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Property

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Property

Property; Uniform Fraudulent Transfer Act

Civil Code § 3439.12 (new); §§ 3439.08, 3440 (amended); Code of Civil Procedure § 697.740 (amended); Corporations Code § 506 (amended); Probate Code § 283 (amended).

SB 474 (Beverly); 1987 STAT. Ch. 40
(Effective June 8, 1987)

Under existing law, the Uniform Fraudulent Transfer Act (Act) provides the guidelines for determining when a transfer¹ is fraudulent and the remedies available to creditors² in the event of a fraudulent transfer.³ Chapter 40 clarifies legislative intent by providing that the Act only applies to transfers made or obligations incurred on or after January 1, 1987.⁴ To protect secured and unsecured creditors,⁵ existing law provides that a transfer of personal property by a debtor that is not accompanied by immediate delivery is void at the time of the transfer.⁶ A creditor includes any person to whom the transferor's estate devolves in trust for the benefit of persons other than the transferor.⁷ Under Chapter 40, any assignee or trustee may exercise the rights and remedies specified in the Act that are available to

1. CAL. CIV. CODE § 3439.01(i) (definition of transfer).

2. *Id.* § 3439.01(c) (definition of creditor).

3. *See id.* §§ 3439-3439.11 (Uniform Fraudulent Transfer Act). *See also* UNIF. FRAUDULENT TRANSFER ACT §§ 1-13, 7A U.L.A. 639-67 (1985). *See generally* *Review of Selected 1986 California Legislation*, 18 PAC. L.J. 433, 720-23 (1987) (Uniform Fraudulent Transfer Act).

4. CAL. CIV. CODE § 3439.12. Transfers made or obligations incurred prior to January 1, 1987 are governed by the law in effect at the time of the transaction. *Id.*

5. *Id.* § 3440(a) (creditor includes persons who are creditors at the time of the transfer, and those persons who become creditors after the transfer while the property remains in the transferor's possession). *See* CAL. COM. CODE § 9105(m) (definition of secured party).

6. *Id.* § 3440(a) (transfer not followed by an actual and continued change in possession). *See generally* *Review of Selected 1985 California Legislation*, 17 PAC. L.J. 587, 646 (1986) (types of creditors protected).

7. CAL. CIV. CODE § 3440(b).

creditors of the assignor or transferors who are beneficiaries of the assignment or trust.⁸

Under existing law, personal property subject to an execution lien⁹ that is not in the custody of a levying officer remains subject to the lien when transferred or encumbered, unless a person acquires an interest in the property for fair consideration¹⁰ and without knowledge of the lien.¹¹ Chapter 40 clarifies existing law by providing that a person who acquires an interest in property for reasonably equivalent value¹² without knowledge of the lien takes free of the execution lien.¹³

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8. *Id.* These rights and remedies may only be exercised to the extent available and for the benefit of those creditors whose rights are asserted by the assignee or trustee. *Id.*

9. See CAL. CIV. PROC. CODE § 697.710 (creation of execution lien).

10. See *McKnight v. Faber*, 185 Cal. App. 3d 639, 645-46, 230 Cal. Rptr. 57, 60 (1986) (quoting *Hansen v. Cramer*, 39 Cal. 2d 321, 324-25, 245 P.2d 1059, 1061 (1952)). The test in determining the propriety of a creditor's challenge of a conveyance for lack of fair consideration depends on whether the debtor is thereby rendered execution proof. *Id.* See generally *United States v. May*, 600 F. Supp. 339, 341 (S.D. Cal. 1984) (fairness of consideration must be determined from the viewpoint of the creditor).

11. CAL. CIV. PROC. CODE § 697.740(a).

12. Value is given for a transfer or encumbrance if, in exchange for the transfer or encumbrance, property is transferred or an antecedent debt is secured or satisfied. See CAL. CIV. CODE § 3439.03.

13. CAL. CIV. PROC. CODE § 697.740(a).

Property; change in ownership—exemption from reappraisal

Revenue and Taxation Code § 63.1 (new).

AB 47 (Hannigan); 1987 STAT. Ch. 48

The California constitution provides that the maximum amount of any ad valorem tax on real property¹ cannot exceed one percent of the full cash value² of the property.³ Under existing law, whenever

1. See CAL. REV. & TAX. CODE § 104 (definition of real property). See also *Morse Signal Devices, Inc. v. Los Angeles County*, 161 Cal. App. 3d 570, 577, 207 Cal. Rptr. 742, 747 (1984) (fixtures are real property for purposes of ad valorem property taxation).

