



Courtside *Newsletter*

New Laws in 2018 May Affect REALTORS®



BY: JOHN V. GIARDINELLI, ATTORNEY AT LAW
ASHLEY A. RICHARDSON, LAW CLERK
CASEY MCINTOSH, PARALEGAL

Throughout the year, rumors from the State Capitol had it that the California Legislature was busily reforming housing laws. As you'll see below, the rumor mill did not disappoint. In addition to the other bills signed into law this year, Governor Brown signed a package of 15 bills into law, each addressing affordable housing. Below we discuss some of the new laws, how they may impact real estate agents, and when they will become effective.

Housing—Streamlined “By-Right” Approvals (SB 35) [Effective 1/1/18]

As many are aware, California is currently in the midst of a significant affordable housing crisis, and home prices, rents, and homelessness are on the rise. Senate Bill (“SB”) 35 would help ensure “access to affordable housing is a matter of statewide concern.” The bill would impose a state-mandated local program that would streamline the approval process and reporting requirements for housing in cities that are not meeting the goals set by the Regional Housing Needs Assessment. Also known as “by-right” approval, this bill would “authorize a development proponent to submit an application for a multifamily housing development, which satisfies specified planning objective standards, that is subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit.” The California Association of REALTORS® (“C.A.R.”) supported this bill, stating “Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review.”

Housing—Building Homes and Jobs Act (SB 2) [Effective immediately]

SB 2 is one of the more significant laws recently signed by Gov. Brown. It seeks to create a permanent source of funds for affordable housing by creating a document recording fee of \$75 for “every real estate instrument, paper, or notice required or permitted by law to be recorded, per each single transaction per single parcel of real property, not to exceed \$225.” This recording fee does not apply to documents recorded in most sale transactions, or those in connection with a transfer to owner-occupant. It does include refinance documents, reconveyance documents, and transfer into and out of trusts (unless it is as part of a sale, or to an owner-occupant). C.A.R. does not believe this law will burden home sales. Fifty percent (50%) of the money collected between January 1 and December 31, 2018 would be made available to local governments for specified purposes, and the other fifty percent (50%) would be used by the Department of Housing and Community Development (“DHCD”) to assist persons at risk of homelessness. On and after January 1, 2019, seventy percent (70%) of the money would be provided to local governments, and the remaining thirty percent (30%) would go to the DHCD to create mixed income, multi-residential housing for lower- to moderate-income households.

Housing—Veterans and Affordable Housing Bond Act (SB 3) [Effective immediately]

SB 3 enacted the Veterans and Affordable Housing Bond Act of 2018, which authorizes the issuance of \$4,000,000,000 in bonds. Per SB 3, \$3,000,000,000 of the proceeds from the sales of the bonds would be used to finance existing housing programs, infill infrastructure financing, and affordable housing match grant programs. The remaining \$1,000,000,000 would be used as funding for farm, mobilehome, and home purchase assistance for veterans. This bond would be submitted to voters at the November 6, 2018 election, and would be decided

on at that point. According to the bill’s author, Senator Jim Beall (D-San Jose), SB 3 “gives California the opportunity to build \$15 billion in much-needed affordable housing for working families, seniors, vets, and the homeless.”

Housing—Enforcement of Housing Laws (AB 72) [Effective 1/1/18]

Current Planning and Zoning law requires a city or county to adopt a long-term plan for the physical development of the city or county, including a mandatory housing element for the “preservation, improvement, and development of housing.” With the enacting of AB 72, the DHCD can review a city or county’s actions for compliance with its adopted housing element. If the DHCD finds the city or county to be out of line, it can revoke its findings of compliance with the Government Code, unless or until the city or county comes back into compliance.

