

ACT NOW FOR NY FIRST HOME | 25

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NEW YORK STATE REALTOR®



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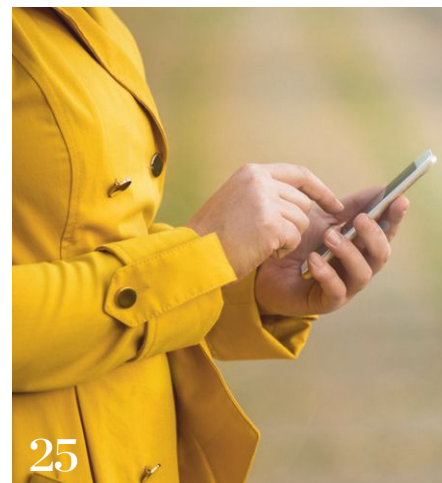
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PRESIDENT'S MESSAGE

Dawn Carpenter, CPM

All in This Together

As I'm writing this column, our NY First Home bill is among hundreds of bills approved at the close of the legislative session that have not yet been sent to Gov. Andrew Cuomo for his consideration. Typically, the governor calls for bills in batches throughout the balance of the year.

This creates an opportunity to make our case with Gov. Cuomo. NYSAR's leadership and Government Affairs team is doing just that, but we need your help. Every member has received a Call for Action email from NYSAR with a link to an email you can send to the governor asking him to sign NY First Home into law. With just a few clicks and a minute of your time, you can make your voice heard.

We all need to tell the governor how NY First Home will build on New York's economic progress by helping families and individuals across the state achieve the dream of homeownership. It will allow New Yorkers to establish a first home savings account to help them save for rising closing costs and down payment requirements. As REALTORS®, we know these two home purchase expenses create serious financial barriers for homebuyers.

NY First Home is supported by 84 percent of New Yorkers, and would incentivize individuals to stay in New York and lay down roots while also helping boost state and local economies through increased homeownership, consumer spending and investment in communities. NY First Home will build stronger communities that in turn strengthen the Empire State. It's a win for all New Yorkers.



PUT SAFETY FIRST Former U.S. Department of Homeland Security Secretary Tom Ridge presents the latest on cybersecurity during Broker's Edge.

Take action now! Visit NYFirstHome.com to answer the call and ask Gov. Cuomo for his signature. You can also share the NYFirstHome.com website with your neighbors, clients and customers, so they too can encourage the governor to sign NY First Home.

On another note, it has been an amazing experience and privilege to represent

you at events such as NAR's Broker's Edge held in New York City in July. It was a successful day in showcasing the REALTOR® value proposition for current and future members. The sold-out event featured NAR's leadership team, high-profile broker-owners and industry visionaries covering a multitude of key industry topics for attendees.

NYSAR's leadership team also just completed its tour of our state, hosting a series of regional meetings with local board leaders. These meetings create an important opportunity for conversations that strengthen our association. While we share updates about the activities of your state association, local board leaders have the opportunity to educate us about their efforts and any local challenges the industry may face.

All of us are members of the REALTOR® family with the same goals for the future of our industry. Working together and learning through sessions like these make us stronger.

In closing, I want to point out that September is REALTOR® Safety Month and urge you all to make your own personal safety a top priority. Take the safety quiz on page 17 and see where you can take steps to increase your safety. There are many resources available to help, but it all starts with you. Stay safe out there.

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To learn more about the requirements, visit [MilitaryRelocationPro.org](https://militaryrelocationpro.org).





FROM THE CEO'S DESK

Duncan MacKenzie, RCE

A New Era of Leadership

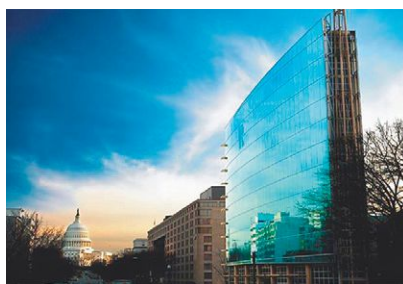
On Aug. 1, 2017, the National Association of REALTORS® welcomed Robert A. “Bob” Goldberg as its new chief executive officer. Bob will succeed Dale M. Stinton, who served in the NAR CEO post for the past 12 years. Most REALTORS® probably don’t know much about the top

staff person at NAR, but this rare change in leadership is worth your attention.

Before moving on to a discussion about Bob and NAR’s future, we all owe a debt of thanks to Dale. Under his tenure, the REALTORS® beat back an attempt to let banks into the real estate brokerage business. He oversaw NAR’s efforts to help lift the housing market after the crisis of 2007–12 with programs such as the homebuyer tax credit. We own the .realtor domain. The REALTOR® Party, which came to being under Dale, is one of the most effective grassroots advocacy organizations in the country. And these are just some of the highlights.

Dale will be the first person to say that he did not achieve these accomplishments alone. NAR, like NYSAR and your local board, is member-driven, and all actions are a team decision based on membership needs and wants. But member ideas often need stewardship through the process of implementation, and Dale’s stamp is on every success.

Bob has held staff leadership positions at NAR for 22 years,



Few organizations speak for property owners in the tax reform debate, and none have the political power that can be generated by REALTORS® under Bob’s guidance.

and he is a highly regarded industry leader. Before becoming NAR CEO, Bob was the CEO and president for the REALTORS® Information Network, and Senior Vice President of Marketing and Business Development, Commercial Services and Business Specialties, at NAR. He also was deeply involved in the agreement with Move Inc. and REALTOR.com.

Bob certainly faces challenges to help guide our membership. He will take control of an association fighting some of the most harmful legislation to homebuying in decades. For example, proposed federal tax reform threatens to massively devalue homeownership. Few organizations speak for property owners in the tax reform debate, and none have the political power that can be generated by REALTORS® under Bob’s guidance.

