



Courtside *Newsletter*

New Laws in 2014 that May Affect Real Estate Practitioners: Part 1

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Numerous new laws were passed in 2013, most of which have either already come into effect or will do so later this year. While the California Association of REALTORS® has created a list of approximately 130, in this two-part series, we will touch on a handful of laws that may be important for real estate practitioners to take note of.

Adjoining Owners Equally Responsible for Shared Fences and Boundaries: As of January 1, 2014, landowners with properties that share fences and other boundaries must adhere to a new law, codified as California Civil Code (CC) § 841. According to CC § 841, adjoining landowners share an equal benefit from any fence dividing their property and therefore “shall share equally in the responsibility for maintaining the boundaries and monuments between them,” unless otherwise stated in writing. As a result of this shared obligation, any landowner who intends to incur any cost for such a fence must provide a 30-day written notice to the other landowners stating:

- A notice of the presumption of equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence;
- A description of the nature of the problem with the shared fence;
- The proposed solution for the problem;
- The estimated construction or maintenance costs to address the problem;
- The proposed cost sharing approach; and,
- The proposed timeline for addressing the problem.

The presumption that there is a shared responsibility to maintain an adjoining boundary may be overcome by demonstrating that imposing equal responsibility for the reasonable costs of construction, maintenance,

or necessary replacement of the fence would be unjust. The Code outlines several considerations that the Court will take into account when making the determination of justness. From there, the Court may order either a contribution of less than an equal share for the costs of construction, maintenance, or necessary replacement of the fence, or order no contribution.

Literal Translation of “Notary Public” in Ads Prohibited:

Introduced in Assembly Bill 1159 and codified in California Business & Professions Code § 6126.7, it is now a violation of law for any person who is not an attorney to literally translate the phrases “notary public,” “notary,” “licensed,” “attorney,” “lawyer,” or any other terms that imply that the person is an attorney in any advertisement or other document. Should a person do so, he or she would be guilty of the unauthorized practice of law and would be subject to potential civil action brought by the California State Bar for a penalty of up to \$1,000 per day per violation. He or she may also be subject to criminal prosecution for a misdemeanor, including a fine and one year imprisonment.

Advertising Government Terms and Symbols:

Pursuant to Business & Professions Code § 17533.6, it is unlawful for any nongovernmental entity to solicit information, the purchase of or payment for a product or service, or the contribution of funds or membership fees via mail, email, or website that contains any content that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement. The exceptions to this law are if:

- (1) The nongovernmental entity has a written connection with, or the approval or endorsement of, a federal, state, or local government entity; or,
- (2) The solicitation meets requirements specified within the code section, including conspicuous disclaimers that the

solicitation is not approved of or endorsed by any governmental agency.

Any violation of the Code section would be considered a misdemeanor, punishable by up to six months of imprisonment and/or a fine of up to \$2,500. Any person who is harmed by a violation of this section will be entitled to recover damages in an amount three times the amount solicited, as well as any other available remedies.

Transfer Disclosure Statement (TDS) Revised to Include Construction Defect Litigation:

Effective July 1, 2014, the C.A.R. Real Estate Transfer Disclosure Statement (TDS) will be revised to require the disclosure of whether a seller is aware of certain construction defect claims found in Civil Code §§ 895, et seq. According to C.A.R., “Under the new law, the revised TDS will inquire, in question 16 of Section 11C, as to whether a seller is aware of any of the following claims threatening to or affecting the real property:

- (1) Claims for damages by the seller based on construction defects...;
- (2) Claims for breach of warranty...; or
- (3) Claims for breach of an enhanced protection agreement..., including any lawsuits or claims for damages under [§§] 910 or 914 alleging a defect or deficiency in the real property or common areas.”

