OCTOBER 2018

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INLAND VALLEYS REALTOR

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A Photo Copyright Firestorm May Be on the Horizon. Are You Prepared?

FOR MORE INFORMATION GO TO PAGES 6-7





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Prop 5 Helps Housing Affordability, Prop 10 Undermines it



JOE CUSUMANO, 2018 IVAR PRESIDENT

This year's election is critical for homeownership in California – and voting has already begun. Please send in your vote by mail ballot today if possible.

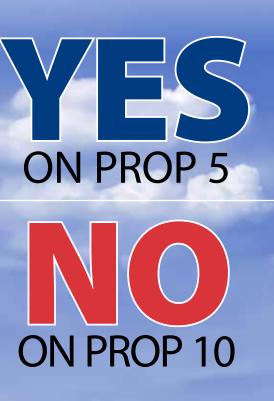
You can return your ballot by mail, drop it off at a polling place or at one of your county's ballot drop boxes or authorize someone to return it for you. You can look up voting instructions for Riverside County here: <u>https://www.voteinfo.net/</u>. For San Bernardino County, info is available here: <u>https://www. sbcountyelections.com/Home.aspx</u>.

Prop 5 and Prop 10 will have a huge impact on housing – and all of us – for years to come. That's why it's critical for REALTORS[®] to send in their ballots ASAP. Please read the article from Government Affairs Director Paul Herrera in this issue to learn more on these issues. For even more info on Prop 5, please visit <u>https://voteyesonprop5.com/</u>.

Voting is always important. However, this year, more than any in recent history, brings housing issues directly to the ballot box. Please make sure your voice is heard and help us get the word out to your friends, family, clients and colleagues.

If you have questions about either initiative, please contact prop5@car.org.

Please join us in voting YES on Prop 5 and NO on Prop 10. Together, we can make our voice heard and protect homeownership. Thank you!





GOVERNMENT AFFAIRS UPDATE



PAUL HERRERA, GOVERNMENT AFFAIRS DIRECTOR

Pant Hear



Election Day is November 6th and Housing is on the Ballot

The first Tuesday in November brings with it about a month worth of campaign noise in a democratic process that seems to take more of its tone from wild-haired fight promoters, professional wrestling and tabloids every year. However silly the campaign season might look, that doesn't mean voters aren't looking at important decisions on this ballot.

While the political world is breaking down further along lines of partisanship, IVAR's government affairs program is increasingly focused on building internally from a connection to issues of homeownership, property rights and the concerns of small business. As recent years have proven, these issues have no natural alliance in any party and may also be threatened from several sides.

This election day, we urge learn about the issues and candidates and cast the vote that best represents what you believe is the right path for our community, state and nation.

More than in any recent year, housing is directly on the ballot this year as California struggles to address a housing affordability crisis that is leaving more and more middle class families on the outside of ownership looking in. This month, we look at four housing related items on the ballot

Prop 5: Ending the Moving Tax Penalty

You may not know this from reading the convoluted ballot summary provided by state officials, but Prop 5 is a very simple initiative. The proposed constitutional amendment, which was developed, written and sponsored by REALTORS®, would allow seniors and disabled homeowners to carry their Prop 13 tax basis when they move anywhere in California if they purchase a home of equal or lesser value. If they purchase a more expensive home, they would add the difference in value to their current assessment and get partial benefit. It would also people who lose their home as a result of a disaster (such as fire or flood) to buy a new home and again maintain their current tax basis.

While opponents argue that the initiative will somehow devastate tax collections, the high end of the cost range amounts to approximately two tenths of one percent of the taxes collected in California. Other analysis shows virtually no cost once benefits of housing turnover are factored in. In any case, those who benefit will save tens of thousands of dollars in their lives; although analysis indicates they don't so much save money as get to live to the home they want. Without the tax change, they likely will not move anyway.

continued on page 5

Prop 10: Taking Guard Rails off Rent Control

Prop 10 proponents will argue that rent control, essentially government price setting on rental housing, is the way to address the California housing affordability crisis. The argument ignores the economic reality of housing – i.e., there isn't enough and the laws of supply and demand can't be repealed.

