

## Oakland/East Bay Municipal Utility District Private Sewer Lateral Program

### Important Information for REALTORS

#### **Background**

As part of a Court Order that is the result of a lawsuit between the U.S. Environmental Protection Agency, the California Water Boards, and East Bay Municipal Utility District (EBMUD), cities were required to develop individual plans for repairing and operating their sewage pipes. As such, the EBMUD developed a program, drafted and passed an ordinance, and then worked with cities in their jurisdiction to pass mirror enabling legislation to implement the program.

The program requires that at point of sale, remodeling projects of \$100,000 or more, or changing the water meter size, trigger the requirement to obtain a “compliance certificate” which demonstrates that the private sewer lateral does not leak. In most cases, this will require significant repair of the sewer lateral. Repairs to the sewer lateral require permits from the City and City inspections, usually upon completion, related to either the pipe and/or the street because most work will include digging up the street beyond the curb/sidewalk. The property must have a compliance certificate to close escrow and complete the sale. Implementation of the EBMUD Private Sewer Lateral program in Oakland begins on January 16, 2012 for escrows opened on or after this date. Escrows opened prior to this date, but are still open, are not subject to the ordinance.

***Oakland Association of REALTORS is providing the following information to help agents with some common questions from our industry. However, agents should check directly with their brokers and risk managers regarding forms and procedures to address the PSL ordinance and their individual transactions.***

#### **Question and Answers**

***Q: What properties are subject to the ordinance?***

**A:** ALL properties are subject to the ordinance except condominiums. Single family homes, multi-unit properties, and commercial/retail properties are all subject to the ordinance.

***Q: What do you do if there has been sewer work prior to January 16, 2012?***

**A:** If the sewer lateral is less than 10 years old and was FULLY replaced, provide valid evidence of the date and replacement work -- the plumber's bill and the approved city building/sewer permits – to EBMUD for an exemption certificate. However, EBMUD will make a determination for exemption and could deny exemption. In this case, you will need to schedule a compliance test with EBMUD to obtain a compliance certificate. If the property does not pass the test, you will need to have additional work done and/or apply for an extension.

***Q: Who is responsible for having the work done, the buyer or the seller?***

**A:** It can be either; the ordinance does not specify which it has to be. It can be negotiated similar to how other work/repairs are handled as part of the transaction. However, a compliance certificate OR the \$4,500 deposit for the time extension are required to close escrow.

***Q: When will the \$4,500 deposit be returned?***

**A:** Once a compliance certificate has been issued, the deposit will be returned within 2 weeks. EBMUD will cut checks once a week on Friday. If compliance paperwork is filed by Tuesday, checks could potentially be returned within the week.

***Q: Who posts the \$4,500 deposit for the time extension?***

**A:** Again, it can be either the buyer or the seller, the ordinance does not specify.

***Q: If there is an extension, can escrow close?***

**A:** Yes, provide the escrow agent with the extension certificate.

***Q: If there was an extension, when the work is completed and the compliance certificate received, how and to whom is the deposit returned?***

**A:** The EBMUD extension form includes a designation for the return of the deposit fee. The individual posting the deposit will indicate at that time to whom the deposit will be returned. As part of the negotiation of the transaction, the individual could designate the buyer, the seller, or some split of both. EBMUD will return checks within two weeks from the issuance of the compliance certificate.

***Q: What if the seller or buyer does not have funds to complete the work OR get the extension?***

**A:** EBMUD has an appeal process for requests for relief. In this case, the current property owner (seller) would make the appeal by writing to the Director of EBMUD within 15 days of becoming aware of the inability to comply. The Director will act on the request within 10 days of receipt. The Director's decision will be final; however within 30 days of the decision, a written request can be submitted for reconsideration. Again, the Director will have 10 days to take action on the reconsideration. Unfortunately, we do not anticipate that appeals will be granted.

***Q: How will EBMUD be tracking sales, properties, and compliance?***

**A:** EBMUD will be monitoring sales through the County Assessor's office and will check monthly for transactions against their internal record of compliance or extension certificates issued. If they discover that a transaction was completed and no compliance or extension certificate was issued, EBMUD will send notice to the new owner and require compliance, there is no formal grace period. It is unclear the timing and/or order of enforcement actions, but the Director has the authority to impose fees, file and injunction requiring the work, and/or terminating water service at the property.

