



1-1-1990

Property

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Property*, 21 PAC. L. J. 535 (1990).

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Property

Property; commercial leases—assignment and subletting

Civil Code §§ 1995.010, 1995.020, 1995.030, 1995.210, 1995.220, 1995.230, 1995.240, 1995.250, 1995.260, 1995.270 (new); § 1951.4 (amended).

SB 536 (Beverly); 1989 STAT. Ch. 982

Under existing case law, if a non-residential real property lease only permits assignment or sublease with the landlord's consent, that consent may be withheld only when the landlord has a commercially reasonable objection to the transfer or the proposed use.¹ Under Chapter 982, transfer restrictions in a lease for non-residential real property may establish an absolute prohibition against transfer.² Chapter 982 also permits the lease to make the transfer subject to an express standard or condition,³ or to require the landlord's⁴ consent to transfer if an express standard or condition is met.⁵ If the restriction requires the landlord's consent, but no standard is given, and the restriction was executed on or after September 13, 1983, a standard of reasonableness is implied;⁶ if the restriction was executed before September 23, 1983, the landlord's consent may be

1. See *Kendall v. Ernest Pestana, Inc.*, 40 Cal. 3d 488, 506-507, 709 P.2d 837, 849, 220 Cal. Rptr. 818, 830 (1985). By the time *Kendall* was decided, the First and Second Appellate Districts had already held that absent a provision to the contrary, consent could not be unreasonably withheld. See *Schweiso v. Williams*, 150 Cal. App. 3d 883, 198 Cal. Rptr. 238 (1st App. Dist. 1984); *Cohen v. Ratinoff*, 147 Cal. App. 3d 321, 195 Cal. Rptr. 84 (2d App. Dist. 1983). But see *Kendall* 40 Cal. 3d at 496, 709 P.2d at 842, 220 Cal. Rptr. at 823 (citing *Richards v. Degan & Brody, Inc.* 181 Cal. App. 2d 289, 5 Cal. Rptr. 263 (1960) as adopting the majority rule of allowing the landlord to arbitrarily withhold consent).

2. 1989 Cal. Stat. ch. 982, sec. 2, at (enacting CAL. CIV. CODE § 1995.230). See *id.* (enacting CAL. CIV. CODE § 1995.020(e)) (definition of transfer).

3. *Id.* (enacting CAL. CIV. CODE § 1995.240). A lease may make a transfer subject to the tenant passing all consideration above the lease rental value to the landlord, or subject to any other reasonable standard or condition. *Id.*

4. See *id.* (enacting CAL. CIV. CODE § 1995.020(a)) (definition of landlord).

5. *Id.* (enacting CAL. CIV. CODE § 1995.250). Among the standards and conditions which may be utilized, the lease may specify that the landlord's consent may not be unreasonably withheld. *Id.*

6. *Id.* (enacting CAL. CIV. CODE § 1995.260). The burden is on the tenant to show that consent was unreasonably withheld. *Id.* The burden is met if the tenant shows that the landlord failed to give, in writing, a reasonable objection to the transfer within a reasonable time after receiving a written request for a statement of objections from the tenant. *Id.*

unreasonably withheld.⁷ Ambiguities in a transfer restriction will be construed in favor of transferability.⁸ If there is no restriction on transfer in the lease, the tenants have a right to the unrestricted transfer of their interest.⁹

Under existing law, a lease may permit the landlord to continue the lease and recover rent after the tenant breaches the lease or abandons the property, if there are no unreasonable restrictions on transfer.¹⁰ Chapter 982 modifies this provision to reflect the changes governing transfer restrictions.¹¹

VJG

7. *Id.* (enacting CAL. CIV. CODE § 1995.270(b)). The legislature found that the application of the *Kendall* rule to restrictions executed before the *Cohen* decision frustrated the expectations of the parties to the lease, and impaired commerce and economic development. *Id.* (enacting CAL. CIV. CODE § 1995.270(a)(4)).

8. *Id.* (enacting CAL. CIV. CODE § 1995.220).

9. *Id.* (enacting CAL. CIV. CODE § 1995.210). *See id.* (enacting CAL. CIV. CODE §§ 1995.020(b), 1995.020(d)) (definitions of lease and tenant).

10. CAL. CIV. CODE § 1951.4 (West 1985).

11. 1989 Cal. Stat. ch. 982, sec. 1, at ____ (amending CAL. CIV. CODE § 1951.4).