Prop 10 repeals a middle ground compact created to allow local lawmakers in California to adopt rent control laws in their community while erecting common sense limits to how far they could go. Specifically, they determined that rent control should not apply to newly planned private development (because the fix for affordability is to have enough homes in the first place) and that it should not apply to single family homes. In communities with rent control, it also allows rents to revert to market level when a unit is vacated by the tenant.

Prop 10 allows a more extreme version of rent control – one that lawmakers felt needed to be outlawed in order to put some basic sense into existing rent control laws in the few communities that enacted rent control. We urge you to vote no on Prop 10.

Prop 1: Rebuilding Funding for Affordable Housing

While the private sector is the best answer to building housing, some families need more help. Until the legislature eliminated local redevelopment agencies and scooped up their funding for the state budget during the financial crisis, California had a source of funds to help build subsidized housing.

The state has been depleting these funds without finding a new way of supporting new construction of subsidized housing for lower income families. Prop 1 creates a significant new source of funding through the issue of bonds. It doesn't close the gap that the elimination of redevelopment created. However, it does quite a bit of work to replenish the funds to keep new housing in the pipeline over the next few years. Prop 1 is endorsed by the California Association of REALTORS[®].

Paul Herrera is the Government Affairs Director for the Inland Valleys Association of REALTORS[®]. You can reach him at <u>pherrera@ivaor.com</u> or by phone at 951-500-1222.

Realtors[®] Recognize National Voter Registration Day

WASHINGTON (September 25, 2018) – With just six weeks remaining until the 2018 midterm election, today marks National Voter Registration Day in America. This morning, National Association of Realtors® President Elizabeth Mendenhall, a sixth-generation Realtor® from Columbia, Missouri and CEO of RE/MAX Boone Realty, called on America's 1.3 million Realtors® to ensure they are registered to vote this November.

"An astounding 74 percent of Realtors[®] cast a vote in the 2016 national election. While that number certainly outpaces that of the general population, it is critical that the voices of even more Realtors[®] and consumers who care about home ownership and real estate investment are heard this Election Day. Improving upon the 85 percent of Realtors[®] currently registered could add nearly 200,000 voters to rolls across the country, and would guarantee the issues that matter most to the real estate industry remain a priority for America's lawmakers.

On September 25, NAR is urging all of our members – and every eligible adult in America – to ensure they are registered to vote this November."

In accordance with National Voter Registration Day, NAR is contacting hundreds of thousands of its members directly through social media channels and text message subscriptions to remind people to register to vote. NAR is also encouraging members to visit <u>realtorparty.realtor/vote2018</u> to find information on registration and other important voter resources. Currently, 84.98 percent of Realtors® are registered to vote this November. That comes as 74.37% of NAR's members voted in the 2016 election, compared to the national average of 55.82%.



A Photo Copyright Firestorm May Be on the Horizon. Are You Prepared?

In September 2018, one California real estate photographer filed suit against Zillow, seeking damages of up to \$81.5 million. The suit centers on over 500 photos that appeared on Zillow websites without the plaintiff's permission. Per Andrea Brambila at Inman News, the photographer "registered images with the U.S. Copyright Office."

According to the plaintiff photographer, the license granted to listing agents who sought his services does not permit any unauthorized display. His complaint includes a sample photography agreement, which states that "[only] the photographer who is the sole registered copyright holder can grant any 3rd party use." Additionally, the license was limited in time to only the period that the property was "on the market" and for a period of time not to exceed one year.

People frequently ask me about this lawsuit. What does it mean for real estate agents and brokers? Does the MLS protect us? Is someone going to sue my office or MLS?

There are no quick and easy answers for these questions. Instead of offering platitudes or pressing a panic button, I will offer my perspective as Vice President and General Counsel for a multiple listing service. You may not need to panic, but you certainly need to inform and prepare yourself.

The MLS EULA and Rules

First, we need to understand the contract and rules you agree to as MLS users. To gain access to any MLS, you must agree to an End User License Agreement, or EULA. (You agree to these regularly – whenever you access software for the first time.) Every agent or broker agrees to these licensing terms of the MLS system before they can input any listing data, including photos.

