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Legislative Update

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The legislative session for 2014 has come to a close, and as landlords in California have come to expect, several new laws were passed which will directly impact the rental housing industry. Below are the new laws and trends for 2015 along with other significant changes which will affect the rental housing industry in 2015:

Landlord / Tenant Laws

AB 2747 Electronic Signatures: This law clarifies that lease agreements which are electronically signed are enforceable. Prior to the passage of AB 2747, there was debate surrounding whether lease agreements which referenced security deposits could be electronically signed. This new law deletes references to security deposit law and makes it clear that lease contracts can be signed electronically.

AB 2565 Electric Vehicle Charging Stations: For residential leases signed, renewed or extend on or after July 1, 2015, landlords are required to approve a tenant's written request to install an electric vehicle charging station at the tenant's parking space if the tenant enters into a written agreement which includes requirements regarding the installation, use, maintenance and removal of the charging station, requires the tenant pay for all modifications, and requires the tenant to maintain a $1,000,000 general liability insurance policy.

The charging station and modifications must comply with all applicable laws and covenants, conditions and restrictions. The tenant is required to pay the cost associated with the electric usage of the charging station. The landlord is not required to provide tenant with an *additional* parking space in order to comply with this law. This law does not apply: (1) when parking is not included as part of the rental contract; (2) to properties with fewer than five parking spaces; (3) to properties subject to rent control; (4) when 10% or more of existing spaces already have electric vehicle charging stations.

In addition, HOAs may not prohibit or unreasonably restrict the installation or use of electric vehicle charging stations in a designated parking space.

For commercial leases executed on or after January 1, 2015, landlords are required to approve a tenant's written request to install an electric vehicle charging station if certain requirements are met. The tenant is not allowed to install more electric vehicle charging stations than the number of spaces allocated to tenant under the lease. If no parking spaces were allocated, the tenant has the right to convert a number of spaces based on a formula which takes into account the square footage of the rented premises and the total number of parking spaces for the entire property. This law does not apply: (1) to a commercial property with less than 50 parking spaces; or (2) to a commercial property which already has 2 electric charging stations for every 100 spaces. AB 2565 is codified at Civil Code §§1947.6 (residential property) and 1952.7 (commercial property).

AB 2561 Gardens in Rental Housing and Duplexes: This bill allows a tenant residing in a single family home or duplex to participate in "personal agriculture" in order to grow edible crops

in portable containers which are approved by the landlord. The landlord can require the tenant to sign an agreement to pay for excessive water and waste collection costs arising from tenant's personal agriculture activities. The placement of the portable containers cannot cause a safety concern or block walkways, driveways, or interfere with the landlord's ability to maintain the property. To ensure compliance, this bill gives the landlord the right to periodically inspect any area where the tenant is engaging in personal agriculture. Marijuana is specifically not included as an "edible crop" under this bill.

SB 1167 Vector Control: Existing law mandates that if the premises are infested with rodents, the landlord must immediately take measures to eradicate the infestation. This law requires the landlord to also abate any conditions which are contributing to the infestation and also allows a government agency to abate the condition. This law further provides that if a government agency issues an abatement order for pest infestation, the agency must order the abatement of any conditions contributing to the infestation.

AB 319 Domestic Violence: This bill prohibits a government agency, including a local housing authority, from requiring a landlord to terminate a tenancy or fail to renew a lease based on an act of domestic violence, stalking, sexual assault, human trafficking, abuse of an elder or adult dependent where the tenant or household member was the victim of the act(s). Furthermore, this law prohibits government agencies from requiring a landlord to terminate tenancy or non-renew a lease due to repeated calls made to 911 or other law enforcement / emergency services by the tenant or a member of tenants household who was the victim or domestic violence, stalking, sexual assault, human trafficking, or abuse of an elder or adult dependent.

AB 2310 Eviction for Nuisance (Illegal Weapons or Ammunition): This bill extends a law which expired on January 1, 2014. In the counties of Los Angeles, Alameda and Sacramento, and also in the cities of Long Beach and Oakland, government prosecutors can require a landlord to evict a tenant for illegal conduct involving unlawful weapons or ammunition. The prosecutor is required to send a notice to the landlord that gives the landlord 30 days to provide the prosecutor with information about the unlawful detainer action or to provide a declaration to the prosecutor that the landlord, for safety concerns, will not evict the tenant. If the landlord refuses to evict, the landlord can authorize the government prosecutor to evict. If the landlord fails to respond to the order by the prosecutor, the landlord can be named as a defendant in the unlawful detainer action and ordered to pay court costs and attorney's fees. The prosecutor can also record a lien against the property.

