



# SANTA CRUZ ASSOCIATION OF REALTORS® LEGISLATIVE WATCH

## COUNTY OF SANTA CRUZ

**To Dump or Not to Dump:** At the February 15, 2005, Board of Supervisors' meeting, an update was provided regarding the county's Integrated Waste Management Local Task Force's recent decision to abandon their search for a new landfill site in the county, due to opposition by the public. Further, the Department of Public Works outlined a short term and long term plan for resource recovery and waste management due to the expected closure of the Buena Vista Landfill in approximately 2020. Currently, Santa Cruz County is managing recycling to the extent that the county has exceeded the annual mandate of AB939 to reduce the amount of refuse to landfills by a minimum of 50 percent. Still, new programs regarding food waste composting, construction and demolition recycling, and a green building center are coming online now. Public Works is also in the process of considering various plans such as a Landfill Materials Ban Ordinance on items such as appliances, tires, household hazardous wastes, televisions and computer monitors; a Mandatory Refuse/Recycling Collection; or a Regional Compost Facility and other recycling programs. County Public Works' staff has asked that all city representatives respond back to the task force in April 2005 as to the types of programs and levels of participation each jurisdiction wants in developing new diversion of waste processing facilities in the future, such as a regional compost facility or waste conversion facility. The Board of Supervisors needs public input, and further meetings and workshops will be held in the months ahead. Go to the county's Public Works web site for further information: [www.dpw.co.santa-cruz.ca.us](http://www.dpw.co.santa-cruz.ca.us). **"Watch!"**

**Sale and Resale of Measure J Units:** The Measure J (inclusionary) affordable housing program began in the late 1970s. There are approximately 380 existing ownership units in the unincorporated area of the county, of which, on average, approximately 10 to 20 units per year are either sold initially by the project developer to an eligible purchaser or resold from an owner to an eligible purchaser. Currently, the initial sale and resale of Measure J units are primarily a private transaction between the buyer and the seller. The county mandates that the buyer's income be certified according to income guidelines set by the county; that the buyer is a first time homebuyer who has resided in the county for 60 days prior to eligibility certification;

that the household does not exceed the appropriate number of residents; and that escrow instructions are handled by the county to insure that mandates have been fulfilled.

County staff considered two new options to the sale and resale of Measure J:

- 1) the County determines who the buyer will be;
- 2) the County creates a list of interested buyers to help facilitate the transaction without assuming ultimate responsibility for the transaction.

Ultimately, in a split decision, the board voted to implement the second alternative: to create outreach to the public of the availability of units and to come back in one year with an evaluation. **"Watch!"**

## CITY OF SANTA CRUZ

**Hotel and Conference Center Update:** The proposed Coast Hotel project on the beach in Santa Cruz has continued to bring accelerated debate over the project. (Check out last month's publication of the *Legislative Watch* for details.) The split decision by the City Council to move forward with the application for expansion of the existing site on West Cliff Drive has spurred a group of citizens to gather signatures before a March 10, 2005, deadline, in an attempt to place the project on the ballot for City of Santa Cruz residents. In opposition to "ballot box planning," others have joined a coalition favoring the Hotel Conference Center, arguing revenues generated from the project and increased jobs would help to alleviate the city's growing financial crises.

As we go to press, City Manager, Dick Wilson, will be visiting the Association's Local Government Relations committee to provide further insight into an ever growing controversy by the public. **"Watch!"**

## OVERVIEW CAR MEETINGS, JANUARY 2005

This year, CAR's January meetings were held in Monterey and provided information on legislative successes, issues of concern to members, and a glimpse of CAR's position on bills that will be forthcoming this coming year. Some 5,000 bills will come before the state legislature, and of these, CAR lobbyists will have to review as many as 1,500 real estate related bills. The actual bills



will be numbered late this month, and the process will begin. That process will place considerations on certain real estate related bills before the CAR meetings at Legislative Days in Sacramento in June. The bills will be analyzed by CAR lobbyists, and policy positions will be delivered for discussion and debate by CAR Directors. The following are some of the issues that CAR will be lobbying in the year ahead:

