Of the 1058 bills signed into law in 2012, 27 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, 2011-12 Session” link. All bills summarized in this publication become effective January 1, 2013, 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.

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Common Interest Developments

Existing law, the Davis-Stirling Common Interest Development Act defines and regulates common interest developments.

Chapter 180, on and after January 1, 2014, comprehensively reorganizes and recodifies the Davis-Stirling Common Interest Development Act. Chapter 180 also revises and recasts provisions regarding notices and their delivery, standardizes terminology, establishes guidelines on the relative authority of governing documents, and establishes a single procedure for amendment of a common interest declaration.

Chapter 180 guarantees the right of an owner of a separate interest to make changes in that separate interest, in a common interest development other than a condominium project, in which that right currently exists. Chapter 180 establishes an express list of conflicts of interest that may disqualify members of a board of directors of an association that manages a common interest development from voting on certain matters.

Chapter 180 also, among other things, revises provisions related to elections and voting, establishes standards for the retention of records, and broadens the requirement that liens recorded by the association in error be released.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments.

Chapter 181, operative January 1, 2014, makes various technical conforming changes to reflect a proposed revision and recodification of the Davis-Stirling Common Interest Development Act, and the operation of Chapter 181 is contingent upon the enactment and operation of that revision and recodification.

Chapter 180 (AB 805 – Torres) AND Chapter 181 (AB 806 – Torres): adding Part 5 (commencing with Section 4000) to Division 4 of, and repealing Title 6 (commencing with Section 1350) of Part 4 of Division 2 of, the Civil Code.

Chapter 180 (AB 2273 – Wieckowski): amending Section 2924b of, and adding Section 2924.1 to, the Civil Code.

• Foreclosure Documents

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 also imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust.

This act, notwithstanding any other law, requires the transfer, following the sale, of a property in a common interest development, executed under a power of sale contained in any deed of trust or mortgage to be recorded within 30 days.

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. Existing law requires that the information requested by the association be mailed within 15 business days following the date the trustee's deed is recorded.

This act instead requires that the requested information described above be mailed to the association within 15 business days following the date of the trustee's sale.

Chapter 255 (AB 2273 – Wieckowski): amending Section 2924b of, and adding Section 2924.1 to, the Civil Code.

• Association Records
• Disclosures Prior to Transfer

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives. Existing law specifies certain documents that an association must provide to a prospective purchaser before transfer of title to the separate interest or execution of a real property sales contract.

Existing law also specifies certain documents that an association must provide to a prospective purchaser upon request. Existing law prohibits an association from charging certain assessments, penalties, or fees in connection with a transfer of title or any other interest, unless an exception

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forceable obligation, dispose of all assets of the former redevelopment agency, and to remit unencumbered balances of redevelopment agency funds, including housing funds, to the county auditor-controller for distribution to taxing entities.

Existing law authorizes the city, county, or city and county that authorized the creation of a redevelopment agency to retain the housing assets, functions, and powers previously performed by the redevelopment agency, excluding amounts on deposit in the Low and Moderate Income Housing Fund.

The act modifies provisions relating to the transfer of housing responsibilities associated with dissolved redevelopment agencies and would define the term “housing asset” for these purposes. The act imposes new requirements on successor agencies with regard to the submittal of the Recognized Obligation Payment Schedule, the conducting of a due diligence review to determine the unobligated balances available for transfer to affected taxing entities, and the recovery and subsequent remittance of funds determined to have been transferred absent an enforceable obligation. The act authorizes the Department of Finance to issue a finding of completion to a successor agency that completes the due diligence review and meets other requirements. Upon receiving a finding of completion, the act authorizes the successor agency to participate in a loan repayment program and limited property management activities.

Existing law authorizes the Department of Finance and the Controller to require any documents associated with enforceable obligations to be provided to them in a manner of their choosing.

The act authorizes the county auditor-controller and the department to require the return of funds improperly spent or transferred to a public entity and would authorize the department and the Controller to require the State Board of Equalization and the county auditor-controller to offset sales and use tax and property tax allocations, respectively, to the local agency. The act authorizes the Controller to review the activities of a successor agency to determine if an improper asset transfer had occurred between the successor agency and the city or county that created the former redevelopment agency, and would require the Controller to order the return of these assets if such an asset transfer did occur.

