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Property

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Property

Property; Fair Housing Law

Health & Safety Code §§35700, 35710, 35711, 35720, 35730, 35730.5, 35731, 35736, 35738 (amended).

SB 610 (Dunlap); STATS 1977, Ch 1187

Support: Fair Employment Practice Commission

Opposition: California Association of Realtors; California Apartment Association

Prior to the enactment of Chapter 1187, discrimination based upon sex, race, color, religion, marital status, national origin, or ancestry in publicly assisted housing and residential dwellings containing more than four units was prohibited [CAL. STATS. 1975, c. 1189, §§1, 3, at 2942, 2943]. Chapter 1187 has amended various discrimination-in-housing provisions of the Health and Safety Code for the express purpose of providing effective remedies to eliminate discriminatory housing practices [*See* CAL. HEALTH & SAFETY CODE §35700].

The Fair Housing Law [CAL. HEALTH & SAFETY CODE §§35700-35745], as amended by Chapter 1187, is apparently intended to provide effective remedies that will eliminate housing discrimination in *all* housing accommodations in this state [*See, e.g.*, CAL. HEALTH & SAFETY CODE §§35700, 35710, 35720, 35730]. In addition, the Fair Housing Law now specifically delineates those activities included in the term "discrimination" as prohibited by this Act [CAL. HEALTH & SAFETY CODE §35710(d), *as amended*, CAL. STATS. 1977, c. 1188, §1.1, at —]. "Discrimination" under the new law includes: (1) the refusal to sell, rent, lease, or negotiate for housing accommodations; (2) the representation that a housing accommodation is not available when in fact it is; (3) the provision of inferior terms, conditions, privileges, facilities, or services in connection with housing; (4) the cancellation or termination of a housing agreement; and (5) the segregation of housing accommodations based upon race, color, religion, sex, marital status, national origin, or ancestry [CAL. HEALTH & SAFETY CODE §§35700; CAL. HEALTH & SAFETY CODE §35710(d), *as amended*, CAL. STATS. 1977, c. 1188, §1.1, at —]. Chapter 1187, however, expressly excludes from the definition of "discrimination" the refusal to rent or lease a portion of an owner-occupied, single family house to a roomer or boarder [CAL. HEALTH & SAFETY CODE §35710(d), *as amended*, CAL. STATS. 1977, c. 1188, §1.1, at —]. As used in the Fair Housing Law, "housing accommodation" includes any improved or unimproved real property that is occupied or intended to be occupied as a home, residence, or sleeping place of one or

more human beings, but excludes accommodations operated by certain nonprofit organizations [*See* CAL. HEALTH & SAFETY CODE §35710(f), *as amended*, CAL. STATS. 1977, c. 1188, §1.1, at —]. Under the prior law, criminal liability was threatened only when housing discrimination was practiced by the owners of various publicly assisted housing accommodations [*See* CAL. STATS. 1975, c. 1189, §3, at 2943]. Section 35720 of the Health and Safety Code now specifies that it is unlawful for the owner of *any* housing accommodation to express any preference as to the kind of occupants desired, to discriminate in the giving of financial assistance, or to retaliate against a person who has opposed practices unlawful under the Fair Housing Law [CAL. HEALTH & SAFETY CODE §35720(1), (3), (5), (6)]. Similarly expanded are the powers of the State Fair Employment Practice Commission, which was previously limited to preventing unlawful discrimination proscribed by Section 35720 [*Compare* HEALTH & SAFETY CODE §35730, *as amended*, CAL. STATS. 1977, c. 1188, §2.1, at — with CAL. STATS. 1963, c. 1853, §2, at 3825]. This Commission and the Division of Fair Employment Practices are now empowered not only to prevent, but also to eliminate all housing discrimination proscribed in the Fair Housing Law [*See* CAL. HEALTH & SAFETY CODE §35730, *as amended*, CAL. STATS. 1977, c. 1188, §2.1, at —]. Furthermore, in addition to these powers, the Commission is now authorized to adopt all necessary rules and regulations needed to implement the provisions of the new law and to provide assistance, both financial and technical, to advisory agencies and conciliation councils to help in effectuating the purposes of this law [*See* CAL. HEALTH & SAFETY CODE §35730.5(d), (g), *as amended*, CAL. STATS. 1977, c. 1188, §3.1, at —].

Any person claiming to be aggrieved by alleged discrimination in housing may now file a verified complaint in writing with the Division of Fair Employment Practices in the Department of Industrial Relations [CAL. HEALTH & SAFETY CODE §35731(a), *as amended*, CAL. STATS. 1977, c. 1188, §5.1, at —]. Previously, however, any person who filed such a complaint was required to waive his or her right to damages under Section 52 of the Civil Code [CAL. STATS. 1963, c. 1853, §2, at 3826]. Section 37531 of the Health and Safety Code now allows a complainant to seek relief under both the Fair Housing Law *and* Civil Code Section 52 [*See* CAL. HEALTH & SAFETY CODE §35731(a), *as amended*, CAL. STATS. 1977, c. 1188, §5.1, at —]. This complaint under the Fair Housing Law is to be dismissed, however, when a final judgment under Civil Code Section 52 is entered, unless the judgment is a dismissal entered at the complainant's request [CAL. HEALTH & SAFETY CODE §35731(a), *as amended*, CAL. STATS. 1977, c. 1188, §5.1 at —]. In addition to the filing of complaints by individually aggrieved parties, Section 35731 now permits the Attorney

General, the Fair Employment Practice Commission, and the Chief of the Division of Fair Employment Practices of the Department of Industrial Relations to make, sign, and file complaints citing practices that appear to violate the *purpose* of the Fair Housing Law or any of its specific provisions [See CAL. HEALTH & SAFETY CODE §35731(b), *as amended*, CAL. STATS. 1977, c. 1188, §5.1 at —].

