TSBOR Property Management Committee

CAR State Legislative Issues & Updates

17 June 2010

Important Reminders

(1) Rent Withholding Requirements for Out-of-State Rental Property Owners "Refresher" - The requirement to withhold taxes for non-residents has been the law since 1954; it is just that in these tight budget times the State, through the Franchise Tax Board (FTB) has decided to actively enforce the requirement. Unfortunately, for practitioners such as REALTOR® Property Managers, they are the one's to do the withholding and tax collecting for the State of California (and the IRS for that matter), just as such practitioners must file 1099 forms for their clients for independent contractor vendors with whom they do business. This discussion is intended to be a helpful reminder of the requirements and the opportunities for the non-resident owners who dutifully pay their taxes to the FTB and how to be exempt from the withholding requirements and/or reduced withholding (some clients of our Property Managers have qualified both ways). The withholding requirement is there, whether or not the property is self-managed or not. ANY income derived WITHIN the State of California for ANYTHING is subject to the same withholding and/or tax liabilities!

(2) EPA Lead-Based Paint Renovation Rule; An Update - The U.S. Environmental Protection Agency's Lead Renovation, Repair and Painting Rule, governing the work of professional remodelers in certain homes where there is lead-based paint, became fully effective on Earth Day, April 22, 2010. The rule addresses remodeling and renovation projects disturbing more than six square feet of potentially contaminated painted surfaces for all residential and multifamily structures built prior to 1978 that are inhabited or frequented by pregnant women

and children under the age of six. It requires a cleaning inspection after the work is completed and grants the remodeler flexibility in determining the size of the work area, which can reduce the size of the area subject to containment.

More information may be found at C.A.R.'s legal summary. The EPA pamphlet, "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools," can be found at http://www.epa.gov/lead/pubs/renovaterightbrochure.pdf.

(2a) Lead Based Paint and Renovations - The new federal rule affects construction contractors, residential landlords, property managers and others who perform renovation for compensation in housing that may contain lead-based paint in housing built before 1978. Renovation includes most repair, remodeling and maintenance activities that disturb painted surfaces. The new rule requires that no more than 60 days prior to commencing the renovation, renovators must give to the owner or occupant of the dwelling a pamphlet and obtain written acknowledgment that the owner or occupant has received the pamphlet The rule also establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators (and others); for accrediting providers of renovation training; for renovation work practices; and for recordkeeping.

Active Bills

(1) AB 331 (Hall) Residential Rental Property and Foreclosure Notices - AB 331 would require property owners and landlords, prior to the execution of a rental agreement for a one to four unit dwelling, to disclose to a prospective tenant if the property is subject to an outstanding Notice of Default (NOD), or any pending foreclosure, declaration of forfeiture, or proceeding to foreclose a tax lien. C.A.R. supports AB 331 because it will assist potential tenants in making an informed decision about whether to rent the property in question. **Position:** Support **Status:** Senate Judiciary Committee

(2) AB 1800 (Ma) Unlawful Rentals of Residential Dwellings - Under existing law it is a misdemeanor for anyone to claim ownership, or take possession, of a residence with the intention of renting or leasing the residence to another person, without the owner's or owner representative's permission. C.A.R. supports AB 1800 which would instead make that crime a felony. **Position:** Support **Status:** Senate Public Safety Committee

(3) AB 2337 (Ammiano) Pension Fund Investments and Rent Control Jurisdictions - AB 2337 would prohibit CalPERS and CalSTRS from investing in business operations that result in the displacement of renters living in rent controlled housing either through significant rent increases, or the destruction or replacement of the housing units. The bill also requires CalPERS and CalSTRS to develop a rent control housing compliance policy by January 2, 2012 that analyzes the compliance of investments and offers suggestions to mitigate any negative impact on rent controlled housing. C.A.R. opposes AB 2337 because it discourages investment in rent controlled housing and further argues that rent control restrictions do not provide adequate financial incentives for businesses to build or improve housing in rent controlled communities. **Position:** Oppose **Status:** Assembly Appropriations Committee.

