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# Property

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# Property

## Property; covenants running with the land

Civil Code §1468 (amended).

AB 1456 (Bagley); STATS 1973, Ch 474

(Effective September 11, 1973)

Section 1468 of the Civil Code provides that any covenant respecting the use of land will be binding upon successive owners if such covenant relates to the use, repair, maintenance, or improvement of or payment of taxes and assessments on such land. Section 1468 has been amended to provide additionally that if the land to which the covenant is appurtenant is held in concurrent ownership, and the covenant suspends the right to partition the parcel, such a covenant will run with the land. The covenant may only last for a period which is reasonable in relation to the purpose of the covenant.

### COMMENT

Condominiums and similar living arrangements by which multiple dwelling facilities are located on single, concurrently owned parcels have become increasingly popular in recent years. Anti-partition covenants have proved useful in protecting the interests of concurrent owners of such parcels from dispossession resulting from a partition sale. Section 1468, as amended, extends this protection by allowing such covenants to run with the land and be binding upon successive owners of the parcel.

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#### See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA LAND SECURITY AND DEVELOPMENT §24.7 (1960).
- 2) Comment, *California's New Legislative Approach to Covenants Running with the Land*, 9 SANTA CLARA LAW. 285 (1968).

## Property; homesteads—nonexempt obligations

Civil Code §1237 (amended).

SB 849 (Grunsky); STATS 1973, Ch 281

Section 1237 of the Civil Code provides that notwithstanding a valid declaration of homestead on a dwelling house in a condominium,

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planned development, stock cooperative, or community apartment project, or on a dwelling house situated on real property held under a lease of 30 years or more, rather than a freehold, certain obligations may be enforced as if there were no homestead: (1) an agreement, covenant, or restriction between or binding upon the owners of a title, interest, or estate in a condominium, planned development, stock cooperative, or community apartment project; or (2) an underlying lease or sublease, indebtedness, security, or other interest or obligation. Section 1237 has been amended to additionally allow the enforcement of a lien arising under an agreement, covenant, or restriction described in (1) above.

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### **See Generally:**

- 1) Teaford, *Homeownership for Low-Income Families: the Condominium*, 21 HAST. L.J. 243, 272 (1970).
- 2) Trost, *Recent Developments in Debtor Protection*, 46 CAL. S.B.J. 639, 646 (1971).

## **Property; mobilehome developments**

Civil Code §§789.10, 789.11 (new).

AB 702 (Wilson); STATS 1973, Ch 785

Section 789.10 has been added to the Civil Code to prohibit the ownership or management of a mobilehome development from imposing as a condition or precondition of residency or tenancy that the mobilehome be removed from the development in the event of a sale to a third person during the term of the tenant's lease or any renewal or extension thereof. Upon the sale to a third person, the owner of the development may, in order to upgrade the quality of his mobilehome park, require that any mobilehome less than ten feet wide or more than ten years old, or in a run-down condition or in disrepair, be removed from the development. The decision of the ownership or management of the development in this regard shall be binding.

Nothing in this section shall be construed to deny the ownership or management the right to require prior approval of a purchaser if the mobilehome will remain located in the development; nor does this section apply to a mobilehome that remains unoccupied for more than 120 consecutive days and is subsequently sold during the ongoing period of vacancy. No rental, lease, or sale agreement shall contain any provision by which the purchaser or tenant waives his rights under this section, and any such waiver shall be deemed void and unenforceable as contrary to public policy. Section 789.11 has been added

to require the ownership or management of a mobilehome development to obtain written authorization from the owner before showing or listing for sale a tenant's or resident's mobilehome.

### COMMENT

Moving a mobilehome and its accessory buildings is expensive. In many cases the home is worth more on resale if it will remain in place, particularly if the park and site location is desirable. Section 789.10 purports to protect the owner of a mobilehome from an arbitrary diminution of his equity by guaranteeing to a prospective purchaser that the mobilehome will not have to be removed from the development at the whim of the ownership or management. The effectiveness of this protection may be questioned, however, since the "binding" determination of what constitutes a "run-down condition" or "disrepair" is made by the ownership or management.

