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Property

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Property

Property; common interest developments

Civil Code § 1354 (amended).

AB 55 (Hauser); 1993 STAT. Ch. 303

Existing law provides that the covenants¹ and restrictions contained in a common interest development's (CID)² declaration,³ or governing documents,⁴ may be enforced as equitable servitudes⁵ by any owner of a separate interest⁶ or by the association,⁷ unless the covenants are unreasonable.⁸ Chapter 303 provides that before an association, owner, or member of an interest in a CID may file a civil action seeking relief⁹ relating to the enforcement of provisions contained in the governing documents of the CID, the party must submit its dispute to alternative

1. See CAL. CIV. CODE § 1460 (West 1982) (defining "covenants running with the land" as covenants which pass with the land and bind the assignees as if they had entered into the covenants personally); 6 HARRY D. MILLER & MARVIN B. STARR, CALIFORNIA REAL ESTATE 2d § 18:40 (1989) (defining covenant as a promise to do or refrain from doing a specific act).

2. See CAL. CIV. CODE § 1351(c) (West Supp. 1993) (defining common interest development as a community apartment project, a condominium project, a planned development, or a stock cooperative); *id.* § 1351(d) (West Supp. 1993) (defining community apartment project); *id.* § 1351(f) (West Supp. 1993) (defining condominium project); *id.* § 1351(k) (West Supp. 1993) (defining planned development); *id.* § 1351(m) (West Supp. 1993) (defining stock cooperative). See generally 7 MILLER & STARR, *supra* note 1, § 22:10 (discussing common attributes of all common interest developments).

3. See CAL. CIV. CODE § 1351(h) (West Supp. 1993) (defining declaration as the document which contains the information required by California Civil Code § 1353); *id.* § 1353 (West Supp. 1993) (listing the required contents of the declaration).

4. See *id.* § 1351(j) (West Supp. 1993) (defining governing documents as the declaration and any other documents which govern the operation of the common interest development or association).

5. See ROGER A. CUNNINGHAM ET AL., THE LAW OF PROPERTY § 8.22, at 485-87 (1984) (discussing the history, formation, and requirements of equitable servitudes); 7 MILLER & STARR, *supra* note 1, § 22:5 (discussing the creation of equitable servitudes); see also *Tulk v. Moxhay*, 41 Eng. Rep. 1143 (1848) (creating servitudes to be used in the court of equity which did not require the horizontal and vertical privity necessary in traditional easements).

6. See CAL. CIV. CODE § 1351(l) (West Supp. 1993) (defining separate interest).

7. See *id.* § 1351(a) (West Supp. 1993) (defining association as a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development).

8. *Id.* § 1354(a) (amended by Chapter 303); see *Nahrstedt v. Lakeside Village Condominium Ass'n*, 14 Cal. App. 4th 315, 332-33, 11 Cal. Rptr. 2d 299, 308 (1992) (holding that a condominium association could only enforce covenants, conditions, and restrictions which were reasonable, and that an unreasonable restriction could not be enforced against a unit owner even if the owner had constructive knowledge of it), *rev. denied*, 1993 Cal. LEXIS 3388.

9. See CAL. CIV. CODE § 1354(b) (amended by Chapter 303) (stating that the relief sought may be solely for declaratory or injunctive relief, or for declaratory or injunctive relief in conjunction with a claim for monetary damages not exceeding \$5,000).

dispute resolution (ADR),¹⁰ unless the action is filed to prevent the imminent running of the limitations period.¹¹ Chapter 303 allows the party seeking relief to initiate the process by serving¹² on the other party a Request for Resolution, which includes a brief description of the dispute, a request for ADR, and a notice requiring the receiving party to respond within thirty days.¹³

Chapter 303 provides that at the time of the filing of the civil action, the party filing must file along with the complaint, a certificate stating that the ADR was completed.¹⁴ Failure to file the certificate is grounds for a demurrer or a motion to strike, unless one of the other parties to the dispute refused ADR, preliminary or temporary orders of the court were necessary, or ADR was not required because of the imminent running of the limitations period.¹⁵ Once a civil action has been filed, and upon written stipulation of the parties, the matter may be referred to ADR and stayed.¹⁶ Chapter 303 provides that without approval of both parties, evidence of anything said, admitted, or any documents prepared for ADR, shall not be admissible in any civil action, nor shall such evidence be

10. See JOHN J. COUND ET AL., CIVIL PROCEDURE ch. 15, at 1237-43 (5th ed. 1989) (evaluating mechanisms of ADR as alternatives to litigation); *id.* at 1230-32 (discussing the need for ADR mechanisms and their differences from the litigation process); see generally SUSAN M. LEESON & BRYAN M. JOHNSTON, ENDING IT: DISPUTE RESOLUTION IN AMERICA (1988) (giving descriptions, examples and cases on litigation, arbitration, negotiation and mediation).

11. CAL. CIV. CODE § 1354(b) (amended by Chapter 303); see generally *Deane Gardenhome Ass'n v. Denktas*, 13 Cal. App. 4th 1394, 16 Cal. Rptr. 2d 816 (1993) (discussing an example of a dispute which lead to litigation involving the color of paint on the defendant's property). In this case, the cost of repainting the house was between \$1,500-\$1,800, yet the attorney's fees and court costs were over \$15,000. *Id.*; SENATE FLOOR ANALYSIS OF AB 55, at 3 (July 12, 1993) (stating that the intent of this bill is to divert away from the courts the growing number of minor disputes involving CIDs' covenants and restrictions such as height of fences, color of paint, number of vehicles, and similar disputes); Fact Sheet from Robyn Boyer Stewart, Legislative Representative to Senator Bill Lockyer, Chairman, Senate Judiciary Committee (Apr. 20, 1993) (copy on file with the *Pacific Law Journal*) (stating that an average two hour ADR hearing costs approximately \$500 and is completed in 90 days, and that litigation pertaining to covenants and restrictions in the governing documents can cost from \$3,000 to well over \$90,000, taking from six to twelve months to resolve).

12. See CAL. CIV. CODE § 1354(b) (amended by Chapter 303) (requiring the service of process for the Request for Resolution to follow the same guidelines for a small claims action); CAL. CIV. PROC. CODE § 116.340 (West Supp. 1993) (outlining the service of process procedure on the defendant in a small claims court action).

13. CAL. CIV. CODE § 1354(b) (amended by Chapter 303); see *id.* (requiring that the ADR must be completed within 90 days unless there is a written stipulation by both parties to extend).

14. *Id.* § 1354(c) (amended by Chapter 303); see *id.* § 1354(e) (amended by Chapter 303) (stating that this chapter does not apply to cross-complaints); CAL. CIV. PROC. CODE § 430.10 (West Supp. 1993) (listing the grounds for a demurrer); *id.* § 435 (West 1982) (listing requirements for notice of motion to strike a complaint).

15. CAL. CIV. CODE § 1354(c) (amended by Chapter 303).

16. *Id.* § 1354(d) (amended by Chapter 303); see *id.* (stating that during the time of referral, the action is not subject to rules of timely disposition); CAL. GOV'T CODE § 68603 (West Supp. 1993) (listing standards of timely disposition for civil and criminal actions).

compelled in any civil action in which testimony or disclosures can be compelled.¹⁷ Additionally, Chapter 303 provides that in an action, the prevailing party shall be awarded attorney's fees and costs.¹⁸

A summary of section 1354 of the California Civil Code, requiring parties to seek ADR in disputes arising from the governing documents of a CID, must be annually provided to members of an association.¹⁹ The summary shall include language which states that failure to comply with this section may result in the loss of the member's right to sue the association or another member of the association.²⁰

MJP

17. CAL. CIV. CODE § 1354(g)-(h) (amended by Chapter 303); *see also* CAL. CIV. PROC. CODE § 1990 (West 1982); CAL. EVID. CODE § 704 (West 1966); CAL. INS. CODE § 784 (West 1972) (outlining situations where a person may be compelled to testify at a trial or hearing); CAL. LAB. CODE § 65 (West 1989) (stating that records of arbitration and mediation of labor disputes are to remain confidential); *cf.* CAL. EVID. CODE § 1152.5 (West Supp. 1993) (stating that without consent of all persons involved, evidence of anything said or of any admission made in the course of a mediation, is not admissible in evidence, and may not be compelled as evidence).

