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Property

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Property

Property—certified appraisal and security interest

Civil Code §§ 1922.13, 2924.7 (new).

AB 3543 (Johnson); 1988 STAT. Ch. 179

Under prior law, a beneficiary, trustee, or mortgagee of a real estate loan could control insurance proceeds from a loss in real property only if the security were impaired; in addition, a lender could declare a default and accelerate a loan because of the borrower's failure to pay taxes or provide fire insurance only when the security was impaired.¹ However, existing law allows institutional lenders to control insurance proceeds and foreclose for failure to pay insurance and taxes whether or not their security interest is impaired.² Chapter 179 extends both these rights to private lenders.³ Finally, Chapter 179 clarifies that an appraisal of real property containing one to four residential units, when done on appropriate forms,⁴ qualifies as a certified appraisal⁵ under existing law.⁶

ERK

1. *Kreshek v. Sperling* 157 Cal. App. 3d 279, 282, 204 Cal. Rptr. 30, 31 (1984) (discussing control of insurance proceeds). *See also*, *Freeman v. Lind*, 181 Cal. App. 3d 791, 792, 226 Cal. Rptr. 515, 515 (1986) (discussing accelerating or defaulting a loan).

2. CAL. FIN. CODE §§ 1227.3, 7462. Institutional lenders must, in the spirit of good faith and fair dealing, permit such proceeds to be used for rebuilding so long as their security is not impaired. *Schoolcraft v. Ross*, 81 Cal. App. 3d 75, 77, 146 Cal. Rptr 57, 58 (1978). The intent of the Legislature is to abrogate the holdings in such cases as *Kreshek* and *Freeman* while supporting the holding in *Schoolcraft*. 1988 Cal. Stat. Ch. 179, sec. 3, at

3. CAL. CIV. CODE § 2924.7(a), (b).

4. *Id.* § 1922.13(a)(1) (Federal National Mortgage Association or Federal Home Loan Mortgage Corporation forms are appropriate for appraisal purposes).

5. *Id.* § 1922.1(a) (definition of certified appraisal). *See also id.* §§ 1922.2, 1922.4 (additional requirements for certified appraisals).

6. Cal. Civ. Code § 1922.13(a).

Property; contracts for payment of development fees

Government Code § 53077.5 (amended and renumbered).

AB 3143 (Cortese); 1988 STAT. Ch. 912

Support: California Teachers Association; North Coast Builders Exchange, Inc.; Ceres Legislative Review Committee

Under existing law, development fees charged by a local agency (agency)¹ against a residential development for public facilities or improvements are payable to the agency, on or before the final inspection² or issuance of the certificate of habitation,³ whichever occurs first.⁴ Chapter 912 permits an agency issuing a building permit to require the applicant to enter into a contract to pay these fees before issuing the permit.⁵ The obligation to pay the fees is enforceable by the agency imposing the fee, even if the agency is not a party to the contract.⁶ The contract must be recorded in the appropriate county recorder's office and constitutes a lien, enforceable against the successors in interest of the initial holder of the building permit.⁷ Finally, the contract may require the permit holder to provide notice of the opening of any escrow for sale of the property for which the permit was issued, and to provide in the escrow instructions that the fee be paid from the sale proceeds prior to disbursement to the seller.⁸

CSF

1. CAL. GOV'T CODE § 66007(d) (definition of local agency).

2. See CAL. GOV'T CODE § 66007(f) (adopting Uniform Building Code definition of final inspection for purposes of California Government Code section 66007); UNIF. BLDG. CODE § 305.5 (1985) (definition of final inspection).

3. See CAL. GOV'T CODE § 66007(f) (adopting Uniform Building Code definition of certificate of occupancy for purposes of California Government Code section 66007); UNIF. BLDG. CODE § 307 (1985) (definition of certificate of occupancy).

4. CAL. GOV'T CODE § 66007(a). Utility service fees are excepted. *Id.* A local agency may require payment at an earlier date if (1) the fees are to be collected for public improvements or facilities for which funds have been appropriated, an account established, and a construction plan or schedule adopted, or (2) the fees reimburse the agency for previous expenditures. *Id.* § 66007(b). See *id.* (definition of appropriated).