NOTE: This act took immediate effect as an urgency measure on June 28, 2012.

Chapter 26 (AB 1484 - Committee on Budget): amending Section 53760.1 of the Government Code, and amending Sections 33500, 33501, 34163, 34171, 34173, 34175, 34176, 34177, 34178, 34179, 34180, 34181, 34182, 34183, 34185, 34186, 34187, 34188, and 34189 of, to add Sections 34167.10, 34177.3, 34177.5, 34178.8, 34179.5, 34179.6, 34179.7, 34179.8, 34182.5, 34183.5, 34189.1, 34189.2, and 34189.3 to, adding Chapter 9 (commencing with Section 34191.1) to Part 1.85 of Division 24 of, and adding and repealing Section 34176.5 of, the Health and Safety Code.
Corporations and Partnerships

- California Revised Uniform Limited Liability Company Act

Existing law, the Beverly-Killea Limited Liability Company Act, authorizes a limited liability company to engage in any lawful business activity, and governs the formation of limited liability companies, including requiring the members to enter into an operating agreement that shall be in writing or oral and to execute and file articles of organization with the Secretary of State.

This act repeals that act as of January 1, 2014, and enacts the California Revised Uniform Limited Liability Company Act, as of that date, which recasts provisions governing the formation and operation of limited liability companies. The act also authorizes an operating agreement to be in a record or implied, in addition to being in writing or oral, and authorizes a combination of those forms.

Existing law establishes requirements and procedures for membership interests in limited liability companies, including voting, meeting, and inspection rights. Existing law also specifies the duties and obligations of the managers of a limited liability company, including member-managers, as specified.

The act distinguishes between a manager-managed limited liability company and a member-managed limited liability company for purposes of defining the scope of a member's agency and imposing fiduciary duties only on persons in control of a limited liability company. The act authorizes the establishment of classes of members.

Existing law provides that the Secretary of State may issue a certificate of status with respect to a limited liability company.

This act also authorizes the Secretary of State to issue a certificate of registration with respect to a foreign limited liability company.

The act provides for the filing of specified records and further provides that an individual who signs such a record affirms under penalty of perjury that the information in the record is accurate.

Existing law does not specifically provide for jurisdiction of courts in matters regarding a limited liability company.

This act allows a limited liability company to be subject to the nonexclusive jurisdiction of courts in another state or the exclusive jurisdiction of California courts. The act also allows a member to consent to arbitration.

Existing law does not specifically provide for a member to dissociate from a limited liability company.

This act specifies when a member would be dissociated from a limited liability company and the effects of dissociation on the member.

Existing law establishes capital contribution standards and liability of members, and regulates the allocation of profits and losses, distributions of money and property, withdrawal of membership, assignment of interests, and dissolution of limited liability companies. Existing law requires the registration of foreign limited liability companies, as defined, with the Secretary of State, and prohibits the transaction of business in this state by an unregistered foreign limited liability company, subject to specified penalties. Existing law also regulates the merger of a limited liability company with one or more limited liability companies or other business entities, as specified, including requiring an agreement of merger and protection of the rights and liabilities of limited liability companies, creditors, and dissenting members.

This act amends the Open Space Easement Act of 1974 to require, upon the acceptance of any instrument creating an open-space easement, that the recording of the easement be consistent with the provisions of existing law that require county recorders to maintain a comprehensive index of conservation easements and Notice of Conservation Easements on land within that county. The act expands the purposes for which a city or county may accept a grant of an open-space easement in the resolution that the city or county is required to make when it accepts an open space easement.

Chapter 875 (SB 1501 – Keebo): amending Sections 51051, 51053, 51054, 51055, 51059, 51084, and 51087 of, and repealing Section 51052 of, the Government Code.

