

CALIFORNIA ASSOCIATION OF REALTORS®

New Laws, Cases and Forms




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 **Leading the way...®**

Deficiency Judgment – new law

- Deficiency Judgments following short sales
- Senate Bill 931, CCP 580e
- No deficiency judgment after a lender has given written consent to a short sale IF
 - **1st trust deed (even if refi)**
 - **Residential 1-4 (no requirement for owner occupancy)**
- Except for fraud and waste
- Does not apply to junior liens

Deficiency Judgment – current law

- CCP 580d – no deficiency following trustee sale
 - **Any loan, any property**
- CCP 580b – no deficiency following judicial foreclosure
 - **Purchase money only (not refi)**
 - Loan used to acquire, res. 1-4, owner occupied
 - Seller carry back, any property
- CCP 580b and d – do not apply to short sales
- Lender Consent letter or term sheet

Tenant termination notice – new law

- Senate Bill 1149, CCP 1161c
 - Residential tenancy
 - Termination notice 1st year after foreclosure
 - Immediate successor
 - Cover letter in 12 pt type attached to termination notice
 - Talk to a lawyer, respond within 5 days, maybe you have 90 days, how to locate free legal help
- Does not apply if new lease, not a tenant at foreclosure, non-payment of rent
- Expires 1/1/13

Tenant termination notice – current related laws

- Notice to tenant at time NOS is posted
 - Residential tenancy
 - notice in 6 languages
 - mailing address differs from notice address for borrower
- Foreclosure generally terminates lease
- California notice went from 30 to 60 days
- Federal law: 90 days for m/m. Remain for fixed term unless buyer occupant, then 90 days.
 - Fair market rent, no relative or former owner

Foreclosure Property Maintenance – new law

- Senate Bill 1427, CC 2929.4
 - **Property acquired at foreclosure sale (REO or investor)**
 - **Prior to imposing fine for failure to maintain vacant property**
 - local government shall provide owner with notice
 - Opportunity to correct
 - (except public health and safety)
- Senate Bill 1427, CC 2929.45
 - **Assessment or lien**
 - **abatement amount must be actual and reasonable cost**
 - **Amounts must be approved at public hearing**

Foreclosure Property Maintenance – existing law

- Local government may assess and lien up to \$1,000 / day for each violation**

Renting Property without owner consent – new law

- Assembly Bill 1800, Penal Code 602.9
 - **Misdemeanor**
 - **Take possession or claim ownership**
 - **For purpose of renting to another**
 - \$2500 fine
 - 1 year in county jail
 - **Misdemeanor**
 - **Causes another to enter**
 - **For purpose of renting to another**
 - \$2500 fine
 - 1 year in county jail

Renting Property without owner consent – existing law

- **Penal Code 602.9**
 - **Misdemeanor**
 - **Take possession or claim ownership**
 - **For purpose of renting to another**
 - \$1000 fine
 - 6 months in county jail
 - **Misdemeanor**
 - **Causes another to enter**
 - **For purpose of renting to another**
 - \$1000 fine
 - 6 months in county jail

Foreclosure consultant and forensic audits – new law

- **Assembly Bill 2325, Civil Code 2945.1**
 - **Foreclosure consultant includes a person who arranges or attempt to arrange an audit of loan secured by a residence in foreclosure**
 - **Existing law**
 - Any person who offers to stop or postpone foreclosure, extend time to reinstate, save residence from foreclosure
 - **Does not include real estate licensee acting as such**
 - **Residential property, 1-4, owner occupied, NOD filed**
 - **No advance fees allowed**
 - **Must register with Department of Justice**

Mortgage Loan Origination – new law

- Senate Bill 1137
 - **Unlawful for broker to compensate licensee for activity if no MLO endorsement**
 - **Crime to act as MLO without endorsement**
 - **Salesperson must notify DRE of MLO activity within 30 days or be exposed to penalties**
 - **Existing law**
 - MLO is any person who takes a residential mortgage loan app or negotiates terms of residential mortgage loan.
 - Mortgage loan is residential 1-4 secured
 - Broker required to register within 30 days
 - Failure to notify = \$50/day, then \$100/day up to \$10,000
 - DRE may deny, suspend or revoke license

Lead Paint renovation and repair

- April 2010 – Contractors and renovators who disturb lead paint surface must comply with lead safe practices
- Pre-1978 homes, child care facilities and schools
- Must be trained, certified, employ safe lead practices and deliver copy of EPA booklet, Renovate right
- 6 or more sf inside, 20 or more sf outside
- EPA extends enforcement of certification requirement until 10/1/10
- If registered for course and complete by 12/31/10
- Language in CAR forms, SPQ, Seller Advisory, SBSA, FLD

