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Property

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Property

Property; transfers of residential property—disclosures

Civil Code §1134.5 (new).
SB 986 (McCorquodale); 1984 STAT. Ch 1183
(*Operative July 1, 1985*)

Existing case law protects a prospective purchaser of real property by imposing a duty to disclose that the structure being purchased does not meet the building code requirements.¹ Chapter 1183 statutorily applies and extends this existing law by providing that the transferor² of residential property³ must deliver⁴ a statement to the transferee stating that any structural additions or alterations⁵ made on the property were or were not completed under an appropriate permit, or were subsequently validated as conforming to building and safety regulations.⁶

Chapter 1183 requires the statement to be delivered before title is transferred or a sales contract is executed.⁷ If the statement is delivered after the execution of an offer to purchase, the transferee has the right to revoke the offer within three days after delivery if the delivery is in person, or within five days after delivery by deposit in the mail.⁸ The right to revoke terminates, however, at the close of escrow or at the time the conveyance is recorded, whichever occurs first.⁹

Chapter 1183 provides that the transferor¹⁰ is not liable for any

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1. See *Curran v. Heslop*, 115 Cal. App. 2d 476, 481, 252 P.2d 378, 381 (1953).
 2. The transfer may be made by sale, exchange, or real property sales contract. CAL. CIV. CODE §1134.5(a). See *id.* §2985 (definition of real property sales contract).
 3. See *id.* §1134.5(a) (at least one but not more than four residential units).
 4. *Id.* §1134.5(c)(1) (definition of delivery).
 5. The structural changes must have been completed during the term of ownership of the transferor or must be changes of which the owner has knowledge. *Id.* §1134.5(a).
 6. *Id.* §1134.5(a); see *id.* §1134.5(1)-(10) (exceptions to statement requirement); see also CAL. GOV'T CODE §38660; CAL. HEALTH & SAFETY CODE §17921; CAL. PUB. RES. CODE §30600 (construction ordinances and regulations).
 7. CAL. CIV. CODE §1134.5(c)(1).
 8. *Id.* §1134.5(c)(2).
 9. *Id.*
 10. *Id.* §1134.5(d)(1) (including a transferor's agent).

error, inaccuracy, or omission in the statement if the error was not within the personal knowledge of the transferor, and ordinary care was exercised in obtaining and transmitting the information.¹¹ In addition, if the error results from information required to be disclosed by a public agency or other persons,¹² Chapter 1183 specifies that the transferor is not liable.¹³ In the event the disclosed information subsequently is rendered inaccurate, Chapter 1183 mandates that no violation will have occurred.¹⁴

Although the purchaser has the right to withdraw an offer for the property upon receipt of the statement,¹⁵ Chapter 1183 provides that failure to comply with the disclosure provisions will not invalidate the transfer of title.¹⁶ Chapter 1183 further provides that actual damages, including attorney's fees, may be recovered if a willful violation of the disclosure requirement has occurred.¹⁷

11. *Id.*; see also *id.* §1134.5(e) (transferor may use an approximation of the information if the information required to be disclosed is unknown or not available to the transferor).

12. *Id.* §1134.5(d)(3) (persons deemed to be other persons providing information to be disclosed).

13. *Id.* §1134.5(d)(1)(2)(3).

14. *Id.* §1134.5(e).

15. *Id.* §1134.5(c)(2).

16. *Id.* §1134.5(g).

17. *Id.*

Property; transfers—breach of agreement to convey

Civil Code §3387 (amended).

AB 2309 (Stirling); 1984 STAT. Ch 937

Under existing law, a presumption exists that a breach of a contract to transfer real property, or an interest in real property, cannot be compensated adequately by a monetary award of damages.¹ Case law has held this presumption to be rebuttable in all transactions.² Chapter

1. CAL. CIV. CODE §3387; see *Remmers v. Ciciliot*, 59 Cal. App. 2d 113, 119, 138 P.2d 306, 310 (1943) (plaintiff's right to a decree of specific performance not dependant upon ability to show monetary damages); *Porporato v. Devincenzi*, 261 Cal. App. 2d 670, 674, 68 Cal. Rptr. 210, 213 (1968) (granting specific performance unless defendant shows that the issuance of the decree would be inequitable); 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Equity* §25 (8th ed. 1974) (presumption that remedy at law is inadequate). See also CAL. CIV. CODE §3306 (damages); *Review of Selected 1983 California Legislation*, 15 PAC. L. J. 674 (1984) (discussion of amendments to damage provisions).

2. *Superior California Fruit Land Co. v. Grossman*, 32 Cal. App. 357, 361-62, 162 P. 1046, 1048 (1917); *Herzog v. Atchison T. and S.F.R. Co.*, 153 Cal. 496, 501, 95 P. 898, 900

937 clarifies existing law by providing for a conclusive presumption when there has been a breach of an agreement to transfer a single family dwelling that the party seeking performance intends to occupy.³ For transfers of property in all other transactions, the presumption only affects the burden of proof in establishing a claim to specific performance.⁴

(1908). This case law, however predates the statutory creation of the two types of rebuttable presumptions. *Compare* CAL. EVID. CODE §601 with 1965 Cal. Stat. c. 299, §110, at 1363 (repealing CAL. CIV. PROC. CODE §1961).

3. CAL. CIV. CODE §3387. *See* CAL. EVID. CODE §620 (effect of conclusive presumption).

4. CAL. CIV. CODE §3387. *See generally* McDonough, *The California Evidence Code: A Precipitous*, 18 HASTINGS L.J. 89, 95-100 (1966) (explanation of the bifurcated system of rebuttable presumptions in the California Evidence Code).

Property; joint tenancies

Civil Code §683.2 (new).

AB 2276 (McAllister); 1984 STAT. CH 519

Existing statutory law sets forth requirements for the creation of joint tenancies.¹ Chapter 519 supplements existing law by establishing statutory methods by which joint tenancies in real property can be terminated without the other joint tenant's consent.²

Under California case law, joint tenants could not sever joint tenancies by conveyances to themselves.³ Joint tenancies could be severed, however, through the use of intermediary devices.⁴ Chapter 519 permits termination of joint tenancies without the joinder or consent of the other joint tenant⁵ by either (1) a conveyance of legal title to a third person, whether or not pursuant to an agreement that the third person will reconvey the title back to the joint tenant,⁶ or (2) execution of a written instrument, including either a deed to oneself

1. CAL. CIV. CODE §683.

2. *Compare id.* with CAL. CIV. CODE §683.2.

