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Property

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Property

Property; Subdivision Map Act

Business and Professions Code Chapter 2 (commencing with §11500) (repealed); Government Code Division 2 (commencing with §66410) (new); Public Resources Code §§5078.9, 10000, 10001, 10002, 10020, 10021, 10022, 10040, 10041, 10042, 10043 (repealed).
SB 977 (Gregorio); STATS 1974, Ch 1536
AB 687 (Quimby); STATS 1974, Ch 1537
(*Effective March 1, 1975*)
Support: League of California Cities; County Supervisors' Association

Repeals the Subdivision Map Act and re-enacts similar provisions in the Government Code with numerous technical changes; authorizes local governments to allow any interested person adversely affected by a decision of an advisory agency or appeals board regarding a subdivision map to challenge the decision before the governing body; authorizes reservation of land for public uses in lieu of mandatory dedications or eminent domain.

Chapter 1536 repeals the Subdivision Map Act [CAL. BUS. & PROF. CODE §11500 *et seq.*] and replaces it with substantially similar provisions in the Government Code under the new title *Planning and Land Use*. There are several significant changes in the law of subdivisions, but most changes are technical revisions designed to clarify the requirements for processing subdivision maps, certification of maps, and other procedural details. The scope of this analysis is limited to the major changes made in the law by this chapter.

First, chapter 1536 has changed certain definitions. "Advisory agency" is redefined to include a designated official or an official body charged with the duty of (1) imposing requirements or conditions on proposed divisions of real property, or (2) having the authority by local ordinance to approve or disapprove maps, or (3) charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property [CAL. GOV'T CODE §66415]. Under prior law, an "advisory agency" was defined as an

official or official body performing only the last duty listed above. The term "subdivider" has been redefined to include not only a person, firm, corporation, partnership, or association which divides real property into a subdivision for himself or others, but also a person, firm, etc. that proposes to divide real property (§66423). Finally, section 66424 has redefined "subdivision" to include all condominium projects (defined in CAL. CIV. CODE §1350) and community apartment projects (defined in CAL. BUS. & PROF. CODE §11004). However, despite these changes in the definition, those divisions of land formerly not defined as a subdivision still require a parcel map and not a final subdivision map (See CAL. GOV'T CODE §66426). Thus it would appear that this expansion in the definition of a subdivision does not catalyze any major changes. [For the required contents of a final map and parcel map see CAL. GOV'T CODE art. 2 (commencing with §66433), art. 3 (commencing with §66444)].

Second, the procedure for securing approval of a tentative subdivision map has been modified by chapter 1536. In addition to changing certain time periods within which specified actions must take place, this chapter provides that a tentative map is deemed to be approved or conditionally approved (depending upon whether the map was last approved or conditionally approved) if the appeals board or the legislative body fails to act on an appeal of an advisory agency's decision within the specified time limits [CAL. GOV'T CODE §66452.4(c)]. Third, chapter 1536 makes a significant change by now allowing, where local ordinance so provides, a nonsubdivider who has been adversely affected by a decision of an advisory agency or an appeals board relating to the approval of a tentative subdivision map to *challenge* the decision before the governing body. However, the governing body has the option as to whether it shall hear the challenge. The procedure to challenge an adverse decision before the governing body is as follows: (1) The nonsubdivider shall file a complaint with the clerk of the local legislative body (*e.g.*, the city council) within 15 days after the decision of the advisory agency or appeals board was rendered; (2) the governing body *may* then hold a hearing (which *may* be public, provided that proper notice is given) within 30 days after the complaint was filed; and (3) if the governing body elects to hear the challenge, it shall declare its findings within seven days after the conclusion of the hearing.

Fourth, newly added section 66452.6 provides that an approved or conditionally approved tentative map (which may be required as a con-

dition to approval of a final subdivision map or a parcel map) shall now expire after 12 months (or after up to an additional 18 months if provided for by local ordinance). Once the tentative map has expired, all proceedings are terminated and a final or parcel map may not be filed until a new tentative map is filed. Fifth, section 66473 now requires a local agency to disapprove a tentative, final, or parcel map if it does not meet *any* of the requirements imposed by law. Sixth, the local agency shall also disapprove a final map for a land project (defined in CAL. BUS. & PROF. CODE §11000.5) for which the tentative map was approved on or after November 10, 1969, unless the local agency has adopted a specific plan for that area and finds that the land project is consistent with that specific plan.

Seventh, under the repealed Subdivision Map Act, the governing body could condition the approval of a subdivision map or a parcel map for divisions of land not amounting to a subdivision upon the dedication of land and/or the payment of a fee for park and recreational purposes. However, the prior law contained two exceptions to this dedication requirement which have now been deleted by chapter 1537 (note that chapter 1537 amends the provisions of chapter 1536, Government Code §66477). These two exceptions were: (1) the division of land requiring a parcel map was made by or on behalf of a private owner making an occasional sale (as opposed to a professional developer); or (2) the division of land did not amount to a subdivision and was not to be used for residential purposes. Thus, by deleting these two exceptions the governing body can now require the dedication or payment for park and recreational purposes solely upon the need generated by the development of the land for such facilities.

Eighth, chapter 1536 retains the requirement that a subdivider must dedicate land for public access to coastlines, lakes, reservoirs, rivers, and streams as a condition for approval of the tentative or final subdivision map if the land to be subdivided fronts such a body of water. However, under prior law, if the division of land did not amount to a subdivision, no such dedication for public access was required. While this chapter retains the general rule that no dedication is required if the division of land does not amount to a subdivision, it does create one exception. If each parcel is larger than 40 acres and created after December 31, 1969, the local agency shall not issue any permit or grant any approval necessary to allow the development of the land fronting such bodies of waters unless public access to the shoreline has been provided.

