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## 2010 New Laws

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### 2010 New Federal and State Statutes Including Statutes Passed the End of 2009

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This chart summarizes all the new laws passed by the California and Federal legislatures affecting the real estate industry in the upcoming year as well as emergency legislation passed the end of 2009 that went into effect immediately. The chart includes not only a summary of the laws but also a link to the text of each statute, regulation, or proposition.

Since over 700 laws have been passed by the California legislature and signed by the governor, this chart may be updated to include additional statutes of interest to real estate licensees. So please do check back for changes (the date on top will be updated when additions are made).

Topic	Law	Description
<b>Advertising</b>	<a href="#">12 Cal. Code Regs. § 2773</a> (approved but not yet finalized by the DRE) License Number of Real Estate Licensee	Under the new regulation, the solicitation materials that must contain the license identification number include the following items: <ul style="list-style-type: none"> <li>▪ Business cards</li> <li>▪ Stationery</li> <li>▪ Web sites owned, controlled, and/or maintained by the soliciting real estate license, and</li> <li>▪ Promotional and advertising flyers, brochures, email and regular mail, leaflets,</li> </ul>

and any other marketing or promotional materials designed to solicit the creation of a professional relationship between the licensee and a consumer, or intended to induce a consumer to contact the licensee about any licensed services.

DRE's new regulation also states that the following items are not solicitation materials under the license number requirement:

- Advertisements in electronic media, including radio, cinema, and television ads, and the opening section of streaming video and audio;
- Print advertising in any newspaper or periodical; and
- "For Sale" signs placed on or around a property intended to alert the public the property is available for purchase or lease.

The eight-digit DRE license number must be in a type size no smaller than the smallest type size used in the solicitation material.

If the name of more than one licensee appears in the solicitation, then each person's license number must be disclosed. However, the license number of employing brokers or corporate brokers whose names, logos, or trademarks appear on solicitation materials along with the names and license numbers of licensed employees or broker-associates, need not appear on those materials.

In addition to solicitation materials, a licensee's DRE license number must also be disclosed on real property purchase agreements when the licensee is acting as an agent in those transactions. C.A.R.'s standard form purchase agreements already conform to this new requirement.

## Appraisals

[SB 237](#)   
(eff. 1-1-10)  
Appraisal

This law requires appraisal management companies, as defined, to register with the Office of Real Estate Appraisers, and subjects them to

Management  
Companies

the provisions of the Real Estate Appraisers' Licensing and Certification Law.

In particular, this law amends Cal. Civ. Code § 1090.5:


"(a) No person with an interest in a real estate transaction involving an appraisal shall improperly influence or attempt to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

"Prohibited acts include, but are not limited to, the following:


- (1) Withholding or threatening to withhold timely payment for an appraisal.
- (2) Withholding or threatening to withhold future business for an independent appraiser, including removal from approved panels of appraisers.
- (3) Expressly or impliedly promising future business, promotions, or increased compensation for an independent appraiser.
- (4) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation in an appraisal report, or on a preliminary estimate or opinion requested from an independent appraiser.
- (5) Requesting the payment of compensation to achieve higher priority in the assignment of appraisal business.
- (6) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, providing to an appraiser an anticipated, estimated, encouraged, or desired valuation in an appraisal report, or


		<p>requesting that an appraiser provide estimated values of comparable sales at any time before the appraiser completes an appraisal report.</p> <p>"(b) Subdivision (a) does not prohibit a person with an interest in a real estate transaction from asking an appraiser to do any of the following:</p> <ol style="list-style-type: none"> <li>(1) Consider additional, appropriate property information.</li> <li>(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.</li> <li>(3) Correct errors in the appraisal report."</li> </ol> <p>Amends Sections 11302, 11314, 11315.5, 11409, and 11422 and adds Sections 11315.1, 11320.5, 11328.1, 11345, 11345.05, 11345.1, 11345.2, 11345.3, 11345.4, 11345.45, 11345.6, 11346, and 11406.5, and repeals and adds Section 11343 of the CA Business and Professions Code, and amends Section 1090.5 of the CA Civil Code.</p>
<b>Arbitration</b>	<a href="#">AB 1090</a> 🗳️ (eff. 1-1-10) Arbitrator Ethics	<p>Under California law, a neutral arbitrator pursuant to an arbitration agreement must comply with the ethics standards for arbitrators adopted by the Judicial Council. This new law adds the requirement: "The ethics requirements and standards of this chapter are nonnegotiable and shall not be waived."</p> <p>Amends Section 1281.85 of the CA Code of Civil Procedure.</p>
<b>Contractors</b>	<a href="#">AB 370</a> 🗳️ (eff. 1-1-10) Unlicensed Contractors	<p>It is a misdemeanor for a person to engage in the business or act in the capacity of a contractor without having a license. This new law increases the penalties for acting as a contractor without a license.</p> <p>This law makes a first conviction punishable by a fine not exceeding \$5,000 or by imprisonment in a county jail for no more than 6 months, as specified, or both. The fine for a 2nd conviction is</p>

