

FALL Second Section

REAL ESTATE 2008



Barbara Boissevain

The Squire House at 900 University Ave., Palo Alto, is a Neo Classical Revival style mansion, complete with Roman columns, Palladian windows and a ballroom — approached through rows of Washingtonia palms. The house is on the market for \$12.5 million.

Top of the market

Multi-million-dollar properties give new meaning to ‘real’ estate

by Susan Golovin

Although it sometimes seems that the entire Peninsula is “high-end real estate,” there are always properties that re-define the category.

Unusual and pricy properties appeal to a totally different — albeit smaller — group of potential buyers.

But, according to Mary Gullixson of Alain Pinel, Menlo Park, although they might stay on the market longer, they are indeed selling.

“When properties of this caliber are sold it doesn’t go

into the statistics. And, you don’t hear about the sales because most of them are confidential,” she said.

Here’s a quick sample of what’s currently available:

The Squire House at 900 University Ave., Palo Alto, was built by John and Georgiana Squire in 1904. It is distinctive not only for its architecture, but also for the more than 20 Washingtonia palms that line the driveway. When the home was first constructed

there was only one house nearby, built by the same architect, Thomas Patterson Ross.

John Adams Squire was the scion of a wealthy East Coast meatpacking family who eventually sold the business to Swift. John was Harvard-educated and came West to study classics at the then newly opened Leland Stanford Junior University.

The 6,374-square-foot house, set on about one acre (the basement adds another 2,249 square feet, and there is a

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Bernard Andre

Sitting on five acres, 'Le Soleil' at 320 Harcross Road in Woodside is billed as a French chateau, complete with 10,000-plus-square-foot home, formal gardens, vineyards, tennis court, pool and room for nine cars. The house is on the market for \$8.395 million.



Mark Stoddard

The Knoll at Lauriston, a 7,800-square-foot Irish Georgian estate in Portola Valley, was modeled after a castle and includes a main house, guesthouse, garage and stables, arranged around a central courtyard. The house is on the market for \$16.8 million.

'When properties of this caliber are sold it doesn't go into the statistics. And, you don't hear about the sales because most of them are confidential.'

—Mary Gullixson, Alain Pinel, Menlo Park



Bernard Andre

The Beaux Arts-style home — with 15-foot ceilings on the first floor — at 60 Parkwood Drive in Atherton offers 17,000 square feet of house on 2.25 acres. The house is on the market for \$23.5 million.

(continued from page 35)

detached guest cottage and double garage as well) reflects Squire's love of classicism. The Neo Classical Revival style is distinguished by its Roman columns, impressively detailed capitals, Palladian window and ornate exterior cornice.

The home is protected by the Mills Act. Thus, the owner, in return for extremely low property taxes (currently \$7,250) must maintain and not alter the exterior. Also, the first floor, which contains the kitchen ("remodeled to look old" as described by one of the listing agents from Alain Pinel, Carol Carnevale), living room, sun room/possible office area, dining room and family room, must be open for a public function once a year.

The upstairs can be viewed via the open staircase, which zigzags to the third floor, and is a feature of the entry.

Although the four-bedroom, 5.5-bath home has been renovated over the years, the wavy glass windows, original light switches and steam radiators have been maintained.

The Palo Alto Times in May 1904 estimated that the cost of the home was "\$10,000 or more." It is now on the market for \$12.5 million.

Le Soleil" at 320 Harcross Road in Woodside delivers on its billing as a French chateau.

The brochure description of the ballroom sets the tone: "Grand entertainment salon with gold leaf ceiling detail and gilded moldings on the walls and ceiling; six full height windows and three double French doors surround the room; oversized fireplace with solid carved marble mantelpiece and two crystal chandeliers."

The 10,010-square-foot, three-story home includes seven bedrooms, seven baths, two half baths, including three bedroom suites, one with its own kitchen.

The cul-de-sac property includes a tennis court, croquet lawn, extensive vineyards, manicured formal gardens, pool, spa and accommodation for nine cars. As Alain Pinel listing agent Mary Gullixson puts it, "You can do a lot with five flat acres."

The home was built in 1926 by Mr. and Mrs. Francis Crosby, and underwent a complete renovation in the 1990s. Crosby owned several independent California phone companies that were bought by AT&T. He was also one of the original investors in Caterpillar.

Originally set on 100 acres, it's easy to imagine the San Francisco Ballet performing in the backyard as it did when the Crosbys were in residence.

The property has been reduced from \$21 million to \$16.8 million.

It is a real "aha moment" when you arrive at The Knoll at Lauriston after traveling up a 1.9-mile twisty, winding, tree-lined roadway accessed by a private gate near the end of Alpine Road in Portola Valley.

