

# goldfarb lipman attorneys

Oakland Los Angeles San Diego

## 2012 GOLDFARB & LIPMAN ANNUAL LEGISLATIVE UPDATE

### NEW LAWS AFFECTING REAL ESTATE AND COMMUNITY ECONOMIC DEVELOPMENT

Goldfarb & Lipman LLP

[www.goldfarblipman.com](http://www.goldfarblipman.com)

510 836 6336

213 627 6336

619 239 6336

*This legislative update is published by Goldfarb & Lipman LLP as a timely reporting service to alert clients and others of recent changes in California law. This legislative update does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.*

TABLE OF CONTENTS

Page

AREA OF LAW

|             |   |           |
|-------------|---|-----------|
| <b>I.</b>   | <b>CONSTRUCTION (PUBLIC/PRIVATE)</b> .....                    | <b>1</b>  |
| <b>A.</b>   | <b>Payment of Subcontractors—SB 293</b> .....                 | <b>1</b>  |
| <b>B.</b>   | <b>Public Works Retention—SB 293</b> .....                    | <b>1</b>  |
| <b>C.</b>   | <b>Payment Bonds—SB 293</b> .....                             | <b>1</b>  |
| <b>D.</b>   | <b>Subcontractor Indemnities—SB 474</b> .....                 | <b>2</b>  |
| <b>E.</b>   | <b>Mechanics' Liens—SB 189</b> .....                          | <b>2</b>  |
| <b>F.</b>   | <b>LLC Contractor License—SB 392</b> .....                    | <b>2</b>  |
| <b>G.</b>   | <b>Architect's Liens—SB 424</b> .....                         | <b>3</b>  |
| <b>H.</b>   | <b>Prevailing Wage Violations—AB 551</b> .....                | <b>3</b>  |
| <b>I.</b>   | <b>Compliance Monitoring—AB 436</b> .....                     | <b>4</b>  |
| <b>J.</b>   | <b>Project Labor Agreements—SB 922</b> .....                  | <b>4</b>  |
| <b>K.</b>   | <b>Public Work Volunteers—AB 587</b> .....                    | <b>5</b>  |
| <b>II.</b>  | <b>LAND USE</b> .....   | <b>5</b>  |
| <b>A.</b>   | <b>Mitigation Lands—SB 436</b> .....                          | <b>5</b>  |
| <b>B.</b>   | <b>Historical Property – Mills Act Contracts—AB 654</b> ..... | <b>5</b>  |
| <b>C.</b>   | <b>Housing Element—AB 1103</b> .....                          | <b>5</b>  |
| <b>D.</b>   | <b>Disadvantaged Unincorporated Communities—SB 244</b> .....  | <b>6</b>  |
| <b>E.</b>   | <b>Transit Priority Projects—SB 310</b> .....                 | <b>6</b>  |
| <b>III.</b> | <b>CEQA</b> .....   | <b>6</b>  |
| <b>A.</b>   | <b>California Environmental Quality Act—SB 226</b> .....      | <b>6</b>  |
| <b>B.</b>   | <b>Environmental Quality—AB 320</b> .....                     | <b>7</b>  |
| <b>IV.</b>  | <b>SUBDIVISIONS AND CONDOMINIUMS</b> .....                    | <b>7</b>  |
| <b>A.</b>   | <b>Subdivision Fee—AB 147</b> .....                           | <b>7</b>  |
| <b>B.</b>   | <b>Map Extension—AB 208</b> .....                             | <b>7</b>  |
| <b>C.</b>   | <b>Rental of Condos—SB 150</b> .....                          | <b>8</b>  |
| <b>D.</b>   | <b>HOA Fee Restriction—AB 771</b> .....                       | <b>8</b>  |
| <b>E.</b>   | <b>HOA Meetings Restriction—SB 563</b> .....                  | <b>8</b>  |
| <b>F.</b>   | <b>Vehicle Charging Station—SB 209</b> .....                  | <b>9</b>  |
| <b>V.</b>   | <b>TAX/PROPERTY TAX/TRANSFER TAX</b> .....                    | <b>9</b>  |
| <b>A.</b>   | <b>Transfer Tax Disclosure—AB 563</b> .....                   | <b>9</b>  |
| <b>B.</b>   | <b>Change in Ownership Penalties—SB 507</b> .....             | <b>9</b>  |
| <b>C.</b>   | <b>Open Space Welfare Exemption—AB 703</b> .....              | <b>10</b> |
| <b>D.</b>   | <b>Solar Energy Property Tax Exclusion—ABx1 15</b> .....      | <b>10</b> |
| <b>E.</b>   | <b>Tax Delinquents—AB 1424</b> .....                          | <b>10</b> |

TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| <b>VI. TITLE/SALES/FORECLOSURES .....</b>                                  | <b>10</b>   |
| <b>A. Easements; Property Tax; Tax Defaulted Property—AB 261 .....</b>     | <b>10</b>   |
| <b>B. Eminent Domain; Conservation Easement—SB 328.....</b>                | <b>11</b>   |
| <b>C. Foreclosure Notices—SB 4.....</b>                                    | <b>11</b>   |
| <b>D. Short-Sale Deficiency Judgments—SB 458 .....</b>                     | <b>11</b>   |
| <b>E. Residential Real Property Disclosure—SB 837.....</b>                 | <b>12</b>   |
| <b>F. Real Property: Marketable Title—SB 284 .....</b>                     | <b>12</b>   |
| <b>VII. BROKERS .....</b>  | <b>12</b>   |
| <b>A. Broker Designated Managers—SB 510 .....</b>                          | <b>12</b>   |
| <b>B. Greater DRE Oversight—SB 706.....</b>                                | <b>13</b>   |
| <b>C. DRE Fines and Reporting—SB 53 .....</b>                              | <b>13</b>   |
| <b>D. Appraisal and Valuation—SB 6 .....</b>                               | <b>13</b>   |
| <b>VIII. MULTIFAMILY HOUSING—TENANTS .....</b>                             | <b>14</b>   |
| <b>A. Landlords Required to Arrange for Recycling Services—AB 341.....</b> | <b>14</b>   |
| <b>B. Rental Dwellings; Smoking—SB 332 .....</b>                           | <b>14</b>   |
| <b>C. Tenants Allowed to Post Political Signs—SB 337 .....</b>             | <b>14</b>   |
| <b>IX. MULTIFAMILY HOUSING—FINANCE.....</b>                                | <b>15</b>   |
| <b>A. HCD/EHAP—AB 221.....</b>   | <b>15</b>   |
| <b>B. Supportive Housing—AB 483.....</b>                                   | <b>15</b>   |
| <b>X. PUBLIC AGENCIES MEETINGS .....</b>                                   | <b>15</b>   |
| <b>A. Meeting Compensation Disclosure—AB 23.....</b>                       | <b>15</b>   |
| <b>B. Executive Contracts/Brown Act—AB 1344.....</b>                       | <b>15</b>   |

On February 1, 2012, all California redevelopment agencies were dissolved. Goldfarb & Lipman invites you to visit our website for the most up-to-date information related to this historic turning point for California real estate development, including expert analysis on the dissolution of redevelopment agencies.

In addition to that fundamental change, other important legislation, unrelated to the dissolution of redevelopment agencies, has been signed into law that will have significant impacts on the real estate development community. The 2012 Annual Legislative Update provides a summary of these new laws. Please feel free to contact any attorney at Goldfarb & Lipman with questions regarding these laws.

**I. CONSTRUCTION (PUBLIC/PRIVATE)**

**A. Payment of Subcontractors—SB 293**

Payment of Subcontractors (SB293; amends Business and Professions Code Section 7108.5 and Public Contract Code Section 10262.5).

Beginning January 1, 2012, a prime contractor on both public and private works projects must make payments to subcontractors within seven (7) days of receipt of a progress payment (unless otherwise agreed to in writing). This is consistent with the current 2007 AIA form contracts, which also have a seven (7) day payment requirement. Under prior law, prime contractors had ten (10) days to make such payments. The statutory remedies for violation of this provision remain the same.

**B. Public Works Retention—SB 293**

Public Works Retention (SB293; adds Section 7201 to the Public Contract Code).

Beginning January 1, 2012, for public works contracts entered into after January 1, 2012, up until January 1, 2016, not more than five percent (5%) retention for any payment may be withheld, with an overall cap on total retention of five percent (5%) of the contract price. There are two exceptions to this new limit: (i) if the public entity makes a finding prior to the bid that the project is "substantially complex", or (ii) if a subcontractor is unable or refuses to furnish payment and performance bonds required by the original contractor.

**C. Payment Bonds—SB 293**

Payment Bonds (SB293; amends Sections 3252, 8612, and 9560 of the Civil Code).

Beginning January 1, 2012, on both public and private contracts, a payment bond claimant without a direct contractual relationship with the general contractor and who did not serve a 20-day preliminary notice, may still enforce a claim by giving notice to the surety and bond principal within 15 days after recordation of a notice of completion or, if no notice of completion has been recorded, within 75 days after completion of the work. The new provision does not apply, however, to laborers, and claimants who supplied materials or services to a

subcontractor where the subcontractor had a direct contractual relationship with the general contractor and all undisputed progress payments have been made.

#### **D. Subcontractor Indemnities—SB 474**

Subcontractor Indemnities (Effective January 2, 2013) (SB474; amends Civil Code Sections 2782 and 2783; adds Section 2782.05).

Although not effective until January 1, 2013, SB 474's changes to indemnification requirements are broad enough that private owners and public entities should begin analyzing its effect on their standard contract documents. SB 474 makes changes to California's anti-indemnity statute, addressing the enforceability of "Type I", or broad indemnities that extend to the active negligence of the indemnitee, in both private and public works. Beginning January 1, 2013, provisions in construction contracts that require a subcontractor to indemnify and defend a general contractor, construction manager, or other subcontractor are void to the extent they require the subcontractor to indemnify/defend those persons against their own active negligence or willful misconduct; or for defects in design; or to the extent the claims do not arise out of the scope of work of the subcontractor. This limitation does not apply to residential construction contracts subject to SB800, wrap-up insurance policies, contracts with design professionals and other enumerated exceptions. The new requirement will apply regardless of any provision intending to apply the law of another State. In addition, beginning January 1, 2013, subcontractors or suppliers on a public works project may not be required to indemnify against liability for the active negligence of the public agency. Similarly, a new provision is added making indemnity provisions in private contracts unenforceable if they extend to the active negligence of the owner or its employees.