		<p>the greater of 20% of the contract price, 20% of the aggregate payments made to, or at the direction of, the unlicensed contractor, or \$5,000. In addition, a 3rd or subsequent conviction is punishable by both a fine and imprisonment in a county jail, as specified, and requires that the fine be no less than \$5,000 and no more than the greater of \$10,000, 20% of the contract price, or 20% of the aggregate payments made to, or at the direction of, the unlicensed contractor.</p> <p>A person who used the services of an unlicensed contractor is a victim of crime and eligible for restitution for economic losses, regardless of whether that person had knowledge that the contractor was unlicensed.</p> <p>Amends Sections 7028 and 7028.16 of the CA Business and Professions Code.</p>
<p><b>Foreclosure</b></p>	<p><a href="#">SB 306</a> 🗳️ (eff. 1-1-10) Notice of Default, Notice of Sale, Short Payoffs, and Escrow Issues</p>	<p>Previously the law required that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Furthermore, until January 1, 2013, the prior law prohibited a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default for an additional 30 days on loans made between January 1, 2003, to December 31, 2007, that secures <u>residential real property</u>.</p> <p>This portion of the law is now limited to <u>owner-occupied residential real property containing no more than 4 dwelling units</u>.</p> <p>Previously the law required a trustee or authorized agent, upon posting a notice of sale, to post and mail a specified notice addressed to residents of property subject to foreclosure upon posting a notice of sale. Existing law required a notice of sale to be recorded in the county in which the property, or some part of it, is situated at least <u>14 days prior</u> to the date of sale.</p>

		<p>The new law specifies how and when this notice is to be mailed. It also extends the time from 14 to <u>20 days prior</u> to the date of sale.</p> <p>This law also requires that until January 1, 2014 a beneficiary, within 21 days of the receipt of a short payoff request (assuming the short payoff has already been approved by the lender) to prepare and deliver a short-pay demand statement, that is prepared in response to a request from an entitled person or authorized agent, setting forth an amount less than the outstanding debt, together with any terms and conditions, under which the beneficiary would execute and deliver a reconveyance of the deed of trust securing the note that is the subject of the short payoff demand statement.</p> <p>The law also permits a beneficiary that elects not to proceed with the transaction that is the subject of the short payoff request to refuse to provide a short payoff demand statement, but would require that he or she provide a written statement, indicating that the beneficiary has elected not to proceed.</p> <p>The law provides that if the terms and conditions of the short payoff agreement require approval by the beneficiary of a closing statement prepared by an escrowholder, approval or disapproval shall be provided not more than 4 days after receipt by the beneficiary of the closing statement, or the closing statement shall be deemed approved. The new law does not bind a lender to a short payoff amount that differs from what the lender has previously approved.</p> <p>This law also contains a provision dealing with escrow agents regulated by the DOC.</p> <p>Amends Sections 2923.5, 2923.6, 2924.8, and 2924f of, and amends, repeals, and adds Section 2943 of, the CA Civil Code, and amends Section 17312 of the CA Financial Code.</p>
HOA	<a href="#">AB 1061</a>  (eff. 1-1-10)	AB 1061 makes any provision of the governing documents of a common interest development



	Low Water-using Plants	<p>void and unenforceable if it prohibits the use of low water-using plants as a group, or if it has the effect of prohibiting or restricting compliance with a local water-efficient landscape ordinance or water conservation measure. In other words, HOAs can no longer force homeowners to maintain lush green lawns if the homeowners prefer other low water-using plants.</p> <p>Repeals and adds Section 1353.8 of the CA Civil Code.</p>
<b>HOA</b>	<a href="#">AB 313</a> 🗳️ (eff. 1-1-10) Assessments	<p>AB 313 prohibits an HOA from making assessments on separate interests within the common interest development based on the taxable value of the separate interests according to the local assessor's office, unless the association was already doing so on or before December 31, 2009, in accordance with its governing documents. An association that is responsible for paying taxes on the separate interests within the common interest development is not subject to this prohibition.</p> <p>Adds Section 1366.4 to the CA Civil Code.</p>
<b>HOA</b>	<a href="#">AB 899</a> 🗳️ (eff. 1-1-10) Disclosures	<p>AB 899 requires an HOA to include in the Assessment and Reserve Funding Disclosure Summary a specified statement regarding the interest rate earned on reserve funds and the assumed inflation rate applied to major component repair and replacement costs. The HOA must also provide, at an owner's request, a new Disclosure Document Index. Furthermore, all the disclosure documents on this Index can be provided electronically (e-mail, fax, etc.).</p> <p>Amends Sections 1350.7 and 1365.2.5 and adds Section 1363.005 of the CA Civil Code.</p>
<b>Homestead</b>	<a href="#">AB 1046</a> 🗳️ (eff. 1-1-10) Homestead Exemption Limits	<p>AB 1046 changes the statutory homestead exemptions. Previously the base exemption was \$50,000 for a single person, \$75,000 for a member of a family unit and there is at least one member of the family unit who owns no interest in the homestead or whose only interest is a community property interest in the homestead, \$150,000 for a person who is (1) 65 years of age or older, (2) physically or mentally disabled and</p>



