



## REAL ESTATE

# Top 10 Real Estate Laws of 2010

By Andrew M. Lieb

Now that 2011 is here it is important to be aware of changes in the law in order to properly represent our clients. This is not a list about the best events from 2010, but, instead, a list that highlights the new legal landscape that you face as real estate practitioners. Being familiar with these laws and regulations may help you to better address your client's matters, save your license and make you money.

### Bankruptcy Exemption

The Homestead Exemption, which allows a bankrupt individual to preserve their home equity while filing for Bankruptcy, has increased from \$50,000 for an individual and \$100,000 for a married couple to \$150,000 for an individual and \$300,000 for a married couple throughout Long Island. Be mindful that outside of Long Island different exemption amounts apply by County.

### Real Estate Agency Disclosure

Real Estate Agents are now required to provide additional informed consent to their customers concerning the nature of their representation, particularly in the dual agency scenario. The new law provides for advanced consent with continual reminders to customers. It also extends the disclosure requirements to Condominiums

and Cooperative Apartments, which were previously exempt.

### Foreclosure Requirements

*Defendant's Attorney's Fees*

The Access to Justice in Lending Act now provides defendants with a right to make a claim for attorney's fees in a foreclosure action if they are successful in defending the foreclosure, but this right only exists if the lender could have recouped attorney's fees pursuant to the mortgage agreement if the lender was successful; almost always the case.

*Plaintiff's Affirmation Requirement* - Combating the prevalence of robo-signers and shabby documentation, New York became the first state to require lenders to vouch for the accuracy of their mortgage documents prior to a foreclosure sale. In fact, the assurance must come from the lender's attorney who will be very careful to perform the requisite investigation in order to protect their license.

### Distressed Property Consultant Advertisements

In addition to the many consumer protection laws that already regulate this industry, now individuals acting as consultants for mortgage workouts (Loan Modifications and Short Sales) must pro-

vide information about the availability of free state-funded services and the number of the New York State Banking Department as part of a consumer disclosure statement in their advertisements. Remember that a Distressed Property Consultant is an individual or business entity that undertakes employment to provide consulting services to a homeowner for compensation with respect to a distressed home loan or a potential loss of the home for nonpayment of taxes. Real estate brokers and salespersons are not exempt from this law, but attorneys practicing law are not so regulated.

### Title Insurance Tax

Title related services, inclusive of all relevant searches, which are not used in the course of preparing a title insurance policy, are now subject to New York State and Local Sales and Compensation Use Taxes.

### Lead Paint Contractor Certification Requirement

The Federal Environmental Protection Agency now requires contractors who perform renovations involving lead paint to be certified by the agency following extensive training and to employ certain work practice standards similar to what is done with respect to asbestos. Among other requirements, contractors are now required to construct containment zones, wear protective clothing, and utilize HEPA vacu-

### Carbon Monoxide Alarm Requirement

New York now requires essentially all residences, both new and existing, to have carbon monoxide alarms installed as follows:

*Constructed before January 1, 2008* - must have one alarm installed on lowest level with a sleeping area.

*Constructed after January 1, 2008* - must have an alarm installed on each level with a sleeping area or where a carbon monoxide source is located.

### New Power of Attorney Form

In real estate, this mainly affects a transaction where the buyer or seller is unavailable. Now, many of the sloppy changes made by the legislature just over a year ago have been corrected. Most importantly, a

Power of Attorney no longer automatically revokes all prior Power of Attorneys.

### Home Inspector Code of Ethics

Home inspectors must now provide a written contract to clients prior to performing the home inspection. This contract must clearly and fully describe the scope of service to be provided and the costs associated therewith. Additionally, this contract must include specific language, including:

Home inspectors are licensed by the NYS Department of State. Home Inspectors may only report on readily accessible and observed conditions. Home inspectors are not permitted to provide engineering or architectural services; and

If immediate threats to health or safety are observed during the course of the inspection, the client hereby consents to allow the home inspector to disclose such immediate threats to health or safety to the property owner and/or occupants of the property.

### Federal Estate / Gift Tax Exemption Increase

After continuous Congressional debate, the exemption is now set at \$5,000,000 for 2011 and 2012. While 2010 had an unlimited exemption, there was speculation that 2011 could see anything from \$1,000,000 to \$3,500,000. This new exemption means that families can easily transfer ten million dollars through the generations by way of a minor estate planning vessel called a Credit Shelter Trust.

This list only provides a small blurb on each new law and regulation. There may be further discussion on these topics going forward as they get fleshed out in the courts. So stay tuned.

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