

# TYLER & BURSCH, LLP

LAWYERS & ADVISORS

## Courtside Real Estate Newsletter

The Latest from the 2019 California Association of REALTORS® Winter Business Meetings



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January 31, 2019 to February 1, 2019, the associates at Tyler and Bursch, LLP had the pleasure of attending the 2019 California Association of REALTORS® (C.A.R.) Winter Business Meetings in Indian Wells. Below is our report on the latest discussions at those meetings.

### MEMBER LEGAL SERVICES – NEW LAWS

#### Notice Period: Unlawful Detainer & Notice of Summons

Assembly Bill 2343 (Effective 09/01/2019)

Prior to AB 2343, before to filing an unlawful detainer action, a landlord was required to provide the tenant with a three-day notice to cure the violation or vacate the property. This law changes the notice period to exclude judicial holidays, including Saturday and Sunday. Similarly, the tenant now also has five days to respond to a notice of summons, and that period does not include judicial holidays, including Saturday and Sunday.

#### Third Party Rental Payments

Assembly Bill 2219 (Effective 01/01/2019)

This new law requires a landlord to accept third party rental payments. No right of tenancy is created by the acceptance, however, the landlord can have the third party sign an acknowledgment to that effect. A landlord is not required to accept housing assistance programs such as Section 8.

#### Balcony Inspections

Senate Bill 721 (Effective 01/01/2019)

SB 721 requires that buildings with three or more multifamily dwelling units with decks, balconies, stairways and walkways be inspected by a licensed architect, licensed civil or structural engineer, a building contractor holding specified licenses, or an individual certified as a building inspector or building official by January 1, 2025. A subsequent inspection must be done every six years. The owner would have to make repairs if the inspector found that the decks or balconies were in need of repair. A copy of the inspection report must be presented to the owner of the building within 45 days its completion. Copies of the reports must be maintained in the building owner's records for two inspection cycles.

If repair is needed based on the inspection report, it shall be performed by a qualified, licensed contractor and a permit for the repairs must be applied for within 120 days of receipt of the inspection report. The owner then has 120 days more to complete the repairs. Common interest developments are exempt. A landlord

is authorized to enter the dwelling unit to comply with the requirements.

#### Price Gouging

Assembly Bill 1919 (Effective 01/01/2019)

AB 1919 retains the ten percent maximum rental price increase during a declared state of emergency. The cap on rent increases will remain in effect during an extension of a declared emergency. The law also communicates that a landlord cannot evict a tenant without cause in order to increase rent. These regulations also apply to other neighboring counties if there is an increased demand as a consequence of the state of emergency. Differently, the law *does* allow a greater than ten percent rental price increase if directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term.

#### Sexual Harassment Prevention Training

Senate Bill 1343 (Effective 01/01/2019)

Employers who employ five or more employees, including temporary/seasonal employees and independent contractors (such as REALTORS®), must provide at least two hours of sexual harassment training to all supervisory employees and at least one hour of sexual harassment training to all non-supervisory employees by January 1, 2020, and once every two years thereafter. If training was completed in 2018, the training must be redone again in 2019 to meet the obligations of this law.

#### Sexual Harassment Civil Liability Expansion

Senate Bill 224 (Effective 01/01/2019)

Even if a business, service, or professional "relationship" does not presently exist, a real estate agent may be liable for sexual harassment when he or she holds himself or herself out as being able to help the plaintiff establish a business, service, or professional relationship with the defendant or a third party. This law eliminates the element that the plaintiff prove there is an inability by the plaintiff to easily terminate the relationship.

#### HOA Oversight

Assembly Bill 2912

This law requires the Homeowners Associations Board of Directors to review on a monthly basis the association's accounts and reserves; requires fidelity bond coverage for directors, officers, and employees to be maintained equal to three months' reserves; and requires a manager to obtain written board approval before they may transfer association funds of \$10,000 or more.

*Continued ...*

**Clean-Up Legislation**

2019 Agency and Disclosure Update

Assembly Bills 1289 and 2884 (the “Clean-Up Legislation”) conform the law to existing real estate practices by introducing plain language and reaffirming independent contractor status. Additionally, the third form of agency has been eliminated and the definition of “Confidential Information” in a dual agency relationship has been clarified.

Additionally, the Clean-Up Legislation eliminates the Transfer Disclosure Statement (“TDS”) exemption for multiple trustees where the trust is revocable. It also allows for electronic delivery of both the Transfer Disclosure Statement and the Natural Hazard Disclosure Statement (“NHD”). The TDS cancellation right explicitly requires delivery of a “completed” TDS and the listing agent’s visual inspection. The buyer will have three days to cancel if the delivery was in person, five days to cancel after a delivery by deposit in the mail, or five days to cancel after a delivery in electronic form (if the parties have agreed to conduct the transaction by electronic means). The timeline is the same for the NHD cancellation right.

**PROFESSIONAL STANDARDS**

Ethics Publication Work Group

At the October 2018 C.A.R. Professional Standards Committee Meeting, the Committee passed the following motion:

"That C.A.R. make a formal request to NAR to revise the NAR Code of Ethics and Arbitration Manual to allow Associations of REALTORS® to make publication of ethics violators accessible to the general public, or to permit C.A.R. to launch a pilot program whereby C.A.R. makes its ethics violators publication web page accessible to the general public."

However, the C.A.R. Executive Committee did not recommend its passage by the Board of Directors. The Executive Committee recommended that the issue be sent back to the Professional Standards Committee to prepare a more detailed proposal which would include specific criteria for which types of violations would be viewable by the general public.

The Board of Directors agreed with the Executive Committee's recommendation, and the matter was sent back to the Professional Standards Committee. Given the recommendations of the Executive Committee and Board of Directors, a work group of Professional Standards Committee members was created to prepare a report and recommendation for action.

The work group will consider the following:

- Should C.A.R. make the summaries and photos of some ethics violators viewable by the general public?
- If C.A.R. does make some summaries and photos publicly viewable, what should the criteria be for determining which summaries and photos will be publicly viewable?
- Should it be different than the criteria used to determine publication of violations viewable by C.A.R. Members?

The work group prepared a report and recommendation to the Professional Standards Committee for the 2019 C.A.R. Spring Business Meetings.

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