Ninth, chapter 1536 offers a new alternative approach to mandatory dedications and eminent domain by allowing local governments to *reserve* land in a tentative subdivision for public uses such as parks, recreational facilities, fire stations, and libraries [CAL. GOV'T CODE §§66479-66482]. The restrictions on this power of reservation are: (1) the ordinance authorizing reservation must have been in effect for 30 days prior to the filing of the tentative map for the subdivision where the land is being reserved; (2) the reserved area shall conform to the specific or general plan adopted by the local government; (3) the reserved area shall be of such a size and shape as to permit the remainder of the property in the proposed subdivision to be developed in an orderly and efficient manner; and (4) the amount of land reserved shall not make development of the subdivider's remaining land economically unfeasible. The public agency for whose benefit an area has been reserved must enter into a binding agreement to buy the land by the time the final map or the parcel map is approved; otherwise, the reservation terminates automatically. If the parties enter into a binding agreement, the local agency must acquire the reserved land within two years after the completion and acceptance of all the subdivision improvements unless the parties mutually agree on a time extension. The compensation that the subdivider shall receive for the reserved land, if the parties enter into a binding agreement, shall be the market value of the land at the time that the tentative map was filed plus taxes paid on the reserved area from the date of the reservation and the costs for maintaining the reserved area.

Tenth, the fee which the local government may require by ordinance (if the specified criteria are met) as a condition for approval of a final subdivision map or as a condition for issuing a building permit may now be spent to defray the costs of constructing "major thoroughfares" as well as the costs of constructing bridges, which was also permitted under the old law [CAL. GOV'T CODE §66484]. Eleventh, this chapter makes various technical, clarifying, and procedural changes in the areas of improvement security [CAL. GOV'T CODE §§66499-66499.10] and reversion to acreage [CAL. GOV'T CODE §§66499.11-66499.20].

See Generally:
1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §§22-26 (8th ed. 1973).
2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA LAND SECURITY AND DEVELOPMENT §§26.1-26.30 (1960).
3) 3 H. MILLER & M. STARR, CURRENT LAW OF CALIFORNIA REAL ESTATE §§874-895 (1971).
4) Comment, *Land Development and the Environment: The Subdivision Map Act*, 5 PAC. L.J. 55 (1974).

Property; open-space easements

Government Code Chapter 6.6 (commencing with §51070) (new); §§16142, 51050 (amended); Revenue and Taxation Code §§17299.1, 18052.2, 24441, 24916.2, (new); §§421, 422, 426 (amended).
AB 2854 (Dunlap); STATS 1974, Ch 1003

In 1966 the "Open-Space Amendment" [CAL. CONST. art. XXVIII] was passed in an effort to preserve open-space lands. This amendment provided that open-space lands subject to an "enforceable restriction" could be assessed according to the uses permitted under that restriction rather than according to the best and highest use otherwise available. Section 422 of the Revenue and Taxation Code, prior to amendment by chapter 1003, limited these "enforceable restrictions" to (1) a contract, (2) an agreement made prior to November 10, 1969, (3) a scenic restriction, (4) a wildlife habitat contract, and (5) an open-space easement. Chapter 1003 eliminates scenic restrictions entered into after January 1, 1975, from a list of "enforceable restrictions" which would qualify a landowner for the reduced assessments and also modifies the law of open-space easements.

An open-space easement is defined as any right or interest which the city or county has acquired by a deed or other grant which will preserve the natural or scenic character of the land for public use or enjoyment. The landowner is required to include a convenant in the deed whereby he promises not to construct or permit construction of improvements which would be incompatible with the scenic or natural character of the land. Such a covenant is to run with the land. The changes in the law of open-space easements made by chapter 1003 are only applicable to open-space easements entered into after January 1, 1975. Existing open-space easements entered into prior to that date remain subject to prior law.

A brief summary of the major changes in the open-space easement law effected by chapter 1003 follows. First, the city or county must now adopt an open-space plan before it can accept a grant for such an easement. Under prior law only a general plan was required. The other criteria which must be met before a city or county may accept a grant of an easement remain virtually unchanged. Thus, in addition to the requirement of adoption of an open-space plan, the city or county must have adopted a general plan, and also adopted a resolution stating that the preservation of the land as open-space is consistent with that general plan and in the best interest of the city or county. Second, the

minimum length of an open-space easement has been reduced from 20 years to 10 years.

Third, chapter 1003 provides for automatic renewal of the easement, while under prior law the easement terminated automatically at the end of the term. Under the new law, if either the landowner or the city or county decides not to renew the easement, that party must serve written notice of nonrenewal on the other party within 90 days of the renewal date. If the notice of nonrenewal is served, the easement will expire at the end of the original term. If not, the term is automatically extended for one year. Fourth, the procedures to abandon an open-space easement are now initiated by the landowner petitioning the governing body, rather than the old procedure of the government initiating the abandonment procedures without the landowner's consent. Under the new procedure, the city or county may not approve the petition to abandon unless by resolution it finds that the easement no longer serves a public purpose, the abandonment is consistent with the general plan, and the abandonment is necessary to avoid substantial financial hardship to the landowner because of unique and involuntary factors. Fifth, chapter 1003 does not permit a waiver of the abandonment fee (50 percent of the abandonment valuation of the property), which was permitted under prior law. Sixth, any abandonment fee paid after January 1, 1975, is no longer deductible from the landowner's income tax as under prior law.

COMMENT

The changes in the open-space easement law made by chapter 1003 appear to have been designed to make the open-space easement method of dedicating open-space lands more attractive to landowners. For example, by changing the minimum term from 20 years to 10 years with an automatic renewal, open-space easement law is now very similar to the contract method of temporarily dedicating land for open-space purposes, which appears to have been more widely used by landowners in the past.

See Generally:

1) Mix, *Restricted Use Assessment in California: Can it Fulfill its Objectives?*, 11 SANTA CLARA LAW. 259 (1971) (general discussion of legislation to preserve open-spaces).

Property; easements—local agencies

Civil Code §812.5 (new).
SB 2410 (Nejedly); STATS 1974, Ch 1340

Various provisions in the Streets and Highways Code allow a county or city to abandon a street or highway and to reserve an easement in that abandoned street or highway for the purpose of allowing a public utility to operate, service, and enlarge its works installed along the abandoned property [CAL. STS. & H'WAYS CODE §§901, 954-960.5]. However, if an easement is not reserved, the public utility is forced to purchase an easement to gain access to their works because the abandonment by the city or county terminates the public utilities easements.