3. *Clark v. Carter*, 265 Cal. App. 2d 291, 295, 70 Cal. Rptr. 923, 926 (1968)

4. *See Burke v. Stevens*, 265 Cal. App. 2d 30, 34, 70 Cal. Rptr. 87, 91 (1968) (use of an intermediary strawman), *Reiss v. Reiss*, 45 Cal. App. 2d 740, 747, 114 P.2d 718, 722 (1941) (use of a trust). *But see Riddle v. Harmon*, 102 Cal. App. 3d 524, 530, 162 Cal. Rptr. 530, 534 (1980) (holding that one joint tenant may unilaterally sever the joint tenancy without the use of an intermediary device); *see also Estate of Carpenter*, 140 Cal. App. 3d 709, 712, 189 Cal. Rptr. 651, 652 (1980).

5. CAL. CIV. CODE §683.2.

6. *Id.* §683.2(a)(1).

or a written declaration that the joint tenancy is severed, that evidences an intent to sever the joint tenancy.⁷

In addition, Chapter 519 gives effect to any written agreements between the joint tenants limiting the right of severance⁸ and provides that methods of severance listed are non-exclusive.⁹ Finally, notwithstanding specified exceptions, Chapter 519 applies to all joint tenancies in real property regardless of the date of creation.¹⁰

7. *Id.* §683.2(a)(2).

8. *Id.* §683.2(b).

9. *Id.* §683.2(a).

10. *Id.* §683.2(c). If a joint tenant died before January 1, 1985, the validity of a severance is determined by the law in effect at the time of death. *Id.* Chapter 519 does not affect the validity of a severance validly made under the law in effect at the time of the severance. *Id.*

Property; quiet title and partition judgments

Code of Civil Procedure §§764.040, 764.050, 874.220, 874.230 (repealed); §§764.045, 874.225 (new); §§764.030, 874.210 (amended). AB 810 (McAlister); 1984 STAT. Ch 20

Under existing law, judgments in quiet title¹ and partition² actions are binding and conclusive on persons, regardless of legal disability, who were parties to the action.³ In addition, the judgment is binding on nonparties who had a claim that was not of record at the time the *lis pendens*⁴ was filed, or if none were filed, at the time the judgment was recorded.⁵ Prior law provided that a person with an unrecorded claim who was not a party would be bound by the judgment if the claim were actually known by the plaintiff of either the quiet title or partition action or the claim was reasonably apparent from an inspection of the property.⁶ Chapter 20 clarifies the time of the knowledge and inspection requirements to be the time the *lis pendens* was filed, or if none were filed, at the time the judgment

1. See generally CAL. CIV. PROC. CODE §§760.010-764.070 (statutory procedures, including definitions, for a quiet title action).

2. See generally *id.* §§872.010-874.240 (general provisions and procedures in an action for partition).

3. *Id.* §§764.030(a), 874.210(a).

4. See *id.* §409 (requirements relating to when a *lis pendens* is necessary and what must be recorded).

5. *Id.* §§764.030(b), 874.210(c).

6. 1980 Cal. Stat. c. 44, §15, at 114 (enacting CAL. CIV. PROC. CODE §764.050); 1976 Cal. Stat. c. 73, §6, at 128 (enacting CAL. CIV. PROC. CODE §874.230).

was entered.⁷ Chapter 20 also provides that a claimant may be bound in the action if the claim were acquired from a party to the action after commencement of the action and with actual knowledge of the action.⁸

7. CAL. CIV. PROC. CODE §§764.045, 874.225. See California Law Revision Commission, *Recommendation Relating to Effect of Quiet Title and Partition Judgments*, 17 CAL. L. REVISION COMM'N REPORTS 947, 952-55 (1984) [hereinafter referred to as *Recommendation*]. Compare CAL. CIV. PROC. CODE §§764.045, 874.225 with 1980 Cal. Stat. c. 44, §15, at 114 (enacting CAL. CIV. PROC. CODE §§764.040, 764.050) and 1976 Cal. Stat. c. 73, §6, at 128 (enacting CAL. CIV. PROC. CODE §§874.220, 874.230).

8. CAL. CIV. PROC. CODE §§764.045, 874.225. The effect of judgment on parties and nonparties is incorporated by specific reference to California Civil Procedure Code section 1908. *Id.* See also *Recommendation*, *supra* note 7, at 953, 955 (specific reference to California Civil Procedure Code section 1908(a)(2)).

Property; cotenant ouster

Civil Code §843 (new).

AB 2343 (Moore); 1984 STAT. Ch 241

Under California case law, a cotenant¹ in possession of real property is not required to pay a cotenant who is out of possession for use and occupation of their common land.² A duty to pay arises, however, if the tenant out of possession has been ousted.³ One difficulty with existing case law has been determining when an ouster has occurred.⁴ Chapter 241 is an attempt to provide a procedure by which a tenant out of possession can establish an ouster.⁵

Chapter 241 first requires that the tenant out of possession make a written demand to the tenant in possession for concurrent use of the property.⁶ If the tenant in possession does not provide unconditional concurrent possession within sixty days after service of

1. CAL. CIV. CODE §§683 (joint tenant defined), 685 (interest in common defined).

2. See *Brunscher v. Reagh*, 164 Cal. App. 2d 174, 176, 330 P.2d 396, 398 (1958) (general rule that each tenant in common has a right to occupy the common property and that one tenant cannot recover rent from the other tenant).

3. See *id.* at 176-77, 330 P.2d at 398. A wrongfully ousted cotenant may recover the damages resulting from the ouster which ordinarily are his share of the value of the use and occupancy of the land during the period of the ouster. *Id.*; see also *Zaslow v. Kroenert*, 29 Cal. 2d 541, 548, 176 P.2d 1, 5 (1946) (definition of ouster).

4. California Law Revision Commission, *Recommendation Relating to Rights Among Cotenants in Possession and Out of Possession of Real Property*, 17 CAL. L. REVISION COMM'N REPORTS 1025, 1028 (1983) [hereinafter cited as *Recommendation*].

5. *Id.* at 1030.

6. CAL. CIV. CODE §843(b) (the written demand will make specific reference to this section and to the time within which concurrent possession must be offered under this section).

this written demand, ouster is established.⁷ Damages for ouster are recoverable in an independent action⁸ or as part of an action for possession or partition of the property.⁹ Chapter 241, however, does not preclude the cotenants, at any time before or after a demand is served, from seeking partition of the property or reaching an agreement about the right of possession or the payment of a reasonable rental value in lieu of possession.¹⁰

7. *Id.* §843(b); see also *Recommendation*, *supra* note 4, at 1031 (establishment of an ouster under CAL. CIV. CODE §843(b) also may mark the beginning of the period required for the tenant in possession to establish title by adverse possession against the tenant out of possession).

