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# Property

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# Property

## Property; balloon payments

Civil Code §2924i (new).

AB 1600 (Hayden); 1983 STAT. Ch 1094

Support: Department of Consumer Affairs; Department of Real Estate

Chapter 1094 is an apparent attempt to expand protections afforded purchasers of residential property<sup>1</sup> by ensuring that debtors who face balloon payments will be aware of payment due dates.<sup>2</sup> Existing law requires the holder of a balloon payment note<sup>3</sup> to deliver or mail to the debtor written notice of the balloon payment not less than 60 days, nor more than 150 days, before the payment is due.<sup>4</sup> These provisions apply only to transactions involving seller take back financing<sup>5</sup> arranged by third parties.<sup>6</sup> In addition, any transaction in which specified provisions of federal and state law entitle a purchaser to other disclosures concerning financing is exempt from the notice requirement.<sup>7</sup>

The provisions of Chapter 1094 cover any transaction involving a balloon payment loan<sup>8</sup> secured by either a mortgage or deed of trust for a period of more than one year.<sup>9</sup> These provisions, however, are limited to transactions financing residential property containing four or fewer units, one of which must be occupied by the debtor.<sup>10</sup> In addition, Chapter 1094

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1. Legislation enacted in 1982 required specified disclosures to certain purchasers of residential property concerning the obligations of the purchasers and the terms of the financial transactions. *See* 1982 Cal. Stat. c. 968, §1, at \_\_\_\_ (enacting CAL. CIV. CODE §§2256-2267).

2. Compare CAL. CIV. CODE §2924i with *id.* §§2956, 2957(f), 2958, 2965, 2966.

3. CAL. CIV. CODE §2957(f) (balloon payment note is a note under which the debtor must pay a balloon payment that is more than twice the amount of the smallest regularly scheduled payment).

4. *Id.* §2966(a).

5. *Id.* §2956 (seller take-back financing as used in this analysis refers to a credit transaction which "includes an extension of credit by the vendor").

6. *See id.* §§2956, 2966(a) (type of transactions subject to disclosure requirements).

7. *Id.* §2958 (disclosures to purchasers not required when the Federal Truth-In-Lending Act, the Real Estate Settlement Procedures Act or CAL. BUS. & PROF. CODE §10240 is applicable).

8. *Id.* §2924i(d)(1) (balloon payment loan is any loan providing (1) a scheduled final payment more than twice the amount of any of the preceding six regularly scheduled payments, or (2) a call provision, exercised by the holder, allowing the lender to demand prepayment of the principal balance); *see id.* §2924i(d)(2) (definition of "call provision").

9. *Id.* §2924i(a); *see id.* §2924i(g) (applies to any notes executed on or after January 1, 1984).

10. *Id.* §2924i(a).

does not apply to (1) transactions involving open-end credit,<sup>11</sup> (2) transactions involving seller take-back financing,<sup>12</sup> or (3) transactions primarily made to finance construction of residential units.<sup>13</sup>

The holders of balloon payment notes subject to the provisions of Chapter 1094 must deliver, or send by first class mail, written notice to the debtor of the payment due date. This notice must be sent within 150 days, but not less than 90 days, before the payment is due.<sup>14</sup> The notice must contain (1) a statement of the name and address of the person to whom the final payment must be made,<sup>15</sup> (2) the date on which payment is due,<sup>16</sup> (3) the amount of the balloon payment,<sup>17</sup> and (4) a statement on whether the debtor has a contractual right to refinance.<sup>18</sup> Chapter 1094 also provides relief to debtors if the balloon payment note holder fails to provide the required notice.<sup>19</sup> Failure to give the written notice extends the due date of the note to 90 days from either (1) the date of delivery or mailing of the notice, or (2) the date the balloon payment originally was due, whichever is later.<sup>20</sup> The debtor may sue to recover actual damages resulting from the note holder's willful failure to comply with the notice requirement.<sup>21</sup> The holder, however, may show by a preponderance of the evidence that the violation was not intentional, but due to error.<sup>22</sup> If the debtor prevails, the holder is liable for the debtor's reasonable attorneys' fees.<sup>23</sup>

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11. Open end credit is to be used as defined in Regulation Z. *Id.* §2924i(b)(1); *see also id.* §2924i(d)(3) (definition of Regulation Z). Open end credit refers to terms of credit, created in reasonable contemplation of repeated transactions, which provide for a finance charge that may be computed at various times on any outstanding, unpaid balance. 15 U.S.C. 1602(i).

12. CAL. CIV. CODE §2924i(b)(2) (transactions subject to CAL. CIV. CODE §2956).

13. *Id.* §2924i(b)(3).