AB 2485 Eviction for Nuisance (Controlled Substances): This law extends an existing program (currently only applicable in the city of Los Angeles), to the city of Oakland and the county of Sacramento. Under this law, government prosecutors can order the landlord to evict a tenant for unlawful conduct involving the manufacture, sale or use of controlled substances. The procedures in place for AB2485 are similar to those described above for AB2310**.**

AB 2256 Increase in Sheriffs' Fees: This law increases some sheriff's fees, including the fee sheriffs charge to perform a lockout pursuant to a writ issued in an unlawful detainer action. The current fee of $125 will increase to $145 as of January 1, 2015.

HOA Laws

AB 968 Maintenance and Repairs in HOA Common Areas: Beginning January 1, 2017, unless otherwise provided in the CC&Rs, HOAs are responsible for repairing and replacing the common areas (other than exclusive use common areas) and the owner of each separate interest is responsible for maintaining the exclusive use common area appurtenant to the separate interest.

AB 2100 Water Conservation and HOAs: Effective July 2014, any HOA rule that prohibits the use of drought tolerant landscaping is void. Furthermore any HOA rule or restriction which prohibits or restricts compliance with local laws concerning water efficient landscaping or other water conservation measures is void. HOAs may not fine homeowners or renters who discontinue or reduce landscape watering when the governor or a local agency has declared a state of emergency due to drought.

AB 2104 Water-Efficient Landscapes in HOAs: AB 2104 is very similar to AB 2100 discussed above with a few minor differences. This law also states that landscaping guidelines or policies for common interest developments shall also be void and unenforceable if they contain the above-described prohibitions or include conditions that have the effect of prohibiting low water-using plants as a replacement of existing turf.

AB 2430 HOA Document Bundling Prohibited and Seller must pay HOA Document Fees: The Davis-Stirling Common Interest Development Act requires an association, upon written request, to provide the owner of a separate interest, or a recipient authorized by the owner, with a copy of specific documents relating to transfer disclosures that the owner is required to make to a prospective purchaser of the owner's separate interest. It prohibits a seller from giving a prospective purchaser the required documents bundled with other documents. AB 2430 requires the cost for providing the required documents to be separately stated and billed from other charges that are part of the transfer or sales transaction. It authorizes a HOA to collect a reasonable fee from a seller for its actual costs in providing documents under these provisions and would require a seller to be responsible to pay the HOA for providing documents under these provisions. It also requires the seller to provide a prospective purchaser with certain current documents that the seller possesses free of charge.

AB 1738 HOA Dispute Resolution: The Davis-Stirling Common Interest Development Act requires HOAs to provide fair, reasonable, and expeditious procedures for resolving disputes between members and HOAs. HOAs may develop their own procedures provided minimum standards are met. AB 1738 requires the procedure to be specified in writing and signed by both parties. It authorizes HOAs and members to be assisted by an attorney or another person to explain their positions. It also establishes a "default" alternative dispute resolution procedure for HOAs that do not otherwise provide a fair reasonable and expeditious dispute resolution procedure.

Employment Laws

AB 1522 Paid Sick Leave: Effective July 1, 2015, California employers must provide a minimum of three (3) paid sick days per year to any employee who has worked for more than 30 days. This will accrue at a rate of 1 hour per every 30 hours worked. Employers with an existing Paid Time Off (PTO) policy offering three (3) or more sick days per year will be considered in compliance.

AB 1433 Protections for Unpaid Interns and Volunteers: This new law adds unpaid interns and volunteers to the list of individuals who are protected from harassment and discrimination under the Fair Employment and Housing Act (FEHA).

AB 2053 Anti-Bullying Training: Effective January 1, 2015, California employers with 50 or more employees must train their supervisors on how to prevent abusive conduct in the workplace. "Abusive conduct" consists of insults, threats, humiliating or offending a person, and sabotaging or undermining a person's work performance. This training must be incorporated into California's existing requirement of sexual harassment training.

AB 2617 Limitation on Mandatory Arbitration Agreements: This new law prohibits mandatory arbitration agreements from including claims for violations of certain civil code sections dealing with violence or threats of violence based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation or political affiliation.

