Civil Procedure

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Civil Procedure

Civil Procedure; appointment of conservator for a person of unsound mind

Civil Code § 39 (amended); Probate Code §§ 810, 811, 812, 813, 814, 1881 (new); §§ 1801, 3201, 3204, 3208 (amended).
SB 730 (Mello); 1995 STAT. Ch. 842

Existing law provides that a contract with a person of unsound mind, but who has capacity of understanding, is subject to rescission even before a court determines the incapacity of the person. Chapter 842 declares the Legislature's intent that a person can have a mental or physical disorder and still have the capability of performing certain actions. Furthermore, Chapter 842 authorizes that a rebuttable presumption relating to the burden of proof regarding a person's mental state will exist if the person cannot manage his or her own financial resources.

Additionally, Chapter 842 further adds that a person is not competent to make a decision unless that person can communicate and appreciate that decision.

1. CAL. CIV. CODE § 39(a) (amended by Chapter 842); see e.g., Mills v. Kopf, 216 Cal. App. 2d 780, 782, 31 Cal. Rptr. 80, 82 (1963) (holding that where a contract is made by one who is of unsound mind, but is not without complete understanding, one cannot rescind unless the party rescinding restores any consideration received); Weseman v. Latham, 153 Cal. App. 2d 841, 846, 315 P.2d 364, 367 (1957) (commenting that where a contract is rescinded because of the incompetency of one of the parties, it is necessary that the other party be restored with the consideration that was exchanged during the transaction); Knighten v. Davis, 358 So. 2d 1022, 1024 (Ala.1978) (stating that where an incompetent is able to cancel a contract, the other party is restored to the same position which he occupied prior to the transaction); Bryant v. Bryant, 379 So. 2d 382, 383 (Fla. Dist. Ct. App. 1979) (finding that a grantor, who lacked capacity to execute a deed, also lacked capacity to change his bank account); McCraw v. Watkins, 249 S.E.2d 202, 203 (Ga.1978) (holding that the defense of mental incapacity to avoid a contract is not conditional upon the offer to return consideration of contract to plaintiff); Cohen v. Crumpacker, 586 S.W.2d 370, 373 (Mo. Ct. App.1979) (commenting that avoidance of a contract through intervention of equitable relief because one is mentally incompetent normally requires inequitable incidents to have occurred); Pemberton v. Reed, 545 S.W.2d 698, 700 (Mo. Ct. App. 1976) (holding that while the grantor lived, prospective heirs of the grantor could not challenge a conveyance the grantor made while she was mentally incompetent); Freshour v. Aumack, 567 S.W.2d 176, 179 (Tex. Ct. App. 1977) (allowing a contract with an insane person by one having knowledge of his incapacity to be set aside as void); Estate of Lucas v. Whiteley, 550 S.W.2d 767, 768 (Tex. Civ. App. 1977) (stating that where a person was mentally incompetent when he executed the power of attorney, the power of attorney is voidable at the election of the incompetent).

2. CAL. PROB. CODE § 810(a) (enacted by Chapter 842); see id. (finding that a person may enter into contracts, convey, marry, execute wills, and make medical decisions even with a mental or physical disorder); see also United States v. Manny, 645 F.2d 163, 166 (2d Cir. 1981) (holding that a comatose person is mentally incompetent while his coma continues).

3. CAL. CIV. CODE § 39(b) (amended by Chapter 842); see id. (stating that a substantial inability to manage a person's financial resources is to be shown by more than mere isolated incidents of negligence or improvidence in order to rescind a contract based on incapacity).

4. CAL. PROB. CODE § 811 (enacted by Chapter 842); see id. (declaring that a person lacks the capacity to make a decision unless the person can appreciate the following: (1) the responsibilities created by the decision, (2) the consequences for the decision maker, and (3) the significant risks involved in the decision); see also Smalley v. Baker, 262 Cal. App. 2d 824, 832, 69 Cal. Rptr. 521, 527 (1968) (holding that the test of mental competency to determine whether a party is entitled to rescission of a contract is directed at cognitive capacity); Drum v. Bunner, 77 Cal. App. 2d 453, 460, 175 P.2d 879, 883 (1947) (stating that the test to Selected 1995 Legislation

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Chapter 842 determines that a person can be classified as incompetent to do a certain act if supported by evidence demonstrating a mental deficit.5

Existing law provides that a conservator6 may be appointed for a person who is unable to provide for his or her own personal needs.7 Chapter 842 augments existing law by requiring that a conservator can be appointed only upon a showing of clear and convincing evidence.8 Chapter 842 also adds that a conservatee cannot consent to medical treatment if the conservatee does not, through a rational thought process, know and appreciate the treatment.9

**COMMENT**

Chapter 842 was enacted because of the lack of a clear statutory standard by which a court could determine if someone had the capacity to perform certain acts.10 Additionally, Chapter 842 is intended to allow individuals who fall into a
particular diagnostic classification to make decisions regarding certain acts if they are still mentally competent. However, Chapter 842 is not intended to increase or decrease the number of cases in which a court must determine the capacity of an individual.

Proponents argue that Chapter 842 provides courts an objective and rational approach for evaluating legal competency, as compared to the methods currently being used.

Gregory T. Flahive

Civil Procedure; certificate of merit for professional negligence actions

Code of Civil Procedure § 411.35 (amended).
SB 934 (Campbell); 1995 STAT. Ch. 241

Under existing law, in specific actions for indemnity or damages arising out of the professional negligence of a person licensed as a professional architect, engineer, or land surveyor, the plaintiff’s attorney is required to file a certificate of merit for obtaining consultation with at least one professional architect,

11. Senate Judiciary Committee, Committee Analysis of SB 730, at 7 (May 16, 1995); see id. (observing that the mere fact that a patient is diagnosed with a certain mental disease does not automatically mean that the patient is incompetent); Lawrence Friedman & Mark Savage, Taking Care: The Law of Conservatorship in California, 61 S. CAL. L. REV. 273, 276 (stating that the theory of conservatorship law cautions that only individuals that absolutely need a conservator should have one appointed); id. at 277 (commenting that it is possible for a person to have a conservator appointed for oneself, yet still retain control over salary, wages, and allowances because these rights and powers are within the discretion of the court to control).


13. Senate Judiciary Committee, Committee Analysis of SB 730, at 8 (May 16, 1995); see id. (referring to § 813 in the California Probate Code); id. at 8 (noting that § 813 was developed by professors in geropsychiatry and neurology, and was circulated widely among various committees for approval).

1. See CAL. CIV. PROC. CODE § 411.35(i) (amended by Chapter 241) (stating that “action” includes a complaint or cross-complaint for equitable indemnity arising out of the rendering of professional services whether or not the complaint or cross-complaint specifically asserts or utilizes the terms “professional negligence” or “negligence”).

2. See CAL. BUS. & PROF. CODE § 5500.1(a) (West 1990) (defining the “practice of architecture” as offering or performing, and being responsible for, professional services which require the skills of an architect in the planning of sites, and the design, in whole or in part, of buildings or groups of buildings and structures).

3. See id. § 6701 (West 1995) (defining “professional engineer” as a person who renders service or creative work, which requires education, training, and experience in engineering sciences and the application of special knowledge of the mathematical, physical, and engineering sciences); see also id. § 6702 (West 1995) (defining “civil engineer”); id. § 6702.1 (West 1995) (defining “electrical engineer”); id. § 6702.2 (West 1995) (defining “mechanical engineer”).

4. See id. § 8701 (West 1995) (defining “professional land surveyor” as “one who offers or is engaged in the practice of land surveying”).

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engineer, or land surveyor who is not a party to the action. The certificate of merit must declare that the attorney has reviewed the facts of the case, has obtained a consultation, and has concluded, based upon this information, that there is a reasonable and meritorious cause for filing the action. Existing law also provides that if the attorney cannot obtain such a consultation, then he or she must file a certificate declaring the reason that the consultation cannot be obtained.

5. CAL. CIV. PROC. CODE § 411.35(a) (amended by Chapter 241); see id. (requiring the plaintiff’s attorney to file the certificate of merit on or before the date of service of the complaint on any defendant); id. § 411.35(b)(1) (amended by Chapter 241) (requiring the certificate of merit to declare that the attorney has reviewed the facts of the case and that the attorney has consulted with at least one architect, professional engineer, or land surveyor who is licensed to practice and practices in this state or any other state, or who teaches at an accredited college and is licensed to practice in this or any other state, in the same discipline as the defendant or cross-defendant, and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is a reasonable and meritorious cause for filing the action); id. § 411.35(c) (amended by Chapter 241) (mandating that where a certificate is required pursuant to California Code of Civil Procedure § 411.35, only one certificate shall be filed, notwithstanding that multiple defendants have been named in the complaint or may be named at a later time); id. § 411.35(d) (amended by Chapter 241) (stating that where the attorney intends to rely solely on the doctrine of res ipsa loquitur, or exclusively on a failure to inform of the consequences of procedure, or both, the certificate of merit does not apply); id. § 411.35(e) (amended by Chapter 241) (providing that an attorney who submits a certificate of merit has a privilege to refuse to disclose the identity of the architect, professional engineer, or land surveyor consulted as well as the contents of the consultation, and that this privilege is also held by the person consulted); id. (mandating further that if the attorney makes a claim that he or she was unable to obtain the required consultation pursuant to California Code of Civil Procedure § 411.35(b)(3), the court may require the attorney to divulge the names of architects, professional engineers, or land surveyors refusing the consultation); id. § 411.35(f) (amended by Chapter 241) (stating that a violation of the certificate of merit provision may constitute unprofessional conduct and be grounds for discipline against the attorney, except that the failure to file the certificate required by California Code of Civil Procedure § 411.35(b)(1), within 60 days after filing the complaint and certificate provided for by California Code of Civil Procedure § 411.35(b)(2), shall not be grounds for discipline against the attorney); id. § 411.35(g) (amended by Chapter 241) (providing that the failure to file a certificate of merit shall be grounds for a demurrer pursuant to California Code of Civil Procedure § 430.10 or a motion to strike pursuant to § 435); see also Korbel v. Chou, 27 Cal. App. 4th 1427, 1430-31, 33 Cal. Rptr. 2d 190, 191-92 (1994) (holding that a settlement is not the same as a favorable termination since it reflects ambiguously on the merits of the action and leaves open the question of a defendant’s guilt or innocence; thus, pursuant to California Code of Civil Procedure § 411.35, the attorney for the plaintiff does not have to reveal the information he obtained from the consultant used to establish the certificate of merit has a privilege to refuse to disclose the identity of the architect, professional engineer, or land surveyor who is licensed to practice and practices in this state or any other state, or who teaches at an accredited college and is licensed to practice in this or any other state, in the same discipline as the defendant or cross-defendant, and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is a reasonable and meritorious cause for filing the action); id. § 411.35(h) (West 1995) (stating that the judicial doctrine of res ipsa loquitur is a presumption which affects the burden of putting forth evidence); id. § 646(c) (West 1995) (declaring that, if the facts support a res ipsa loquitur presumption and the defendant has introduced evidence to support a finding that he was not negligent or not a proximate cause of the occurrence, the court may instruct the jury in a specified manner).

