





2009 New Federal and State Statutes and 2008 Voter-Passed Initiatives including statutes passed the end of 2008

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This chart summarizes all the new laws passed by the California and Federal legislature (and propositions passed by the voters) affecting the real estate industry in the upcoming year as well as emergency legislation passed the end of 2008 that went into effect immediately. The chart includes not only a summary of the laws but also a link to the text of each statute, regulation, or proposition.

Topic	Law	Description
Advertising	SB 1461  DRE License Number on Ads (eff. 7/1/09)	<p>This law requires a real estate licensee to disclose his or her DRE license number on all "solicitation materials intended to be the first point of contact with consumers" and on real property purchase agreements when acting as an agent in those transactions.</p> <p>It defines "solicitation materials intended to be the first point of contact with consumers" to include:</p> <ul style="list-style-type: none"> • business cards, • stationery, • advertising fliers, and • other materials designed to solicit the creation of a professional relationship between the licensee and a consumer. <p>Excluded from the definition are the following:</p> <ul style="list-style-type: none"> • an advertisement in print or electronic media, • "for sale" signs, and • specified classified rental advertisements. <p>Amended Business and Professions Code Section 10140.6.</p>
Advertising	FCC Order 08-239A  Order Implementing the Junk	The Federal Communications Commission (FCC) issued a clarification on

	<p>Fax Prevention Act of 2005 (eff. 10/30/08)</p>	<p>implementation of the Junk Fax Prevention Act of 2005. Its summary is provided below:</p> <ul style="list-style-type: none"> • Facsimile numbers compiled by third parties on behalf of the facsimile sender will be presumed to have been made voluntarily available for public distribution so long as they are obtained from the intended recipient's own directory, advertisement, or Internet site; • Reasonable steps to verify that a recipient has agreed to make available a facsimile number for public distribution may include methods other than direct contact with the recipient; and • A description of the facsimile sender's opt-out mechanism on the first Web page to which recipients are directed in the opt-out notice satisfies the requirement that such a description appear on the first page of the Web site.
Disclosure	<p>AB 2881  Proximity to Farm or Ranch (eff. 1/1/09)</p>	<p>This law requires the following:</p> <ul style="list-style-type: none"> • the notice of intention provided as part of an application for a public report by a subdivider must contain a specified notice if the property is located within one mile of farm or ranch land; and • An expert ("licensed engineer, land surveyor, geologist, or expert in natural hazard discovery"), when responding to a request for a natural hazards disclosure statement, must determine whether the residential property is located within one mile of farm or ranch land and to provide a specified notice to that effect. <p>Amended Business and Professions Code Section 11010 and Civil Code Section 1103.4.</p>
Disclosure	<p>SB 1595  Owner/Tenant Responsibilities in State Responsibility Area; Changes Criteria of High Fire Hazard Severity Zone (eff. 1/1/09)</p>	<p>A person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, that is within a very high fire hazard severity zone or in a state responsibility area must significantly reduce the risk of ignition of the habitable structure</p>

		<p>by maintaining defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation.</p> <p>A greater distance than that may be required by state law, local ordinance, rule, regulation, or by an insurance company under certain circumstances. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary.</p> <p>Amended Government Code Sections 51175, 51177, 51178, 51182.</p>
Discrimination	<p>S. 3406 🗳️</p> <p>Amendments to the ADA (eff. 1/1/09)</p>	<p>The Americans with Disabilities Amendments Act of 2008 (ADAAA) expands the definition of a covered disability, and will likely subject employers to more requests for accommodation and more claims of discrimination on the basis of disability. It overturns a series of Supreme Court opinions interpreting the ADA, including <i>Sutton v. United Air Lines, Inc.</i>, and <i>Toyota Motor Manufacturing, Kentucky, Inc. v. Williams</i>.</p> <p>Among other things, the ADAAA expands the definition of “major life activities” through a non-exhaustive defining list of major life activities, which contains both “general” categories such as caring for oneself, eating, sleeping, walking, lifting, thinking, communicating and working, and “major bodily functions” such as functions of the immune system, normal cell growth, digestive, neurological, respiratory, circulatory and reproductive functions. The inclusion of these definitions, in conjunction with the pronouncement that “an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability” expands the scope of the protection previously afforded under the ADA.</p>
Eminent Domain	<p>Proposition 99 🗳️</p> <p>Restriction on Eminent Domain in reaction to <i>Kelo v. City of New London</i></p>	<p>Under previous law, state and local governmental agencies had the ability to acquire private property by eminent domain. The U.S. Supreme Court had upheld the right to governmental agencies</p>