Easements

- Recording Open-Space Easements
- Acceptance of Open-Space Easements

This act amends the Open Space Easement Act of 1974 to require, upon the acceptance of any instrument creating an open-space easement, that the recording of the easement be consistent with the provisions of existing law that require county recorders to maintain a comprehensive index of conservation easements and Notice of Conservation Easements on land within that county. The act expands the purposes for which a city or county may accept a grant of an open-space easement in the resolution that the city or county is required to make when it accepts an open space easement.

Chapter 419 (SB 323 – Vargas): amending Sections 9653.6, 17900, and 23405.2 of the Business and Professions Code, amending Section 708.310 of the Code of Civil Procedure, amending Sections 171.03, 171.3, 1113, 1152, 1157, 2113, 6019.1, 8019.1, 12540.1, 15911.03, 15911.08, 16903, 16908, 16911, and 25005.1 of, adding Section 17657 to, adding Title 2.6 (commencing with Section 17701.01) to, and repealing Title 2.5 (commencing with Section 17000) of, the Corporations Code, amending Sections 12190, 12197, and 12262 of the Government Code, amending Section 1192.95 of the Insurance Code, amending Sections 17941, 17947, 19141, and 23332 of the Revenue and Taxation Code, and amending Section 1116 of the Unemployment Insurance Code.
**Escrow**

**Notice of Meetings and Records**

Existing law provides for the creation of common interest developments and requires that a common interest development be managed by an association that may or may not be incorporated. Existing law prescribes requirements for meetings of the board of directors of the association that manages the development, and requires notice of the time and place of a meeting of the board of directors to be given to the members of the association at least four days prior to the meeting.

This act requires notice for a meeting that will be held solely in executive session to be given to members of the association at least two days prior to the meeting, except as specified. The act provides that, if a member consents, notice may be given to the member electronically, and would also delete provisions that generally allow the board of directors to consider any proper matter at a meeting even if it has not been noticed as an action item for the meeting.

This act permits meetings of the board of directors of a common interest development association to be conducted by teleconference by revising the definition of a meeting for these purposes. The act requires that a teleconference meeting be conducted in a manner that protects the rights of members of the association and otherwise complies with other requirements governing common interest developments. The act also requires that the notice of a teleconference meeting identify at least one physical location so that members of the association may attend and would require that at least one member of the board of directors be present at that location. The act prohibits the board of directors from taking action on any item of business outside of a meeting. The act prohibits the board from conducting a meeting via a series of electronic transmissions, such as electronic mail, except to conduct an emergency meeting.

Existing law requires an association to make available specified association records, but excludes from those requirements agendas for meetings of the board of directors that are held in executive session.

This act deletes this exclusion, and therefore requires an association to make available agendas for meetings held in executive session.

**Foreclosure**

**Deficiency Judgments**

Existing law provides that a deficiency judgment shall lie following a judicial foreclosure with respect to, among other things, a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of real property, or under a deed of trust or mortgage on a dwelling to secure repayment of a purchase money loan which was in fact used to pay all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser.

This act additionally provides that a deficiency judgment shall lie in any event on any loan, refinance, or other credit transaction that is used to refinance a purchase money loan, or subsequent refinances of a purchase money loan, except to the extent that the lender or creditor advances new principal which is not applied to any obligation owed or to be owed under the purchase money loan, or to fees, costs, or related expenses of the refinancing.

The act provides that any payment of principal for a refinanced purchase money loan would be deemed to be applied first to the principal balance of the purchase money loan, and then to the remaining principal balance. The act’s provisions apply to a loan, refinance, or other credit transaction used to refinance a purchase money loan which is executed on or after January 1, 2013.

Chapter 64 (SB 1069 - Corbett): amending Section 580b of the Code of Civil Procedure.

**Pre-Foreclosure Procedures**

Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower prior to filing a notice of default to explore options for the borrower to avoid foreclosure. Existing law requires a notice of default or, in certain circumstances, a notice of sale, to include a declaration stating that the mortgagee, trustee, beneficiary, or authorized agent has contacted the borrower, or has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.