SB 1360 Recovery Periods: In 2013, a new law was enacted entitling employees to a recovery period when working outdoors in temperatures exceeding 85 degrees. Many questions and issues arose from employers regarding this recovery period. SB 1360 provides that similar to rest breaks, recovery periods are to count as hours worked for which there will be no deduction from wages.

AB 326 Notifying Cal/OSHA of Injuries: This new law expands the old California Labor Code Section 6409.1, which requires employers to file a complete report of every occupational injury or illness suffered by an employee. SB 326 provides that an employer may make an immediate injury or illness report by email or telephone.

Minimum Wage: As a reminder, effective July 1, 2014, state minimum wage increased to $9.00 per hour. State minimum wage is scheduled to increase again to $10.00 an hour effective January 1, 2016.

Miscellaneous Laws:

AB 2365 Prohibiting Consumer Reviews: A contract or proposed contract for the sale or lease of consumer goods or services may not include a provision waiving the consumer's right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services. Remedies for violation include civil penalties of $2,500 for the initial violation and $5,000 for each subsequent violation, an additional penalty of $10,000 if the violation was willful, intentional, or reckless. Actions may be brought by the consumer, the Attorney General, or a district attorney or city attorney. It does not prohibit or limit a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove. While this law is not specifically directed at residential leases, landlords should be aware that a residential lease may be considered to be a contract for consumer services and residents may be considered to be consumers.

AB 2451 Water Sub-meters: This bill was co-sponsored by California Apartment Association and the Utility Management and Conservation Association in response to challenges faced by landlords when obtaining water sub-meters for their properties. AB2451 does the following:

(1) it mandates that sub-meters tested in one county can be used in any other county;
(2) it allows approved sub-meters to be stockpiled for a period of time and installed when needed;
(3) it prohibits the destruction of sub-meters by county officials if the sub-meter fails an initial test;
(4) it clarifies that sub-meters are "placed in service" when they are installed and operating; and
(5) it assures that testing fees are allocated to the county where the sub-meters are tested.

AB 1513 Removal of Squatters: In the counties of Los Angeles and Mendocino, and in the cities of Ukiah, Palmdale, and Lancaster, this law allows owners of properties with 1 to 4 units to register their vacant properties with the local law enforcement agency and to post a declaration of ownership on the property. If the owner contacts law enforcement to report trespassers or squatters in the premises, law enforcement is required to respond to the premises and require any occupants therein to produce proof of their right to possession. Anyone without proof of a right to possession would be notified that the owner can seek a court order to have the trespasser arrested and forcibly removed from the premises. After 48 hours has lapsed, if the unauthorized occupants are still in possession, the owner can obtain a temporary restraining order and injunctive relief against the trespassers and have them arrested and removed from the property.

Any personal property left behind by the trespasser would be handled in accordance with landlord tenant laws surrounding abandoned property. This bill has a sunset provision of January 1, 2018 and will no longer be in effective as of that date unless renewed by the legislature.

Fair Housing

California Laws

AB 1660 – Driver's Licenses for Undocumented Immigrants: Under an existing law passed during the 2013 legislative section, effective January 1, 2015, the Department of Motor Vehicles will issue driver's licenses to undocumented immigrants. The licenses will be required to show that the bearers have not presented a birth certificate or Social Security Card. Under AB 1660, for immigrants from Mexico, the DMV will be required to accept either a passport or a Mexican consular ID card as proof of identity, while immigrants from other countries may need to provide two forms of identification. The reasoning behind this provision of the law is that Mexican consular cards are considered a reliable form of ID and are easily verified by the government through its E-Verify system. This should be significant to the rental industry, as in the past, some landlords have refused to accept a Mexican consular card as proof of identity on the theory that they were not reliable.

Existing law contains a provision under the Unruh Civil Rights Act making it illegal to discriminate against an individual because he or she holds or presents this type of license. Although not directed specifically at housing, the Unruh Act applies to all businesses which would include rental housing. AB 1660 amends the Fair Employment and Housing Act to state that national origin discrimination includes discrimination in employment on the basis of possessing this type of a driver's license. These provisions also serve as a good reminder that California Civil Code Section 1940.3 prohibits a landlord from inquiring about or requiring an applicant or current resident to make any statement about his or her citizenship or immigration status.