18. CAL. CIV. CODE § 1354(f) (amended by Chapter 303); *see id.* (stating that the court may consider a party's refusal to participate in ADR prior to filing of the action when determining fees and costs); *id.* § 1717 (West Supp. 1993) (allowing for the award of attorney's fees and costs in contract actions); CAL. CIV. PROC. CODE § 1032(b) (West Supp. 1993) (stating that except as otherwise provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding); *id.* § 1032(a)(4) (defining prevailing party); *id.* § 1033(a)(10) (West Supp. 1993) (allowing attorney's fees as part of allowable costs); *id.* § 1033.5 (West Supp. 1993) (outlining the items allowable as costs); CAL. R. CT. 26(a), (c) (allowing a prevailing party to be awarded costs and outlining the items recoverable as costs in appellate courts); *United Services Automobile Ass'n v. Dalrymple*, 232 Cal. App. 3d 182, 187, 283 Cal. Rptr. 330, 332 (1991) (stating that in the absence of an established exception, each party bears its own counsel fees); *Nielson v. Stumbos*, 226 Cal. App. 3d 301, 305, 276 Cal. Rptr. 272, 274-75 (1990) (stating that where a statute refers to an award of "costs and attorney's fees", attorney's fees are an item and component of the costs to be awarded and are allowable as costs under California Code of Civil Procedure § 1033.5(a)(10)); *Braun v. City of Taft*, 154 Cal. App. 3d 332, 348, 201 Cal. Rptr. 654, 663 (1984) (stating that generally, attorney fees are not allowed unless they are specifically authorized by agreement or statute); *see generally* 7 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *California Procedure*, §§ 84-126 (3d ed. 1985 & Supp. 1993) (discussing the prevailing party's right to costs, items allowable as costs, and procedures for obtaining costs); *id.* § 127 (discussing the bases for an award of attorney's fees).

19. CAL. CIV. CODE § 1354(i) (amended by Chapter 303); *see id.* § 1365 (West Supp. 1993) (requiring the distribution of a pro forma operating budget yearly to members of the association).

20. *Id.* § 1354(i) (amended by Chapter 303).

Property; compensation to displaced persons

Government Code § 7262.5 (new); § 7260 (amended).
AB 1257 (Friedman, B.); 1993 STAT. Ch. 851

Existing law requires a public entity¹ to provide compensation and advisory services² to any person,³ business,⁴ or farm operation,⁵ that is displaced because of the acquisition of real property for a public use.⁶

1. See CAL. GOV'T CODE § 7260(a) (amended by Chapter 851) (defining public entity as including the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state or any entity acting on behalf of these agencies when acquiring real property).

2. See *id.* § 7261 (West Supp. 1993) (requiring the public entity to provide aid, including local relocation advising assistance offices, to assist in obtaining replacement facilities for relocation of persons, businesses or farm operations).

3. See *id.* § 7260(b) (amended by Chapter 851) (defining person as any individual, partnership, corporation, or association).

4. See *id.* § 7260(d) (amended by Chapter 851) (defining business).

5. See *id.* § 7260(e) (amended by Chapter 851) (defining farm operation as any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support).

6. *Id.* § 7262 (West Supp. 1993); see *id.* § 7260(g) (amended by Chapter 851) (defining public use as a use for which real property may be acquired by eminent domain); *id.* § 7260.5 (West Supp. 1993) (stating legislative findings and intentions in minimizing the adverse impact of displacement caused by programs or projects undertaken by public entities); *id.* § 7262 (West Supp. 1993) (outlining compensation to persons, businesses or farm operations for moving expenses, losses of tangible personal property, expenses in searching for replacement property, and expenses necessary to reestablish a displaced farm or business on a new site); *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 241-42 (1984) (holding that an act to regulate a land oligopoly problem was within the police power of the Hawaii Land Reform Act); *Olsen v. United States*, 292 U.S. 246, 255 (1934) (stating that compensation of taken property is the market value, which is measured by considering the highest and most profitable use of the land in the reasonable future); *Superior Strut & Hanger Co. v. Port of Oakland*, 72 Cal. App. 3d 987, 993-94, 140 Cal. Rptr. 515, 517-18 (1977) (holding that an actual exercise of eminent domain is not a prerequisite to payment of relocation expenses, but it is only required that property be acquired for public use); see also RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN* 107-45 (1985) (discussing the Police Powers of government to take private land for public uses); *id.* at 161-80 (discussing the public use requirement); *id.* at 181-94 (discussing market value compensation for taken property); JESSE DUKEMINIER & JAMES E. KRIER, *PROPERTY* 1142-43 (3d ed. 1993) (discussing the sources and rationale behind the powers of eminent domain); JULIUS L. SACKMAN & PATRICK J. ROHAN, *NICHOLS': THE LAW OF EMINENT DOMAIN* § 14.03 (3d ed. 1993) (discussing the construction and amendments of the Model Eminent Domain Code); *id.* § 14A.02(4)(a) (discussing the common law views of the rights of displaced persons upon the taking of the entire leasehold); *id.* § 14A.02(6) (discussing the costs of obtaining new premises and the substitution theory of putting the displaced person in the same situation he was in before the taking); cf. 42 U.S.C. § 4621 (1988) (stating Congressional declarations of findings and policies to provide fair and uniform relocation assistance to displaced persons); *id.* § 4622 (1988) (outlining expenses which are compensated when displacing a person, business or farm operation); *Moorer v. Department of Hous. & Urban Dev.*, 561 F.2d 175, 178-79 (8th Cir. 1977) (stating that the Uniform Relocation Assistance and Real Property Acquisition Policies Act was intended to benefit those displaced by public agencies, and to benefit individuals who were not willing sellers). See generally Catherine R. Lazuran, Annotation, *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, 33 A.L.R. Fed. 9, at §§ 12-24 (1977 & Supp. 1993)

Chapter 851 changes the definition of displaced persons by adding occupants of residential hotels⁷ and occupants of employee housing⁸ as residential tenants who can be displaced as a result of rehabilitation, demolition, or other displacing activity prescribed under a program or project of the public entity.⁹

Chapter 851 also adds to the definition of persons who are not considered displaced persons, persons who are temporarily displaced for not more than 180 days, and who are offered the occupancy of a comparable replacement unit¹⁰ located within the same apartment complex.¹¹ Chapter 851 requires that these people must also be: (1) Provided with all other financial benefits and services otherwise required for a displaced person; and (2) offered the right to return to that person's original unit with a specified rent.¹² The temporary unit provided to the displaced person may not be unreasonably impacted by the effects of the

(discussing relocation assistance which may be granted under the Federal Real Property Acquisition Policies); James Timothy Payne, Annotation, *Validity, Construction, and Application of State Relocation Assistance Laws*, 49 A.L.R.4th 491 at §§ 27-33 (1986 & Supp. 1993) (discussing the specific relocation costs allowed); *id.* §§ 54-57 (discussing relocation benefits in eminent domain proceedings); John E. Theuman, Annotation, *Supreme Court's Views as to What Constitutes "Taking" Within Meaning of Fifth Amendment's Prohibition Against Taking of Private Property for Public Use Without Just Compensation*, 89 L. Ed. 2d 977 at §§ 3-5 (1988), (discussing general principles of eminent domain); *id.* §§ 6-9 (discussing government action of acquiring property).