Once a complaint has been filed alleging discrimination in housing and the Division of Fair Employment Practices determines through its own investigation that it is a valid complaint, it must first attempt to eliminate the unlawful discrimination through conference, conciliation, or persuasion [See CAL. HEALTH & SAFETY CODE §35731(c), *as amended*, CAL. STATS. 1977, c. 1188, §5.1, at —; CAL. LAB. CODE §1422, *as added*, CAL. STATS. 1977, c. 1188, §30, at —]. If this attempt to obtain voluntary compliance fails to eliminate the unlawful housing discrimination, the chief of the Division may issue a written accusation against the owner of the housing accommodation in question [See CAL. HEALTH & SAFETY CODE §35732]. If no accusation was issued, the prior law did not provide any time limits for notifying the person claiming to be aggrieved that the division did not intend to issue an accusation [See CAL. STATS. 1963, c. 1853, §2, at 3827]. Section 35731 now provides that if the Division fails to issue an accusation within 150 days after the filing of a complaint or decides earlier that it will not issue an accusation, the Division must notify the allegedly aggrieved person of this fact within 30 days of the decision or not more than 120 days after the filing of the complaint, whichever occurs first [CAL. HEALTH & SAFETY CODE §35731(d), *as amended*, CAL. STATS. 1977, c. 1188, §5.1 at —]. Additionally, this notice must indicate that the person who filed the complaint may bring a civil action in superior court for violation of the Fair Housing Law, but must do so within one year from the date the Division notice was mailed [CAL. HEALTH & SAFETY CODE §35731(d), *as amended*, CAL. STATS. 1977, c. 1188, §5.1, at —].

If an accusation is issued, the Fair Employment Practice Commission, as under the prior law, must hold hearings on the accusation to determine the validity of the issues raised [CAL. HEALTH & SAFETY CODE §35732(b)]. Under the prior law, however, if the Commission found there had been a violation of the Fair Housing Law, it was limited to issuing a cease and desist order and taking any *one* of several remedial actions [See CAL. STATS. 1975, c. 280, §1, at 701]. Chapter 1187 broadens the remedies now available to the division by providing that in addition to the cease and desist order the division may take *any* actions that, in the judgment of the division, will effectuate the purpose of the Fair Housing Law [CAL. HEALTH & SAFETY CODE §35738, *as amended*, CAL. STATS. 1977, c. 1188, §13.1, at —]. These actions *may* include, but are not limited to: (1) the sale or rental

of the housing accommodation or like housing; (2) actual and punitive damages not to exceed \$1,000; or (3) affirmative or prospective relief [CAL. HEALTH & SAFETY CODE §35738, *as amended*, CAL. STATS. 1977, c. 1188, §13.1, at —]. To avoid double recovery, however, no relief is available unless the aggrieved person signs a written waiver relinquishing rights under Civil Code Section 52 [CAL. HEALTH & SAFETY CODE §35738, *as amended*, CAL. STATS. 1977, c. 1188, §13.1, at —]. Thus, by expanding the prohibition against discrimination in housing to cover most residential housing accommodations and by adding the assistance of the Division of Fair Employment Practices to enforce the provisions of the Fair Housing Law, Chapter 1187 appears to have expanded the remedies available to eliminate housing discrimination in this state.

See Generally:

- 1) 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §423 (Unruh Civil Rights Act), §431 (discrimination in housing) (8th ed. 1973), (Supp. 1976).
- 2) 7 PAC L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 520 (discrimination in housing) (1976).
- 3) 6 PAC. L.J., REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 378 (Rumford Fair Housing Act) (1975).

Property; discrimination in housing finance—redlining

Health and Safety Code Part 6 (commencing with §35800) (new).
SB 7 (Holden); Stats 1977, Ch 1140

“Redlining” is defined as the practice of financial institutions either to exclude certain geographical areas from consideration for home mortgages and rehabilitation loans, or to vary the terms and conditions of such loans within certain geographical areas [Comment, *Redlining: Potential Civil Rights and Sherman Act Violations Raised by Lending Policies*, 8 IND. L. REV. 1045 (1975)]. Although it is arguable that “redlining” practices in California could be challenged under the Unruh Civil Rights Act [CAL. CIV. CODE §51] and the Rumford Fair Housing Act [CAL. HEALTH & SAFETY CODE §§35700-35745] [See Comment, *Redlining in Mortgage Lending: California’s Approach to Getting the Red Out*, 8 PAC. L.J. 699, 716-19 (1977)], there was previously no statutory provision that *expressly* prohibited discrimination based upon the geographic location of property used as security. In August of 1976, the Savings and Loan Commissioner adopted regulations for state-licensed savings and loan associations that establish, *inter alia*, prohibitions on certain restrictive lending practices based on neighborhood factors [10 CAL. ADM. CODE §245.2] and affirmative action requirements for such saving and loan associations to increase the extent of lending in “redlined” areas [See 10 CAL. ADM. CODE §§147.6, 245.5].

The legislature, recognizing the existence of "redlining" practices in California has enacted, under the police powers of the state, The Housing Financial Discrimination Act of 1977 [CAL. HEALTH & SAFETY CODE §§35800-35833] to prohibit such discrimination in housing finance [CAL. HEALTH & SAFETY CODE §§35801(e), 35802(a)].

The prohibitions against "redlining" codified by Chapter 1140 extend to any "financial institution," defined as any bank, savings and loan association, public agency, or other institution that regularly makes, arranges, or purchases loans [See CAL. HEALTH & SAFETY CODE §35805(c)]. The term "housing accommodation" as used in Chapter 1142, is defined as any improved or unimproved real property, occupied, or intended to be occupied, by the owner as a residence, containing not more than four dwelling units [CAL. HEALTH & SAFETY CODE §35805(d)]. Also included in this definition is residential property containing not more than four dwelling units, if the owner applies for a secured home improvement loan, whether or not the owner will occupy such property [CAL. HEALTH & SAFETY CODE §35805(d)].

