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2018 LEGAL UPDATE Marin Independent Brokers Network

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NEW CA LAWS

SB 2. **Recording Fees.** New recording fees ranging between \$75 and \$225 imposed for refinances and reconveyances to fund the state Housing Fund.

SB 173. **BRE.** Bureau of Real Estate (BRE) once again known as Department of Real Estate (DRE).

SB 407. **HOA's Shall Adopt Rules Regarding BOD Elections.** Rules must be adopted to make BOD elections fairer and have access to common areas to campaign.

SB 422. **Swimming Pool Inspections.** New law requires 2 of 7 safety features.

AB 291 and 299. **Immigration Status.** Prohibits landlord from inquiring as to immigration status.

AB 494/SB 229. **Accessory Dwelling Units (ADU).** Formerly second units. An ADU may be rented, but may not be sold or otherwise conveyed, separate from the primary residence. Other issues addressed include parking requirements, setbacks and which accessory structures may be converted to an ADU. The city may require owner occupancy for the primary residence or the ADU.

AB 551. **Landlord/Tenant-Bedbug Disclosure.** Landlord prohibited from renting vacant units if it has a current bedbug infestation. Requires landlords to provide copies of pest control reports to tenants of inspected units and to all tenants if infestation found in common areas. Landlord may not engage in retaliatory conduct and Tenants must cooperate with detection and treatment of bedbugs.

AB 634. **HOA Solar.** Resident has right to install solar system.

AB 646. **Flood Zone Discls.** Eff. 7/1/18, residential lease must disclose if premises are in a flood zone.

AB 690. **HOA Disclosure Documents.** Not required to purchase all documents.

SB 785. **Water-conserving plumbing fixtures.** Cal. Civ. Code §1101.1 *et seq.*

Single family:

- After 1/1/14 all building alternations shall replace non-compliant plumbing fixtures.
- Before 1/1/17, all non-compliant fixtures must be replaced.
- After 1/1/17, sellers must disclose whether property has non-compliant fixtures.
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Multi-family:

- Before 1/1/19 all non-compliant fixtures must be replaced.
- Owners have right of entry to comply with fixture requirement per CC§1954.
- After 1/1/19 tenant shall notify owner if compliant fixtures not operating at spec., and owner shall correct.
- After 1/1/19 sellers must disclose whether property has non-compliant fixtures.

AB 1070. **Solar Energy Sys. Discls.** Requires product seller to disclose 12 discreet areas of information

AB 1148. **Commercial Lease.** Definition expanded to include vacation rentals and must reference CASp status.

AB 1357. **Roofing Inspections.** Agents exempt from liability for negligent reports.

AB 2330. **Broker Associates.** Requires the responsible broker to notify the DRE of any affiliation/termination of broker associates. Broker associates are still required to notify the DRE of where they intend to conduct licensed activities.

Cannabis. SB 94: In June 2017, California combined its medical and recreational cannabis laws into one comprehensive piece of legislation: The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). Bus. & Prof. Code §§26000-26231.1. The federal government (AG Jeff Sessions) considers cannabis illegal as a Schedule 1 drug, and can still prosecute cannabis businesses operating under state law. MAUCRSA provides safe harbor to innocent property owners who lease property to licensed operators, but the safe harbor does not extend to federal enforcement. Local governments can pursue illegal cannabis operations and their landlords and recover attorney's fees. CCP sec. 731; Gov. Code sec. 38773.5. Unlicensed operators and their landlords are subject to state-level criminal and civil penalties, fines and imprisonment. Health & Saf. Code sec. 11366.5. Summary: Doing business with the cannabis industry is high risk. If a landlord chooses to proceed, there are several lease provisions that should be included to protect landlords. Individuals can grow six plants, and be in possession of not more than an ounce. Must be 21, and not drive intoxicated or smoke wherever tobacco smoking is prohibited or within 1000 feet of a schools, and child care centers.

Marin County Mediation Mandatory Requirement. In the County of Marin, tenants are entitled to mandatory mediation if rent is increased by five percent or services decreased by five percent. Guidelines available the week of January 15th. Notice of mediation right must be provided no later than February 12, 2018, available on line from the County and/or Professional publishing. Tenants can sue to enforce mediation rights through injunction and recover attorney's fees.

CASES OF INTEREST TO REAL ESTATE AGENTS

Hinrichs v. Melton (2017) 11 Cal. App. 5th 516. No abuse of discretion in trial court's balancing of hardships in granting of easements to landlocked property even if there is no preexisting use. Why this case is important. The law of equitable easements continues to expand per the courts.

Hovannisian v. First American Title Insurance Company (2017) 14 Cal. App. 5th 420. Seller's title insurance coverage terminated upon transfer of real property to purchasers, because the transfer arising out of a foreclosure was to a third-party buyer without warranty. Why this case is important. Case law continues to hold title policies not transferrable.

