

**2006**  
**New Laws Passed By the California/Federal Legislature Affecting**  
**REALTORS®**

**Bankruptcy**

<p><b>U.S.P.L. 108-8 Section 311</b></p> <p>(Portion of the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" – 11 U.S.C. § 362(b))</p>	<p>The federal legislature passed the Bankruptcy Abuse and Consumer Protection Act of 2005 with most provisions going into effect on October 17, 2005. One particular change in the bankruptcy law involving the "automatic stay" and found in 11 U.S.C. § 362(b) will affect residential landlords. The new law permits the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against the debtor/tenant of residential property so long as the lessor has obtained a judgment for possession of the property before the date of the filing of the bankruptcy petition.</p> <p>In addition, the new law also permits an eviction action that seeks possession of the residential property based on endangerment of the property or the illegal use of controlled substances on the property, but only if the lessor files with the court a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered the property or illegally used or allowed to be used a controlled substance on the property.</p>
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**Common Interest Developments and Homeowners' Associations**

<p><b>AB 1098*</b></p> <p>(HOA Records - Adds Civil Code Section 1363.07 and Replaces Civil Code Section 1365.2 - Select provisions effective 1/1/06, 7/1/06 and 1/1/07)</p>	<p>AB 1098 requires an affirmative vote of the owners of at least 67% of the separate interests in the common interest development--unless the CC&amp;Rs require a different percentage--to grant exclusive use of any portion of a common area to any member, with exceptions. The law also requires the HOA of a common interest development to make the accounting books and records, and the minutes of meetings of the association available for inspection and copying by a member of the association, (or the member's designated representative) and authorizes a member to bring an action to enforce that right and also authorizes a court to assess a civil penalty of up to \$500 for each violation of that provision. The revised Section 1365.2 now defines "association records" and also "enhanced association records."</p>
<p><b>SB 61*</b></p> <p>(HOA Elections - eff. 7/1/06)</p>	<p>SB 61 requires homeowners' associations to use secret ballots for elections regarding assessments, selection of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property. It also requires an independent third party as inspector of elections.</p>
<p><b>SB 137*</b></p> <p>(HOA Assessments - eff. 1/1/06)</p>	<p>SB 137 revises the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2006. The law provides that when an association of a common interest development seeks to collect delinquent assessments of less than \$1,800, not including accelerated assessments and specified late charges and fees, the association must either file a civil action in small claims court or record a lien but the association would be prohibited from foreclosing on this lien until the amount equals or exceeds \$1,800 or the assessments are more than 12 months delinquent.</p>
<p><b>SB 853*</b></p> <p>(Physical Changes to</p>	<p>SB 853 deals with an owner's request to make physical changes to the owner's separate interest or to the common area. In responding to such a request, the</p>

Unit - eff. 1/1/06)	homeowners' association must comply with certain conditions including the requirement that a decision on a proposed change be consistent with the Fair Employment and Housing Act.
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**Disclosure Issues**