(4) SB 183 (Lowenthal) Carbon Monoxide Detectors Retrofit Mandate (Chapter 19, 2010 Stats.) - Starting January 1, 2011, the Real Estate Transfer Disclosure Statement (TDS) will be amended to streamline the disclosure of home safety devices. First, the TDS will include a new disclosure of whether the seller has a carbon monoxide detector. This disclosure addresses a new law enacted by SB 183 that requires California homeowners to install or plug in a carbon monoxide device in an existing single-family residence by July 1, 2011 (next year), and other existing dwelling units by January 1, 2013. The new TDS will specifically state that installation of a carbon monoxide detector, among other appliances and devices, is not a precondition of sale or transfer of the dwelling. Second, the TDS will be amended to incorporate a seller's certification that, by close of escrow, the seller will be in compliance with existing requirements for smoke detector and water heater bracing. Effective January 1, 2011, the new TDS will eliminate the need for a separate standard form Water Heater and Smoke Detector Statement of Compliance (C.A.R. Form WHSD) for applicable transactions.

The new requirement to install or plug in a carbon monoxide detector will apply to dwelling units with a fossil fuel burning heater or appliance, fireplace, or attached garage. "Fossil fuel" means fuel gases, wood, oil, coal, kerosene, or other petroleum or hydrocarbon products that emit carbon monoxide as a combustion byproduct. Special rules apply to residential landlords. C.A.R. will update our standard form TDS in the November 2010 forms release to reflect these changes.

(5) SB 782 (Yee) Residential Tenancies and Domestic Violence - This bill would prohibit a landlord from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking against a tenant or a tenant's household member, when that act is documented pursuant to a court order and the perpetrator of that act is not a tenant of the same dwelling unit. It also proposes to authorize a tenant who is protected by a restraining order related to domestic violence acts to immediately change the locks on his or her dwelling unit

without the landlord's permission, or to make a written request that the landlord change the locks of the dwelling within 48 hours of that request, when the restrained person is not a tenant of the same dwelling unit. The bill would also authorize the landlord to change the locks when the restrained person is a tenant of the same dwelling unit. In such a case, the bill specifically states that the landlord is not liable to a restrained person who is excluded from the dwelling unit if the landlord complies in good faith with that provision. The bill also states that a restrained person who has been excluded from a dwelling under the provisions of this bill remains liable under the lease with all other tenants of the dwelling unit for rent as provided in the lease. **Position:** Not Favor **Status:** Assembly Judiciary Committee

(6) SB 1149 (Corbett) Residential Tenancies and Required Notices re Foreclosure Status of Property - This bill requires a form cover sheet to be attached to any eviction notice provided to tenants whenever the notice is served within one year after a foreclosure sale. The form cover sheet would be titled "Notice to Any Renters Living At [street address of the unit]" and must be in at least 12-point type. Among other things, the sheet would state that the tenants should respond to any court papers, even if they are not named in them. The cover sheet must also state that tenants generally have the right to stay in the rental unit for 90 days and may have the right to stay longer if they have a lease, as well as provide information regarding legal assistance. **Position:** Watch **Status:** Assembly Desk

(7) AB 1927 (Knight) C.A.R.-Sponsored Right-to-Rent Legislation for 2010 - Over the last few years, C.A.R. members noticed a trend among some homeowner associations to adopt restrictions that limit the ability of unit owners to rent their dwellings in common interest developments (CID's). In 2008 C.A.R. sponsored AB 2259 (Mullin) to address this issue. The bill passed the legislature nearly unanimously, with only 1 "no" vote in the Senate and none in the Assembly, but was vetoed by the Governor. The Veto Message stated that owners of a unit in a CID agreed, when they purchased their unit, to abide by rules of the HOA and understood that any decision to change those rules would be governed by the HOA

voting process. C.A.R. is sponsoring AB 1927 to re-visit this right-to-rent issue and address concerns raised by the Governor in his AB 2259 veto message. AB 1927 requires two-thirds of the unit owners in a CID to approve, by written ballot, any amendment of the governing documents that would prohibit owners from renting or leasing their unit. Governance provisions with different written ballot voting requirements in place as of AB 1927's date of introduction (2-17-2010) would be "grandfathered" by this legislation. **Status:** Senate Transportation and Housing Committee