In determining the availability, provision, or terms on which to provide financial assistance for the purpose of purchasing, constructing, rehabilitating, improving, or refinancing a housing accommodation, Chapter 1140 now prohibits financial institutions from: (1) discriminating on the basis of the geographic location of the housing accommodation [CAL. HEALTH & SAFETY CODE §35810]; (2) discriminating on the basis of race, color, religion, sex, marital status, national origin, or ancestry [CAL. HEALTH & SAFETY CODE §35811]; and (3) considering the racial, ethnic, religious, or national origin composition of the neighborhood surrounding the housing accommodation as it is, or as it is expected to be [CAL. HEALTH & SAFETY CODE §35812]. The geographic location of the property, however, may be considered in the giving of financial assistance if, in a particular case, such consideration is necessary to avoid an unsafe and unsound business practice [CAL. HEALTH & SAFETY CODE §35810]. Furthermore, Chapter 1140 does not preclude a financial institution from considering the fair market value of the property that will secure the proposed loan, nor does it require a financial institution to provide a loan if occupancy of the property would create an imminent threat to the health or safety of the occupant [CAL. HEALTH & SAFETY CODE §35813]. Financial institutions are also required to notify applicants for loans of these prohibitions against discrimination, the procedures for filing a complaint, and the right of review of any complaint determination [CAL. HEALTH & SAFETY CODE §35830].

Any applicant for a real estate loan in connection with a housing accommodation may now file a complaint alleging discrimination by a financial institution with the Secretary of Business and Transportation [CAL. HEALTH

& SAFETY CODE §35820], who is empowered to issue the rules and regulations necessary to interpret and enforce this new law [CAL. HEALTH & SAFETY CODE §35814]. Immediately upon receipt of such a complaint, the Secretary is required to attempt to eliminate any alleged unlawful practice by conference, conciliation, or persuasion [CAL. HEALTH & SAFETY CODE §35821]. In any event, within 30 days after receiving this complaint the Secretary must determine whether the financial institution has engaged in any unlawful practice as defined by Chapter 1140 [See CAL. HEALTH & SAFETY CODE §35822]. If the Secretary does not find any evidence of an unlawful practice, a written statement incorporating the Secretary's findings and decision must be given to the complainant and the financial institution [CAL. HEALTH & SAFETY CODE §35822]. When there is a decision that an unlawful practice has occurred, the Secretary must notify the financial institution in writing of the decision and order it to cease the discriminatory practice [CAL. HEALTH & SAFETY CODE §35822]. In addition, the Secretary must order the financial institution either to make the loan on nondiscriminatory terms or to pay damages in an amount not to exceed \$1,000 [CAL. HEALTH & SAFETY CODE §35822(a)-(b)]. The decision of the Secretary is final unless an appeal is made by the complainant or the financial institution within ten days after receipt of this decision [CAL. HEALTH & SAFETY CODE §35823]. This appellate process is to be conducted by the Office of Administrative Hearings and the decision of the hearing officer, which must be rendered within 45 days of the request for appeal, is binding upon the Secretary [CAL. HEALTH & SAFETY CODE §35823]. If the decision of the Secretary is in favor of the complainant, the Secretary must represent the complainant at the hearings [CAL. HEALTH & SAFETY CODE §35823]. If the complainant or the financial institution is not satisfied with the decision of the hearing officer, either party may obtain judicial review by filing a petition for a writ of mandate [CAL. HEALTH & SAFETY CODE §35823]. When considering such a petition, a court may review evidence that was improperly excluded at the hearing; and if the complainant prevails, the court may award costs and reasonable attorney's fees [CAL. HEALTH & SAFETY CODE §35823].

The legislature, by extending the prohibition against "redlining" to all financial institutions within the state, has gone significantly beyond the scope of existing administrative regulations proscribing such practices and has established remedies for persons subjected to "redlining" [Compare CAL. HEALTH & SAFETY CODE §§35800-35833 with 10 CAL. ADM. CODE §§145.7, 147.6, 204.2(q), 242.2(t), (u), and §§245-246.7]. Thus, by prohibiting discriminatory "redlining" practices, the legislature has expressly attempted to encourage increased lending in areas in which conventional mortgage financing has heretofore been unavailable, to increase the avail-

ability of housing to all credit-worthy persons, to ensure an available supply of decent, safe housing, and to prevent the abandonment and decay of these previously "redlined" areas [See CAL. HEALTH & SAFETY CODE §35802].

See Generally:

- 1) 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §423 (Rumford Fair Housing Act, Unruh Civil Rights Act) (8th ed. 1973).
- 2) 7 PAC L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 520 (discrimination in housing) (1976).
- 3) Comment, *Redlining in Mortgage Lending: California's Approach to Getting the Red Out*, 8 PAC. L.J. 699 (1977).

Property; unlawful detainer

Civil Code §1952.3 (new); §1952 (amended).

