



VAR Board of Directors Meeting Talking Points – May 20, 2021

Financial Report

- The financial reports ending May 13, 2021 were accepted, with one abstention.
- Treasurer Barb Trousdale informed the Board that VAR received \$44,000 from DotLoop for past revenue sharing dating back to 2017.
- The Board approved CEO Kathy Sweeten request for non-budgeted expenses including:
 - Landscaping upgrades
 - Office window treatments
 - Gutter and outside painting updates
 - \$10,000 for the start-up of VAR Realtor® Charitable Foundation.

New Business

- The Board heard a presentation from Dave Legaz and Francesca Lenzi regarding the NAR Realtor® Relief Foundation for the 2021 campaign. After the presentation the Board unanimously approved a donation of \$25,000.00 to the relief effort.

DotLoop Workgroup

- The DotLoop Workgroup presented their findings for possible alternatives to DotLoop when the VAR Agreement ends in October 2021. The Workgroup reviewed the transaction management systems of four companies – DocuSign, Remine, Lone Wolf and Skyslope. After seeing demos and talking with company representatives, the Workgroup recommended that VAR continue to pursue an agreement with Remine. Brokers, the VAR Board of Directors and President Council Members will be invited to see a demonstration before any final decisions are made.

Forms Committee Report

- Mike Hickey reported that the Forms Committee has finished their review of the P&S Contract and the SPIR form. VAR Attorney Kathy McMahon is reviewing the final document. Once that is done the documents will be uploaded to DotLoop for Committee review before being available to the membership. In addition, all the clause documents have been reviewed.

Update from OPR

- OPR General Counsel Gabe Gilman presented the Chapter 57 Review of the Vermont Real Estate Commissions and the nine recommendations being made (see attached PowerPoint). He indicated that the VREC will be meeting monthly over the next six months to address the nine recommendations individually. He also said that he expected that VAR will provide feedback during the VREC Meeting.

NAR Directors Report

- The virtual NAR Legislative Meetings were held May 3-10. 15,000 people registered for the meetings. Highlights include:
 - NAR now has 1,484,549 members. 225,000 of those members hold an NAR credential.
 - The Board of Directors approved no increase in membership dues for 2022.
 - Over 475,000 investors have participated in RPAC for a total of \$78,526,031.
 - Members saved \$75,000,000 using the NAR Member Benefits Program.
 - A number of MLS related policy changes were approved.

REGULATORY REVIEW: REAL ESTATE COMMISSION

A SUMMARY OF RECENT ANTRITRUST EVENTS
AND OPR's RECOMMENDATIONS

RECENT ANTITRUST EVENTS

- **DOJ-NAR**
 - Complaint and proposed settlement filed in November 2020
 - Settlement would disallow representations that buyer broker services are free to buyers; would eliminate non-public split fields; and would disable split filtering
 - Local impact and implementation unclear
- **Moehrl** - *Ongoing*
- **Sitzer** - *Ongoing*

1. REQUIRE CLIENTS TO PAY THEIR OWN AGENTS

Replace commission splitting with uncoupled compensation.

This is a powerful pro-consumer reform because it immediately removes the root cause of downstream issues:

- the buyer's agent's incentive to steer toward high-commission listings
- the listing agent's incentive to prefer unrepresented buyers
- procuring cause disputes

But ... has negative implications for buyer brokerage and high potential for controversy

Implementation:

- Contingent on litigation outcomes. Either the General Assembly or the Commission could specify that licensees must be compensated for brokerage services only by their clients.

2. DISALLOW DESIGNATED AGENCY OR IMPROVE DISCLOSURE OF WHAT IT MEANS

Remove or limit Designated Agency

The 2015 introduction of designated agency benefits large brokerage firms to the detriment of consumers and small brokerage firms.

- When fiduciary obligations are undesired or impossible to maintain, consumers should know

Implementation:

- Either the General Assembly or the Commission could require a return to the pre-2015 representation rules. Or the model can be retained with improved disclosure and release options.

