

2010 SUMMARY OF LEGISLATION



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The California Land Title Association is pleased to present the 2010 Summary of Legislation.

Editor's Note

Of the 733 bills signed into law in 2010, 40 have been summarized as significant for the title industry.

The CLTA wishes to express its appreciation to the Legislative Committee for reviewing the legislation and summaries, and Anthony Helton, CLTA Legislative Coordinator, for producing this publication.

The Summary is intended merely to provide shorthand references to selected bills of interest to the title industry. The actual chaptered versions should always be reviewed for specific details.

Copies of bill text, histories, committee analyses, voting records and veto messages are available from the California Legislature's official website at www.leginfo.ca.gov under the "Bill Information, 2009-10 Session" link. All bills summarized in this publication become effective January 1, 2011, unless otherwise noted.

PLEASE NOTE: This publication contains live links to chaptered bill text and case documents. Links to chaptered bills can be found at the end of each bill summary; links to case documents can be accessed by clicking on the case name at the beginning of each case summary.

ASSESSMENTS

- **Improvement Act of 1911**
- **Renewable Energy Improvements**

Existing law, the Improvement Act of 1911, authorizes public agency officials and property owners to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property. Existing law requires the legislative body to make these determinations by adopting a resolution indicating its intention to do so and requires that the resolution include specified information and directs an appropriate public agency official to prepare a prescribed report.

This act defines the term “permanently fixed,” for purposes of financing the installation of distributed generation renewable energy sources, to include systems that are attached to specified types of real property pursuant to a power purchase agreement or lease between the owner of the system and the owner of the assessed property, if the agreement satisfies prescribed criteria.

This act prohibits a public agency from permitting a property owner to participate in a contractual assessment program if the total amount of the assessments and taxes on the property exceeds 5% of the property’s market value. This act also requires the prescribed report to include criteria for determining the underwriting requirements, as well as safeguards to be used to limit the total annual property tax and assessments on the property.

Chapter 564 (AB 44 – Blakeslee); adding Sections 5898.15, 5898.23, and 5899.2 to the Streets and Highways Code.

CIVIL ACTIONS

- **Adverse Possession**

Existing law requires that a person claiming title in an action for adverse possession show that the land has been occupied and claimed for the period of five years continuously, and the party or person, their predecessors and grantors have paid all taxes.

This act requires that timely payment of those taxes be established by certified records of the county tax collector.

Chapter 55 (AB 1684 – Jeffries); amending Section 325 of the Code of Civil Procedure.

COURT RECORDS

- **Preservation Guidelines**

Existing law provides that court records may be preserved in any form, including electronic forms.

This act additionally authorizes courts to create and maintain records in electronic forms, and would authorize the signing or verification of trial court documents using a computer or other technology.

Existing law requires that court records be preserved in accordance with standards or guidelines adopted by the American National Standards Institute or the Association for Information and Image Management.

This act deletes these provisions and instead requires the Judicial Council to adopt rules to establish the standards and guidelines for the creation, maintenance, reproduction, and preservation of court records, and would require that these standards and guidelines reflect industry standards for each medium used, ensure the accuracy and preserve the integrity of the records, and ensure that the public can access and reproduce the records. The act further requires that court records be preserved in accordance with these rules.

Under existing law, “retain permanently” means that the original court record shall never be transferred or destroyed.

This act revises this definition to mean that the record shall be maintained in accordance with the rules established by the Judicial Council.

Chapter 167 (AB 1926 – Evans); amending Sections 68150 and 68151 of the Government Code.

DEEDS

- **Grant Deed Copy Services**

Existing law provides that certain advertising-related practices are unlawful and makes a violation of those provisions a crime.

This act makes it unlawful for any person, firm, corporation, association, or any other business entity to make any untrue or misleading statements in any manner in connection with the offering or performance of a grant deed copy service, defined as a service, offered through a mailed solicitation to a property owner, to obtain, for compensation, a copy of the property owner’s grant deed or other record of title. The act makes it unlawful to offer to perform this service without making specified disclosures.

Chapter 533 (AB 1373 – Lieu); adding Section 17537.10 to the Business and Professions Code.

DISCLOSURES

- **Residential Building Safety**
- **Carbon Monoxide**

Existing law requires certain transferors of real property improved with 1 to 4 dwelling units, as well as transferors of mobilehomes and manufactured homes, to make specified disclosures to prospective transferees regarding the characteristics of the property and prescribes forms for the purpose of making these disclosures.

Existing law requires the transferor of real property containing a single-family dwelling to provide transferees written notice of compliance with specified requirements for the installation of smoke detectors. Existing law requires the seller of any real property containing a water heater to certify in writing to a prospective purchaser compliance with specified safety requirements related to those water heaters.

This act revises the disclosure forms described above to provide a seller certification that the property, at the close of escrow, will be in compliance with the requirements for smoke detectors and water heaters and to remove these provisions from elsewhere in the forms. The act also revises the disclosure forms to add a disclosure regarding carbon monoxide devices and a statement specifying that installation of a listed appliance, device, or amenity is not a precondition to sale or transfer.

Existing law requires the State Fire Marshal to adopt regulations and standards regarding the quality and installation of burglar bars and safety release mechanisms for emergency escape and rescue windows, the approval and installation of smoke detectors, and the approval of portable fire extinguishers for marketing, distribution, and sale in this state. Existing law requires a smoke detector approved and listed by the State Fire Marshal to be installed in a dwelling unit intended for human occupancy. The State Housing Law creates standards for buildings used for human habitation. A violation of that law is a misdemeanor.

This act enacts the Carbon Monoxide Poisoning Prevention Act of 2010. This act requires the State Fire Marshal to certify and approve carbon monoxide devices and their instructions for the use in dwelling units intended for human occupancy. The act requires the State Fire Marshal to charge an appropriate fee to the manufacturer of a carbon monoxide device to cover the costs associated with the approval and listing of carbon monoxide devices. The act prohibits the marketing, distribution, or sale of devices unless they and their instructions have been approved and listed by the State Fire Marshal. The act requires a carbon monoxide device to be installed in a dwelling unit intended for human occupancy and would generally provide that a violation of these provisions is an infraction punishable by a maximum fine of \$200 for each offense, but the act requires that a property owner receive a 30-day notice to correct prior to the imposition of the fine.

The act provides that a transfer of title is not invalidated on the basis of a failure to comply with these requirements, and that the exclusive remedy for the failure to comply is an award of actual damages not to exceed \$100, exclusive of any court costs and attorney's fees.

This act requires an owner or the owner's agent of a dwelling unit intended for human occupancy who rents or leases the dwelling unit to a tenant to maintain carbon monoxide devices in that dwelling unit. The act permits the owner or the owner's agent to enter that dwelling unit to install, repair, test, and maintain carbon monoxide devices. The act permits the Department of Housing and Community Development to suspend enforcement of certain requirements on property owners if the department, in consultation with the State Fire Marshal, determines that a sufficient amount of tested and approved carbon monoxide devices are not available, and would require the department to publicize this decision.

Chapter 19 (SB 183 – Lowenthal); amending Sections 1102.6 and 1102.6d of the Civil Code, and adding Sections 17926, 17926.1, and 17926.2 to, and adding Chapter 8 (commencing with Section 13260) to Part 2 of Division 12 of, the Health and Safety Code.

DOMESTIC PARTNERSHIPS AND MARRIAGES

- **Termination**

(1) Existing law provides that the superior courts have jurisdiction over all proceedings relating to the dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of partners in a domestic partnership. Existing law provides that the dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership follow the same procedures, and the partners possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage, respectively, except as specified.

This act authorizes parties to a registered domestic partnership who are also married to one another to petition the court to dissolve both their domestic partnership status and their marriage status in a single proceeding, in a form prescribed by the Judicial Council. The act also requires the Judicial Council to prescribe the specified form.