<p><b>AB 1078*</b> and <b>SB 536*</b></p> <p>(methamphetamine lab clean-up and clean-up standards - eff. 1/1/06 for AB 1078 and 10/1/09 for SB 536)</p>	<p>Civil Code Section 1102.18 requiring disclosure of methamphetamine lab contamination will sunset on January 1, 2006. The new Government Code Section 25400.28 created by AB 1078--which requires the seller or landlord to give a written disclosure of the clean-up order to buyers and tenants--is intended to replace the existing law in Civil Code section 1102.18. The seller/landlord's disclosure obligation under AB 1078 is somewhat different since it deals with the disclosure of clean-up orders rather than contamination. Another significant change to the law is that it applies not only to residential one-four unit properties, but all types of properties since "property" is now defined as "any parcel of land, structure, or part of a structure. . . including mobilehomes and manufactured housing." However, the law exempts mobilehomes and manufactured homes if they are located in a "park." The typical TDS exemptions no longer apply (e.g., no exemption for probate or trusts). However, the law has incorporated the same delivery requirements as for the TDS (3 or 5 day rescission period).</p> <p>AB 1078 requires a property owner who receives an order that the owner's property was contaminated by a methamphetamine laboratory activity, and any other person occupying the property, to immediately vacate the affected unit. The law also requires the property owner to hire an authorized methamphetamine laboratory site remediation contractor (meeting certain requirements as defined by law) to remediate the contamination caused by methamphetamine laboratory activity.</p> <p>Furthermore, AB 1078 requires a local health officer to issue a "no further action determination" if the local health officer determines that remediation is not required on the property, based either on a "preliminary site assessment report" (PSA Report) or if the site has been remediated.</p> <p>The law also requires a property owner who has not received a "no further action determination" to notify the prospective buyer in writing of the pending order, and provide the prospective buyer with a copy of the pending order. In addition, the property owner must provide written notice to all prospective tenants that have an application to rent a dwelling unit ( "or other property") subject to the remediation order, and must provide the prospective tenant with a copy of the order. The prospective tenant must acknowledge, in writing, the receipt of the notice and pending order before signing a rental agreement. The notice must be attached to the rental agreement. If the property owner does not comply with this law, the prospective tenant may void the rental agreement.</p> <p>SB 536 requires the Department of Toxic Substances Control to develop sampling and analytical methods for the collection of methamphetamine residue, and by October 1, 2009 to establish investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine.</p>
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<p><b>AB 1323*</b></p> <p>(Megan's Law Revised - 4/1/06)</p>	<p>Information about registered sex offenders is currently available by the Department of Justice through an internet website. This law requires notice of this website to be included in lease or rental agreements, and contracts for sale of residential real property.</p> <p>AB 1323 deletes those provisions of Megan's Law that established the "900" telephone number by which members of the public could call to inquire whether a named individual was a registered sex offender. The new law requires the</p>
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	<p>Department of Justice to operate a service permitting the public to make an inquiry, regarding at least 6 individuals, and to charge a fee for these requests to be deposited into the Sexual Predator Public Information Account. In addition, this bill makes misuse of this information provided by the Department of Justice a criminal violation.</p> <p>Effective April 1, 2006, the revised disclosure language will be mandatory for residential sellers of 1-4 unit properties, as well as for residential landlords. C.A.R. will be updating the standard form, Data Base Disclosure (DBD), as well as its purchase and lease agreements to reflect this change in the law. The updated forms should be available in January 2006.</p>
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### Discrimination - Fair Housing

<p><b>AB 394*</b></p> <p>(Housing Discrimination - eff. 1/1/06)</p>	<p>AB 394 makes it easier and less expensive for homeowners to remove unlawful and discriminatory language in the recorded CC&amp;Rs by modifying the procedure. A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry may record a document titled Restrictive Covenant Modification which would include a copy of the original document with the illegal language stricken.</p>
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<p><b>AB 1400*</b></p> <p>(Unruh Civil Rights Act Revisions - eff. 1/1/06)</p>	<p>The Unruh Civil Rights Act (California Civil Code Section 51) prohibits business establishments from discriminating on the basis of <i>sex, race, color, religion, ancestry, national origin, disability, or medical condition</i>. AB 1400 adds <i>marital status</i> and <i>sexual orientation</i> to this list. However, AB 1400 states that "it is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive." This means that California law continues to prohibit any arbitrary discrimination.</p>
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### Electronic Communications

<p><b>SB 833*</b></p> <p>(Unsolicited Faxes - eff. 1/1/06)</p>	<p>Effective January 1, 2003, California repealed its unsolicited fax law, leaving the federal Telephone Consumer Protection Act of 1991 as the sole regulation of unsolicited faxes. Now California has passed another law governing junk faxes. Effective January 1, 2006, SB 833 bans the sending of unsolicited advertising faxes from someone in California to someone in California and provides for damages of at least \$500 per violation.</p>
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### Housing and Landlord/Tenant