#### **E. Mechanics' Liens—SB 189**

Mechanics' Liens (SB 189; amends multiple sections of the Business and Professions Code, the Civil Code, the Code of Civil Procedure, the Government Code, the Insurance Code, the Labor Code, and the Public Contract Code).

SB 189, which was enacted in 2010, makes comprehensive changes to California's Mechanics' Lien laws, moving, restructuring, and rephrasing many of the requirements. Most provisions will not be effective until July 1, 2012. In short, these changes include: revising the statutory lien waivers; revising notice of completion requirements and the definition of completion; requiring identification of construction lenders in construction contracts; and requiring general contractors to provide 20-day notices. One change effective January 1, 2011, is the requirement that lien claimants serve a Notice of Mechanic's Lien on the owner of the property to be lienied before recording the lien in order for the lien to be effective. Due to the significant changes to existing mechanics' lien law, Goldfarb & Lipman will provide a more comprehensive summary of the changes prior to the effective date of SB 189.

#### **F. LLC Contractor License—SB 392**

LLC Contractor License (SB 392; amends multiple sections and adds Sections 7071.6.5 and 7071.19 to, the Business and Professions Code, and amends Section 17002 of the Corporations Code).

SB 392 took effect January 1, 2011 allowing limited liability companies to hold a contractor's license under the Contractors' State License Law. Under SB 392, the Contractors State License Board is to have begun processing applications on January 1, 2012.

**G. Architect's Liens—SB 424**

Design Professional Lien (SB424; adds Section 8319 to the Civil Code).

Under current law a design professional may record a design professional lien notwithstanding the absence of commencement of work. Effective July 1, 2012, a design professional may convert a design professional lien to a mechanics lien provided certain requirements are met, and thereafter enforce that lien as a mechanics lien.

**H. Prevailing Wage Violations—AB 551**

Prevailing Wage Violations (AB 551; amends Sections 1775, 1776, and 1777.1 of the Labor Code). This bill amends Labor Code Section 1775 to increase the daily penalties for violations of the prevailing wage law as follows:

- 1) \$40-\$200 (previously \$10-\$50) per worker per day unless the error was a good faith mistake and promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- 2) The minimum penalty cannot be less than \$80 (previously \$20) per worker per day if the contractor or subcontractor has failed to pay prevailing wages on another job within the previous three years.
- 3) The minimum penalty cannot be less than \$120 (previously \$30) per worker per day if the Labor Commissioner determines that the violation was willful.
- 4) The minimum penalty for not timely producing certified payroll records increased to \$100 (previously \$25) per worker per day.

AB 551 also provides that any contractor or subcontractor found to have committed two or more willful violations of the prevailing wage law in a three year period shall be barred from bidding or working on a public works project for a three year period. In addition, if a contractor or subcontractor fails to provide certified payroll records within 10 days of request by specified entities, the Labor Commissioner can notify the contractor or subcontractor that if the records are not produced within 30 days of the Labor Commissioner's notice, that contractor or subcontractor will be barred from bidding or working on a public works project for a period of one to three years.

Finally, the bill modifies the rules regarding publication of debarred contractors and subcontractors by requiring the Labor Commissioner to post the list of debarred contractors on the Commissioner's Web site, to notify the Contractors' State License Board whenever the debarment list is updated and to annually notify awarding bodies of the availability of the list of debarred contractors and subcontractors.

**I. Compliance Monitoring—AB 436**

Compliance Monitoring (AB 436; amends Sections 17250.30 and 81704 of the Education Code, to amend Section 6531 of the Government Code, to amend Section 1771.7 of, to repeal Sections 1771.55, 1771.75, 1771.8, 1771.85, and 1771.9 of, and to repeal and add Sections 1771.3 and 1771.5 of, the Labor Code, and to amend Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3 of the Public Contract Code).

This bill requires certain public works projects to use the Compliance Monitoring Unit ("CMU") of the Department of Industrial Relations ("DIR") to monitor compliance with prevailing wage laws. The covered projects include:

- 1) Any public works project funded in part by state issued bonds other than the 2006 Water project bond initiative.
- 2) Any public work that utilizes a design-build contract where the statute authorizing the use of the design-build method requires use of the CMU.
- 3) Any public works project where the awarding body elects to use the CMU for all of its public works projects.

Projects utilizing a previously DIR-approved Labor Compliance Program or a qualified project labor agreement are not subject to the CMU requirements. Only projects for which the public works contract is awarded on or after January 1, 2012, are subject to the CMU requirements. Awarding bodies must pay a fee for this monitoring work to DIR. The fee cannot exceed 1/4% (0.25%) of the total project costs or of the state bond proceeds provided for the project, whichever is less.

Jurisdictions electing to use the CMU (or other DIR-approved labor compliance program) for all of its public works projects may choose to not require prevailing wages for new construction projects of \$25,000 or less or for demolition, repair, alteration or maintenance projects of \$15,000 or less. Typically, the prevailing wages requirement is triggered for projects with a cost of \$1,000 or less.

**J. Project Labor Agreements—SB 922**

Project Labor Agreements (SB 922; an act to add Chapter 2.8 (commencing with Section 2500) to Part 1 of Division 2 of the Public Contract Code).