Chapter 1340 has been enacted to allow a "local agency" (defined in this chapter to include cities and special districts as set forth in §54775 of the Government Code, which would include most public utilities) to retain its public easements to maintain, operate, replace, or remove its works even though the city or county abandons the street or highway without expressly reserving any public easements. This chapter provides that a city or county proposing abandonment of a street or highway shall give written notice of its intent to abandon within 15 days after adopting an ordinance or resolution of abandonment to any local agency requesting such a notice.

The city or county is required to maintain a public index of such requests from local agencies. If the local agency determines that the public interest is served by retaining a public easement to service its works, it may retain its easement by filing a verified notice of the easement with the county recorder's office. However, the local agency *must* record its verified notice within 30 days after receiving the city's or county's written notice of intent to abandon the street or highway; or, if the local agency did not receive the written notice, within 180 days after the city or county has recorded the instrument evidencing the abandonment of the street or highway. Failure to record the verified notice within the above time limits will extinguish the local agency's right to the easement. This chapter is not intended to make the rights of the public to a street or highway subordinate to any public easement of a local agency, nor to affect the city's or county's rights to reserve an easement pursuant to sections 72.5, 959.1, or 8330 of the Streets and Highways Code.

Property; liens—duration

Health and Safety Code §§2285, 25863 (amended); Labor Code §3720 (amended); Public Resources Code §§3423, 4179 (amended); Water Code §13305 (amended).
AB 2030 (H. Johnson); STATS 1974, Ch 46

Chapter 46 has been enacted to specify the duration of certain statutory liens which have the same force and effect as a judgment lien. This chapter provides that the following liens shall continue for 10 years from the time of recording unless released or otherwise discharged: (1) a lien for costs incurred by a mosquito abatement district while abating a mosquito breeding area [CAL. HEALTH & SAFETY CODE §2285]; (2) a lien for costs incurred for radioactive decontamination [CAL. HEALTH & SAFETY CODE §25863(a)]; (3) a lien for costs incurred by the State Forester while abating a fire hazard [CAL. PUB. RES. CODE §4179]; (4) a lien for costs incurred by a regional water quality control board while abating a condition of pollution or a nuisance [CAL. WATER CODE §13305(a)]; (5) a lien against the property of an employer who has not secured the payment of workmen's compensation and insurance [CAL. LABOR CODE §3720]; and (6) a lien on property for oil and gas assessments [CAL. PUB. RES. CODE §3423]. A normal judgment lien continues for 10 years after a certified abstract of the judgment decree is recorded [CAL. CODE CIV. PROC. §674]. This chapter also requires that the notice of lien for the first four liens listed above shall contain the name of the property owner. The notice of lien for the remaining listed liens is already required to include the name of the property owner. Note that this notice of lien must be recorded with the county recorder's office before the lien can become effective.

See Generally:
1) REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION, this volume at 411 (Taxation; erroneous assessments).

Property; nuisance abatement—lis pendens

Code of Civil Procedure §409.7 (new); §409.6 (amended); Health and Safety Code §17985 (amended).
AB 3892 (Murphy); STATS 1974, Ch 839
Support: Department of Housing and Community Development

Section 409.7 has been added to the Code of Civil Procedure to protect a prospective buyer of a building which may be declared to be uninhabitable. This section requires a public agency, when it initiates an action to have a building declared to be uninhabitable, to file a lis pendens at the same time the complaint for such an action is filed. In addition, section 17985 of the Health and Safety Code has been amended to make it mandatory, rather than optional, that a public agency file a lis pendens when it initiates an action to abate a nuisance.

Under the prior law, a prospective buyer could not discover if a public agency had initiated an action to have the building declared uninhabitable unless the buyer directly inquired to the agency bringing the action or the seller voluntarily informed the buyer of the action. Likewise, the buyer had no dependable means to discover if an action to abate a nuisance on the property was in progress when recording the lis pendens was optional. Thus, it was possible for the owner of a building to sell it at a high price to an ignorant buyer immediately after a public agency had brought an action to have the building declared to be uninhabitable or abated as a nuisance. The buyer's only recourse would be to bring an action against the seller for misrepresentation, which would be futile if the seller has left the country or is judgment proof. Under the provisions of chapter 839, a prospective buyer could be forewarned of an action to have the building declared to be uninhabitable or abated as a nuisance before incurring major expenses in a sales transaction. If the buyer fails to discover the lis pendens in the public records, he is nonetheless held to have been given constructive notice of the pending action; but the provisions of this chapter would not adversely affect the buyer's action for *fraudulent* misrepresentation against a seller, since the courts have held that the recording acts do not afford protection to those who make fraudulent misrepresentations [*See* Seeger v. Odell, 18 Cal. 2d 409, 115 P.2d 977 (1941)].

Property; mortgages and deeds of trust—recordation of discharges

Civil Code §2941 (amended).
AB 892 (Seeley); STATS 1974, Ch 267
Opposition: California Land Title Association; California Real Estate Association

In all cases where a mortgage or deed of trust has been recorded, a cloud remains on the title after satisfaction of the debt unless a certificate of discharge of the mortgage or a full reconveyance of the deed of trust is likewise recorded. Section 2941 of the Civil Code provides that the mortgagee must execute and deliver, in form sufficient for recordation, a certificate of discharge after the mortgage has been satisfied and the mortgagor has demanded such a certificate. Likewise, a trustor under a deed of trust is entitled to a full reconveyance from the trustee once the debt has been satisfied and a demand made, and the trustor may compel the beneficiary to request the trustee to make the reconveyance.

Prior to chapter 267, section 2941 did not expressly state who was responsible for recording the certificate of discharge or the reconveyance. As amended by chapter 267 this section now requires the mortgagee or the trustee to record these documents in the county recorder's office where the mortgage or deed of trust is recorded unless the mortgagor or trustor has given contrary instructions or there is a concurrent escrow, in which case the recording is done by the escrow agent. The section is further amended to provide that a mortgagee, trustee, or beneficiary may charge a fee for all services rendered in preparing, executing, or recording a certificate of discharge, a full reconveyance, or a request for a full reconveyance. The payment of the fee may be made a condition to performance of any services required by this section. The mortgagee, trustee, or beneficiary can be held liable to the mortgagor or the trustor for any damages which may be sustained, as well as a $300 penalty, if he fails to provide the specified documents within 30 days of the demand, or if the mortgagee or trustee fails to record the certificate of discharge or the reconveyance, even if no demand has been given. Any violation of section 2941 may also result in criminal penalties [CAL. CIV. CODE §2941.5].