8. See *Brunscher v. Reagh*, 164 Cal. App. 2d 174, 177, 330 P.2d 396, 398 (1958).

9. CAL. CIV. CODE §843(c).

10. *Id.* §843(d).

Property; subdivision map approval

Government Code §§66418.1, 66498.1, 66498.2, 66498.3, 66498.4, 66498.5, 66498.6, 66498.7, 66498.8* (new); §§66424.5, 66428, 66452, 66452.6, 66463.5 (amended).

SB 1660 (Montoya); 1984 STAT. Ch 1113

(Operative January 1, 1986)

Under existing law, a subdivider who has submitted a tentative map¹ to a local agency for approval has no guarantee that the development² can be completed in accordance with the law applicable at the time the tentative map was submitted.³ The California Supreme Court held in *AVCO Community Developers, Inc. v. South Coast Regional Commission*⁴ that no vested right to complete a development in accordance with then existing law exists until substantial work has been performed in good faith reliance on a permit issued by the government.⁵

With the enactment of Chapter 1113, the subdivider has the option

* Section 66498.8 of the Government Code shall become operative January 1, 1985.

1. CAL. GOV'T CODE §66424.5(a) (definition of tentative map).

2. *Id.* §66418.1 (definition of a development).

3. See 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Secured Transactions in Real Property*, §§126-128 (8th ed. 1973).

4. 17 Cal. 3d 785, 553 P.2d 546, 132 Cal. Rptr. 386 (1976).

5. *Id.* at 791, 553 P.2d at 550, 132 Cal. Rptr. at 389.

of seeking a vested right (hereinafter referred to as development right) to complete a residential⁶ development in accordance with specified ordinances, policies, and standards.⁷ To obtain the development rights, the subdivider must file a vesting tentative map⁸ if a tentative map is required under existing law.⁹ Approval or conditional approval of the vesting tentative map confers the development rights.¹⁰

Under Chapter 1113, if the development described in a vesting tentative map does not comply with zoning ordinances in existence at the filing of the vesting tentative map, the inconsistency must be noted on the map.¹¹ The map either may be denied or conditionally approved provided that the inconsistency is removed.¹² In addition, an amendment to the vesting tentative map may be applied for at any time prior to the expiration of the vesting tentative map.¹³ The filing of a vesting tentative map is not a prerequisite to the approval of any proposed subdivision when development rights are not being sought.¹⁴

Subsequent to the filing of a vesting tentative map, Chapter 1113 permits the property owner or designee to seek approvals from a local agency for development that differs from the vesting tentative map.¹⁵ In addition, the local agency can condition or deny a permit, approval, extension, or entitlement if (1) a failure to do so would be a threat to the health and safety of the subdivision or the community,¹⁶ or (2) the condition is required to comply with state or federal law.¹⁷

Under Chapter 1113, the development right exists for an initial period of at least one year but not more than two years beyond the recordation of the final map.¹⁸ If a project under a single vesting tentative map has multiple phases, the initial time limit for each phase begins with the recordation of the final map for that phase.¹⁹ If the

6. CAL. GOV'T CODE §66498.7.

7. *Id.* §66498.1(b).

8. *Id.* §66424.5(b) (definition of a vesting tentative map).

9. *Id.* §66498.1(a). Under certain circumstances, a parcel map rather than a tentative map is required. In these circumstances, Chapter 1113 allows for the filing of a vesting tentative map in place of the parcel map. *Id.* §66428.

10. *Id.* §66498.1(b).

11. *Id.* §66498.3(a).

12. *Id.*

13. *Id.* §66498.2.

14. *Id.* §66498.5.

15. *Id.* §66498.4. These approvals and permits may be granted by the local agency to the extent that they are authorized under applicable law. *Id.*

16. *Id.* §66498.1(c)(1).

17. *Id.* §66498.1(c)(2).

18. *Id.* §66452.6(g). If the vesting tentative map is being filed in conjunction with a parcel map rather than a final map, the initial time periods are computed from the recording of the parcel map instead of the final map. *Id.* §66463.5(f).

19. *Id.* §66452.6(g). The one year period also is extended if the agency takes longer than

subdivider submits a complete application for a building permit during the initial time period, the development rights will continue until the building permit expires or is extended.²⁰ These time limits are extended for up to five years when there is a development moratorium²¹ imposed or a lawsuit involving the approval of a vesting tentative map is pending.²²

thirty days to process an application for a grading permit or design or architectural review. In addition, the subdivider may apply for a one year extension, and, if the extension is denied, the subdivider may appeal within 15 days the denial to the legislative body. *Id.* §66452.6(g).

20. *Id.* §66452.6(h).

21. *Id.* §66463.5(d). At the end of a development moratorium, the map will have the same amount of time to run as it had before the moratorium, unless that time is less than 120 days, at which time the map shall run for 120 days. *Id.*

22. *Id.* §66463.5(e).

Property; housing—age restrictions

Civil Code §51.3 (new); Government Code §65915 (amended).

AB 3909 (Davis); 1984 STAT. Ch 787

SB 1553 (Boatwright); 1984 STAT. Ch 1333

Under existing law as expressed in *Wolfson v. Marina Point*¹ and *O'Conner v. Village Green*,² age restrictions on housing in apartments and condominiums are prohibited by the Unruh Civil Rights Act.³ Both cases hold that covenants, conditions and restrictions,⁴ and written lease agreements⁵ that prohibit those under eighteen years of age from living on the premises are invalid. The court in *Wolfson* stated that under certain circumstances, age restrictions would be allowed, but specific guidelines were not given to determine the validity of age restrictions.⁶

1. 30 Cal. 3d 721, 640 P.2d 115, 180 Cal. Rptr. 496 (1982).

2. 33 Cal. 3d 790, 662 P.2d 427, 191 Cal. Rptr. 320 (1983).

