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WATER CONSERVING PLUMBING FIXTURES IN 2017; HERO/PACE LENDER AND COUNTY ASSOCIATION SUED IN CLASS ACTION; HUD SETS OWNER OCCUPANCY STANDARDS FOR CONDO FINANCING

1 message

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Table of Contents

Water Conserving Plumbing Fixtures

Beginning January 2017, California Civil Code § 1101.4 requires that all homes built on or before January 1, 1994 must be equipped with water conserving plumbing fixtures. Although this law does not create a point of sale requirement (unlike water heater strapping and smoke alarm compliance), it does trigger a disclosure to the buyer (like carbon monoxide detectors). As the industry works through the application of the law, there is much confusion on everyone's part as to what needs to be done and by whom. To help with this, C.A.R. is creating a client Q&A, modifying an existing disclosure, and modifying two seller disclosure forms. The Carbon Monoxide Detector Notice is being modified to become the Water-Conserving Plumbing Fixtures and Carbon Monoxide Detector Notice (C.A.R. Form WCMD, 12/16) (available December 12, 2016). Both the Seller Property Questionnaire (SPQ) and the Exempt Seller Disclosure (ESD) are being modified to include a question for the seller to disclose whether they are aware of any non-compliant plumbing fixtures. The short, plain language Q&A for clients, set out below and which will include the revised WCMD, can be given separately.

2017 Water Conserving Plumbing Fixtures - What You Need to Know

Q. What does the law require?
A. In a nutshell, starting in 2017, the law requires installation of water conserving plumbing fixtures if you own a single-family home, and it is built before 1994 – whether or not it is being sold.

Q. I am selling my house. Are there any special disclosures that I must make?
A. The law requires you to disclose whether there are any non-compliant plumbing fixtures on the property. The form on the other side of this FAQ [the new WCMD will be on the back] has the specifications. But if you are unsure, then you should consult with someone who has expertise in the matter like a contractor or plumber.

Q. I am selling my house. Are there any installation requirements under this law?
A. No. There is nothing in this law that requires installation of water-conserving plumbing fixtures as a condition of sale. However, if you haven't already installed water conserving plumbing fixtures on your pre-1994 single-family house, then you are in violation of the basic requirement of the law.

Q. I own a property in a city where there is an existing retrofit law for water-conserving fixtures as a point of sale requirement (such as Los Angeles, San Diego or San Francisco). Are those retrofit laws still in force?
A. Yes. Local laws passed before July of 2009 requiring retrofit of plumbing fixtures remain in effect. The state law

also allows a locality to pass more restrictive requirements at any time.

Q. I would like to install water conserving plumbing fixtures. What can I do?
A. Call an expert such as a contractor or plumber. You can also go to your local home improvement store. You may wish to contact your local water service provider to find out if they offer low-cost or even no-cost plumbing fixtures.

While not part of the client piece, the C.A.R. Legal Q&A Water Conserving Plumbing Fixtures has additional information.

HERO/PACE Lender and County Association Sued in Class Action for Deceptive Loans with "Predatory Characteristics" - Lawsuit highlights unfairness, abuse and expense of certain energy improvement financing programs.

A class action lawsuit against Renovate America, Inc., and the San Bernardino Associated Governments (SANBAG) was filed on November 1st, alleging "predatory characteristics" and a "pervasive pattern of false, deceptive and otherwise unlawful practices" regarding Home Energy Renovation Opportunity Loans (HERO Loans). Renovate America, Inc., originates loans for energy efficiency improvements, such as solar panels, under the HERO program. SANBAG is an association of San Bernardino county districts, cities, and other local agencies, which hired Renovate America to market, originate and administer the HERO Loan program in San Bernardino County. Under state law, HERO loans are given a super-priority status as a Property Assessed Clean Energy (PACE) lien. These types of liens typically have priority even over existing first mortgage deeds of trust. Often, the property owner may not be able to refinance or sell without paying off a HERO loan.