The 7,800-square-foot Irish Georgian estate, built in 1994, was modeled after an Irish castle. The main house, plus the two-bedroom guesthouse, a four-car garage cum upstairs playroom, two stall stables and caretaker's quarters, are arranged around a central courtyard. The buildings are constructed of basalt stone and have slate roofs.

Surrounded by Windy Hill Preserve, the hourglass shaped 8.5-acre lot is next to the original stables and gate house of the historic Lauriston estate built by perfumer Herbert Law.

"I believe the house is approximately where the riding ring of the original estate used to be," said Pat Looney, the agent at Campi Properties who is listing the property at \$8,395,000.

The main house, consisting of four bedrooms and four-plus bathrooms, features a dramatic, skylight-lit, two-story, stone-floor entry, which runs the length of the house and culminates in an enclosed glass Garden Room.

"They were going to put the swimming pool where the central fountain is," Looney said. "I'm glad they didn't because this is where everyone thinks it should be," she added, pointing out a site behind the house that has a scenic view of the mountains.

One is reminded of the White House upon first seeing stately 60 Parkwood Drive in the Lindenwood section of Atherton. It was thus an appropriate setting for a reception for President Bill Clinton in 1999.

Listed at \$23,500,000 by Mary Gullixson, it is a four-bedroom, six-and-a-half-bath 17,000-square-foot home on 2.25 acres. The property is one of the "Three Sisters" E.W. Hopkins commissioned for each of his three daughters — in this case, for Georgiana upon her marriage to Frederick McNear.

The Beaux Arts-style home — with columns, balustrades, pilasters, panels of bas-relief, garlands, cartouches, dentil moldings, intricately decorated ceilings — was designed by Bliss and Faville, whose work includes the St. Francis Hotel and the Palace of Fine Arts.

It was built in 1909 and has been extensively updated and restored by Orlando Diaz Azcuy Design Associates and Ryan Associates.

All of the rooms except for a generous, wood-paneled office/den are on the first floor, allowing for approximately 15-foot ceilings on the first floor. An attached apartment provides two bedrooms, one bath and a full kitchen. There is also an eight-car subterranean garage plus a full basement.

The McNears built one of the first swimming pools in Atherton in 1923 as a birthday present for their 18-year-old son who was returning from boarding school in the East. The setting of the new pool, in the same location, is dramatically enhanced by the 16 columns supporting the rear loggia.

The 18 acres at 28030 Natoma Road is the second largest parcel in all of Los Altos Hills. "It's pretty much the same as it was 200 years ago," agent Gary Nobile of Ventura Barnett Properties said.

The property does include two relatively modest dwellings, but the features are the views of rolling hills and the seclusion. Privacy is assured not only by the acreage, but also by the fact that it's a key lot.

Owned by the Stirling family for the past 50 years, the three granddaughters of the original owner have fond memories of family retreats on site and would love to see it purchased by a single buyer. Nobile, of course, is doing his best to find one.

However, he's a realist and he's done the research.

"I'm marketing this through a multi-pronged approach, based on the people with the highest probability of buying," he said. The land can be subdivided into one-acre-minimum lots.

Nobile said his best prospects are people who already live in the area on four- to five-acre parcels, the upper echelon of Silicon Valley or their friends, private foundations that would want to preserve the land, small custom builders unique to Los Altos Hills and larger developers. He is also making a pitch to the Los Altos Historical Society.

Nobile has listed the property for about a month, at \$26,999,999. Prior, it was on the market for nine months at \$35 million.

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Housing perks lure new hires

Peninsula employers cope with sky-high housing costs

by Alexander Papoulias

When Scott Shafer was the defensive coordinator for Stanford's football program, his family lived in a university-owned house in Menlo Park, just three miles from campus. According to Bob Bowsby, the director of Stanford's athletic department, the home was one of several owned by the university and set aside especially for its football coaching staff.

"The success of an athletic program, law firm or any other organization is largely dependant on the quality of its staff. We need to be able to compete with other markets, or we risk losing the caliber of people we're after," Bowsby said.

While the Peninsula's reputation as one of the country's most desirable places to live has not diminished, private employers, city government and local school districts are aware of the challenges facing prospective staff in finding affordable homes and rentals here. To attract and retain capable people, more and more organizations are offering help in the form of housing incentives, subsidies and stipends.

Employers are beginning to see housing incentives no longer as merely "perks" of employment, but as an increasingly necessary measure for drawing a strong workforce to this area.

Spearheaded by Bowsby, and backed

in part by billionaire Stanford booster John Arrillaga, Stanford Football's program aims to make life on the Peninsula appeal to prospective coaching staff who may be on the fence about whether to uproot their families and move to this incredibly expensive area. In the past, the area's high cost of living meant that much of Stanford's coaching staff spent long hours commuting to and from their homes outside the area, picking up the burden of commuting costs, as well as the loss of time with their families.