Local Laws

San Francisco "Fair Chance" Ordinance: In 2014, the City of San Francisco passed an ordinance that severely restricts the ability of housing providers who receive any city funding for the provision of affordable housing in San Francisco to use past criminal history as a basis for denial of tenancy. The ordinance provides that such housing providers cannot conduct criminal background checks on a prospective resident until after the resident has gone through the application and screening process to see if he/she meets the housing provider's other financial and other rental criteria.

The ordinance further provides that once the person has shown he/she meets the property's other criteria, the results of any criminal background check can only be used to deny housing if the housing provider can show that the criminal history has a direct and specific

negative bearing on the safety of persons or property, given the nature of the housing. It requires the housing provider to also consider other factors such as the likelihood that the same or similar offense might be committed in the housing and whether there are any supportive services available on site that might reduce any such likelihood.

While the ordinance only applies to affordable housing in San Francisco, it is worth noting as it could signal a trend for other jurisdictions to adopt similar laws. Several years ago, HUD issued a memorandum to housing authorities and providers of HUD housing urging them to consider similar measures as a way to allow past offenders reunification with their families upon release from custody and reintegration into society by providing them with housing, which HUD stated was an essential need. The San Francisco ordinance was based on similar findings, i.e., that denial of housing and other essentials creates a barrier to reintegration into society.

Cases

Pit Bull Ruled a Reasonable Accommodation: In Warren v. Delvista Towers Condominium Association, Inc., July 2014, a resident sued a community for failure to accommodate his disability by allowing him to keep a pit bull as an emotional support animal. There was a local ordinance prohibiting the keeping pit bulls as a dangerous breed and the community refused to allow the animal as a companion animal based on the ordinance. The Fair Housing Act contains an exemption from coverage when there is a direct threat to the health and safety of others. However, in keeping with prior appellate court rulings regarding the direct threat exemption, the court in this case found the threat must be from the specific animal - not a remote or speculative threat because of the breed of dog. This ruling is also in line with the 2013 HUD/DOJ Joint Statement on Assistance Animals for the Disabled.

HUD Pregnancy Discrimination Case: In October 2014, HUD entered into a conciliation agreement to resolve a case filed against Wells Fargo Bank for discrimination in mortgage lending based on pregnancy. The individual claimants were women who alleged they had been denied mortgage loans on the basis that they were out on temporary parental leave and had not yet returned to active work status. The settlement required Wells Fargo to pay damages to each of the individual claimants and to establish a $3.5 million dollar fund to compensate other potential victims of their lending practices and to notify potential victims of the availability of the fund. In addition, Wells Fargo is required to update its mortgage underwriting guidelines to allow qualified applicants who are out on temporary leave, including parental leave, to use their pre-leave income to qualify for the loan as long as their return to work date precedes the due date of the first mortgage payment and there is no information that the applicant's post-leave income will be less than the pre-leave income.

While this case was based on mortgage lending practices, it is still of note for the rental housing industry for a couple of reasons. First, it is a reminder that the Fair Housing Act (as well as California law) recognizes pregnancy as protected under the category of familial status. Second, it is instructive on how HUD might view a refusal to rent case if an otherwise qualified applicant was denied housing because of being out on temporary leave, particularly if the return to work date would fall before the first rental payment was due under the lease. It is also important to remember that California lists source of income as a protected class and considers pregnancy to be a disability.

Other Fair Housing Issues

Assistive Animal Verification: Our fair housing practice group has seen a dramatic increase in applicants and residents presenting owners/managers with "certificates" and/or "ID cards" indicating that their animal is a "registered service animal." Owners and managers should be aware that these documents can be purchased on-line through various websites, such as the National Service Dog registry, without any proof of disability or disability-related need for an

assistive animal. As such, these documents do not provide sufficient verification for a person to have an assistive animal. Unless the person's disability and need for the animal are obvious, owners and managers are entitled to written verification that: 1) the applicant or resident has a disability as defined by California law; and 2) the animal is related to, and needed because of, the disability.

Disparate Impact Update: Once again, the U.S. Supreme Court is scheduled to hear a case regarding whether disparate impact is a valid basis for discrimination liability. The case, which the court will consider in the first half of next year, is Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, 13-1371. Oral arguments are scheduled for January 21, 2015.