This bill affirmatively authorizes public entities, including local public entities, to enter into a project labor agreement for construction projects, if the agreement includes specified taxpayer protection provisions. This certainly would change the result in several lower level court cases on this issue. SB 922 prohibits a charter provision from preventing the governing board of a local public entity, other than a charter city, from exercising this authority. Commencing on January 1, 2015, if a charter provision prohibits a charter city from consideration of a project labor agreement for a project, then state financial assistance may not

be used to support that project. The delayed effective date for the prohibition on state funding presumably provides the charter city an opportunity to modify its charter if desired.

**K. Public Work Volunteers—AB 587**

Public Work Volunteers (AB 587; amends Section 1720.4 of the Labor Code).

Labor Code Section 1720.4 exempts the work of volunteers and volunteer coordinators meeting specified conditions from the prevailing wages requirements for public works concluded on or after January 1, 2002. This provision expired on January 1, 2012. AB 587 extends this volunteer exemption from January 1, 2012 through January 1, 2017.

**II. LAND USE**

**A. Mitigation Lands—SB 436**

Mitigation Lands (SB 435; amends Section 65965 of, to add Sections 65966 and 65967 to, and to add and repeal Section 65968 of, the Government Code).

This measure establishes detailed standards for the dedication and long-term management of lands used to mitigate the environmental impacts of a development project. These lands could include, for example, wetlands to mitigate loss of wetlands or land used for habitat for endangered species. The statute sets standards for nonprofit organizations that hold title to and manage mitigation lands and allows funds set aside for managing the property to be held by the nonprofit organization owning the property, provided that the organization meets certain standards. The bill was sponsored by the California Council of Land Trusts to allow nonprofits owning mitigation property to also control the endowment established for long-term management of the property.

**B. Historical Property – Mills Act Contracts—AB 654**

Historical Property (AB 654; amends Sections 50281, 50281.1, 50282, 50284, and 50287 of the Government Code).

Cities and counties are authorized to enter into a contract with owners of historic properties that restrict the use of the property in return for lowered property tax assessments (Mills Act contracts). This bill requires cities and counties to inspect the property before entering into the contract and every five years thereafter. If the owner has violated the contract, the local agency is required to either cancel the contract or take other legal action to enforce it.

**C. Housing Element—AB 1103**

Housing Element (AB 1103; amends Section 65583.1 of the Government Code).

Cities and counties may meet twenty five percent (25%) of their obligation to designate sites in their housing elements for affordable housing by converting market-rate housing to affordable housing. This bill expands the types of housing that may receive housing element



credit by allowing any foreclosed property converted to affordable to receive such credit. Prior to the passage of AB 1103, only the conversion to affordable of units contained in buildings with three units or more could receive housing element credit. Now, any foreclosed unit, even a single-family home, converted to affordable housing and otherwise meeting the standards in the statute may receive housing element credit.

#### **D. Disadvantaged Unincorporated Communities—SB 244**

Disadvantaged Unincorporated Communities (SB 244; amends Sections 56375, 56425, and 56430 of, and adds Sections 53082.5, 56033.5, and 65302.10 to, the Government Code, and adds Section 13481.7 to the Water Code).

This bill requires cities and counties to amend their land use elements to review water, sewer, stormwater, and fire protection needs in unincorporated communities with ten or more dwellings and analyze financing mechanisms that could feasibly be used to extend services to those communities. The amendments must be completed on or before the due date of the next housing element. In addition, the Local Agency Formation Commission (LAFCO) may not approve annexations of more than 10 acres unless any contiguous disadvantaged unincorporated community is included in the annexation. A "disadvantaged unincorporated community" is one where the median income is eighty percent (80%) or less than the statewide median income. Periodic reviews of urban services completed by LAFCO must include the service needs of disadvantaged unincorporated communities.

#### **E. Transit Priority Projects—SB 310**

Transit Priority Projects (SB 310; amends Section 53395.14 of, to add Section 53393.3.5 to, and to add Article 9 [commencing with Section 65470] to Chapter 3 of Division 1 of Title 7 of, the Government Code).

This bill allows cities and counties to participate in the Transit Priority Project Program upon adoption of an ordinance expressing the city or county's intent to participate in the program and upon the city or county's establishment of an infrastructure financing district ("IFD") and infrastructure financing plan. The bill further requires the city or county to amend its general plan, if necessary, to authorize a developer to build at a height of a minimum of three stories within the boundaries of the IFD. SB 310 also permits an IFD to reimburse a developer for permits and other expenses incurred in developing affordable housing pursuant to the adopted Transit Priority Project Program, so long as the project meets the rigorous Transit Priority Project Program requirements.

### **III. CEQA**

#### **A. California Environmental Quality Act—SB 226**

California Environmental Quality Act (SB 226; amends Section 65919.10 of the Government Code, and amends Sections 21083.9 and 21084 of, and adds Sections 21080.35, 21094.5, 21094.5.5, and 25500.1 to, the Public Resources Code).

This bill will streamline California Environmental Quality Act ("CEQA") compliance for specified infill projects. Environmental review for qualifying projects will be able to bypass analyzing impacts that were already examined at a programmatic level. To be eligible for streamlining, a project will have to meet specified performance standards. This streamlining is intended to augment the existing infill exemptions, and provide a bridge between the current regulatory scheme and the supplemental CEQA relief that will become available pursuant to SB 375 over the remainder of the decade. The Governor's Office of Planning and Research is responsible for promulgating guidelines to effectuate SB 226 and has published its initial draft guidelines and the related statement of reasons (available at [http://opr.ca.gov/s\\_sb226.php](http://opr.ca.gov/s_sb226.php)).

