**Consumer Protection Reader, 2012**  
**Quiz Answers for Part 2 of 2**  
July 17, 2012

We defend each answer with an explanation based on citations from the book. Often we quote more content than necessary to justify our answers. We do this to put our answers into context and to make the quizzes a richer learning experience. Citations from the book appear on a yellow background in Times-Roman.

Paragraphs labeled as Notes contain supplemental information we think useful but which is not part of the course and is, therefore, not the basis for any question on the course final. Paragraphs labeled as Comments represent the author’s comments which you are free to ignore or ridicule.

**1. 2.2.2.2: Are You a Real Estate Professional? Maybe not, Says IRS**

*In computing taxes, passive losses may be used to offset wage income.*

**False** A passive loss is a loss incurred through a rental property, limited partnership, or other enterprise in which the individual is not actively involved. Examples of passive losses include interest, depreciation, taxes, insurance, and maintenance.

**Passive losses can only be used to offset passive income,** not wage or portfolio income. Passive income is not subject to the 15.3% self-employment tax.

**Note:** Suppose Joe has an annual net income from his rental properties of $100K while Linda has a commission income of $100K earned as an independent contractor. If both Linda and Joe are in the 28% income tax bracket and have no other deductions, Joe will pay $28K in taxes and Linda $40K – a difference of $12K. (However, Joe will not earn social security credits but Linda will.)

<table>
<thead>
<tr>
<th></th>
<th>Joe</th>
<th>Linda</th>
</tr>
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<tbody>
<tr>
<td>Net Profit (from Schedule C)</td>
<td>100,000</td>
<td>100,000</td>
</tr>
<tr>
<td>Deduction for ½ Self Employment Tax</td>
<td>0</td>
<td>-7,065</td>
</tr>
<tr>
<td>Adjusted Gross Income</td>
<td>92,935</td>
<td></td>
</tr>
<tr>
<td>Income Tax Owed (at 28% bracket)</td>
<td>28,000</td>
<td>26,021</td>
</tr>
<tr>
<td>Self Employment Tax Owed ($100K *.9235 *.153)</td>
<td>14,130</td>
<td></td>
</tr>
<tr>
<td>Total Tax Owed</td>
<td>28,000</td>
<td>40,151</td>
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**2. 2.3.2.1: NAR® Meeting Marked by a Sense of Urgency**

*Which of the following is not a worry of NAR®’s membership? The Federal government will ...*

A. lower the cap on the mortgage interest deduction.  
B. eliminate Fannie and Freddie.  
C. lower the loan limits for FHA and GSE loans.  
D. require banks to retain too large a percentage of their mortgages.  
E. allow banks to compete with real estate brokerages.  

**[E]** Mr. Hunt cites the controversy to allow banks into the brokerage business as a settled issue that is no longer of concern to REALTOR®’s: “the battle to keep banks out of the real estate brokerage business went on for years.” He then cites and describes four proposed legal changes which will almost certainly affect the real estate market.

**Note #1:** Recently (October 4, 2011) the Progressive Policy Institute and e21 hosted a conference entitled “New Solutions for America’s Housing Crisis.” Among the attendees were U.S. Senator Johnny Isakson, Ronald Phipps (president of NAR®), David Stevens (president of the Mortgage Bankers Association), and many other notables in the real estate business. The worry these experts expressed over the issues Mr. Hunt described, particularly the worry about the regulatory definition of Qualified Residential Mortgage (the
types of loans that banks may sell without restriction), was palpable. You can watch the four hour presentation [here].

3. 2.3.2.2: Landmark Consumer Protection Law Heavy with Strong Mortgage Rules

The agency created by Dodd/Frank to ensure consumers get clear, accurate information from mortgage providers is the ...

A. Truth-in-Lending Commission.
B. Mortgage Security Administration.
C. Consumer Financial Protection Bureau.
D. National Recovery Administration.
E. Mortgage Industry Authority.

Among its {the Dodd/Frank Act} provisions, the far-reaching new law creates a new Federal Reserve-based watchdog, the Consumer Financial Protection Bureau to ensure consumers get clear, accurate information necessary to shop for mortgages, credit cards and other financial products.

