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# Property

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# Property

## Property; abandoned mobilehomes

Civil Code § 798.61 (new).

AB 3225 (Lewis); 1986 STAT. Ch. 1153

Sponsor: Western Mobilehome Association

Existing law governs the sale or transfer of an interest involving mobilehomes,<sup>1</sup> but does not provide a procedure for the transfer of an interest when a mobilehome has been abandoned.<sup>2</sup> Under Chapter 1153, the management<sup>3</sup> of a mobilehome park<sup>4</sup> may petition a court for a declaration of abandonment if, after determining the mobilehome is abandoned,<sup>5</sup> the management has posted a notice of abandonment for the previous thirty days, and has attempted to notify the owner by mail at the last known address.<sup>6</sup> If the court enters a judgment of abandonment, the management must submit within ten days a complete inventory of the contents, post a notice of intent to sell the abandoned property, mail a copy of the notice to the owner, and publish the notice of sale in the local newspaper.<sup>7</sup> The management may conduct a public sale of the abandoned mobilehome and its contents thirty days after the judgment has been entered.<sup>8</sup> The unclaimed proceeds from the sale which exceed the amount to which management is entitled are considered abandoned property, and must

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1. See, e.g., CAL. CIV. CODE §§ 798.15 (rental agreement); 798.26 (right of entry by management); 798.55-798.58 (termination of tenancy); 798.70-798.79 (transfer of mobilehomes). See also *id.* § 798.3 (definition of mobilehome).

2. See generally *id.* §§ 798-799.6 (Mobilehome Residency Law).

3. *Id.* § 798.2 (definition of management).

4. *Id.* (definition of mobilehome park).

5. An abandoned mobilehome means any unoccupied mobilehome that is (1) less than 12 feet in width, (2) located in a mobilehome park on a site for which no rent has been paid to the management for the preceeding 60 days, and (3) reasonably believed by the management to be abandoned. *Id.* § 798.61(a).

6. *Id.* § 798.61(b), (c). The notice must also be sent to any known holder of a security interest in the mobilehome. *Id.* § 798.61(b).

7. *Id.* § 798.61(e).

8. *Id.* § 798.61(g). Prior to the sale, the mobilehome and its contents may not be moved from its site. *Id.* § 798.61(f).

be paid to the county treasury.<sup>9</sup> The purchaser at the public sale takes the property free of all prior interests.<sup>10</sup>

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9. *Id.* § 798.61(g). Within one year, the former homeowner or any other owner may apply to the county treasury for payment of any or all of the unclaimed proceeds. If the county pays all of the proceeds, then the county will not be liable to any other subsequent claimant. *Id.*

10. *Id.* § 798.61(i).

## Property; county recorder—notice of abstract of judgment

Government Code § 27297.5 (amended).

SB 1813 (Deddeh); 1986 STAT. CH. 612

Sponsor: California Association of Collectors

Support: Office of Local Governmental Affairs

Under existing law, whenever an abstract of judgment, or other document creating an involuntary lien,<sup>1</sup> affecting the title to real property is recorded, the county recorder must notify the judgment debtor or the attorney of record within ten days of the recording.<sup>2</sup> Chapter 612 creates an exception to this notice requirement when the judgment creditor provides to the county recorder proof that the documents being recorded were served<sup>3</sup> on the judgment debtor.<sup>4</sup>

Under existing law, the failure of a county recorder to notify the judgment debtor that a lien has been recorded, does not affect the force, priority, or effect of the lien or constructive notice otherwise imparted by recordation.<sup>5</sup> Chapter 612 provides the same lien protection when the judgment creditor or lienholder fails to notify the person against whom the document is being recorded.<sup>6</sup>

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1. CAL. GOV'T CODE § 27297.5(d) (definition of involuntary lien).

2. *Id.* § 27297.5(a) (if the recorded document contains the address of the judgment debtor or the judgment debtor's attorney).

3. *Id.* § 27297.5(a), (b) (service must be made pursuant to Government Code § 27297.5(b)).

4. *Id.* § 27297.5(a). The judgment creditor may add the actual cost of service to the lien amount. *Id.* § 27297.5(c).

5. *Id.* § 27297.5(f).

6. *Id.* Chapter 612 does not apply to involuntary liens in favor of the federal government or to any state tax lien against real property. *Id.* § 27297.5(e).

## Property; disclosure of real estate agent's affirmative obligations

Civil Code §§ 2373, 2374, 2374.5, 2375, 2375.5, 2376, 2377, 2378, 2379, 2380, 2381, 2382 (new); § 1717 (amended).  
 AB 1034 (Connelly); 1986 STAT. Ch. 785  
 (Effective January 1, 1988)\*

With the enactment of Chapter 785, the legislature intends to protect consumers in residential real estate transactions by requiring real estate agents to disclose to buyers and sellers, in uniform and comprehensible terms, the various types of agency relationships in real property transactions.<sup>1</sup> The legislature also intends to provide an explicit basis for maintaining the confidentiality of price information by a dual agent<sup>2</sup> in real property transactions.<sup>3</sup>

Under existing case law, a real estate agent may not represent both the seller and the buyer in a real estate transaction, unless the agent obtains the consent of both principals after full disclosure.<sup>4</sup> Chapter 785 requires the listing agent<sup>5</sup> and the selling agent<sup>6</sup> to disclose to the buyer and the seller, as soon as practical, that the agent is acting (1) exclusively as the seller's agent, (2) exclusively as the buyer's agent, or (3) as a dual agent representing both the buyer and the seller.<sup>7</sup> This relationship must be confirmed in the contract to pur-

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\* To provide consumers and agents sufficient time to familiarize themselves with the provisions of this act, Chapter 785 will not become effective until January 1, 1988. 1986 Cal. Stat. ch. 785, sec. 3(g), at \_\_\_\_.

1. 1986 Cal. Stat. ch. 785, sec. 3(b), (c), at \_\_\_\_\_. Real property transaction means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction and includes a listing or an offer to purchase. CAL. CIV. CODE § 2373(k).

2. CAL. CIV. CODE § 2373(d) (definition of dual agent).

3. 1986 Cal. Stat. ch. 785, sec. 3(f), at \_\_\_\_\_. By enacting Chapter 785, the legislature does not intend to diminish any liability to buyers and sellers which may exist for tortious conduct in connection with these real property transactions. *Id.* sec. 3(e), at \_\_\_\_\_. Furthermore, Chapter 785 is not to be construed to either diminish the duty of disclosure owed buyers and sellers by agents or to relieve agents from liability for any breach of a fiduciary duty or a duty of disclosure. CAL. CIV. CODE § 2382.

