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Civil Procedure

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Civil Procedure

Civil Procedure; arbitration—liens

Code of Civil Procedure § 1281.8 (new); § 1281.5 (amended).
SB 1394 (Garamendi); 1989 STAT. Ch. 470

Existing law allows a person to enforce a claim of lien¹ by bringing an action without waiving the right to arbitrate the dispute.² Under Chapter 470, the defendant waives the right to arbitration if the defendant fails to file a petition to compel arbitration when answering a complaint.³ In addition, Chapter 470 permits a party to an arbitration proceeding to seek a provisional judicial remedy⁴ without waiving the right to arbitration.⁵

KRI

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1. See CAL. CIV. CODE § 3084 (Deering Supp. 1989) (definition of claim of lien).
 2. CAL. CIV. PROC. CODE § 1281.5 (amended by 1989 Cal. Stat. ch. 470, sec. 1, at ____). When filing the action, the person must include an application for a stay of the proceedings pending the arbitration. *Id.* See *Kaneko Ford Design v. Citipark, Inc.*, 202 Cal. App. 3d 1220, 1227, 249 Cal. Rptr. 544, 548 (1988) (holding that California Code of Civil Procedure section 1281.5 requires that the application for stay pending arbitration be served on the other party within a reasonable time).
 3. 1989 Cal. Stat. ch. 470, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 1281.5). See CAL. CIV. PROC. CODE § 1281.2 (West Supp. 1989) (allows a party to file a petition to compel arbitration).
 4. The following provisional remedies are available: (1) Attachments and temporary protective orders; (2) writs of possession; (3) preliminary injunctions; (4) temporary restraining orders; and (5) the appointment of receivers. 1989 Cal. Stat. ch. 470, sec. 2, at ____ (enacting CAL. CIV. PROC. CODE § 1281.8).
 5. *Id.* The application for a provisional remedy must be accompanied by an application for a stay of all proceedings pending arbitration. *Id.*

Civil Procedure; award of attorney's fees for small recoveries

Code of Civil Procedure § 1033 (amended).
AB 966 (Harris); 1989 STAT. Ch. 62

Under existing law, when a plaintiff who could have filed an action in small claims court but chose to file in a municipal or justice court

recovers a judgment less than the small claims court jurisdictional amount,¹ the court may allow attorney's fees.² Under prior law, a prevailing plaintiff could not recover attorney's fees if the action could not have been originally filed in the small claims court.³ Under Chapter 62, attorney's fees may be awarded in a municipal or justice court whenever a prevailing plaintiff recovers less than the jurisdictional amount for the small claims court, regardless of whether the claim could have originally been filed in the small claims court.⁴

JZ

1. See CAL. CIV. PROC. CODE § 116.2 (West 1982) (the small claims court has jurisdiction when the amount of the demand is not more than \$2000).

2. *Id.* § 1033(b)(1) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 62, sec. 1, at ____).

3. 1987 Cal. Legis. Serv. ch. 4, sec. 2, at 14 (West) (amended by 1989 Cal. Stat. ch. 62, sec. 1, at ____). Under existing law, collection agencies may not file an action in small claims courts. CAL. CIV. PROC. CODE § 117.5 (West 1982).

4. 1989 Cal. Stat. ch. 62, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 1033).

Civil Procedure; corporations—service of process

Corporations Code §§ 1702, 2110, 2111 (amended).
SB 290 (Greene); 1989 STAT. Ch. 438
Support: State Bar, Business Law Section

Existing law allows a court to order service of process upon a domestic corporation by delivering a copy of the process to the Secretary of State's office, when service cannot be made upon the corporation's designated agent.¹ Chapter 438 allows service upon the Secretary of State to be ordered by any federal court or another state's court in which the action or proceeding has been filed.²

TFT

1. CAL. CORP. CODE § 1702(a) (amended by 1989 Cal. Stat. ch. 438, sec. 1, at ____). Many states have similar statutes. See, e.g., NEV. REV. STAT. § 14.030 (1988); OR. REV. STAT. § 60.121 (1987); WASH. REV. CODE ANN. § 14.030 (1988).

2. 1989 Cal. Stat. ch. 438, sec. 1, at ____ (amending CAL. CORP. CODE § 1702(d)).