2. See CAL. CONST. art. XIII A, § 2; CAL. REV. & TAX. CODE § 110.1 (definition of full cash value).

3. CAL. CONST. art. XIII A, § 1(a).

real property changes ownership,⁴ the property is subject to reappraisal at full cash value for property tax purposes unless the change in ownership is exempted from reappraisal.⁵ Chapter 48 provides that a real property purchase or transfer⁶ is not a change in ownership and does not require reappraisal if the purchase or transfer is between parents and their children⁷ and involve the principle residence⁸ of an eligible transferor.⁹ In addition, Chapter 48 provides that a purchase or transfer between parents and their children of the first one million dollars of full cash value of all other real property of an eligible transferor is not a change in ownership and is not subject to reappraisal.¹⁰

JAB

4. See CAL. REV. & TAX. CODE § 60 (definition of change in ownership). See also *id.* §§ 61 (inclusions in definition of change in ownership); 62 (exclusions from definition of change in ownership). See generally *Allen v. Sutter County Bd. of Equalization*, 139 Cal. App. 3d 887, 892, 189 Cal. Rptr. 101, 104 (1983) (“three elements are required to effect a change in ownership: (1) transfer of a present interest in real property, (2) transfer of the beneficial use of the property, and (3) transfer of property rights that are substantially equivalent in value to the fee interest.”); 63 Ops. Att’y Gen. 304 (1980) (“The exclusion under California Revenue and Taxation Code sections 60 through 66 of transfers of certain property interests from the meaning of ‘change in ownership’ is a valid construction of article XIII A of the California Constitution.”).

5. See CAL. CONST. art. XIII A, § 2 (assessment of ad valorem tax on real property). Changes in ownership that are exempt include California Revenue and Taxation Code sections 62 (general exclusions), 62.1 (transfers of mobile home parks to nonprofit corporations), 63 (interspousal transfers), 64 (transfers of interests in legal entities), 65 (transfer of joint tenancy property), and 66 (transfers involving employee benefit plans). See generally 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Taxation* § 95G (8th ed. 1974 & Supp. 1984). See also *Review of Selected 1982 California Legislation*, 14 PAC. L.J. 735, 738-41 (1983) (discussion of various types of change in ownership).

6. “‘Purchase or transfer between parents and their children’ means either a transfer from a parent or parents to a child or children of the parent or parents, or a transfer from a child or children to a parent or parents of the child or children.” CAL. REV. & TAX. CODE § 63.1(c)(1).

7. Children includes any of the following: (1) Any child born of the parent or parents; (2) any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists; (3) any son-in-law or daughter-in-law of the parent or parents; and (4) any child adopted by the parent or parents, other than an individual adopted after reaching the age of 18 years. *Id.* § 63.1(c)(2)(A)-(D).

8. Principle residence means a dwelling that a homeowner’s exemption, or a disabled veteran’s residence exemption, has been granted and includes only that portion of the underlying land that consists of an area of reasonable size used as a site for the residence. *Id.* § 63.1(b)(1).

9. *Id.* § 63.1(a)(1). An eligible transferor is the parent or child of an eligible transferee. *Id.* § 63.1(c)(4). An eligible transferee is the parent or child of an eligible transferor. *Id.* § 63.1(c)(5).

10. *Id.* § 63.1(a)(2). Chapter 48 provides that the \$1,000,000 exclusion applies separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees of real property, other than the principle residence, of that eligible transferor. *Id.* § 63.1(b)(2). In the case of any purchase or transfer involving two or more eligible transferors, the transferors may elect to combine their separate \$1,000,000 exclusions and jointly sell or

transfer property with a full cash value of not more than the combined amount of their separate exclusions. *Id.* This applies to both voluntary transfers and transfers resulting from a court order or judicial decree that are completed on or after November 6, 1986. *Id.* § 63.1(e), (f). Chapter 48 further provides that the transfer of real property from a corporation, partnership, trust, or other legal entity to an eligible transferor is excluded from reappraisal, where the purpose of that transfer is to permit an immediate retransfer from the eligible transferor to an eligible transferee. 1987 Cal. Stat. ch. 48, sec. 2, at _____. Also, under Chapter 48 the transfer of real property between an eligible transferor and an eligible transferee is excluded from reappraisal when that transfer is immediately followed by a retransfer from the eligible transferee to a corporation, partnership, trust, or other legal entity. *Id.* To be allowed these exemptions from reappraisal, Chapter 48 requires the transferee to file a claim with the assessor and furnish a written certification that the eligible transferee is a parent or child of the eligible transferor and a copy of a written certification that the eligible transferor is a parent or child of the eligible transferee. CAL. REV. & TAX. CODE § 63.1(d).

