

New Laws for 2008
by Robert J. Sheppard, Esq.

California landlord-tenant law and real estate law field is constantly evolving. The past year has seen the introduction of many new laws passed by the California State legislature. Here are some of the more notable ones:

Virginia Graeme Baker Pool and Spa Safety Act

The Act specifies that on or after December 19, 2008, "public pools and spas", including those which are open to residents of an apartment building or complex, residential development or a multi-family residential area must have appropriate safety drain covers and in certain circumstances, anti-entrapment systems.

Under federal law, owners are required to comply with the following guidelines:

1. All drain covers, as of December 19, 2008, must conform to the American National Standard ASME/ANSI A112.19.8 compliant drain covers. (*The new approved drain covers will have a visibly marked symbol of a swimmer which may include the following text: "ASME A112.19.8-2007" with manufacturer and model.*)
2. Pools with a single main drain must have at least one of the following to prevent entrapment: a safety vacuum release system; a suction-limiting vent system with a tamper-resistant atmospheric opening; a gravity drainage system that utilizes a collector tank; automatic pump shut-off system and/or a drain disablement.

Violation of the act carries a maximum penalty of \$1.825 million and could result in criminal penalties including fines or imprisonment under Section 21 of the Consumer Product Safety Act.

It is strongly recommended that all apartment owners check their pool drains and with their pool professional to make sure they are in compliance **before December 19, 2008.** A copy of this law and its requirements may be found at <http://www.apsp.org/32/index.aspx> and its interpretation with diagrams can be viewed at http://www.recreonics.com/fyi/cpsc_pool_safety_act_interpretation.pdf.

No Discrimination by Landlords Based on Immigration or Citizenship

Under this new law, residential landlords cannot use immigration or citizenship status as criteria for prospective tenants or prospective occupants. Specifically, landlords and agents of landlords may not make any inquiry into immigration or citizenship status.

Nuisance as Ground for Eviction Now to Include Illegal Weapons

Nuisance by a tenant now includes possession of illegal weapons or ammunition along with the use of the property in furtherance of that offense. Civil Code 3845 allows the City Attorney to require the landlord to commence an eviction lawsuit based on "...*illegal conduct involving an unlawful weapons or ammunition purpose on real property...*" Prior law allowed for such a procedure for illegal drug use. (This law is set

to expire January 1, 2010.) A landlord may also evict with a 3-Day Notice to Vacate based on nuisance under Code of Civil Procedure 1161(4) using possession of illegal weapons or ammunition as a basis of the eviction.

Notice to Tenants When There is a Planned Conversion to Condominiums

Monetary penalties will be imposed on property developers if notices are not given to tenants when converting properties into common interest developments/condos. If the developer fails to provide notice to a prospective tenant (after the approval of the final map), the developer must pay money damages to each prospective tenant who actually becomes a tenant of a subsequently subdivided property.

60 Day Notice Law for Foreclosure Affected Tenants

On July 8, 2008, Code of Civil Procedure section 116.1b was signed into law. This law provides that a tenant or subtenant in possession of rental housing at the time of a foreclosure sale is now entitled to a 60 day notice instead of 30 days under old law. This will not apply if any party on the note remains in the property as a tenant, subtenant, or occupant. This law expires on 12/31/2012.

Notice to Tenants Required in Home Being Foreclosed On

Civil Code Section 2924.8 requires the following notice to be placed on residential property being sold at foreclosure: *“Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have.”* This law only applies to loans secured by residential real property and if the billing address for the mortgage note is different than the property address. This law expires on 12/31/2012.

Loan Regulation/Mortgage Loan Brokerage Issues

This new law increases regulations regarding subprime and other non-traditional mortgages. Various agencies governing residential loans will have new authority to adopt stricter guidelines. Also, principals who make eight or more loans of their own money within a calendar year without using a real estate broker must become licensed with the Department of Real Estate.

Property Tax Reassessment Exemption Applied Retroactively for Domestic Partners

This new law retroactively applies the exemption from reassessment for transfers of real property between registered domestic partners back through January 1, 2001. However, no property tax refunds will be provided for such reassessment reversals.

Regulation of Real Estate Appraisers

Under this new law, the compensation of an appraiser cannot be based on the valuation of a property for the following types of transactions: *sales, purchases, transfers, financing or development*. The new law also prohibits parties with an interest in the real estate transaction from improperly influencing a real estate appraiser.

Common Interest Development Managers

Current law requires common interest development (CID) managers to meet certain requirements in order to be a “certified CID manager” and to provide certain information annually to the board of directors of the CID. This new law extends these provisions through January 1, 2012 and requires that qualifications as a “certified CID manager” include new education elements for management skills.

Agenda for Home Owner Association (HOA) Meetings

Under this new law, HOA meeting notices must include an agenda for the meeting. Generally, the HOA can only discuss items on the agenda at its meetings, unless the meeting is an emergency meeting.

Automatic Homestead Law

Under this new law, the “residential exemption” (also known as the “automatic homestead”) applies even though the homeowner does not live in the property if either a separated spouse or a former spouse resides in the property or exercises control over possession of the property.

Regulations Regarding Notary Public

This new law affects notary publics. The identity of the person making the acknowledgment or taking an oath or affirmation, must be based on “satisfactory evidence” and no longer on “personal knowledge.” The certificate of acknowledgement must be executed under penalty of perjury. A “Power of Attorney” document now requires a thumbprint.

Restrictions on Cellular Telephone Usage in Motor Vehicles

Effective July 1, 2008, use of a cellular phone when driving a motor vehicle is prohibited unless the phone is designed and configured to allow hands-free listening and talking and is used in that manner. This law will be in California Vehicle Code §§12810.3 and 23123.

[Editor’s Note: AOA has recently learned of a new required procedure for rental properties in the Orchard Dale Water District (Whittier, CA). Property owners must now co-sign for their new tenants to initiate water service. No co-sign – no service. It is as follows:

Special Owner/Tenant Service Affidavit Form

Applications for water service to residential rental property require service to be provided on account of the property owner or alternatively, upon co-application by both the property owner and the tenant of the premises that will be served by the metered connection. Tenants/Owners may be required to file an affidavit with the

District, signed by the owner assuming responsibility for any unpaid water charges resulting from the actuation of the service by the tenant. The form is available at the District office or may be obtained online at www.odwd.org.

AOA recommends obtaining the maximum allowable security deposit to recover any possible future losses of unpaid water bills belonging to tenants who vacated their property.]

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