7. See CAL. HEALTH & SAFETY CODE § 50669(b) (West Supp. 1993) (defining residential hotels).

8. See *id.* § 17008 (West Supp. 1993) (defining employee housing).

9. CAL. GOV'T CODE § 7260(c)(1)(A)(ii) (amended by Chapter 851); see *Peter Kiewit Sons' Co. v. Richmond Redev. Agency*, 178 Cal. App. 3d 435, 445, 223 Cal. Rptr. 728, 734 (1986) (holding that a tenant who holds over without the owner's consent becomes a tenant at sufferance and does not qualify for relocation benefits as a displaced person); *Albright v. State*, 101 Cal. App. 3d 14, 19-20, 161 Cal. Rptr. 317, 320 (1979) (holding that a person who owned a home on rented land which had been acquired by the State through condemnation was a displaced person entitled to relocation benefits even though he also owned another home); *Baiza v. Southgate Recreation & Park Dist.*, 59 Cal. App. 3d 669, 674, 130 Cal. Rptr. 836, 839 (1976) (holding that a tenant who was offered the opportunity to remain a tenant after the property was condemned, and who failed to pay rent, lost his status as a displaced person and was not entitled to relocation benefits).

10. See CAL. GOV'T CODE § 7260(i) (amended by Chapter 851) (defining comparable replacement dwelling).

11. *Id.* § 7260(c)(3)(A) (amended by Chapter 851); see *id.* § 7260(c)(3)(B)(i) (amended by Chapter 851) (defining "apartment complex" as four or more residential rental units subject to common ownership and financing that are also located on the same or contiguous parcels); *Smith v. Cookeville*, 381 F. Supp. 100, 106 (M.D. Tenn. 1974) (stating that condemnees could not assert that the city had failed to provide them with relocation assistance since the condemnees had refused relocation assistance offered them). See generally ASSEMBLY FLOOR ANALYSIS OF AB 1257, at 2 (June 1, 1993) (stating that the purpose of Chapter 851 is to reduce the potential costs for relocation assistance payments to temporarily displaced tenants in order to encourage the rehabilitation of approximately 20,000 publicly subsidized or low-income units in need of rehabilitation).

12. CAL. GOV'T CODE § 7260(c)(3)(A)(i), (ii) (amended by Chapter 851).

construction, and the property must be a qualified affordable housing preservation project.¹³

MJP

Property; marital property dissolution

Civil Code §§ 4800.10, 4800.11 (amended and repealed); Family Code §§ 2109, 2110, 2111, 2112 (new); §§ 2100, 2101, 2102, 2104, 2105, 2106, 2107, 2122, 2125, 2127 (amended); § 2109 (amended and renumbered).

AB 1469 (Speier); 1993 STAT. Ch. 1101
(Effective July 27, 1993)

Existing law requires each party in a dissolution of marriage¹ action, except by court order upon good cause or by the stipulation of the parties, to serve upon the other party a preliminary declaration of disclosure which sets forth the declarant's assets² and liabilities,³ and a completed income and expense declaration⁴ within sixty days of service of the petition for dissolution of marriage.⁵ Existing law also requires each party to serve upon the other party a final declaration of disclosure⁶ and a current

13. *Id.* § 7260(c)(3)(A)(iii) (amended by Chapter 851); *see id.* § 7260(c)(3)(B)(ii) (amended by Chapter 851) (defining qualified affordable housing preservation project).

1. *See* CAL. FAM. CODE § 310 (West Special Pamphlet 1993) (stating that marriages are dissolved by the death of one of the parties, a judgment of dissolution of marriage, or a judgment of nullity of marriage).

2. *See id.* § 2101(a) (amended by Chapter 1101) (stating that assets include, but are not limited to, any real or personal property of any nature, whether tangible or intangible, and whether currently existing or contingent).

3. *See id.* § 2101(e) (amended by Chapter 1101) (stating that liability includes, but is not limited to, any debt or obligation, whether currently existing or contingent).

4. *See id.* § 2101(d) (amended by Chapter 1101) (stating that expenses include, but are not limited to, all personal living expenses, but shall not include business related expenses); CAL. R. CT. 1225(b) (West 1993) (requiring a completed income and expense declaration, and property declaration when requested).

5. CAL. FAM. CODE § 2104 (amended by Chapter 1101); *see id.* § 2330 (West Special Pamphlet 1993) (outlining a petition for dissolution of marriage); *see also* THE RUTTER GROUP, CALIFORNIA PRACTICE GUIDE, *Family Law* § 1:145 (William P. Hogoboom & Donald B. King eds., 1993) (discussing the procedural requirements for preparing and exchanging disclosure declarations).

6. *See* CAL. FAM. CODE § 2105(d) (amended by Chapter 1101) (requiring that the final declaration of disclosure include all material facts and information regarding the characterization of all assets and liabilities, the valuation of all assets in which the community has interest, the amounts of all obligations on the liabilities which are community, all material facts and information regarding the earnings, accumulations, and expenses of each party which are set forth in the income and expense declaration).

income and expense declaration, executed under penalty of perjury, before the parties enter into an agreement for the resolution of property or support issues.⁷

Chapter 1101 provides that existing law will apply to nullification of marriage and legal separation proceedings.⁸ Chapter 1101 also requires that the parties always exchange preliminary declaration of disclosures, and deletes the exception allowing the preliminary declaration of disclosure to be waived by the court upon good cause or by stipulation of the parties.⁹ Chapter 1101 states that absent good cause, no judgment shall be entered with respect to the parties' property rights without each party having

7. *Id.* § 2105(a) (amended by Chapter 1101); *see id.* (requiring the final declaration of disclosure and current income and expense declarations to be filed at least 45 days before the trial date); *id.* § 2101(c) (amended by Chapter 1101) (defining earnings and accumulations as including all income, from whatever source derived); *In re Marriage of Modnick*, 33 Cal. 3d 897, 905, 663 P.2d 187, 191, 191 Cal. Rptr. 629, 633 (1983) (stating that because of the fiduciary relationship between the spouses, each spouse has an obligation to inform the other spouse of the existence of community property assets); *Schnabel v. Superior Court*, 15 Cal. App. 4th 1079, 1089, 12 Cal. Rptr. 2d 63, 70 (1992) (stating that public policy requires the accurate disclosure of information by both parties in a marital dissolution proceeding); *Rifkind v. Superior Court*, 123 Cal. App. 3d 1045, 1049-50, 177 Cal. Rptr. 82, 84 (1981) (noting that a spouse was not entitled to disclosure of income tax returns of the other spouse's law corporation and three partnerships for purposes of ascertaining their wealth in a dissolution proceeding); *see also* Sorrell Trope, DIVIDING PROPERTY ON DISSOLUTION OF MARRIAGE: AN OVERVIEW 1-11 (Cal. Continuing Educ. Bar 1990) (discussing the methods and techniques used to value the assets in divorce proceedings). *See generally* Victoria Felton-Collins & Violet Woodhouse, *Dividing Equity When Couple Splits*, L.A. TIMES, May 10, 1992, at K1 (discussing the division of home equity upon the termination of a marriage); Walter Price, *Arguments are Heard on Fame-as-Property Claim*, L.A. TIMES, Feb. 8, 1991, at F13 (discussing whether the fame of one spouse can be considered as property in divorce proceedings); *Spouse Entitled to Business Records in a Divorce*, L.A. TIMES, July 24, 1993, at D6 (stating that the spouse of a business owner has the right to extensive company financial records during divorce proceedings).

