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AB-892 Transfers of real property. (2019-2020)

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Date Published: 09/23/2019 09:00 PM

Assembly Bill No. 892

CHAPTER 310

An act to amend Sections 1088, 1101.4, 1102, 1102.2, 1102.3, 1102.6, 1103.1, 2079, 2079.13, and 2079.14 of the Civil Code, relating to real property.

[Approved by Governor September 20, 2019. Filed with Secretary of State September 20, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 892, Holden. Transfers of real property.

The Real Estate Law establishes, within the Business, Consumer Services, and Housing Agency, the Department of Real Estate for the licensure and regulation of real estate brokers and salespersons. Existing law requires a licensed real estate broker to retain for 3 years copies of certain documents relating to transactions for which a real estate broker license is required, as specified.

Existing civil law provides that a multiple listing service (MLS), as defined, may be used by real estate agents and appraisers to prepare market evaluations and appraisals of real property and makes an agent or appraiser responsible for the truth of their representations and statements, as specified.

This bill would require a multiple listing service to retain and make accessible on its computer system, if any, all listing and other information placed in the multiple listing service by an agent or appraiser for no less than 3 years from the date the listing was placed. The bill would prohibit these provisions relating to multiple listing services from altering the obligations of a licensed real estate broker to retain documents relating to transactions for which a real estate broker license is required, as specified.

Existing law imposes certain disclosure requirements on the transferor of single-family residential property, including requiring the transferor to provide a specified real estate transfer disclosure statement and to disclose certain natural hazards. Existing law makes those provisions applicable to, among other transfers, a lease with an option to purchase, any other option to purchase, or a ground lease with improvements. Existing law specifically exempts certain transactions from those disclosure requirements.

This bill would revise the form for the real estate transfer disclosure statement to include a check box indicating that there are no substituted disclosures for the transfer. The bill would specifically exempt from the above-described disclosure requirements the sale, creation, or transfer of any lease, except a lease with an option to purchase or a ground lease coupled with improvements.

Existing law imposes a duty on a real estate broker or salesperson to a prospective buyer of single-family residential property or a manufactured home to conduct an inspection of the property offered for sale and to disclose to that prospective buyer all facts materially affecting the value or desirability of the property, if the broker has a written contract with the seller to find a buyer or the broker acts in cooperation with that broker.

This bill, instead, would impose that duty on a real estate broker or salesperson to a prospective buyer of residential real property improved with one to 4 dwelling units or a manufactured home.

Existing law defines various terms for specified provisions affecting the duties of real estate professionals to prospective sellers and buyers of real property.

This bill would define the terms "single-family residential property" and "single-family residential real property" for specified provisions.

The bill would also make technical and clarifying changes to related provisions affecting residential real property disclosures.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1088 of the Civil Code is amended to read:

1088. (a) A listing may not be placed in a multiple listing service unless authorized or directed by the seller in the listing.

(b) If an agent or appraiser places a listing or other information in the multiple listing service, that agent or appraiser shall be responsible for the truth of all representations and statements made by the agent or appraiser of which that agent or appraiser had knowledge or reasonably should have had knowledge to anyone injured by their falseness or inaccuracy.

(c) A multiple listing service shall retain and make accessible on its computer system, if any, all listing and other information placed in the multiple listing service by an agent or appraiser for no less than three years from the date the listing was placed in the multiple listing service.

(d) This section shall not alter the obligations of a licensed real estate broker to retain documents as specified in subdivision (a) of Section 10148 of the Business and Professions Code.

SEC. 2. Section 1101.4 of the Civil Code is amended to read:

1101.4. (a) For all building alterations or improvements to single-family residential real property, as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department, the permit applicant shall replace all noncompliant plumbing fixtures with water-conserving plumbing fixtures.

(b) On or before January 1, 2017, noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

(c) A seller or transferor of single-family residential real property shall disclose in writing to the prospective purchaser or transferee the requirements of subdivision (b) and whether the real property includes any noncompliant plumbing fixtures.