3. CAL. CIV. CODE §51.

4. *O'Conner*, 33 Cal. 3d at 792, 662 P.2d at 428, 191 Cal. Rptr. at 321. The conditions, covenants, and restrictions contained a provision prohibiting those under eighteen from living on the premises. *Id.*

5. *Marina Point*, 30 Cal. 3d at 726, 640 P.2d at 117, 180 Cal. Rptr. at 499. The apartment dwellers lease contained a provision that no one under the age of eighteen could reside in the apartments. *Id.*

6. See *Wolfson*, 30 Cal. 3d at 742-743, 640 P.2d at 122-123, 180 Cal. Rptr. at 504-505. No comment was made in *O'Conner* about the enforceability of age restrictions concerning senior housing. See letter from Bion Gregory to Senator Leroy Green, March 9, 1984 (copy on file at *Pacific Law Journal*).

Chapter 1333 is intended to establish and preserve specially adapted housing for senior citizens.⁷ Chapter 1333 provides that (1) conditions, covenants, and restrictions or other governing documents for condominiums,⁸ stock cooperatives,⁹ limited equity housing cooperatives,¹⁰ and planned developments¹¹ (hereinafter referred to as restrictions), or (2) a written policy of an owner of a multiple family residential rental property limiting occupancy, residency, or use of the housing to persons of stipulated ages (hereinafter referred to as written policy) are appropriate if certain conditions are met.¹²

Chapter 1333 establishes four major conditions. The first requires that, to have a valid limitation on occupancy, residency, or use, the restrictions or written policy must allow, at a minimum, one person to be at least sixty-two years of age, or fifty-five years of age if in a senior citizen housing development¹³ (hereinafter referred to as a qualifying resident).¹⁴ In addition, any other resident must be at least forty-five years of age, unless the resident is (1) the spouse or cohabitant of the qualified resident or (2) a person who resides with and provides primary physical or economic support to the qualifying resident.¹⁵

The second condition requires the restrictions to permit temporary residency of a person less than forty-five years of age. This period may not be less than sixty days in any calendar year.¹⁶

The third condition stipulates that the death, dissolution of marriage, hospitalization, or other prolonged absence of the qualifying resident cannot preclude the other qualified permanent resident from continuing residency.¹⁷

The final condition requires that to be subject to Chapter 1333, the development¹⁸ must have been developed as a senior citizen housing

7. "The legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state." CAL. CIV. CODE §51.3; *see also* 1984 Cal. Stat. c. 787, §1, at ____.

8. CAL. BUS. & PROF. CODE §783 (definition of a condominium).

9. *Id.* §11003.2 (definition of a stock cooperative).

10. *Id.* §11003.4 (definition of a limited-equity housing cooperative).

11. *Id.* §§11003, 11003.1 (definition of a planned development).

12. CAL. CIV. CODE §51.3(d).

13. *Id.* §51.3(a)(2) (definition of senior housing development).

14. *Id.* §51.3(d); *see id.* §51.3(a)(1) (definition of qualifying resident).

15. *Id.* §51.3(d).

16. *Id.* §51.3(e).

17. *Id.* §51.3(f).

18. Development includes condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property. *Id.* §51.3(g).

19. Any multiple family housing development that contained age restrictions on January

development or have been substantially rehabilitated or renovated and immediately used for senior citizen housing.¹⁹

Under existing law, density bonuses,²⁰ or other incentives of equivalent financial value, are granted if the developer agrees to build (1) at least twenty-five percent of a development for persons of low or moderate income or (2) at least ten percent for lower income households.²¹ Chapter 1333 supplements existing law by providing that a developer may qualify for a density bonus if the developer constructs at least fifty percent of the total dwelling units of a housing development as a senior housing development.²²

1, 1984 can enforce those restrictions until December 31, 1986 to the extent permitted by Chapter 1333. Existing documents or written policies that contain age restrictions may be amended until December 31, 1986, but failure to amend will not defeat enforcement of the age restrictions to the extent permitted by Chapter 1333. In addition, those who had a right, on January 1, 1985 to reside in, occupy, or use housing subject to the new law shall not be deprived of their right. *Id.*

20. CAL. GOV'T CODE §65915(c) (definition of density bonus).

21. 1983 Cal. Stat. c. 634, §1, at ____ (amending CAL. GOV'T CODE §65915).

22. *Id.* §65915(a). Compare CAL. CIV. CODE §65915 with 1983 Cal. Stat. c. 634, §1, at ____ (amending CAL. GOV'T CODE §65915) (supplementation of existing law regarding qualifications for density bonuses).

Property; extension of conditions, covenants, or restrictions

Civil Code §846.6 (new).

AB 2905 (N. Waters); 1984 STAT. Ch 650

Prior to the enactment of Chapter 650, property owners in common interest subdivisions¹ had no means by which to extend terminable conditions, covenants, or restrictions.² With the enactment of Chapter 650, any set of conditions, covenants, or restrictions on a subdivision that specify a termination date, but do not provide for extending the termination date, may be extended upon the approval of fifty percent of the property owners in the subdivision.³ Furthermore, Chapter 650 provides that an extension cannot exceed the initial term of the conditions, covenants, or restrictions, or twenty years, whichever is less.⁴

1. CAL. BUS. & PROF. CODE §§11000, 11000.1, 11000.5, 11004.5 (definitions of subdivision).

2. CAL. CIV. CODE §846.6(a).

3. *Id.* §846.6(b). The conditions, covenants, or restrictions may provide that a greater percentage than 50 percent is required for an amendment. *Id.*

4. *Id.* §846.6(d).

Property; condominiums

Civil Code §§783, 1350, 1351 (amended).
AB 3373 (Stirling); 1984 STAT. Ch 291

Under prior law, a condominium was defined as an undivided common interest in a portion of a parcel of real property *and* a separate interest in space in a building on that real property.¹ Chapter 291 revises the definition of condominium by eliminating the requirement that the separate interest in space be within a building.² With the enactment of Chapter 291, the area within such boundaries may be filled with air, earth, water, or any combination thereof, and is not required to be physically attached to land except by easements and, if necessary, support.³ The separate interest also must be described in sufficient detail⁴ on a recorded document⁵ so that all the boundaries can be located.⁶

Chapter 291 modifies the required contents of a recorded condominium plan.⁷ Prior law necessitated diagrammatic floor plans of the building or buildings in sufficient detail to identify each unit.⁸ Chapter 291 requires the plan to include (1) a reference to sufficient monumentation on the ground to locate applicable boundaries,⁹ (2) a three dimensional description of the property,¹⁰ and (3) a certificate consenting to the recordation of the condominium plan.¹¹ In the case

1. 1969 Cal. Stat. c. 275, §1, at 624 (amending CAL. CIV. CODE §783). *See generally* 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §§232-237 (8th ed. 1973 and Supp. 1980) (discussion of requirements necessary to qualify as a condominium in California).