8. CAL. FAM. CODE § 2104(a) (amended by Chapter 1101); *see* CAL. CIV. CODE §§ 4400-4458 (West 1982 & Supp. 1993) (discussing marriages which are void or voidable, and thus a nullity); *see also* THE RUTTER GROUP, *supra* note 5, § 2:10-15 (discussing the advantages of nullity proceedings compared to marital dissolution); *id.* § 11:19.7 (stating that prior to Chapter 1101, legal separation proceedings did not have to conform to declaration of disclosure rules, and normal discovery methods had to be utilized for these proceedings).

9. CAL. FAM. CODE §§ 2109, 2110 (enacted by Chapter 1101).

executed and served a copy of the final declaration of disclosure and current income and expense declaration.¹⁰

MJP

Property; mobilehome park rules

Civil Code § 798.25.5 (new).

AB 1012 (Bornstein); 1993 STAT. Ch. 889

Existing law provides that a rule or regulation of a mobilehome park¹ may be amended by the management² of the park without the consent of the homeowner.³ Chapter 889 provides that a rule which is unilaterally

10. *Id.* § 2106 (amended by Chapter 1101); *see* CAL. CIV. CODE § 4550 (West Supp. 1993) (outlining the conditions necessary for the commencement of summary dissolution proceedings); *id.* § 4800.10(f) (amended by Chapter 1101); CAL. FAM. CODE § 2107(c) (amended by Chapter 1101) (stating that if a party fails to produce declarations of disclosure as required by this chapter, they must pay the complying party's reasonable attorney's fees and costs incurred, in addition to any other remedy provided by law); *see also* THE RUTTER GROUP, *supra* note 5, § 1:130 (stating that for convenience, summary dissolutions should be used for marital dissolutions where the marriage was of a short duration, involved no minor children, and had relatively minimal community property); *id.* § 8:144.7-8 (discussing the two-stage declaration of disclosure requirements under previous California Civil Code sections); *id.* § 8:302.2-3 (discussing mandatory declarations of disclosure, and sanctions for not complying with declaration regulations). *See generally* CALIFORNIA MARITAL DISSOLUTION PRACTICE §5.1-20, at 125-40 (Cal. Continuing Educ. Bar 1981 & Supp. 1991) (discussing summary dissolution proceedings); JOYCE HENS GREEN ET AL., DISSOLUTION OF MARRIAGE § 10.01-07 (1986 & Supp. 1992) (discussing the division of marital property, historically, and under the Uniform Marital Property Act).

1. *See* CAL. CIV. CODE § 798.4 (West 1982) (defining mobilehome park as an area of land accommodating mobilehomes used for human habitation, and where two or more mobilehome sites are rented, or held out for rent); *id.* § 798.3(a) (West Supp. 1993) (defining mobilehome as a structure designed for human habitation and for being moved on a street or highway).

2. *See id.* § 798.2 (West 1982) (defining management as the owner of a mobilehome park or an agent or representative authorized to act on the owner's behalf in connection with matters relating to a tenancy in the park).

3. *Id.* § 798.25 (West Supp. 1993); *see id.* (regulating amendments of mobilehome park rules and regulations); *id.* (stating that to make a rule or regulation without the consent of the homeowners, notice of the amendment must be sent to the tenant within six months of the change); *see also id.* § 798.9 (West Supp. 1993) (defining homeowner as a person who has a tenancy in a mobilehome park under a rental agreement); *id.* § 798.14 (West Supp. 1993) (stating that notice must be either delivered personally to the homeowner or deposited in the United States mail, addressed to the homeowner at his or her site within the mobilehome park); *cf.* ARIZ. REV. STAT. ANN. § 33-1452(C) (Supp. 1993) (stating that a park owner may amend rules, which are not unfair or deceptive, if the owner furnishes the changes to all mobilehome tenants 30 days before they become effective); DEL. CODE ANN. tit. 25, § 7015(e) (1989) (allowing a landlord to amend existing rules and regulations, which will become effective 60 days after the landlord delivers the written notice of the amendments to the tenant). *See generally* 4 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* § 533(d) (9th ed. 1987) (discussing CAL. CIV. CODE § 798.25).

adopted by the management, is implemented without the consent of the homeowners, and purports to deny homeowners their right to a trial by jury, or requires binding arbitration in disputes between the homeowner and management, is void and unenforceable.⁴

MJP

Property; mobilehome parks

Civil Code §§ 798.3, 798.15, 798.22, 798.55 (amended).
AB 503 (Rainey); 1993 STAT. Ch. 666

Existing law provides that mobilehome¹ park² rental agreements³ must contain a provision specifying that it is the responsibility of the management⁴ to provide physical improvements in the common areas and maintain them in good working order and condition.⁵ Chapter 666 requires

4. CAL. CIV. CODE § 798.25.5 (enacted by Chapter 889); *see* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1012, at 1, (June 7, 1993) (stating that there is evidence of a statewide trend for mobilehome park management to include clauses in the rules to limit a homeowner's constitutional right to a jury or to force binding arbitration, in disputes between the management and homeowners). Proponents feel that tenants might agree to the provisions of waiving a jury trial or compulsory arbitration because they do not know that they infringe on their constitutional rights. *Id.* at 2; *see also* JDC (America) Corp. v. Amerifirst Fla. Trust Co., 736 F. Supp. 1121, 1123 (S.D. Fla. 1990) (holding that contracts to arbitrate are not to be avoided by allowing one party to ignore the contract and resort to the courts); *Dixon v. Prothro*, 840 P.2d 491, 496 (Kan. 1992) (stating that juries have such an important place in our society and history, that any attempt to curtail the right to a jury trial should be examined with the utmost care); *Barazzotto v. Intelligent Sys., Inc.*, 532 N.E.2d 148, 151 (Ohio Ct. App. 1987) (stating that the only way to reconcile compulsory arbitration with the constitutional right to a jury trial is to allow the party with the right to the jury trial to demand a jury trial *de novo* following the arbitration result); *cf.* FLA. STAT. ANN. § 718.1255(3)-(4) (West Supp. 1993) (requiring mobilehome owners and management to attempt to resolve their disputes using nonbinding arbitration to reduce court dockets and spare the parties the cost of litigation).

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1. *See* CAL. CIV. CODE § 798.3(a) (amended by Chapter 666) (defining mobilehome).
 2. *See id.* § 798.4 (West 1982) (defining mobilehome park as an area of land where two or more mobilehomes are rented).
 3. *See id.* § 798.8 (West Supp. 1993) (defining rental agreement as an agreement between the management and the homeowner establishing the terms and conditions of a park tenancy).
 4. *See id.* § 798.2 (West 1982) (defining management as the owner of a mobilehome park or agent or representative authorized to act on the management's behalf regarding matters of tenancy).
 5. *Id.* § 798.15(d)(1) (amended by Chapter 666); *see id.* § 798.15(g) (amended by Chapter 666) (requiring the rental agreement to contain a provision stating that the management can charge a reasonable fee for maintenance of the land upon which the mobile home is situated); *Duncan v. United States*, 734 F. Supp. 824, 826 (N.D.Ill. 1990) (holding that a landlord has a duty to exercise reasonable care to keep common areas in a reasonably safe condition); *Frances T. v. Village Green Owners Ass'n*, 42 Cal. 3d 490, 499, 723 P.2d 573,

that the mobilehome park rental agreement specify that the management shall have a reasonable time, after management knows or should have known, of the sudden or unforeseeable breakdown or deterioration of the physical improvements, to repair and bring them into good working order.⁶

Existing law provides that management must send notice of termination or refusal to renew tenancy at least 60 days before terminating or refusing to renew tenancy to a homeowner.⁷ Under existing law, a copy of this

