



Nicolas Romo
562-373-5120
Lic#01787685
www.SellingCasas.com

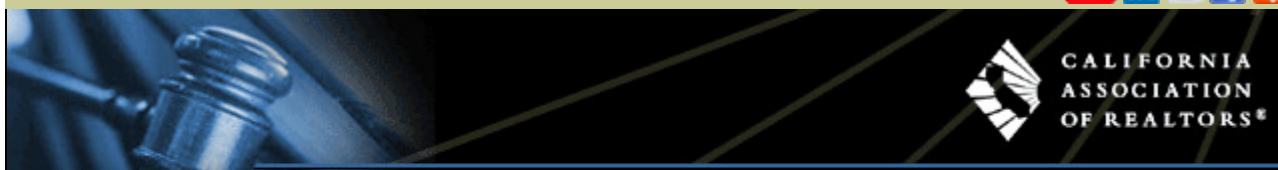
C.A.R. Announces New California Laws for 2012

1 message

C.A.R. Realegal(R) <newsletters@mail2.carwebs.org>
Reply-To: "C.A.R. Realegal(R)" <newsletters@mail2.carwebs.org>

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New California Laws for 2012

Now that the first half of the 2011-12 legislative session is over, significant new laws have emerged that may affect REALTORS® and their clients. Below are some of the new laws involving disclosures, licensing, small claims court, landlord-tenant, and other areas of interest for the real estate practitioner. The full text of a bill is available at www.leginfo.ca.gov.

Sellers Disclosing Water-Conserving Plumbing Fixtures: C.A.R. successfully sponsored a new law, effective January 1, 2012, revising the Transfer Disclosure Statement (TDS) to include a checkbox in Section A for the seller to disclose whether the property has water-conserving plumbing fixtures. The revised TDS also clarifies at the end of Section B that, by January 1, 2017, a single-family residence built on or before January 1, 1994 must generally be equipped with water-conserving plumbing fixtures. If, however, that single-family home is altered or improved on or after January 1, 2014, the water-conserving plumbing fixtures must be a condition of final permit approval. Water-conserving plumbing fixtures are low-flow toilets, shower heads, and faucets under section 1101.3 of the California Civil Code. C.A.R. intends to release a revised TDS form in November 2011 to comply with this law. Senate Bill 837.

NHD Companies Disclosing Mining Operations: Starting January 1, 2012, a company preparing a natural hazard disclosure (NHD) statement for a prospective buyer, as required for certain transactions, must also disclose whether the property is located within one mile of a mining operation, according to map coordinate data from the Office of Mine Reclamation. If a property is within one mile, the NHD company must give a specified notice that such mining operations may cause inconveniences. Senate Bill 110.

No Fee Bundling for HOA Disclosures: Beginning January 1, 2012, another C.A.R.-sponsored bill requires a homeowner's association (HOA) to, upon written

request, give an estimate of the fee for providing a prospective buyer with the governing documents of the common interest development and other required HOA disclosures. The fee must be reasonable based upon the HOA's actual cost for procuring, preparing, reproducing, and delivering the HOA documents. If the fee is paid, the HOA cannot withhold the required HOA disclosures for any reason. Moreover, the HOA cannot bundle the fee for providing required HOA disclosures with any other fees, fines, or assessments. This law will prevent an HOA's third-party document preparation company from bundling together both mandatory and non-mandatory HOA documents, and charging a higher fee for providing all the documents. The HOA is also prohibited from charging any additional fees for electronic delivery of HOA documents, which must be available to a requesting party if the HOA maintains the documents electronically. Additionally, at a buyer's request, the HOA must provide 12 months of approved minutes of the association's board of directors meetings (excluding executive sessions). Delivery of the required HOA documents must be accompanied by a cover sheet itemizing the documents required by law and those provided. In November 2011, we intend to release a revised C.A.R. standard form Homeowner Association Information Request that complies with this requirement. Assembly Bill 771.

Brokers Designating Managers: Under another law that C.A.R. sponsored, effective July 1, 2012, an employing broker may appoint a licensee as a manager to supervise the licensed activities, clerical staff, and day-to-day operations of a branch office or division. An appointed manager who fails to properly supervise licensed activities will be subject to disciplinary action by the California Department of Real Estate (DRE). Appointing a manager, however, does not limit the employing broker's supervisory responsibilities. The appointment of a manager must be in a written agreement in which the manager accepts the delegated responsibility. The employing broker must notify the DRE when a manager has been appointed or terminated. A licensee cannot be an appointed manager if the licensee holds a restricted license, is or has been subject to a debarment order, or is a salesperson with less than two years of full-time real estate experience within the last five years. Senate Bill 510.