		<p>unable to work, or (3) 55 years of age or older and has a gross annual income of \$15,000 or less (or \$20,000 or less if married).</p> <p>This law increases the homestead exemptions to \$75,000, \$100,000, and \$175,000, respectively.</p> <p>Amends Sections 703.150 and 704.730 of the CA Code of Civil Procedure.</p>
<p><b>Housing</b></p>	<p><a href="#">SB 224</a>  (eff. 10-11-09) CalHome Program Funding for Manufactured Homes and Mobilehomes</p>	<p>The CalHome Program under the administration of HUD authorizes funds to be used to enable low- and very low income households to become or remain homeowners. The program authorizes the use of grant funds for, among other things, home rehabilitation.</p> <p>SB 224 provides that home rehabilitation includes the installation or retrofit of ignition resistant exterior components on existing manufactured homes, mobilehomes, and accessory structures required pursuant to specified administrative regulations.</p> <p>Under the CalHome Program, the department provides the program funds to local public agencies or nonprofit corporations as either grants or loans to assist home ownership and requires them to meet prescribed criteria.</p> <p>This law prohibits a local public agency and a nonprofit corporation from denying funding or applying different underwriting guidelines to a housing program or project solely on the basis that the home is a manufactured home or mobilehome or the home is located in a mobilehome park or a manufactured housing community.</p> <p>The California Housing Finance Agency also administers the California Homebuyer's Downpayment Assistance Program for the purpose of assisting first-time low- and moderate-income home buyers utilizing existing mortgage financing. Under the program, the amount of the downpayment assistance is due and payable at the end of the term or upon sale of or refinancing of the home.</p>



		<p>This law authorizes the agency to permit the downpayment assistance loan to be subordinated to refinancing if it determines that certain criteria have been met.</p> <p>Amends Sections 50650.3, 50650.4, and 51504 of the Health and Safety Code.</p>
<p><b>Housing</b></p>	<p>AB 1020  (eff. 1-1-10) Public Swimming Pools: Anti-entrapment Devices and Systems</p>	<p>AB 1020 requires an existing public swimming pool (defined below) to be equipped with anti-entrapment devices or systems that meet ASME/ANSI or ASTM performance standards. It also requires an existing public swimming pool with a single main drain that is not an unblockable drain to meet at least one of several specified standards. The bill imposes timeframes by which its requirements must be met.</p> <p>The law also requires that every newly constructed public swimming pool have at least 2 main drains per pump that are hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least 3 feet in any dimension between the drains.</p> <p>The law requires the State Department of Public Health to develop, and a public swimming pool owner to file, a form to indicate compliance with the requirements of this law.</p> <p>"Public swimming pool" is defined as an outdoor or indoor structure, whether in-ground or above-ground, intended for swimming or recreational bathing, including a swimming pool, hot tub, spa, or nonportable wading pool, that is any of the following:</p> <ul style="list-style-type: none"> <li>(A) Open to the public generally, whether for a fee or free of charge.</li> <li>(B) Open exclusively to members of an organization and their guests, residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multifamily residential area, or patrons of a hotel or other public</li> </ul>

		<p>accommodations facility.</p> <p>(C) Located on the premises of an athletic club, or public or private school.</p> <p>Note: This law was written to conform with, and to allow state and local enforcement of the federal Virginia Graeme Baker Pool &amp; Spa Safety Act (VGBA) that became effective December 18, 2008. The VGBA affects owners, agents and property managers of apartment complexes, condos, but not single-family homes, that have spas or pools.</p> <p>Amends Section 18942 and adds Sections 116064.1 and 116064.2 of the CA Health and Safety Code.</p>
<b>Housing</b>	<p><a href="#">AB 210</a> 🗳️ (eff. 1-1-10) Green Building Standards</p>	<p>Under certain circumstances when reasonably necessary because of local climatic, geological, or topographical conditions, a city or county is authorized to make changes or modifications to the requirements contained in the California Building Standards Codes. AB 210 specifies that a city or county is authorized to change or modify green building standards among other things.</p> <p>Amends Sections 17958.5 and 18941.5 of the CA Health and Safety Code.</p>
<b>Housing</b>	<p><a href="#">SB 407</a> 🗳️ (eff. 1-1-10) Water Conserving Plumbing Fixture Replacement</p>	<p>SB 407 establishes requirements for residential and commercial real property built and available for use on or before January 1, 1994, for replacing plumbing fixtures that are not water conserving (defined as noncompliant plumbing fixtures--see the statute for the details).</p> <p>On and after January 1, 2014, this law will require, for all building alterations or improvements to <u>single-family residential real property</u>, as defined, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department.</p>