Every MLS in the country has provisions in its EULA that require its users to have the rights necessary for the MLS to use the photographs they input into the MLS system. Here are those provisions in the California Regional MLS EULA:

A. YOU warrant to CRMLS that YOU own, have been assigned ownership, or have the legal authority based on the grant of a world-wide, perpetual, non-revocable, fully assignable and transferable license with the right to sub-license to submit to CRMLS any and all information, text, photographs, and other media that you submit to the MLS ("YOUR CONTRIBUTION").

B. If YOU i) are not the author or creator, or ii) do not own or have not been assigned all ownership rights or, iii) have not been granted a world-wide, perpetual, non-revocable,

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fully assignable and transferable license with the right to sublicense, to any or all of the information, text, photographs, and/or other media related to YOUR CONTRIBUTION, YOU should not submit YOUR CONTRIBUTION to the MLS.

In plain English: When a user agrees to an MLS EULA, they represent that they either own the photographs they upload or have a very broad license from the photographer. That license gives the listing agent the right not just to display the photos, but also all the following rights:

- 1) The right to send those photos to third-parties (the MLS).
- 2) The right for the Third Party (MLS) the right to also send the photo to whomever they want.
- 3) All rights are forever and never expire.

This language in the EULA is clear-cut and definitive. It does not "caution" or "recommend against" inputting media for which the user does not have the copyright or license; it forbids the practice.

Participants and subscribers also agree to similar language contained in the MLS Rules. Here are two sections of CRMLS Rule 11.5:

- (b) By submitting any media to the MLS, the Participant and Subscriber represent and warrant that they own the right to reproduce and display the media or they have procured such rights and all necessary licenses from appropriate parties.
- (c) The submitting Participant and Subscriber grants CRMLS an irrevocable, unrestricted, transferable, perpetual, royalty-free, non-exclusive license (with right to sublicense) to use, store, reproduce, compile, display and distribute the media as part of its compilation.

If this plaintiff photographer's clients input his photos into CRMLS and had only agreed to the license agreement the photographer provided, the listing agent would be violating the CRMLS EULA and Rule 11.5.

This photographer's license is limited and insufficient because it did not give the listing agent the rights to provide the photographs to the MLS (a third-party), and because it failed to provide the MLS the right to further transfer that photo to others (i.e., IDX websites and syndicators). The license was also limited in time – not perpetual as required by the MLS, since the license terminated when the property was no longer "on the market".

How Photography Contracts Can Cause Compliance Issues

Before you make an agreement with a photographer or any other media producer, it is important to understand the rules and compliance regulations of your MLS. The best-case scenario when you fail to follow the rules is an MLS violation, possibly leading to a substantial fine. In worse cases, you might face MLS suspension, ethics violations, or even a lawsuit. Remember: it is your responsibility to ensure that you have adequate rights to photos and other media that you submit to the MLS.

There are two areas with which you should be particularly concerned:

Copyright. Do you own or have an all-encompassing license to the media? Here is a freebie: if you screen shot it from Google Street View, you do not! If the photographer you are working with does not grant you ownership or a license with all of the requirements per the MLS EULA and Rules, then do not submit that photo to the MLS.

Perpetual license. This falls under copyright, but it is important enough to warrant its own point. According to the plaintiff's complaint, he granted his clients only a license for as long as the property was on the market, and further limited to no longer than a year. This, too, would violate CRMLS rules, as media licenses must be perpetual. The photos need to remain in the MLS after the sale so that agents and appraisers can use the photos in preparing opinions of value in CMAs and appraisals. The photos are still important to the MLS community long after the property has sold.