(2) Existing law provides that, in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning, among other things, the status of the marriage.

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DOMESTIC PARTNERSHIPS AND MARRIAGES (cont.)

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Existing law provides that two persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted have the same rights and responsibilities as are granted to or imposed upon spouses with the sole exception of the designation of “marriage”.

This act specifies that the court’s jurisdiction concerning the status of a marriage includes those out-of-state same-sex marriages contracted on or after November 5, 2008.

Chapter 397 (AB 2700 – Ma); amending Sections 299 and 2010 of the Family Code.

FORECLOSURE

- **Notice of Sale**

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. After the lapse of not less than three months from the filing of the notice of default, the mortgagee, trustee, or other person authorized to take the sale is required to give notice of sale, stating the time and place.

This act instead permits a mortgagee, trustee, or other person authorized to take sale to file a notice of sale up to five days before the lapse of the three-month period provided that the date of sale is no earlier than three months and 20 days after the filing of the notice of default.

Chapter 180 (SB 1221 – Calderon); amending Sections 2924 and 2924c of the Civil Code.

- **Foreclosure Consultants**
- **Arranging Loan Audits**

Existing law defines a foreclosure consultant as any person who makes any solicitation, representation, or offer to any homeowner to perform for compensation or who, for compensation, performs specified services relating to foreclosure sales, including performing debt, budget, or financial counseling of any type and giving any advice, explanation, or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or reinstatement of an obligation secured by a lien on the residence.

Existing law requires a person to register with, and obtain a certificate from, the Department of Justice to provide foreclosure consultant services. Existing law establishes various prohibited acts applicable to foreclosure consultants, including prohibiting a foreclosure consultant from claiming, demanding, charging, collecting, or receiving any compensation before fully performing the services which the foreclosure consultant was contracted to perform. Existing law makes it a crime to perform foreclosure consultant services without being registered with the department or to violate the prohibited acts applicable to foreclosure consultants.

This act provides that foreclosure consultant services include arranging or attempting to arrange the audit of any obligation secured by a lien on a residence in foreclosure and thereby would require a foreclosure consultant to register with the department to arrange or attempt to arrange those audits.

Chapter 596 (AB 2325 – Lieu); amending Section 2945.1 of the Civil Code.

- **Postponements by Public Entities**
- **Regulatory Agreements**

Existing law requires a lender to file a notice of default in the case of nonjudicial foreclosure prior to enforcing a power of sale as a result of a default on an obligation secured by real property. Existing law also requires that a notice of sale be given before the power of sale may be exercised.

This act, until 2013, creates an exception to the provision governing the exercise of the power of sale by providing that if a property contains five or more multifamily units and a public entity is a party to a regulatory agreement or recorded deed restriction on the property, the public entity may, by written notice to the trustee, postpone the sale date by no more than 60 days. The act provides that, if multiple public entities are parties to a regulatory agreement or a recorded deed restriction on the property, only one entity may postpone the sale date. The act also provides that the power to postpone a sale date pursuant to these provisions may be exercised only once, and that the period of postponement expires after 180 days have elapsed since filing the notice of default.

Chapter 597 (AB 2347 – Feuer); amending, repealing, and adding Section 2924f of the Civil Code.

- **Deficiency Judgments**

Existing law authorizes an action for a deficiency judgment for the secured by deeds of trust or mortgages. Existing law prohibits a deficiency judgment in any case in which the real property has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust.

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FORECLOSURE (cont.)

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This act prohibits a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than four units in any case in which the trustor or mortgagor sells the dwelling for less than the remaining amount of the indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or first mortgage. The act provides that written consent of the holder of the first deed of trust or first mortgage to that sale shall obligate that holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of the indebtedness on the first deed of trust or first mortgage. The act specifies that those provisions would not limit the ability of the holder of the first deed of trust or first mortgage to seek damages and use existing rights and remedies against the trustor or mortgagor or any 3rd party for fraud or waste if the trustor or mortgagor commits either fraud with respect to the sale of, or waste with respect to, the real property that secures that deed of trust or mortgage. The act makes these provisions inapplicable if the trustor or mortgagor is a corporation or political subdivision of the state.

Chapter 701 (SB 931 – Ducheny); adding Section 580e to the Code of Civil Procedure.

FORECLOSURES

• Requests for Notices of Default

The Davis–Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Under existing law, a common interest development is managed by an association pursuant to the provisions of the governing documents of the development.

Existing law requires a trustee or mortgagee to record a notice of default and to post and publish a notice of sale prior to selling real property at a foreclosure sale. Existing law allows an association, with respect to separate interests governed by the association, to record a single request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee’s deed upon sale concerning a separate interest, as specified.

This act clarifies that a recorded request by an association for a copy of the trustee’s deed of sale does not, for purposes of a specified statute, constitute a document that either effects or evidences a transfer or encumbrance of an interest in real property or that releases or terminates any interest, right, or encumbrance of an interest in real property.

Chapter 133 (AB 2016 – Torres); amending Section 2924b of the Civil Code.

• Property Maintenance

Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. Existing law authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day per violation.

This act requires a governmental entity, prior to imposing a fine or penalty for failure to maintain a vacant property that is subject to a notice of default, that is purchased at a foreclosure sale, or that is acquired through foreclosure, to provide the owner of that property with a notice of the violation and an opportunity to correct the violation. This notice requirement would not apply if the governmental entity determines that a specific condition of the property threatens public health or safety. The act further provides that the costs of nuisance abatement measures taken by a governmental entity with regard to property that is subject to a notice of default, that is purchased at a foreclosure sale, or acquired through foreclosure, shall not exceed the actual and reasonable costs of nuisance abatement. This act also prohibits a governmental entity from imposing an assessment or lien for the costs of nuisance abatement prior to the adoption of those costs by the elected officials of that governmental entity at a public hearing.

Chapter 527 (SB 1427 – Price); adding Sections 2929.4 and 2929.45 to the Civil Code.

• Unlawful Detainer Proceedings

Existing law governs unlawful detainer proceedings. Existing law authorizes the court clerk to allow access to limited civil case records filed under these provisions to certain persons, including a party to the action or a resident of the premises, under certain conditions, without regard to when they request that access. Existing law also authorizes the clerk to allow access to any other person 60 days after the complaint has been filed, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action.

This act additionally authorizes the clerk to allow access to those records to any other person in the case of a complaint involving residential property that has been sold in foreclosure, or under other, specified proceedings, as indicated in the caption of the complaint, if 60 days have elapsed since the complaint was filed with the court and judgment against all defendants has been entered for the plaintiff, after a trial. The act also requires the plaintiff in those proceedings to include a specified caption in the complaint. If judgment is not entered under these conditions, the act prohibits the clerk from allowing access to any court records in the action, except to the persons described above who are permitted access without regard to when they request access.

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FORECLOSURES (cont.)

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Existing law governing unlawful detainer proceedings also requires that a tenant or subtenant in possession of a rental housing unit which has been sold by reason of certain enumerated causes, including foreclosure, who rents or leases the rental housing unit either on a periodic basis or for a fixed period of time, be given written notice to quit, at least as long as the term of hiring itself but not exceeding 30 days, before the tenant or subtenant may be removed from that rental housing unit.

This act additionally requires, until January 1, 2013, that any notice to quit regarding a housing unit served within one year after a foreclosure sale include a separate cover sheet that contains an additional notice to renters. The act sets forth the content of this notice providing the tenant with specified information regarding tenants' rights.

Chapter 641 (SB 1149 – Corbett); amending Sections 1161.2 and 1166 of, and adding and repealing Section 1161c of, the Code of Civil Procedure.