		<p>On and after January 1, 2014, <i>for specified building alterations or improvements to multifamily residential real property and commercial real property</i>, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department.</p> <p>New disclosure requirement: On and after January 1, 2017, a seller or transferor of single-family residential real property, multifamily residential real property, or commercial real property must disclose to a purchaser or transferee, in writing, specified requirements for replacing plumbing fixtures, and whether the real property includes noncompliant plumbing.</p> <p>By January 1, 2019, all noncompliant plumbing fixtures in multifamily residential real property and commercial real property, as defined, must be replaced with water-conserving plumbing fixtures.</p> <p>This law permits an owner or the owner's agent to enter rental property for the purpose of installing, repairing, testing, and maintaining water-conserving plumbing fixtures, as specified, and requires, on and after January 1, 2019, that the water-conserving plumbing fixtures prescribed by this law operate at the manufacturer's rated water consumption at the time that a tenant takes possession.</p> <p>Adds Section 1102.155 and Article 1.4 (commencing with Section 1101.1) of the Ca Civil Code.</p>
<p><b>Housing &amp; Land Use</b></p>	<p><a href="#">AB 1441</a> 📄 (eff. 1-1-10 ) Williamson Act - Lot Line Adjustments</p>	<p>The Williamson Act conserves agricultural and open space land under a three-part scheme that involves voluntary contracts that enforce restricted land uses, reduced property tax assessments, and state subventions to make up for lost revenues. Land that is subject to a Williamson Act contract cannot be subdivided into parcels that are too small to sustain their agricultural use. To facilitate a lot line adjustment,</p>

		<p>local officials and the owners of Williamson Act contracted land can agree to simultaneously rescind a contract and enter a new contract if the local officials make seven findings.</p> <p>AB 1441 extends the statutory termination date to January 1, 2011 that portion of the law that permits local officials to rescind a Williamson Act contract and simultaneously enter into a new contract to facilitate a lot line adjustment.</p> <p>Amends Section 51257 of the CA Government Code.</p>
<b>Internet</b>	<p><a href="#">SB 200</a>  (eff. 1-1-10) Raffles &amp; Internet Advertising</p>	<p>The California Constitution generally prohibits lotteries, but permits private, nonprofit, eligible organizations to conduct raffles for beneficial or charitable purposes, as specified. Previously this law prohibited a raffle from being advertised over the Internet.</p> <p>SB 200 eliminates this prohibition on advertising a raffle over the Internet and sets forth specified information regarding a raffle that may be included on an Internet Web site.</p> <p>Amends Section 320.5 of the CA Penal Code.</p>
<b>Landlord-Tenant</b>	<p><a href="#">P.L. 111-22</a>  (eff. 5-20-09) "Title VII - Protecting Tenants in Foreclosed Properties"</p>	<p>P.L. 111-22 (Title VII) creates a new 90-day rental termination notice after foreclosure by the foreclosing lender or a purchaser at the foreclosure or trustee's sale for bona fide tenants on a month-to-month tenancy. A bona fide tenant is any tenant other than the mortgagor/owner (or his/her child, parent, or spouse) and if the tenancy is the result of an arms-length transaction and the rent is not substantially lower than fair market rent. If the bona fide tenant is on a lease, then the full lease term must be honored unless the unit is sold to a buyer who intends to occupy the property, then the 90-day termination notice can be given. See Question 14 of the Legal Q&amp;A, <a href="#">Foreclosing on Rental Property</a>, for a summary of all the time periods for termination of a tenancy.</p> <p>Note : Be sure to check with local ordinances which may impose additional requirements on</p>

		terminating a tenancy.
<b>Landlord-Tenant</b>	<b>SB 290</b>  (eff. 1-1-10) 60-day Notice	<p>SB 290 deletes the sunset date (originally set for January 1, 2010) on this state law requiring a landlord to provide a 60-day notice prior to terminating a residential tenancy if the tenant has resided in the unit for a year or more. This law is extended indefinitely.</p> <p>Amends Section 1946.1 of the CA Civil Code.</p>
<b>Landlord-Tenant</b>	<b>SB 120</b>  (eff. 1-1-10) Residential Utilities	<p>SB 120 provides that, where a landlord-tenant relationship exists, if an electrical, gas, heat, or water corporation furnishes individually-metered residential service to residential occupants in a detached single-family dwelling, multi-unit residential structure, mobilehome park, or permanent residential structure in a labor camp, and the owner, manager, or operator is the customer of record, the corporation is required to make a good faith effort to inform the residential occupants, by means of a specified written notice, when the account is in arrears, that service will be terminated at least 10 days prior to termination, except as specified.</p> <p>This law also requires any notices under this statute to be provided in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.</p> <p>This law revises the option by which residential occupants may become customers of the corporation, and specifies that if one or more of the residential occupants are willing and able to assume responsibility for the subsequent charges to the account to the satisfaction of the corporation, the electrical, gas, heat, or water corporation is required to make service available to the residential occupants.</p> <p>This law contains similar provisions for a publicly-owned utility that furnishes individually-metered residential light, heat, water, or power to a detached single-family residence or to residential occupants in a multi-unit residential structure, mobilehome park, or permanent residential structure in a labor camp.</p>


