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New Laws 2008

Q&A
ASK AN ATTORNEY

Q. *Can a seller of real property be held liable for fraudulent misrepresentation to a subsequent buyer?*

A. Yes. California law permits a buyer to sue a former owner of the property for fraudulent misrepresentation. One case law example is *Geernaert v. Mitchell* (1995). The 1st Circuit Court of Appeal held that the seller who makes a fraudulent misrepresentation is subject to liability to a subsequent buyer who acts in justifiable reliance on the misrepresentation, even though the misrepresentation was not made directly to the subsequent buyer but the seller intends or has reason to expect that the misrepresentation will be repeated or its substance will be communicated to a subsequent buyer, and that the information will influence the subsequent buyer's conduct in the transaction. The *Barnhouse v. City of Pinole* (1982) case held a developer liable to a subsequent buyer of the property. This rule has been referred to as "indirect deception."

A number of new laws signed by the governor in late 2007 will affect REALTORS® and their clients in 2008. Read on for a quick summary of several of the new laws.

Condo Conversions (AB 763):

Under this new law, if the developer does not provide notice to any prospective tenant, after the approval of the final map of a condominium conversion, that the property may later be sold as a separate unit, the developer must pay each prospective tenant, who actually became a tenant, the following: (1) actual moving expenses not to exceed $1,100; and (2) the first month's rent on the tenant's subsequent rental unit immediately after moving, not to exceed $1,100.

Agendas for HOA Meetings (SB 528):

Common interest developments (CIDs) that are managed by a homeowners' association (HOA) are required to have open meetings permitting any member of the CID to attend. However, certain topics–such as contracts with third-party vendors, litigation issues, and discipline of current members–can be discussed in closed executive sessions. The HOA is required to provide a notice for the open meeting indicating the time and place at least four days in advance of the meeting.

Under this new law, the meeting notices must also include an agenda. Generally, the HOA can discuss only those items on the agenda, unless the meeting is an emergency meeting. The exceptions to this limitation are as follows:

- an owner of a unit in the CID who is not a board member speaks on items not on the agenda;
- board members (or an agent of the board such as a managing agent) address questions or issues raised by an owner who is a non-board member;
- board members provide resources for factual information to agents of the board;
- board members request a report at a future meeting from an agent of the board;
- board members direct an agent of the board to perform administrative tasks as part of CID requirements; and
- the board's two-thirds majority vote concludes an issue is an emergency topic.

Discrimination by Landlord Based on Immigration or Citizenship (AB 976):

Under this new law, landlords of residential real property cannot use immigration or citizenship as a criterion when dealing with existing or prospective tenants (or any occupant). Specifically, landlords and agents of the landlord may not make any inquiry into immigration or citizenship status; nor can the landlord require any prospective tenant or occupant to make a statement about immigration or citizenship status.

The statute also prohibits local governments from adopting any ordinance or regulation requiring a landlord (or

any agent of the landlord) of residential real property to: inquire; compile; disclose; report; provide information on; refuse to offer accommodations; or otherwise take any action based on the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant.

However, this law does not prohibit the landlord from requesting information or documentation to verify the identity or the financial qualifications of a tenant or occupant.

Real Estate Licensee Discipline (AB 840):

Prior to passage of this statute, the Department of Real Estate (DRE) had the authority to suspend or revoke a license, or to deny the application for a license, for various reasons stated in California Business & Professions Code §§ 10176 and 10177. One of those reasons is "a felony or a crime involving moral turpitude." The California Court of Appeals in *Petropoulos* v. *Department of Real Estate* (2006) (see the April 2007 issue of this magazine) held that a misdemeanor must also involve "moral turpitude" in order for the DRE to be able to take disciplinary action.

Under this new law, the "moral turpitude" element has been eliminated and replaced with a crime "substantially related to the qualifications, functions, or duties of a real estate agent." A corresponding change has also been made for mineral, oil, and gas licensees regulated by the DRE.

In other words, the DRE may now take disciplinary action if someone is convicted of, pleads guilty to, or pleads nolo contendere to a felony or a misdemeanor so long as the felony or misdemeanor is substantially related to the qualifications, functions, or duties of a real estate licensee. ◆

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