest fund raiser is their annual Hoedown for Hunger, a fun family event. This year SCCAR will be sponsoring the Hoedown and raising money to help feed the hungry in Santa Cruz County. We are looking for volunteers to put on the event and to help raise money. If you are interested please give me a call at 831-252-2638.

Monday Morning with Candie

Every first Monday of each month from 9:30 – 10:30 is "Monday Morning with Candie". We talk about what's happening in the real estate market, the association and anything on your mind. Your suggestions, concerns and ideas are very welcome. You are welcome to spend the entire hour or just pop in for a few minutes at your convenience. The next first Monday is **June 6, 2016** at the Association office. I hope to see you then.

What's Your Story?



What is YREP?

The newly formed Young Real Estate PROS (YREP) committee held their first mixer this past April 20th at Michael's on Main. Facilitated by young top producer Justin McNabb, a lively discussion ensued on what began as marketing but ultimately culminated into the foundation of any marketing plan, "What is Your Story?" and how do you want to tell it? The event proved to be most educational for attendees and we look forward to hosting many more.

YREP's goal is to provide newer members in the real estate profession a platform to network and build relationships and increase awareness of SCCAR benefits and activities. Additionally, the group will develop events for leading edge and innovative knowledge exchange, increasing involvement in Association leadership and providing a platform for input on the future direction of the organization.

If you are interested in joining this committee, please contact Jasiri Daire, Bay Federal Credit Union, jdaire@bayfed.com.



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The Market Then and Now



Two of the greats presented at our President's Panel on April 15, past president's Robert Bailey (1988) and Steve Allen (2010). The market insights and nuances that they shared you won't find in text books - it's all about living it.

We hope to have them back again as attendees were clamoring for more.



Active Key Exchange

SCCAR and Supra will be hosting a key exchange for all Active Key holders this summer. The new key is the XpressKEY and is Supra's compact touchscreen key that is easy to use and quickly



opens keyboxes. It updates automatically over cellular networks and sends showing notices in real time. (use express key image somewhere near here)



Only members who have an Active Key will need to attend this event. More details are coming soon. Learn more about the [XpressKEY](#)

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Affiliate Spotlight

Bee-Clene
Patty Enriquez

patty@beeclene.com

831-438-1111



Bee-Clene is a full-service housekeeping and carpet cleaning company that has been in business since 1998. We have partnered with property management companies and REALTORS® for years, making homes and properties move in ready.

We realize the various tasks you manage as a REALTOR® and strive to make your job easier. Our goal is to help present a home in its best light while providing exceptional customer service.

Move In/ Move Out Cleans

Bee-Clene's professional team is well trained to make a house market ready. We focus on cleaning a home from top to bottom, making sure all surfaces shine. Blinds are dusted. Windows are cleaned to make them shine. We wipe down the insides of drawers. Baseboards and windowsills are thoroughly cleaned. We know all of the details matter.

Work With One Company To Take Care Of Multiple Needs

Bee-Clene is a one-stop shop. Partnering with Bee-Clene allows you more time to focus your energy on other real estate matters. You do not have to get bogged down as a project manager for the array of services needed to get a home ready to list. We will work with the timeline that you establish coordinating our staff accordingly for all cleaning and handyman jobs required. Because we offer a variety of services we are able to schedule different skilled workers for the next task at hand.

Bee-Clene is much more than a house cleaning service. We offer steam truck-mounted carpet cleaning services and ultrasonic blind cleaning. We also cater to home improvement jobs, providing

skilled handymen for multiple projects. Our handymen paint the interiors and exteriors of homes, porches and doors to give them new life. We pressure wash home exteriors and decks. We do small jobs and big ones. Need installation of carpet and flooring? We do that also.

Quick Turn Around When You Need Flooring Fast

Bee-Clene is an authorized Shaw carpet sales dealer. We also sell laminate. Purchasing flooring from us means one less middleman for you. When flooring arrives at our warehouse, we are immediately ready to begin the install. This is one less step for you having to coordinate with a dealer and the installer. Purchasing new carpet and flooring from us saves you and the homeowner time.