Property; foreclosures—residential repairs

Civil Code § 2932.6 (new).

AB 2175 (Polanco); 1987 STAT. Ch. 187

Pursuant to existing law, a savings and loan association¹ has the power to purchase real estate for the purpose of producing income or for inventory and sale or improvement.² In addition, a savings and loan association may hold, sell, lease, operate, or otherwise exercise the rights of an owner of the property.³ Chapter 187 extends these rights to a financial institution.⁴ With the enactment of Chapter 187, a financial institution is given the authority to repair any residential real property acquired through foreclosure solely for purposes of compliance with building codes and health and fire ordinances and regulations.⁵

JMA

1. CAL. FIN. CODE § 5102(a) (definition of association and savings association).

2. *Id.* § 7350(a).

3. *Id.* § 7350(b).

4. CAL. CIV. CODE § 2932.6(a). *See id.* § 2932.6(b) (financial institution includes, but is not limited to, banks, savings associations, credit unions, and industrial loan companies).

5. *Id.* § 2932.6(a).

Property; agricultural land—transfer of ownership

Government Code § 51230.1 (amended).
AB 714 (N. Waters); 1987 STAT. Ch. 232

Existing law permits the transfer of ownership between family members of a portion of land within an agricultural preserve¹ under the California Land Conservation Act² (Williamson Act) if (1) the parcel transferred conforms to local zoning and land division ordinances, and (2) the written agreement between the landowner and the immediate family member transferring the land provides that they will jointly operate the land under the terms and conditions of the contract.³ With the enactment of Chapter 232, land designated as an agricultural preserve may be transferred between immediate family members⁴ only if the parcel (1) is at least ten acres in the case of prime agricultural land,⁵ and (2) conforms to all local zoning and land division ordinances and to specific provisions of the California Coastal Act of 1976.⁶

Furthermore, the family members must (1) comply with all applicable requirements relating to agricultural income and permanent agricultural improvements imposed by the city or county as a condition of the contract executed under the Williamson Act and covering the land from which the parcel is taken,⁷ and (2) form a written agreement between the immediate family members who are parties to the transfer that the land subject to the Williamson Act will be jointly operated under the terms and conditions of the existing contract.⁸

MRS

1. See CAL. GOV'T CODE § 51201(d) (definition of agricultural preserve).

2. See generally *id.* §§ 51200-51295 (Williamson Act).

3. *Id.* § 51230.1(a)(2),(4).

4. Chapter 232 defines immediate family as the spouse, the natural or adopted children, the parents, or the siblings of the landowner. *Id.* § 51230.1(c).

5. See *id.* § 51201(c) (definition of prime agricultural land). The parcel must be at least 40 acres if the land is not prime agricultural land. *Id.* § 51230.1(a)(1). In either case the parcel must also meet the requirements of Government Code section 51222 pertaining to the size of parcels necessary to sustain agricultural use. *Id.*

6. *Id.* § 51230.1(a)(1). The parcel must conform to any applicable local coastal program certified pursuant to Chapter 6 (commencing with section 30500) of Division 20 of the California Public Resources Code. CAL. GOV'T CODE § 51230.1(a)(2).

7. If the contracted land already complies with these requirements, the portion of that land to be transferred is deemed to also comply. *Id.* § 51230.1(a)(3).

8. *Id.* § 51230.1(a). A transfer of ownership described in section 51230.1(a) has no effect on any contract executed pursuant to Article 3 (commencing with section 51240) of the California Government Code covering the land from which the portion was transferred. *Id.* § 51230.1(b). The portion transferred remains subject to that contract. *Id.*

Property; property owner liability—Department of Fish and Game personnel

Fish and Game Code §§ 2056, 2090, 2097 (amended).
AB 996 (Campbell); 1987 STAT. Ch. 286

Existing law provides that the policy of the State is to foster and encourage the cooperation of owners of property indentified as habitats for endangered and threatened species.¹ With the enactment of Chapter 286, these property owners are not liable to employees or persons under contract with the Department of Fish and Game for injuries that occur to the employees or contractors while conducting surveys, management, or recovery efforts of endangered species on the property owners' land.²

LAL

1. CAL. FISH & GAME CODE § 2056. See generally *People v. K. Sakai Co.*, 56 Cal. App. 3d 531, 536, 128 Cal. Rptr. 536, 539 (1976) (the Federal Endangered Species Act of 1973 provides a program to protect animal species threatened with worldwide extinction and encourages the states to create similar programs to protect fish and wildlife).