Note: This agency (Consumer Financial Protection Bureau) is destined to have an increasing impact on the real estate brokerage industry after the detailed regulations needed to implement the 860-page Dodd/Frank bill have been written. It is estimated that at this point in time (October 2011) about 15% of the regulation have been written with the remaining regulations expected in 2012.

4. 2.3.2.3: Washington Report: Seizure of Fannie and Freddie

Anyone needing to pay a really low downpayment for a home needs to apply for a conventional loan insured by Fannie or Freddie.

False Anyone needing a really low downpayment or more consumer-friendly credit to buy a house will need to turn to FHA, not Fannie or Freddie. Between now and January 1 {2009}, FHA will be able to do three percent down loans of up $729,750. ¶ After January 1 {2009}, FHA will offer three and a half percent downpayments on maximum loans of $625,500 [this is still true as of June 2011]. Fannie and Freddie will have the same upper limit for high-cost areas but won’t be able to come close on downpayments or credit standards.”

Note: The conforming loan limit for all GSE’s is $417,000 except in expensive areas where congress has authorized a temporary increase for FHA loans for single family residences to the lesser of $729,750 or 125% of the median home value within the metropolitan statistical area (MSA).

5. 2.3.3.1: Housing Affected by Demographic Trends

Baby Boomers want one story homes in communities offering active lifestyles.

True Aging baby boomers, those 55 to 64 years old, will keep working, and, some may stay put in their current suburban homes until the values [of their existing homes] recover …. [t]hose in this group who do move will look for comfortable, easy homes (first-floor master bedroom), but the report indicates they’ll look for mixed-age living environments that cater to active lifestyles.

6. 2.3.4.1: Divorce Rate Declines Alongside Home Prices

As home prices fall, divorce rates fall.

True The AER (American Economic Review) used advanced mathematical formulas to account for variations in educational backgrounds and wealth levels and found that as home prices fall, divorce rates fall with them.
7. 2.3.6.4: Environmentally Sensitive and Cost-Effective Concrete Gaining Ground as Building Material Choice

 AAC is 10% air.

**False**  “AAC” stands for Autoclaved Aerated Concrete 🕒. It is concrete which has been baked like a cake so that it contains 80% air.

**Citation:** AAC is made with all fine aggregates, nothing more coarse than a grain of sand, cement, and a natural expansion agent that causes the concrete to rise like bread dough, with countless small air pockets. In fact, this concrete is 80% air,” says the AACPA, whose mission is to nurture and champion the autoclaved aerated concrete industry, by creating and maintaining a dynamic network bringing together resources, knowledge, and innovation. AAC has proven to be a very durable material. It will not rot, warp, rust, corrode, or otherwise decompose and provides a very low maintenance building, saving considerable time and money in upkeep over the life of the building.

8. 2.4.1.1: Credit Consequences of Home Loss

Five years ago Bob suffered a home foreclosure. Bob may hope to buy a new home with a conforming mortgage if he can put at least ____% down and has a minimum credit score of ____.

A. 20%/880
B. 10%/950
C. 25%/800
D. 10%/680
E. 3%/250

(D) Five years after a foreclosure, a consumer may be eligible to obtain a home loan. Of course, certain restrictions may apply. At least a 10% down payment is required and a minimum credit score of 680. Also, purchase of a second home or investment property is not permitted.

**Note:** A “conforming mortgage” is a mortgage that the lender may sell to Fannie Mae or Freddie Mac. Credit scores range from 350 to 850. The minimum downpayment for Fannie Mae and Freddie Mac (as of 05/2011) is 5% (but there is a limited Fannie Mae program which requires only 3%). The minimum downpayment for FHA loans (these are not conforming) is 3.5%.

9. 2.4.2.2: Investor Report: Condo Loan Rules

FHA may insure a condo loan if…

A. the unit belongs to a condo hotel.
B. more than 25% of the condo’s space is commercial.
C. less than 30% of its units have FHA loans.
D. more than 10% of its units are owned by investors.
E. less than 50% of a new project’s units have been sold.
F. the project is less than half a mile from a superfund site.

(C) In general, the FHA doesn’t want to insure any condo loan within a complex not primarily residential in nature or in which a majority of owners are not residents.

