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Property

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Property

Property; condominiums

Business and Professions Code §§11003, 11003.1, 11003.2, 11004 (repealed and new); 11003.3 (repealed); §11018.1 (amended); Civil Code §783 (repealed and new); §§846.6, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1361, 1370, 1725, 1730 (repealed); §§783.1, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372 (new); §1133 (amended); Code of Civil Procedure §374 (repealed and new).

AB 314 (Davis); 1985 STAT. Ch 874

Support: Select Committee on Common Interest Subdivision

AB 316 (Stirling); 1985 STAT. Ch 1003

Support: Department of Real Estate

Chapter 874 enacts the Davis-Stirling Common Interest Development Act¹ which consolidates much of the existing law regulating specified residential developments.² Chapter 874 provides that these developments are to be designated common interest developments, defined by Chapter 874 to include condominiums,³ stock cooperatives,⁴ and community apartment projects.⁵ Chapter 874 further applies much of the existing law governing condominiums to all common interest developments as defined in Chapter 874.⁶

Under prior law the owner of a condominium project⁷ was *permitted* to appoint an association⁸ to manage the project.⁹ Chapter 874, however, *requires* a common interest development to be managed by an association.¹⁰ In addition, Chapter 874 allows an association,

1. CAL. CIV. CODE §1350 (short title). *See generally id.* §§1350-1372.

2. *See generally id.* §§1350-1372.

3. CAL. CIV. CODE §783 (definition of condominium).

4. *Id.* §1351(m) (definition of a stock cooperative). Chapter 874 provides that interests in stock cooperatives are to be considered interests in real property. *Id.* §783.1.

5. *Id.* §1351(c). *See id.* §1351(d) (definition of community apartment project).

6. *See generally id.* §§1350-1372.

7. *Id.* §1351(f) (definition of condominium project).

8. *Id.* §1351(a) (definition of association).

9. 1976 Cal. Stat. c. 73, §2, at 108 (amending CAL. CIV. CODE §1355).

10. *Id.* §1363.

whether incorporated or unincorporated, to exercise the same powers as a nonprofit mutual benefit corporation.¹¹

Existing law provides that a common interest development association may charge a member of the association a late fee on assessments that are delinquent¹² and create a lien¹³ upon the property of the delinquent owner for the assessments due.¹⁴ Under prior law, assessments were delinquent after thirty days and liens automatically expired after one year.¹⁵ Chapter 874 modifies prior law by decreasing to fifteen days the time period before a payment is deemed to be delinquent.¹⁶ Chapter 874 does not provide for the automatic expiration of liens created by the association.¹⁷ Furthermore, Chapter 874 also expands the types of charges that may be levied¹⁸ and increases the allowable penalty for delinquent assessments.¹⁹

Existing law permits an association to encumber the property of a member with a lien by recording a notice of delinquent assessment.²⁰ Chapter 874 provides that if the lien is to be enforced by nonjudicial foreclosure the recorded notice of delinquent assessment must include the name and address of the trustee authorized by the association to enforce the lien by sale.²¹ Existing law allows an association to enforce a lien by foreclosing on the property of the delinquent member.²² Chapter 874 extends existing law by allowing the enforcement of a lien by the use of *any* legal process.²³

11. *Id.* The association is given all the powers enumerated in section 7140 of the Corporation Code, except that an unincorporated association cannot use or adopt a corporate seal nor may the association issue membership certificates under the provisions of section 7313 of the Corporation Code. *Id.* §1363. See CAL. CORP. CODE §5059 (definition of nonprofit mutual benefit corporation).

12. CAL. CIV. CODE §1366(c) (incorporating 1982 Cal. Stat. c. 1237, §1, at 4561 (enacting CAL. CIV. CODE §1725)).

13. CAL. CIV. CODE §2872 (definition of lien).

14. *Id.* §1367(b) (incorporating 1963 Cal. Stat. c. 860, §3, at 2091 (enacting CAL. CIV. CODE §1356)).

15. 1963 Cal. Stat. c. 860, §3, at 2091 (enacting CAL. CIV. CODE §1356).

16. CAL. CIV. CODE §1366(c).

17. *Id.* §1367.

18. Compare CAL. CIV. CODE §1366(c) (allowing collection of a penalty, reasonable costs of collection including reasonable attorney fees, and interest of up to 12%) with 1982 Cal. Stat. c. 1237, §1, at 4561 (enacting CAL. CIV. CODE §1725) (allowing imposition of a penalty but not allowing costs of collection).

19. CAL. CIV. CODE §1366(c). Compare *id.* (allowing a 10% penalty) with 1982 Cal. Stat. c. 1237, §1, at 4561 (enacting CAL. CIV. CODE §1725) (providing a sliding scale for a penalty that ranges from 1% to 1.5%).

20. CAL. CIV. CODE §1367(b). Prior law called this notice a notice of assessment. Compare CAL. CIV. CODE §1367(b) with 1963 Cal. Stat. c. 860, §3, at 2091 (enacting CAL. CIV. CODE §1356).

21. *Id.* §1367(b) (applies if the lien is to be enforced as provided in Civil Code §1367(d)).

22. CAL. CIV. CODE §1367 (incorporating 1963 Cal. Stat. c. 860, §3, at 2091 (enacting CAL. CIV. CODE §1356)).

23. *Id.* §1367(d). Any sale by a trustee must be in accordance with the provisions of Civil

Chapter 1003 enacts provisions that allow the owners of a common interest development to petition the court²⁴ for a reduction of the percentage of votes required to pass an amendment of a declaration,²⁵ if more than fifty percent of the votes²⁶ of the association are required before the declaration can be amended and the owners have been unable to pass the amendment.²⁷ Chapter 1003 allows the court discretion to grant the petition if the court makes the following findings: (1) proper notice of the court hearing was given,²⁸ (2) voting was conducted in accordance with governing documents,²⁹ (3) a reasonably diligent effort was made to permit all eligible voters to vote,³⁰ (4) a group of owners with more than fifty percent of the votes voted for the amendment,³¹ and (5) the amendment is reasonable.³² To be effective the amendment and court order must be recorded³³ and a copy must be mailed to each member of the association.³⁴ Chapter 1003, however, does not permit amendment of the declaration, if the amendment would change the voting requirements affecting certain voting classes;³⁵ eliminate the special rights, preferences, or privileges designated in the declaration as belonging to the declarant³⁶ without

Code §§2924, 2924(b), 2924(c).

24. *Id.* §1356(a) (court refers to the superior court in the county where the common interest development is located).

25. *Id.* §§1351(h) (definition of declaration), 1353 (declaration requirements).

26. If the association contains only one voting class, 50% refers to the votes of the association. In the case of more than one voting class, however, 50% refers to 50% of the votes per class of voting shares. *Id.* §1356(a).

27. *Id.* The petition must do the following: (1) describe the effort to get approval as provided for in the declaration, (2) include the number of negative and affirmative votes received, (3) include the number or percentage of votes required under the declaration, and (4) include any other information the petitioner deems relevant to the determination of the court. The petitioner must attach to the petition the following: (1) the governing documents as defined in section 1351(j) of the Civil Code, (2) a complete text of the amendment, (3) copies of the notice or solicitation materials used to get approval of the voters, (4) an explanation of the reason for the amendment, and (5) other documentation deemed relevant. *Id.*

28. Fifteen days notice must be given to all persons entitled to notice. Notice must be given to all members of the association, mortgagees or beneficiaries of trusts, and to the city and county as required by the declaration. *Id.* §1356(c)(1).

29. *Id.* §1356(c)(2).

30. *Id.* §1356(c)(3).

31. If more than one voting class exists and the declaration requires a majority vote of more than one class, the votes required are more than 50% of the votes of *each* class required by the declaration to vote in favor of the amendment. *Id.* §1356(c)(4).

32. *Id.* §1356(c).

33. *Id.* §1356(f).

34. *Id.* §1356(g) (the mailing must take place within a reasonable time after the amendment has been recorded and must include a statement that the amendment has been recorded).

35. If the declaration required more than 50% of the votes in more than one class of voters, the amendment cannot change the voting requirements of the declaration unless more than 50% of the voters in *each* of the affected classes approved the amendment. *Id.* §1356(e)(1).

36. *Id.* §1351(g) (definition of declarant).

the consent of the declarant;³⁷ or impair certain security interests.³⁸

Under prior law, a declaration could provide for *any reasonable* assessments to pay for allowable obligations.³⁹ Chapter 874 creates specific restraints upon the levying of assessments by prohibiting a regular assessment from being increased by more than ten percent over the assessment of the previous fiscal year, unless there was approval by a group of owners having a majority of the votes of the association.⁴⁰ Additionally, special assessments may not exceed five percent of the gross expenses, unless there was approval by a group of owners having more than fifty percent of the votes.⁴¹ Chapter 874, however, does not limit assessment increases for emergency situations⁴² or for maintenance or repair of common areas if the association has an obligation to maintain those areas.⁴³

Under existing law, a public report⁴⁴ must first be secured by the developer of a common interest development⁴⁵ and then be delivered to a purchaser of property in a common interest development.⁴⁶ Chapter 874 provides that, in addition to the public report, the purchaser must be given a statement⁴⁷ which delineates the rights and obligations of a purchaser of a common interest development.⁴⁸

Under existing law, an association may sue as a real party in interest for damages to areas the association is obligated to maintain.⁴⁹ Chapter 874 further allows an association to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in the name of the association as a real party in interest.⁵⁰ Finally, Chapter 874 provides that the association may institute, defend, settle, or intervene in an action to seek enforcement of governing documents, in addition to seeking damages.⁵¹

37. *Id.* §1356(e)(2).