A four-bedroom, 2,200-square-foot home in Palo Alto costs roughly \$1.68 million on average, approximately \$300,000 more than a comparable one in the nation's next most expensive college town, Chestnut Hill, Mass., home of Boston College.

Bowsby took the position of athletic director at Stanford in 2006, in part because Stanford offered him a monthly stipend to help with the cost of housing. He immediately recognized how the football program could benefit from implementing similar programs for its coaching staff.

By November 2007, Stanford had already purchased six houses, and was aiming to own anywhere from 20 to 40 homes and apartments for the university's football coaching staff. According to Bows-

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A 44-unit apartment complex called College Vista was opened in late 2004 for faculty and staff of the San Mateo Community College District. Offering rents at roughly half market rate, the district is attempting to prevent high staff turnover.



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❖ Partridge Ave., Menlo Park	\$1,788,000
❖ Partridge Ave., Menlo Park	\$1,788,000
❖ University Drive, Menlo Park	\$898,000
❖ Black Mountain Rd., Los Altos Hills	\$4,275,000
❖ College Ave., Menlo Park	\$1,800,000
❖ Hawthorne Drive, Atherton	\$6,995,000
❖ Kingswood Drive Hillsborough	\$2,399,000
❖ Waterloo Ct., Belmont	\$1,550,000
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by, the university's athletics department has a number of programs for housing aid that vary according to position and terms set by negotiation. Stanford owns all homes and apartments used by coaching staff.

Housing aid at Stanford is not limited to its athletic department though. Managed by Faculty Staff Housing, a division of the office of the provost, Stanford offers several programs to aid its academic faculty with housing costs. According to Jan Thomson, the university's director of communication services, the vast majority of eligible Stanford faculty take full advantage of the F.S.H. programs, which are for tenured faculty, and apply to buying a home as well as renovating or remodeling an existing one.

Programs include a deferred-interest loan, as well as an interest-only home loan. F.S.H. also offers what is called the Housing Allowance Program, which is a taxable fringe benefit to supplement a faculty member's income when a new home is purchased or renovations are made to an existing one.

Some organizations are countering the area's high cost of living by building affordable housing for their staff.

In December 2004, the San Mateo Community College District (SMCCD) opened a 44-unit apartment complex called College Vista for full-time faculty and staff. Built on what was once a parking lot, the complex offers district employees one-, two- and three-bedroom apartments at roughly half the average market rate.

According to Sue Harrison, executive assistant to the district chancellor, SMCCD's board of trustees first envisioned College Vista in 2002. At the time the school district was having difficulty recruiting staff at all levels, and was facing a yearly staff turnover

rate of 10 to 11 percent. Prospective faculty members were opting to live and work elsewhere, due in large part to the area's impossibly high cost of living.

The school district could not afford to raise salaries, and instead began offering inexpensive second mortgages as an early measure to help its faculty afford homes. Still, most teachers were unable to meet the 3 percent down payment required for the loan. Many of the district's younger teachers were recent college graduates, still carrying the burden of student debt.

According to a 2007 report by the non-profit group Sustainable San Mateo County, San Francisco, San Mateo and Marin counties are the nation's most expensive, "based on the hourly wage required to rent a two-bedroom apartment."

Additionally, the report stated that, "a household in San Mateo County needed an annual income of \$118,159 to buy a median-priced condo for \$550,000. The income needed to buy a median-priced single-family home for \$869,000 was \$186,691." Salaries for full-time SMCCD faculty range from \$54,265 to \$65,351 annually. The disparity between the average cost of a home and the salary earned by a full-time college employee illustrates the broader problem faced by thousands who want to live and work in this area but simply cannot afford to.

The district built College Vista as a means to provide affordable homes for its staff; because profit was never a motive the district has been able to set rent prices ranging from \$840 to \$1,400 per month. In addition, the school district avoids the expense of property tax, as it owns the tax-exempt land College Vista is built on.

Permanent district staff members get a higher priority on the waiting list for Col-

lege Vista, which was 92 people strong in November of last year. Residents are allowed to live at College Vista for five years, which is the amount of time the school district estimated to be sufficient for a full-time staff member to save money for a home.

A new project on the Cañada College campus, aimed at addressing the same needs as College Vista is in the planning stages. Called Cañada Vista, the 60-unit complex is projected to open sometime in 2009 and will be constructed on what is now the college's underutilized parking lot #3.

According to Barbara Christensen, the SMCCD's director of community and government relations, the district conducted a survey of its staff last year, asking which campus they would prefer the district build a staff housing development on: Cañada or Skyline. "Cañada was the overwhelming response," Christensen said.