6. CAL. CIV. PROC. CODE § 411.35(a) (amended by Chapter 241).

7. Id. § 411.35(b)(2), (3) (amended by Chapter 241); see id. (requiring the plaintiff’s attorney to file a certificate declaring why the attorney was not able to obtain a consultation, for either of two reasons: (1) A statute of limitations would impair the action and the certificate could not be obtained before the impairment of the action; or (2) the attorney has made three separate good faith attempts with three separate architects, professional engineers, or land surveyors to obtain this consultation, and none of those contacted would agree
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Chapter 241 requires an attorney who obtains a consultation to also obtain an opinion from the person consulted as to whether or not the named defendant or cross-defendant was negligent in the performance of the applicable professional services.8

Prior law provided for the repeal of California Code of Civil Procedure Section 411.35 on January 1, 1997.9 Chapter 241 deletes the repeal provision.10

COMMENT

The purpose of the certificate of merit is to provide architects, engineers, and land surveyors protection from frivolous professional negligence suits.11 Chapter 241 strengthens this provision by requiring an opinion from the person consulted as to whether the professional was negligent in the performance of the professional services.12 This requirement is in addition to the consultation that is required under existing law.13 Opponents argued that Chapter 241 would serve only to increase the complexity and cost of litigation; therefore, in the final version of Chapter 241, the author deleted certain provisions such as the

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8. Id. § 411.35(b)(1) (amended by Chapter 241).
10. CAL. CIV. PROC. CODE § 411.35(h) (amended by Chapter 241).
11. Guinn v. Dotson, 23 Cal. App. 4th 262, 270, 28 Cal. Rptr. 2d 409, 414 (1994); see SENATE FLOOR, COMMITTEE ANALYSIS OF SB 934, at 2 (May 18, 1995) (stating that a 1987 study commissioned by the California Council of Civil Engineers and Land Surveyors suggests that the certificate of merit has successfully weeded out frivolous litigation since fewer malpractice suits are filed against design professionals and more malpractice suits are dismissed); id. (maintaining that to improve the law’s effectiveness in protecting against frivolous malpractice actions, the Legislature enacted SB 1718 in 1988 to provide an in-camera proceeding of the consultant’s name and address for a post-trial court review of the certificate of merit consultation when the plaintiff’s lawsuit is unsuccessful); 3 B.E. WITKIN, CALIFORNIA PROCEDURE, Actions § 156(a) (9th ed. Supp. 1995) (noting that the certificate of merit required for malpractice actions against physicians, dentists, podiatrists, and chiropractors attempts to eliminate frivolous malpractice actions against those persons); see also CAL. CIV. PROC. CODE § 411.35(h) (amended by Chapter 241) (mandating that upon the favorable conclusion of the litigation with respect to any party for whom a certificate of merit was filed, or for whom a certificate of merit should have been filed, the trial court may, upon the motion of a party or upon the court’s own motion, verify compliance with California Code of Civil Procedure § 411.35, by requiring the attorney for the plaintiff or cross-complainant to disclose the name, address, and telephone number of persons consulted and relied upon to the trial judge); id. (providing for an in-camera proceeding at which the moving party will not be present in order to satisfy the certificate of merit requirement in California Code of Civil Procedure § 411.35(b)); id. (mandating that if the trial judge finds that there has been a failure to comply with California Code of Civil Procedure § 411.35, the court may order a party, a party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees, incurred by another party as a result of the failure to comply with this section).
12. CAL. CIV. PROC. CODE § 411.35(b)(1) (amended by Chapter 241); see ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 934, at 3 (July 5, 1995) (asserting that the law prior to Senate Bill 934 permitted a certificate of merit to be based upon casual consultation, commonly referred to as “cocktail consultation,” where a plaintiff’s attorney casually asked whether a proposed action “had any merit”).

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requirement that the consultant file a written report and review relevant documents before rendering his or her opinion. **14**

**Civil Procedure; civil discovery**

Code of Civil Procedure § 1985.6 (new).
AB 617 (Kuehl); 1995 STAT. Ch. 299

Existing law provides that a person who, by subpoena duces tecum, seeks the production of a consumer's personal records held by a witness, must notify the consumer by delivering a copy of the subpoena, the affidavit supporting the issuance of the subpoena, and a specified notice to the consumer.  **2**

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14. See Senate Judiciary Committee, Committee Analysis of SB 934, at 4 (May 9, 1995) (suggesting that requiring the consultant to submit a written report and to review all relevant documents before issuing his or her written report would be an undue and unnecessary burden for plaintiffs and that the cost of a written report would range from a few hundred to several thousand dollars); Compare SB 934, available in LEXIS, Cal. Library; Cabill File, Version-Date Feb. 23, 1995 (proposing to amend Cal. Civ. Pro. Code § 411.35(b)(1) with 1995 Cal. Legis. Serv. ch. 241, sec. 1, at 700.

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2. See id. § 1985.3(a)(1) (West Supp. 1995) (defining "personal records" as any copy of a book, document, or other writing relating to a consumer and maintained by any witness, which includes, but not limited to, a hospital, a bank, an insurance company, attorney, accountant, or a school).

3. See id. § 1985.3(a)(2) (West Supp. 1995) (defining "consumer" as any individual, partnership of five or fewer persons, association, or trust which has conducted business with the witness or has acted as a fiduciary to the witness).

4. Id. § 1985.3(b) (West Supp. 1995); see id. § 1985.3(e) (West Supp. 1995) (requiring a subpoena duces tecum to be accompanied with notice indicating that the records of the consumer are being sought, that the consumer can file papers with the court prior to the production date if the consumer objects to furnishing the papers, and that the consumer should consult with an attorney in regard to protecting the consumer’s privacy); cf. 18 U.S.C.A. § 986(a) (West Supp. Pamphlet 1995) (providing that, in an in rem proceeding, any party may request a subpoena duces tecum for a financial institution to produce documents, such as books or records, and the requestor must provide notice to all parties of the request); Fed. R. Civ. P. 34(b), (c) (permitting a party to request the production of documents kept in the usual course of business, and allowing the production by parties not a party); N.H. Rev. Stat. Ann. § 359-C:10(I)(a), (b) (1995) (providing that a request for financial records may be obtained under a subpoena duces tecum if the request is issued to both the financial institution and the customer, and 10 days after service or 14 days after mailing if the customer does not move to quash the subpoena); 13 C.F.R. § 134.25(b) (1994) (requiring a subpoena duces tecum to specify with particularity which books, papers, documents and facts are expected to be provided). See generally Sehlmeyer v. Department of Gen. Servs., 17 Cal. App. 4th 1072, 1080-81, 21 Cal. Rptr. 2d 840, 844-45 (1993) (holding that a person's personal records are subject to disclosure in an administrative proceeding if the subpoenaing party takes reasonable steps to notify the person and affords the person a fair opportunity to assert his or her interests by objecting to the disclosure); Slagle v. Maryon, 211 Cal. App. 3d 1309, 1312, 260 Cal. Rptr. 122, 124 (1989) (concluding that a court does not lack jurisdiction to a motion to quash a subpoena duces tecum even though the motion is brought after the date set forth in the subpoena); Sasson v. Katash, 146 Cal. App. 3d 119, 124, 126-27, 194 Cal. Rptr. 46, 48-49 (1983) (declaring that a subpoenaed lease agreement comes under the definition of personal record, that the word "maintained" does not mean records prepared but
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Chapter 299 enacts similar requirements regarding a person seeking the production of employment records of an employee maintained by his or her current or former employer.

COMMENT

Under existing law, an individual is notified when personal records are subpoenaed so that the person may contest the subpoena based on the information being protected by privacy. However, a person's employment record is not subject to notification, and thus, these records could be turned over, even though they may contain confidential information. Therefore, according to the sponsor, the State Bar's Conference of Delegates, Chapter 299 was enacted to cure this defect in the law. In addition, the notice requirement of Chapter 299 assists custodians of records in that they are placed in an uncomfortable situation when

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the records are requested. Finally, Chapter 299 creates a new code section because the existing statute is broadly drafted and just inserting the term "employer" to the list of witnesses would have an unintended effect.

Chad D. Bernard

Civil Procedure; dishonored checks—damages

Civil Code § 1719 (amended).
AB 522 (Katz); 1995 STAT. Ch. 134

Under existing law, any person who passes a check on insufficient funds is liable to the payee for treble damages, as well as the face value of the check and any costs to mail a written demand for payment, in addition to any penal sanctions that may apply. Existing law provides that liability exists only if the

1. See CAL. CIV. CODE § 1719(a)(3)(A)-(C) (amended by Chapter 134) (defining "to pass a check on insufficient funds" as to make, utter, draw, or deliver any check that is refused because the account used to pay the check lacks funds or credit, the check maker does not have an account with the drawee, or the drawee was ordered to stop payment on the check).

