2016 Legislative & Regulatory Year in Review
2017 New Laws Affecting REALTORS®

Table of Contents

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(As of February 3, 2017)

SBAOR

In 2016, the Santa Barbara Association of REALTORS® stayed involved in local politics to ensure that your business and private property rights are preserved in the South Coast, California and the United States. Below is a summary of the legislative and regulatory issues your Association of REALTORS® (local, state, national) has monitored and addressed in 2016. If you have questions, please contact Krista Pleiser, Government Affairs Director at (805) 884-8609 or kpleiser@sbaor.com.

County Short-Term Rentals – Santa Barbara County is reviewing and clarifying provisions concerning the use of Short-term Rentals within the unincorporated areas of the County. The current proposal will allow the Land Use of Short-Term Rentals in the Zone Districts of AG-II, with regulations, and in the Zone Districts of C-1, C-2, C-3, CH, CM-LA, C-V, MU, and OT-R/GC and prohibit the use in all other Zone Districts. SBAOR has been working tirelessly to encourage the Board of Supervisors to direct staff to create a fair and commonsense ordinance that will preserve neighborhood characteristics while allowing private property owners to exercise their constitutional rights. The County is lucky that they can look to the City of Goleta and their recently adopted Short Term Rental Ordinance.

Goleta Short-Term Rentals – SBAOR was an integral stakeholder in helping the City of Goleta create a short-term rental ordinance. The City of Goleta took a commonsense approach to this blossoming industry. There are several hoops that need to be jumped before a unit can be considered a short term vacation rental, but Goleta's ordinance takes into consideration the owner of the property, the short term vacationer, and the neighbors. Here is what is needed in addition to a short term vacation rental permit:

- Nuisance Response Plan
- Transient Occupancy Tax Application for Certificate Registration
- Surety bond in the amount of $1,500
- Permit Application fee of $75.00
- Declaration of Notification (as proof that all properties within 200 feet have been mailed the Public Notice of Short-Term Vacation Rental Application)
- General Business License Application. If a business license has already been obtained, the business license number needs to be provided on the permit application.

Goleta Zoning Ordinance - The City of Goleta's new Zoning Ordinance project is a collaborative process, in which SBAOR is a stakeholder, that will revise citywide zoning regulations to implement the General Plan, update development and design standards and permitting procedures, and help realize the community's vision for the future – a safe, beautiful, vibrant and livable community with a robust local economy and a sustainable relationship with the environment. This ordinance is scheduled to be implemented sometime during 2017.

Carpinteria Short-Term Rentals – On Thursday, December 8, 2016, The California Coastal Commission approved the City of Carpinteria's new Short Term Rental Ordinance. This new ordinance establishes well-defined geographic boundaries within which short-term rentals are authorized and a quantitative cap, limit the location and maximum number of short term rentals that may be permitted, and establish permitting and operating standards for short-term rentals. Home

Stays are allowable. It's important to note that the vacation rental license shall be personal to the applicant/owner and shall automatically **expire upon sale or transfer** of the premises or residential unit. SBAOR continually advocated for a commonsense approach, like that of the City of Goleta, and did have some success in increasing the numbers within the quantitative cap.

Santa Barbara Short-Term Rentals – In June 2015, the Santa Barbara City Council directed staff to continue enforcement of the City's existing zoning regulations prohibiting all residential short-term rentals, unless properly permitted. Basically, you can't have short term vacation rentals within the City of Santa Barbara, although there are some exceptions. If the unit is within a R-4, Commercial (C), or Manufacturing (M) zone you can register with the City and get a business license. Although this seems like a big change, the City really hasn't changed anything except now they are enforcing their current ordinance and they won't be issuing business licenses and collecting Transient Occupancy Tax (TOT). SBAOR continues to have discussions with the City to change this ordinance, but given the current political climate, change will not occur any time in the foreseeable future.

Santa Barbara Zoning Ordinance - The City of Santa Barbara is updating its Zoning Ordinance, in which SBAOR is a stakeholder, which establishes the zone classifications, permitted uses in the various zones, development standards and regulations, and the development review process. The zoning regulations affect land use, design, parcel size, building heights, density, setbacks, parking, landscaping, fencing and other aspects of property development and use. The City's current Zoning Ordinance was first adopted in 1957, and has been amended many times over the years. At this time, a comprehensive update is needed to bring it up to date to reflect current uses and practices. At the end of the New Zoning Ordinance (NZO) process (implementation scheduled for 2016), the goal is to have an improved Zoning Ordinance that is restructured and easier to understand; modern and current; flexible in administering the code, including staff administrative authority for minor items; responsive to nonconforming situations

Santa Barbara Property Assessed Clean Energy (PACE) - Certain energy retrofit lending programs, often referred to as Property Assessed Clean Energy (PACE) programs, are made by localities to finance residential energy improvements and are generally repaid through the homeowner's real estate tax bill. These loans typically have automatic first lien priority over previously recorded mortgages. SBAOR has been involved in the PACE discussion since its inception in 2008. We understand the importance of energy efficiency which is why our organization was a stakeholder in creating the emPowerSBC program. Since its creation, emPowerSBC has expanded to the tri-county area and is now emPower Central Coast. This program was created due to the issues surrounding PACE which include predatory lending practices, the loan takes a super-priority loan status above all other loans, and there is a lack of oversight on these programs. SBAOR stopped the City of Santa Barbara from outright adopting this program because the issues with PACE have not been corrected on the State of Federal levels.

Zoning Information Reports (ZIR) - SBAOR has been working for the past 7 years with the City of Santa Barbara to rectify the issues revolving around the ZIR's. REALTORS® have had several accomplishments with ZIR's over the years with making ZIR's optional for condominiums and PUD's, fax ZIR applications with credit card information, and more timely reports. SBAOR was a member of the City of Santa Barbara ZIR Working Group whose task was to work on finding common ground between the City and SBAOR, understanding all the issues, and work on the overall ZIR process. The Minor Zoning Exceptions Ordinance was created which classifies violations into a minor or major category. A new ZIR Task Force has been formed in order to review the most current problems with ZIR's.

Santa Barbara Sign Ordinance – SBAOR has a seat at the Santa Barbara City Sign Ordinance Review Committee which was proposed by the City Council in September 2015 in response to the United States Supreme Court decision in Reed v. Town of Gilbert, Ariz. Reed changed a major part of the legal underpinnings for modern sign regulation. As a result, the City Council directed formation of an 11-member committee to review the First Amendment implications of the case with respect to the City of Santa Barbara's Sign Ordinance. Signs are an integral part of real estate and as such SBAOR's task is to maintain as much flexibility with real estate signage as possible within the new parameters of the law.

Santa Barbara Development Impact Fees – The City of Santa Barbara was considering implementing Development Impact Fees which would have driven up the cost of building. SBAOR stopped the City from implementing these fees with help of the Santa Barbara Regional Chamber of Commerce and the Home Builders Association of Central Coast.

Santa Barbara Removal of Parking on Micheltorna – The City of Santa Barbara was considering removing all parking on Micheltorna between the 101 freeway and State Street for a new bicycle path. While SBAOR is a proponent of alternative transportation, we also understood that the removal of this parking would have affected many homeowners, tenants, and businesses surrounding this area. SBAOR, along with a coalition of business and residents in the area, convinced the City of Santa Barbara to move the bike path to other surrounding streets which would not require the same amount of removal of parking spaces.

C.A.R.

In the 2015-2016 legislative session, C.A.R. is pursuing a largely defensive legislative posture advancing sponsored bills and preserving resources to defend against legislation threatening the real estate industry. In addition to sponsored bills, C.A.R. seeks "targets of opportunity" or amendments to protect and promote the ability of REALTORS® to do business and to advance C.A.R.'s policy agenda. "Targets of opportunity" may include amendments to legislation of others consistent with C.A.R. policy; for example, environmental issues should accommodate the rights of property owners; tenants' rights legislation should also recognize property owners' rights; risk management gains of recent years must be preserved; and unreasonable burdens on the real estate transaction and housing avoided. Below is a list of C.A.R. sponsored legislation. For more information on bills of interest, please visit http://www.car.org/governmentaffairs/stategovernmentaffairs/LegProgram2016

AB 205 (Wood) Squatters Pilot Program Jurisdictions - In 2014, C.A.R. sponsored AB 1513 (Fox) in an effort to address the lengthy process required to prevent squatting or to evict squatters. This measure created a three year pilot program in the cities of Lancaster, Palmdale and Ukiah that permits the owner of a vacant property to register it with local law enforcement. It establishes a fee-based program for local government that permits an owner of a vacant home to register it with local law enforcement and have it monitored while it remains vacant. It further requires timely action by these law enforcement agencies should the property be unlawfully occupied. AB 205 proposed to expand the pilot program to include the cities of Eureka and Fairfield and the counties of Humboldt and Lake. Last spring, the AB 1513-pilot program communities reported that this authorization was unnecessary and their local law enforcement agencies are not inclined to administer the program established by AB 1513. The four jurisdictions proposed to be added by AB 205 also indicated they did not need such authority. As a consequence, C.A.R. is no longer pursuing this measure.
Status: Stalled in Assembly Judiciary Committee

AB 237 (Daly) Parcel Tax Vote Notification - Under current law, resident property owners receive notice of proposed parcel taxes with receipt of their ballot pamphlet while non-resident property owners do not receive any notice whatsoever. This bill requires a city, county or special district (e.g., hospital districts, etc.) to provide notice to ALL property owners, including nonresident property owners, within seven days of the vote, by the district's governing board, to place a proposed parcel tax on the ballot. AB 237 was held in committee and did not move forward this session (See also, AB 2476 p. 3).
Status: Held in Assembly Appropriations Committee

AB 345 (Frazier) Continuing Education - Under current law, real estate brokers and salespersons are required to complete 45 hours of CalBRE-approved continuing education in order to renew their licenses. AB 345 earmarks three hours of a broker's mandated continuing education for a course on the management and supervision of real estate licensed activity. The bill also permits salespersons to elect to take a course containing relevant information to assist them in understanding how to be effectively supervised by a responsible broker or branch manager.
Status: Signed by the Governor (Chapter 68, Statutes of 2015)

AB 607 (Dodd) Bonds for Non-Licensees - The CalBRE's current regulations allow a nonlicensee, with written authorization, to manage the broker's trust account if that non-licensee has fidelity bond coverage that is equal to the maximum amount of funds to which the non-licensee has access. This regulation is interpreted to mean that the bond must be a zero deductible bond, meaning that the insurers are responsible for the first dollar lost. REALTORS® have reported that bond companies will not sell bond coverage exceeding $100,000 unless the bond contains a deductible, usually of 1-5 percent. This measure, among other things, allows bonds for nonlicensees with access to broker trust funds to include a deductible of up to 5%.
Status: Signed by the Governor (Chapter 216, Statutes of 2015)