	(passed 6/3/08)	<p>to take private property by eminent domain, and then turn over that property to another private person (e.g., for a development project) in <i>Kelo v. City of New London</i>. Proposition 90 was an attempt to reform that right of eminent domain in California, but Proposition 90 was defeated in a ballot measure in 2006.</p> <p>Under the new law, state and local government agencies cannot take owner-occupied residences by eminent domain to transfer to a private person except for certain very limited exceptions. These limited exceptions are for:</p> <ul style="list-style-type: none"> • protecting public health and safety; • preventing serious, repeated criminal activity; • responding to an emergency; or • remedying environmental contamination which poses a threat to public health and safety. <p>For purposes of this law, owner-occupied residence must be the primary residence for one year prior to the state or local governmental agency's initial written offer to purchase the property.</p> <p>Amended Article 1, § 19 of the California Constitution.</p>
Foreclosure	<p>SB 1137 📄</p> <p>Notices to Tenants & Owner-Occupants; REO Lender/Trustee's Sale Purchaser Obligations (eff. 7/8/08 and 9/9/08)</p>	<p>The foreclosing lender must now give the tenant a 60-day notice instead of the previous 30-day notice. [Note, however, for Section 8 tenants the notice period is not changed and remains 90 days.] Furthermore, the 60-day notice period does not apply to the owner--or any party to the note--who is occupying the foreclosed property. The owner or party to the note need be given only a 3-day notice to quit.</p> <p>Tenant/owner-occupant must also get a statutory notice of the foreclosure (in 6 different languages) once a notice of sale has been posted on a property. This foreclosure notice must be posted along with the notice of sale and also mailed to the tenant/owner-occupant. This provision takes effect 60 days after the measure becomes law. (eff. 9/9/08) For a copy of</p>

		<p>the notice, click here. 📄</p> <p>A lender cannot file an NOD until 30 days after contact is made with the borrower to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure" or 30 days after satisfying due diligence requirements to contact the borrower. The lender must advise the borrower of the right to request a subsequent meeting within 14 days, and to provide the borrower the toll-free phone number of a HUD-certified housing counseling agency.</p> <p>A foreclosing lender or purchaser at a trustee's sale (or foreclosure sale) must "maintain" the condition (defined in the statute) of the property or be subject to a fine of up to \$1,000 per day per violation.</p> <p>Added Code of Civil Procedure section 1161b, Civil Code sections 2923.5, 2923.6, 2923.8, and 2929.3.</p>
Foreclosure	<p>AB 180 📄</p> <p>Mortgage Foreclosure Consultants Law Amended (eff. 7/1/09)</p>	<p>This law amends the existing mortgage foreclosure consultants law. It contains the following provisions:</p> <ul style="list-style-type: none"> ▪ <u>Cancellation Right</u>: Permits an owner to cancel a foreclosure consultant contract until midnight of the fifth business day (previously third business day) by mail, e-mail, or facsimile. ▪ <u>Foreign Language Rule</u>: Requires the contract to be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract and requires the foreclosure consultant to provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language requested by the owner. If English is the language principally used by the foreclosure consultant to describe his/her services or to negotiate the contract, the foreclosure consultant must notify the owner orally and in writing before the owner signs the contract that the owner has the right to ask for a completed copy of the contract in a language described in Civil Code Section 1632(b) (i.e., prior to the execution, a translation of the contract or agreement in the language in which the contract or agreement was negotiated,

		<p>which includes a translation of every term and condition in that contract or agreement.) (Non-English languages specified in Civil Code Section 1632: Spanish, Chinese, Tagalog, Vietnamese, or Korean.)</p> <ul style="list-style-type: none"> ▪ <u>Power of Attorney Prohibition</u>: Prohibits a foreclosure consultant from taking any power of attorney from an owner for any purpose. ▪ <u>Registration Requirement</u>: Requires a foreclosure consultant to register with the Department of Justice (DOJ). ▪ <u>Bond Requirement</u>: Requires a foreclosure consultant to obtain and maintain a surety bond of \$100,000. The DOJ may refuse to issue, or may revoke a certificate of registration because of any misstatement in the registration form, because the foreclosure consultant has failed to maintain the bond required and because of any violation of the foreclosure consultant law. There are penalty provisions. ▪ <u>New Fund</u>: Creates a Foreclosure Consultant Regulation Fund in the State Treasury. <p>Amended Civil Code Sections 1632, 2945.2, 2945.3, and 2945.4 and added Section 2945.45.</p>
HOA	AB 1892, 2180 📄 Solar Energy (eff. 1/1/09)	<p>Any governing document of a homeowners association that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable. Reasonable restrictions are permissible.</p> <p>Amended Civil Code Section 714.</p>
HOA	SB 1511 📄 HOAs Request/Notification of NOD (eff. 1/1/09)	<p>This law permits an association, with respect to separate interests governed by the association, to record a request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of these separate interests, mail to the association a copy of any trustee's deed after the trustee's sale concerning a separate interest.</p> <p>The request must include a legal</p>

