

2005
New Laws Passed By The California Legislature/Electorate Affecting
REALTORS®

Common Interest Developments (eff. 1/1/05)

AB1836 CID Dispute Resolution Process	<p>This law revises the provisions in the Davis-Stirling Common Interest Development (CID) Act relating to the dispute resolution process. This new law states that a common interest development HOA and an owner of a separate interest may enforce governing documents other than the declaration (i.e., other than the CC&Rs). The law also creates a new dispute resolution procedure for conflicts between the HOA and a member, to be applied when the dispute concerns specified subjects. Under the new law the dispute resolution provisions also are applicable to other nonjudicial processes and their applicability is expanded to include actions enforcing not just the Davis-Stirling Common Interest Development Act but also the Nonprofit Mutual Benefit Corporation Law.</p>
AB2376 CID Unit Change Approval	<p>Under this law if an HOA's governing documents require association approval before an owner may make a physical change to the owner's separate interest or to the common area, the association must satisfy specified requirements in reviewing a proposed change, including providing a fair, reasonable, and expeditious procedure for making its decision, as specified, and making a decision on a proposed change in writing.</p>
AB2718 CID Disclosures	<p>Common interest development homeowners' associations, like local governments, have the ability to levy assessments for the general maintenance of the development. While they are required by law to provide certain financial information, it is typically not distributed in a way that is useful to most residents. Even worse, many associations have failed to provide for an adequate budgetary reserve to cover the expense of repairing roofs, pools, and other features of the common areas. And as a result, homeowners are often unaware of an impending assessment increase.</p> <p>To remedy the situation, AB 2718 (sponsored by C.A.R.) makes several improvements to the way homeowners' associations inform their members of required financial information. The law alerts homeowners about possible assessment increases and revises the requirements for associations to notify their members about their reserve funds intended to cover future repairs or replacements of "major components."</p> <p>Some CID associations divert association funds to a nonprofit entity called a "Community Service Organization" to perform functions for the association or the surrounding community. This law requires those CSOs serving on behalf of the association to provide meaningful financial disclosures to association residents. Also, when residents have to obtain disclosure documents, the law limits document preparation charges to actual and reasonable costs.</p>

Disclosure Issues

<p>AB488 Megan's Law</p>	<p>This law requires the Department of Justice, on or before July 1, 2005, to make specified information about certain sex offenders available to the public via an internet website and to update that information on an ongoing basis. This information is to include all of the information currently available to the public via CD-ROM, and would also include the home address of specified offenders. With regard to certain offenders whose residence addresses are to go on the internet website only under specified circumstances relating to their criminal histories, the department would be required to put that address information on the website on or before July 1, 2006. The law also provides penalties for mis-use of this information.</p>
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<p>AB920 (eff. 6/24/04) NHD Clean-up Legislation</p>	<p>This law modifies the existing statutory NHD form to require a supplying consultant to sign his or her own work product, and preempts local airport influence disclosure rules unless they are re-enacted after the effective date of the bill.</p> <p>AB 920 has been incorrectly characterized by some disclosure providers and other private interests as including a higher standard in selection of disclosure companies by real estate professionals and increasing liability for real estate agents. This is not the case; if anything, AB 920 reinforces the responsibilities of the disclosure companies making these substitute disclosures and requires them to sign their own work.</p> <p>To assist REALTORS® in understanding how AB 920 changes the NHD law, see the side-by-side comparison chart.</p>
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<p>SB 1568 (eff. 7/1/05 and 1/1/06) Subdivision Disclosure/ NHD Law/ CC&Rs Amendment</p>	<p>Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the DRE an application for a public report consisting of a notice of intention and a completed questionnaire that includes, among other things, a statement that there is an airport in the vicinity, and that this may affect the use of the property. A copy of the public report, when issued, must be given to the prospective purchaser by the owner, subdivider, or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision or upon request by any member of the public. This law requires, on or after July 1, 2005, the notice of intention filed with the application for a public report, to include a statement regarding whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, and to provide a specified notice. Furthermore, existing law limits the liability of a transferor for failing to disclose natural hazards in specified property transactions if the transferor obtains a report or opinion prepared by a licensed engineer, land surveyor, geologist, or expert in natural hazard discovery dealing with matters within the scope of the professional's license or expertise. This limitation of liability includes the requirement that when an expert in natural hazard disclosure responds to a request regarding natural hazards, that the expert also determine whether the property is within an airport influence zone and, if so, provide a specified notice with his or her report. This new law conditions the limitation on liability by requiring the expert in natural hazard disclosures to also determine whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission and to provide a specified notice. In addition, this new law requires that any CC&Rs, recorded on or after January 1, 2006, contain a statement regarding whether the property is within the jurisdiction of the San Francisco Bay Conservation and Development Commission, and to provide a specified notice.</p>
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Electronic Communications (eff. 1/1/05)