Property; condominium assessments

Revenue and Taxation Code § 2188.6 (repealed and new)

AB 1510 (Calderon); 1989 STAT. CH. 649

Sponsor: Governmental Affairs Council

Support: Los Angeles County Assessor's Office

Under prior law, the initial buyer or seller of a condominium unit could have the unit assessed for property tax separately from the rest of the units in the complex.¹ Under Chapter 649, the county assessor may assess each unit of a proposed condominium complex separately, unless the owner of the real property records a request that the complex be assessed as one parcel.²

BJW

1. 1980 Cal. Stat. ch. 411, sec. 18, at 804 (amending CAL. REV. & TAX. CODE § 2188.6(a)) (repealed by 1989 Cal. Stat. ch. 649, sec. 1, at ____).

2. 1989 Cal. Stat. ch. 649, sec. 2, at ____ (enacting CAL. REV. & TAX. CODE § 2188.6(a)). Chapter 649 retains the provision that if a unit is taxed individually, any taxes due will constitute a lien solely on that unit. *Id.* (enacting CAL. REV. & TAX. CODE § 2188.6(b)).

Property; disclosure of environmental hazards in real property transactions

Civil Code § 1102.6a (new); § 1102.6 (amended).

AB 584 (Hauser); 1989 STAT. Ch. 171

Support: Timber Association of California; California Farm Bureau Association

Existing law requires a seller of real property to disclose specified information to the buyer.¹ Chapter 171 expands existing law by requiring sellers to disclose known environmental hazards on the property.² Chapter 171 also allows city or county governments to require additional disclosures³ from a seller, and provides a form for these disclosures.⁴

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1. CAL. CIV. CODE § 1102.6 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 171, sec. 1, at ____). This information includes the disclosure of liens, deed restrictions, encroachments, property damage, and other problems which may affect the property's value. *Id.* See *Review of Selected 1985 California Legislation*, 17 PAC. L.J. 761, 784 (1986) (reviewing California Civil Code section 1102.6).

2. 1989 Cal. Stat. ch. 171, sec. 1, at ____ (amending CAL. CIV. CODE § 1102.6). Environmental hazards include asbestos, contaminated soil or water, formaldehyde, fuel or chemical storage tanks, lead-based paint, or radon gas on the property. *Id.*

3. These additional disclosures include any representations that the seller is required to make to the buyer. *Id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1102.6a).

4. *Id.*

Property; false subdivision reports

Business and Professions Code § 11020 (new).

SB 743 (Seymour); 1989 STAT. Ch. 296

Under existing law, a person who intends to offer subdivided lands¹ for sale or lease must file an application for a public report² with

1. See CAL. BUS. & PROF. CODE §§ 11000.1 (West Supp. 1989), 11000.5, 11004.5 (West 1987) (definition of subdivided lands).

2. See *id.* § 11010 (West Supp. 1989) (definition of public report).

the Department of Real Estate.³ Chapter 296 prohibits a person from knowingly making, issuing, transferring, delivering, or publishing a report that is false, altered, counterfeit, or forged.⁴

JZ

3. *Id.*

4. 1989 Cal. Stat. ch. 296, sec. 1, at _____ (enacting CAL. BUS. & PROF. CODE § 11020). A violation of Chapter 296 is punishable by imprisonment up to one year, a fine of up to \$10,000, or both; the offender may also be civilly liable to any person injured by the false report. *Id.* See, e.g., *Green Trees Enterprises, Inc. v. Palm Springs Alpine Estates, Inc.*, 66 Cal. 2d 782, 786, 427 P.2d 805, 808, 66 Cal. Rptr. 782, 784 (1967) (misrepresentation of facts in subdivision sales gives rise to tort damages).

Property; landlord and tenant—utility charges for areas beyond tenant's dwelling

Civil Code § 1940.9 (new).