HOME INSPECTIONS

• Energy Audits

Existing law provides that it is the duty of a home inspector who is not licensed as a general contractor, structural pest control operator, or architect, or registered as a professional engineer, to conduct a home inspection with the degree of care that a reasonably prudent home inspector would exercise. Existing law provides that a home inspection may include an inspection of energy efficiency, if requested by the client. Under existing law, a home inspection report is a written report consisting of specified information that is prepared for a fee and is issued after a home inspection.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to establish specified standards related to a statewide home energy rating program for residential dwellings, known as the Home Energy Rating System (HERS) Program.

This act authorizes a home inspection to include, if requested by the client, a HERS home energy audit that meets the requirements of the HERS regulations established by the commission. The act declares the intent of the Legislature that a HERS audit may, at the request of the client, be performed by a home inspector who meets the requirements of the HERS regulations.

Chapter 453 (AB 1809 – Smyth); adding Chapter 9.4 (commencing with Section 7199.5) to Division 3 of the Business and Professions Code.

HOUSING

• Offers to Purchase

The Planning and Zoning Law authorizes the legislative body of a city or county to adopt zoning ordinances regulating, among other things, the use of buildings, structures, and land as between industry, business, residences, open space, and other uses.

Existing law, until January 1, 2011, imposes notice and procedural requirements on an owner of specified types of government-subsidized rental housing regarding the owner's decision not to extend or renew participation in specified government-subsidized housing programs, including the requirement that the owner, in specified circumstances relating to the property's status as government-subsidized rental housing, give notice of the opportunity to submit an offer to purchase the property to specified entities. Existing law requires the initial notice of a bona fide opportunity to submit an offer to purchase to include specified information.

This act deletes the repeal of these provisions, thereby extending their operation indefinitely, and modifies the information required to be included in the initial notice of a bona fide opportunity to submit an offer to purchase.

Chapter 308 (SB 454 – Lowenthal); amending Sections 65863.10, 65863.11, and 65863.13 of the Government Code.

• Cal-Vet Qualified Residences

Existing law provides for the CalVet Home Loan program. Existing law defines "home" for purposes of this program to mean a parcel of real estate upon which there is a dwelling house and other buildings that will suit the needs of the purchaser and the purchaser's dependents as a place of abode, which includes a condominium and a mobilehome.

This act expands the definition of home to include residences with 2 to 4 units, inclusive, that satisfy specified requirements and that are only occupied by veterans and their families.

Chapter 542 (AB 2087 – Torres); amending Section 987.53 of the Military and Veterans Code.

INSURANCE COMPANIES

• Market Conduct Examinations

Existing law requires the Insurance Commissioner to conduct an examination of the business and affairs of insurers admitted in this state at least once every 5 years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner is required to consider the

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INSURANCE COMPANIES (cont.)

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results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, market analysis results, including consumer complaint analysis, evaluation of ongoing regulatory activities, analysis of data derived from industry surveys or interrogatories, and other criteria as set forth in the Examiner's Handbook or in the Market Regulation Handbook adopted by the National Association of Insurance Commissioners that are in effect at the time of the examination.

This act authorizes the commissioner to postpone a market conduct examination, otherwise required, for up to three years if information derived from a market analysis indicates that the prior examination of the insurer resulted in no significant negative findings, the number of consumer complaints received by the insurer is in the lowest quartile of complaints, on a ratio basis, for insurers in that line of business, and the market analysis identifies no other issues of significant concern.

Chapter 387 (AB 2404 – Hill); amending Sections 481 and 730 of the Insurance Code.

JUDGMENTS

- **Enforcement of Judgments**
- **Document Transfer Tax**

(1) Existing law provides for the service of process and notices, including a writ or summons issued in the course of judicial proceedings, by the sheriff or other ministerial officer. Certain documents and records relating to the service of process and notices, including any direction or authority by a party or his or her attorney to a sheriff in respect to the execution or return of process and instructions from a judgment creditor to a levying officer, are required to be in writing.

This act generally authorizes a levying officer to electronically transmit and receive specified documents and records relating to enforcement of judgments. The act requires specified information to be included with the electronic transmission, and requires a levying officer to exclude or redact certain identifiers from any document or record made available to the public. The act provides additional safeguards and procedures relating to the electronic transmission of documents and records, and makes other conforming changes.

(2) Existing law requires a writ of execution, possession, or sale, and written instructions from a judgment creditor to a levying officer relating to the enforcement of a judgment, to include specified information.

This act requires those process documents to specify certain additional information, including the type of legal entity of the judgment debtor, if other than a natural person. The act also requires a writ of execution, possession, or sale to include a statement indicating whether the case is limited or unlimited.

(3) Existing law specifies procedures for issuance and return of postjudgment writs of execution. Among other things, the levying officer is required to return the writ to the court, together with a report of his or her actions and an accounting of amounts collected and costs incurred, within specified time periods.

This act authorizes the levying officer to retain the original writ or an electronic copy and to electronically file with the court a return of his or her actions, and an accounting of amounts collected and costs incurred, in lieu of returning the paper version of an original writ of execution. The return of the levying officer's actions and the accounting would be required to be filed with the court, and the writ would expire, within those specified time periods.

(5) The Documentary Transfer Tax Act authorizes the board of supervisors of a county or city and county to impose a tax upon specified instruments that transfer specified interests in real property.

Existing law requires the levying officer conducting the sale of real property that has been levied upon, when the purchaser pays the amount due, to execute and deliver a deed of sale to the purchaser and record a duplicate of the deed of sale in the office of the county recorder.

This act clarifies that the purchaser of levied upon real property is responsible for paying the documentary transfer tax.

Chapter 680 (AB 2394 – Brownley); amending Sections 262, 262.2, 262.4, 687.010, 699.060, 699.510, 699.520, 699.560, 701.030, 701.660, 706.026, 706.101, 712.020, and 1993 of, and adding Chapter 2 (commencing with Section 263) to Title 4 of Part 1 of, the Code of Civil Procedure.

LIENS

- **Municipal Utility District Charges**
- **Lien for Delinquencies**

The Municipal Utility District Act authorizes a municipal utility district, by resolution or ordinance, to require the owner of record of privately owned real property within the district to pay the fees, tolls, rates, rentals, or other charges for certain utility services rendered to a lessee, tenant, or subtenant. Existing law provides that those charges that have become delinquent, together with interest and penalties, are a lien on the property when a certificate is filed by the district in the office of the county recorder and that the lien has the force, effect, and priority of a judgment lien. The act exempts water and sewer services to residential property and electrical services from this provision.

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LIENS (cont.)

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This act establishes additional procedures, until January 1, 2016, for a municipal utility district to collect delinquent fees, tolls, rates, rentals, or other charges, together with interest and penalties thereon, for services rendered to a lessee, tenant, or subtenant, through the tax roll, in the same manner as property taxes. The act, until January 1, 2016, authorizes a municipal utility district to collect delinquent fees, tolls, rates, rentals, or other charges, together with interest and penalties thereon, for services rendered to a lessee, tenant, or subtenant, by recording in the office of the county recorder of the county in which the affected parcel is located, a certificate declaring the amount of the delinquent charges, together with interest and penalties thereon, which would then constitute a lien against the affected real property of the delinquent property owner in that county and have the force, effect, and priority of a judgment lien.

The act, until January 1, 2016, deletes the above-described exemption for water and sewer services to residential property, thereby exempting only electrical services from these collection provisions.

The act requires any district that places a lien on a property for water or sewer service on or before December 31, 2014, to submit a report containing certain information to the Assembly and Senate Committees on Judiciary and to the Assembly and Senate Committees on Local Government on or before January 1, 2015.

The act would require a municipal utility district that exercises these collection measures to reimburse the county for the reasonable expenses incurred by the county.