The Woodside-Redwood City border runs directly through the site of what will be Cañada Vista, slightly complicating the building's early planning. The Town of Woodside originally wanted to annex Redwood City's portion of the land, but lacked the multi-family zoning and existing infrastructure such as sewer and water lines necessary to accommodate the building. Christensen and District Chancellor Ron Galatolo succeeded in convincing the Woodside Town Council to agree to preliminary plans for de-annexing the property to Redwood City.

"Recently they've (Woodside Town Council) said that they want to have some input into the building's design, so we're holding some meetings with a subcommittee of the Council. It all seems to be going well, and I'm not anticipating any delays in the project," Christensen said.

Palo Alto's city government has used

housing incentives to secure a number of its department heads.

"The city is an equity partner in my Palo Alto house, since they wanted its chief executive to live in Palo Alto," said former City Manager Frank Benest. The city helped Benest purchase his home on Bryant Street when he moved here for the city manager job in 2000. The city owns 56.8 percent of the house, and Benest owns 43.2 percent.

"In some cases we offer some types of housing assistance to department directors. For instance, the city may pay points on a home loan. In the past, we have provided a home loan to a department head," Benest said.

Benest retired in August 2008, and according to his employment agreement, must sell his home no later than 2017. In December 2007, the City Council voted 9-0 in favor of an amendment to Benest's employment contract, such that he and the city will share the cost of any "improvements, upgrades or beautification efforts" to increase the home's value by the time of sale, provided that they are approved by the city's administrative services director.

"I see it as a good measure to protect our investment. The city owns 56.8 percent of the property that was originally acquired at about \$1.58 million. The appreciation of homes in Palo Alto has been significant and the city wants to ensure the investment is maintained properly for when it comes time to sell," said Lalo Perez, the city's director of administrative services.

Many private local businesses, such as Facebook are getting in on the act as well. According to a Facebook spokesperson, the company offers "a \$600 per month housing subsidy to employees who live within one mile of the office." ■

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Across the street from the Squire House is another venerated Palo Alto home. The Colonial Revival, with Victorian and Classic Revival influences, at 860 University Ave., was built in 1906 for Elbert Peck, but sold to Dr. Carl Wilson, a Stanford surgeon active in local politics, two years later. The Wilsons lived in the home until 1975.

Architectural detailing that landed the home on the National Register of Historical Places ranges from the clapboard facade and deep porches with classical

columns and spindled balustrades to the front-facing gable.

The 4,527-square-foot, five-bedroom house (not counting the attic and basement) sits on a half acre, which also includes the original carriage house, barn, four-car garage and a pool.

Highlights of the house, which is offered by Nancy Manning, Coldwell Banker, Palo Alto, for \$8,650,000, include the largest Tiffany stained-glass window in California, operable gas sconces, rich wood details and wood shingle roof with 31 ridges with galvanized claw feet. ■



This mix of Queen Anne and Colonial Revival architecture at 860 University Ave., Palo Alto, is on the market for \$8,650,000.

Mark Stoddard

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Separating themselves from the pack

From dog owners to ethnic specialists, real estate agents offer a particular expertise

by Johanna Toivio

Times are tough. Pressured by unstable market conditions Realtors are finding more and more creative ways to market themselves and their listings, targeting a specific group of people looking to either buy or sell a house.

Djuna Woods, a Coldwell Banker broker in Menlo Park, has joined the niche marketers who include divorce, seniors and eco-friendly experts. She focuses on dog owners looking to buy or sell property. A year ago she launched her website, www.PeninsulaHouseHound.com, after she realized the special needs many dog owners have when looking for a new home.

Ideally they'd be looking for "a dog-friendly neighborhood, near dog parks or trails, including off-leash areas and on a quiet street, preferably in a cul-de-sac," Woods said. "When you come home after a long day at work and you have to exercise your dog, you don't want to drive a long way to do that," she said.

Woods has a King Charles cavalier spaniel called Bucky, who has been partly behind the inspiration for her specialty. "I was looking for something to distinguish myself from other Realtors," Woods said.

For many people, their pets are like their children, and as Woods puts it, "it takes a village to take care of a dog." If homeowners have to go out of town or they are working late, they have people in the neighborhood to help take care of pets. When scouting for

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Veronica Weber

Djuna Woods, a Coldwell Banker real-estate agent, walks her dog Bucky on a trail at Streamside Open Space land adjacent to Sand Hill Road. Woods caters to homebuyers seeking homes with larger (and contained) yards, proximity to dog parks and trails and dog-friendly neighborhoods.

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a house, Woods advised taking a beloved pet along for a neighborhood stroll to see how people react to it, and to check out potential for community support.