With 1.2 million members, NAR has diverse organizational and administrative challenges. It seems that the MLS world is reshaping itself daily. Washington is just plain wacky. Many of the D.A.N.G.E.R. report findings loom overhead. And these are just the issues we know of.

NAR does not transition CEOs often, so with the move comes a wide variety of membership anxieties and expectations about the future of their trade association. For what it’s worth, I have worked with Bob and with the elected NAR leadership that selected him as CEO. I’m sure there will not always be easy answers to what lies ahead, but I am wholeheartedly positive about the REALTOR® brand moving forward under Bob’s guidance.

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W

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all of your necessary CE credit, get the latest industry news, network with REALTORS® from three states and be motivated by expert speakers? Triple Play 2017 in Atlantic City, NJ, is your one-stop shop for all of this and more!

The action kicks off this year on Monday, Dec. 4, with the all-new Advance Conference, sponsored by the Young Professionals Network (YPN). All are welcome to hear industry visionaries share tips to advance your business, value, resources and opportunities. Monday also features a can't-miss social media panel with

top brokers sharing their best strategies.

Tuesday, Dec. 5, through Thursday, Dec. 7, you can build your schedule and choose from more than 90 one-, two- and three-hour CE and professional development sessions taught by an array of rising stars.

As always, the Trade Expo is your chance to learn about

the latest industry innovations and ideas from more than 250 exhibitors. It will be open all day Tuesday and Wednesday, giving you ample opportunities to explore.

While your days will be full of learning, your nights will be full of fun and networking! Monday's Kickoff Party, co-sponsored by the tri-state YPNs, is open to all and will set the tone for the week.

Attend the New York State Association of REALTORS® reception on Tuesday night, then head over to the Ice-breaker Reception for dancing and live music from Nik & The Nice Guys.

Don't forget to take some time to relax. What better way to do that than by spending time in the RPAC High Rollers' Suite on Wednesday from 10 a.m. to 4 p.m.! With a \$250 entrance fee, which counts toward your 2018 RPAC total, you'll gain access to amenities including shoe shine, manicures, massages, professional photographs, a psychic reader, business facilities, hot lunch, beverages and a deluxe coffee barista.

Download the Triple Play mobile app if you haven't already. The free app gives you access to all convention programs, descriptions, presenters and CE credit details. You'll also have access to hotel, travel, parking, dining and shopping information, and discount coupons. Search "Triple Play" in the app store. 📱

**December 4-7, 2017
Atlantic City Convention Center | Atlantic City, NJ**

NEWS | NYSAR member prompts NAR to change MLS policy to include audio listing search

During the February 2017 New York State Association of REALTORS® MLS Issues and Policy Committee meeting, Miguel Berger, a member of the Greater Capital Association of REALTORS®, presented a voice-activated listing search application he developed.

The presentation used the Amazon Echo Alexa artificial intelligence device. As presented to the committee, the user engages in a conversation with Alexa to walk through the features and location the user desires for their next home. The search is conducted without using a computer, phone or tablet to search the internet.

Berger told the committee he was preparing a request to the National Association of REALTORS® MLS Technology and Emerging Issues Advisory Board to recommend the NAR Multiple Listing Committee revise the Internet Data Exchange (IDX) Policy to authorize the delivery of IDX listing information by voice-activated devices.



AI LISTING
Your clients may soon be able to ask Alexa to speak about the listings in their cities.

At the MLS Issues and Policy Committee Meeting in May, a recommendation was approved and referred to the NAR Board of Directors to revise the MLS Policy to “allow the delivery of IDX listing information via voice-activated devices such as the Amazon Alexa and Dot, Google Home and Microsoft’s Cortana.” As adopted, the NAR policy allows MLS participants to authorize limited electronic display and delivery of their listings by other participants via these authorized mediums under the participant’s control: websites, mobile apps and audio devices. As used throughout this policy, “display” included “delivery” of such listings.

SERVICE | Hudson Gateway REALTOR® Foundation makes donation to children’s hospital



FOR THE KIDS Members of the Hudson Gateway REALTOR® Foundation present a check to the Maria Fareri Children’s Hospital.

The Hudson Gateway REALTOR® Foundation recently donated \$2,500 to the Maria Fareri Children’s Hospital in Valhalla, NY. The hospital is the advanced care children’s hospital for New York’s Hudson Valley and Fairfield County, CT. The hospital cares for the region’s most seriously ill and injured children including those in need of open heart surgery, brain surgery, cancer treatments, organ transplants, trauma and burn care, and advanced neonatal services. The hospital is also a major academic institution and a research hub.

Established in 2003, the Hudson Gateway REALTOR® Foundation is the charitable arm of the Hudson Gateway Association of REALTORS®.



YOUR calendar

SEPTEMBER
24-27 **NYSAR Fall**
Business Meetings, Turning Stone Resort & Casino, Verona, NY

OCTOBER
05 **NYSAR Legal**
Leftovers webinar, 2:30 p.m.

12 **Digital Marketing**
Basics for REALTORS® webinar, 2:30 p.m.

17 **NYSAR Radio:**
Recent Court and DOS Decisions, 10 a.m.



26 **Meeting Buyers’ Demands** with RPR’s Search Tools webinar, 2:30 p.m.

NOVEMBER
3-6 **NAR REALTOR®**
Conference & Trade Expo, Chicago, IL

21 **NYSAR Radio:**
Agency – Dual and Designated Agents, 10 a.m.

WANT TO KNOW MORE?

➔ For additional information about calendar events, visit NYSAR.com.



EVENTS | 2017 REALTORS® Conference & Expo opens Nov. 3 in Chicago

The 2017 REALTORS® Conference & Expo will be held Nov. 3–6 in Chicago. The conference will feature 100 educational sessions as well as unlimited opportunities for networking and referral-building.