Chapter 485 (SB 1035 – Hancock); amending, repealing, and adding Section 12811.1 of the Public Utilities Code.

• Restitution Orders

Existing law provides for victim restitution orders and restitution fines. Existing law authorizes procedures for the entry and application of court orders for income deduction upon entry of an order for a restitution fine or for victim restitution, and gives the agency responsible for the collection of restitution specified powers and duties in regard to these income deduction orders.

The act provides that if there is no agency in the county responsible for the collection of restitution, the county probation office or the prosecuting attorney may carry out the functions and duties of such an agency in regard to the income deduction orders described above. This act further provides, if the defendant fails to meet his or her obligations under the restitution order and the defendant has not provided good cause for the failure, that a court shall be authorized, upon the request of the prosecuting attorney, to order the prosecuting attorney be giv-

en authority to use lien procedures applicable to the defendant, including, but not limited to, a writ of attachment of property. This act provides prosecutorial immunity from liability for these proceedings and deny reimbursement for the costs of the prosecuting attorney from the defendant's income or assets.

Chapter 582 (AB 1847 – Furutani); amending Section 1202.42 of the Penal Code.

LOCAL GOVERNMENT

- Parks and Open Space Districts
- Irrevocable Offers of Dedication

Existing law authorizes a regional park district, regional park and open-space district, or regional open-space district to plan, adopt, lay out, plant, develop, and otherwise improve, extend, control, operate, and maintain a system of public parks, playgrounds, golf courses, beaches, trails, natural areas, ecological and open-space preserves, parkways, scenic drives, boulevards, and other facilities for public recreation, for the use and enjoyment of the inhabitants of the district, and to select, designate, and acquire land, or rights in land, within or without the district, to be used and appropriated for those purposes.

This act authorizes an irrevocable offer of dedication of an interest in real property for any of those uses and purposes to be made to such a district, with the consent of the board of directors of the district. The act requires the offer of dedication to be executed, acknowledged, and recorded in the same manner as a conveyance of real property, and would provide that, when recorded in the office of the county recorder, the offer of dedication is irrevocable and may be accepted at any time by the board of directors of the district. The act authorizes the board of the directors of the district to terminate the offer of dedication and abandon the right to accept the offer.

Chapter 59 (AB 1962 – Chesbro); adding Section 5565.5 to the Public Resources Code.

MECHANICS' LIENS

- Revision of Mechanics' Lien Law

The California Constitution provides that mechanics, persons furnishing materials, artisans, and laborers of every class have a lien upon the property upon which they have bestowed labor or furnished material for the value of the labor done and material furnished. The California Constitution also requires the Legislature to provide, by law, for the speedy and efficient enforcement of those liens.

Existing statutory law governs works of improvement, including design professionals' liens and mechanics liens. These provisions govern the conditions required to enforce a lien and for a mechanic's lien to be deemed valid, and define the use of the terms "materialman" and "original contractor" for purposes of the mechanics' lien law.

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MECHANICS' LIENS (cont.)

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This act revises and recasts those statutory provisions and makes both substantive and technical changes. The act also replaces the terms “original contractor” and “materialman” with the terms “direct contractor” and “material supplier,” respectively. A copy of a Notice of Completion must be delivered within 10 days to a direct contractor and a claimant who has given a preliminary notice.

The act enacts separate provisions governing private works of improvement and public works of improvement. The act revises and recasts provisions governing design professionals’ liens, mechanics liens, notices of cessation, payment bonds, and retention payments.

The act also provides that any other act enacted during the 2010 calendar year that takes effect on or before January 1, 2011, that amends, adds, or repeals any section amended, added, or repealed by this act shall prevail over this act. The act incorporates additional changes made by AB 2216 and AB 2419, contingent upon the enactment of those acts.

The provisions of the act become operative on July 1, 2012, except as specified.

The changes to the enforcement procedures for a mechanic’s lien going into effect after July 1, 2012 are substantial, including but not limited to the following:

1. A separate index will be maintained for preliminary notices filed with the county recorder (CC§8214).
2. A mechanic’s lien release bond will be in the amount of 125% of the amount of the claim of lien (CC§8424).
3. A notice of completion with required warning language may be recorded on or within 15 days after the date of completion (CC§8182 and 8416).
4. The preliminary notice form and the waiver of release forms for progress payments and final payment have been revised (CC§8132 and 8138).
5. For deeds of trust recorded with priority, an optional advance of funds by the construction lender that is used for construction costs has the same priority as a mandatory advance of funds by the construction lender, provided that the total of all advances does not exceed the amount of the original construction loan; and (CC§8458)
6. New 20 day requirement for filing a notice of pendency of action (CC§8461).
7. A court may dismiss an action to foreclose a mechanics’ lien if it is not brought to trial within two years after commencement of the case.
8. After service of a bonded stop payment notice, a construction lender must give written notice within 30 days

of the lender’s election to not withhold funds for the claimant.

9. For certain projects involving construction loans in excess of \$5,000,000, an owner may be required to provide security in the form of a surety bond, irrevocable letter of credit, or escrow account.

Chapter 697 (SB 189 – Lowenthal); amending Sections 7034, 7071.5, 7071.10, 7159, 7159.1, 7159.5, 7159.14, 7164, 8513, and 17577.5 of the Business and Professions Code, amending Sections 1917.166, 1917.615, 3059, 3060, 3319, 3320, and 3321 of, amending the heading of Part 8 (commencing with Section 7100) of Division 4 of, amending and repealing Sections 3084 and 3252 of, adding Section 9560 to, adding Part 6 (commencing with Section 8000) to Division 4 of, repealing Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 of, and repealing Title 15 (commencing with Section 3082) of Part 4 of Division 3 of, the Civil Code, amending Sections 86, 410.42, 708.760, 1203.61, 1281.5, and 1800 of the Code of Civil Procedure, amending Sections 17307.5 and 81133.5 of the Education Code, amending Sections 7480, 14975, 15820.105, 27287, 27361.9, 66499.2, and 66499.7 of the Government Code, amending Sections 5463, 16017.5, 19825, and 34218 of the Health and Safety Code, amend Section 11751.82 of the Insurance Code, amending Section 218.5 of the Labor Code, amending Sections 4107.7, 7103, 10222, 10822, 20104, 20134, 20461, 20496, 20682.5, 20688.4, 20813, 20815.3, 20991, 21061, 21071, 21081, 21091, 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181, 21196, 21212, 21231, 21241, 21251, 21261, 21271, 21311, 21321, 21331, 21341, 21351, 21361, 21371, 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461, 21491, 21501, 21511, 21521, 21531, 21541, 21572, 21581, 21591, 21601, 21622, and 21631 of, the Public Contract Code, and amending Section 136.5 of the Streets and Highways Code.

REAL ESTATE AGENTS AND BROKERS

• Advance Fees

The Real Estate Law provides for the regulation and licensure of real estate brokers and salespersons by the Real Estate Commissioner. As used in the Real Estate Law, the term “advance fee” is defined as a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed, with certain exceptions.

This act redefines the term “advance fee” to mean a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, before fully completing the service the licensee contracted to perform or represented would be performed. The act would, in addition to the existing exceptions, also exempt from the definition of advance fee moneys claimed, demanded, charged, received, or collected for the purposes of advertising the sale, lease, or exchange of real property or a business opportunity in a newspaper, written publication, or other electronic media, or moneys earned for real estate services under a limited service contract, for stand-alone services. The act also exempts

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REAL ESTATE AGENTS AND BROKERS (cont.)

(Continued from Previous Page...)

from that definition a contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed.

Chapter 85 (AB 1762 – Hayashi); repealing and adding Section 10026 of the Business and Professions Code.