2. See BLACK'S LAW DICTIONARY 1129 (6th ed. 1990) (defining "payee" as the person to whom or to whose order a bill, note, or check is made payable).

3. See 6 B.E. Witkin, SUMMARY OF CALIFORNIA LAW, Torts § 1333 (9th ed. 1988 & Supp. 1995) (defining treble damages as an award of three times the amount of actual damages); BLACK'S LAW DICTIONARY 393 (6th ed. 1990) (defining "treble damages" as damages given by statute in certain cases, consisting of the damages found by the jury, actually tripled in amount); see also CAL. CIV. CODE § 3294(a) (West Supp. 1995) (stating that exemplary damages, such as treble damages, are permitted when it is proven by clear and convincing evidence that the defendant was guilty of oppression, fraud, or malice); Beeman v. Burling, 216 Cal. App. 3d 1586, 1598, 265 Cal. Rptr. 719, 726 (1990) (stating that statutory damages may take the form of penalties that are composed of arbitrary sums or they may provide for a doubling or tripling of actual damages); cf. McMahon Food Co. v. Call, 406 N.E.2d 1206, 1208 (Ind. Ct. App. 1980) (holding that the legislature can provide for punitive damages, such as treble damages, in cases where the defendant is also subject to criminal penalties without violating double jeopardy principles).

4. CAL. CIV. CODE § 1719(a)(1) (amended by Chapter 134); see CAL. PENAL CODE § 476a(a) (West Supp. 1995) (criminalizing the passing of worthless checks); see also id. § 648 (West 1988) (criminalizing the unauthorized issuing or circulating of money). For examples of other statutes providing for treble damages, see CAL. CIV. CODE § 32(a) (West Supp. 1995) (trebling damages for unlawful discrimination under the Unruh Act); CAL. CIV. PROC. CODE § 732 (West 1980) (trebling damages for waste); id. § 733 (West 1980) (trebling

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individual fails to pay the amount due on the bad check within thirty days of the mailing of a written demand for payment; unless he or she stopped payment to resolve a good faith dispute with the payee. Prior law, however, capped any possible treble damage awards at $500.

Chapter 134 provides for treble liability if the check writer fails to make cash payment to the recipient of the check, within thirty days of the demand for payment, for the amount of the check and any bad check charges levied by the payee’s financial institution. Chapter 134 also increases the $500 cap on treble damages to $1500. Additionally, Chapter 134 provides that any amount owing on a bad check is to be decreased by any partial payment made within thirty days of the written demand. The remedies provided by Chapter 134 are mandatorily imposed upon the court.

**COMMENT**

The purpose of Chapter 134 is to provide a stronger disincentive for bad
check writers. Additionally, by providing a higher treble damages cap, the Legislature intended to deter further increases of burdensome bad check disputes on small claims court dockets. However, there is some question as to whether additional damage provisions have any remedial effect on bad check writers.

Timothy J. Moroney

Civil Procedure; judges—limits on gifts, honoraria, and travel expenses

Code of Civil Procedure § 170.9 (amended). SB 353 (Alquist); 1995 STAT. Ch. 378

Existing law provides that no judge can accept a gift of more than $250

1. See CAL. CIV. PROC. CODE § 170.9(c) (amended by Chapter 378) (stating that for the purposes of California Code of Civil Procedure § 170.9, the term judge encompasses judges of the justice, municipal, or superior courts, and justices who preside on the California Courts of Appeal or the Supreme Court).

2. See id. § 170.9(f) (amended by Chapter 378) (defining the term "gift" as meaning any payment that is given in which consideration of greater or equal value is not received and includes a rebate or discount in price of anything unless that rebate or discount is normally given in the course of business); id. (stating that any person, except a defendant in a criminal action, has the burden of proving that the payment received was not a gift); see also CAL. GOV'T CODE § 82028(a) (West 1993) (defining "gift," in relation to acceptance by government officials and candidates, as any payment made without consideration of equal or greater value given and includes rebates and discounts not given in the regular course of business to the general public); CAL. CODE REGS. tit. 2, § 18941(a) (1995) (relating that a discount or rebate given or received by an official is not a gift if such is given in the regular course of business); id. § 18941(b) (1995) (declaring that a gift is accepted or received by a public official when he or she knows he or she has actual possession over the gift or takes any steps showing control over the gift except as otherwise provided in this section or in California Code of Regulations, Title 2 § 18943); id. § 18941(b)(2), (3) (1995) (explaining that the discarding of a gift does not negate the prior acceptance of a gift by the official and the giving of a gift received to another person is still considered to be a gift accepted); id. § 18941.1 (1995) (providing, with a few exceptions, that payments made to an official for his or her food is considered a gift); id. § 18943 (1995) (discussing how a government official may return, donate, or reimburse the person for a gift); id. § 18945 (1995) (setting forth the guidelines for determining if a person or organization is considered a source of a gift).
from a single source in any calendar year. However, existing law does exempt certain advances, payments, and reimbursements for travel and related expenses. Further, existing law does not prohibit the receipt of certain, specified gifts. Existing law also provides that no judge may accept any type of honorarium.


4. CAL. CIV. PROCE. CODE § 170.9(a) (amended by Chapter 378); see id. § 170.9(d) (amended by Chapter 378) (stating that the gift limitations set forth in California Code of Civil Procedure § 170.9 must be adjusted biennially by the Commission on Judicial Performance in order to reflect changes in the Consumer Price Index, which must be rounded to the nearest ten dollars); see also CAL. CONST. art. VI, § 8(a) (describing and allowing for the Commission on Judicial Performance, and describing the membership along with term limits); Sanjour v. EPA, 984 F.2d 434, 451 (D.C. Cir. 1993) (Wald, J., dissenting) (agreeing with the majority in that it is very important to maintain public confidence in the government and that this confidence can be disturbed with activities of corruption), reh’g granted, 997 F.2d 1584 (D.C. Cir. 1993); Adams v. Comm’n on Judicial Performance, 8 Cal. 4th 630, 663, 882 P.2d 358, 379, 34 Cal. Rptr. 2d 641, 661 (1994) (stating that a judge’s asking for, or knowing acceptance of, benefits or favors that have a substantial monetary value from a party or attorney whose case is presently being heard before the court is highly corruptive and suggests improper use of his or her office). See generally 2 B.E. WITKIN, CALIFORNIA PROCEDURE, Courts § 26 (3d ed. 1989 & Supp. 1994) (discussing the Commission on Judicial Performance).

5. CAL. CIV. PROCE. CODE § 170.9(e) (amended by Chapter 378); see id. (setting forth the exemptions that relate to travel). For examples of other states’ travel expense reimbursement for judges, see ALA. CODE § 12-1-17 (1986); ARK. CODE ANN. § 16-10-119 (Michie 1994); GA. CODE ANN. § 15-6-30 (1994); IND. CODE ANN. § 33-13-3-1 (West 1983); OR. REV. STAT. § 46.632 (1987); S.D. CODIFIED LAWS ANN. § 16-6-6 (1994).

6. CAL. CIV. PROC. CODE § 170.9(b)(2) (amended by Chapter 378); see id. (exempting wedding, birthday, and other similar gifts exchanged between individuals that are not highly disproportionate in value); cf. NEV. REV. STAT. ANN. § 281.571(e)(2) (Michie 1995) (excluding from mandatory financial disclosure of judges’ birthday, wedding, anniversary, or other similar gifts if the donor does not have a substantial interest in the judge’s judicial role); MODEL CODE OF JUDICIAL CONDUCT Canon 4(D)(5)(d) (1990) (stating that a gift from a friend or relative, for an occasion such as a wedding, anniversary, or birthday, is considered proper to accept if the gift is commensurate with the relationship and the occasion).

7. CAL. CIV. PROC. CODE § 170.9(g) (amended by Chapter 378); see id. 170.9(h) (amended by Chapter 378) (defining “honorarium” as meaning any payment made for any speech given, an article that is published, or attendance at any type of conference, meeting, or any other similar kind of social event); cf. CAL. GOV’T CODE § 89502(b) (West Supp. 1995) (defining “honorarium,” in cases involving public officials and candidates, to include payment received for any speech given, article written and published, or attendance at any type of public or private event or gathering); CAL. CODE REGS. tit. 2, § 18931.1 (1995) (defining “speech” as a public address, oration, or any other form of oral presentation including participation in a debate, panel, or seminar; a speech given does not include any type of artistic performance); id. § 18931.2 (1995) (defining “article published” as any nonfictional work not published in connection with a bona fide business that is published in some type of periodical); id. § 18931.3 (1995) (defining the term “attendance” as being present during, or making an appearance at, including acting as any type of host for, any public or private gathering such as conferences, conventions, meetings, or meals); id. § 18932.3 (1995) (stating that speechmaking will be determined to be the predominate activity of an official’s business in the following situations: (1) In cases where the official has been in business for more than one year, and during the 12 month period prior to and including the speech, the official’s business has spent more than 50% of its time preparing or giving speeches, or during this same time period the official’s business made more than 50% of its gross income on speech preparation or presentation; or (2) if the official’s business has been in existence for less than a year, the same provisions as set forth above apply except that the time frame is 30 days instead of 12 months); id. § 18932.5 (1995) (excluding from honorarium charitable donations if the donation is made to a reputable tax-exempt nonprofit organization and is not delivered to the official, the official does not make a speech, write an article or make an attendance conditioned upon the donation, the official does not use the donation as a deduction for his or her tax purposes, the donation will have no immediate and known effect financially on the official or his or her immediate family, and the official’s name is not identified with the donation; but if the official knows or has reason to know of a donation to be made on his behalf, he or she must notify that person and inform them that such a donation cannot be made).
Chapter 378 redefines exceptions to the term honorarium. 8