- 1) Homeowner Associations oversight;
- 2) Efforts to establish federal guidelines for any wireless directory assistance for cellular subscriber's telephone, an opt-in requirement, and the right to opt-out without cost;
- 3) Regarding housing opportunities, CAR will support legislation that proactively eliminates the NIMBY (not in my backyard) tactics. CAR will also support legislation that will require cities and counties to "roll over" their unmet regional housing need allocation (RHNA) to the next housing element cycle;
- 4) The Inclusionary Zoning Task Force will create a strike force to help REALTORS® understand the policies, practices and reasoning of inclusionary zoning; to establish a resource library; to explain the legal, social, and economic arguments; and to provide a panel discussion at the September 2005 CAR Director's meeting regarding the implications of inclusionary zoning;
- 5) CAR will embark on a fact finding mission to review the consequences of old subdivisions prior to the state's implementation of the Subdivision Map Act in 1983;
- 6) With regard to property management, CAR will be opposing upcoming legislation that requires onerous and impractical remediation of methamphetamine labs on real property. CAR continues to support legislation permitting uniform enforcement and interpretation of the state's discrimination laws and oppose legislation to the contrary;
- 7) CAR will support legislation that would permit a seller to provide information, such as Social Security numbers, to escrow or another settlement provider as an alternative to providing the information directly to the buyer, as currently required by FIRPTA;
- 8) CAR is presently taking a **"Watch!"** position on AB62 (Strickland), a bill to increase the homeowners' exemption

from the existing \$7000 to 25 percent of the value. While the premise seems attractive, there are other elements of the bill that need to be analyzed;

- 9) In the Beverly Hills-Greater Los Angeles area and other areas, local government has attempted to impose stringent taxes on the commissions of brokers and agents and, in some cases, to the extent of double and triple taxation. The Business License Tax Force concluded that CAR will provide support for campaigns in local associations to defeat unfair business license taxes. The complications inherent in state legislation were not considered prudent or an appropriate response to the issue, at this time.

### STATUTORY CHANGES/ADDITIONS AFFECTING REAL ESTATE

When laws are passed by the state, citizens are affected locally, and these laws are incorporated into local statutes and standards of law affecting local citizens and the agents who represent them. The following are changes in various laws:

**Natural Hazard Disclosure Reports. AB920** has slightly modified the NHD by requiring the third party company providing the NHD to use language exactly as stated in the civil code. Also, the format changed—adding two checkboxes, and the one usually checked states that transferors and their agents acknowledge that they have exercised good faith in the selection of a third party report provider who provided the information and that it has not been verified by the transferor or agents. Beginning January 1, 2005, AB920 also required that sellers must disclose whether property is located "in or adjacent to" an industrial-use zone. Past law required disclosure that subject property was "affected" by an industrial zone. Now it requires sellers to disclose if the property is "affected by a nuisance created by" an industrial-use zone.

**AB68 Privacy Notices.** See CAR's new legal memorandum titled Online Privacy Laws Affecting REALTORS® available at [www.car.org](http://www.car.org). This bill requires operators of commercial web sites, or online services who collect personally identifiable information from California residents on a web site or online service, to post its privacy policy on its web site or online service and to comply with that policy.





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**Translation of Legal Documents.** Effective July 1, 2004, real estate licensees who negotiate consumers' personal loans secured by real property or residential lease agreements longer than thirty days and who negotiate these loans or leases in Spanish, Korean, Chinese, Vietnamese or Tagalog, must either provide translated copies of the loan documents or leases or have the consumers with whom they have been negotiating supply their own interpreters, who are at least 18 years old and fluent in English and the language in question. CAR plans to release residential lease forms in these languages. The DRE has released and made available on its web site translations of the required Mortgage Loan Disclosure Statement in five languages.

**SB115 Rental Payments in Cash.** As of January 1, 2005, landlords and their agents will be **prohibited from requiring cash as the exclusive form of rent payment or security deposits.** Cash payments may not be required in the original lease or rental agreement, or thereafter, unless the tenant has previously attempted to pay rent with a check drawn on insufficient funds, or the tenant has stopped payment on a check. In either of these cases, per a new statutory form called the "Notice of Obligation to Pay Rental or Lease Payments in Cash," the landlord may demand payment in cash for up to three months.

**SB1145 Landlord Tenant Law.** The 60 Day Notice to tenants to increase rents by more than 10 percent, the prohibition on landlords being able to discriminate against prospective tenants based on source of income, and the requirement that all residential tenants be given the option of having a pre-move out inspection from the landlord in order to tell them which items on the property need to be cleaned or repaired to avoid any deduction from their security deposit are now *permanent laws* (in the past, the above items had termination or "sunset" dates).

Currently, county clerks may not provide access to court files regarding unlawful detainer actions if the defendant prevails in the action within 60 days after the complaint has been filed. Effective January 1, 2005, upon passage of SB1145, a county clerk may provide such access to certain persons, including parties to the action, attorneys for parties to the action, any person who provides the court with a name of at least one plaintiff and one defendant and the address of the property—including the unit number, any resident who provides the clerk with the name

of the parties or case number, and anyone else who obtains a court order upon a showing of good cause.

**AB2718 Common Interest Developments.** Effective January 1, 2005, homeowners' associations must prepare and distribute to their members on an annual basis, along with the other required financial statements and documents, a form called the "Assessment and Reserve Funding Disclosure Summary." It will spell out, among other things, the current assessment, additional assessments that have already been scheduled, and a statement as to whether or not—based on the most recent reserve study—current reserve account balances will be sufficient at the end of each year for the HOA's obligation to repair or replace major components and if not, what assessments will be necessary to ensure that sufficient funds are available each year. AB2718 also requires the Board of Directors to inform members of money transfers from the reserve account to the general operating budget and the method of replacing those funds—in the next available mailing.