4. *Loughlin v. Idora Realty Co.*, 259 Cal. App. 2d 619, 629, 66 Cal. Rptr. 747, 753 (1968). See also CAL. BUS. & PROF. CODE § 10176(d) (codifying rule as ground for disciplinary action against real estate broker).

5. CAL. CIV. CODE § 2373(f) (definition of listing agent). Chapter 785 does not preclude a listing agent from also being a selling agent. The combination of these two functions in one agent does not, of itself, make that agent a dual agent. *Id.* § 2380.

6. *Id.* § 2373(n) (definition of selling agent).

7. *Id.* § 2375.5. Chapter 785 does not prevent an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship if the requirements of Civil Code §§ 2374 and 2375.5 are complied with. *Id.* § 2378.

chase the property by use of a specified form.<sup>3</sup> Chapter 785 prohibits selling agents from acting exclusively as agents for the buyer when that agent is also the listing agent.<sup>9</sup>

Under Chapter 785, a dual agent is prohibited from disclosing to the buyer that the seller is willing to sell the property at a price lower than the listing price,<sup>10</sup> unless the agent has the written consent of the seller.<sup>11</sup> Similarly, Chapter 785 also prohibits a dual agent from disclosing to the seller that the buyer is willing to pay a greater price than the offering price,<sup>12</sup> unless the agent has the written consent of the buyer.<sup>13</sup>

Under Chapter 785, real estate agents are required to provide the buyer<sup>14</sup> and seller<sup>15</sup> in residential real property transactions with a specified disclosure form<sup>16</sup> detailing the following affirmative duties of real estate agents: (1) the fiduciary duty that the agent owes the principal, and (2) the duties of good faith, diligence, and full disclosure that the agent owes to both parties in the transaction.<sup>17</sup> Under existing law, a valid contract employing a person to act as a real estate agent must be in writing.<sup>18</sup> Chapter 785 provides that, with the written consent of the parties, a contract between the principal and agent may be modified to change the agency relationship at any time before the performance of the act which is the object of the agency.<sup>19</sup>

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8. See *id.* § 2377.5(c) (setting forth the specified form). The payment of compensation to an agent by the seller or the buyer is not necessarily determinative of a particular agency relationship. *Id.* § 2377.

9. *Id.* § 2376.

10. *Id.* § 2373(g) (definition of listing price).

11. *Id.* § 2379.

12. *Id.* § 2373(h) (definition of offering price).

13. *Id.* § 2379.

14. *Id.* § 2373(c) (definition of buyer).

15. *Id.* § 2373(m) (definition of seller).

16. See *id.* § 2375 (setting forth the specified form).

17. *Id.* §§ 2374, 2375. The agent is further required to obtain from the buyer and seller a signed receipt for the form. The disclosure form must be presented by the listing agent prior to entering into the listing agreement, and by the selling agent as soon as practical prior to the presentation of an offer to purchase. If the selling agent does not deal with the seller on a face-to-face basis, the selling agent may deliver the disclosure form through the listing agent or by certified mail to the seller's last known address, in which case a signed receipt is not required. *Id.*

18. *Id.* § 1624(d).

19. *Id.* § 2381.

**Property; disclosure to purchaser**

Civil Code § 1710.2 (new).

SB 2484 (Roberti); 1986 STAT. Ch. 498

Sponsor: California Association of Realtors

Under existing law, a seller or seller's agent<sup>1</sup> has an affirmative duty to disclose facts not accessible to the diligent attention of the buyer, when the facts materially affect the value or desirability of the property.<sup>2</sup> Recent case law has expanded the disclosure requirement to include facts which the seller is aware have a significant and measurable effect on the market value of the property, regardless of the character of the information.<sup>3</sup> Furthermore, existing law creates an action for deceit<sup>4</sup> upon failure to make a required disclosure.<sup>5</sup>

Chapter 498 is in response to legislative findings that the applicability of existing case law regarding disclosure requirements is ambiguous when the previous owner or occupant has been afflicted with acquired immune deficiency syndrome (AIDS).<sup>6</sup> Accordingly, Chapter 498 states that no cause of action will lie for the failure of the owner or the owner's agent to disclose to the transferee<sup>7</sup> that a prior inhabitant of the premises was afflicted with AIDS.<sup>8</sup>

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1. CAL. BUS. & PROF. CODE §§ 10011-10025 (agent includes all individuals defined by these sections).

2. *Cooper v. Jevne*, 56 Cal. App. 3d 860, 866, 128 Cal. Rptr. 724, 727 (1976); *Lingsch v. Savage*, 213 Cal. App. 2d 729, 735-36, 29 Cal. Rptr. 201, 204-05 (1963) (both courts requiring an affirmative duty to disclose facts). *See also* *Easton v. Strassburger*, 152 Cal. App. 3d 90, 102, 199 Cal. Rptr. 383, 388 (1984) (adds requirement of inspection by the agent).

3. *Reed v. King*, 145 Cal. App. 3d 261, 267, 193 Cal. Rptr. 130, 133 (1983) (requiring the seller or the seller's agent to disclose that a murder occurred in the home).

4. CAL. CIV. CODE § 1709 (action for deceit).

5. *Id.* § 1710(3) (definition of deceit for failure to disclose a known fact).

6. 1986 Cal. Stat. ch. 498, sec. 1(e), at \_\_\_\_\_. *See* CAL. CIV. CODE § 1710.2 (definition of AIDS).

7. CAL. CIV. CODE § 1710.2 (transferee includes a purchaser, lessee, or renter of real property).

8. *Id.*

## Property; discrimination

Government Code § 65008 (amended).  
AB 1995 (M. Waters); 1986 STAT. Ch. 639  
(Effective September 2, 1986)

Existing law provides that no city or county may prohibit or discriminate against any residential development<sup>1</sup> or emergency shelter because of the method of financing, or the race, sex, color, religion, national origin, ancestry, or age of the intended occupants.<sup>2</sup> With the enactment of Chapter 639, the legislature declares that discriminatory practices which inhibit the development of housing for families of low, moderate, and middle income, or the development of emergency shelters for the homeless, are a matter of statewide concern.<sup>3</sup> Accordingly, Chapter 639 expands existing law to protect the owners, as well as the intended occupants, and provides that no city or county may discriminate against any residential development or emergency shelter because of the lawful occupation of the owners or intended occupants.<sup>4</sup>

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1. Under Chapter 639, residential development means a single family residence or a multifamily residence. CAL. GOV'T CODE § 65008(f).