576, 229 Cal. Rptr. 456, 459 (1986) (comparing a condominium association to a landlord, and stating that a condominium association has the duty to exercise reasonable care in maintaining common areas); Yazzolino v. Jones, 153 Cal. App. 2d 626, 632, 315 P.2d 107, 111 (1957) (holding that a landlord has a duty to use ordinary care to keep portions of the premises over which control is retained, such as common areas, in a safe condition); RESTATEMENT (SECOND) OF TORTS § 360 (1965) (stating that a landlord is liable for injuries that occur to tenants in common areas due to dangerous conditions which the landlord could have discovered by the use of ordinary care); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 63, at 440 (5th ed. 1984) (discussing the affirmative obligation of the landlord to exercise reasonable care in inspecting and repairing common areas). The obligation is one of reasonable care, and the landlord is not liable where no injury was reasonably anticipated or the condition was not discoverable by a reasonable inspection. *Id.* at 441; *see also* ROBERT S. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT § 4:4 (1980) (discussing the tort liability for injuries sustained on premises controlled by the landlord); Olin L. Browder, *The Taming of a Duty - The Tort Liability of Landlords*, 81 MICH. L. REV. 99, 102-3 (1982) (discussing the duty of the landlord to control common areas as an exception to the traditional law of caveat emptor); Christy E. Harris, Project, *Special Project on Landlord-Tenant Law in the District of Columbia Court of Appeals: The Duty of a Modern Landlord to Protect His Tenants from Crime*, 29 HOW. L.J. 149, 154 (1986) (discussing the duty of the landlord to protect tenants from third party criminal activities arising from historical landlord duties).

6. CAL. CIV. CODE § 798.15(d)(2) (amended by Chapter 666); *see id.* § 798.15(d) (amended by Chapter 666) (stating that a reasonable period of time is 'as soon as possible' in situations affecting a health or safety condition, and shall not exceed 30 days in any other case); *id.* § 798.84(a) (West Supp. 1993) (stating that no action may be brought based on management's failure to maintain physical improvements in the common areas in good working order or condition unless the landlord has been given at least a 30 day notice of the intended action); Becker v. IRM Corp., 38 Cal. 3d 454, 468, 698 P.2d 116, 125, 213 Cal. Rptr. 213, 222 (1985) (stating that the purchaser of rental property is expected to inspect the premises to determine whether they are safe); Sieber v. Blanc, 76 Cal. 173, 174, 18 P. 260, 261 (1888) (stating that a landlord with a covenant to repair, must do so within a reasonable time); McNally v. Ward, 192 Cal. App. 2d 871, 884, 14 Cal. Rptr. 260, 268 (1961) (holding that a covenant to maintain leased premises obligates the landlord to repair only within a reasonable time after receiving notice from the tenant); *see also* Proffer v. Randall, 755 S.W.2d 655, 656 (Mo. Ct. App. 1988) (holding that the tenant is under an obligation to give notice to the landlord of any defect not known to the landlord, and to allow a reasonable time for repairs); Appleby v. Webb, 588 N.Y.S.2d 228, 229 (N.Y. App. Div. 1992) (holding that in order for a landlord to be held liable for a defective condition upon a premises, he must have had actual or constructive notice of the condition for a sufficient amount of time so that, in the exercise of reasonable care, he should have corrected it); Annotation, *Statute Requiring Property to be Kept in Good Repair as Affecting Landlord's Liability for Personal Injury to Tenant or His Privies*, 17 A.L.R.2d 704, 722 (1951) (stating that a landlord is liable for injuries which occur as a result of a defect, after the landlord has received actual or constructive notice of the defect and fails to repair it within a reasonable time).

7. CAL. CIV. CODE § 798.55(b) (amended by Chapter 666); *see id.* § 798.9 (West Supp. 1993) (defining a homeowner as a person who has a tenancy in a mobilehome park under a rental agreement); *id.* § 798.55(a) (amended by Chapter 666) (stating legislative findings on why mobilehome owners are provided with unique protection from eviction); CAL. CIV. PROC. CODE § 1162 (West 1982) (listing the acceptable means of service of the notice); *see also* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950) (holding that within limits of practicability, notice must be such as is reasonably calculated to reach interested parties to afford

notice must be sent to the legal owner,⁸ each junior lienholder,⁹ and the registered owner by mail within ten days after notice was sent to the homeowner.¹⁰ Chapter 666 provides that if the homeowner has not paid the rent due within three days after the first notice, a second notice must be sent to the legal owner, each junior lienholder, and the registered owner by certified or registered mail with return receipt requested, unless the first notice was sent by these means.¹¹

MJP

Property; rent control

Civil Code § 1947.15 (new).

AB 264 (Costa); 1993 STAT. Ch. 843

Existing law requires an owner¹ who charges rent to a tenant² in excess of the certified lawful rent ceiling, to refund the excess rent to the tenant upon demand in any city or county which administers a system of rent controls on the price at which residential units may be offered for rent or lease.³ Chapter 843 requires any city or county that administers rent

them due process of law); *Adamson Companies v. Zipp*, 163 Cal. App. 3d Supp. 1, 10-11, 210 Cal. Rptr. 165, 171-72 (1984) (stating that the Legislature did not intend, nor does the law require, strict adherence to the procedure of serving notice to non-tenant owners in unlawful detainer of mobilehome actions, so long as the owner receives notice of termination or refusal to renew tenancy prior to the landlord filing an unlawful detainer action). The law requires 60 days prior notice of termination or refusal to renew tenancy sent to the homeowner before an unlawful detainer action. *Id.*; *Palmer v. Agee*, 87 Cal. App. 3d 377, 386, 150 Cal. Rptr. 841, 846 (1978) (stating that the 60 day notice to tenants applies exclusively to proceedings for termination of mobilehome tenancies for nonpayment of rent).

8. See CAL. HEALTH & SAFETY CODE § 18005.8 (West Supp. 1993) (defining legal owner as a person holding a security interest in a mobilehome).

9. See *id.* § 18005.3 (West Supp. 1993) (defining junior lienholder as a person, other than a legal owner, holding a security interest in a mobilehome).

10. CAL. CIV. CODE § 798.55(b) (amended by Chapter 666).

11. *Id.*

1. See CAL. CIV. CODE § 1980(b) (West 1985) (defining owner as any person other than the landlord who has any right, title, or interest in personal property).

2. See *id.* § 1980(e) (West 1985) (defining tenant as any paying guest, lessee, or sublessee of any premises for hire).

3. *Id.* § 1947.11(a) (West Supp. 1993); see *id.* (stating that if the owner refuses to refund the excess rent, and if a court determines that the owner willfully or intentionally charged the tenant rent in excess of the certified lawful rent ceiling, the court shall award the tenant a judgment for the excess amount of rent and may triple the amount); *Pennell v. City of San Jose*, 485 U.S. 1, 11-12 (1988) (holding that the purpose of a city rent control ordinance to prevent unreasonable rent increases caused by the city's housing shortage was a legitimate

control, and which does not include a system of vacancy decontrol,⁴ to include in any calculation of a property owner's net operating expenses, any expenses and other costs for professional services⁵ reasonably incurred⁶ in the course of successfully⁷ pursuing rights under or in relationship to that ordinance or the rights to a fair return⁸ on the owner's

exercise of the city's police power); *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 158, 550 P.2d 1001, 1022, 130 Cal. Rptr. 465, 486 (1976) (holding that rent control is a proper exercise of a local government's police power if it is reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their properties) *superseded by statute as stated in* *City of Santa Monica v. Yarmark*, 203 Cal. App. 3d 153, 249 Cal. Rptr. 739 (1988); *see also* W. DENNIS KEATING, *THE RENT CONTROL DEBATE* 57-74 (Paul L. Niebanck, ed., 1985) (discussing the evolution of rent control in California and alternatives to rent control); PAUL L. NIEBANCK, *THE RENT CONTROL DEBATE* 7-10 (Paul L. Niebanck, ed., 1985) (discussing the politics and economics of rent control and how the policies of rent control may have added to the problem of the housing shortages that rent control was designed to end); ROBERT S. SCHOSHINSKI, *AMERICAN LAW OF LANDLORD AND TENANT* § 7:1 (1980) (discussing the historical background and purpose of rent controls); 6 HARRY D. MILLER & MARVIN B. STARR, *CURRENT LAW OF CALIFORNIA REAL ESTATE* 147-54 (2d ed. 1989 & Supp. 1992) (discussing regulations of rent); *id.* at 154 n.5 (noting that the purpose of rent control is to alleviate hardship due to a shortage of housing, yet noting that many studies show that rent control leads to a reduction in housing quality and quantity); MICHAEL A. STEGMAN, *THE RENT CONTROL DEBATE* 29-55 (Paul L. Niebanck, ed., 1985) (outlining the rent control plans of New York City).

