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2011 New Federal and State Statutes Including Statutes Passed During 2010


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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 during 2010 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.

| Topic | Law | Description |
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| Advance Fee | <p>AB 1762 </p> <p>(eff. Jan. 1, 2011)</p> <p>Advance fee prohibition clarification</p> | <p>An advance fee is defined as a fee that is claimed or received by a real estate licensee from a principal before fully completing the services or a listing that the licensee contracted or represented would be performed.</p> <p>This law redefines the term by adding certain exemptions. In particular, it exempts limited service contracts for stand-alone services. This means a licensee may provide stand-alone services performed on a task-by-task basis, for which compensation is received as each separate, contracted-for task is completed. To qualify for this exclusion, all services performed under the contract must be described in subdivision (a), (b), or (c) of Cal. Bus. & Prof. Code 10131.</p> <p>A contract between a broker and a principal that requires payment of a commission to the broker after the contract is fully performed does not represent an agreement for an advance fee.</p> <p>In addition, the law exempts the advertising of real estate or a business</p> |

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| | | <p>opportunity from the advance fee prohibition provided the publication or electronic media is not under the control or ownership of the broker.</p> <p>Repeals and adds Section 10026 of CA Business and Professions Code.</p> |
| Advertising | <p>AB 1373 🗳️ (eff. Jan. 1, 2011) Restrictions and disclosures on grant deed copy service</p> | <p>This law cracks down on the mailed advertisements sent to property owners offering, for compensation, to provide a copy of the grant deed or other record of title by making it a crime unless certain disclosures are provided and the advertisement doesn't mislead a person into believing that the company is affiliated with a government agency.</p> <p>Section 17537.10 is added to the Business and Professions Code.</p> |
| Business Structure | <p>SB 392 🗳️ (eff. Jan. 1, 2011) Licensed contractors may now be formed as an LLC</p> | <p>This law authorizes the Contractors' State License Board, commencing no later than Jan. 1, 2012, to issue a contractor's license to a limited liability company (LLC) and authorizes the responsible managing manager, officer, member, or employee of the LLC, to qualify for that license. In order to be licensed as an LLC, the applicant or licensee must have a surety bond in the sum of \$100,000.</p> <p>Amends Sections 7025, 2028.5, 2029, 7065, 7065.1, 7065.5, 7068, 7068.1, 7068.2, 7069, 7071, 7071.7, 7071.8, 7071.9, 7071.11, 7071.17, 7072.5, 7075.1, 7076, 7076.2, 7085.6, 7090, 7090.1, 7096, 7121, 7121.1, 7121.5, 7121.6, 7122, 7122.1, 7122.2, 7122.5, 7137, 7138, 7152, 7159, and 7159.10 and adds Sections 7071.6.5, and 7071.19 to the CA Business and Professions Code.</p> |
| Common Interest Developments (CID) | <p>AB 2016 🗳️ (eff. Jan. 1, 2011) CID request for notification of trustee's deed of sale</p> | <p>Under existing law an HOA is permitted to record a single request that a mortgagee or trustee mail to the association a copy of any trustee's deed upon sale concerning a separate interest in the CID. This law clarifies that the request for notification does not constitute a document that effects or evidences a transfer or encumbrance on the property</p> |