Existing law exempts certain items from the definition of the term gift as used in conjunction with a judge. 9 Chapter 378 adds to these exemptions in the definition of the term gift. 10

**COMMENT**

Section 170.9 of the California Code of Civil Procedure was created in 1994 to uniformly apply the gifts and honoraria rules to public officials and judges. 11 Chapter 378 was created to clarify the provisions as stated in the prior version of California Civil Procedure Code section 170.9. 12 Prior to the statute's enactment, the Canons in the California Code of Judicial Conduct were the only available guidance on gift limitations. 13 However, the Canons in the California Code of

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8. Compare 1994 Cal. Legis. Serv. ch. 1238, sec. 1, at 6342 (enacting CAL. CIV. PROC. CODE 170.9(i)) (stating that honorarium does not include income that is earned for personal services which are normally provided in the connection with a practice of a bona fide profession, including teaching or writing for a legal publisher, which is a bona fide publisher of legal publications that are used to educate lawyers or judges, and also, does not include fees received for the performance of a marriage pursuant to California Penal Code § 94.5) with CAL. CIV. PROC. CODE 170.9(i) (amended by Chapter 378) (excluding writings for all publishers, not just legal publishers); cf. CAL. GOV'T CODE § 89502(e) (West Supp. 1995) (excluding from the definition of honorarium, in the context of honorarium given to public officials and candidates, income earned from personal services which are ordinarily associated with a bona fide business, unless the predominant and sole activity of the business is making speeches, and any honorarium which is not used within 30 days after receipt and is either returned to the donor or given to the State Controller for donation to the general fund).

9. CAL. CIV. PROC. CODE § 170.9(i)(2)-(6) (amended by Chapter 378); see id. (exempting gifts which are not used and are returned within 30 days after receipt or given to a charitable organization without realizing any tax benefit, gifts given to a judge from closely related relatives, campaign contributions that are required to be reported pursuant to the California Government Code, any type of inheritance or devise, and personalized plaques and trophies that each value less than $250).

10. Id. § 170.9(i)(1), (7) (amended by Chapter 378); see id. § 170.9(i)(7) (amended by Chapter 378) (excluding admission to events that are presented by state or local bar associations or judges' professional associations as long as no type of travel is necessary as described in California Code of Civil Procedure § 170.9(e)(3)). Compare 1994 Cal. Legis. Serv. ch. 1238, sec. 1, at 6343 (enacting CAL. CIV. PROC. CODE § 170.9(i)(1)) (excluding from the definition of gift, informational material consisting of books, pamphlets, reports, calendars, or periodicals and stating that no payment for travel or reimbursement for any expense will be considered as informational material) with CAL. CIV. PROC. CODE § 170.9(i)(1) (amended by Chapter 378) (adding to the informational material exception: (1) Discs and cassettes; and (2) gratuitous or reduced price admission, tuition costs, or registration for conferences or seminars of the informational variety).

11. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 353, at 2 (May 2, 1995); see CAL. GOV'T CODE §§ 89501-89505 (West 1993 & Supp. 1995) (setting forth the gift and honoraria limitations for state officials, local officials, and their employees); see also Telephone Interview with Mike Foulkes, Legislative Consultant to Senator Alquist on SB 353 (July 27, 1995) (notes on file with the Pacific Law Journal) (stating that SB 353 was created to clarify the law in this area and take care of glitches with prior law that did not make any sense); id. (noting as an example that an exception to gifts was created for judges who attend certain events hosted by state or local bar associations, which previously did not exist and bar associations believed was needed).

12. ASSEMBLY JUDICIARY COMMITTEE ANALYSIS OF SB 353, at 2 (June 21, 1995); see 1994 Cal. Legis. Serv. ch. 1238, sec. 1, at 6341-43 (enacting CAL. CIV. PROC. CODE § 170.9) (providing the law as it existed before the creation of Chapter 378).

13. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 353, at 1 (May 8, 1995); see CAL. CODE OF JUDICIAL CONDUCT, Canon 4D(1)(a)-(b) (West Supp. 1995) (stating that judges should not involve themselves in financial situations that may be perceived to exploit their position, or become involved in continuous business
Civil Procedure

Judicial Conduct do not have the power of laws or regulations. Nonetheless, California courts have recognized that a judge’s failure to comply with these Canons suggests performance that is below an acceptable level.5

Matthew E. Farmer

Civil Procedure; land use and development agreements—90-day statute of limitations

SB 333 (Campbell); 1995 STAT. Ch. 253

Existing law requires all cities and counties to adopt a general plan1 and it

relations with those who may likely come before the court; id. Canon 4D(4) (West Supp. 1995) (suggesting, in most situations, that judges should not accept, and should urge their family members not to accept, a gift, loan, or any type of favor from anyone; see also id. Canon 4 (West Supp. 1995) (suggesting that judges conduct their quasi-judicial or extra-judicial activities so as to minimize any chance of conflicting interests); cf. ARIZ. JUDICIAL ETHICS, Canon 4 (1994) (providing a very similar canon as found in California); W. VA. CODE OF JUDICIAL CONDUCT, Canon 5 (1994) (setting forth a very similar canon as found in California). See generally Mark S. Bagula & Robert C. Coates, Trustees of the Justice System: QuasiJudicial Activity and the Failure of the 1990 ABA Model Code of Judicial Conduct, 31 SAN DIEGO L. REV. 617, 618-20 (1994) (introducing a background discussion of the creation of the ABA Canons of Judicial Conduct).

14. Kloepfer v. Commission on Judicial Performance, 49 Cal. 3d 826, 838 n.6, 728 P. 2d 239, 245 n.6, 264 Cal. Rptr. 100, 106 n.6 (1989); see id. (recognizing that even though canons do not have the power of law or regulation, they do reflect a judicial consensus regarding a standard of behavior).

15. Id; see Adams v. Comm’n on Judicial Performance, 8 Cal. 4th 630, 663, 882 P. 2d 358, 378-79, 34 Cal. Rptr. 2d 641, 661 (1994) (stating that a violation of a canon will generally be conduct that falls below the standards expected of California’s judges, even though not every violation will involve moral turpitude, dishonesty, or corruption).


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allows these municipalities to enact zoning ordinances.²

To ensure the completion of projects within a reasonable time, prior law mandated that all legal proceedings challenging the adoption or amendment of general or specific plans, the adoption or amendment of zoning ordinances, or the determination of the legality of adopting or amending regulations attached to specific plans be filed within 120 days of the decision.³ Chapter 253 prohibits legal action against these local government land use decisions unless the suit is brought within ninety days.⁴

Existing law permits developers and local officials to enter into development agreements.⁵ However, prior law failed to specify a statute of limitations for the

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2. CAL. GOV'T CODE §§ 65300, 65850 (West Supp. 1995); see id. § 65850 (West Supp. 1995) (authorizing a legislative body of any county or city to adopt ordinances that regulate the following: (1) the use of buildings, land, and open space; (2) signs and billboards; (3) the location, height, bulk, number of stories, and size of buildings and structures; (4) the size and use of lots, yards, courts, and other open spaces; (5) the percentage of a lot occupied by a building or structure; (6) the intensity of land use; (7) offstreet parking and loading; (8) the maintenance and building of setback lines; (9) civic districts; and (10) the time, place, and manner of operation of sexually oriented businesses). See generally B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, CONSTITUTIONAL LAW § 835 (9th ed. 1988 & Supp. 1995) (describing California zoning ordinances).

3. 1987 Cal. Stat. ch. 218, sec. 1, at 1191 (amending CAL. GOV'T CODE § 65009(c)); see CAL. GOV'T CODE § 65009(b)(1) (amended by Chapter 253) (requiring legal action challenging a land use decision to be limited to the issues raised in a public hearing or in a written correspondence delivered to the public agency unless (1) the issue could not have been raised with due diligence, or (2) the body conducting the hearing prevented the issue from being raised); Park Area Neighbors v. Town of Fairfax, 29 Cal. App. 4th 1442, 1447-48, 35 Cal. Rptr. 2d 334, 336-37 (1994) (ruled that neighbors were precluded from challenging a low-income housing development project in a judicial court because they had failed to raise their objections during a public hearing, even though the litigants did not have legal representation at the hearing); Freeman v. City of Beverly Hills, 27 Cal. App. 4th 892, 897, 32 Cal. Rptr. 2d 731, 734 (1994) (holding that actions challenging ordinances establishing conditional use permits were barred by 120-day limitation period even though plaintiff sought monetary damages); Corona-Norco Unified Sch. Dist. v. City of Corona, 17 Cal. App. 4th 985, 993, 21 Cal. Rptr. 2d 803, 807 (1993) (ruled that a school district was not precluded from challenging an amendment to a zoning ordinance because the city council failed to issue a required notice in advance of the meeting indicating that failure to raise issues would preclude judicial review); City of Coachella v. Riverside County Airport Land Use Comm'n, 210 Cal. App. 3d 1277, 1285, 258 Cal. Rptr. 2d 795, 799 (1989) (providing that 120-day statute of limitations is not applicable to an action challenging an airport commission's land use plan); Beresford Neighborhood Ass'n v. San Mateo, 207 Cal. App. 3d 1180, 1187, 255 Cal. Rptr. 2d 434, 437 (1989) (holding that adoption—not introduction—of zoning ordinance was a "decision" within meaning of 120-day limitations period). See generally B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, CONSTITUTIONAL LAW § 828 (9th ed. 1988 & Supp. 1995) (describing the statute of limitations applicable to actions challenging certain legislative land use decisions).