2. CAL. FISH & GAME CODE § 2056.

Property; mobilehome sales

Civil Code § 798.75 (amended)
AB 556 (Lewis); 1987 STAT. Ch. 323

Existing law provides that the purchaser of any mobilehome¹ located in a mobilehome park² has no rights of tenancy³ unless the purchaser executes⁴ a rental agreement with the management of the

1. CAL. CIV. CODE § 798.3 (definition of mobilehome).

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

3. *Id.* § 798.12 (definition of tenancy).

4. *Id.* § 798.75(a) (the statutory requirement is satisfied if an escrow, sale, or transfer agreement contains a separate provision binding the purchaser to a rental agreement with the park and is signed by the purchaser, or if the rental agreement is a separate agreement signed by both the purchaser and the park's management). See generally *Review of Selected 1983 Legislation*, 15 PAC. L.J. 411, 682 (1984) (discussion of rental agreement requirements).

park.⁵ Under Chapter 323 a person is considered an unlawful occupant if the management of the park demands the surrender of a mobilehome site and the occupant refuses to surrender.⁶ Chapter 323 further provides that an unlawful occupant is subject to summary proceedings⁷ for obtaining the possession of real property and unpaid rent.⁸ Chapter 323 provides that the occupant will not be an unlawful occupant even though a rental agreement has not been signed and a surrender demand has been made by the management of the park if: (1) the occupant is the registered owner; (2) the management of the park has determined the occupant's financial status and tenancy history are adequate; and (3) the management of the park has not offered the occupant a rental agreement.⁹

AGW

5. CAL. CIV. CODE § 798.75(a),(b). *Id.* § 798.2 (definition of park management).

6. *Id.* § 798.75(c) (the purchaser must surrender the site within five days).

7. Summary proceedings have precedence over all other civil actions, except actions which are given special precedence by law. CAL. CIV. PROC. CODE § 1179(a). The precedence applies to the setting, hearing, and determination of the trial or hearing. *Id.*

8. CAL. CIV. CODE § 798.75(c).

9. *Id.* § 798.75(d).

Property; disclosures to purchaser

Civil Code § 1710.2 (amended).

SB 324 (Davis); 1987 STAT. Ch. 494

Under existing law, a seller of property has a duty to disclose facts not accessible to the buyer.¹ This requirement includes the disclosure of murders that have occurred on the premises.² With the enactment of Chapter 494, there is no cause of action against a property owner for failing to disclose the manner of death of the prior occupant, if the death has occurred more than three years prior to the offer to purchase.³ Chapter 494, however, does not protect owners or their

1. *Cooper v. Jevne*, 56 Cal. App. 3d 860, 866, 128 Cal. Rptr. 724, 727 (1976). *See also Lingsch v. Savage*, 213 Cal. App. 2d 729, 735, 29 Cal. Rptr. 201, 207 (1963) (facts to be disclosed include all facts which can reasonably effect the value or desirability of the property).

2. *Reed v. King*, 145 Cal. App. 3d 261, 267, 193 Cal. Rptr. 130, 133 (1983).

See generally 1986 Review of Selected California Legislation, 18 PAC. L.J. 707 (1986) (legislation requiring disclosures to purchasers).

3. CAL. CIV. CODE § 1710.2.

agents from intentional misrepresentations regarding deaths on the property.⁴

DAH

4. *Id.* § 1710.2(d).

Property; deeds and instruments—racially restrictive clauses deemed omitted

Civil Code § 782.5 (new).
SB 716 (Lockyer); 1987 STAT. Ch. 500

Under existing law, racial restrictions on the use or transfer of realty are unenforceable and void.¹ Chapter 500 provides that any deed or written instrument² relating to real property, which contains any restriction³ based on race or color, is deemed to be revised to omit that restriction.⁴

LJN

1. *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948) (a restrictive covenant designed to exclude a person from ownership or occupancy of real property because of the person's race or color is unenforceable by state courts under the equal protection clause of the fourteenth amendment); CAL. CIV. CODE §§ 782 (racial restrictions in deeds are void), 53 (restrictions on the transfer or use of real property based on race or color are void).

2. CAL. CIV. CODE § 782.5(a) (any deed or written instrument relating to title to real property, or any written covenant, condition, or restriction annexed to or part of the deed or instrument).

3. *Id.* (any provision forbidding, restricting, or conditioning any person's right to sell, buy, lease, rent, use, or occupy real property).

4. *Id.* The court's powers of reformation of a deed or written instrument are unaffected by Chapter 500. *Id.* § 782.5(b).