That support could make it easier to make changes when it comes to extending park hours or finding more places to take dogs, Woods said. Some neighborhoods are simply more open to dog owners, for example Palo Alto and Menlo Park, she said.

There are also safety issues when it comes to looking for a home, such as good fencing around the house. Many dog owners prefer hardwood floors as they are easier to clean up.

She gets many of her clients through referrals, from meeting people in dog parks and networking with local pet stores, shops and groomers.

Many of Woods' clients are dog owners looking to buy a home, rather than selling. She caters to many Baby Boomers, young couples and first-time home buyers.

Another niche marketer is Grace Wu, a Realtor for Alain Pinel in Palo Alto, who specializes in helping buyers of Chinese origin. She speaks Mandarin Chinese and a Taiwanese dialect and often gets clients through referrals from previous clients and through community involvement. Half of her clients are bilingual people looking for housing in the Palo Alto area.

"In Chinese philosophy education comes first," Wu explained, and "family and community are very important."

Another priority is the ancient art of feng shui — literally wind/water — that relates to balancing space and making everything

in harmony with nature. Wu mentioned how important the floor plan is and how "bad feng shui" could be location of a stairway right after the front door, since everyone should be able to look at something beautiful as they walk in.

But a house with bad feng shui can be modified, she said. There could be a "double-door entrance and one of the doors could remain closed so that the stairway doesn't hit your eye as soon as you walk in," she said.

Landscaping is also a factor. If, for example, the house is built so that light shines brightly on it at certain times of the day, that's bad feng shui. But "there are ways to soften this. You can redo your landscaping, plant trees and bushes," Wu said.

Although her clients may be hesitant if there is something that could conflict with principles of feng shui, "the younger generation don't care that much," she said.

Another factor Chinese buyers are sometimes looking for is the so-called "mother-in-law quarters" for extended family that might stay over. So there may be "one bedroom for parents prepared but not long-term and often not necessary," Wu said. Because of these cultural differences that sometimes determine the outcome of a sale, many brokerage firms including Alain Pinel offer training on different cultures.

Chinese and Indian buyers are among the largest growing groups based on nationality looking for real estate opportunities in Palo Alto, according to Robert Gerlach, manager of the Alain Pinel Palo Alto branch. Out of the 61,200 residents of Palo Alto, approximately 9.3 percent are of Chinese origin and 2.1 percent Asian Indian, according to city data in July 2007.

Yet many Realtors don't want to focus



Veronica Weber

Part of the expertise of Grace Wu, an Alain Pinel broker, is understanding the needs of Chinese potential homebuyers, who may be seeking good feng shui, or appropriate spaces for an extended family.

on one type of clientele.

"You don't want to specialize because you don't want to limit yourself and turn down customers," Gerlach said.

But Woods and Wu are really trying to offer special service to a specific group of people.

As Woods said, "there is a real need, a special need that most Realtors don't know

how to address." Since Woods also shares that need, she's concentrating on this particular niche for personal as well as financial reasons, and "it makes the whole thing fun," she said. ■