5. *Id.* § 66007(c)(1).

6. *Id.* § 66007(c)(2).

7. *Id.* The contract will be recorded in the grantor-grantee index with the agency issuing the building permit as grantee, and the permit holder as grantor. *Id.*

8. *Id.* § 66007(c)(3).

Property; escheat

Code of Civil Procedure § 1501.5 (new); §§ 1513, 1513.5, 1514, 1515, 1516, 1518, 1519, 1520, 1521 (amended).
 AB 3815 (O'Connell); 1988 STAT. Ch. 286

Under existing law, the Unclaimed Property Act¹ specifies that unclaimed property escheats to the state if the apparent owner² makes no contact with the property holder or shows no interest in the property for a period of seven years.³ Chapter 286 generally reduces the required period of inactivity to five years.⁴

Under existing law, a bank or financial organization⁵ holding unclaimed property is required to make a reasonable attempt at notifying⁶ a customer of the pending escheat.⁷ Chapter 286 provides owners more time to recover their property by requiring banks and financial organizations to make reasonable efforts in notifying⁸ the owners by mail within three to three and one-half years after the

1. See 1959 Cal. Stat. Ch. 1809, sec.2, at 4296 (enacting CAL. CIV. PROC. CODE §§ 1500-1615) (setting forth the Unclaimed Property Act); *Douglas Aircraft Co. v. Cranston*, 58 Cal. 2d 462, 463, 374 P.2d 819, 821, 24 Cal. Rptr. 851, 853 (1962) (the Unclaimed Property Act has two objectives: (1) Protect owners by locating them and reuniting them with their property; and (2) give the state, rather than the holders, the benefit of the use of the property, most of which will never be claimed).

2. CAL. CIV. PROC. CODE § 1501(a) (definition of apparent owner).

3. *Id.* §§ 1510, 1511 (providing general conditions required for property to escheat to the state). See *id.* §§ 1513 (property held by banks or other financial organizations), 1514 (contents of safe deposit boxes), 1515 (funds held or owed by life insurance corporations), 1516 (undistributed dividends and distributions of business associations), 1518 (property held by fiduciaries), 1519 (property held by the government), 1520 (any other property held for another person), and 1521 (employee benefit plan distributions). Prior to enactment of Chapter 286, the required period of inactivity specified in these sections was seven years. See *supra* note 1.

4. CAL. CIV. PROC. CODE §§ 1513-1516, 1518-1521. *But see id.* §§ 1513(c) (travelers checks escheat after fifteen years of inactivity), 1513(e) (money orders escheat after seven years of inactivity).

5. *Id.* §§ 1501(b) (definition of banking organization), 1501(d) (definition of financial organization).

6. *Id.* § 1513.5(c). Notice is not required for property interests of less than twenty-five dollars. *Id.*

7. 1959 Cal. Stat. ch. 1809, sec. 2, at 4297 (enacting CAL. CIV. PROC. CODE § 1513.5(a) (stating time period for notification to be within six to twelve months before the property escheats).

8. CAL. CIV. PROC. CODE § 1513.5(a) (requiring earlier notification of a pending escheatment). Notice is required if the holder has an accurate address for the apparent owner in its records. *Id.*

last activity in the account or after the last communication with the owner.⁹

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9. *Id.* Chapter 286 declares that the intent of the legislature is that property received by the state through this process not permanently escheat to the state. CAL. CIV. PROC. CODE § 1501.5(b).

Property; instrument defined

Government Code § 27279 (new).

AB 3264 (Frazee); 1988 STAT. Ch. 400

Sponsor: County Recorder's Association of the State of California

Opposition: California Land Title Association

Existing law uses the term instrument in conjunction with the recording of interests in real property.¹ Chapter 400 defines an instrument as a written and signed paper that transfers title to or gives a lien on real property, or gives a right to a duty or debt.² Chapter 400 is not, however, intended to change the scope of documents presently eligible for recordation.³

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1. CAL. GOV'T CODE § 27280(a) (any instrument affecting title to real property can be recorded).

2. Cal Gov't Code § 27279. Common law originated this definition of an instrument. *See, e.g.,* Hoag v. Howard, 55 Cal. 564, 565 (1880) ("instrument" means some written paper signed and delivered which transfers title, creates a lien on property, or gives a right to a debt or duty).