Strengthening DRE Enforcement: Effective January 1, 2012, the DRE will have greater disciplinary authority to achieve its highest priority of protecting the public. A licensee will be required to report to the DRE within 30 days of any of the following: (1) disciplinary action taken by another licensing entity in California or another state, or by a federal governmental agency; (2) an indictment or information charging a felony against the licensee; or (3) a conviction of a felony or misdemeanor, including a plea of guilty or no contest. Failure to comply with this reporting requirement will be cause for discipline. The DRE's broader disciplinary authority will also include, among other things, the ability to automatically suspend the license of anyone incarcerated after a felony conviction. For disciplinary actions, the DRE can conclusively presume without a hearing that a licensee's conviction of murder, rape, lewd and lascivious acts, or a violation of dangerous drugs or controlled substances laws is substantially related to the licensee's qualifications, functions, or duties. The DRE will also be able to enter into a pre-prosecution settlement with a licensee or applicant instead of issuing an accusation or statement of issues, but the settlement shall be considered discipline. Additionally, the DRE can request that a disciplinary order requires the disciplined licensee to pay reasonable investigation and prosecution costs. Failure to pay can result in non-renewal of license. The DRE can also require that a restricted licensee pays the costs for monitoring the licensee and monetary restitution to any person who sustained damages caused by the licensee's misconduct. Again, failure to pay can result in non-renewal of license. Senate Bill

706.

DRE Issuing Citations and Fines: Starting January 1, 2012, the DRE can issue a citation and fine up to \$2,500 if, upon investigation, it has cause to believe that a licensee has violated the DRE rules, or a unlicensed person has engaged in licensed activities. The person cited can request a hearing within 30 days from receipt of the citation. The citation and fine will be in lieu of DRE disciplinary action for the offense cited, and the citation will not be reported as discipline. However, failure to comply with the terms of the citation or pay the fine within a reasonable time specified by the DRE shall result in disciplinary action and non-renewal of license. The DRE may also apply to a superior court for a judgment in the amount of the fine and an order compelling compliance. All administrative fines collected will be deposited into the Real Estate Recovery Fund, which has, under Senate Bill 706, been renamed the Consumer Recovery Account. Additionally under this law, if the DRE delays the renewal of a license due to a pending disciplinary action, the license will not expire until the results of the disciplinary action are final or the license is voluntarily surrendered, whichever occurs first. This law also gives the DRE the authority to make public information confirming the fact of certain investigations or proceedings regarding a licensee, and to apply for a court order to enforce a subpoena if a licensee has refused to obey. Senate Bill 53.

Reporting Broker-Owned Escrows and Securities Qualification Exemptions: Starting July 1, 2012, a broker who conducts escrow activities for five or more transactions in a calendar year under the broker exemption from the Escrow Law, or whose escrow activities are \$1 million or more in a calendar year, must file with the DRE an annual report of the number of escrows and dollar volume. The report must be filed within 60 days after the end of a calendar year in which the threshold is met. A failure to submit the report will be penalized at \$50 per day for the first 30 days and \$100 per day thereafter, up to \$10,000. A broker who fails to pay the penalty may be subject to license suspension or revocation. All penalties collected will be deposited into the Consumer Recovery Account under the Real Estate Recovery Program. Effective January 1, 2012, this law also requires a broker who files certain information with the DRE for an exemption from securities qualification to submit a copy of that information to any investor who gives funds to the broker in connection with a transaction involving the sale of a series of notes (or undivided interests in a note) secured by real property under section 10237 of the California Business and Professions Code. Senate Bill 53.

DRE Suspending Largest Tax Delinquents: Commencing January 1, 2012, both the State Board of Equalization and the Franchise Tax Board must periodically make public a list of the 500 persons with the largest tax delinquencies in excess of \$100,000. The lists must include, among other things, each taxpayer's occupational or professional license numbers. The DRE and other state governmental licensing entities (with certain exceptions) must suspend and refuse to issue or renew an occupational or professional license for anyone on either tax delinquency list. Assembly Bill 1424.