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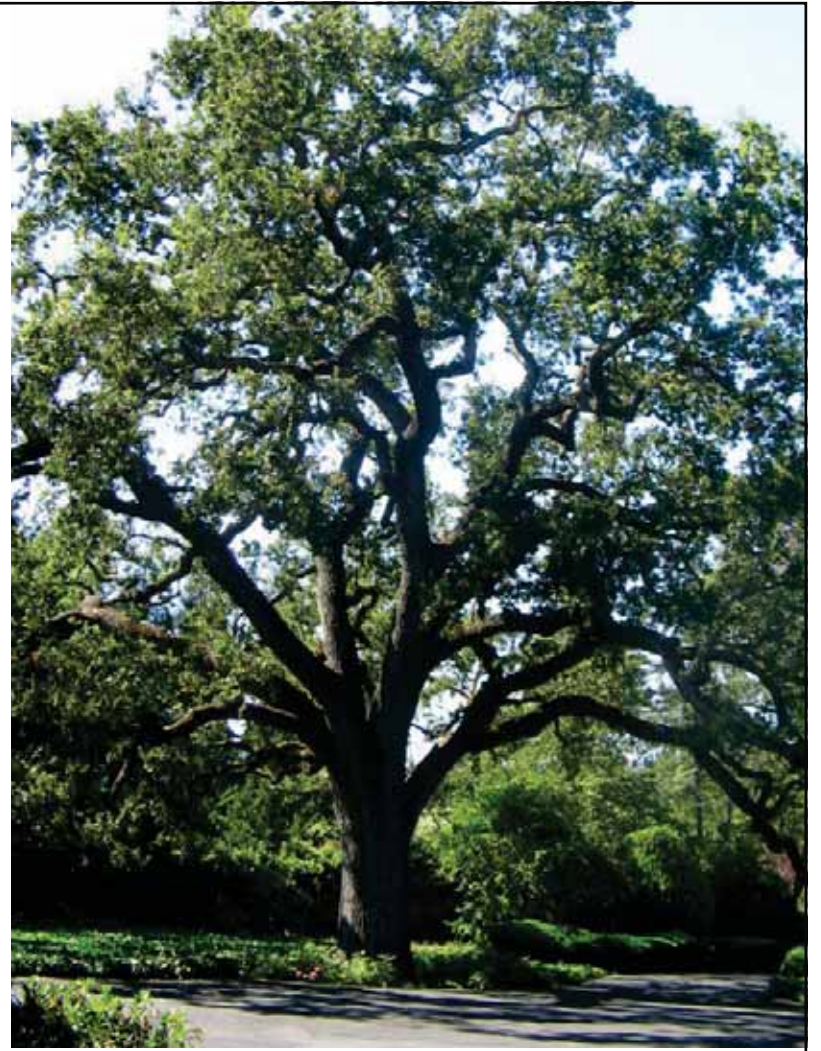
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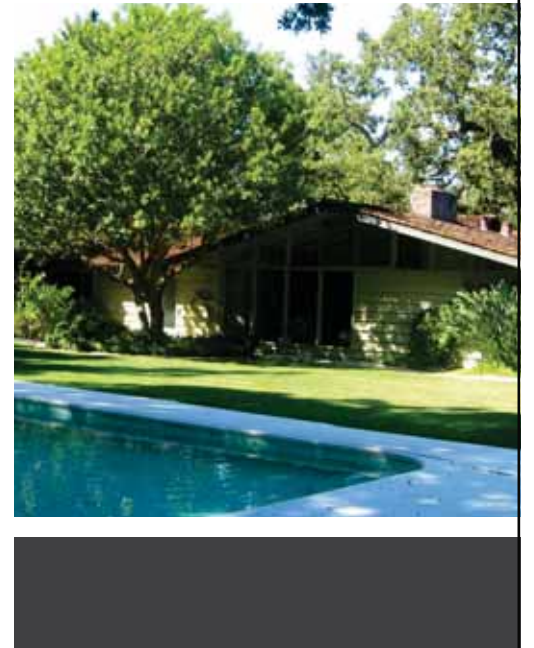
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A parachute or a brick?

Think before signing forms on mediation and arbitration in real estate

by J. Robert Taylor, J.D.

Mediation and arbitration clauses are a part of all standard form real estate contracts that often are seen under the heading of "Alternative Dispute Resolution." These clauses are often taken for granted and misunderstood.



Real estate brokers encourage buyers and sellers to agree to these clauses with very little knowledge of how these agreements may later impact a future dispute between the parties. There is a strong tendency to sign anything that is on the form and in bold print because you will do anything just to "get the house." This is one area of the real estate negotiation that has become driven by the real estate forms, i.e., the real estate industry, and not by client requests for arbitration or mediation to be a part of their purchase contracts.

Arbitration clauses in real estate are regulated by the Civil Code and must be of a particular type size and/or in bold print. They also must be separately initialed by the buyer and seller to be effective. This is intended to be a warning sign to the parties, but instead it has become a standard spot where the agent/broker tells you to initial, just because it is there.

Arbitration and mediation clauses are not required to form a binding and fully enforceable real estate contract. So why do they exist?

The basics

Both mediation and arbitration are a means to resolve a dispute between a buyer and seller without resorting to filing a lawsuit in Superior Court. Mediation is an informal non-binding negotiation between the parties with the assistance of a third-party neutral. The neutral should generally be an experienced real estate attorney or a retired judge with experience in real estate.

The mediator works with the parties to resolve the dispute and avoid civil litigation or a binding arbitration. All parties to the mediation share equally in the costs of hiring the mediator. Cost of mediators can be \$200 to \$600 per hour. In addition both parties should be represented by an attorney; this is not required but it still is a process governed by laws and procedures that would overwhelm 99 percent of buyers and sellers.

Many real estate contracts will include a clause that a buyer or seller who refuses mediation will lose his/her right to collect legal fees and costs even if he/she prevails in a later litigation and courts have upheld this type of agreement.

Mediation is completely confidential. Information and statements used in mediation cannot be used as evidence in a later trial or arbitration. No record of the mediation is kept and offers to settle the dispute cannot be used in any later proceeding for any purpose by the parties.

Mediation can last for an afternoon or over many days and weeks until a settlement is reached or any party sees the ongoing discussion as pointless. A suc-

cessful mediation usually results in a new written contract containing the terms of the settlement between the parties to the dispute.