**Citation:** Units in condo hotels are prohibited [from obtaining FHA insured loans]. Ditto for units in time share or “segmented ownership” projects, houseboat condo developments, and projects where there are multiple dwellings inside single condominium units. ¶ FHA said it won’t insure units in condominiums where more than 25% of the total space is allotted to commercial uses, such as retail stores, or offices. In fact, the agency made a point of emphasizing that it will reject loan applications from any property that it deems not “to be primarily residential” in character. FHA also won’t insure condo loans if more than 10% of the units are owned by investors. That’s a much stricter standard than Fannie Mae’s, which permits up to 49% of units to be investor owned. The 10% rule applies as well to situations where a builder or developer is left with unsold units and rents them out. ¶ The agency won’t
endorse loans from projects where less than 50% of the total units already have been sold or where less than 50% of the units are owner-occupied or sold to buyers “who intend to occupy them.” ¶ FHA doesn’t even want to insure loans on units located in buildings with heavy concentrations of units that are FHA-financed. **If more than 30% of the unit owners in a project took out FHA-backed loans, the agency doesn’t want to do any more business in that condominium.** ¶ Finally, FHA said it doesn’t want to have anything to do with condo projects that might be affected by negative environmental factors. For example, it won’t insure units in buildings located within a thousand feet of a major highway – it wants to avoid adverse noise pollution impacts on property values – or within 3,000 feet of a dump, landfill, or EPA Superfund site.

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<th>10.</th>
<th>2.4.2.3: Washington Report: Congress Pressures FHA.</th>
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<tr>
<td><strong>Which government mortgage insurer has seen its share of the mortgage market increase from 3% a few years ago to 30% today?</strong></td>
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<tr>
<td>A. FHA</td>
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<tr>
<td>B. Fannie Mae</td>
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<td>C. Ginnie Mae</td>
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<td>D. Freddie Mac</td>
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(A) Robert Toll, the CEO of Toll Brothers, a large, publicly-traded home builder, called the agency’s rapid growth – from a 3% market share a few years back to a 30% share of higher of home purchase loans – “a trainwreck” waiting to happen.

<table>
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<th>11.</th>
<th>2.4.2.4: Investor Report: REO Listings</th>
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<tr>
<td><strong>11. How many days must an investor wait after a Fannie REO listing has been placed on the market before Fannie will consider his bid?</strong></td>
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<tr>
<td>A. 30 days.</td>
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<td>B. 45 days.</td>
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<td>C. 15 days.</td>
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(C) Fannie Mae calls its latest REO home sales program “First Look,” but investors might want to call it “Second Look.” When Fannie lists one of its tens of thousands of foreclosed and repossessed houses for sale through a participating real estate broker, investors will be barred from submitting bids for the first fifteen days.

**Note:** The purpose of the “First Look” program is to give prospective owner-occupants the first opportunity to purchase an REO home before all investors.

<table>
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<th>12.</th>
<th>2.4.2.5: FHA Provides Much Needed Trust-Building Guidelines for Condominiums</th>
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<tr>
<td><strong>12. As a condition for insuring a condo loan, the FHA requires lenders to verify that its homeowners association is financially sound.</strong></td>
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**True** The latest FHA condominium guidelines eliminated the two main reasons the public quit buying condominiums: 1) They couldn’t afford the down payment, 2) They lost confidence in the association’s financial status. ¶ Condominiums that received FHA approval soon learned that approval alone was not enough to draw buyers. Lack of confidence in the financial stability of association fees and reserve accounts kept buyers and REALTOR’s away as well. ¶ The new guidelines call for FHA-approved condominiums to be financially stable and require the mortgage lender to approve the association budget, reserve account, and more. ¶ As a condition to insuring a condo loan, the FHA requires lenders to verify its association is financially sound.

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<th>13.</th>
<th>2.4.3.2: Get the Facts Before You Opt for a Reverse Mortgage</th>
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<td><strong>In a federally-backed reverse mortgage, mortgage insurance pays the lender for any deficiency that may result when the mortgage is paid.</strong></td>
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When a home with a reverse mortgage is sold, the proceeds from its sale are used to pay the lender the amount owed by the borrower (the total paid by the lender to the borrower since the inception of the loan). If the proceeds from the home’s sale do not satisfy the amount owed, the mortgage insurer pays the lender the difference. Conditions which can create a deficiency include the longer than expected life of the borrower and a loss in value of the borrower’s home.