3. ALLOW FACILITATIVE BROKERAGE

Vermont should join the majority of states in permitting facilitative brokerage

A non-adversarial model in which a real estate professional offers expert transaction facilitation to both buyer and seller, without representing either as an agent, or fiduciary.

- The current prohibition on facilitative brokerage is an unnecessary restriction on the way professionals can serve clients

Implementation:

- Either the General Assembly or the Commission could strike the parallel provisions in Rules 4.3 & 4.4 that prohibit non-fiduciary brokerage services.

4. RECOGNIZE DISTINCTIONS BETWEEN RESIDENTIAL AND COMMERCIAL PRACTICE

Address commercial brokerage practices in rule or exempt from licensure

A longstanding vacancy in the Commission seat conventionally filled by a commercial broker has left that practice area unrepresented

- Current rules and regulations focus on residential brokerage and are incompatible with commercial brokerage in practice
- Complaints about commercial brokerages and brokers are extremely rare

Implementation:

- The General Assembly could amend 26 V.S.A. § 2251(b) or the commission could establish a subcommittee

5. PROHIBIT UNREASONABLE WAIVERS OF CONSUMER RIGHTS

Standard contracts contain unreasonable provisions limiting the accountability of real estate licensees for civil damages they may cause.

The practice is contrary to the public interest as well as the concept of fiduciary responsibility, and the Commission's rules should be amended to prohibit it.

- If licensing is required to protect the public, it is irrational to permit agents to excuse themselves from accountability for harms they may cause their clients

Implementation:

- The commission or General Assembly could act to expressly prohibit real estate licensees from including liability waivers in service agreements with clients not separately represented by counsel

6. USE REGULATION AND CONSUMER DISCLOSURES TO ENCOURAGE INFORMED ENTRY INTO EXCLUSIVE REPRESENTATION AGREEMENTS, AS WELL AS SOFTER LANDINGS AND EQUITABLE COMPENSATION WHEN THEY FAIL

Survey respondents suggest consumer protections similar to those applied in other areas of commerce: e.g., a contract cancellation period, an attorney-review period, or both.

Consumers typically engage attorneys to represent them in real estate transactions after many of the most consequential commitments have been made.

- Most representation agreements are terminable only by mutual consent
- Most agreements commit a client to paying the commission regardless their agent's role in the transaction

Implementation:

- The General Assembly or Commission could consider New Jersey's attorney-review model; could encourage service-based compensation models by making exclusive representation agreements less airtight; or could directly require that service agreements specify fees for certain discrete real estate services short of closing.

7. CODIFY IMMUNITY FOR GOOD-FAITH REPORTS; DEFINE MISCONDUCT TO INCLUDE RETALIATION; AND INFORM CONSUMERS HOW TO MAKE CONDUCT COMPLAINTS

Professional communities in Vermont are so small and referral-oriented that survey respondents report unwillingness to risk calling problems to the attention of regulators.

This problem is not easily fixed with a single solution, so partial solutions are recommended:

- 1st, the law should expressly afford good-faith reporters of misconduct immunity from civil damages
- 2nd, the law should define unprofessional conduct by real estate professionals to include retaliation, by boycotting or otherwise, against good-faith reporters of professional misconduct
- 3rd, include within the Mandatory Consumer Disclosure simple information about how to file a complaint with the Office and Real Estate Commission—a measure common in other regulated fields

Implementation:

- The General Assembly could amend § 128(d)

8. ADAPT REGULATION TO THE VIRTUAL OFFICE

There are fewer and fewer reasons to associate supervision with shared physical space.

The requirement that a branch office have a broker in charge, codified in Rules 2.6(a), 4.1(b), makes less sense in a world where there is no physical office.

- By updating the relevant rules to reflect the reality of virtual work and mobile brokerage, we can reduce compliance costs and facilitate innovation

Implementation:

- The Commission could make rules changes or establish a working group to think through more flexible supervision models.