14. *Id.* §2924i(c). *Compare id. with id.* §2966(a) (different time period in which to give required notice).

15. *Id.* §2924i(c)(1).

16. *Id.* §2924i(c)(2).

17. *Id.* §2924i(c)(3). If the amount is unknown, an estimate including unpaid principal, interest, and any other charges should be given. *Id.*

18. *See id.* §2924i(c)(4).

19. *See id.* §2924i(e), (f).

20. *Id.* §2924i(e). The debtor's obligation is not extinguished, though, by a violation of these provisions. *Id.* Interest will continue to accrue, and periodic payments will be due, although the balloon payment due date has been extended. *Id.* Default on a periodic payment during the extended period shall be considered a default under the terms of the note. *Id.* Failure to comply with the notice requirement does not affect the validity of credit or security documents. *Id.* §2924i(f)(1).

21. *Id.* §2924i(f)(1).

22. *Id.* §2924i(f)(2). The error must be a bona fide error that occurred despite use of procedures adopted to avoid error. *Id.*

23. *Id.* §2924i(f)(1).

## Property; rescission of declaration of default

Civil Code §2924c (amended).

AB 73 (Costa); 1983 STAT. Ch 112

Support: California Association of Realtors; Department of Consumer Affairs

Existing law permits a trustor, mortgagor, or a successor in interest to a deed of trust or mortgage to prevent foreclosure and possible sale of the property in default by paying the beneficiary any amount due.<sup>1</sup> Chapter 112 provides a statutory method whereby the person authorized to cure the default may cause a notice of rescission to be executed and recorded after the default is cured.<sup>2</sup> Under Chapter 112, the person curing the default may require the mortgagee, beneficiary, or successor in interest, upon written request,<sup>3</sup> to execute a notice rescinding the declaration of default and demand for sale.<sup>4</sup> The notice of rescission must be recorded by the mortgagee within thirty days after the request is received.<sup>5</sup>

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1. CAL. CIV. CODE §2924c(a)(1). This amount includes costs and expenses actually incurred in enforcing the deed of trust or mortgage, and trustee's or attorney's fees not exceeding \$150 in the case of a mortgage or a deed of trust, or one half of one percent of the entire unpaid balance, whichever is greater. *Id.*

2. *See id.* §2924c(a)(2).

3. *Id.* The request must be directed to the person named on the notice of default as the beneficiary or mortgagee.

4. *Id.*

5. *Id.*

## Property; arranger of credit

Civil Code §§2957, 2963 (amended).

AB 629 (McAlister); 1983 STAT. Ch 1217

Support: Attorney General; California Association of Realtors; California Land Title Association; Department of Consumer Affairs; Department of Real Estate

Existing law provides that certain written disclosures<sup>1</sup> must be given when an arranger of credit is involved in a transaction for the purchase of a dwelling house.<sup>2</sup> An arranger of credit is a person other than one of the parties to the credit transaction or the party's attorney, who (1) develops or negotiates terms of the agreement, (2) participates in the completion of the credit document, and (3) receives compensation for the credit transac-

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1. CAL. CIV. CODE §§2956 (form and contents of disclosure), 2958-2964 (disclosure requirements).

2. *Id.* A dwelling house is defined as one which houses not more than four families. *Id.*

tion.<sup>3</sup> A party to the transaction who is a real estate licensee<sup>4</sup> or an attorney may also be an arranger of credit.<sup>5</sup> With the enactment of Chapter 1217, however, when a real estate licensee represents one party, the other party, even if that party is an attorney, will not be considered an arranger of credit.<sup>6</sup>

Furthermore, existing law excludes persons acting in the capacity of an escrow from the definition of an arranger of credit.<sup>7</sup> Chapter 1217, however, provides that persons acting as escrow holders are arrangers of credit if they act on behalf of one of the parties in the development or negotiation of the credit terms.<sup>8</sup> Escrows who participate only in the completion of credit documents according to the instructions,<sup>9</sup> or who merely furnish information regarding credit terms, do not fall within the definition of arrangers of credit.<sup>10</sup>

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3. *Id.* §2957(a)(1).

4. CAL. BUS. & PROF. CODE §10011 (definition of real estate licensee).

5. CAL. CIV. CODE §2957(a)(2). In any transaction where disclosure is required, the obligations apply only to the licensees or attorneys who are parties to the transaction, and not to any other party. *Id.*

6. *Id.*

7. *Id.* §§1057 (definition of escrow), 2957(a)(3).

8. *Id.* §2957(a)(4); *see also id.* §2957(b)(definition of credit).

9. *Id.* §2957(c) (definition of credit document).

10. *Id.* §2957(a)(4).