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**See Generally:**

- 1) CAL. HEALTH & SAFETY CODE §18200 *et seq.* (Mobilehome Parks Act).
- 2) FLA. CIVIL PRACTICE & PROCEDURE CODE §83.291 (FLA. LAWS 1972, Ch. 72-28, §3, eff. March 8, 1972) (limitations on powers of owners and management of mobilehome developments).

### Property; mobilehomes—termination of tenancy

Civil Code §789.5 (amended).

SB 548 (Moscone); STATS 1973, Ch 351

Support: Golden State Mobilehome Owners' League

Opposition: California Real Estate Association

Section 789.5 of the Civil Code provides an exclusive list of conditions which, if breached, create grounds for termination of a tenancy in a mobilehome park; prohibits the management of a mobilehome park from denying use of a park community or recreation hall at reasonable hours for purposes of meetings relating to mobilehome living and affairs when the facility is not otherwise in use; and requires the ownership or management of a mobilehome park to give 60 days' notice to terminate a tenancy, specifying the reason or reasons for termination. Section 789.5 has been amended to eliminate changes in ownership of the mobilehome park as grounds for terminating a tenancy. The section has also been amended to entitle *residents* in the mobilehome park and *occupants of a mobilehome* in a mobilehome park to the same use rights in a park community or recreation hall as was previously afforded only to tenants. In addition, Section 789.5

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has been amended to require that the notice of termination provide information as to the date, place, and circumstances of termination. No recital of or reference to subdivision or paragraph numbers, or language of this section shall be construed as compliance with the section's notice provisions.

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**See Generally:**

- 1) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 371 (1972).

### **Property; mortgages—notice of default**

Civil Code §§2924, 2924c (amended).  
AB 1571 (Warren); STATS 1973, Ch 817

Section 2924 of the Civil Code provides that before a private power of sale may be exercised, the mortgagee, trustee, or other person holding such a power must file for record a notice of default (this notice must also be mailed to any person who, subsequent to execution of a deed of trust or mortgage with a power of sale, requests such notice pursuant to Section 2924b). Sections 2924 and 2924c have been amended to require that if the default is curable, the notice of default must contain the statement supplied in Section 2924c(b). This statement informs the person in default of the right to cure the default and reinstate the mortgage or deed of trust, makes reference to Section 2924c which contains the measures necessary to cure the default, warns that the right to reinstate will terminate and the property may be sold if the default is not cured within three months, and provides the name and address of the beneficiary or mortgagee so that he can be contacted. Section 2924c(a) has been amended to allow reinstatement at any time within three months after the recordation of notice of default if the power of sale is to be exercised, or any time before the entry of the decree of foreclosure in all other instances. In addition, Section 2924c(b), as amended, provides that if the statement specified by subdivision (b) is not included in the notice of default when required, this shall not affect the validity of a sale in favor of a bona fide purchaser or encumbrancer for value and without notice. The provisions of this act shall become operative on July 1, 1974.

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**See Generally:**

- 1) CAL. CIV. CODE §§2924, 2924b, 2924c (filing notice of default).
- 2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA REAL ESTATE SECURED TRANSACTIONS §§4.49-4.54, 6.13 (1970) (foreclosure and notice).
- 3) Comment, *California's Nonjudicial Foreclosure Notice Requirements and "The Sniadach Progeny": An Evaluation*, 9 CAL. WEST. L. REV. 290 (1973).

**Property; open-space land sales**

Government Code §54225 (new); §§11011.1, 54220, 54221, 54222, 54223 (amended).