38. *Id.* §1356(e). If a declaration specifies that there is a required percentage of approval by mortgagees or beneficiaries then the declaration cannot be amended to impair the security interest of these mortgagees or beneficiaries without their approval. *Id.* §1356(e)(3).

39. 1976 Cal. Stat. c. 73, §2, at 108 (amending CAL. CIV. CODE §1355).

40. CAL. CIV. CODE §1366(b).

41. *Id.*

42. *Id.* §1366(b)(2).

43. *Id.* §1366(b)(1) (the allowable expenditures include the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or improvements, and funding reserves).

44. CAL. BUS. & PROF. CODE §11018 (stating requirements of a public report).

45. *Id.* §11018.2.

46. *Id.* §11018.1.

47. *Id.* §11018.1(c) (required statement).

48. *See id.*

49. CAL. CIV. PROC. CODE §374.

50. *Id.*

51. *Id.*

Property; Real Estate Recovery Program

Business and Professions Code §§10470, 10470.1, 10471, 10472, 10473, 10473.1, 10474, 10474.5, 10475, 10476, 10477, 10479, 10483 (repealed); 10470, 10471, 10471.1, 10471.2, 10471.3, 10471.4, 10471.5, 10471.6, 10472, 10472.1, 10473, 10473.1, 10474, 10474.5, 10475, 10476, 10477, 10478, 10479, 10480, 10481 (new); §10450.6 (amended).

SB 512 (Beverly); 1985 STAT. Ch. 690
(Effective January 1, 1987)

Support: California Association of Realtors; Department of Real Estate; Department of Finance

Under existing law, the Real Estate Recovery Program¹ (hereinafter referred to as the Recovery Account) provides that an aggrieved person² who obtains a specified final judgment³ against a person licensed⁴ by the Department of Real Estate (hereinafter referred to as the Department), may apply for payment⁵ that represents the claimants' actual and direct loss in the amount unpaid on the judgment.⁶ With the enactment of Chapter 690, an application for payment under the Recovery Account is required to be made on a form prescribed by the Department.⁷ The application must be delivered to the Depart-

1. The Real Estate Fund (predecessor of the Recovery Program) has been held to be "a remedial statute intended to protect the public, which is to be given a liberal construction." *Booth v. Robinson*, 147 Cal. App. 3d 371, 378, 195 Cal. Rptr. 130, 137 (1983).

2. See *Buccella v. Mayo*, 102 Cal. App. 3d 315, 327, 162 Cal. Rptr. 369, 375 (1980) (defrauded real estate licensee was not precluded from recovery by virtue of the fact that he was a licensee); *But see Middelsteadt v. Karpe*, 52 Cal. App. 3d 297, 301-04, 124 Cal. Rptr. 840, 842-45 (1975) (class intended to be protected by the Real Estate Broker's Act is not the real estate licensees but the clients).

3. The judgment must be one in which the licensed defendant performed acts for which the license was required, and such acts resulted in either (1) fraud, (2) misrepresentation, (3) deceit, or (4) conversion of trust funds. CAL BUS. & PROF. CODE §10471; see *Froid v. Fox*, 132 Cal. App. 3d 832, 839, 183 Cal. Rptr. 461, 465 (1982) (judgment against broker for fraud did not arise out of a licensed activity, therefore no recovery allowed under the Recovery Account). *Robinson v. Murphy*, 96 Cal. App. 3d 763, 767-68, 158 Cal. Rptr. 246, 248-49 (1979) (no real estate broker's license was required for transaction in which a broker sold his own property, hence no recovery under the Recovery Account).

4. CAL BUS. & PROF. CODE §10470 (license includes either a real estate broker's license or salesperson license).

5. Payment awards from the Recovery Account are limited to the following amounts: (1) for causes of action that occurred between July 1, 1964 and January 1, 1975, \$10,000 for any one transaction and \$20,000 for any one licensee; (2) for causes of actions that occurred between January 1, 1975, and January 1, 1980, \$10,000 for any one transaction and \$40,000 for any one licensee; and (3) for causes of action that occurred on or after January 1, 1980, \$20,000 for any one transaction and \$100,000 for any licensee. *Id.* §10474(a), (b), (c).

6. *Id.* §10471(a).

7. *Id.* §10471(c) (required contents of the application). The prescribed form must include detailed instructions with respect to documentary evidence, pleadings, court rulings, and the products of discovery, to be appended to the application. *Id.* §10471(d).

ment and served⁸ on the judgment debtor no later than one year after the judgment becomes final.⁹ Within fifteen days after submission of the application to the Department, the claimant must serve¹⁰ upon the judgment debtor a specified notice¹¹ together with a copy of the application.¹² Under Chapter 690, if the judgment debtor fails to file with the Department a written response to the application within thirty days after service of notice, the judgment debtor thereafter is not entitled to further notice regarding the claim.¹³

Chapter 690 further provides that the Real Estate Commissioner (hereinafter referred to as the Commissioner) must render a final written decision on the application¹⁴ within ninety days after the completed application has been received, unless the claimant agrees in writing to a longer period.¹⁵ If the Commissioner fails to render a written decision within ninety days, or within the extended period, the claim is deemed to have been denied.¹⁶ The Commissioner is empowered to deny or grant the application, or to enter into a compromise with the claimant.¹⁷ Furthermore, the Commissioner must give notice of a decision regarding a claim to the claimant and the judgment debtor.¹⁸

Chapter 690 provides that when a claim is denied the claimant may file in the court in which judgment was rendered an application for an Order Directing Payment Out of the Recovery Account.¹⁹ Chapter

8. *Id.* §10471(b) (service of the judgment debtor must be in accordance with Business and Professions Code §10471.1).

9. *Id.* (delivery can be either personal or through certified mail).

10. Service can be either personal or through registered mail. *Id.* §10471.1(a). If the judgment debtor holds a current license, service may be made by registered mail addressed to the judgment debtor at the latest business or residence address on file with the Department. If the judgment debtor does not have a current license, and personal service cannot be effected after reasonable diligence, the claimant can effect service through publication. *Id.* §10471(b).

11. *Id.* §10471.1(c) (required contents of notice).

12. *Id.* §10471.1(a).

13. *Id.* §10471.1(d).

14. *Id.* § 10471.2(a) (if the application does not comply with Business and Professions Code §§10080, 10471, the Commissioner must mail an itemized list of deficiencies to the claimant within 15 days).

15. *Id.* §10471.3(a). The 90 days is measured from the date the Department receives a substantially complete application. In the event of an irreconcilable dispute between the claimant and the Commissioner regarding the completeness of the application, the claimant may *immediately* file a claim with the court pursuant to Business and Professions Code §10472. *Id.* §10471.2(b).

16. *Id.* §10471.3(a).

17. *Id.* §10471.3(b). The Commissioner may pay less than the amount claimed. If the claimant refuses to accept the claim offered by the Commissioner, the Commissioner is to deny the claim. *Id.*

18. *Id.* §§10471.5(b) (notice required if the claim is denied); 10471.5(c) (notice required if the claim is granted).

19. *Id.* §10471.5(a).

690 additionally provides that after being served notice of the claimant's application for an Order Directing Payment, the Commissioner and judgment debtor each have thirty days to file a written response.²⁰ Under Chapter 690, if the judgment debtor fails to file a written response, the claim may be compromised or settled by the Commissioner, and upon joint petition by the applicant and Commissioner, the court must issue an order directing payment out of the Recovery Account.²¹

Chapter 690 further provides that any person, or the agent of any person, who files any document with the Commissioner that is false or untrue, or that contains any willful, material misstatement of fact is guilty of a public offense punishable by imprisonment²² up to one year, a fine not to exceed \$1,000, or both.²³ Finally, Chapter 690 provides that in case of any inconsistencies between Chapter 690 and other specific provisions of law,²⁴ the specific provisions will prevail if the application was filed before January 1, 1987.²⁵

20. *Id.* §10472(a). A verified application for the order must be filed within six months after receipt of the denial notice, and a copy of the verified application must be served on the Commissioner and the judgment debtor. A notice setting forth specific information also must be served on the judgment debtor. *Id.* §10472(b).

21. *Id.* §10472.1 (the court must grant the Commissioner a continuance of up to 30 days if so requested, and may on showing of good cause by any party, continue the hearing for a time deemed appropriate by the court).

22. *Id.* §10478 (imprisonment is to be in the county jail).

23. *Id.*

24. *Id.* §10481 (provisions include Business and Professions Code §§10470-10483).