Property; violations of the Subdivision Map Act

Government Code § 66499.31 (new); § 66490.30 (amended).
SB 524 (Russell); 1987 STAT. Ch. 799

Existing law prohibits a person from selling, leasing, financing or commencing construction of a building on a parcel of real property for which a final or parcel map¹ is required² unless the map is filed for record with the county recorder.³ Under prior law, any person who violated the provisions of the Subdivision Map Act⁴ was guilty of a misdemeanor.⁵ Chapter 799 increases the penalties for violations committed by subdividers⁶ or owners of record.⁷

Existing law allows a grantee⁸ of real property divided in violation of the Subdivision Map Act or local ordinance⁹ to bring a civil action¹⁰ within one year from the date of discovery of the violation.¹¹ With the enactment of Chapter 799, the statute of limitations, for both a criminal and civil action against the subdivider or owner of record, is tolled for any time period during which there is no constructive notice¹² of the transaction constituting the violation.¹³

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1. CAL. GOV'T CODE §§ 66433-66443 (provisions governing final maps); *id.* §§ 66444-66451.33 (provisions governing parcel maps).

2. A final map is required for five or more parcels unless one of the exceptions exist. *Id.* § 66426. If there are four or fewer parcels or one of the exceptions applies then a parcel map is required. *Id.* § 66428.

3. *Id.* § 66499.30(a)-(b). *See id.* §§ 66464-66468 (filing of map).

4. *Id.* §§ 66410-66499 (provisions of Subdivision Map Act).

5. 1974 Cal. Stat. ch. 1536, sec. 4, at 3509 (enacting CAL. GOV'T CODE § 66499.31). *See* CAL. PENAL CODE § 17(b) (definition of misdemeanor). Misdemeanors are punishable by confinement in the county jail not exceeding six months or a maximum fine of \$1000, or both. *Id.* § 18.

6. CAL. GOV'T CODE § 66423 (definition of subdivider).

7. *Id.* § 66499.31. Under Chapter 799, violations by subdividers or owners of record are punishable by confinement in the county jail or state prison for not more than one year, by a maximum fine of \$10,000, or by both. *Id.* Every other violation of the Subdivision Map Act remains classified as a misdemeanor. *Id.*

8. *Id.* § 66499.32(b) (also applies to a successor).

9. *Id.* § 66421 (definition of local ordinance).

10. Grantees or successors may bring either a civil action to recover damages or a suit to enjoin or restrain a violation. *Id.* §§ 66499.32, 66499.33.

11. *Id.* 66499.32(b).

12. If the owner of record at the time of the violation or at any time thereafter failed to record a deed, lease, or financing document with the county recorder, there is no constructive notice. *Id.* § 66499.30(g).

13. *Id.*

Property; Costa-Keene-Seymour Commercial Property Investment Act

Civil Code §§ 1954.25, 1954.26, 1954.27, 1954.28, 1954.29, 1954.30, 1954.31 (new).

SB 692 (Keene); 1987 STAT. Ch. 824

Under existing law, the terms for the hiring¹ of real property are determined by the contract of the parties.² The California Constitution confers authority on a county or city, through the exercise of police and regulatory power, to enact local ordinances not in conflict with general laws.³ Under existing case law, this provision has been construed to authorize cities to enact rent control laws in the exercise of their police and regulatory powers so long as certain conditions are met.⁴

In enacting Chapter 824, the legislature intends to prevent the imposition of artificial barriers on commercial rents but does not intend to affect local rent controls on residential real property.⁵ Chapter 824 prohibits public entities⁶ from enacting or enforcing commercial rent control.⁷ Chapter 824, however, does not limit or affect a public entity's authority or right with respect to the following: (1) The Eminent Domain Law;⁸ (2) abatement of nuisances;⁹ (3) the Airport Approaches Zoning Law;¹⁰ (4) any contract or agreement by

1. CAL. CIV. CODE § 1925 (definition of hiring).

2. See *Strecker v. Barnard*, 109 Cal. App. 2d 149, 152, 240 P.2d 345, 347 (1952) (modern tendency is to interpret obligations of a lease according to the law of contracts). See generally 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* § 423 (1973 & 1984 Supp.) (law of contracts determines the obligations of parties under a lease); CALIFORNIA CONTINUING EDUCATION OF THE BAR, *California Real Property Remedies Practice* § 12.1 (1982) (landlord-tenant relationship is governed by contract principles).

3. CAL. CONST. art. XI, § 7. See generally 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* § 443 (1973 & Supp. 1985) (discussing state constitutional authorization for enactment of local ordinances).