***Q: Are REALTORS subject to any enforcement under this ordinance?***

**A:** Technically no, the responsibility is on the property owner. However, as with other local laws and ordinances, REALTORS must disclose the requirements to clients as part of the transaction.

***Q: What if there is no compliance or extension?***

**A:** According to the ordinance, escrow cannot close without either compliance or extension certificates. Unfortunately, if either seller or buyer is unable to comply, the sale cannot proceed.

***Q: What about short sales or other transactions that can take a long time, even months?***

**A:** Currently, there is no provision in the ordinance for additional extensions. If transactions are going longer than the 180-day extension period, the interested parties and/or REALTOR should apply for the extension closer to the start of escrow, not the beginning of negotiations.

***Q: Who is responsible for compliance in a foreclosure?***

**A:** Under the current ordinance, foreclosed properties are exempted. When a foreclosed property is purchased subsequent the foreclosure by a new owner, compliance will be imposed at that point. So, the buyers will be required to have the work done, get the compliance certificate or the extension and post the \$4,500 deposit.

***Q: Who does the test to certify compliance?***

**A:** A plumbing contractor actually performs the test. An EBMUD inspector will simply observe the test and can issue the compliance certificate at the time of a successful test.

***Q: What about our agreements and disclosure forms?***

**A:** The PSL ordinance is referenced in the East Bay Purchase Agreement Addendum. Agents should check with their brokers and risk managers regarding forms and procedures to address the PSL ordinance.

***Q: How and when does the City of Oakland get involved?***

**A:** Permits are required to do work on the sewer lateral. Usually, the plumbing contractor will obtain the appropriate permits on behalf of the property owner. The City Inspector will come out to inspect the work during or after the job. The City Inspector cannot issue an EBMUD compliance certificate.

***Q: What if more than one property connects to the sewer lateral but the rest are not for sale?***

**A:** Condominiums, as defined as a classification by the County, are not part of the implementation at this time, but will be phased-in in 10 years. If a property has multiple owned units but shares a private sewer lateral, when one of the units hits a trigger the entire sewer lateral is subject to the ordinance. It is up to the owners who will take all or any shared responsibility to comply with the ordinance, but a compliance or extension certificate will need to be obtained to complete the transaction.

***Q: How long will this ordinance be in effect?***

**A:** There is no sunset date for this ordinance. Presumably it will be in effect for at least the next 30 years and beyond.

***Q: Is there a rebate program?***

**A:** Yes, but it is narrowly defined and CANNOT apply to properties that are otherwise meet the triggers. So, if a property is for sale and/or in escrow, the property is not eligible for the rebate program. The rebate program is an incentive program NOT an assistance program.

**November 10, 2011**

**Important Change to the Sewer Lateral Requirements for Emeryville, Oakland and Piedmont**

**You can monitor all details and updates by clicking on the following links:**

[www.ebmud.com/our-water/wastewater-treatment/private-sewer-lateral-program](http://www.ebmud.com/our-water/wastewater-treatment/private-sewer-lateral-program)

[www.eastbaypsl.com](http://www.eastbaypsl.com)

[www.oar.org/pdfs/PSLbrochure.pdf](http://www.oar.org/pdfs/PSLbrochure.pdf)

**We now have the Oakland Public Meeting Schedule and Locations for the PSL Program**

**Thursday, November 17, 2011 – 7:00 PM**

**Lake Merritt Boat House**

**568 Bellevue Avenue, Oakland, CA 94610 (near Grand Avenue)**

**Parking Lot Provided, AC Transit**

**Max of 50 chairs**

**Wednesday, December 14<sup>th</sup>, 2011 – 7:00 PM**

**East Oakland Sports Center (upstairs meeting room)**

**9161 Edes Avenue, Oakland, CA 94603 (at 98<sup>th</sup> Avenue)**

**Parking Lot & Security Provided, AC Transit**

**Max of 50 chairs**

**Thursday, January 5, 2012 – 7:00 PM**

**Joaquin Miller Community Center**

**3594 Sanborn Drive, Oakland, CA 94602**

**Parking Lot Provided**

**Max of 50 chairs**

**Interested in attending the Public Hearings? Please contact Jessica Reynolds at:**

[jessica@oar.org](mailto:jessica@oar.org)