

NEW LAWS FOR 2008-09 AFFECTING REALTORS®

With the housing market taking center stage among the nation's concerns, both Congress and California's State Legislature have enacted significant new laws affecting REALTORS®. Highlights of the new laws are summarized below. To view the full text of a California legislative bill, go to www.leginfo.ca.gov

Emergency Economic Stabilization Act May Help Homeowners: Enacted on October 3, 2008, this historic federal legislation earmarks \$700 billion for the Treasury Secretary to purchase troubled assets from financial institutions. The Secretary and other federal agencies are also charged with the task of mitigating foreclosures for mortgages and mortgage-back securities and encouraging loan modifications. Furthermore, this law strengthens the FHA-insured refinance loans for troubled mortgages under the HOPE for Homeowners program, including authority for the program's board of directors to increase the maximum loan amount above 90% of the appraised value. This bill also extends the tax exemption for debt forgiveness on home loans under the Mortgage Forgiveness Debt Relief Act of 2007 from December 31, 2009 to December 31, 2012. *Source: H.R. 1424.*

DRE License Number Must Be on First-Contact Materials: Effective July 1, 2009, California's real estate agents must disclose their Department of Real Estate (DRE) license numbers on all solicitation materials intended to be the first point of contact with consumers. Examples include business cards, stationery, advertising flyers, and other materials designed to solicit the creation of a professional relationship between a licensee and consumer. Excluded from the law, however, are advertisements in print or electronic media, "for sale" signs, and classified rental ads reciting the address or phone number of the rental property. The DRE may adopt regulations to clarify the first-contact materials covered under this new requirement. This bill also requires agents' license numbers on real property purchase agreements, which C.A.R. has already incorporated into our standard form purchase agreements. Senate Bill 1461.

Debt Relief Income Exempt from State Income Tax: Starting September 25, 2008, the federal income tax exemption for debt forgiven on a home loan now applies to state income taxes to a limited extent. Federal law provides a tax exemption for debt forgiveness on a loan incurred for acquiring, constructing, or substantially improving a principal residence up to \$2 million if the debt is discharged from 2007 through 2012. Under the new California law, the maximum qualifying debt is only \$800,000, not \$2 million, and the maximum exclusion is \$250,000. Moreover, the California law only applies to a debt discharged in 2007 or 2008. Senate Bill 1055.

DRE Can Discipline Licensee for Inflating BPOs: Beginning on January 1, 2009, the DRE can suspend or revoke a real estate license if the licensee generates an inaccurate opinion of value (Broker Price Opinion or BPO) for a short sale of residential real property to manipulate the lender to reject the short sale or to acquire a financial or business advantage, such as obtaining a listing agreement. This new rule aims to preclude a self-serving agent from inflating a BPO in hopes that the lender will reject the short sale, foreclose on the property, and give the BPO agent an REO listing. Senate Bill 1737.

DRE Can Suspend Licensee for Acting Against Public Interest or Committing an Offense Involving Dishonesty: Commencing January 1, 2009, the DRE can suspend a license up to 36 months: (1) if suspension is in the public interest and the licensee knew or should have known that violating a DRE rule would cause material damage to the public; or (2) for committing any offense involving dishonesty, fraud, or deceit, or an offense reasonably related to the qualifications of a licensee, whether such offense was adjudicated by a criminal conviction, plea of nolo contendere, final judgment in a civil action, or administrative agency judgment. A person suspended under this law is prohibited from engaging in any business activity related to real estate in a real estate office or certain related fields. Senate Bill 1737.

Duty to Disclose Agent is Arranging Financing: Starting January 1, 2009, a listing or selling agent who undertakes to arrange financing for the sale, lease or exchange of real property (or an agent arranging financing who undertakes to act as the listing or selling agent) must, within 24 hours, provide a written disclosure of that role and any related loan transactions to all parties to the sale, lease, or exchange. Senate Bill 1737.

Pool Drains Must Be Properly Covered: As a red alert for apartment and condo managers, all U.S. "public pools and spas" as defined must be equipped with anti-entrapment drain covers by December 19, 2008. The suction from pool and spa drains can be so strong as to entrap children, and cause injuries or drowning deaths. Under the new federal Virginia Graeme Baker Pool and Spa Safety Act, a "public pool or spa" includes pools and spas open to the public, as well as those open exclusively to residents of multi-unit apartment buildings or multi-family residential areas (such as condominiums). The new law requires, among other things, that drain covers for pools and spas conform to the performance standard of ASME/ANSI A112.19.8-2007 and that single main drains be equipped with anti-entrapment devices as specified. For more information, visit the Web site of the [U.S. Consumer Product Safety Commission \(CPSC\)](#), which includes a list of manufacturers, given the uncertainty as to whether the supply of compliant drain covers is adequate. *Source:* [S. 1771](#).