Citation: As part of the closing costs [for a reverse mortgage], you must pay a mortgage insurance premium (MIP) equal to 2% of the loan amount up-front, plus an annual premium thereafter equal to 0.5% of the loan amount. The premium guarantees that if the company managing your account – commonly called the loan “servicer” – goes out of business, the government will step in and make sure you have continued access to your loan funds. Furthermore, the MIP guarantees you will never owe more than the value of your home when the reverse mortgage must be repaid.

Note #1: The loan ends when the homeowner dies, sells the house, fails to pay his property tax or homeowner’s insurance, or, depending on the loan’s conditions, moves out of the house for 12 consecutive months (for example, to move into an assisted living facility). When the loan ends, the reverse mortgage can be paid off with the proceeds of the sale of the house, or if the borrower has died, the property can be refinanced by the heirs of the homeowner’s estate with a regular mortgage. If the proceeds exceed the loan amount including compounded interest and fees, the owner of the house receives the difference. If the owner has died, the heirs receive the difference.

Note #2: The cost of the mortgage insurance is the biggest up front cost when taking out a reverse mortgage – 2% of the loan amount (it is usually financed). The borrower must also pay an annual premium of .5% of the mortgage balance (source).

A reverse mortgage is similar to a life estate.

A life estate is an estate whose duration is limited to the life of the party holding it, or some other person. Both a life estate and a reverse mortgage end with the death of the owner however a reverse mortgage may also end if the owner sells his home, if he abandons the home for a full year, or if he fails to pay his property tax.

Citation: According to Scarantino, the other ways that people default on a reverse mortgage are by not paying taxes or their homeowner’s insurance. “That’s it. There’s nothing else that can remove them from their home. It virtually creates a life estate,” says Scarantino.

A buyer with a mortgage pre-approval letter is preferable to a buyer with a pre-qualification letter.

Speaking as a REALTOR®, the difference between a pre-approval vs. a pre-qualification is in documentation and verification. In other words, is the buyer providing copies of income pay stubs and bank account statements to the mortgage lender or is the mortgage lender simply relying on verbal information provided by the buyer? More often than not, the difference between the two terms is that one is issued without any verification of information and the other starts with the buyer providing written documentation of all information provided. While neither is considered to be a mortgage commitment, nor a written mortgage guarantee, obtaining a mortgage pre-approval letter is more preferred than obtaining a mortgage pre-qualification letter.

A FICO credit score measures the financial resources needed to pay back loans.

Credit scores are a measurement of the risk a prospective borrower will not repay a loan. Thus, someone with a net worth of $1,000 but who pays backs his loans on time will have a higher FICO score than a dead-beat multimillionaire.
**Citation:** When asked to define “credit score,” only 31% correctly identified the answer, “risk of not repaying the loan,” in a multiple choice question that also included “financial resources to pay back loans” (21%), “amount of consumer debt” (16%), “knowledge of consumer credit” (15%), and “attitude toward consumer credit” (9%) as other options.

17. **2.4.4.3: Landmark Consumer Protection Law Heavy with Strong Mortgage Rules**

Which of the following government entities was **not** created by Dodd/Frank?

A. Consumer Financial Protection Bureau (a federal reserve-based watchdog).
B. A national consumer complaint hotline.
C. Office of Financial Literacy.
D. Office of Housing Counseling (under HUD).
E. Nationwide Mortgage Licensing System and Registry

**[E]** The Nationwide Mortgage Licensing System and Registry (NMLS) was created by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE) (see §2.1.1.1.3). All the other organizations (and more) were created by Dodd/Frank.

**Citation:** Among its [Dodd/Frank provision]s, the far-reaching law creates a new Federal Reserve-based watchdog, the Consumer Financial Protection Bureau to ensure consumers get clear, accurate information necessary to shop for mortgages, credit cards and other financial products. It also protects consumers from hidden fees, predatory terms, and deception. Often called “Wall Street Reform,” the RAFS Act has many provisions for those who live on Main Street, including a national consumer complaint hotline so consumers will have, for the first time, a single, toll-free number to report problems with financial products and services; a new Office of Financial Literacy; and a new HUD Office of Housing Counseling to boost homeownership and rental housing counseling.