3. 1988 Cal. Stat. Ch. 400, sec. 2, at _____. *See eg.,* CAL. GOV'T CODE §§ 27280-27297.5 (documents to be recorded).

Property; map requirements under Subdivided Lands Act

Business and Professions Code § 11018.8 (new).

SB 2258 (C. Green); 1988 STAT. Ch. 1293

Under existing law, a subdivider¹ must make certain documents available to prospective purchasers.² Chapter 1293, where adopted

1. CAL. CODE REGS. tit. 10, § 2801.5 (1985) (definition of subdivider).

2. CAL. BUS. & PROF. CODE § 11018.1 (subdivider must furnish a copy of the public report issued by the Real Estate Commission on the subdivision and a copy of a statement containing general information about common -interest developments to prospective purchasers; public report must be posted conspicuously).

by county or city ordinance, requires the subdivider to post a map in a conspicuous place in any office where sales, leases, or offers regarding the subdivision regularly occur.³ The map must show the location of freeways⁴ within an area of two statute miles surrounding the subdivision.⁵ Additionally, a copy of the map must be made available to prospective purchasers or lessees before an offer to purchase or lease is made and must be given to each purchaser or lessee who requests one.⁶

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3. *Id.* § 11018.8(a),(c). *See id.* § 11000 (definition of subdivision).
 4. *Id.* § 11018.8(b) (location of freeways on map must be as shown on the general plan of the jurisdiction).
 5. *Id.*
 6. *Id.* § 11018.8(c).

Property; mineral rights

Civil Code § 848 (new).

AB 2873 (Jones); 1988 STAT. Ch. 535

Support: California Cattleman's Association; California Farm Bureau

Under existing law, an owner of mineral rights has an implied right of entry onto real property to extract the minerals.¹ Chapter 535 requires that the owner of mineral rights give written notice to the owner² of the real property, or to the owner's representative, which may include the lessee or the person listed as the assessee on the local assessment roll, prior to entry to prospect for, mine, or extract any mineral.³ The owner of mineral rights also must give written notice to any public utility which has a recorded interest in the real property, only if there will be an excavation of that utility interest by the mineral owner.⁴ If the mineral owner fails to meet

1. CAL. CIV. CODE § 883.110 (mineral right defined). *Callahan v. Martin*, 3 Cal.2d 110, 125, 43 P.2d 788, 789 (1935) (grant of minerals includes implied right of entry to extract them).

2. CAL. CIV. CODE § 848.

3. *Id.*

4. *Id.* (written notice must: be made by certified mail or acknowledged personal delivery; state the extent and location of the prospecting, mining, or extracting of minerals; include approximate times of entry and exit).

this written notice requirement, the owner of the real property or the public utility may request the court to enjoin the prospecting, mining, or extraction until the notice requirement has been met.⁵

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5. *Id.* The mineral rights owner is relieved of the written notice requirement if there is neither an owner named on the local assessment roll nor a public utility with a recorded interest. *Id.*

Property; mobilehome ombudsman

Civil Code § 798.29 (new);
Health and Safety Code § 18151 (amended).
AB 1527 (Longshore); 1988 STAT. Ch. 333

Existing law provides for the establishment of a mobilehome ombudsman,¹ to assist in the taking, resolving, and coordinating of complaints from the public concerning manufactured homes and mobilehomes.² The ombudsman, however, is not authorized to assist in resolving disputes involving mobilehome park rental agreements, leases or rents.³ Chapter 333 requires the ombudsman to refer alleged violations of law or regulations within the Department of Housing and Community Development's (Department) jurisdiction to the Division of Codes and Standards within the Department.⁴ Chapter 333 also mandates the posting of a sign disclosing the name, address, and telephone number of the ombudsman in a conspicuous place within a mobilehome park.⁵

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1. CAL. HEALTH & SAFETY CODE § 18151(a) (establishes mobilehome ombudsman position within Department of Housing and Community Development). *See generally id.* §§ 18150-18154 (pertaining to the establishment and office of mobilehome ombudsman).