25. *Id.*

Property; unlawful detainer and orders of abatement

Civil Code §§1942.3, 1942.4 (new); Code of Civil Procedure §1176 (amended); Health and Safety Code §§17959.4, 17980 (amended).
AB 2148 (Harris); 1985 STAT. CH. 1279
Support: Western Center on Law and Poverty

Existing law provides procedures governing actions for unlawful detainer.¹ Chapter 1279 provides that in an unlawful detainer action a rebuttable presumption² that the landlord has breached the warranty

1. CAL. CIV. PROC. CODE §1161 (unlawful detainer defined).

2. CAL. CIV. CODE §1942.3(a) (presumption affects the burden of producing evidence to establish that the landlord has breached the warranty of habitability).

of habitability is established if the following conditions are proven:³ (1) the dwelling substantially lacks specified affirmative standard characteristics;⁴ (2) after inspection of the premises, a public officer responsible for the enforcement of any housing law has notified the landlord or an agent of the landlord, in writing, of the landlord's obligation to abate a nuisance or repair a substandard condition;⁵ (3) the condition has existed and has not been abated sixty days after the issuance of the specified notice and the delay is without good cause;⁶ and (4) the condition was not caused by an act or omission of the tenant.⁷ Chapter 1279 specifies that failure to prove the conditions giving rise to the presumption does not affect the right of the tenant to raise and pursue any defense based upon a breach of the implied warranty of habitability.⁸ Chapter 1279 provides that a landlord who demands or collects rent when the above conditions exist is liable for actual and special damages⁹ sustained by the tenant or lessee.¹⁰ Chapter 1279 further provides that the prevailing party is entitled to the recovery of reasonable attorney's fees in an amount fixed by the court.¹¹ Furthermore, an action brought under Chapter 1279 may be maintained in small claims court if the actual and special damages claimed are within the jurisdictional amount.¹² Chapter 1279 is applicable to leases or rental agreements entered into or renewed on or after January 1, 1986.¹³

Existing law provides that an appeal by the defendant from an unlawful detainer judgment does not stay proceedings on the judgment.¹⁴ Chapter 1279 provides that a petition for a stay of the judgment pending appeal must be directed to the judge who rendered the judgment.¹⁵ Stay of the judgment must be granted if the court finds

3. Chapter 1279 requires that all of the specified conditions be proven in order to establish the presumption. CAL. CIV. CODE §§1942.3(b), 1942.3(c).

4. *Id.* §1942.3(a)(1); see *id.* §1941 (definition of affirmative standard characteristics).

5. *Id.* §1942.3(a)(2).

6. *Id.* §1942.3(a)(3).

7. *Id.* §1942.3(a)(4) (conditions must not have been caused by an act or omission of the tenant in violation of Civil Code sections 1929 or 1941.2).

8. *Id.* §1942.3(b).

9. Chapter 1279 limits recoverable special damages to an amount not less than \$100 or more than \$1000. *Id.* §1942.4(a).

10. *Id.* §1942.4(a)(1)-(4). The conditions specified to establish liability for actual or special damages are identical to those necessary to establish a rebuttable presumption that a landlord has breached the habitability requirements of section 1941 of the Civil Code. See *supra* notes 4-7 and accompanying text.

11. *Id.* §1942.4(b).

12. *Id.* §1942.4(d).

13. *Id.* §1942.4(e).

14. CAL. CIV. PROC. CODE §1176.

15. *Id.* §1176(a).

that the moving party will suffer extreme hardship in the absence of a stay and that the nonmoving party will not be irreparably harmed by issuance of the stay.¹⁶ If the stay is not granted, the defendant may file a petition for an extraordinary writ with the appropriate appeals court.¹⁷ Chapter 1279 provides that if a stay of the judgment is granted by either the trial or appellate court, the stay may be subject to any conditions the court deems just.¹⁸ Furthermore, Chapter 1279 requires that as a condition to the issuance of a stay of enforcement of the judgment, the court issuing the stay must order the defendant to pay the reasonable monthly rental value into the court.¹⁹

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* Chapter 1279 defines reasonable monthly rental value as being the contract rent, unless the rental value has been modified by the trial court in which case the modified value must be used. *Id.*

Property; compelling the offering of accommodations

Government Code §§7060, 7060.1, 7060.2, 7060.3, 7060.4, 7060.5, 7060.6, 7060.7 (new).

SB 505 (Ellis); 1985 STAT. Ch 1509

(Effective July 1, 1986)

Support: California Association of Realtors; California Chamber of Commerce; Department of Finance; Department of Housing and Community Development

Prior case law allowed a city to require an owner of real property to seek city approval prior to the demolition of rental property.¹ Chapter 1509 prohibits a public entity² from compelling an owner³ to offer or continue to offer accommodations⁴ in the property for rent or lease.⁵ Chapter 1509, however, does not (1) prevent a public

1. *Nash v. City of Santa Monica*, 37 Cal. 3d 97, 109, 207 Cal. Rptr. 285, 294, 688 P.2d 894, 903 (1984).

2. CAL. GOV'T CODE §811.2 (definition of public entity).

3. Owner refers to the owner of any residential real property. *See id.* §7060(a).

4. CAL. GOV'T CODE §7060(b). The definition of accommodations includes the following: (1) residential units in any detached physical structure containing four or more residential rental units; and (2) any detached physical structure containing three or less residential rental units and any other structure on the same parcel of land. *Id.*

5. *Id.* §7060(a).

entity from compelling an owner to offer property for rent or lease if the owner of the rental property has agreed to offer the accommodations for rent or lease in consideration of a direct financial contribution,⁶ (2) increase or decrease the right of a public entity to grant or deny any entitlement to real property,⁷ (3) diminish or enhance any power that may exist⁸ in a public entity to mitigate any adverse impact on persons displaced by the withdrawal of accommodations in any residential hotel⁹ from the rental market,¹⁰ (4) supersede other specified rights,¹¹ or (5) relieve a party to a lease or rental agreement of the duty to perform any obligation under the lease or rental agreement.¹²

Under Chapter 1509, a public entity that has imposed rent control on accommodations may enact an ordinance, statute, or regulation¹³ to apply rent control to accommodations re-entering the rental market

6. *Id.* §7060.1(a). For the purposes of Chapter 1509, direct financial contribution includes contributions specified in section 65916 of the Government Code and any form of interest rate subsidy or tax abatement. If an agreement is entered into prior to July 1, 1986, the agreement may be made in return for *any* consideration, not just direct financial consideration. Chapter 1509 further provides that the agreement specified in section 7060.1(a) of the Government Code is unenforceable against a bona fide purchaser for value unless (1) the purchaser has actual knowledge of the agreement, or (2) a written memorandum of the agreement has been filed prior to July 1, 1986, or not less than 30 days prior to the transfer of title to the purchaser. *Id.*

7. *Id.* §7060.1(b) A public entity may change entitlements by several methods, including, but not limited to, zoning, planning, and subdivision map approvals. *Id.*

8. Exist refers to power that currently exists or which may exist in the future. *Id.* §7060.1(c)(1).

9. CAL. HEALTH & SAFETY CODE §50519(b)(1) (definition of residential hotel).

10. CAL. GOV'T CODE §7060.1(c)(1). The reference to residential hotels in Government Code §7060.1(c)(1) is not intended to increase or decrease any power that exists, of any public entity, to require the same actions for other types of accommodations as required for residential hotels. *Id.* §7060.1(c)(2).

11. *Id.* §7060.1. The protected rights are those that may exist in the following: (1) Chapter 16 of Division 7 of Title 1 of the Government Code (relocation assistance); (2) Part 2.8 of Division 3 of Title 2 of the Government Code (Department of Fair Employment and Housing); (3) Chapter 5 of Part 2 of Division 7 of the Business and Professions Code (unfair competition); (4) Part 2 of Division 1 of the Civil Code (personal rights); (5) Title 5 of Part 4 of Division 3 of the Civil Code (hiring); (6) Chapter 4 of Title 3 of Part 3 of the Code of Civil Procedure (summary proceedings); or (7) Division 24 of the Health and Safety Code (community development and housing). CAL. GOV'T CODE §7060.1(d).

12. CAL. GOV'T CODE §7060.1(e). The express intent of the legislature is to supersede any holding or portion of any holding in *Nash v. City of Santa Monica*, 37 Cal. 3d 97, 207 Cal. Rptr. 285, 688 P.2d 894 (1984) that conflicts with Chapter 1509. The legislature further expresses the intent that Chapter 1509 does not (1) interfere with local governmental regulation over land use, (2) override procedural protections designed to prevent abuse of the right to evict tenants, (3) permit an owner to withdraw less than all of the accommodations from the rental market, (4) give any public entity power to control rents that does not exist independent of Chapter 1509, (5) alter in any way Government Code §65863.7 relating to the withdrawal of accommodations that comprise a mobilehome park from rent or lease, or (6) change in any way Civil Code §798.56 relating to a change of use of a mobilehome park. *Id.* §7060.7.

13. Chapter 1509 provides that the public entity may adopt a regulation after public notice

after previously having been withdrawn from that market.¹⁴ If the rental property is placed back on the rental market within one year, the statute, ordinance, or regulation may provide for the following: (1) the property will be subject to rent control as if the property had not been withdrawn from the market;¹⁵ (2) the owner of the accommodations may be liable to a displaced tenant for actual¹⁶ and punitive damages¹⁷ that are the proximate result of the displacement;¹⁸ (3) the owner of the accommodations may be liable to the public entity for exemplary damages for displacement of tenants;¹⁹ and (4) the owner of the accommodations may be required to first offer the accommodations to the displaced tenant.²⁰ If the rental property is returned to the rental market more than one year after having been withdrawn from the rental market the property may be subject to the same rent control as if never withdrawn²¹ and the public entity may require by statute, ordinance, or regulation that the landlord offer the accommodations to the displaced tenant if the accommodations are returned to the rental market within ten years.²² Chapter 1509 further provides

and a hearing of a public body of the public entity, if the members of the public body have been elected by the voters of the public entity. The regulation will be subject to referendum according to the laws of the public entity, except that (1) the decision to put the referendum to the voters must be made by the public body that enacted the regulation, and (2) the regulation is to become effective upon passage and is to remain in effect until a majority of the voters of the public entity vote against the regulation, notwithstanding the provisions of Election Code §§4050, 4051, and 4055. *Id.* §7060.5.