AB 685 (Irwin) Real Estate Law Cleanup - Real Estate Law is outdated including terminology that does not reflect both genders. This bill makes some necessary technical corrections, which include eliminating references to "salesman" and "salesmen" and instead replacing those with "salesperson" and "salespersons," respectively. AB 685 is the first in a series of cleanup measures C.A.R. will be pursuing to update the Real Estate Law.
Status: Signed by the Governor (Chapter 177, Statutes of 2016)

AB 807 (Stone) Private Transfer Fees - Private Transfer Fees (PTFs) are fees imposed by an individual, developer, etc. that require a homebuyer and any subsequent purchaser to pay a fee upon the transfer of a home. In 2007, C.A.R. successfully sponsored AB 980, which requires disclosure of new and existing PTFs and requires PTFs to be recorded against the applicable property. However, new kinds of PTFs are now being used. This bill expands the current PTF recordation requirement to include PTFs whose payment does not occur upon a change in ownership or that are not based on sales price.
Status: Signed by the Governor (Chapter 634, Statutes of 2015)

AB 1545 (Irwin) State of California Housing Agency Act - This bill was introduced in August 2015 establishing a state Housing Agency with a Governor's Cabinet-level Secretary of Housing to oversee all activities related to housing in the state. The Housing Agency would have been comprised of state agencies that play a role in California's housing market, promoting an integrated approach for California's housing needs. Facing opposition from most of the groups to be included in the new Agency, along with a sense that it was too soon for another government reorganization on the "heels" of the 2012 changes, AB 1545 did not advance to a hearing this year and did not move forward this session.
Status: Held at Assembly Desk

AB 1650 (Frazier) Uniform Advertising Standards - Existing law varies greatly depending on the type of advertisement (i.e., "for sale" signs, print and electronic media, business cards, brochures, etc.) and the name being used by the licensee (i.e., given name, nickname, team name, etc.). This bill requires a licensee conducting advertising of ANY kind to also include their CalBRE license number and responsible broker's identity. Company "for sale," lease or rent signs would only be required to contain the responsible broker's identity. "Open house" and directional signs without a reference to agent name would be exempt from this requirement. This bill also includes a one-year delayed effective date for implementation.
Status: Signed by the Governor (Chapter 142, Statutes of 2016)

AB 1750 (Dodd) Clarification of Definitions - This bill clarifies that environmental hazard booklet liability protections applied to sellers of real property apply equally to lessors of real property. Current law does not clearly apply the rule to landlords and property managers. Use of the guide to common environmental hazards will remain voluntary.
Status: Signed by the Governor (Chapter 125, Statutes of 2016)

AB 1807 (Bonta) Disciplinary Action Notice: Reporting Time Limit - Current law requires that a discipline notice against a licensee's name in the California Bureau of Real Estate's online database be reported indefinitely, even if the licensee has been rehabilitated and the license penalty (i.e., suspension or restriction) has been removed. This bill allows a licensee to petition CalBRE to remove old (10 years or more) violations from its online database upon payment of a fee and demonstration of rehabilitation. All violations would continue to be maintained offline on the licensee's permanent record.
Status: Signed by the Governor (Chapter 558, Statutes of 2016)

AB 2330 (Ridley-Thomas) Broker Associates - While the terms "Broker" and "Real Estate Salesperson" have been defined in statute, "Broker Associate" is a term of art used in practice but not currently defined in law. This bill, among other things, statutorily defines "Broker Associates," and requires "Broker Associates" to be searchable in the California Bureau of Real Estate's database.
Status: Signed by the Governor (Chapter 614, Statutes of 2016)

AB 2476 (Daly) Parcel Tax Vote Notification - Under current law, resident property owners receive notice of proposed parcel taxes with receipt of their ballot pamphlet while non-resident property owners do not receive any notice whatsoever. This bill requires notice of a parcel tax to be given to non-resident property owners after it has been approved (See also, AB 237 p. 1).
Status: Signed by the Governor (Chapter 269, Statutes of 2016)

AB 2668 (Mullin) and ACA 12 (Mullin) Property Taxation: Base Year Value Transfers - Current law allows persons over the age of 55 to transfer the property tax base year value of their principal residence to a replacement home of equal or lesser value within the same county (Prop. 60) or another county if that county has opted into the program (Prop. 90). These measures provide: 1) the base year value of a principal residence may be transferred to a replacement home of greater value; and 2) the base year value of the replacement home to be calculated by adding the difference between the sales price of the principal residence and the purchase price of the replacement home to the base year value of the principal residence. AB 2668 was amended in the Assembly Revenue and Taxation Committee. As amended, the bill allows only seniors with household incomes below the area median to transfer the property tax base year value to a replacement home of greater value. AB 2668 is a reintroduction of SB 378 (Beall), which was held in the Senate Appropriations Committee last year, and ACA 12 is a reintroduction of SCA 9 (Beall). AB 2668 was held in committee and did not move forward this session. Additional action on ACA 12 was suspended (See also, SB 378 and SCA 9, p. 4).
Status: AB 2668 - held in Assembly Appropriations Committee; ACA 12 - held at Assembly Desk

AB 2693 (Dababneh) Property Assessed Clean Energy (PACE) Loans - Existing law requires home loans to be accompanied by the Truth in lending RESPA Integrated Disclosure (TRID), which is intended to allow an "apples to apples" comparison shopping of various loan products. However, PACE transactions are technically not loans and are not required to be accompanied by a TRID disclosure. Current law gives delinquent PACE assessments "super-priority" status, as part of the tax bill, over other recorded obligations; lenders require these "super liens" to be paid off before any new financing can be obtained. This measure requires a TRID-like disclosure be provided to a property owner participating in a PACE program, a 3 day right of rescission, and a notice that the property owner may not be able to refinance or sell without paying off the PACE "loan."
Status: Signed by the Governor (Chapter 618, Statutes of 2016)

AB 2760 (Mathis) Rental Housing: Support Animals - Housing providers must make a "reasonable accommodation" for a tenant's disability. "Reasonableness" of an accommodation is determined on a case-by-case basis and requires evidence of the disability that will be alleviated by the presence of an animal in order to waive a "no pets policy." Unlike service animals, support (sometimes referred to as companion) animals are not trained to perform specific tasks. Support animals are not afforded the same protections under the ADA or California state law, causing confusion for housing providers. This bill, among other things, permits a landlord to allow, as a condition of the lease, a tenant, with a medically established need, to maintain a support animal on the property provided the support animal: 1) is housebroken; 2) does not pose a threat to other tenants or the property; and 3) does not jeopardize the availability of property insurance. The tenant must notify, and receive approval from, the landlord prior to brining the support animal on the premises. Facing strong opposition from the Humane Society and other animal rights groups, C.A.R. elected not to take the bill up; it did not have the votes to pass and did not move forward this session.
Status: Stalled in Assembly Judiciary Committee

SB 146 (Galgiani) Team Names - In 2014, C.A.R. sponsored AB 2018 (Bocanegra) to remove ambiguity surrounding Fictitious Business Names (FBNs) by statutorily defining how salespersons, with their broker's permission, can use FBNs while also establishing clear standards for the use of "team names" that are not FBNs. This measure cleans up and clarifies that "team names" not requiring an FBN for purposes of the real estate law do not require the filing of an FBN with their local county.
Status: Signed by the Governor (Chapter 129, Statutes of 2015)

SB 378 (Beall) and SCA 9 (Beall) Property Taxation: Base Year Value Transfers – Current law allows persons over the age of 55 to transfer the property tax base year value of their principal residence to a replacement home of equal or lesser value within the same county (Prop. 60) or another county if that county has opted into the program (Prop. 90). These measures, commencing with the 2016–17 fiscal year, provide: 1) the base year value of a principal residence may be transferred to a replacement home of greater value; and, 2) the base year value of the replacement home to be calculated by adding the difference between the sales price of the principal residence and the purchase price of the replacement home to the base year value of the principal residence. SB 378 was held in committee; consequently, SCA 9 is no longer being pursued (See also, AB 2668 and ACA 12 p. 3).
Status: SB 378 - held in Senate Governance and Finance Committee; SCA 9 – dropped

SB 474 (Wieckowski) Credit Bids - In 2014, C.A.R. successfully sponsored AB 2039 (Muratsuchi) addressing auctions and real estate short sales. That legislation, among other things, prohibits companies from using "shill bids" (i.e., bids from non-bona fide purchasers used to drive up the price of the home being auctioned). A "credit bid" (i.e., the lender bidding amount of its note at the foreclosure sale) is exempt from the "shill bid" prohibition. SB 474 eliminates the unnecessary reference to "credit bid."
Status: Signed by the Governor (Chapter 354, Statutes of 2015)

SB 710 (Galgiani) Real Estate Licensee Advertising: Definition of Responsible Broker - Existing law establishes clear advertising standards for real estate licensees using "team names" and defines "responsible broker's identity" (i.e., company name) for advertising purposes. SB 710 corrects a drafting error that required the listing of a company name and a responsible broker's license number on all "team" advertising. To correct that error, this bill requires the company name or both the company name and number to be listed.
Status: Signed by the Governor (Chapter 224, Statutes of 2016)

Parcel Tax Limits - Under current law, parcel taxes can be collected forever. This bill, among other things, would require any current parcel tax with an indefinite duration to be reauthorized by the voters, and would require a limit on the number of years the parcel tax can be collected. This bill would also prohibit any proposed parcel tax from being collected indefinitely.
Status: Pending

NAR

During the 114th Congress, NAR's legislative and regulatory agenda continued to focus on creating a fundamentally sound and robust U.S. real estate market while protecting the business interests of members, as well as consumers. **NAR achieved several accomplishments** and set the foundation for many important issues moving forward.