## Property; breach of an agreement to buy or sell real property

Civil Code §§3306, 3307 (amended).

AB 1068 (Stirling); 1983 STAT. Ch 262

Support: Department of Real Estate; San Diego County Bar Association; State Bar Conference of Delegates

Under existing law, the detriment resulting from the breach of an agreement to convey real property is the purchase price plus the expenses properly incurred in examining the title, with interest.<sup>1</sup> Prior to the enactment of Chapter 262, if the breach was in bad faith,<sup>2</sup> the injured party also could obtain the difference between the purchase price and the value of the real estate at the time of the breach as an alternative to specific performance.<sup>3</sup> In addition, the party could recover expenses incurred when preparing to

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1. CAL. CIV. CODE §3306.

2. *Kossler v. Palm Springs Developments, LTD.*, 139 Cal. App. 3d 894, 904—Cal. Rptr.—(1983). In an action for damages caused by a bad faith breach of contract to sell or convey real property, a showing of fraud or evil intent is not required. A showing of deliberate refusal to perform is sufficient. *Id.*

3. CAL. CIV. CODE §3306.

enter upon the land.<sup>4</sup> Chapter 262 deletes the bad faith requirement and allows any plaintiff to recover these specified damages.<sup>5</sup>

Existing law defines detriment caused by the breach of a contract to purchase real property as the excess or profit, if any, over the value of the property.<sup>6</sup> In an apparent attempt to conform the measure of damages in real property to the measure of damages in general contracts,<sup>7</sup> Chapter 262 permits consequential damages plus interest when evidence supports this type of award.<sup>8</sup>

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4. *Id.*

5. Compare *id.* with CAL. CIV. CODE §3307.

6. CAL. CIV. CODE §3307.

7. Compare *id.* § 3300 with *id.* §3307.

8. CAL. CIV. CODE §3307.

## Property; lis pendens

Code of Civil Procedure §§409, 1250.150 (amended).

AB 460 (D. Brown); 1983 STAT. Ch 78

Support: Attorney General; Department of Transportation; State Bar  
Condemnation Commission

Under existing law, when an action affecting an interest in real property is pending, either party may<sup>1</sup> record a notice of the pendency of the action (hereinafter referred to as lis pendens), at the time the complaint or cross complaint is filed, or at any time thereafter.<sup>2</sup> Furthermore, existing law requires a person recording a lis pendens first to deliver a copy of the notice to all adverse parties and owners of record.<sup>3</sup> Chapter 78 exempts any proceedings brought pursuant to the Eminent Domain Law<sup>4</sup> from this notice requirement,<sup>5</sup> and requires instead that a copy of the notice be served with the summons and complaint.<sup>6</sup>

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1. Existing law *requires* the plaintiff in an eminent domain action to file a lis pendens. *Lansburgh v. Market St. Ry. Co.*, 98 Cal. App. 2d 426, 431, 220 P.2d 423, 427 (1950).

2. CAL. CIV. PROC. CODE §409(a). The lis pendens must be filed with the county recorder of the county where the property is situated. *Id.* See *Contini v. Western Ins. Co.*, 40 Cal. App. 3d 536, 542, 115 Cal. Rptr. 257, 260 (1974) (purpose of a lis pendens is to give constructive notice of pending litigation affecting real property); see also 2 B. WITKIN, CALIFORNIA PROCEDURE, *Actions* §§206-14 (2d. ed. 1970).

3. CAL. CIV. PROC. CODE §409(b). A copy of the notice must be delivered by first class mail, return receipt requested. *Id.*

4. *Id.* §1230.010 (short title). See generally *id.* §§1230.010- .050.

5. Compare *id.* with 1981 Cal. Stat. c. 889, §1, at 3400. (amending CAL. CIV. PROC. CODE §409).

6. Compare CAL. CIV. PROC. CODE §1250.150 with 1975 Cal. Stat. c. 1275, §2, at 3429 (enacting CAL. CIV. PROC. CODE §1250.150).

## Property; eminent domain actions

Code of Civil Procedure §§1245.230, 1250.125 (amended);  
Government Code §7267.2 (amended).  
SB 1229 (Foran); 1983 STAT. Ch 1079  
Support: Department of Transportation; Department of General Services

Eminent Domain Law<sup>1</sup> provides that a public entity<sup>2</sup> may not acquire property<sup>3</sup> for a public project<sup>4</sup> until a determination has been made that (1) public interest and necessity require the project, (2) the project is planned or located in a manner compatible with the greatest public good and the least public injury, and (3) the property sought to be acquired is necessary for the project.<sup>5</sup> These matters are conclusively established by a resolution of necessity.<sup>6</sup> Before a resolution of necessity can be adopted, existing law requires the public entity to offer the owner of record an amount that the public entity believes to be just compensation<sup>7</sup> for the property.<sup>8</sup> Chapter 1079 states that when the owner of record cannot be located with reasonable diligence, a failure to offer compensation does not prevent adoption of the resolution.<sup>9</sup>

Under existing law, the issuance of a summons marks the commencement of eminent domain proceedings.<sup>10</sup> When summons is served by publication, the publication must name only the defendants to be served and describe only the property in which the named defendants have or claim

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1. CAL. CIV. PROC. CODE §§1230.010 (short title), 1230.020-.050.