2. 1969 Cal. Stat. c. 275, §1, at 624 (amending CAL. CIV. CODE §783).

3. CAL. CIV. CODE §783.

4. The description may refer to:

- (i) Boundaries described in the recorded final map, parcel map, condominium plan, or other document;
- (ii) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or a portion thereof;
- (iii) an entire structure containing one or more separate interests in space; or
- (vi) any combination thereof. CAL. CIV. CODE §783.

5. The document may consist of a recorded final map, parcel map, condominium plan or other document. *Id.*

6. *Id.* *See also* Ross, *Condominium in California—The Verge of an Era*, 36 S. CAL. L. REV. 351, 354-55 (1963) (discussion of the limitations of a requirement that space be within a building).

7. *Compare* 1969 Cal. Stat. c. 275, §1, at 624 (amending CAL. CIV. CODE §783) *with* CAL. CIV. CODE §1351.

8. 1969 Cal. Stat. c. 275, §1, at 624 (amending CAL. CIV. CODE §783).

9. CAL. CIV. CODE §1351(i).

10. *Id.* §1351(ii). One or more dimensions may extend for an indefinite distance upwards or downwards in sufficient detail to identify the common areas and each separate interest in space. *Id.*

11. *Id.* §1351(iii).

of a condominium agreement that ceases upon the termination of an estate for years, Chapter 291 requires the certificate to be signed by the lessor and the lessee of the estate,¹² if the property is subject to a life estate, by all the life tenants and remainder interests,¹³ and by the trustee or beneficiary of each deed of trust and the mortgagee of each recorded mortgage.¹⁴ These interest holders also are qualified to amend or to revoke the recorded condominium plan.¹⁵

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

Property; deposit of escrow funds

Financial Code §17409 (amended).

SB 1405 (Beverly); 1984 STAT. Ch 511

(*Effective July 17, 1984*)

Under prior law, all monies deposited in escrow had to be deposited in a demand or checking account in a bank.¹ The funds also could be deposited in an interest-bearing account in a bank or state or federal savings and loan association if kept separate, distinct, and apart from the funds of the escrow agent.²

In an attempt to clarify the differing interpretations of prior law,³ Chapter 511 provides that all monies deposited into escrow *first* must be deposited in a non-interest-bearing demand or checking account in a bank, or a state or federal savings bank, or a state or federal savings and loan association.⁴ *After* being deposited, the funds may be redeposited in an interest-bearing account at a bank, state or federal

1. 1951 Cal. Stat. c. 364, §17409, at 1112 (enacting CAL. FIN. CODE §17409).

2. *Id.*

3. See 1984 Cal. Stat. c. 511, §3, at ____;

Section 17409 of the Financial Code has received a variety of interpretations by regulatory agencies, citizens and corporations of this state as it relates to the deposit of escrow funds. California citizens, escrow companies, and depository institutions will be aided in the provision of certainty and consistency as to the treatment of deposits of home or business owner funds into escrow when real property is being purchased in California. To foster the security and peace of mind of California citizens placing these deposits in escrow accounts, it is essential that this act take effect immediately. *Id.*

4. CAL. FIN. CODE §17409.

savings bank, or state or federal savings and loan association.⁵ Chapter 511 also permits the funds to be deposited in a state or federal credit union if the depositor is qualified under the bylaws of the credit union, and the funds are kept separate, distinct, and apart from the funds of escrow agent.⁶

5. *Id.*

6. *Id.*

Property; real estate brokers—deposit of funds

Business and Professions Code §10145 (amended).
SB 1451 (Seymour); 1984 STAT. Ch 560

Prior law required a real estate licensee to place any funds received in connection with a transaction into (1) a neutral escrow depository, (2) the possession of his principal, or (3) a trust fund account maintained in a bank or recognized depository.¹ Any funds deposited into a trust fund account had to remain in the account until disbursed in accordance with instructions from the lender or borrower.² In addition, existing law requires a separate recordation of all funds and their disposition.³

Under Chapter 560, a real estate broker⁴ who accepts funds belonging to others in connection with any transaction is required to deposit all funds that are not immediately placed into a neutral escrow depository, or into the hands of his principal, into a trust fund maintained by the broker in a bank or recognized depository.⁵ The funds must remain in the trust account until disbursed in accordance with instructions from the person entitled to the funds.⁶

Chapter 560 provides the additional option of allowing a broker to deposit funds into an interest-bearing account in a bank or savings and loan association if a request is made by (1) the owner of the funds, or (2) the principals to a transaction or series of transactions from which the broker has received funds.⁷ The following conditions,

1. 1961 Cal. Stat. c. 886, §15, at 2327 (enacting CAL. BUS. & PROF. CODE §10145).

2. *Id.*

3. CAL. BUS. & PROF. CODE §10145.

4. *Id.* §10131.1 (definition of real estate broker); *see also* §§10237-10239.35 (real estate broker for purposes of Chapter 560).

5. *Id.* §10145(a).

6. *Id.*

7. *Id.* §10145(d).

however, must be satisfied: (1) the account must be in the name of the broker as trustee for the specified beneficiary or specified principal of a transaction or series of transactions;⁸ (2) all funds must be covered by insurance provided by an agency of the federal government;⁹ (3) the funds must be kept separate, distinct, and apart from any other funds held by the broker;¹⁰ (4) the broker must disclose to the person from whom the funds were received and to any beneficiary whose identity is known at the time the account is opened, the nature of the account, how interest is to be calculated and paid, who will pay service charges, if any, and any notice requirements for withdrawal of the funds;¹¹ (5) neither the broker nor anyone licensed under the broker may benefit from the interest earned;¹² and (6) if the transaction is an executory sale, lease, or loan when the broker is accepting funds to be applied to the sale, lease, or loan, the parties to the contract must specify in the contract or collateral written agreement who is to receive the interest earned on the funds.¹³ The broker has no obligation to deposit the funds into an interest-bearing account unless requested and the above conditions are met,¹⁴ and if the broker informed the person making the request that the funds will not be deposited in an interest-bearing account.¹⁵

Chapter 560 provides that real estate salespersons must deliver any funds they accept to their broker or, if instructed by their broker, into (1) the hands of the broker's principal, (2) a neutral escrow depository, or (3) the broker's trust fund account.¹⁶ A broker acting as a principal must place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.¹⁷ Chapter 560 also requires the broker to maintain a separate record of all trust fund accounts including the receipt and disposition of all funds *and* any interest earned.¹⁸

8. *Id.* §10145(d)(1).