New Condo Policies Signed into Law; Rural Housing Service Loans Streamlined

Through a Call for Action which generated almost 280,000 letters to the Senate and thousands of Capitol Hill visits during the REALTOR® Legislative Meetings and Trade Expo, H.R. 3700, "The Housing Opportunity Through Modernization Act", unanimously passed the House of Representatives and Senate and was signed into law. For more than a decade, NAR and REALTORS® pressured Congress to pass legislation that makes Federal Housing Administration (FHA) financing for condominiums more accessible and streamlines the Rural Housing Service (RHS) loan process. Through letters, meetings, newspaper advertisements and spearheading industry coalitions, NAR educated Congress on the critical role condominiums and RHS loans play in the housing market and served as a key factor in getting H.R. 3700, which addresses these issues, signed into law. NAR continues to work closely with FHA and RHS to ensure that the provisions of the legislation are implemented in a timely manner.
For more information visit: http://www.nar.realtor/condominiums

CFPB Makes Clear Lenders' Ability to Share Closing Disclosure in Proposed Rule

Following months of intense outreach by NAR through letters and in-person meetings, the Consumer Financial Protection Bureau (CFPB) announced its intention to issue additional written guidance on the "Know Before You Owe" (TRID) rule. Since implementation in 2015, NAR has argued that more formal guidance is needed to help the industry understand the rule, including clarification that lenders may share the Closing Disclosure (CD) with real estate agents involved in the transaction. NAR successfully advocated this issue as evidenced by the CFPB's new proposed "Know Before You Owe" rule which included language stating that an existing exception within the Gramm-Leach-Bliley Act (GLBA) Regulation P allows lenders to share the CD with third parties.
For more information visit: www.nar.realtor/trid

Drones Approved for Use in Commercial Real Estate Without Section 333 Waiver

For more than two years, NAR actively worked with the Federal Aviation Administration (FAA) and industry partners to integrate drones into the national airspace for commercial use. NAR wrote to the FAA on numerous occasions to weigh in on the final Small Unmanned Aerial System (UAS) Rule, submitted multiple letters to Congress and testified before the House Judiciary Committee to support the use of drones in real estate. This outreach resulted in a final rule released in August 2016 granting the use of drones in commercial real estate without requiring a Section 333 waiver. The only real estate industry representative of 26 groups invited to join the FAA Micro UAS Aviation Rulemaking Committee, NAR submitted recommendations to FAA on a future "micro UAS" rule.
For more information visit: www.nar.realtor/drones

House Overwhelming Passes Private Market Flood Insurance Legislation

NAR has actively been educating Congress on the important role affordable flood insurance plays for homeowners. Through letters and in-person meetings, the House of Representatives passed by an overwhelming bipartisan vote of 419-0, "The Flood Insurance Market Parity and Modernization Act" (H.R. 2901, Reps. Ross, R-FL; Murphy, D-FL). This legislation encourages the development of a private market that offers comparable flood insurance coverage at a lower cost than the NFIP. Additionally, NAR testified before the Senate Committee on Small Business and Entrepreneurship on the impacts of inaccurate flood insurance rate increases to small businesses. With the National

Flood Insurance Program (NFIP) set to expire in 2017, NAR will continue to work with the current and incoming 115th Congress on reauthorization and reform of the program.
For more information visit: www.nar.realtor/floodinsurance

FHA Revises Single Family Handbook Appraisal Requirements After NAR raised strong concerns about language in the Handbook requiring appraisers to take on home inspection duties, the Federal Housing Administration (FHA) announced at NAR's July Appraisal Summit that it would remove the language. FHA deleted the language in October from the Handbook that an appraiser "must operate all conveyed appliances and observe their performance," and replaced it with "must note all appliances that remain and contribute to the market value." FHA also provided a clear definition of which items are considered "appliances" for the purpose of an FHA appraisal.
For more information visit: www.nar.realtor/fha

Enhancing Credit Scoring Models and Reporting
Given the still tight underwriting standards in the market, NAR has been advocating to Congress and federal regulators the importance of alternative credit scoring models for potential homebuyers. Through letters of support to the Hill, NAR helped get several pieces of legislation introduced that amend or update current credit scoring models used by Fannie Mae, Freddie Mac and other industry lenders. To bring attention to this important issue, NAR, along with the National Association of Hispanic Real Estate Professionals® (NAHREP) and the Asian Real Estate Association of America (AREAA), hosted a "Credit Scoring Roundtable" with key Congressional and Administration officials: Rep. Keith Ellison (D-MN), Rep. Ed Royce (R-CA), Rep. Al Green (D-TX), Ed Golding, Housing and Urban Development (HUD) Principal Deputy Assistant Secretary and Patricia McClung, Consumer Financial Protection Bureau (CFPB) Assistant Director for Mortgage Markets.
For more information visit: http://www.nar.realtor/credit-policy

Raising Concerns About Increasing Student Loan Debt
Over the past year, NAR has been actively engaging with Congress and the Administration on the impact of student debt on homeownership and the overall economy. At the invitation of NAR, the U.S. Housing and Urban Development (HUD) Secretary Julián Castro and Senator Elizabeth Warren (D-MA) attended the 2016 REALTORS® Legislative Meetings & Trade Expo who addressed the efforts that the Administration and Congress are taking to alleviate NAR's growing concerns. Continuing the dialogue, NAR submitted letters of support on several pieces of legislation that have been introduced in Congress, and worked with HUD to revise the calculation of student loan debt for FHA loans. Additionally, in partnership with American Student Assistance's "SALT" program, NAR's Research division commissioned a joint study on student debt and housing and presented the survey findings at Congressional and media briefings to highlight the importance of this issue. NAR will continue to engage with the 115th Congress when it convenes in January 2017 and with the new Administration.
For more information visit: www.nar.realtor/political-advocacy

NAR Leads Coalition Call for GSE Fee Reduction
NAR lead a coalition of 24 organizations in submitting a letter to Federal Housing Finance Agency (FHFA) Director Mel Watt urging him to reduce loan level price adjustments (LLPAs) by Fannie Mae and Freddie Mac (GSEs). NAR was the point person for assembling this extraordinary joint effort by consumer and industry groups to raise concerns with the GSEs double-charging consumers for assumed credit losses and capital levels that are already being assumed by existing g-fees and private mortgage insurance coverage. NAR will continue to collaborate with this diverse group of organizations on broader housing finance reform issues.
For more information visit: www.nar.realtor/gses

CALIFORNIA ASSOCIATION OF REALTORS®

2017 New Laws Affecting REALTORS®

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October 5, 2016

This chart summarizes new laws passed by the California Legislature and the U.S. Congress that may affect REALTORS® in 2017. For the full text of a law, click onto the legislative number or go to http://leginfo.legislature.ca.gov/ for California laws or http://www.gpo.gov/fdsys/ for federal laws. A legislative bill may be referenced in more than one section.

Topic	Description
Advertising - Uniform Standards Effective 1/1/18	**Beginning January 1, 2018, all first point of contact solicitation materials must include:** **1) the name and number of the licensee and** **2) the responsible broker's "identity," meaning the name under which the broker is currently licensed by the BRE and conducts business in general or is a substantial division of the real estate firm. The broker's license number is optional.** **There is no longer an exception for advertisements in print or electronic media; or for newspapers and magazines. However, "for sale," "open house," rent, lease, and directional signs that contain no licensee information or only the broker's information are OK.** **The purpose of this law is to create uniform advertising standards across a variety of media and types.** **Current Law** Current law states that an agent will include their own license number on first point of contact solicitation materials but need not include either their name or their broker's name. Moreover, current law excludes from the license number requirement "for sale" signs placed on or around a property intended to alert the public the property is available for lease or purchase; advertising in print and electronic media; advertising in any newspaper or periodical; and classified rental advertisements reciting the telephone number or address of the property offered for rent. **New law** Under the new law, effective in 2018, a licensee must disclose on all solicitation materials intended to be the first point of contact with consumers both their name and license number, and additionally, the solicitation must contain the responsible broker's "identity," meaning the name under which the broker is currently licensed by CalBRE and conducts business in general or is a substantial division of the real estate firm. (The broker's license number is optional). The new law also

	eliminates most of the exceptions and broadens the types of advertising it applies to including: • Business cards • Stationery • Advertising flyers • Advertisements on television, in print, or electronic media • "For sale," "open house," lease, rent or directional signs when any licensee identification information is included • Any other material designed to solicit the creation of a professional relationship between the licensee and a consumer **Limited Exception** However, the new law retains an exception for "for sale," rent, lease, "open house" and directional signs. These signs need not include the agents' or associate brokers' names or license numbers as long as either: 1) The responsible broker's identity appears (which includes the broker's name, but the broker's license number is optional). Under this exception there can be no reference on the sign to an associate broker or licensee. or 2) There is no licensee identification information at all. This exception also applies to the general rule of disclosing a licensee's status, such as broker, agent or REALTOR, in all advertising. But keep in mind that under the N.A.R. Code of Ethics Standard of Practice 12-5, any advertisement of real estate services or listed property in any medium must disclose the name of the firm in a reasonable and readily apparent way. So even though a licensee who is not a REALTOR may post under the new law a completely generic "for sale" sign, REALTORS should, at the very least, include the name of the firm on a "for sale" sign. The "responsible broker's identity" is defined to mean the name under which the responsible broker is currently licensed by CalBRE and conducts business in general or is a substantial division of the real estate firm. The inclusion of the responsible broker's license identification number is optional. **Uniform Advertising Standards Purpose** The purpose of this law is to create uniform advertising standards across a variety of media and types. Presently, advertising rules vary greatly depending on the type and medium of advertisement. "For sale" signs, print and electronic media, business cards, classified rental advertisement, etc..., rely on different rules with a variety of exceptions. This law attempts to create a unified standard with very limited exceptions. The new rules also more closely align the requirements of team name and agent-owned DBA advertising with other types of advertising. Team name and agent-owned DBA advertising rules were changed slightly on

	August 29, 2016 to require only the inclusion of the broker's name but not the broker's license number. See the description of this new law under the heading for "Advertising Team Names." **Rent or Lease Signs** Previously the law excepted classified rental advertisements which recite only the telephone number at the premises of the property offered for rent or the address of the property offered for rent. The new law allows an exception for rental and leasing "signs" as long as no identifying licensee information appears in the solicitation (or only the broker's name appears). Arguably, the exemption for rental classified ads no longer exists, and in place, there is an exemption for rent and lease signs. AB 1650 codified as Business and Professions Code §10140.6. C.A.R. sponsored legislation. This law goes into effect on January 1, 2018.
Advertising Team Names Effective 8/30/16	**Effective August 30, 2016, on team name and agent-owned DBA advertising, only the responsible broker's name must be displayed alongside the team name or agent-owned DBA. The display of the responsible broker's license number is optional.** This new law, which took effect on August 30, 2016, corrects a drafting error that required to be displayed in all team name and agent-owned DBA advertising both the responsible broker's name *and* license identification number. The new law, to correct that error, requires only the responsible broker's name. The display of the responsible broker's license identification number in team name or agent-owned DBA advertising is optional. The responsible broker's name means the name under which the responsible broker is currently licensed by CalBRE and conducts business in general or is a substantial division of the real estate firm. SB 710 codified as Business and Professions Code §10159.7. C.A.R. sponsored legislation. Effective August 30, 2016.
Broker Associates Searchable Information Effective 1/1/18	**Beginning January 1, 2018, CalBRE's public licensee information, as provided on CalBRE's website, will indicate whether a licensee is an "associate licensee" and, if the associate licensee is a broker, will identify each responsible broker with whom the licensee is contractually associated.** **Additionally, this law requires the responsible broker to immediately notify CalBRE in writing whenever a broker-associate is hired or terminated.** Currently, data on CalBRE's website allows the public to verify licensing information pertaining to "Brokers" and "Salespersons." This data enables the public to determine through an internet search who the responsible broker is for any particular salesperson. However, there is no