		<p>description or the assessor's parcel number of the separate interest as well as the name and address of the association and a statement that it is a homeowners' association. Subsequent requests of an association will supersede prior requests. A request must be recorded before the filing of a notice of default.</p> <p>It requires the mortgagee or trustee to mail that information to the association within 15 business days following the date the trustee's deed is recorded. It specifies that failure to mail the information will not affect the title to real property.</p> <p>Amended Civil Code Section 2924b.</p>
HOA	<p>AB 2846 📄</p> <p>Amended Written Notice Re: Assessments and Foreclosure (eff. 1/1/09)</p>	<p>Existing law requires an association to distribute a specified written notice to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. This notice must include information about assessments, foreclosure, payments, meetings, and payment plans.</p> <p>This law requires the written notice to also include a statement notifying members that an owner may, but is not obligated to, pay under protest any disputed charge or sum owed to the association and by doing so specifically reserve the right to contest the disputed charge or sum in court or otherwise.</p> <p>This bill provides that if a dispute exists between the owner of a separate interest and the association regarding any charge or sum owed to the association and the amount does not exceed the jurisdictional limits for small claims court, the owner may, in addition to pursuing dispute resolution, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, and commence an action in small claims court.</p> <p>Nothing in the section added by this law impedes an association's ability to collect delinquent assessments, as specified.</p> <p>Amended Civil Code Section 1365.1 and</p>

		added Section 1367.6.
Housing/Finance	H.R. 3221 📄 Housing and Economic Recovery Act/ HOPE for Homeowners Program (eff. 7/30/08)	<p>This federal law includes GSE reform (government sponsored enterprises such as Fannie Mae, Freddie Mac), FHA reform, homebuyer tax credit, FHA foreclosure rescue, and more. For a detailed NAR summary, click here.</p> <p>See below under Tax category for the FIRPTA fix which was included in this federal law</p>
Housing/Finance	12 C.F.R. Part 226 Final Rule Under Reg Z 📄 (eff. 10/1/09)	<p>This Regulation Z final rule establishes a new category of "higher-priced mortgages" that includes virtually all closed-end subprime loans secured by a consumer's principal dwelling. Which loans qualify as "higher-priced" will be determined by a new index that will be published by the Federal Reserve Board. The rule's definition of "higher-priced mortgage loans" will capture virtually all loans in the subprime market, but generally exclude loans in the prime market.</p> <p><u>The rule for these higher-priced loans:</u></p> <ul style="list-style-type: none"> * Prohibits a lender from making a loan without regard to borrowers' ability to repay the loan from income and assets other than the home's value. A lender complies, in part, by assessing repayment ability based on the highest scheduled payment in the first seven years of the loan. To show that a lender violated this prohibition, a borrower does not need to demonstrate that it is part of a "pattern or practice." * Prohibits a lender from relying on income or assets that it does not verify to determine repayment ability. * Bans any prepayment penalty if the payment can change during the initial four years. For other higher-priced loans, a prepayment penalty period cannot last for more than two years. * Requires that the lender establish an escrow account for the payment of property taxes and homeowners' insurance for first-lien loans. The lender may offer the borrower the opportunity to cancel the escrow account after one year. <p><u>The rule for all closed-end mortgages</u></p>

		<p><u>secured by a consumer's principal dwelling:</u></p> <ul style="list-style-type: none"> • Prohibits certain servicing practices: failing to credit a payment to a consumer's account as of the date the payment is received, failing to provide a payoff statement within a reasonable period of time, and "pyramiding" late fees. • Prohibits a creditor or broker from coercing or encouraging an appraiser to misrepresent the value of a home. • Creditors must provide a good faith estimate of the loan costs, including a schedule of payments, within three days after a consumer applies for any mortgage loan secured by a consumer's principal dwelling, such as a home improvement loan or a loan to refinance an existing loan. <p><u>The rule for all mortgages:</u></p> <p>Requires advertising to contain additional information about rates, monthly payments, and other loan features. The rule also bans seven deceptive or misleading advertising practices, including representing that a rate or payment is "fixed" when it can change.</p> <p>Compliance with the new rules, other than the escrow requirement, is mandatory for all applications received on or after October 1, 2009. The escrow requirement has an effective date of April 1, 2010 for site-built homes, and October 1, 2010 for manufactured homes.</p>
Housing/Finance	<p>H.R. 1424 Emergency Economic Stabilization Act of 2008 (eff. 10/3/08)</p>	<p>This federal law provides authority for the Federal Government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.</p> <p>This law, commonly known as the \$700 Billion Bailout, strengthens the FHA-insured refinance of loans for troubled mortgages under the HOPE for Homeowners program. It also extends the tax exemption for mortgage debt forgiveness on home loans under the Mortgage Forgiveness</p>