		<p>Adds Section 1942.2 to the CA Civil Code, and amends Sections 777.1, 10009, 10009.1, 12822, 12822.1, 16481, and 16481.1 and repeals and adds Section 777 of the Public Utilities Code.</p>
<b>Legal Aid</b>	<p><b>AB 590</b>   (eff. 1-1-10,  <b>7-1-11</b> (pilot  projects),  <b>7-1-17</b> (chapter  on civil legal  representation))</p>	<p>Commencing July 1, 2011 and subject to funding specifically provided for this purpose, AB 590 requires the Judicial Council to develop one or more model pilot projects in selected courts for 3-year periods pursuant to a competitive grant process and a request for proposals in order to provide free legal counsel to represent low-income parties in civil matters involving critical issues affecting basic human needs, such as <u>housing-related matters</u>, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child in those courts selected by the Judicial Council, as specified.</p> <p>This law also provides that each project will be a partnership between the court, a qualified legal services project that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project.</p> <p>Adds Article 9.6 (commencing with Section 6159.5) to the CA Business and Professions Code, and repeals and adds Sections 68085.1 and 70626 and adds Chapter 2.1 (commencing with Section 68650) to the CA Government Code.</p>
<b>Licensing</b>	<p><b>SB 36</b>   (eff. <b>10-11-09</b>  but license  endorsement  not required  until <b>12-31-10</b>)  Mortgage Loan  Originator  Endorsement</p>	<p>SB 36 requires a new real estate license endorsement from the DRE in order to engage in the business as a “mortgage loan originator.” A “mortgage loan originator” is an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain. An individual real estate licensee acting within the meaning of CA Bus. &amp; Prof. Code Section 10131 (d) is a mortgage loan originator for purposes of this law with respect to activities involving</p>



		<p>"residential mortgage loans" as defined.</p> <p>"Residential mortgage loan" means "any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real estate upon which is constructed or intended to be constructed a dwelling."</p> <p>"Dwelling" means "a residential structure that contains one-to-four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence."</p> <p>This law also requires the licensing and regulation of mortgage loan originators under the California Finance Lenders Law and the California Residential Mortgage Lending Act. In addition, this law requires mortgage loan originators to also be licensed and registered through the Nationwide Mortgage Licensing System and Registry.</p> <p><u>Note:</u> Any real estate broker involved in sales or property management who accepts compensation for services from a lender or a mortgage loan originator is deemed to be a mortgage loan originator under this law.</p>
<p><b>Mechanics Liens</b></p>	<p><a href="#">AB 457</a> 📄 (eff. 1-1-11) Notice to Be Served on Homeowner</p>	<p>The California Constitution gives workers the right to record a mechanic's lien for the value of labor and materials provided for the improvement of real property prior to filing an action against the owner of the property.</p> <p>AB 457 requires that a mechanic's lien (or claim of lien) and Notice of Mechanic's Lien must now be served on the owner of the property (or on the construction lender or the original contractor if those parties cannot be served). If it is not properly served, as described in the statute, the lien is unenforceable.</p> <p>This law also requires a proof of service affidavit to be completed and signed by the person</p>

		<p>serving the Notice of Mechanic's Lien, and it would be included as part of the mechanic's lien or claim of lien.</p> <p>In addition, after the filing of the complaint in the proper court to foreclose on the mechanic's lien, the "mechanic" <u>must</u> record a notice of the pendency of the proceedings (e.g., lis pendens) no more than 20 days after the filing of the mechanic's lien foreclosure action. Only from the time of recording the lis pendens will a purchaser or encumbrancer of the property be deemed to have constructive notice of the pendency of the action.</p> <p>Amends Sections 3084 and 3146 of the CA Civil Code.</p>
<b>Mobilehomes</b>	<p><a href="#">SB 804</a> 🗳️ (eff. 1-1-10) Park Management Restriction</p>	<p>SB 804 adds the following language to the existing statute:</p> <p style="padding-left: 40px;">The management shall not require a homeowner, who is replacing a mobilehome or manufactured home on a space in the park, in which he or she resides, to use a specific broker, dealer, or other person as an agent in the purchase of or installation of the replacement home.</p> <p>Amends Section 798.71 of the CA Civil Code.</p>
<b>Mortgage Loans</b>	<p><a href="#">AB 260</a> 🗳️ (eff. 1-1-10) Violations of Federal Law Become Violations of Licensing Law; Higher-priced Mortgage Loans</p>	<p>AB 260 authorizes the DRE to suspend or revoke the license, or to deny issuance of the license, for a violation of specified federal lending laws or regulations or upon the violation or failure to comply with specified provisions of state law relating to mortgages.</p> <p>This law also provides that a violation of specified federal lending laws or regulations, or of the provisions regulating higher-priced mortgage loans by a licensee is also a violation of the licensing law of the licensee.</p> <p>In addition, this state law (in the Financial Code) establishes "higher-priced mortgage loans," as defined in Part 226 of Title 12 of the Code of</p>



