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EARLELAW NEWSLETTER

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New California Real Estate-Related Laws for 2009-2010

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Real Estate Loans

* **Mortgage Fraud Becomes a State Crime:**
As of January 1, 2010, anyone who deliberately makes any misrepresentation or omission during the mortgage lending process with the intent of influencing that process will be guilty of mortgage fraud under California law. A violation of this law is a crime punishable by one-year imprisonment. Under existing federal law, loan fraud against a federally-insured lender is a crime punishable by a \$1 million fine, plus one-year imprisonment (18 U.S.C. section 1014). Senate Bill 239.

* **No Advance Fee Loan Modifications:**
Starting October 11, 2009, a new law prohibits anyone from claiming any compensation for negotiating or arranging a loan modification until after that person fully performs each and every service as promised. Aimed at combating loan modification scams, this ban applies to advance fees collected by real estate agents and attorneys. The ban expires on January 1, 2013. Also effective immediately, anyone who negotiates or arranges a loan modification must give the borrower a specified notice that paying a third-party for loan modification services is unnecessary. These new requirements apply to mortgage loans secured by residential property up to four units, with certain exceptions for lenders and loan servicers acting on their own behalf. Violations can be penalized by, among other things, a \$10,000 fine plus one-year imprisonment for individuals, or a \$50,000 fine for businesses. Real estate brokers with existing Advance Fee Loan Modification Agreements reviewed by the Department of Real Estate can no longer, as of October 11, 2009, enter into these agreements or collect advance fees. Agreements entered into and

advance fees collected before October 11, 2009 are not affected. For the DRE announcement, go to [http://www.dre.ca.gov/pdf_docs/SB94WebAnnouncement\(brokers\).pdf](http://www.dre.ca.gov/pdf_docs/SB94WebAnnouncement(brokers).pdf). Senate Bill 94.

* **Advance Fee Redefined:** Aside from loan modifications discussed above, Senate Bill 94 also broadens the definition of an advance fee which must be specially handled by real estate agents, such as by submitting an advance fee agreement for Department of Real Estate review and placing funds received into a broker's trust account. Under the new definition that took effect on October 11, 2009, agents cannot separate advance fees or services into components to avoid the advance fee requirements. More specifically, an advance fee is now defined as "a fee, regardless of the form, claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed." Exceptions include advertisements in newspapers of general circulation, tenant prescreening fees, and tenant security deposits. Senate Bill 94.

* **Mortgage Loan Originators Regulated:**
Beginning in December 2010, a real estate licensee acting as mortgage loan originator must obtain a license endorsement, which entails education, written testing, and reporting requirements. A mortgage loan originator is anyone who, for compensation or gain, takes a mortgage loan application or offers or negotiates terms of a mortgage loan for residential property containing one-to-four units. Exemptions include real estate agents who only engage in selling, buying, or leasing activities, unless compensated by a lender or mortgage loan originator. This license endorsement requirement comports with the creation

of a Nationwide Mortgage Licensing System and Registry under recent federal law. Finance lenders and residential mortgage lenders under the Department of Corporation must also register in the nationwide system. Additionally, if a real estate broker or the broker's salesperson makes, arranges, or services loans secured by residential property containing one-to-four units, the broker must notify the Department of Real Estate by January 31, 2010 or within 30 days of commencing such loan activity, whichever is later. Senate Bill 36.

* **Mortgage Broker Activities Restricted:** Commencing January 1, 2010, a mortgage broker will be deemed a fiduciary with a duty to place the borrower's economic interest above his or her own. This fiduciary duty pertains to a mortgage broker who makes loans secured by residential property of one-to-four units. Also starting January 1, 2010, the law will strictly regulate higher-priced mortgage loans, as defined, including requiring upfront disclosure if a mortgage broker only arranges higher-priced mortgage loans, restricting prepayment penalties and yield spread premiums, prohibiting negative amortization, and prohibiting mortgage brokers from steering borrowers to higher-cost loans. Assembly Bill 260.