		Debt Relief Act of 2007 until December 31, 2012.
Housing/Finance	SB 870 🏠 Cal HFA Establishes Mortgage Refinance Program (eff. 9/25/08)	<p>Cal HFA is the state's independent affordable housing bank. Cal HFA's programs are entirely self-supporting and unlike general obligation bond programs do not rely on any tax-payer or state-funded support. CalHFA sells bonds and uses the proceeds of the bonds to make home loans and apartment construction loans.</p> <p>SB 870 permits the California Housing Finance Agency (Cal HFA.) to establish rules and regulations for a mortgage refinance program which was authorized by the federal law, HERA.</p> <p>The federal Housing and Economic Recovery Act of 2008 (HERA) included a one-time increase in the national allocation of tax-exempt bond capacity of an additional \$11 billion. California's portion is approximately \$1.175 billion. The additional tax-exempt bond capacity can be used for three purposes: refinancing sub-prime mortgages, providing below market rate mortgages to first-time homebuyers, and construction of multi-family rental properties. (Note: This is the first time federal law has permitted the use of tax-exempt bonds for refinancing mortgages.)</p> <p>Amended Health and Safety Code Sections 50086, 51050, and 51101 and added Section 51058.5.</p>
Housing/Finance	SB 1065 🏠 Cities/Counties May Use Revenue Bonds to Make/Purchase Home Mortgages (eff. 1/1/09 thru 1/1/12)	<p>This law permits cities and counties to use revenue bond funds to make or purchase refinanced home mortgages that are federally insured, federally guaranteed, or eligible to be purchased by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan and Mortgage Corporation (Freddie Mac).</p> <p>It applies the maximum household income criteria of 120 percent for most areas and 150 percent for specified economically disadvantaged to borrowers who obtain refinanced mortgages through a local housing agency home financing program. This authorization limits local governments to making or purchasing "purchase-money" mortgages made to low- or moderate-</p>

		<p>income homebuyers and to low- or moderate income individuals who are refinancing their mortgages and are simultaneously undertaking to substantially rehabilitate their homes.</p> <p>Amended, repealed and added Health and Safety Code Sections 52013 and 52020.</p>
Housing	<p>S. 1771 Virginia Graeme Baker Pool & Spa Safety Act, 15 U.S.C. 8001 <i>et seq.</i>, (eff. 12/19/08)</p>	<p>This federal law requires new and existing public pools and spas to be equipped with anti-entrapment drain devices. The law applies to multi-family apartment complexes and not individual homes. For a more detailed summary of the law, click here.</p>
Housing	<p>AB 2280 🗳️ Modification of Density Bonus Law (eff. 1/1/09)</p>	<p>Under the Planning and Zoning Law a city or county is required to provide a developer with a density bonus and other incentives or concessions in exchange for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for low-, very low, or moderate-income households or qualifying residents when a developer of housing proposes a housing development within the city or county.</p> <p>This new law imposes certain procedural changes to the application for a density bonus and other incentives or concessions.</p> <p>Amended Government Code Section 65915.</p>
Identity Theft	<p>12 C.F.R., Part 41, 12 C.F.R. Part 272, 12 C.F.R. Parts 334 and 364, and 16 C.F.R. Part 681 Final Rule Identity Theft "Red Flags" and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2008 (eff. 11/1/08 for compliance)</p>	<p>Under the Red Flags Rule, financial institutions and creditors (includes mortgage loan brokers) must develop a written program that identifies and detects the relevant warning signs – or “red flags” – of identity theft. These may include, for example, unusual account activity, fraud alerts on a consumer report, or attempted use of suspicious account application documents. The program must also describe appropriate responses that would prevent and mitigate the crime and detail a plan to update the program. The program must be managed by the Board of Directors or senior employees of the financial institution or creditor, include appropriate staff training, and provide for oversight of</p>