2. *Id.* § 65008(b).

3. *Id.* § 65008.

4. *Id.* § 65008(b).

## Property; mobilehomes

Civil Code §§ 798.17, 798.51 (amended).  
SB 2141 (Greene); 1986 STAT. Ch. 1416  
Sponsor: Author  
Support: Golden State Mobilehome Owners League

Under existing law a rental agreement between the management<sup>1</sup> of a mobilehome park<sup>2</sup> and a homeowner<sup>3</sup> is exempt from any local

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1. CAL. CIV. CODE § 798.2 (definition of management).

2. *Id.* § 798.4 (definition of mobilehome park).

3. A homeowner is a person who has a tenancy in a mobilehome park under a rental agreement. *Id.* § 798.9. *See id.* § 798.12 (definition of tenancy).

rent control regulations if the agreement is for the personal residence of the homeowner, and if the rental term exceeds twelve months.<sup>4</sup> Chapter 1416 expands the rights of the homeowner by giving the homeowner thirty days, from the time of the management's offer, to accept or reject an agreement.<sup>5</sup> After executing a rental agreement, the homeowner has the power to void the agreement by notifying the management in writing within seventy-two hours of execution.<sup>6</sup> In addition, the homeowner may reject a rental agreement offer that exceeds twelve months, and elect instead to enter one for less than twelve months with the same charges, terms, and conditions<sup>7</sup> that were contained in the original offer.<sup>8</sup> Chapter 1416 further requires the management of a mobilehome park to meet with a homeowner regarding the rental agreement within thirty days of the homeowner's written request for such meeting.<sup>9</sup>

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4. *Id.* § 798.17. *See Birkenfield v. City of Berkeley*, 17 Cal. 3d 129, 158, 550 P.2d 1001, 1022, 130 Cal. Rptr. 465, 486 (1976) ("It is now settled California law that legislation regulating prices or otherwise restricting contractual or property rights is within the police power if its operative provisions are reasonably related to the accomplishment of a legitimate governmental purpose").

5. CAL. CIV. CODE § 798.17(b)(3).

6. *Id.* § 798.17(b)(4).

7. *See generally id.* §§ 798.30-798.38 (fees and charges for mobilehome residents).

8. *Id.* § 798.17(c). An option to renew the agreement included in the original offer will not, however, be carried over to the new lease should the homeowner elect to enter a lease for less than 12 months. *Id.* Chapter 1416 does not preclude the management from offering lessees gifts of value other than reductions in rental rates. *Id.* § 798.17(d).

9. *Id.* § 798.51(d).

## Property; power of sale

Civil Code § 2924j (new).

AB 4302 (Eaves); 1986 STAT. Ch. 943

Sponsor: Trust Deed Service Financial Corporation

Existing law governs the execution of any nonjudicial foreclosure<sup>1</sup>

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1. Nonjudicial foreclosure is the private execution of a power of sale contained in a mortgage or deed of trust without resorting to judicial action. BLACK'S LAW DICTIONARY 581 (5th ed. 1979) (defining statutory foreclosure). *See generally* Strutt v. Ontario Sav. & Loan Ass'n, 28 Cal. App. 3d 866, 876-77, 105 Cal. Rptr. 395, 402 (1972) (discussing the constitutionality of nonjudicial foreclosures).



in a deed of trust<sup>2</sup> or mortgage.<sup>3</sup> With the enactment of Chapter 943, a deed issued by a trustee<sup>4</sup> at a nonjudicial foreclosure is considered void if the sale was previously enjoined, and the injunction was served upon the trustee or beneficiary.<sup>5</sup> In addition, if the sale was stayed according to the bankruptcy laws, and the property is located in the same county where the bankruptcy proceedings were commenced, the deed will be considered void.<sup>6</sup> Chapter 943 further requires the trustee, beneficiary, or any other person who received proceeds from the sale of the property to tender the consideration<sup>7</sup> paid for the real property to the grantee.<sup>8</sup> If the deed has already been issued, Chapter 943 requires the grantee to execute and record a quitclaim deed<sup>9</sup> relinquishing any interest in the trustee's deed prior to the consideration being tendered by the trustee.<sup>10</sup>

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2. *La Arcada Co. v. Bank of Am.*, 120 Cal. App. 397, 398, 7 P.2d 1115, 1115 (1932) (deed of trust is a conveyance in trust to secure an indebtedness against the trust estate, with a power of sale vested in the trustee).

3. CAL. CIV. CODE §§ 2924a-2924i. *See id.* § 2920 (definition of mortgage). *See generally* 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Security Transactions in Real Property* §§ 4-6 (8th ed. 1973 & Supp. 1984) (comparing deeds of trust and mortgages).

4. CAL. CIV. CODE § 2218 (definition of trustee).

5. *Id.* § 2924j(a). *Id.* § 2218 (definition of beneficiary).

6. *Id.* § 2924j(a). *See generally* 11 U.S.C. §§ 101-109 (1978 & Supp. 1986) (general provisions of federal bankruptcy act). If the property is located in another county, the deed can be rendered void prior to the sale by recording the stay order, or a copy of the petition in bankruptcy, in the county where the property is located. CAL. CIV. CODE § 2294j(a). *See also* CAL. GOV'T CODE § 27280 (instruments and judgments recordable). The deed may also be made void by serving written notice of the bankruptcy proceedings on the trustee or beneficiary. CAL. CIV. CODE § 2924j(a).

7. *See* CAL. CIV. CODE § 1605 (definition of consideration).

8. *Id.* § 2924j(b).

9. A quitclaim deed is an instrument of conveyance in which the "right, title, and interest of the grantor vests in the purchaser only what the grantor himself could claim." *Lombardi v. Sianides*, 71 Cal. App. 272, 276, 235 P. 455, 456 (1925).

10. CAL. CIV. CODE § 2924j(b).

## Property; real estate appraisal standards—the Lancaster-Montoya Appraisal Act

Civil Code §§ 1922, 1922.1, 1922.2, 1922.4, 1922.6, 1922.8, 1922.10, 1922.11, 1922.12, 1922.14 (new).

