THE GIARDINELLI LAW GROUP, A P C

Courtside Newsletter

The Latest from the California Association of REALTORS® Winter Business Meetings

BY: KELLY A. NEAVEL, ATTORNEY AT LAW
ASHLEY A. RICHARDSON, LAW CLERK
LINDA CONAWAY, LEGAL ASSISTANT
CASEY MCINTOSH, PARALEGAL

On January 17 and January 18, 2018, this office had the pleasure of attending the 2018 California Association of REALTORS® (C.A.R.) Business meetings in Monterey. Below is our report on the latest discussions at those meetings.

Member Legal Services & Property Management Legal Open Forum – New Laws

CalBRE to DRE (SB 173) [C.A.R. Sponsored]
Effective July 1, 2018, the California Bureau of Real Estate (CalBRE) is returning to its standing as the Department of Real Estate (DRE). It was formerly under the Department of Consumer Affairs (DCA), but will now be directly under the Business, Consumer Services and Housing Agency (BCSH). This will end the diversion of licensee fees to the DCA.

Landlord/Tenant Immigration Status (AB 291)
This law prohibits a landlord from threatening to disclose a tenant's or prospective tenant's immigration status. It also expands the definition of "immigration status" to include the perception of illegal immigration status. There are also new penalties that may be placed on a landlord, including six to twelve times the monthly rent being awarded to the tenant. The tenants will also have an Unlawful Detainer (UD) defense. The landlord may still require information or documentation necessary to determine or verify the financial qualifications of a tenant or verify the identity of a prospective tenant.

Broker-Associates Notification (AB 2330) [C.A.R. Sponsored]
Under current law, a person could search for a sales agent on the DRE's website and see all who are licensed to brokerages or all sale agents licensed under the responsible broker. Effective January 1, 2018, the new law will allow the same for broker-associates. It also creates a new obligation in which a responsible broker must immediately notify the DRE whenever a broker-associate is engaged or terminated. The DRE has created Form RE 215 for this. This form is not available to be submitted electronically.

Uniform Standards of Advertising (AB 1650)
Effective January 1, 2018, the Uniform Standards of Advertising's purpose is to create uniform standards of advertising no matter the type or medium of advertisement. It is considered the most important rule affecting agents this legislative session and provides a year for all agents to become compliant.

The basic rule states that all first point of contact solicitation materials must include:

1) The name and license number of the sales agent or broker associate; and,
2) The responsible broker's identity (the broker's license number is optional).

The responsible broker identity means the name under which the broker is licensed and conducts business in general, or a substantial division of the real estate firm. This can be a registered fictitious name so long as that is the general name the broker uses. Also, the responsible broker is the person or entity the agent is licensed to.

Solicitation materials are materials intended to be the first point of contact with the consumer, such as: business cards, stationary, advertising flyers, advertisements on television, in print, or electronic media, any other material designed to solicit the creation of a professional relationship between the licensee and a consumer, and "for sale," 'open house," lease, rent or directional signs.

However, there is an exception for a broker regarding signage advertisements. The signs will not be considered 'first point of contact material' when:

a) The responsible broker's identity appears and there is no reference to an associate broker or sales agent or
b) There is no licensee identification at all (i.e. just a generic sign).

A 'reference' to an agent would be anything that names an agent in any way. However, C.A.R. recommends that the second exception be ignored since such a sign would likely be a National Association of REALTORS® ("NAR") Code of Ethics violation of Standard of Practice 12-5.

Bed Bug Disclosures (AB 551)
Effective July 1, 2017 for new tenants and January 1, 2018 for existing tenants, residential landlords may not show or rent vacant units if the landlord "knows" it has current bed bug infestation. AB 551 does not provide a duty on landlords to inspect a dwelling unit or the common areas of the premises for bed bugs if the landlord has no notice of a suspected or actual bed bug infestation. It does require the landlord to provide copies of pest control reports to tenants whose units have been inspected and other tenants if infestation in a common area is confirmed. The disclosure will include information on bed bugs and the procedure for reporting. REALTORS® may use C.A.R. Form "Bed Bug Disclosure" (BBD).

Home Inspectors Swimming Pool Safety (SB 442)
Effective January 1, 2018, when a building permit is issued, this bill requires that the pool or spa be equipped with at least 2 of 7 specified drowning prevention safety features and revises the characteristics of some of those safety features. The bill would also require that the information be included in the home inspection report.

Continued …

Ban-the-Box (AB 1008)

Under AB 1008, Government Code § 12952 makes it unlawful for an employer with five (5) or more employees to include on any application for employment any question that ask about an applicant's conviction history. It is also unlawful to orally inquire about an applicant's conviction history. An employer may not ask about the details of a conviction until a formal offer of employment has been extended. Thereafter, should an employer decide to deny employment based upon the conviction, they must consider three facts:

1) The nature and gravity of the offense or conduct;
2) The time that has passed since the offence or conduct and completion of the sentence; and
3) The nature of the job held or sought.