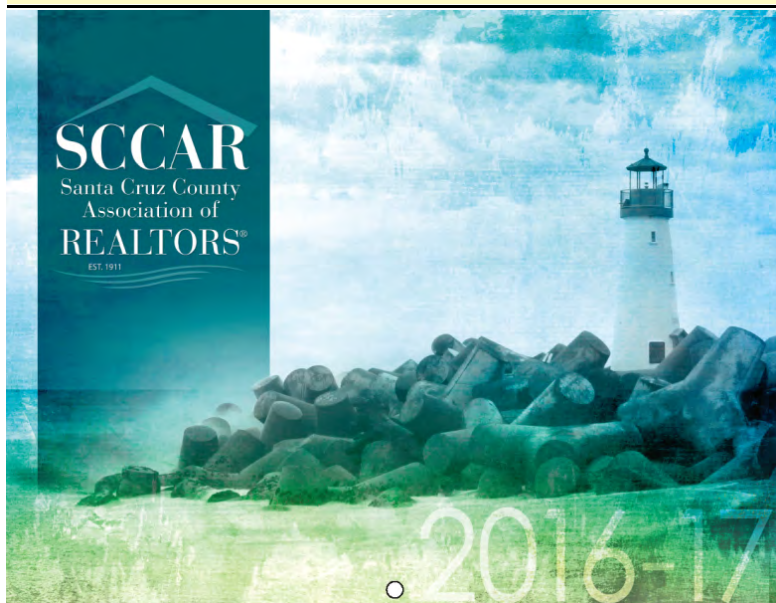
We Work On Saturdays

Many service providers do not offer weekend hours. Preparing a home to list is stressful, and can be even more so when a homeowner is in a time crunch to sell. We clean on Saturdays and work on assigned home improvement tasks when you need to meet a deadline. Offering services six days a week is our commitment to helping you get a home ready to sell.

Peace of Mind

Your client is protected when you recommend Bee-Clene as a service provider. We are licensed, bonded and insured. We also have a contractor's license. When using our handymen services you can rest assured that we are licensed and trained.

Call Bee-Clene at 831-438-1111 the next time you have a home to list.



"My Dream Home" Wall Calendar

SCCAR is producing our first annual "My Dream Home" wall calendar that will be for sale in our store in July! Each month will feature a drawing from a local student depicting what their dream home looks like. The goal is to bring further awareness to the value and joy of homeownership and how local real estate industry professionals help in achieving that dream.

Keep an eye out for them coming in July!

Santa Cruz County Housing Statistics

March 2016: Santa Cruz County - Single Family Residential

City	New	Inventory	Sold	Avg. DOM	Avg. Sale Price	Median Sale Price	Median \$/Sqft	% LP Rec'd	Sale Volume	Avg. Home Sq. Ft.	Avg. Lot Sq. Ft.	Months of Inventory
Aptos	33	57	22	36	\$946,510	\$829,000	\$543	99%	\$20,823,228	1,802	28,859	3.2
Ben Lomond	6	11	1	9	\$475,000	\$475,000	\$560	106%	\$475,000	848	17,380	6.6
Boulder Creek	15	24	4	58	\$420,000	\$422,500	\$397	100%	\$1,680,000	1,085	7,623	2.8
Brookdale	0	1	0									
Capitola	9	7	5	55	\$2,329,600	\$1,280,000	\$777	92%	\$11,648,000	2,421	6,125	1.9
Corralitos	2	9	1	16	\$1,650,000	\$1,650,000	\$586	95%	\$1,650,000	2,815	426,540	4.5
Davenport	0	0	0									
Felton	11	22	12	32	\$580,750	\$576,500	\$403	101%	\$6,969,000	1,461	49,773	2.8
Freedom	1	6	2	10	\$538,500	\$538,500	\$310	98%	\$1,077,000	1,744	8,603	3.6
La Selva Beach	6	8	3	132	\$1,565,000	\$1,400,000	\$516	94%	\$4,695,000	3,030	29,897	2.7
Los Gatos	8	22	3	110	\$966,666	\$990,000	\$398	91%	\$2,900,000	2,610	243,616	7.3
Mount Hermon	0	1	0									
Santa Cruz	71	115	44	37	\$1,040,039	\$824,500	\$569	102%	\$45,761,750	1,663	18,171	3.6
Scotts Valley	17	32	10	31	\$1,189,740	\$1,115,000	\$418	100%	\$11,897,400	2,937	66,564	5.6
Seacliff	0	1	0									
Soquel	10	15	5	8	\$1,099,000	\$810,000	\$523	101%	\$5,495,000	2,011	61,803	4.1
Watsonville	36	70	19	57	\$492,992	\$446,950	\$340	100%	\$9,366,850	1,494	12,992	4.7
Royal Oaks	11	13	7	58	\$539,071	\$445,000	\$314	95%	\$3,773,500	1,658	133,626	3.9