2. *Id.* §1235.190 (definition of public entity).

3. *Id.* §1235.125 (definition of property).

4. The power of eminent domain may be exercised to acquire property only for a public use. *Id.* §1240.010.

5. *Id.* §1240.030.

6. *See id.* §§1245.210-.270 (contents of a resolution of necessity). A resolution of necessity contains (1) a general statement of the public use for which the property is to be taken, (2) a reference to the statute that authorizes acquisition of the property, and (3) a description of the general location and extent of the property to be taken. *Id.* §1245.230(a), (b) (description must be sufficiently detailed for reasonable identification).

7. CAL. GOV'T CODE §7267.2 (the amount offered must be at least equal to the fair market value of the property as appraised by the public entity).

8. *Id.* If, however, the public entity has determined that the property is needed for an emergency project, the entity need not offer compensation to the owner prior to adopting a resolution of necessity. CAL. CIV. PROC. CODE §1245.230. In this case, the offer may be made within a reasonable time after the adoption of a resolution of necessity, not to exceed 90 days. *Id.*

9. *Compare* CAL. GOV'T CODE §7267.2 with 1982 Cal. Stat. c. 1059, §3, at— (amending CAL. GOV'T CODE §7267.2).

10. *Pacific Coast Ry. Co. v. Porter*, 74 Cal. 261, 263, 15 P. 774, 775 (1887); *see* CAL. CIV. PROC. CODE §1235.165 (definition of proceeding).

to have an interest.<sup>11</sup> Furthermore, a failure to appear and answer upon service by publication can result in a default judgment<sup>12</sup> against the defendant.<sup>13</sup> With the enactment of Chapter 1079, the defendant, upon a showing of good cause, may contest the amount of compensation within one year of the judgment if (1) summons was served by publication, (2) compensation for the property was not offered because the defendant could not be located with reasonable diligence, and (3) the defendant failed to appear.<sup>14</sup>

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11. CAL. CIV. PROC. CODE §§1235.125 (definition of interest), 1250.125(a).

12. *Id.* §585 (definition of judgment on default)

13. *Id.* §1250.125(b).

14. *Compare id.* §1250.125(c) with 1975 Cal. Stat. c. 1275, §2, at 3428 (enacting CAL. CIV. PROC. CODE §1250.125).

## Property; subdividers

Government Code §§66445, 66499.7 (amended).

SB 680 (Seymour); 1983 STAT. Ch 163

Support: Los Angeles County Office of Planning and Research

Opposition: California Independent Public Employers Council

Under existing law, subdividers may be required to post security to guarantee the completion of improvements, or to assure payment to contractors and persons providing labor, materials, or equipment.<sup>1</sup> Upon payment to contractors, the security must be reduced to a sum not less than the total amount demanded in recorded claims of lien.<sup>2</sup> If a claim of lien does not exist, however, the security may be released in full.<sup>3</sup> Chapter 163 modifies this provision to require release of the security when no claims of lien exist.<sup>4</sup> If claims of lien have been recorded, only the amount of security equal to the sum of the claims may be retained.<sup>5</sup>

Existing law requires that subdivision parcel maps contain a certificate by the engineer or surveyor responsible for preparing the map. Chapter 163 restricts this certificate requirement to subdivisions upon which a field survey was performed.<sup>6</sup>

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1. CAL. GOV'T CODE §66499(a); *see id.* §§66499.1, 66499.2.

2. *Id.*

3. *Compare id.* §66499.7(b) with 1982 Cal. Stat. c. 87, §24(b) at \_\_\_\_ (amending CAL. GOV'T CODE §66499.7(b)).

4. *Compare* CAL. GOV'T CODE §66499.7(b) with 1982 Cal. Stat. c. 87, §24(b) at \_\_\_\_ (amending CAL. GOV'T CODE §66499).