		<p>Federal Regulations (see Legal Q&amp;A, <a href="#">Predatory Lending: the Federal High Cost Mortgage Disclosure</a>, for the definition) as a new category of regulated loans. Among other things, this law limits prepayment penalties and prohibit provisions for negative amortization.</p> <p>A licensee is prohibited from making false, deceptive, or misleading statements or representations in connection with higher-priced mortgage loans. A mortgage broker (as defined in this statute) cannot receive compensation, including a yield spread premium, fee, commission, or any other compensation, for arranging a higher-priced mortgage loan with a prepayment penalty that exceeds the compensation that the mortgage broker would otherwise receive for arranging that higher-priced mortgage loan without a prepayment penalty.</p> <p>This law also provides that a mortgage broker, as defined, providing mortgage brokerage services, as defined, to a borrower is the fiduciary of the borrower, and any violation of the broker's fiduciary duties is a violation of the mortgage broker's licensing law. The fiduciary duty includes a requirement that the mortgage broker place the economic interest of the borrower ahead of his or her own economic interest.</p> <p><u>Note:</u> The definition of "mortgage broker" in the Civil Code differs from the one in the Financial Code.</p> <p>Amends Section 10177 of the CA Business and Professions Code, adds Section 2923.1 to the CA Civil Code, and amends Section 50505, adds Sections 1242, 14961, and 22346 and adds Division 1.9 (commencing with Section 4995) to the CA Financial Code.</p>
<p><b>Mortgage Loans</b></p>	<p><a href="#">AB 329</a> 🗳️ (eff. 1-1-10) Reverse Mortgages</p>	<p>A reverse mortgage is a loan that allows a homeowner to convert home equity into tax-free cash payments. More than 90 percent of all reverse mortgages are obtained through the Home Equity Conversion Mortgage (HECM) program sponsored by HUD. Many senior citizens</p>

		<p>use reverse mortgage payments to supplement retirement income or pay medical expenses.</p> <p>AB 329 enacts the Reverse Mortgage Elder Protection Act of 2009. Restrictions on the reverse mortgage loans are spelled out in the statute (e.g., prepayment, in whole or in part, must be permitted without penalty at any time during the term of the reverse mortgage loan.) This new law prohibits a lender or any other person who participates in the origination of the mortgage from participating in, being associated with, or employing any party that participates in or is associated with any other financial or insurance products, except as specified.</p> <p>This law prohibits a lender or any other person who participates in the origination of the mortgage from referring a prospective borrower to anyone for the purchase of other financial or insurance products, except as specified. It also requires the lender to provide the prospective borrower with a list of not fewer than 10 nonprofit counseling agencies in the state that have been approved by HUD for counseling.</p> <p>A lender is required to provide a borrower with a checklist specifying issues the borrower should discuss with a reverse mortgage counselor or, if the borrower seeks counseling prior to requesting a reverse mortgage loan application, the law requires a mortgage counselor to provide the checklist which must be signed by the counselor, if the counseling is done in person, and the prospective borrower, with a copy provided to the borrower. The prohibits approval of the loan application until the signed checklist is provided to the lender.</p> <p>Amends Sections 1923.2 and 1923.5 of the CA Civil Code.</p>
<p><b>Mortgage Loans</b></p>	<p><a href="#">SB 239</a> 📄 (eff. 1-1-10) Mortgage Fraud as a Felony</p>	<p>SB 239 creates the criminal offense, the felony of mortgage fraud, a violation punishable by imprisonment in the state prison or in a county jail for not more than one year. The law provides that</p>

		<p>mortgage fraud may only be prosecuted when the value of the alleged fraud meets the threshold for grand theft.</p> <p>The new law spells out the procedure by which a peace officer or person employed by a law enforcement agency may obtain real estate records from a real estate licensee or others (court-ordered production of records). The licensee may notify the client of the receipt of the order for production of records, unless the court orders the "real estate recordholder" to withhold notification to the customer upon a finding that this notice would impede the investigation.</p> <p>Repeals and adds Section 532f of the CA Penal Code.</p>
<p><b>Mortgage Loans</b></p>	<p>SB 94  (eff. 10-11-09) No Advance Fees with Loan Modifications</p>	<p>SB 94 prohibits any person, including licensed real estate brokers and attorneys who negotiate, attempt to negotiate, arrange, attempt to arrange, or otherwise offer to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower related to mortgages and deeds of trust secured by residential real property containing one-to-four dwelling units to do any of the following:</p> <ol style="list-style-type: none"> <li>1. Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he/she/it would perform.</li> <li>2. Take any wage assignment, any lien of any type on real or personal property, or any other security to secure the payment of compensation.</li> <li>3. Take any power of attorney from the borrower for any purpose.</li> </ol> <p>For a more-detailed discussion of this law, go to the 2009 Archive News article, New California Law: SB 94.</p>