Civil Procedure; motor vehicle claim arbitration

Code of Civil Procedure § 1141.11 (amended).
SB 167 (Lockyer); 1989 STAT. Ch. 894

Under existing law, local rules of municipal court districts may determine when pending civil actions should be subject to arbitration.¹ Chapter 894 requires arbitration hearings to commence within 120 days of the filing of an answer.²

PHB

1. CAL. CIV. PROC. CODE § 1141.11(c) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 894, sec. 1, at ____).

2. 1989 Cal. Stat. ch. 894, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 1141.11(d)). This limitation is only applicable to pending civil actions as of July 1, 1990 against a single defendant for monetary damages arising as a result of automotive collisions. *Id.* Single defendant is defined as a person or entity, two or more persons covered by the same relevant insurance policy, or two or more persons without the applicable insurance coverage living in the same household. *Id.* The court may extend time limits for good cause and may disqualify arbitrators for cause per Chapters 170.1 and 170.6 of the California Code of Civil Procedure. *Id.* See CAL. CIV. PROC. CODE §§ 170.1, 170.6 (West Supp. 1989) (establishing grounds for disqualification of judicial officers and judges).

Civil Procedure; notice of motions

Code of Civil Procedure §§ 418.10, 418.040, 706.105, 720.320, 877.6, 1005 (amended); Evidence Code § 1043 (amended); Government Code § 946.6 (amended).
SB 859 (Kopp); 1989 STAT. Ch. 693

Prior law required that a hearing be held within specified time limits following the filing of notice¹ of various types of motions.²

1. See CAL. CIV. PROC. CODE § 1010 (West 1980) (explanation of the requirements and contents of notice).

2. See 1969 Cal. Stat. ch. 1610, sec. 3, at 3363 (amending CAL. CIV. PROC. CODE § 418.10(b)) (amended by 1989 Cal. Stat. ch. 693, sec. 1, at ____) (10 to 20 days for motion to quash service of summons or to stay or dismiss the action); 1982 Cal. Stat. ch. 1364, sec. 2, at 5183 (amending CAL. CIV. PROC. CODE § 706.105(e)) (amended by 1989 Cal. Stat. ch. 693, sec. 3, at ____) (no later than 20 days after a notice of opposition to a judgment debtor's claim of exemption from withholding of earnings). See CAL. CIV. PROC. CODE § 1003 (definition of a motion).

Chapter 693 provides that a hearing on these motions must be held within thirty days after the notice is filed.³

Under prior law, a party who filed a notice of motion had to serve⁴ the opposing party with notice and with supporting papers within specified time limits prior to the hearing.⁵ Chapter 693 establishes a uniform time period of at least fifteen calendar days before the date of the hearing by which notice and supporting papers must be served on the opposing party.⁶

BAS

3. 1989 Cal. Stat. ch. 693, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 418.10(b)); *id.* sec. 3, at ____ (amending CAL. CIV. PROC. CODE § 706.105(e)).

4. See CAL. CIV. PROC. CODE §§ 1011-1012 (West 1980), 1013-1013a (West Supp. 1989), 1014-1020 (West 1980) (explanation of different methods of service).

5. See 1969 Cal. Stat. ch. 1610, sec. 3, at 3363 (amending CAL. CIV. PROC. CODE § 418.10(b)) (amended by 1989 Cal. Stat. ch. 693, sec. 1, at ____) (not less than 10 days before a motion to quash, stay, or dismiss); 1974 Cal. Stat. ch. 1516, sec. 9, at 3341 (amending CAL. CIV. PROC. CODE § 484.040) (amended by 1989 Cal. Stat. ch. 693, sec. 2, at ____) (at least 20 days before a motion for a right-to-attach order or a writ of attachment); 1978 Cal. Stat. ch. 630, sec. 1, at 2082 (amending CAL. EVID. CODE § 1043(a)) (amended by 1989 Cal. Stat. ch. 693, sec. 7, at ____) (at least 10 days for discovery or disclosure of peace officer personal records); 1982 Cal. Stat. ch. 1364, sec. 2, at 5183 (amending CAL. CIV. PROC. CODE § 706.105(e)) (amended by 1989 Cal. Stat. ch. 693, sec. 3, at ____) (not less than 10 days before a motion opposing a judgment debtor's claim of exemption from withholding of earnings), *id.* at 5220 (amending CAL. CIV. PROC. CODE § 720.320(a)) (amended by 1989 Cal. Stat. ch. 693, sec. 4, at ____) (not less than 10 days for a third-party claim); 1987 Cal. Stat. ch. 1208, sec. 7, at ____ (amending CAL. GOV'T CODE § 946.6(d)) (amended by 1989 Cal. Stat. ch. 693, sec. 8, at ____) (at least 10 days for a late claim against a public entity); 1988 Cal. Stat. ch. 128, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 877.6(a)) (amended by 1989 Cal. Stat. ch. 693, sec. 5, at ____) (at least 20 days before a hearing on a good-faith settlement). Concern has been expressed that the many code sections directing the time for setting motions for a hearing in court create confusion for attorneys and court staff. Letter from James A. Simpson, legislative advocate for the County Clerks Association, to Senator Quentin Kopp (Nov. 22, 1988) (on file at the *Pacific Law Journal*).