18. **2.4.5.1: Short Sale Transactions**

Who may legally perform short sale services?

A. A Nevada broker licensee.
B. A Certified Public Accountant.
C. A salesperson licensee.
D. An attorney who runs a short sale consulting service.

**[C]** Unless an institution or individual is otherwise exempt, a California real estate broker license is required to engage in the negotiation of short sales between borrowers and lenders. The most common exemptions to the licensing requirement include licensed California attorneys engaged in the practice of law, as opposed to the individual simply being an attorney and marketing short sale services.

19. **2.4.5.6: Facing Foreclosure? Know Your Options!**

The foreclosed borrower under a trust deed has no right of redemption.

**True** The foreclosed borrower under a trust deed has no right of redemption. Once the home is sold, that’s it, the borrower may not redeem title.

20. **2.4.5.7: Disclosures for “REOs”**

For REOs, a TDS is **not** required.

**True** The TDS (Transfer Disclosure Statement) is not required for REO sales; probably because the lender can not be expected to know the home’s history or neighborhood.

**Citation:** When residential real property of one to four dwelling units is sold or transferred in California, CC §1102 et al. requires certain disclosures regarding the property. Foreclosure sales are specifically made exempt from the statutory transfer disclosure requirements. That is why a Real Estate Transfer Disclosure Statement (“TDS”) – which
21. **2.4.5.11: Mortgage Lenders Can’t Always Obtain Deficiency Judgments**

John loaned Sally $500K to buy his home. Soon after she moved in, Sally defaulted and John foreclosed pursuant to a deed of trust. John sold Sally’s home (formally his home) at a private sale for $400K taking a $100K loss. John may sue Sally for the deficiency.

**False** John may not sue Sally for the deficiency for two reasons. First, because his loan was for the purchase of a Sally’s personal residence; Second, because his foreclosure was non-judicial (not through the courts).

**Citation:** In California, a major exception to the deficiency judgment rules is that no deficiency judgment is allowed when the loan is a purchase money loan for owner-occupied residential property from one- to four-units. Simply put, if the loan was made for the purchase of your home, no deficiency judgment is allowed. Another major exception to the deficiency judgment rules is that no deficiency judgment can be obtained if the foreclosure is non-judicial. To understand this, we must note that there are two kinds of foreclosures available in California. One – the overwhelmingly most common – is a non-judicial foreclosure, also known as a trustees sale {aka, “private sale”}.

22. **2.4.6.2: Washington Report: Good Faith Estimate Mortgage Disclosures**

At settlement, residential loan originators may charge buyers no more than 10% more than their quote for origination and processing fees as stated on their Good Faith Estimate form.

**False** A residential loan originator may not charge even a penny more for origination and processing fees than the price quoted on his GFE. He may charge up to 10% more for the services paid to a third party such as a title insurer and escrow services.

**Citation:** HUD has a blunt message for home buyers, lenders, REALTOR®s, and anyone else involved in real estate. Despite what you may have heard to the contrary, on January 1st {2010} the federal government expects everyone to be using the new consumer-friendly Good Faith Estimate (GFE) mortgage disclosures and the new HUD-1 settlement statement. … For example, if a loan officer tells you the origination and processing charges will be $800, he or she won’t be allowed to charge you any more than that at settlement. There will be zero tolerance for increases on these fees. Other types of charges, such as for title insurance and settlement services, generally won’t be allowed to come in more than 10% above the upfront estimate – unless you the borrower chooses the title company and it’s not on the mortgage company’s list of recommended firms.

23. **2.4.7.2: Appraisers Up for “Wall Street Reform” Regulatory Do-Over**

Appraisal management companies are required to pay outside appraisers the …

A. reasonable and customary compensation.
B. the same as for staff appraisers.
C. the amount authorized by the Federal Housing Finance Agency.

**(A)** [The Fed’s interim final rule] requires the payment of reasonable and customary compensation to appraisers who are not employees of the creditors or of the appraisal management companies hired by the creditors.

24. **2.4.8.2: CA Legislation Takes Aim at Errant Title Reps**

The Insurance Code permits marketing reps for title companies to spend “reasonable” amounts for food, beverages, entertainment, educational programs, and promotional items for their clients.