Any denial of employment based on a conviction must be presented to the applicant in writing as a preliminary denial. The preliminary denial must include a notice of the disqualifying conviction(s) that are the employer's basis for rescinding the offer of employment; a copy of the conviction history report, if any; and an explanation of the applicant's right to respond. The applicant has five (5) business days in which to respond to the preliminary denial disputing the accuracy of the conviction history. If he or she is still attempting to collect evidence to dispute the accuracy, an additional five (5) business days are granted. If, after this process, a final decision denying employment is rendered, the employer must notify the applicant in writing, stating:

A. The final denial or disqualification (the employer is not required to explain his or her reasoning);
B. Any procedure the employer has for challenging the decision or requesting reconsideration;
C. The applicant's right to file a complaint with the department.

Certain positions are exempt from the above requirements, such as those wherein state, federal, or local law require criminal background checks for employment purposes, or to restrict employment based on criminal history.

Employment Salary History (AB 168)

Effective January 1, 2018, AB 168 adds Labor Code § 432.3, which prohibits an employer from asking a prospective employee (applicant) about his or her salary history. This applies to all employers, including state and local government employers, and the legislature. However, an applicant may voluntarily supply salary history information (e.g. if the applicant tells the potential employer without any prompting). The employer may rely on that voluntarily supplied information in his or her consideration of the applicant's potential salary. This section will not apply to salary history information that is disclosable to the public per state or local law, and a violation of this section will not be considered a misdemeanor (unlike some other employer restrictions).

Member Legal Services & Property Management Legal Open Forum – Marijuana Law

Marijuana is still illegal under federal law, and the recent appeal of the Cole Memorandum essentially means that federal prosecutors across the country may decide individually how to prioritize resources to crack down on marijuana possession, distribution and cultivation in states where it is legal.

In California, landlords are allowed to prohibit marijuana or cannabis use on their property. As with anything, though, there are some caveats landlords, property managers, and real estate agents should take into consideration.

- Landlords and property managers should review or revise their lease to ensure they can prohibit or control marijuana use.
    - They may also wish to add a provision to their lease to prohibit marijuana plants and cultivation.
- Landlords are not required under fair housing laws to adjust their policies to reasonably accommodate a tenant's use of medical marijuana, and the website of the Department of Fair Housing expressly states that permitting medical marijuana is not considered a "reasonable accommodation."

Furthermore, marijuana usage on a property will require disclosures to future buyers regardless if the marijuana will be removed by closing. Brokers may wish to adopt an office requirement that transactions involving marijuana must be preapproved. For transactions involving marijuana, landlords and property managers should make sure their tenants are in compliance with California law.

MEMBER LEGAL SERVICES

Federal Tax Reform

Five Unfavorable Provisions:

1. Reduction in the Mortgage Interest Rate Deduction
2. Cap on Deductibility of State and Local Property Tax ($10,000)
3. No Personal Exemption
4. No Deduction of Moving Expenses
5. Client Deduction Expenses Reduced

Five Favorable Changes

1. Rates/Brackets are Reduced
2. Standard Deduction is Doubled (Indexed for Inflation & Interest) – Permanent
3. Child Tax Credit Increased
4. 20% Independent Contractors
5. Expense Non-Residential Improvements

No Changes to Existing Law

1. 1031 Exchanges Still Good for Real Estate
2. Still Exclude $250,000 (Single-filers)/$500,000 (Joint-filers) for Appreciation
3. Capital Gains Rates
4. Depreciation of Recovery Rates
5. Low Income Credit/Bonds Stayed

PROFESSIONAL STANDARDS

NAR's Code of Ethics Standard of Practice 12-10 was amended to clarify that images are included as a "true picture" in advertising. Removing powerlines and makingsmall spaces look larger are not a "true picture." Any alleged violations will be handled on a case-by-case basis.

Additionally, an Issues Briefing Paper (IBP) was presented addressing the issue of whether C.A.R. should request that NAR revise the Code of Ethics to require REALTORS®, when acting as listing agents, to provide written verification upon request from cooperating agents that an offer submitted by the cooperating agent has been presented to the seller or that the seller has waived the obligation to have the offer presented. After discussion, the following motion was made and passed:

> "That C.A.R. will make a formal request to NAR to revise the Code of Ethics so that REALTORS® acting as listing brokers, upon the request of a cooperating broker, will be required to submit written verification to the cooperating broker that an offer has been presented to the seller or written verification that the seller has waived the obligation to have offers presented."

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Should you have any questions regarding any of the information contained herein, we urge you to seek qualified legal counsel.