Best Practices for Agents and Brokers

The lawsuit against Zillow has justifiably turned heads in our industry and shined a bright light onto this issue. Agents and brokers can take away a few best practices to help avoid legal consequences:

- Use the CAR Property Images Agreement (PIA) form. This newer form from CAR has the necessary terms and license rights to place the photos or other media into the MLS. Alternatively, agents can use a form created by their brokerage firm's lawyer that contains all the necessary licenses. Agents should not be signing a license or agreement presented to them by a photographer. To date, I have never seen a photographer-created license agreement that complies with the CRMLS EULA and Rules.
- Learn your MLS's rules for copyrighted media. The MLS rules are published online at CRMLS.org Become familiar with the specific wording of the rules you will need to follow them exactly.
- Only submit compliant media to the MLS. If you found the image online, took it from anyone or anywhere without permission, or lack confidence in its copyright status, do not submit it to the MLS!

Read everything before you sign it, or better yet, make your photographer sign your agreement. If they won't sign your agreement, get a different photographer. Make sure you know the rules. Above all else, proceed with common sense. Follow these simple steps, and you have a much better chance at protecting yourself and others from legal liability.



The two new laws, although touching many sections of the Civil Code and Business and Professions Code, are "clean-up" legislation clarifying and modernizing many of the definitions in the Real Estate law overall.

The primary practical impact for REALTORS[®] will be in the agency disclosure and confirmation process.

Currently, the Listing Agent (the seller's agent) is required to provide an agency disclosure to the seller when taking a listing, and the Selling Agent (the buyer's agent usually) is required to give an agency disclosure to the buyer when writing the offer and an agency disclosure to the seller when the offer is presented. Although this process may have made a good deal of sense in 1986 when the law was first enacted it is one of the most common areas of confusion for real estate agents and their clients, and generates many calls to the Legal Hot Line.

Beginning January 1, 2019, the agency process will be simplified:

- 1. The Seller's Agent (formerly the Listing Agent) will be required to give an agency disclosure to the seller when taking a listing.
- 2. The Buyer's Agent (formerly the Selling Agent) will be required to give an agency disclosure to the buyer when writing an offer. The "3rd agency" from the Buyer's Agent to the seller will no longer be required.
- 3. The agency confirmation language in the purchase contracts will be modified to reflect the change in the nomenclature and to clarify that the brokerage may use the services of both salespersons and broker associates, and to provide room for the new requirement that all of the brokers and agents must be identified, along with their DRE license numbers.

The C.A.R. standard forms will be modified for December release to reflect the new statutory requirements.

TDS and Revocable Trusts. Most sellers of residential real property are required to complete a real estate transfer disclosure statement (TDS). Exemptions from the TDS requirement include court ordered sales, fiduciaries in the administration of estates and trusts, and REO sales. One of the most confusing exemptions has been for trustees. Trustees of trusts are exempt from providing a TDS, except it they are a natural person who is the "sole trustee" of a revocable trust who is the former owner of the property or who has occupied the property within the preceding year. The rationale being that this person is really the "owner" of the property and knows as much about the property as any other owner would know and should therefore complete a TDS.

Revocable trusts are a very common form of ownership for couples and usually both parties of the couple are trustees of the trust. Many callers to the C.A.R. Legal Hotline were confused about this carve out from the TDS requirement. Why are a couple who both live in the property and are both trustees of the revocable trust exempt from giving a TDS when a sole trustee is not?

In a very welcome cleanup, AB 1289 modifies Civil Code section 1102.2 by removing the word "sole". Effective January 1, 2019, section 1102.2 (d) will read "This exemption [the TDS exemption] shall not apply to a sale if the trustee is a natural person who is a trustee of a revocable trust and he or she is a former owner of the property or was an occupant in possession of the property within the preceding year."

Realtors[®] View Technology as Increasingly Valuable for Business, Competition

HOME CONTROL

WASHINGTON (September 18, 2018) — As technology continues to transform and modernize the real estate industry, Realtors[®], members of the National Association of Realtors[®], are focused on adapting to and remaining at the forefront of this change. Last month, NAR kicked-off the inaugural <u>Innovation, Opportunity & Investment</u> <u>Summit</u> in San Francisco, where Realtors[®] joined real estate technology companies and the investment community to discuss evolutions in real estate technology and strategies for Realtors[®] to keep up with these trends.

"During the iOi Summit, Realtors[®] collaborated with leading technology firms to identify Realtor[®]-friendly technology tools and resources. The summit is a part of an ongoing process of creating a dynamic, competitive real estate market that will help NAR advance our members-first mission for years to come," said NAR CEO Bob Goldberg.