4. *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 165, 130 Cal. Rptr. 465, 491, 550 P.2d 1001, 1027 (1976) (within the police and regulatory powers, cities have the authority to enact rent control ordinances so long as a fair return is assured to property owners).

5. CAL. CIV. CODE § 1954.25. See also *id.* §§ 1947.7, 1947.8 (local rent controls on residential rental units).

6. CAL. GOV'T CODE § 811.2 (public entity includes the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state); CAL. CIV. CODE § 1954.26(c) (definition of public entity).

7. CAL. CIV. CODE § 1954.27(a). *Id.* § 1954.26(f) (definition of commercial rental control).

8. CAL. CIV. PROC. CODE §§ 1230.10-1273.010 (Eminent Domain Law).

9. CAL. CIV. CODE § 1954.28(b). A public entity is prohibited from using its authority to abate nuisances to circumvent the limitations of Chapter 824. *Id.*

10. CAL. GOV'T CODE § 50485 (Airport Approaches Zoning Law).

which an owner¹¹ agrees with a public entity to offer real property at a stipulated price¹² in consideration for direct financial contribution; (5) a written contract between a redevelopment agency¹³ and an owner or developer¹⁴ of commercial real property¹⁵ within a redevelopment project area; (6) a written development agreement;¹⁶ (7) preservation of historical resources;¹⁷ (8) the Subdivision Map Act;¹⁸ or (9) any contract or agreement by which a public entity transfers, leases or licenses owned or leased commercial real property.¹⁹ In addition, Chapter 824 does not grant, enlarge, or diminish: (1) Any power of a public entity with respect to the chartering, planning and zoning of cities;²⁰ (2) any power which a public entity may possess to mitigate the impact of the construction, demolition or alteration of commercial property;²¹ and (3) any authority of a public entity to require a business license.²² Further, Chapter 824 expressly permits a public entity to enact a local notification statute which would enable a tenant²³ to obtain notice relating to the termination of the lease²⁴ by the landlord.²⁵ A notification statute enacted pursuant to Chapter 824 must contain specified provisions.²⁶ Further, Chapter 824 must

11. CAL. CIV. CODE § 1954.26(a) (definition of owner).

12. *Id.* § 1954.26(b) (definition of price).

13. CAL. HEALTH & SAFETY CODE § 33003 (redevelopment agency defined). 14. CAL. CIV. CODE § 1954.26(l) (definition of developer).

15. *Id.* § 1954.26(d) (definition of commercial real property).

16. *See generally* CAL. GOV'T CODE §§ 65864-65869.5 (development agreements).

17. CAL. PUB. RES. CODE § 5020 (regulations governing preservation of historical resources).

18. CAL. GOV'T CODE § 66410 (Subdivision Map Act).

19. CAL. CIV. CODE § 1954.28.

20. CAL. CONST. art. XI, § 5 (grants planning and zoning powers to public entities). *See* CAL. GOV'T CODE § 65000 (establishes the Planning and Zoning Law).

21. CAL. CIV. CODE § 1954.29 (not applicable to actions taken for the clear and systematic purpose of circumventing Chapter 824).

22. *Id.* § 1954.29.

23. *Id.* § 1954.26(g) (definition of tenant).

24. *Id.* § 1954.31 (applies to termination of lease due to expiration of the term). *See id.* § 1954.26(h) (definition of term). *See also id.* § 1951 (definition of lease).

25. *Id.* § 1954.31.

26. *Id.* § 1954.31(a)-(c). The notification statute must contain provisions relating to any or all of the following: (1) The delivery of a negotiation notice by a tenant; (2) a requirement for an owner to deliver an impasse notice at any time after delivery of the negotiation notice subject to specified exceptions; (3) establish that a bad faith failure to comply with the enactment is subject to a remedy for actual damages; (4) a remedy is available only through an action brought by the owner or the tenant. *Id.* § 1954.31(a). *See id.* § 1954.26(k) (definition of deliver); *id.* 1954.26(j) (definition of negotiation notice); *id.* 1954.26(i) (definition of impasse notice). The enactment must contain the following provisions: (1) The tenant may only exercise a right given by enactment if the terms of the lease were performed in a manner which would entitle tenant to exercise any option possessed under lease; (2) no cause of action under enactment may be assigned other than to a lawful assignee in lawful possession who is in compliance with enactment; (3) nothing in enactment creates a duty to extend or renew any

not be construed to: (1) Relieve any party to an existing commercial lease or rental agreement from the duty to perform; (2) preclude express agreements as to the price at which property may be sublet; (3) impair any obligation under a contract entered into prior to the effective date of Chapter 824;²⁷ (4) affect any provision or requirement for mitigation of damages;²⁸ (5) limit any price adjustment required or permitted by law due to constructive eviction; (6) diminish or enlarge specified powers²⁹ of a public entity; (7) relieve a party of an arbitration requirement or right;³⁰ (8) affect lease provisions creating an option, right to first refusal or covenant to renew or extend a lease or sell the real property; or (9) relieve a person of any duty or deprive a person of a right or cause of action based on discrimination.³¹