AB578 Electronic Recording Authorization	Currently the transfer of ownership of almost all California properties is recorded by having someone from the title or escrow company physically deliver the transfer of title documents to the county recorder's office. Not only is this method antiquated and inefficient, but it is also costly. In 2002, California's Attorney General issued an opinion that county recorders cannot engage in electronic recording, unless they have additional authorization under statute. The AG opinion discouraged the use of electronic recording. AB 578, sponsored by C.A.R., gives that authorization to county recorders and encourages the use of electronic recording.
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SB1436 Consumer Protection Against [Computer] Spyware Act	This law prohibits a person or entity other than the authorized user of a computer owned by a person in California from, with actual knowledge, conscious avoidance of actual knowledge, or willfully, causing computer software to be copied onto the computer and using the software to (1) take control of the computer, as specified, (2) modify certain settings relating to the computer's access to or use of the Internet, as specified, (3) collect, through intentionally deceptive means, personally identifiable information, as defined, (4) prevent, without authorization, an authorized user's reasonable efforts to block the installation of or disable software, as specified, (5) intentionally misrepresent that the software will be uninstalled or disabled by an authorized user's action, or (6) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus software installed on the computer.
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Labor Issues (eff. 1/1/06)

AB1825 Sexual Harassment Training	This law requires employers with 50 or more employees to provide 2 hours of training and education to all supervisory employees, as specified, within one year of January 1, 2005, unless the employer has already provided sexual harassment training and education to employees after January 1, 2003. Each employer must provide sexual harassment training and education to each supervisory employee once every 2 years, after January 1, 2006. Furthermore, this law provides that a claim that the training and education did not reach a particular individual does not automatically result in the liability of an employer for sexual harassment and, additionally, an employer's compliance with these provisions does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.
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Landlord/Tenant Issues

SB115 (eff. 1/1/05) Restrictions on Cash Payments of Rent	<p>This law prohibits a landlord or a landlord's agent from requiring cash as the exclusive payment of rent or deposit of security, except in circumstances following a tenant's failure to pay rent with a valid financial instrument, as specified. The law also provides that a waiver of these provisions is contrary to public policy, void, and unenforceable.</p> <p>One provision, in particular, "the issuance of a money order or a cashier's check is direct evidence only that the instrument was issued," is intended to protect</p>
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	landlords from the situation whereby a tenant claims in court that he/she paid the rent when in fact the tenant had a money order issued, but never paid the landlord and simply cashed the money order himself or herself.
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SB1328 (eff. 7/1/05) Section 8 Housing Law Changes	Among other changes, the definition of "assisted housing development" is expanded. The law states that an owner of an assisted housing development cannot sell the development at any time within the five years prior to the expiration of rental restrictions or at any time if the owner is eligible for prepayment or termination within five years unless the owner or its agent first has provided each of certain specified entities an opportunity to submit an offer to purchase the development.
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AB2523 (eff. 1/1/05) Unlawful Detainer Actions Brought By City Prosecutor or City Attorney	<p>Existing law, scheduled to be repealed by its own terms on January 1, 2005, provides that the city prosecutor or city attorney of specified judicial districts in the County of Los Angeles may file, in the name of the people, an action for unlawful detainer against any tenant who is unlawfully engaged in specified controlled substance offenses, as specified.</p> <p>The sunset date of this law is extended until January 1, 2010 and the program is expanded to include actions by city prosecutors or city attorneys in courts in Alameda County and San Diego County that have jurisdiction over unlawful detainer actions involving real property situated in specified cities in those counties.</p>
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SB1145 Landlord/Tenant Laws Extended	<p>Until January 1, 2006, existing law requires that if a landlord increases the rent of a month-to-month tenancy in excess of 10% of the amount of the rent charged to a tenant annually, as specified, the landlord shall provide an additional 30 days' notice, for a total of 60 days, prior to the effective date of the increase, except as specified.</p> <p>This law deletes the sunset date on the above provision, extending the provision indefinitely. Existing law requires that a landlord provide specified statements to a tenant if an initial inspection prior to the termination of a tenancy is requested by the tenant. This law modifies that list of statements to delete a required statement regarding a claim of security. In a summary proceeding for the possession of real property, existing law prohibits a court clerk from providing access to the court file, index, register of actions, and other court records if the tenant prevails in the action within 60 days after the complaint is filed.</p> <p>This law permits a court clerk to provide access to those records to specified persons, including, but not limited to, a party to the action, or pursuant to a court order upon a showing of good cause. The Fair Employment and Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.</p> <p>Until January 1, 2005, the act also prohibits discrimination on the basis of a person's source of income, the failure to account for the aggregate income of coresidents, or the failure to exclude a government rent subsidy from that portion of the rent to be paid by the tenant in assessing his or her eligibility for</p>
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	rental housing. This law deletes the sunset date on the above provision, extending the provision indefinitely.
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Mortgage Loan Brokerage (eff. 1/1/05)