Following the iOi Summit, NAR developed a survey focused on Realtors[®] day-to-day use of technology and analyzed ways technology continues to change how Realtors[®] and real estate businesses operate. According to the <u>2018 REALTOR[®]</u> <u>Technology Survey</u>, Realtors[®] have spent countless hours and millions of dollars advancing real estate technologies and keeping up with the latest trends in order to further their business.

"The iOi Summit and the Realtor" Technology Survey are both initiatives that help us better understand Realtors" use of technology, embrace change and identify the business technology tools of the future. Both are part of my vision as CEO, advocating for technologies that are Realtor"-centric and ensure a competitive market for consumers throughout the real estate transaction," said Goldberg.

According to the survey, Realtors[®] continue to find the most value in current technology tools that increase efficiency and enhance remote work capabilities. The three most valuable technology tools Realtors[®] used in their businesses, excluding email and cell phones, were local MLS websites/apps (64 percent), lockbox/smart key devices (39 percent), and social media platforms (28 percent).

As the real estate market becomes more dynamic and competitive with advances like smart technology, Realtors[®] are becoming more familiar with smart home and Internet connected devices.

Realtors[®] always stay in touch with the latest trends buyers want in their homes. The survey found that Realtors[®] are most familiar with security devices (19 percent), home-connected wearable devices (12 percent), and home comfort devices (12 percent).

While the majority of agents are satisfied with the technology tools provided by their broker, they do want some additional tools. When asked what additional technology tools Realtors[®] would like to see their broker provide in the future, respondents most wanted to see predictive analytics (36 percent), CRM tools (35 percent), and transaction management software (25 percent).

According to the survey, 41 percent of Realtors[®] were somewhat satisfied with MLS-provided technology and nearly 29 percent were extremely satisfied with their MLS's technology offerings. Only two percent of respondents do not use any of the technology tools or services that their MLS offers.

The tech tools that have given respondents or their agents the highest number of quality business leads in the last year were social media (47 percent), their MLS site (32 percent), their brokerage's website (29 percent), and listing aggregator sites (29 percent).

The 2018 Realtor[®] Technology Survey was based on data collected in March 2018. The survey was e-mailed to NAR members, including Realtor[®] brokers, managers and agents, and generated 2,525 usable responses. The survey is available at <u>https://www.nar.realtor/reports/realtor-technology-survey</u>.



Housing Data Report September 2018

The Voice of Real Estate in the Inland Empire^s™



A report brought to you by the Inland Valleys Association of REALTORS® (IVAR) www.ivaor.com

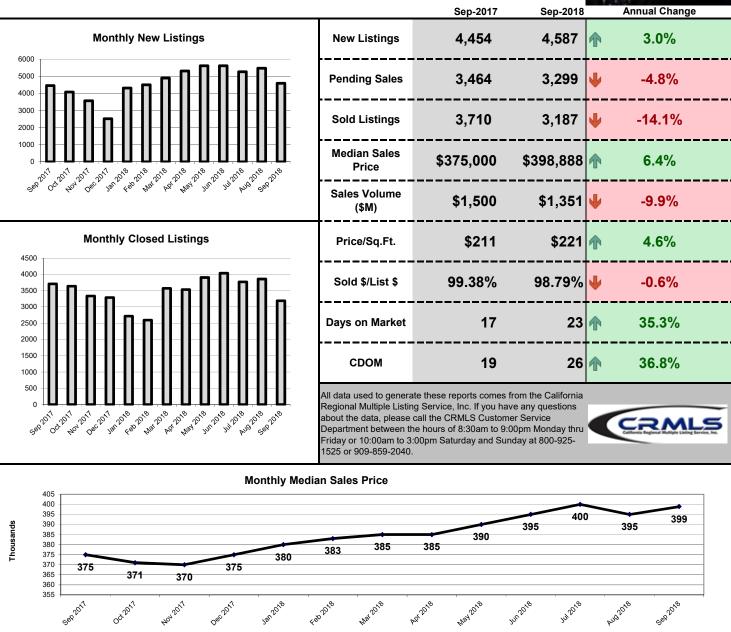
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Mark Dowling, Chief Executive Officer