(8) AB 2016 (Torres) CIDs and Notices of Default- Sponsored by the Community Associations Institute (CAI), this bill seeks to clarify the intent of SB 1511 (Chapter 527, Stats. of 2008), which permitted a homeowners association (HOA) to record a request, in the event of a foreclosure on a separate interest within the HOA, that the lender or trustee mail to the HOA a copy of the trustee's deed upon sale. The purpose of this 2008 bill: To ensure that the HOA knows the name and address of the successor in interest as soon as possible when a separate interest in the HOA is foreclosed upon and the property is subsequently sold. Although the purpose of SB 1511 was to permit an HOA to record a single request for all of its separate interests, some county recorders rejected HOA filings on the grounds that other provisions of existing law require a separate request for each separate property. This bill seeks to clarify that an association's single recorded request applies to all of the separate interests within the association, and the request when filed only needs to include the name of the association. **Position:** Watch **Status:** Senate Judiciary Committee

(9) SB 1252 (Corbett) Housing Discrimination Guidelines and Federal Parity - Federal housing programs have renter eligibility criteria requiring that at least one member of the household be 62 years old or older. This type of requirement currently violates California law. Additionally, businesses may not discriminate in the sale or rental of housing accommodations based on age, with the exception of establishments which are designed to accommodate the unique social and physical

needs of senior citizens. C.A.R. supports SB 1252 which would reconcile differences between federal law and state law by adding source of income to the list of protected classes in existing law. The bill would also clarify that admission preferences based on age, imposed in connection with a federally-approved housing program, do not constitute age discrimination in housing under state law. **Position:** Support **Status:** Senate Floor

(10) AB 2207 (Fong) Utilities and Restrictions on Termination of Service - Requires utilities to allow a customer who is subject to termination of service for nonpayment of a delinquent bill to enter into a bill payment plan. Also requires a customer service representative to inform the customer that he or she has a right to arrange a bill payment plan extending the period for payment of the bill a minimum of 3 months, and possibly exceeding 12 months. The customer is held responsible for any charges that accrue to the service account after entering into a bill payment plan. The bill also permits a utility to file with the California Public Utilities Commission (CPUC) a Tier 1 advice letter to open a memorandum account to track any significant additional costs associated with complying with the requirement to offer a bill payment plan. Position: Watch Status: Senate Rules Committee

(11) AB 2439 (Nestande) Subletting of Mobilehome Park/Manufactured Housing Community Spaces - Existing law permits mobile home owners to rent or sublease their home in the event of a medical emergency. Current law also allows mobile home park management to require its approval of the prospective tenant, limits the term of the sublease to no more than 12 months and prohibits homeowners from charging more then an amount necessary to cover space rent, utilities and loan payments. AB 2439 would expand this rental provisions to allow a mobile home owners to rent or sublease their home for any reason. The bill also exempts subleased mobile homes from rent control. C.A.R. supports AB 2439 because it affords homeowners greater flexibility to rent their homes during difficult financial periods. **Position:** Support **Status:** Assembly Housing & Community Development Committee.

TSBOR Property Management Committee

Report on Litigation – Property Management Co. Fed ADA Compliance

17 June 2010

Big Bear/Mammoth Lakes, CA

The Big Bear Association of REALTORS®, along with two small local professional property management companies (Gray Squirrel Resort and Village Reservation Service), are currently engaged in a lawsuit that was brought against these Prop. Management Co.s by one Ron O'Byrne (represented by T. Matthew Phillips, Esq., -Las Vegas, NV). Initially, the City of Big Bear was also named in the suit, but has reportedly been dismissed from the cause of action by the judge. The cause of action is claimed to be violation of the federal "Americans with Disabilities Act" (A.D.A.) of 1990 (Public Law 101-336; 104 Stat. 327). The crux of the plaintiff's argument appears to revolve around the federal requirement that "places of public accommodation" must provide "full and equal" access to the disabled. The plaintiff purports that "vacation rental" properties (privately owned residential properties offered for rental of thirty days or less) are "places of public accommodation", and as such are required to bring their dwelling up to (into) compliance with ADA access provisions. The property management companies in question did not have a fully ADA-compliant unit available for a weekend rental, which set the stage for the current litigation. Because ADA is a federal statute, the case was brought forward in Federal District Court (U.S. District Court, Central District, California). As such, the case (# 2.09-cv-08406-DMG-DTB) has potential ramifications well beyond the City of Big Bear, San Bernardino County, or even California for that matter; the outcome could be cited in future cases throughout the United States.