4. *See* CAL. CIV. CODE § 1947.15(i)(1) (enacted by Chapter 843) (defining vacancy decontrol as a system of controls on the price at which residential rental units may be offered for rent or lease which permits the rent to be increased to its market level, without restriction, each time a vacancy occurs, and reimposes controls on the price of the rental unit upon rerental); *see also* Laura L. Westray, Note, *Are Landlords Being Taken by the Good Cause Eviction Requirement?*, 62 S. CAL. L. REV. 321, 335 (1988) (defining vacancy decontrol as a process allowing an owner with a vacant rental unit to rent the unit at the market value after a tenancy has been terminated, but once rented, the unit will again be regulated by rent control provisions fixing the rental price). The effect of vacancy decontrol is to temporarily exempt a unit from rent control rate restrictions so that an owner may set the rent at market price. *Id.*

5. *See* CAL. CIV. CODE § 1947.15(b) (enacted by Chapter 843) (stating that professional services fees, expenses and costs include, but are not limited to, legal, accounting, appraisal, bookkeeping, consulting, property management or architectural services).

6. *See id.* § 1947.15(e) (enacted by Chapter 843) (stating that the determination of the reasonableness of the expenses, fees or other costs shall be determined by considering: 1) The rate charged for those professional services in that geographical area; 2) the complexity of the matter; 3) the degree of administrative burden or judicial burden imposed upon the property owner; 4) the amount of adjustment of rent sought or the significance of the rights defended and the results obtained; and 5) whether the professional assistance was reasonably related to the result achieved).

7. *See id.* § 1947.15(g) (enacted by Chapter 843) (stating that the rights of a property owner shall be deemed successfully pursued if the owner obtains an upward adjustment in rents, successfully defends his or her rights in an administrative proceeding brought by the tenant or local rent board, or prevails in a proceeding, brought under California Civil Code § 1947.7, concerning certification of maximum lawful rents).

8. *See* U.S. CONST. amend. V; CAL. CONST. art. I, § 19 (providing that the government shall not "take" private property without just compensation); *Cromwell Associates v. Mayor and Council of Newark*, 511 A.2d 1273, 1275 (N.J. Super. Ct. Law Div. 1985) (stating that rent control ordinances must allow a landlord to receive a just and reasonable return on his investment). *See generally* JESSE DUKEMINIER & JAMES E. KRIER, *PROPERTY* 555-56 (3d ed. 1993) (discussing the calculation of "fair returns" on rents under rent control programs); 6 HARRY D. MILLER & MARVIN B. STARR, *CURRENT LAW OF CALIFORNIA REAL ESTATE* at 154-62 (stating that a landlord is entitled to a "fair and reasonable" return on the rental property); *id.* at 154 n. 5 (discussing the objective of rent control to obtain a market equilibrium level rent to assure a return on the landlord's investment, but not to allow him to take advantage of housing shortages); Dwight C. Hirsh, IV, Note, *Yee v. City of Escondido: A Rejection of the Ninth Circuit's Unique Physical Takings Theory Opens the Gates for Mobilehome Park Owners'*

property.⁹ If it is determined that the landlord's petition to pursue these rights is wholly without merit, the tenant shall be awarded a reduction in rent to compensate for the reasonable costs of attorneys or consultants retained to defend against the petition brought by the landlord.¹⁰

Chapter 843 provides that all expenses, reasonably incurred by a property owner in an administrative proceeding to successfully pursue rights under rent control ordinances, are included in the total net operating expenses used to determine the fair return to the owner of the property.¹¹ Chapter 843 provides that the reasonable fees incurred by the property owner in successfully obtaining a judicial reversal of an adverse administrative decision regarding the upward adjustment of rents, shall be assessed against the public agency which issued the adverse administrative decision.¹² If the landlord's appeal of an adverse administrative decision is frivolous¹³ or solely to cause unnecessary delay, the public agency which defended the action shall be awarded its reasonably incurred expenses in defending the action.¹⁴ The ability of a local agency to set its

Regulatory Takings Clause, 24 PAC. L.J. 1681 (1993) (discussing the history and constitutionality of rent control law in California).

9. CAL. CIV. CODE § 1947.15(b) (enacted by Chapter 843); *see id.* § 1947.15(d)(1) (enacted by Chapter 843) (stating that the city may amortize the expenses for a period of five years, except in extraordinary circumstances when the period may be 8 years, if there is evidence that the expenses will not reoccur annually); *id.* § 1947.15(d)(2) (enacted by Chapter 843) (stating that the reasonableness of the expenses claimed, the appropriateness of the amortization period, or an award of an upward adjustment in rents to compensate the property owner for expenses, shall be made as part of, or immediately following, the decision in the underlying administrative proceedings); *Casella v. City of Morgan Hill*, 230 Cal. App. 3d 43, 57, 280 Cal. Rptr. 876, 885 (1991) (stating that the lack of a vacancy decontrol clause in a rent control ordinance does not constitute a taking without just compensation), *cert. denied*, 112 S. Ct. 1665 (1992); *see also* EAST PALO ALTO, CAL., ORDINANCE 17-83, § 12 (stating that landlords may petition the Board to raise rents in rent control units so that they can maintain a positive net operating income, but that attorney's fees and costs incurred in proceedings before the board are not considered operation expenses); LOS ANGELES, CAL., ORDINANCE 152,120, § 151.06(C) (1984) (stating that a landlord may raise the maximum rent level of specified vacant rental units to any amount upon re-rental, but after the unit is rented, the rent may not be increased); WEST HOLLYWOOD, CAL., MUN. CODE art. IV, ch. 4, § 4410 (stating that landlords may raise rents on vacant rental units only after obtaining a limited vacancy increase certificate upon application to the rent board); B.K. Stinshoff, *Unusual Alliance Opposes Change in Rent Law*, WEST HOLLYWOOD POST, Sept. 21, 1989, at 1 (discussing the effect that rent increase provisions on vacant units have had in West Hollywood); B.K. Stinshoff, *Rent Control Fears Scaring Off Real Estate Investors*, WEST HOLLYWOOD POST, Feb. 28, 1985, at 14 (discussing the effect that rent control has had in reducing the value of rental properties in the West Hollywood area).

10. CAL. CIV. CODE § 1947.15(h)(1) (enacted by Chapter 843); *see id.* (stating that the reasonableness of the costs of the tenant's defense shall be determined by the same factors used to determine the reasonableness of the landlord's costs for professional services); *id.* § 1947.15(e) (enacted by Chapter 843) (outlining the factors used to determine the reasonableness of the landlord's costs for professional services).