5. CAL. GOV'T CODE §66445(i).

6. *Compare* CAL. GOV'T CODE §66445 (amending 1982 Cal. Stat. c. 87, §2, at \_\_\_\_ with 1982 Cal. Stat. c. 518, §2, at \_\_\_\_ (amending 1982 Cal. Stat. c. 87, §2, at \_\_\_\_)). The certifi-

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cate must state that all monuments are of the character and occupy, or will occupy, the positions indicated by the parcel map. *Id.* §66445(i).

## Property; merger and unmerger of contiguous parcels

Government Code §66424.2 (repealed); §§66451.10, 66451.11, 66451.12, 66451.13, 66451.14, 66451.15, 66451.16, 66451.17, 66451.18, 66451.19, 66451.20, 66451.21, 66451.25, 66451.26, 66451.27, 66451.28, 66451.29, 66451.30, 66451.31, 66451.32, 66451.33 (new).

AB 2010 (Cortese); 1983 STAT. Ch 845

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

Prior to the enactment of Chapter 845, contiguous parcels of land that came under common ownership could be merged.<sup>1</sup> Chapter 845 incorporates the prior requirements for merger<sup>2</sup> and additionally mandates that other conditions be satisfied.<sup>3</sup> Furthermore, Chapter 845 provides for the unmerger of parcels previously merged<sup>4</sup> when a notice of merger has not been recorded.<sup>5</sup>

### *Merger*

Prior to the enactment of Chapter 845, a local agency<sup>6</sup> could merge parcels if (1) one of the parcels did not meet minimum lot size requirements, (2) at least one of the parcels was not developed with a building, and (3) both parcels came under common ownership.<sup>7</sup> Chapter 845 incorporates these provisions,<sup>8</sup> and further mandates that before merger may occur, any affected parcel must (1) comprise less than 5,000 square feet,<sup>9</sup> (2) not have been created in compliance with the applicable laws and ordinances in effect at the time the parcel was created,<sup>10</sup> (3) not meet current standards for sewage disposal and domestic water supply,<sup>11</sup> (4) not meet slope stability standards,<sup>12</sup> (5) not have legal access adequate for vehicular and

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1. See 1980 Cal. Stat. c. 1217, §3, at 4127 (enacting CAL. GOV'T CODE §66424.2).

2. Compare CAL. GOV'T CODE §66451.11 with 1980 Cal. Stat. c. 1217, §3, at 4127 (enacting CAL. GOV'T CODE §66424.2).

3. See CAL. GOV'T CODE §66451.11(b).

4. See *id.* §§66451.25-.33.

5. See *id.* §66451.30.

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

7. 1980 Cal. Stat. c. 1217, §3(a), at 4128 (enacting CAL. GOV'T CODE §66424.2).

8. CAL. GOV'T CODE §66451.11 (incorporating 1980 Cal. Stat. c. 1217, §3(a), at 4127 (enacting CAL. GOV'T CODE §66424.2)).

9. *Id.* §66451.11(b)(1).

10. *Id.* §66451.11(b)(2).

11. *Id.* §66451.11(b)(3).

12. *Id.* §66451.11(b)(4).

safety equipment,<sup>13</sup> (6) create health or safety hazards if developed,<sup>14</sup> or (7) be inconsistent with the applicable general or specific plan, unless the inconsistency refers to minimum lot size or density standards.<sup>15</sup>

In addition, existing law requires the local agency to record notice of the merger<sup>16</sup> after giving the owner an opportunity to contest the merger.<sup>17</sup> Chapter 845 specifies that a merger is not effective until a notice of merger is filed with the recorder of the county in which the real property is located.<sup>18</sup>

### *Unmerger*

Under prior law, parcels that had merged by operation of law but not in accordance with local ordinances<sup>19</sup> were deemed unmerged.<sup>20</sup> Furthermore, prior law required local agencies to record a notice of merger.<sup>21</sup> Chapter 845 mandates that parcels merged in accordance with local ordinances, but lacking a recorded notice of merger before January 1, 1984, will be unmerged by specified procedures.<sup>22</sup> For a parcel to be unmerged, the parcel must (1) be at least 5,000 square feet,<sup>23</sup> (2) have been created in compliance with the applicable laws and ordinances in effect at the time the lot was created,<sup>24</sup> (3) meet current standards for sewage disposal and domestic water supply,<sup>25</sup> (4) meet slope density standards,<sup>26</sup> (5) have legal

13. *Id.* §66451.11(b)(5).

14. *Id.* §66451.11(b)(6).

15. *Id.* §66451.11(b)(7). As of January 1, 1984, the provisions of Chapter 845 shall be the sole and exclusive authority for the merger of contiguous parcels. *Id.* §66451.10. In order to allow local agencies an opportunity to conform their ordinances to the new requirements, the new merger provisions do not become operative until July 1, 1984. *See id.* §§66451.11-18.