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| | | <p>nor does it release or terminate any interest, right, or encumbrance of an interest in the real property.</p> <p>Amends Section 2924b of the CA Civil Code.</p> |
| Disclosure | <p>SB 183 🗳️ (eff. Jan. 1, 2011) Carbon monoxide detectors; smoke detectors and water-heater bracing disclosure</p> | <p>This law revises the TDS and MHTDS to include a disclosure regarding compliance with the smoke detectors and water-heater bracing laws (eliminating the need for separate disclosure forms). The TDS and MHTDS will also add a disclosure regarding carbon monoxide detection devices.</p> <p>This law enacts the Carbon Monoxide Poisoning Prevention Act of 2010. The law requires a carbon monoxide device (battery or hard-wired) to be installed in a "dwelling unit intended for human occupancy." A violation is punishable by a maximum fine of \$200 for each offense. Owners of residential rental property must also comply with this law. Tenants are responsible to notify the owner of an inoperable or deficient carbon monoxide device.</p> <p><u>Installation Time Period:</u></p> <ul style="list-style-type: none"> • On or before July 1, 2011 for existing single-family dwelling units • On or before Jan. 1, 2013 for all other existing dwelling units <p>Amends Sections 1102.6 and 1102.6d of the CA Civil Code and adds Sections 13260, 13261, 13262, 13263, 17926, 17926.1, and 17926.2 to the CA Health and Safety Code.</p> |
| Foreclosure | <p>AB 2325 🗳️ (eff. Jan. 1, 2011) Forensic loan audits added to definition of services under Mortgage Foreclosure Consultant law</p> | <p>A foreclosure consultant is any person who makes any solicitation, representation, or offer to any homeowner to perform certain services relating to foreclosure sales and loan modifications ("forbearance from any beneficiary or mortgagee"), including debt, budget, or financial counseling, and credit repair, for compensation. There are certain exemptions under the law. A violation of the law can impose criminal penalties.</p> |

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| | | <p>This new law adds forensic loan audits to the definition of services under the Mortgage Foreclosure Consultant law by adding CA Civil Code Section 2945.1(e)(9).</p> <p>Amends Section 2945.1 of CA Civil Code.</p> |
| Foreclosure | <p>SB 1221 🗳️ (eff. Jan. 1, 2011) Trustee's Sale - Notice of Sale can be given 85 days after recordation of NOD instead of 3 months (90 days)</p> | <p>Under existing law governing trustee sales, the Notice of Sale cannot be filed until at least 3 months after the filing of the Notice of Default (NOD).</p> <p>This new law permits the filing of a Notice of Sale up to 5 days before the lapse of the 3-month period provided that the actual date of the sale is no earlier than 3 months and 20 days after the filing of the NOD.</p> <p>Amends Sections 2924 and 2924c of the CA Civil Code.</p> |
| Home Energy Ratings | <p>AB 1809 🗳️ (eff. Jan. 1, 2011) Home inspection to include HERS home energy audit, if requested</p> | <p>This new law authorizes a home inspection to include, if requested by the client, a Home Energy Rating System (HERS) Program energy audit.</p> <p>For more information about the California Energy Commission's regulations, standards, and approved HERS providers, go to http://www.energy.ca.gov/HERS/index.html.</p> <p>Adds Sections 7199.5 and 7199.7 to the CA Business and Professions Code.</p> |
| Housing | <p>SB 454 🗳️ (eff. Jan. 1, 2011) Extension of government-subsidized rental housing notice and procedural requirements</p> | <p>This law extends existing law (which would have ended January 1, 2011) that imposes notice and procedural requirements on an owner of government-subsidized rental housing regarding the owner's decision not to extend or renew participation in the specified government-subsidized housing programs.</p> <p>Amends Sections 65863.10, 65863.11, and 65863.13 of the CA Government Code.</p> |
| Housing | <p>SB 1483 🗳️</p> | <p>Existing law established the Multifamily</p> |

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| | (eff. Jan. 1, 2011) Extension of Multifamily Improvement District Law | Improvement District Law to create multifamily improvement districts within a city or county and permitting the levy of assessments on residential rental properties within the district for the purpose of financing certain improvements and promoting certain activities beneficial to those properties. This law extended these provisions until Jan. 1, 2022. Amends Section 36710 of the CA Streets and Highways Code. |
| Identity Theft | SB 1087 🗳️ (eff. Jan. 1, 2011) Restitution for identity theft victims | This law requires a defendant convicted of the crime of identity theft to pay restitution to the identity theft victim. The court order by the criminal court will be enforceable as if the order were a civil judgment. Amends Section 1202.4 of the CA Penal Code. |
| Internet | SB 1411 🗳️ (eff. Jan. 1, 2011) Misdemeanor to impersonate another person on the internet | This law provides that any person who knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means (e.g., opening an e-mail account or an account or profile on a social networking Web site in another person's name) for purposes of harming, intimidating, threatening, or defrauding another person is guilty of a misdemeanor. The violation is punishable by a fine not exceeding \$1,000 or by imprisonment in a county jail not exceeding one year or by both. The injured person is authorized to bring a civil action against the perpetrator. Adds Section 528.5 to the CA Penal Code. |
| Land Use | AB 1965 🗳️ (eff. Jan. 1, 2011) Agricultural: Williamson Act extension of automatic termination date for | The Williamson Act authorizes a city or county and a landowner of agricultural land to rescind a contract and simultaneously to enter into a new contract to facilitate lot line adjustments. This law extends the repeal date of the |