		<p>any service providers.</p> <p>The Red Flags Rule provide all financial institutions and creditors the opportunity to design and implement a program that is appropriate to their size and complexity, as well as the nature of their operations.</p>
Landlord/Tenant	<p>AB 2052 🗳️</p> <p>Victim of Domestic Violence & Termination of Tenancy (eff. 9/27/08 thru 1/1/12)</p>	<p>This law authorizes a tenant to notify the landlord in writing that he/she or a household member, as defined, was a victim of an act of domestic violence, sexual assault, or stalking, as defined, and intends to terminate the tenancy. It requires the tenant to attach a copy of a temporary restraining order or emergency protective order, or a copy of a specified written report by a peace officer to the notice.</p> <p>It authorizes the tenant to quit the premises and the tenant is discharged from payment of rent for any period following 30 days from the date of the notice, or as specified. Existing law on the security deposit still applies. If within the 30 days after notice is given under this section and the premises are rented to another, the rent for the 30-day period must be prorated.</p> <p>The notice to terminate the tenancy must be given within 60 days of date the order was issued or the report was made, or as specified.</p> <p>This law also provides that other tenants, except the household member who is a victim of domestic violence, sexual assault, or stalking, and members of that person's family, are not released from their obligations under the rental agreement.</p> <p>For purposes of the unlawful detainer law, if a person commits specified acts of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, there is a rebuttable presumption affecting the burden of proof that the person has committed a nuisance on the premises unless the victim or a member of the victim's household has not vacated the premises.</p> <p>Added Civil Code Section 1946.7 and amended, repealed and added Code of Civil Procedure Section 1161.</p>

Landlord/Tenant	<p>AB 2949 🗳️</p> <p>Landlords/REO Lenders and Abandoned Animals (eff. 1/1/09)</p>	<p>This law requires a person or private entity that discovers an abandoned animal in or about the premises of real property that has been vacated upon, or immediately preceding, the termination of a lease or other rental agreement or foreclosure of the property to immediately contact animal control for the purpose of retrieval and care.</p> <p>The law provides, in part, that:</p> <ul style="list-style-type: none"> Any person or private entity with whom a live animal is deposited shall immediately notify animal control officials for the purpose of retrieving the animal. The person in possession of the abandoned animal is subject to all local ordinances and state laws that govern the proper care and treatment of those animals. The person or private entity, or the successor property owner, that notifies animal control officials to retrieve the animal shall not be considered the keeper of the animal. <p>(Note: This law impacts banks with REO properties and their real estate agents.)</p> <p>Amended Civil Code Sections 1815, 1816, and 1981.</p>
Landlord/Tenant	<p>AB 2025 🗳️</p> <p>Disposition of Personal Property Left on Commercial Real Property (eff. 1/1/09)</p>	<p>This law provides for the disposition of personal property remaining on the premises of commercial real property, as defined, at the termination of a tenancy, as specified. The law also provides that, in the case of a tenancy of commercial real property, if the landlord reasonably believes that the total resale value of the personal property is the lesser of \$750 or \$1 per square foot of the premises occupied by the tenant, the landlord may retain the property for his or her own use or dispose of it in any manner.</p> <p>Added Civil Code Section 1980.5 and added Chapter 5.5 (starting with Section 1993) to Title 5 of Part 4 of Division 3 of the Civil Code.</p>
Licensing	<p>SB 1737 🗳️</p>	<p>SB 1737 authorizes the DRE to suspend or</p>

	<p>DRE Disciplinary Actions for Violations such as Inflating BPO (eff. 1/1/09)</p>	<p>bar from any position of employment, management, or control, for up to 36 months, a real estate salesperson or real estate broker or an unlicensed person, if the DRE finds either of the following:</p> <ul style="list-style-type: none"> ▪ The suspension or bar is in the public interest, and that the person knew or should have known that he or she violated the Real Estate Law or its regulations, and has caused material damage to the public. ▪ The person was convicted of, or pleaded not guilty to, any crime, or was held liable in any civil action, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business. <p>The law prohibits persons suspended or barred under the authority described above from participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, underwritten title company, real estate salesperson or real estate broker and from engaging in any business activity on the premises where a real estate salesperson or real estate broker is conducting business.</p> <p>(Note: This section is intended to stop the practice of avoiding DRE jurisdiction by switching to work in a real estate-related capacity with a company or individual that is licensed under a different state regulator, such as Department of Corporations, Department of Financial Institutions, Department of Insurance, or a federal regulator.)</p> <p>This law authorizes DRE to suspend or revoke the license of a licensee who provides an opinion of value of residential real property (BPO), in connection with a short sale, that does either or both of the following:</p> <ul style="list-style-type: none"> ▪ Manipulates the lien holder to reject the proposed debt forgiveness sale.
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		<ul style="list-style-type: none"> Acquires a financial or business advantage, including a listing agreement that directly results directly from the inaccurate opinion of value of the property. <p>The law requires a person, licensee or entity that arranges financing in connection with a sale, lease, or exchange of real property, or when a person or entity that arranges financing in connection with the sale, lease, or exchange of real property undertakes to act as an agent with respect to that property, that agent, person, or entity must, within 24 hours, disclose those roles in writing to all parties to the sale, lease, or exchange, and to any related loan transaction.</p> <p>Amended Business and Professions Code Section 10176 and added Sections 10087 and 10177.6.</p>
Licensing	SB 1448 📄 Fines for Being Unlicensed (eff. 1/1/09)	<p>This law increases the maximum fine for an unlicensed person acting as a real estate licensee from \$10,000 to \$20,000 if the violation is committed by a person and from \$50,000 to \$60,000 if the violation is committed by a corporation.</p> <p>If a Real Estate Fraud Prosecution Trust Fund exists in the county where the person or corporation is convicted, this law requires any fine collected from the person or corporation in excess of the existing maximum amount be deposited in that fund.</p> <p>Amended Business and Professions Code Section 10139.</p>
Licensing	AB 2454 📄 DRE Recovery Fund (eff. 1/1/09)	<p>This law increases the limit on the amount for which the Department of Real Estate Recovery Account may be liable and deletes obsolete provisions relating to cause of action brought prior to January 1, 1980.</p> <p>The monetary increase for applications for payment from the Recovery Account filed on or after January 1, 2009 is \$50,000 for any one transaction and \$250,000 for any one licensee.</p> <p>Amended Business and Professions Code</p>