Tenant Victimized by Domestic Violence Can Terminate Tenancy: Beginning on September 27, 2008, a tenant can terminate a tenancy upon giving a 30-day written notice to terminate, if the notice also informs the landlord that the tenant or a household member has been a victim of domestic violence, sexual assault, or stalking as defined. The tenant must attach to the notice a copy of a temporary restraining order, emergency protective order, or police report issued within the last 60 days. The tenant is also entitled to a proration of the last month's rent if, within those last 30 days, the tenant vacates and the landlord re-rents the premises to a new tenant. This law will sunset on January 1, 2012. Assembly Bill 2052.

Landlords and REO Lenders Must Take Charge of Abandoned Animals: Effective January 1, 2009, any person or private entity with whom a live animal has been "involuntarily deposited" must take charge of it, if able to do so, and immediately notify animal control officials to retrieve the animal. An "involuntary deposit" includes the abandonment of a live animal on a property that has been vacated upon, or immediately preceding, the termination of a lease or foreclosure of the property. The animal control officers who respond can secure a lien to recover the rescue cost, but this law imposes no other liability upon a depository who complies with these rules. Assembly Bill 2949.

Smoke Detector and Water Heater Bracing for Manufactured Homes: Starting January 1, 2009, all used mobile homes and manufactured homes that are sold must have an operable smoke alarm in each sleeping room (whereas prior law only required one smoke detector per manufactured home). If the manufactured home was manufactured on or after September 16, 2002, the smoke alarm must comply with the federal Manufactured Housing Construction and Safety Standards Act. If the manufactured home was manufactured before September 16, 2002, the smoke alarm (which can be battery-powered) must be installed in terms of its listing and installation requirements. A seller satisfies the above requirements by signing a declaration, within 45 days before transfer of title, that the smoke alarms are properly installed and operable. For a manufactured home manufactured before September 16, 2002, the seller must provide the buyer with the manufacturer's information on the operation, testing, and proper maintenance of the smoke alarms. An agent is not liable for any error, inaccuracy, or omission in any required disclosures that the agent did not know was false. The California Department of Housing and Community Development (HCD) may establish new rules as needed to clarify or implement the smoke alarm requirements. This law also requires all replacement fuel-gas-burning water heaters in existing mobile homes and manufactured homes that are offered for sale or lease to be seismically braced, anchored or strapped in accordance with rules and standards to be established by the HCD by July 1, 2009. Assembly Bill 2050.

Title Company's Promotional Items and Marketing Reps Regulated: Effective January 1, 2009, a title company is prohibited from, directly or indirectly, paying for someone else's ads in newspapers, newsletters, magazines, or other publications, or paying for someone else's food, beverage, or entertainment expenses. A title company may, however, give out \$10 promotional items with a permanently-affixed company logo (but not gift certificates or gift card) or provide education and educational materials related to title insurance (but not continuing education credits). This law also requires a title marketing representative who solicits or sells title insurance to have a valid certificate of registration from the Department of Insurance. A certificate of registration is not required if a person's primary duty is to issue a title policy or perform escrow services. Senate Bill 133.

No Text Messaging While Driving: Commencing January 1, 2009, a person driving a motor vehicle is prohibited from writing, sending, or reading a text message, instant message, or e-mail from an electronic wireless communication device. However, a person may read, select, or enter a name or phone number in a wireless device to make or receive a phone call. A violation of this law is an infraction punishable by a base fine of \$20 for the first offense and \$50 for each subsequent offense. Senate Bill 1613.

Other Significant Laws: Some of the other new laws of interest to REALTORS® are, without limitation, amendments to the 3 1/3 percent California withholding requirement for installment sales and non-California partnerships and corporations (Assembly Bill 3078); bonding, insurance, and other requirements for 1031 exchange facilitators (Senate Bill 1007); liquidated damages rules for high-rise condominiums over \$1 million (Assembly Bill 2020); and an increase in the fine for acting as a licensee without a license from \$10,000 to \$20,000 (Senate Bill 1448).

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