14. *Id.* §7060.2.

15. Government Code §7060.2(a)(1) applies notwithstanding any contrary provision of law allowing a landlord to establish a rental rate upon the initial hiring of accommodations. *Id.* §7060.2(a)(1).

16. Actual damages are to be applied as defined and limited by Government Code §§7262, 7264. *Id.* §7060.2(a)(2).

17. Punitive damages are limited to the contract rent for six months. *Id.*

18. *Id.* Actions brought pursuant to Government Code §7060.2(a)(2) must be brought within two years of displacement. Government Code §7060.2(a)(2) does not limit any other remedy the tenant may have under the law. *Id.*

19. *Id.* §7060.2(a)(3). The exemplary damages are limited to six month's rent for any unit or units from which tenants have been displaced. The action must be brought within three years of the withdrawal of the rental unit from the rental market. *Id.*

20. *Id.* §7060.2(a)(4). The tenant is required, within 30 days of displacement, to notify the owner of the desire to consider an offer to renew the tenancy. The tenant is required to furnish the owner with an address and may give the owner an address correction as needed. The offer from the owner must be mailed to the tenant by certified or registered mail and the tenant has 30 days from the time the offer was placed in the mail to accept the offer. The acceptance may be by personal delivery or by registered or certified mail. *Id.*

21. *Id.* §7060.2(b)(1). The rent may be adjusted as provided for in the system of rent control. Government Code §7060.2(b)(1) prevails over any contrary provision of law authorizing the landlord to establish the rental rate on initial hiring of the accommodations. *Id.*

22. *Id.* §7060.2(b)(2). The tenant must request the offer, in writing, within 30 days of displacement. An owner that violates Government Code §7060.2(b)(2) may be liable to a displaced tenant for punitive damages not to exceed six months rent. *Id.*

that if an accommodation is demolished and subsequently replaced,²³ rent control may be applied at a price set by the public entity as a fair and reasonable return to the owner.²⁴

In order for the rent control provisions of Chapter 1509 to apply to a successor in interest of an owner of accommodations, the public entity must record a notice²⁵ of the intention to apply the rent control provisions of Chapter 1509 to the successor in interest.²⁶ Chapter 1509 also provides that if the public entity has a system of rent control, a public entity may require an owner to notify the public entity of an intention to withdraw rental property from the market²⁷ and require the recordation of a specified memorandum.²⁸ Chapter 1509 further provides that the owner of accommodations may be required to (1) notify the displaced tenant that notice has been filed with the public entity and inform the tenant of the rights of the tenant under Chapter 1509,²⁹ and (2) notify the public entity if the accommodations are to be returned to the market.³⁰ Finally, Chapter 1509 provides that if an owner institutes an unlawful detainer action against a tenant, the tenant may assert the defense that the owner has not complied with the provisions of Chapter 1509.³¹

23. The accommodations must be replaced within five years of the time the accommodations were removed from the rental market. *Id.* §7060.2(c).

24. *Id.* The rental rate for demolished and subsequently replaced accommodations is based upon a reasonable return for newly constructed accommodations notwithstanding any exemption from rent control for newly constructed accommodations. *Id.*

25. The notice must specifically describe the real property and the dates applicable. *Id.* §7060.3.

26. *Id.* The notice must be indexed in the grantor-grantee index. A bona fide purchaser for value that buys the accommodations after the accommodations have been withdrawn from the rental market is not subject to the provisions of Chapter 1509 unless notice was recorded at least one day prior to title transfer. *Id.*

27. *Id.* §7060.4(a). The public entity may require that the notice contain statements providing information on the number of accommodations, the name or names of tenants or lessee, and the rent for each residential rental unit. Chapter 1509 provides, however, that the information respecting names of tenants, the applicable rent, and the number of accommodations is confidential. *Id.*

28. *Id.* The recorded notice must summarize the provisions of the required notice except for the confidential items. The notice may require certification that actions required by law have been instituted to terminate existing tenancies. If notice is required by the public entity, the date the accommodation is removed from the market, for the purposes of Chapter 1509, is 60 days from delivery of notice to the public entity. *Id.*

29. *Id.* §7060.4(b).

30. *Id.* §7060.4(c) (notification must be in writing).

31. *Id.* §7060.6.

Property; equity purchasers and foreclosure consultants

Civil Code §§1695.8, 2945.7 (amended).

SB 616 (Seymour); 1985 STAT. Ch 270

Support: Department of Consumer Affairs; Department of Real Estate; Department of Finance

Existing law regulates the actions of equity purchasers¹ and foreclosure consultants² by subjecting them to criminal³ liability for failure to follow specified procedures and for deceptive practices.⁴ Under prior law, specified violations⁵ by an equity purchaser or foreclosure consultant were punished as misdemeanors.⁶ Chapter 270, however, provides that the court may apply either a misdemeanor or felony⁷ penalty upon conviction of any equity purchaser or foreclosure consultant.⁸

1. CAL. CIV. CODE §1695.1(a) (definition of equity purchaser).

2. *Id.* §2945.1(a) (definition of foreclosure consultant).

3. *Id.* §§1695.8 (criminal penalties for equity purchasers), 2945.7 (criminal penalties for foreclosure consultants).

4. *Id.* §§1695.8, 2945.7. *See id.* §§1695.6 (prohibited practices for equity purchasers), 1695.8 (prohibiting fraud or deceit by equity purchasers), 2945.4 (prohibited practices for foreclosure consultants). *See generally* *Review of Selected 1979 California Legislation*, 11 PAC. L.J. 584 (1980) (review of the enactment of CAL. CIV. CODE §§1695-1695.14, 2945-2945.8); *Review of Selected 1980 California Legislation*, 12 PAC. L.J. 537 (1981) (review of amendments to CAL. CIV. CODE §§1695.1, 1695.3, 1695.5-1695.7, 1695.12, 2945.1, 2945.3, 2945.4, 2945.6, 2945.7).

5. CAL. CIV. CODE §§1695.6, 1695.8 (violations by equity purchasers), 2945.4 (violations by foreclosure consultants).

6. *See* 1979 Cal. Stat. c. 1029, §1, at 3536 (enacting CAL. CIV. CODE §1695.8); 1980 Cal. Stat. c. 423, §19, at 852 (amending CAL. CIV. CODE §2945.7). *See* CAL. PENAL CODE §17 (definition of misdemeanor).

7. CAL. PENAL CODE §17 (definition of felony).

8. CAL. CIV. CODE §§1695.8 (the criminal penalty for a violation by an equity purchaser is a fine not greater than \$10,000, imprisonment in a county jail not exceeding one year, or in the state prison, or both fine and imprisonment), 2945.7 (the criminal penalty for a violation by a foreclosure consultant is a fine of not more than \$10,000, imprisonment in the county jail for not more than one year, or in the state prison, or both fine and imprisonment).

Property; joint tenancy, easements

Civil Code §§887.010, 887.020, 887.030, 887.040, 887.050, 887.060, 887.070, 887.080, 887.090 (new); §683.2 (amended); Code of Civil Procedure §701.680 (amended).

AB 96 (McAlister); 1985 STAT. Ch 157

Support: California Law Revision Commission

Joint Tenancy

Existing law allows a joint tenant¹ to sever² a joint tenancy³ by execution and delivery of a deed to a third person⁴ or by execution of a written instrument evidencing an intent to sever the joint tenancy.⁵ Under Chapter 157, however, the severance of a joint tenancy of record will be effective against the right of survivorship of the other joint tenant only if (1) an instrument⁶ severing the joint tenancy is recorded prior to the death of the severing tenant,⁷ or (2) if the severing instrument is not recorded before the death of the severing tenant, the instrument was executed and acknowledged before a notary public not more than three days before death, and the instrument was recorded within seven days after the death of the severing tenant.⁸ The limitations of Chapter 157 do not apply to severance of a joint tenancy if the severance is caused by a written instrument executed by all the joint tenants,⁹ a written agreement of all joint tenants,¹⁰ or a deed from one joint tenant to another.¹¹

Existing law does not authorize the severance of a joint tenancy if severance would contravene a written agreement between the joint

1. CAL. CIV. CODE §683 (definition of joint tenant).

2. An owner of property in joint tenancy may sever the joint tenancy by breaking any one of the following four unities: time, title, interest, or possession. Once one of the four unities is broken a joint tenancy becomes a tenancy in common. *Tenhet v. Boswell*, 18 Cal. 3d 150, 155, 133 Cal. Rptr. 10, 14, 554 P.2d 330, 334 (1976).

3. CAL. CIV. CODE §683 (definition of joint tenancy).

4. *Id.* §683.2(a)(1) (applies whether or not pursuant to an agreement that requires the third person to reconvey legal title to the joint tenant).

5. *Id.* §683.2(a)(2).

6. An instrument may be a deed, written instrument, or declaration that evidences an intent to sever the joint tenancy. CAL. CIV. CODE §683.2(a).