Home Energy Rating Booklet – new law

- 7/1/96 State supposed to develop educational booklet about home energy rating program
- Book published in October 2010
- Added to CAR combined hazard book (EQ, lead paint and environmental hazard) in 10/10
- Added to CAR zipforms Epubs in 11/10
- Provides general protection to licensees if given

Carbon monoxide detectors – new law

- **Senate Bill 183, Civil Code 1102**
 - **Dwellings must have operable CO detector**
 - **All sfr must comply by 7/1/11**
 - **All other dwellings by 7/1/13**
 - Exemptions: owned by state or local government or UC
 - **Not a point of sale**
 - **TDS and MHTDS updated 1/1/11 to include new [] in IIA about CO detector (CAR forms updated in November 2010)**
 - **New Q on TDS about smoke detector and water heater**
 - **Satisfies disclosure requirement without SDWH form**
 - **Upgrade to Environmental hazard book. CAR directors authorize payment and expected in February 2011**

Holmes v Summer – new case (10/6/10)

- Listing agent duty to buyer to disclose that seller needs lender approval or bring significant cash to close escrow
- Duty to disclose before buyer enters into contract
- Facts:
 - Contract January 08 for \$750,000.
 - Approx. \$1,140,000 in debt secured by 3 loans. Almost \$400,000 deficiency.
 - After contract, buyer sells own home. No home sale contingency as part of contract.
 - Seller does not bring cash. Lenders do not reduce loans. Transaction does not close.
 - Buyer sues listing broker for damages.

Holmes v Summer – new case

- Trial court says no duty from listing agent to buyer
- Buyer appeals. Appellate court says duty exists.
 - **Good faith to buyer trumps any confidentiality to seller.**
 - **Disclosure can be over non-physical defects.**
 - **Disclosure of liens after contract executed is too late (buyer already suffered damages by entering into contract) (knowing liens does not disclose balance of debt)**
- C.A.R. trustees authorize attempt to get case republished
 - **Specific facts not problematic but application of concept to other situations**
 - **Blurs distinction between fiduciary and non-fiduciary duty**
 - **Disclosures after acceptance should be sufficient.**

Kuish v Smith– new case (2/3/10)

- Non refundable deposit clause unenforceable forfeiture
- Facts:
 - **Contract date January 2006. Buyer cancel September 2006.**
 - **14 million sale price. \$620,000 deposit.**
 - **Contract language says deposit is non-refundable.**
 - **Did not use liquidated damage clause.**
- Appellate court awards buyer return of deposit despite buyer breach.
- Not liquidated damage which requires buyer default, 10 point bold type, and separate initials for original and subsequent deposits.

Kuish v Smith– new case

- Other Smith case years ago stated that calling a deposit an option does not make it non-refundable
- Does non refundable deposit apply if buyer cancels for a failed contingency or if seller breaches?
- Application to residential property transactions
- Buyer and seller to get own legal advice if want a non-refundable clause. Agent should not draft.
- Enforceability highly unlikely.
- Would buyer agree to a true option?

Short Sale Information and Advisory (SSIA) – new form

- Replaces Short Sale Listing addendum (SSL)
- 9 paragraphs, better format, clear headings and sub-headings
- New paragraph (4) for seller continuing liability on debt
 - **Short sale deficiency**
 - **Purchase money deficiency**
 - **Refinance and junior loans**
- New paragraph (6) for Potential Improprieties
 - **Scams, surcharges, straw parties, secret deals**
- Use at time of listing (with seller) and at time of contract (with buyer)

Short Sale Addendum (SSA) – revised form

- Paragraph 1A – contingency time to get lender approval defaults to 45 days
- 1C – seller to deliver copy of lender approval to buyer within 3 days (not just notice of approval)
- 1D – either party may cancel if lender approval not received
- 1F – neither party must continue negotiation if lender term sheet requires changes to Agreement

Short Sale Addendum (SSA) – revised form

- 2 – defaults to delayed starting time for inspections, contingencies until lender approval
 - **No delay for time to provide pre-approvals and verification of down payment and closing cost**
 - **Can opt to start from time of acceptance of contract by seller**
- 3 – defaults to delayed time to bring deposit to escrow until lender approval
 - **Can opt to start from time of acceptance of contract by seller**
- 6 – can keep property on market for back up offers, can accept back up offers, must notify first buyer if back up offers presented to lender