The event will include the largest trade show in real estate with more than 400 industry-related exhibitors, a Young Professionals Networking event, a REALTOR® Volunteer Build, a keynote by Olympic Gold Medalist Michael Phelps, a celebrity concert starring John Fogerty, a Bank of America tailgate party and more.

LEARN MORE

➔ For additional details on the conference and expo, visit realtor.org/convention.

EVENTS | Fall Business Meetings kick off Sept. 24

The New York State Association of REALTORS® will hold its annual Fall Business Meetings Sept. 24–27 at the Turning Stone Resort & Casino in Verona, NY.

In addition to the various committee meetings and working groups, the event will feature the General Session led by

NYSAR President Dawn Carpenter and the Legal Update. NYSAR encourages all members to participate, as many sessions do not require official committee service.

Members can also take advantage of a Video Bootcamp session featuring Jeremias “JMan”

Maneiro. Attendees will learn to better market themselves and their listings by creating video with the equipment they already own. The session requires pre-registration.

LEARN MORE

➔ For more information, visit NYSAR.com.

FOUNDATION | Housing Opportunities Month raises awareness and support for first-time buyers

NYSAR’s Housing Opportunities Foundation celebrated its seventh annual Housing Opportunities Month in June with the goal of raising awareness of and financial support for the foundation’s first-time homebuyer grant program. Thanks to generous donors, the foundation raised \$700 during the month-long fundraiser.

The foundation would like to congratulate Jodi Downs from the Northern Adirondack Board of REALTORS®, who won the \$50 American Express gift card drawing.

Even though Housing Opportunities Month is over, you can still show your support for the foundation and the consumers it helps achieve the American Dream by making a donation. Visit NYSARHousingFoundation.com and click on Contribute to find the Donate button, or call (518) 463-0300.



FOR MORE INFORMATION about the foundation and its initiatives, visit NYSARHousingFoundation.com.

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Three entries for \$50



Make your donation online at www.NYSARHousingFoundation.com, or at the Registration Desk at the Fall Business Meetings. The winner will be announced at the Board of Directors meeting on Wednesday, Sept 27.

Proceeds go toward the Foundation’s first-time homebuyer grant program, which awards \$2,000 grants to low- to moderate-income families/individuals.

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YOUR **business**

CYBERATTACKS: WHAT YOU NEED TO KNOW

SAFETY | Can't-miss tips for protecting yourself against the latest online scams.



“IN TODAY’S WORLD, WE ARE ALL LIKELY TO BE A VICTIM OF SOME TYPE of cyberattack,” NYSAR IT Director Sean Dowling recently told *New York State REALTOR*® magazine. While a scary thought, statistics back it up. According to Norton Security, 689 million people in 21 countries experienced cybercrime in 2016. More people believe it has become harder to stay safe online in the past five years than in the “real” world.



By Ciara Hassenpflug
NYSAR COMMUNICATIONS COORDINATOR

Another alarming statistic is that email phishing schemes account for 95 percent of cybersecurity threats, according to the FBI. It’s important for brokerage owners to be aware of the vulnerabilities of their agents, staff and clients when communicating through digital platforms.

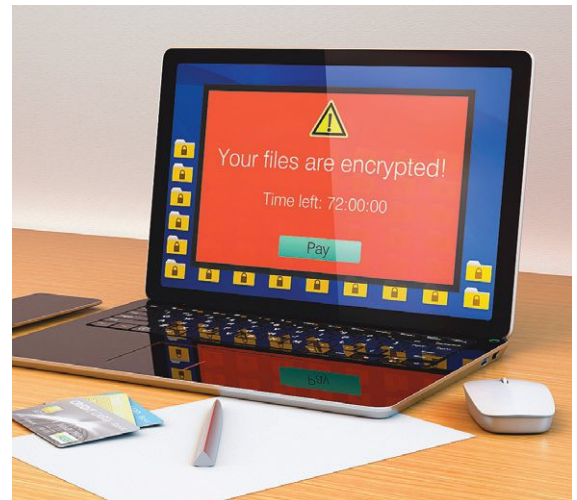
SPEAR PHISHING SCAMS

THE RISK According to Dowling, the most common form of phishing scheme that an office is likely to encounter is what’s called a targeted spear phishing. This scam disguises itself in the form of an email pretending to come from a colleague, manager, CEO or even a friend. Often the email will be personalized, and because it comes from someone you know, you might be less vigilant about the potential threat and click on something without thinking.

Recently, there have been numerous instances where cybercriminals have targeted homebuyers during the real estate transaction process using such a scheme, duping them into a fraudulent wire transfer. Let Kentwood Real Estate Services LLC in Colorado serve as a cautionary tale. They, along with a REALTOR®, bank, title company and mortgage broker are all currently being sued by a couple who lost their life savings during the transaction process.

News outlets reported the couple received an email from their REALTOR® notifying them that they would receive wiring instructions from a woman at the title company prior to closing. They then received an email from both the title and mortgage companies stating they would need to wire a specific amount of money in order to close on their property. Cybercriminals had hacked into one of the companies’ servers, retrieved financial information and sent the fraudulent email to the homebuyers.

THE SOLUTION To combat these scams, Dowling suggests informing your clients that these threats exist and pose a risk, letting them know that they should contact you — their agent — if they are requested to wire money anywhere. Or, if you or



your agents do engage in a wire transfer, call your client on the phone before the transfer of funds so they know they are sending money to a legitimate source. “I think educating your clients as you go through the process helps a lot,” he said.

When it comes down to it, if an email seems suspicious, it probably is. It is better to err on the side of caution and refrain from clicking any links or opening any attachments. You can always reach out to the person the email is supposedly from to verify its validity if you are unsure. The same goes for pop-ups or posts that offer things like free trips or say you have won something. There’s a reason they sound too good to be true.

RANSOMWARE ATTACKS

THE RISK The fastest-growing malware is ransomware. After clicking on a malicious link, ransomware encrypts everything on your hard drive and attempts to encrypt files over the network as well, Dowling explained.