AB2693 Mortgage Loan Brokerage Restrictions	<p>Real estate licensees are licensed and regulated by the Real Estate Commissioner and finance lenders and brokers are licensed and regulated by the Commissioner of Corporations.</p> <p>This law prohibits real estate licensees and licensed finance lenders and brokers from failing to disburse funds in accordance with a commitment to make a loan, or intentionally delaying the closing of a loan for the purpose of increasing specified costs to the borrower. In addition, under existing law a real estate broker is defined as a person who, among other things, solicits borrowers or lenders for or negotiates loans or collects payments or performs other services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.</p> <p>AB 2693 requires a real estate broker, engaging in these activities, who meets certain criteria to notify the Department of Real Estate annually in writing.</p>
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Privacy Issues (eff. 7/1/06)

AB3016 Restrictions on Use of Social Security Numbers	<p>Existing law prohibits a person or entity, <i>with specified exceptions</i>, from publicly posting or displaying an individual's social security number or doing certain other acts that might compromise the security of an individual's social security number.</p> <p>However, existing law also permits a person or entity that has used a person's social security number prior to July 1, 2002, in a manner that is otherwise prohibited, to continue to use the person's social security number in that manner if certain conditions are met, including the condition that the use be continuous. This law, effective July 1, 2006, removes the exception for continuous use from the provisions described above. In essence, the law requires certain entities (e.g., FTB, CSUN, UCLA) to discontinue the use of social security numbers as identifiers as of certain dates indicated in the statute.</p>
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Property Restrictions (eff. 1/1/05)

SB1369 Firebreaks	<p>This law, which modifies existing law, requires persons subject to fire hazards (described in the statute) to remove all brush, flammable vegetation, or combustible growth that is located within 100 feet from the occupied dwelling or occupied structure, or building or structure, as applicable, or to the property line, or at a greater distance if required by state law, or local ordinance, rule, or regulation.</p> <p>The law authorizes the Director of Forestry and Fire Protection to authorize the removal of vegetation not consistent with these and related requirements. The law also authorizes the Director to place a lien on the building, structure, or grounds for the expense of the removal of that vegetation, as specified.</p>
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	<p>Additionally, the law requires a special certification upon new construction or rebuilding of an occupied dwelling or occupied structure damaged by fire in a very high fire hazard severity zone to be presented to the insurer providing the construction insurance coverage.</p>
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<p>SB3033 Seismic Retrofitting</p>	<p>Existing law establishes a program within all cities and counties for properties located in seismic zone 4 to identify all potentially hazardous buildings, establish a mitigation program for these buildings, and file a report on the programs with the Seismic Safety Commission.</p> <p>This law prohibits, until January 1, 2009, a city or county from imposing any additional building or site conditions, on or before the issuance of a building permit, to conduct seismic-related improvements to the building to meet the requirements of the mitigation program at the time of the application, if the building or site conditions are unrelated to the improvements and the improvements comply with applicable building codes and meet or exceed the requirements of state and federal law and regulations that would otherwise apply.</p>
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Tax Issues (eff. 1/1/05)

<p>AB1338 California Withholding Law Revised Again</p>	<p>Effective for escrows that close on or after January 1, 2005, transfers of real property owned by non-individuals (such as corporations, trusts, estates) are subject to the same automatic withholding tax as individuals unless the seller meets one of the certifiable exemptions.</p> <p>Under the new law, non-individual sellers can no longer request a waiver or a reduced withholding rate based upon a small gain. For individual sellers, the 2003 state withholding law provided five certifiable exemptions: (1) sale of the property for less than \$100,000, (2) sale of the seller's "principal residence" (as defined in Internal Revenue Code Section 121 (IRC 121)), (3) sale of the property at a loss, (4) sale of the property as part of an IRC 1031 exchange, and (5) sale of the property because of an involuntary conversion (a government taking) and seller will replace the property under IRC 1033.</p> <p>This law adds another certifiable exemption--the last use of the property sold was as seller's principal residence, even if the seller does not meet the 2 out of the last 5 years requirement or one of the special circumstances as enumerated in IRC 121.</p>
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Unfair Competition Laws

<p>Prop 64 (November 2004 Voter Initiative)</p>	<p>California's unfair competition law prohibits any person from engaging in any unlawful or fraudulent business act. This law may be enforced in court by the Attorney General, local public prosecutors, or any person acting in the interest of itself, its members, or the public. Prior to the passage of Prop 64, a person initiating a lawsuit under the unfair competition law was not required to show that he or she suffered an injury or lost money or property.</p> <p>In addition, persons initiating unfair competition lawsuits did not have to meet the requirements for class action lawsuits such as (1) certification by the court of</p>
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a group of individuals as a class of persons with a common interest, (2) demonstration that there is a benefit to the parties of the lawsuit and the court from having a single case, and (3) notification of all potential members of the class.

Prop 64 limits an individual's right to sue by allowing private enforcement of unfair business competition laws only if that individual was actually injured by, and suffered a financial or property loss because of, an unfair business practice. Prop 64 further requires private representative claims to comply with the procedural requirements applicable to class action lawsuits.

Prior to Prop 64, state and local governments were able to use proceeds from civil penalties for general purposes, and now, Prop 64 restricts the use of these penalty revenues for the enforcement of consumer protection laws.

C.A.R. supported the passage of Prop 64 so that the law will now prevent "shakedown" lawsuits.