

2007

New Laws Passed By the California Legislature Affecting REALTORS®

Common Interest Developments and Homeowners' Associations

<p>AB 2100* HOA Disclosures</p>	<p>This new law amends the Davis-Stirling Act to require additional reporting on reserves for a common interest development, and to extend disclosures for self-dealing by homeowner associations (HOAs). Specifically, this law requires (1) the pro-forma operating budget to include any deficiency in reserve funding on a per unit basis; (2) a statement of the HOA when the HOA defers or decides not to repair/replace major components; (3) a statement of any outstanding loans by the HOA; (4) a reserve funding plan indicating how the HOA will fund any deficiencies in reserve funding; (5) distribution of the reserve funding plan to all members.</p> <p>Furthermore, this law slightly revises the disclosure form regarding assessments and reserve funding. Finally, this bill also provides that certain disclosures and voting rules be followed when a HOA is dealing with contracts between the HOA and a board member (or an entity controlled by board member or an entity in which a board member has material financial interest), regardless of whether the HOA is a corporation. (Formerly, these rules for disclosures and voting only applied to HOAs which were corporations).</p> <p>The provisions of this new law become effective January 1, 2007, except for the distribution of the reserve funding plan, which becomes effective January 1, 2009.</p>
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Environmental Hazards/Issues

<p>AB 2861* Lead- Based Paint Violations</p>	<p>This new law increases the penalty for repeat violations of lead-based paint hazard laws. Specifically, any violation after the first would become a misdemeanor with a fine of up to \$5,000 and/or six months imprisonment.</p> <p>Under current law, local enforcement agencies can issue a cease and desist order to the owner when there is a lead hazard created by an "activity" at the premises. A violation of this order is an infraction which is punishable by a fine of up to \$1,000. Under the new law, the second or any subsequent violation would be a misdemeanor which is punishable by a fine not to exceed \$5,000, or by imprisonment in county jail for up to six (6) months, or both.</p> <p>This law which amends California Health & Safety Code § 105256 becomes effective on January 1, 2007.</p>
<p>SB 841* Firebreaks for State Responsibility Areas</p>	<p>Existing law requires a person that owns, leases, controls, operates, or maintains any building or structure in, upon, or adjoining any mountainous area or forest-covered lands, brush lands, or grass-covered lands, or any land that is covered with flammable material, to maintain around and adjacent to the building or structure a firebreak of at least 30 feet.</p> <p>This new law, which is applicable to state responsibility area lands under the authority of the Department of Forestry and Fire Protection, authorizes a state or local fire official, at his</p>

	<p>or her discretion, to permit an owner of property to construct a firebreak or implement appropriate vegetation management techniques, to ensure that defensible space is adequate for the protection of a hospital, adult residential care facility, school, aboveground storage tank, hazardous materials facility, or similar facility on the property. This law authorizes the firebreak to be for a radius of up to 300 feet from the facility, or to the property line, whichever distance is shorter.</p> <p>This law, which goes into effect January 1, 2007, adds Section 4291.3 to the Public Resources Code.</p>
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Landlord/Tenant

<p>AB 1169*</p> <p>60-Day Notice to Terminate Lease</p>	<p>This law reestablishes the sixty (60) day notice which is required by landlords to give to residential tenants on periodic leases (e.g., month-to-month lease) when the tenants have been living in the property for at least one year. This law maintains the exception of a thirty (30) day notice for certain qualifying properties for sale.</p> <p>Currently, the law requires thirty (30) days notice for the landlord or the tenant to terminate a month-to-month tenancy. Under the new law, for residential leases the landlord will be required to provide sixty (60) days notice to terminate any periodic leases, such as a month-to-month rental, if all tenants and residents have been in the property for at least one year. In cases where any tenant or resident has been residing in the property for less than one year, then thirty (30) days notice is sufficient.</p> <p>Additionally, thirty (30) days notice can be given when <u>all</u> of the following conditions have been met:</p> <ul style="list-style-type: none"> (1) the dwelling is a separately alienable unit (e.g. condo, single family residence, townhouse; but not a duplex, triplex or other multi-unit property); (2) the owner of the unit is being sold to a bonafide purchaser for value; (3) escrow has been established with a licensed escrow agent or licensed real estate broker; (4) the buyer is a natural person (or persons); (5) notice is given within 120 days after escrow is opened; (6) notice was not previously given to the tenant; and (7) the buyer intends to live in the property for at least one full year. <p>This law adds California Civil Code § 1946.1 which becomes effective on January 1, 2007, and is set to sunset on January 1, 2010 unless extended by the California Legislature.</p>
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Licensing