	way for the public to search for and view similar information pertaining to broker-associates. Moreover, brokers are required to report to CalBRE whenever a salesperson who is licensed under them is either hired or terminated. However, there is no similar reporting requirement regarding broker-associates. This law closes this deficiency by: 1) Identifying who a broker-associate is contracted with (when not acting under his or her own license) 2) Making this information searchable by the public on the internet through CalBRE's public licensee information and 3) Requiring the responsible broker to immediately notify CalBRE whenever a broker-associate is hired or terminated. Technically this law requires CalBRE to disclose on its web site whether a licensee is an "associate licensee," meaning whether the licensee is working under a responsible broker as either a salesperson or a broker-associate. And if the associate licensee is also a broker, then the CalBRE data must further identify each responsible broker with whom the associate licensee is contracted. Note that nowhere in this law is the phrase "broker-associate" actually used. Instead, the law relies upon indicating whether a license is an "associate licensee" and whether that person is also a broker. Other parts of this law refer to a "broker acting as a salesperson." AB 2330 codified as Business and Professions Code §§ 10083.2 and 10161.8. C.A.R. sponsored legislation. This law goes into effect on January 1, 2018.
Climate Change Goal of 40% Reduction of GHGs Below 1990 Levels Effective 1/1/97	**California aims to reduce greenhouse gas emissions to 40% below 1990 levels, but extends the target date by 10 years from 2020 to 2030.** Currently, the California Global Warming Solutions Act of 2006 designates the State Air Resources Board (ARB) as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. Currently, the ARB is required to approve a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020 and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. This new law requires the state board to ensure that statewide greenhouse gas emissions are reduced to 40% below the 1990 level by 2030. It is estimated that current policies will likely only achieve half of the 2030 goal. The board will use its current authority to adopt regulations to achieve the maximum technologically feasible and cost-effective greenhouse gas emissions reductions and to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with the act.

	Presently, the state board is required to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions. Additionally, this new law requires the state board to make available, and update at least annually, on its Internet Web site the emissions of greenhouse gases, criteria pollutants, and toxic air contaminants for each facility that reports to the state board and air districts, and requires the state board, at least once a year at a hearing of the Joint Legislative Committee on Climate Change Policies, to present an informational report on the reported emissions of greenhouse gases, criteria pollutants, and toxic air contaminants from all sectors covered by the scoping plan. The new law creates the Joint Legislative Committee on Climate Change Policies consisting of at least 3 Members of the Senate and at least 3 Members of the Assembly and would require the committee to ascertain facts and make recommendations to the Legislature and to the houses of the Legislature concerning the state's programs, policies, and investments related to climate change. AB 197 and Senate Bill 32 codified as Government Code §§ 39510 and 39607; and Health and Safety Code §§ 38506, 38531, 38562.5, 38562.7 and 38566. Effective January 1, 2017.
Common Interest Developments - Owner to Provide Contact Information to HOA **Effective 1/1/17**	**Requires the owner of a separate interest in a common interest development to annually provide the association with specified written information for the purpose of receiving notices from the association.** 1) Requires an owner of a separate interest to, on an annual basis, provide written notice to the association of all of the following: • The address or addresses to which notices from the association are to be delivered; • An alternate or secondary address to which notices from the association are to be delivered; • The name and address of an owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the owner's extended absence from the separate interest; and • Whether the separate interest is owner-occupied, is rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land. 2) Requires an association to solicit annual notices of each owner and, at least 30 days prior to making certain required disclosures, enter the data into its books and records. 3) Specifies that if an owner fails to provide the information specified in the above provision, the property address shall be deemed to be the mailing address to which notices are to be delivered.

	SB 918 codified Civil Code § 4041. Effective January 1, 2017.
Disciplinary Action Records **Petition Process to Remove Disciplinary Action Records from Public Profile after 10 Years** **Effective 1/1/18**	**Beginning January 1, 2018, a licensee may petition CalBRE to remove a past disciplinary action record from his or her online profile after 10 years. CalBRE retains discretion to grant the petition.** Current law requires that a discipline notice against a licensee's name in CalBRE's online database be reported indefinitely, even if the licensee has been rehabilitated and the license penalty (i.e., suspension or restriction) has been removed. This new law creates a process by which a licensee, upon written request accompanied by a specified fee, may request removal of a disciplinary action from his or her online profile. After the passage of at least 10 years of the posting of the violation, and upon the demonstration (evidence) of rehabilitation, CalBRE can consider and grant on a case-by-case basis the removal of the violation from its online database. All violations would continue to be maintained offline on the licensee's permanent record. This law allows the licensee to present evidence of rehabilitation indicating that the notice is no longer required to prevent a credible risk to members of the public utilizing licensed activity of the licensee. The commissioner, in evaluating a petition, would be required to take into consideration other violations that present a credible risk to the members of the public since the posting of discipline requested for removal. AB 1807 codified as Business and Professions Code §10083.2. C.A.R. sponsored legislation. The effective date of the petition process is January 1, 2018.
Disclosures **Death of Occupant Rule Clarified** **Effective 9/25/16**	**The existing law concerning disclosure of death of an occupant is clarified to say that the death of an occupant, or the manner of death, occurring more than three years prior to an offer to purchase is not a material fact which requires disclosure.** This law clarifies that an owner or his or her agent, or the selling agent are not required to disclose the death of an occupant upon the real property or the manner of death where it occurred more than three years prior to the offer to purchase or rent, since it is not a material fact. Previously, the law only stated that no cause of action could arise for failing to disclose such. Additionally, this law clarifies that no disclosure is required where an occupant of that property was living with human immunodeficiency virus (HIV) or died from AIDS-related complications. AB 73 codified as Civil Code § 1710.2. Urgency law to take effect September 25, 2016.

Disclosures **Liability Protections of Environmental Hazards Booklet Extended to Landlords** **Effective 1/1/17**	**Liability protections for delivery of the Residential Environmental Hazards booklet extended to include leases of more than one year.** This law clarifies that the liability protections for delivery of the Residential Environmental Hazards booklet extend to leases of more than one year's duration. Under Civil Code 2079.7 when a seller or broker elects to deliver this booklet the information is deemed legally adequate to inform the transferee regarding common environmental hazards such as asbestos, formaldehyde, hazardous waste, household hazardous waste, lead, mold and radon, and additional general information on these issues is not required (unless the broker or seller has actual knowledge). This protection now includes leases of more than one year. The delivery of this booklet is optional. The booklet is intended for "consumers" and is described as a "consumer information booklet." Nonetheless the new law would make its protections applicable to "real property" which includes all commercial and vacant land properties, but not multi-unit residential rentals of five units or more. AB 1750 codified as Civil Code § 2079.13. C.A.R. sponsored legislation. This law goes into effect on January 1, 2017.
Employment **Family Leave** **Effective 1/1/18**	**Wage replacements under California's Paid Family Leave program are increased from the current level of 55% to either 60% or 70% depending on the employee's income. This law also eliminates the program's previous one week waiting period for claims. The change takes effect in 2018.** Currently, California's Paid Family Leave program provides employees with 55% of their wages for up to six weeks. This new law will allow people who earn up to 33% of the average weekly wage to be paid 70% of their salary while on paid family leave, creating a new classification for low-income workers who make about $20,000 or less annually. Employees who earn more than 33% of the average weekly wage will get 60% of their salary during paid family leave, capped at about $1,100 a week. Additionally this law removes the 7-day waiting period for these benefits. AB 908 codified as Unemployment Insurance Code §§ 2655, 2655.1 and 3303. This law goes into effect on January 1, 2018.
Employment **$15 Minimum Wage**	**Minimum hourly wage to increase to $15 by 2022 (or 2023 for businesses with 25 employees or less). The Governor retains**

Effective 1/1/17	**authority to pause increases depending on the economy or budget (known as the "off-ramp provisions"). After the minimum wage reaches $15 per hour for all businesses, the minimum wage will increase by up to 3.5% per year based on inflation.** On January 1st of 2017 the minimum wage will rise to $10.50 per hour for businesses with 26 or more employees. On January 1st of each year thereafter, the minimum wage will rise until reaching $15 per hour per the following schedule: • 2017, the minimum wage will increase to $10.50 per hour. • 2018, the minimum wage will increase to $11 per hour. • 2019, the minimum wage will increase to $12 per hour. • 2020, the minimum wage will increase to $13 per hour. • 2021, the minimum wage will increase to $14 per hour. • 2022, the minimum wage will increase to $15 per hour. For businesses with 25 or fewer employees, the above schedule is delayed at each step by one year. **Off-Ramp Provisions** The Governor can choose to pause any scheduled increase for one year if either economy or budget conditions are met. The increase to $10.50/hour is not subject to off-ramps. The initial determination of the Governor must be made by August 1st of each year prior to a January increase. The Governor makes the final determination by September 1st depending on the economy or the budget. **1. Economy** The Governor has the ability to pause an increase if seasonally adjusted statewide job growth for either the prior 3 or 6 months is negative and retail sales receipts for the prior 12 months is negative. **2. Budget** The Governor has the ability to pause an increase if any year from the current budget year to two additional years is forecasted to be in deficit when including the next scheduled increase. Pursuant to Proposition 2, a multiyear forecast is adopted as part of the annual Budget Act. A deficit is if the operating reserve is projected to be negative by more than 1 percent of annual revenues, currently about $1.2 billion. The budget off-ramp can only be used twice. **Inflation Indexing** Wages will be adjusted annually for inflation (as measured by the National Consumer Price Index) beginning the first January 1st after small businesses are at $15/hour. There is a floor of 0 percent (no decreases) and a ceiling of 3.5 percent. Any inflation adjusted increase will be rounded to the nearest 10 cents. The off-ramp provisions do not apply once the state gets to $15/hour. SB 3 codified as Labor Code §§ 245.5, 246, and 1182.12. This law goes into effect on January 1, 2017.

Employment Mandated State Retirement Savings Program Enrollment Effective 1/1/17	**This law requires employers with five or more employees that do not offer specified retirement plans to arrange for their employees to enroll for payroll deduction contributions into a state retirement savings program called "Secure Choice" (short for "The California Secure Choice Retirement Savings Program"). No employer contribution is required. It will be implemented per a schedule according the size of the employer after the California Secure Choice Retirement Savings Investment Board ("the board") makes a report to the Governor and Legislature affirming various requirements.** This law requires eligible employers that do not offer specified retirement plans to allow their employees to enroll for payroll deduction contributions to a retirement savings program. The law provides that employers retain the right at all times to set up and offer their own qualified retirement plans. The law neither requires companies to contribute their own money nor makes state taxpayers liable. This law applies to any employer that has five or more employees, and includes an employer of a provider of in-home supportive services as an employer in some circumstances. An employer that provides an employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or that offers an automatic enrollment payroll deduction IRA, is exempt from the requirements of the Secure Choice program, if the plan or IRA qualifies for favorable federal income tax treatment under the federal Internal Revenue Code. Each eligible employee shall be enrolled in the program unless the employee elects not to participate in the program. An eligible employee may elect to opt out of the program by making a notation on the opt-out form. If an employee does not opt out, they will then contribute a portion of their salary or wages to a retirements savings account which would be set initially between 2% and 5%. The board may thereafter escalate contributions but not above 8%. This law requires the board, prior to opening the program for enrollment, to make a report to the Governor and Legislature affirming that certain requirements have been met. After the board opens the Secure Choice program for enrollment, any employer may choose to have a payroll deposit retirement savings arrangement to allow employee participation in the program under the terms and conditions prescribed by the board. • Within 12 months after the board opens the program for enrollment, eligible employers with more than 100 eligible employees and that do not offer a retirement savings program shall have a payroll deposit retirement savings arrangement to allow employee participation in the program.