7. *Id.* §683.2(c)(1). The recordation requirement is to prevent fraud by a severing tenant who withholds knowledge of the severance hoping to survive the nonsevering tenant. See California Law Revision Commission, *Recommendation Relating to Recording Severance of Joint Tenancy*, 18 CAL. L. REVISION COMM'N REPORTS _____ (1985).

8. CAL. CIV. CODE §683.2(c)(2).

9. *Id.* §683.2(d)(1).

10. *Id.* §683.2(d)(2).

11. *Id.* §683.2(d)(3). Chapter 157 further provides that subdivisions (c) and (d) of section 683.2 of the Civil Code only apply to severances made after January 1, 1986. *Id.* §683.2(c).

tenants not to sever.¹² Chapter 157, however, provides that a written agreement not to sever will not defeat the rights of a good faith purchaser or a good faith encumbrancer who has given value without knowledge of the nonseverance agreement.¹³

Easements

Prior case law held that an easement¹⁴ created by grant could not be considered abandoned merely because the easement was not used.¹⁵ Chapter 157, however, provides that the owner of a servient tenement¹⁶ may bring an action to have an easement¹⁷ declared abandoned and to clear record title to the property.¹⁸ An easement may be declared abandoned if for a period of twenty years (1) the easement has not been used,¹⁹ (2) taxes have not been paid on the easement,²⁰ and (3) an instrument creating, reserving, transferring, or otherwise evidencing the easement has not been recorded.²¹ Furthermore, an easement may be declared abandoned, notwithstanding any previous instrument²² providing that the easement may not be abandoned.²³

The owner of an easement may preserve the easement by recording a notice stating in general terms that the claimant intends to preserve

12. *Id.* §683.2(b).

13. *Id.* Subdivisions (a) and (b) of section 683.2 of the Civil Code apply to all joint tenancies in real property, whether the joint tenancy was created before, on, or after January 1, 1985, except that in the case of the death of a joint tenant before January 1, 1985, the validity of a severance under subdivisions (a) and (b) is determined by the law in effect at the time of death. *Id.* §683.2(e).

14. An easement is defined as a burden or servitude upon land, whether or not attached to other land as an incident or appurtenance, that allows the holder of the burden or servitude to do acts on the land. *Id.* §887.010. This definition does not cover negative easements. See California Law Revision Commission, *Recommendation Relating to Abandoned Easements*, 18 CAL. L. REVISION COMM'N REPORTS _____ (1985).

15. *Masin v. LaMarche*, 136 Cal. App. 3d 687, 693, 186 Cal. Rptr. 619, 622 (1982) (an express easement may be lost by prescription or adverse possession but not by mere nonuse); *Zimmer v. Dykstra*, 39 Cal. App. 3d 422, 434, 114 Cal. Rptr. 380, 388 (1974) (an easement created by grant may not be lost by mere nonuse).

16. CAL. CIV. CODE §803 (definition of servient tenement).

17. Chapter 157 does not apply to an easement that is part of a unified or reciprocal system for the mutual benefit of multiple parties. *Id.* §887.020.

18. *Id.* §887.040. The action is to be brought in the superior court in the county where the property is located and pursuant to the procedures given for quiet title actions in Chapter 4 of Title 10 of Part 2 of the Civil Procedure Code. *Id.* §§887.040(b)-(c). An abandoned easement is unenforceable and is deemed to have expired as if reconveyed to the owner of the servient tenement. *Id.* §887.080.

19. *Id.* §887.050(a)(1).

20. *Id.* §887.050(a)(2).

21. *Id.* §887.050(a)(3).

22. Instrument refers to either (1) the instrument creating, reserving, transferring, or otherwise evidencing the easement, or (2) another recorded document. Chapter 157 does not prohibit the instrument from providing an earlier expiration date. *Id.* §887.050(b).

23. *Id.*

a specific easement or all easements owned by the claimant in a particular county.²⁴ Finally, an easement may not be considered abandoned if a notice of intent to preserve the easement has been recorded within twenty years immediately preceding commencement of the action to establish the abandonment of the easement,²⁵ or notice is recorded after the beginning of the judicial proceedings but prior to judgment.²⁶

24. *Id.* §887.060. Chapter 157 expressly excludes the necessity of meeting the specific requirements for the recording of notices set out in Civil Code §§880.330(b)(2), 880.330(b)(3), and 880.340. *Id.* §880.060(b).

25. *Id.* §887.060(c)(1).

26. *Id.* §887.060(c)(2). Chapter 157 provides that the easement owner who files a notice of intent after commencement of judicial proceedings to quiet title must pay into the court, for the benefit of the servient tenement owner, the litigation expenses attributable to the easement. The litigation expenses include costs and expenses reasonably and necessarily incurred, including reasonable attorney's fees. *Id.* §887.070. Chapter 157 applies to all easements executed or created on, before, or after January 1, 1986. Chapter 157 further provides that if the time period for abandonment of easements expires before, on, or within five years after January 1, 1986, then the time period is extended five years past January 1, 1986. *Id.* §887.090. *See id.* §880.370.

Property; maintenance of easements

Civil Code §845 (amended); Government Code §§50077.5, 53979, 61601.16 (new); 23014, 25120, 25210.9c, 25210.73, 25562, 26907, 31101, 50078.11, 50078.12, 54902.5, 54974, 61601.14 (amended); Health and Safety Code §13841.13 (new); 5473.4 (amended); Public Utilities Code §§11825, 11828, 11850, 11853, 11861, 11863, 11890, 11940, 11941 (amended); 1941 Cal. Stat. c. 52, §6 (amended); 1951 Cal. Stat. c. 303, §66 (repealed and new); §§18, 30, 31, 33, 48, 53, 90, 91, 150 (amended); 1947 Cal. Stat. c. 699, §5.4 (amended)

AB 1350 (Cortese); 1985 STAT. Ch 985

Support: Office of Local Government Affairs; Department of Finance; East Bay Municipal Water District

Under existing law, a private right of way¹ must be maintained (1) by the owner of the easement that evidences the right of way, or (2) by the owner of land to which the private right of way attaches.² Existing law further specifies that if there are multiple owners of the

1. CAL. CIV. CODE §801 (types of easements).

2. *Id.* §845(a).

easement, or the easement is attached to parcels of land under different ownership, the owners may enter into an agreement allocating between themselves the costs of maintaining the right of way.³ Under prior law, owners that entered into an agreement regarding maintenance of a right of way were limited to bringing an action for contribution in superior court if another party to the agreement failed to pay the proportionate costs of maintenance.⁴ Chapter 985 permits an owner⁵ to bring an action in any court of competent jurisdiction for either specific performance *or* contribution, if another owner fails to pay the proportionate cost of maintenance after a receipt of a written demand to pay.⁶

If the owners have not entered into an agreement, existing law requires the costs to be shared by each owner in proportion to the use the owner makes of the easement.⁷ Prior law required an owner to apply to the superior court for the appointment of an impartial arbitrator to apportion the costs between the owners.⁸ If the arbitration award was not accepted by the owners, only the superior court had jurisdiction to determine the proportionate liability of each owner.⁹ Under Chapter 985, an owner may apply to any court where the right of way is located, provided the court has jurisdiction over the amount in controversy, for the appointment of an impartial arbitrator.¹⁰ If the owners do not accept the arbitration award, Chapter 985 permits the court to enter a judgment determining the proportionate liability of each owner.¹¹

3. *Id.* §845(b). *See also* *Rose v. Peters* 59 Cal. App. 2d 833, 835, 139 P.2d 983, 984 (1943) (parties may alter the obligation of owner of easement by contract).

4. 1939 Cal. Stat. c. 755, §1, at 2285, (enacting CAL. CIV. CODE §845).

5. Owners includes multiple owners filing an action jointly or severally. CAL. CIV. CODE §845(b).

6. *Id.*

7. *Id.* §845(c).

8. 1939 Cal. Stat. c. 755, §1, at 2285 (enacting CAL. CIV. CODE §845).

9. *Id.*

10. CAL. CIV. CODE §845(c). Any owner, including an owner of land to which an easement is attached, may apply for the appointment of an impartial arbitrator. *Id.*

11. *Id.* The judgment is enforceable as a money judgment by any party against any other party to the action. *Id.*

Property; public easements

Government Code §§65870, 65871, 65873, 65874, 65875 (new).
AB 1363 (Cortese); 1985 STAT. Ch 996
Support: City of San Jose; Office of Local Governmental Affairs;
Department of Finance

Under existing law, a nonprescriptive easement¹ on real property may be created or reserved only by a conveyance.² Existing law further allows a land owner to expressly dedicate an enforceable easement for the benefit of the public and also permits an easement for the benefit of the public to be created by implication.³ Chapter 996 provides that an easement may be created without a conveyance, if a city or county adopts an ordinance that permits an owner of real property to record a covenant of easement in favor of the city or county.⁴ An easement created under Chapter 996 is limited to providing parking, ingress, egress, emergency access, solar access, landscaping or open-space.⁵ An additional restriction under Chapter 996 is that the land benefited or burdened under the easement must be in common ownership at the time the covenant is recorded.⁶ Chapter 996 further requires that the covenant be recorded in the county in which the restricted property is located⁷ and provides that the covenant will become effective upon recordation.⁸ The covenant may not be released without a public hearing⁹ to determine whether the restriction is no longer necessary to achieve the land use goals of the city or county.¹⁰ Finally, Chapter 996 provides that only the city or county and the owner of the restricted property have standing to enforce or challenge the covenant or release of the covenant.¹¹

1. See 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Easements and Profits* §340 (8th ed. 1974) (contrasting various types of easements).