4. CAL. GOV'T CODE § 65009(c) (amended by Chapter 253).

5. Id. § 65865(a) (West Supp. 1995); see id. § 65865.2 (West Supp. 1995) (requiring development agreements to specify the following: (1) the duration of the agreement, (2) the permitted uses of the property, (3) the density or intensity of use, (4) the maximum height and size of proposed buildings, and (5) provisions for reservation or dedication of land for public purposes); id. (permitting development agreements to include the following: (1) provisions for subsequent discretionary actions that do not inhibit development, (2) terms specifying a time that the project will be completed, and (3) terms and conditions concerning financing of public facilities and subsequent reimbursement); id. § 64865.4 (West Supp. 1995) (providing that a development agreement is enforceable by any party notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the municipality entering the agreement, which alters or amends the rules, regulations, or policies in force at the time of execution of the agreement); see also Curtin, Jr. & Jacobson, supra note 1, at 1100-01 (defining development agreements as an agreement between a property owner and a city under which the city agrees to apply to the subject property, unless provided otherwise by agreement, the policies, rules and regulations in effect at the time the development
filing of suits attacking such agreements. Under Chapter 253, a lawsuit contesting a development agreement must be brought within ninety days after the agreement is made.

Prior law required challenges on behalf of the development of housing projects for low income families to be commenced within two years. Under Chapter 253, legal actions supporting the development of housing for low income families must be initiated within one year.

Existing law requires the Department of Housing and Community Development (HCD) to review adopted housing elements or amendments within a general plan and to report on the adequacy of the elements within 120 days. Chapter 253 permits actions challenging the deficiencies of a housing agreement was entered into; cf. Haw. Rev. Stat. §§ 46-121 through 46-132 (1985) (permitting the use of development agreements in local land use decision-making). See generally Cal. Gov’t Code §§ 65865-65869.5 (West 1983 & Supp. 1995) (governing development agreements); Miller & Starr, supra note 1, § 20:142 (describing development agreements); Douglas R. Porter, The Relation of Development Agreements to Plans and Planning, in Development Agreements: Practice, Policy, and Prospects 148 (Douglas R. Porter & Lindell L. Marsh eds., 1989) (depicting the use of development agreements as an expedient alternative to complex policy making by public officials); Curtin, Jr. & Jacobson, supra note 1, at 1100 (discussing development agreements as a reaction to growth control measures); Eric Sigg, California’s Development Agreement Statute, 15 Sw. U. L. Rev. 695 (1985) (reviewing the history and rationale of California’s development agreement statute); William Fulton, Building and Bargaining in California, Cal. Law., Dec. 1984, at 36, 39 (indicating that local government officials use development agreements as bargaining tools to compensate for lost revenue resulting from the passage of Proposition 13).

6. Senate Committee on Housing and Urban Affairs, Committee Analysis of SB 333, at 1 (Apr. 17, 1995); see id. (expressing that the statute of limitations might be four years which is the general statute of limitations for civil cases); Fact Sheet from the Office of Senator Tom Campbell (copy on file with the Pacific Law Journal) (indicating that there have been no published appellate court decisions addressing the deadline for attacking development agreements); see also Cal. Civ. Proc. Code § 343 (West 1982) (providing that the statute of limitations for civil cases is four years).


8. 1987 Cal. Stat. ch. 218, sec. 1, at 1191 (amending Cal. Gov’t Code § 65009(d)); see id. (providing that the two-year limitation period applies to actions that meet both of the following two requirements: (1) It is brought to support the development of housing projects which meet the requirements for housing for persons and families with low or moderate incomes set forth in California Government Code § 65915; and (2) it is brought with respect to actions taken pursuant to California Government Code §§ 65580-65589.8, pursuant to California Government Code §§ 65589.5, 65863.6, 65915 or 66474.2, or pursuant to California Government Code §§ 65913-65914); id. (providing that the cause of action accrues 60 days after notice of deficiencies is filed or the legislative body takes a final action in response to the notice); see also Cal. Gov’t Code § 6580-65859.8 (West 1983 & Supp. 1995) (governing housing elements); id. § 65589.5 (West Supp. 1995) (declaring legislative intent regarding low income housing); id. § 65863.6 (West 1983) (requiring local governments to balance housing needs with public service needs and available fiscal and environmental resources); id. § 65915 (West Supp. 1995) (setting forth the requirements for housing for low income persons); id. § 66474.2 (West Supp. 1995) (governing approval or disapproval of a tentative map and the ordinance, policies, and standards of a public agency).

9. Cal. Gov’t Code § 65009(d)(1) (amended by Chapter 253); see Senate Judiciary Committee, Committee Analysis of SB 333, at 5 (May 16, 1995) (indicating that to offset the shorter statute of limitations the word “project” was dropped in order to allow low income people to initiate lawsuits in support of low income housing generally, rather than with respect to particular housing projects).


11. See Cal. Gov’t Code § 65582(d) (West Supp 1995) (defining “housing element” as the housing element of a community’s general plan, as required by California Government Code § 65302).

12. Id. § 65585(b) (West Supp. 1995).
element to be filed within sixty days after the HCD reports its findings.\textsuperscript{13}

\textbf{COMMENT}

Chapter 253 is designed to promote development by creating a shorter statute of limitations for actions contesting certain local legislative land use decisions.\textsuperscript{14} By ensuring the validity of these decisions, Chapter 253 encourages builders and bankers to take risks and to invest in projects that contribute towards the development of the community.\textsuperscript{15} In addition, Chapter 253 is intended to provide certainty with respect to lawsuits attacking development agreements by clarifying the deadline by which these challenges can be initiated.\textsuperscript{16}

Critics contend that Chapter 253 is based on the faulty assumption that the only parties interested in contesting land use decisions by local officials are sophisticated litigants.\textsuperscript{17} In their view, Chapter 253 does not protect the rights of innocent and inexperienced parties from the potential harmful effects of these decisions.\textsuperscript{18}

Interestingly, the constitutional validity of the use of development agreements in land use decision-making has never been tested.\textsuperscript{19} The use of such agreements could be invalid on the grounds that it contracts the state’s police power away.\textsuperscript{20} Alternatively, development agreements may be subject to the protection of the

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\textsuperscript{13} \textit{Id.} § 65009(i) (amended by Chapter 253); \textit{see Assembly Floor, Committee Analysis of SB 333, at 2-3 (July 10, 1995) (asserting that the establishment of a 60-day period to challenge the adequacy of a housing element, which commences after the HCD reports its findings, relieves housing advocates from having to file unnecessary, premature lawsuits to protect their rights).}

\textsuperscript{14} \textit{Senate Committee on Housing and Urban Affairs, Committee Analysis of SB 333, at 2 (Apr. 17, 1995); see id. at 1-2 (stating that SB 333 applies to the following land use decisions: (1) general plans; (2) specific plans; (3) zoning; (4) regulations of specific plans; (5) decisions involving affordable housing projects; and (6) decisions adopting, amending, or modifying a development agreement).}

\textsuperscript{15} \textit{Senate Judiciary Committee, Committee Analysis of SB 333, at 4 (May 16, 1995).}

\textsuperscript{16} \textit{Assembly Committee on Local Government, Committee Analysis of SB 333, at 2 (July 5, 1995); see id. (citing supporters as asserting that development agreements are too easily subject to frivolous legal challenges with a four-year time frame, which discourages financial investment and secure development); Letter from Eileen Reynolds, Legislative Advocate, California Association of Realtors, to Senator Tom Campbell (June 20, 1995) (copy on file with the Pacific Law Journal) (declaring that SB 333 provides more certainty to developers and pro-housing advocates as they pursue much needed housing at the local level); Letter from Richard Lyon, Legislative Advocate, California Building Industry Association, to Senator Tom Campbell (May 15, 1995) (copy on file with the Pacific Law Journal) (maintaining that SB 333 strikes a balance between achieving greater certainty for public agencies and project applicants, while ensuring the right of the public to object to land use decisions contained within development agreements in a timely manner).}

\textsuperscript{17} \textit{Assembly Floor, Committee Analysis of SB 333, at 2 (July 10, 1995); see Savvy Compromise, L.A. Times, July 9, 1989, at 2 (Metro) (reporting that the Sierra Club and San Diegans for Managed Growth accepted a $500,000 settlement from developers in return for dropping a lawsuit, which challenged the city’s decision to permit developers to build on 320 acres, after the environmental groups failed to file the suit within the statute of limitations period); id. (characterizing lawsuits between environmental groups and developers as public-interest volunteers with financial Goliaths for adversaries).}

\textsuperscript{18} \textit{Assembly Floor, Committee Analysis of SB 333, at 2 (July 10, 1995).}

\textsuperscript{19} Curtin Jr. & Jacobson, \textit{supra} note 1, at 1101.

\textsuperscript{20} \textit{Id.}
contracts clause of the United States Constitution.  

Julia A. Butcher

Civil Procedure; mobilehomes—final money judgment

Civil Code § 798.61 (amended); Code of Civil Procedure §§ 700.080, 715.010 (amended); Health and Safety Code § 18080.9 (new); § 18005.8 (amended).  
SB 69 (Kelley); 1995 STAT. Ch. 446

Existing law, known as the Mobilehome Residency Law, regulates rights and duties of residents1 and managers2 of mobilehome parks.3 Existing law permits a court to enter a judgment of abandonment of a mobilehome4 if certain

21. Sigg, supra note 5, at 712-13; see id. (arguing that the main issue concerning the enforceability of development agreements involves the tension between the reserved powers doctrine and the contracts clause of the United States Constitution); see also U.S. CONST. art I, § 10, cl. 1 (providing that no state shall pass any law impairing the obligation of contracts). See generally Daniel J. Curtin, Jr. & Sanford M. Skaggs, Legal Issues and Considerations, in DEVELOPMENT AGREEMENTS: PRACTICE, POLICY, AND PROSPECTS 121, 125-27 (Douglas R. Porter & Lindell L. Marsh eds., 1989) (examining whether development agreements bargain away police power or whether they are protected by the contracts clause of the United States Constitution); William G. Holliman, Jr., Development Agreements and Vested Rights in California, 13 URB. LAW. 44, 49-58 (1981) (analyzing Supreme Court cases dealing with the police power of states and the contracts clause of the United States Constitution and their significance towards the validity of development agreements); Bruce M. Kramer, Development Agreements: To What Extent Are They Enforceable?, 10 REAL EST. L.J. 29 (1981) (discussing the reserved powers doctrine and the contracts clause of the United States Constitution and their applicability to determining the legality of development agreements).