	• Within 24 months after the board opens the program for enrollment, eligible employers with more than 50 eligible employees and that do not offer a retirement savings program shall have a payroll deposit retirement savings arrangement to allow employee participation in the program. • Within 36 months after the board opens the program for enrollment, all other eligible employers that do not offer a retirement savings program shall have a payroll deposit retirement savings arrangement to allow employee participation in the program. SB 1234 codified as Government Code §§ 100000, 100002, 100004, 100008, 100010, 100012, 100014, 100032, 100034, 100036, and 100043, to add Sections 100046, 100048, 100049, and 100050; and Welfare and Institutions Code § 12302.2. This law goes into effective on January 1, 2017.
FHA Condo Regulations Owner Occupancy Percentage lowered and Recertification Process Made Less Burdensome. The effective date will be no later than 11/27/16	**FHA's minimum owner-occupancy ratio for condo associations is reduced from the current 50 percent to 35 percent. FHA is ordered to streamline the entire recertification process for condo associations and make compliance "substantially less burdensome."** The new law requires FHA to reduce its minimum owner-occupancy ratio from the current 50 percent to 35 percent, unless the FHA can provide justification for a higher percentage. FHA's regulations must be changed within 90 days of enactment. Specifically, in order for a condominium project to be acceptable for FHA insurance, only 35 percent of all family units (including units not covered by FHA-insured mortgages) need be occupied by the owners as a principal residence or a secondary residence (as such terms are defined by the Secretary), or must have been sold to owners who intend to meet such occupancy requirement. Additionally, FHA is required to streamline the entire recertification process for condo associations and make compliance "substantially less burdensome." The law requires FHA to consider, among other things, lengthening the time between certifications for approved properties, and allowing updating of information rather than resubmission. Condo experts predict this alone could convince significant numbers of associations to return to the FHA fold, thereby opening up sales and purchases to thousands more condo units. This law also requires FHA to replace existing policy on transfer fees with the less-restrictive model already in place at the Federal Housing Finance Agency. HR 3700 codified as 42 USC 1437. N.A.R. and C.A.R. backed. This law was enacted July 29, 2016. The provisions discussed will come into force no later than October 27, 2016.

Housing "Junior Accessory Dwelling Units" Effective 9/29/16	**Authorizes a city or county to provide by ordinance for the creation of Junior accessory dwelling units within an existing dwelling.** Existing law authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential areas. This law authorizes a city or county to provide by ordinance for the creation of junior accessory dwelling units in single-family residential zones. It requires the ordinance to include, among other things, standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements. It prohibits an ordinance from requiring, as a condition of granting a permit for a junior accessory dwelling unit, additional parking requirements. AB 2406 codified as Government Code § 65852.22. Supported by C.A.R. Effective on 9/29/2016.
Housing "Accessory Dwelling Units" Effective 1/1/17	**Renames "Second Units" as "Accessory Dwelling Units" (ADUs). Reorganizes existing law to apply a clear standard for the ADU permit review process regardless of whether a local government has adopted an ordinance or not. Additionally, eases some of the barriers to the development of ADUs** This law reorganizes existing law to apply a clear standard for the ADU permit review process regardless of whether a local government has adopted an ordinance or not. If a local government has an ADU ordinance, that ordinance must include specified provisions for standards such as parking, setback, and zoning requirements. If a local agency has not adopted an ordinance, it must review the application pursuant to these same standards. An application must be ministerially reviewed and approved or disapproved within 120 days after receipt. This law makes several changes to ADU standards including 1) Increased floor area of an attached ADU must not exceed 50% of the existing living area, up from 30%. 2) no passageways shall be required in conjunction with the construction of an ADU 3) Setback requirements are limited 4) Standards for off-street parking replacement spots are provided, and it is specified that a local agency may reduce or eliminate parking requirements for any ADU located within its jurisdiction. AB 2299 codified as Government Code 65852.2. Supported by C.A.R. Effective date is January 1, 2017. [SB 1069 incorporates additional changes proposed by AB 2299. It revises the requirements for the approval or disapproval of ADU applications when a local agency has not adopted an ordinance. It aims to ease regulatory barriers for homeowners. It amends Government Code §§ 65582.1, 65583.1, 65589.4, 65852.150, 65852.2 and 66412.2. Effective January 1, 2017.]
Landlord/Tenant Bedbugs Disclosure	**Introduces new disclosure requirement for new tenants commencing July 1, 2017 and for existing tenants commencing January 1, 2018. Landlord is prohibited from showing or renting**

Effective 7/1/17 and 8/1/18	**vacant units if the landlord "knows" it has a current bed bug infestation. However, there is no duty on a landlord to inspect a dwelling unit or the common areas of the premises for bed bugs if the landlord has no notice of a suspected or actual bed bug infestation. Requires landlords to provide copies of pest control reports to tenants whose units have been inspected and other tenants if infestation in common area is confirmed.** Current law imposes various obligations on landlords who rent out residential dwelling units, including providing each new tenant who occupies the unit with a copy of the notice provided by a registered structural pest control company if a contract for periodic pest control service has been executed. **Disclosure Obligations** On and after July 1, 2017, prior to creating a new tenancy for a dwelling unit, a landlord must provide a written notice to the prospective tenant. And beginning January 1, 2018 this notice must be given to all other tenants. The notice must be in at least 10-point type and must include at least the following: First, general information in substantially the following form: Information about Bed Bugs Bed bug Appearance: Bed bugs have six legs. Adult bed bugs have flat bodies about $^{1}/_{4}$ of an inch in length. Their color can vary from red and brown to copper colored. Young bed bugs are very small. Their bodies are about $^{1}/_{16}$ of an inch in length. They have almost no color. When a bed bug feeds, its body swells, may lengthen, and becomes bright red, sometimes making it appear to be a different insect. Bed bugs do not fly. They can either crawl or be carried from place to place on objects, people, or animals. Bed bugs can be hard to find and identify because they are tiny and try to stay hidden. Life Cycle and Reproduction: An average bed bug lives for about 10 months. Female bed bugs lay one to five eggs per day. Bed bugs grow to full adulthood in about 21 days. Bed bugs can survive for months without feeding. Bed bug Bites: Because bed bugs usually feed at night, most people are bitten in their sleep and do not realize they were bitten. A person's reaction to insect bites is an immune response and so varies from person to person. Sometimes the red welts caused by the bites will not be noticed until many days after a person was bitten, if at all. Common signs and symptoms of a possible bed bug infestation:

	• Small red to reddish brown fecal spots on mattresses, box springs, bed frames, mattresses, linens, upholstery, or walls. • Molted bed bug skins, white, sticky eggs, or empty eggshells. • Very heavily infested areas may have a characteristically sweet odor. • Red, itchy bite marks, especially on the legs, arms, and other body parts exposed while sleeping. However, some people do not show bed bug lesions on their bodies even though bed bugs may have fed on them. For more information, see the Internet Web sites of the United States Environmental Protection Agency and the National Pest Management Association. Secondly, the notice must include the procedure that the tenant must follow to report suspected infestations to the landlord. **Additional Disclosure Obligations** Whenever a pest control operator conducts inspections of a unit (including surrounding units), the landlord must notify the tenants of those units in writing of the operator's findings. This notice must be made within two business days of receipt of the pest control operator's findings. (A pest control operator means an individual holding a Branch 2 Operator, field representative, or applicator license from the Structural Pest Control Board.) However, for confirmed infestations in common areas, all tenants shall be provided notice of the pest control operator's findings. **Landlord is prohibited from showing or renting vacant units if the landlord "knows" it has a current bed bug infestation.** This law prohibits a landlord from showing, renting, or leasing to a prospective tenant any vacant dwelling unit that the landlord knows has a current bed bug infestation. If a bed bug infestation is evident on visual inspection, the landlord is considered to have notice. Additionally, this law does not impose a duty on a landlord to inspect a dwelling unit or the common areas of the premises for bed bugs if the landlord has no notice of a suspected or actual bed bug infestation. A landlord may not engage in any retaliatory conduct against a tenant who has notified the landlord of finding or reasonably suspecting a bed bug infestation on the property. **Tenants must cooperate**

	This law requires tenants to cooperate with the inspection to facilitate the detection and treatment of bed bugs, including providing requested information necessary to facilitate the detection of bed bugs to the pest control operator. It permits entry into a tenant's unit selected by the PCO to conduct inspection for bedbugs and permits entry for follow-up inspections of surrounding units until bed bugs are eliminated, as long as the entry complies with requirements for advance notice and other provisions of Civil Code Section 1954. In general, this law espouses various policy goals regarding the control of bed bugs including the importance of cooperation among landlords, tenants and pest control operators; the importance of early detection; best practices among pest control operators; and the importance of tenants to cooperate by reducing clutter, washing clothes and the like. AB 551 codified as Civil Code §§ 1942.5, 1954.1 and 1954.600 et seq. The requirement to provide disclosures to new tenants is effective July 1, 2017 and January 1, 2018 for all other tenants. Other provisions of law are effective on January 1, 2017.
Landlord/Tenant Commercial Leasing Disclosures re CASp Report **Effective in part 9/17/16***	**This law requires a lessor to state on a commercial lease whether or not the property has been inspected by a Certified Access Specialist (CASp). Additionally, if the property has been issued an inspection report by a CASp, indicating that it meets applicable standards, the commercial property owner or lessor shall provide a copy. If no report has been issued, then a specific disclosure statement would be required. Prior to signing the lease, the prospective lessee has the right to review an inspection report issued by a CASp, if one exists, and may cancel lease within 72 hours after signing based on the report. This law goes into effect immediately as of 9/16/2016, with one exception.** Existing law requires a commercial property lessor to state on every lease form or rental agreement executed on or after July 1, 2013, whether the property has been determined by a CASp to meet all applicable construction-related accessibility standards. This new law will require a statement as to whether or not the property has been *inspected* by a CASp specialist for leases executed on or after January 1, 2017. *This law is an urgency statute and goes into effect immediately. Interpreting this law conservatively, all of the requirements described below went into effect immediately, the day after signature by the Governor, on September 17, 2016. If the subject premises have been issued an inspection report by a CASp, indicating that it meets applicable standards, the commercial property owner or lessor shall provide a copy of the current disability access inspection certificate and any inspection report to the lessee or tenant within seven days of execution of the lease.