AB 1081 (Wilson); STATS 1973, Ch 1308

Support: City of San Diego

Section 11011.1 of the Government Code provides that land declared surplus by the legislature pursuant to Section 11011, and not needed by any state agency, may be sold to local governmental agencies. Prior to amendment, if the surplus land was to be used for park or recreational purposes and operated by local governmental agencies at no expense to the state, the Director of General Services could sell it to such local agencies, with the approval of the State Public Works Board, at fifty percent of the fair market value. Chapter 1308 has amended Section 11011.1 to provide that where such land is to be used for park or recreational purposes, and operated as indicated above, it may be sold to local agencies at either the fair market value, or *any lesser value* of the land, if such transfer is in the public interest. In addition, the section, as amended, provides that where such land is to be used for *open space purposes*, it may be sold to local agencies at fifty percent of the fair market value. Such discounted sales of surplus lands may be made only under the following conditions: (1) the local public agency has submitted a general development plan for the property, approved by the Director of Parks and Recreation and conforming with the agency's general plan, pursuant to Article 5 (commencing with §65300) of the Government Code; (2) the land must be developed within a time period established by the state, but not to exceed ten years, and in the case of a sale for park or recreational purposes, the deed shall provide that the land shall revert to the state if the land is not developed within the time period so determined by the state; and (3) the instrument of transfer must indicate that the land will revert to the state if, during the period of 25 years after the sale, the land is used otherwise than for the open-space or the park and recreational purposes for which it was sold. In its application to this section, "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation of natural resources.

Section 54222 has been amended to require any state or local agency disposing of surplus lands for park or recreational purposes or for open-space purposes to first notify any park and recreation department of the city and county wherein the land is situated, any regional park

authority having jurisdiction over the land, or the State Resources Agency of the impending sale. Section 54223 has been amended to require the entity desiring to purchase such surplus lands to notify the seller of its intent to purchase within 60 days after Section 54222 notice has been given. Chapter 1308 has also added Section 54225 to provide that any public agency selling surplus land to an entity described in Section 54222 for recreational or open-space purposes, may provide for a payment period of up to 20 years in any contract of sale, or sale by deed of trust of such land. Section 54221 has been amended to provide that "open-space purposes," as used in Article 8 (commencing with §54220), shall (as in §11011.1) mean the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

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**See Generally:**

- 1) CAL. CONST. art. XXVIII (conservation of open spaces).
- 2) CAL. GOV'T CODE §65560 (different definition of open-space land).
- 3) *Report of the Senate Interim Committee on Open Space, Open Space—What is it?*, reprinted in JOURNAL OF THE CALIFORNIA SENATE app. at 51 (Reg. Sess. 1970).

**Property; recordation of documents**

Government Code §27288.1 (repealed); §27288.1 (new).

SB 143 (Stiern); STATS 1973, Ch 636

Section 27288.1 of the Government Code provided that the county recorder could not accept for recordation an instrument releasing any lien on personal or real property unless the instrument set forth the name of the obligor of the lien being released. This section has been repealed and a new Section 27288.1 has been added by Chapter 636.

Section 27288.1, as added, provides that no document affecting or evidencing a transfer or encumbrance of an interest in real property shall be recorded unless the document includes the name of the interest holder of record. If the document releases or terminates any interest, right, or encumbrance the document shall not be recorded unless it contains or has appended thereto the name of the owner of the title or interest, or the name of the owner as it appeared in the document when the interest, right, or encumbrance was created. Any document must additionally contain other information required by law pertaining to the particular document offered for recordation.

Section 27288.1 also provides that the recorder may rely upon the information contained in or appended to the document offered for recordation in determining whether this section is complied with. Fail-

ure of a document which is recorded to include all the names required by this section shall not affect the constructive notice which would otherwise have been afforded by the recordation.

This section shall not apply when a public highway or road is vacated or abandoned by a public agency nor when a county tax collector records documents in accordance with Revenue and Taxation Code Sections 3513, 3710, and 3805. When a notice of assessment is recorded pursuant to Section 3114 of the Streets and Highways Code or a notice of award of contract is recorded pursuant to Section 5248 of the Streets and Highways Code, the name of the assessed owners or the latest secured assessment role shall be recorded.