Jacobs v. Coldwell Banker Residential Brokerage Company (2017) 14 Cal. App. 5th 438. Brokerage firm not liable for obvious danger posed to prospective home buyer by empty swimming pool. Broker

had no constructive or actual knowledge that diving board base was defective. Not identified in any disclosure reports. Compare: *Hall v. Rockcliff Realtors* (2013) 215 Cal.App. 4th 1134. Owner listed property for sale with listing agents. The property had a bonus room in the attic accessible by a pull-down ladder. Listing agents ordered a contractor's inspection report that identified the ladder that identified the ladder has needing replacement. The report was placed on the kitchen counter. A buyer's agent showed the property and fell when the hinge of the ladder failed and broke her leg. Buyer's agent sued the owner and listing agents for negligence and premises liability. The court held the listing agents had a duty to notify visitors to the property of dangerous concealed conditions of which the agent had actual or constructive knowledge. Listing agents face exposure for liability for dangerous condition of property for which they have actual or constructive knowledge. In this case the contractor's report was constructive knowledge. Think about this case next time you hold an open house. Why this case is important: Brokers are liable for dangerous conditions of property of which they have actual knowledge.

Jacobs v. Locatelli (2017) 8 Cal. App. 5th 317. (Marin County Case). Broker filed suit against property owners for a commission. Not all owners signed the listing agreement although the owner that did sign indicated he was an agent for the other owners and the non-signing owners who had contact with the broker did not object. Owners objected to paying a commission on Statute of Frauds basis (commission agreement must be in writing). RLG: Two cases of spouses fraudulently signing for other co-owner spouse and then trying to avoid paying a commission. One case went to mediation, with owner reserving right to file admin complaint with BRE/DRE. Second case resolved because buyer had 1031 exchange and large damage exposure. Why this case is important: It seems elementary, but brokers must get all sellers to sign listing agreement.

Scher v. Burke (2017) 3 Cal. App. 5th 136. Plaintiffs claim implied dedication of defendants' non-coastal lands for non-recreational roadway purposes by the public. Held, after 1972, Civil Code section 1009 prohibits a finding of implied dedication, whether the use is for recreational purposes or not. The California Supreme Court overruled three prior inconsistent court of appeal decisions.

RECENT RIFKIND LAW GROUP CASES

Land Issues: Relocation/remodel of Tomales Bay waterfront cabin involving CA Coastal Commission and County of Marin.

Drainage: Mill Valley drainage improvements and related easement issues from development of upslope property.

Design Review: Approval of Inverness historic structures before Marin County BOS which arbitrarily limited size of approved structures.

Design Review: New Belvedere garage structure adversely affecting views and privacy.

Fences: Fence height dispute involving a new FEMA home in Belvedere.

Fire Damage: 1600-acre ranch subject to mudslides affecting water supply from state park lands damaged by fire.

Landscaping: Two neighbors dispute privacy, light, design review issues.

Subdivision: Sought revival of approval for three-unit Larkspur subdivision previously abandoned.

Disclosure of defects: Owner/builder/seller failed to disclose multiple construction defects, including mold. Settled in mediation against seller, with remaining claim against home inspector.

Mold: Pending lawsuits from two prior tenants on mold claims, drafted indemnity agreement to allow escrow to close. Defending seller against mold claims by two prior tenants.

Title Issues: Mill Valley escrow disrupted by boundary issue with upslope neighbor. Title policy correctly described the lot size, but did not list prior lot line adjustment of significant amount, and fence line had never been adjusted.

Landslides: Three landslide cases from winter 2017 in Larkspur, Novato and San Rafael.

Tree Litigation: Trees remain a significant source of neighbor disputes. Most jurisdictions have heritage tree ordinances requiring a permit for removal. View ordinances exist in Belvedere, Tiburon, Sausalito, and Corte Madera.

Unlawful Detainers: Both residential and commercial discrimination claims are on the rise causing evictions to become more protracted, uncertain and expensive.

NEW FEDERAL TAX LAW

Capital gains. No changes for capital gains. Federal 20%, California 13.3%.

1031 Exchange. No changes for tax-deferred exchanges.

Mortgage Interest Deduction. Loans prior to Dec. 16, 2017 grandfathered. For new mortgages issued after Jan. 1, 2018, interest deductible on loans up to \$750,000 for personal and secondary residences, down from \$1M. Interest deductions for HELOC is eliminated. No limitation on real estate trade or business to deduct net interest expense, except in 2022, cannot exceed 30% of EBITDA.

State and Local Taxes (SALT). Allows a maximum deduction of \$10,000. Previously unlimited.

Depreciation. 40 years for commercial non-residential, 30 years residential real property, and 20 years for interior improvements. Land improvements, such as parking lots, drainage and tangible personal property eligible to be expensed 100% for next five years.

Active Loss Limitation. New law limits taxpayers from deducting losses incurred in an active trade or business from wage income or portfolio income. Applies to existing investments. \$500K for married filers and \$250K single.

Estate Tax. Exemptions doubled to \$10.98M individually and \$21.96M for couples.

Carried Interest. E.g. the share of profits of an investment paid to an investment manager in excess of the amount that the manager contributes to the partnership. New law requires a three-year holding period to qualify for long term capital gains treatment.

Miscellaneous Deductions Repealed. No deductions for moving, alimony, tax preparation.

Health Care. Starting in 2019 repeal of Affordable Care Act mandate to purchase health insurance.

Corporate Tax. Reduced from 35% to 21%.

Reduction in Taxes for Pass-Through Entities. Allows deduction of 20% of income for LLC's, S-corps, sole proprietorships.

529 College Savings Accounts. Up to \$10K per year can be used for K-12 school tuition.