16. *Id.* §66451.12 (incorporating 1980 Cal. Stat. c. 1217, §3, at 4127 (enacting CAL. GOV'T CODE §66424.2)).

17. *Id.* Before recording a notice of merger, the local agency must inform the owner by certified mail of the intention to determine status and allow the owner a hearing if requested. *Id.* §§66451.13-18.

18. *Id.* §66451.12; *see id.* §§66451.19-21 (providing notice and hearing procedures for local agencies that already had merger provisions in effect before January 1, 1984).

19. 1976 Cal. Stat. c. 928, §4, at 2120 (enacting CAL. GOV'T CODE §66424.2) (providing for automatic merger of contiguous parcels under common ownership that did not meet local zoning requirements).

20. *Compare* 1977 Cal. Stat. c. 234, §5, at 1034 (amending CAL. GOV'T CODE §66424.2) (deleting automatic merger provisions) and 1980 Cal. Stat. c. 1217, §3, at 4127 (enacting CAL. GOV'T CODE §66424.2) *with* 1976 Cal. Stat. c. 928, §4, at 2120 (enacting CAL. GOV'T CODE §66424.2) (providing for automatic merger provisions); *see also* 1983 Cal. Stat. c. 845, §4, at \_\_\_ (providing that the repeal of Section 66424.2 of the CAL. GOV'T CODE does not affect those parcels previously unmerged under its provisions).

21. 1980 Cal. Stat. c. 1217, §3(c), at 4127 (enacting CAL. GOV'T CODE §66424.2).

22. *See* CAL. GOV'T CODE §66451.30; *see also id.* §§66451.25-33 (providing notice and hearing procedures for the unmerger of previously merged parcels for which no notice of merger has been recorded prior to January 1, 1984).

23. *Id.* §66451.30(a)(1).

24. *Id.* §66451.30(a)(2).

25. *Id.* §66451.30(a)(3).

26. *Id.* §66451.30(a)(4).

access adequate for vehicular and safety equipment,<sup>27</sup> (6) not create health or safety hazards if unmerged,<sup>28</sup> and (7) be consistent with the applicable general or specific plan, unless the inconsistency refers to minimum lot size or density standards.<sup>29</sup> The parcel may *not* be unmerged, however, if one or more of the contiguous parcels is (1) enforceably restricted open-space land,<sup>30</sup> (2) timberland<sup>31</sup> or land devoted to agricultural use,<sup>32</sup> (3) within 2,000 feet of a present or future commercial mineral extraction site,<sup>33</sup> or (4) within the coastal zone,<sup>34</sup> and prior to July 1, 1981, was identified or designated as being of insufficient size to support residential development.<sup>35</sup>

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27. *Id.* §66451.30(a)(5).

28. *Id.* §66451.30(a)(6).

29. *Id.* §66451.30(a)(7).

30. CAL. REV. & TAX. CODE §422 (definition of enforceably restricted open-space land); CAL. GOV'T CODE §66451.30(b)(1).

31. CAL. GOV'T CODE §51104(f) (definition of timberland).

32. *Id.* §51201(b) (definition of agricultural use); *id.* §66451.30(b)(2).

33. *Id.* §66451.30(b)(5) (definition of mineral resource extraction); *id.* §66451.30(b)(3), (4).

34. CAL. PUB. RES. CODE §30103(a) (definition of coastal zone).

35. CAL. GOV'T CODE §66451.30(b)(5).

## Property; assessment of timeshares

Revenue and Taxation Code §998 (new).

SB 217 (Beverly); 1983 STAT. Ch 1110

Support: California Association of Realtors; California Timeshare Owners Foundation; Department of Finance; Department of Real Estate

Chapter 1110 was enacted with the intent to provide uniformity and certainty in the assessment of timeshares.<sup>1</sup> Since the development and sale of timeshares represents a growing segment of the California real estate industry, the Legislature has enacted a clear method of assessment to identify the portion of timeshare interests constituting real property<sup>2</sup> subject to property tax.<sup>3</sup>

The California Constitution states that all taxable property must be assessed at an equal percentage of the fair market value.<sup>4</sup> The value to which the percentage is applied, whether fair market value or not, is known as

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1. 1983 Cal. Stat. c. 1110, §1, at \_\_\_\_\_. Chapter 1110 is declaratory of existing law. *Id.* c. 1110, §3, at \_\_\_\_.

2. CAL. CIV. CODE §14 (definition of real property).

3. 1983 Cal. Stat. c. 1110, §1, at \_\_\_\_.