RECORDING

- **Notification of Recording**

Existing law authorizes the Los Angeles County Board of Supervisors and the Riverside County Board of Supervisors to adopt a resolution to authorize the county recorder to notify the party or parties executing a deed, quitclaim deed, or deed of trust.

This act extends this authorization to the board of supervisors of every county in the state.

Chapter 44 (AB 2618 – Nestande); amending Section 27297.7 of the Government Code.

SUBDIVISIONS

- **Release of Performance Security**

The Subdivision Map Act and local ordinances authorize or require, under specified circumstances, the furnishing of specified types of security with respect to the performance of various acts or agreements subject to the act. Existing law, until January 1, 2011, also sets forth the specific procedures imposed on a local agency for the complete or partial release of a performance security furnished by a subdivider.

This act extends the repeal date of the provisions relating to the procedures for releasing a performance security, from January 1, 2011, to January 1, 2016, thereby extending their operation.

Chapter 174 (SB 1019 – Correa); amending Section 66499.7 of the Government Code.

- **Parcel Merger**
- **Renewable Energy Facilities**

The Subdivision Map Act controls the subdivision of land, provides the sole and exclusive authority for local agency initiated merger of contiguous parcels, and authorizes a legislative

body to initiate proceedings for reversion to acreage.

This act provides that specified provisions of the act do not prohibit a landowner, local agency, or renewable energy corporation authorized to conduct business in the state from seeking financial assistance from eligible state funding sources to defray the costs of merging parcels on private or public lands, or the costs of establishing or administering a joint powers authority established or authorized to merge parcels on private or public lands for the purpose of siting renewable energy facilities.

Chapter 492 (SB 1319 – Pavley); amending Section 66499.12 of, and adding Section 66451.24 to, the Government Code.

TAXATION

- **Income Tax Credit for Qualified Principal Residence**

The Personal Income Tax Law authorizes various tax credits, including a credit equal to the lesser of 5% of the purchase price of a qualified principal residence, as defined, or \$10,000, for purchases made between March 1, 2009, and before March 1, 2010, subject to specified restrictions.

This act authorizes a credit against those taxes in an amount equal to the lesser of 5% of the purchase price of a qualified principal residence, or \$10,000, for purchases made between May 1, 2010, and on or before December 31, 2010, or on or after December 31, 2010, and before August 1, 2011, subject to the submission of a certification to the Franchise Tax Board by either the taxpayer or seller, that the residence has either never been occupied or that the taxpayer is a first-time home buyer.

This act limits the total amount of credits to \$200,000,000 and requires that the aggregate limitation of \$100,000,000 in credits for the purchase of qualified principal residences that have never been occupied be reduced by 70% of the credit amount allocated under each certification by the Franchise Tax Board. This act also requires that the aggregate limitation of \$100,000,000 in credits for the purchase of a qualified principal residence by first-time home buyers be reduced by 57% of the credit amount allocated under each certification by the Franchise Tax Board.

Chapter 12 (AB 183 – Caballero); adding and repealing Section 17059.1 of the Revenue and Taxation Code. This act took effect as a tax levy on March 25, 2010.

(1) The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, “full cash value” is defined as the assessor’s valuation of real property as shown on the 1975-76 tax act under “full cash value” or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. For purposes

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TAXATION (cont.)

(Continued from Previous Page...)

of these provisions, existing law specifies that taxable real property has changed ownership when that property is leased for 35 years or more, including renewal options. Existing law conclusively presumes that all homes that are eligible for the homeowners' exemption, other than specified manufactured homes and floating homes, and that are on leased land are under a lease that have a renewal option of at least 35 years.

This act makes technical, nonsubstantive changes to this provision.

(2) The California Constitution excludes from a "change in ownership" specified property transfers of a principal residence and the first \$1,000,000 of the value of other real property between parents and their children, as defined by the Legislature. Existing law includes as a transfer, the transfer of a present beneficial ownership of property through the medium of a trust. Existing law requires those seeking this exclusion to file a claim with the county assessor. The claim is not a public document, but may be inspected by the transferee and the transferor or their respective spouse, transferor's or the transferee's legal representative, and the executor or administrator of the transferee's or transferor's estate.

This act authorizes the trustee of the transferee's trust to file a claim with the assessor and to furnish a written certification, and would further authorize the trustee of the transferee's or transferor's trust to inspect the claim.

(3) The California Constitution and existing property tax law authorize taxpayers to transfer the base year value of property to replacement property, if the claimant, who is a person claiming the property tax relief, meets certain conditions. Existing law also authorizes the co-owner of the original property, as a joint tenant, a tenant in common, or a community property owner, to claim the property tax relief. Existing law generally defines a person to be an individual.

This act clarifies that the term "person" includes an individual who is the present beneficiary of a trust and that a coowner includes a present beneficiary of a trust.

(4) Existing property tax law provides, pursuant to a specified provision of the California Constitution, for a homeowners' property tax exemption in the amount of \$7,000 of the full value of a "dwelling."

This act clarifies that a dwelling that is damaged in a misfortune or calamity is not disqualified from receiving the homeowners' exemption, if certain conditions are met. This act clarifies that a dwelling that does not exist on the lien date because it has been totally destroyed is disqualified from receiving the homeowner's exemption until the structure has been replaced and is occupied as a dwelling.

This act also deletes provisions providing that dwellings destroyed by specified disasters for which the Governor proclaimed a state of emergency are not disqualified from receiving the exemption, and replaces them with a general provision.

(5) Existing property tax law requires any property, not exempted from taxation by federal law or pursuant to the California Constitution, to be assessed at its full cash value. Existing law also establishes a rebuttable presumption of valuation at full value, provided certain conditions are met, for each taxable year from the 1984-85 tax year to the 2010-11 tax year, inclusive, for intercounty pipeline rights-of-way on publicly or privately owned property.

This act extends the application of this rebuttable presumption to the 2015-16 fiscal year.

(6) Existing law requires county boards to meet to equalize the assessment of property on the local roll and authorizes a taxpayer to apply to a county assessment appeals board for an assessment reduction under a variety of circumstances, including for a reduction of the base year value of real property.

Existing property tax law requires that the taxpayer's opinion of value, as reflected on a timely filed application for reduction in an assessment of property, be the basis for the calculation of property taxes, where the county assessment appeals board has failed to hear evidence and make a final determination on that application within either two years of the filing of that application or an extension of that two-year period. Existing law requires that the taxpayer's opinion of value be the basis for taxing the property described in the application for all succeeding tax years until the board acts upon the application, as provided. Existing law defines "county board" for purposes of this provision to mean a county board of supervisors meeting as a county board of equalization or an assessment appeals board.

This act replaces the term "county assessment appeals board" with the term "county board" and replaces the terms "taxpayer" and "taxpayer's" with the terms "applicant" and "applicant's."

(7) Existing law prohibits a current member of an assessment appeals board, any alternate members of an assessment appeals board, or a hearing officer from representing an applicant for compensation on any application for equalization in the county in which the board member, the alternate member, or the hearing officer serves. Existing law requires a hearing officer to notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal, and requires the clerk to schedule the matter before an alternate assessment appeals board.

This act repeals those provisions.

(8) Existing property tax law allows the correction of certain errors resulting in incorrect entries on the property tax roll, as provided.

This act makes clarifying revisions to this provision.

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TAXATION (cont.)

(Continued from Previous Page...)

(9) Existing law requires property taxes to be refunded if, among other circumstances, the taxes were paid on an assessment in excess of the equalized value of the property as determined pursuant to a specified statute by the county board of equalization.

This act changes an obsolete statutory reference in this provision.

