

# New 2011 State and Federal Laws

**Q:** I'm a landlord, and I heard that I now need to give an IRS Form 1099 to my plumber who works on my rental properties. Is that true?

**A:** Yes, if you pay your plumber \$600 or more over the year for the work on your rental properties. Under one provision of a new federal law, Section 2101(h) of H.R. 5297 (Small Business Jobs and Credit Act of 2010) that went into effect Jan. 1, 2011, any person who receives rental income must provide an IRS Form 1099 for all aggregate annual payments of \$600 or more made to a service provider such as a plumber, carpenter, gardener, or handyman. This new law applies to both residential and commercial property. In previous years, only real estate licensees doing property management were required to file the 1099, not property owners. Congress has extended this requirement to "a person receiving rental income from real estate."

**A**s usual, the California and federal legislatures have been very busy passing laws for 2011, including several emergency legislative efforts that went into effect last year. Read on for a brief summary of some of the new California laws. Additional state laws, as well as some of the federal laws, will be summarized in the next issue.

**Advance Fee Clarification:** AB 1762 (effective Jan. 1, 2011). An "advance fee"—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—is generally prohibited. Under some circumstances, the DRE will approve an advance fee contract.

This new law carves out certain services from the definition of an advance fee. In particular, it exempts limited service contracts for stand-alone services. This means a real estate 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 those listed in subdivision (a), (b), or (c) of California Business and Professions Code § 10131.

**Carbon Monoxide Poisoning Prevention Act of 2010:** SB 183 (effective Jan. 1, 2011). Actually, this new law not only creates the need for homeowners and landlords to eventually install carbon monoxide detection devices, but it also eliminates the need for separate smoke detector and water-heater bracing compliance forms when a seller uses the

TDS. This law revises the TDS and MHTDS forms to include provisions that the seller is in compliance with the smoke detector and water-heater bracing laws (eliminating the need for a separate disclosure form, C.A.R. form WHSD, except when the seller is exempt from providing the transfer disclosure statement). The TDS and MHTDS now contain a disclosure regarding carbon monoxide detection devices.

SB 183 requires a carbon monoxide detection device to be installed in any existing dwelling "intended for human occupancy" that has a fossil fuel burning heater or appliance, fireplace, or attached garage. These devices must be installed in existing single-family dwelling units on or before July 1, 2011, and in all other dwellings on or before Jan. 1, 2013. For general information regarding carbon monoxide, go to [www.epa.gov/iaq/co.html](http://www.epa.gov/iaq/co.html). Manufacturer's instructions in the package provide instructions regarding proper placement of the devices.

**Home Energy Rating System (HERS):** AB 1809 (effective Jan. 1, 2011). Although the California legislature passed a law many years ago mandating the creation of such a booklet, the Home Energy Rating System (HERS) booklet has not been available until 2010. There is no mandatory disclosure requirement of home energy ratings. Providing the HERS booklet to the buyer is optional. This booklet is now incorporated into the C.A.R. Combined Hazards booklet. The new law, AB 1809, does authorize a home inspection to include, if requested by the client, a HERS energy audit. For information about the California Energy Commission's regulations, standards, and approved HERS providers, go to [www.energy.ca.gov/HERS/index.html](http://www.energy.ca.gov/HERS/index.html).

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was finishing high school—Rhode Island. “We were corporate gypsies,” he laughs. “It provided a good background for relocation work.”

And for building a successful real estate business. Along the way, Phipps earned an array of professional designations and certifications—Graduate, REALTOR® Institute (GRI), Certified Residential Specialist (CRS), Accredited Buyer Representative (ABR), GREEN, and e-PRO. Elected president of the Rhode Island Association of REALTORS® and appointed a NAR director in 2000, Phipps rapidly established his credentials as a can-do guy whose intelligence and strategic thinking were highly prized by NAR leadership and the rank and file, says one former NAR leader.

