



Courtside *Newsletter*

TGLG Reports: The C.A.R. Spring Business Meetings



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Several weeks ago, our Team attended the California Association of REALTORS® (C.A.R.) Spring Business Meetings in Sacramento. 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:

- “Team Names” (revised 2/16/2016) – Discusses the definition and use of team names as per the California Bureau of Real Estate (CalBRE) and Business & Professions Code requirements.
- “Advertising Your Services: Required Name and License Information” (revised 2/29/2016) – Regarding the California laws and regulations, and the C.A.R. Code of Ethics sections that govern how a REALTOR® may advertise his professional services.
- “Revocable Transfer on Death Deed & Reprint of the Statutory FAQs” (revised 1/22/2016) – Enacted on January 1st, Assembly Bill 139 allows for the creation of a revocable transfer on death (TOD) deed to allow a homeowner to pass property to a beneficiary without a probate, trust, or joint tenancy. C.A.R.’s Q&A explains the purpose and requirements of the TOD deed.
- “Liquidated Damages and Deposit Disputes” (revised 4/7/2016) – Discusses the liquidated damages clause standard in C.A.R. purchase agreements and the effects of the clause when a buyer breaches the purchase agreement.
- “Use of An ‘As Is’ Clause” (revised 3/18/2016) – Clarifies the “as is” clause in C.A.R. purchase agreements and outlines its limitations and significance.
- “Counter Offer Forms (C.A.R. Forms SCO, BCO and SMCO)” (revised 3/15/2016) – Outlines the more important aspects of the C.A.R. counter offer forms, also known as the Seller Counter Offer (SCO), Buyer Counter Offer (BCO) and the Seller Multiple Counter Offer (SMCO). Specifically, it clarifies what must be done in a situation with multiple counter offers and/or back-and-forth between buyer and seller, and when a binding agreement is created.

- “Contingencies and Contingency Removal” (revised 3/14/2016) – Discusses the more common contingencies found in real estate sales transactions, their appearance in the C.A.R. form Residential Purchase Contract (RPA-CA), and how to remove contingencies under the C.A.R. contracts.

New Legal Developments

- Impact of TRID on Disclosure of Commissions: The buyer should know how much their real estate agent is going to receive in commissions 7-10 days before the transaction closes. Further, there is now a mandatory field to disclose the commissions of both sides.
- Fast-Tracked Real Estate License Application for Military Veterans: As a result of Senate Bill 122, effective July 1, 2016, the California Bureau of Real Estate (CalBRE) will expedite licensure process for an applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged.
- Rights of Pregnant Employees: Effective April 1, 2016, California employers must provide employees with a new poster describing the rights and obligations of pregnant employees. Pregnant employees must be provided with pregnancy disability leave (PDL) of up to four months and employers must return them to the same job, or a comparable job in certain circumstances, when they are no longer disabled by pregnancy. The poster also offers further clarification of PDL, including the fact that it is not for an automatic period of time and that it is ultimately determined by a health care provider.
 - A copy of the poster must be provided to the employee when the employer finds out the employee is pregnant.
 - Additional rights and requirements are applicable under the California Family Rights Act and/or the federal Family and Medical Leave Act.
 - If more than 10% of the employees speak a different language, the employer must have policy translated into every language that is spoken by at least 10% of the workforce.

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Property Management Hot Issues – Presented by Sanjay Wagle, Legislative Advocate

- **Support Animals:** Current law requires landlords to allow service animals on their property, so that handicapped individuals may be afforded the equal opportunity to use and enjoy a dwelling. A “service animal” is defined in the Americans with Disabilities Act as “a dog that has been individually trained to do work or perform tasks for an individual with a disability.” Recently, controversy has arisen regarding a landlord’s allowance of support animals on a property. Support animals are any animal that provides emotional support, therapy, comfort, or companionship. Since they have not been trained to perform a specific job or task, they are not considered service animals.

As a result of the ongoing argument over the necessity of support animals, Assembly Bill 2760 has been introduced to “provide that a tenant or prospective tenant shall not be prohibited from possessing a support animal on the rented premises or associated common areas if the tenant or prospective tenant satisfies specified conditions.” Amongst those conditions would be:

- notification to the landlord;
- the animal must be housebroken;
- the animal does not disturb the quiet enjoyment of other tenants, or pose a threat to them;
- the animal does not jeopardize the availability or price of insurance.

Furthermore, the Bill would finally define “support animal” as “a support dog, companion animal, emotional support animal, or assistive animal that is prescribed by a California licensed physician or licensed mental health professional in order to treat a mental or emotional illness or mental or emotional disability. A support animal does not include a service animal.”

- **Bed Bugs:** Under the recently introduced Assembly Bill 551, California legislature attempts to evoke cooperation amongst landlords, tenants, and pest control operators to address the unique challenge of controlling bed bug infestations. Specifically,
 - Beginning July 1, 2016, landlords will be required to provide written notice to prospective tenants regarding “Information about Bed Bugs.”
 - The notice, outlined in Civil Code Section 1954.12, will also be provided to existing tenants by January 1, 2017.
 - Landlords cannot rent or lease, or offer to rent or lease, any dwelling they know or should know has bed bugs.
 - Such a dwelling is considered untenable.
 - Tenants cannot bring furnishing onto the property that they know, or reasonably should know, has bed bugs.
 - Tenants must inform the landlord within seven (7) calendar days of finding or suspecting bed bugs.
 - Within five (5) days of being informed, the landlord must retain the services of a pest control operator.
 - If there are bed bugs, the landlord must inform other tenants of units identified for treatment, in

- writing, within two (2) business days. If common areas are infested, all other tenants will be notified.
- If an infestation is confirm, the landlord must prepare and implement a bed bug treatment program within 10 calendar days after the infestation confirmation.
 - Tenants will be provided with a cover sheet from the landlord disclosing the date/time of the treatment, length of time of the treatment, and what the tenant must do to prepare, as outlined on a checklist.
 - Entry into units must comply with Civil Code § 1954.
- Within 30 calendar days after an infestation, landlords will create a written bed bug management plan for the property, which will be made available for tenants.

- **Fair Housing Act – Criminal Records and Tenant Selection:** On April 4th, the Department of Housing and Urban Development (HUD) issued the “Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records.” This paper brings to light how a landlord may be violation the Fair Housing Act (FHA) by implementing a blanket ban on potential renters with arrest records. The FHA prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin. While having a criminal record is not a protected characteristic under the FHA, a blanket ban on potential renters with arrest records could have a disparate impact on racial groups. Per the Guidance, “African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population...” and “criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.” According to HUD Secretary Julián Castro, “Many people who are coming back to neighborhoods are only looking for a fair chance to be productive members, but blanket policies like this unfairly deny them that chance.”

HUD’s guidance comes after last year’s Supreme Court decision in Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., et al., in which it was determined that disparate impact is cognizable under the FHA. The guidance urges landlords and property managers to reevaluate their rental practices to ensure that they are acting within the law. Blanket bans and requirements that cause disparate impact are illegal. When screening applicants with arrest records, housing providers must take into consideration “the nature, severity, and recency of criminal conduct” and ultimately prove that any policy is “necessary to serve a ‘substantial, legitimate, nondiscriminatory interest.’” In other words, not all past criminal conduct is a risk to resident safety, and landlords need to distinguish what and who could be a risk on an applicant-by-applicant basis.

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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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