AB 3746 (Lancaster); 1986 STAT. Ch. 372

(Effective January 1, 1988)

Sponsor: California Association of Realtors

Support: Department of Real Estate

Under prior law there were no legislative standards for real property appraisals.<sup>1</sup> Chapter 372 defines and establishes standards for *certified* appraisals<sup>2</sup> and *certified* appraisal reports<sup>3</sup> of real property.<sup>4</sup> Moreover, Chapter 372 provides a cause of action for any person who has been damaged, or can demonstrate potentially irreparable damage, from the violation of the provisions of Chapter 372.<sup>5</sup>

### APPRAISER'S DUTIES

Chapter 372, referred to as the Lancaster-Montoya Appraisal Act, requires any persons performing a certified appraisal of real property in California to employ methods and techniques necessary to produce a credible appraisal,<sup>6</sup> use due diligence to ensure that all material data is considered with appropriate care to produce an informed result,<sup>7</sup> refuse to perform any part of the appraisal process which they reasonably believe they do not have adequate knowledge or experience to perform competently,<sup>8</sup> follow specified procedures when appraising structures or improvements that are not in existence at

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1. The Sacramento Bee, June 8, 1986, at K1, col. 1.

2. Certified appraisal is defined as an act or process, for or in expectation of compensation, to produce an analysis, opinion, or conclusion relating to the value of specified interests in real property, when that act or process is termed a certified appraisal. CAL. CIV. CODE § 1922.1(a).

3. Certified appraisal report is defined as any communication of an analysis, opinion, or conclusion relating to the value of real property which is termed as a certified appraisal report or is in any way described as a communication of the results of a certified appraisal. *Id.* § 1922.1(b).

4. *Id.* §§ 1922.2-.14.

5. *Id.* § 1922.11. The court may award costs and reasonable attorneys' fees to the prevailing party. *Id.*

6. *Id.* § 1922.2(a).

7. *Id.* § 1922.2(b).

8. *Id.* § 1922.2(c).

the time of the appraisal,<sup>9</sup> and base estimates of future income and expenses which form a basis for value, on reasonably clear and appropriate evidence and reasonable projections in the marketplace.<sup>10</sup>

Chapter 372 further provides that any person performing a certified appraisal of real property must (1) identify the real property or interest in real property being appraised,<sup>11</sup> and the purpose and scope of the appraisal;<sup>12</sup> (2) specify the value concept to be derived, together with any factors or adjustments used to produce value;<sup>13</sup> (3) establish the effective date of the certified appraisal report and the date for which valuation is effective, if different;<sup>14</sup> (4) identify and analyze the highest and best use of the property;<sup>15</sup> (5) determine the facts, assumptions, and conditions upon which the appraisal is based, and their impact on any conclusion;<sup>16</sup> (6) select and pursue an appraisal procedure to be followed, and identify that procedure and why that procedure was selected, in the appraisal report;<sup>17</sup> (7) identify and analyze any current agreement of sale, option, or listing of the

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9. *Id.* § 1922.2(d). When an opinion or conclusion of value to be expressed includes the value of structures or improvements which do not exist at the time of the appraisal, Chapter 372 requires the appraiser to examine (1) plans, specifications, or other documentation sufficient to identify the scope and character of the proposed improvements; (2) evidence indicating the probable time of completion of the proposed improvements; and (3) reasonably clear and appropriate evidence of development costs. *Id.*

10. *Id.* § 1922.2(e).

11. *Id.* § 1922.4(c).

12. *Id.* § 1922.4(a).

13. *Id.* § 1922.4(b). Value concepts may include the following: (1) fair market value for property tax purposes, pursuant to Revenue and Taxation Code § 110; (2) fair market value for purposes of eminent domain, pursuant to Civil Procedure Code § 1263.320; (3) value of public utility, pursuant to Public Utilities Code § 201; (4) fair market value for purposes of reviewing the lending practices of financial institutions, pursuant to Health and Safety Code § 35805(b); (5) market value, as defined by regulations or criteria of any federal or state regulatory agency, or federal or state chartered secondary mortgage market institution, for purposes of loan underwriting; and (6) other published, cited, or defined concepts. *Id.*

14. *Id.* § 1922.4(d).

15. *Id.* § 1922.4(e). If the highest and best use of the property is not used, the appraiser is required to expressly conclude why consideration of that factor is deemed not necessary or appropriate, and the reasons for that conclusion. *Id.* See AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, *THE APPRAISAL OF REAL ESTATE* 29 (1967) (definition of highest and best use).

16. CAL. CIV. CODE § 1922.4(f). Chapter 372 requires that the facts, assumptions, and conditions upon which the appraisal is based be recorded in the appraisal report with sufficient precision for the purposes of the appraisal. *Id.*

17. *Id.* § 1922.4(g). The appraisal procedure may use the direct sales comparison approach, the income approach, the cost approach, any other appropriate appraisal approach, or any combination of approaches. If neither the direct sales comparison approach, the income approach, nor the cost approach are used, this omission or the use of alternative approaches in the appraisal report must be explained and supported. If more than one approach is selected, any difference in opinions or conclusions which result must be reconciled. *Id.* See generally 1 J. BONBRIGHT, *THE VALUATION OF PROPERTY* 134-218 (1937) (discussion of the direct sales comparison approach, the income approach, and the cost approach). See also Whitaker, *Real Property Valuation in California*, 2 U.S.F. L. REV. 47 (1967).

interest being appraised, if this information is reasonably available;<sup>18</sup> and (8) arrange for a proper inspection of the subject property.<sup>19</sup>

#### APPRAISAL REPORT REQUIREMENTS

Chapter 372 requires that certified appraisal reports be presented in clear and unequivocal terms with sufficient information to enable the user to understand the report properly, and in such a manner as to avoid being misleading.<sup>20</sup> Chapter 372 further requires that written certified appraisal reports include the following: (1) a specific discussion of the appraiser's duties;<sup>21</sup> (2) disclosure of all material facts;<sup>22</sup> (3) a discussion of any qualifications of the opinions or conclusions contained in the report;<sup>23</sup> (4) the identity of any other persons who prepared the analysis, opinion, or conclusions contained in the report;<sup>24</sup> (5) a conspicuous and accurate statement of any possible conflicts of interest that the preparer of the report may have;<sup>25</sup> (6) a certification that the statements of fact contained in the report are true and correct, to the best knowledge and belief of the appraiser;<sup>26</sup> and (7) a certification that the analysis, opinion, and conclusions were developed, and the report was prepared, in conformity with the provisions of the Lancaster-Montoya Appraisal Act, or a statement of the particulars for which that certification is not made.<sup>27</sup>

#### CONTINGENT FEES

Under Chapter 372, appraisers are prohibited from accepting an

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18. CAL. CIV. CODE § 1922.4(h). Chapter 372 also requires the appraiser to identify and analyze any *prior* sales of the interest to be appraised, if information on these sales is reasonably available to the appraiser in the normal course of business, and if those sales occurred within (1) one year, for property containing one to four residential units, and (2) three years, for all other property interests. *Id.*

19. *Id.* § 1922.4(j). Appraisers are required to either inspect the property with the ordinary care used by persons making these inspections for appraisal purposes, delegate the inspection to a competent person and identify that person in the appraisal report, or disclose to the user of the report the fact that no inspection of the real property has been made and the reason therefore. *Id.*

20. *Id.* § 1922.6(a).

