



2014 California Legal Update

At CRES, we provide risk management services and insurance solutions to help you protect and grow your business. As part of our risk management program, we want to keep you informed about important new laws that go into effect in 2014 and affect real estate licensees.

The California Legislature passed hundreds of bills in 2013 that has resulted in CAR revising several forms with more to come. The revised forms dated 12/13 were provided to the Legal Forum at the January 2014 meeting in San Diego. These new forms as well as other legal updates are discussed below.

Homeowner Association Information Request

(C.A.R. Form HOA Revised 12/13)

This form is for use after January 1, 2014. Civil Code Sections 4525 and 4530 require the HOA to provide information concerning the operations of the HOA to the Seller upon request, within 10 calendar Days from the date of the Request. The HOA is to provide written or electronic estimate of fees that will be assessed for providing the requested documents. Real Estate Licensees should contact their local association and obtain this new form to be used in their transactions.

Residential Lease or Month-to-Month Rental Agreement

(C.A.R. Form LR, Revised 12/13)

This form is six pages and has several changes from the previous form. Licensees should obtain and use this new form in assisting Landlords with the leasing of their property. Licensees should review the new form before discussing the terms and conditions with a Landlord.

Demand For Mediation

(C.A.R. Form DM, Revised 12/13)

This form can be used to request Mediation between a Seller and Buyer or Landlord and Tenant. Both the Residential Purchase Agreement and the new Lease Agreement require disputes between parties to engage in Mediation before pursuing and legal action.

There are other revised forms that are in the "Draft" stages with release scheduled in April and November of 2014. These forms are:

Additional Agent Acknowledgment; Additional Broker Acknowledgment; Declaration Regarding Real Estate License and Tax Reporting; Notice of Nonresponsibility; Receipt and Delivery of Notice; Contingency for Sale of Buyer's Existing Property; Contingency for Seller's Purchase of Replacement Property; Residential Purchase Agreement and Joint Escrow Instructions.

Licensees should contact their local associations to obtain and review these forms when made available.

Transfer Disclosure Statement - What, AGAIN!!!!

Starting July 1, 2014 any Property specified in Civil Code Section 1102, residential properties with one-to-four dwelling units, must disclose any knowledge of construction defect claims. This can be very confusing to licensees and Sellers. The revision primarily has to do with Question 16 in Section IIC of the TDS. The revised TDS requires the Seller to disclose "known legal claims threatening to or affecting the property"

1. Claims for damages by the Seller pursuant to Section 910 or 914 of the Civil Code.
2. Claims for breach of warranty pursuant to Section 900 of the Civil Code, or:
3. Claims for breach of an enhanced protection agreement pursuant to Section 903 of the Civil Code.

All of these code sections are references to California's construction defect law, but that is not set forth in the TDS.

In 2002 the state legislature passed Senate Bill 800 which was codified as sections 895 through 945.5 of the Civil Code. The law when passed mostly applies to construction defects claims for new construction of residential property or condominiums after 2002. It was intended to be a scheme for home owner's disputes against home builders before filing lawsuits.

This will be a trap for listing agents and could be a source of liability for selling agents.

However, C.A.R. legal department has prepared a legal article entitled "SB 800: California's Construction Defect Law". Licensees can access this article at: "qa.car.org". The article has a link to sections 895 through 945.5 of the Civil Code.

Listing Agents should print out the article as well as the link to the code sections when presenting the TDS to a Seller for their completion. Remember: filing out the TDS is the responsibility of the Seller. After giving the article, link and TDS to the Seller, have them sign something stating that you provided these items to the Seller.

When the Seller asks, "what does all this mean?", the listing agent should reply, "I am not an attorney. I don't have the education, training or experience to give you an opinion or interpretation of this new law." It would not hurt to have this statement in writing also.

Record Retention

Effective January 1, 2014 the California Bureau of Real Estate (CalBRE) can discipline a real estate licensee for destroying books, documents, or tangible objects that are required to be maintained. Also, the CalBRE can award discipline if required documents are sought in connection with an investigation, audit or examination and are not available.

Under current law, a real estate broker must retain for 3 years copies of any and all documents signed or obtained by the broker in connection with any transaction involving licensed activities. The CalBRE has now stated that the retention requirement includes Electronic Communications. OH, YES!!! This means texts, emails, and tweets sent or received, if such items involve licensed activities.

Smoke Detectors

Effective July 1, 2014, Battery-operated smoke alarms must contain a non-replaceable, non-removable battery with a 10 year capacity. The law has a one year grace period until July 1, 2015.

Clients With Foreclosures

The current law prohibits a foreclosing lender to enforce a deficiency against a borrower. As of January 1, 2014, such lenders cannot claim that a deficiency is owed or from collecting on a deficiency. What this means is that foreclosing lenders cannot file a deficiency notice on a borrower's credit report or contact a borrower to try to collect a debt. A similar law protects homeowners who sold in a short sale situation.

Adjoining Land Owners

As of January 1, 2014, adjoining land owners are equally responsible for maintaining boundaries between their respective lands. The new law provides a procedure for one land owner to notify an adjoining land owner of the intention to make repairs to the boundary. The notice requires 30 days' notice, what needs to be done and an estimate of the costs.

The party receiving the notice can try to defeat the requested repair by showing that the equal responsibility would be unjust, such as undue financial hardship.

“Buyer Beware”

The concept of “Let the Buyer Beware” (Caveat Emptor) is a legal concept long forgotten, but not dead. There is an interesting case out of the State of Washington.

A couple looking for a second home, purchased a home in Blaine, Washington. They had a home inspection which showed a small amount of rot. The inspector noted the rot but said that it did not pose a structural problem. The buyers did not raise the issue with the Seller.

Sometime later, the buyers noticed a damp smell, the presence of potato bugs, and ceiling tiles separating. They had the home reinspected which disclosed serious structural mold, rot and pest damage. The extent of the damage had not been discovered in the first inspection because the seller had installed new siding, trim, and insulation.

The buyers hired a contractor to provide a cost estimate of the repairs. They soon came to the conclusion that the cost of the repairs would exceed the cost to rebuild. So they sued the seller for fraudulent concealment and negligent misrepresentation.

The trial court found in favor of the buyers, but the State Court of Appeals reversed and found that the buyers could not bring a claim because the buyers were made aware of the condition in the first inspection. The appeals court went further by finding that the sellers had engaged in “egregious nondisclosure and concealment.” However, having been put on notice of the rot, the buyers failed to follow up on the extent and cause of the rot.

A majority of states have enacted disclosure laws. These laws require the seller to answer questions about the condition of the property. These same laws do not reduce the buyer's duty to conduct a reasonably diligent inspection.

For example, California enacted Civil Code Section 2079.5 which provides: “Nothing in this article relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself including facts which are known or within the diligent attention and observation of the buyer or prospective buyer.”

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