(10) Existing law, the Governor's Reorganization Plan No. 1 of 2009, transferred duties of the Division of Telecommunications in the Department of General Services to the office of the State Chief Information Officer, including duties related to implementing revenue generating procedures for the 911 emergency telephone system. Existing law abolished the California Integrated Waste Management Board and transferred specified duties of that board to the Department of Resources Recycling and Recovery, including duties related to electronic waste.

This act makes specific conforming changes to reflect the transfer of these duties.

Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23, of this act, amending Sections 41030, 41031, 41032, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141, and 41142 of the Revenue and Taxation Code, respectively, are not operative due to the prior passage of Assembly Bill 2408 (Ch. 404).

Chapter 654 (SB 1494 – Comm. on Revenue and Taxation): amending Section 42463 of the Public Resources Code, to amend Sections 61, 63.1, 69.5, 218, 401.10, 1604, 4831, 5096, 41030, 41031, 41032, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141, 41142, 45855, 45863, 45981, and 45982 of, and to repeal Sections 1624.3, 1636.2, and 1636.5 of, the Revenue and Taxation Code.

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**THE FOLLOWING PAGES CONTAIN
NEW CASES
OF IMPORTANCE TO THE TITLE INDUSTRY**

PLEASE NOTE: The CLTA would like to thank Roger Therien of Westcor Land Title Insurance Company for providing the following case summary information.

ADVERSE POSSESSION

Nielsen v. Gibson

178 Cal. App. 4th 318 (2009)

ADVERSE POSSESSION: 1. The “open and notorious” element of adverse possession was satisfied where plaintiff possessed the subject property by actual possession under such circumstances as to constitute reasonable notice to the owner. Defendant was charged with constructive knowledge of plaintiff’s possession, even though defendant was out of the country the entire time and did not have actual knowledge.

2. The 5-year adverse possession period is tolled under C.C.P. section 328 for up to 20 years if the defendant is “under the age of majority or insane”. In the unpublished portion of the opinion the court held that although the defendant had been ruled incompetent by a court in Ireland, there was insufficient evidence that defendant’s condition met the legal definition of “insane”.

ASSESSMENT BOND FORECLOSURE

612 South LLC v. Laconic Ltd. P’ship

184 Cal. App. 4th 1270 (2010)

ASSESSMENT BOND FORECLOSURE: 1. Recordation of a Notice of Assessment under the Improvement Act of 1911 imparted constructive notice even though the notice did not name the owner of the subject property and was not indexed under the owner’s name. There is no statutory requirement that the notice of assessment be indexed under the name of the property owner.

2. A Preliminary Report also gave constructive notice where it stated: “The lien of special tax for the following municipal improvement bond, which tax is collected with the county taxes. . .”

3. A property owner is not liable for a deficiency judgment after a bond foreclosure because a property owner does not have personal liability for either delinquent amounts due on the bond or for attorney fees incurred in prosecuting the action.

ATTACHMENT

Bank of Am., N.A. v. Stonehaven Manor, LLC

186 Cal. App. 4th 719 (2010)

- **Reh’g Denied (July 29, 2010)**
- **Review Denied (Oct. 20, 2010)**

ATTACHMENT: The property of a guarantor of a debt--a debt which is secured by the real property of the principal debtor and also that of a joint and several co-guarantor--is subject to attachment where the guarantor has contractually waived the benefit of that security (i.e. waived the benefit of Civil Code section 2849).

COMMUNITY PROPERTY

Starr v. Starr

189 Cal. App. 4th 277 (2010)

COMMUNITY PROPERTY: In a divorce action the Court ordered the husband to convey title to himself and his former wife. Title had been taken in the husband’s name and the wife executed a quitclaim deed. But Family Code section 721 creates a presumption that a transaction that benefits one spouse was the result of undue influence. The husband failed to overcome this presumption where the evidence showed that the wife executed the deed in reliance on the husband’s representation that he would subsequently add her to title. The husband was, nevertheless, entitled to reimbursement for his separate property contribution in purchasing the property.

CONTRACTS

Kuish v. Smith

181 Cal. App. 4th (2010)

CONTRACTS: 1. Defendants’ retention of a \$600,000 deposit designated as “non-refundable” constituted an invalid forfeiture because a) the contract did not contain a valid liquidated damages clause, and b) plaintiff re-sold the property for a higher price, so there were no out-of-pocket damages. 2. The deposit did not constitute additional consideration for extending the escrow because it was labeled “non-refundable” in the original contract.

DEEDS OF TRUST

Perlas v. GMAC Mortg., LLC 187 Cal. App. 4th 429 (2010)

DEEDS OF TRUST: Borrowers filed an action against a lender to set aside a deed of trust, setting forth numerous causes of action. Borrowers' loan application (apparently prepared by a loan broker) falsely inflated the borrowers' income. In the published portion of the opinion. The court held in favor of the lender, explaining that a lender is not in a fiduciary relationship with borrowers and owes them no duty of care in approving their loan. A lender's determination that the borrowers qualified for the loan is not a representation that they could afford the loan. One interesting issue in the unpublished portion of the opinion was the court's rejection of the borrowers' argument that naming MERS as nominee invalidated the deed of trust because, as borrower argued, the deed of trust was a contract with MERS and the note was a separate contract with the lender.

In re: Estate of Hastie 186 Cal. App. 4th 1285 (2010)

DEEDS: An administrator of decedent's estate sought to set aside two deeds on the basis that the grantees were the grandson and granddaughter of decedent's caregiver. Defendant did not dispute that the transfers violated Probate Code section 21350, which prohibits conveyances to a fiduciary, including a caregiver, or the fiduciary's relatives, unless specified conditions are met. Instead, defendant asserted only that the 3-year statute of limitations had expired. The court held that the action was timely because there was no evidence indicating that the heirs had or should have had knowledge of the transfer, which would have commenced the running of the statute of limitations.

Luna v. Brownell 185 Cal. App. 4th 668 (2010)

DEEDS: A deed transferring property to the trustee of a trust is not void as between the grantor and grantee merely because the trust had not been created at the time the deed was executed, if (1) the deed was executed in anticipation of the creation of the trust and (2) the trust is in fact created thereafter. The deed was deemed legally delivered when the Trust was established.

ESCROW

Plaza Home Mortg., Inc. v. N. Am. Title Co., Inc. 184 Cal. App. 4th 130 (2010)

- **Reh'g Denied (May 25, 2010)**

ESCROW / LOAN FRAUD: The buyer obtained 100% financing and managed to walk away with cash (\$54,000) at close of escrow. (Actually, the buyer's attorney-in-fact received the money.) The lender sued the title company that acted as escrow holder, asserting that it should have notified the lender when it received the instruction to send the payment to the buyer's attorney-in-fact after escrow had closed. The court reversed a grant of a motion for summary judgment in favor of the escrow, pointing out that its decision is narrow, and holding only that the trial court erred when it determined the escrow did not breach the closing instructions contract merely because escrow had closed. The case was remanded in order to determine whether the escrow breached the closing instructions contract and if so, whether that breach proximately caused the lender's damages.

HOMEOWNER'S ASSOCIATIONS

Clear Lake Riviera Cmty. Ass'n. v. Cramer 182 Cal. App. 4th 459 (2010)

HOMEOWNER'S ASSOCIATIONS: Defendant homeowners were ordered to bring their newly built house into compliance with the homeowners association's guidelines where the house exceed the guidelines' height restriction by nine feet. Even though the cost to the defendants will be great, they built the house with knowledge of the restriction and their hardship will not be grossly disproportionate to the loss the neighbors would suffer if the violation were not abated, caused by loss in property values and loss of enjoyment of their properties caused by blocked views. The height restriction was contained in the associations guidelines and not in the CC&R's, and the association did not have records proving the official adoption of the guidelines. Nevertheless, the court held that proper adoption was inferred from the circumstantial evidence of long enforcement of the guidelines by the association.