#### **B. Environmental Quality—AB 320**

Environmental Quality (AB 320; amends Sections 21108, 21152, and 21167.6.5 of the Public Resources Code).

This measure modified the Public Resources Code to prevent a CEQA action from being dismissed for failing to name indispensable parties so long as the plaintiff or petitioner names the persons identified in the project's notice of determination or notice of exemption or, if no such notice was filed, the persons referenced in the definition of "project," as reflected in the lead agency's record of proceedings. Previously, the plaintiff or petitioner in a CEQA lawsuit was required to name, as a real party in interest, any recipient of an approval that is the subject of the action or proceeding. Failure to name a recipient of approval that was deemed an indispensable party could be grounds for dismissal. If dismissal occurred after the limitations period expired, courts generally did not allow leave to amend.

### **IV. SUBDIVISIONS AND CONDOMINIUMS**

#### **A. Subdivision Fee—AB 147**

Subdivision Map Fees (AB 147; adds Sections 66484.7 and 66484.9 to the Government Code).

This bill amends the Subdivision Map Act to allow a local agency, through adoption of an ordinance, to require payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for the purposes of defraying the costs of constructing transportation facilities defined as pedestrian, bicycle, transit, and traffic calming facilities. The ordinance must meet certain enumerated requirements such requiring a public hearing for the area benefitted.

#### **B. Map Extension—AB 208**

Map Extension (AB 208; amends Section 65961 of, adds Section 66452.23 to, the Government Code).

This bill extends by 24 months the expiration date of any approved tentative map or vesting tentative map that has not expired as of July 15, 2011, but will expire prior to January 1, 2014. If a map is extended pursuant to this provision, two limitations apply: (i) the period of

time after recordation of the map during which a city or county is prohibited from imposing new conditions on a building permit is reduced from 5 years to 3 years, and (ii) a city or county is not prohibited from imposing new fees upon the issuance of a building permit.

### **C. Rental of Condos—SB 150**

Common Interest Developments: Limitation on Certain Rental Restrictions (SB 150; amends Section 1368 and 1373 of, and adds Section 1360.2, to the Civil Code).

As of January 1, 2012, this bill limits the enforcement of restrictions on rentals of cooperative, condominium and other common interest development housing units under certain circumstances. Prohibitions on renting units added to the governing documents of a homeowner's association ("HOA") after January 1, 2012, will not be effective against an individual owner unless the restriction was effective prior to the owner purchasing an interest in the common interest development. Owners can consent to be bound by restrictions on rentals that otherwise would not apply to the owner. Also, this bill requires an owner to provide a statement describing any HOA provision that prohibits renting, and its applicability, to a prospective purchaser.

### **D. HOA Fee Restriction—AB 771**

Common Interest Developments: Required Disclosures and fees (AB771; amends Section 1368, and adds Section 1368.2 to the Civil Code).

By adding Section 1368.2 to the Civil Code, this bill creates a new form detailing which documents the seller of a separate interest in a common interest development is required to provide to a prospective purchaser. Among other documents, this bill requires that, upon request, the seller is required to provide the prospective purchaser the minutes from the HOA's regular board meetings conducted over the previous 12 months. The HOA is required to provide a seller a written or electronic estimate of the fees that will be charged for providing the requested documents. The disclosure documents may be maintained in electronic form, and may be posted on the HOA's website. The HOA may collect a reasonable fee for the requested documents, but no additional fees may be charged for electronic delivery of the documents.

### **E. HOA Meetings Restriction—SB 563**

Common Interest Developments: Meetings (SB 563; amends Section 1363, 1363.05 and 1365.2 of the Civil Code).

This bill, known as the Common Interest Development Open Meeting Act, modifies the manner in which an HOA board conducts business and meetings. Specifically, as of January 1, 2012, the Common Interest Development Open Meeting Act eliminates the ability of an HOA board to take actions without a meeting. In addition, except for emergency situations, board decisions are no longer permitted to be made by e-mail. To hold an emergency meeting via e-mail all board members must consent in writing and such consent must be filed with the board meeting minutes. This bill permits HOA board meetings to be conducted via teleconference so long as the teleconference is conducted in a manner that protects the rights of homeowners including that notice of the teleconferenced meeting provide a physical location where members

may attend and at least one member of the board of directors must be present at that location. This bill requires that notice for an executive session meeting be given to HOA members at least 2 days prior to the meeting. In addition, this bill requires the HOA to make available agendas for meetings held in executive session.

**F. Vehicle Charging Station—SB 209**

Common Interest Developments: Electric Vehicle Charging Stations (SB209; adds Section 1353.9 to the Civil Code).

This bill provides that any prohibition or restriction on the installation, or use, of an electric vehicle charging station in any of the governing documents of a common interest development is void and unenforceable. This bill authorizes an HOA to impose reasonable restrictions on electric vehicle charging stations that do not significantly increase the cost of the station, or significantly decrease the station's efficiency or performance. The bill establishes a process for the HOA's approval for the installation of an electric vehicle charging station. This bill also establishes the duties and obligations of a homeowner in connection with the installation and operation of an electric vehicle charging station, including the homeowner's obligation to maintain an umbrella liability coverage policy of \$1,000,000 which names the HOA as an additional insured.