See Generally:

1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Security Transactions* §81 (8th ed. 1973).
2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA LAND SECURITY AND DEVELOPMENT §3.37 (1960).

Property; prepayment—secured transactions

Civil Code §2954.9 (new).
AB 3500 (Deddeh); STATS 1974, Ch 1059

Section 2954.9 has been added to the Civil Code to give the obligor under a loan secured by a mortgage or deed of trust the absolute right to prepay any or all of the balance due on the debt, together with accrued interest. Prior to chapter 1059, the obligor did not have an absolute right to prepay the debt and accrued interest unless the parties had agreed to a provision in the loan agreement expressly allowing the obligor to prepay. Such prepayment provisions were commonly included in loan agreements. The provisions of section 2954.9 apply to any secured transaction entered into after January 1, 1975, except purchase-money mortgages where the mortgage or deed of trust is given back to the seller (who is also the mortgagee or the beneficiary under the deed of trust) for the purchase price. Note that this section does

not affect the parties' rights to agree to a prepayment penalty not otherwise prohibited by law.

COMMENT

Chapter 1059 gives an obligor, under a mortgage or deed of trust entered into after the effective date of this chapter, the absolute right to prepay the debt but does not affect the parties' right to agree on a prepayment penalty. It should be noted that the right to prepay the debt granted by this chapter probably cannot be emasculated by requiring an outrageously excessive prepayment penalty. This conclusion is based on the dictum in *Hellbaum v. Lytton Savings & Loan Association* [274 Cal. App. 2d 456, 79 Cal. Rptr. 9 (1969)], which indicates that the court would probably not allow a prepayment penalty charge which is so excessive as to shock the judicial conscience.

Property; mortgages—notice of default

Civil Code §2924c (amended).
AB 3509 (Bannai); STATS 1974, Ch 308
(*Effective May 31, 1974*)
Support: California Land Title Association, California Bankers' Association

Sections 2924 and 2924c of the Civil Code, as amended in the 1973 session of the legislature [CAL. STATS. 1973, c. 817], require a mortgagee, trustee, or other person with a private power of sale to file a notice of default before exercising the power of sale and to mail this notice of default to any person who requests the notice pursuant to section 2924b. If the default is curable, the notice shall also include the statement set forth in section 2924c(b), which is to inform the mortgagor or trustor or their successors in interest that they have the opportunity to reinstate the mortgage or deed of trust. The statement shall also include the name and address of the beneficiary or the mortgagee. Chapter 308 has now additionally amended section 2924c to require that the statement shall also include the name and address of the successors in interest of the beneficiary or the mortgagee.

This change, to include the name and address of the successors in interest as well as that of the beneficiary and the mortgagee, is apparently intended to ensure that the mortgagor or trustor can more readily ascertain the conditions which must be performed to cure the default and avoid the foreclosure sale. The changes made by chap-

ter 308 became operative on July 1, 1974, the same time the amendments made by chapter 817, statutes of 1973 became operative.

See Generally:
1) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 458 (1974) (notices of default).

Property; 1911 Act bonds—repayment period, prepayment

Streets and Highways Code §§6462.1, 6464 (amended).
AB 3156 (Quimby); STATS 1974, Ch 520
AB 3564 (Kapiloff); STATS 1974, Ch 527

Chapter 527 has been enacted to authorize a public agency which issues 1911 Act bonds to establish different repayment periods for each affected property owner. The practical effect of this change in the law will probably be that public agencies issuing these bonds will determine the repayment period to meet the property owner's ability to pay the assessment on his property (*e.g.*, a low income property owner will be allowed a longer repayment period so that his payments will be lower). The maximum repayment period for 1911 Act bonds is 24 years [CAL. STS. & H'WAYS CODE §6462].

Regardless of the duration of the repayment period, the property owner may prepay the assessment in advance of the maturity date. However, if the property owner elects to prepay the assessment, he must also pay a penalty of five percent on the "unmatured principal." Under the law prior to chapter 520, there was some ambiguity as to whether the "unmatured principal" included recent principal payments on which interest had already been paid. Chapter 520 clarifies the ambiguity by expressly providing that the five percent prepayment penalty does not apply to any principal payment on which interest has already been paid.

Property; 1911 Act bonds—foreclosure

Streets and Highways Code §6505.1 (new); §§6501, 6502, 6504, 6505, 6506, 6507, 6550, 6631 (amended).
AB 2578 (L. Greene); STATS 1974, Ch 64
AB 3211 (Knox); STATS 1974, Ch 373

Chapter 64 alters the foreclosure procedure on 1911 Act bonds in order to curtail those abuses of the procedure wherein a bondholder could force the sale and acquire fee title to the encumbered property for a relatively small amount without the property owner's knowledge.

This amended procedure applies to all foreclosure proceedings instituted pursuant to chapter 6 (commencing with §6500) of the Streets and Highways Code when the first notice pursuant to section 6501 has been issued after March 12, 1974.

This chapter amends five major steps in the foreclosure procedure. First, the treasurer of the city or county is required to send notice of the foreclosure sale by certified mail to the property owner on the last equalized assessment roll *and* to any person whose name appears as an owner on the county assessor's records used to prepare the next roll. Under the prior law, only the property owner of record was sent a notice by first class mail. Second, six months after the above notice has been sent, the treasurer is required to publish in a newspaper of general circulation a notice of sale to include a description of the encumbered property and a detailed description of the fees, penalties, and interest that the property must pay, in addition to the delinquent payments on the 1911 Act bonds, to avoid the foreclosure sale. Prior to this chapter, this notice did not include a description of the property or a detailed description of the fees, penalties, and interest to be paid. Third, the treasurer shall send by certified mail a copy of the above notice, at least 15 days prior to the date of sale, to both the bondholder *and* the property owner as shown in the assessor's records. Under the prior law this notice was sent only to the bond owner. Fourth, the date of sale shall be at least 30 days after the notice in step two above has been published, rather than the previous 15 days. The amended procedures also expressly provide that the foreclosure sale may not take place if the treasurer has not sent the notices pursuant to steps one and three above. However, failure of the property owner to receive or accept these notices shall not affect the validity of the sale.