AB 13 (McAlister); STATS 1977, Ch 49

Support: California Law Revision Commission

In response to a recommendation by the California Law Revision Commission, Chapter 49 has been enacted to codify existing case law relating to unlawful detainer actions and to clarify the procedural rights of the lessor and lessee when the lessee gives up possession after the commencement of such an action [See *Recommendation Relating to Damages in Action for Breach of Lease*, 13 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS, AND STUDIES 1683 (1976)]. Prior to the enactment of Chapter 49, actions for unlawful detainer, forcible entry, or forcible detainer had to be brought separately from actions for prospective damages recoverable under Civil Code Sections 1951.2, 1951.5, and 1951.8 [*E.g.*, *Cavanaugh v. High*, 182 Cal. App. 2d 714, 722-23, 6 Cal. Rptr. 525, 530-31 (1960); *Roberts v. Redlich*, 111 Cal. App. 2d 566, 569-70, 244 P.2d 933, 935 (1952); *Pfitzer v. Candeias*, 53 Cal. App. 737, 741-42, 200 P. 839, 841 (1921); see CAL. STATS. 1970, c. 89. §7, at 106]. Although unlawful detainer actions are summary proceedings that are generally limited to the narrow issue of possession, case law has established several affirmative defenses relevant to the issue of possession that may be raised by a lessee in such actions [See, *e.g.*, *Green v. Superior Court*, 10 Cal. 3d 616, 632, 517 P.2d 1168, 1178, 111 Cal. Rptr. 704, 714 (1974); *Abstract Inv. Co. v. Hutchinson*, 204 Cal. App. 2d 242, 255, 22 Cal. Rptr. 309, 317 (1962)]. In addition, the courts have established that if a tenant gives up possession of the premises after commencement of an unlawful detainer proceeding, the action will be converted to an ordinary civil action for damages and the summary proceeding rules of unlawful detainer will no longer be applicable [*E.g.*, *Union Oil Co. v. Chandler*, 4 Cal. App. 3d 716, 722, 84 Cal. Rptr. 756, 760 (1970); *Heller v. Melliday*, 60 Cal. App. 2d 689, 696-97, 141 P.2d 447, 451-52 (1943); *Servais v. Klein*, 112 Cal. App. 26, 36, 296 P. 123, 127 (1931)].

Chapter 49 codifies the prior case law relating to the conversion of unlawful detainer actions into ordinary civil actions and specifies that a conversion of such an action will occur only when possession of the property has been delivered to the lessor before trial or, if there is no trial, before judgment is entered [CAL. CIV. CODE §1952.3(a)]. Once the case has become an ordinary civil action, a lessor may generally obtain any relief to which he or she is entitled [CAL. CIV. CODE §1952.3(a)(1)]. Included in such relief is the right to obtain prospective damages pursuant to Section 1951.2(a)(3) provided there has been a lease, a breach of the lease by the lessee, and either abandonment by the lessee before the end of the term or termination by the lessor of the lessee's right to possession [*See* CAL. CIV. CODE §§1951.2(a), 1952.3(a)(1)]. If a lessor, however, seeks such prospective damages or any other damages not recoverable in an unlawful detainer action, then the lessor must either amend the complaint to state a claim for these damages and to eliminate possession of the property as an issue in the case [CAL. CIV. CODE §1952.3(a)(1)], or elect to recover prospective and other damages in a separate action [*See* CAL. CIV. CODE §1952(b). *See generally* CAL. CIV. CODE §§1951.2, 1951.5, 1951.8]. At the same time, Chapter 49 makes clear that lessors who amend their complaints under these circumstances lose their right to bring a separate action for relief under Sections 1951.2, 1951.5, and 1951.8 of the Civil Code [*See* CAL. CIV. CODE §§1952, 1952.3, CAL. LAW REVISION COMM'N COMMENT]. Furthermore, if a lessor amends an unlawful detainer complaint to state a claim for prospective damages, he or she must also serve a copy of the amended complaint on the defendant-lessee [CAL. CIV. CODE §1952.3(a)(1)].

Section 1952.3 also clarifies the rights of defendant-lessees in unlawful detainer actions that are converted into ordinary civil actions. Specifically, in such circumstances the lessee is no longer subject to the restrictive rules of unlawful detainer pleading and now has the right to seek any affirmative relief by cross-complaint and assert all available defenses, regardless of whether the lessor amends his or her complaint pursuant to Section 1952.3(a)(1) [CAL. CIV. CODE §1952.3(a)(2); *see* CAL. CIV. CODE §1952.3, CAL. LAW REVISION COMM'N COMMENT]. A defendant-lessee, however, will not forfeit any related cause of action merely because of a failure to assert such claims, unless the defendant-lessee has answered an amended complaint or has filed a cross-complaint in the action [CAL. CIV. CODE §1952.3(a)(2). *See generally* CAL. CIV. PROC. CODE §426.30(a)]. Chapter 49 also indicates that the five-day filing deadline for a response in an unlawful detainer action is *not* modified by merely delivering possession of the property to the lessor, but upon amendment of the lessor's complaint pursuant to Section 1952.3(a)(1), the time limit for filing a response is extended to 30 days or for such time as the court may allow [*See* CAL. CIV.

CODE §1952.3(b). *See generally* CAL. CIV. PROC. CODE §§471.5, 586, 1167, 1167.3]. If a defendant has failed to respond within this five-day period, however, and a default has been entered on the unlawful detainer complaint, whether before or after possession of the property has been delivered to the lessor, the case will remain an unlawful detainer proceeding unless the default is set aside or the lessor opens the default by amending the complaint [*See* CAL. CIV. CODE §1952.3(c), (d); CAL. CIV. CODE §1952.3, CAL. LAW REVISION COMM'N COMMENT]. Finally, despite the apparent limited application to unlawful detainer proceedings, the Law Revision Commission has indicated that Chapter 49 is not intended to preclude application of Sections 1952 and 1952.3 of the Civil Code to forcible entry or forcible detainer cases [CAL. CIV. CODE §1952.3, CAL. LAW REVISION COMM'N COMMENT].