	If the premises have not been issued a disability access inspection certificate, then this law requires a statement on the lease form or rental agreement as follows: “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” This law also establishes a presumption that making repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a CASp report is the responsibility of the commercial property lessor unless otherwise agreed upon by the parties to the lease. It grants a prospective lessee the opportunity to review any CASp report prior to execution of the lease, and if the report is not provided at least 48 hours prior to execution of a lease or rental agreement, the prospective lessee has the right to rescind the lease or agreement, based upon information in the report, for 72 hours after execution. AB 2093 codified as Civil Code §1938. This law went into effect immediately on 9/17/2016 with the exception of the requirement of indicating whether the property has been inspected by a CASp specialist for leases executed on or after January 1, 2017.
Landlord/Tenant Unlawful Detainer Reporting Effective 1/1/17	**No public access to Unlawful Detainer records permitted unless the plaintiff/landlord prevails within 60 days of filing. Previously, it was the defendant/tenant who had to prevail within 60 days of filing to bar such access.** Existing law permanently restricts access to unlawful detainer action public records if the defendant (that is, the tenant) prevails within 60 days after the UD complaint is filed. This law would allow public access to unlawful detainer records only if 1) the plaintiff (that is, the landlord) prevails within 60 days from the filing of the complaint or 2) by order of the court when judgment is entered for the plaintiff after trial more than 60 days since filing of the complaint. There are other limited exceptions that allow for access. Additionally, if a proof of service of summons in a UD action had not been filed within 60 days and the action was dismissed as a result, that record would also not be available to the public. Likewise, a default that is later set aside will also

	be unavailable. Lastly, a court could bar access to court records in the action if the parties so stipulate. The practical effect of this law will be to make permanently unavailable to public view many unlawful detainer filings even where the landlord's initial complaint was justified. This law contains a statement of findings and declarations which explain its purpose including a statement that, "It is the intent of the Legislature to amend existing statutes regarding open access to public records by making permanently unavailable to the public civil case records in unlawful detainer proceedings in which the plaintiff does not prevail within 60 days of filing instead of unlawful detainer proceedings in which the defendant prevails within 60 days of filing." AB 2819 codified as Code of Civil Procedure §§ 1161.2 and 1167.1. Effective date is January 1, 2017.
Landlord/Tenant Water Submeters Effective date 1/1/18	**This law requires that submeters be installed on all new multifamily residential units or mixed commercial and multifamily units, and requires that landlords bill residents of these new units for the increment of water they use. This requirement will come into effect pursuant to standards which may only be proposed and adopted after January 1, 2018.** **When a multi-unit property has submeters installed prior to 2018 and the landlord elects to charge a tenant separately for water service, then all of the requirements of this new law must be complied with commencing January 1, 2018. However, this law does not affect existing properties without submeters where tenants are billed separately through ratio-allocation utility systems (RUBS).** Existing law requires the installation of a water meter when new water service is requested. This new law requires each water purveyor that provides water service to a newly constructed multiunit residential structure or newly constructed mixed-use residential and commercial structure for which a water connection is submitted after January 1, 2018, to ensure each individual unit be metered or submetered as a pre-condition for new water service. The landlord of the newly constructed structure shall be required to install and read the submeters unless the water purveyor agrees to install and/or read them. For these newly constructed units, the landlord will be required to bill residents for water service in accordance with this law. For properties with submeters installed prior to January 1, 2018, in which the landlord elects to charge a tenant separately for water service, this law must be complied with commencing January 1, 2018. **Notice and Disclosure, Limitations and Meter Accuracy** If a submeter is used to charge a tenant separately for water service, this law imposes various requirements on landlords. It requires a landlord to

make disclosures to the tenant prior to the execution of the rental agreement. It specifies that as part of the monthly bill for water service, a landlord may only bill a tenant for volumetric water usage, a portion of any recurring fixed charge billed to the property by the water purveyor, an administrative fee, and a late charge. It specifies that payments are required to be due at the same point in each billing cycle, and that each bill must include and separately set forth certain information. This law would prohibit a landlord from charging certain additional fees.

This law also requires a landlord to maintain and make available in writing to a tenant, the date the submeter was last inspected, tested, and verified, the data used to calculate the tenant's bill, and the location of the submeter. It requires a landlord to investigate and, if warranted, rectify certain problems or a submeter reading that indicates constant or abnormal water usage.

Entry
A landlord is permitted to enter a dwelling unit for purposes relating to a submeter or water fixture.

Late Fee and Eviction
A tenant may be charged late fees of up to $7 if more than 25 days late, or up to $10 in each subsequent bill if any amount remains unpaid. But the total late fee in any 12-month period cannot exceed 10% of the total amount that remains unpaid.
If the water bill remains unpaid for 180 days after the date upon which it is due or the amount of the unpaid water bill equals or exceeds two hundred dollars ($200), the landlord may terminate the tenancy with the service of a three-day notice to perform covenant. Water service charges under this law cannot be claimed as additional rent, meaning, that a three-day notice to pay rent or quit should not be used to demand payment of the water bill.

Ratio-allocation system and certain other submetering systems are exempt
This law does not apply to a ratio utility system where submeters are not used to charge a tenant separately for water service. "Ratio utility billing system" means the allocation of water and sewer costs to tenants based on the square footage, occupancy, or other physical factors of a dwelling unit.

A submetering system that measures only a portion of a dwelling unit's water usage, including, but not limited to, a system that measures only hot water usage, shall not be subject to this chapter if the system was first put in service before January 1, 2018.

This law only applies to:
(1) Dwelling units offered for rent or rented in a building where submeters were required to be installed pursuant to a building standard proposed by the Department of Housing and Community Development after January 1, 2018 and thereafter adopted by the California Building Standards Commission.

	(2) All dwelling units where submeters are used to charge a tenant separately for water service on or after January 1, 2018. **Local ordinances grandfathered in if in effect before 2013** This law does not preempt an ordinance that regulates the approval of submeter types or the installation, maintenance, reading, billing, or testing of submeters and associated onsite plumbing if the ordinance or regulation was adopted prior to January 1, 2013. SB 7 codified as Civil Code §§ 1954.201 et seq., Health and Safety §17922.14, and Water Code §§ 517 and 537 et seq. The bill would provide that these provisions shall become operative on January 1, 2018.
Licensing **Eliminates References to "Salesmen";** **Issuance of License for Person Previously cited** **Effective 1/1/17**	**"Real estate salesman" is now renamed "real estate person" in the real estate law.** **Prohibits issuance of a real estate license to a person who was cited for the illegal practice of real estate and either the terms of the citation have not been complied with or an unpaid fine remains outstanding.** The Real Estate Law includes outdated terminology that does not reflect both genders. This law makes some necessary technical corrections, which include eliminating references to "salesman" and "salesmen" and instead replacing those with "salesperson" and "salespersons," respectively. Presently, the commissioner may issue a citation to a person who appears to be practicing real estate without a license. Presently, the law prohibits a license from being renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with. This new law would additionally prohibit a license from being issued under those circumstances. AB 685 codified as Business and Professions Code §§ 6742, 10003, 10007, 10008, 10009.5, 10010, 10011, 10012, 10013, 10014, 10015, 10016, 10023, 10024, 10027, 10074, 10080.9, 10082, 10132, 10133.1, 10136, 10137, 10140.5, 10143.5, 10144, 10161.5, 10161.8, 10178, 10179, 10186.2, and 11212, and Corporations Code § 31210. C.A.R. sponsored legislation. This law goes into effect on January 1, 2017.
Licensing **Outdoor Advertising Exemption** **Effective 1/1/17**	**An "outdoor advertising representative," defined as an employee of a corporation that holds an outdoor advertising business license, is exempt from BRE licensing requirements when arranging for lease or transfer of real property which is solely for the placement of an advertising display and where the owner or operator of the advertising display meets minimum insurance requirements.**

	An "outdoor advertising representative" is excluded from BRE licensing requirements in connection with specified transactions. An "outdoor advertising representative" means an employee of a corporation or a limited liability company or a general partner of a partnership that holds a license issued by the Department of Transportation to engage in the business of outdoor advertising, arranging for the lease or transfer of real property by his or her employer or an interest in real property solely for the placement of, access to, or operation of, an advertising display and appurtenances thereto. In every transaction involving the transfer, lease, or use of real property for the operation of an advertising display negotiated by an outdoor advertising representative, the owner or operator of the advertising display shall maintain liability insurance coverage for death, bodily injury, and property damage arising out of, or in connection with, its acts, omissions, or operations on the real property. The amount of the insurance coverage shall not be less than five hundred thousand dollars ($500,000) per person or one million dollars ($1,000,000) per occurrence for personal injury and five hundred thousand dollars ($500,000) for property damage. It must be issued by an insurance carrier authorized to sell such insurance in California. AB 1381 codified as Business and Professions Code §§ 10133.45 and 11317.2. Effective date is January 1, 2017.
Licensing Retired Status Effective 1/1/17	**Any board under the Department of Consumer Affairs (DCA), including the Bureau of Real Estate, may establish the category of "retired" licensees.** This law would authorize any of the boards within the DCA to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or vocation. This law does not require boards to offer a retired license. A retired license may be issued to a person with either an active license or an inactive license. However, it cannot be issued when licensee was placed on inactive status for disciplinary reasons. Retired licensees cannot engage in any activity for which a license is required, unless the board, by regulation, specifies the criteria for a retired licensee to practice his or her profession. This law would not apply to a board that has other statutory authority to establish a retired license. AB 2859 codified as Business and Professions Code § 464. Effective date is January 1, 2017.
Loans Homeowner Bill of Rights Extended in Part to Successor in Interest after Death of Borrower Effective 1/1/17	**Extends provisions of the Homeowner's bill of rights to a successor in interest after the borrower has died. This law is in effect only until January 1, 2020.** Existing law gives a borrower various rights and remedies against a lender, servicer and others in regards to foreclosure prevention alternatives, including loan modifications, under the California Homeowner Bill of Rights.