Previously, C.A.R. has described HERO loans as unfairly expensive, with interest rates that border on predatory, where even basic lending guidelines for consumers are ignored, and which are often sold by high pressure door-to-door sales people. The lawsuit is specific to those homeowners who were charged administrative fees in excess of 5.7% on HERO loans. It paints a grim picture of loans being made with predatory characteristics, excessive fees and abusive terms, including secretly double-counting accrued interest and administration fees; a secretly charged administration fee on capitalized interest; payments on a HERO Loan which were not applied when made; interest being charged after the loan was paid in full; an inaccurate amortization schedule presented to the borrower; loan payments made directly to contractors; HERO loans approved based almost solely on a borrower's collateral; and an unlawful waiver of claims against the lender; and the plaintiff was first approached by a door-to-door salesman. Importantly, the lawsuit affirms that HERO loans may be subject to federal consumer protections under both TILA and HOEPA.

The law suit alleges:

- Secret double-counting of accrued interest, with an APR of 10.59%
- Secret double-counting of administration fees which ranged from 4.99% to 6.95%
- Failure to credit payments when made which thereby secretly increase the total amount of interest
- Overcharging of recording fees
- Understatement of estimated APR. When calculated properly, the APR for the plaintiff's HERO loan was in excess of 12%.
- Violations of TILA's High Cost Mortgage Rules
- Violations of TILA's Ability to Repay Rules
- Violations of HOEPA 1) by failing to provide various consumer protection disclosures 2) by charging prepayment fees 3) by imposing excessive late fees and 4) by failing to receive a certification from a counselor approved by HUD that the consumer has received counseling about the advisability of a high-cost mortgage
- Conspiracy to violate TILA and HOEPA
- And as against Renovate America only, violations of the California's Covered Loan Law and the Unfair Competition Law

Recently CAR successfully sponsored a law (AB 2693) which may help to curb the abuses of HERO loans. This consumer protection law requires delivery of a detailed financial disclosure document to a property owner participating in a Property Assessed Clean Energy (PACE) lien program. (HERO loans rely upon the PACE lien program to ensure priority status). The disclosure document contains a variety of notices and warnings including a notice that the property owner may not be able to refinance or sell without paying off the PACE obligation. The property owner also retains a 3-day rescission right detailed in a statutory form. Statements as to increased value of the property cannot

be made unless based on an appraisal, a broker price opinion or an "automated valuation model."

HUD Sets Owner Occupancy Requirements for Condo Financing - 35% owner occupancy ratio is permitted if certain conditions are met; otherwise, the 50% standard is retained

The Federal Housing Administration (FHA) retained its current requirement that approved condominium developments have a minimum of 50 percent of the units occupied by an owner. However, that ratio can be lowered to 35% for existing condo developments provided certain conditions are met. In general, to qualify for the lower percentage the development must show it has "higher reserves, a low percentage of association dues in arrears, and evidence of long-term financial stability" per the mortgagee letter (2016-15) FHA issued on October 26, 2016 outlining its new policy.

Specifically, the mortgagee letter states that for an existing project to be eligible for the lower 35% ratio they must meet the following conditions:

- Applications must be submitted for processing and review under the HUD Review and Approval Process (HRAP) option;
- Financial documents must provide for funding of replacement reserves for capital expenditures and deferred maintenance in an account representing at least 20 percent of the condo development's budget;
- No more than 10 percent of the total units can be in arrears (more than 60 days past due) on their condominium association fee payments; and
- Three years of acceptable financial documents must be provided.

For condominium projects that are proposed, under construction (including existing projects less than 12 months old) or gut rehab conversions, FHA will maintain its current owner-occupancy percentage of 30 percent.

The 35 percent ratio was enacted into law this summer in NAR-backed legislation called "The Housing Opportunity Through Modernization Act," H.R. 3700. The law says the 35 percent ratio would become law automatically unless HUD released a different figure by Oct 28. In its release prior to that deadline, HUD says it will approve the 35 percent ratio so long as the stricter conditions are met to ensure loans can be made without putting the FHA insurance fund at undue risk. "HUD believes that it would be possible to protect the fund while allowing a lower owner-occupancy percentage if certain adjustments are made to enhance other requirements that affect the financial stability of the project," the agency said.

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