If you don’t have good backups, then you have to pay the ransom, which usually requires you to purchase bitcoins, a type of digital currency, for the ransomware author or lose your files. There’s very

689 million
PEOPLE FROM 21 COUNTRIES EXPERIENCED CYBERCRIME IN 2016.

Source: Norton Security

little risk of the ransomware author getting caught and punished, so it's a big business right now.

THE SOLUTION If it does happen, it's time to figure out if the ransom (usually a few thousand dollars per machine that was compromised) is worth more than the cost of the lost data. Brokerages should ideally engage a technology consultant to ensure that their strategy is sound so that they have a plan in the event this happens.

Dowling said the rule of thumb for backups is 3-2-1: three copies on two different types of media and one off-site. He said you can't just assume that the files you have copied in Dropbox or OneDrive will be fine; ransomware will encrypt those files as well. "You could still get unlucky, but it's like locking your doors at night. It won't keep out a determined burglar, but it will prevent crimes of opportunity."

Ensure that your operating system and other software (Dowling suggests Malwarebytes Anti-Exploit) is regularly patched (monthly at minimum), and test your backups regularly. Once most of this is in place, it's automated and you won't have to spend too much time thinking about it.

A GOOD PASSWORD GOES A LONG WAY

Dowling also recommends using difficult-to-guess, unique passwords for all of your sites that require a log-in. Yes, different passwords for each site. This may sound unmanageable, but there are products that make this much easier to follow.

Password managers like LastPass, 1Password, DashLane or KeePassX let you import all the sites you visit and create long, randomized passwords that protect you from being hacked. Instead of having to remember all of these passwords, you'll only need a single, strong master password to unlock your password manager, which will then unlock the rest.

Speaking of that strong, master password, try to think outside of the box when it comes to creating one. Phrases work well for this, or even song lyrics. Also be sure to add numbers or special characters such as "@" to replace an "a" or "\$" to replace an "s."

"The bad guys will always have a leg up because they have significant financial incentive to find the security holes and exploit them," said Dowling. Keeping your office safe from attack comes down to mitigation (patching, anti-malware, etc.) and ultimately making sure you have reliable backups to quickly recover in the event of a disaster. "There's no easy answer. It's more of a strategy and recognizing that security is a reactive business." 🌱



SAFETY QUIZ

Test your knowledge of common REALTOR® situations

Working in real estate means working with people in a variety of locations and online. You may know some of these people, but many are strangers. The real estate business creates risks that people in most other fields never face.

TRUE OR FALSE?

1. Since you received a referral from a trusted source, it's OK to assume the referral is safe and you can let your guard down.



TRUE OR FALSE?

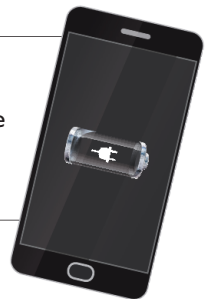
2. When showing a potential buyer a home, you should let them follow behind you and show them areas like basements and confined spaces.

TRUE OR FALSE?

3. It's a good practice to use the word "vacant" when describing a listing.

TRUE OR FALSE?

4. It's OK to let your phone battery die during an open house. You shouldn't be using your phone anyway.



TRUE OR FALSE?

5. Discussing where you live or vacation plans with new clients is a good way to be relatable.



ANSWERS: The correct answer to each question is FALSE!

If you answered TRUE to any of the above statements, it's time to freshen up on your safety protocols! Visit nar.realtor/safety for a wealth of safety resources that cover everything from staying safe at open houses and showings to technology and brokerage safety. Coming soon to NYSAR.com will be a one-hour safety video featuring Ed Jekel, CEO of the Mohawk Valley Association. He presents an overview of procedures you can implement in your business to protect you and your clients. From showing property, including open houses and model homes, to working in the office, driving and parking, you'll learn valuable precautions that could save your life.



By **S. Anthony Gatto, Esq.**
NYSAR GENERAL
COUNSEL

NYSAR's Legal Hotline is a question-and-answer service for REALTOR® members only. Call (518) 43-NYSAR or (518) 436-9727 from 9 a.m. to 4 p.m. Monday through Friday with your questions. You will need to provide your member number, which can be found on the mailing label of this magazine. The hotline does not provide a client-lawyer relationship. For confidential legal advice, consult a competent attorney.

CEILING UNLIMITED

LEGAL LINES | Escalation clauses can benefit both buyers and sellers, but take care to protect your clients.

ESCALATION CLAUSES, when properly used, are advantageous negotiating tactics that benefit the buyer and the seller. As you will see, the problems with escalation clauses are numerous and could create issues for the buyer, the seller and REALTORS®. In order to fully dissect and analyze an escalation clause, we must first ask: “What does an escalation clause do?” and “How does an escalation clause work?”

WHAT IS AN ESCALATION CLAUSE?

When residential real estate sales are extremely active, it creates a seller's market. The resulting increased competition can create the need for an additional “edge” for aggressive buyers. Often, potential purchasers have been outbid on numerous properties even when making initial and subsequent offers at or above the asking price. Discouraged at losing one or more properties to better offers, buyers and their agents have been insisting that purchase offers submitted to the seller include an escalation clause.

An escalation clause is a pre-established term in a purchase offer that increases the buyer's original offer by a certain sum. In other words, Buyer X puts in an offer for a property with an escalation clause. After all offers are submitted, Buyer X does not have the highest offer. However, in this situation, Buyer X included an escalation clause that offers the seller \$1,000 above the highest offer.

As you can see, the inclusion of an escalation clause in a purchase offer affords the buyer the greatest chance of success in submitting the highest offer. However, a

poorly worded escalation clause can hurt your client.