- The housing data for the first ³⁄₄ quarters of 2018 reflects a mostly positive but tightening real estate market. When comparing year-over-year 2018 data to 2017 housing data, New Listings are up (3.8%), however Sold Listings are down 7.9%. As increased New Listings convert to Sold Listings, the 7.9% Sold Listings percentage should decrease over the next several months. However, the issue of demand is beginning to show signs of decreasing. Additionally, the Median Sales Price is up 6.8% year-over-year.
- The recent decrease in demand for the month of September caused the "Combined Days on Market" to increase to 26 days, which is nearly a 37% increase.
- Median Sales price was generally flat the last six months of 2017, and again Median Sales the last price three months has remained steady at approximately \$398,000.

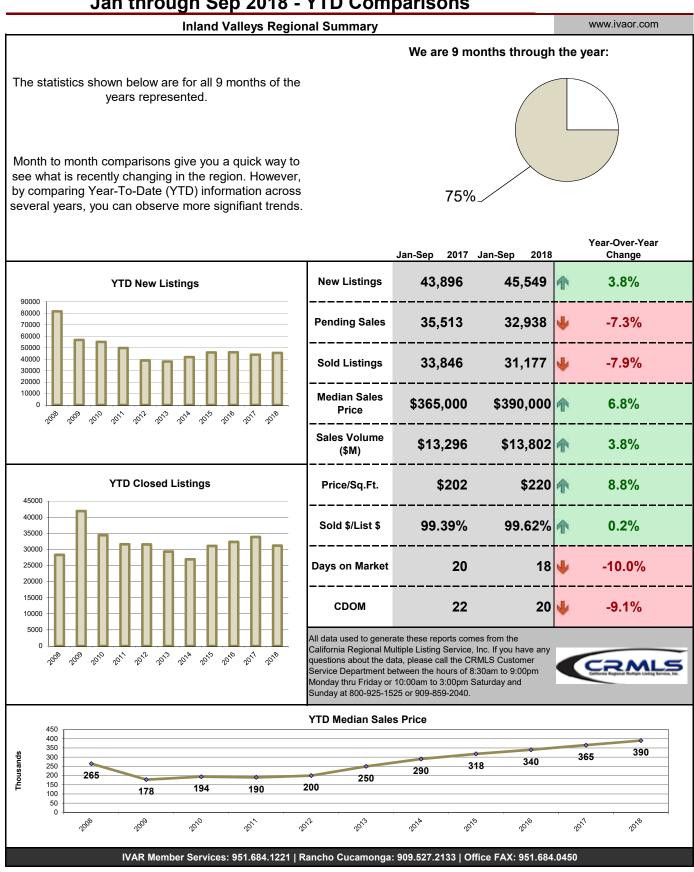




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Jan through Sep 2018 - YTD Comparisons





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Sep 2018 City Overview As a service and convenience to our members, IVAR is pleased to offer several "Quick Look" reports. This is one more way for IVAR members to stay informed with minimal effort.

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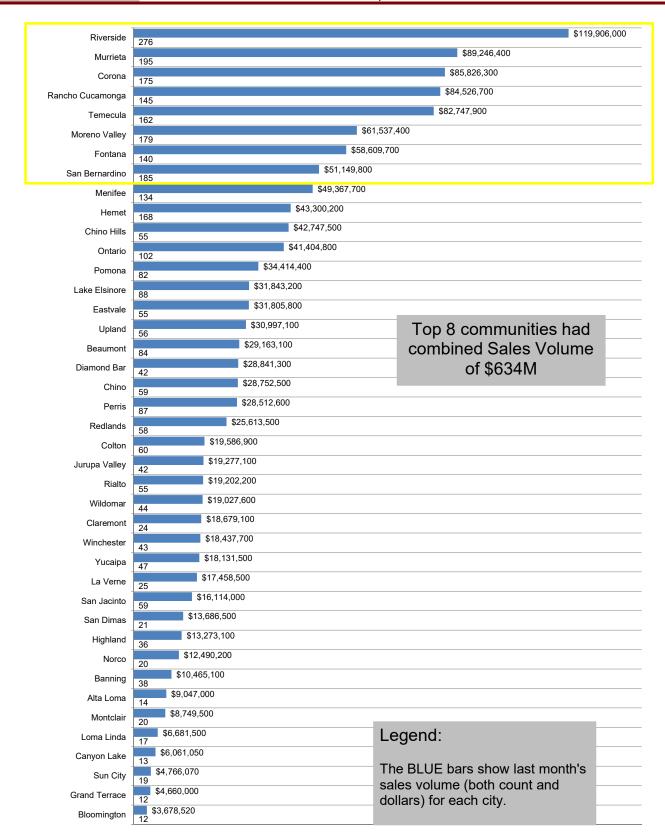
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Sep 2018 - Sales Volume per City