2. CAL. HEALTH & SAFETY CODE § 18151. *See id.* § 18151(b) (including, but not limited to complaints regarding title and registration problems, installation, warranties, financing, sales, inspection of homes and mobilehome parks, accessories, and improvements). *See generally* CAL. CIV. CODE §§ 798-799.8 (Mobilehome Residency Law).

3. CAL. HEALTH & SAFETY CODE § 18151(c).

4. *Id.* § 18151(d).

5. CAL. CIV. CODE § 798.29.

Property; mobilehome park conversions and closures

Civil Code § 798.14 (new); §§ 798.56, 798.61 (amended); Government Code §§ 65863.7, 65863.8 (amended).

AB 3085 (Cortese); 1988 STAT. Ch. 171

AB 2852 (Clute); 1988 STAT. Ch. 910

AB 3720 (Hauser); 1988 STAT. Ch. 301

Support: Western Center on Law and Poverty; Western Mobilehome Association; California Rural Legal Assistance Fund

Opposition: League of California Cities; City of Buena Park

Existing law requires that before a mobilehome park¹ may be closed or converted to another use, the person or entity proposing the change of use must prepare a report that discusses the impact of the change on any displaced residents.² Existing law additionally mandates that a local legislative body or planning agency review the report.³ Further, under existing law, in reviewing the report, the local legislative body or planning agency may decide to require the person or entity proposing the change to pay the reasonable costs of relocation for any displaced residents.⁴ Chapter 171 includes local government entities or planning agencies in the definition of entities which must prepare change-of-use reports and pay relocation costs.⁵

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1. CAL. HEALTH & SAFETY CODE § 18214 (definition of mobilehome park).

2. CAL GOV'T. CODE § 65863.7. The report must cover the availability of other adequate mobilehome housing and the amount of relocation costs. *Id.* § 65863.7(a). Also, the report must be sent to a resident of each mobilehome in the park at least 15 days before a hearing, if any, before an advisory agency or legislative body. *Id.* § 65863.7(b). Chapter 171 requires that the report be sent at the same time as the notice of intent to change use, which must be given to the homeowner at least 15 days before the management is to appear before a legislative body to obtain permission for the change. *Id.* §§ 798.56(f)(1); 798.56(g). Chapter 301 requires all notices to mobilehome park owners be delivered personally or by the United States mail. *Id.* § 798.14.

3. *Id.* § 65863.7(e). The local agency must inform the applicants for a conversion of a mobilehome park of the applicants' duty to give notice to residents of the park. *Id.* § 65863.8. Chapter 910 allows the local agency to establish reasonable fees to pay the costs incurred in implementing this provision. *Id.* § 65863.7(g).

4. *Id.* § 65863.7(e).

5. *Id.* § 65863.7(i). The local government agency is considered the entity proposing the change of use when the change is the result of any zoning or planning decision or any inaction by the local government. *Id.* Therefore, a decision by the local government entity or planning agency not to renew a conditional use permit or zoning variance would result in the government taking steps to mitigate the impact on displaced residents. *Id.*

Property; mobilehome sales

Civil Code § 798.81 (new); §§ 798.71, 798.72 (amended).

AB 3506 (Bradley); 1988 STAT. Ch. 1033

SB 2230 (Craven); 1988 STAT. Ch. 498

Support: California Commission on Aging; Golden State Mobile-home Owner's League; California Association of Realtors

Existing law provides that the management of a mobilehome park (management) may not show or list for sale a manufactured home¹ or mobilehome without the owner's written authorization.² With the enactment of Chapter 498, the management may neither prohibit the showing or sale of a manufactured home or mobilehome by the homeowner or the homeowner's agent, nor require that the management be the listing agent.³ Chapter 1033 establishes the same restrictions on mobilehome park management with regard to the listing or sale of used mobilehomes.⁴

Under existing law, the management may not charge a homeowner or the homeowner's agent a selling fee as a condition of sale of a mobilehome, unless a service is performed by the management.⁵ Under Chapter 498, management may not charge a fee to prospective purchasers of mobilehomes as a condition of residency without performing a service in connection with the sale.⁶

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1. The definition of manufactured home includes mobilehomes. CAL. HEALTH & SAFETY CODE § 18007.

2. CAL. CIV. CODE § 798.71(a).

3. *Id.* § 798.71(b).