CH

lease, nor will delivery or receipt of any notice constitute a waiver of any right under lease; or (4) the delivery of any notice creates a rebuttable presumption, affecting the burden of proof, that notice was proper. *Id.* § 1954.31(b). The enactment may not require the following: (1) The extension of any lease without the mutual consent of owner and tenant; (2) that either party offer or negotiate an extension or renewal of the lease; (3) the bar of any action brought to recover possession by specified means; or (4) any remedy other than that specified by Chapter 824. *Id.* § 1954.31(c). Any lease or rental agreement which is not in writing or any lease whose term expires within 270 days is not subject to notification statutes. *Id.* § 1954.31(d).

27. *Id.* § 1954.27(b)(3) (the effective date of Chapter 824 is January 1, 1988).

28. *Id.* §§ 1951-1952.6.

29. *Id.* § 1954.27(b)(6) (includes any power which a public entity may have with respect to regulation of rental rates or the ownership, conveyance or use of specified property).

30. See CAL. CIV. PROC. CODE §§ 1280 (arbitration), 1141.10 (judicial arbitration), 1823 (pilot projects).

31. CAL. CIV. CODE § 1954.27(b). *Id.* §§ 51, 53, 782 (civil rights provisions).

Property; common-interest developments maintenance

Civil Code § 1364 (amended).

AB 1544 (McClintock); 1987 Cal. STAT. Ch. 1151

Existing law makes the managing association¹ of a common- in-

1. CAL. CIV. CODE § 1351(a) (definition of association).

2. *Id.* § 1351(c) (definition of common-interest development).

3. *Id.* § 1364 (unless otherwise provided in the declaration of a common interest

terest development² responsible for maintaining common areas.³ The owner of each separate interest⁴ is responsible for maintaining that interest and any appurtenant exclusive use common area.⁵ Chapter 1151 requires each owner of a separate interest in a planned development⁶ to assume responsibility for all maintenance costs caused by wood destroying pests or organisms (pests).⁷ These owners are also individually responsible for temporary relocation costs that arise while pest damage is repaired.⁸ The managing association of a community apartment project,⁹ condominium project,¹⁰ or stock cooperative,¹¹ however, is responsible for repair and maintenance of the common areas caused by the presence of wood-destroying pests or organisms.¹² An association may temporarily remove a common-interest development occupant¹³ while pest damage is being repaired.¹⁴ Chapter 1151 requires the association to give this occupant and the owners between fifteen and thirty days notice in a specified manner.¹⁵

Existing law also lists fixtures that are exclusive use common areas allocated exclusively to a separate interest.¹⁶ Chapter 1151 entitles an owner of a separate interest to reasonable access to the common

development). *See id.* § 1351(h) (definition of declaration). Common areas, except exclusive use common areas, are included. *Id.* § 1364. *See also id.* § 1351(b) (definition of common area). *See generally Review of Selected 1985 California Legislation*, 17 PAC. L.J. 587, 761, (Davis-Sterling Common Interest Development Act regulating specified residential developments). *Compare* 1985 Cal. Stat. ch. 874, at ____ (enacting CAL. CIV. CODE § 1364) (declaring the association responsible for maintaining common areas) *with* CAL. CIV. CODE § 1364 (b)(1) (requiring the association to repair and replace, as well as maintain, the common areas).

4. CAL. CIV. CODE § 1351(l) (definition of separate interest).

5. *Id.* § 1364. *See id.* § 1351(i) (definition of exclusive use common area).

6. *Id.* § 1351(k) (definition of planned development).

7. *Id.* § 1364(b)(2) (costs include all costs of repair and maintenance). A majority of the association's members, however, may delegate responsibility for the repairs and maintenance to the association, and the association must recover the additional costs as a special assessment. *Id.*

8. *Id.* § 1364(c).

9. *Id.* § 1351(d) (definition of community apartment project).

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

11. *Id.* § 1351(m) (definition of stock cooperative).

12. *Id.* § 1364(b)(1) (unless otherwise provided in the declaration).

13. *Id.* § 1364(e) (definition of occupant).

14. *Id.* § 1364(d)(1) (removal is for periods that are necessary for prompt, effective treatment of wood-destroying pests or organisms).