* **Reverse Mortgages:** Provides new disclosure and other requirements under the Reverse Mortgage Elder Protection Act (Assembly Bill 329).

Appraisal

* **Appraisal Industry Oversight:** The Office of Real Estate Appraisers (OREA) will have regulatory oversight of appraisal management companies, which gained prominence after Fannie Mae and Freddie Mac adopted the Home Valuation Code of Conduct (HVCC). Starting January 1, 2010, the OREA must implement a registration system for appraisal management companies, including fingerprinting and background checks for persons with operational authority, as defined. On a separate note, this law clarifies what conduct constitutes improperly influencing the appraisal process by anyone with an interest in a real estate transaction. Such prohibited conduct includes withholding or threatening to withhold an appraisal fee, withholding or threatening to withhold future appraisal business, and promising future business, promotions, or compensation. Senate Bill 237.

Title and Escrow

* **REO Buyer Can Select Escrow and Title:** Effective October 11, 2009, the Buyer's Choice Act prohibits an REO lender selling residential property up to four units from directly or indirectly requiring the buyer to purchase escrow services or title insurance from any particular company. However, a buyer who has received written notice of the right to make an independent selection, may agree to the REO lender's escrow or title recommendations. An REO lender that violates this law can be held liable for three times the charges the buyer incurred, whereas a violation by the seller's agent may be subject to license disciplinary action. This law expires on January 1, 2015. Assembly Bill 957.

Landlord-Tenant

* **60-Day Notice to Terminate Tenants Extended:** Existing law generally requiring a 60-day notice to terminate a month-to-month residential tenant, which was originally slated to sunset on January 1, 2010, has been extended indefinitely. A 30-day notice to terminate is sufficient if the tenant has lived in the property for less than one year, or if the landlord has sold the property and certain requirements are met as specified in our standard-form Notice of Termination of Tenancy (C.A.R. Form NTT). The 60-day notice requirement does not apply to fixed-term leases, such as a one-year lease. Other laws address tenants in properties foreclosed upon. Senate Bill 290.

* **Landlord Utilities:** Requires certain utility companies to notify residential tenants of landlord's past due accounts and upcoming shutoffs, and allows tenants to begin service in their own names and deduct payment from rent (Senate Bill 120).

* **Disposal of Records:** Shields from liability businesses that dispose of abandoned records containing personal information by shredding or erasing, and gives a legal presumption that a tenant owns records remaining on the premises after tenancy termination (Assembly Bill 1094).

* **Mobilehome Parks:** Prohibits management from requiring a homeowner to use a specific broker or dealer when replacing a mobilehome or manufactured home on a space in a mobilehome park (Senate Bill 804).

Premises Liability and Asset Protection

* **Swimming Pools: Requires** anti-entrapment devices for owners of apartment buildings, condominium complexes, and others, including the filing of compliance statements (Assembly Bill 1020).

* **Increase in Homestead Exemptions:** Effective January 1, 2010, the homestead exemption protecting a homeowner's equity from judgment creditors has been increased by \$25,000 across the board to \$75,000 for individuals, \$100,000 for married couples or family units, as specified, and \$175,000 for persons over 65 years, disabled, or over 55 years with limited income as specified. Assembly Bill 1046.

Construction and Contracting

* **Mechanic's Liens:** Provides new procedures, including service of a Notice of Mechanic's Lien to the owner and mandatory recording of a lis pendens when enforcing a mechanic's lien (Assembly Bill 457).

* **Plumbing Fixtures:** Provides new disclosure and other requirements for water-conserving plumbing fixtures effective on or after January 1, 2014 (Senate Bill 407).

* **Low Water-Using Plants:** Renders unenforceable any HOA provision prohibiting landscaping with water-efficient plants in common interest developments (Assembly Bill 1061).

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of business law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has served as a Judge Pro Tempore for the Santa Clara Superior Court, and is also a licensed Real Estate Broker.

Mr. Earle received his law degree from the Santa Clara University School of Law, where he served as an Editor of the school's Law Review, and where he received awards for academic excellence. He received his undergraduate degree, with honors, in business administration from the University of La Verne.

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