March 2016: Santa Cruz County - Common Interest Development

City	New	Inventory	Sold	Avg. DOM	Avg. Sale Price	Median Sale Price	Median \$/Sqft	% LP Rec'd	Sale Volume	Avg. Home Sq. Ft.	Avg. Lot Sq. Ft.	Months of Inventory
Aptos	10	26	10	29	\$558,800	\$566,500	\$452	98%	\$5,588,000	1,236	1,073	3.5
Boulder Creek	2	4	2	67	\$432,000	\$432,000	\$310	99%	\$864,000	1,396	1,350	4
Capitola	9	10	4	7	\$437,000	\$438,500	\$489	100%	\$1,748,000	914	925	2.7
Freedom	0	0	1	17	\$226,325	\$226,325	\$151	100%	\$226,325	1,500	784	0
La Selva Beach	0	3	0									
Santa Cruz	19	22	17	30	\$517,879	\$520,000	\$527	102%	\$8,803,950	992	5,401	1.7
Scotts Valley	7	8	4	72	\$608,162	\$645,000	\$371	98%	\$2,432,650	1,616	1,438	4
Soquel	0	2	2	10	\$462,000	\$462,000	\$452	101%	\$924,000	1,027	958	2
Watsonville	7	9	5	21	\$552,800	\$680,000	\$425	99%	\$2,764,000	1,205	740	2.5

February 2016: Santa Cruz County - Single Family Residential

City	New	Inventory	Sold	Avg. DOM	Avg. Sale Price	Median Sale Price	Median \$/Sqft	% LP Rec'd	Sale Volume	Avg. Home Sq. Ft.	Avg. Lot Sq. Ft.	Months of Inventory
Aptos	30	47	12	64	\$1,224,666	\$1,104,500	\$445	98%	\$14,696,000	2,717	41,171	2.6
Ben Lomond	6	10	1	0	\$550,000	\$550,000	\$383	100%	\$550,000	1,437	27,878	2.5
Boulder Creek	10	16	9	81	\$591,705	\$588,000	\$323	99%	\$5,325,349	1,922	79,609	1.3
Brookdale	1	2	1	221	\$381,724	\$381,724	\$335	99%	\$381,724	1,140	10,149	3
Capitola	2	5	3	62	\$897,793	\$938,000	\$663	95%	\$2,693,380	1,602	8,944	1.7
Corralitos	4	8	2	8	\$624,050	\$624,050	\$446	101%	\$1,248,100	1,396	19,994	2.7
Davenport	0	0	0									
Felton	10	19	6	43	\$395,000	\$453,500	\$463	96%	\$2,370,000	920	9,416	2.4
Freedom	3	8	1	86	\$365,000	\$365,000	\$191	91%	\$365,000	1,912	16,988	6
La Selva Beach	2	5	3	138	\$1,535,000	\$1,175,000	\$446	95%	\$4,605,000	3,230	157,397	2.5
Los Gatos	9	18	5	50	\$1,030,400	\$1,098,000	\$543	98%	\$5,152,000	2,152	117,045	5.4
Mount Hermon	0	1	0									
Santa Cruz	54	89	30	67	\$1,172,398	\$822,000	\$567	100%	\$35,171,948	2,077	46,275	2.7
Scotts Valley	13	24	5	58	\$708,900	\$660,000	\$396	98%	\$3,544,500	1,827	35,658	4.5
Seacliff	1	1	0									
Soquel	8	11	3	36	\$701,333	\$670,000	\$499	98%	\$2,104,000	1,523	8,726	2.5
Watsonville	25	56	11	39	\$914,818	\$795,000	\$447	100%	\$10,063,000	1,907	239,014	3.3
Royal Oaks	6	11	1	5	\$243,500	\$243,500	\$312	122%	\$243,500	780	16,533	3.3