9. *Id.* §10145(d)(2).

10. *Id.* §10145(d)(3).

11. *Id.* §10145(d)(4).

12. *Id.* §10145(d)(5).

13. *Id.* §10145(d)(6).

14. *Id.* §10145(e).

15. *Id.*

16. *Id.* §10145(a).

17. *Id.* §10145(b). In addition, the commissioner may prescribe by regulation the circumstances in which and conditions under which funds received in trust by a broker may be deposited into an interest bearing account. *Id.* §10145(f).

18. *Id.* §10145(g).

Property; trust deeds

Civil Code §§2924c,* 2924d, 2924f, 2924g, 2934a; Code of Civil Procedure §805c (amended).

SB 1706 (Seymour); 1984 STAT. Ch 1730

Under existing law, when a trustor or mortgagor defaults and the holder of a trust deed¹ or mortgage² wishes to foreclose, a copy of the notice of default must be sent to the trustor or mortgagor.³ The trustor then has three months in which to pay the entire amount then due if under a power of sale in a trust deed, or prior to the entry of a decree of foreclosure if due under a mortgage.⁴ The amount charged includes reasonable costs and expenses.⁵

Chapter 1730 requires the notice of default sent to the trustor or mortgagor to include a statement that, although the property is in foreclosure, the trustor or mortgagor may offer it for sale provided that the sale is completed prior to the conclusion of the foreclosure.⁶ In addition, Chapter 1730 allows, after July 1, 1985, the trustor or mortgagor and the mortgagee or beneficiary to mutually agree in writing to provide additional time for the trustor or mortgagor to cure the default by transfer of the property or otherwise, establish a schedule of payments to cure the default, or both.⁷ Chapter 1730 additionally permits the charging of costs incurred as the result of a postponement not to exceed fifty dollars per postponement and a fee for a litigation guarantee in the event of a judicial foreclosure.⁸

Before property⁹ can be sold under a power of sale in a trust deed or a notice of sale in a mortgage, existing law requires that a notice of sale to be (1) recorded, (2) published, and (3) posted at the property.¹⁰ If the property is residential, the notice must be posted

* Section 2924c, as amended by Chapter 1730, will remain in effect until July 1, 1985, at which time the amendments to section 2924c made by Chapter 919 will become operative. This review reflects the amendments made by Chapter 919, but notes the law in effect until July 1, 1985.

1. See CAL. CIV. CODE §§2920, 2924 (definition of a trust deed and a mortgage); see also 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Secured Transactions in Real Property*, §§4-6 (8th ed. 1973) (discussion of trust deed and mortgage).

2. *Id.*

3. CAL. CIV. CODE §2924c(b)(1).

4. *Id.* §2924c(a)(1).

5. *Id.*

6. *Id.* §2924c(b)(1).

7. *Id.* These additional provisions of the amendment to section 2924c, relating to an agreement between the trustor and the mortgagee or beneficiary, are effective July 1, 1985. 1984 Cal. Stat. c. 1730, §9, at ____.

8. CAL. CIV. CODE §2924c(c).

9. *Id.* §2924f(a) (definition of property).

10. *Id.* §2924f(b).

on the door; but if that is not possible, the notice must be posted in a conspicuous place.¹¹ If the access to the property is denied because a common entrance is restricted by a guard fence or other similar impediment, the notice may be posted at the guard fence or other impediment.¹²

Chapter 1730 allows the court, when the trust deed or mortgage is judicially foreclosed, to require the trustor or mortgagor to pay reasonable attorney or trustee fees and the actual cost of publishing, recording, mailing and posting notices, the litigation guarantee, and the litigation cost of suit.¹³ For trust deeds or mortgages executed before this act became effective, the court instead may require the trustor or mortgagor to pay the amount set up in the trust deed or mortgage.¹⁴

In order to substitute trustees for multiple deeds of trust, existing law requires each substitution to be executed, acknowledged, and recorded.¹⁵ The substitution must contain the date of the trust deeds, the names of the trustors, the book and page where the trust deeds are recorded, and the name of the new trustee.¹⁶ When there are multiple deeds of trust all having the same trustee and beneficiary, Chapter 1730 offers the alternative of recording a substitution without the necessity of setting forth the names of all the trustors and the recording dates for all of the trust deeds.¹⁷ No notice of default, however, will be valid unless a substitution complying with existing law first is recorded.¹⁸

11. *Id.*

12. *Id.*

13. CAL. CIV. PROC. CODE §580c.

14. *Id.*

15. CAL. CIV. CODE 2934a(a)(1).

16. *Id.* §2934(a)(2).

17. *Id.* §2934a(a)(3).

18. *Id.*

Property; liens

Civil Code §2906 (new).

AB 2383 (Naylor); 1984 STAT. Ch 565

Existing law provides that people having an interest in real property can redeem that property from a lien prior to foreclosure of their right of redemption.¹ Under prior law, all contracts restraining

1. CAL. CIV. CODE §2903. *See generally* 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW,

that right of redemption from a lien were void.² With the enactment of Chapter 565, a contract in the form of an option granted to a secured party by a debtor to acquire an interest in real property collateral³ is valid, despite the debtor's equity of redemption.⁴ Chapter 565 stipulates that, in order to be valid, the right to exercise the option cannot be dependent upon the default of the debtor with respect to the security agreement.⁵ Chapter 565 does not apply, however, to residential real property containing four or fewer units.⁶

Real Property, §134 (8th ed. 1973).

2. CAL. CIV. CODE §2889; *see also* *Lobingier v. Skinner*, 93 Cal. App. 695, 700, 270 P. 394, 396 (1928) (stating the favored position of the right of redemption in the law).

3. *Thomson-Houston Electric Co. v. Capitol Electric Co.*, 56 F. 849, 854 (D. Tenn. 1893) (defining "collateral" as a separate obligation attached to any other contract to guarantee performance).