SB 696 (Alquist); 1989 STAT. Ch. 861

Sponsor: Pacific Gas and Electric Company

Chapter 861 requires a landlord to give a tenant written notice if the tenant's gas or electric meters serve areas outside of the tenant's dwelling unit.¹ The landlord must give the notice prior to the beginning of tenancy, or upon the landlord's discovery of the condition.² The landlord must execute a written agreement with the tenant setting forth arrangements for paying the utility bills.³ Chapter 861 creates a cause of action for tenants against landlords who fail to comply with the requirements of Chapter 861.⁴ The remedies available to the tenant include making the landlord the customer of record with the

1. 1989 Cal. Stat. ch. 861, sec. 1, at _____ (enacting CAL. CIV. CODE § 1940.9). Chapter 861 applies only if the landlord or the landlord's agent is aware that the tenant's meter serves outside areas. *Id.*

2. *Id.*

3. The landlord and tenant may agree to any of the following: (1) That the tenant will pay for the utility service; (2) that the landlord will pay for service to areas outside the tenant's dwelling; (3) that the landlord will be made customer of record for the tenants' meter; (4) that the landlord will be separately metered and billed for the area of service outside the tenant's dwelling; or (5) the landlord and tenant may agree to other arrangements. *Id.*

4. *Id.*

utility, or requiring the landlord to reimburse the tenant for payments allocatable to the outside service.⁵

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5. *Id.* Amounts required to be reimbursed to the tenant are calculated from the time the duty to disclose the condition arose. *Id.* Chapter 861 does not prevent the court from ordering other remedies. *Id.*

Property; mobile homes

Health and Safety Code §§ 18052.6, 18052.7 (new); §§ 18008, 18062.2, 18063 (amended).

AB 1203 (Hauser); 1989 STAT. Ch. 875

Under prior law, a mobile home was defined as a transportable structure designed to be used with or without a foundation system and containing no more than two dwelling units.¹ Chapter 875 defines a mobilehome as either a transportable structure designed to be used with a foundation and used as a dwelling unit,² dormitory,³ efficiency unit,⁴ or residential hotel, or a transportable structure containing no more than two dwelling units designed to be used with or without a foundation.⁵ Chapter 875 also requires mobilehomes manufactured as dormitories, hotels, or apartments to comply with the existing handicap accessibility requirements for dormitories, hotels, and motels.⁶

Under existing law, the Department of Housing and Community Development (Department) is responsible for licensing mobilehome

1. 1981 Cal. Stat. ch. 975, sec. 3, at 3726 (enacting CAL. HEALTH & SAFETY CODE § 18008 (amended by 1989 Cal. Stat. ch. 875, sec. 1, at ____)).

2. See CAL. HEALTH & SAFETY CODE § 18003.3 (West 1984) (definition of dwelling unit).

3. See 1989 Cal. Stat. ch. 875, sec. 1, at ____ (amending CAL. HEALTH & SAFETY CODE § 18008(b)(2)) (definition of dormitory).

4. See CAL. HEALTH & SAFETY CODE § 17958.1 (West 1984) (definition of efficiency unit).

5. 1989 Cal. Stat. ch. 875, sec. 1, at ____ (amending CAL. HEALTH & SAFETY CODE § 18008). See CAL. HEALTH & SAFETY CODE § 50519 (b)(1) (West 1984) (definition of residential hotel).

6. 1989 Cal. Stat. ch. 875, sec. 1, at ____ (amending CAL. HEALTH & SAFETY CODE § 18008(b)(4)). See generally 24 CAL. CODE REGS. § 2-1213 (1986) (handicapped accessibility requirements for hotels, motels, and dormitories).

salespersons.⁷ Chapter 875 permits the Department to issue a ninety-day temporary certificate, which gives the recipient all the privileges of a licensee, except the power to execute documents, contracts, listings, and sales agreements.⁸

GK

7. CAL. HEALTH & SAFETY CODE § 18045 (West 1984). See *id.* § 18013 (West Supp. 1989) (definition of salesperson).

8. 1989 Cal. Stat. ch. 875, sec. 2, at ____ (enacting CAL. HEALTH & SAFETY CODE § 18052.6(a)). A dealer who employs a salesperson with a temporary license bears complete legal responsibility for that salesperson's actions. *Id.* sec. 3, at ____ (enacting CAL. HEALTH & SAFETY CODE § 18052.7).

Property; mortgages and deeds of trust

Civil Code §§ 1213, 1214, 2898, 2920, 2924b, 2924c, 2924.3, 2931a, 2931b, 2934a, 2954.10 (amended); Code of Civil Procedure §§ 580b, 580d, 726 (amended).