<p>AB 790*</p> <p>Falsely Claiming to be a REALTOR®</p>	<p>This new law strengthens prohibitions against real estate agents from falsely claiming membership in trade organizations or falsely claiming to have special designations or certifications. Generally, this law prohibits knowingly authorizing, directing, conniving at or aiding in the publication, advertisement or distribution of any material false statement or representation concerning a designation or a certification, including trade organization membership. The Real Estate Commissioner is authorized to suspend or revoke a real estate license for this violation.</p>
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	<p>Currently, the law provides that willful misuse of trade names, including “realtor”, are subject to discipline by the Real Estate Commissioner by revoking, suspending or denying a license. The new law strengthens the law on what is prohibited. The Commissioner may revoke, suspend or deny a license if anyone KNOWINGLY:</p> <p>(1) authorized; (2) directed; (3) connived at; OR (4) aided in</p> <p>the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her:</p> <p>(A) designation or certification of special education; (B) credential; OR (C) trade organization membership.</p> <p>This law amends California Business & Professions Code § 10177.</p> <p>The provisions of this new law become effective on January 1, 2007.</p>
<p>AB 2429*</p> <p>Changes to Real Estate Licensing Requirements</p>	<p>This statute increases the minimum requirements for a salesperson to obtain a real estate license. Generally, conditional salesperson licenses will no longer be available for new licensees. A salesperson must take a minimum of three real estate classes before obtaining a real estate license, but the exemptions for attorneys and others qualified to take the broker exam remain in effect.</p> <p>Currently, the law allows two methods for obtaining a real estate salesperson license. The first requires the applicant to take three real estate classes and then pass the salesperson exam to receive a four year license. The second allows the applicant to take one real estate class, and then pass the salesperson exam to receive a “conditional” license which is valid for 18 months. During that time period, the conditional licensee must finish the additional two real estate classes. The new law removes the option for a conditional license for all applications starting October 1, 2007.</p> <p>The exception for attorneys and others qualified to take the broker exam will still apply.</p> <p>This law amends California Business & Professions Code §§ 10151, 10153.3, 10153.4, and 10153.5 and repeals California Business & Professions Code § 10153.9.</p> <p>The provisions of this new law do not take effect until October 1, 2007.</p>

Loan Issues

<p>SB 1609*</p> <p>Reverse Mortgages</p>	<p>This new law provides protection to consumers who obtain reverse mortgages. This law prohibits certain self-serving dealing activities by companies providing reverse mortgages, requires certain additional disclosures for reverse mortgages, and also requires a translation of the contract for a reverse mortgage to the language in which primarily negotiated.</p> <p>This law requires lenders and mortgage broker to perform certain acts, and also prohibits certain practices when selling reverse mortgages:</p> <p>(1) PROHIBITS requiring the purchase of an annuity as condition for the reverse mortgage;</p> <p>(2) PROHIBITS offering an annuity or referring the borrower to another for an annuity prior to</p>
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	<p>loan closing or before the end of buyer's right to rescind;</p> <p>(3) REQUIRES referring the borrower to housing counseling agency;</p> <p>(4) PROHIBITS accepting a full application for a reverse mortgage before the borrower receives housing counseling;</p> <p>(5) MODIFIES the disclosure notice;</p> <p>(6) REQUIRES the lender to provide a list of independent loan counselors;</p> <p>(7) REQUIRES the contract to be translated into Spanish, Chinese, Tagalog, Vietnamese, or Korean if the reverse mortgage is primarily negotiated in that language.</p> <p>The provisions of this new law become effective on January 1, 2007.</p>
<p>AB 2602*</p> <p>Trust Fund Interest on Loans</p>	<p>This new law determines who is entitled to the benefits when a real estate broker collects trust fund money related to a loan and puts that money into a bank or similar financial institution.</p> <p>Currently, the law has a provision which indicates that when a real estate broker receives trust fund money related to a loan and puts that money into a non-interest bearing account of a bank or similar financial institution, then the broker is entitled to the benefits from having the funds at that institution.</p> <p>The new law does the following:</p> <p>(1) defines "financial institution" for the purposes of the current law; and</p> <p>(2) provides that the broker can receive the benefits (including financial benefits) when putting such trust funds into an <u>interest-bearing</u> account, if the lender has authorized this in writing.</p> <p>However, the second provision of this law applies <u>only to loans on commercial properties</u> (other than residential 1-4 unit properties) when the lender is an "institutional investor" under California Financial Code § 50003.</p> <p>This law which amends California Financial Code § 854.1 and adds California Financial Code § 854.2 becomes effective on January 1, 2007.</p>