2. CAL. CIV. CODE §806.

3. *Id.* §813 (reservation of public use making any other use permissive).

4. CAL. GOV'T CODE §65871(a). The affected real property is subject to section 1104 of the Civil Code. *Id.* §65871(b) (easements that pass with property).

5. *Id.*

6. *Id.* §65871(b).

7. *Id.* §65873. Recording of the covenant constitutes notice to all persons to the extent of the recording laws. *Id.* Upon recordation, all successors in interest become bound by the covenant. *Id.*

8. *Id.* §65871(b).

9. *Id.* §65874(a). The hearing is to be held by an agency designated in the ordinance for that purpose. *Id.*

10. *Id.* §65874(b). Any person, whether or not holding title to the restricted property, may request a hearing to determine whether the restriction is still necessary. *Id.* §65874(a).

11. *Id.* §65875.

Property; mortgage interest

Civil Code §2948.5 (new).

SB 1223 (Keene); 1985 STAT. Ch 1393

Support: California Association of Realtors; State Banking Department; California Land Title Association

Opposition: Citicorp Services, Inc.

Chapter 1393 enacts provisions that prohibit the accrual of interest¹ prior to the close of escrow in certain real property transactions.² In the absence of escrow, however, Chapter 1393 provides that interest may not accrue until the loan proceeds are available for withdrawal as a matter of right.³ Chapter 1393 does not apply to disbursements of loan proceeds by cash, check, cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order issued by, or drawn upon, a financial institution, insured by an agency or instrumentality of the United States, with an office in California.⁴

1. CAL. CIV. CODE §1915 (definition of interest). For the purposes of Chapter 1393, interest is the interest on the principal obligation of a promissory note secured by a mortgage or deed of trust. *Id.* §2948.5.

2. *Id.* §2948.5 (transactions regarding real property improved with between one and four units).

3. *Id.* See CAL. INS. CODE §12413(d) (definition of available for withdrawal as a matter of right).

4. CAL. CIV. CODE §2948.5. The California office of the financial institution must be one from which payments may be obtained. *Id.*

Property; mortgages and deed of trust—notice requirements in default actions

Civil Code §2924b, 2924c, 2924d, 2924g, (amended).

AB 1441 (Eaves); 1985 STAT. Ch 1206

Support: Western Center on Law and Poverty; Department of Real Estate; Department of Consumer Affairs

Existing law requires the trustee of a trust deed and the mortgagee of a mortgage to send a copy of notice of default¹ or notice of sale² to each trustor or mortgagor and to every person that files a request for a copy of notice of default or notice of sale.³ The trustee or the

1. CAL. CIV. CODE §2924b(2)(a). A copy of the notice, with the recording date, must be sent to trustor or mortgagor within 10 days after recordation of the notice of default. *Id.*

2. *Id.* §2924b(2)(b). A copy of the notice with the time and place of sale must be sent at least 20 days before the date of sale. *Id.*

3. *Id.* §2924b(1) (any person may file a request to be notified). See generally, Lupertino

mortgagee also must mail a copy of the notice of default to other specified persons.⁴ Existing law further specifies that all such notices must be sent by registered or certified mail.⁵ Chapter 1206 expands the notice requirement by providing that a duplicate notice must be sent to each trustor or mortgagor by first-class mail and, in addition, requires the person mailing the duplicate notice to execute and retain an affidavit⁶ certifying the mailing.⁷ The affidavit provided for by Chapter 1206 establishes a conclusive presumption of mailing, in the absence of fraud.⁸

Existing law provides that if an obligation secured by a deed of trust or a mortgage becomes due or is declared due prior to the fixed maturity date as a result of a default in payment,⁹ the default may be cured by payment of the amount that would have been due had no default occurred, plus costs¹⁰ and fees.¹¹ Prior law permitted default to be cured within three months of recordation of a notice of default.¹² Chapter 1206 specifies that a default may be cured at any time between the recordation date of a notice of default and five business days prior to the date of sale.¹³ If the date of sale is postponed for a period of longer than five days, the right of reinstatement is revived as of the date of the postponement and continues until five days prior to the new date of sale.¹⁴ Chapter 1206 additionally provides that no liability can be based upon a failure to allow reinstatement within the five-day period prior to the date of sale.¹⁵

v. Carbahal, 35 Cal. App. 3d 742, 748, 111 Cal. Rptr. 112, 115 (1977) ("the only requirements essential to a valid notice of default and election to sell under a deed or trust are those expressly prescribed by statute or the instrument itself").

4. CAL. CIV. CODE §2924b(3)(b) (other persons to whom notice must be mailed). Notice must be mailed within one month following recordation of the notice of default. *Id.* §2924b(3)(a).

5. *Id.* §2924b(1), (3).

6. *Id.* §2924b(5). The affidavit must identify the notice mailed, the name and address of the person mailing the notice, that the person mailing the notice is over 18 years of age, the date of deposit in the mail, the identity of the person to whom the notice is sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. *Id.*

7. *Id.*

8. *Id.*

9. CAL. CIV. CODE §2924c(a)(1). The obligation may be declared due as a result of a default of an interest payment or any installment of principal, or if the trustor or the mortgagor fails to pay taxes, assessments, or insurance premiums in accordance with the terms of the agreement. *Id.*

10. *Id.* See *id.* §2924c(c) (list of permissible costs and expenses).

11. *Id.* §2924c(a)(1). See *id.* §2924c(d) (trustee's or attorney's fees presumed to be lawful if not in excess of specified amounts).

12. 1984 Stat. c. 919, §1, at 57 (amending CAL. CIV. CODE §2924c).

13. CAL. CIV. CODE §2924c(e). 1985 Cal. Stat. c. 1206, §7, at ____ (provisions of Civil Code §§2924c(a)(1), (b)(1), (e) are applicable to foreclosure proceedings commenced by recordation of a notice of default recorded on or before January 1, 1986).

14. CAL. CIV. CODE §2924c(e).

15. *Id.*

Existing law provides that a trustee¹⁶ may demand from a beneficiary¹⁷ reasonable costs and expenses actually incurred in enforcing the terms of an obligation upon the sale of property pursuant to a power of sale in a deed of trust.¹⁸ Chapter 1206 provides that a trustee or attorney may collect a fee not to exceed \$300 or one percent of the unpaid principal, whichever is greater.¹⁹

Existing law provides that a trustee has the discretion to postpone sale proceedings at any time prior to the completion of the sale.²⁰ The trustee must postpone the sale upon the order of any court of competent jurisdiction or by operation of law.²¹ The notice for each postponement must be given by public declaration at the time and place last appointed for the sale.²² Chapter 1206 prohibits a trustee from conducting a sale until seven days after the expiration of an injunction, restraining order, or stay from any court of competent jurisdiction,²³ or the expiration of a postponement arising by operation of law.²⁴

16. *Id.* §2924d(b) (includes agents and successors in interest).

17. *Id.* (includes agents and successors in interest).

18. *Id.* §2924c(c) (list of permissible costs and expenses).

19. *Id.* §2924d(b). Any charge for trustee's or attorney's fees is conclusively presumed to be valid and lawful if the charge does not exceed \$300 or one percent of the unpaid principal. These charges are in lieu of and not in addition to charges authorized by §§2924d(a) and 2924c(d) of the Civil Code. *Id.*

20. *Id.* §2924g(c)(1) A maximum of three postponements are permissible at the discretion of the trustee, upon instruction of the beneficiary or the written request of the trustor. The reason for the trustor's request for postponement must be the need for additional time to obtain cash to satisfy the obligation. *Id.*

21. *Id.* §2924g(c)(2). Such a postponement may not be used for determining the maximum number of permissible postponements. *Id.*

22. *Id.* §2924g(d) The notice must set forth the new date, time, and the place of the sale, which also must be the same place as originally chosen by the trustee. No other notice of postponement need be given. *Id.*

23. *Id.* (unless otherwise expressly provided in the original order or any amendments to that order).

24. *Id.*

Property; eminent domain

Government Code §7267.2 (amended).

AB 892 (Costa); 1985 STAT. Ch 1106

Support: Department of Fish and Game; Wildlife Conservation Board; East Bay Municipal Utility District; Department of Finance; Department of General Services

Existing law provides that a public agency may not acquire property under eminent domain powers¹ for less than the fair market value.² Chapter 1106, however, authorizes a public entity to make an offer to acquire property for less than the public entity's approved appraisal of the fair market if (1) the property is being offered for sale³ by the owner for less than the public entity's approved appraisal of the fair market value; (2) the public entity has offered to pay the price which the owner has specified; and (3) no federal funds are involved in the acquisition, construction, or project development.⁴

1. CAL. GOV'T CODE §7260 (definition of eminent domain powers).

2. *Id.* §7267.2(a). *Southern Cal. Fisherman's Ass'n v. United States*, 174 F.2d 739, 740, 95 F. Supp. 1004, 1005 (9th Cir. 1949) (definition of fair market value).

3. CAL. GOV'T CODE §7267.2(c) (definition of offered for sale).

4. *Id.* §7267.2(b).

Property; notices of sale

Government Code §43003 (amended); Streets and Highways Code §§6505.2, 6505.4, 10408.5 (new); §§6502, 6505.1, 10408 (amended).