### COMMENT

The addition of Section 27288.1 of the Government Code is in response to provisions in the Government Code which do not specifically require counties to record certain liens on real property with the name of the owner of the interest encumbered [See, *e.g.*, CAL. GOV'T CODE §25828]. Consequently, the recorder would have been unable to index such documents in the grantor-grantee index, thereby giving no notice to persons using the index for title searches.

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See Generally:

- 1) CAL. GOV'T CODE §25828 (liens for unremunerated county services).
- 2) CAL. GOV'T CODE §27280 *et seq.* (documents to be recorded).
- 3) CONTINUING EDUCATION OF THE BAR, CALIFORNIA REAL ESTATE SALES TRANSACTIONS §§18.43-18.72 (1967), (Supp. 1972).
- 4) CONTINUING EDUCATION OF THE BAR, CALIFORNIA LAND SECURITY AND DEVELOPMENT §1.6 (1960).

### Property; redemption payments

Water Code §§26225, 26229 (amended).  
AB 1232 (Kapiloff); STATS 1973, Ch 556

Section 26655 of the Water Code provides that an irrigation district may purchase land upon which irrigation assessments have become delinquent. Section 26225 allows the owner of such land to redeem it within five years from the date of sale. Prior to amendment, Section 26225 specified that such redemption could be made by payment to the district of the amount for which the district purchased the land, plus a specified penalty charge. As amended, Section 26225 will now require a redeeming property owner to pay not only the district purchase price and penalty charge, but also to pay to the county any taxes, interest, and penalties which would have been due to the county

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or any special district for which the county levies and collects taxes had the property remained on the tax roll. Special districts include, but are not limited to, school districts, improvement districts, maintenance districts, county service areas, or other governmental entities. The provisions of this section do not apply to property purchased by an irrigation district before the effective date of this act [A.B. 1232, CAL. STATS. 1973, c. 556, §3].

Section 26226 provides that on receipt of the redemption money plus the recorder's fee, the collector shall make out duplicate certificates of redemption. One of the duplicate certificates shall be given to the redemptioner (§26227), and the other shall be recorded with the county recorder in whose office the certificate of sale was recorded (§26229). Section 26229 has been amended to provide that such recorded certificate of redemption is conclusive in favor of a purchaser or encumbrancer for value.

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### **See Generally:**

- 1) CAL. CONST. art. XIII, §1; CAL. REV. & TAX. CODE §202 (tax exemptions for public property).
- 2) WITKIN, SUMMARY OF CALIFORNIA LAW, *Taxation* §60 (7th ed. 1960) (property tax exemptions).
- 3) 94 C.J.S., *Waters* §337(d) (1955).

### **Property; subdivision approval process**

Business and Professions Code §§11002, 11019 (repealed); §11019 (new).

AB 1186 (Russell); STATS 1973, Ch 202

Support: California Real Estate Association

Section 11019 of the Business and Professions Code has been repealed and reenacted by Chapter 202 to provide that the Real Estate Commissioner may issue a cease and desist order or order the cessation of the sale or lease of interests in a subdivision in three instances: (1) when any subdivider or other person violates the regulations set forth in Sections 11000 through 11200 (pertaining to sales, exchanges, or other transactions in subdivision lands); (2) when an applicant for public report has made representations and assurances upon which the commissioner has relied in issuing the public report, and such assurances and representations are not carried out by the applicant (previously there was no provision allowing a cease and desist order to be issued where false representations or assurances had caused the granting of a public report); and (3) when conditions existing in

the subdivision would have caused the denial of the public report if the conditions had existed at the time of the issuance of the public report. A public report is necessary for any sale or lease of lots or parcels in a subdivision, and must contain the data specified in Section 11010 (pertaining to the identities of the owner and subdivider, a description of the subdivision lands, various financial information, and other specified data), and any other information deemed appropriate by the Commissioner of Real Estate. The grounds for denial of a public permit are listed in Section 11018. As added, the section also requires that service and proof of service of the order to cease and desist must comply with Articles 3, 4, and 5 (commencing with §§415.10, 416.10, and 417.10, respectively) of the Code of Civil Procedure.

