



October 2008

NEW 2008 LAWS IMPACTING REAL ESTATE INDUSTRY

There were a great number of bills signed into law during 2008. Even though the Governor vetoed a long list of bills, there were so many passed that we cannot report on all of them in this article. The following are selected new laws signed by the Governor in September and October 2008 and earlier this year that we thought would be of particular interest to real estate professionals.

NEW REGULATIONS OF LOAN BROKERS

SB 1240, Machado. Real estate brokers and salespersons.

Under existing Real Estate Law, real estate brokers and real estate salespersons are licensed and regulated by the Real Estate Commissioner, and willful violation of the law is a crime. The commissioner is authorized to investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within the state. The law defines a real estate broker as a person who, among other things, solicits borrowers or lenders for, or negotiates loans or collects payments, or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity. Persons engaging in that activity who meet certain criteria are required to annually notify the Department of Real Estate (DRE) in writing.

The newly enacted law deletes that notification requirement and instead requires a real estate broker who, among other things, makes, arranges, or services loans secured by residential real property to notify the DRE in writing, as specified, to pay specified penalties for failing to provide that notification, and to notify the DRE when he or she is no longer subject to this requirement. The new law also requires these brokers to keep documents and records that will enable the commissioner to determine whether they are in compliance with the Real Estate Law. The commissioner is now authorized to inspect and examine or audit the business documents and records of a real estate broker or salesperson after reasonable notice and require special reports from time to time from these brokers.

Under the new law, a broker who makes, arranges, or services 8 or more of these loans in a calendar year must file various annual reports with the DRE commencing January 1, 2010. Accountants who prepare those reports are subject to various duties. The commissioner may cause an examination and report to be made and may charge the broker for 1-1/2 times the cost involved, if the broker fails to timely file the annual reports. The new law also requires the commissioner to examine the affairs of these brokers and other licensees acting under them for compliance with the Real Estate Law. The commissioner is authorized to impose penalties against those brokers or salespersons



October 2008

Page 2

based on the findings of those examinations. The penalties collected will be deposited into the Recovery Account in the Real Estate Fund and be available for expenditure upon appropriation by the Legislature.

LIQUIDATED DAMAGES – SELLER ACCOUNTING ON SALE OF CONDO

AB 2020, Fuentes. Residential property contracts: liquidated damages.

Under prior law, liquidated damages provisions in a contract to purchase and sell residential property that provides that all or any part of a payment made by the buyer will be liquidated damages to the seller on the buyer's failure to complete the purchase of the property if certain specific requirements are met. In certain circumstances involving the sale of an attached residential condominium unit located within a structure of 10 or more residential condominium units, the seller is required to perform an accounting of its costs and revenues. The law specified what must be taken into account when determining the reasonableness of an amount actually paid as liquidated damages in such a sale.

The new law, effective until July 1, 2014, requires the seller to perform an accounting in certain circumstances involving the sale of an attached residential condominium located within a structure of 20 or more residential condominium units, standing over 8 stories high, that is high-density infill development, when the purchase price is greater than \$1,000,000. That minimum purchase price is adjusted annually, and the seller must give notice to the buyer of those provisions. The new law also provides for what must be taken into account when determining the reasonableness of an amount actually paid as liquidated damages in the event of a buyer's default in such a sale.

NEW REGULATION FOR EXCHANGE (ACCOMMODATORS) FACILITATORS

SB 1007, Machado. Exchange facilitators.

Prior law provides for licensure and regulation of various financial institutions by the Commissioner of Financial Institutions or the Commissioner of Corporations. However, the law does not specifically regulate exchange accommodators (individuals who facilitate like-kind exchanges of property pursuant to federal tax law, commonly called "1031 exchanges").