HOMESTEADS

Tarlesson v. Broadway Foreclosure Investments, LLC

184 Cal. App. 4th 931 (2010)

HOMESTEADS: A judgment debtor is entitled to a homestead exemption where she continuously resided in property, even though at one point she conveyed title to her cousin in order to obtain financing and the cousin subsequently conveyed title back to the debtor. The amount of the exemption was \$150,000 (later statutorily changed to \$175,000) based on debtor's declaration that she was over 55 years old and earned less than \$15,000 per year, because there was no conflicting evidence in the record.

JUDGMENTS

Fid. Nat. Title Ins. Co. v. Schroeder

179 Cal. App. 4th 834 (2009)

JUDGMENTS: A judgment debtor transferred his 1/2 interest in real property to the other cotenant prior to the judgment creditor recording an abstract of judgment. The court held that if the trial court on remand finds that the transfer was intended to shield the debtor's property from creditors, then the transferee holds the debtor's 1/2 interest as a resulting trust for the benefit of the debtor, and the creditor's judgment lien will attach to that interest. The court also held that the transfer cannot be set aside under the Uniform Fraudulent Transfer Act because no recoverable value remained in the real property after deducting existing encumbrances and Gordon's homestead exemption.

The case contains a good explanation of the difference between a resulting ("intention enforcing") and constructive ("fraud-rectifying") trust. A resulting trust carries out the inferred intent of the parties; a constructive trust defeats or prevents the wrongful act of one of them.

LEASES

Abers v. Rounsavell

189 Cal. App. 4th 348 (2010),
as modified (Nov. 5, 2010)

LEASES: Leases of residential condominium units required a re-calculation of rent after 30 years based on a percentage of the appraised value of the "leased land". The term "leased land" was defined to consist of the condominium unit and an undivided in-

terest in the common area of Parcel 1, and did not include the recreational area (Parcel 2), which was leased to the Homeowners Association. The Court held that the language of the leases was clear. The appraisals were to be based only on the value of the lessees' interest in Parcel 1 and not on the value of the recreational parcel.

LIS PENDENS

Park 100 Inv. Group II v. Ryan

180 Cal. App. 4th 795 (2009)

LIS PENDENS: 1. A lis pendens may be filed against a dominant tenement when the litigation involves an easement dispute. Although title to the dominant tenement would not be directly affected if an easement right was shown to exist, the owner's right to possession clearly is affected

2. A recorded lis pendens is a privileged publication only if it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property. If the complaint does not allege a real property claim, or the alleged claim lacks evidentiary merit, the lis pendens, in addition to being subject to expungement, is not privileged.

MARKETABLE RECORD TITLE ACT

Schmidli v. Pearce

178 Cal. App. 4th 305 (2009),
as modified (Nov. 5, 2009)

MARKETABLE RECORD TITLE ACT: This case was decided under the pre-2007 version of Civil Code section 882.020, which provided that a deed of trust expires after 10 years if the maturity date is "ascertainable from the record". The court held that this provision was not triggered by a Notice of Default, which set forth the maturity date and which was recorded prior to expiration of the 10-year period.

NOTE: In 2007, C.C. section 882.020 was amended to make it clear that the 10-year period applies only where the maturity date is shown in the deed of trust itself.

MECHANICS' LIENS

Forsgren Associates Inc. v. Pac. Golf Cmty. Dev. LLC

182 Cal. App. 4th 135 (2010)

- Review Denied (June 17, 2010)

MECHANIC'S LIENS: 1. Owners of land are subject to mechanic's liens where they were aware of the work being done by the lien claimant and where they failed to record a notice of non-responsibility.

2. Civil Code section 3128 provides that a mechanic's lien attaches to land on which the improvement is situated "together with a convenient space about the same or so much as may be required for the convenient use and occupation thereof". Accordingly, defendant's land adjacent to a golf course on which the lien claimant performed work is subject to a mechanic's lien, but only as to the limited portions where a tee box was located and where an irrigation system was installed.

3. The fact that adjacent property incidentally benefits from being adjacent to a golf course does not support extending a mechanic's lien to that property.

4. The owners of the adjacent property were liable for interest, but only as to their proportionate share of the amount of the entire mechanic's lien.

NOTARIES

Purdum v. Holmes

187 Cal. App. 4th 916 (2010)

NOTARIES: A notary was sued for notarizing a forged deed. He admitted that he knew the grantor had not signed the deed, but the lawsuit was filed more than six years after the deed was signed and notarized. The court held that the action was barred by the six-year limitation period in C.C.P. 338(f)(3) even though plaintiff did not discover the wrongful conduct until well within the six year period.

OPTIONS

Steiner v. Thexton

48 Cal. 4th 411 (2010)

OPTIONS: A contract to sell real property where the buyer's performance was entirely conditioned on the buyer obtaining regulatory approval to subdivide the property is an option. Although plaintiffs' promise was initially illusory because no

consideration was given at the outset, plaintiffs' part performance of their bargained-for promise to seek a parcel split cured the initially illusory nature of the promise and thereby constituted sufficient consideration to render the option irrevocable.

PARTITION

LEG Investments v. Boxler

183 Cal. App. 4th 484 (2010)

PARTITION: A right of first refusal in a tenancy in common agreement does not absolutely waive the right of partition. Instead, the right of first refusal merely modifies the right of partition to require the selling cotenant to first offer to sell to the nonselling cotenant before seeking partition. [Ed. note: I expect that the result would have been different if the right of partition had been specifically waived in the tenancy in common agreement.]

PROPERTY TAXES

Steinhart v. County of Los Angeles

47 Cal. 4th 1298 (2010)

- Reh'g Denied (Mar. 30, 2010)

PROPERTY TAXES: A "change in ownership", requiring a property tax reassessment, occurs upon the death of a trust settlor who transferred property to a revocable trust, and which became irrevocable upon the settlor's death. The fact that one trust beneficiary was entitled to live in the property for her life, and the remaining beneficiaries received the property upon her death, did not alter the fact that a change in ownership of the entire title had occurred.

Grotenhuis v. County of Santa Barbara

182 Cal. App. 4th 1158 (2010)

PROPERTY TAXES: Subject to certain conditions, a homeowner over the age of 55 may sell a principle residence, purchase a replacement dwelling of equal or lesser value in the same county, and transfer the property tax basis of the principal residence to the replacement dwelling. The court held that this favorable tax treatment is not available where title to both properties was held by an individual's wholly owned corporation. The court rejected plaintiffs' argument that the corporation was their alter ego because that concept is used to pierce the corporate veil of an opponent, and not to enable a person "to weave in and out of corporate status when it suits the business objective of the day."

QUIET TITLE

Vanderkous v. Conley

188 Cal. App. 4th 111 (2010)

QUIET TITLE: 1) In a quiet title action the court has equitable powers to award compensation as necessary to do complete justice, even though neither party's pleadings specifically requested compensation. 2) Realizing that the court was going to require plaintiff to compensate defendant in exchange for quieting title in plaintiff's favor, plaintiff dismissed the lawsuit. However, the dismissal was invalid because it was filed following trial after the case had been submitted to the court.

TITLE INSURANCE

Lee v. Fidelity Nat. Title Ins. Co.

188 Cal. App. 4th 583 (2010)

- Reh'g Denied (Oct. 5, 2010)
- Review and Depub. Denied (Dec. 1, 2010)

TITLE INSURANCE: 1. The insureds could have reasonably expected that they were buying a title insurance policy on APN 22, and not just APN 9, where both the preliminary report and policy included a reference to APN 22, listed exclusions from coverage that were specific to APN 22, and attached an assessor's parcel map with an arrow pointing to both APN 9 and 22.

2. A preliminary report is merely an offer to issue a title policy, but an insured has the right to expect that the policy will be consistent with the terms of the offer.