		Amends Sections 10026, 10085, 10133.1, and 10177, adds Section 10147.6 and repeals Sections 6106.3 and 10085.6 of the CA Business and Professions Code; amends Section 2945.1, adds Section 2944.6 and repeals Section 2944.7 of the CA Civil Code; amends Section 22161 of the CA Financial Code.
<b>Mortgage Loans</b>	<a href="#">SB 633</a>  (eff. 1-1-10) Impound Accounts	<p>The law prohibits requiring an impound, trust, or other type of account for payment of property taxes, insurance premiums, or other purposes relating to the property as a condition of a real property sale contract or a loan secured by a deed of trust or mortgage on real property containing only a single-family, owner-occupied dwelling, with certain exceptions.</p> <p>SB 633 adds to those exceptions sales where a loan is made in compliance with the requirements for higher-priced mortgage loans established in Regulation Z, whether or not the loan is a higher-priced mortgage loan, and where a loan is refinanced or modified in connection with a lender's homeownership preservation program or a lender's participation in such a program sponsored by a federal, state, or local government authority or a nonprofit organization.</p> <p>Amends Section 2954 of the CA Civil Code.</p>
<b>Mortgage Loans</b>	12 CFR 226.19 <a href="#">Federal Register Notice</a> (Reg Z after MDIA)  (eff. 7-30-09)	<p>These final Reg Z rules implement the Mortgage Disclosure Improvement Act (MDIA), an amendment to the Truth-in-Lending Act (TILA). The regulations apply to loans secured not only by a consumer's principal dwelling, but other dwellings as well (e.g., second home).</p> <p>In particular,</p> <ul style="list-style-type: none"> <li>• Creditors must wait <u>seven business days</u> after they provide the early disclosures before closing the loan.</li> <li>• If a change occurs that makes the APR in the early disclosures inaccurate beyond a specified tolerance, creditors must provide new disclosures with a revised annual percentage rate (APR) and</li> </ul>

		<p>then wait an <u>additional three business days</u> before closing the loan.</p> <p>The rules permit a consumer to expedite the closing to address a personal financial emergency, such as a pending foreclosure.</p>
<p><b>Mortgage Loans</b></p>	<p><a href="#">12 CFR 226.32 (b)(3)</a> (eff. <b>4-1-10</b>) Reg Z Advertising</p>	<p>The Federal Reserve Board has adopted, under TILA Section 129(l)(2), 15 U.S.C. 1639(l)(2), rules to <u>prohibit the following seven deceptive or misleading practices</u> in advertisements for closed-end mortgage loans:</p> <ul style="list-style-type: none"> <li>• Advertisements that state “fixed” rates or payments for loans whose rates or payments can vary without adequately disclosing that the interest rate or payment amounts are “fixed” only for a limited period of time, rather than for the full term of the loan;</li> <li>• Advertisements that compare an actual or hypothetical rate or payment obligation to the rates or payments that would apply if the consumer obtains the advertised product unless the advertisement states the rates or payments that will apply over the full term of the loan;</li> <li>• Advertisements that characterize the products offered as “government loan programs,” “government-supported loans,” or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government supported or - sponsored loans;</li> <li>• Advertisements, such as solicitation letters, that display the name of the consumer’s current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer’s current lender;</li> <li>• Advertisements that make claims of debt elimination if the product advertised would merely replace one debt obligation with another;</li> <li>• Advertisements that create a false impression that the mortgage broker or lender is a</li> </ul>

		<p>“counselor” for the consumer; and</p> <ul style="list-style-type: none"> <li>Foreign-language advertisements in which certain information, such as a low introductory “teaser” rate, is provided in a foreign language, while required disclosures are provided only in English.</li> </ul>
<b>Privacy</b>	<p><a href="#">AB 1094</a>  (eff. 1-1-10) Disposal of Personal Information</p>	<p>AB 1094 modifies existing law regarding destruction of customer records in order to protect a customer's privacy. A business is required to take all reasonable steps to dispose, or arrange for the disposal, of customer records within its custody or control containing personal information when the records are no longer to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.</p> <p>This law exempts information that is made available to the general public from federal, state, or local government records.</p> <p>The law establishes safe harbors by those who comply with this statute and for records that end up in the possession of a storage company or commercial landlord who properly disposes of the records.</p> <p>Existing law requires a landlord, if personal property remains on the premises after a residential or commercial tenancy has terminated and the premises have been vacated by the tenant, to give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property, as specified. This law provides that, if the property left behind consists of records, the tenant will be presumed to be the owner of the records.</p> <p>Amends Sections 1798.80, 1798.81, 1798.84, 1980, 1983, 1993, and 1993.03 of the CA Civil Code.</p>
<b>Tax</b>	<p><a href="#">H.R. 3548</a>  (eff. 11-6-09)</p>	<p>H.R. 3548 provides both for the extension of the first-time homebuyer tax credit and expansion of</p>



Homebuyer Tax  
Credit  
Extension and  
Expansion


it to qualified non-first-time buyers as well. A few of the provisions of this new law include the following:

- (1) Both the \$8,000 first-time homebuyer tax credit and the \$6,500 tax credit for “move-up” buyers (see 4 below) would sunset on April 30, 2010. However, purchasers who have binding contracts as of April 30, 2010 (before May 1, 2010), would still qualify for the credit as long as they complete the transaction within 60 days (or June 30, 2010).
- (2) The amendment establishes income limits of \$125,000 for an individual or \$225,000 for a couple for both credits.
- (3) The cost of the home being purchased cannot exceed \$800,000 for both categories in order to be eligible for the credit.
- (4) “Move up” buyers (an individual or his/her spouse, if married) are qualified if he/she “has owned and used the same residence as such individual's principal residence for any 5-consecutive-year period during the 8-year period ending on the date of the purchase of a subsequent principal residence.”

