



Courtside *Newsletter*

Overheard at the C.A.R. Winter Business Meetings



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Our team had the privilege of attending the California Association of REALTORS® Winter Business Meetings in Anaheim. This month's *Courtside Newsletter* will discuss some of the news and information picked up in the Member Legal Services portion of those meetings.

Legal Q&As

C.A.R. has revised several Legal Q&As, available for review on their website, including:

- Fire Prevention Fee (revised 12/16/2015) [Regarding the State Responsibility Area Fire Prevention Fee, and annual fee assessed on owners in State Responsibility Areas to fund fire prevention services.]
- Mold and Its Impact on Real Estate Transactions (revised 12/23/2015) [Discusses the Toxic Mold Protection Act of 2001, the resulting additional disclosure requirements for sellers and landlords, and its impact on REALTORS®.]
- Taxation of Foreclosures and Short Sales (revised 1/26/2015) [Regarding the income tax consequences of foreclosures, including deeds-in-lieu of foreclosure, and short sales of a borrower's property.]
- Landlord-Tenant Guide for REALTORS® (revised 1/29/2016)

A new Legal Q&A entitled "Rainwater Diversion, Collection and Damage During Escrow" was released in December 2015. This Q&A addresses some of the "basic questions which are bound to arise with the El Nino weather phenomenon" that has brought a deluge of rain to certain areas of the state.

New Laws

- Landlord-Tenant: Mold Habitability Standards (Senate Bill 655)
 - Indoor mold growth is one of the most common complaints received by tenants' rights organizations. In an effort to address this issue, Senate Bill 655 was passed, adding "visible mold growth" to the list of substandard housing conditions that must be repaired in order for a property to remain tenantable.
 - Mold is defined as "microscopic organisms or fungi that

can grow in damp conditions in the interior of a building." (Health & Safety Code § 17920(j))

- Mold must be identified by a health officer or code enforcement officer, and the officer must conclude that the mold endangers the health, property or welfare of the tenants.
- Mold that is caused by the tenant's inadequate housekeeping or failure to use available ventilation would not be the responsibility of the lessor/landlord.
- The lessor/landlord must be made aware of the problem.
- The landlord is authorized to enter a dwelling to make repairs to any dilapidation related to the mold. (He or she must still comply with notice of entry requirements under Civil Code § 1954.)
- Codified in Civil Code § 1941.7 and Health & Safety Code § 17920, et seq.
 - *How this affects REALTORS®:* REALTORS® must conduct a reasonable and diligent visual inspection of the property for sale. C.A.R. advises using the Agent Visual Inspection Disclosure form (AVID) to document any findings and to provide notice to buyers about the limited scope of the agent's inspection. However, agents shouldn't speculate as to the cause of the mold, or even use the word "mold." The Legal Q&A "Mold and Its Impact on Real Estate Transactions" suggests noting any potential presence of mold as "green and black discoloration..."
 - REALTORS® are generally not qualified to diagnose or even speculate as to whether mold exists in a property, but they are required to note if something looks amiss.
- Smoke Alarm Update
 - Per Health & Safety Code § 13113.7(3), residential landlords must install additional smoke alarms, (previously referred to as "smoke detectors"), to ensure that the smoke alarms in compliance with current building codes.
 - Current building code requires that smoke alarms be present in every bedroom and another alarm be located adjacent to sleeping areas (such as in the hallway).

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- New smoke alarms must be fire marshal approved.
- Existing smoke alarms do not have to be replaced so long as they still work.
- Battery-operated smoke alarms must contain 10-year non-replaceable, non-removable batteries. (Health & Safety Code § 13114(2)(A))
- *How this affects REALTORS®*: There are certain exemptions to this law for sellers of single-family homes, which are outlined in Health & Safety Code § 13113.8(d). The C.A.R. Q&A entitled “Smoke Alarm Requirements” also provides a handy guide to assist with compliance for property managers and any other questions REALTORS® may have.
- Organic Waste Disposal (Assembly Bill 1826)
 - Beginning April 1, 2016, any business or multi-family residential dwelling with 5 or more units that generates either (8) cubic yards or more of organic waste must arrange for recycling of that waste by:
 1. Sourcing separate organic waste from other waste and subscribing to a basic level of organic waste recycling service that includes collection and recycling of organic waste.
 2. Recycling its organic waste onsite or self-hauling its own organic waste for recycling.
 3. Subscribing to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste.
 4. Making other arrangements consistent with paragraph (3) of subdivision (b) of Section 42649.84 [selling or donating its recyclable organic waste materials].
 - “Organic waste” is defined as “food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.” (Public Resources Code § 42649.8(c))
 - *How this affects REALTORS®*: This law will mainly affect REALTORS® acting as property managers of residential buildings with 5 or more units, as they will be required to arrange for organic waste recycling.
- Employment: Use of Paid Sick Leave (Senate Bill 579)
 - This new law, effective January 1, 2016, redefines how employees may use their sick days to correspond to the Healthy Workplaces, Healthy Families Act of 2014.
 - Upon request of the employee, employers are now required to provide sick days for the employee or their family members’ diagnosis, care or treatment of an existing illness, or preventative care. Sick days may also be used for victims of domestic violence, sexual assault or stalking.
 - The definition of “family member” has also been redefined to include the employee’s children, spouses, parents, domestic partners, grandparents, grandchildren, and siblings.
- Private Transfer Fees (Assembly Bill 807)
 - A private transfer fee is a fee that is required to be paid when property is resold (primarily imposed by builders and developers). Some confusion arose recently regarding fees that were not due at the time of the sale of the property. As a result AB 807 was enacted and the new law expands the definition of

private transfer fees that are regulated, now including those fees incurred as a result of transfer of the property, not just upon transfer.

- A “Payment of Transfer Fees Required” is required to be recorded against the property by the entity imposing the fee.
- If the transfer fee is not a flat amount or based upon a percentage of the sale price, the Notice of Private Transfer Fee must include the method for how the transfer fee was calculated, including actual dollar examples.
- Further requirements for the form are outlined in Civil Code § 1098.5.
- The seller must disclose the private transfer fee on the “Notice of Private Transfer Fee” form.
 - Requirements for the form are outlined in Civil Code § 1102.6e.
- *How this affects REALTORS®*: REALTORS® should be cognizant of what is recorded against the property, to ensure that both they and the seller are making all necessary disclosures to the buyer. The preliminary title report should show that the “Payment of Transfer Fees Required” document has been recorded against the property. Agents for buyers should review this document and advise their clients as well.
- Mobilehome Sales: Criteria for Park Approval of Purchasers (Senate Bill 419)
 - Beginning July 1, 2016, upon request of a selling homeowner or prospective buyer, management of a mobilehome park must inform the requestor, in writing, of the information it requires and the standards it will utilize to determine if the new owner is acceptable as a homeowner within the park.
 - Current law states that management cannot withhold approval if the purchaser has the financial ability to pay rent and park fees, unless it reasonably determines that the purchaser will not comply with the park rules and regulations.
 - Approval can be withheld based on the prospective purchaser’s prior tendencies.
 - Approval can also be withheld for reasons based upon “fraud, deceit, or concealment of material facts by the prospective purchaser.”
 - *How this affects REALTORS®*: REALTORS® may request such information from mobilehome park management on behalf of their clients.

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

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