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| | a lot line adjustment | <p>contract rescission provision to Jan. 1, 2013.</p> <p>Amends Section 51257 of the CA Government Code.</p> |
| Land Use | <p>AB 1684 🗳️ (eff. Jan. 1, 2011) Adverse Possession: Tax payments must have been timely for an adverse possession claim</p> | <p>Under existing law, a claimant making an adverse possession claim must show that the land has been occupied and claimed for a continuous period of 5 years and the claimant and/or predecessors and grantors have paid all state, county, or municipal taxes levied and assessed upon the land.</p> <p>This law adds the condition that the tax payments must have been made in a timely manner as established by certified records of the county tax collector.</p> <p>Amends Section 325 of the CA Code of Civil Procedure.</p> |
| Land Use | <p>SB 1427 🗳️ (eff. Jan. 1, 2011) REO owner notice of violation of abandoned property ordinance</p> | <p>Existing law requires a legal owner of vacant residential property purchased at a foreclosure sale to maintain the property with penalties for failure to maintain of up to \$1,000 per day per violation.</p> <p>This law requires the government to provide the owner who purchased the property at a foreclosure sale with a notice of the violation and an opportunity to correct it before imposing the penalty. However, the notice requirement doesn't apply if the condition of the property threatens public health or safety.</p> <p>Adds Sections 2929.4 and 2929.45 to the CA Civil Code.</p> |
| Landlord-Tenant | <p>AB 1263 🗳️ (eff. Jan. 1, 2011) Unlawful detainer of commercial tenant</p> | <p>This law changes the method of serving an unlawful detainer notice on a commercial tenant. The law provides that service on a commercial tenant can be made by any of the following methods:</p> <p>(1) delivering a copy to the tenant personally,</p> <p>(2) leaving a copy with some person of suitable age and discretion at the property and sending a copy through the mail, as</p> |

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| | | <p>specified, or</p> <p>(3) by affixing a copy in a conspicuous place on the property and sending a copy through the mail, as specified.</p> <p>Amends Section 1162 of the CA Code of Civil Procedure.</p> |
| Landlord-Tenant | <p>SB 1149 🗳️ (eff. Jan. 1, 2011) Prohibits general release of court records in foreclosure-related eviction unless landlord prevails; New cover page with Notice to Quit to tenants after a foreclosure</p> | <p>This law authorizes a court clerk to allow access to court records of eviction proceedings involving residential property that has been sold in foreclosure if 60 days have elapsed since the complaint was filed and judgment was entered against all the defendants (tenants).</p> <p>This law also requires, until Jan. 1, 2013, that any Notice to Quit served to a tenant of residential property within one year after a foreclosure sale include a separate cover sheet containing an additional notice to tenants (statutory language in Section 1161c(b) and (c)).</p> <p>Amends Sections 1161.2 and 1166 and adds Section 1161c of the CA Code of Civil Procedure.</p> |
| Landlord-Tenant | <p>AB 1800 🗳️ (eff. Jan. 1, 2011) Unlawful renting of residential dwelling</p> | <p>Existing law makes it a misdemeanor for a person to claim ownership or take possession of someone else's residential property for the purpose of renting or leasing it to another without the consent of the owner. This law increases the penalties for this offense to a maximum of \$2,500 or imprisonment in a county jail not exceeding one year or by both.</p> <p>Amends Section 602.9 of the CA Penal Code.</p> |
| Landlord-Tenant | <p>H.R. 5297 (Small Business Jobs and Credit Act of 2010) (eff. Jan. 1, 2011) Landlords to report payments exceeding \$600 on IRS form 1099</p> | <p>H.R. 5297 includes an expansion of the 1099 reporting related to a trade or business. Under existing law only those real estate professionals engaged in property management-type businesses have been required to file Forms 1099. This new federal law extends the Form 1099 requirement to any person who receives rental income. This requirement</p> |


