

2008
New Laws Passed by the California Legislature Affecting REALTORS®

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Appraisers

SB 223* Regulation of Real Estate Appraisers	<p>Additional prohibitions have been imposed on real estate appraisers when involved in transactions where the appraiser's compensation depends on the valuation of the real estate. All persons involved in a real estate transaction, under the new law, are prohibited from unduly influencing real estate appraisers.</p> <p>Under current law, the Office of Real Estate Appraisers governs licensing and certification of real estate appraisers. Current law prohibits the compensation of the appraiser being based on the commission generated on:</p> <ul style="list-style-type: none">· Sales;· Purchases; or· Transfers. <p>Under the new law, the compensation of the appraiser cannot be based on the VALUATION of the property for the following types of transactions:</p> <ul style="list-style-type: none">· Sales;· Purchases;· Transfers;· Financing; or· Development. <p>Furthermore, the new law prohibits parties with an interest in the real estate transaction from improperly influencing a real estate appraiser. Certain requests are deemed not to be improper influencing:</p>
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	<ul style="list-style-type: none"> · asking to CONSIDER additional, appropriate PROPERTY INFORMATION; · requesting further DETAILS or EXPLANATION of the determined VALUE; or · inquiring into CORRECTING ERRORS. <p>This law amends California Business & Professions Code § 11323, and adds California Civil Code § 1090.5. The provisions of this new law went into effect on October 5, 2007.</p>
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Common Interest Developments

<p>AB 763*</p> <p>Conversion From Rental Property to Condo</p>	<p>This new law changes the penalties when certain notices are not provided to tenants when converting properties into common interest developments.</p> <p>Under current law, any governmental agency is prohibited from approving a final map for a subdivision under the Subdivision Map Act when residential real property is being converted into a common interest development (condos) unless the governmental agency finds that the developer has complied with certain notice requirements to tenants.</p> <p>Under the new law, if the developer does not provide notice to any prospective tenant, after the approval of the final map, that the property may subsequently be sold as a separate unit, then the developer must pay each prospective tenant who actually became a tenant the following:</p> <ul style="list-style-type: none"> · Actual moving expenses not to exceed \$1,100; and · the first month's rent on the tenant's new rental unit immediately after the tenant moves, not to exceed \$1,100. <p>However, the governmental agency cannot deny the conversion based on the developer not giving the prospective tenant this notice.</p> <p>Certain other technical changes have been made regarding findings required by the legislative body to approve the tentative and final map.</p> <p>This law amends California Government Code §§ 66427.1, 66452.5, 66452.9, 66459 and 66499.37, and adds California Government Code §§ 66452.11 and 66452.12. The provisions of this new law become effective on January 1, 2008.</p>
<p>AB 691*</p> <p>Common Interest Development Managers</p>	<p>This new law modifies the requirements to be called a "certified common interest development manager" and also extends the regulation of such managers from January 1, 2008 until January 1, 2012.</p> <p>Under current law, common interest developments are governed by the Davis-Stirling Act (California Civil Code §§ 1350 <i>et seq.</i>). Current law requires common interest development (CID) managers to meet certain requirements in order to be a "certified CID manager." In addition, all CID managers are required to provide certain information annually to the board of directors of the CID:</p> <ul style="list-style-type: none"> · whether or not the manager is a "CERTIFIED CID manager"; · the name, address and telephone number of the PROFESSIONAL

	<p>ASSOCIATION that certified the manager;</p> <ul style="list-style-type: none"> · the LOCATION of the manager's PRIMARY OFFICE; · whether the fidelity INSURANCE of the manager covers the current year's OPERATING & RESERVE FUNDS; and · whether the manager has a REAL ESTATE LICENSE. <p>All of these provisions were set to expire on January 1, 2008.</p> <p>Under the new law, these provisions relating to CID managers remain effective until January 1, 2012. In addition, qualifications as a "certified CID manager" after July 1, 2003 include the additional optional education elements (which come under general management skills):</p> <ul style="list-style-type: none"> · management and administration of architectural standards; · professional conduct and standards of practice; and · conflict avoidance and dispute resolution mechanisms. <p>This law amends California Business & Professions Code §§ 11500, 11501, 11502, 11502.5, 11504, 11505 and 11506 and become effective on January 1, 2008.</p>
<p>SB 528*</p> <p>Agenda for HOA Meetings</p>	<p>Common interest developments that are managed by an association are required to have open meetings which any member of the common interest development may attend. Certain items (such as contracts with third party vendors, litigation issues, and discipline of current members) can be discussed in closed executive sessions. The association is required to provide a notice for the meeting indicating the time and place at least four days in advance of the meeting.</p> <p>Under the new law, the association meeting notices must also include an agenda for the meeting. Generally, the association can discuss only those items on the agenda at its meetings, unless the meeting is an emergency meeting.</p> <p>The exceptions to this limitation are as follows:</p> <ul style="list-style-type: none"> · an OWNER in the common interest development who is NOT A BOARD MEMBER speaking on items not on the agenda; · board members, or an agent of the board (e.g. a managing agent) from ADDRESSING QUESTIONS or ISSUES RAISED BY AN OWNER (non-board member); · board members PROVIDING RESOURCES FOR FACTUAL INFORMATION to agents of the board; · board members REQUESTING A REPORT AT A FUTURE MEETING from an agent of the board; · board members directing an agent of the board to perform ADMINISTRATIVE TASKS as part of common interest development requirements; · upon VOTE by a TWO-THIRDS MAJORITY of the board that the issue is an EMERGENCY ISSUE which could not have been included in the agenda.