SB 1598 (Kopp); 1989 STAT. Ch. 698

Under existing law, an estate for years is defined as both an estate in real property and as a chattel real.¹ Every transfer of an interest in property, as security for the performance of some obligation, is deemed a mortgage.² In *Taylor v. Bouissiere*, the California Fourth District Court of Appeal held that because a mortgage encumbering a leasehold was a mortgage in a chattel real, it was not subject to the "one action rule"³ which only applies to a security interest in real property.⁴

1. CAL. CIV. CODE §§ 761 (West 1982) (term for years as an estate), 765 (West Supp. 1989) (term for years as chattels real).

2. *Id.* § 2924 (West Supp. 1989).

3. See CAL. CIV. PROC. CODE § 726(a),(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 698, sec. 14, at ____). The "one action rule" requires that the foreclosure action and deficiency claim be tried in a single action, and that the mortgagee exhaust the remedy against the property before seeking personal liability against the mortgagor on the promissory note. *Id.*

4. *Taylor v. Bouissiere*, 195 Cal. App. 3d 1197, 241 Cal. Rptr. 253 (1987) (mortgagee allowed to seek the balance due on a promissory note secured by the mortgagor's interest in a term for years, without regard to the one action rule).

Chapter 698 was enacted for the express purpose of abrogating the holding in *Taylor*.⁵ Chapter 698 subjects deeds of trust and mortgages in estates for years to the one action rule.⁶ Additionally, Chapter 698 requires all deeds of trust and mortgages encumbering an estate for years to comply with the recordation statutes.⁷

GK

5. 1989 Cal. Stat. ch. 698, sec. 15, at . The legislature announced that applying the one action rule to leasehold mortgages is consistent with the policies behind the enforcement of mortgages and deeds of trust. *Id.*

6. *Id.* sec. 14, at ____ (amending CAL. CIV. PROC. CODE § 726(a)).

7. *Id.* sec. 1, at ____ (amending CAL. CIV. CODE § 1213). Any mortgage or deed of trust encumbering an estate for years is subject to the prioritization statute in the California Civil Code. *Id.* sec. 3, at ____ (amending CAL. CIVIL CODE § 2898).

Property; rent control—sanctions

Civil Code §§ 1947.7, 1947.8 (amended);

§§ 1947.10, 1947.11 (new).

SB 912 (Petris); 1989 STAT. Ch. 987

Support: California Apartment Association

Existing law limits the imposition of penalties against owners of residential property who substantially comply¹ with local rent control regulations.² Chapter 987 extends these limitations by requiring the restoration of annual rent adjustments, denied while the owners were not in compliance with the rent control requirements, once the owners can show a good faith effort to comply with the local registration requirements.³ Owners who previously were exempt from registration requirements⁴ for rent controlled units may have their rent increases

1. Substantial compliance requires a good faith effort by the owner to comply with the applicable rent control provisions, and the cure of any defects in compliance in a timely manner after being given notice by the agency responsible for implementing the provisions. CAL. CIV. CODE § 1947.7(b) (West 1987). *See id.* (definition of local agency).

2. *Id.*

3. 1989 Cal. Stat. ch. 987, sec. 1, at ____ (amending CAL. CIV. CODE § 1947.7(c)).

4. This provision covers owners who were exempt from the registration requirements of previous versions of the applicable ordinance, regulation, or charter, and who do not comply with the current version. *Id.*

restored once they are in compliance.⁵ For jurisdictions where, prior to January 1, 1990, restoration of annual rent increases were not allowed, Chapter 987 permits the local rent control agency to phase in restoration of annual rent increases over a three year period.⁶

If a tenant in a rent controlled unit was evicted from the unit with the intention that the owner, or the owner's immediate relatives, would occupy the vacated unit, Chapter 987 requires the owner or relative to reside in the unit for at least six continuous months.⁷ If the eviction was based on fraud by the owner, or the six-month residency requirement is not met, then the owner is subject to civil penalties.⁸ Owners who charge rent in excess of the allowed rent are also subject to civil penalties.⁹

BDD

5. *Id.* The restoration of annual adjustments is prospective only. *Id.* Compliance means the owner is in substantial compliance, has paid all fees, penalties, and rent overcharges not barred by the applicable statute of limitations, and has satisfied all claims for refunds of rental overcharges. *Id.* (amending CAL. CIV. CODE § 1947.7(e)).