		Section 10474.
Liquidated Damages	<p>AB 2020 </p> <p>Liquidated Damages & Hi-Rise Condos (eff. 1/1/09 thru 1/1/14)</p>	<p>This law provides that if the contracted sales price of a newly constructed attached residential condominium unit located within a structure of 20 or more residential condominium units, standing over eight stories high and located in a specified high-density infill development is greater than \$1 million, a seller may recover 6% of the contracted sales price in liquidated damages if the buyer defaults on a presale contract by not purchasing the condominium unit, unless the buyer establishes that the amount claimed by the seller is unreasonable in relation to the seller's actual damages.</p> <p>In the sale of a unit, as described above, the seller is required to perform an accounting of its costs and revenues. The accounting must include any and all costs and revenues related to the construction and sale of the residential property and any delay caused by the buyer's default. The seller must make reasonable efforts to mitigate any damages arising from the default. If a "new qualified buyer" has entered into a contract to purchase the residential property in question, the seller must perform the accounting within 60 calendar days after a new qualified buyer has entered into a contract to purchase.</p> <p>The seller must refund to the buyer any amounts previously retained as liquidated damages in excess of the greater of either 6 percent of the originally agreed-upon purchase price of the residential property or the amount of the seller's losses resulting from the buyer's default, as calculated by the accounting. The refund must be sent to the buyer's last known address within 90 days after the final close of escrow of the sale or lease of all the residential condominium units within the structure.</p> <p>Prior to the execution of a contract for sale of specified residential condominium units, the seller must provide to the buyer a specified notice regarding liquidated damages. If the seller fails to provide this notice to the buyer prior to the execution of the contract, the amount of any liquidated damages will be subject to normal</p>

		<p>liquidated damages provisions.</p> <p>Starting July 1, 2010, and annually on each July 1 thereafter, the dollar amount of the minimum purchase price specified in the bill must be adjusted by the Real Estate Commissioner who will determine the amount of the adjustment based on the change in the median price of a single family home in California, as determined by the most recent data available from Federal Finance Housing Board. Upon making that determination, the Real Estate Commissioner must publish the current dollar amount of the minimum purchase price on the Department of Real Estate Internet Web site.</p> <p>Amended, repealed and added Civil Code Section 1675.</p>
Miscellaneous	<p>SB 28 🏠</p> <p>No Text Messaging When Driving (eff. 1/1/09)</p>	<p>SB 28 bans the use of an electronic wireless communications device to write, send, or read a text-based communication while driving a motor vehicle. The law imposes a base fine of \$20 for a first offense and \$50 for each subsequent offense.</p> <p>This prohibition does not include reading, selecting, or entering a telephone number or name in an electronic wireless communications device for the purpose of making or receiving a telephone call. It also excludes any emergency professional who uses these devices while operating an emergency vehicle in the course and scope of his or her duties. A violation point will not be given for a conviction.</p> <p>Amended Vehicle Code Section 12810.3 and added Section 23123.5.</p>
Mobilehomes	<p>SB 1234 🏠</p> <p>Mobilehome Privacy (eff. 1/1/09)</p>	<p>This law prohibits the owners or management of a mobilehome park from entering an enclosed accessory structure to a mobilehome without the prior written consent of the resident, except in case of emergency or when the resident has abandoned the mobilehome or accessory structure.</p> <p>Amended Civil Code Section 798.26.</p>