21. *Id.* § 1922.6(b)(1).

22. *Id.* § 1922.6(b)(2).

23. *Id.* § 1922.6(b)(3). This requirement includes any limitations on the scope of the report or omissions from the report that are in contrast with generally recognized appraisal practices. *Id.*

24. *Id.* § 1922.6(b)(4).

25. *Id.* § 1922.6(b)(5). Enumerated possible conflicts of interests include a present or contemplated future interest in the subject property, a relationship with the owner of the property, and a relationship with the prospective user of the appraisal data. *Id.*

26. *Id.* § 1922.6(b)(6).

27. *Id.* § 1922.6(b)(7).

engagement to make a certified appraisal or to prepare a certified appraisal report in which the employment itself, or the fee for the appraisal service, is contingent upon the appraiser reporting a predetermined value.<sup>28</sup> Chapter 372 further prohibits appraisers from accepting compensation<sup>29</sup> for a certified appraisal or a certified appraisal report contingent upon the amount of an award of monetary damages arising out of legal actions in which the value of the appraised property is being disputed.<sup>30</sup>

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28. *Id.* § 1922.8(a). Also prohibited are appraisal engagements that are contingent upon a preestablished analysis, opinion, conclusion, or finding in the certified appraisal report. *Id.*

29. *Id.* § 1922.1(c).

30. *Id.* § 1922.8(b).

## Property; release or subordination of judgment liens

Code of Civil Procedure §§ 697.370, 764.070 (amended).

AB 3206 (Johnston); 1986 STAT. Ch. 271

(Effective July 11, 1986)

Sponsor: California Land Title Association

Existing law provides that a release or subordination of a judgment lien<sup>1</sup> on real property<sup>2</sup> by a judgment creditor<sup>3</sup> is sufficient so long as a description of the property affected is contained within the release or subordination.<sup>4</sup> Chapter 271 creates an exception to this

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1. CAL. CIV. PROC. CODE § 697.310 (creation and duration of a judgment lien). *See generally* 8 B. WITKIN, CALIFORNIA PROCEDURE §§ 62-71 (3d ed. 1985) (judgment liens on real property under current law).

2. CAL. CIV. PROC. CODE § 680.320 (definition of real property).

3. *Id.* § 680.240 (definition of judgment creditor).

4. *Id.* § 697.370(b)(1). The release or subordination must also contain (1) the date the judgment lien was created, and the location of the abstract or a certified copy of the judgment; (2) the title of the court where judgment was entered, and the cause and number of the action; (3) the date judgment was entered, including any subsequent renewals, and their location in the court's records; and (4) the name and address of the judgment creditor and debtor. *Id.* § 697.370(b)(2)-(5). Chapter 271 requires that the name and address of the judgment creditor's assignee, if any, be included in the release or subordination. *Id.* § 697.370(b)(5). If the judgment debtor does not have an interest of record in the real property, the release or subordination must show the name of the record owner. *Id.* § 697.370(b)(1). *See generally* 8 B. WITKIN, CALIFORNIA PROCEDURE § 67 (3d ed. 1985) (release and subordination of judgment liens on real property).

provision by providing that the release may contain a short statement<sup>5</sup> if all of the judgment debtor's<sup>6</sup> real property in the county where the lien is recorded is being released from the judgment lien, or if the judgment debtor has no known interest in any real property in that county.<sup>7</sup> Under existing law, a judgment in an action for the release or subordination of a judgment lien is not binding or conclusive on any interest of the United States.<sup>8</sup> Chapter 271 creates an exception to existing law by providing that such actions will be binding and conclusive as to the interests of the United States if the United States is individually joined as a party to the action, and if such actions are authorized to be binding and conclusive under federal law.<sup>9</sup>

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5. CAL. CIV. PROC. CODE § 697.370(b)(1) (in lieu of a description of the property being released). The statement must closely resemble the following: "This is a release from the judgment lien described herein of all of the interests in real property of the herein named judgment debtor subject to the lien." *Id.*

6. *Id.* § 680.250 (definition of judgment debtor).

7. *Id.* § 697.370(b)(1). *See id.* § 697.370(d) (a release or subordination of a judgment lien pursuant to this section does not release or subordinate the judgment lien as to judgment debtors not named in the release).

8. *Id.* § 764.070(b).

9. *Id.* *See id.* § 764.070(a) (a judgment is not binding or conclusive on the State of California, unless the State is individually joined as a party to the action).

## Property; rent control

Civil Code §§ 1947.7, 1947.8 (new).

SB 2580 (Petrís); 1986 STAT. CH. 1190

Sponsor: Author

Existing law permits municipalities to regulate rental rates of residential property.<sup>1</sup> With the enactment of Chapter 1190, the legislature intends to limit the imposition of penalties against property owners who attempt to fully comply with local rent stabilization programs.<sup>2</sup> Chapter 1190 precludes assessment of a noncompliance

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1. *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 158, 550 P.2d 1001, 1022, 130 Cal. Rptr. 465, 486 (1976) (regulation is permitted through the exercise of police power).

2. CAL. CIV. CODE § 1947.7(a).

penalty against an owner of residential rental units who is in substantial compliance<sup>3</sup> with local rent control laws.<sup>4</sup>

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3. Substantial compliance means that the owner has made a good faith attempt to comply with the law, but is not in full compliance, and has, after receiving notice of a deficiency from the local agency, cured the defect in a timely manner, as reasonably determined by the local agency. *Id.* § 1947.7(b).

4. *Id.* Restitution to the tenant or local government is the exclusive remedy that may be imposed against an owner of residential units who is in substantial compliance with the local rent control laws. *Id.*

## Property; rent skimming

Civil Code §§ 890, 891, 892, 893, 894, 895 (new).