When possession of a lessor's property is no longer in issue, it would appear that the summary procedures of an unlawful detainer action are not required to resolve the rights of the contesting parties [*See* *Green v. Superior Court*, 10 Cal. 3d 616, 633 n.18, 517 P.2d 1168, 1179 n.18, 111 Cal. Rptr. 705, 715 n.18 (1974); *Servais v. Klein*, 112 Cal. App. 26, 36, 296 P. 123, 127 (1931)]. Accordingly, under these circumstances, Chapter 49 appears to expedite the judicial process and to avoid multiplicity of actions by allowing lessors to convert their unlawful detainer actions into ordinary civil actions for damages and by similarly allowing defendants in such converted actions to assert cross-complaints and raise all available defenses.

See Generally:

- 1) 3 B. WITKIN, *SUMMARY OF CALIFORNIA LAW, Real Property*, §449 (implied warranty of habitability), §524 (unlawful detainer), §529 (damages) (8th ed. 1973), (Supp. 1976).
- 2) 6 PAC. L.J., *REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 3/2* (abandonment of leased real property) (1975).
- 3) Note, *The Great Green Hope: The Implied Warranty of Habitability in Practice*, 28 STAN. L. REV. 729 (1976).

Property; landlord-tenant—security deposits

Civil Code §1950.5 (repealed); §§1950.5, 1950.7 (new).

AB 94 (Rosenthal); STATS 1977, Ch 971

Support: California Labor Federation, AFL-CIO; Golden State Mobile Home Owners League

Opposition: California Association of Realtors

Prior to the enactment of Chapter 971, Civil Code Section 1950.5 governed payments or deposits whose primary purpose was to secure the performance of a rental agreement for any type of property, but did not cover advance payments of rent or payments to secure the execution of a lease

[CAL. STATS. 1972, c. 618, §4, at 1095]. Chapter 971 makes Section 1950.5 applicable to residential leases only and adds Section 1950.7 to the Civil Code to regulate security payments for nonresidential leases [CAL. CIV. CODE §§1950.5(a), 1950.7(a)].

Section 1950.5 now defines security for residential leases as “any payment, fee, deposit, or charge . . . to be used for any purpose,” which eliminates from this category of leases the distinctions between security payments based upon their primary function [CAL. CIV. CODE §1950.5(b)]. Civil Code Section 1950.5, however, still applies to those payments or deposits made to secure the performance of a rental agreement [CAL. CIV. CODE §1950.7(a)]. Also, under the prior law, any such money given as security was held by the landlord for the tenant, and a tenant’s claim to the security deposit had priority over the claim of any creditor except a trustee in bankruptcy [CAL. STATS. 1972, c. 618, §4, at 1096]. Although nonresidential leases are still subject to this provision [CAL. CIV. CODE §1950.7(b)], tenants’ claims under a residential lease now have priority over those of any creditors, including a trustee in bankruptcy [CAL. CIV. CODE §1950.5(d)]. Further, the law previously did not establish any maximum amount of money that a landlord could demand as security, and no such restriction yet governs nonresidential leases [*Compare* CAL. CIV. CODE §1950.7 *with* CAL. STATS. 1972, c. 618, §4, at 1095-96]. With respect to residential leases, however, Chapter 971 now limits the amount of security that a tenant may be required to pay to the equivalent of two months’ rent for unfurnished property and three months’ rent for furnished property [CAL. CIV. CODE §1950.5(c)]. Further, the landlord and the tenant may agree that the landlord is to make certain structural, decorative, furnishing, or other alterations for a specified fee to be paid by the tenant [CAL. CIV. CODE §1950.5 (c)]. In addition to this security payment, a landlord may also require advance payment of the first month’s rent, but this language is not designed to prohibit an advance payment of *not less than* six months rent if the lease is for six months or longer [CAL. CIV. CODE §1950.7(c)].

Once a landlord had obtained possession of a security deposit, the prior law placed few restrictions on what portion of these deposits a landlord could rightfully have kept and what portion he or she must have returned to the tenants [*See* CAL. STATS. 1972, c. 618, §4, at 1096]. For both residential and nonresidential leases, Chapter 971 continues the provisions of the Civil Code that allow a landlord to retain that portion of a security deposit necessary to remedy defaults in rent, to repair damages to the premises, or to clean the premises on termination of the tenancy [*Compare* CAL. CIV. CODE §1950.5(e) *and* §1950.7(c) *with* CAL. STATS. 1972, c. 618, §4, at 1096]. Landlords of residential property, however, are no longer permitted to deduct for ordinary wear and tear to the premises, and must now give

tenants an itemized written statement of the basis for, and the amount of, any security received and retained [CAL. CIV. CODE §1950.5(e)]. In addition, to protect security payments made by residential tenants, Chapter 971 now prohibits characterizing any such security as “nonrefundable” [CAL. CIV. CODE §1950.5(i)]. The addition of this provision would appear to follow the lead of an earlier appellate court decision in which the court indicated that when the lease required the tenant to pay a nonrefundable cleaning fee and to maintain the premises in their original condition, the cleaning fee could not properly be withheld if the tenant performed [*See Bauman v. Islay Investments*, 30 Cal. App. 3d 752, 757, 106 Cal. Rptr. 889, 892 (1973)]. Furthermore, since payments to secure the execution of a lease were sometimes retained if the tenant did not enter into occupancy [*See* 1 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §416 (8th ed. 1973)], this new prohibition against “nonrefundable” security payments would seem to decrease the use of such payments as a means of securing execution of a lease [*See generally* CAL. CIV. CODE §1950.5(i)]. Finally, Chapter 971 continues to provide that all landlords, who have transferred ownership of leased property, must either return the security payments to their tenants or notify the tenants that the security has been transferred to the landlord’s successor [CAL. CIV. CODE §§1950.5(f), 1950.7(d)]. Notice of the security payment, transfer, however, may now be made to the tenant by either certified mail or personal service [CAL. CIV. CODE §§1950.5(f)(1), 1950.7(d)(1)]. As was the case previously, once this transfer has been completed, the transferee has all the rights and obligations of the original lessor [*Compare* CAL. STATS. 1972, c. 618, §4, at 1096 *with* CAL. CIV. CODE §1950.5(g) *and* §1950.7(e)].