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| | | <p>would apply to any landlord (including a small investor), rather than only those who are in the business of managing property.</p> <p>Starting Jan. 1, 2011, any person who receives rental income must provide a Form 1099 for all payments of \$600 or more made to service providers such as plumbers, carpenters, yard services and repair people. The purchase of goods is not included within the reporting requirement. The Form 1099 is provided to the IRS and to the service provider. The new requirement applies to both residential and commercial property.</p> |
| Litigation: Jury Trials | <p>AB 2284 </p> <p>(eff. Jan. 1, 2011) California Expedited Civil Jury Trials Act</p> | <p>This law establishes the Expedited Jury Trials Act (until Jan. 1, 2016), a new system whereby parties sign a consent order for a jury trial in civil cases to permit expedited procedures including a jury of 8 or fewer (now 12), with no alternates, a limit of 3 peremptory challenges for each side, and a limit of 3 hours for each side to present its case. The parties also waive all rights to appeal with the verdict being binding subject to a written high/low agreement (a written agreement entered into by the parties that specifies a minimum amount of damages that a plaintiff is guaranteed to receive from the defendant, and a maximum amount of damages that the defendant will be liable for, regardless of the ultimate verdict returned by the jury. Neither the existence of, nor the amounts contained in any high/low agreements, may be disclosed to the jury.)</p> <p>Adds Sections 630.01 through 630.12 of the CA Code of Civil Procedure.</p> |
| Loan Limits | <p>H.R. 3081 (Making Continuing Appropriations for Fiscal Year 2011, and for Other Purposes-Sections 144 and 145) (eff. Sep. 30, 2010) Fannie Mae, Freddie Mac, and</p> | <p>Among other things, this federal law states that, for home equity conversion mortgages (HECMs, or reverse mortgages) for elderly homeowners for which the mortgagee issues credit approval for the borrower during fiscal year 2011, mortgage insurance benefits may not exceed 150% of the maximum dollar amount in effect of the original principal obligation of conventional</p> |

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| | FHA loan limits | <p>mortgages purchased by the Federal Home Loan Mortgage Corporation (Freddie Mac).</p> <p>This law also extends through fiscal year 2011 the current 2010 Federal Housing Administration (FHA), Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), and Government National Mortgage Association (Ginnie Mae) loan limits for high-cost areas, allowing agency discretion to increase such limits for sub-areas meeting specified requirements.</p> <p>Current mortgage limits can be found on the Real Estate Regulatory Updates page of car.org by looking under the applicable federal agency.</p> |
| Mobilehomes | <p>SB 1047 🗄️ (eff. Jan. 1, 2011) Tenant provisions also apply to members of a nonprofit mutual benefit corporation that lease a space in the park</p> | <p>The Mobilehome Residency Law (MRL) governs tenancies in mobilehome parks. The law also contains special provisions that apply to residents who have an ownership interest in the mobilehome park.</p> <p>This new law provides that Sections 798 through 798.88 of the MRL also applies to park residents of a mobilehome park owned and operated by a nonprofit mutual benefit corporation whose members consist of the park residents.</p> <p>Amends Section 799.1 of the CA Civil Code.</p> |
| Mobilehomes | <p>AB 2120 🗄️ (eff. Jan. 1, 2011) Copy of MRL to be given to park residents by the mobilehome park management</p> | <p>Existing law requires the management of a mobilehome park to provide all the homeowners with a copy of the Mobilehome Residency Law (MRL) by Feb. 1 of each year, if a significant change was made to the law in the prior year.</p> <p>This law instead requires management to either provide all homeowners with a copy of the MRL or to notify all homeowners that a change has been made by legislation enacted in the prior year and to provide a copy of those provisions to the</p> |