4. CAL. CIV. CODE §2906. The option also takes priority at recordation. *Id.*

5. *Id.* The option will not be deemed invalid or ineffective on the basis that the secured party has impaired the debtor's equity of redemption in violation of common law or California Civil Code section 2889. *Id.*

6. *Id.*

Property; mineral rights

Civil Code §794 (repealed); §§883.110, 883.120, 883.130, 883.140, 883.210, 883.220, 883.230, 883.240, 883.250, 883.260, 883.270 (new). AB 2278 (McAlister); 1984 STAT. Ch 240

California law has provided for the termination of mineral right property interests that have become dormant¹ and the related impairment of surface and subsurface marketability² through various measures.³ Case law has held that a court can declare a mineral right

1. The definition of dormancy depends upon the method of clearing title which is involved. *See Gerhard v. Stephens*, 68 Cal. 2d 864, 890-91, 442 P.2d 692, 707-08 (1968). *Cf.* CAL. CIV. CODE §883.220(a)-(c).

2. The large scale reservation of mineral rights impedes marketability of surface area because the conveyance of subsurface mineral rights includes rights of access over the surface and restricts the use of the surface. Development of subsurface mineral interests also are impeded by dormant mineral interests by discouraging drilling and other exploration due to the increased risk that a dormant mineral interest holder may be able to claim a right to participate in any production from the exploration. *See California Law Revision Commission, Recommendation Relating to Dormant Mineral Rights*, 17 CAL. L. REVISION COMM'N REPORTS 957, 962 (1984) [hereinafter referred to as *Recommendation*]; *see also* Comment, *Abandonment of Mineral Rights*, 21 STAN. L. REV. 1227, 1231-35 (1969) (discussion of effect of dormant mineral interests on marketability of property).

3. *See infra* notes 5-7 and accompanying text.

abandoned based upon a finding of intent to abandon and nonuse.⁴ Additionally, statutory law allows surface entry rights under a twenty year oil and gas lease to be terminated under certain circumstances⁵ and leases of land for production of oil to be limited to ninety-nine years.⁶ Moreover, statutory law provides for the quitclaim release of dormant mineral leases.⁷

While maintaining the existing means of terminating a dormant mineral right,⁸ Chapter 240 has codified a series of provisions that provide an additional vehicle through which dormant mineral interests may be terminated,⁹ while protecting the rights of mineral owners.¹⁰

Rights Affected

Existing law provides for the termination of dormant mineral right interests in the case of land leases,¹¹ surface entry rights for oil and gas leases over twenty years old,¹² and for mineral rights in fugacious minerals¹³ that are incorporeal hereditaments.¹⁴

Chapter 240 allows the owner of real property subject to a mineral right to bring an action to terminate the mineral right if the right is dormant.¹⁵ All mineral rights, fugacious or nonfugacious,¹⁶ organic or inorganic,¹⁷ regardless of the term or form of the interest,¹⁸ are subject to this action to terminate.¹⁹ Chapter 240 specifically excludes, however, mineral rights reserved to the United States,²⁰ a state or

4. Gerhard v. Stephens, 68 Cal. 2d 864, 890-91, 442 P.2d 692, 712 (1968).

5. CAL. CIV. PROC. CODE §§772.010-772.060. Limiting circumstances upon termination include the lack of a termination right in certain counties, and that the termination may not adversely affect the production of oil and gas by the lessee. *Id.* §§772.010, 772.040.

6. CAL. CIV. CODE §718(f).

7. *Id.* §883.140 (incorporating 1953 Cal. Stat. c. 945, §1, at 2321 (enacting CAL. CIV. CODE §794)).

8. See *supra* notes 4-7 and accompanying text.

9. CAL. CIV. CODE §§883.210-883.270.

10. *Id.* §883.130.

11. *Id.* §883.140 (incorporating 1953 Cal. Stat. c. 945, §1, at 2321 (enacting CAL. CIV. CODE §794)).

12. CAL. CIV. PROC. CODE §§772.010-772.060.

13. See generally Comment, *Abandonment of Mineral Rights*, 21 STAN. L. REV. 1227, 1229-30 (description of delineation between fugacious and nonfugacious minerals).

14. Gerhard v. Stephens, 68 Cal. 2d 864, 886, 442 P.2d 692, 707-08 (1968).

15. CAL. CIV. CODE §883.210.

16. *Id.* §883.110.

17. *Id.*

18. *Id.* The interest can be created by grant or reservation as a fee or a lesser interest, mineral, royalty, or leasehold, absolute or fractional, corporeal or incorporeal and includes express or implied appurtenant surface rights. The grant of minerals includes an implied right to extract them. *Id.*

19. *Id.* §883.210.

20. *Id.* §883.120(a).

local public entity,²¹ a person in possession,²² or a conservation easement²³ from the procedure to terminate dormant mineral rights.²⁴

Expired or Abandoned Mineral Right Interest

Existing law permits a lessor²⁵ to demand that the lessee²⁶ of an abandoned mineral interest quitclaim²⁷ the interest to the lessor or be held liable for all damages sustained by the lessor as a result of the refusal, in addition to all reasonable attorney fees fixed by the court and \$150.²⁸ Chapter 240 maintains the viability of this action,²⁹ but establishes that this procedure is not a prerequisite to the newly established statutory action to clear title of a dormant mineral interest.³⁰

Procedure for Termination

Existing law relies primarily upon the common law principles of abandonment to encourage the full use and development of real property.³¹ The determination of abandonment relies upon a judicial determination of intent.³² Chapter 240 establishes an independent method for termination of a dormant mineral right.³³ A termination action may be brought if for the twenty years preceeding the action³⁴ (1) no production, development, or any other operation affected the

21. *Id.* §883.120(b).

22. *Id.*; see also *id.* §880.240 (additional description of interests not subject to the provisions of Chapter 240).

23. See *supra* note 22 and accompanying text.

24. CAL. CIV. CODE §883.120(a)(b).

25. See *id.* §883.140 (lessee includes an assignee or other successor in interest of the lessee).

26. See *id.* (lessor includes a successor in interest or heir or grantee of the lessor).

27. See *Buller v. Buller*, 62 Cal. App. 2d 694, 699, 145 P.2d 653, 655 (1944) (a quitclaim deed is a conveyance which transfers only the interest which the grantor has).

28. CAL. CIV. CODE §883.140(c) (incorporating 1953 Cal. Stat. c. 945, §1, at 2321 (enacting CAL. CIV. CODE §794)).

29. CAL. CIV. CODE §883.140(a)-(c).

30. *Id.* §883.140(d).

31. See *Recommendation, supra* note 2, at 963; see also Comment, *The Oil and Gas Profit a Prendre: What Effect on California Law?*, 2 LOY. L.A.L. REV. 136, 150 (1969); Willemsen, *Improving California's Quiet Title Laws*, 21 HASTINGS L.J. 835, 856 (1970) (additional discussion of the abandonment remedy to dormant mineral rights).