11. *Id.* § 1947.15(b) (enacted by Chapter 843).

12. *Id.* § 1947.15(c) (enacted by Chapter 843).

13. *See id.* § 1947.15(h)(2) (enacted by Chapter 843) (defining frivolous as either: 1) Totally and completely without merit; or 2) for the sole purpose of harassing an opposing party).

14. *Id.*

own fair return standards, or to limit other actions under its local rent control programs, is not affected by Chapter 843.¹⁵

MJP

Property; return of security deposits by landlords

Civil Code § 1950.5 (amended); Code of Civil Procedure § 1174 (amended).

SB 444 (Rosenthal); 1993 STAT. Ch. 755

Existing law provides that a landlord¹ may require a security² deposit for a residential rental agreement.³ Prior law provided that within two weeks after the tenant⁴ had vacated the premises, the landlord, or his

15. *Id.* § 1947.15(j) (enacted by Chapter 843); *see id.* § 1947.15(f) (enacted by Chapter 843) (stating that Chapter 843 is not applicable to any mobilehome parks where rent is limited by rent controls).

1. *See* CAL. CIV. CODE § 1980(a) (West 1985) (defining landlord as any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his agent or successor in interest).

2. *See id.* § 1950.5(b) (amended by Chapter 755) (defining security as any payment, fee deposit, or charge including an advanced payment in rent, to be used for any purpose including: (1) The compensation of the landlord for a tenant's default in rent; (2) repair of damages to premises other than wear and tear caused by the tenant; (3) cleaning the premises at termination of tenancy; and (4) to remedy future defaults of the tenant in returning, replacing, or restoring personal property); *id.* § 1950.5(c) (amended by Chapter 755) (stating that the amount of security demanded by the landlord may not be greater than two times the rent for a non-furnished residence and three times the rent for a furnished residence).

3. *Id.* § 1950.5(a) (amended by Chapter 755); *see* *People v. Parkmerced Co.*, 198 Cal. App. 3d 683, 692, 244 Cal. Rptr. 22, 26 (1988) (stating that a landlord can only claim security in amounts reasonably necessary to remedy tenants' defaults, to repair damages to premises caused by tenants, and to refund the difference of the collected security); *see also* ROBERT S. SCHOSHINSKI, *AMERICAN LAW OF LANDLORD AND TENANT* §§ 6:31, 6:34 (1980) (discussing security deposits and the rights and obligations with respect to the return of the deposit); *id.* §§ 6:40-6:41 (discussing statutes concerning security deposits); *cf.* HAW. REV. STAT. § 521-44(b) (Supp. 1992) (requiring that the security deposit not exceed a sum equal to one month's rent); KAN. STAT. ANN. § 58-2550 (1983) (stating that the security deposit for an unfurnished dwelling is not to exceed one month's rent, and 1 1/2 month's rent for a furnished dwelling); MD. CODE ANN., REAL PROP. § 8-203(b) (1988) (stating that the maximum security deposit allowed is a sum equal to two month's rent, or \$50, whichever is greater). *See generally* John P. Bosshardt, Note, *Rental Security Deposit in California*, 22 HASTINGS L.J. 1373 (1971) (discussing rental security deposits in California); Note, *Uniform Residential Landlord and Tenant Act*, 15 WM. & MARY L. REV. 845, 875-88 (1974) (discussing security deposits).

4. *See* LIBBY F. JESSUP, *LANDLORD AND TENANT* 122 (1974) (defining tenant as one who has the temporary use and occupancy of real property owned by another, and the duration and terms of that tenancy usually being fixed by a lease); *see also* CAL. CIV. CODE § 1940(a) (West 1985) (defining persons who hire real property as persons who hire dwelling units located within this state including tenants, lessees, boarders and lodgers); *id.* § 1980(e) (West 1985) (defining tenant as any paying guest, lessee, or sublessee of any premises for hire).

successor in interest, was required to provide an itemized statement indicating the amount of, and the basis for having, security withheld, and return any remaining portion of the security to the tenant.⁵ Prior law also provided that a landlord or a landlord's successor in interest⁶ could be subject to damages, not to exceed \$200 plus two percent interest on the security, in addition to actual damages, for a bad faith claim or retention of the security deposit.⁷ Chapter 755 provides that a landlord may be liable for up to \$600 statutory damages, in addition to actual damages, for a bad faith retention of security.⁸ Chapter 755 also provides that the landlord has three weeks to return an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and shall return any remaining portion of the security to the tenant.⁹

Prior law provided that a successful plaintiff in a forcible entry,¹⁰ or forcible or unlawful detainer¹¹ proceeding, upon a showing of malice,¹²

5. 1986 Cal. Stat. ch. 564, sec. 1, at 1991 (amending CAL. CIV. CODE § 1950.5); *see* CAL. CIV. CODE § 1950.5(f) (amended by Chapter 755) (requiring the landlord to furnish the tenant within three weeks, the itemized statement by personal delivery or first class mail); *cf.* COLO. REV. STAT. § 38-12-103(1) (1982); GA. CODE ANN. § 44-7-34 (Harrison 1991) (allowing one month to provide itemized statements and remaining portion of security deposit); IND. CODE ANN. § 32-7-5-16 (Burns Supp. 1993) (allowing 45 days to return a security deposit).

6. *See* CAL. CIV. CODE § 1950.5(g) (amended by Chapter 755) (allowing a landlord to transfer his interest and relieve himself of liability by transferring the portion of the security deposit remaining to the successor in interest, or return the portions to the tenant).

7. 1986 Cal. Stat. ch. 564, sec. 1, at 1991 (amending CAL. CIV. CODE § 1950.5).

8. CAL. CIV. CODE § 1950.5(k) (amended by Chapter 755); *see* Kirkland v. Allen, 678 P.2d 568, 571-72 (Colo. Ct. App. 1984) (holding that when a landlord deliberately fails to return the security deposit following the tenant's notice, such retention is "willful" under the statute entitling tenant to treble damages for willful retention of a security deposit); Beckett v. Olson, 707 P.2d 635, 637 (Or. Ct. App. 1985) (holding that a landlord's failure to return a security deposit to a former tenant within 30 days of termination of tenancy and redelivery of possession mandated an award to the former tenant of twice the amount of the security deposit); *cf.* GA. CODE ANN. § 44-7-35(c) (Harrison 1991) (allowing damages of three times the security sum improperly withheld, plus reasonable attorney's fees).

9. CAL. CIV. CODE § 1950.5(f) (amended by Chapter 755); *see* Consumers Distrib. Co. Ltd. v. Hermann, 812 P.2d 1274, 1279 (Nev. 1991) (stating that a landlord must provide the tenant with an accounting when the landlord withholds funds, whether or not the lease contract provided that the tenant was entitled to an accounting); *cf.* IDAHO CODE § 6-321 (1990) (requiring the itemized letter and remaining portion of the security deposit to be returned within 21 days if there is no other time fixed in the agreement between the parties).

10. *See* CAL. CIV. PROC. CODE § 1159 (West 1982) (defining forcible entry as breaking open doors, windows, or other parts of a house; or using any kind of violence to enter into real property; or, after entering peaceably upon real property, turn out by force, threats, or menacing conduct, the party in possession); Karp v. Margolis, 159 Cal. App. 2d 69, 73, 323 P.2d 557, 559 (1958) (stating that forcible entry is not confined to cases where a fight takes place, or physical force or restraint is used, or where there are threats of physical harm, and no flat breach of the peace is necessary).