This act adds mortgage servicers to these provisions and would extend the operation of these provisions indefinitely, except that it would delete the requirement with respect to a notice of sale. The act, until January 1, 2018, additionally requires the borrower to be provided with specified information in writing prior to recordation of a notice of default and, in certain circumstances, within five business days after recordation. The act prohibits a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default or, until January 1, 2018, recording a notice of sale or conducting a trustee’s sale while a complete first lien loan modification application is pending.

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Foreclosure (cont.)

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The act, until January 1, 2018, establishes additional procedures to be followed regarding a first lien loan modification application, the denial of an application, and a borrower’s right to appeal a denial.

Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust, including, among other things, recording a notice of default and a notice of sale.

The act, until January 1, 2018, requires a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date and time. The act provides that an entity shall not record a notice of default or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the deed of trust, the original or substituted trustee, or the designated agent of the holder of the beneficial interest.

The act prohibits recordation of a notice of default or a notice of sale if a foreclosure prevention alternative has been approved and certain conditions exist and, until January 1, 2018, requires recordation of a rescission of those notices upon execution of a permanent foreclosure prevention alternative. The act, until January 1, 2018, prohibits the collection of application fees and the collection of late fees while a foreclosure prevention alternative is being considered, and would require a subsequent mortgage servicer to honor any previously approved foreclosure prevention alternative.

The act authorizes a borrower to seek an injunction and damages for violations of certain of the provisions described above. The act authorizes the greater of treble actual damages or $50,000 in statutory damages if a violation of certain provisions is found to be intentional or reckless or resulted from willful misconduct. The act authorizes the awarding of attorneys’ fees for prevailing borrowers. Violations of these provisions by licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate would also be violations of those respective licensing laws.

The act provides that the requirements imposed on mortgage servicers, mortgagees, trustees, beneficiaries, and authorized agents, described above are applicable only to mortgages or deeds of trust secured by residential real property not exceeding 4 dwelling units that is owner-occupied, and, until January 1, 2018, only to those entities who conduct more than 175 foreclosure sales per year or annual reporting period.

The act requires, upon request from a borrower who requests a foreclosure prevention alternative, a mortgage servicer who conducts more than 175 foreclosure sales per year or annual reporting period to establish a single point of contact and provide the borrower with one or more direct means of communication with the single point of contact. The act specifies various responsibilities of the single point of contact.

Existing law prescribes documents that may be recorded or filed in court.

This act requires that a specified declaration, notice of default, notice of sale, deed of trust, assignment of a deed of trust, substitution of trustee, or declaration or affidavit filed in any court relative to a foreclosure proceeding or recorded by or on behalf of a mortgage servicer shall be accurate and complete and supported by competent and reliable evidence. The act requires that before recording or filing any of those documents, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower’s default and the right to foreclose, including the borrower’s loan status and loan information.

The act, until January 1, 2018, provides that any mortgage servicer that engages in multiple and repeated violations of these requirements shall be liable for a civil penalty of up to $7,500 per mortgage or deed of trust, in an action brought by specified state and local government entities, and would also authorize administrative enforcement against licensees of the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate.

Chapter 86 (AB 278 – Eng) AND Chapter 87 (SB 900 – Leno); amending and adding Sections 2923.5 and 2923.6 of, amending and repealing Section 2924 of, adding Sections 2920.5, 2923.4, 2923.7, 2924.17, and 2924.20 to, adding and repealing Sections 2923.55, 2924.9, 2924.10, 2924.18, and 2924.19 of, and adding, repealing, and adding Sections 2924.11, 2924.12, and 2924.15 of, the Civil Code.

Military Service Protections

Existing law provides legal rights for service members in regard to court proceedings, interest liabilities, contracts, eviction proceedings, leases, tax and assessments, life insurance policies, and health insurance.

Existing law prohibits any sale, foreclosure, or seizure of real or personal property subject to a mortgage, or other security, for nonpayment by the service member owner if made during the period of military service or within three months thereafter. Court orders and party agreements are exceptions to this provision. Violation of this provision is a misdemeanor.

This act extends the prohibition from three months to nine months after the military service period.

Chapter 204 (AB 2475 – Committee on Veterans Affairs); amending Section 408 of the Military and Veterans Code.
Foreclosure (cont.)

