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March 9, 2009

**VIA EMAIL TRANSMITTAL - pvose@gavar.org**

Greater Antelope Valley  
Association of Realtors  
1112 West Avenue M-4  
Palmdale, CA 93551

Attention: Pamela Vose  
Chief Executive Officer

Re: **Placing For Sale Signs on REO Properties**  
Our Ref. No.: 1-GAVAR.01-08-112-1

Dear Ms. Vose:

This will address the concern of the Board of Directors regarding current practices in connection with the sale by lenders/sellers of REO properties. These transactions are dominating the real estate landscape in the Antelope Valley at this time.

The practice of concern to the Board of Directors is the placing of "For Sale" signs by brokers on the REO properties advertising the properties for sale, although no listing has been input in the MLS for the property. Two methods have been reported to me which support the broker's authority to place the "For Sale" sign on the property.

The first of these is a situation where a broker places his "For Sale" sign on the property after being orally assured by the seller of the property that the broker will receive a listing. There is no actual written agency authorization for the broker, but his custom and practice with the lender/seller suggests that he will soon receive a formal Listing Agreement. Accordingly, he places a sign on the property after being authorized to do so by the REO lender, either by oral communication or other communication short of a formal written agency agreement.

The second method involves a situation where the REO lender/seller actually enters into an agency agreement with a broker. These agreements are in writing and are variously called "Master Listing Agreements", "Master Service Agreements" or other names. The broker and lender do not use the standard CAR authorized Listing Agreements. These written documents actually

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create an agency relationship between the lender/seller and the broker and may contain authorization for the broker to place a "For Sale" sign on the property. However, these agreements do not include a specific list price for the property but state that after appropriate appraisal and/or comparative market analysis, a list price will be established, and the agreement will be amended to designate the particular price for a particular property.

The broker, in accordance with the oral assurance or agreement, places his standard "For Sale" sign on the subject property. The broker is a member of the GAVAR MLS. Placing the sign on the property represents that the property has been listed with the broker and is for sale. When contacted, the broker often indicates that he, in fact, has a Listing Agreement, but that the lender/seller has not yet designated an actual sales price.

The question presented then is whether these transactions are consistent with California law, consistent with the Multiple Listing Service Rules and Regulations, and for Association members, comply with the requirements of the NAR Rules of Ethics and Standards of Practice.

California law requires that contracts for the listing of real property for sale are required to be in writing to be enforceable (Civil Code Section 1624). Listing contracts must be specific about the subject matter of the agency and specify the purchase price and terms of purchase. If no purchase price is specified, the seller will not be obligated to the broker if the seller refuses an offer at a fair price.

Civil Code Section 2079.13(e) defines a Listing Agreement as a contract between an owner of real property and an agent by which the agent has been authorized to sell the real property or to find or obtain a buyer.

Civil Code Section 2079.14 provides that the listing agent, prior to entering into a Listing Agreement, must provide a disclosure form to the seller.

Civil Code Section 1086(f) defines a "listing" as "a written contract between the owner of a property and an agent by which the agent has been authorized to sell the property or to find or obtain a buyer."

Business and Professions Code Section 10140 provides, in pertinent part, that every person who knowingly advertises or circulates any false statement or representation concerning any land offered for sale is guilty of a public offense and shall be punished by a fine not exceeding \$1,000.00, or by imprisonment in a county jail not exceeding one year, or by both. And, if a real

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estate licensee, he shall be subject to trial by the Commissioner of Real Estate for a suspension or revocation of his license.

MLS Rule 7.11 requires that all listings in the MLS shall be complete in every detail and must include the full gross listing price.

MLS Rule 7.5 requires that brokers must submit all listings of residential properties (1 - 4 units) to the MLS within 48 hours after receipt of a signed listing agreement.

MLS Rule 12.10 provides that brokers may not engage in false or misleading advertising.

Article 9 of the Code of Ethics of the National Association of Realtors requires that Realtors shall assure that all listing agreements shall be in writing in clear and understandable language expressing the specific terms and commitments of the parties.

CONCLUSION. In our opinion, both the MLS broker who places a "For Sale" sign on the property without written authority to do so, and the MLS broker with written authority to do so but without a listing agreement sufficiently completed to permit input in the MLS system, have violated California law and the MLS Rules. The Association broker who does so also is in violation of Article 9 of the NAR Code of Ethics. Such conduct risks the loss of commissions on the sale of the property, disciplinary action (for REALTOR members) and the prospect of criminal and license sanctions under the Business and Professions Code. Placing the "For Sale" sign on the property should be postponed until the seller/lender has actually presented the broker with a listing agreement with terms (purchase price) sufficient to permit entry into the MLS system.

This opinion is limited to those signs placed by brokers which state "For Sale." Signs informing the public that the broker is the property manager or may otherwise be contacted regarding the property, and that do not represent that the property is "For Sale," are not meant to be covered by this opinion.

Very truly yours,

WILLIAM WALSH IV  
WALSH DELANEY ATTORNEYS

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