4. CAL. CONST. art. XIII, §1.

the full value for property tax purposes.<sup>5</sup> Chapter 1110 establishes as the full value of a timeshare estate<sup>6</sup> or timeshare use,<sup>7</sup> the real property value of the interest, excluding the value of any nonreal property items.<sup>8</sup> The full value of a timeshare may be determined by considering the full value of nontimeshare resort properties, condominiums,<sup>9</sup> cooperatives, or other properties possessing similar attributes and locations.<sup>10</sup>

Under Chapter 1110, the aggregate assessed value of all timeshare interests relating to a single segment of real property must be determined by either (1) using a formula that adds the fair market value of a similar nontimeshare segment to a sum necessary to account for any increase or decrease in the fair market value resulting from the property being marketed as a timeshare property,<sup>11</sup> or (2) any alternative method that disregards nonreal property items calculated into the purchase price.<sup>12</sup> Chapter 1110 expressly states that these provisions must not be construed to require an assessment of any property at less than its fair market value.<sup>13</sup>

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5. *Id.*

6. CAL. BUS. & PROF. CODE §11003.5(b) (definition of timeshare estate).

7. *Id.* §11003.5(c) (definition of timeshare use).

8. CAL. REV. & TAX. CODE §998(a). Nonreal property items include vacation exchange rights, vacation conveniences and services, and club memberships. *Id.*

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

10. CAL. REV. & TAX. CODE §998(a).

11. *Id.*

12. *Id.*

13. *Id.* §998(d). The State Board of Equalization is required to adopt regulations to carry out the provisions of Chapter 1110 by June 30, 1984. *Id.* §998(e).

## Property; tenants—notice to quit

Code of Civil Procedure §1161a (amended).

AB 637 (Waters); 1983 STAT. Ch 346

Support: California Association of Realtors; Department of Consumer Affairs; Department of Housing and Community Development; Department of Real Estate

Opposition: California Mortgage Bankers Association

Existing law states that when real property is sold, a person<sup>1</sup> may be removed<sup>2</sup> from the premises after being served a three day written notice to

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1. The person may be an owner, tenant, or subtenant. *See* CAL. CIV. PROC. CODE §1161a(a).

2. The removal typically is accomplished through an unlawful detainer action which provides a summary method of ouster when an occupant holds over after the sale of property. *Evan v. Superior Court*, 67 Cal. App. 3d 162, 168, 136 Cal. Rptr. 596, 600 (1977); CAL. CIV. PROC. CODE §1161 (definition of unlawful detainer).

quit,<sup>3</sup> if the property is sold<sup>4</sup> (1) pursuant to a writ of execution<sup>5</sup> against the occupant or a person under whom the occupant claims,<sup>6</sup> (2) pursuant to a writ of sale<sup>7</sup> or express power of sale<sup>8</sup> upon foreclosure of a mortgage executed by the occupant or a person under whom the occupant claims,<sup>9</sup> (3) under a power of sale contained in a deed of trust<sup>10</sup> executed by the occupant, or a person under whom the occupant claims,<sup>11</sup> or (4) by the occupant or a person under whom the occupant claims.<sup>12</sup> Chapter 346<sup>13</sup> protects tenants of rental housing units<sup>14</sup> by requiring that the notice to quit be at least as long as the lease or rental period, but not exceeding thirty days.<sup>15</sup> Chapter 346 specifies that this provision does not adversely affect any additional rights of a tenant or subtenant under a fixed term lease.<sup>16</sup>

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3. CAL. CIV. PROC. CODE §1162 (methods of service of three day notice).

4. In each type of sale, the title must be duly perfected before a person may be removed. *Id.* §1161a. *See also* Keller v. Bridge, 161 Cal. App. 2d 837, 838, 327 P.2d 241, 244, (1958) (definition of perfected title).

5. CAL. CIV. PROC. CODE §§699.510 (definition of writ of execution), 701.510-680 (sale under writ of execution).

6. *Id.* §1161a(a)(1).

7. *Id.* §§716.0 (definition of writ of sale), 716.020 (sale under writ of sale).

8. *Id.* §2924 (definition of power of sale).

9. *Id.* §1161a(a)(2).

10. Huckell v. Matranqa, 99 Cal. App. 3d 471, 481, 160 Cal. Rptr. 177, 183 (1979) (definition of deed of trust).

11. CAL. CIV. PROC. CODE §1161a(a)(3).

12. *Id.* §1161a(a)(4).

13. Chapter 346 is further amended by Chapter 1124 to include manufactured Homes and Mobilehomes. *Compare* 1983 Cal. Stat. c. 1124, §11, at\_\_\_\_ with 1983 Cal. Stat. c. 346, §1 at\_\_\_\_; *see also* CAL. CIV. PROC. CODE §1161a.