32. *Gerhard v. Stephens*, 68 Cal. 2d 864, 886, 442 P.2d 692, 707-08 (1968); see also *Recommendation, supra* note 2, at 963 (requirement of judicial determination of intent to abandon).

33. See *Gerhard v. Stephens*, 68 Cal. 2d 864, 890-91, 442 P.2d 692, 712 (1968). Cf. CAL. CIV. CODE §§883.210-883.270.

34. The 20 year period is consistent with the 20 year time period prescribed for termination of a right of entry or occupation of surface lands under an oil or gas lease. See CAL. CIV. PROC. CODE §§772.110-772.660. The 20 year period can be extended indefinitely by periodic recodation of a notice of intent to preserve the mineral right. See *id.* §883.230; *Recommendation, supra* note 2, at 972.

minerals;³⁵ (2) no property tax was paid on the mineral right;³⁶ and (3) no instrument evidencing the mineral right was recorded.³⁷ If all these requirements are met, the action must be brought in the same manner as a quiet title proceeding³⁸ in the superior court of the county where the real property that is the subject of the action is located.³⁹

Rights of the Mineral Interest Holder

Under existing law, the recordation of a notice of intent to preserve a mineral right creates a presumption that the claimant has not abandoned the mineral right in a common-law abandonment action.⁴⁰ Chapter 240 provides that a recordation of this notice⁴¹ is a conclusive bar to the statutory action for termination.⁴² Additionally, a court has the discretion to require the property owner to compensate the mineral right owner⁴³ or, alternatively, to permit the mineral right owner to record a late notice of intent.⁴⁴ The discretion of the court, however, is contingent upon (1) the mineral right having substantial value,⁴⁵ and (2) the judgment being equitable in that particular case.⁴⁶

Effect of Termination

Under Chapter 240, if a mineral right is deemed terminated, the right is essentially transferred to the owner of the property.⁴⁷ This termination procedure becomes effective January 1, 1985,⁴⁸ subject to a five year grace period⁴⁹ during which a mineral right owner can file a notice of intent to preserve the interest.⁵⁰

35. CAL. CIV. CODE §883.220. Any other operation can include exploration, drilling, mining, on or below the surface of the property or on other property, as long as the operation affects the mineral right in question. *Id.*

36. *Id.* §883.220(b).

37. *Id.* §883.220(c).

38. *Id.* §883.230(b); *see also* CAL. CIV. PROC. CODE §§760.010-764.010 (quiet title proceedings).

39. CAL. CIV. CODE §883.240(a).

40. *Id.* §883.310 (presumption affecting burden of proof).

41. A notice of intent to preserve the mineral right will constitute conclusive evidence that the mineral right is not dormant if the right is recorded (1) within the 20 years preceeding commencement of the termination action, or (2) pursuant to the procedures listed in California Civil Code section 883.250. *See id.* §883.230(b).

42. *Id.* §883.230(b); *see Recommendation, supra* note 2, at 972.

43. CAL. CIV. CODE §883.250. The compensation may be required as a condition of termination. *Id.*

44. *Id.*

45. *Id.* §883.250. The mineral right that qualifies as dormant is presumed not to have substantial value. *Id.* §883.250(c).

46. *Id.* §883.250.

47. *Id.* §883.260; *see also Recommendation, supra* note 2, at 973 (effects of termination).

48. CAL. CIV. CODE §883.270.

49. *Id.* §880.370.

50. *Id.*

Property; water rights

Water Code §2702 (repealed); §2529 (new); §§2700, 2701, 2750, 12986 (amended).

AB 3535 (Costa); 1984 STAT. Ch 1654

Under existing law, the State Water Resources Control Board¹ (hereinafter referred to as the Board) is required to review petitions of claimants to rights of any stream system² and to determine the status of those claims.³ Incidental to this determination, the Board must issue a notice of prescribed information⁴ to the petitioners as soon as possible.⁵ Chapter 1654 additionally requires the Board to file, with the recorder of each county affected by the claim, a notice of specified information⁶ within sixty days subsequent to the date by which claimants are required to notify the Board of their intention to file proof of claim.⁷ Chapter 1654 requires that the notice must (1) identify the owners of parcels riparian⁸ to the stream or parcels to which water is diverted from the stream, and (2) be properly recorded.⁹

Chapter 1654 also specifies procedures and requirements for reconsideration of all or part of an order of determination.¹⁰ Reconsideration may be ordered upon a petition of any party affected

1. See generally CAL. WATER CODE §§174-189 (powers and duties of the State Water Resources Control Board).

2. *Id.* §2500 (definition of stream system).

3. *Id.* §2501. See also *City of Pasadena v. City of Alhambra*, 33 Cal. 2d 908, 924-25, 207 P.2d 17, 23-24 (1949) (upholding method of determination). See generally Ferrier, *Administration of Water Rights in California, Court References and Statutory Adjudications*, 44 CALIF. L. REV. 833, 843 (1956) (general description of petition review undertaken by the Board).

4. CAL. WATER CODE §2526.

5. *Id.*

6. The specified information is:

(1) The order has been entered and the proceedings are pending. (2) Information regarding the status of the proceedings may be obtained from the board. (3) The proceedings will result in a determination of the rights to water of the stream system. (4) Any claimants who fail to appear and submit proof of their claims as provided will forfeit all rights to water previously claimed by them on the stream system. (5) At the conclusion of the proceedings the superior court will enter a decree determining the water rights appurtenant to each parcel identified in the notice. *Id.* §2529(a)(1)-(5).

7. *Id.* §2529(a).

8. See *Bathgate v. Irvine*, 126 Cal. 135, 142-44, 58 P. 442, 444-45 (1899) (definition of riparian).

9. CAL. WATER CODE §2529(b). Recordation must be undertaken in such manner that anyone researching the title of a parcel will find the notice. *Id.* The board is also required to file a supplementary notice in the same manner as the original manner if additional parcels that appear to be riparian are subsequently found. *Id.* §2529(c).

10. *Id.* §2702(a).

by the order.¹¹ The petition must be filed within thirty days of the date the notice of adoption of the order of the Board is sent.¹² Reconsideration is appropriate on all pertinent parts of the record, and any arguments as may be permitted.¹³ A further hearing may be held for the purpose of receiving additional evidence upon notice to all affected parties.¹⁴

11. *Id.*

12. *Id.*

13. *Id.* §2702(b).

14. *Id.*