

THERE OUGHTA BE A LAW

(OH, WAIT, THERE IS)

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As one year ends and a new one begins, a young attorney's fancy lightly turns to thoughts of law. Specifically, the recently enacted laws that will help or plague his or her clients. In an effort to help you adjust to the new realities and burdens imposed by the State legislatures in their infinite wisdom, here is a non-exhaustive selection of some of the key laws in some of the States in which we might represent your interests, and of which you should be aware:

Arizona

1. Effective July 1, 2020 the newly established Department of Insurance and Financial Institutions (DIFI) will assume the responsibilities of the Arizona Department of Financial Institutions and the Automobile Theft Authority. The Department of Financial Institutions will become a division within DIFI.
2. Effective August 27, 2019, Arizona adopted a modified version of the Uniform Commercial Real Estate Receivership Act ("UCRERA"), governing the procedures for a receivership on an interest in commercial real property and any personal property related to or used in operating the real property, but *does not apply* to a receivership of an interest in real property improved by one to four dwelling units unless the dwelling units were used as part of a commercial enterprise.
3. Effective August 27, 2019, and interest in real property conveyed by a "beneficiary deed" is treated as the separate property of the named grantee beneficiary and not community property, unless otherwise stated in the beneficiary deed. If none of the grantee beneficiaries named in the beneficiary deed survives the owner, the beneficiary deed is void.
4. Effective August 27, 2019, an HOA lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the assessment becomes due.

California

1. As a result of the California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Court*, the California Legislature has enacted a new law, effective January 1, 2020, that provides that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all three of the following conditions are satisfied:
 - (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - (B) The person performs work that is outside the usual course of the hiring entity's business. AND
 - (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

There are certain exemptions from the law, including one for real estate licensees, lawyers, investment broker/advisors, and accountants. ***Please see related article in this Newsletter, discussing the new law in detail.***

2. As of January 1, 2020, debt collectors are required to leave at least \$1,724 in a person's combined bank accounts. The law does not forgive the debt or prohibit the collector from going after debt by other means, such as garnishing paychecks; it just ensures that a person's bank account will be left with the minimum amount that the State has deemed a family of four needs to survive for a month.
3. As of January 1, 2020, licensed finance lenders making loans of between \$2,500 and less than \$10,000 are limited to charging simple interest of 36% per annum above the Federal Fund rate. The statute also limits the fees that may be charged.

4. Effective January 1, 2020, but applicable to rents increased on or after March 15, 2018, rent increases are capped at 5% each year plus inflation until January 1, 2030. Landlords are also banned from evicting tenants without just cause, meaning someone can't be evicted so the landlord can raise the rent for a new tenant. NOTE: This does not preempt more restrictive local rent control laws. *Please see the detailed article in this Newsletter for more information.*
5. Starting January 1, 2002, local governments can set up banks to handle taxpayer money and make loans. The public banks would be required to adhere to many of the same regulations as private banks, such as being FDIC insured. Only 10 such banks can be open at a time and no more than 2 can be approved in a calendar year.
6. The Rosenthal Fair Debt Collection Act has been amended, effective January 1, 2020, to now expressly *include* mortgage debt and to remove the prior exemption for attorneys from the term “debt collector.”

Nevada

1. Effective June 8, 2019, Nevada has extended the protections of the Federal Employees Civil Relief Act into Nevada law, prohibits foreclosure sale of an owner-occupied residential home of a federal, state, or tribal worker, or under certain circumstances a household member or landlord of such a worker, when the government shuts down, and extends the prohibition for 90 days after the shutdown ends. There is also the potential for a stay of a pending judicial foreclosure action during the shutdown period, unless the court determines that the shutdown does not materially affect the borrower's ability to comply with his or her loan obligations. As an alternative, the court, during a pending judicial foreclosure, may also adjust the obligations to preserve the interests of the parties. This prohibition only applies to loans secured prior to the shutdown. Any person who knowingly violates this new law is guilty of a misdemeanor and may be liable for attorney's fees and costs incurred by the injured party. With respect to this potential liability, the court is required to take into consideration due diligence used by the person prior to initiating the foreclosure sale. Importantly, the misdemeanor and liability provisions do not apply to a foreclosure trustee who initiates the foreclosure sale at the direction of another person. Similar to the Servicemembers Civil Relief Act, this law requires that a borrower be notified of these protection provisions prior to the recording of a notice of default or the commencement of a judicial foreclosure. For non-judicial foreclosures, this notice is to be included in the “SB 321” letter to be issued at least 30 days prior to the recording of the Notice of Default.
2. Effective July 1, 2019, Nevada has changed the procedures and timeframes for both commercial and residential evictions and now echoes the Federal Protecting Tenants at Foreclosure Act by providing that a tenant of a property sold at a residential sale retains the rights held under the lease. The new law also requires the prior owner to transfer the security deposit to the new owner. Finally, the new owner must notify the tenant of the change of ownership within 30 days after the transfer or sale and that a failure to pay rent may result in an eviction. However, there is express language in the new law indicating that a new owner who obtains title to property “sold as a residential foreclosure” is exempt from the new provisions and still retains the right to remove the tenant under existing provisions after a notice of change of ownership is issued, a 60-day notice is posted, and the current unlawful detainer procedures are followed. In a nutshell, this law transfers the lease rights of the prior owner to the new owner and affirms the tenant's rights under the lease for residential property sales other than foreclosure sales, and it does not apply to property transferred by residential foreclosure sale or prevent a 60-day eviction notice from being posted and enforced through an unlawful detainer if the property was obtained through foreclosure.
3. In a clean-up bill, effective October 1, 2019, Nevada has modified some of the terms utilized in its statutes governing deeds of trust and assignments of rent. The term “trustee” in NRS 107.0805, formerly defined as “ascribed in NRS 107.080”, is now defined as “the trustee of record,” which is how it was defined in NRS 107.080. The prior term “trust agreement” has now been changed to “deed of trust”. While these changes are not material, they do make the statutes easier to read, cite, and interpret. The other change of note is that the language found in NRS 40.050, that a mortgage shall not be a deemed a conveyance “without a foreclosure and sale”, has been updated to read “in the absence of a foreclosure sale or in accordance with NRS 32.100 to 32.370, inclusive, NRS 107.100 or chapter 107A of NRS.” Put simply, the foreclosure sale requirement remains but has been updated to include: (1) the provisions of NRS 32, which allow for a mortgagee to request that the court appoint a receiver when a mortgaged property is in danger of being lost; (2) the provisions of NRS 107.100, which also allow for a receiver to be appointed where personal and real property subject to the deed of trust is in danger of being lost; and (3) the provisions of NRS 107A, which allow for the assignment of rents from a security instrument.