AB 622 (Cortese); 1985 STAT. Ch 475

Support: California Land Title Association; Department of Finance

Under existing law, city tax liens¹ may be enforced by a sale of the real property subject to the tax assessed by the city.² Existing law also provides that an owner whose real property is subject to sale for nonpayment of principal or interest due on a serial bond,³ and the holder of the serial bond, must be mailed notice by the city of the impending sale.⁴ Furthermore, under existing law a property

1. CAL. GOV'T CODE. §43001 (definition of tax liens).

2. *Id.* §43003. Once the sale of the property has been completed, the execution and delivery of necessary certificates and deeds must be accomplished in conformity with regulations that have been established by local ordinance. *Id.*

3. CAL. STS. & HY. CODE §6400 (authorization for legislative bodies to issue serial bonds).

4. *Id.* §§6501 (notice to property owner), 6505 (notice to bondholder).

owner must be mailed notice of an impending sale of real property for failing to pay city assessments.⁵ Chapter 475 provides that if real property is to be sold to satisfy outstanding taxes, bond payments, or assessments, notice must be given by registered mail to the last known mailing address of all parties of interest⁶ prior to the date of sale.⁷

5. *Id.* §10409.

6. Parties of interest include all lienholders of record prior to the issuance of the treasurer's deed and any other person that would be vested with title to all or part of any portion of the property to be sold. CAL. STS. & HY. CODE §6505.2.

7. CAL. GOV'T CODE §43003(a)(1); CAL. STS. & HY. CODE §§6505.2(a) (the city treasurer must send notice not less than 45 days nor more than 60 days prior to the date of the sale), 10408.5 (the city tax collector must send notice not less than 45 days nor more than 60 days prior to the date of the sale). Historically, the United States Supreme Court has held that a state must provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314. The Court recently held that an Indiana statute requiring mail notice to be given only to property owners, and not mortgages, in the sale of real property for the nonpayment of taxes did not meet the requirements of the Due Process Clause of the fourteenth amendment. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 799-800 (1983).

Property; subdivided lands—disclosure to prospective purchasers

Business and Professions Code §11018.6 (new), Civil Code §1360 (amended).

AB 596 (La Follette); 1985 STAT. Ch 1596

Support: California Building Industry Association; Department of Real Estate

Existing law requires developers of common-interest subdivisions¹ to obtain a public report² from the Real Estate Commissioner³ prior to the offering of units or lots for sale or lease.⁴ Developers are required to furnish a copy of the public report to prospective purchasers

1. Common-interest subdivisions include condominiums, stock cooperatives, limited equity cooperatives, community apartment projects, planned developments and certain time-share estates or uses. CAL. BUS. & PROF. CODE §11004.5.

2. The public report authorizes the sale or lease of lots or units in the subdivision and is issued after the Real Estate Commissioner has made an examination of the subdivision. *Id.* §11010 (information contained in the report).

3. *Id.* §10003 (definition of Real Estate Commissioner).

4. *Id.* §11018. The object of the regulation regarding disclosure is the protection of purchasers from fraud and sharp practices. *People v. Byers*, 90 Cal. App. 3d 140, 148, 153 Cal. Rptr. 249, 253.

of units or lots.⁵ Under Chapter 1596, the developer also must provide prospective purchasers with a declaration of covenants, conditions and restrictions imposed upon the property.⁶ In addition, Chapter 1596 requires disclosure of information pertaining to any association organized for subdivision owners⁷ and a statement disclosing the outstanding delinquent assessments and related charges levied by the association.⁸

5. CAL. BUS. & PROF. CODE §11018.1(a). The requirement also is extended to the sale of repossessed lots or units offered by the developer; agents of the developers are also required to furnish a copy of the public report. *Id.*

6. *Id.* §11018.6(a).

7. *Id.* §§11018.6(b), (c). The developer is required to furnish prospective purchasers with a copy of the articles of incorporation or association and the bylaws for the subdivision owners association. *Id.*

8. *Id.* §11018.6(f). Any other instrument must be furnished to prospective purchasers that establishes or defines the common, mutual, and reciprocal rights, and responsibilities of the owners or lessees of the interests of the subdivision. *Id.* §11018.6(d).

Property; disclosure statements

Business and Professions Code §10176.5 (new); Civil Code §§1102, 1102.1, 1102.2, 1102.4, 1102.5, 1102.6, 1102.7, 1102.8, 1102.9, 1102.10, 1102.11, 1102.12, 1102.13 (new).

SB 1406 (Petris); 1985 STAT. CH 1574

(Effective January 1, 1987)

Support: California Association of Realtors; Department of Real Estate

Existing law requires that specified disclosures¹ be made before transfer of certain types of real property.² Additionally, existing case law requires sellers and brokers³ of real property to disclose facts that would materially affect a real property transfer.⁴ Chapter 1574 explicitly delineates the items⁵ that must be disclosed by sellers and real

1. See, e.g., CAL. CIV. CODE §§1099 (disclosure of pest control inspection reports), 1134 (disclosure of structural defects for condominiums), 1134.5 (disclosure of structural permits for residential units) (list not exhaustive).

2. See, e.g., *id.* §§1099 (any real property), 1134 (condominiums), 1134.5 (residential property of one to four units) (list not exhaustive).

3. CAL. BUS. & PROF. CODE §10131 (definition of broker).

4. *Easton v. Strassburger*, 152 Cal. App. 3d 90, 102, 199 Cal. Rptr. 383, 390 (1984). See *Ashman, Real Estate Broker Must Discover and Disclose Defects*, 70 A.B.A. J., June 1984, at 118 (discussing *Easton*).

5. CAL. CIV. CODE §1102.6 (required form of disclosure). The required form lists several

estate licensees⁶ in transactions involving specified real estate.⁷ Chapter 1574, however, exempts from the disclosure requirement several real property transactions.⁸

Chapter 1574 provides that before real property is transferred a specified statement⁹ must be delivered¹⁰ to the prospective transferee.¹¹ If the real property is transferred by sale the disclosure must be prior to transfer of title.¹² If the transfer is to be achieved by a real property sales contract,¹³ lease option, or ground lease,¹⁴ the disclosure must be made prior to execution of the transaction.¹⁵ If the required disclosure, or a material amendment to the disclosure, occurs after the execution of the offer to purchase, the transferee is given time to terminate the offer by written notification to the transferor or agent of the transferor.¹⁶

features of real property and requires that the seller disclose whether or not the features are in operating order. The form requires a statement concerning several conditions of the property including soil condition, flooding, and easements or encroachments. The form also requires a statement from an agent, if one exists, as to the agent's visual and verbal investigations of the property. Finally, the form provides that it is not a warranty but the information contained therein may be relied upon by a purchaser. *Id.* The items listed do not limit any other obligation required by law. *Id.* §1102.8.

6. CAL. BUS. & PROF. CODE §10014 (defining real estate licensee to include brokers and salesmen). Chapter 1574 excludes escrow agents as agents of the transferor or transferee for purposes of the disclosure requirements unless express written authorization makes the escrow agent an agent of the transferor or transferee. CAL. CIV. CODE §1102.11.

7. CAL. CIV. CODE §§1102-1102.13. The disclosure requirements apply to transactions of improved real property with at least one but not more than four units. The transactions may be sales, land sales contracts, lease options, or ground leases. *Id.* §1102.

8. *Id.* §1102.1. Chapter 1574 exempts from the disclosure requirement the following: (1) transactions when a public report has been delivered to the purchaser pursuant to section 11018.1 of the Business and Professions Code; (2) transfers when a public report is not necessary pursuant to section 11010.4 of the Business and Professions Code; (3) transfers due to a court order; (4) transfers upon default; (5) transfers by a fiduciary in the course of the administration of a decedent's estate, a guardianship, conservatorship, or trust; (6) transfers from a co-owner to one or more other co-owners; (7) transfers to a spouse or a person related by consanguinity; (8) transfers between spouses due to dissolution of marriage; (9) transfers of unclaimed property by the State Controller pursuant to Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure; (10) transfers made by the state to satisfy tax obligations; and (11) transfers to or from any governmental entity. *Id.*

9. *Id.* §1102.6 (preprinted form that must be delivered to transferee).

10. Disclosure may be by personal delivery or mail. Delivery to the spouse of a transferee is delivery to the transferee, unless provided otherwise by contract. *Id.* §1102.10.

11. *Id.* §1102.2.

12. *Id.* §1102.2(a).

13. *Id.* §2985 (defining real property sales contract).

14. The ground lease must be coupled with improvements. *Id.* §1102.2(b).

15. *Id.* The transferor must indicate that Chapter 1574 has been complied with on the receipt for deposit, the real property sales contract, the lease, any addendum attached to the lease, or a separate document. *Id.* §1102.2.