Arbitration is a somewhat more formal process, although not nearly as formal as a trial in Superior Court. Costs in arbitration are similar to mediation. The arbitrator should be a qualified real estate attorney or a retired judge with real estate experience. Arbitrations follow a similar format as trials do in that witnesses are under oath and the arbitrator can make rulings similar to a judge.

Parties may conduct pre-arbitration discovery, but the discovery process is in some arbitration clauses somewhat more limited in comparison with the process in a court trial. Obviously, when you agree to arbitration you are waiving your right to have your case decided by a jury.

Arbitration can be non-binding or binding on the litigants. Non-binding means that the decision of the arbitrator will be confidential and shall have no outcome on a future trial. All real estate contracts have clauses that, if initialed, provide for binding arbitration. When binding arbitration is elected by the parties the decision of the arbitrator is binding and final. The judgment given by the arbitrator can be enforced in the same manner as any judgment received in Superior Court.

Binding arbitration is a confidential proceeding, no transcript is made and if the parties pay the judgment then no one will know about the litigation other than

(continued on page 50)

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(continued on page 48)

the parties, the witnesses and the attorneys.

A judgment received in a binding arbitration cannot be appealed absent fraud, conflict of interest or some other very extreme injustice. If the arbitrator merely applies the law incorrectly or uses some Solomonic formula to provide "justice," the losing party has no recourse to appeal the judgment the way current arbitration clauses are written in real estate contracts.

Interestingly in a recent case entitled *Cable Connection Inc. v. Direct TV* the California Supreme Court held that parties to a litigation could agree in an arbitration clause containing a provision that allowed for judicial review when an arbitrator's decision was inconsistent with California law. In other words, if the arbitration clause is drafted properly the arbitrator cannot make an arbitrary decision without a proper basis in law without the risk of his decision being overturned by a Superior Court judge.

What your agent doesn't want you to know

While the agent is telling you that everyone signs the arbitration clause and that not signing it will raise the suspicions of the seller, he/she does not tell you that he/she is not signing the clause and has no obligation to arbitrate or even mediate.

When there is a dispute between a buyer and seller there is often an agent(s) that is partially to blame. Conveniently, the brokers have left themselves out of the alternative dispute resolution loop that they have

encouraged their clients to participate in, or in the case of mediation, made it a default portion of the boilerplate.

The savvy buyer or seller might ask why brokers are not bound by the same terms. Given the choice, they have decided that it is better not to be bound to participate in disputes unless they are either compelled to by a filing in Superior Court or they elect to participate in the mediation or arbitration voluntarily.

Obviously, being able to make the choice of whether or not to participate with a knowledge of what the dispute is about is a huge, I repeat, huge advantage. Since your real estate agents are fiduciaries, don't you think they should tell you about this huge advantage that they are building into the contract to protect themselves from liability?

A party that is necessary to the dispute, or in other words, has potential liability, cannot be compelled to participate in the arbitration or the mediation process. So the buyer and seller are forced by the contract to go through mediation without having all the parties that should be there participate, thus often making it difficult to settle, if not impossible. Still the costs continue regardless of the prospects for settlement.

Even though both the buyer and seller have agreed to arbitrate, the brokers and other parties that may have liability, such as the termite inspector or home inspector, can force the litigants to forego arbitration and file their action in Superior Court.

One of the arguments for mediation and arbitration is that is a means of saving the costs of normal litigation. No savings ex-

ist if you cannot sue all of the necessary parties in arbitration and are forced to take your action to Superior Court.

I regularly speak to attorneys who are unhappy with the outcome of arbitration. Arbitrators can tend to fashion their own remedies in ways the juries and judges cannot. This is a major reason why the real estate industry has done everything they can to sidestep mediation and arbitration. It is a business decision to avoid a pitfall that they happily steer clients into without any serious discussion of the pros and cons.

In light of the *Cable Connection Inc. v. Direct TV* decision, should real estate agents be including language in the arbitration clause that allows for judicial review of decisions that do not follow the law? This

Judges are doing everything possible to avoid hearing real estate cases.

would be possible, but don't look for forms to change anytime soon as it does not serve the interest of the real estate community to do so.

There certainly are some pros to alternative dispute resolution. All litigation even if filed in Superior Court is going to be forced into some form of alternative dispute resolution in advance of trial. Judges are doing everything possible to avoid hearing real

estate cases.

There is very serious pressure applied on all parties to settle the dispute through mediation or arbitration due to the uncertainty of any trial and the costs involved. It can also save money under certain circumstances, and in other cases may actually cost more; mediators and arbitrators can be very expensive unless both sides are very efficient. This is not a characteristic of some attorneys I have dealt with.

