CALIFORNIA ASSOCIATION OF REALTORS®

2024 New Laws

CALIFORNIA ASSOCIATION OF REALTORS®
Legal Department
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November 17, 2023

2024 New Law Round-Up: C.A.R.'s Annual Round-Up of California's New Laws Impacting Agents, Brokers, and their Businesses

These laws go into effect on January 1, 2024, unless stated otherwise.

Listings Capped at 24 months (AB 1345)

How long can a listing last? 24 months. Previously, there was no specified limit. Now, under AB 1345, exclusive listings on residential one-to-four properties that last longer than 24 months from the date the listing was signed are unlawful, unenforceable, and void.

The law also makes void and unenforceable the automatic renewal or the recordation of any exclusive residential listing regardless of duration and regardless of the number of dwelling units. An exclusive residential listing entered into with an LLC, corporation, or partnership is excluded from the 24 month prohibition, but may nonetheless not be recorded or automatically renewed.

NHD Statement Simplifies Identification of Properties Subject to Defensible Space Disclosures (AB 1280, C.A.R. sponsored)

The Natural Hazard Disclosure Statement will now specifically identify high and very high fire hazard severity zones, simplifying the identification of properties subject to the defensible space and fire hardening disclosures. Three new sub-categories are being added to the NHD statement as pictured:

A HIGH or VERY HIGH FIRE HAZARD SEVERITY ZONE (FHSZ) as identified by the Director of Forestry and Fire Protection pursuant to Section 51178 of the Government Code or Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes ___ No ___
High FHSZ in a state responsibility area ___
Very High FHSZ in a state responsibility area ___
Very High FHSZ in a local responsibility area ___

When the property is located in any of these zones, the "yes" box must be checked, and a defensible space disclosure would be required. For properties built before 2010, the fire hardening disclosure and questionnaire would also be required. Agents may use the "Fire Hardening and Defensible Space Advisory, Disclosure and Addendum" (Form FHDS) for this purpose.

The three new sub-categories provide additional information as to the fire zone severity, either high or very high, and as to location, either in a state responsibility or a local responsibility area.

Flipper Disclosures for Properties Resold within 18 Months (AB 968)

A seller of a residential one-to-four property who accepts an offer within 18 months from the date when title was transferred must make the following disclosures: 1) The seller must disclose repairs and renovations when performed by a contractor with whom the seller entered into contract; 2) the name of each contractor and their contact information; and 3) any permits obtained (or if not obtained, the contact information of the third party who can provide the permits).

This new law should have little effect on the day-to-day practice of REALTORS. The reason is that, first, the Seller Property Questionnaire already requires sellers to meet most of these new disclosure requirements. Secondly, the Standard Forms Advisory Committee is considering changes to the SPQ that will specifically address any new flipper disclosures, obviating any special practice that an agent might otherwise have to adopt.

An important aspect of this disclosure is that it is part of the Transfer Disclosure Statement law. That means the disclosure applies in the same circumstances as the TDS, it has the same exemptions as the TDS and is subject to the same cancellation rights as the TDS and TDS-related disclosures. This law is effective July 1, 2024.

Online Notarization by California Notaries Pending Secretary of State

Certification (SB 696)

California notaries are not presently permitted to conduct notarization online. However, under SB 696, they will be authorized to do so once the Secretary of State certifies the necessary technology or by 2030, whichever is earlier. The technology required by SB 696 features various security and anti-fraud mechanisms with two forms of identity proofing and verification by a live commissioned notary.

Online notarizations conducted by out-of-state notaries, which are already recognized de facto, will receive clear recognition beginning January 1, 2024, if the notarization is conducted in accordance with the law of the jurisdiction in which the notary is commissioned.

Small Claims Court Limits Increased (SB 71)

Presently, the small claims court limit for a natural person is $10,000 (for the first two claims in one calendar year). Under the new law, the limit has been increased to $12,500. For a non-natural person, the limit is presently $5,000 (for the first two claims in one calendar year). This is now increased to $6,250 under the new law.

This law has greater significance for real estate than one might imagine. First, many disputes between a buyer and seller that arise during a real estate transaction, if they cannot be settled, will end up in small claims court, including disputes over the earnest money deposit. Second, all C.A.R. contracts exclude disputes that may be brought before a small claims court from the obligation to mediate and arbitrate. The upshot is that small claims court, often the best option for those unable to settle their disputes, will be an even more attractive option.

Environmental Hazard Booklet to be Updated (AB 225, C.A.R. sponsored)

This new law will update the state's Homeowners Guide to Environmental Hazards booklet by adding three new chapters related to wildfires, climate change, and sea level rise, providing consumers with valuable information regarding these risks.

The update does not allocate additional expenditures but will rely on existing or private resources as they become available. This approach to funding will save money and limit wasteful government spending, but it also means that the law contains no firm deadline for completing the updated booklet.

ADUs may be Separately Transferred as a Condo -- But Conditions Do Apply (AB 1033)

AB 1033 grants local agencies the authority to adopt an ordinance allowing for the separate conveyance of an ADU. That's the first condition -- that the locality adopt an ordinance permitting

the conveyance.

Perhaps more importantly, the ADU must be transferred as a condominium. The process to establish the condominium must comply with the Davis-Stirling Common Interest Development Act and the Subdivision Map Act, which governs the subdivision of property.

There are additional conditions that must be met. Each lienholder must consent to the establishment of the condominiums. A lienholder has the right to demand that their lien be paid off or modified as a condition of providing consent. Finally, if a property is within an HOA, that HOA must approve the creation of the condominium. The bottom line is that although the law will now allow for ADUs to be separately conveyed, it is likely that, in practice, few will be.