<p>Mobilehomes</p>	<p>AB 2050 🏠 Smoke Detectors & Water Heater Bracing in Mobilehomes (eff. 1/1/09)</p>	<p><u>Smoke Detectors:</u></p> <p>This law requires all <u>used</u> manufactured homes, <u>used</u> mobilehomes, and <u>used</u> multifamily manufactured homes that are sold to have a smoke alarm installed in each room designed for sleeping that is operable on the date of transfer of title.</p> <p>The seller must sign a declaration 🏠 regarding the presence of working smoke alarms in these specified homes within 45 days prior to the transfer of title. The law also shields real estate licensees from liability for errors, inaccuracies, or omissions relating to the disclosures required to be made by a transferor pursuant to this bill.</p> <p><u>Water Heater Strapping:</u></p> <p>The law also requires all fuel-gas-burning water heater appliances installed in <u>new</u> manufactured homes or <u>new</u> multifamily manufactured homes be seismically braced, anchored, or strapped and such work be completed before or at the time of installation of the homes.</p> <p>In addition, any <u>replacement</u> fuel-gas-burning water heater appliances in <u>existing</u> mobilehomes, <u>existing</u> manufactured homes, or <u>existing</u> multifamily manufactured homes that are <u>offered for sale, rent, or lease</u> are required to be seismically braced, anchored, or strapped.</p> <p>All <u>used</u> mobilehomes, <u>used</u> manufactured homes, and <u>used</u> multifamily manufactured homes <u>that are sold</u> must, on or before the date of transfer of title, have the fuel-gas-burning water heater appliance or appliances seismically braced, anchored, or strapped. This requirement is satisfied if, within 45 days prior to the transfer of title, the transferor signs a declaration stating that each water heater appliance in the used mobilehome, used manufactured home, or used multifamily manufactured home is secured pursuant to this section on the date the declaration is signed.</p> <p>The Department of Housing and Community Development is to promulgate on or before July 1, 2009 rules and</p>
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		<p>regulations that include standards for water heater seismic bracing, anchoring, or strapping.</p> <p>(Note: Section 3.5 in AB 2050 is not in effect.)</p> <p>Amended Health and Safety Code Section 18031.7 and repealed and added Section 18029.6.</p>
Mobilehomes	<p>SB 1107 🏠</p> <p>Accommodations for Disabled (eff. 1/1/09)</p>	<p>This law requires mobilehome park management to allow an owner or resident to install accommodations for the disabled on their mobilehome or the site, lot, or space on which their mobilehome is located, as specified. It authorizes the management to require that the accommodations installed be removed by the current homeowner at the time the mobilehome is removed from the park or pursuant to a written agreement prior to the completion of the resale of the mobilehome, as specified.</p> <p>The law also permits a mobilehome owner to share the home with a live-in caregiver who provides care pursuant to a written treatment plan without being charged a fee for that person by the park management.</p> <p>Amended Civil Code Sections 798.34 and 799.9 and added Civil Code Sections 798.29.6 and 799.11.</p>
Mobilehomes	<p>California Code of Regulations, Title 25, Chapter 3, Subchapter 2, and adopted by reference portions of the California Code of Regulations,</p> <p>Title 24, California Building Code, Part 2, Chapter 7A</p> <p>(25 Cal. Code Regs. Sections 4200-4214)</p> <p>Ignition resistant exterior design, construction, installation and alteration of any new or used manufactured home, multifamily manufactured home or commercial modular or used</p>	<p>Emergency regulations were passed by the HCD that affect the exterior design, construction, installation and alteration of any new or used manufactured home, multifamily manufactured home or commercial modular or used mobilehome designated for installation in Wildland Urban Interface Fire Areas.</p>

	mobilehome designated for installation in Wildland Urban Interface Fire Areas (eff. 9/1/08)	
Tax	H.R. 3221 📄 "FIRPTA Fix" (eff. 7/30/08)	According to Section 3024 of H.R. 3221 (Housing and Economic Recovery Act of 2008), the seller may give the seller's affidavit of nonforeign status (C.A.R. form AS) to a "qualified substitute" instead of to the buyer. However, the qualified substitute must furnish a statement to the buyer stating, under penalty of perjury, that the qualified substitute has the affidavit in his or her possession. A qualified substitute is the person responsible for closing the transaction, that includes an attorney, title company, escrow company, or buyer's agent (but not the seller's agent).
Tax	SB 1055 📄 Conforms California income tax law with federal law as to mortgage debt forgiveness (eff. 9/25/08)	<p>California law, SB 1055, conforms California Revenue and Tax Code Section 17144.5 with federal law, the Mortgage Forgiveness Debt Relief Act of 2007, with the following exceptions:</p> <ol style="list-style-type: none"> (1) The maximum amount of acquisition indebtedness is reduced to \$800,000 for couples filing jointly and \$400,000 for individual filers; (2) The maximum amount of debt relief income that can be forgiven is \$250,000 for couples filing jointly and \$125,000 for individual filers; and (3) California's debt relief statute applies to property sold on or after January 1, 2007 and before January 1, 2009. <p>Finally, if the owner has owned the property for some time and has refinanced to take out some of the equity, the owner could be subject to capital gains taxation when selling the property as well. See Question 9 of the Legal Q&A, Taxation of Foreclosures and Short Sales for additional information.</p>
Title Insurance	SB 133 📄 Promotions & Marketing Representatives (eff. 1/1/09)	In order to become employed as a title marketing representative (TMR) this law requires that a person must hold a valid "certificate of registration" as a title marketing representative issued by the Department of Insurance. A "title marketing

