



Courtside *Newsletter*

Several New Laws Affecting REALTORS® in 2016



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California's Legislature once again boasted of a busy year in 2015, preparing and passing numerous new laws. Many of these laws may have an effect on the practice of real estate. Brokers and agents would do well to keep abreast of them.

Continuing Education Requirements for Brokers – Assembly Bill 345

In mid-July, Governor Brown signed Assembly Bill 345 into law, thus enacting a new requirement for real estate brokers' continuing education. Current law requires a real estate broker to renew his or her license every four years. Pursuant to Business & Professions Code § 10170.5, within that 4-year period, the broker must complete 45 clock hours of education, now including a 3-hour course in the management of offices and supervision of licensed activities.

The California Association of REALTORS® backed this bill, stating, "Since the California Bureau of Real Estate can hold a manager accountable for failure to supervise, C.A.R. believes it important that a real estate broker understand how to properly manage real estate offices, salespersons, and broker associates, in order to minimize risk for all parties involved." The new requirement went into effect January 1, 2016. For more information on continuing education requirements, please see our September 2015 *Courtside Newsletter*, which can be found on our website: www.glawgroupapc.com.

Personal Information – Senate Bill 560

Business & Professions Code § 30 has been amended to include the language that no later than January 1, 2016, the Bureau of Real Estate (CalBRE) will require from licensees either an individual tax payer identification number (TIN) or social security number (SSN), if the licensee is an individual. Upon request from the Franchise Tax Board or Employment Development Department, CalBRE will provide the licensee's information, including the TIN or SSN.

Additional Recording Fees – Assembly Bill 661

Pursuant to current law, a \$10 fee is paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county. The fee goes toward the Real Estate Fraud Prosecution Trust Fund, which supports local law enforcement activities to fight real estate fraud crimes. AB 661 was drafted to clarify some ambiguities in the language of exemption from the fee. Codified in Government Code § 27388, the fee does not apply to any real estate instrument, paper, or notice that is:

1. Accompanied by a declaration stating that the transfer is subject to a documentary transfer tax;
2. Recorded concurrently with a transfer subject to a documentary transfer tax; or,
3. Presented for recording within the same business day as, and is related to the recording of, a transfer subject to a documentary transfer tax.

This law is effective as of January 1, 2016.

Fire Prevention Fee – Assembly Bill 301

The State Board of Forestry and Fire Protection has adopted an emergency regulation under Public Resources Code § 4212 to levy an annual fire prevention fee upon each "habitable structure" within a state responsibility area. The owner of the structure as of July 1st of the year the fee is due is responsible for payment of the fee. AB 301 allows the owner of the structure the ability to negotiate payment of the fee as part of the terms of the sale of the structure. However, in addition to this language, Public Resources Code § 4213.1(a)(2) contains the caveat that the liability for payment of the fee still rests upon the owner of the structure as of July 1st. This law went into effect January 1, 2016.

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Private Transfer Fees – Assembly Bill 807

Current law defines a “transfer fee” as “any fee payment requirement imposed within a covenant, restriction, or condition contained in any deed, contract, security instrument, or other document affecting the transfer or sale of, or any interest in, real property that requires a fee be paid as a result of transfer of the real property.” It is, effectively, a private tax to be paid upon the sale of a property. Assembly Bill 807, sponsored by the California Association of REALTORS®, “expands Private Transfer Fee (PFT) recordation requirements to include PFTs whose payment does not occur upon a change in ownership or that are not based on sales price.” Furthermore, the disclosure of the PFTs must be in a single document and not incorporated by reference to other documents.

Lawn Appearance – Assembly Bill 1

Many issues and concerns have arisen regarding the appearance of lawns and the limitation for watering said lawns during California’s drought crisis. In an effort at clarity, AB 1 was passed and codified into Government Code § 8627.7, stating that during a state of emergency based on drought conditions, “a city, county, or city and county shall not impose a fine under any ordinance for a failure to water a lawn or for having a brown lawn.” This law went into effect January 1, 2016.

Recycled Water – Assembly Bill 786

As a result of the ongoing state of emergency regarding the drought, the legislature has been concerned with preserving potable water and limiting its use to water outdoor landscaping. To that effect, Civil Code § 4735 includes language stating that an association cannot impose a fine or assessment against a homeowner for reducing or eliminating watering his landscaping or lawns. However, AB 786 has amended CC§4735 to allow an assessment or fine to be imposed against “an owner of a separate interest that...receives recycled water...and fails to use that recycled water for landscaping irrigation.” Due to the emergent nature of the drought, this law went into immediate effect upon being passed by the legislature (October 11, 2015).

Water-Efficient Landscaping – Assembly Bill 349

Passed in conjunction with AB 786 in response to the drought crisis, AB 349 further amends Civil Code § 4735. Governing documents or landscaping policies or guidelines are void and unenforceable if they prohibit the use of artificial turf or synthetic grass. Furthermore, owners of a separate interest who implement water-efficient landscaping measures in response to the state of emergency shall not be required to reverse or remove the water-efficient landscaping measure when the state of emergency is declared to be over. This law was also enacted immediately (September 4, 2015.)

Drought-Tolerant Landscaping – Assembly Bill 1164.

On April 1, 2015, Gov. Brown issued Executive order directing the State Water Resources Control Board to implement mandatory water reduction across the state of California. The goal is to reduce water usage by 25%, and with landscape irrigation representing 43% of urban water use, efforts have been made to replace existing landscaping with drought-tolerant landscaping, including artificial turf or synthetic grass. Whilst laws have been implemented stating a city and/or county may not prohibit the installation of drought-tolerant landscaping, synthetic grass, or artificial turf, AB 1164 has added caveats to that prohibition. Government Code § 53087.7(b) states that a city and/or county may impose reasonable restrictions on the type of drought-tolerant landscaping that may be installed on residential property, provided the restrictions do not:

1. Substantially increase the cost of installation;
2. Effectively prohibit installation; and/or,
3. Significantly impede the installation, such as with the requirement that a yard must be covered with living plant material.

As with the other water-use bills discussed herein, this law went into effect immediately (October 9, 2015).

Clotheslines or Drying Racks – Assembly Bill 1448

Codified in Civil Code §§ 1940.20 and 4750.10, landlords may no longer restrict tenants from using a clothesline or drying rack. Furthermore, any governing document, such as those issued by homeowner associations, may not prohibit or unreasonably restrict the use of clotheslines or drying racks. As defined, a “clothesline” is a cord, rope, or wire from which laundered items may be hung to dry or air. A “drying rack” is considered to be an “apparatus” from which laundered items may be hung to dry or air. A balcony, railing, awning or other part of the structure or building is not considered a drying rack or clothesline. This new law became effective January 1, 2016.

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As always, we encourage you to seek qualified legal counsel should you have any questions or concerns regarding these new laws.

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