SEC. 3. Section 1102 of the Civil Code is amended to read:

1102. (a) Except as provided in Section 1102.2, this article applies to any transfer by sale, exchange, real property sales contract as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements of any single-family residential property.

(b) For purposes of this article, the definitions contained in Chapter 1 (commencing with Section 10000) of Part 1 of Division 4 of the Business and Professions Code shall apply.

(c) Any waiver of the requirements of this article is void as against public policy.

SEC. 4. Section 1102.2 of the Civil Code is amended to read:

1102.2. This article does not apply to the following:

(a) Sales or transfers that are required to be preceded by the furnishing to a prospective buyer of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers that can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(b) Sales or transfers pursuant to court order, including, but not limited to, sales ordered by a probate court in the administration of an estate, sales pursuant to a writ of execution, sales by any foreclosure sale, transfers by a trustee in bankruptcy, sales by eminent domain, and sales resulting from a decree for specific performance.

(c) Sales or transfers to a mortgagee by a mortgagor or successor in interest who is in default, sales to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, any foreclosure sale after default, any foreclosure sale after default in

an obligation secured by a mortgage, a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, sales by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure, sales to the legal owner or lienholder of a manufactured home or mobilehome by a registered owner or successor in interest who is in default, or sales by reason of any foreclosure of a security interest in a manufactured home or mobilehome.

(d) Sales or transfers by a fiduciary in the course of the administration of a trust, guardianship, conservatorship, or decedent's estate. This exemption shall not apply to a sale if the trustee is a natural person who is a trustee of a revocable trust and is a former owner of the property or was an occupant in possession of the property within the preceding year.

(e) Sales or transfers from one coowner to one or more other coowners.

(f) Sales or transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(g) Sales or transfers between spouses resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to that judgment.

(h) Sales or transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(i) Sales or transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(j) Sales or transfers or exchanges to or from any governmental entity.

(k) Sales or transfers of any portion of a property not constituting single-family residential property.

(l) The sale, creation, or transfer of any lease of any duration with the exception of a lease with an option to purchase or a ground lease coupled with improvements.

(m) Notwithstanding the definition of sale in Section 10018.10 of the Business and Professions Code and Section 2079.13, the terms "sale" and "transfer," as they are used in this section, shall have their commonly understood meanings. The changes made to this section by Assembly Bill 1289 of the 2017–18 Legislative Session shall not be interpreted to change the application of the law as it read prior to January 1, 2019.

SEC. 5. Section 1102.3 of the Civil Code is amended to read:

1102.3. The seller of any single-family real property subject to this article shall deliver to the prospective buyer the completed written statement required by this article, as follows:

(a) In the case of a sale, as soon as practicable before transfer of title.

(b) In the case of sale by a real property sales contract, as defined in Section 2985, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this subdivision, "execution" means the making or acceptance of an offer.

(c) With respect to any sale subject to subdivision (a) or (b), the seller shall indicate compliance with this article on the real property sales contract, the lease, or any addendum attached thereto or on a separate document.

If any disclosure, or any material amendment of any disclosure, required to be made by this article, is delivered after the execution of an offer to purchase, the prospective buyer shall have three days after delivery in person, five days after delivery by deposit in the mail, or five days after delivery of an electronic record in transactions where the parties have agreed to conduct the transaction by electronic means, pursuant to provisions of the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3), to terminate the offer by delivery of a written notice of termination to the seller or the seller's agent. The period of time the prospective buyer has in which to terminate the offer commences when Sections I and II, and, if the seller is represented by an agent in the transaction, then also Section III, in the form described in Section 1102.6, are completed and delivered to the buyer or buyer's agent. A real estate agent may complete their own portion of the required disclosure by providing all of the information on the agent's inspection disclosure set forth in Section 1102.6.

SEC. 6. Section 1102.6 of the Civil Code is amended to read:

1102.6. (a) The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE INSERTED

(b) The amendments to this section by the act adding this subdivision shall become operative on July 1, 2014.