Oregon

1. Oregon now caps annual rent increases at 7% plus the change in consumer price index (this year about 3%). The bill, which took effect upon passage, also prohibits landlords from evicting month-to-month renters without cause after 12 months of residency.
2. Effective January 1, 2020, anyone holding a lien against real property may request from a person that holds another lien against that property an itemized statement of the amount that is necessary to pay off that other lien. The statement must include the per diem interest that accrues after the date of the statement if the obligation that the lien secures bears interest. The obligor's consent is not a condition of providing the information unless another State or Federal law so requires.
3. Effective January 1, 2020, a Sheriff conducting an execution sale of real property must now also provide a Notice to Debtors in substantially the following form:

“NOTICE TO DEBTOR

You should be careful about offers to sell rights to surplus funds.

You may have a right to surplus funds remaining after payment of costs and satisfaction of the judgment, as provided in ORS 18.950 (4).

If you transfer or sell your right to redemption, you might not have the right to surplus funds.”

4. Effective January 1, 2020, a complaint in a suit to foreclose a residential trust deed on the lien debtor must include as an attachment a copy of a notice to lien debtors, in substantially the following form and printed in at least 14-point type:

“WARNING: You may get offers from people who tell you they can help you keep your property. You may get offers from people who want to buy your “redemption rights” or “all rights under ORS chapter 18.” You should be careful about those offers, as a sale of your rights to a property in foreclosure may include your right to claim any surplus funds arising from the foreclosure sale. Make sure you understand any papers you are asked to sign. If you have any questions, talk to a lawyer or one of the organizations mentioned below before signing.

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide telephone contact number at _____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may visit its website at: _____. Legal assistance may be available if you have a low income and meet federal poverty guidelines. For more information and a directory of legal aid programs, go to _____.”

5. Also effective January 1, 2020, a purchaser of rights in real property during a pending judicial foreclosure and prior to the end of the redemption period must provide a “notice in clear and conspicuous type” advising the seller that the transfer of an interest in real property during a foreclosure may include the transfer of redemption rights and the right to claim surplus funds arising from the foreclosure sale. The purchaser is required to record an affidavit of compliance with the notice provision prior to, or concurrently with, recording the deed that transfers the interest. Specifically, the notice is required to be in at least 14 point type and state:

“WARNING: You should be careful about this kind of transfer of property. Make sure you understand the documents that you sign. You may still own interests in this property. If you sign the deed to transfer this property, you may be giving up all of your interests in this property, such as redemption rights and rights to “surplus funds.” “Surplus funds” are any extra money if the property is sold at the sheriff's execution sale for more than what is owed on the property. If you have questions, talk to a lawyer before signing.”

Utah

1. Effective May 14, 2019, Utah amended its laws governing residential loan licensees to, among other things: (a) establishes criteria and parameters for temporary authorization to act as a mortgage loan originator; (b) beginning January 1, 2020, requires a background check for certain licenses to include ongoing monitoring through the Federal Bureau of Investigation's Next Generation Identification System's Rap Back Service; (c) requires the Division of Real Estate to establish a fee for background checks; and (d) revise the grounds for disciplinary action against a sales agent, principal broker, or association broker.

Washington

1. Effective July 28, 2019, landlords (or managers acting on their behalf) seeking to collect and/or evict for unpaid rent (or other reoccurring fees) on a residential property need to provide 14 days' notice. This 14-Day notice to Pay Rent or vacate has express minimum language requirements.
2. Also effective July 28, 2019, notices to increase rent have a 60-day advance notice requirement with express minimum language mandated.
3. Effective July 27, 2019, a debtor on a judgment for consumer debt may now claim as exempt up to \$2,000 in his or her bank account.
4. Unless a different rate is specified in the contract, and that rate is also reflected by the judgment, the post-judgment interest rate is now *lowered* to 9% as of July 28, 2019.

If you have questions about these or any other State laws affecting your business, please feel free to contact one of our attorneys.



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