“Ron is probably one of the most intellectual and well-read people I know,” says 2001 NAR President Richard Mendenhall, a Missourian who first met Phipps when both served on a Presidential Advisory Group (PAG) on Virtual Office Web Sites. “When I was in graduate school back in the early ’70s, there was a study that said that highly intelligent people aren’t necessarily creative, but highly creative people also tend to have high intelligence. Ron has both. He has the ability to think of things that can be done that others might not think of. At the same time, he’s not in the clouds; he’s very, very down to earth. He is so in touch with the membership of NAR because he is a practicing REALTOR® who is doing exactly what they are doing every day.”

For example, Phipps, like the majority of his peers, is using social media to communicate with his network. Check out Phipps’ Facebook page and you’ll find he’s a “voracious student of life” and a politic pragmatist who loves people, discussion, and reflection—details you won’t find in his official biography. Follow the chatter on his wall, or his regular blog posts, and you’ll discover that he strives to pack as much living as possible into every day, but struggles—as many do—to maintain a healthy balance between work, his volunteer leadership responsibilities (he’s on the road 15 days a month), athletic pursuits (he is a triath-

lete and has competed in San Francisco’s “Escape from Alcatraz” swim), and, most important, his family. A recent post reflects this daily struggle:

*Productive day: Newport early; Providence NPR interview; four showings; drafted a sales agreement; entered a listing; new price on Warwick Neck townhouse; and a gentle 5 mile run. All before dinner.*

“When you have kids who have grown up with Facebook, you grow up with them on Facebook,” he laughs. “The cool thing with social media is that your reach can be really broad.” Still, he acknowledges that it can be a consumer of valuable time. “I use it to convey certain messages—to let people know that business is happening and that you need to have a balanced life. I love to work, and I always try to squeeze 18 hours of waking time into each 24-hour day. But I’m working hard on the balance, and I think that’s the message.”

Working alongside his family, especially his sons, has taught Ron Phipps some important lessons at the junction where experience and technology meet. “Even though I have more experience, that experience doesn’t necessarily replace innovation,” he explains, noting that “the average seller is in their 40s and the average buyer is in their 30s, so there’s a generational gap. The average REALTOR® is 52 or 53, so we need to teach our membership how to minimize that language barrier.”

Turning philosophical for a moment, he contemplates other important lessons learned.

“They also remind me that the arrow of time moves very quickly,” says Phipps, who a year ago became a grandfather. “We don’t know how many chapters are left to be written in the book. My hope is that as REALTORS® we can look back at this time, and at this great recession, and see that we got through it by standing side-by-side. I think that’s what this organization encourages, fosters, and facilitates.” ♦

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## Legal

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**Adverse Possession:** AB 1684 (effective Jan. 1, 2011). California Code of Civil Procedure § 325 requires a person who is claiming a right to title in a property by adverse possession to show that the property has been occupied and claimed for five years continuously, and to have paid all the state, county, or municipal taxes levied on the land. AB 1684 adds the condition that the tax must have been paid in a timely manner as established by certified records of the county tax collector.

**Foreclosure Sale Purchaser:** SB 1427 (effective Jan. 1, 2011). The person who purchases property at a foreclosure or trustee’s sale must “maintain” vacant residential real property. “Failure to maintain” means failure to care for the exterior of the property, including but not limited to permitting excessive foliage growth that diminishes the value of the surrounding properties, failure to take action to prevent trespassers or squatters from remaining on the property, or failure to take action to prevent mosquito larvae from growing in standing water, or other conditions that create a public nuisance. Failure to maintain the property has civil penalties of up to \$1,000 per day, per violation.

SB 1427 adds the requirement that the governmental entity is to provide the purchaser at a foreclosure or trustee’s sale with a notice of the violation and an opportunity to correct it before imposing the penalty. However, the notice requirement won’t apply if the condition of the property threatens public health or safety. Any assessment or lien to recover the costs of governmental nuisance abatement measures cannot exceed the actual and reasonable costs of the abatement. ♦

*Sonia M. Younglove, Esq., is C.A.R. senior counsel. She will be reviewing additional state laws, as well as some of the new federal laws, in the March/April 2011 issue. For more legal news, visit [www.car.org/legal](http://www.car.org/legal).*