For purchases made in 2010, taxpayers would be able to claim the credit on their 2009 income tax return. Homebuyers would not have to repay the credit, provided the home remains their principal residence for 36 months after the purchase date. However, this recapture provision would not apply in the case of a member of the Armed Forces, military intelligence or Foreign Service who is on qualified official extended duty. In addition, members of the military who have been deployed overseas for 90 days or more in 2008 or 2009 would have until April 30, 2011, to claim the homebuyer tax credit.

The amendment also includes anti-fraud language that gives the IRS the authority to do greater oversight during the processing of the return rather than waiting for an audit situation.

		<p>The amendment requires the taxpayer claiming the credit to be 18 or older and requires a HUD-1 settlement statement to be attached when claiming the credit.</p>
<p><b>Tax</b></p>	<p><a href="#">SB 824</a>  (eff. 1-1-10) Changes Definition of Substantially Damaged or Destroyed Property</p>	<p>Existing property tax law provides, pursuant to a requirement of the California Constitution, that the property tax base year value of real property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to a comparable property located within the same county that is acquired or newly constructed within 3 years after the disaster as a replacement property. The property is considered substantially damaged or destroyed if it sustains physical damage amounting to more than 50% of its full cash value immediately prior to the disaster.</p> <p>Among other things, SB 824 provides that property is substantially damaged or destroyed if either the land or improvements sustain the specified amount of damage.</p> <p>Amends Sections 15609 and 15641 of the CA Government Code and amends Sections 69, 69.3, 214.6, 276, 480.3, and 480.4 of the CA Revenue and Taxation Code.</p>
<p><b>Tax</b></p>	<p><a href="#">AB x4-18</a>  (eff. 1-1-10) Board of Equalization Business Use Tax</p>	<p>The Sales and Use Tax Law requires a person conducting business as a seller of tangible personal property in this state to obtain a permit from the State Board of Equalization (BOE) for each place of business and also requires a person selling tangible personal property for storage, use, or other consumption in this state to register with the State Board of Equalization.</p> <p>AB x4-18 requires requires a "qualified purchaser" to register with the BOE and report and pay use tax directly to the BOE by April 15 for the previous calendar year.</p> <p>This law defines a "qualified purchaser" as a person that meets all of the following conditions:</p> <ul style="list-style-type: none"> <li>• The person receives at least \$100,000 in gross receipts from business operations per</li> </ul>

		<p>calendar year. Note: Gross receipts is the total of all receipts from both in-state and out-of-state business operations.</p> <ul style="list-style-type: none"> <li>• The person is not required to hold a seller's permit or certificate of registration for use tax (under section <a href="#">6226 of the Revenue and Taxation Code</a>).</li> <li>• The person is not a holder of a use tax direct payment permit as described in <a href="#">section 7051.3 of the Revenue and Taxation Code</a>.</li> <li>• The person is not otherwise registered with the BOE to report use tax.</li> </ul> <p>In modified conformity with the federal income tax law, this law also requires backup withholding, as provided, at a rate of 7% on specified payments made on or after January 1, 2010, whenever such payments are subject to federal backup withholding.</p> <p>(Note: Under the statutory definition, it appears that a real estate licensee may need to register with the BOE, but if the licensee hasn't purchased any tangible personal property then no use tax will be owed. Unfortunately, unless there is a clarification by the BOE, the definition doesn't spell out that registration is required only by persons selling tangible personal property.)</p> <p>Amends Section 18661 and adds Sections 6225 and 18664 to the CA Revenue and Taxation Code.</p>
<p><b>Title &amp; Escrow</b></p>	<p><a href="#">AB 957</a>  (eff. <b>10-11-09</b>) "Buyer's Choice Act" Buyers Choice of Escrow &amp; Title Services</p>	<p>AB 957, the Buyer's Choice Act, prohibits a mortgagee or beneficiary under a deed of trust who acquired title to residential real property improved by one-to-four dwelling units at a foreclosure sale (or trustee's sale) from, requiring, directly or indirectly, as a condition of selling the property, that the buyer purchase title insurance or escrow services in connection with the sale from a particular title insurer or escrow agent. The law does not prohibit a buyer from agreeing to accept a title insurer or an escrow agent recommended by the seller if written notice of the</p>

right to make an independent selection is first provided by the seller to the buyer.

A "seller" is defined as a mortgagee or beneficiary under deed of trust who acquired title to residential real property improved by four or fewer dwelling units at a foreclosure sale, including a trustee, agent, officer, or other employee of any such mortgagee or beneficiary. Thus, this law applies to REO transactions where the seller is a bank, as well as those transactions where the seller is the foreclosing lender which includes private non-bank lenders. Furthermore, a real estate agent of the "seller" is included under this definition.

A "seller" who violates these provisions will be liable to the buyer for an amount equal to three times all charges made for the title insurance or escrow services. In addition, any person in violation will be deemed to have violated his or her licensing law and will be subject to discipline by the licensing entity (e.g., the DRE). A transaction is not invalidated solely because of the failure of any person to comply with any provision of this law.

Repeals the old provisions and Adds Sections 1103.20 through 1103.23 of the CA Civil Code.