HOA Disclosures—Mandatory Charge Form (AB 690) [Effective 1/1/18]

Under the Davis-Stirling Act [Civil Code (“CC”) § 4525], a seller may provide certain documents specified in CC § 4525 to a prospective purchaser before the transfer of title or execution of a sales contract. Under CC § 4530, a homeowners association (“HOA”) must comply with requests for documents from the seller. Additionally, under CC § 5300, an HOA is required to distribute an annual budget report 30- to 90-days prior to its fiscal year end. Per AB 690, CC § 5300(a)(12) will be amended to include a “Charges for Documents Provided” disclosure, listing all documents that may be requested by the seller to provide to a prospective purchaser, and the fee for each document. This completed disclosure will be required in the HOA’s annual budget. Under the amended CC § 4528, the form will state, “A seller may request some or all of these documents, but shall not be required to purchase ALL of the documents listed on this form.” C.A.R. Form HOA2, “Homeowners Association Information Request,” provides a list of mandatory conflict of interest disclosures that will now explain the seller’s rights. HOA 1, 2, and 3 should all be used together. The seller has three (3) days after acceptance to request disclosures from the HOA. If no disclosures are given, the seller may have a legal claim against the HOA.

AB 690 also enacts certain requirements for managers of common interest developments, such as HOAs. Specifically, they must disclose whether they are certified, if they hold an active real estate license, and whether they received any third-party referral fees for distributing required documents. Managers must also facilitate the delivery of any documents requested by a seller, should they be contractually obligated.

Pet Friendly Housing Act (AB 1137) [Effective 1/1/2018]

Known as the Pet Friendly Housing Act of 2017, AB 1137 enacts Health & Safety Code § 50466. Under Section 50466, the DHCD will require each housing development that is funded by the DHCD after January 1, 2018 to allow a resident of the development to own one or more common household pets within the resident’s dwelling (subject to state laws and local ordinances regarding public health, animal control, and animal anticruelty). “Common household pet” is defined as a dog or cat, or other domesticated animal that is kept for pleasure rather than commercial purposes.

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Property Management—Immigration Status (AB 291 & 299) [Effective 1/1/2018]

Under AB 291, the California Civil Code is amended to prohibit a lessor (landlord or property manager) from:

- Inquiring about a tenant, occupant, or potential occupant's immigration status, unless it is needed to validate finances. (Hereinafter "tenant" will refer to a "tenant, occupant, or potential occupant.")
- Using a tenant's immigration status as a means to cause the tenant to quit the property or as grounds for eviction.
- Threatening to disclose a tenant's immigration status or citizenship in order to get the tenant to vacate the property.
- Disclosing a tenant's immigration or citizenship status to any immigration authority, law enforcement agency, or state, local, or federal agency as a means of intimidation, retaliation, or repossession of the property.

Use of such means of coercion has also been added as an affirmative defense in an Unlawful Detainer (eviction) action. AB 291 declares that "immigration or citizenship status of any person is irrelevant to any issue of liability or remedy under specified provisions of law relating to the rights of tenants." A lessor may, however, disclose a tenant's immigration or citizenship status in order to comply with any legal obligation under federal law, subpoena, warrant, or court order. This law should be independently reviewed as there are additional provisions, restrictions, and exceptions that exist.

AB 299 amends CC § 1940.3 to state that a public entity cannot implement a policy, statute, ordinance, regulation or administrative action requiring a landlord to "make any inquiry, compile, disclose, report, or provide any information, prohibit offering or continuing to offer, accommodations in the property for rent or lease, or otherwise take any action regarding or based on the immigration or citizenship status of a tenant" unless it is to comply with a legal obligation under federal law, subpoena, warrant, or court order. The lessor may also request documentation necessary to verify financial qualifications of a prospective tenant.

Broker-Associates Notification (AB 2330) [Effective 1/1/2018]

Currently, CalBRE lists the status information of real estate licenses issued by the Bureau, indicating the "License Type" as either "Broker/Officer" or "Salesperson." AB 2330 will amend Business & Professions Code § 10083.2 to require CalBRE (via its website) and responsible brokers (through reporting) to:

- disclose whether a licensee is an associate licensee.
- identify if the associate licensee is also a broker, and every responsible broker with whom the associate licensee is contractually associated.
- report the employment relationship between the responsible broker and the associate licensee.

B&P § 10161.8 will also be revised to create a new obligation in which the responsible broker must immediately notify CalBRE in writing whenever a broker-associate is engaged or terminated. CalBRE has created Form RE 215, "Broker-Associate Affiliation Notification," for the sole purpose of notifying the Bureau of affiliations and terminations of broker-associates. It is important to note that a broker-associate whose affiliation began before January 1, 2018 is required to submit a RE 215 form to the Bureau to confirm affiliation once the law goes into effect.