Fifth, after the encumbered property has been sold at public auction, the property owner has the right of redemption for at least one year after the date of purchase and until the purchaser has applied for the deed, paid the requisite fees, and the treasurer has sent by certified mail a notice to the property owner of the application for the deed 30 days prior to the expiration of the time of redemption or the date of the application for the deed. The treasurer shall also post a copy of this notice on the encumbered property in a conspicuous place. Thus, chapter 64 has shifted the duty to notify the property owner of his right to redeem from the bondholder to a disinterested third party, the treasurer. Also the procedure prior to this chapter did not require posting of the notice.

If the bondholder elects to initiate foreclosure proceedings, it may

sometimes be necessary to have a title search to determine the owner of the property so that the required notices are sent to the right person. Under the law prior to chapter 373, the bondholder could recover the costs of this title search if the foreclosure proceedings were consummated, but not if the property owner reinstated his bond by paying the delinquent payments. Chapter 373 has been enacted to allow the bondholder to recover this cost from the property owner when the property owner has reinstated his bond.

See Generally:
1) 41 CAL. JUR. 2d, *Public Securities, etc.* §63 (1958).

Property; municipal water district bonds

Water Code §§71925, 71926, 71927, Article 2 (commencing with §71930) (repealed); Article 2 (commencing with §71930) (new); §71922 (amended).
AB 3461 (Knox); STATS 1974, Ch 385
(*Effective July 5, 1974*)

The provisions of chapter 4 (commencing with §71920) of the Water Code detail the procedure required to form an uninhabited improvement district out of a portion of a municipal water district. An uninhabited improvement district is defined in section 71921 of the Water Code as being an area containing less than 12 registered voters. Under the law prior to chapter 385, the procedure used to form such a district involved the adoption of a resolution of intention to form the improvement district and to incur indebtedness (*i.e.* to issue bonds) by the board of the municipal water district. The resolution had to include a general description of the proposed district, the time and place for a public hearing, and the purpose and amount of the bonded indebtedness. After the adoption of the resolution of intention to form an uninhabited improvement district, notice was to be published and sent by mail to each person owning land within the proposed improvement district. If the owners of at least one half of the assessed valuation of land protested, the formation of the improvement district could have been stopped. If there was no such protest, the municipal water district board could then adopt a resolution to form the improvement district and issue bonds up to the amount specified in the resolution of intention to form the district.

Chapter 385 amends the above procedure by eliminating the provisions for the formation of uninhabited improvement districts by the

municipal water district board, and provides instead that the voters shall decide the questions of formation and incurring bonded indebtedness. Each landowner shall now have one vote for each dollar's worth of land he owns which is within the proposed improvement district, and voting may be by mail or by proxy. If a majority of the votes are in favor of such a district, the uninhabited improvement district shall be formed and bonds issued.

Property; water rights—livestock watering

Water Code Article 2.5 (commencing with c1226) (new); §§1225, 5101 (amended).
AB 2483 (Nimmo); STATS 1974, Ch 140

Chapter 140 has been enacted to declare that the owner of a dam having a capacity of less than 10 acre-feet on January 1, 1975, shall have a *valid water right* and is therefore eligible for a permit or license to use the water without following the normal permit procedures if (1) the water is to be used primarily for watering livestock, (2) the dam was constructed prior to January 1, 1969, and (3) no litigation between private parties over the rights to such water was a matter of public record prior to January 1, 1974. The dam owner's right to use the water shall continue until the water is no longer used primarily to water livestock. Section 1226.4 provides that the State Water Resources Board, after notice and a hearing, may revoke the dam owner's license or permit if it finds that the water is no longer being used to water livestock.

The priority of the dam owner's water right depends upon the date he files his claim to use the water pursuant to this chapter. If he files his claim and pays the requisite filing fee prior to December 31, 1977, section 1226.1 provides that such a claim has water right priority as of the date the dam was constructed. Claims filed after this deadline have priority as of the date of filing. It is important to note that all licenses and permits issued by the Board prior to January 1, 1975, shall have priority over any water right obtained pursuant to this chapter.

COMMENT

Although the state has a permit procedure to obtain the right to use unappropriated water, many small agricultural dams have been built without following this procedure; hence, the dam owners had no legal

right to use the water. This chapter gives the dam owner the legal right to use the water for the important purpose of watering livestock without a prior determination by the Board that there is in fact unappropriated water available, as required under the normal permit procedure. However, the provision in section 1226.1 which gives water right priority to water users who obtained a permit or license prior to January 1, 1975, over any water right obtained pursuant to this chapter may ensure that only surplus water is appropriated by this chapter. If such a license or permit holder with priority is deprived of water to which he is entitled, the dam owner claiming a water right under this chapter could not use the water. But the burden would be upon the permit or license holder with priority to show that his water rights are being infringed upon, as opposed to the Board having to determine that there is unappropriated water available under the normal permit procedure.

It should also be noted that many of the dam owners who are obtaining valid water rights under this chapter could *probably* have claimed prescriptive rights to use the water. In many cases the use of the water would have been continuous, adverse use under claim of right for five years (note that this chapter requires that the dam must have been built over five years ago). However, there is some doubt as to whether common law prescriptive water rights can be acquired under California's water appropriation statute since the California courts have not yet resolved this issue.

See Generally:
1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §§577-580, 586, 587, 592 (8th ed. 1973).
2) 23 CAL. ADMIN. CODE §400 *et seq.* (appropriation of water).
3) Craig, *Prescriptive Water Rights in California and the Necessity for a Valid Statutory Appropriation*, 42 CAL. L. REV. 219 (1954) (arguing no prescriptive water rights without statutory appropriation).
4) Kletzing, *Prescriptive Water Rights in California: Is Application a Prerequisite?*, 39 CAL. L. REV. 369 (1951) (arguing no statutory appropriation necessary to obtain prescriptive water rights).