• Document Translations

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the mortgagor, trustee, 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 mortgagee or trustor. Existing law specifies other requirements and procedures for completion of a foreclosure sale, including recording a notice of sale prior to exercising a power of sale. Existing law requires, under specified circumstances, that a summary of mortgage terms be provided to the borrower in one of five specified languages.

This act, with respect to residential real property containing no more than four dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to provide to the mortgagor or trustor attached to a copy of the recorded notice of default and a copy of the notice of sale a summary of the information required to be contained in those notices in English and five specified languages. The act also requires the notice of default and notice of sale to include a statement, in English and five specified languages, that a summary of the key provisions of the respective notice in English and five specified languages is attached. The act provides that the attached summaries are not required to be recorded or published. Those provisions would become operative on April 1, 2013, or 90 days following the issuance of summary translations by the Department of Corporations, whichever occurs later.

The act also requires the Department of Corporations to provide a standard translation of the statement and summaries described above for a notice of default and a notice of sale, respectively, in those languages, and to make those documents available without charge on its Internet Web site. The act specifies that any mortgagee, trustee, beneficiary, or authorized agent who provides the department’s translations, in the manner prescribed, shall be in compliance with that provision.

This act incorporates additional changes to Section 2924 of the Civil Code proposed by AB 278. The act repeals duplicate provisions of law.

Chapter 556 (AB 1599 – Feuer): amending Section 2924f of, amending and repealing Section 2924 f, and adding Section 2923.3 to, the Civil Code.

• Disclosure to Tenant of Notice of Default

Existing law generally regulates the hiring of real property, including, among other things, specifying certain obligations imposed on landlords and obligations imposed on tenants. Existing law, until January 1, 2013, requires a tenant of property upon which a notice of sale has been posted to be provided a specified notice advising the tenant that, among other things, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 60-day eviction notice, and that other laws may prohibit the eviction or provide the tenant with a longer notice before eviction.

This act, until January 1, 2018, requires every landlord who offers for rent a single-family dwelling, or a multifamily dwelling not exceeding four units, and who has received a notice of default that has not been rescinded with respect to a mortgage or deed of trust secured by that property to disclose the notice of default in writing to any prospective tenant prior to executing a lease agreement for the property. The act provides that a violation of those provisions would allow the tenant to void the lease and entitle the tenant to recovery of one month’s rent or twice the amount of actual damages from the landlord, and all prepaid rent, if the tenant voids the lease and vacates the property in addition to any other remedies that are available.

The act also provides that if the tenant elects not to void the lease and the foreclosure sale has not yet occurred, the tenant may deduct a total amount equal to one month’s rent from future rent obligations owed the landlord who received the notice of default. The act specifies the content of the written disclosure notice, and would require the notice to be provided in English and other languages.

The act exempts a property manager from liability for failing to provide the written disclosure notice unless the landlord notified the property manager of the notice of default and directed him or her in writing to deliver the written disclosure.

Chapter 566 (SB 1191 – Simitian): adding and repealing Section 2924.85 of the Civil Code.

Insurance

• Investment Reports

Existing law requires each admitted insurer to provide information to the Insurance Commissioner on all of its community development investments and community development infrastructure investments in California.

This act requires that each admitted insurer with premiums written equal to or in excess of $100,000,000 submit to the Commissioner, by July 1, 2013, a report on its minority, women, and disabled veteran-owned business procurement efforts. The act provides that the failure to file the report by July 1, 2013, subjects the admitted insurer to civil penalties to be fixed and enforced by the Commissioner.

The act requires, among other things, that commencing July 1, 2015, each eligible admitted insurer biennially update its supplier diversity report and submit a new report, containing additional elements, to the Commissioner no later than July 1.

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INSURANCE (cont.)

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The act requires that, by July 31, 2013, the Commissioner establish and maintain a link on the department’s Internet Web site that provides public access to the contents of each admitted insurer’s report on minority, women, and disabled veteran-owned business procurement efforts.

The act provides that these provisions shall remain in effect only until January 1, 2019.