**V. TAX/PROPERTY TAX/TRANSFER TAX**

**A. Transfer Tax Disclosure—AB 563**

Transfer Tax Disclosure (AB 563; adds Section 408.4 to the Revenue and Taxation Code).

Current law permits a county recorder to obtain otherwise confidential information from the county assessor in connection with the county recorder's investigation of whether the documentary transfer tax should be imposed for an unrecorded change in control or ownership of property. This bill provides that designated city employees are now also authorized to obtain such information from the county assessor.

**B. Change in Ownership Penalties—SB 507**

Change in Ownership Penalties (SB 507; amends Sections 480, 480.1, 480.2, 482, and 483 of the Revenue and Taxation Code).

SB 507 extends the time period for filing the change in control and ownership form with the County Board of Equalization whenever there is a change in ownership or a change in control of an owner of real property from 45 days to 90 days. This bill also designates the County Board of Equalization, instead of the County Board of Supervisors, as the public entity able to abate penalties for late filing of the change of control and ownership form. For single family owners the maximum penalty for late filing was increased to \$20,000. A change in control of an owner of property occurs whenever there is a transfer of more than a 50% interest in the owner entity.

For example, if a limited partnership transfers more than a 50% interest in the limited partnership to another party, then that would trigger a change in control of the owner of the property.

**C. Open Space Welfare Exemption—AB 703**

Open Space Welfare Exemption (AB 703; amends Section 214.02 of the Revenue and Taxation Code).

This bill extends the inoperative date from January 1, 2012, until January 1, 2022, to allow eligible owners of open space lands the ability to claim property tax exemption.

Such land must be exclusively used for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty.

**D. Solar Energy Property Tax Exclusion—ABx1 15**

Solar Energy Property Tax Exclusion (ABx1 15; amends Section 73 of the Revenue and Taxation Code).

Existing law excludes a solar energy system from triggering property tax reassessment.

This bill clarifies that the definition of "active solar energy system" to include the completion of the construction of a solar energy system as part of a new property or the addition of a solar energy system to an existing property. This bill also clarifies that this exclusion from reassessment remains in effect until there is a subsequent change in ownership.

**E. Tax Delinquents—AB 1424**

Tax Delinquents (AB 1424; amends and adds Sections of the Business and Professions Code, Government Code, the Public Contract Code, the Revenue and Taxation Code, and the Vehicle Code).

Beginning on July 1, 2012, a state governmental licensing agency will suspend or refuse to issue or renew a license if the licensee's name is on a certified list of the 500 largest tax delinquencies issued by the State Board of Equalization or the Franchise Tax Board. This bill also prohibits a state agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on either list of the 500 largest tax delinquencies.

**VI. TITLE/SALES/FORECLOSURES**

**A. Easements; Property Tax; Tax Defaulted Property—AB 261**

Easements; Property Tax; Tax Defaulted Property (AB 261; amends Sections 3712, 3725, and 3731 of the Revenue and Taxation Code).

This bill provides that easements of any kind, including prescriptive easements, survive as encumbrances on property sold at auction for tax-defaults. This bill also changes the

procedural requirements and deadlines for bringing actions to rescind or set aside a tax deed due to alleged invalidity or irregularity. Specifically, the bill requires a person desiring to set aside a tax deed to first petition the board of supervisors of the county within one year of the sale of the property and then requires that person to petition a court to have the tax deed set aside within one year of the county board of supervisor's determination that a tax deed should not be rescinded.

**B. Eminent Domain; Conservation Easement—SB 328**

Eminent Domain; Conservation Easement (SB 328; amends Section 1240.055 to the Code of Civil Procedure).

This bill provides new procedural requirements to encourage early consultation by parties in eminent domain proceedings regarding the acquisition of property encumbered by a conservation easement by requiring specified notices be given to holders of conservation easements and, under specified circumstances, to the public entities that provided funding for the conservation easement. The bill further entitles the holder of a conservation easement to compensation under the Eminent Domain Law.

**C. Foreclosure Notices—SB 4**

Foreclosure Notices (SB 4; amends Section 2924f of the Civil Code).

Senate Bill No. 4 requires additional notices to any bidder of a foreclosed home at a trustee sale. In addition, the bill requires the lender to make a good faith effort to notify the homebuyer if a trustee sale is postponed. This bill is effective April 1, 2012, and is applicable to property containing one to four single family residences. Bidders must be advised of the risks of bidding at a trustee sale, which includes the fact that the bidder is bidding on the lien of the lender. In addition, the bidder must be advised that if the bidder is bidding on a junior lien, the bidder may be responsible for paying off the senior lien before the property is free and clear.

This bill provides that a good faith effort must be made to the homebuyer and the public regarding any postponement of a trustee sale. Such efforts may include providing a number to be called regarding the trustee sale or information on the Internet regarding the trustee sale.

**D. Short-Sale Deficiency Judgments—SB 458**

Short-Sale Deficiency Judgments (SB 458; amends Section 580e of the Code of Civil Procedure).