To discourage improper and excessive deductions from the security paid, Chapter 971 also allows the courts to continue to impose up to \$200 in punitive damages for a landlord’s bad faith retention of a security payment [CAL. CIV. CODE §§1950.5(h), 1950.7(f)]. In a case of bad faith retention by a residential landlord, Section 1950.5(h) additionally provides that the landlord, not the tenant, now has the burden of proving the reasonableness of any amounts that were withheld. In this matter, Section 1950.5(h) appears to deviate from the normal procedural rules governing civil actions, since in a court action to recover deposit money, the tenant would be the plaintiff and thus would normally have the burden of proof as to those allegations of the complaint that are in issue [*See Polk v. Polk*, 228 Cal. App. 2d 763, 787, 39 Cal. Rptr. 824, 838 (1964); *Mills v. Vista Pools, Inc.*, 184 Cal. App. 2d 668, 672, 7 Cal. Rptr. 545, 548 (1960); CAL. EVID. CODE §500]. To further facilitate the recovery of such damages from landlords who wrongfully retain all or any portion of a security deposit, Chapter 971 expressly grants small claims courts the authority to hear these

cases, provided the actual and punitive damages do not exceed the \$750 jurisdictional limit of these courts [CAL. CIV. CODE §1950.5(j); *see* CAL. CIV. PROC. CODE §116.2]. This provision may have been in response to a recent opinion of the California Attorney General that attempted to allay the concerns of some small claims court judges who felt they did not have the authority to assess punitive damages in cases in which a landlord wrongfully withheld a security payment [*See* 59 OP. ATT'Y GEN 321-24 (1976)].

Chapter 971 also identifies, by date of termination and creation, the rental agreements to which the various provisions of Sections 1950.5 and 1950.7 will apply. The provision limiting deductions from security payments and requiring the landlord to provide an itemized written statement of the deductions made is applicable to all tenancies, leases, or rental agreements *terminated* on or after January 1, 1978 [CAL. CIV. CODE §1950.5(k)]. The provisions regarding the amount of security that may be required, designating security as nonrefundable, and the types of payments that qualify as security payments apply to all rental agreements created or renewed on or after January 1, 1978 [CAL. CIV. CODE §1950.5(k)]. Provisions concerning punitive damages, transfer of a landlord's interest, and all provisions concerning nonresidential leases are a recodification of prior law and thus apply to payments made on or after January 1, 1971 [CAL. CIV. CODE §§1950.5(k), 1950.7(g)]. Thus, Chapter 971 would appear to significantly increase the protection provided for any deposit, charge, or fee paid by a tenant under a residential lease.

See Generally:

- 1) 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §537 (use of lessee's deposit) (8th ed. 1973).
- 2) Comment, *The Rental Security Deposit in California*, 22 HASTINGS L.J. 1373 (1971).
- 3) Comment, *The Residential Lease: Some Innovations for Improving the Landlord-Tenant Relationship*, 3 U. CAL. D.L. REV. 31 (1971).

Property; mobilehome park tenancies

Civil Code §§789.5c, 789.14 (new); §789.9 (amended).

AB 901 (Gualco), STATS 1977, Ch 817

Support: California State Mobilehome Owners League

Opposition: California Association of Realtors

SB 258 (Carpenter); STATS 1977, Ch 54

Support: Golden State Mobilehome Owners League

SB 586 (Wilson); STATS 1977, Ch 736

Support: Golden State Mobilehome Owners League

Section 789 of the Civil Code prescribes a 30-day notice for termination of any tenancy at will. Sections 789.3 through 789.13, which follow this basic landlord-tenant provision, expressly govern mobile home park tenan-

cies and represent a unique statutory pattern designed to protect these tenants from commonly experienced landlord manipulation [Comment, *The Community and the Parkowner Versus the Mobile Home Park Resident: Reforming the Landlord-Tenant Relationship*, 52 B.U.L. REV. 810, 821 (1972)]. This development appears to have grown from the peculiar nature of mobilehome tenancies as compared to other residential tenancies in that the cost of relocating, installing, and landscaping a mobilehome when a mobilehome tenancy is terminated is much greater than the costs attendant to termination of any other residential tenancy [See CAL. CIV. CODE §789.4; CAL. VEH. CODE §35790].

Chapter 54 adds Section 789.14 to the Civil Code to allow a prospective or present mobilehome tenant whose mobilehome is subject to the provisions of Section 789.5 to request a written rental agreement. When such a request is made, the written agreement provided in response is to cover a term of not less than 12 months [CAL. CIV. CODE §789.14]. Section 789.5 was limited in its application under prior law, to mobilehomes that could only be moved under permit pursuant to California Vehicle Code Section 35790. Chapter 786 has, however, extended the coverage of these code sections to all trailer coaches in excess of eight feet in width and 40 feet in length [CAL. CIV. CODE §789.5(b)].

In related legislation, Chapter 817 has added Section 789.5c to the Civil Code to make a written rental agreement a precondition to establishing a mobilehome tenancy and requires that the following, nonexclusive, provisions be included therein: (1) a description of the physical improvements to be provided the tenant during the period of tenancy [CAL. CIV. CODE §789.5c(a)(2)]; (2) a statement of the ownership's responsibilities to provide and maintain physical facilities offered in the rental agreement in good working order throughout the period of the tenancy [CAL. CIV. CODE §789.5c(a)(1)]; (3) a list of services to be provided during the period of tenancy covered by the agreement [CAL. CIV. CODE §789.5c(a)(3)]; and (4) a statement that, after giving ten days written notice of the matters to be discussed, the ownership shall *meet* and *consult* with tenants, either individually or collectively, regarding: (a) amendments to the rules and regulations; (b) changes in the standards for maintenance of physical improvements; and (c) any addition, alteration, or deletion of services, equipment or physical improvements [CAL. CIV. CODE §789.5c(a)(4)]. Although it is clear that notice and consultation are required by Section 789.5c(a)(4), it is uncertain whether tenant concurrence is required by this section as a prerequisite to landlord action on proposed changes.