The good news is that the vast majority of cases do settle in advance of trial and this generally saves a lot in attorneys' fees and other costs. It also allows the courts to focus on criminal and other cases that are not amenable to arbitration.

If you start asking your agent questions about arbitration or mediation they will quickly refer you to a simplified written disclosure form or opine that they cannot respond because to do so would be giving legal advice. The irony is that the real estate industry can steer buyers and sellers into taking action to limit their legal rights without giving legal advice.

In the meantime, not agreeing to waive your right to a trial is rarely a bad idea. After all the justice system is the core of what we rely on to protect us. ■

J. Robert Taylor, J. D., a real estate attorney and broker for more than 20 years, has served as an expert witness and mediator and is on the judicial arbitration panel for Santa Clara County Superior Court. Send questions to Taylor c/o Palo Alto Weekly, P.O. Box 1610, Palo Alto, CA, or via e-mail at btaylor@taylorproperties.com.

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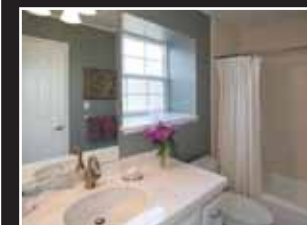
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RentWatch

In case of foreclosure, does a tenant have to move?

by Martin Eichner

Q Even though I am a renter, the “mortgage meltdown” has me concerned about my rights if the house I rent goes into foreclosure. Do I have to move if my landlord loses her property in a foreclosure sale?



Beware of paying rent to someone who has already lost the property in foreclosure or someone pretending to be the new landlord. We are seeing this scam too often. Tenants think they are paying rent when in fact the money is totally wasted.

Q In about three months I am selling the duplex I own. The real estate agent handling the sale wants my tenants to sign a waiver of no liability in case something is broken or stolen during the open houses, inspections or repair work. One tenant signed, but the other has refused. I don't want to be responsible. Is there anything I can do to force the tenant to sign?

A The tenant has no obligation to release you from any liability for lost, broken or missing personal property. In fact, for this specific reason, there probably is a clause in the listing agreement you signed with your real estate agent that states you agree to maintain homeowner's insurance on the property during the sale period. This insurance would cover this situation as well as damage to the property itself done by any open house visitors, inspectors or repair personnel.

You need to discuss this matter with your agent or contact the local board of realtors for further information. If an item is broken or stolen during an open

house or required inspection, it would be the obligation of the tenant to prove the damage or theft took place during those activities.

To avoid any unpleasant occurrence, it is to your benefit to coordinate all activities related to the sale with both of the tenants and if either one wants to be present, you should do your best to accommodate.

Q I have a severe back problem. To reduce my pain my doctor has recommended that I sleep on a waterbed, but the apartment manager says waterbeds are not allowed. I can get a letter from my doctor. I feel the manager is not being fair. What are my rights?

A You have the right to a reasonable accommodation due to your disability. Although landlords may have rules or policies that they can enforce, tenants with disabilities are entitled to exceptions to those policies where necessary for their disability. In this situation, the landlord would need to accommodate your disability by allowing a waterbed, unless they could show that the waterbed posed an undue financial burden on their business, in which case the accommodation would be unreasonable.

The landlord could also request that you obtain a note from your doctor that states your need for the accommodation. Be aware that you may be asked to increase your security deposit if you are a month-to-month tenant. Civil Code § 1940.5(h) allows for a security deposit of 2.5 times the monthly rent for unfurnished property and 3.5 times for furnished property when a tenant has a waterbed. For those on lease

es, the increased deposit can be requested when the lease is renewed.

Q I answered a “room for rent” ad on my college bulletin board that said the room had a microwave oven. Since I don't have a lot of money this feature was important and I used it a lot. Well, the oven broke, and now the landlady says she is not going to fix it because she feels I was using it too much. I need the oven fixed. What can I do?

A Your situation requires two responses. One is that since the microwave was listed in the ad, a workable microwave must be provided. This is called an “express” promise. The landlady has an obligation to repair the microwave or reduce your rent accordingly.

Secondly, in order to remove the oven after it is repaired, the landlady must serve you a 30-Day Change of Terms notice listing the action that the oven will no longer be allowed. This notice only applies if you are a month-to-month tenant; it cannot be used if you have a lease. In this case, the landlady could terminate availability of the oven only when the lease is renewed. ■

Martin Eichner edits RentWatch for Project Sentinel, an organization founded in 1974 that provides landlord tenant dispute resolution and fair housing services in Northern California and administers rental-housing mediation programs in Palo Alto, Los Altos and Mountain View. Call 650-856-4062 for dispute resolution or 650-321-6291 for fair housing or e-mail mediate4us@projsen.org.



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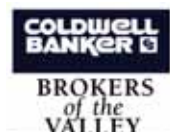
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