This bill was enacted on July 11, 2011, and as an urgency bill, was effective immediately. This bill prohibits a holder of the deed of trust from seeking a deficiency judgment in connection with a deed of trust secured against a dwelling unit (not more than four units) in which (i) the unit was sold at a price less than the remaining outstanding indebtedness, and (ii) the holder of the deed of trust provided written consent to such sale and agreed title may be voluntarily transferred by grant deed to a buyer when the proceeds of such agreed upon sale price are tendered. The bill prohibits the holder of the deed of trust from seeking any additional compensation from the seller or trustor.

The trustor cannot be a corporation, limited liability company, limited partnership or political subdivision of the state. The protections provided in this bill are also applicable when the promissory note is secured by both a deed of trust and additional security (i.e. personal property).

The tender of the sale proceeds in accordance with the written consent of the lender shall be treated as if the dwelling unit had been sold by foreclosure under a power of sale. No additional compensation shall be provided from the seller in connection with the sale.

**E. Residential Real Property Disclosure—SB 837**

Residential Real Property Disclosure (SB 837; amends Section 1102.6 of the Civil Code).

This bill revises a residential real property disclosure form to allow a transferor of residential property (with one to four dwellings) to disclose whether or not the property is equipped with water-conserving plumbing fixtures.

**F. Real Property: Marketable Title—SB 284**

Real Property: Marketable Title (SB 284; amends Section 880.020 of, and amends, repeals, and adds Section 884.010 of, the Civil Code).

Under current law, if no conveyance, contract, or other instrument that gives notice of an exercise of an option is recorded against real property, the option expires of record: (1) six months after the expiration date specified in the option agreement; or (2) if the option agreement has no expiration date, six months after the date the option agreement is recorded. If the expiration date of a recorded option is not clearly ascertainable, the status of the recorded notice may be determined by relying on off-record information. This bill adds that on or after January 1, 2013, if the expiration date of an option is not ascertainable from the recorded instrument, the document will automatically expire of record six months after the date the option agreement is recorded.

**VII. BROKERS**

**A. Broker Designated Managers—SB 510**

Broker Designated Managers (SB 510; amends Section 10165 of, and, adds Section 10164 to Business and Professional Code).

Beginning on July 1, 2012, an employing broker or corporate officer-broker may designate a manager of a branch office or division as the broker responsible for overseeing and supervising that branch office's or division's operations and activities, including staff, broker and salespersons activities, by entering into a written agreement with the manager and sending notice to the Department of Real Estate (DRE). The designated manager may not hold a restricted license, be subject to debarment, or have less than 2 years of full-time real estate experience within 5 years prior to being designated. The DRE must be immediately notified in writing when a designated manager is terminated or changed. The DRE may suspend or revoke the

license of a designated manager for failing to properly oversee and supervise the branch office's or division's operations and activities.

**B. Greater DRE Oversight—SB 706**

Greater DRE Oversight (SB 706; amends and adds sections to the Business and Professional Code).

Beginning January 1, 2012, the DRE must post on the Internet the status of suspensions and revocations of licenses and may enter into a settlement agreement with brokers and salesperson being investigated. Licensees will be required to report any information regarding a felony charge or indictment, conviction of a felony or misdemeanor, and any other disciplinary action against the licensee and the license or endorsement of an incarcerated felon will be automatically suspended. Violators may be required to pay penalties, the reasonable costs of an investigation and enforcement, or monetary costs associated with monitoring a restricted license or endorsement. If an outstanding judgment against a broker/salesperson is paid under the newly created Consumer Recovery Account, the subject license will be automatically suspended on the date of payment until the paid amount is reimbursed with interest. In addition, beginning on January 1, 2013, as part of the renewal process, licensees must take a course related to federal and state appraisal laws.

**C. DRE Fines and Reporting—SB 53**

DRE Fines and Reporting (SB 53; amends and adds sections to the Business and Professional Code).

Beginning January 1, 2012, the DRE may cite and fine both unlicensed persons and licensees that violate broker/salesperson laws and regulations. Each fine may include an administrative fine not to exceed \$2,500. These sanctions are in addition to all other administrative, civil, or criminal penalties. The DRE may, on its own, or must, upon receipt of a written verified complaint, investigate the actions of a licensee. The DRE may disclose to the public information regarding an investigation or proceeding of a licensee or unlicensed person. Beginning July 1, 2012, brokers who engage in escrow activities for 5 or more transactions in a calendar year pursuant to an exemption under the Escrow Law or whose exempted escrow activities equal or exceed \$1,000,000 must file an annual report with the DRE or be subject to penalties. There are additional notice requirements for brokers conducting qualified or exempt transactions under the Corporations Code. The DRE may suspend or revoke, delay renewal, or deny issuance of a license for violating new conduct requirements, such as demonstrating negligence or incompetence in performing a licensed act.

**D. Appraisal and Valuation—SB 6**

Appraisal and Valuation (SB 6; amends Civil Code Section 1090.5 and amends and adds to Business and Professional Code and Civil Code).

Beginning January 1, 2012, brokers and salespersons are expressly prohibited from knowingly or intentionally misrepresenting the value of real property or having a prohibited interest in property in which they offer or provide an opinion of value in connection with the



origination of a mortgage loan. In addition, an appraisal management company or person with an interest in a real estate transaction is prohibited from improperly influencing any appraisal. A person/entity preparing an appraisal or performing appraisal management functions is also prohibited from having an interest in the property or transaction.