SB 1856 (Seymour); 1986 STAT. CH. 838

Sponsor: Attorney General

Support: Department of Real Estate; Department of Consumer Affairs

Chapter 838 creates a civil cause of action for certain sellers, tenants, and mortgagees, who suffer loss resulting from rent skimming.<sup>1</sup> Rent skimming includes the failure of a residential real estate property owner to apply rental revenue,<sup>2</sup> at any time during the first year after acquiring that property, to payments due on mortgages<sup>3</sup> and deeds of trust.<sup>4</sup> Under Chapter 838, a seller of an interest in residential real property who receives a promissory note<sup>5</sup> for all or a portion of the purchase price, secured by a lien on the property, may bring an action against any person<sup>6</sup> who has engaged in rent skimming with respect to that property.<sup>7</sup> A seller who prevails will recover all actual damages, reasonable attorney's fees, costs, and any appropriate equitable relief.<sup>8</sup> In addition, if the defendant has engaged

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1. CAL. CIV. CODE § 891(a)-(d).

2. *Id.* § 890(a) (or an amount equivalent to the rental revenue).

3. *Id.* § 2920 (definition of mortgage). *See id.* § 2947 (description of mortgageable real property).

4. *Id.* § 890(a). *See id.* § 852 (creating trusts relating to real estate).

5. *Id.* § 891(a) (or other evidence of indebtedness).

6. *Id.* § 890(c) (definition of persons).

7. *Id.* § 891(a).

8. *Id.*

in multiple acts of rent skimming, Chapter 838 requires exemplary damages<sup>9</sup> of at least three times the actual damages to be awarded.<sup>10</sup> Furthermore, Chapter 838 allows the seller of an interest in residential real property, who reacquires that property interest from a person engaged in rent skimming with respect to that property,<sup>11</sup> to request a court order declaring the property free of any lien<sup>12</sup> against the person who engaged in rent skimming.<sup>13</sup> The court must grant the order if the lien is not related to property improvements and is not security for a loan made by a bona fide lien holder, unless the court determines the interests of justice will not be served by the order.<sup>14</sup>

A mortgagee or beneficiary under a deed of trust encumbering residential real property may bring an action, against any person who has engaged in multiple acts of rent skimming<sup>15</sup> with respect to that property, to recover actual damages,<sup>16</sup> attorney's fees, costs, exemplary damages, and appropriate equitable relief.<sup>17</sup> A tenant may bring an action against a person who has engaged in rent skimming with respect to the rented premises, and may recover any actual damages,<sup>18</sup> reasonable attorney's fees, costs, and exemplary damages.<sup>19</sup> Chapter 838 requires exemplary damages of at least three times the actual damages to be awarded to the tenant if the defendant has engaged in multiple acts of rent skimming, or the mortgage or deed of trust payments were two or more months delinquent at the time the tenant rented the premises.<sup>20</sup>

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9. *Id.* § 3294 (definition of exemplary damages).

10. *Id.* § 891(a). Exemplary damages may also be awarded in other cases. *Id.* See *id.* § 890(b) (definition of multiple acts of rent skimming).

11. *Id.* § 891(b) (or a law enforcement agency).

12. *Id.* (any lien that is or has the effect of a judgment lien).

13. *Id.* The seller's motion or application for such an order must be given with at least 30 days advance notice to all persons who may be affected by the order, including lienholders. *Id.*

14. *Id.* § 891(b).

15. *Id.* § 891(c) (whether or not that person has been contractually bound by an obligation secured by the mortgage or deed of trust).

16. *Id.* (limited to the amount of rent collected on the encumbered property).

17. *Id.*

18. *Id.* § 891(d) (including any security deposit or moving expenses resulting from a foreclosure sale).

19. *Id.*

20. *Id.* Exemplary damages may also be awarded in other cases. *Id.* The rights and remedies created under Civil Code § 891 by Chapter 838 are in addition to any other rights and remedies provided by law. *Id.* § 891(e). Any waiver of rights granted under Civil Code § 891 by Chapter 838 is void and unenforceable as contrary to public policy. *Id.* § 891(f). In addition, Chapter 838 provides that Code of Civil Procedure §§ 580a (actions for deficiency judgment after foreclosure or trustee's sale), 580b (limiting when deficiency judgment will lie), 580d (prohibiting deficiency judgment when property is sold under power of sale), and 726 (permitting one form of action only for deficiency judgments involving mortgaged real property) do not apply to any action brought under Chapter 838. *Id.* § 891(g).



Chapter 838 provides that any person found guilty of five acts of rent skimming, or any person once previously convicted of multiple acts of rent skimming, and found guilty of a subsequent knowing and willful<sup>21</sup> act of rent skimming is subject to imprisonment<sup>22</sup> for up to one year, a fine of not more than \$10,000, or both.<sup>23</sup> In addition, under Chapter 838, persons found guilty of additional acts of rent skimming will be separately punished for each additional act by the same penalty.<sup>24</sup> Chapter 838 provides natural persons with an affirmative defense to a charge of rent skimming<sup>25</sup> if, within thirty days of receiving rental revenues, the defendant used the revenue<sup>26</sup> to pay health care providers<sup>27</sup> for unforeseen and necessary medical treatments,<sup>28</sup> or to pay licensed contractors<sup>29</sup> for correcting violations of any statute, ordinance, or regulation relating to the habitability of the premises.<sup>30</sup> Lastly, Chapter 838 provides that if any part of this title is declared unconstitutional, the remaining portions and their application to other persons and circumstances remain unaffected.<sup>31</sup>

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21. CAL. PENAL CODE § 7 (definition of knowingly and willfully).

22. CAL. CIV. CODE § 892(a) (in the state prison or county jail).

23. *Id.* Each act comprising multiple acts of rent skimming must be separately alleged.

*Id.*

24. *Id.* § 892(b). Prosecution for criminal rent skimming, under Chapter 838, must be commenced within three years from the date of acquisition of the last parcel of property used in rent skimming. *Id.* § 892(c). This penalty is in addition to any other penalties or remedies proscribed by law. *Id.* § 892(d).

25. *Id.* § 893(a) (includes criminal or civil rent skimming).

26. *Id.* § 893(a)(3) (having no other source from which to pay the obligations).

27. CAL. BUS. & PROF. CODE § 6146(c)(2) (definition of health care providers).

28. CAL. CIV. CODE § 893(a)(1)(A) (medical treatments of the defendant, or the defendant's spouse, parents, or children).

29. *Id.* § 893(a)(1)(B) (includes material suppliers).

30. *Id.* § 893(a)(1)-(3). The defendant has the burden of producing evidence of each element of the defense in a criminal action for rent skimming, as well as the burden of proving each element of the defense in a civil action for rent skimming. *Id.* § 893(b).

31. *Id.* § 894.

## Property; subdivision maps

Government Code § 66424.1 (amended).