6. 1989 Cal. Stat. ch. 693, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 418.10(b)); *id.* sec. 2, at ____ (amending CAL. CIV. PROC. CODE § 484.040); *id.* sec. 3, at ____ (amending CAL. CIV. PROC. CODE § 706.105(e)); *id.* sec. 4, at ____ (amending CAL. CIV. PROC. CODE § 720.320(a)); *id.* sec. 5, at ____ (amending CAL. CIV. PROC. CODE § 877.6(a)); *id.* sec. 6, at ____ (amending CAL. CIV. PROC. CODE § 1005(b)); *id.* sec. 7, at ____ (amending CAL. EVID. CODE § 1043(a)); *id.* sec. 8, at ____ (amending CAL. GOV'T CODE § 946.6(d)). If notice is served by mail, the required 15-day period of notice before the time appointed for the hearing shall be increased by: five days if the place of mailing and the place of address are within the state; 10 days if either the place of mailing or the place of address is outside the state but within the United States; and 20 days if either the place of mailing or the place of address is outside the United States. *Id.* The County Clerk's Association believes that by revising the law to require at least 15 calendar days, with some exceptions, much time will be saved in research prior to filing documents with the court. Letter from James A. Simpson, legislative advocate for the County Clerk's Association, to Senator Quentin Kopp (Nov. 22, 1988) (on file at the *Pacific Law Journal*).

Civil Procedure; penalty for discrimination

Civil Code § 52 (amended).

SB 531 (Torres); 1989 STAT. Ch. 459

Support: Fair Employment and Housing Commission,

Jewish Public Affairs Committee of California,

California Teacher's Association, Attorney General's Office.

Opposition: None.

Existing law provides that any person¹ who discriminates² in housing³ or in business dealings⁴ is liable for a civil penalty of \$10,000 plus damages.⁵ Under Chapter 459, the \$10,000 civil penalty must be awarded to the person who was discriminated against.⁶

JMF

1. See CAL. CIV. CODE § 51.5 (West Supp. 1989) (the definition of person includes a firm, association, organization, partnership, business trust, corporation, or company).

2. The discrimination must be based on sex, race, religion, ancestry, national origin, or a physical disability. *Id.* § 52(a) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 459, sec. 1, at ____).

3. All persons are entitled to free and equal housing. *Id.* § 51 (West Supp. 1989). Modifications to accommodate persons with physical disabilities are not required on new or existing buildings. *Id.*

4. Boycotting and blacklisting are also prohibited. *Id.* § 51.5 (West Supp. 1989).

5. *Id.* § 52(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 459, sec. 1, at ____). The court may find the damages to be: (1) The actual damages for every offense; (2) the jury awarded amount; or (3) up to three times the actual damage. *Id.* § 52(a) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 459, sec. 1, at ____). The minimum award is \$250. *Id.* See, e.g., *J.R. Norton Co. v. General Teamsters, Warehousemen & Helpers Union*, 208 Cal. App. 3d 430, 434, 256 Cal. Rptr. 246, 248 (1989) (a civil penalty was imposed where strikers used violence during a labor dispute).

6. 1989 Cal. Stat. ch. 459, sec. 1, at ____ (enacting CAL. CIV. CODE § 52(b)(2)).

Civil Procedure; peremptory challenge—judge

Civil Code § 170.6 (amended).

SB 690 (Dills); 1989 STAT. Ch. 537

Sponsor: Conference of Delegate State Bar of California.

Support: California Judge's Association, California Court Commissioner's Association, California Defense Counsel.

Existing law allows a party to challenge,¹ five days prior to trial, any judge assigned to hear a case.² Existing case law requires that a peremptory challenge for any reason must be given at the earliest possible opportunity once a judge has been assigned to a case for all purposes.³ Chapter 537 establishes a ten day period⁴ during which a party must make any objection to a judge assigned for all purposes.⁵

JMF

1. The challenge must be made on the basis of prejudice. CAL. CIV. PROC. CODE § 170.6(2) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 537, sec. 1, at ____).

2. *Id.* The restriction of five days applies where the judge is known at least ten days prior to the hearing. *Id.*

3. *Augustyn v. Superior Court*, 186 Cal. App. 3d 1221, 1228, 231 Cal. Rptr. 298, 302 (1986). There is no policy reason for allowing any further delay in deciding whether to challenge the assignment. *Id.* The challenge should be made at the time of the all purpose assignment. *Woodman v. Superior Court*, 196 Cal. App. 3d 407, 419, 241 Cal. Rptr. 818, 825 (1987).

4. The 10 day period begins when the defendant is notified of the identity of the judge for all purposes. *See* 1989 Cal. Stat. ch. 537, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 170.6).