	This law amends California Civil Code § 1363.05 and goes into effect on January 1, 2008.
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Contractors

<p>AB 243*</p> <p>Disciplinary Actions Against Contractors</p>	<p>Under current law, contractors licensed under the Contractors' State License Law are subject to discipline by the Contractors' State License Board. The provisions provide for certain time frames for the Board to take disciplinary actions:</p> <ul style="list-style-type: none"> · 4 YEARS for patent acts or omissions by contractors; · 10 YEARS for latent acts or omissions by contractors; · 2 YEARS for misrepresentations or omissions made by contractors in obtaining or renewing a license; and · DURING THE WARRANTY PERIOD for breach of an express, written warranty. <p>Under the new law, one time frame has been changed, and a new time frame has been added:</p> <ul style="list-style-type: none"> · 18 MONTHS AFTER THE WARRANTY PERIOD for breach of an express, written warranty; and · 2 YEARS for criminal convictions related to the qualifications, functions and duties of a contractor. <p>For the timeframes specified above for misrepresentations and omissions and criminal convictions, the time frames start upon the discovery by the registrar of the misrepresentation, or the conviction.</p> <p>This law amends California Business & Professions Code § 7091 and goes into effect on January 1, 2008.</p>
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Discrimination/Fair Housing

<p>AB 976*</p> <p>Discrimination by Landlord Based on Immigration or Citizenship</p>	<p>Under existing state law, landlords may not discriminate against residential tenants based on various characteristics, including age, disability, gender, medical condition, race, color, religion, marital status, sexual orientation, ancestry and national origin. Certain exceptions do apply, such as senior housing facilities and owner-occupied properties.</p> <p>Under the new law, landlords of residential real property cannot use IMMIGRATION or CITIZENSHIP status as criteria for tenants, occupants, prospective tenants or prospective occupants. Specifically, landlords and agents of the landlord may NOT:</p> <ul style="list-style-type: none"> · make ANY INQUIRY into immigration or citizenship status; nor · require any (prospective) tenant or occupant to MAKE A STATEMENT about immigration or citizenship status. <p>Furthermore, the statute also prohibits local governments from adopting any ordinances or regulations which would require a landlord or any agent of the landlord of residential real property from:</p>
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	<ul style="list-style-type: none"> · Inquiring; · Compiling; · Disclosing; · Reporting; · Providing information on; · Prohibiting to offer accommodations; or · otherwise taking any action <p>based on the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant.</p> <p>This law does not prohibit the landlord from requesting information or documentation to verify the identity or the financial qualifications of a tenant or occupant.</p> <p>This law which adds California Civil Code § 1940.3 goes into effect on January 1, 2008. [Note: this statute is added to the landlord/tenant law and was not included under the Unruh Civil Rights Act--California Civil Code § 51.]</p>
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Escrow Fee

<p style="color: blue;">AB 804*</p> <p>New Escrow Fee for Escrows Regulated by DOC</p>	<p>Many escrow companies handling real estate transactions are licensed with the California Department of Corporations (DOC). Some escrow companies, such as title insurers, are licensed by the Department of Insurance (DOI), and others, such as broker-controlled escrows, are licensed by the Department of Real Estate (DRE). Under existing law, the DOC-licensed escrow companies are not entitled to any fee, commission or compensation which is contingent on performing any act, condition or instruction prior to the close and completion of escrow, except for a disbursement agreed upon by all parties.</p> <p>Under the new law, escrow companies can charge an additional fee for administering an escrow when either (1) the escrow has been postponed for two months from the most recent closing date agreed by the parties, or (2) the escrow has been cancelled if the following conditions are met:</p> <ul style="list-style-type: none"> · the postponement or cancellation was CAUSED BY the PARTIES; · the fee was indicated in at least 8 POINT BOLD TYPE on the FRONT PAGE of the escrow instructions; and · the PARTIES have INITIALED those INSTRUCTIONS. <p>Furthermore, it is now a violation of the escrow licensing laws if the escrow company violates any provision of RESPA. The new law requires that an escrow company provide an closing audit report within 105 days or written notice of terminating its license. Finally, this law requires escrow companies</p>
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	<p>to make minor changes to their disclosures.</p> <p>This law amends California Financial Code §§ 17210.2, 17346, 17406 and 17600, and adds California Financial Code §§ 17421.5 and 17425. The provisions of this new law become effective on January 1, 2008.</p>
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Homesteads