3. There was a triable issue of fact as to whether a neighbor's construction of improvements on APN 22 was sufficient to commence the running of the statute of limitations, where the insureds testified that they did not know the precise location of APN 22 and assumed that the neighbors constructed the improvements on their own property.

4. There was a triable issue of fact as to whether Fidelity National Title Insurance Company acted as escrow holder or whether the escrow was conducted by its affiliate, Fidelity National Title Company (only the insurance company was named as a defendant).

Soifer v. Chicago Title Co.

187 Cal. App. 4th 365 (2010), as modified (Aug. 13, 2010)

- Review Denied (Oct. 27, 2010)

TITLE INSURANCE: A person cannot recover for errors in a title company's informal communications regarding the condition of title to property in the absence of a policy of title insurance or the purchase of an abstract of title. There are two ways in which an interested party can obtain title information upon which reliance may be placed: an abstract of title or a policy of title insurance. Having purchased neither, plaintiff cannot recover for title company's incorrect statement that a deed of trust in foreclosure was a first lien.

TRUSTEE'S SALES

Banc of Am. Leasing & Capital, LLC, v. 3 Arch Tr. Services, Inc.

180 Cal. App. 4th 1090 (2009)

TRUSTEE'S SALES: A judgment lien creditor is not entitled to receive a notice of default, notice of trustee's sale or notice of surplus sale proceeds unless the creditor records a statutory request for notice. The trustee is required to disburse surplus proceeds only to persons who have provided the trustee with a proof of claim. The burden rests with the judgment creditor to keep a careful watch over the debtor, make requests for notice of default and sales, and to submit claims in the event of surplus sale proceeds.

Garcia v. World Sav., FSB

183 Cal. App. 4th 1031 (2010)

- Reh'g Denied (May 5, 2010)
- Review Denied (June 23, 2010)

TRUSTEE'S SALES: A lender told plaintiffs/owners that it would postpone a trustee's sale by a week to give plaintiffs time to obtain another loan secured by other property in order to bring the subject loan current. Plaintiffs obtained a loan the following week, but the lender had conducted the trustee's sale on the scheduled date and the property was sold to a third party bidder. Plaintiffs dismissed causes of action pertaining to setting aside the sale and pursued causes of action for breach of contract, wrongful foreclosure and promissory estoppel.

The court held that there was no consideration that would support the breach of contract claim because plaintiffs promised nothing more than was due under the original agreement. Plaintiffs also could not prove a cause of action for wrongful foreclosure because that cause of action requires that the borrower tender funds to pay

(Continued on Next Page...)

TRUSTEE'S SALES (cont.)

(Continued from Previous Page...)

off the loan prior to the trustee's sale. However, plaintiffs could recover based on promissory estoppel because procuring a high cost, high interest loan by using other property as security is sufficient to constitute detrimental reliance.

Mabry v. Superior Court

185 Cal. App. 4th 208 (2010)

- Review Denied (Aug. 18, 2010)

TRUSTEE'S SALES: The court answered, and provided thorough explanations for, a laundry list of questions regarding Civil Code section 2923.5, which requires a lender to explore options for modifying a loan with a borrower prior to commencing foreclosure proceedings.

1. May section 2923.5 be enforced by a private right of action? Yes.
2. Must a borrower tender the full amount of the mortgage indebtedness due as a prerequisite to bringing an action under section 2923.5? No.
3. Is section 2923.5 preempted by federal law? No.
4. What is the extent of a private right of action under section 2923.5? It is limited to obtaining a postponement of a foreclosure to permit the lender to comply with section 2923.5.
5. Must the declaration required of the lender by section 2923.5, subdivision (b) be under penalty of perjury? No.
6. Does a declaration in a notice of default that tracks the language of section 2923.5(b) comply with the statute, even though such language does not on its face delineate precisely which one of three categories applies to the particular case at hand? Yes.
7. If a lender forecloses without complying with section 2923.5, does that noncompliance affect the title acquired by a third party purchaser at the foreclosure sale? No.
8. Did the lender comply with section 2923.5? Remanded to the trial court to determine which of the two sides is telling the truth.
9. Can section 2923.5 be enforced in a class action in this case? Not under these facts, which are highly fact-specific.
10. Does section 2923.5 require a lender to rewrite or modify the loan? No.

Malkoskie v. Option One Mortg. Corp.

188 Cal. App. 4th 968 (2010)

TRUSTEE'S SALES: After plaintiff stipulated to a judgment in an unlawful detainer action, she could not challenge the validity of the trustee's sale in a subsequent action because the subsequent action is barred by collateral estoppel. Because the action was barred, the court did not reach the question of the validity of the trustee's sale based on the substitution of trustee being recorded after trustee's sale proceedings had commenced and based on assignments of the deed of trust into the foreclosing beneficiary being recorded after the trustee's deed.

Vuki v. Superior Court

189 Cal. App. 4th 791 (2010)

TRUSTEE'S SALES: Unlike section 2923.5 as construed by this court in *Mabry v. Superior Court* 185 Cal. App. 4th 208 (2010), neither Section 2923.52 or Section 2923.53 provides any private right of action, even a very limited one as this court found in *Mabry*. Civil Code section 2923.52 imposes a 90-day delay in the normal foreclosure process. But Civil Code section 2923.53 allows for an exemption to that delay if lenders have loan modification programs that meet certain criteria. The only enforcement mechanism is that a violation is deemed to be a violation of lenders license laws. Section 2923.54 provides that a violation of sections 2923.52 or 2923.53 does not invalidate a trustee's sale, and plaintiff also argued that a lender is not entitled to a bona fide purchaser protection. The court rejected that argument because any noncompliance is entirely a regulatory matter, and cannot be remedied in a private action.

TRUSTS

Presta v. Tepper

179 Cal. App. 4th 909 (2009)

- Reh'g Denied (Nov. 24, 2009)

TRUSTS: An ordinary express trust is not an entity separate from its trustee, like a corporation is. Instead, a trust is merely a relationship by which one person or entity holds property for the benefit of some other person or entity. Consequently, where two men entered into partnership agreements as trustees of their trusts, the provision of the partnership agreement, which required that upon the death of a partner the partnership shall purchase his interest in the partnership, was triggered by the death of one of the two men.

USURY

Junkin v. Golden W. Foreclosure Serv., Inc.

180 Cal. App. 4th 1150 (2010)

USURY: The joint venture exception to the Usury Law, which has been developed by case law, provides that where the relationship between the parties is a bona fide joint venture or partnership, an advance by a joint venturer is an investment and not a loan, making the Usury Law inapplicable. The court applied the exception to a loan by one partner to the other because instead of looking at the loan in isolation, it looked at the entire transaction which it determined to be a joint venture. The case contains a good discussion of the various factors that should be weighed in determining whether the transaction is a bona fide joint venture. The presence or absence of any one factor is not, alone, determinative. The factors include whether or not: 1) there is an absolute obligation of repayment, 2) the investor may suffer a loss, 3) the investor has a right to participate in management, 4) the subject property was purchased from a third party and 5) the parties considered themselves to be partners.

WATER RIGHTS

Kendall v. Walker

181 Cal. App. 4th 584 (2009), as modified on denial of Reh'g (Jan. 27, 2010)

WATER RIGHTS: An owner of land adjoining a navigable waterway has rights in the foreshore adjacent to his property separate from that of the general public. The court held that the boundary in the waterway between adjacent parcels of land is not fixed by extending the boundary lines into the water in the direction of the last course ending at the shore line. Instead, it is fixed by a line drawn into the water perpendicular to the shore line. Accordingly, the court enjoined defendants from allowing their houseboat from being moored in a manner that crossed onto plaintiffs' side of that perpendicular boundary line.

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