Arguably, Section 789.14, which requires that a requested written rental agreement for mobilehome tenancies be at least 12 months in duration, when read in connection with Chapter 817, may require that the agreement

elements specified in Section 789.5c be embodied in a 12-month minimum written rental agreement. It is the stated intent of the author, however, that the purpose of drafting Chapter 817 was to ensure mobilehome park tenants a right to a written rental agreement for the period of tenancy agreed upon, but not to require a minimum one year lease for all such tenancies [Letter from Assemblyman Eugene Gualco to Andrea Miller, September 13, 1977 (copy on file at the *Pacific Law Journal*)].

Finally, Chapter 736 imposes unique notice requirements upon both landlords and tenants in mobilehome park tenancies. Whereas the Civil Code requires only a 30-day written notice either to alter the terms of a residential lease [CAL. CIV. CODE §827], or to terminate a tenancy at will [CAL. CIV. CODE §789], mobilehome park ownership or management must now give a tenant 60-day written notice of any rent increase [CAL. CIV. CODE §789.9(a)], and the tenant must give the ownership or management 60-day written notice of intent to vacate a tenancy [CAL. CIV. CODE §789.9(b)]. Thus, with the addition of requirements for a written rental agreement, a minimum period of tenancy option, a meeting and consultation between a landlord and tenant before changes to this agreement are permitted, and extended notice requirements, Chapters 54, 736 and 817 appear to extend the statutory scheme acknowledging the unique needs of mobilehome park tenants.

See Generally:

- 1) *People v. Mel Mack Co.*, 53 Cal. App. 3d 621, 126 Cal. Rptr. 505 (1975) (general interpretation of Civil Code Sections 789.7, 789.8).
- 2) 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §421 (mobilehome tenancies) (8th ed. 1973).
- 3) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 456 (mobilehome developments), 457 (termination of tenancy) (1974).
- 4) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 597 (tenancy, deficiency judgments) (1973).
- 5) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 370 (eviction of tenant by interruption of services) (1972).
- 6) Comment, *Mobilehomes: Present Regulation and Needed Reforms*, 27 STAN. L. REV. 159 (1974).

Property; notice of sale of real property

Civil Code §2924f (amended); Code of Civil Procedure §692 (amended).

AB 463 (Suitt); STATS 1977, Ch 139

Support: California Department of Real Estate

Chapter 139 amends provisions of Section 2924f of the Civil Code and Section 692 of the Code of Civil Procedure that are concerned with a power of sale in a deed of trust, a mortgage, or on execution of judgment. Section 2924f of the Civil Code requires that before real property or leasehold estates can be sold under such a power of sale, a written notice must be posted in a public place and on the property to be sold at least 20 days before

the sale, and published in a newspaper of general circulation once a week for the same period. Prior to the sale of property on execution, an additional notice must be given to the judgment debtor [CAL. CIV. PROC. CODE §692(3)]. Previously, the notice required in any of these situations was sufficient if it contained a legal description of the property and a street address or other common description [CAL. STATS. 1972, c. 1056, §§3, 6, at 1942, 1945]. Furthermore, the law provided that if a legal description was given, an error or omission in the street address or common description would have no effect on the validity of the notice [CAL. STATS. 1972, c. 1056, §§3, 6, at 1942, 1945].

Chapter 139 continues the provisions of the prior law relating to the posting and publication of a notice of sale of real property under Section 2924f of the Civil Code and Section 692(3) of the Code of Civil Procedure. Additionally, Chapter 139 now requires that if there is no street address or other common designation, the notice of sale must contain the name and address of the beneficiary requesting the sale and a statement that "directions may be obtained pursuant to a written request submitted to the beneficiary within ten days from the first publication" of the notice of sale [CAL. CIV. CODE §2924f; CAL. CIV. PROC. CODE §692(3)]. These directions shall be deemed reasonably sufficient to locate the property if "information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road" [CAL. CIV. CODE §2924f; CAL. CIV. PROC. CODE §692(3)]. Chapter 139 also provides that if a legal description is contained in the notice of sale, an error or omission in the street address, common designation of the property, the name or address of the beneficiary, or the directions obtained from the beneficiary has no effect on the validity of the notice *or* the validity of the sale [CAL. CIV. CODE §2924f; CAL. CIV. PROC. CODE §692(3)]. Sales may, however, be invalidated and liability incurred if there is a material error in the legal description [Crist v. House & Osmonson, Inc., 7 Cal. 2d 556, 61 P.2d 758 (1936)], or the sale was fraudulent [See Munger v. Moore, 11 Cal. App. 3d 1, 89 Cal. Rptr. 323 (1970)].

The provisions added by Chapter 139 establish a method for obtaining directions to property that has no street address and is to be sold at a forced sale [CAL. CIV. CODE §2924f; CAL. CIV. PROC. CODE §692(3)]. These added provisions are apparently designed to facilitate the general public's participation in forced sales of property by making it easier for consumers to identify and locate the property advertised for sale.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, OGDEN'S REVISED CALIFORNIA REAL PROPERTY LAW §§5.2, 5.11 (transfer by operation of law), 17.52-.61 (mortgages and trust deeds), 18.1-.37 (foreclosure proceedings) (1975).

- 2) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 458 (mortgages-notice of default) (1974).

