



Courtside *Newsletter*

New Laws for the New Year

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Get ready to ring in the New Year with family, friends, and a good amount of new laws! Outlined below are some of the most important new laws for real estate professionals to keep in mind for the New Year.

Record Retention (Business and Professions Code § 10148, Civil Code § 1624)

As many brokers are aware, all documents executed or obtained in connection with any transaction for which a real estate broker license is required must be retained for three years. Assembly Bill 2136, sponsored by the California Association of REALTORS® (C.A.R.), clarified which records need to be retained. Messages of an “ephemeral nature” are excluded from the record retention requirement. “Ephemeral” refers to any messages, such as text messages, instant messages, and tweets that are not designed to create a permanent record. Messages such as these, which are not designed to be retained, are excluded from the record requirement. An exception occurs if a text or instant message was intended to create or be the representation or memorialization of a contract. If this is the case, the text, instant message, tweet, etc., would need to be retained as part of a transaction file.

Remind agents to use email and memorialize text messages, phone calls, and conversations in writing, regarding disclosures, counter offers, or anything relating to the contract. You don’t want

to enter a dispute unprepared against a client who has kept all the text messages. Manage client expectations and limit text messages to basic notifications. Save the use of text messaging for updates such as, “on my way!” or “here is the address.”

HOA’s Mandated Common Interest Development (CID) Disclosures (Civil Code §§ 4528 & 4530)

Current law requires delivery of various common interest development (CID) disclosure documents, also known as mandated CID disclosures. These disclosures include the CC&Rs, Bylaws, Operating Rules, rental and age restrictions, budget reports, regular and special assessments, etc. Prior to January 1, 2015, those disclosures were able to be bundled and sold as a package of documents together with the legally mandated disclosures. Beginning January 1, 2015, the fees for these mandated CID disclosures must be individually itemized for each document, separately stated, and separately billed from all other fees, fines, or assessments, and only the mandated disclosures may appear on the statutory form.

- Once a written request for the mandated CID disclosures is made, the HOA must estimate the cost of the mandated CID disclosures prior to processing the request. Where there is no hard copy delivery of documents, the HOA may not charge an additional fee for electronic delivery in lieu of the hard copy. If the deal falls through, the

HOA must refund all the money if they have not started any work, and can do a partial refund if work has partially been done.

- This law would also require a seller to provide a prospective purchaser with all mandated CID documents that the seller possesses, free of charge. If a seller confirms in writing that the document is a current document then the HOA may not bill for it. The HOA may collect a reasonable fee based on its actual cost for the procurement, preparation, reproduction, and delivery of the documents, but only from the seller. It is the responsibility of the seller to pay the HOA, person, or entity that provides the mandated CID disclosures.
- As a result of this law, C.A.R. will modify its standard purchase agreements to require that the seller alone will pay for the mandated CID disclosures, but the cost for other contractual disclosures will remain negotiable. Additionally, C.A.R. form HOA will be modified to reflect the required changes by dividing it into three forms: one to request from the HOA the common interest disclosures; one for mandated CID disclosures (per the revised statutory form); and one for additional contractual disclosures as required under the C.A.R. standard purchase agreements.

Continued...

CalBRE Notification (Business and Professions Code §§ 10150, 10151, 10162 & 10165.1)

Brokers and agents must provide CalBRE with their current telephone number, email address, and office or mailing address that the broker or agent uses for any licensed activity. Brokers and agents must keep this information current, updating the information within 30 days after making a change.

Combating Squatters (Civil Code §§ 527.11-527.12)

The Cities of Palmdale, Lancaster and Ukiah will be starting a pilot program designed to combat squatting in the city. Under the new program, a property owner or their agent can file a Declaration of Ownership of Residential Real Property with local law enforcement for vacant property. The program is meant to expedite the eviction process for landlords. The property owner can apply within 48 hours to remove squatters, and a court date will be held within three days. A squatter will have two days to leave before being removed by the sheriff.

Team Names (Business and Professions Code §§ 10159.5-10159.7)

Beginning January 1, 2015, the use of a team name no longer requires a broker to apply to CalBRE for the issuance of a separate license, and does not constitute a fictitious business name, so long as the following requirements are met:

- The name is used by two or more real estate licensees.
- The name includes a licensee's surname with the term "associates," "group," or "team."
- The name does not include any term(s) that imply or suggest the existence of a real estate entity independent of a responsible broker. For example, a team could not include the word "brokerage" in the team name.

If the team uses advertising that includes the team name, they must adhere to the following requirements:

- The licensee's name and license number must be displayed in a conspicuous manner.
- The name of the broker responsible for the teams' real estate activities must be displayed as prominently and conspicuously as the team name.

"Yelp" Law (Civil Code § 1670.8)

Starting January 1, 2015, consumers cannot be forced to waive their right to make critical statements about a business online. A business owner cannot make a valid contract with a customer that states the customer cannot complain. If a contract is made, it will be considered void. In addition to a void contract, this law imposes civil penalties upon any person who violates this law: \$2,500 for the first violation, and \$5,000 for each subsequent violation, with an additional \$10,000 fine if the violation was willful, intentional or reckless. This new law does not prohibit or limit a person or business that hosts online customer reviews or comments from removing a statement that is otherwise lawful to remove.

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There are a multitude of new laws coming into effect on the first of the year. Be sure to seek qualified legal counsel for any questions you may have. The tired old refrain, "better safe than sorry" still rings true as you ring in the New Year.

CALENDAR

RPA

Date: January 23, 2015
Time: 9:00 a.m. – 2:00 p.m.
Location: Southwest Riverside County Association of REALTORS®

Contact SRCAR to sign up!
www.srcar.org

RPA

Date: January 27, 2015
Time: 9:00 a.m. – 1:00 p.m.
Location: Pacific West Association of REALTORS® - Long Beach

Contact PWR to sign up!
www.pwr.net

C.A.R. Winter Business Meetings

Date: January 28-31, 2015
Location: Indian Wells

Contact C.A.R. for more information and to sign up!
www.car.org

Brown Bag

Date: February 12, 2015
Time: 11:30 a.m. – 1:00 p.m.
Location: Southwest Riverside County Association of REALTORS®

Contact SRCAR to sign up!
www.srcar.org

RPA

Date: February 13, 2015
Time: 9:00 a.m. – 1:00 p.m.
Location: Pacific West Association of REALTORS® - Anaheim

Contact PWR to sign up!
www.pwr.net

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