February 2016: Santa Cruz County - Common Interest Development

City	New	Inventory	Sold	Avg. DOM	Avg. Sale Price	Median Sale Price	Median \$/Sqft	% LP Rec'd	Sale Volume	Avg. Home Sq. Ft.	Avg. Lot Sq. Ft.	Months of Inventory
Aptos	17	29	7	142	\$665,239	\$630,000	\$422	98%	\$4,656,675	1,435	927	4.4
Boulder Creek	2	3	0									
Capitola	5	6	5	31	\$481,300	\$435,000	\$498	101%	\$2,406,500	923	1,228	1.5
Freedom	1	0	0									
La Selva Beach	1	4	1	8	\$1,275,000	\$1,275,000	\$529	98%	\$1,275,000	2,408	1,655	2
Santa Cruz	16	20	14	49	\$480,239	\$495,000	\$437	99%	\$6,723,350	1,076	908	1.8
Scotts Valley	5	6	1	11	\$489,900	\$489,900	\$442	100%	\$489,900	1,108	566	3.6
Soquel	0	3	0									
Watsonville	5	11	2	12	\$337,625	\$337,625	\$274	98%	\$675,250	1,228	980	3

Data provided by MLS Listings, Inc.

May 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2 Monday Morning with Candie 9:30 - 10:30 am	3 MLS First Class 9:30 am - 1 pm	4 Legal Update Hotel Paradox 9 - 11 am	5 Tour Marketing Meeting 8:30 - 9 am	6 Local Govt. Relations Committee 9 am RSVP Work Day	7
8 	9 Education Committee 9:30 am YREP Mtg. 1 pm	10	11 The Art of the CMA - 1 pm The Science of an Open House 10 am NAR Washington D.C.	12 Tour Marketing Meeting 8:30 - 9 am	13	14
15	16 Event & Community Relations 10 am	17	18 Housing Foundation Trustee Mtg. 2 pm	19 Tour Marketing Meeting 8:30 - 9 am	20 Board of Directors 8:30 am Affiliate Mtg 11 am Custom Reports 10 am Charity Poker Tournament 5:30 pm	21
22	23 Budget & Finance 10 am	24	25	26 Tour Marketing Meeting 8:30 - 9 am	27 SCCP: Water Resources 9:30 am	28
29	30 SCCAR Closed Memorial Day	31				

June 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2 Tour Marketing Meeting 8:30 - 9 am	3 Local Govt. Relations Committee 9 am	4
5	6 Monday Morning with Candie 9:30 - 10:30 am MLS First Class 1 pm	7	8 <i>Spring Fling</i> 11 am - 2 pm Housing Foundation Trustee Mtg. 2 pm	9 Tour Marketing Meeting 8:30 - 9 am	10 Board of Directors 8:30 am Affiliate Mtg 11 am	11
12	13 YREP Mtg. 1 pm	14	15	16 Tour Marketing Meeting 8:30 - 9 am	17 New Member Orientation 8 am Listing Management 10 am Advanced Matrix 1 pm	18
19 	20 Education Committee 9:30 am Budget & Finance 10 am	21	22	23 Tour Marketing Meeting 8:30 - 9 am	24	25
26	27 HomeSnap 10 am	28	29	30 Tour Marketing Meeting 8:30 - 9 am		