The Big Bear BOR characterizes the situation thusly: "Since December, 2009, we have been fighting a lawsuit that would require any home used as a private home rental (overnight cabin rental) to comply with

the American Disabilities Act (ADA). Since there is no requirement for a private home to meet ADA standards, the majority of private home rentals (PHRs) do not meet ADA guidelines. If this lawsuit prevails it will essentially eliminate the rights of property owners to rent out their private homes on an overnight / vacation basis - in Big Bear and everywhere else as well. Big Bear Lake is a resort community in the San Bernardino Mountains of Southern California. Our Real Estate market and general economy depends heavily upon the revenue generated by cabin rentals and the vacationers who rent them." To-date reportedly some $100,000.oo has been spent in defense of the lawsuit. The Big Bear BOR has used its IMPAC funds, private contributions, and state-level (CAR) IMPAC funds to wage this battle. The fight is ongoing, with CAR and your local Board (TSBOR) keeping close tabs on the progress of the case. The current action pending consideration by the Court is the defendants request for a Summary Judgment. If granted, this would essentially be a finding by the Court that the plaintiff cannot prevail based on the facts in evidence, and the case would be dismissed. If this request for summary judgment is not awarded to the defendants, then the matter will be set for trial. Both sides (property management Co.s and ADA complainant) are said to have stated that if they do not prevail in the trial court, each is prepared to initiate an appeal at the appropriate juncture. In short, a costly and protracted legal battle is all but assured. Given the potential impact this case could have on your ability to conduct business in the Tahoe-Truckee region, TSBOR will continue to monitor this issue closely, and update you as events warrant.

TSBOR Property Management Committee

Update on Utilities interface with Prop. Managers

17 June 2010

Member-initiated request for assistance

TSBOR's advocate received a request from a professional property management group to look into how various utilities, specifically Southwest Gas Co. and Sierra Pacific Power Co.) handle transfers of billing party requests when executed by a prop. manager retained by the owner to address such matters. At issue were inconsistencies in how such requests were handled by a utility's representative when such requests for service/billing changes were initiated. Timing, procedural matters, and costs were all discussed. The advocate took on the information collection and possible remedies tasking, to be reported back to the TSBOR Property Management Committee.

The advocate also reported on this emerging issue at a recent TSBOR Local Government Relations Committee meeting, asking if committee members had any additional info, insights, or issues that should be included. Interestingly, the LGR Committee noted that another cost center during such transfers of service can be found in the propane service sector as well. Something along the lines of a $300.oo charge is imposed by the propane company to execute a change in billing order. It was initially characterized as a provision in law, but later was referenced as a company policy as opposed to a state statute. With this information in hand, the tasking took on a third component.

Sierra Pacific Power and Southwest Gas have both been contacted. Prior to initiating contact, significant background research was performed so as to better inform the discussion, and possibly secure a remedy/agreement or understanding as to how such transfer requests would be addressed in the future. We were/are looking to achieve consistence, ease of access and execution, and cost containment.

Both of the above-mentioned utilities have some provisions in-place to address the professional property managers standing in such service change orders,

such as a Landlord Agreement. The foundation for a more functional system is already in place, and at present we (TSBOR) are seeking to build upon this to develop a program that better addresses the objectives as outlined in the preceding paragraph. The outlook is favorable. More definitive proposals with associated documents should be available for your review within a few weeks time.

Investigation into the propane transfer of service fee matter has just begun. There is nothing of substance to report on this aspect of the three issues at this juncture. It is hoped that full factual understanding of the issue in play, and possible remedies will be ripe for Committee consideration and feedback within a week's time.

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