This new law (which will be in effect until January 1, 2014, and then repealed) requires an accommodator to comply with certain bonding and insurance requirements and to notify existing exchange clients whose relinquished or replacement property is located in California of any change in control of the accommodator. The new law also requires, among other things, that the accommodator act as a custodian for all exchange funds and invest those funds in investments that meet a prudent investor standard. Accommodators are now prohibited from performing certain specified acts, including making material misrepresentations and engaging in fraudulent or dishonest dealings. Violation of the new law subjects the accommodator to civil suit. A person claiming to have been damaged by failure of an accommodator to comply with the new provisions may file a claim on specified bonds, deposits, or letters of credit to recover the damages.



October 2008

Page 3

POINT OF SALE EXPENSE

AB 2050, Garcia. Mobilehomes and manufactured homes.

This new law has multiple components: First, the law now requires all fuel-gas-burning water heater appliances be required to be seismically braced, anchored, or strapped. The law applies to all new or used mobilehomes, manufactured homes, or multifamily manufactured homes that are sold, and it applies to appliances installed in new manufactured homes or new multifamily manufactured homes, or installed as replacement fuel-gas-burning water heater appliances in existing mobilehomes, existing manufactured homes, or existing multifamily manufactured homes that are offered for sale, rent, or lease. The Department of Housing and Community Development will promulgate rules and regulations that include standards for water heater seismic bracing, anchoring, or strapping.

Second, under prior law, all used mobilehomes and manufactured homes sold in California after January 1, 1986, are required to be equipped with an operable smoke detector. Under the new law, commencing on or after January 1, 2009, all used manufactured homes, used mobilehomes, and used multifamily manufactured homes that are sold must instead have a smoke alarm installed in each room designed for sleeping that is operable on the date of transfer of title, as specified.

HOMEOWNER ASSOCIATION MAY RECORD REQUEST FOR COPY OF NOD

SB 1511, Ducheny. Common interest developments: mortgages.

The Davis-Stirling Common Interest Development Act regulates common interest developments (CIDs). Under prior law, CIDs are managed by an association pursuant to the provisions of the governing documents of the development, and a trustee or mortgagee must record a notice of default (NOD) and post and publish a notice of sale (NOS) prior to selling real property at a foreclosure sale. If someone wants a copy of any NOD or NOS, he or she must record a request for a copy of those notices. A mortgagee or trustee must provide those notices to a person who has recorded a request.

Under the new law, an association may record a request to receive a mailed copy of any trustee's deed upon sale concerning the CID unit from a mortgagee, trustee, or other person authorized to record an NOD. The mortgagee or trustee must mail that information to the association within 15 business days following the date the trustee's deed is recorded. Failure to mail the request would not affect the title to real property.

BILLS TO INVESTIGATE AND PROSECUTE METAL THEFT

Due to the increased number of foreclosed properties, vacant properties have become prime targets for metal thieves who strip the unoccupied homes of copper piping and other metals that have resale value. These bills address metal theft issues:



October 2008

Page 4

AB 844 requires recyclers to hold payment for three days, check a photo ID, and take a thumbprint of anyone selling scrap metals. This should deter quick cash for metal thieves. The new law also requires anyone convicted of metal theft to pay restitution for the materials stolen and for any collateral damage caused during the theft.

SB 691 requires recyclers to take thumbprints of individuals selling copper, copper alloys, aluminum and stainless steel. Sellers must also show a government ID and proof of their current address. Recyclers who break the law face suspension or revocation of their business license and increased fines and jail time.

AB 1859 creates a fine of not more than \$3,000 for any person who knowingly receives any part of a fire hydrant, including bronze or brass fittings and parts to discourage the theft of fire hydrant fittings and fire department connections.

SB 447 requires scrap metal dealers and recyclers to report what materials are being scraped at their facilities and by whom on a daily basis. These rules already apply to pawn shop dealers and should help local law enforcement officials in quickly investigating stolen metal and apprehending thieves.

AB 1778 deters the theft of recyclables by requiring recyclers to obtain identifying information of individuals who bring in more than \$50 worth of CRV recyclables and newspapers. It also requires that payments of \$50 or more be made by check.

Additional information on new laws (and the many vetoed bills) is available at <http://gov.ca.gov/kindex.php?/press-release>.

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