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| | | <p>homeowners upon request within 7 days of the request.</p> <p>Amends Section 798.15 of the CA Civil Code.</p> |
| Mortgage Loan Broker | <p>12 CFR Part 226 (Reg Z Docket No. R-1366) 📄 (eff. April 1, 2011) Mortgage loan originators may not receive compensation based on the interest rate or other loan terms</p> | <p>The Federal Reserve Board (Board) has published final rules amending Regulation Z, which implements the Truth in Lending Act and Home Ownership and Equity Protection Act. The purpose of the final rule is to protect consumers in the mortgage market from unfair or abusive lending practices that can arise from certain loan originator compensation practices, while preserving responsible lending and sustainable homeownership.</p> <p>The final rule prohibits payments to loan originators, which includes mortgage brokers and loan officers, based on the terms or conditions of the transaction other than the amount of credit extended. The final rule further prohibits any person other than the consumer from paying compensation to a loan originator in a transaction where the consumer pays the loan originator directly.</p> <p>The Board is also finalizing the rule that prohibits loan originators from steering consumers to consummate a loan not in their interest based on the fact that the loan originator will receive greater compensation for such loan.</p> <p>The final rules apply to closed-end transactions secured by a dwelling where the creditor receives a loan application on or after April 1, 2011.</p> |
| Mortgage Loan Broker | <p>SB 1137 📄 (eff. Jan. 1, 2011) Mortgage loan originator license endorsement</p> | <p>Among other provisions, this law makes it unlawful for a real estate broker to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required if that licensee does not hold a mortgage loan originator license endorsement. It is a crime for a person to act as a mortgage loan originator without a license endorsement or to advertise using words indicating the person is a real estate salesperson or a</p> |

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| | | <p>mortgage loan originator without having a license or license endorsement. It also authorizes the DRE Commissioner to deny, suspend, revoke, restrict, condition, or decline to renew a mortgage loan originator license endorsement, or take other actions, after notice and opportunity for a hearing, under specified conditions.</p> <p>See the DRE Web page for all the details at http://www.dre.ca.gov/lic_sb36_safe.html.</p> <p>In addition, this law requires a licensed finance lender or broker that employs one or more mortgage loan originators that makes residential mortgage loans to maintain a net worth of \$250,000 and if only arranging but not making such loans to maintain a net worth of \$50,000.</p> <p>Amends Sections 10137, 10139, 10166.01, and 10166.02 and adds Section 10166.051 of the CA Business and Professions Code; Amends Sections 22104, 22107, 22109.1, 22109.4, 22112, 50002, 50141, 50144, and 50700 of the CA Financial Code.</p> |
| <p>Power of Attorney</p> | <p>SB 1038 🗳️ (eff. Jan. 1, 2011) Attorney-in-fact now may be liable for losses to principal's property</p> | <p>The Power of Attorney Law creates various duties and requires an attorney-in-fact to observe the standard of care that would be observed by a prudent person dealing with property of another, or if an attorney-in-fact has special skills he or she must observe the standard of care that would be observed by others with similar skills.</p> <p>However, this law deletes the existing provision that an attorney-in-fact is not liable for a loss to the principal's property if he or she is not compensated, unless the loss results from his or her bad faith,intentional wrongdoing, or gross negligence.</p> <p>Under this new law, if the attorney-in-fact breaches a duty pursuant to the Power of Attorney Law he or she is chargeable with interest for any loss or depreciation in value of the property, any profit made through the breach, or any profit that would have accrued to the principal if the</p> |

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| | | <p>loss or profit is a result of the breach.</p> <p>Amends Section 4231 and adds Section 4231.5 to the CA Probate Code.</p> |
| Property Tax | <p>Prop. 13 🗳️ (eff. June 8, 2010) New construction exclusion for seismic retrofitting</p> | <p>Proposition 13 prohibits tax assessors from re-evaluating new construction for property tax purposes when the point of the new construction is to seismically retrofit an existing building.</p> <p>Amends Section 2 of Article XIII A of the California Constitution.</p> |
| Short Sales | <p>SB 931 🗳️ (eff. Jan. 1, 2011) Discharge of balance of loan indebtedness after a short sale for residential 1-4 real property by holder of a first deed of trust</p> | <p>This new law prohibits a lender holding a first deed of trust (purchase money or refinance) for a dwelling of 1-4 units to demand a deficiency judgment (unpaid balance due on the loan) from the trustor or mortgagor (owner) who sells the dwelling for less than the remaining amount of the indebtedness due at the time of the short sale to which the lender has consented in writing.</p> <p>However, if the owner commits either fraud with respect to the short sale, or waste with respect to the secured real property, then the lender may seek damages and use existing rights and remedies against the owner or any third party for fraud or waste.</p> <p>Note that this law doesn't apply if the trustor or mortgagor is a corporation or political subdivision of the state.</p> <p>Adds Section 580e to the Code of Civil Procedure.</p> |
| Subdivisions | <p>SB 1019 🗳️ (eff. Jan. 1, 2011) Extends release of performance security by subdivider law</p> | <p>The Subdivision Map Act authorizes or requires a subdivider to furnish specified types of security to ensure the performance of various acts or agreements. The law (set to expire Jan. 1, 2011) sets forth specific procedures imposed on a local agency to provide a complete or partial release of a performance security.</p> <p>This law extends the repeal date of these provisions until Jan. 1, 2016.</p> |

