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Courtside Real Estate Newsletter



New Laws Affecting REALTORS® in 2019

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The California Legislature has enacted several new laws that may affect REALTORS® and their practices this year. This month's *Courtside Newsletter* provides an overview of some of those laws.

REAL ESTATE LAW CLEAN-UP (AB 1289 & AB 2884) – REVISED C.A.R. FORMS

Disclosure Regarding Real Estate Agency Relationship (AD)

The California Legislature made multiple revisions to clarify what is generally known as the Real Estate Law, which were reflected in AB 1289 and AB 2884. Specifically, AB 1289 changes language in the Disclosure Regarding Real Estate Agency Relations (C.A.R. Form AD). Per the Bill's text, it revises "the content of the disclosure form to include certain information, including seller and buyer responsibilities" as well as revises "the content of the form required to confirm real estate agent relationships." Civil Code § 2079, et seq. is revised under these terms and Form AD now specifically states "Seller and Buyer Responsibilities." These reflect the acknowledgment of the agent's role and the buyer's responsibility to "exercise reasonable care" to protect herself, "including as to those facts about the property which are known to you or within your diligent attention and observation." The form now further states that the buyer and seller are advised to consider obtaining tax advice from a "competent professional" in relation to the potentially complex tax consequences of the transaction.

As a result of the "clean-up" law, the "third" agency form has been eliminated, as well as the requirement that it be delivered by the buyer's agent to seller with an offer to

purchase. Per C.A.R., there have also been some "plain English changes," e.g. "Selling agent" is now "Buyer's Agent;" "Listing Agent" is now "Seller's Agent;" and "Purchaser" is now "Buyer."

Buyer Representation Agreement – Exclusive (BRE)

Buyer Representation Agreement – Non-Exclusive (BRNE)

Buyer Representation Agreement – Non-Exclusive/Not for Compensation (BRNN)

Possible Representation of More than One Buyer or Seller – Disclosure and Consent (PRBS)

As a result of AB 1289, the above forms now contain an additional caveat regarding dual agency, stating that buyer and/or seller agree that in the event of dual agency, "a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered..."

LICENSING

Citizenship and Immigration Status Disclosure for Real Estate Licensees (SB 695) [Effective 1/1/2019]

While SB 695 affects a multitude of California agencies, it specifically affects REALTORS® with regards to licensing requirements. Previous law requires a real estate licensee or applicant to provide, at the time of issuance of a license, his or her social security number or individual taxpayer identification number to the Department of Real

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Estate (“licensing board”). Under SB 695, the licensing board will be prohibited from requiring an applicant to disclose his or her citizenship or immigration status. It would also be prohibited from denying an otherwise qualified applicant a license based upon his or her citizenship or immigration status. Section 30 of the Business & Professions Code will be amended to reflect such prohibitions.

PROPERTY MANAGEMENT

Unlawful Detainer—Three Day Notice to Pay Rent or Quit (AB 2343) [Effective 9/1/2019]

Under existing law, if a tenant violates a lease agreement—by failing to pay rent or perform certain actions under the agreement—a landlord is entitled to pursue an unlawful detainer action to seek eviction. Mandatory to the commencement of this procedure is the 3-day notice to cure the violation or vacate the property, a.k.a. the 3-day notice to pay rent or quit. Under AB 2343, the California Code of Civil Procedure (CCP) § 1161 will be amended to exclude Saturdays, Sundays and “other judicial holidays” from being included in the period of notice. AB 2343 also amends CCP § 1167 in a similar manner, excluding Saturdays, Sundays and other judicial holidays from being calculated as part of the time a defendant has to respond to a five-day summons. Both revisions become effective September 1, 2019.

Inspection of Decks, Balconies, Stairways & Walkways (SB 721) [Completed by 1/1/2025]

SB 721 creates a new requirement for inspection of “exterior elevated elements” in buildings with 3 or more multifamily dwelling units under Health & Safety Code § 17973. Specifically, an “exterior elevated element” includes balconies, decks, porches, stairways, walkways, and entry structures that extend beyond exterior walls that are designed for human use and rely, in whole or part, on wood-based structures for support. The inspections must be done by qualified, licensed professionals prior to January 1, 2025, and by January 1st every six years thereafter. An inspection report will be provided to the owner of the building, and any emergency repairs must be done immediately. Non-emergent repairs must be completed within 120 days of receipt of the inspection report. The inspector providing the report will notify the local enforcement agency and the owner if the building does not comply with repair requirements within 180 days. A civil penalty from \$100-\$500 per day will be assessed until the repairs are completed.

Protections for Victims of Domestic Abuse (AB 2413) [Effective 1/1/2019]

AB 2413 creates new protections for victims of domestic violence, stalking and abuse with regards to the landlord/tenant relationship. Specifically, it:

- voids any provision in a lease agreement that prohibits or limits, or threatens to prohibit or limit, a tenant or person’s right to summon emergency assistance as a victim of abuse or emergency, or on behalf of a victim of abuse or in an emergent situation. Such lease provisions are found to be in opposition to public policy and therefore unenforceable.
- Prohibits a landlord from terminating tenancy or failing to renew a lease agreement based on acts against a tenant or tenant’s household that constitute domestic violence, sexual assault, stalking, human trafficking or elder abuse. However, the acts must have been both documented and the perpetrator named in the documentation does not live in the same dwelling unit.
 - The landlord may terminate or decline to renew tenancy if the victim invites the perpetrator to the property and the landlord believes that the perpetrator posts a threat to other tenants or guests on the property.

Rent Limitations During State of Emergency (AB 1919) [Effective 1/1/2019]

While there are already provisions in place protecting consumers against price gouging during a declared state of emergency, this new law adds Section 8588.88 to the Government Code to afford protections to renters. Specifically, during a state of emergency, it is now a misdemeanor for a person, business or other entity to increase the rental price charged for housing by more than 10%. “State of emergency” can include, but is not limited to, an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster, and such a state can be declared by the President, Governor or local governing entity with vested authority to do so.

In an effort at brevity, not all new laws are covered here. As always, we encourage you to seek qualified legal counsel should you have any questions or concerns regarding the law and how it affects your real estate practice.

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