16. *Id.* §1102.2. The transferee is allowed three days to give notice of termination if disclosure was made in person; if disclosure is delivered by mail, the transferee has five days after the disclosure was deposited in the mail to notify the transferor or the agent of the transferor of termination. *Id.*

A transferor or agent of the transferor is not liable for errors, inaccuracies, or omissions contained in a disclosure statement if the errors, inaccuracies, or omissions; (1) were not within the knowledge of the transferor or the agent, or (2) were based on information provided by a government agency or another person disclosing information pursuant to Chapter 1574;¹⁷ and ordinary care was used in obtaining the information.¹⁸ If a public agency or other person¹⁹ provides information to a prospective transferee, the transferor is relieved of the duty to provide the information if the disclosure was in compliance with the disclosure requirements of Chapter 1574.²⁰ Chapter 1574 further provides that if any information supplied by the disclosure statement subsequently becomes inaccurate, the inaccuracy does not constitute a violation of Chapter 1574.²¹ Furthermore, if information required to be disclosed is unknown or unavailable to the transferor and a reasonable, but unsuccessful, effort has been made to discover the information, the transferor may approximate the information.²²

Chapter 1574 provides that if more than one licensed real estate broker is acting as an agent in a real property transaction the broker that obtained the offer from the transferee must deliver the disclosure statement to the transferee.²³ Chapter 1574 also provides that if the broker responsible for delivery of the disclosure statement is unable to obtain the disclosure documents, the broker must provide the transferee with written notice of the right of the transferee to receive disclosure before consummating the transfer.²⁴ The broker, however, is not required to notify the transferee of disclosure rights if the broker has received written assurances that the disclosure has been received by the transferee.²⁵

The real estate license of a broker is subject to revocation or suspension for repeated or willful violations of Chapter 1574.²⁶ Furthermore,

17. The requirement may be satisfied by obtaining information from a licensed engineer, land surveyor, geologist, structural pest control operator, contractor, or other expert dealing within the scope of the professional's license or expertise. *Id.* §1102.4(c).

18. *Id.* §1102.4(a).

19. *Id.* §1102.4(c) (listing persons who issue reports that may be used in lieu of the disclosure statement).

20. *Id.* §1102.4(b).

21. *Id.* §1102.5.

22. *Id.* The statement must specify that an approximation was used. *Id.* Any disclosure made pursuant to Chapter 1574 must be made in good faith. *Id.* §1102.7 (requiring and defining good faith). Chapter 1574 permits amendment of the disclosure if the amendment is in writing and satisfies the requirements of section 1102.2 of the Civil Code. *Id.* §1102.9.

23. *Id.* §1102.12(a) (the transferor may provide otherwise by written agreement).

24. *Id.* §1102.12(b). A licensed real estate broker required to make disclosures pursuant to Chapter 1574 also must keep a record of actions taken to comply with Chapter 1574 in accordance with Business and Professions Code §10148. *Id.*

25. *Id.*

26. CAL. BUS. & PROF. CODE §10176.5.

any person that violates the provisions of Chapter 1574 is liable for the actual damages suffered by a transferee.²⁷ Finally, Chapter 1574 provides that real estate transactions are not subject to invalidation based solely upon violations of Chapter 1574.²⁸

27. CAL. CIV. CODE §1102.13.

28. *Id.*

Property; real property security disclosure statement

Business and Professions Code §§10237.5, 10247.5 (repealed); §§10240.1, 10240.2 (new); §§10225, 10237.4, 10238.7, 10242.6, 10243, 10248.1 (amended).

SB 1185 (Vuich); 1985 STAT. Ch 1355

Support: Mortgage Brokers Institute; Department of Real Estate; Department of Finance

Existing law requires any person selling a real property security¹ to deliver to the purchaser a written statement delineating specified terms of the sales agreement and conditions of the property, before the purchaser is required to complete the transaction.² Prior law provided only one statement to be delivered to a purchaser in any real property security transaction.³ Chapter 1355 modifies prior law by providing that either of two different statements⁴ may be required, depending on the acts performed by the real estate broker⁵ in handling the transaction.⁶

1. CAL. BUS. & PROF. CODE §10237.1 (definition of real property security).

2. *Id.* §10237.4. Under Chapter 1355 the required statement is set forth in CAL. BUS. & PROF. CODE §10232.5. *Id.*

3. 1961 Cal. Stat. c. 886, §23, at 2332 (enacting CAL. BUS. & PROF. CODE §10237.5) (listing requirements for statement under prior law).

4. CAL. BUS. & PROF. CODE §10232.5 (listing the two statements).

5. *Id.* §10131 (definition of real estate broker for use in Part 1 of Division 4 of the Business and Professions Code).

6. *See id.* §§10237.4 (requiring a written statement providing the information listed in CAL. BUS. & PROF. CODE §10232.5), 10232.5 (listing two statements and requiring one or the other to be delivered according to which acts the broker is performing). A broker that solicits borrowers or lenders or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity must provide the statement listed in section 10232.5(a) of the Business and Professions Code. A broker that sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract or promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof must deliver the statement listed in section 10232.5(b) of the Business and Professions Code. *Id.* §10232.5.

Property; notice requirements in property actions

Code of Civil Procedure §409 (amended);
AB 1568 (McClintock); 1985 STAT. Ch 154
Support: State Bar of California; Department of Consumer Affairs

Under prior law, before recordation of a *lis pendens* notice¹ a copy of the notice had to be mailed to all interested parties² by first-class mail with return receipt requested.³ Interested parties were determined from the records of the office of the county assessor.⁴ Chapter 154 specifies that a copy of the *lis pendens* notice must be mailed to all interested parties by certified or registered mail with return receipt requested.⁵ Under Chapter 154 interested parties are to be determined by the latest county assessment roll or more recent assessment information in the possession of the county assessor.⁶

1. *Giles and Co. v. Bank of America* 47 Cal. App. 2d 315, 327, 117 P.2d 943, 951 (1941) (*lis pendens* gives a judgment creditor notice of the nature of the action, the names of the parties to the action, and the description of the property involved in the action).

2. CAL. CIV. PROC. CODE §409 (adverse parties and all owners of record).

3. 1984 Stat. c. 572, §1, at 591 (amending CAL. CIV. PROC. CODE §409).

4. *Id.*

5. CAL. CIV. PROC. §409(c).

6. *Id.*

Property; partnership statements

Corporations Code §15010.7 (amended).
AB 1339 (Cortese); 1985 STAT. Ch 138
Support: State Bar Committee on Partnerships

Under existing law, a statement of partnership¹ may be recorded which restricts the authority of an individual partner with respect to partnership interests in real property.² Existing law further provides that the recorded statement constitutes constructive notice of the restrictions contained therein³ and is conclusive as to restrictions on partnership real property⁴ in the county in which the statement is recorded.⁵

1. CAL. CORP. CODE §15010.5 (definition of statement of partnership).

2. *Id.* §15010.7.

3. The title to the real property must be held in the partnership name or otherwise indicate ownership by partnership. *Id.*

4. *Id.* §15010.7 (may also record a certified copy of partnership statement).

5. *Id.* §15010.5.

Prior law permitted the statement of partnership to remain in effect until a subsequent statement was recorded that had been signed, acknowledged, and verified by *all the parties*.⁶ Chapter 138 requires the subsequent statement to be signed, acknowledged and verified by all the *existing partners*.⁷

6. 1984 Cal. Stat. c. 477, §3, at —, (enacting CAL. CORP. CODE §15010.7).

7. CAL. CORP. CODE §15010.7.

Property: rental deposits

Civil Code §1950.5 (amended).

AB 2289 (Wright); 1985 STAT. Ch 1555

Support: Department of Consumer Affairs

Existing law requires a landlord who retains all or part of the security deposit¹ of a tenant to furnish the tenant with an itemized written statement of the basis for, and disposition of, the security within two weeks after the tenant has vacated the premises.² If a landlord retains the security deposit of a tenant in violation of the security deposit law, Chapter 1555 requires that the landlord pay the tenant two percent interest on the unlawfully retained security in addition to other penalties.³ Existing law provides that a landlord may deduct a portion of the security deposit reasonably necessary to remedy defaults in payment of rent, repair damages to the premises caused by the tenant,⁴ and clean the premises⁵ upon termination of the tenancy.⁶ Chapter 1555 provides that a landlord may not assert a claim against the tenant or security for damages to the premises or defective condi-

1. CAL. CIV. CODE §1950.5(b) (definition of security).

2. *Id.* §1950.5(f).

3. *Id.* §1950.5 (k). The bad faith claim or retention of a security or any portion thereof, in violation of section 1950.5 of the Civil Code, may subject the landlord to damages not to exceed \$200. *Id.* §150.5(i).

4. The landlord may not deduct any portion of the security deposit to remedy ordinary wear and tear. *Id.* §1950.5(e).

5. The landlord may deduct a portion of the security deposit for the purposes of cleaning the premises only if cleaning is necessary. *Id.*

6. *Id.*

tions that existed prior to the tenancy, or for ordinary wear and tear.⁷ Existing law provides that upon termination of the interest of a landlord in a dwelling unit, the landlord may (1) transfer the remaining portion of the security to the successor in interest, and notify the tenant by personal delivery or certified mail of the transfer and any remaining claims against the security, or (2) return the remaining portion of the security to the tenant.⁸ Chapter 1555 makes the landlord and the successor in interest of the landlord jointly and severally liable for repayment of the security in the event of noncompliance with Chapter 1555.⁹

7. The landlord may not assert a claim for ordinary wear and tear, whether or not the wear and tear existed prior to the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies. *Id.* The amendments set out in section 1950.5(e) of the Civil Code are declaratory of existing law, and the amendments to section 1950.5(k) are applicable to all leases and other tenancies of residential property terminated on or after January 1, 1987. *Id.* §1950.5(o).

8. *Id.* §1950.5(g).

9. *Id.* §1950.5(i). The successor in interest is not liable for damages if the successor has a good faith belief that the lawfully remaining security has been returned to the tenant or transferred to the successor pursuant to section 1950.5(g) of the Civil Code. *Id.*