	This law, until January 1, 2020, prohibits a mortgage servicer, upon notification that a borrower has died, from recording a notice of default until the mortgage servicer requests reasonable documentation of the death of the borrower from a claimant, among other things. A claimant is a person claiming to be a successor in interest, who is not a party to the loan or promissory note. The law provides a reasonable period of time for the claimant to present the requested documentation. A mortgage servicer is required, within 10 days of a claimant being deemed a successor in interest, to provide the successor in interest with information about the loan and to allow a successor in interest to assume the deceased borrower's loan or to apply for foreclosure prevention alternatives on an assumable loan. Such a successor in interest who assumes an assumable loan and wishes to apply for a foreclosure prevention alternative has the same rights and remedies as a borrower under specified provisions of the California Homeowner Bill of Rights. SB 1150 codified as Civil Code § 2920.7. Effective date is January 1, 2017.
Mobile Homes Three Year Temporary Waiver Program for Taxes and HCD Charges Effective 1/1/17	**Requires waiver of all vehicle license registration fees (VLF) by the Department of Housing and Community Development (HCD) against a person who is not currently the registered owner of a manufactured home or mobilehome prior to transfer of title. If the manufactured home or mobilehome is subject to local property taxation (LPT) then the HCD must issue a conditional transfer of title and would require a county tax collector to issue a tax liability certificate with only partial payment of the taxes owed. This window for waiver of charges and taxes expires at the end of 2019.** Due to the sometimes informal nature of mobilehome sales, buyers and sellers may not be aware that delinquent taxes and fees prevent title from transferring. This law creates an abatement program to address the situation where a buyer has already purchased a mobilehome, but is unable to transfer title into his or her name due to delinquent fees or taxes. Nonpayment of VLF constitutes a lien on the mobilehome in favor of the state. Nonpayment of LPT means the county tax collector may pursue collection of the delinquent LPT in the same manner as other delinquent taxes on the unsecured roll. Both of these scenarios prevent HCD from amending the title into the new owner's name. If the buyer cannot pay the delinquent charges associated with the home, and the seller does not agree to pay or cannot be located, then the buyer cannot obtain legal ownership. Beginning January 1, 2020, this law will make it unlawful for any person to use for occupancy any manufactured home or mobilehome that does not conform to the registration requirements of the department, if the department provides notice to the occupant of the registration requirements and any registration fees due.

	AB 587 codified as Civil Code § 798.15, Health and Safety Code §§ 18092.7, 181161.1, 18550 and 18550.1 and Revenue and Taxation Code § 5832. Effective date is January 1, 2017.
Notary Public Maximum Fees Effective 1/1/17	**Maximum fees that can be charged by a notary public for taking a proof of deed will increase from $10 to $15.** Currently, the law sets maximum fees that may be charged by a notary public for many services at $10. This new law increases the maximum permissible charge from $10 to $15 on the following services: • Taking an acknowledgment or proof of a deed, or other instrument, to include the seal and the writing of the certificate • Certifying a copy of a power of attorney AB 2217 codified as Government Code §8211. This law goes into effect on January 1, 2017.
PACE Liens Detailed Financial Disclosure and 3-Day Rescission Right Effective 1/1/17	**A property owner may not participate in a PACE lien program without delivery of a detailed financial disclosure document received before contractual consummation. The disclosure document contains a variety of notices and warnings including a notice that the property owner may not be able to refinance or sell without paying off the PACE obligation. The property owner also retains a 3-day rescission right detailed in a statutory form. Statements as to increased value of the property cannot be made unless based on a valuation as specified.** Existing law requires home loans to be accompanied by the Truth in lending RESPA Integrated Disclosure (TRID), which is intended to allow an "apples to apples" comparison shopping of various loan products. However, PACE transactions are technically not loans and are not required to be accompanied by a TRID disclosure. Current law gives delinquent PACE assessments “super-priority” status, as part of the tax bill, over other recorded obligations; lenders require these “super liens” to be paid off before any new financing can be obtained. This measure will require a TRID-like disclosure be provided to a property owner participating in a PACE program, a 3 day right of rescission, and a notice that the property owner may not be able to refinance or sell without paying off the PACE obligation. This law prohibits making monetary or percentage representations of increased value to a property owner regarding the effect the financed improvements will have on the market value of the property unless the estimate of market value is based upon either “an automated valuation model,” a broker price opinion or an appraisal by a licensed appraiser. AB 2693 codified as Government Code § 53328.1 and Streets and Highways Code §§5898.15, 5898.16 and 5898.17.

	This law goes into effect on January 1, 2017.
PACE Liens **FHA permits limited subordination with disclosures.** **Effective 9/17/16**	**FHA permits properties encumbered with a Property Assessed Clean Energy (PACE) obligation to be eligible for FHA-insured mortgage financing, whether for new purchases or refinancing, under certain circumstances. If the PACE lien is to remain, then property sales contract must include all terms and conditions of the PACE obligation by closing. Effective September 17, 2016.** Under FHA guidance, for a property to be eligible for FHA-insured mortgage financing, PACE obligations may be superior or subordinate, but may not fully accelerate. The FHA guidance stresses that PACE obligations must be treated as and follow the same rules as other special tax assessments levied by municipalities. In that vein, FHA will allow that only delinquent payments may take priority over a mortgage. A delinquency on a PACE obligation cannot trigger acceleration of the entire loan. In the event of a sale, including a foreclosure, the PACE obligation will run with the land, and the new homeowner will be responsible for payments on any outstanding PACE amounts. For PACE-encumbered property to be considered for FHA-insured mortgage financing, the mortgagee must verify that the following requirements are met: • Must be treated like a special assessment • Only delinquent special assessment payments may take priority over a mortgage. • PACE obligations must freely and automatically transfer upon sale. • PACE obligations must be recorded on the land records • Outstanding PACE obligations must run with the land **New Disclosure and Appraisal Requirements** Under the FHA guidance, when a PACE-encumbered property is sold, the property sales contract must indicate whether the seller will satisfy the PACE obligation at or before closing or whether the obligation will remain with the property. If the obligation will remain with the property, the property sales contract must include and incorporate all terms and conditions of the PACE obligation. Additionally, if the obligation will remain with the property, the appraiser must analyze and report the impact of the PACE-related improvements on the value of the property. Based on guidance from the Federal Housing Administration issued in Mortgagee Letter 2016-11. This guidance went into effect on September 17, 2016.
TAX **Parcel Tax Vote Notification** **Effective 1/1/17**	**Requires notice of a new parcel tax to the owner, if that owner does not reside within the jurisdictional boundaries of the taxing entity.**

	Under current law, resident property owners receive notice of proposed parcel taxes with receipt of their ballot pamphlet while non-resident property owners do not receive any notice whatsoever. This new law requires that non-resident owners be provided with notice of a new parcel tax which includes (1) The amount or rate of the parcel tax in sufficient detail to allow each property owner to calculate the amount of the tax to be levied against the owner's property. (2) The method and frequency for collecting the parcel tax, and the duration of time during which the parcel tax will be imposed. (3) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the parcel tax. AB 2476 codified as Government Code §54930. This law goes into effect on January 1, 2017.
Team Name Advertising Effective 8/29/16	**Effective August 29, 2016, on team name and agent-owned DBA advertising, only the responsible broker's name must be displayed alongside the team name or agent-owned DBA. The display of the responsible broker's license number is optional.** This new law, which took effect immediately on August 28, 2016, corrects a drafting error that required to be displayed in all team name and agent-owned DBA advertising both the responsible broker's name *and* license identification number. The new law, to correct that error, requires only the responsible broker's name. The display of the responsible broker's license identification number in team name or agent-owned DBA advertising is optional. The responsible broker's name means the name under which the responsible broker is currently licensed by CalBRE and conducts business in general or is a substantial division of the real estate firm. SB 710 codified as Business and Professions Code §10159.7. C.A.R. sponsored legislation. Effective August 29, 2016.
Water Use Fines may be imposed for "excessive water use" Effective 1/1/17	**Requires each public/private urban retail water supplier to define "excessive water use" by a residential customer and permits these water suppliers to fine residential customers up to $500 per 748 gallons (100 cubic feet) of water used above the defined local standard for excessive water use during a drought emergency.** This law declares that during prescribed periods of drought emergencies, excessive water use by a residential customer in a single-family residence or by a customer in a multiunit housing complex is prohibited. It requires each urban retail water supplier to establish a method to identify and discourage excessive water use and that entity is authorized to issue a fine of up to five hundred dollars ($500) for each hundred cubic feet of water, or 748 gallons, used above the excessive water use threshold established by the urban retail water supplier in a billing cycle.

	Any fine imposed must be added to the customer's water bill and is due and payable with that water bill. The system for issuing fines does not apply unless the urban water supplier is fully metered. But once all of the water supplier's residential water service connection are being billed based on metered water usage, it will apply. SB 814 codified as Water Code §§ 365, 366 and 367. January 1, 2017 is the effective date.

Member Legal Services

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Dec. 8, 2016 (revised)

CALIFORNIA ASSOCIATION OF REALTORS®

WATER-CONSERVING PLUMBING FIXTURES

Key questions

- **Does the water conservation law create any point of sale requirements?** See question #2
- **What is the significance of it NOT creating a point of sale requirement?** See question #3
- **Are there any forms that allow the seller to meet their disclosure obligations?** See question #8
- **Should this box on the TDS be checked if the seller is uncertain about whether there are WCP fixtures installed?** See question #11
- **How should a seller answer the question on the SPQ, "Are you aware of any non-compliant plumbing fixtures?" if they are uncertain?** See question #12

Introduction

California law requires property owners (for properties built before 1994) to install water-conserving plumbing fixtures by 2017 for single-family properties and by 2019 for other properties. Additionally, if any property (built before 1994) is altered or improved after 2014, then water-conserving plumbing fixtures must be installed as a condition of final permit approval. (Cal. Civ. Code section 1101.4)

In 2012 the Transfer Disclosure Statement was expanded to include a check box for water-conserving plumbing fixtures. As explained in the TDS itself, the check box does not create a point of sale requirement. (Cal. Civ. Code section 1102.6.)

Beginning in 2017 a seller of a single-family property will also be required to disclose whether the property is in compliance with the law. This same disclosure requirement will apply to other types of properties beginning in 2019. Even then, the law creates no point of sale requirement. (Cal. Civ. Code section 1101.4 and 1101.5.)

Q 1. ***What is the purpose of the water conserving plumbing fixtures law ("WCP fixtures law")?***

A The legislature thinks that water conservation is a cost effective approach to the challenges created by not having enough water. Those challenges include future economic health; environmental health; growing urban areas; water reliability; waste water treatment; energy and other resource costs; and protecting and restoring aquatic resources. All of these issues were cited as reasons behind this effort to promote water conservation.

Q 2. ***Does the water conservation law create any point of sale requirements?***

A No. There is nothing in the law that requires the installation of water-conserving fixtures as a condition of sale.

Q 3. ***What is the significance of it NOT creating a point of sale requirement?***

A Because the WCP fixtures law does not create a point-of-sale requirement, there is no obligation on either agents or brokers to ensure that sellers or buyers install WCP fixtures. However, as in all transactions, agents should impress upon the seller the necessity of carefully and accurately completing the appropriate disclosure forms.