**False** “Reasonable” used to be the standard but this “loophole” was closed by the California legislature in 2008. Now the standard is zero-tolerance; that is, title insurance marketing reps are not permitted to pay for any prospect’s or customer’s food, beverages, or entertainment.
Citation: Insurance Code §12404 is where one can find the prohibitions against giving rebates or inducements for the referral of title business. While the section is clear about a whole variety of activities, it also contains a giant loophole. Currently, §6(d) says “Reasonable expenditures for food, beverages, entertainment, educational programs, and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the placement or referral of title business.” You can imagine how much jawboning has gone on over the term “reasonable.” ¶ That problem-causing section has been removed from the code. Left in its place are rules that are much more clear and concise. “Expenditures for food, beverages, and entertainment” are prohibited. Period. No fudge factor standard of “reasonable” is present. Moreover, a long-sought specific dollar amount is presented with respect to gifts. “Promotional items with a permanently affixed company logo of [the title company] with a value of not more than ten dollars ($10) each” is permissible. There can be no giving of “a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value."

25. 2.5.2.1: Beware of Hiring Unlicensed Contractors!

Which of the following is not a requirement for a contractor’s license? The applicant must …
  A. have at least two years of experience working independently at his trade.
  B. pass both trade and contractor license law exams.
  C. pass a criminal background check.
  D. post a license bond.

[A] There is an experience requirement for obtaining a contractor’s license but it is four years working as “verified journey-level experience in their trade”; that is, four years working under (not independently) the direction of a licensed contractor. As the article points out several times, “contracting without a license is a crime in California.” That means that if someone earns more than $500 (including materials) for a construction project, that person could go to the slammer!

Citation: By law, anyone who contracts for a construction project valued at $500 or more for labor and materials must be licensed by CSLB. State-licensed contractors generally have four years of verified journey-level experience in their trade, have passed trade and contractor license law exams, and have undergone professional background investigations. They post a license bond and carry workers’ compensation insurance for employees (and themselves if they are roofers). Contractors who have applied for or changed their license since January 2005 must also pass a criminal background check. The law requires contractors to include their license number in all advertisements; unlicensed contractors are required to say that they are not licensed in their advertisements.

Note: The California State Licensing Board (the government entity which licenses contractors) conducts sting operations to find and prosecute unlicensed contractors (see this report for a recent account of such a sting operation.)

26. 2.5.4.2: What Exactly is Mello-Roos?

Mello-Roos bonds are used to finance a community’s …
  A. recreational facilities.
  B. reserve funds.
  C. open-space.
  D. infrastructure.
  E. schools.

[D] Many prospective homebuyers in California are becoming increasingly aware of the term Mello-Roos when looking to purchase new and used homes. For those that are unfamiliar, Mello-Roos is simply a special tax assessed to homeowners in a community as repayment for bonds used to fund the infrastructure within their community.

Note: The growing reliance of California local governments on Mello-Roos bond financing reflects broader fiscal trends toward increased specialization and greater local responsibility. These trends came about as a result of the voter approval of Proposition 13 in 1978 and declining federal assistance for local infrastructure (source).
27. 2.5.5.2: Short Sale Tactics May Bring on Legal Liabilities

The higher the price of a short sale, the better for the seller.

True: In short, generally, the purchase price does make a difference to the short-sale seller, because the higher the price the lower the amount of either taxable income or unforgiven debt. The agent who ignores or conceals this fact is inviting a future legal action that will allow him to participate in the seller’s financial problems. In California, he may have an opportunity to explain his behavior to the DRE as well.

Note: Mr. Hunt, the author of the article, does not mention the Mortgage Relief Act of 2007 even though that act was passed three years before his article. That act, generally allows taxpayers to exclude income from their lender’s discharge of debt on their principal residence. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualifies for the relief. However, debt incurred for any other purpose than to purchase a home or to improve it such as a HELOC does not qualify for the exclusion (source).

The Mortgage Relief Act applies to debt forgiven in calendar years 2007 through 2012. As much as two million dollars of forgiven debt can be excluded per couple filing jointly; one million for single taxpayers.

28. 2.5.6.3: Non-Refundable Deposit Can’t Always Be Kept

If a buyer defaults on a purchase agreement without a liquidated damages clause, the seller must return his non-refundable deposit if he (the seller) suffers no actual damages as a result of the buyer’s default.