Property; tax-deeded property

Revenue and Taxation Code §§3695.5, 3772.5, 3795.5 (new); §§3791.3, 3797, 3800, 3807.5, 3811 (amended).

AB 1414 (Lockyer); STATS 1977, Ch 1120

Support: East Oakland Housing Committee

Chapter 1120 has apparently been enacted to give preferential treatment to nonprofit organizations in obtaining title to tax-deeded property so that such organizations may rehabilitate and sell the property to low-income persons [*See* CAL. REV. & TAX. CODE §3695.5]. Tax-deeded property is that real property to which the state holds absolute title because the taxes, assessments, penalties, and costs have remained delinquent for five years after the sale of the land to the state by the county tax assessor [*See* CAL. REV. & TAX. CODE §§3351, 3436, 3511]. Under prior law *only* state and local public entities, taxing agencies, or revenue districts could file written objections to the sale of tax-deeded property when they considered the property necessary for public use [*See* CAL. REV. & TAX. CODE §§3695, 3695.4]. These public entities could then acquire such property by applying to the county board of supervisors and tax collector for permission to purchase the property and by receiving approval of the purchase from the board of supervisors and the State Controller [*See* CAL. REV. & TAX. CODE §§3791, 3795].

Chapter 1120 now extends to nonprofit organizations the right to file a written objection to the sale of tax-deeded *residential* real property and to obtain preferential rights to purchase such property [*See* CAL. REV. & TAX. CODE §§3695.5, 3791.3]. These nonprofit organizations must state in their written objection that they will rehabilitate and resell the property to low-income persons [CAL. REV. & TAX. CODE §3695.5]. In addition to this written objection, the nonprofit organization must file with the board of supervisors and tax collector an application to purchase the property before a notice of intended sale is published [CAL. REV. & TAX. CODE §3695.5]. Section 3695.5 further provides that if the nonprofit organization objects to the sale and, before the date of sale, applies to purchase the property at a price equal to that approved by the board of supervisors, the tax collector cannot proceed with the sale.

Chapter 1120 has added Section 3772.5 to the Revenue and Taxation Code for the purpose of defining the terms “low-income persons,” “non-profit organization,” and “rehabilitation.” “Low-income persons” are persons and families whose income does not exceed 120 percent of the area median income, with adjustments for family size, as determined by the

Secretary of Housing and Urban Development [CAL. REV. & TAX. CODE §3772.5]. A “nonprofit organization” is a corporation formed by three or more persons for the purpose of acquiring and rehabilitating single-family dwellings for sale to low-income persons and which does not contemplate the distribution of gains, profits, or dividends to its members [CAL. REV. & TAX. CODE §3772.5. *See generally* CAL. CORP. CODE §§9000-10703]. The term “rehabilitation” is defined as repairs and improvements to a substandard building necessary to make it a building that is not substandard [CAL. REV. & TAX. CODE §3772.5. *See generally* CAL. HEALTH & SAFETY CODE §17920(f)].

Section 3791.3 of the Revenue and Taxation Code has also been amended specifically to permit nonprofit organizations proposing to rehabilitate and to sell property to low-income persons to purchase property deeded to the state for taxes regardless of whether the property is subject to or has been sold or deeded for taxes to a taxing agency other than the state. The nonprofit organization and the county board of supervisors must reach an agreement for the sale of the property or for an option to purchase it, and this agreement must be approved by the State Controller [*See* CAL. REV. & TAX. CODE §§3794.2, 3795]. As part of this agreement the Controller may establish conditions for the sale of tax deeded property to a nonprofit organization, including requiring the organization to report to the Controller to assure the completion of the rehabilitation within a reasonable time and to assure maximum benefits to low-income persons [CAL. REV. & TAX. CODE §3795.5]. Furthermore, the Controller may provide for the reconveyance of the property to the state if the nonprofit organization has not rehabilitated the property within two years from the time the deed was executed or within any extension of the two-year period approved by the board of supervisors [CAL. REV. & TAX. CODE §§3795.5, 3807.5]. Upon approving the agreement, the State Controller must direct the county tax collector to publish a *notice of agreement*, which states, among other things, that an agreement for the sale of tax-deeded property or for an option to purchase such property has been made by the county board of supervisors with the named nonprofit organization and that the agreement was approved by the Controller [CAL. REV. & TAX. CODE §§3796, 3797]. The cost of publishing the notice of agreement is to be paid by the nonprofit organization or taxing agency that is purchasing the property [CAL. REV. & TAX. CODE §3800].

Section 3805 of the Revenue and Taxation Code, as amended by Chapter 1120, provides that the deed conveying the property to the nonprofit organization may specify any condition deemed necessary to assure compliance with the agreement, including a condition that the property be used by the nonprofit organization for the public use specified in the agreement. Within ten days after the execution of this deed to the nonprofit organization the tax

collector must report to the State Controller, assessor, and auditor the following: (1) the name of the purchaser; (2) the date of the deed to the nonprofit organization; (3) the amount for which the property was sold; (4) the description of the property conveyed; and (5) the numbers and dates of certificates of sale to the state and the deed to the state [CAL. REV. & TAX. CODE §3811]. Thus it appears that Chapter 1120 may encourage nonprofit organizations to rehabilitate single-family residential dwellings for resale to low-income persons by giving these organizations preferential rights to tax-deeded property.

See Generally:

- 1) 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Taxation* §§169, 171 (nature and effect of tax deed to state; sale of tax-deeded property to private persons; procedure of sale) (8th ed. 1974).
- 2) CONTINUING EDUCATION OF THE BAR, 2 OGDEN'S REVISED CALIFORNIA REAL PROPERTY LAW §§21.20, 21.23 (second sale to state; sale to other taxing agency) (1975).