SEC. 7. Section 1103.1 of the Civil Code is amended to read:

1103.1. (a) This article does not apply to the following sales:

(1) Sales or transfers pursuant to court order, including, but not limited to, sales ordered by a probate court in administration of an estate, sales pursuant to a writ of execution, sales by any foreclosure sale, sales by a trustee in bankruptcy, sales by eminent domain, and sales resulting from a decree for specific performance.

(2) Sales or transfers to a mortgagee by a mortgagor or successor in interest who is in default, sales to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, any foreclosure sale after default in an obligation secured by a mortgage, sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, or sales by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(3) Sales or transfers by a fiduciary in the course of the administration of a trust, guardianship, conservatorship, or decedent's estate. This exemption shall not apply to a sale if the trustee is a natural person who is a trustee of a revocable trust and the seller is a former owner of the property or an occupant in possession of the property within the preceding year.

(4) Sales or transfers from one coowner to one or more other coowners.

(5) Sales or transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the sellers.

(6) Sales or transfers between spouses resulting from a judgment of dissolution of marriage or of legal separation of the parties or from a property settlement agreement incidental to that judgment.

(7) Sales or transfers by the Controller in the course of administering Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(8) Sales or transfers under Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(9) Sales, transfers, or exchanges to or from any governmental entity.

(10) The sale, creation, or transfer of any lease of any duration except a lease with an option to purchase or a ground lease coupled with improvements.

(b) Sales and transfers not subject to this article may be subject to other disclosure requirements, including those under Sections 8589.3, 8589.4, and 51183.5 of the Government Code and Sections 2621.9, 2694, and 4136 of the Public Resources Code. In sales not subject to this article, agents may make required disclosures in a separate writing.

(c) Notwithstanding the definition of sale in Section 10018.5 of the Business and Professions Code and Section 2079.13, the terms "sale" and "transfer," as they are used in this section, shall have their commonly understood meanings. The changes made to this section by Assembly Bill 1289 of the 2017–18 Legislative Session shall not be interpreted to change the application of the law as it read prior to January 1, 2019.

SEC. 8. Section 2079 of the Civil Code is amended to read:

2079. (a) It is the duty of a real estate broker or salesperson, licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code, to a prospective buyer of residential real property improved with one to four dwelling units or a manufactured home as defined in Section 18007 of the Health and Safety Code, to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective buyer all facts materially affecting the value or desirability of the property that an investigation would reveal, if that broker has a written contract with the seller to find or obtain a buyer or is a broker who acts in cooperation with that broker to find and obtain a buyer.

(b) It is the duty of a real estate broker or salesperson, licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code, to comply with this section and any regulations imposing standards of professional conduct

adopted pursuant to Section 10080 of the Business and Professions Code with reference to Sections 10176 and 10177 of the Business and Professions Code.

SEC. 9. Section 2079.13 of the Civil Code is amended to read:

2079.13. As used in this section and Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained.

The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions.

(b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes a vendee or lessee of real property.

(c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29.

(d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction.

(e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement.

(f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation.

(g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent.

(h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller.

(j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.

(k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase.

(l) "Single-family residential property" or "single-family residential real property" means any of the following:

(1) Real property improved with one to four dwelling units, including a leasehold exceeding one year's duration.

(2) A unit in a residential stock cooperative, condominium, or planned unit development.

(3) A mobilehome or manufactured home when offered for sale or sold through a real estate broker pursuant to Section 10131.6 of the Business and Professions Code.

(m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration.

(n) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which they are the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property.

(o) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

SEC. 10. Section 2079.14 of the Civil Code is amended to read:

2079.14. (a) A copy of the disclosure form specified in Section 2079.16 shall be provided in a real property transaction as follows:

(1) The seller's agent, if any, shall provide the disclosure form to the seller before entering into the listing agreement.

(2) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable before execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

(b) The agent providing the disclosure form specified in Section 2079.16 shall obtain a signed acknowledgment of receipt from the buyer or seller except as provided in Section 2079.15.