True: If the seller suffers no actual damages (e.g., loss of market value) as a result of a buyer’s default, he must return the buyer’s “non-refundable” deposit.

Citation: In California, though, characterizing a deposit as “non-refundable” does not necessarily make it so. This is the lesson of a recent California Appellate decision (Kuish v. Smith, 4th Appellate District) and it is something of which agents and their clients should be aware.” ¶ … “The appellate court reversed the decision of the trial court and ordered that the deposits be returned. First the appellate court looked to CC §3307 which lays out the basis for determining damages when an agreement to purchase real estate has been breached. “The seller’s main measure of damages is essentially the difference between the contract price and the property’s value at the time of breach.” Hence, in a rising market, as this one obviously was, there were no damages to the seller. Moreover, the court also noted that CC §3294 expresses “the policy of the law against the allowance of exemplary damages for breach of contract regardless of the nature of the breach”. “Any provision by which money or property would be forfeited without regard to the actual damage suffered would be an unenforceable penalty.” ¶ The court observed that the parties could have agreed to a liquidated damages clause, but they did not. A liquidated damages clause is a ‘pre-agreement’ that stipulates that a breach will result in a certain amount of damages. Such clauses, with certain limitations, are perfectly acceptable in California real estate purchase agreements but they must be signed separately by both parties. Neither the Smiths nor Kuish chose to do so. As a result, the Smiths were only entitled to actual damages, and there were none. ¶ The California Real Estate Purchase Agreement contains a pre-printed liquidated damages clause which buyer and seller may sign if they agree. If sellers want the deposit to be “non-refundable,” that is what they should look to.

Note: The damages clause in CAR®’s Residential Purchase Agreement is as follows:

18. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer’s default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award.

BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION FOR ANY INCREASED DEPOSIT. (C.A.R. FORM RD) Buyer’s Initials _________ / _________ Seller’s Initials _________ / _________
29. 2.5.6.5: How Shall We Count the Days?

The 2010 CAR® Residential Purchase Agreement states time periods in hours (e.g., “you have 48 hours”) rather than days (e.g., “you have two days”).

False. Just the opposite is true.

Citation: The first change we note is that notices requiring the other party to perform some act are now to be phrased in days rather than 24-hour periods. For example, “You have 2 days from receipt of this notice to remove your loan approval contingency,” rather than, “You have 48 hours .” Among other things, this change brings these time periods into conformity with other time-related provisions of the contract (e.g. “Seller has 7 days after acceptance to disclose to Buyer...”)

Note: The article gives the purchase agreement’s definition of “day”: From that change we move on to the matter of what shall count as a “day”. Many contracts, for example, will stipulate that “days” means “business days.” The California Purchase Agreement is somewhat more detailed, to say the least. “Days means calendar days. However, after Acceptance the last Day for performance of any act required by the Agreement (including Close of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.” To put it another way, the contract wants performance to be required only on what are normally considered to be business days.

30. 2.5.7.2: Brokers Foresee an Increasing Number of Lawsuits Related to Short Sales

According to a 2011 NAR® survey of real estate professionals regarding legal issues facing the brokerage industry, of the following areas, the area generating the greatest number of disputes is ...

A. agency.
B. RESPA.
C. fair housing.
D. anti-trust.

(A) Agency retained the top ranking among the groups of issues that caused disputes. and later An interesting aspect of the survey results is that many participants indicated a strong need for training in various areas, even though these may not have among the most frequent causes of disputes. Primary among these were RESPA, Fair Housing, and Anti-trust.

31. 2.5.7.3: Agency Relationships Needs to be Clear

The listing broker may assist a buyer in completing a purchase agreement for his seller’s property without forming an agency relationship with the buyer.

True. BUT, the service of assisting a buyer in completing a purchasing agreement is an act which the buyer as plaintiff in an action against the licensee could site to support his allegation that the defendant was, in fact, his agent and therefore owed him fiduciary duties. If the defendant had performed other services for the plaintiff that are typically performed by a buyer’s agent (showing property, negotiating terms, providing comps, etc.) then his argument would be strengthened. And even if the buyer signed CAR®’s “Buyer Non-Agency Agreement” (Form BNA); the plaintiff might successfully argue that he signed the form without question as he trusted the defendant at the time because he believed then that he was his agent.