## **VIII. MULTIFAMILY HOUSING—TENANTS**

### **A. Landlords Required to Arrange for Recycling Services—AB 341**

Landlords Required to Arrange for Recycling Services (AB 341; amends the Public Resources Code by adding Sections 42649.1 and 42649.2, among other sections).

This bill requires multifamily residential dwellings with five or more units to arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement applicable to the collection, handling, or recycling of solid waste to the extent such services are offered and reasonably available from a local provider. Landlords may require tenants to "source separate" their recyclable materials to aid in recycling program.

### **B. Rental Dwellings; Smoking—SB 332**

Rental Dwellings; Smoking (SB 332; adds Section 1947.5 to the Civil Code).

This bill authorizes landlords of residential dwelling units to prohibit smoking on the residential property, in individual dwelling units, in an interior or exterior area, or on the premises on which the dwelling units are located. All leases or rental agreements entered into after January 1, 2012, for dwelling units on property on any portion of which the landlord has prohibited smoking must include a provision that specifies the areas on the property where smoking has been prohibited. A landlord who exercises the authority to ban smoking pursuant to SB 332 must comply with federal, state, and local requirements governing changes to the terms of lease or rental agreements, including providing existing tenants written notices in the manner prescribed in Civil Code Section 827.

### **C. Tenants Allowed to Post Political Signs—SB 337**

Tenants Allowed to Post Political Signs (SB 337; amends the Civil Code by adding Section 1940.4).

In general, landlords cannot prohibit tenants from posting or displaying political signs relating to (1) elections or legislative votes, (2) the initiative, referendum or recall process, or (3) issues before a public board or agency. Landlords may prohibit such signs if a sign is more than 6 square feet or the posting of a sign would violate a local, state or federal law or a lawful provision in CC&Rs. The signs must be posted in compliance with any time limits set forth in a local ordinance or, if no such ordinance exists, the landlord may establish a reasonable time period for the posting, which is defined as beginning at least 90 days prior to the date of the election or vote to which the sign relates and ending at least 15 days thereafter.

**IX. MULTIFAMILY HOUSING—FINANCE****A. HCD/EHAP—AB 221**

HCD/EHAP (AB 221; amends Sections 53533 and 53545 of the Health and Safety Code).

This bill provides that funds deposited into the Emergency Housing and Assistance Fund Program could be utilized by the Department of Housing and Community Development ("HCD") for supportive housing under the Multifamily Housing Program. Supportive housing projects help serve individuals and households who are at risk of homelessness or currently living in transitional housing or emergency shelters.

**B. Supportive Housing—AB 483**

Supportive Housing (AB 483; amends Section 50675.14 of the Health and Safety Code).

This bill modifies certain provisions in the Multifamily Housing Program – Supportive Housing Program. This bill revised the term "targeted population" and makes several changes to the information a borrower must include in its annual report to HCD. The bill also imposes new requirements with respect to populations served by the supportive housing program.

**X. PUBLIC AGENCIES MEETINGS****A. Meeting Compensation Disclosure—AB 23**

Meeting Compensation Disclosure (AB 23; amends Section 54952.3 to the Government Code).

This bill authorizes a convened legislative body whose membership constitutes a quorum of any other legislative body to convene a meeting of the subsequent legislative body simultaneously or serially, only if a verbal announcement is made of the amount of compensation or stipend, if any, that each member will be entitled to as a result of convening the meeting of the subsequent legislative body. The announcement is not required if the amount of compensation is prescribed by statute and no additional compensation has been authorized by a local government agency.

**B. Executive Contracts/Brown Act—AB 1344**

Executive Contracts/Brown Act (AB 1344; amends Sections 9255 and 9260 of the Elections Code, and amends Sections 34457, 34458, 54954.2, and 54956 of, to add Section 34458.5 to, to add Article 2.6 [commencing with Section 53243] to Chapter 2 of Part 1 of Division 2 of Title 5 of, and to add Chapter 10.1 [commencing with Section 3511.1] to Division 4 of Title 1 of, the Government Code).

1) City Charter or Charter Amendment. This bill requires the submission of a city charter or charter amendment, whether submitted to the voters by a charter commission or the

governing body of a city or city and county, to be submitted at the next established statewide general, statewide primary, or regularly scheduled municipal election date, provided there are at least 95 days before the election. The bill also requires that a proposal to adopt a charter to include in the ballot description an enumeration of new city powers as a result of the adoption of the charter, including whether the charter, if adopted, will give the city council the power to raise its compensation and the compensation of other city officials without voter approval.

2) Government Employment Contracts. This bill prohibits an employment contract for a local government agency executive from providing automatic renewal of the contract that provides for an automatic increase in excess of the cost of living or a maximum cash settlement in excess of certain specified limits.

3) Reimbursement if Convicted of Abuse of Office. This bill requires a contract between a local government agency and an employee or officer of the agency to include a provision that requires that if the officer or employee is convicted of a crime involving an abuse of his or office, then such individual must fully reimburse the local agency for specified payments made by the local agency to the officer or employee.

4) Posting Agenda on Website. This bill requires a local government agency to post notice of the agency's meetings on its website, if it has one. It also prohibits consideration of an agency executive's compensation at a special meeting.