1. See CAL. CIV. CODE § 798.11 (West Supp. 1995) (defining “resident” as a homeowner or other person who lawfully occupies a mobilehome); see also id. § 798.8 (West Supp. 1995) (defining “rental agreement” as an agreement between the management and the homeowner establishing the terms and conditions of a park tenancy, including a lease agreement); id. § 798.9 (West Supp. 1995) (defining “homeowner” as a person who has a tenancy in a mobilehome park under a rental agreement); id. § 798.12 (West Supp. 1995) (defining “tenancy” as a right of a homeowner to use a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvement, and accessory structures for human habitation, including use of services and facilities).

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 his behalf regarding to matters of tenancy in the park).

3. Id. §§ 798-799.8 (West 1982 & Supp. 1995); see id. (setting forth the provisions of the Mobilehome Residency Law, including the obligations of the residents and managers of mobilehome parks); see also id. § 798.4 (West 1982) (defining “mobilehome park” as an area of land where two or more mobilehome sites are rented, or held out for rent, to accommodate mobilehomes used for human habitation).

4. See id. § 798.61(a)(2)(A) (amended by Chapter 446) (providing that mobilehome includes trailer coach, or a recreational vehicle); see also CAL. HEALTH & SAFETY CODE § 18010 (West Supp. 1995) (defining “recreational vehicle” as a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy, or a park trailer designed for human habitation for recreational or seasonal use only); CAL. VEH. CODE § 635 (West Supp. 1995) (defining “trailer coach” as a vehicle, other than a motor vehicle, designed for human habitation or human occupancy for industrial, professional, or commercial purposes, for carrying property on its own structure, and for being drawn by a motor vehicle); cf. CAL. HEALTH & SAFETY CODE § 18008 (West Supp. 1995) (defining
conditions are established and no party demonstrates an interest in the mobile-home. Chapter 446 allows a party to establish an interest in a mobilehome by evidence of a right to possession or a security interest in the mobilehome.

Existing law requires a specified procedure for the imposition of a levy upon personal property. Chapter 446 permits a levy to be assessed upon a mobilehome.

Existing law, known as the Mobilehomes-Manufactured Housing Act of 1980, requires annual registration with the Department of Housing and Com-

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6. CAL. CT. CIV. CODE § 798.61(d)(2) (amended by Chapter 446); see id. § 798.61(a)(1)(A)-(C) (amended by Chapter 446) (defining an “abandoned mobilehome” as a mobilehome that is located on a mobilehome park where no rent has been paid for the preceding 60 days, the mobilehome is unoccupied, and a reasonable person would believe it to be unoccupied); see also Marlow v. Campbell, 7 Cal. App. 4th 921, 928, 9 Cal. Rptr. 2d 516, 520 (1992) (holding that only the municipal and justice courts, not the superior court, will have jurisdiction to enter a judgment of abandonment of a mobilehome or a manufactured home); id. at 927-28, 9 Cal. Rptr. 2d at 520 (declaring that this is not solely a declaratory relief judgment, which allows a superior court to hear a case, because there was a judgment of costs as well as an abandonment judgment, there was a petition seeking to permit plaintiffs to inventory the mobilehome’s contents, and there was a petition seeking to sell the mobilehome); cf. ILL. ANN. STAT. ch. 210, para. 117/10 (Smith-Hurd Supp. 1995) (defining “abandoned mobile home” as not having an owner or authorized tenant currently residing in the mobile home to the best of the knowledge of the municipality, has had no utilities payments declared overdue, and the taxes are overdue by three months); IOWA CODE ANN. § 562B.27(1) (West Supp. 1995) (defining “abandoned mobile home” as one in which the tenant has been absent for 30 days or more without a reasonable explanation during which time the rent is either in default for three or more days or the rental agreement is terminated); VT. STAT. ANN. tit. 10, §6248(a) (Supp. 1994) (declaring that a mobile home is abandoned if a reasonable person would believe that the mobile home is not occupied, the rent is 30 days overdue, and the park owner has attempted to contact the resident or owners at their home address, last known place of employment, and last known mailing address). See generally 4 B.E. WrrnN, SUMMARY OF CALIFORNIA LAW, Real Property § 539 (9th ed. Supp. 1995) (setting forth the definition of “abandoned mobilehome” and the process for notice, judgment, and sale of the mobilehome); Erik Nelson, Trailer Park Neighbors Fear Loosened Regulations Abandoned Mobile Homes Would Be Permitted to Sit Vacant for 6 Months, BALTIMORE SUN, Jan. 11, 1993, at 7B (discussing how all mobile home parks experience abandoned trailers and that this leads to teenagers using the trailers how they want).

7. See id. § 700.080(d) (amended by Chapter 446); see id. (amending the definition of personal property).
munity Development, unless the mobilehome or manufactured home satisfies certain requirements. Existing law also requires each individual possessing a security interest in a manufactured home subject to registration to file specified information with the Department regarding the security interest.

Chapter 446 provides that if a mobilehome park owner receives a final money judgment for unpaid rent against a registered owner of a mobilehome or a manufactured home registered with the Department, the mobilehome park owner may perfect a lien against that mobilehome or manufactured home conforming with the specified provisions of the Mobilehomes-Manufactured Housing Act of 1980, by filing a form determined by the Department. A lien instituted under Chapter 446 is not a security interest under the definition of "legal owner" in the act. Chapter 446 further provides that a lien instituted under Chapter 446 is not subject to execution. Chapter 446 requires reduction of the lien amount created under Chapter 446 by the amount the legal owner or junior lienholder is

10. See CAL. HEALTH & SAFETY CODE § 18007 (West 1984) (defining "manufactured home" as a structure, transportable in one or more sections, which is 8 feet by 40 feet in traveling mode, or is 320 square feet when erected, and is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required facilities).

11. Id. § 18075.5 (b), (d)-(f) (West Supp. 1995); see id. (requiring registration for manufactured homes, mobilehomes, commercial coaches, and floating homes unless the structure remains affixed to the foundation system, the structure is owned by a member, or former member, of the Armed Forces if displaying a valid registration with respect to a manufactured home or mobilehome from the owner's home state, or any other manufactured homes determined by the Department to be subject to exception); see also id. § 18075.7 (West Supp. 1995) (exempting from registration with the Department of Housing and Community Development any truck camper permanently attached to a vehicle and registered as a "house car").

12. Id. § 18080.7 (West Supp. 1995); see id. § 18085(b) (West Supp. 1995) (setting forth the information to be contained in the registration application to include the true name and mailing address of the registered owner, the legal owner, and any lien holders, the name of the county where the registered owner resides, the address where the home is located, and a description of the home).

13. See CAL. CIV. CODE § 2872 (West 1993) (defining "lien" as a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act); see also CAL. CIV. PROC. CODE § 1180 (West 1982) (defining "lien" as a charge imposed upon specific property, by which is made security for the performance of an act). See generally 4 B. E. WITKIN, SUMMARY OF CALIFORNIA LAW, Personal Property § 168 (9th ed. 1987 & Supp. 1995) (defining the nature and different kinds of liens); John K. Pearson, Kansas Artisan's & Mechanic's Liens: An Unnecessary Tangle, 63 J. KAN. BAR ASS'N, 28, 29 (1994) (discussing the differences between a lien and a security interest).

14. CAL. HEALTH & SAFETY CODE § 18080.9(a) (enacted by Chapter 446); cf. KY. REV. STAT. ANN. § 376.480(1) (Baldwin 1994) (allowing any owner of real property who rents space on which a mobile home sits to have a lien for rent due on the mobile home, its contents, and other personalty abandoned by the tenant on the landlord's property for rent due, reasonable storage, cleanup costs, and utilities); TEX. REV. CIV. STAT. ANN. art. 5069-6A.18(1) (West Supp. 1993) (stating that an owner of real property may establish a possessory lien against a manufactured home for unpaid rent). See generally John C. Siemers, The Mortgagee's Lien Against Rents, 25 TEX. TECH L. REV. 873 (1994) (discussing the perfection and enforcement of liens against rents of real and personal property in various types of jurisdiction and under the Uniform Commercial Code).

15. See CAL. HEALTH & SAFETY CODE § 18005.8 (amended by Chapter 446) (defining "legal owner" as one holding a security interest in a manufactured home, mobilehome, commercial coach, floating home, or a truck camper perfected by filing the appropriate documents with the Department).

