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Legal Update: EBMUD Ordinance Affects Title & Escrow Procedures in Certain Areas in Northern California

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East Bay Municipal Utility District Ordinance Affects Title & Escrow Procedures in Certain Areas in Northern California

East Bay Municipal Utility District ("EBMUD") recently enacted the Regional Private Sewer Lateral Ordinance No. 311 (the "Ordinance"). A private sewer lateral is a pipe that connects the plumbing in a home or business to the sanitary sewer main, usually located in the street. The private sewer lateral carries sewage from a building to a public sanitary sewer. Generally, it is the responsibility of the property owner to maintain the sewer lateral.

The Ordinance is implicated if you live in one of the affected areas when (1) you are selling your property, (2) building or remodeling on your property in excess of $100,000, or (3) requesting a change in your water meter size. An exemption may apply if the private sewer lateral was fully replaced within the last ten years.

Title Transfer

If you are selling property in the affected area, the Ordinance requires that you obtain a compliance certificate or apply for a time extension certificate. Specifically, prior to transferring title, if the property contains a private sewer lateral in one of the affected areas, the transferor shall disclose the requirements of the Ordinance and provide a valid compliance certificate to the interested parties. Interested parties include the transferor property owner's real estate broker, the transferee, the transferee's real estate broker, and the escrow holder, if any.

If a compliance certificate cannot be obtained prior to transferring title, the transferor may request an extension of time in which to perform the repairs or replacement required in conjunction with the transfer of the property by applying for a temporary compliance certificate. A temporary compliance certificate will be issued when an application and fee are submitted in, addition to evidence that $4,500 is being retained in escrow. Once conditions for issuing a compliance certificate are met, the compliance certificate will be issued and will provide for the release of the remaining escrow funds. If the work is not completed within 180 days of the close of escrow, the escrow funds may be forfeited. EBMUD will take possession of the forfeited escrow funds and the current owner must show compliance prior to requesting that EBMUD release the forfeited funds.

Construction or Remodeling in excess of $100,000

If you are applying for a permit or other approval needed for construction, remodeling, or modification of any structure with a private sewer lateral within one of the affected areas (in excess of $100,000), the property owner must obtain a compliance certificate prior to obtaining a final permit or approval from the permitting authority.

Change in Water Service

If a property owner in the affected area applies for an increase or decrease in the size of the owner's water meter, a compliance certificate must be obtained prior to obtaining a final permit or approval.

Multi Unit Buildings

Multi unit buildings in the affected area, such as condominiums are also affected and require that the homeowners' association determine if the sewer lateral is in compliance within ten years of the Ordinance being adopted.

Compliance certificates that are obtained as a result of complete replacement of the private sewer lateral are valid for twenty years. If the compliance certificate is obtained without complete replacement, either as a result of repair work or testing without repair work, it is valid for seven years. For more information on how to obtain a compliance certificate, see www.ebmud.com.

The Ordinance goes into effect on August 22nd in Emeryville and Piedmont, October 17th in El Cerrito, Kensington, Richmond Annex and December 19th in the City of Oakland.

For more information about this ordinance, or other escrow and title related legislation or issues, please contact Rich Carlston or Ella Gower at 925-935-9400 or email them at rich.carlston@msrlegal.com or ella.gower@msrlegal.com. For more background on escrow, see Miller & Starr California Real Estate 3d, Chapter 6, "Escrow."

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