AB 2034 (Bradley); 1986 STAT. Ch. 35

Sponsor: Author; California Civil Engineers and Land Surveyors

Under the Subdivision Map Act (the Act),<sup>1</sup> local agencies<sup>2</sup> have the authority to regulate the design<sup>3</sup> and improvement<sup>4</sup> of subdivisions.<sup>5</sup> The Act defines subdivision as the division of any unit or units of improved or unimproved land shown on the latest equalized county tax assessment roll,<sup>6</sup> for the purpose of sale, lease, or financing.<sup>7</sup> The Act requires, with certain exceptions,<sup>8</sup> a tentative and final map<sup>9</sup> for all subdivisions creating five or more parcels, while parcel maps<sup>10</sup> are generally required for subdivisions creating four or fewer parcels.<sup>11</sup> Prior law provided that the subdivision definition<sup>12</sup> did not prevent a purchaser of a unit of land created under the Act from dividing the land *once*, prior to the time that a new tax

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1. CAL. GOV'T CODE §§ 66410-66499.37 (provisions of the Act).

2. *Id.* § 66420 (definition of local agency).

3. *Id.* § 66418 (definition of design).

4. *Id.* § 66419 (definition of improvement).

5. *Id.* § 66411. Additional purposes of the Act include requiring subdividers to provide streets and drains, and protecting the purchaser and public from fraud and exploitation. *See Pratt v. Adams*, 229 Cal. App. 2d 602, 605-06, 40 Cal. Rptr. 505, 508 (1964). *See generally* 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §§ 22-26 (8th ed. 1973 & Supp. 1984) (subdivisions); CAL. GOV'T CODE § 65913.2 (limitations on local government regulation of subdivisions).

6. *See* CAL. GOV'T CODE § 51546 (the county assessment roll is the basis for levying city taxes); *see also id.* § 51501 (a city can transfer the tax assessment and collection duties performed by the city assessor to the county assessor); *id.* § 51504 (all assessments made by the county assessor and corrected by the board of supervisors or the State Board of Equalization will be the basis for levying city taxes).

7. *Id.* § 66424. Leases of agricultural land for the cultivation of food or fiber, or for the grazing or pasturing of livestock, are exempted from the definition. *Id.*

8. Exceptions to the requirement of tentative and final maps for subdivisions creating five or more parcels include the following divisions: (1) divisions of parcels containing less than five acres, with each new parcel created abutting a maintained public street or highway, and requiring no dedications or improvements; (2) divisions that create parcels having a gross area of twenty acres or more and having an approved access to a maintained public street or highway; (3) divisions of land having approved access to a public street or highway which encloses part of a tract industrially or commercially zoned, and which has approved street alignments and widths; or (4) divisions creating parcels that have a gross area of not less than forty acres or that are not less than a quarter of a quarter section. *Id.* § 66426. These subdivisions falling within the tentative and final map requirement exceptions will require a parcel map. *Id.*

9. *See id.* § 66424.5 (definition of tentative map); *see generally id.* §§ 66433-66443 (provisions concerning final maps).

10. *See generally id.* §§ 66444-66450 (provisions concerning parcel maps).

11. *Id.* § 66426.

12. *Id.* § 66424.

assessment roll had been completed reflecting the creation of the unit proposed to be subdivided.<sup>13</sup> Chapter 35 expands this exception by allowing a purchaser to subdivide the land one *or more* times prior to the completion of the new tax assessment roll.<sup>14</sup> Chapter 35 also prohibits local agencies from prohibiting, due to prior subdivision, consecutive subdivisions of any portion of the same parcel by the original subdivider<sup>15</sup> or a subsequent purchaser.<sup>16</sup> Chapter 35 provides, however, that local agencies retain the authority to impose appropriate conditions or requirements on the consecutive subdivisions.<sup>17</sup>

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13. 1977 Cal. Stat. ch. 234, sec. 4, at 1034 (amending CAL. GOV'T CODE § 66424.1).

14. CAL. GOV'T CODE § 66424.1. *See generally id.* § 51546 (county assessment roll made annually).

15. *Id.* § 66423 (definition of subdivider).

16. *Id.* § 66424.1.

17. *Id.*; *see generally id.* §§ 66411 (local control of subdivisions); 66411.1 (improvements for a division of land which is not a subdivision of five or more lots); 65913.2 (limitations on local government regulation of subdivisions).

## Property; Uniform Fraudulent Transfer Act

Civil Code § 3439.12 (repealed); §§ 3439, 3439.01, 3439.02, 3439.03, 3439.04, 3439.05, 3439.06, 3439.07, 3439.08, 3439.09, 3439.10, 3439.11 (repealed and new); §§ 3445, 3446, 3447 (amended); Code of Civil Procedure § 487.020 (amended).

SB 2150 (Beverly); 1986 STAT. CH. 383

Sponsor: California Commission on Uniform State Laws

Chapter 383 repeals the Uniform Fraudulent Conveyance Act<sup>1</sup> and provides a new means of addressing the issue of fraudulent transfers by adopting the Uniform Fraudulent Transfer Act (the Act).<sup>2</sup> Pursuant to Chapter 383, a transfer<sup>3</sup> made<sup>4</sup> or obligation

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1. 1939 Cal. Stat. ch. 329, secs. 2-14, at 1667-70 (enacting CAL. CIV. CODE §§ 3439.01-.12); 1982 Cal. Stat. ch. 35, sec. 2, at 64 (amending CAL. CIV. CODE § 3439.09).

2. *Id.* §§ 3439-3439.11 (Uniform Fraudulent Transfer Act).

3. Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. *Id.* § 3439.01(i). Prior law defined conveyance as every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien encumbrance. 1939 Cal. Stat. ch. 329, sec. 3, at 1667 (enacting CAL. CIV. CODE § 3439.01).

4. A transfer is not made until the debtor has acquired rights in the asset transferred. CAL. CIV. CODE § 3439.06(d). With respect to an asset that is real property other than a

incurred<sup>5</sup> by a debtor<sup>6</sup> may be fraudulent as to a creditor,<sup>7</sup> whether the creditor's claim<sup>8</sup> arose before or after the transaction.<sup>9</sup> Chapter 383 provides that a transaction is fraudulent as to a creditor with a prior claim if the debtor concluded the transaction without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent<sup>10</sup> at the time the transaction was concluded or the debtor became insolvent as a result of the transfer or obligation.<sup>11</sup> In an action for relief against a fraudulent transfer or obligation under Chapter 383, a creditor

fixture, but including the interest of a seller or a purchaser under a contract for the sale of the asset, a transfer is made when the transfer is so far perfected that a good faith purchaser of the asset from the debtor, against whom applicable law permits the transfer to be perfected, cannot acquire an interest of the transferee. *Id.* § 3439.06(a)(1). A transfer is made with respect to an asset that is not real property or that is a fixture when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee. *Id.* § 3439(a)(2). If applicable law permits the transfer to be perfected and the transfer is not perfected before the commencement of an action for relief under Chapter 383, the transfer is deemed made immediately before the commencement of the action. *Id.* § 3439.06(b). If applicable law does not permit the transfer to be perfected, the transfer is made when effective between the debtor and the transferee. *Id.* § 3439.06(c).