4. *Id.* § 798.81 (management may not require that it be listed as the agent or prohibit a homeowner's agent from acting as the selling agent in the sale of a used mobilehome). *See generally* CAL. HEALTH & SAFETY CODE § 18014 (definition of used mobilehome).

5. CAL. CIV. CODE § 798.72(a). The service must be requested in writing by the homeowner or the homeowner's agent. *Id.*

6. *Id.* § 798.72(b). Management may not charge a fee for interviewing a prospective homeowner, but may charge a fee for a credit check of a prospective homeowner. *Id.*

Property; mortgage insurance cancellation—disclosure

Civil Code § 2954.6 (new).

AB 3916 (Johnston); 1988 STAT. Ch. 569

Existing law governs the requirements that a lender or mortgagee

of real property may impose upon a borrower or mortgagor.¹ Chapter 569 provides that, if a mortgagee requires mortgage guaranty insurance² as a condition of a loan secured by a trust deed or mortgage, the mortgagee must disclose to the mortgagor certain information pertaining to cancellation of this insurance.³

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1. See CAL. CIV. CODE §§ 2947-2955.5. See also *id.* §§ 2956-2967 (pertaining to disclosures regarding purchase money liens on residential property). See generally 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Security Transactions in Real Property* § 183 (9th ed. 1987) (concerning accountings and notices by mortgagee).

2. CAL. INS. CODE § 12640.02(a) (definition of mortgage guaranty insurance). See *id.* §§ 117 (definition of mortgage insurance), 119 (definition of mortgage guaranty insurance). Civil Code section 2954.6 does not apply to any mortgage paid for with bond funds issued under an indenture requiring mortgage insurance for the life of the loan, or to insurance on loans for low to middle class housing pursuant to Health and Safety Code sections 51600-51901. CAL. CIV. CODE § 2954.6(c).

3. CAL. CIV. CODE § 2954.6(a)(1)-(3) (requires disclosure of whether the borrower has the right to cancel). If the borrower has the right to cancel, the lender must give the borrower written notice of information necessary to communicate with the insurer or lender, the conditions necessary for cancellation, and the procedure the borrower must follow to cancel the insurance. *Id.* The information must be provided, at no charge to the borrower, at close of escrow or as soon as the lender knows or should know of the cancellation requirements. *Id.* § 2954.6(b).

Property; mortgages and deeds of trust—notice of indebtedness servicing transfer

Civil Code § 2937 (added).

AB 4529 (Clute); 1988 STAT. Ch. 1190

Under prior law, when the holder of a promissory note, bond, or other instrument secured by a deed of trust or mortgage on real property transferred the note, bond, or other instrument, and the debtor continued to pay the original creditor, the debtor was nonetheless liable to the new holder of the loan.¹ Chapter 1190 requires the original creditor to give written notice² to a borrower if the

1. *Rogers v. Peckham*, 120 Cal. 238, 242, 52 P. 483, 484 (1898) (after note has been transferred, and assignment of mortgage has been recorded, debtor has constructive notice of assignment and is not protected in making payments to original creditor).

2. See CAL. CIV. CODE § 2937(c) (notice must be sent by first-class mail to borrower's address and must contain: (1) The name and address of the new debt servicer; (2) the date transfer was or will be completed; (3) the address where future payments are to be made, and (4) the due date of next payment).

Property

servicing of a debt on a note, bond, or other instrument secured by a mortgage or deed of trust on a single family residence is transferred to a different servicing agent.³ Moreover, the borrower is not obligated to pay a new servicing agent before receiving such written notice.⁴ Chapter 1190 also provides that a borrower is not liable to any servicing agent or to the holder of a note, bond, or other instrument for payments made to a previous servicing agent or for late charges, if such payments were made before the borrower received notice of the transfer and the payments were otherwise on time.⁵

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3. *Id.* § 2937(b). This provision is intended to protect the borrower from fraudulent schemes and may ensure timely payments. *Id.* § 2937(a).

4. *Id.* § 2937(b).

5. *Id.* § 2937(e).

Property; mortgages and deeds of trust—notice of delinquencies

Civil Code § 2924e (amended).