**CAL FIRPTA Changes.** Under the new law, sellers will not have to have lived on the property two of the last five years, as long as the "last use" of the property was as a principal residence (sellers will still have to pay capital gains taxes to the federal and state governments if they sell a principal residence before living in and owning it for two of the last five years, absent special circumstances). Exemptions for non-individual taxpayers have also been changed. Previously, corporations were exempt from the withholding as long as they were incorporated in California, qualified through the Secretary of State or with a permanent place of business in California. When the new regulations become effective, corporations will be exempt only when they have a permanent place of business in California. Similarly, under current law, estate sales where the decedent lived in California are exempt; but starting when the new regulations become effective, these sales will only be exempt if the property being sold was the principal residence of the decedent. Finally, sales of property in California owned by an irrevocable trust with a California trustee will no longer be automatically exempt.

**AB48 Registered Sex Offenders.** By July 1, 2005 (it's already available), the California Attorney General's office will be



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required to post on its web site, [www.caag.state.ca.us./megan/index.htm](http://www.caag.state.ca.us./megan/index.htm), information about serious and high risk sex offenders. In the past, the registered sex offender database was only available at a 900 number or at certain police and sheriff stations, and the information was rather "bland"—name, alias, photograph, physical description, and so on. Now, serious sex offenders who have been convicted of committing a lewd act with a child under 14, a crime involving force or fear, two or more offenses at separate trials, or who are designated Sexually Violent Predators, will also have their actual street address listed. The Attorney General has now posted this information at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov).

**AB2007 DRE.** As of January 1, 2005, a person applying for a broker's or salesperson's license may apply for the license at the same time that he/she applies for the exam. Effective August 1, 2004, brokers may use the DRE e-licensing online system to terminate the employment of salespersons. Further changes to the handling of trust fund checks are included in this new regulation.

**HUD Transactions.** Effective June 28, 2005, HUD requires that on all sales of single family properties by HUD a "Radon Gas and Mold Notice Agreement" (CAR form RGM) be provided to the buyer. This form is a notice and release of HUD and its contractors (management companies who dispose of the properties) from liability for radon gas and mold.

**NAR and the Patriot Act.** NAR concluded that real estate agents doing brokerage and property management are not financial institutions and do not have to implement anti-money laundering programs. However, mortgage brokers are financial institutions and therefore must implement a customer identification program when they ask their clients for personal information in order to complete financial transactions.

**AB578 Electronic Recording of Documents.** All 58 California counties are now authorized to record real property documents in an electronic delivery system in the form of a "digitized electronic record." County Recordors may scan hard copies and then record the documents electronically. In addition, if the document in question is a reconveyance instrument, a substitution of trustee, or an assignment of trust deed, the document may be created electronically and then stored. Therefore, no hard copies

need be created at all! These are known as "digital electronic records." They require the Board of Supervisors' approval, certification from the California Attorney General's office, and a written contract signed between all authorized submitters of documents to be recorded electronically and the Recorder. (Note: Santa Cruz Board of Supervisors has not authorized electronic recordings to date.)

**The foregoing information on the above laws is available in detail to members at [www.car.org](http://www.car.org).**

## **Q&A AVAILABLE ON NAR WEB SITE REGARDING \$250,000 to \$500,000 HOME SALE EXCLUSION**

Go to [www.realtor.org](http://www.realtor.org) and download the new public policy pamphlet regarding the sale of personal residences and how, under specific guidelines, some capital gains taxes may be excluded. In 1997, this federal law created an opportunity for most taxpayers—regarding their personal residences—to exclude up to \$250,000 for individual taxpayers and up to \$500,000 for married taxpayers filing jointly and meeting basic requirements. Three tests must be satisfied in order to get the exclusion:

- 1) **The Ownership Test** states that the party must have owned and lived in the residence for periods aggregating at least two years of the five year period ending on the date of sale;
- 2) **The Use Test** states that the property was used as the principal residence for at least two years out of five years since the date of the sale; and
- 3) **The Waiting Period Test** states that owners must not have utilized this exclusion for any sale during the preceding two year period.

Remember, a personal residence is treated differently than an investment property that is rented! Investment property does not receive these types of exclusions unless additional requirements/tests are met. **Remember that the Q&A is a good basic reference to agents, sellers, and buyers. Consultation with a competent tax advisor is always recommended.**

*Please Note: The Legislative Watch is prepared by Rose Marie McNair, Governmental Affairs Director, and is only a summary not intended to provide legal advice and should always be verified for accuracy.*