Q 4. ***If there are no point of sale requirements, then what is required?***

A The law will require owners of real property to install water-conserving fixtures simply because they own the property regardless of whether they are selling it. The requirement for installation is not immediate, but will take effect in later years depending on the type of property or whether improvements are made. For single family properties built before 1994, the installation requirement takes effect on January 1, 2017. For multi-unit residential property and any commercial property, these requirements will apply starting January 1, 2019. See questions 25 and 26 below.

Q 5. ***I'm a homeowner selling my pre-1994 single-family house. Are there any installation requirements under this law?***

A No. There is nothing in this law that requires installation of WCP fixtures as a condition of sale. However, if you haven't already installed water conserving plumbing fixtures on your pre-1994 single-family house, then beginning January 1, 2017, you will be in violation of the basic requirement of the law.

Q 6. ***Under the law WCP fixtures are not required as a point of sale. However, isn't it possible that lenders may require it as a condition of the loan?***

A Yes. It's possible. Lenders may make their own underwriting decisions regardless of what the law technically does or does not require. If a lender requires the installation of WCP fixtures as a condition of the loan, that is his or her right to do so. At this time, however, we are unaware of any lender requiring it.

Q 7. ***What does the law require a seller to disclose regarding water conservation plumbing fixtures?***

A Presently, the law only requires the seller to check the box on the TDS as to whether there are water conserving plumbing fixtures. Commencing January 1, 2017, for single family pre-1994 houses, the law will require a seller to disclose to the buyer the requirement of water conserving plumbing fixtures and whether the real property has any noncompliant fixtures. This same requirement will come into effect for multi-unit residential and commercial property starting January 1, 2019. See questions 25and 26 below.

Q 8. ***Are there any forms that allow the seller to meet their disclosure obligations?***

A Yes. There are a few.

- First, the TDS will allow the seller to disclose to the buyer the legal requirements of the law. That's on the second page of the TDS in the fine print.

- Secondly, with the 2016 December forms release, the Seller Property Questionnaire (Form SPQ) will be revised to ask the seller whether they are aware of any non-compliant plumbing fixtures.
- Thirdly, on those transactions which are TDS exempt, the Exempt Seller Disclosure (Form ESD) will be amended to facilitate both disclosures. (Since for TDS exempt properties, neither the TDS nor the SPQ is used).
- Finally, with the December forms release there will be an optional disclosure form for "Water conserving Plumbing Fixtures and Carbon Monoxide Detector Notice" (Form WCMD). This form will provide an explanation of the technical requirements of the law. It is not actually a new form, but instead, is a revision of the existing "Carbon Monoxide Detector" form. Although, it is an optional form, agents should check with their broker to see if the brokerage requires its delivery.

Q 9. ***The TDS was changed to include a check box asking if the property has any water-conserving plumbing fixtures. Does that make it a point of sale requirement?***

A No. In fact, the TDS box has an asterisk to the second page that says, "Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling." (Cal. Civ. Code section 1102.6.)

Q 10. ***If the seller checks the box indicating that there are some water-conserving plumbing fixtures, is he or she representing that the fixtures are in compliance with this law?***

A No. The TDS specifically says, "Fixtures in this dwelling may not comply with Section 1101.4 of the Civil Code." (Cal. Civ. Code section 1102.6.)

Q 11. ***Should this box on the TDS be checked if the seller is uncertain about whether there are WCP fixtures installed?***

A If the seller is uncertain, its best to leave it blank.

Q 12. ***How should a seller answer the question on the SPQ (or ESD if TDS-exempt), "Are you aware of any non-compliant plumbing fixtures?" if they are uncertain?***

A A seller who is uncertain should probably err on the side of caution by checking "yes" and stating that they are aware of noncompliant plumbing fixtures.

Q 13. ***How can a seller know for sure if the property has non-compliant plumbing fixtures?***

A CAR form WCMD states the technical specifications of non-compliant fixtures. However, if the seller is unsure then they should consult with someone who has expertise in the matter such as a contractor, plumber or retrofit compliance company.

Q 14. ***What do agents need to know about compliance with the WCP fixture law?***

A Agents should be aware that beginning January 1, 2107 owners of single family properties built before 1994 need to replace non-compliant fixtures with WCP fixtures - whether or not the owners are selling their property. And also, starting at the same time, sellers have certain disclosure obligations as discussed above in question 6 through 14.

However, generally agents do not have the expertise of contractors or plumbers, and therefore it is prudent to not offer definitive advice on whether there are or aren't non-compliant plumbing fixtures on the property.

Q **15.** ***If the seller would like, at his or her option, to install WCP fixtures as part of a sale, where on the California Residential Purchase Agreement (Form RPA-CA) should this be indicated?***

A Paragraph 7D under "Other Costs" is the appropriate place to indicate this.

Q **16.** ***Is there sample language that could be used to negotiate for the installation of WCP fixtures?***

A Yes, A seller or buyer may use the following language: [Buyer or Seller shall pay for]… the installation of water-conserving plumbing fixtures per Civil Code § 1101.3 if required by law not to exceed the cost of $________.

The phrase "water-conserving plumbing fixtures" is defined to mean plumbing fixtures in compliance with current, new-construction, building standards (Civ. Code 1101.3(e)). The suggested language on the contract, "if required by law," would leave open the possibility that the plumbing fixtures already meet the standards of the Civil Code and thus, there would be no obligation to upgrade them.

Q **17.** ***What is the definition of "water-conserving plumbing fixture"?***

A Water-conserving plumbing fixture means any fixture that is in compliance with current building standards applicable to a newly constructed real property. (Cal. Civ. Code section 1101.3.)

Q **18.** ***What is the definition of "noncompliant fixture"?***

A The law calls for installation of water-conserving plumbing fixtures only when the existing plumbing fixtures are "non-compliant." Noncompliant plumbing fixture means (1) any toilet manufactured to use more than 1.6 gallons of water per flush (2) any urinal manufactured to use more than one gallon of water per flush (3) any showerhead manufactured to have a flow capacity of more than 2.5 gallons of water per minute (4) any interior faucet that emits more than 2.2 gallons of water per minute. (Cal. Civ. Code section 1101.3.)

Q **19.** ***Does the water conservation law apply to all types of property?***

A No. The law only applies to property built and available for use on or before January 1, 1994. (Cal. Civ. Code section 1101.2.)

Q **20.** ***Why does it only apply to buildings built before January 1, 1994?***

A Under federal law, all residential toilets manufactured after January 1, 1994 must use no more than 1.6 gallons per flush. In California ultra-low flush toilets have been required in all new construction since January 1, 1992.

Q **21.** ***When must the water-conserving fixtures be installed?***

A It depends on what kind of property you own, and whether you make improvements. The law sets up three categories: "single-family residential real property," "commercial real property," and "multifamily residential property."

Q 22. ***What is a "single-family residential" property?***

A A single-family residential property means any real property that is improved with, or consisting of, a building containing not more than one unit that is intended for human habitation. Therefore a condo, even a single condo occupied by only one family, is not a single-family residential property under this law. (Cal. Civ. Code section 1101.3.)

Q 23. ***What is a "multifamily residential real property"?***

A A multifamily residential property means any real property containing more than one unit that is intended for human habitation. This would include the residential portions of a mixed use property. (Cal. Civ. Code section 1101.3.)

Q 24. ***What is a "commercial real property"?***

A Commercial real property means any property that is not in the above two categories and includes hotels and motels. (Cal. Civ. Code section 1101.3.)

Q 25. ***If I own a single-family residential property, what are the requirements and when do they take effect?***

A Beginning January 1, 2017 all single family property owners will be required to replace noncompliant plumbing fixtures with water-conserving fixtures regardless of whether any improvements are made and whether or not the property is being sold.

Beginning January 1, 2017 a seller must disclose in writing to the buyer the requirement of water-conserving fixtures and whether the real property has any noncompliant fixtures.

However, if you do any improvement requiring a permit after January 1, 2014 on a single-family property, the permit will not be issued unless all noncompliant plumbing fixtures have been replaced with water-conserving fixtures. (Cal. Civ. Code section 1101.4.)

Q 26. ***I own a multifamily residential property or a commercial property, what are the requirements and when do they take effect?***

A Beginning January 1, 2019 all noncompliant plumbing fixtures in any multifamily residential real property and any commercial real property shall be replaced with water-conserving plumbing fixtures.

Beginning January 1, 2019 a seller of these types of properties must disclose in writing to the buyer the requirement of water-conserving fixtures and whether the real property has any noncompliant fixtures.

However, after January 1, 2014, if you do any improvement which either costs at least $150,000 or increases total floor area by more than 10, then all nonconforming fixtures must be replaced with water-conserving plumbing fixtures. And replacement of nonconforming fixtures will be a condition of permit approval or certificate of final completion. However, if you only do improvements requiring a permit in a room then you only have to replace nonconforming fixtures in that room. (Cal. Civ. Code section 1101.5.)

Q 27. ***Who is required to make the disclosure as to whether the property is or isn't in compliance, the seller or the listing agent?***

A The seller. The law specifically says a seller or transferor shall make the disclosure in writing. Earlier drafts of the bill attempted to make agents responsible for the disclosure, but these were removed from the final law.

Q 28. ***Are there any exemptions?***

A Yes. There are exemptions for historical sites; property where it isn't technically feasible to install water-conserving fixtures; buildings where the water is permanently disconnected; buildings slated to be demolished; and a special exemption for a city (or county) itself that has an existing retrofit law. (Cal. Civ. Code section 1101.7.)

Q 29. ***Can I comply with this law by just putting a brick in my toilet?***

A No. The law defines as nonconforming any toilet manufactured to use more than 1.6 gallons. Therefore, displacing water in the tank will not put you in compliance with the law, even though you might be saving just as much water.

Q 30. ***I am a landlord, and I want to install or test my water-conserving devices in the rental unit. Can I enter the property for that purpose?***

A Yes, as long as you give the proper written notice for entry of a dwelling. (Cal. Civ. Code sections 1101.5, 1954.)

Q 31. ***I own a property in city where there is an existing retrofit law for water-conserving fixtures as a point of sale requirement (such as Los Angeles, San Diego or San Francisco). Are those retrofit laws still in force?***

A Yes. Local laws passed before July of 2009 requiring retrofit of plumbing fixtures remain in effect. The state law also allows a locality to pass more restrictive requirements at any time.

Q 32. ***Can a city or county require greater water savings than the state law? Or have local laws now been superseded by the state law?***

A No. A city, county or a retail water supplier has the authority to enact local ordinances or establish policies that will result in a greater amount of water savings than those provided under California's statewide law on water-conserving plumbing fixtures (Cal. Civ. Code section 1101.8).

Q 33. ***Where can I find additional information?***

A This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org/legal.

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The information contained herein is believed accurate as of December 8, 2016. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Written and revised by Robert Bloom, Esq.