5. If oral, an obligation is incurred when effective between the parties. *Id.* § 3439.06(e)(1). If the obligation is evidenced by a writing, the obligation is incurred when the writing executed by the obligor is delivered to or for the benefit of the obligee. *Id.* § 3439.06(e)(2). The phrase transfer made or obligation incurred will be hereinafter referred to as the transaction.

6. *Id.* § 3439.01(e) (debtor means a person who is liable on a claim).

7. *See id.* § 3439.01(c) (definition of a creditor).

8. *Id.* § 3439.01(b) (definition of a claim).

9. *Id.* § 3439.04. Such transfers or obligations are fraudulent when made by the debtor in the following circumstances: (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, if the debtor was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (3) without receiving a reasonably equivalent value in exchange for the transfer or obligation, if the debtor intended to incur debts beyond the debtor's ability to pay as they became due. *Id.* § 3439.04(a); 3439.04(b)(1), (2). *See also* Radin, *Fraudulent Conveyances in California and the Uniform Fraudulent Conveyance Act*, 27 CALIF. L. REV. 1, 1 (1983) (explaining the origin of the language used in early English acts designed to prevent fraudulent conveyances and transfers).

10. A debtor is insolvent if, at fair valuations, the sum of the debtor's debts is greater than all of the debtor's assets. CAL. CIV. CODE § 3439.02(a). A debtor which is a partnership is insolvent if, at fair valuations, the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts. *Id.* § 3439.02(b). A debtor who is generally not paying debts as they become due is presumed to be insolvent. *Id.* § 3439.02(c). In determining insolvency, assets do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under Chapter 383. *Id.* § 3439.02(d). Moreover, when determining insolvency, debts do not include an obligation to the extent the obligation is secured by a valid lien on property of the debtor not included as an asset. *Id.* § 3439.02(e).

11. *Id.* § 3439.05.

may obtain various remedies for injuries received.<sup>12</sup> A successful creditor in an action pursuant to this Act may avoid the transfer or obligation to the extent necessary to satisfy the creditor's claim,<sup>13</sup> or may attach the asset transferred.<sup>14</sup> A creditor may also receive equitable remedies,<sup>15</sup> such as an injunction against further disposition of the asset or the asset's proceeds.<sup>16</sup> Chapter 383 also allows for the appointment of a receiver to take charge of the asset to be transferred or the proceeds from the sale of the asset.<sup>17</sup> The Act also provides that the transferee<sup>18</sup> may give an undertaking<sup>19</sup> when the creditor brings an action against a fraudulent transfer or obligation.<sup>20</sup> The undertaking must be conditioned so that the transferee will pay to the creditor the lesser of the value of the subject of the transaction or the amount determined to be due and owing the creditor.<sup>21</sup> These remedies are, however, subject to five limitations.<sup>22</sup>

First, a transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value, or against any subsequent transferee or obligee.<sup>23</sup> Second, to the extent a transfer is voidable in an action by a creditor, the creditor may recover judgment only for the value of the asset transferred, or the amount necessary to satisfy the creditor's claim, whichever is less.<sup>24</sup> The judgment may be entered against the first transferee of the asset, and against any subsequent transferee other than a good faith transferee who took for value.<sup>25</sup> Third, if the judgment is based upon the

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12. *Id.* § 3439.07(d). All remedies provided by the Act are applicable to the assignees of a general assignment for the benefit of creditors. *Id.*

13. *Id.* § 3439.07(a)(1).

14. *Id.* § 3439.07(a)(2). A creditor can attach the asset or the proceeds obtained through transfer of the asset by the debtor. *Id.* If a creditor has commenced an action, or obtained a judgment, on a claim against the debtor, the creditor may attach or levy execution on the asset or the proceeds from the sale of the asset. *Id.* § 3439.07(b), (c).

15. *See id.* § 3439.07(a)(3).

16. *Id.* § 3439.07(a)(3)(A).

17. *Id.* § 3439.07(a)(3)(B).

18. Transferee means the person to whom property was transferred, the person on whom an obligation was incurred, or the successors or assigns of the person. *Id.* § 3445(c).

19. *Id.* § 3447 (conditions of an undertaking).

20. *Id.* § 3446(a).

21. *Id.* § 3447(a), (b). If the undertaking is given, the transferee may sell, encumber, transfer, convey, mortgage, pledge, or otherwise dispose of the property or obligation. *Id.* § 3446(b). The purchaser, encumbrancer, transferee, mortgagee, or pledgee of the property or obligation takes the property or obligation unaffected by the action and any judgment that is rendered in the action. *Id.*

22. *See id.* § 3439.08.

23. *Id.* § 3439.08(a).

24. *Id.* § 3439.08(b).

25. *Id.* § 3439.08(b)(1), (2).

value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer.<sup>26</sup> Fourth, notwithstanding voidability of a transfer or an obligation under Chapter 383, a good faith transferee or obligee is entitled, to the extent of the value given to the debtor, to a lien on a right to retain any interest in the assets transferred, enforcement of any obligation incurred, and a reduction in the amount of liability on the judgment.<sup>27</sup> Finally, a transfer is not voidable if the transfer results from the termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law, or from the enforcement of a lien in a noncollusive manner in compliance with applicable law.<sup>28</sup>

Actions with respect to fraudulent transfers or obligations under existing law are subject to various statutes of limitations.<sup>29</sup> These time limits vary from one year from the time the creditor could have reasonably discovered the transfer,<sup>30</sup> to four years from the time the transaction took place.<sup>31</sup> The Act provides that a cause of action on a fraudulent transfer is extinguished if no action is brought or levy is made within seven years from the date of the transaction.<sup>32</sup>

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26. *Id.* § 3439.08(c) (subject to adjustment as the equities may require).

27. *Id.* § 3439.08(d).

28. *Id.* § 3439.08(e) (other than a voluntary transfer of the collateral by the debtor to the lienor in satisfaction of all or part of the secured obligation).

29. *See id.* § 3439.09.

30. *Id.* § 3439.09(a).

31. *Id.* § 3439.09(b).

32. *Id.* § 3439.09(c).