As reenacted, Section 11019 also requires that all activities covered in a cease and desist order shall be immediately discontinued upon the receipt of such an order. By requiring immediate cessation of activities specified in the cease and desist order, the new section imposes felony liability at the time the recipient ignores the order, rather than at the time of the final determination of all issues at the hearing [CAL. BUS. & PROF. CODE §11023].

The new section further provides that the subdivider or other person named within the cease and desist order may, within 30 days, file a request for a hearing to challenge the order. Upon such request, the commissioner shall assign the matter to the Office of Administrative Hearings to conduct the hearing. The order shall be deemed vacated if the hearing is not commenced within 15 days after receipt of the request or, if no decision in the case is reached by the commissioner, within 30 days after completion of the hearing. Prior to enactment of Chapter 202, former Section 11019 provided that the cease and desist order would be vacated if the hearing was not held within 15 days after the request or if a proposed decision and an official adoption or rejection thereof by the commissioner were not rendered within 45 days after submission of the matter for a hearing.

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See Generally:

- 1) *Chapman v. Div. of Real Estate*, 153 Cal. App. 2d 421, 314 P.2d 733 (1957) (application of §11019).
- 2) CAL. BUS. & PROF. CODE §11023 (penalty of \$5000, 5 years, or both).
- 3) CAL. ADMIN. CODE tit. 10, §2794 *et seq.* (public reports).
- 4) *Leavy & Ross, Real Estate Developers' Liability*, 41 CAL. S.B.J. 318, 321 (1966) (function and purpose of §11019).
- 5) 49 OPS. ATT'Y GEN. 17, 20 (1967) (cease and desist orders as enforcement tool).

**Property; subdivision regulation**

Business and Professions Code §11018.7 (repealed); §11018.7 (new).

AB 579 (Badham); STATS 1973, Ch 780

Support: Professional Community Management, Inc.; California Real Estate Commission; California Real Estate Association

Section 11018.7 of the Business and Professions Code, relating to the Real Estate Commissioner's power of consent over modifications of instruments affecting ownership rights in certain types of planned developments, has been repealed, and a new Section 11018.7 has been enacted which is similar to the provisions of the former section. As added, Section 11018.7(a) provides that no material change in instruments controlling or affecting rights to ownership, possession, or use of interests in a subdivision is valid without prior consent of the Real Estate Commissioner during the period of time when the subdivider or his successor controls one-fourth of the votes necessary to effect such a change. Prior to reenactment, Section 11018.7 required the commissioner's consent for such changes until three years had elapsed from the date the subdivider or his successor ceased to control one-third of the necessary votes. Former Section 11018.7 also applied exclusively to rights affecting any lot, apartment, or condominium. The new section applies to subdivisions as defined in Sections 11000.1 and 11004.5, with the exception of land projects. In addition to lots, apartments, and condominiums, this definition of a subdivision will apply to stock cooperatives and other pure undivided interests in land.

The new section provides that where a subdivision is also a land project, any change affecting rights to ownership, possession, or use therein requires the approval of the commissioner, unless three years have elapsed from the date of the subdivider, or his successor, ceased to control one-third of the votes necessary to effect such a change. As mentioned above, prior to this enactment, such was the requirement for changes affecting rights in all lots, apartments, and condominiums.

Subdivision (b) of Section 11018.7, as reenacted, specifies the grounds for the commissioner's denial of consent to such changes, and regulates solicitation of owners or members for the purpose of effectuating such changes. These provisions are identical to those of former Section 11018.7.

**COMMENT**

As originally passed in 1965, Section 11018.7 of the Business and

Professions Code was intended to protect investors from changes in contract terms while developers still had control over the majority of unsold units within the subdivision [See Leavy & Ross, *Real Estate Developers' Liability*, 41 CAL. S.B.J. 318 (1966)]. Chapter 780 does away with the requirement that the Real Estate Commissioner approve changes for three years after one-third control had ceased, because such approval is apparently not necessary for the protection of investors once the developer holds less than one-fourth of the votes.