16. Id.

17. Id. § 18080.9(d) (enacted by Chapter 446).

18. See id. § 18005.3 (West Supp. 1995) (defining "junior lienholder" as a person, other than the legal owner, holding a security interest in a manufactured home, mobilehome, commercial coach, floating home, or truck camper).
required to pay according to certain provisions of the Mobilehome Residency Law.\(^19\)

Once a money judgment is satisfied, Chapter 446 requires a lien perfected according to Chapter 446 to be released as specified.\(^20\) Under Chapter 446, the judgment creditor would be liable for all damages, for a specified penalty of $100, and for the opposing party's reasonable attorney's fees if the judgment creditor fails without just cause to comply within twenty days of the date the judgment creditor's lien is satisfied.\(^21\) Chapter 446 designates a mobilehome park owner filing a lien created according to Chapter 446 as a junior lienholder for the purposes of sale pursuant to the act regarding disposal of a repossessed or surrendered manufactured home, mobilehome, truck camper, or floating home.\(^22\)

Chapter 446 requires that the registered owner abandon any claim to possession of, or ownership interest in, a mobilehome or manufactured home once the legal owner accepts the registered owner's surrender of ownership interest.\(^23\) Chapter 446 also provides that the registered owner would be divested of title to the mobilehome or manufactured home after completion of foreclosure.\(^24\) Chapter 446 further specifies the procedure for extinguishing a judgment lien filed pursuant to Chapter 446.\(^25\)

**COMMENT**

The purpose of Chapter 446 is to protect mobile home park owners' money judgments and to permit and to collect unlawful detainer judgments against defaulting park tenants.\(^26\) However, the opposition contends that Chapter 446 will

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19. *Id.* § 18080.9(e) (enacted by Chapter 446); see *Cal. Civ. Code* § 798.56(a)(1)(A), (b)(4) (West Supp. 1995) (allowing a legal owner or junior lienholder to sell a mobilehome as long as the person satisfies all responsibilities owed to management by the homeowner 90 days prior to notice of termination of tenancy and the person reimburses the management the amount of reasonable attorney's fees and court costs incurred to bring the termination of tenancy action).

20. *Cal. Health & Safety Code* § 18080.9(h) (enacted by Chapter 446); see *id.* § 18100.5(a) (West Supp. 1995) (requiring the Department to be notified within 20 days of the extinguishment of any transfer or release of a security interest so that there is no obligation to extend credit, incur obligations, or otherwise give value for the manufactured home or mobilehome).

21. *Id.* § 18080.9(h) (enacted by Chapter 446).

22. *Id.* § 18080.9(a) (enacted by Chapter 446); see *§ 18080.9(f)(3) (enacted by Chapter 446) (extinguishing a judgment lien if upon the payment of any surplus proceeds owed to the junior lienholder if the proceeds of the sale exceed the amount due to the legal owner from the registered owner under the security agreement, promissory note, or other debt instrument secured by the manufactured home or mobilehome).

23. *Id.* § 18080.9(f)(1)-(3) (enacted by Chapter 446).

24. *Id.* § 18080.9(g) (enacted by Chapter 446).

25. *Id.* § 18080.9(f)(1)-(3), (g) (enacted by Chapter 446); see *id.* (providing that a judgment lien will be extinguished if the proceeds of the sale of the surrendered mobilehome or manufactured home by the legal owner is not sufficient to satisfy the amount due to the legal owner by the registered owner, upon the payment of any surplus proceeds owed to the junior lienholder if the proceeds of the sale by the legal owner exceed the amount due to the legal owner, or upon the completion of foreclosure).

26. *Senate Floor, Committee Analysis of SB 69,* at 3 (May 11, 1995); see *Senate Judiciary Committee, Committee Analysis of SB 69,* at 3 (Mar. 28, 1995) (setting forth the sponsor's argument that the law protects a secured creditor from a secured debtor transferring title to the mobilehome, and protects a
require lenders to bring unnecessary foreclosure actions in order to clear the junior judgment lien of the park owner. The opposition also contends that Chapter 446 hinders the lender’s ability to resell a reacquired mobilehome, and creates an inappropriate lien because Chapter 446 ignores the distinction between real property and mobilehomes.

According to the sponsor, the intent of Chapter 446 is to provide an established standard for the courts to follow in an abandonment hearing brought by a mobilehome park owner. Finally, Chapter 446 clarifies the power of levying officers to levy upon a mobilehome whether or not it is occupied.

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Existing law specifies the actions in which a small claims court has

judgment creditor from a debtor transferring title if there is a lien in place); id. (quoting the Western Mobilehome Parkowner’s Association as stating that there is a loophole in the law depriving mobilehome park owners of the same protection as a secured creditor); id. (noting the sponsor’s argument that a park resident who loses an unlawful detainer action and against whom a money judgment has been issued can remove the mobilehome from the site and sell it without the mobilehome park management having any recourse).

27. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 69, at 4 (Mar. 28, 1995); see id. (noting the contention by the California Manufactured Housing Institute that under the law prior to the enactment of SB 69, many borrowers surrender the property to the lender when the borrower falls behind on the mortgage, but SB 69 requires the lender to foreclose on the property in order to clear the junior judgment lien); id. (setting forth the opposition’s contention that this unnecessary foreclosure would cause lending for manufactured homes and mobilehomes to become more expensive).

28. Id.; see id. (explaining the opposition’s argument that loans will be more expensive after the enactment of SB 69 because a mobilehome park owner can get a money judgment after the lender has foreclosed, and the new judgment lien would not be eliminated by the earlier foreclosure); id. (noting that a lender can protect from a later judgment lien by registering the foreclosure action with the Department of Housing and Community Development, but this process may take three to six months, and force the lender to assume additional expense pending the completion of the process); see also id. (discussing the opposition’s contention that a lien on real property is due to a recognition that the lien holder has performed a service that benefits or enhances the property, similar to a carpenter’s lien); id. (contrasting a real property lien with a lien for back rent, which does not confer a benefit on the property, and thus the lender becomes a guarantor of payment of park rents). But see id. at 4-5 (setting forth Western Mobilehome Parkowner’s Association’s argument that the opposition does not distinguish between a mechanic’s lien and a judgment lien, and that a judgment lien should be enforceable whether the lien is on real or personal property).

29. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 69, at 5 (Mar. 28, 1995); see id. (stating Western Mobilehome Parkowner’s Association’s concern that current law allegedly allows a third party to stop an abandonment proceeding by simply stating that they live in the mobilehome); id. (noting that SB 69 requires the third party to show evidence that they are a co-owner, tenant, co-tenant, sub-tenant, assignee, or have some other right to possession or security interest of the mobilehome).

30. Id.; see id. (describing the sponsor’s desire to have the power to levy clarified in order to prevent another case of a judge construing the permittance of a levy only if the mobilehome was unoccupied).
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jurisdiction. Chapter 366 expands existing law by requiring that in actions filed by those held in a Department of Corrections or Youth Authority facility, the small claims court maintains jurisdiction over a defendant provided the plaintiff has specifically alleged that he or she has exhausted any administrative remedies available against that department and has complied with specific sections of the California Government Code.²

Existing law provides that only the individual plaintiff and defendant may take part in a small claims action.³ Chapter 366 expands existing law by permitting the Department of Corrections and the Department of Youth Authority

1. CAL. CIV. PROC. CODE § 116.220(a) (amended by Chapter 366); see id. (setting forth the various actions in which a small claims court will have jurisdiction as follows: (1) the recovery of money, if the amount does not exceed $5000; (2) to enforce payment of delinquent unsecured personal property taxes if not more than $5000, provided the legality of the tax is not contested; (3) to issue a writ of possession authorized by California Civil Code §§ 1861.5 and 1861.10 if the amount of the demand is not in excess of $5000; (4) to confirm, modify, or vacate a fee arbitration award of $5000, or less, between an attorney and client that is binding or has become binding, or to hold a new hearing between an attorney and client after a fee dispute has been subject to nonbinding arbitration with a result not in excess of $5000); see also id. § 116.220(b) (amended by Chapter 366) (establishing that in any action seeking assistance under the California Code of Civil Procedure § 116.220(a), the court may grant relief by way of rescission, restitution, reformation, and specific performance, instead of, or in addition to, damages); id. (providing that the court may issue a conditional judgment and will retain jurisdiction until full payment and performance of any judgment or order); id. § 116.220(c) (amended by Chapter 366) (providing that notwithstanding the California Code of Civil Procedure § 116.220(a), the small claims court will have jurisdiction over a defendant guarantor who is obligated to appear due to another's default, actions, or omissions, only if the demand is not more than $2500); id. § 116.220(d) (amended by Chapter 366) (providing that when jurisdiction is deprived due to an excess in the demand amount, that excess may be waived—becoming operative upon judgment); cf. MINN. STAT. ANN. § 176.2615(2)(2) (West 1993) (providing that a small claims court may have jurisdiction over a claim if it does not exceed $5000); MONT. CODE ANN. § 25-35-502(1) (1995) (stating that a small claims court has jurisdiction when the amount of the claim does not exceed $3000 exclusive of costs); NEB. REV. STAT. § 25-2802(1) (1989) (stating that jurisdiction is available to claims not exceeding $1500 dollars, irrespective of interest and costs); NEV. REV. STAT. ANN. § 73.010 (1986) (providing that a small claims court shall have jurisdiction when the amount claimed does not exceed $1500 dollars and the defendant is a resident of the township in which the action is to take place); TEX. GOV'T CODE ANN. § 28.003(a) (West Supp. 1995) (providing that the small claims court has jurisdiction for recovery of money not in excess of $5000 exclusive of costs). See generally CAL. CIV. PROC. CODE §§ 116.110-116.950 (West Supp. 1995) (setting forth the Small Claims Act).

2. CAL. CIV. PROC. CODE § 116.220(e) (amended by Chapter 366); see id. (specifying that the plaintiff must comply with California Government Code §§ 905.2 and 905.4); see also id. § 116.220(e) (amended by Chapter 366) (providing that in lieu of that allegation, the final administrative adjudication or determination by the department of the plaintiff's claim may be attached to the complaint at the time of filing); id. § 116.220(f) (amended by Chapter 366) (establishing that in any action governed by California Code of Civil Procedure § 116.220(e), if the plaintiff fails to show proof of compliance with the specified requirements at the time of trial, the judicial officer may either dismiss the action or continue it until the plaintiff has had an opportunity to provide such proof); id. § 116.220(g) (amended by Chapter 366) (defining "department" as including an employee of a department against whom a claim has been filed arising out of his duties as an employee of that department); CAL. GOV'T CODE § 905.2 (West 1995) (establishing a definitional scheme for all claims for money or damages against the state); id. § 905.4 (West 1995) (providing that California Government Code §§ 900-915.4 are not to be construed as an exclusive means for presenting claims to the Legislature nor as preventing the Legislature from making such appropriations for the payment of claims against the state which have not been submitted to the board or recommended for payment by it).