Citation: The importance of such forms was illustrated recently in the case of Miller v. London Properties heard in the Fifth Appellate District of California’s Court of Appeal. The Millers had sought to purchase a business listed by Agent Donna Pride of London Properties. Pride told the Millers that she was willing to assist them in a non-agency capacity by filling out a standard form purchase agreement. But she emphasized that she was the exclusive agent of the seller. She gave them all the required agency disclosure forms, and she even had them sign a company-generated form similar to the CAR® Buyer Non-Agency Agreement. Later, when things went sour, the Millers sued Pride and London Properties. Among other things, they alleged breach of fiduciary duty because Pride had not advised them of the significance of the wording in a covenant not-to-compete. The trial court concluded that there was no...
agency relationship and therefore no fiduciary duty. ¶ The appellate court upheld the trial court’s decision. Moreover, it was unmoved by the Miller’s argument that the subsequent conduct of the parties was sufficient to create an agency relationship, notwithstanding the disclosure forms. (On a couple of occasions Pride had acted as an intermediary between the Millers and the Seller.) ¶ The Miller v. London Properties opinion is unpublished and therefore does not stand as a precedent. Nonetheless, it is refreshing to see a court uphold a broker’s clearly-stated rejection of an agency relationship.

Comment: The case involved the sale of a business and not the sale of a home. In general, courts believe business people are more sophisticated than home buyers and therefore deserve less protection.

32. 2.6.1.2: Popular Landscaping Trends

According to Carla Hill of Realty Times, which of the following is among her list of popular landscaping trends?

A. brick patios  
B. synthetic stains  
C. traditional wicker  
D. Australian plants  
E. pergolas

According to Ms. Hill, What are the latest trends in landscaping? Let's take a look! ¶ Pergolas… the answer ¶ Flagstone Patio … and not brick patios ¶ Natural Stains … and not synthetic stains ¶ New Age Wicker … and not traditional wicker ¶ Fountains … ¶ Solar Lights … ¶ Regional Plants … and not Australian native plants.

33. 2.6.1.4: What Do I Need to Know about the Plumbing?

In new homes, plastic piping is nearly always used for waste systems.

True Almost all new homes use “ABS plastic piping” for their waste systems.

Citation: If we look beyond early waste systems of clay tiles and cast iron, we move to today’s almost exclusive use of ABS plastic piping (Acrylonitrile-Butadiene-Styrene schedule 40, typically black in color). Okay, that was a mouthful, but one word to remember: “Plastics.”

34. 2.6.1.6: Love The House, Hate The Traffic Noise – There Is Hope!

An effective way to reduce traffic noise is to add another layer of drywall.

False “Too many times I have seen homeowners try to do something about the noise by adding another layer of drywall, or something to the wall itself. It’s not minimal return, its zero return. Unless you control the weak point, that does nothing,” says Sola.

35. 2.6.2.3: What is a GFCI Electrical Outlet

Which of the following outlets must be provided within 5-feet of a water source?

A. Ungrounded  
B. Grounded  
C. GFCI.

When the GFCI outlet detects a loss of current, meaning electricity has found an alternate path, say through to your wet hands while using that hairdryer in the bathroom, then the GFCI
switches “off” in a matter of milliseconds to shutoff the flow of electricity.” It is for this reason that building codes require at a minimum, any outlet or switch within 5-feet of a water source should provide for GFCI protection. Note that older homes may not have GFCI’s installed, but most electrical systems can be upgraded to add them as a retrofit and they are strongly recommended for added safety.

**Note:** Are GFCIs required when a home changes ownership? This is what one expert has to say about the requirement: “In an older home there may be no requirement for GFCI’s to be installed. The seller is not required to upgrade the receptacles unless the electrical system has been modified. So if the kitchen in a 1950’s house has been remodeled, and receptacles have been added or moved, they must be upgraded to GFCI receptacles if they are within 6 feet of a plumbing fixture. This applies to bathrooms too. So when your home inspector suggests upgrading certain receptacles to GFCI receptacles, please know that he has your safety in mind. The seller may not have to upgrade the receptacles, but you should do it for your family’s safety.” ([Source](#))