Property; abandonment of leased real property

Civil Code §1951.3 (new); Code of Civil Procedure §415.47 (new).
AB 2831 (McAlister); STATS 1974, Ch 332
Support: California Law Revision Commission

Section 1951.2 of the Civil Code details the rights and duties of the lessor and lessee if the lessee "abandons" the property before the end of the term. Prior to chapter 332, case law held that abandonment

requires both an intention to abandon the premises and a manifestation of this intent [3 H. MILLER & M. STARR, CURRENT LAW OF CALIFORNIA REAL ESTATE, *Ownership* §1052 (1971)]. Chapter 332 has added section 1951.3 to the Civil Code to provide for an alternative, more certain, method to establish that the lessee has abandoned the premises, but this section does not exclude alternative methods of proving abandonment.

Under newly added section 1951.3, the premises shall be deemed abandoned if (1) the lessee has failed to pay rent for 14 consecutive days; (2) the lessor reasonably believes that the lessee has abandoned; (3) the lessor has given written notice to the lessee stating his belief that the premises have been abandoned; and (4) the lessee has failed to notify the lessor that he does not intend to abandon within 15 days after the lessor's notice was personally delivered, or 18 days after the notice was mailed. If the notice is not personally delivered to the lessee, it shall be sent by first-class mail to the lessee's last known address and to any other address where the lessee can reasonably be expected to receive such a notice. This section of the code also includes a sample form to be used in giving the lessee notice.

Even if the lessee sends a notice of intent not to abandon, the lessor is not precluded from bringing an action for unlawful detainer pursuant to sections 1161 through 1179a of the Code of Civil Procedure because the tenant has failed to pay the rent or has otherwise committed unlawful detainer. Section 415.47 has been added to the Code of Civil Procedure to authorize two additional methods to serve a summons for unlawful detainer. First, if the lessee has sent a notice of intent not to abandon, he must include an address in his notice where the lessor may send by certified mail a summons for an unlawful detainer action. Second, if the lessee does not include his address in the notice, the lessor may send the summons by certified mail to the same address where he sent or delivered the notice of belief of abandonment. In either case the summons shall be sent within 60 days after the lessor receives the lessee's notice of intent not to abandon, and shall be deemed to have been served on the tenth day after the mailing.

COMMENT

Under section 1951.2 of the Civil Code, the lessor has the duty to mitigate his damages by reletting the premises if the lessee has in fact abandoned the premises. However, if the lessor relets the premises and it is later proven that the lessee had not abandoned, the lessor may

be liable for damages for the reletting on a theory that there has been an actual eviction [*See* 3 H. MILLER & M. STARR, CURRENT LAW OF CALIFORNIA REAL ESTATE, *Ownership* §1052 (1971)]. Thus, section 1951.3 allows the lessor to relet the premises with greater certainty that the premises have been abandoned and the tenancy thereby terminated. In addition, it is important that the lessor knows when the tenant has abandoned the premises, thereby terminating the tenancy, so that the lessor may dispose of the tenant's personal property without fear of being liable for conversion. New optional procedures may be followed to dispose of the tenant's personal property left on the premises after the tenancy has terminated [*See* REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION, this volume at 374 (Property; personal property left on vacated premises)].

See Generally:
1) *Recommendations Relating to Landlord-Tenant Relations*, 11 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS, AND STUDIES 970-88 (1973).

Property; personal property left on vacated leased premises

Civil Code §1862 (repealed); Chapter 5 (commencing with §1980) (new); Code of Civil Procedure §1174 (amended).
AB 2830 (McAlister); STATS 1974, Ch 331
Support: California Law Revision Commission; California Rural Legal Assistance

Chapter 331 has been enacted to establish a uniform procedure to govern the disposition of personal property which has been left on leased premises after the termination of the tenancy. These procedures apply to all types of rental property, whether commercial or residential, furnished or unfurnished, and supersede the provisions of section 1862 of the Civil Code, which has been repealed. The newly added section 1981 states that these procedures are not mandatory. However, if the lessor does follow these procedures, his liability may be limited [CAL. CIV. CODE §1989(c)].

Section 1982 provides that any personal property left on the premises which the lessor reasonably believes to be *lost* shall be disposed of as any other lost property [*See* CAL. CIV. CODE §2080 *et seq.*]. If the personal property does not appear to be lost, section 1983 provides that the lessor shall give written notice to the lessee and to any person that the lessor reasonably believes to be the owner. The notice may be given at any time after the premises have been vacated, and shall include the following: (1) a description of the personal property; (2)

the address where the property may be claimed; (3) the final date that the property may be claimed (not less than 15 days after personal delivery of the notice or, if mailed, not less than 18 days after depositing the notice in the mail); and (4) a statement that return of the property may be conditioned upon payment of reasonable storage costs (defined in §1990). Model forms of such notice are contained in sections 1984 and 1985. If the notice is mailed rather than personally delivered, the lessor shall send a copy to the possible owner's last known address and to any other address where that person may reasonably be expected to receive such notice. Note that section 1991 has been added to provide that this notice may be given with the "notice of belief of abandonment" as provided for in new section 1951.3 of the CIVIL CODE [*See* REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION, this volume at 372 (Property; abandonment of leased real property)].

Section 1986 requires the lessor to store the property on the vacated premises or in a safe place until he releases or otherwise disposes of the property. Since the lessor is required to use reasonable care in storing the property, his liability is now extended from that of a gratuitous bailee to the equivalent of a bailee for hire [3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Personal Property* §§109, 116 (8th ed. 1973)]. Section 1987 provides that the lessor shall release the property to any person whom he reasonably believes to be the owner. That person may claim the property at any time prior to a public auction made pursuant to section 1988. However, the lessor may require payment of the reasonable expenses incurred as a condition to the release. Generally, unclaimed property shall be sold at public auction according to the provisions of section 1988(b). However, if the lessor reasonably believes that the resale value of the property is less than $100, as an alternative he may keep the property or dispose of it as he desires. If the property is auctioned any proceeds in excess of the lessor's reasonable expenses shall be paid into the county treasury within 30 days of the auction. The owner has one year from the date of the auction in which to claim this money.