6. *Id.* (amending CAL. CIV. CODE § 1947.7(d)). Phased rent increases apply when the annual rent adjustment would exceed 20% of the rent previously paid by the tenant. *Id.* In order to obtain the phased increases, the tenant must demonstrate that financial hardship would result if the full annual adjustment is restored. *Id.* The increases must be in equal installments over the three-year period. *Id.* This subdivision will be operative only until January 1, 1993, unless a later statute deletes or extends that date. *Id.*

7. *Id.* sec. 3, at ____ (enacting CAL. CIV. CODE § 1947.10(a)).

8. *Id.* If the tenant moves back into the vacated unit, the owner may be liable for treble the tenant's relocation costs, and treble the increase in rent the tenant may have paid. *Id.* If the tenant does not move back, the owner may be liable for treble the tenant's relocation costs and three months' rent for the vacated unit. *Id.* The prevailing party may also be awarded attorneys' fees. *Id.* These penalties do not preclude other remedies. *Id.* (enacting CAL. CIV. CODE § 1947.10(b)).

9. *Id.* sec. 4, at ____ (enacting CAL. CIV. CODE § 1947.11(a)). The owner must refund excess rent on the tenant's demand. *Id.* If the owner refuses to do so, and is found to have willfully or intentionally overcharged the tenant, the court must award the excess amount and may award three times that amount. *Id.* The prevailing party may also be awarded attorneys' fees. *Id.* These penalties do not preclude other remedies, or extend the time during which actions must be brought. *Id.* (enacting CAL. CIV. CODE § 1949.11(b), (c)).

Property; transfers—disclosure of ordinance locations

Civil Code §§ 1102.15, 1940.7 (new).
SB 650 (Stirling); 1989 STAT. Ch. 294

Existing law requires transferors of real property to disclose the

presence of neighborhood nuisances or noise problems.¹ Chapter 294 requires a seller of residential property to give the buyer written notice of the existence² of any former ordnance locations³ in the neighborhood area.⁴ Chapter 294 also requires a landlord of residential dwellings to give tenants written notice of the existence of former ordnance locations in the neighborhood.⁵ The notice must be given to prospective tenants prior to their entering into a rental agreement, and to existing tenants as soon as is practicable.⁶

Chapter 294 was enacted in response to a 1983 incident in San Diego County, in which two eight-year-old boys were killed when an abandoned mortar shell exploded while they were playing.⁷ The legislature has found that because of the number of former ordnance sites in the state,⁸ the existence of these sites poses a danger to residential neighborhoods, and a need exists to identify these locations and warn residents of their existence.⁹

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1. See CAL. CIV. CODE §§ 1102-1102.9 (West 1987) (disclosures upon transfers of residential property).

2. 1989 Cal Stat. ch. 294, sec. 1, at ____ (enacting CAL. CIV. CODE § 1102.15). Sellers are required to give written notice if they have actual knowledge of the existence of the ordnance locations. *Id.*

3. *Id.* Ordnance locations are areas previously used by the federal or state government for military purposes that may contain potentially explosive munitions. *Id.*

4. *Id.* The notice must be given prior to the transfer of title. *Id.* See *id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1940.7(c)(2)) (neighborhood area is defined as the area within one mile of the residence).

5. *Id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1940.7). The landlord is required to give written notice if the landlord has actual knowledge of the existence of the ordnance locations. *Id.* (enacting CAL. CIV. CODE § 1940.7(b)).

6. *Id.* The disclosure requirement of Chapter 294 does not limit any other disclosure obligations created by other law. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 1102.15).

7. *Id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1940.7(a)). See Los Angeles Times, Jan. 23, 1989, Part II, at 8, col. 2 (article discussing the problems with old ordnance in the Tierrasanta area).

8. There are 835 sites in California which may contain old artillery; only "a small percentage" have been surveyed by the Army Corps of Engineers, and the Corps "has no idea whether ordnance problems exist" at the unsurveyed sites, although they "expect some form of ordnance contamination at some of these sites." Letter from the Army Corps of Engineers to the Tierrasanta Community Council (Mar. 29, 1989) (on file at the *Pacific Law Journal*).

9. 1989 Cal. Stat. ch. 294, sec. 2, at ____ (enacting CAL. CIV. CODE § 1940.7) (findings and intent of CAL. CIV. CODE § 1940.7) (findings and intent of legislature).