Disparate impact, or discriminatory effect, can occur when a policy or practice that seems neutral on its face has the effect of discriminating against a particular protected group or groups of individuals when that policy is put into practice. Examples are: overly restrictive occupancy standards, which can have a disparate impact on families with children (familial status) or policies that require applicants to present a U.S. issued ID or Social Security Number in order to rent, which disparately impacts persons from other countries (national origin).

In 2013, HUD (the federal enforcement agency) issued rules formalizing its standards for handling disparate impact cases. This has caused a great deal of confusion and concern throughout the industry, as many believe that HUD's recognition of disparate impact as a basis for discrimination liability was something new. In fact, HUD has long recognized disparate impact as a basis for fair housing liability and most courts have also upheld it as a valid theory.

Regardless of the outcome of the Supreme Court case, it is important to note that in California, disparate impact is actually part of our fair housing laws. Accordingly, even if the Supreme Court were to find that disparate impact was not a valid theory under the federal Fair Housing Act, owners and managers should be aware that California will continue to recognize it as a valid basis for fair housing complaints.

Deaf Discrimination Testing Report: In 2014, the National Fair Housing Alliance released a report based on testing of discrimination in rental housing against those with hearing impairments. The report details that their testing uncovered "sustained patterns of housing discrimination against deaf and hard of hearing apartment seekers across the country."

This discrimination included such things as managers: hanging up on deaf or hard of hearing prospects; telling hearing testers about more available units and giving more information about apartments and amenities than to deaf or hard of hearing testers; quoting higher rental rates or application fees to deaf or hard of hearing testers; failing to follow up with deaf or hard of hearing testers at the same rate they followed up with hearing testers; and emphasizing financial qualifications and background checks to deaf or hard of hearing testers when these same requirements were seldom mentioned to hearing callers.

This report should serve as a reminder to owners and managers the importance of treating all prospects equally without regard to any disability such as a hearing impairment. It should also serve as a reminder that refusing to take a TDD or TDY call from a deaf applicant or providing less customer service to such a caller could result in fair housing liability.

TRENDS

Late Fees: There have been multiple class action lawsuits filed against residential landlords during the past decade over late fees. In addition, many judges are scrutinizing late fee charges more closely in unlawful detainer actions. Landlords can expect to see this trend continue. Late fee polices and amounts charged should be reviewed to ensure they are enforceable and are not exposing the landlord to liability.

Fees Imposed by Local Governments: In an effort to raise revenue for their cities, local governments are increasingly adopting laws which assess "inspection fees" against landlords for residential properties. These fees are usually assessed on a per unit basis and often range from about $20 a unit to over $100 a unit. In addition to inspection fees, local governments are looking at other creative ways to raise revenue at the landlord's expense. For example, in the city of Antioch, voters passed Measure O in November of 2014 which establishes a new "business license" fee for landlords. The fee is $250 for each single family home and $150 per unit for multifamily rental units.

Smoking Bans: In addition to new fees, local governments continue to pass anti-smoking measures and smoking bans which affect the rental housing industry. These bans apply to the specific city where the law was passed. At this time, there is no statewide ban or limit on smoking in rental housing. However, the legislature continues to consider bills which would ban smoking in multifamily housing. Landlords can expect to see this trend continue.

E-Cigarette Bans: In addition to anti-smoking laws, several cities in California have already enacted or are considering enacting laws prohibiting using e-cigarettes where smoking is already prohibited. It is expected that more cities – especially those that have already enacted ordinances prohibiting smoking in certain places, including all or some portions of multi-family housing, will follow suit. Despite claims from e-cigarette manufacturers to the contrary, there is some evidence to suggest that the chemicals emitted in vapor from e-cigarettes are harmful. The Food and Drug Administration is looking at regulating their use. This is likely to be an issue faced by owners and managers who have smoke-free properties or operate under local non-smoking ordinances. Stay tuned.

Rent Control: With a recovering economy (and after several consecutive years of rent decreases), landlords have finally been able to increase their rents the last few years. These rent increases have resulted in several local governments exploring the implementation of rent control ordinances in their cities. With the percentage of renters in the State of California at over 50% (and growing), and rents continuing to rise, rent control will remain a major issue for landlords over the coming years. Even in areas of the state (including Orange County) where concerns over the passage of rent control measures were nonexistent, the subject is starting to be raised with greater interest and frequency.

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