Hiring Real Estate Broker for Sale of Surplus Government Property:

Each state agency must annually report to the Department of General Services any state lands under the jurisdiction of the agency that are in excess of foreseeable needs. If that land is not needed by any other governmental agency, it may be sold by an authorized real estate broker, with approval by the Department, for a negotiated, reasonable commission that is similar to the commission earned on the sale of privately-owned properties in the area. The new law, effective January 1, 2014, revises Government Code §§ 11011.5 and 14664 and requires that the

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Calendar

Managing Risk in Today's Litigation Environment

Date: January 31, 2014
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Southwest Riverside County Association of REALTORS®
Contact SRCAR to sign up!

Property Management

Date: February 5, 2014
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Pacific West Association of REALTORS®
Contact PWR to sign up!

Brown Bag

Date: February 20, 2014
 Time: 11:30 a.m. – 1:00 p.m.
 Location: Southwest Riverside County Association of REALTORS®
Contact SRCAR to sign up!

RPA

Date: March 11, 2014
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Pacific West Association of REALTORS®
Contact PWR to sign up!

Managing Risk in Today's Litigation Environment

Date: April 8, 2014
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Pacific West Association of REALTORS®
Contact PWR to sign up!

Fair Housing

Date: April 15, 2014
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Tri-Counties Association of REALTORS®
Contact Tri-Counties to sign up!

Fair Housing

Date: April 17, 2014
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Pacific West Association of REALTORS®
Contact Tri-Counties to sign up!

C.A.R. Expo

Date: April 30-May 3, 2014
 Location: Sacramento Convention Center
Go to www.car.org for more information and registration!

broker be local with respect to the property. Further, the state shall select a broker based upon his or her demonstration of knowledge of the local real estate market and success in selling real property in the local market, and on his or her demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. In order to select the appropriate person, the state will adopt specific criteria on which to evaluate the broker.

Smoke Detectors Specifications Changed: Effective July 1, 2014, any smoke alarm that is battery operated must contain a non-replaceable, non-removable battery capable of powering the smoke alarm for at least 10 years in order to be approved by the State Fire Marshall. Beginning on January 1, 2015, a smoke alarm must display the manufacture date, provide a place to write the date of installation,

and incorporate a hush feature in order for the Fire Marshall to approve it. Further, the Fire Marshall would no longer have the authority to suspend enforcement of these provisions. However, the Fire Marshall would still be authorized to adopt exceptions through its regulatory process. These new laws are codified in Health & Safety Code § 13114.

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These are just a few of the new laws that have gone or will go into effect this year. Our next *Courtside Newsletter* will cover additional laws, including those that affect property management issues and disciplinary actions.

As always, should any of these new laws raise any questions or concerns, seek qualified counsel for answers prior to going forward with any action you might be considering.

C.A.R. Released New Forms in December 2013

**BY: KELLY A. NEAVEL, ATTORNEY AT LAW
 CASEY MCINTOSH, PARALEGAL**

This past December, the California Association of REALTORS® (C.A.R.) released one new form, two revised forms, and discontinued the use of one form.

New

Demand for Mediation (DM): The Demand for Mediation is a new form that will begin the process of using mediation as a means to resolve a dispute over terms of a real estate contract. The form will include a brief description of the dispute, as well as the location of the mediation, either at the C.A.R. Consumer Mediation Center or another location. There is also a section in which the parties may specify the mediator and the date/time the mediation will take place.

Revised

Homeowner Association Information Request (HOA): This form has been modified to reflect the revisions of the Davis Sterling Act in the California Civil Code. It is no longer acceptable to use prior versions of this form, as the law changed at the beginning of this year.

Residential Lease or Month-to-Month Rental Agreement (LR): Paragraph 11 of the LR was modified so that tenants are no longer responsible for checking and maintaining smoke alarms/detectors. However, tenants are still obligated to ensure that the alarms/detectors are clean and ventilated, and to check and maintain carbon monoxide detectors.

Discontinued

Counter Offer Multiple (COM): The COM has been discontinued in light of the release of the Seller Multiple Counter Offer (SMCO) in late November 2013. This form will replace the COM, effectively separating multiple counter offer situations from those with single counter offers.

As always, should you have any questions about the use of any form, it is always best to seek qualified legal counsel for an answer prior to utilizing the form.

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