<p><b>SB 51</b></p> <p>(60-day Notice Extension - <u>Not Passed</u> )</p>	<p>Starting January 1, 2006, landlords may give a 30-day notice—instead of a 60-day notice--to terminate their month-to-month tenants (unless rent control or subsidized housing rules apply). Existing law requiring a 60-day notice of termination expired on December 31, 2005 as a result of the defeat of SB 51. C.A.R. Standard Form "Notice of Termination of Tenancy" (NTT) will be revised to reflect this change in the law.</p>
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<p><b>SB 326*</b></p> <p>(Rental Housing and Government Control - eff. 1/1/06)</p>	<p>Two years ago, C.A.R. successfully co-sponsored a measure providing that low and moderate rental housing developments of 100 units or less cannot be denied a permit if they comply with local government development standards and receive a negative declaration or a mitigated declaration under the California Environmental Quality Act. SB 326 expands this law to duplexes, triplexes, and fourplexes, and expands the state "Anti-Nimby Law" (see below) to</p>
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	charter cities.
<b>SB 575*</b>  (the "Anti-Nimby Law" - eff. 1/1/06)	SB 575 ("Anti-Nimby Law") contains important limits on the ability of local municipalities to turn down housing by claiming that there is "no need" or the zoning is "inconsistent." This law, which amends Government Code Section 65589.5, changes the conditions upon which a disapproval or a conditional approval of the housing development project is based.
<b>SB 435*</b>  (Density Bonuses - eff. 1/1/06)	Last year, C.A.R. successfully sponsored a bill to improve the use of the state's density bonus law. This year C.A.R. sponsored SB 435 to provide that the law will be more easily understood, implemented and functional by applying the law to all forms of common interest developments; assuring that units built as a result of a density bonus may also extend to moderate income ownership housing and states that localities can recover any initial subsidy for moderate income units upon sale.
<b>HVAC Changeouts*</b>  (link to California Energy Commission - eff. 10/1/05)	<u>Effective</u> October 1, 2005, Title 24 of the Building Energy Efficiency Standards requires that air conditioning and heating ducts be tested for leaks when a central air conditioner or furnace is installed or replaced. Ducts that leak 15 percent or more must be repaired.

#### Licensing Issues

<b>AB 223*</b>  (Risk Management Education Course - eff. 7/1/07)	<p>Prior to license renewal every licensee must take 4 required courses (agency, ethics, fair housing, and trust fund management) as 12 of their 45 hours of continuing education. C.A.R sponsored AB 223 to designate as part of that 45 hours, a 3-hour mandatory continuing education course in Risk Management. It also requires existing licensees to keep current with the increasingly complex demands of documentation, newly required disclosures and the newest options available to shield themselves from avoidable liability. Having taken Risk Management training may entitle a licensee to lower cost "E&amp;O" insurance coverage.</p> <p>Beginning July 1, 2007, the 45-hour continuing education requirement for brokers and salespersons which must include coursework on risk management, also includes principles, practices, and procedures for avoiding errors and omissions. For a first-time license renewal, a licensee must complete, among other things, a 3-hour course in risk management. For subsequent renewals, a licensee must complete, among other things, an 8-hour update survey course covering ethics, agency, trust funds, fair housing, and risk management. However, this law goes into effect on January 1, 2006 so the DRE can begin preparing for implementation.</p>
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#### Loan Issues

<b>AB 885*</b>  (Real Property Trustee Sale Foreclosures - eff. 1/1/06)	<p>Civil Code Section 2925b requires a person recording a notice of default or a notice of sale under any deed of trust or mortgage with power of sale to perform specified actions. These actions include mailing a copy of the notice with the recording date shown and a copy of the notice of the time and place of sale to each person requesting a copy and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale. AB 885 modifies the definition of "last known address" for these purposes.</p> <p>In addition, former Civil Code Section 2925g permitted a maximum of three</p>
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	<p>postponements of the sale proceedings. AB 885 amends Section 2925g to permit any number of postponements of the sale proceedings at any time prior to the completion of the sale, for any period of time not to exceed a total of 365 days from the date set forth in the notice of sale, upon the order of any court, where stayed by operation of law, by mutual agreement of any trustor and any beneficiary (or any mortgagor and any mortgagee) at the discretion of the trustee, or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed. Any postponements beyond the 365-day period require a new notice of sale to be given before any further sale proceedings may be scheduled.</p>
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<p><b>AB 901*</b>  (Predatory Lending - eff. 1/1/06)</p>	<p>Under the state predatory lending law, the term "covered loan" meant a consumer loan in which the original principal balance of the loan does not exceed \$250,000. Effective January 1, 2006, AB 901 changes this definition so that a "covered loan" means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association.</p>
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<p><b>AB 1419*</b>  (California Finance Lenders Law - eff. 1/1/06)</p>	<p>The California Finance Lenders Law provides for the licensing and regulation of finance lenders by the Commissioner of Corporations. AB 1419 specifies application requirements for a licensee to operate at an additional location and authorizes the licensee to operate at that new location 10 days after the date of mailing of the application. The new law also requires the Commissioner to investigate any person responsible for the conduct of the lending activities of the applicant and authorizes the Commissioner to deny an application based on any unlawful activities as indicated in the statute (Financial Code Section 22109).</p>
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<p><b>AB 1729*</b>  (Real Estate Loans and Notes Disclosure - eff. 1/1/06)</p>	<p>AB 1729 amends Business and Professions Code Section 10232.4 dealing with exemptions to the requirement of providing the mortgage loan disclosure statement. It also amends Business and Professions Code Section 10233 dealing the requirements of real estate licensees who service promissory notes. AB 1729 also amends Business and Professions Code Section 19238 regarding the form that needs to be filed with the Real Estate Commissioner.</p>
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**Miscellaneous**