AB 3019 (Hannigan); 1988 STAT. Ch. 510

Under existing law, a beneficiary or mortgagee of any deed of trust or mortgage on real property containing one to four residential units may request notice of delinquencies in payment by the trustor or mortgagor to the beneficiary or mortgagee of a senior lien.¹ Chapter 510 extends this right to request notice to the beneficiary or mortgagee of any deed of trust or mortgage on real property given to secure an original obligation not exceeding \$300,000.² A beneficiary or mortgagee of a senior obligation secured by nonresidential properties that has sent five or more prior notices may charge up to \$15 for each subsequent notice.³

PKR

1. CAL. CIV. CODE § 2924e(a) (delinquencies must be of principal or interest of at least four months).

2. *Id.*

3. *Id.* § 2924e(b).

Property; personal property leases

Commercial Code §§ 11101, 11102, 11103, 11105, 11106, 11107, 12101, 12102, 12103, 12104 (repealed); §§ 10101, 10102, 10103, 10104, 10105, 10106, 10107, 10108, 10109, 10110, 10111, 10112, 10113, 10114, 10115, 10116, 10117, 10118, 10119, 10120, 10121, 10301, 10302, 10303, 10304, 10305, 10306, 10307, 10308, 10309, 10310, 10401, 10402, 10403, 10404, 10405, 10406, 10501, 10502, 10503, 10504, 10505, 10506, 10507, 10508, 10509, 10510, 10511, 10512, 10513, 10514, 10515, 10516, 10517, 10518, 10519, 10520, 10521, 10522, 10523, 10524, 10525, 10526, 10527, 10528, 10529, 10530, 10531, 10532 (repealed and new); §§ 1301, 1302, 1303, 1304, 1305, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1501, 1502, 1503, 1504 (new); §§ 1105, 1201, 9113 (amended).
SB 1580 (Beverly); 1988 STAT. Ch. 1359*

Sponsor: California Commission on Uniform State Laws

Support: American Association of Equipment Lessors; California Association of Equipment Lessors; State Bar of California; Security Pacific Corporation; National Vehicle Leasing Association

Chapter 1359 enacts a modified version of the Uniform Commercial Code Article 2-A pertaining to personal property leases.¹ The following provides a brief overview of Chapter 1359's provisions governing personal property leases. For an in-depth analysis of this new law and California's changes to the Uniform Commercial Code's language, see the Legislative Note in the April 1989 volume of the *Pacific Law Journal*.

GENERAL PROVISIONS

Chapter 1359 applies to any transaction, regardless of form, that creates a lease.² Any lease that is subject to Chapter 1359 also is subject to any applicable statute of the United States, certificate of

* Chapter 1359 applies to all lease contracts that are first made or that first become effective between the parties on or after January 1, 1990, and it does not apply to any lease contract first made or that first became effective between the parties prior to January 1, 1990, or to any extension, amendment, modification, renewal, or supplement of or to the lease contract, unless the parties thereto specifically agree in writing that the lease contract, as supplemented, will be subject to Chapter 1359. CAL. COM. CODE § 10600.

1. See CAL. COM. CODE §§ 10101-10600 (Uniform Commercial Code - Leases).

2. *Id.* § 10102. "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, including a sublease unless the context clearly indicates otherwise; but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. *Id.* § 10103(1)(j). Existing law determines whether a transaction creates a lease or a security interest according to the facts of each case. *Id.* § 1201(37)(b). See *id.* §§ 1201(37)(b), 1207(37)(b) (factors to consider when deciding whether a transaction is a security interest or a lease).

title statute of this state, certificate of title statute of another jurisdiction, and consumer laws of this state.³ Chapter 1359 provides rules for choosing the applicable law and the appropriate judicial forum.⁴ Chapter 1359 also allows claims or rights arising out of an alleged default or breach of warranty to be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.⁵

LEASE CONTRACT FORMATION AND CONSTRUCTION

Under Chapter 1359, a lease contract is not enforceable by way of action or defense unless the lease provides certain specified terms and conditions.⁶ Chapter 1359 outlines the methods in which a lease agreement can be formed,⁷ explained,⁸ revoked,⁹ accepted,¹⁰ and modified.¹¹ Under Chapter 1359 the lessee receives all the benefits of a supplier's promises and warranties to the lessor made in the supply contract.¹² Chapter 1359 specifies the methods for creating express and implied warranties.¹³ Provisions governing risk of loss, identification of goods to the lease agreement, and insurable interests also are included in Chapter 1359.¹⁴