Miscellaneous

<p>AB 2618*</p> <p>Small Claims Court</p>	<p>This new law is essentially clean-up legislation which increases the jurisdictional limit in small claims court to \$7,500 on certain issues which were left unchanged when general limits increased from \$5,000 to \$7,500. This law conforms the jurisdictional limits of a number of actions in small claims court, including some common interest development actions, and landlord-tenant claims.</p> <p>The areas where small claims court jurisdiction was previously limited to \$5,000 and was increased to \$7,500 are the following:</p> <p>(1) specified acts of discrimination, including boycotting, blacklisting, violence, and the threat of violence;</p>
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	<p>(2) specified enforcement actions relating to common interest developments for declaratory, injunctive or writ relief in conjunction with monetary damages;</p> <p>(3) specified actions in landlord-tenant law;</p> <p>(4) a claim or counterclaim in a class action lawsuit;</p> <p>(5) complaints to the PUC (Public Utilities Commission) through its website;</p> <p>(6) complaints to the PUC against any electrical, gas, water, heat or telephone company;</p> <p>(7) specified juvenile law claims against a minor, or a minor's parents.</p> <p>This new law become effective on January 1, 2007.</p>
<p>SB 1613*</p> <p>Restrictions on Cellular Telephone Usage in Motor Vehicles</p>	<p>This new state law imposes a prohibition on the use of a cellular phone when driving a motor vehicle unless the phone is designed and configured to allow hands-free listening and talking, and used in that manner. A number of exceptions to this prohibition include:</p> <p>(1) contacting a law enforcement agency of public safety entity for EMERGENCY PURPOSES;</p> <p>(2) calls by an EMERGENCY SERVICES PROFESSIONAL in an authorized emergency vehicle; and</p> <p>(3) certain digital two-way radios when driving a commercial vehicle until July 1, 2011.</p> <p>The fine for a first offense is \$20 and for any subsequent offense is \$50. Any infraction is not be considered a violation point for DMV purposes (i.e., won't impact auto insurance).</p> <p>This law which adds California Vehicle Code §§ 12810.3 and 23123 becomes effective on July 1, 2008.</p>
<p>AB 2977*</p> <p>Pool & Spa Safety</p>	<p>This new law extends the safety requirements for construction of new pools (or remodeling of existing pools) to spas. Furthermore, this law changes what is acceptable for the safety features. This law also adds a new disclosure requirement to be given to consumers by contractors/builders when obtaining a permit to work on a pool or spa.</p> <p>Currently, the law requires certain safety features whenever a building permit is issued for construction of a new swimming pool at a private, single-family house. Such pools must have one of the following five features:</p> <p>(1) a pool enclosure;</p> <p>(2) a safety pool cover;</p> <p>(3) exit alarms on doors providing direct access to the pool;</p> <p>(4) self-closing, self-latching device with a release mechanism on doors providing direct access to the pool; OR</p> <p>(5) other means of protection, if the degree of protection is equal or greater than any of the four previously specified devices.</p> <p>Under the new law, this safety feature provision would be applicable to construction of a new pool or spa, or remodeling to a pool or spa (when a permit is required). For spas, items (1) and (2) must have a locking feature. Furthermore, two additional safety measures are allowed:</p> <p>(6) removable mesh fencing meeting standards of the American Society for Testing and Materials (ASTM); OR</p> <p>(7) swimming pool alarms meeting ASTM standards.</p>