The lessor's liability is limited by section 1989. This section provides that the lessor shall not be liable to anyone if he releases the property to the former lessee, even if he does not follow the procedure outlined in this chapter. If the lessor follows the procedures in sections 1987 and 1988 and delivers the property to someone other than the lessee whom he reasonably believes to be the owner, the lessor is only liable to those persons who did not receive notice pursuant to section

1983 and who can prove that they reasonably should have received such notice.

When personal property is left on the leased premises after the lessor regains possession of the premises in an unlawful detainer proceeding, the provisions of section 1174 of the Code of Civil Procedure are applicable. Chapter 331 amends this section to conform generally with the provisions of Civil Code Section 1980 *et seq.* (property left on premises after termination of tenancy). However, although the intent has been to make the procedures for these two situations consistent, the procedure outlined in section 1174 differs in that the notice to the lessee is given in a writ of restitution, and a lessee is allowed 15 days after restitution of the premises in which to make a claim. This section is also amended to delete those provisions which allowed the lessor to hold the lessee's property until his judgment has been satisfied and to apply the proceeds of a public sale of the lessee's property to his judgment. These provisions were held unconstitutional in *Gray v. Whitmore* [17 Cal. App. 3d 1, 94 Cal. Rptr. 904 (1971)].

See Generally:
1) REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION, this volume at 372 (abandonment of leased real property).
2) *Recommendations Relating to Landlord-Tenant Relations*, 11 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS, AND STUDIES 957-69 (1973).

Property; Cal-Vet loans

Military and Veterans Code §987.31, Article 3.1 (commencing with §987.50) (new); §§980, 988.3 (amended).
AB 4354 (Russell); STATS 1974, Ch 1477
(*Effective September 26, 1974*)
Support: Department of Veterans' Affairs; State Association of County Veterans Service Officers; California Real Estate Association

Chapter 1477 enacts the Veterans' Farm and Home Purchase Act of 1974. This Act, which applies to all Cal-Vet home and farm purchase loans entered into after September 26, 1974, duplicates all of the statutory provisions of the Cal-Vet program of 1943 [CAL. MIL. & VET. CODE §985 *et seq.*] with only minor modification. The primary change is contained in section 987.87. This section provides that the Department of Veterans' Affairs may set a floating interest rate for Cal-Vet loans entered into after the effective date of this Act to reflect the actual cost of general obligation bond sales, administrative costs, commercial interest rates, and the solvency of the Vet-

erans' Farm and Home Building Fund of 1974. The California Veterans Board and the Veterans' Finance Committee shall review this floating interest rate at least once each year. The maximum five percent interest provision in the 1943 Cal-Vet loan program has been deleted from the 1974 program but remains applicable to all existing loans under the prior program. This bill also provides that the service termination date for loan eligibility of Vietnam veterans shall be concurrent with the effective date of this Act.

Property; housing—physically disabled

Civil Code §54.1 (amended).
AB 2559 (Bee); STATS 1974, Ch 108

Section 54.1(a) of the Civil Code provides that blind and physically handicapped persons are entitled to full and equal access to public conveyances, public accommodations, and amusement and resort facilities. Section 54.1(b) provides that blind and physically handicapped persons must also be given equal access to housing accommodations offered for rent, lease, or other compensation, but the section does *not* include hotels, lodging places, or single family residences in which only one room is offered for rent or lease. Chapter 108 amends section 54.1(b) to further provide that the lessor of the housing accommodation may not refuse to lease or rent to a blind or handicapped person simply because that person is financially dependent upon his spouse. However, the lessor may consider the aggregate financial status of the couple and may refuse to rent or lease to them if their total income is insufficient. Any violation of these provisions is a misdemeanor [CAL. CIV. CODE §54.3].

It should be noted that under the existing provisions of section 54.1 the lessor may also refuse to rent or lease to a blind or handicapped person with a dog, including a guide dog, if the lessor does not accept tenants with dogs; and the lessor is not required to modify his property in any way to accommodate a blind or physically handicapped tenant, nor is the lessor held to a higher standard of care for such a tenant. Thus, with the changes made by chapter 108, the statutes expressly allow a lessor to refuse to rent to a blind or physically handicapped person if such a person has a dog and *all* tenants are prohibited from having dogs, or the aggregate wealth of the handicapped person and his or her spouse is insufficient.

Property; Rumford Fair Housing Act—subpoenas, retaliatory eviction

Health and Safety Code §§35720, 35730.5 (amended).
SB 1815 (Petris); STATS 1974, Ch 1224
Support: Fair Employment Practices Commission; California Trial Lawyers' Association; National Organization for Women; California Housing Coalition

The Rumford Fair Housing Act [CAL. HEALTH & SAFETY CODE §35700 *et seq.*] prohibits discrimination in publicly assisted housing on the basis of race, color, religion, national origin, or ancestry. Under the Act, the Fair Employment Practices Commission (FEPC) is charged with the responsibility of enforcing these prohibitions against discrimination. Section 35730.5 of the Health and Safety Code lists the powers and duties of the FEPC in connection with its enforcement responsibilities. Among these listed powers, the FEPC was only allowed to subpoena a witness' books and papers for a public hearing. Chapter 1224 extends the FEPC's subpoena powers to allow the FEPC to compel a witness to deliver his books and papers during the course of an investigation. With the change made by this chapter, the FEPC now has the same subpoena powers in fair housing cases as it has in fair employment cases under the Fair Employment Practices Act.

In addition, chapter 1224 has amended section 35720 to make it unlawful for any person to "harass, evict, or otherwise discriminate against any person in the sale or rental . . . ." of any housing accommodation because that person has attempted to enforce the antidiscrimination provisions in the Rumford Fair Housing Act. Although the above provision was added to the list of unlawful acts which the FEPC is to have the authority to enforce, there is some question as to whether the FEPC can in fact enforce this prohibition against harassment and eviction. The problem is that while section 35730 authorizes the FEPC to prevent violations of section 35720, which lists the unlawful acts, the aggrieved party must first file a verified complaint. But chapter 1224 does not expand the FEPC's authority to receive, investigate, and pass upon complaints alleging harassment and eviction.