EFFECT OF LEASE CONTRACT

Unless otherwise specified by Chapter 1359, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods, and against creditors of the parties.¹⁵ Chapter 1359 applies, unless otherwise provided, regardless of whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods.¹⁶ With specified exceptions, Chapter 1359 sanctions the transfer of any interest of a party to a lease contract and of the lessor's residual

3. *Id.* § 10104.

4. *Id.* §§ 10105-10106.

5. *Id.* § 10107.

6. *Id.* § 10201. The total payments to be made under a lease contract, excluding payments for options to renew or buy, must be less than \$1000 and there must be a signed writing sufficient to indicate that a lease contract has been made between the parties. *Id.*

7. *Id.* § 10204.

8. *Id.* § 10202.

9. *Id.* § 10205.

10. *Id.* § 10206.

11. *Id.* § 10208.

12. *Id.* § 10209.

13. *Id.* §§ 10210-10215.

14. *Id.* §§ 10217-10221.

15. *Id.* § 10301.

16. *Id.* § 10302.

interest.¹⁷ The rights of parties to such a transfer also are outlined.¹⁸ Chapter 1359 enunciates the priority given to various creditors, materialmen, and service providers' claims.¹⁹

PERFORMANCE, REPUDIATION, SUBSTITUTION, EXCUSE

Chapter 1359 imposes on each party to a lease contract an obligation not to impair the other's expectation of receiving due performance.²⁰ With the enactment of Chapter 1359, a party who is insecure about performance may demand written assurance.²¹ Chapter 1359 details the conditions necessary to find repudiation and specifies the consequences of a repudiation.²² Chapter 1359 also describes the conditions, and effect of substitute performance.²³

DEFAULT

Determination of default and any resulting rights and remedies are governed by the lease agreement and the terms of Chapter 1359.²⁴ Under Chapter 1359, a default of the lease results if a lessor fails to deliver the goods, or if a lessee repudiates, rightfully rejects the goods, or justifiably revokes acceptance of the goods.²⁵ The lessee has several specified duties and remedies.²⁶ Chapter 1359 additionally explains what constitutes acceptance,²⁷ and the manner in which acceptance can be revoked.²⁸ Further, under Chapter 1359, a default also results under the lease if a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole and the lessor has several specified rights and remedies.²⁹ Chapter 1359 also details the rights of a lessee and a lessor when a third party causes actionable injury to goods identified with a lease contract.³⁰

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17. *Id.* § 10303.

18. *Id.* §§ 10304-10305.

19. *See id.* §§ 10306-10310.

20. *Id.* § 10401(1).

21. *Id.* § 10401.

22. *Id.* §§ 10401-10403.

23. *Id.* §§ 10404-10405.

24. *Id.* §§ 10501-10507.

25. *Id.* §§ 10508-10514; §§ 10518-10522.

26. *Id.*

27. *Id.* § 10515. A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered. *Id.* § 10516.

28. *Id.* § 10517.

29. *Id.* §§ 10523-10530.

30. *Id.* § 10531.

* The *Pacific Law Journal* wishes to thank Curtis D. Rindlisbacher for his contribution to this analysis.

Property; real estate broker disclosure requirements

Civil Code § 2079.6 (new).

AB 3773 (Hauser); 1988 STAT. Ch. 274

Under existing law, a real estate broker must perform a careful visual inspection of property and disclose to a prospective purchaser all visually apparent facts that will affect the value or desirability of the property.¹ Chapter 274 exempts a real estate broker from these requirements under two circumstances: (1) when a transfer of subdivided lands must be preceded by the furnishing of a public report² to the prospective transferee; or (2) when a transfer of subdivided lands can be made without a public report.³ However, this exemption applies only to property that has not been previously occupied.⁴

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1. CAL. CIV. CODE § 2079 (pertains to residential property comprising one to four dwelling units).