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See Generally:

- 1) CAL. BUS. & PROF. CODE §11000.5 (defining a "land project").
- 2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA REAL ESTATE SALES TRANSACTIONS §2.21 (1967) (commissioner's mandate concerning stock cooperatives).
- 3) CONTINUING EDUCATION OF THE BAR, CALIFORNIA REAL ESTATE SECURED TRANSACTIONS §§26.7-26.10 (1970) (filing and approval).

### Property; surveyors' right to enter land

Civil Code §846.5 (new).

AB 1272 (Ray E. Johnson); STATS 1973, Ch 435

Section 846.5 has been added to the Civil Code to provide that authorized surveyors have a right of entry onto privately owned land when such entry is necessary to utilize monuments or control stations or record on the land. The owner or tenant who controls the land shall be responsible for providing reasonable access for the surveyors and must do so without undue delay [§846.5(a)]. Section 846.5(c) sets up a separate procedure for situations where the monument is within access-controlled portions of freeways. There, surveyors have *no* free right of access and must apply to the state agency having jurisdiction over the freeway and submit a written request for usable reference points outside the freeway.

### COMMENT

Land surveyors, as used in this act, must be professionals licensed by the state, as defined in the Business and Professions Code Chapter 15 (commencing with §8700). This also encompasses civil engineers. The new Section 846.5 removes a major source of problems to surveyors who previously could be considered trespassers in trying to locate monuments necessary to their work. Prior to this enactment, even though coterminous landowners were responsible to maintain monuments and boundaries between their properties [CAL. CIV. CODE §841], a landowner could seriously impede the work of any surveyor

who wanted to make use of monuments or other markers at the boundary or elsewhere on his land. The new code section not only requires the landowner to give the surveyor reasonable access onto his land, but provides a potentially important change in liability of the landowner. Since the surveyor now becomes a person acting in an official capacity, he would traditionally have been classified as an invitee and owed the highest standard of care. Although California has officially abrogated the invitee-licensee distinctions [See *Rowland v. Christian*, 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968)], the land possessor's duty to exercise "ordinary" care with respect to foreseeable risks of injury now definitely extends to the surveyor on his property, and the surveyor is placed in a much stronger position in the event of an accident.

However, the statute takes an exactly opposite stance with respect to freeway areas. The surveyor is in effect warned to stay off any access-controlled portions of the freeway and to apply to the government agency responsible to locate him alternate reference points. Defying such a prohibition would likely shift responsibility back to the surveyor.

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**See Generally:**

- 1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA REAL ESTATE SALES TRANSACTIONS §§8.1-8.29 (1967).
- 2) CAL. BUS. & PROF. CODE ch. 15 (commencing with §8700).

**Property; water appropriation permits**

Water Code Chapter 6.5 (commencing with §1425) (new).  
AB 584 (Seeley); STATS 1973, Ch 536

*Empowers State Water Resources Control Board to issue temporary permits to appropriate water upon making specified findings; authorizes board to delegate power to issue such permits to employees subject to periodic review; enumerates board's investigative processes in regard to application for permit; provides notice requirements with regard to application and granting of permit; provides that any interested person may file objection to appropriation; specifies that permit automatically terminates upon noncompliance with provisions of this chapter; allows board to modify or revoke permit at its discretion; provides that permit has maximum duration of 180 days and that any such permit may not be renewed more than once.*

Chapter 536 has added Chapter 6.5 (commencing with §1425) to the Water Code to provide for the issuance of temporary permits

for the appropriation of water. Section 1425 empowers the State Water Resources Control Board to issue to an applicant a conditional, temporary appropriation permit under the following conditions: (1) no such permit shall be issued unless the board finds an urgent but temporary need to appropriate the water for a period not to exceed six months; (2) the board must find that such water may be appropriated without injury to any user of the water, without any unreasonable effect upon fish, wildlife, or other instream beneficial uses, and without adversely affecting the rights of downstream users; and (3) the board must find that unappropriated water is available. The section also specifies that the board may delegate to any employee of the board all or any of its functions under this chapter. The board shall, however, at its next regular meeting review and validate any temporary or emergency permit issued by an employee.