An example of a simple unconditional escalation clause is as follows: “Purchaser will increase the best offer received by \$1,000” (of course, the dollar amount can vary, but for the sake of simplicity, I will use the figure of \$1,000 throughout this article). This simple example by itself is poorly worded and should not be included in any purchase offer without additional language protecting and limiting the exposure of the buyer and their agent.

DO'S AND DON'TS OF ESCALATION CLAUSES

Licensees who use escalation clauses should check with their MLS and broker to inquire if there are any available escalation forms (at the time of this writing there were a few forms in use throughout New York). If no form is available, the licensee should carefully discuss the components of an escalation clause with the purchaser. After the purchaser is fully informed as to the use of an escalation clause, the licensee can then put the offer down on paper through a pre-printed purchase offer, binder, etc.

One issue is when a REALTOR® is acting as a seller's agent working with

a buyer who wishes to have an escalation clause in the purchase offer. The buyer will inform the seller's agent of the maximum purchase price the buyer is willing to pay for the property (the ceiling). Pursuant to the law of agency and one's fiduciary duties, the seller's agent must then disclose this amount to the seller. In this situation, the seller's agent must disclose this fact to the buyer and make the buyer aware that the seller will know the buyer's ceiling. For properties where multiple offers are made, this may not be an issue. But for properties where there are not multiple offers made or the buyer with an escalation clause submits the highest purchase offer, the seller holds a significant advantage.

Suppose Buyer X submits a purchase offer with an escalation clause that contains a ceiling of \$400,000. The buyer's initial offer is for \$375,000. The seller has the opportunity to reject the buyer's offer and make a counteroffer for an amount up to the buyer's ceiling. Since the seller already knows how much the buyer is willing to spend, and the buyer is obviously interested in purchasing the property, the seller has a strategic negotiating advantage.

This is why it is important to include an escalation clause in a purchase offer only when it is more than likely that a property will get multiple competitive offers. It is also important, when not acting as a buyer's agent, to fully inform the buyer that you are not acting

in their best interest and nothing they tell you, including their ceiling, is confidential and you must disclose such information to the seller.

Similarly, the buyer must be fully aware that it is possible that the monetary limit set for the ceiling may turn out to be the buyer's offer. It is foreseeable that a buyer will set a ceiling well above what is financially feasible down the road. Knowing the buyer's finances upfront will help you set a realistic ceiling. Now that you have the offer completed with an escalation clause, you must wait to see if the escalation clause is triggered.

YOUR DUTY AS LISTING AGENT

For a listing agent, the best course of action when an escalation clause is triggered is to treat it the same as a counteroffer from the seller (unless the form you are using provides otherwise). The seller should present the counteroffer to the buyer for the new purchase price based on the escalation clause. The buyer would then accept the counteroffer and re-execute the purchase offer with the new purchase price dated and initialed.

However, all this could be avoided with the inclusion of an escalation clause addendum that takes all these items into consideration. Therefore, if a properly drafted escalation clause is attached to the purchase offer as an addendum, signature lines should be included for the seller to execute the counteroffer pursuant to the escalated purchase price, and for the buyer to accept the counteroffer pursuant to the escalation clause.

Make sure the offer ceiling is not higher than the market value of the property. If the buyer plans to finance the property, an appraisal will most likely need to be completed for the lender. Many properties have been appraised for less than the amount listed in the

It is important to include an escalation clause in a purchase offer only when it is more than likely that a property will get multiple competitive offers.





Tune in to NYSAR Radio

NYSAR Radio is a free internet-based live call-in show hosted by NYSAR's Director of Legal Services Anthony Gatto, Esq. You can call him at (518) 436-9727 with your real estate-related legal questions and have them answered live on the air. Visit NYSAR.com for the link to the internet broadcast.

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purchase offer. In certain instances, it is nearly impossible for the buyer to get the proper amount of financing because the lender bases the loan on the appraised value of the property, not the actual purchase price.

Sometimes the only way around this is for the buyers to make a down payment of more than they originally planned. Furthermore, since the increased down payment is being credited toward the amount between the appraised value and the purchase price, the buyer may now be required to pay Private Mortgage Insurance (PMI) on the loan, another added monthly expense.

Another issue is that a buyer is sometimes under the impression he/she is “guaranteed” to submit the highest purchase price and, therefore, the seller will accept their offer. This is not always the case. Numerous factors come into consideration when a seller accepts a purchase offer. For instance, a buyer with an escalation clause could have one or more contingencies included in their purchase offer, and another buyer who is offering a lower purchase offer could have no contingencies or is paying cash. In some instances, a seller does not want to address contingencies if there is a higher probability that a closing will occur with little or no difficulty.

HOW TO DRAFT A PROPER ESCALATION CLAUSE


An escalation clause is not as easy to draft as one would imagine. The original example that was utilized in the onset of this article, “Purchaser will increase the best offer received by the seller by \$1,000,” is not the proper way to draft an escalation clause.

There are many factors to consider when including an escalation clause in a purchase offer. The most important rule of drafting a proper escalation clause is to include a ceiling.

Imagine the following scenario: Buyer X submits a purchase offer for 123 Maple Lane with an escalation clause of \$1,000 above the next best offer. Buyer Z does the

same. Without a ceiling included in the purchase offer, the two competing escalation clauses would continue to “one up” each other, increasing the purchase price in perpetuity.

If this were to occur, the seller would most likely instruct the listing agent to go back to Buyer X and Buyer Z, and ask them to submit a new purchase offer under whatever multiple-offer scenario the seller chooses. This is not the most efficient use of time for any party in the transaction and may frustrate the seller. If the purchase offers were submitted with a ceiling, this issue would not have occurred. A ceiling would put a cap on the amount of the offer once the escalation clause was triggered.



A properly drafted escalation clause should include language specifically addressing an incremental monetary amount used to increase the purchase offer.