2. See generally CAL. BUS. & PROF. CODE § 11018.1 (providing requirements for public reports).

3. CAL. CIV. CODE § 2079.6. See generally CAL. BUS. & PROF. CODE § 11010.4 (setting requirements for transfers of subdivided lands that can be made without a public report).

4. CAL. CIV. CODE § 2079.6.

Property; subdivision regulation

Civil Code §§ 1355, 1365 (amended);

Government Code § 66411 (amended).

AB 3081 (Hauser); 1988 STAT. Ch. 367

AB 4426 (Ferguson); 1988 STAT. Ch. 1409

Sponsor: Leisure World

Support: Community Association Institute

Existing law requires local agencies to regulate and control the design and improvement of certain subdivisions.¹ Chapter 367 expands this requirement to include the regulation of common interest developments.² Chapter 367 also changes the accounting and distri-

1. CAL. GOV'T. CODE § 66411. For example, the local agency must regulate grading to prevent soil erosion and damage to other property. *Id.* Only subdivisions that require a tentative and final or parcel maps are subject to the statute. *Id.* See generally §§ 66426 (explaining which subdivisions require tentative or parcel maps), 66424 (definition of subdivision).

2. *Id.* § 66411. See generally *id.* § 1351(c) (definition of common interest development).

bution requirements for the budget of an association³ that manages a common interest development.⁴

Existing law also provides that a common interest development must record a declaration describing the development.⁵ Chapter 1409 allows amendment of the declaration by a vote of fifty percent or more of the owners, if the declaration does not otherwise expressly provide for amendment.⁶

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

4. CAL. CIV. CODE § 1365(a)(3), (b), (c). Existing law requires that the annual budget include an estimate of the remaining life of major components which the association must maintain. CAL. CIV. CODE § 1351(a)(3). Chapter 367 mandates instead that the estimate must be of the current replacement costs of the estimated remaining useful life of the components. *Id.* Existing law also obligates the association to distribute its budget, and a review of the budget, to the members. *Id.* § 1365(a), (b). Chapter 1409 allows the association to distribute a summary, unless a member requests a copy of the actual budget and a review of the budget. *Id.* § 1365(c). If a copy is requested, the association must provide it at its own expense. *Id.*

5. Cal. Civ. Code § 1353(a). The declaration must contain a legal description of the development, the name of the association, and the restrictions on the use of any portions of the development that are intended to be enforceable equitable servitudes. *Id.*

6. *Id.* § 1355(b). The development must distribute the proposed amendment to all owners of separate interests not less than 15 days and not more than 60 days before the solicitation of any approval. *Id.* The amendment must be recorded in each county in which a portion of the development is located, and a copy of the amendment must be sent to all owners. *Id.* See generally § 1356 (power of court to approve amendments despite a lack of the number of votes expressly required by the declaration).

Property; undivided-interest subdivisions

Business and Professions Code § 11000.2 (new); § 10249.4 (amended).

SB 1890 (Seymour); 1988 STAT. Ch. 434

Existing law regulates the sale and lease in California of subdivisions located in and outside of this state.¹ Chapter 434 gives a three day right of rescission to a prospective purchaser of an interest in an undivided-interest subdivision.² Chapter 434 also adjusts the fees

1. See CAL. BUS. & PROF. CODE §§ 11010-11030 (regulatory requirements applicable to subdivisions, subdivided lands, and land projects), 11000.6 (conditions exempting subdivision from treatment as land project), 11000, 11000.1, 11004.5 (definition of subdivisions and subdivided lands).

2. *Id.* § 11000.2(a) (providing right of rescission similar to that enjoyed by time-share purchasers). Compare *id.* § 11000.2(b) (undivided-interest subdivision owner or his agent must disclose the right of rescission to any prospective purchaser and provide a form for exercising

charged in connection with the inspection³ of out-of-state subdivided lands.⁴

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the right) *with id.* § 11024 (owner of time-share subdivision must inform prospective purchaser of three-day right of rescission and must provide form for exercising that right).

3. *See* CAL. BUS. & PROF. CODE § 11018 (Real Estate Commissioner must inspect any subdivision and issue or deny public report according to enumerated grounds for denial).

4. *Id.* § 10249.4 (fees will include actual and necessary subsistence expenses incurred during the inspection).