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| Tax | <p>AB 183  (eff. March 25, 2010) CA income tax credit for a first-time buyer or new home buyer</p> | <p>This state law established tax credits for either first-time homebuyers or buyers of new homes. They are limited to the lesser of 5 percent of the purchase price or \$10,000 for a qualified principal residence. Taxpayers must apply the total tax credit in equal amounts over 3 successive tax years (maximum of \$3,333 per year) beginning with the tax year in which the home is purchased. The tax credits cannot reduce regular tax below tentative minimum tax (TMT). The tax credits are nonrefundable, and unused credits cannot be carried over.</p> <p>These tax credits are available for taxpayers who purchase a qualified principal residence on or after May 1, 2010, and before January 1, 2011. Additionally, these tax credits are available for taxpayers who purchase a qualified principal residence on or after December 31, 2010, and before August 1, 2011, pursuant to an enforceable contract executed on or before December 31, 2010. The purchase date is defined as the date escrow closes. Taxpayers may apply for the tax credits if they have entered into a contract before May 1, 2010, as long as escrow closes on or after May 1, 2010. However, taxpayers may not request a New Home Credit reservation if they have entered into the contract before May 1, 2010.</p> <p>The total amount of allocated tax credit for all taxpayers may not exceed \$100 million for the New Home Credit and \$100 million for the First-Time Buyer Credit.</p> <p>Added Section 17059.1 to the CA Revenue and Taxation Code.</p> <p>[Note: The state already allocated all the available funds for first-time homebuyers but were still accepting additional new home credit applications as of Sep. 16, 2010. See the FTB Web page for more details at http://www.ftb.ca.gov/individuals/new_home_credit.shtml.)]</p> |
| Tax | H.R. 5297 (Small Business Jobs and | H.R. 5297, among other provisions, includes an expansion of the |

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| | <p>Credit Act of 2010) (eff. Jan. 1, 2011) Landlords to report payments exceeding \$600 on IRS form 1099</p> | <p>1099 reporting related to a trade or business. Under existing law only those real estate professionals engaged in property management-type businesses have been required to file Forms 1099. This new federal law extends the Form 1099 requirement to any person who receives rental income. This requirement would apply to any landlord (including a small investor), rather than only those who are in the business of managing property.</p> <p>Starting Jan. 1, 2011, any person who receives rental income must provide a Form 1099 for all payments of \$600 or more made to service providers such as plumbers, carpenters, yard services and repair people. The purchase of goods is not included within the reporting requirement. The Form 1099 is provided to the IRS and to the service provider. The new requirement applies to both residential and commercial property.</p> |
| <p>Tax</p> | <p>H.R. 5623 (eff. July 2, 2010) Homebuyer Assistance and Improvement Act of 2010</p> | <p>This federal law amended the Internal Revenue Code of 1986 to extend the federal homebuyer tax credit for the purchase of a principal residence from June 30, 2010 to Sep. 30, 2010 for any eligible homebuyer who entered into a written binding contract before May 1, 2010.</p> <p>[Note: This federal tax credit is no longer available. However, for details of the tax credit, see the Legal Q&As, Homebuyer Tax Credit Update (Federal Law) and Homebuyer Tax Credit Chart 2010.]</p> |

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