Agents Handling Appraisal Issues: Beginning January 1, 2012, a licensee cannot knowingly or intentionally misrepresent the value of real property. Furthermore, a licensee who offers or provides an opinion of value of residential real property that is used as the basis for originating a mortgage loan cannot have any direct or indirect interest in the property or transaction as defined under Regulation Z (at 12 C.F.R. section 226.42(d)). A licensee or other interested party is also prohibited from using coercion, extortion, bribery, intimidation, compensation, or instruction to improperly

influence a person preparing an appraisal or valuation for a real estate transaction. Senate Bill 6.

Increasing Small Claims to \$10,000: Commencing January 1, 2012, the small claims court jurisdiction will generally increase from \$7,500 to \$10,000 for an action brought by a natural person. For a claim of bodily injury from a car accident, the increase to \$10,000 will not occur until 2015. The dollar limit in small claims court for an action brought by a corporation or other entity will remain at \$5,000. Senate Bill 221.

Revising the Notice of Sale: Effective April 1, 2012, a notice of trustee's sale for the non-judicial foreclosure of one-to-four residential units must contain specified notices to the owner on how to seek postponement of the trustee's sale, and to potential bidders on the risks involved in bidding at trustee auctions. Additionally, a lender or authorized agent must make a good faith effort to provide up-to-date information about sale dates and postponements to persons who want this information. The lender must also provide updated information through the Internet, a telephone recording, or any other means that allows free access at any time. Senate Bill 4.

Renting Out Condominiums: C.A.R. also successfully sponsored legislation protecting owners' right to rent out their units in common interest developments. Starting January 1, 2012, an owner in a common interest development is exempt from any prohibition in a governing document against renting or leasing the unit, unless that prohibition was in effect before the owner acquired title to his or her unit. When renting out a unit, the owner must give the HOA verification of the owner's acquisition date, and name and contact information of the prospective tenant. An owner's right to rent under this law does not terminate for certain transfers of title, including, but not limited to, probate, spousal, parent-to-child, adding a joint tenant, and other transfers exempt from property tax reassessment. For sales transactions, the required HOA disclosures must include a statement describing any prohibition in the governing documents against renting or leasing. This law does not apply to rental prohibitions in effect before 2012. Senate Bill 150.

Tenants Smoking Ban: Beginning January 1, 2012, a residential landlord can prohibit the smoking of cigarettes and other tobacco products on the property, including any dwelling unit, building, other interior or exterior area, or the premises on which the property is located. For new tenants on or after January 1, 2012, the areas where smoking is prohibited must be stated in the lease or rental agreement. For preexisting tenants before 2012, a new provision prohibiting smoking is a change in the terms of tenancy that requires adequate written notice, depending on whether the tenancy is month-to-month or for a fixed term. Senate Bill 332.

Tenants Displaying Political Signs: Effective January 1, 2012, a residential tenant can generally display political signs related to elections, legislative votes, initiatives, and other political matters as specified, but the landlord can make reasonable restrictions as to location, size, and duration of display. In a single-family dwelling, a tenant's political signs can be displayed from the yard, window, door, balcony, or outside wall of the leased premises. In a multifamily dwelling, a tenant's political signs can be posted in the window or door of the leased premises. A landlord can restrict the size of a political sign to six square feet. A landlord can also prohibit a tenant from displaying political signs that violate local, state or federal law, or a lawful provision in an HOA's governing documents. A tenant must remove political signs in compliance with time limits set by local ordinance, or absent such time limits,

the landlord can reasonably restrict the posting of a sign to 90 days before an election or vote, and its removal within 15 days after the election or vote. Senate Bill 337.

Tenants Recycling Rights: Commencing July 1, 2012, a multifamily residential dwelling of five or more units (or a multifamily residential dwelling or business that generates more than four cubic yards per week of commercial solid waste as defined) must arrange for recycling services. The intent of this law is to address the challenges local governments are facing in reducing solid waste disposal in multifamily properties. The required recycling services are to be consistent with state or local laws, to the extent that these services are offered and reasonably available from a local service provider. The property owner of a multifamily residential dwelling may require tenants to source separate their recyclable materials to aid in compliance with this law. Assembly Bill 341.

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Edited by: Stella Ling, stellal@car.org

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