5. 1989 Cal. Stat. ch. 537, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 170.6). Where the party has not yet appeared in the proceeding, the party will be given 10 days from the date of appearance. *Id.* For an all purpose assignment, the judge for the case is identified at the time of the assignment. *Augustyn v. Superior Court*, 186 Cal. App. 3d 1221, 1228, 231 Cal. Rptr. 298, 302 (1986).

Civil Procedure; property—lis pendens

Code of Civil Procedure § 409.9 (new).

AB 1011 (Moore); 1989 STAT. Ch. 815

In an action concerning real property, existing law provides that notice of lis pendens may be recorded, and that a copy of the notice must be mailed to all owners of record.¹ Chapter 815 requires anyone

1. CAL. CIV. PROC. CODE § 409(a) (West Supp. 1989). Owners of record are determined from the latest county assessment roll in the possession of the county assessor. *Id.* § 409(c). *See generally Review of Selected 1981 Legislation*, 13 PAC. L.J. 737, 754 (1982) (analysis of Code of Civil Procedure section 409).

who has contracted to transfer an interest in real property, and who has received a notice of lis pendens concerning that property, to notify² all prospective transferees that an action is pending concerning that property.³

KMS

2. Notice must be given within three days after receipt of lis pendens, and must be delivered by certified mail, or personal delivery. 1989 Cal. Stat. ch. 815, sec. 1, at ____ (enacting CAL. CIV. PROC. CODE § 409.9(b)).

3. *Id.* (enacting CAL. CIV. PROC. CODE § 409.9(a)). A transfer subject to this section will not be invalidated solely for failing to comply with these provisions, but, a negligent or willful failure to comply will result in liability for damages actually incurred. *Id.* (enacting CAL. CIV. PROC. CODE § 409(c)). See *Kendall Brief Co. v. Superior Ct.*, 60 Cal. App. 3d 462, 131 Cal. Rptr. 515, 519 (1976) (purpose of lis pendens). See generally 2 B. WITKIN, CALIFORNIA PROCEDURE, *Actions* §§ 206-207 (2d ed. 1970) (explains and defines lis pendens).

Civil Procedure; statute of limitations—landscape architecture

Business and Professions Code §§ 5651, 5661, 5681 (amended).
SB 572 (Bergeson); 1989 STAT. Ch. 229

Prior law mandated that persons file any accusations against a licensed landscape architect within two years of the act or omission that allegedly constituted grounds for disciplinary action.¹ Chapter 229 extends the statute of limitations to six years after the act or omission, or three years after the California State Board of Landscape Architects (Board) discovers, or should have discovered with reasonable diligence, the act or omission that gives rise to disciplinary action, whichever is sooner.² Accusations that a landscape architect has obtained licensing by fraud or misrepresentation³ may be filed

1. 1957 Cal. Stat. ch. 1568, sec. 1, at 2924 (amended by 1989 Cal. Stat. ch. 229, sec. 2, at ____). Prior law required persons to file accusations that the landscape architect obtained licensing by fraud or misrepresentation within two years after the California State Board of Landscape Architects discovered the alleged fraud or misrepresentation. *Id.* See CAL. BUS. & PROF. CODE §§ 5666-5675 (West 1974) (lists acts and omissions that constitute grounds for disciplinary action against a landscape architect).

2. 1989 Cal. Stat. ch. 229, sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 5661).

3. See CAL. BUS. & PROF. CODE § 5667 (West 1974) (provides that obtaining a certificate to practice landscape architecture by fraud or misrepresentation is grounds for disciplinary action).

within three years after the Board discovers the facts that allegedly constitute the prohibited fraud or misrepresentation.⁴

Prior law required landscape architecture license applicants to satisfactorily pass an oral examination and a written examination in order to obtain a license.⁵ Chapter 229 abrogates the requirement for an oral examination.⁶ Chapter 229 also provides that the Board may waive the written examination if the applicant is licensed in another state and has passed the Uniform National Examination for Landscape Architects, or if the applicant shows certification by the Council of Landscape Architects Registration Boards and proof of adequate job experience.⁷ In either case, the applicant must also show a satisfactory score⁸ on a written examination covering the same scope and subject matter as the last California written examination given, as provided by existing law.⁹

LRM

4. 1989 Cal. Stat. ch. 229, sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 5661) (six-year statute of limitations does not apply to accusations regarding fraud and misrepresentation).

5. 1968 Cal. Stat. ch. 932, sec. 6, at 1782 (amended by 1989 Cal. Stat. ch. 229, sec. 1, at ____) (Board could waive the written examination if the applicant had satisfactorily passed an equivalent examination in another state).

6. 1989 Cal. Stat. ch. 229, sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 5651(b)).

7. *Id.*

8. *See id.* (the score must be the same that is required to pass the last given California written examination).

9. *Id.* Chapter 229 further requires that the written examination test the applicant's knowledge of plants and environmental conditions in California, irrigation design, and California laws governing landscape architecture practice. *Id.*