11. *See* CAL. CIV. PROC. CODE § 1160 (West 1982) (defining forcible detainer as keeping possession of real property by force or threats of violence, whether the property was acquired peaceably or otherwise); *id.* § 1161 (West 1982) (stating that a tenant guilty of unlawful detainer if he remains after the expiration of the lease term, keeps possession after a default in rent, fails to perform conditions of the lease, commits waste on the

could be awarded either the damages and rent found due, or punitive damages¹³ of up to three times the amount of damages and rent found due.¹⁴ Chapter 755 revises this provision to provide instead that the plaintiff may be awarded statutory damages of up to \$600, or actual damages, including rent found due, or both.¹⁵

MJP

property, or fails to quit the premises after notice).

12. See CAL. PENAL CODE §7(4) (West 1988) (defining malice and maliciously as a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law).

13. See CAL. CIV. CODE § 3294 (West Supp. 1993) (stating that exemplary damages may be recovered for the sake of example and punishment where there is clear and convincing evidence that the defendant is guilty of oppression, fraud, or malice).

14. 1988 Cal. Stat. ch. 797, sec. 3, at 2576 (amending CAL. CIV. PROC. CODE § 1174); see *Fifth & Broadway Partnership v. Kimny, Inc.*, 102 Cal. App. 3d 195, 204, 162 Cal. Rptr. 271, 277 (1988) (holding that in an unlawful detainer action, treble damages are awarded properly against a defendant if malice is pleaded and proved); *Karp*, 159 Cal. App. 2d at 76, 323 P.2d at 561 (stating that in a forcible detainer action, where plaintiffs established forcible entry and detainer, but failed to establish actual damages, court could only award plaintiffs nominal damages and treble that amount); see also *Love v. Monarch Apartments*, 771 P.2d 79, 82 (Kan. Ct. App. 1989) (stating that the penalty for wrongful withholding of the security deposit does not depend on the landlord's good or bad faith, and that statutory damages are automatic); *Fowler v. Seiter*, 838 P.2d 675, 679 (Utah 1992) (holding that forcible entry and detainer provisions make it mandatory for the court to award treble damages to lessees once it has been determined that the lessor waived his or her only defense).

15. CAL. CIV. PROC. CODE § 1174(b) (amended by Chapter 755); see *Hudec v. Robertson*, 210 Cal. App. 3d 1156, 1163, 258 Cal. Rptr. 868, 873 (1989) (stating that if the landlord prevails in an unlawful detainer action, only damages which resulted from the unlawful detention and accrued during that time are proper); *Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, 195 Cal. App. 3d 1032, 1069-71, 241 Cal. Rptr. 487, 508-09 (1988) (stating that the measure of damages to which a landlord is entitled for unlawful detainer is the reasonable rental value of the property); *Adler v. Elphick*, 184 Cal. App. 3d 642, 649, 229 Cal. Rptr. 254, 259 (1986) (holding that, in an unlawful detainer action, the damages for wrongful possession need not be limited to the controlled rent level required by municipal rent control ordinance for subject property); *Gray v. Whitmore*, 17 Cal. App. 3d 1, 18, 94 Cal. Rptr. 904, 912 (1971) (stating that the judgment for damages and the rent found due in an unlawful detainer action, are merely incidental to the main objective of recovering possession of the property); see also *Grombone v. Krekel*, 754 P.2d 777, 780 (Colo. Ct. App. 1988) (holding that one who prevails in a forcible entry and detainer action is entitled only to recover possession, damages, reasonable attorney fees, and costs). The amount of damages that the plaintiff may recover in the unlawful detainer action is the reasonable rental value of the premises for the period. *Id.* See generally CALIFORNIA RESIDENTIAL LANDLORD AND TENANT PRACTICE §§ 7.1-7.221 (Cal. Continuing Educ. Bar 1986 & Supp. 1992) (discussing unlawful detainer actions).

Property; tax or assessment liens

Revenue and Taxation Code § 2192.2 (new); §§ 2192.1, 4703 (amended).

AB 1498 (Campbell); 1993 STAT. Ch. 853

(Effective October 5, 1993)

Existing law provides that every tax or assessment declared to be a lien¹ on real property has priority over all other liens.² Chapter 853 sets forth several examples of liens and assessments over which a property tax lien has priority.³ Chapter 853 also declares that proceeds from the sale of real property upon which taxes are due must be transmitted to the

1. See CAL. CIV. CODE § 2872 (West 1993) (defining lien as a charge imposed upon property, in some mode other than by a transfer in trust, by which it is made security for the performance of an act); CAL. CIV. PROC. CODE § 1180 (West 1982) (defining lien as a charge imposed upon specific property by which it is made security for an act); see also *Thompson v. Clark*, 6 Cal. 2d 285, 300, 57 P.2d 490, 498 (1936) (explaining that it is not essential that one have an immediate right of foreclosure in order for a lien to exist); *East Bay Mun. Util. Dist. v. Garrison*, 191 Cal. 680, 692, 218 P. 43, 47 (1923) (asserting that a tax lien is no different than other varieties of liens because it rests upon an obligation to do the act which its attachment to the property secures).

2. CAL. REV. & TAX. CODE § 2192.1 (amended by Chapter 853); see *id.* § 2187 (West 1987) (stating that every tax on real property is a lien against the property assessed); *id.* §§ 2188-2189.7 (West 1987 & Supp. 1993) (listing improvements, condominiums, leased premises, planned developments and projects, time-share projects, personal property, or floating homes as subject to assessment, tax, or lien); see also *T.M. Cobb Co. v. Los Angeles County*, 16 Cal. 3d 606, 619, 547 P.2d 431, 439, 128 Cal. Rptr. 655, 663 (1976) (stating that tax liens are not by their own force superior to prior private liens); *Bradbury v. Kaiser*, 3 Cal. App. 4th 1257, 1260, 5 Cal. Rptr. 2d 325, 326-27 (1992) (holding that a perfected judgment lien had priority over a state tax lien on personal property because the judgment creditor perfected its lien prior to the time the Franchise Tax Board filed its notice of a tax lien); cf. *NEV. REV. STAT. § 360.480* (1991) (giving priority to a recorded lien when attached prior to the date the amount due in taxes became a lien); *OR. REV. STAT. § 311.405(2)* (1993) (stating that no tax lien shall be voided or impaired); *TEX. TAX CODE ANN. § 32.05* (Vernon 1992) (giving tax liens priority over all other liens no matter when the attachment occurred); *Jefferson Standard Life Ins. Co. v. United States*, 247 F.2d 777, 780 (9th Cir. 1957) (finding that, under California law, a tax lien does not have priority over pre-existing contract liens unless the legislative enactment creating the tax lien has given it priority). See generally *Diversified Credit Corp. v. Couch*, 669 P.2d 1355, 1362 (Colo. 1983) (explaining that the legislature may enact legislation imposing a tax lien on real property and give such a lien priority over other liens); *Farmers & Merchants Nat'l Bank of Hagerstown v. Shlossberg*, 507 A.2d 172, 182 (Md. 1986) (stating that when the statute clearly provides for tax liens to have priority over other liens, the tax lien is accorded such priority over preceding liens including perfected security interests); *Grand Prairie Indep. Sch. Dist. v. Southern Parts Imports, Inc.*, 803 S.W.2d 762, 764 (Tex. 1991) (holding that city tax liens had priority over a perfected security interest in the same property), *aff'd in part, rev'd in part*, 813 S.W.2d 499, 500 (Tex. 1991).

3. CAL. REV. & TAX. CODE § 2192.1 (amended by Chapter 853); see *id.* (providing recognizance, deed, judgment, debt, and obligation as an incomplete list of examples over which tax or assessment liens have priority).

officer responsible for the collection of those taxes and assessments, and applied to those taxes and assessments due.⁴

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4. *Id.* § 2192.2 (enacted by Chapter 853); *see id.* (exempting tax sales from sales subject to Chapter 853 and including sales conducted by judicial process or other officers).