	<p>Furthermore, this law would require that the building inspector ensure that the standards are met and that the safety feature is working correctly before approving the permit.</p> <p>In addition, the consumer notice currently given when constructing new pools will be required for new spas, and work on pools or spas requiring a permit. Finally, this law also updates the backup safety systems (e.g., suction outlets are to have anti-entrapment covers), and requires the Building and Standards Commission to update the building code for swimming pools and spas by January 1, 2010.</p> <p>This law which amends California Health & Safety Code §§ 115922, 115924 and 115928 becomes effective on January 1, 2007.</p>
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Subdivisions/Developments

<p>SB 1052*</p> <p>Subdivision Appeal Process</p>	<p>Currently, the Subdivision Map Act authorizes either the developer or any tenant in the property to appeal decisions or actions by an advisory agency relating to a tentative map on subdivisions that are conversions. Such appeals must be filed within ten days of any decision, and is then heard by either the appeals board or the legislative body (if there is no appeals board) within thirty (30) days. Under the new law, if the legislative body does not have a regularly scheduled meeting within thirty (30) days, then the appeal can be heard at the next regular meeting after the notice of the appeal, so long as such period does not exceed sixty (60) days. Furthermore, the new law restates that each decision made by the legislative body under this section of the law must be supported by consistent findings of fact.</p> <p>This law amends California Government Code § 66452.5. This new law becomes effective on January 1, 2007.</p>
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<p>AB 782*</p> <p>"Blight" Defined for Redevelopment Purposes</p>	<p>This new law changes the criteria for "blight" for redevelopment purposes. This law removes one of the criteria as sufficient for blight by itself – the condition that the land is characterized by subdivided lots of irregular form and shape, and inadequate size for proper usefulness and development.</p> <p>Currently, the law defines "blight" and "predominantly urbanized" for the purposes of redevelopment. Under those definitions, redevelopment agencies are empowered to reduce the effect of blight. Under existing law, four physical factors and five economic factors of blight are laid out. The four physical factors are:</p> <ul style="list-style-type: none"> (1) buildings where living or working would be UNSAFE OR UNHEALTHY; (2) factors that prevent or substantially hinder the ECONOMICALLY VIABLE USE or capacity of buildings or lots; (3) adjacent or nearby uses which are INCOMPATIBLE with each other and prevent economic development; and (4) lots of IRREGULAR FORM and SHAPE, and INADEQUATE SIZE for proper usefulness and development. <p>Under current law, "blight" was a combination of at least one of the four physical factors and at least one of the five economic factors. In addition, the fourth physical factor was sufficient by itself for "blight".</p> <p>This last basis for "blight" has been removed under the new law. Furthermore, this same physical factor is no longer a criterion for "predominantly urbanized".</p>
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	This law which amends California Health & Safety Code §§ 33030 and 33320.1 becomes effective on January 1, 2007.
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Tax Issues