Normally the amount of the ceiling is only disclosed to the buyer's agent and not made available to the listing agent until the escalation clause is triggered. Then the buyer's agent will tell the listing agent whether the triggered escalation is below the ceiling. The following is an example of an escalation clause scenario with a ceiling: Buyer X has

a ceiling of \$325,000, and Buyer Z has a ceiling of \$330,000. Buyer Z would have the highest offer of \$326,000 (Buyer X had the next highest bid at \$325,000, and Buyer Z's escalation clause was for \$1,000 increments, therefore \$326,000).

Of course, there are downfalls to the inclusion of a ceiling. A properly drafted escalation clause should contain language specifically addressing the following: an incremental monetary amount used to increase the purchase offer; a ceiling on the amount of the escalated offer; and a requirement that if the escalation clause is triggered, the seller must disclose the amounts of the other offers to the buyer, or at least the highest offer.

It is suggested that the escalation clause be included as an addendum to the purchase offer in clear, concise language rather than being added into a space that is intentionally left blank for other items and/or contingencies. However, the most important thing to remember when drafting the escalation clause is whether the seller and purchaser can actually settle under the terms of the purchase offer.

MORE ON ESCALATION CLAUSES

In closing, the use of an escalation clause is not always appropriate. If an escalation clause is used

in a purchase offer, the licensee must fully disclose to the buyer how the escalation clause operates.

Furthermore, the buyer should discuss the use of the escalation clause with their attorney, and the addendum should include or be subject to an attorney approval clause since it may be treated as a counteroffer.

There are numerous factors to consider when determining if an escalation clause is appropriate. Issues such as previous trends in the market, how “hot” the market currently is, how desirable the property/location is and whether the asking price is higher or lower than other comparable properties should all be considered. If it is determined that an escalation clause is warranted when presenting a purchase offer, remember the basic framework in this article. 🌱

EDUCATION | Learn to create engaging courses at NYSAR development workshop

If you're an instructor, a potential instructor or a course developer, or have an idea for a course you think the industry needs, plan now to attend the Course Development Workshop. NYSAR and national trainer Roseann Farrow have teamed up to create a one-of-a-kind program designed for those who want to write effective, interactive courses for real estate professionals.

From your initial concept to creating a marketing package to sell others on the benefits of your course, this hands-on session will help you discover how to build an effective learning experience.

In the workshop, you'll learn to: apply adult learning principles to foster success; use a proven 10-step process

to build your course; and develop a timed outline with an attention-grabbing title, intriguing description, intended learning objectives and key content. And, you'll discover how to incorporate activities to engage participants and strengthen outcomes.

The Course Development Workshop will be held at the Greater Capital Association of REALTORS® in Albany, NY, Nov. 20-21. The cost for members is just \$495; \$395 for graduates of NYSAR's Instructor Training Institute. The registration deadline is Nov. 7.

Don't miss this opportunity to put your skills to work to enhance the performance and skills of real estate professionals, and to build a new source of revenue for yourself! 🌱

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GO GLOBAL

EDUCATION | Register for CIPS courses to capitalize on skyrocketing U.S. home sales to foreigners.



By Priscilla Toth
NYSAR
DIRECTOR OF
EDUCATION

The National Association of REALTORS®' "2017 Profile of International Activity in U.S. Residential Real Estate" found that home sales to foreign buyers surged to a record \$153 billion in sales, a 49-percent increase in total dollar volume from the previous 12-month period.

Other key findings:

- China (\$31.7B), Canada (\$19.0B), U.K. (\$9.5B), Mexico (\$9.3B) and India (\$7.8B) all increased in sales-dollar volume from 2016. China stayed in the top position for the fourth straight year.
- Sales to recent immigrants (\$78.1B) and non-resident foreigners (\$74.9B) rose to new survey highs.
- The number of transactions was up from the 2016 report by 32 percent to 284,455.

- Most foreign buyers purchased detached single-family homes.
- The median sales price was up by 9 percent from 2016 to \$302,290. Approximately 10 percent of all buyers paid more than \$1 million, and 44 percent paid all cash.

Take advantage of this market. If you want to capture a share of this rapidly growing, lucrative market, register today for the Certified International Property Specialist (CIPS) courses being offered in East Elmhurst Oct. 16–20, 2017. You'll learn to connect with and effectively serve clients from around the world in your local market. You'll get the tools you need to serve foreign-born buyers in terms they'll understand. These CIPS courses arm you with everything you need to take

your business global including a comprehensive understanding of the currency, and legal and tax requirements essential to international transactions. And you'll discover how to cater to a global clientele in your local market.

You can take all these courses with CIPS Instructor and 2011 NAR President Ron Phipps. In addition to being a licensed real estate broker for 37 years, he has been recognized as Rhode Island's REALTOR® of the Year, helped build homes in the Gulf region following Hurricane Katrina and continues to be an active volunteer on many important projects.

"Learning about global real estate from a former NAR president and well-traveled REALTOR® made my CIPS experience more than just a journey through books," said REALTOR® Kate Conquest. "Ron's vivid stories and cultural references truly helped me understand the importance of being able to leverage the international landscape of different buyers and sellers throughout the world."

These CIPS courses are vital to your success in the global marketplace. Courses are \$150 each for members and provide 7.5 hours of CE credit. You can take all five for \$650, a \$100 savings!

Register at NYSAR.com for individual courses, or call NYSAR today to register for the full series at (800) 239-4432 x 219. Don't wait — space is limited. 🌱



CHOOSE A COURSE
Visit NYSAR.com for a complete course list and more information, and to register.

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By Sal Prividera Jr.
NYSAR DIRECTOR OF COMMUNICATIONS



SIGN UP TODAY

Additional information and a link to sign up can be found in NYSAR.com's Industry Resources section by clicking on Down Payment Resource.