2018 Uniform Standards of Advertising (AB 1650) [Effective 1/1/2018]

In an attempt to create uniform standards across a variety of advertising mediums, Assembly Bill 1650 amends Business & Professions Code § 10140.6. Effective January 1, 2018, a real estate licensee will be required to disclose the following on all solicitation materials that are intended to be a "first point of contact with consumers" and on real property purchase transactions in which he or she is acting as an agent:

- the licensee's name and license number (or, if the licensee is a mortgage loan originator, the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry); and,
- the responsible broker's identity. (The inclusion of the responsible broker's identification number is optional.)

As defined in B&P § 10159.7, "responsible broker's identity" means the name under which the broker is licensed by CalBRE and conducts business in general,

or a substantial division of the real estate firm. The name used for the broker's identity must be the name the broker uses in general. This can be a registered fictitious name so long as that is the general name the broker uses.

AB 1650 also revises the description of solicitation materials. B&P § 10140.6(b)(2) has been amended to state that "solicitation materials" include "business cards, stationery, advertising flyers, advertisements on television, in print, or electronic media, 'for sale,' rent, lease, 'open house,' and directional signs, and other materials designed to solicit the creation of a professional relationship between the licensee and a consumer.

An exception to this rule is if the "for sale," rent, lease, "open house," and directional signs do either of the following:

1. Display the responsible broker's identity without reference to an associate broker or license; or,
2. Display no licensee information (i.e. a generic sign).

A "reference" to an agent would be anything that names an agent in any way. It is important to note that a sign displaying no licensee information would likely be a violation of the National Association of REALTORS® (NAR) Code of Ethics Standard of Practice 12-5. (SOP 12-5 states that any advertising materials must disclose the name of the REALTOR®'s firm in a "reasonable and readily apparent manner.") Agents have a year to become compliant with this law.

California Bureau of Real Estate (SB 173) [Effective 7/1/2018]

In 2012, the California Department of Real Estate was moved under the Department of Consumer Affairs ("DCA"), and its name was changed to the Bureau of Real Estate ("CalBRE"). Per C.A.R., this move was part of a bigger effort to streamline government and, while certain aspects of the plan worked, this one did not. Under the DCA, CalBRE was a monetary drain. After July 1, 2018, CalBRE will become its own department under the Business, Consumer Services, and Housing Agency, and will once again be known as the Department of Real Estate (DRE). This will end the diversion of licensee fees to the DCA. For advertising purposes, the unofficial policy is that DRE, BRE or CalBRE are all acceptable ways to reference license numbers, and agents can use up existing stock of advertising materials.

Property Management—Flood Zones (AB 646) [Effective 7/1/2018]

Current law requires a listing agent or seller to disclose if the property is located within a flood zone. That requirement has been extended to landlords and property managers in regards to their tenants. Beginning July 1, 2018, under Government Code § 8589.45(a), every lease or rental agreement that is entered into shall disclose the following to the tenant:

1. If the owner has actual knowledge that the property is in an area subject to flooding, including a special flood hazard zone. "Actual knowledge" is defined by:
 - a. Receipt by the owner of a written notice from a public agency stating that the property is in a special flood zone, or area of potential flooding.
 - b. Whether the owner's mortgage holder requires the owner to carry flood insurance.
 - c. Whether the owner currently carries flood insurance.
2. The tenant can obtain information about hazards, including flood hazards, which may affect the property on the Office of Emergency Services' website. Reference to the "MyHazards" tool will also be on the disclosure.
3. The owner's insurance does not cover the tenant's personal possessions, and the tenant should consider obtaining renter's insurance and flood insurance to insure against risk of loss due to natural hazards.
4. That the information on the disclosure is adequate to inform the tenant, and the owner does not need to provide any additional information about flood hazards to the property.

This requirement will only apply to residential tenants, and C.A.R. will issue a new form in June 2018.

Given the amount of new laws enacted this year, not all laws are covered in this *Courtside Newsletter*. However, C.A.R. offers a summary of the 2018 laws on its website. As with any legal matter we encourage you to contact a qualified attorney to discuss any questions or concerns you may have.

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