14. The term "rental housing unit" includes any structure or any part thereof which is rented or offered for rent for residential occupancy in this state. *Id.* §1161a(c).

15. *Id.* §1161a(b).

16. 1983 Cal. Stat. c. 346, §2, at\_\_\_\_.

## Property; mobilehomes

Civil Code §§798.15, 798.25, 798.26, 798.36, 798.37, 798.50, 798.55, 798.56, 798.75, 798.77, 798.85, 799.1, 799.2, 799.4, 799.6 (amended).

AB 1052 (Bader); 1983 STAT. Ch 519

Support: Department of Housing and Community Development; Golden State Mobilehome Owners League; Western Mobilehome Association

Existing law requires that certain provisions be included in a written rental agreement for a tenancy in a mobilehome park.<sup>1</sup> Chapter 519 re-

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1. *See* CAL. CIV. PROC. CODE §798.15(a)-(f),(h).

quires another provision in the agreement stating that a mobilehome owner may be charged a maintenance fee for failing to maintain the rented premises if upon notice, the mobilehome owner fails to correct the condition within fourteen days.<sup>2</sup> Although existing law does not permit the imposition of fees as a means to enforce mobilehome park regulations and rules,<sup>3</sup> Chapter 519 creates an exception for maintenance fees imposed for failing to maintain the premises.<sup>4</sup> Moreover, under existing law, homeowners may not be assessed entry, installation, hookup, or landscaping fees as a condition of tenancy.<sup>5</sup> Chapter 519 excepts local governmental fees and directly related site costs from these provisions.<sup>6</sup>

When a mobilehome is sold and remains in the park, existing law requires the sales agreement to contain a signed provision binding the new purchaser to the terms of the rental agreement.<sup>7</sup> Under prior law, this requirement could be satisfied by a separate rental agreement signed by the purchaser.<sup>8</sup> To satisfy the requirement with a separate rental agreement under Chapter 519, the separate agreement must be signed by both the purchaser and the park management.<sup>9</sup>

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2. *Id.* §798.15(g).

3. *Id.* §798.36.

4. *Id.*

5. *Id.* §798.37.

6. *Id.*

7. *Id.* §798.75.

8. 1981 Cal. Stat. c. 667, §8, at 2451 (amending CAL. CIV. CODE §798.75).

9. CAL. CIV. CODE §798.75.

## Property; accessory taxation

Revenue and Taxation Code §5805 (new).

SB 191 (Craven); 1983 STAT. Ch 349

(Effective July 25, 1983)

Under existing law, a mobilehome is subject to either an ad valorem property tax<sup>1</sup> or a vehicle license fee.<sup>2</sup> Prior to the enactment of Chapter 349, the law was unclear regarding the treatment of mobilehome accessories<sup>3</sup> for taxation purposes. Consequently, the possibility of double taxation occurred in some counties.<sup>4</sup> In an attempt to clarify the taxation of

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1. CAL. REV. & TAX CODE §§5801(b), 5810, 10758, 10759.5.

2. *Id.* §§10751, 10751.5.

3. CAL. HEALTH & SAFETY CODE §18008.5 (definition of mobilehome accessory)

4. *See* CAL. REV. & TAX CODE §§5803 (full cash value of a mobilehome includes accessories in some circumstances), 10753.4 (accessories not included in determining vehicle license fee after Jan. 1, 1977), 6012.2, 6276.11 (on brokerage sales of used mobilehomes, a sales tax is not imposed on the sale price of in-place accessories); *see also* Telephone con-

mobilehome accessories, Chapter 349 provides generally that accessories are not subject to local property taxation if they are (1) subject to state vehicle license fees, and (2) installed on rented or leased lots with a mobilehome first sold before January 1, 1977.<sup>5</sup> Accessories may be subject to local property tax, however, if (1) the accessories are permanently affixed to the land, or (2) the mobilehome also is subject to property taxation.<sup>6</sup>

Chapter 349 also establishes a rebuttable presumption that an accessory is subject to a vehicle license fee if installed on a rented or leased lot with a mobilehome first sold before January 1, 1977.<sup>7</sup> This presumption may be rebutted, however, by a showing that the accessory was not included in determining the market value of the mobilehome for purposes of establishing a vehicle license fee base, or that the accessory otherwise was not subject to the vehicle license fee.<sup>8</sup>

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versation with John G. Tennyson, Consultant, Senate Select Committee on Mobilehomes (Aug. 29, 1983) (notes on file *Pacific Law Journal*).

5. CAL. REV. & TAX CODE §5805(a)

6. *Id.*

7. *Id.* §5805(b)

8. *Id.*