Most first-time homebuyers need a little help when it comes to the down payment and paying New York State's high closing costs. Fortunately, there are a variety of programs designed to assist first-time buyers in closing the gap. From NYSAR Housing Opportunities Foundation grants and federal and state down payment assistance programs to benefits for armed forces veterans and other resources for all buyers, how does a REALTOR® keep track of all of them?

Thanks to the partnership between Down Payment Resource and the New York State Association of REALTORS®, you don't have to constantly scan for eligibility or funding changes to buyer assistance programs administered by state and local housing finance agencies, nonprofits and other housing organizations. Down Payment Resource does it all for you.

Save precious time. The free tool allows you to search by neighborhood, city, county or specific property address. You can provide this service to your buyers and narrow down the programs they may qualify for by entering additional information.

"It's extremely easy to use," said Marcia Clarke, chair of the NYSAR Housing Opportunities Committee and president of the Brooklyn Board of REALTORS®. "It takes 15 seconds to input an address of a property that your buyer might be interested in to see what grants and financial assistance might be available."

Clarke, broker of M C Realty Consulting & Management and BRESRE Realty in Brooklyn, said Down Payment Resource saves REALTORS® valuable time. "We're not in the business to chase down a resource or several resources every month. REALTOR® time is precious. Whatever we do with it, we want to make sure it is productive."

She noted that the tool is updated every 30 days and offers the most current information about available homebuyer assistance programs across New York State.

Demonstrate your added value. "First-time homebuyers are the lifeblood [of our industry]," Clarke said, noting the key role REALTORS® can play in making sure buyers are aware of programs that can help them become homeowners. Using the tool further showcases the value REALTORS® continue to bring to the transaction, she said.

Buyers are pleased to learn about the resource tool and assistance programs that they may be eligible to use to help them with their home purchase, she said. As an added benefit, they may share the information with friends and family who may use it as a springboard for starting their own homeownership journey.

Down Payment Resource produces additional tools for REALTORS® including its Homeownership Program Index, which measures the availability and characteristics of the programs in its database. It also issues a monthly Down Payment Report covering the latest data on down payments.

REALTORS® who participate in the Down Payment Resource program have access to a variety of marketing tools designed to tell consumers you can help them find down payment program information. These include: a personalized link to their own Down Payment Connect landing page; Facebook posts and ads; Twitter and LinkedIn graphics; and customizable flyers. They also have a series of videos that show how to use these tools along with best practices.

Additional information and a link to sign up can be found in NYSAR.com's Industry Resources section by clicking on Down Payment Resource. 🌱



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YOUR voice



DEAR GOVERNOR...

HAVE YOU TAKEN ACTION?

AT THE CAPITAL | It's time for REALTORS® to rally and urge Gov. Cuomo to sign NY First Home into law.

M

ANY OF YOU ARE FAMILIAR WITH THE NY FIRST HOME initiative and the campaign launched last year to educate lawmakers and the public on the need to create a state-sponsored, first-time homebuyer savings account program for New Yorkers. The successful path to approval in both state legislative houses has been paved with REALTOR® action and perseverance since the start.



By Jared Burns
NYSAR
LEGISLATIVE
AFFAIRS
COORDINATOR

Now, there is one step left before this proposal becomes a reality: Gov. Andrew Cuomo must sign it into law. Legislative approval in the state Assembly and Senate was a tremendous victory in June, but we still have to work to cross that finish line.

The most effective way to get NY First Home signed into law is by answering the NYSAR Call for Action urging Gov. Cuomo to sign the bill into law.

OUR STRONGEST ACTIVISTS

You are the voice of real estate and the experts in your field. You have seen first-hand the financial hardships and difficulties facing first-time homebuyers in New York State. NY First Home is a responsible initiative that would have a lasting impact on a New Yorker's ability to save for and afford a first home, or help a child or grandchild start saving early.

New Yorkers were polled last year, and an overwhelming 84 percent supported the NY First Home

initiative. If enacted, it would incentivize individuals to stay in New York while helping boost state and local economies through increased homeownership rates, consumer spending and investment in our communities.

New York has the lowest homeownership rate and among the highest closing costs in the nation, along with being ranked the third worst state for first-time homebuyers by Bankrate.com.

Encouraging the governor to sign NY First Home into law is an important step towards reversing this trend.

Please answer the Call for Action by visiting NYFirstHome.com and going to the Take Action tab. You can also help spread the word by encouraging family, friends and colleagues to ask the governor to sign. Be a part of an initiative that will have a real impact on making homeownership more affordable and accessible for New Yorkers throughout our great state. 🌟

TWO WAYS TO RALLY FOR NY FIRST HOME

Be a part of an initiative that will have a real impact on making homeownership more affordable and accessible for New Yorkers throughout our great state. You can help NY First Home become a reality in two ways:



1 ANSWER THE CALL FOR ACTION

Go to the Take Action tab at NYFirstHome.com to send an email to Gov. Cuomo asking him to sign NY First Home into law.



2 INVOLVE YOUR FRIENDS AND FAMILY

Help spread the word by encouraging family, friends and colleagues to ask the governor to sign NY First Home.

Flood Insurance Bill Keeps Key Priorities

LEGISLATION | REALTORS® find common ground to support NFIP.

With the expiration deadline approaching, the National Association of REALTORS® and the House Financial Services Committee found common ground in July on critical legislation that would reauthorize the National Flood Insurance Program (NFIP).

Key changes to prior versions of the legislation, the 21st Century Flood Reform Act, allowed NAR to remove its objections and support the bill. Specifically, REALTORS® support the new legislation's commitment to retaining current "grandfathering" rules that protect homeowners from significant rate increases when a flood map changes, as well as extending the

reauthorization period of the NFIP to five years. Caps on proposed increases to policyholders' fees and rate hikes were another REALTOR® priority that were included in the new bill.