3. Id. § 116.540(a) (West Supp. 1995); see ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS of AB 725, at 3-4 (May 3, 1995) (suggesting that small claims courts were established on the principle of self-representation in order to provide an informal judicial forum for persons of limited resources to resolve a small claim face to face).
to participate in a small claims proceeding through a regular employee, who is employed for reasons other than representing the department.\(^4\)

Chapter 366 additionally provides that where the Department of Corrections or the Department of the Youth Authority is a defendant in small claims court, the department’s representative is not required to personally appear to challenge compliance with the pleading requirements by the plaintiff and may instead submit the challenge by way of pleadings or declarations.\(^5\)

Furthermore, Chapter 366 establishes that at the small claims hearing, the court shall require any individual appearing as a representative of the Department of Corrections or the Department of the Youth Authority under California Code of Civil Procedure section 116.541(a) to file a declaration.\(^6\)

**COMMENT**

Small claims courts were established to offer a means of obtaining a speedy settlement.\(^7\) However, the Department of Corrections believes that some inmates

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4. *CAL. CIV. PRO. CODE* § 116.541(a) (enacted by Chapter 366). *See generally ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 725, at 4* (May 3, 1995) (noting that previous efforts to expand the use of representatives in small claims court have encountered opposition); *id.* (noting how in 1993, AB 725 was “introduced to authorize public agencies to appear and participate in small claims court actions through an unpaid volunteer representative,” but this bill was vetoed by Governor Wilson because he felt the bill was “inconsistent with the principle of self-representation upon which the small claims court system was founded”).

5. *CAL. CIV. PRO. CODE* § 116.541(b) (enacted by Chapter 366).

6. *Id.* § 116.541(c) (enacted by Chapter 366); *see id.* (providing that the declaration must state that the individual is authorized to appear, must specify the basis for the authorization, and must verify that the appearing person is not employed for the sole purpose of small claims court representation); *id.* § 116.541(d) (enacted by Chapter 366) (noting that California Code of Civil Procedure § 116.541 shall not operate so as to authorize an attorney to participate in a small claims action except as expressly provided in California Code of Civil Procedure § 116.530); *id.* § 116.541(e) (enacted by Chapter 366) (providing that all references to the Department of Corrections or the Department of the Youth Authority include employees against whom claims have been filed under this chapter arising out of the employee’s duties with that department); *see also id.* § 116.530(a), (b) (West Supp. 1995) (providing that an attorney may not take part in the conduct or defense of a small claims action unless the attorney is appearing to maintain or defend specified actions); *id.* § 116.530(c) (West Supp. 1995) (noting that an attorney is not prevented from providing advice to a party to a small claims action, testifying to facts of which he or she has personal knowledge, representing a party in an appeal to the superior court, and representing a party in connection with the enforcement of a judgment).

7. *See Martz v. MacMurray College*, 627 N.E.2d 1133, 1135 (Ill. App. Ct. 1993) (stating that small claims court procedures were adopted in order for one to be able to obtain justice at an affordable cost, and in order to free up court calendars); *id.* at 1134-35 (expressing how unnecessary hearings and filings regarding motions for continuance, to strike jury demand, and for dismissal allowed this case to represent an example of the worst kind of abuse in small claims courts); *see also Sanderson v. Neiman*, 17 Cal. 2d 563, 573, 110 P.2d 1025, 1030 (1941) (specifying that the chief characteristics of a small claims court proceeding are that there are “no attorneys, no pleadings, no legal rules of evidence, no juries, and no formal findings made on the issues presented”); *id.* (suggesting that the theory behind the court’s organization is that only by escaping from the complexity and delay of the normal course of litigation could anything be gained in a legal proceeding which involves a small sum); Suzanne E. Elwell with Christopher D. Carlson, *The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV. 433, 434 (1990) (discussing how small claims courts were established to satisfy the needs of citizens who, due to the difficulties of litigating in the regular courts, were unable to resolve disputes through the justice system); Jasper Greigson, *How to Complain*, DAILY MAIL, Nov. 12, 1994, at 33 (expressing how the small claims court is easy to use, there is no need to understand the law, and you can
of state facilities were abusing the small claims system.  

Curiously, small claims courts have often faced criticism for acting as a collection agency as opposed to providing a means of redress for individuals. In the past, the principle of self-representation underlying the small claims court system has been used as a justification for denying collection agencies and other assignees broad access to the small claims process.

Although efforts to expand the use of representatives in small claims court have not been successful in the past, the Department of Corrections believes it necessary to permit state entity defendants to be represented in small claims court actions.

By allowing the use of declarations to challenge jurisdictional requirements, Chapter 366 is creating a more efficient means of using the small claims court. However, the provision requiring proof of exhausting all administrative remedies prior to filing an action may contribute to the already overworked courthouse.

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8. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 2 (May 3, 1995); see id. (noting how inmates are abusing the system with frivolous small claims actions before exhausting their administrative remedies); id. (suggesting that inmates were abusing the system by forcing the California Department of Corrections staff members to appear in actions by naming individual defendants); see also Employment Law—Conditions of Employment, CHI. DAILY L. BULL., Feb. 17, 1994, at 1 (providing an example of abuse in small claims courts when unnecessary hearings and filing turned a small claims case into “a near federal monstrosity”).

9. Elwell, supra note 7, at 444; see id. (recognizing that the characterization of small claims courts as collection agencies poses the following problems: (1) The courts are not being used by those for whom they were intended; (2) heavy use by businesses crowds the docket; and (3) excessive use by businesses discourages individuals from pursuing claims because of the perception that the court is a "business court"); see also Arthur Best, Peace, Wealth, Happiness, and Small Claim Courts: A Case Study, 21 FORDHAM URN. L.J. 343, 346 (1994) (noting that of the cases filed in Denver’s county courts, 70% were filed by collection agencies, and 25% of the filings came from landlords).

10. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 4 (May 3, 1995); see Newsome v. Potter, 491 N.Y.S.2d 257, 259 (1985) (discussing how small claims courts have been transformed into collection agencies by businessmen and only by prohibiting corporate and assignee plaintiffs and by refusing to establish small claims attachment and garnishment powers is it possible to lessen the appeal for businessmen to bring actions in small claim courts); see also County of Portage v. Steinpreis, 312 N.W.2d 731, 743 n.5 (Wis. 1981) (Abrahamson, J., dissenting) (mentioning that the small claims courts in Wisconsin are dominated by businesses and collection agencies, and have not been successful in providing speedy, inexpensive results for minor disputes).

11. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 4 (May 3, 1995); see SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 4 (June 27, 1995) (noting that the Department of Corrections position that permitting employees to be represented in small claims court actions by a department representative is both necessary and cost-efficient); see also id. (specifying that while an inmate is not required to appear, and may have a representative appear on his or her behalf, the state employees were previously required to represent and defend themselves).

12. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 5 (July 11, 1995); see id. (noting that the provision allowing a representative to challenge a plaintiff’s failure to comply with filing requirements without requiring a personal appearance serves a similar function as a motion to strike or a demurrer).
According to the California Department of Corrections, in about fifty percent of small claims actions the plaintiff inmate fails to exhaust administrative remedies in which it is named as a defendant. By allowing claims to be dismissed for failing to show compliance in exhausting all administrative remedies, Chapter 366 contradicts a policy of the law that dismissal of claims for technical pleading defects is generally disfavored. Chapter 366 was enacted in order to address these concerns and to encourage proper use of small claims courts.

Laura J. Roopenian

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13. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 6 (June 27, 1995); see id. (noting that Judge Fredricks of the Los Angeles County South Bay Municipal Court believes that the provision is not needed because, "there are already existing provisions of law that prevent illegal judgments against public entities in small claims court." Further, "there is no risk whatever of a public entity having a judgment against it in small claims because of lack of exhaustion of administrative remedies. If a small claims judge erred in this regard, the entity could appeal"); see also id. (relating the statements of Judge Fredricks, who noted that pre-suit paperwork is not required of plaintiffs in higher courts and questioned why such a requirement should be placed on small claims litigants, when the purpose of the small claims process is to expedite the action for both the plaintiff and defendant).

14. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 5 (July 11, 1995); see SENATE FLOOR, COMMITTEE ANALYSIS OF AB 725, at 3 (July 20, 1995) (quoting the California Department of Corrections in its assessment that requiring inmates to exhaust administrative remedies before filing in small claims court will relieve the Department, staff, and the courts of the burden of large numbers of meritless claims); id. (adding that prior to AB 725, the California Department of Corrections believed that a personal appearance by a named defendant was required to point out to the court that the inmate had not satisfied these preliminary requirements).

15. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 6 (July 11, 1995); see Millinger v. Town of West Springfield, 515 N.E.2d 584, 588 (Mass. 1987) (noting that in the absence of unfair surprise or prejudice there is reluctance to dismiss an action because of a possible technical defect in the pleading).

16. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 3 (May 3, 1995); see SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 725, at 4 (June 27, 1995) (stating that the purpose of AB 725 is to ease the burden of the Department of Corrections and its employees in having to defend small claims court actions brought against them by a prison inmate); see also id. at 5 (describing how small claims judges usually dismissed frivolous claims filed by inmates, yet inmates continued to file such actions for purposes of harassment); id. (noting that although all plaintiffs are required to exhaust their administrative remedies before initiating judicial actions against the state, in about fifty percent of small claims actions in which the California Department of Corrections has been named as a defendant, the inmate has failed to exhaust all administrative remedies); ASSEMBLY JUDICIARY COMMITTEE, supra, at 2 (noting that 439,493 small claims court cases were filed between 1993 and 1994); id. (elaborating further that during the same time period, the Board of Control received 11,655 claims for money or damages, of which 959 were for an amount not in excess of $5000; 626 of these claims were rejected, and while only 233 were allowed).