<p>SB 1607*</p> <p>Property Tax Reassessment Exemptions</p>	<p>This new law clarifies certain exemptions from property tax reassessments. Most importantly, it clarifies that the exemption for transfers between grandparents and their grandchildren will be liberally construed. This law also clarifies the “welfare exemption” and the “veterans’ organization exemption” and makes a minor change for applications for the exemption for property owned by local governments.</p> <p>Currently, the law has an exclusion from reassessment for transfers between a parent and a child (Proposition 58), and also between a grandparent and a grandchild (Proposition 193). The former was previously given a liberal interpretation, and this law gives the same liberal interpretation to the latter (i.e. transfers between a grandparent (GP) and a grandchild). Specifically, the following transactions, among others, have been deemed to be exempt:</p> <p>(1) a transfer from a legal entity wholly owned by the transferor to himself, and then to the transferee (e.g. a transfer from GP’s corporation to GP to GP’s grandchild);</p> <p>(2) a transfer from a transferor to the transferee, and then to the transferee’s legal entity wholly owned by the transferee.</p> <p>A legal entity for the above purposes includes corporations, partnerships, trusts, and other legal entities.</p> <p>This new law which amends California Revenue and Taxation Code §§ 214, 214.8, 254.4, 254.6 and 1840 becomes effective on January 1, 2007.</p>
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<p>AB 2962*</p> <p>California Withholding Tax Alternative Upon Transfer</p>	<p>This new law provides an alternative to the current California withholding tax requirement upon transfer of real property of paying three and one-third percent of the sales price on real estate on non-exempt transactions. Under this law, if withholding is required, the seller can opt to pay the top-tier (under corporate or individual state tax laws) on any recognized gain on the sale of the real property.</p> <p>Currently, the law requires the payment of three and one-third percent (3 1/3%) as withholding on the transfers of real estate on properties which do not qualify for an exemption. Some of the more common exemptions, among others provided in the statute, are:</p> <p>(1) sale of a PRINCIPAL RESIDENCE; (2) sale as part of a 1031 EXCHANGE; (3) LOSS on the sale of property; (4) sales price of \$100,000 OR LESS; (5) a CORPORATION with a permanent place of business in CALIFORNIA.</p> <p>Under the new law, if the transferor is not exempt from withholding at the time of the sale/transfer, the transferor can opt to withhold the maximum tax rate (under either individual tax rates or corporation tax rates) on the actual gain on the transferred property instead of the three and one-third percent. Such withholding would be done under penalty of perjury which would be subject to the penalty of the greater of (i) \$500 or (ii) 10% of amount required to be withheld, in addition to the withholding plus any interest, fees and other penalties.</p> <p>This law amends California Revenue & Taxation Code §§ 18662 and 18668 and goes into effect on January 1, 2007.</p>
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Time Shares

<p>AB 3020*</p> <p>Time Shares</p>	<p>This new law increases the disclosures required on the sale or lease of time-share interests, as well as providing other safeguards in the sale or lease of these interests. Specifically, the new provisions require more stringent certifications on proposed time-share budgets including the right of the Real Estate Commission to review such budgets, and specify certain reserve requirements related to unsold inventory by the developer, and allow an association greater powers to collect delinquent assessments in a time-share facility.</p> <p>Currently, the law requires time-share developers and exchange companies to disclose certain information to purchasers and prospective purchasers of time-share plans and exchange programs. Specified time-share plans offered for sale in California, or created and existing in California must also pay certain fees, register, and provide certain notices and disclosures for all oral and written communication. These time-share plans require a public report by the Real Estate Commissioner.</p> <p>Under the new law, anyone offering to sell or lease must make certain information available prior to signing any contract, and must provide a copy of that information prior to any transfer of interest. This information includes:</p> <ul style="list-style-type: none"> (1) the CCRs for the time-share plan; (2) the articles of incorporation (or association) of the time-share association (TSA); (3) bylaws of the TSA; (4) other rights and responsibility for owners; AND (5) the current budget and financial statement for the time-share plan. <p>This law also specifies:</p> <ul style="list-style-type: none"> (1) when regular and special assessments become delinquent; (2) the costs that may be charged when delinquent; AND (3) how notices are to be provided for increases in regular and special assessments. <p>Furthermore, this law would require that the developer certify the budget in a specified manner to the Real Estate Commissioner in order to comply with the law, and that certification of these budgets would be limited to certain qualified persons. Finally, this bill also tighten procedures for the developer to provide assurances (written contracts that obligate the developer to pay shortfalls for operating expenses when inventory remains unsold) for the time-share development.</p> <p>This law amends California Business & Professions Code §§ 11211.5, 11226, 11238, 11240, 11241, 11242, 11267 and 11275, and adds California Business & Professions Code §§ 11216.1, 11242.1 and 11265.1.</p> <p>Most of the provisions of this new law become effective on January 1, 2007, but the provisions relating to delinquent regular and special assessments of a time share became effective immediately on September 22, 2006</p>
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