15. *Id.* § 1364(d)(2) (the notice must state the reason for the temporary relocation, the date and time the treatment will begin and end and that the occupants will be responsible for the occupants' own accommodations). The notice must be: (1) Delivered to the occupants and sent to the owners, if different than the occupants, by first class mail; or (2) sent to both the occupants and the owners, if different than the occupants. *Id.* § 1364(d)(3)(A), (B).

16. *Id.* § 1351(i) (includes fixtures located outside the interest's boundaries, like shutters, patios, and windows). These fixtures may be allocated in another manner by the common interest development declaration. *Id.*

areas to maintain telephone wiring included in the list of fixtures.¹⁷ The access must be subject to the association's consent which may not be unreasonably withheld.¹⁸

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17. *Id.* § 1364(f) (internal and external telephone wiring). An owner's access is allowed notwithstanding the declaration's provision. *Id.*

18. *Id.* (approval may include the association's approval of telephone wiring upon the exterior of the common areas and other conditions as the association determines reasonable).

Property; accord and satisfaction of checks and drafts

Civil Code § 1526 (new).

SB 1684 (Kopp); 1987 STAT. Ch. 1268

Existing case law creates an accord and satisfaction when a creditor to an unliquidated claim returns and uses a check¹ notifying the creditor that the check was written to fully settle that claim.² Under Chapter 1268, a creditor may accept the check, delete³ the words of notification,⁴ and continue to pursue any remaining amount of the creditor's claim.⁵ When a check is tendered to settle a composition

1. See *Potter v. Pacific Coast Lumber Co.*, 37 Cal. 2d 592, 597, 234 P.2d 16, 18 (1951) (includes checks and drafts).

2. *Id.* See CAL. CIV. CODE §§ 1521 (definition of accord), 1523 (definition of satisfaction). See also *Connecticut Printers, Inc. v. Gus Kroesen, Inc.*, 134 Cal. App. 3d 54, 61, 184 Cal. Rptr. 436, 439 (1982) (upheld the *Potter* rule in situations where there is a bona fide dispute). Compare *Potter*, 37 Cal. 2d at 597, 234 P.2d at 18 (the unliquidated debt is discharged when the creditor cashes a check marked "in full discharge of claim" or with similar language) with CAL. COM. CODE § 1207 (a person who explicitly reserves rights and performs in a manner demanded does not thereby prejudice the rights reserved if the person uses words like "under protest") and *Connecticut Printers*, 134 Cal. App. 3d at 60, 184 Cal. Rptr. at 438 (held that because principles of law supplement the California Commercial Code section 1207 does not explicitly displace and therefore does not abrogate the *Potter* rule). See generally 1 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* § 593 (8th ed. 1974) (majority view is that where there is an honest dispute regarding the obligation's amount, acceptance of a check notifying a creditor that the check constitutes full payment constitutes accord and satisfaction, even though the creditor notifies the debtor that the check is received only on account).

3. See CAL. CIV. CODE § 1526(a) (or otherwise strike out). Compare CAL. COM. CODE § 1207 (requires a person to state words like "under protest") with CAL. CIV. CODE § 1526(a) (a person needs only to strike out the words of notification).

4. See CAL. CIV. CODE § 1526(a) (whether the words are "PAYMENT IN FULL" or other words of similar meaning).

5. *Id.* (the creditor may also pursue the claim if the acceptance of the check or draft was inadvertent or without knowledge of the debtor's notation).

or extension agreement,⁶ or is issued in exchange for a release of a claim, a creditor who retains the check with knowledge of the settlement restrictions is deemed as having accepted the amount as payment in full of the claim if the creditor receives the check with knowledge of the settlement restriction.⁷ Chapter 1268 specifies the circumstances under which a creditor must be conclusively presumed to have knowledge of that settlement restriction.⁸

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6. See CAL. COM. CODE § 1201(3) (definition of agreement).

7. CAL. CIV. CODE § 1526(b) (pursuant to the composition or extension agreement all creditors of the same class are accorded similar treatment). The creditor receives that check with knowledge of the restriction. *Id.*

8. *Id.* § 1526(b)(1), (2) (a conclusive presumption of notification is made when the creditor either, before receiving the check, gives written consent to the agreement or has been given, within 15 to 90 days before receiving the check, written notice that a check will be tendered with a restrictive endorsement and that acceptance of the check will constitute an accord and satisfaction). This notification of the creditor may be made by mailing the notice by first-class mail, postage prepaid, to the creditor's address as the address appears on the debtor's books or as the creditor has otherwise, in writing, designated. *Id.* § 1526(d).