At the time of publication of this article, a final version of the bill (H.R. 2874) was expected to be drafted and voted on in the House of Representatives. NAR is hopeful that these efforts will culminate in the enactment of a long-term reauthorization and strengthening of the NFIP before the program's expiration date of Sept. 30 to avoid a lapse in the program.

Without the NFIP, millions of home and small business owners in communities across New York State and the country will not be able to obtain a mortgage or insurance to protect their property against flooding. Flooding is the most common and costly natural disaster in the U.S. The NFIP reduces the number of uninsured properties that will otherwise turn to the federal government for taxpayer-funded disaster aid after floods.

REALTORS® are urging Congress to reauthorize the NFIP and include reforms that reduce uncertainty in real estate markets before Sept. 30. 🌸

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THE FINAL PUSH

AT THE CAPITAL | The 2017 legislative session ended with a flurry of activity around flooding, taxes and more.

The 2017 legislative session in Albany sprinted to a finish and concluded just before midnight on Wednesday, June 21, after a flurry of activity in the final week of its regular scheduled session. In the waning days of the session, several high-profile measures were addressed, while others eluded agreement between legislative leaders and Gov. Andrew Cuomo.

Within a week of adjourning their regular session, the governor called a “special session” requiring the Senate and Assembly to return to Albany to address several items that went unresolved the week prior. Following is a summary of



By Michael Kelly
NYSAR DIRECTOR
OF GOVERNMENT
AFFAIRS

several major end-of-session initiatives including several notable REALTOR®-supported measures.

Initiatives of interest to REALTORS®. NYSAR’s top legislative priority for the past several years, NY First Home, passed in both the state Senate and Assembly by a combined vote of 204-1. The bill will be delivered to the governor for his consideration at an undetermined time. The NY First Home program will allow individuals and couples to put aside money in a special savings account to be used for the upfront costs associated with purchasing a first home in New York State. More information on the program can be found at NYFirstHome.com.

NYSAR-supported legislation addressing the devastating flooding on Lake Ontario, the St. Lawrence River and several other waterways unanimously passed both houses of the New York State Legislature. After it became apparent

that Gov. Cuomo would veto the bill as approved, the Legislature and governor came to an agreement during the extraordinary legislative session to provide aid to areas affected by the flooding.

The new legislation provides a combined \$55 million to homeowners, small businesses, farms, not-for-profits and local municipalities for purposes of repairing homes, roads and infrastructure as well as preparing for future flooding. The legislation also authorizes a property owner whose primary residence is located within the affected disaster area to deduct from their federal adjusted gross income any distributions from retirement savings accounts to repair property damage due to flooding. The deduction would be applied to state income taxes.

Numerous local county sales tax, mortgage recording tax and real estate transfer tax extenders were approved during the special session. The extension of the authority for these county-level taxes was critical to 50 counties across the state.

Our year in review. NYSAR’s 2017 legislative priorities contained a lengthy roster of bills that REALTORS® supported or opposed. Of the bills receiving support, NY First Home was approved by both houses, while other matters such as co-op transparency and codification of real estate teams failed to advance.

On a positive note, NYSAR defeated numerous anti-real estate bills, which included: numerous new local mortgage recording and real estate transfer taxes; legislative imposition of a cease and desist zone in Queens; a measure that could revoke your real estate license if you use an incorrect term for a New York City neighborhood; expansion of DEC oversight of wetlands; and unnecessary changes to the state’s agriculture disclosure notice.

Visit the Government Affairs section of NYSAR.com for more information about NYSAR’s legislative priorities. ✨

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You may not think your investment matters, but my experience as a member of the NYSAR leadership team showed me the difference RPAC can make in the halls of government. When meeting political leaders face to face, I found they want to support the issues we care about, and they do so enthusiastically.

RPAC supports legislators based upon their positions relating to real estate and our profession. REALTORS® can stand tall knowing that RPAC invests in lawmakers who will actively defend private property rights and the preservation of a sound, dynamic real estate market.

In a world of squeaky wheels, we need the investments in RPAC to help our voices rise above the noise made by those who don't share our American Dream of homeownership.

RPAC is working right now on the following REALTOR® priorities:

The preservation of the Property Tax Deduction, the Mortgage Interest Deduction (MID) and the 1031 Like-Kind exchange benefit.

Enacting NY First Home, a first-time homebuyers savings account program here in New York.

Extending the National Flood Insurance Program (NFIP).

Mike Smith

NYSAR Past President

Howard Hanna Real Estate Services,
Geneseo, NY



New York State Association of REALTORS®, Inc.

RPAC Your Best Investment in Real Estate

For more information on RPAC: RPAC of New York | Facebook group www.NYSAR.com/government-affairs/rpac
Contact: Derick King, NYSAR's Political Affairs Coordinator | dking@nysar.com or 518-463-0300 x238

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WHO IS THE TYPICAL NEW YORK REALTOR®?

The typical New York State REALTOR® is a 54-year-old female homeowner, who is primarily a residential specialist with 11 years of experience, according to the *2017 Member Profile New York Report* produced by the National Association of REALTORS® for NYSAR.

THEIR INCOME



Agents typically had **11 transactions**.

\$30,000



The **median gross income** for REALTORS® was \$30,000.

\$85,900



REALTORS® with **16 years or more experience** earned a median gross income of \$85,900.

THEIR BUSINESS

16% of business came from **repeat clients** and

20% through **referrals from past clients**.

57% are **affiliated with an independent company**, and

87% are **independent contractors** with their firms.

69% said that real estate was **their only career**.

82% are certain they will remain **in the business for two more years**.

HOW THEY MARKET THEMSELVES

The **largest single expense category** in 2016 was business promotion expenses at

\$1,560



52 percent have had a website for at least five years,



17 percent have a real estate blog and

70 percent use social media.



To read the full report, including comparisons between New York REALTORS® and their counterparts across the nation, visit the Research page of NYSAR.com under Industry Resources.



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