<p><b>AB 1640*</b>  (Residential Insurance Claims - eff. 7/1/06)</p>	<p>Effective July 1, 2006, AB 1640 requires any insurer who issues a policy of insurance covering residential property and reports claims history or loss experience to an insurance support organization, to provide the insured with a specified disclosure regarding contacting the claims information database, and to include the disclosure in the California Residential Property Insurance Bill of Rights.</p>
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<p><b>SB 422*</b>  (Small Claims Court Jurisdictional Amount - eff. 1/1/06)</p>	<p>Prior to passage of this law, a small claims court would hear various actions but only up to the jurisdictional amount of \$5,000, with a few specified exceptions. This law increases the small claims court jurisdictional amount to \$7,500—again with a few specified exceptions. Legal entities other than natural persons (e.g., corporations, partnerships, or governmental entities) do not qualify for this jurisdictional increase.</p>
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**Mobilehomes**

<p><b>SB 237*</b></p> <p>(Mobilehome Transfers - eff. 1/1/06)</p>	<p>This law adds Civil Code Section 798.19.5 to the Mobilehome Residency Law prohibiting a mobilehome park rental agreement entered into or renewed on and after January 1, 2006, from including a provision that grants to management the right of first refusal to purchase a homeowner's mobilehome that is in the park and offered for sale to a third party. However, SB 237 does permit a separate agreement for separate consideration between the mobilehome owner and the park owner granting the park owner or management a right of first refusal to purchase a homeowner's mobilehome that is in the park and offered for sale.</p>
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### Privacy Issues

<p><b>SB 101*</b></p> <p>(Employee – Use of Social Security Number – eff. July 21, 2005 but impact eff. 1/1/08)</p>	<p>This law restates and clarifies existing law which requires every employer—including governmental entities--by January 1, 2008, to include on the itemized statement provided to an employee only the last 4 digits of the employee's social security number or an employee identification number other than a social security number.</p>
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### Tax Issues

<p><b>AB 14*</b></p> <p>(Property Tax on New Subdivisions - eff. 1/1/06)</p>	<p>AB 14 prohibits a county tax assessor from assigning parcel numbers or preparing a separate assessment or separate valuation to divide any existing residential structure into a subdivision, until a subdivision final map or parcel map has been recorded as required by law.</p>
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<p><b>AB 459*</b></p> <p>(Disclosure Notice of Supplemental Tax Bill - eff. 1/1/06)</p>	<p>Although change of ownership triggers reassessment of property taxes, buyers may not realize that they may have to pay supplemental tax bills. Effective January 1, 2006, AB 459--which adds Civil Code Section 1102.6c--requires sellers of residential properties of 1-4 units, or their agents, to disclose to prospective buyers that they may owe supplemental taxes. C.A.R. standard form "Notice of Your Supplemental Property Tax Bill" (SPT) will satisfy this requirement.</p>
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<p><b>AB 1099*</b></p> <p>(Property Tax and Solar Energy - retro. to 1999-2000 fiscal year)</p>	<p>This law excludes property from property tax reassessment for the construction or addition of an active solar energy system and is applicable from the 1999-2000 fiscal year to the 2008-09 fiscal year.</p>
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<p><b>SB 565*</b></p> <p>(Property Tax and Domestic Partners - eff. 2006-7 fiscal year)</p>	<p>Beginning the lien date for the 2006-07 fiscal year, SB 565 permits registered domestic partners to transfer property to each other without triggering a reassessment and taxation at the current market value. As a result, registered domestic partners will be treated the same as spouses under California property tax laws.</p>
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\*Click to install [Acrobat Reader](#), a free downloadable software that will enable you to read Senate and Assembly Bills which are in PDF format.

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