As a service and convenience to our members, IVAR is pleased to offer several "Quick Look" reports. This is one more way for IVAR members to stay informed with minimal effort.

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SEPTEMBER 2018 REGION REPORT INLAND VALLEYS



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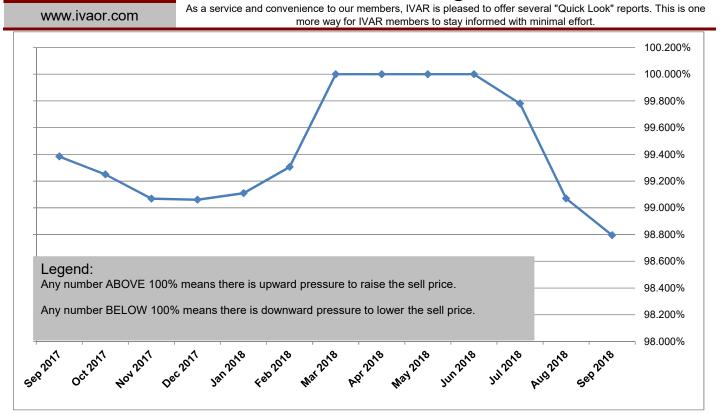
Sep 2018 - Top Communities with New Listings (year-over-year)

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-80%	-60%	-40%	-20%	0%	20%	40%	60%	80%	100%		
Eastvale	93										
Jurupa Valley	62										
Yucaipa	75										
Redlands	96										
Riverside	451										
Corona	299										
Menifee	192										
Montclair	30										
Beaumon	91										
Rialto	85										
Chino Hills	104				I						
Murrieta	271					Legend:					
Temecula	243										
Sun City	35					The column of numbers on the left is the # of new					
Perris	124					listings in e					
Banning	68					month.					
Highland	62										
San Jacinto	94					The bars s	The bars show the annual				
Ontario	145					percent cha					
Heme	231					same mon					
Upland	89										
Moreno Valley	219										
Wildomai	56										
San Dimas	33										
La Verne	29										
Lake Elsinore	128										
Fontana	207										
Coltor	49										
San Bernardino	237										
Diamond Ba	70										
Chino	80										
Pomona	106										
Rancho Cucamonga	-										
Alta Loma	-										
Winchester											
Norco											
Claremon	_										
Loma Linda	-										
Canyon Lake	-										
Bloomington											
Grand Terrace											



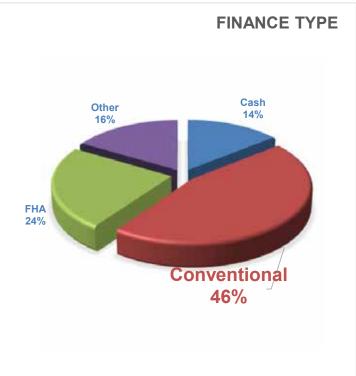
Sell Price vs Original List Price



This report is brought to you by IVAR:

As a service to the more than 4 million residents of the Inland Empire, the Inland Valleys Association of **Realtors**® is proud to distribute this data report on the housing market in the 50 communities served by our Realtor Members.

The core purpose of IVAR is to help its members become more professional and profitable, while promoting and protecting real property rights.



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