<p>SB 433*</p> <p>Automatic Homestead</p>	<p>Under existing law, homeowners are protected for a certain amount of equity in their residence by a declared homestead, or the "residential exemption" (also known as the automatic homestead). Even when homeowners do not file a declared homestead on their residence, the residence may be protected from sale by the "residential exemption" under California Code of Civil Procedure §§ 704.710 - 704.850. In order to qualify for the protection of the "residential exemption," either the homeowner with the judgment against him or her, or the homeowner's spouse must have lived in the property at the time the lien attached to the residence, and either the homeowner or their spouse were required to reside in the residence continuously since then. For purposes of these statutes, a spouse did not include a married person following entry of judgment of legal separation of the married couple.</p> <p>Under the new law, the "residential exemption" applies even though the homeowner does not live in the property, if either (1) a separated spouse or (2) a former spouse:</p> <ul style="list-style-type: none"> · Resides in the Property, or · Exercises Control over Possession of the Property. <p>The changes to the law do not allow any debtor to have more than one property as a homestead. Additionally, the law does not change the rule that only the homestead of one of the spouses is considered to be exempt, if the debtor and the spouse reside in separate homesteads.</p> <p>This law amends California Code of Civil Procedure § 704.720 and the provisions of this new law become effective on January 1, 2008.</p>
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Licensing

<p>AB 839*</p> <p>Real Estate License Renewal for Persons in the Armed Forces</p>	<p>Under current law, certain members of the military who have a real estate license are given an automatic extension of time to get a renewal of their license. In order to qualify, the licensee must notify the Real Estate Commissioner within six months of active duty. The military licensee is not required to renew his or her license until the earlier of engaging in real estate business, or one year after termination of military service. The exclusive list of members of the military includes only members of the following:</p> <ul style="list-style-type: none"> United States Army; United States Navy; United States Air Force; Marine Corps;
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	<p>Merchant Marine in times of war;</p> <p>Coast Guard; and</p> <p>Public Health Service (officers only) detailed by proper authority of the Army or Navy.</p> <p>Under the new law, one additional military organization has been added:</p> <p>National Guard.</p> <p>This law amends California Business & Professions Code § 10460 and goes into effect on January 1, 2008.</p>
<p>AB 1153*</p> <p>Mobilehome Dealer Licensee Fingerprinting Required</p>	<p>Under current law, manufacturers, distributors, dealers and sellers of mobilehomes, manufactured homes, or commercial coaches are required to get a license or a temporary permit from the Department of Housing and Community Development (HCD). The provisions provide for the applicant to furnish all information as reasonably required, including proof of successful examination, proof as a manufacturer, distributor, dealer or salesperson, and information relating to the applicant's character, honesty, integrity and reputation. Under the new law, the applicant must submit fingerprints and related information to DOJ, which will submit that information to the FBI for federal criminal history information. DOJ will then submit federal and state criminal history to HCD. HCD will also request subsequent arrest notification from the DOJ for each applicant.</p> <p>This law amends California Health & Safety Code §§ 18050 and 18070.3 and goes into effect on January 1, 2008.</p>
<p>AB 840*</p> <p>Real Estate Licensee Discipline</p>	<p>Under existing law, the DRE has the ability to suspend or revoke a license, or to deny the application for a license for various specified reasons under California Business & Professions Code §§ 10176 and 10177. One of those reasons is "a felony or a crime involving moral turpitude" in which the Court of Appeals in <i>Petropoulos v. Department of Real Estate</i> (2006) 142 Cal. App. 4th 554, interpreted to mean that a misdemeanor must involve "moral turpitude" in order for the DRE to take disciplinary action. Under the new law, the "moral turpitude" element has been eliminated and replaced with a crime "substantially related to the qualifications, functions, or duties of a real estate agent." The felony element remains unchanged. A corresponding change has also been made for mineral, oil and gas licensees regulated by the DRE.</p> <p>This law amends California Business & Professions Code §§ 10177 and 10562 and the provisions of this new law become effective on January 1, 2008.</p>