		<p>representative" is a natural person employed by a title insurer, underwritten title company, or controlled escrow company whose primary duty is to market, offer, solicit, negotiate, or sell title insurance. The term does not include a person whose primary duties directly involve the creation, production, or issuance of the title policy or the performance of escrow services.</p> <p>A certificate of registration is valid for a three-year period. This law does not preclude an action against a company that had actual knowledge of the violation by a TMR.</p> <p>The law makes the following additional activities to be unlawful inducements for the placement or referral of title insurance:</p> <ul style="list-style-type: none"> • Advertising in newspapers, magazines or other publications that are produced by or on behalf of a person or results in a subsidy to a person. • Expenditures for food, beverages and entertainment for a person. <p>However, the following additional expenditures are lawful:</p> <ul style="list-style-type: none"> • Promotional items with a company logo of the title company or title insurer with a value of not more than \$10 each. A "promotional item" does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value. • Furnishing education or educational materials related to the title insurance business for a person if continuing education credits are not provided. • Other expenditures for a person as permitted by the California Department of Insurance by regulation. <p>Amended Insurance Code Section 12404 and added new Article 8 (Section 12418 et seq.) to Chapter 1 of Part 6 of Division 2 of the Insurance Code.</p>
Tax	SB 1055  State Income Tax & Debt Relief	This law conforms state law to the federal

	<p>Income (eff. 9/25/08)</p>	<p>Mortgage Forgiveness Debt Relief Act of 2007 (with a few exceptions) by allowing an income exclusion of cancellation of indebtedness income generated from the discharge of a "qualified principal residence indebtedness".</p> <p>The law defines a "qualified principal residence indebtedness" as acquisition indebtedness, within the meaning of Internal Revenue Code Section 163(h)(3)(B), but modifies the federal definition of "acquisition indebtedness" by providing that, for purposes of this law, the aggregate amount of acquisition indebtedness for any period may not exceed \$800,000 (or \$400,000 in the case of a married taxpayer filing separately).</p> <p>It limits the amount of the cancellation of indebtedness income eligible for the exclusion from gross income as follows:</p> <ul style="list-style-type: none"> ▪ \$250,000 in the case of a taxpayer filing single or as a head of household, and in the case of married couples filing jointly. ▪ \$125,000 in the case of a married taxpayer filing separately. <p>It applies only to discharges of qualified principal residence indebtedness occurring on or after January 1, 2007 and before January 1, 2009.</p> <p>The law also provides that no penalties or interest may be assessed on the cancellation of indebtedness income eligible for exclusion if that income resulted from the discharge of qualified residence indebtedness during the 2007 taxable year.</p> <p>For taxpayers who have already filed their returns and included discharge of principal residence indebtedness as income for California purposes for 2007, they will need to file an amended return and use Schedule CA (540 or 540NR) line 21f, column B to make adjustments to appropriately exclude all or a portion of it.</p> <p>Added Revenue and Taxation Code Section 17144.5.</p>
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Tax	<p>SB 1007 </p> <p>1031 Exchange Facilitators (eff. 1/1/09 thru 1/1/14)</p>	<p>This law requires a person engaging in the business as an exchange facilitator for a 1031 exchange to comply with certain bonding and insurance requirements, as specified, and to notify existing exchange clients whose relinquished or replacement property is located in this state of any change in control of the exchange facilitator, as defined.</p> <p>The law also requires a person engaging in business as an exchange facilitator to, among other things, act as a custodian for all exchange funds and to invest those funds in investments that meet a prudent investor standard, as specified.</p> <p>It prohibits these persons from performing specified acts, including, but not limited to, making material misrepresentations and engaging in conduct constituting fraudulent or dishonest dealings. It makes any person who violates these provisions subject to civil suit in a court of competent jurisdiction and provides that a person claiming to have sustained damage because of a failure to comply with these provisions may file a claim on specified bonds, deposits, or letters of credit to recover the damages.</p> <p>Added and repealed Division 20.5 (commencing with Section 51000) of the Financial Code.</p>
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