Regardless of whether the FEPC is found to have authority to enforce the prohibition against eviction and harassment, it would appear that the restriction against eviction or harassment because the lessee attempted to enforce the antidiscrimination provisions of the Act may be considered in conjunction with section 1942.5 of the Civil Code, which specifies when retaliatory eviction may be raised as a defense to

an action for possession by a lessor. Thus, it would appear that a lessee in an action for possession of the premises may raise the defense if the lessor's dominant purpose was to retaliate against a lessee who attempted to enforce the antidiscrimination provisions of the Act.

See Generally:
1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §534 (1973) (retaliatory eviction).

Property; use of surplus public property

Government Code §§54226, 54227, 54230, 54230.5 (new); §54222 (amended).
SB 2396 (Behr); STATS 1974, Ch 1339

Section 11011.1(a) of the Government Code provides that land which has been declared to be surplus by the legislature pursuant to section 11011 and not needed by any state agency shall be offered for sale to local governmental agencies at fair market value. Section 54226 has been added to the Government Code to require any state or local agency disposing of surplus real property to first notify the county housing authority where the property is located that the property is for sale at fair market value. If the housing authority elects to purchase the surplus property, it may make the purchase by contract of sale or deed of trust with a payment period of up to 20 years pursuant to section 54225 of the Government Code. Section 54230.5 has been added to expressly provide that failure of a state or local agency to comply with the above requirement to notify the county housing authority shall not invalidate any transfer or conveyance of the real property to any purchaser or encumbrancer for value.

Property; condemnation awards—prepayment penalties

Code of Civil Procedure §1246.2 (amended).
AB 3901 (Wood); STATS 1974, Ch 530

When condemned property is encumbered by a mortgage, deed of trust, or other lien, the condemning agency may acquire the property without the encumbrance by paying the full amount to the parties claiming an interest in the property, or it may deduct the amount of indebtedness from the award and assume the obligation to the lienholder [CAL. CODE CIV. PROC. §1248(8)]. If the condemning agency chooses to pay the full amount when the property is encumbered by a mortgage or deed of trust, section 1246.2 of the Code of Civil Proce-

dure provides that the condemnation award paid to the mortgagee or the beneficiary shall not include any penalty for prepayment based on a prepayment penalty clause contained in the mortgage or deed of trust.

This section has been amended to expand coverage to include property encumbered by a *contract of sale* which is acquired for public use. This change in the law is in response to the practice by lenders of securing loans on real property with a contract of sale. The provisions in section 1246.2 prevent the mortgagee or beneficiary from recovering a prepayment penalty from the *condemnor*, but fail to resolve the question of the mortgagee's or beneficiary's right to extract the prepayment penalty from the obligor. However, even if the mortgagee or beneficiary has such a right against the obligor, its value is questionable since the right to foreclose has been terminated, leaving the mortgagee or beneficiary with only the right to sue for such a prepayment penalty.

See Generally:
1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA REAL ESTATE SECURED TRANSACTIONS §4.76 (1970).

Property; eminent domain—attorney and expert fees

Code of Civil Procedure §1249.3 (new).
AB 3925 (McAlister); STATS 1974, Ch 1469
Support: State Bar of California
Opposition: County Supervisors' Association of California; League of California Cities

Prior to chapter 1469, the property owner in an eminent domain proceeding could not recover his attorney or expert fees from the condemnor [County of Los Angeles v. Ortiz, 6 Cal. 3d 141, 490 P.2d 1142, 98 Cal. Rptr. 454 (1971)]. Section 1249.3 has been added to the Code of Civil Procedure to allow the condemnee to recover these costs, but only where there is a dispute between the parties and the condemnor has not made a *reasonable* offer. This section provides that both the condemnor and the condemnee are required to serve each other with their final offers for the condemned property at least 30 days prior to trial. Upon a motion by the condemnee made within 30 days after the entry of judgment, the court may review the reasonableness of these final offers in view of the final determination of the value of the property. If the court determines that the condemnor has made an unreasonable offer and that the condemnee's offer was reasonable, the court shall allow the condemnee to recover his attorney and expert fees in addition to any other costs which the court has discretion to allow pur-

suant to section 1255. The statute does not contain guidelines to aid the parties or the courts in determining the reasonableness of the final offers.

See Generally:
1) CONTINUING EDUCATION OF THE BAR, CONDEMNATION PRACTICE IN CALIFORNIA §§1.8-1.10 (1973) (other situations in which condemnee may recover attorney and expert fees).

Property; termite clearance reports

Business and Professions Code §8519 (new); Civil Code §1099 (new).
AB 3629 (Lancaster); STATS 1974, Ch 649
(*Effective July 1, 1975*)
Support: Department of Real Estate; Pest Control Operations of California

Although not required by law, a seller of property generally has a structural pest control operator inspect the premises for termites and other wood destroying insects, and destroys any such insects before selling the property. The seller may then obtain a "termite clearance" from the pest control operator, which may be required by the contract of sale or by the lending institution financing the sale. Section 8519 has been added to the Business and Professions Code to specify that the content of this "termite clearance" (referred to as a certification in this section) shall include (1) the findings of the inspection; (2) a recommendation as to the work necessary to destroy any termites and repair any damage caused by the termites (*corrective* work as distinguished from *preventive* work); and (3) a statement as to the amount of corrective work not yet completed. The termite clearance report is not to include so-called preventive work, which is the work necessary to keep termites from infesting the structure (*e.g.*, clearing out wood chips). The reason for this distinction is to provide a basis on which the buyer and seller can more readily determine the costs of each type of work in the event that they wish to split these costs.

Section 1099 has been added to the Civil Code to require the seller to deliver to the buyer a copy of the termite inspection report (prepared pursuant to §8516 of the Business and Professions Code) before transferring title or executing a contract of sale, if such a report or a termite clearance report is required by the contract of sale or as a condition to financing. This section also provides that if the termite inspection report is required and the seller receives a termite clearance

report or a notice of work completed (prepared pursuant to §8518 of the Business and Professions Code), he must also immediately deliver either of these documents to the buyer *before* transferring title or executing a contract of sale.

This bill does not require that a termite clearance report be delivered to the buyer in all cases. It simply forces timely delivery of the termite clearance report if it is required by the contract of sale or the lending institution as a condition to approving financing, and specifies that the termite clearance report shall only specify "corrective work."