



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

New Laws

January 2010

This newsletter outlines some of the new laws in California that impact consumers. Unless otherwise noted, these laws are effective as of January 1, 2010.

THEFT:

For many years, theft of over \$400 has been a felony and theft of \$400 or less has been a misdemeanor. Now, theft of \$950 or less is a misdemeanor (petty theft) and theft over \$950 is a felony (grand theft).

REAL ESTATE FRAUD:

A number of new laws have been passed that regulate the sale of real estate and the mortgage loan business.

The new crime of mortgage fraud is defined as deliberately making a misrepresentation during the mortgage lending process with the intention that the lender, borrower, or another party rely on it. If the value of

the fraud exceeds \$400, the crime is a felony.

Those who offer to perform mortgage loan modification or mortgage loan forbearance for a fee paid by the borrower are prohibited from collecting the fee until after fully performing the services. Attorneys can be disciplined for taking these upfront fees. Real estate agents who use materials to obtain advance fee agreements when they have been ordered by the Real Estate Commissioner not to use these agreements, face a maximum fine of \$2,500 and misdemeanor prosecution.

Real estate licensees who offer to perform mortgage loan modification or mortgage loan forbearance must provide customers with a written notice that it is not necessary to pay a third party to arrange for a loan modification. Real estate licensees who engage in the mortgage loan origination business must have both a real

estate license and a license endorsement allowing mortgage loan origination.

Mortgage loan contracts must be in the language of the consumer when the loan was negotiated in that language.

Beginning on July 1, 2010, mortgage brokers are prohibited from steering a borrower to accept a loan at a higher cost than that for which the borrower could qualify based upon the loans offered by the persons with whom the broker regularly does business. Anyone violating this law can be sued by the Attorney General's Office for penalties of up to \$10,000 per violation.

Mortgage originators and residential mortgage loan originators are required to be licensed, have a certain level of education, pass a test, and complete continuing education.

Real estate appraisers must now submit fingerprints with their applications for licenses and are subject to a background check.

Anyone selling residential real property after acquiring it at a foreclosure sale is prohibited from requiring the purchaser to buy title insurance or escrow services from a particular vendor.

CONTRACTORS:

Anyone contracting without a license now faces a maximum fine for a first conviction of \$5,000. Anyone who suffers a second conviction of this crime faces a maximum fine of the greater of \$5,000 or 20% of the contract price. Third convictions are punishable by a fine of \$10,000 or 20% of the contract price.

The Legislature has also declared that anyone who uses the services of an unlicensed contractor is a victim of crime eligible for restitution regardless of whether the victim knew the contractor was not licensed.

SELLERS OF TRAVEL:

A seller of travel is now subject to prosecution under the Seller of Travel Law only when the aggregate amount of money he/she received from all customers for travel services in a consecutive 12-month period exceeds \$2,350.

ADVANCE FEE TALENT SERVICES:

It is now unlawful for anyone to own, operate, or act in the

capacity of an advance-fee talent representation service. This is a service that offers to act on behalf of an artist and requires an upfront fee for the work. All talent contracts must be in writing and the person offering the services must maintain a bond of \$50,000 for the benefit of any customers who may be harmed by the business.

MISCELLANEOUS:

Beginning on December 1, 2010, businesses are prohibited from automatically charging a customer's credit or debit card without the consumer's explicit consent for ongoing shipments of a product or ongoing deliveries. The purpose of this law is to stop retailers from charging a customer's card for future shipments of product or future services through a negative option. Now the business must obtain the consumer's express approval for such ongoing charges. This section does not make it a crime, but allows the consumer to seek all available remedies.

Cities may now seek to abate as a nuisance the property where counterfeit goods are sold or manufactured.

Charter-party carriers (e.g. bus operators and limousine operators) who operate without obtaining a permit or otherwise violate the law are subject to misdemeanor prosecution with a maximum fine of \$5,000 and up to 3 months in jail. A California Highway Patrol officer is authorized to impound a bus of a charter-party carrier for 30

days if the officer determines that the charter-party carrier does not have the proper permit or the driver does not have a valid driver's license.

**San Diego
City Attorney's Office
Consumer and Environmental
Protection Unit
(619) 533-5600**

This newsletter was written by Tricia Pummill.

.....
The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.