Landlord/Tenant: Security Deposits Limited to One Month's Rent (AB 12)

Beginning July 1, 2024, a landlord may collect only one month's rent in addition to the first month's rent. There is no exception for furnished units. But there is a carve-out for "small landlords." Small landlords can collect two months' rent as security deposit plus the first month's rent, again without regard to whether the property is furnished or unfurnished.

What exactly is a small landlord? A small landlord is a "natural person" who owns no more than two residential rental properties that together include no more than four units. For example, a landlord who owns one single-family property and one triplex is a small landlord. A family trust can qualify as a small landlord, as well as an LLC, as long as every member of the LLC is a natural person. Even for small landlords, if the prospective tenant is a service member, the security is limited to one month's rent.

What about currently held security deposits in excess of one month's rent? Landlords who currently hold a security deposit or those who demand or collect a security deposit in excess of one month's rent prior to July 1, 2024, may retain the security deposit even though it is more than one month's rent.

Landlord/Tenant: "Ability to pay" Screening instead of Credit History for Section 8 Tenants (SB 267)

A Section 8 tenant must be offered the chance to have their application reviewed on the basis of their "ability to pay" as opposed to credit history. This rule applies to not only Section 8 tenant applicants but any tenant receiving a government rent subsidy.

Under SB 267, it is unlawful for a landlord to use a person's credit history as part of the application process without first offering the applicant the option of providing lawful, verifiable alternative evidence of their reasonable ability to pay. The tenant applicant need only show a reasonable ability to pay their portion of the rent.

Alternative evidence of reasonable ability to pay may include government benefit payments, pay records, and bank statements. When the applicant makes this election, then the landlord is obligated to:

1. Provide the applicant reasonable time to respond with that alternative evidence and
2. Reasonably consider that alternative evidence in lieu of the person's credit history in determining whether to offer the rental accommodation to the applicant.

Nonetheless, the landlord may still request information or documentation to verify employment, request landlord references, or verify the identity of a person.

Landlord/Tenant: TPA Eviction Procedures Dramatically Tightened, Actual Damages Added (SB 567)

Effective April 1, 2024, SB 567 will tighten up the requirements for a landlord to terminate a tenancy under the Tenant Protection Act in two situations:

- No-fault eviction based on owner move-in, and
- No-fault eviction based on substantial remodeling.

Additionally, an owner who materially violates the TPA by improperly terminating a tenancy or by raising the rent beyond the maximum amount is liable for:

- Actual damages;
- Reasonable attorney's fees and costs (at the discretion of the judge);
- Up to three times actual damages for willful violations;
- Punitive damages; and
- The Attorney General et al. is authorized to seek injunctive relief.

<u>No-Fault Eviction Based on Owner Move-In</u>

Under the TPA, an owner is permitted to terminate a tenancy based on an owner's intent to move in, which allows the owner or specified close relatives to occupy the property. Presently, there are no specifics surrounding the termination notice or the timing or duration of the owner occupancy, only that the owner or relative "intends to occupy the residential real property."

Under the new law, there are a number of requirements. The termination notice must state the name and relationship of the person moving in. It must inform the tenant that they can demand

proof that the soon-to-be occupant owns the property or is related to the owner. The occupant must move in within 90 days after the tenant vacates and must remain in occupancy for at least a year. If either of these requirements are not met, the owner must offer the unit to the tenant who vacated it under the same terms in effect when the tenant left the property and pay for reasonable moving expenses in excess of any relocation assistance paid.

No-Fault Eviction based on Substantial Rehabilitation

It's a similar story for terminations based on substantial rehabilitation, except that the current law already contains strict requirements for such a termination. The new law adds to these already strict requirements.

The current law requires the work to take 30 days, during which time the tenant cannot safely remain in occupancy. The new law requires the work to take 30 "consecutive" days. This means there cannot be any day in which the tenant would not be required to vacate the property due to health, safety and habitability code requirements. If, at any time during the 30 days, the tenant could legally occupy the property, then the 30 days restarts.

The current law requires that the owner state the reason for the termination in the notice. The new law adds further requirements, including a lengthy statutory notice, which must be written verbatim, and a description of the remodeling to be completed. The requirement that the work must require permits now additionally requires that the landlord provide copies of the permits with the notice.

Void Termination Notice based upon "any" violation of the TPA

SB 567 adds that "An owner's failure to comply with any provision of this section shall render the written termination notice void." Therefore, any violation of the TPA may void the termination notice. That's what it literally says.

Actual Damages for wrongful termination and rent beyond the maximum

SB 567 now specifies "actual damages" for termination of tenancy in "material" violation of the TPA or for charging rent beyond the maximum. Attorney fees may be assessed at the judge's discretion. For a "willful" violation, the damage award may be tripled, and a penalty may be assessed on top of that.

Sounds scary, doesn't it? It is. The sums involved can get very big, very fast. To understand how, you need to realize that "actual damages" is a loose concept in the law that varies based upon which expert witness testifies and which jury is hearing that expert witness.

Suffice it to say that in a worst-case scenario (from the landlord's perspective), a tenant who has been wrongfully terminated in material violation of the TPA may claim the difference between actual rent and market rent times the length of time they intended to occupy the property. If the owner acted "willfully," then that amount could be tripled.

For example, if the difference between actual and market rent was $500 and the tenant testified that they intended to occupy the property for ten years. Then the damage award could be $500 X 12 (months) x 10 (years) x 3 (for willful acts) = $180,000.

Bottom line advice: If a landlord would like to evict, they should consult with their own attorney.

See our 2024 New Laws Chart!

The above ten laws are certainly the most important California new laws affecting agents and brokers. But they are not the only ones. For a more complete list and a more detailed summary of the above laws, see our **2024 New Laws chart**.

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