Section 1426 requires that the application for the temporary permit be completed in accordance with the provisions of Section 1260 (mandatory contents of an application to appropriate) and be accompanied by such maps, drawings, and other data as may be required by the board. Section 1427 requires the board, before making the above findings required by Section 1425, to review available records, files, and decisions which relate to the availability of unappropriated water from the source at the proposed point of diversion, to consult with the Department of Fish and Game, and if desirable or necessary to the findings of the board, make a field investigation.

Section 1428 has been added to require the board to issue and deliver to the applicant a notice of the application as soon as practicable after reception of the application. The notice shall contain the information required by Section 1301 (identification of applicant, nature and point of diversion, and other pertinent, specified information), and shall be published by and at the expense of the applicant or permittee as follows: (1) if the application is for more than three cubic feet per second, or for more than 200 acre-feet of storage, and the permit is to remain in effect for 30 days or more, the notice shall be printed within 20 days of its issuance in a newspaper of general circulation published in the county in which the point of diversion lies; (2) in all other cases, unless the permit is to be in effect less than ten days, the applicant must post a copy of the notice no later than two days after its reception in two conspicuous places in the locality to be affected by the appropriation, and the board shall send a copy of the notice by registered mail to each person who, in the

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judgment of the board, could be adversely affected by the temporary appropriation. If the permit is to be in effect no longer than ten days, the board may require either no notice at all or, if notice will be required, such proof of notice as it deems appropriate. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with the board within ten days of publication. In cases where the notice has been posted, affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

The board is empowered to issue a temporary permit to appropriate in advance of the notice required by this section, but such permittee must still comply with the notice requirements after the permit issues. If the permittee should fail to comply with any requirement of this section, his temporary permit will automatically terminate. Section 1428 also provides that any interested person who has an objection to the temporary appropriation may file his objection with the board and must also send a copy of his objection to the applicant or permittee. The board must give prompt consideration to the objection and may hold a hearing on the subject after notifying all interested persons.

Section 1430 stipulates that the issuance of a temporary permit creates no vested interest in real property, even of a temporary nature. The right to appropriate pursuant to such a permit shall at all times be subject to revocation or modification at the discretion of the board, and automatically expires after 180 days, unless a shorter time is indicated. The permit may be renewed only once. Section 1429 also requires that the board supervise appropriation pursuant to the temporary permit for the protection of vested rights and in-stream beneficial uses and for compliance with permit conditions. Failure of the permittee to comply with any requirement of this section shall result in the automatic termination of the temporary permit.

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### See Generally:

- 1) CAL. WATER CODE ch. 6 (commencing with §1375) (permits for appropriation).
- 2) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §313 (7th ed. 1960), (Supp. 1969).

## **Property; zoning reports for residential building sales**

Government Code §25846 (new).

SB 657 (Song); STATS 1973, Ch 353

In 1969 Article 6.5 (commencing with §38780) was added to the

Government Code [CAL. STATS. 1969, c. 894, at 1735, §1] to empower cities to require by ordinance that a seller of residential buildings obtain from the city a zoning report prior to any sale or exchange of such a building. The report must indicate the regularly authorized use, occupancy, and zoning classifications of the land, and must be delivered to the buyer of the property prior to the consummation of the sale or exchange. Chapter 353 has added Section 25846 to the Government Code to authorize counties to enact similar ordinances requiring sellers of residential buildings located outside the boundaries of any incorporated city to obtain zoning reports from the county in which the land is located. The enactment of this section will equalize the rights of potential buyers of residential buildings located outside city limits with those buying land located within city limits, with respect to zoning information.

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**See Generally:**

- 1) CAL. GOV'T CODE art. 6.5 (commencing with §38780).
- 2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA ZONING PRACTICE §4.14 (1969), (Supp. 1973) (city and county zoning powers).