Chapter 414 (AB 53 - Solorio); adding and repealing Article 10.2 (commencing with Section 927) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

Chapter 101 (AB 2476 - Committee on Veterans Affairs): amending Section 405 of the Military and Veterans Code.

LOANS

• Rate of Interest on Service Members’ Mortgage Loans

Existing law provides certain legal rights for service members, including with regard to credit agreements, interest liabilities, and mortgages and trusts. Existing law prohibits an obligation or liability bearing interest at a rate in excess of 6% per year incurred by a service member before that person’s entry into service from bearing interest at a rate in excess of 6% per year during any part of the period of military service, except as prescribed. Existing law provides that a person who violates this rate of interest provision is liable for actual damages, reasonable attorney’s fees, and costs incurred by an injured party.

This act, in addition, recasts these provisions to prohibit an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, that is bearing interest at a rate in excess of 6% per year and incurred by a service member before that person’s entry into service from bearing interest in excess of 6% per year for one year after any part of the period of military service.

Chapter 101 (AB 2476 - Committee on Veterans Affairs): amending Section 405 of the Military and Veterans Code.

• Advance Loan Modification Fees

Existing law, until January 1, 2013, prohibits any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform residential mortgage loan modifications for mortgages and deeds of trust secured by real property containing four or fewer dwelling units, or other forms of mortgage loan forbearance for a fee paid by the borrower, from demanding or receiving any preperformance compensation, requiring collateral to secure payment, or taking a power of attorney from the borrower. Existing law makes the violation of those provisions a crime and, with respect to an attorney, cause for imposition of discipline.

Chapter 563 extends the operation of those provisions until January 1, 2017.

Existing law prohibits any person from engaging in the business of, acting in the capacity of, advertising as, or assuming to act as, a real estate broker or a real estate salesperson without first obtaining a real estate license.

Chapter 569 additionally prohibits any person from engaging in the business of, acting in the capacity of, advertising as, or assuming to act as, a mortgage loan originator without having obtained a license endorsement.

Existing law, until January 1, 2013, prohibits any person who negotiates or arranges residential mortgage loan modifications for a fee from demanding or receiving preperformance compensation, as specified, or requiring security as collateral or taking a power of attorney from the borrower and makes a violation of that prohibition a misdemeanor subject to specified fines.

Existing law, until January 1, 2013, also prohibits certain conduct by a real estate licensee in connection with a mortgage loan modification or forbearance, including demanding compensation before service is fully performed, taking a lien on property or wage assignment, or taking a power of attorney from the borrower. A violation of those prohibitions is a misdemeanor.

Chapter 569 extends the operation of the above-described provisions indefinitely.

Existing law provides that any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or any person acting or advertising themselves as a real estate broker, real estate salesperson, or mortgage loan originator without a license or license endorsement, is guilty of a misdemeanor.

Existing law requires any person, including a person licensed to practice law, who performs a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation to provide a specified notice to the borrower concerning third parties arranging loan modifications. Existing law also prohibits certain conduct by that person including, among other things, demanding compensation before service is fully performed, taking a lien on property or a wage assignment, or taking a power of attorney from the borrower. Existing law provides that a violation of these requirements or prohibitions is a misdemeanor with specified penalties. Existing law requires that a prosecution for these offenses be commenced within one year of the commission of the offense.

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Loans (cont.)

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Chapter 569 extends the time to commence a prosecution for these offenses to three years from the discovery of the commission of the offense, or within three years after completion of the offense, whichever is later.

Chapter 563 (SB 980 - Vargas) AND Chapter 569 (AB 1950 - Davis); amending Section 1923.2 of the Civil Code, amending Section 2944.7 of the Civil Code, and amending Section 802 of the Penal Code.

- Reverse Mortgage Loan Counseling

Existing law defines and regulates reverse mortgage loans and prohibits a reverse mortgage loan application from being taken by a lender unless the loan applicant has been provided a specified notice advising the applicant about counseling prior to obtaining the reverse mortgage loan. Existing law requires a lender to provide a prospective borrower a list of not fewer than 10 housing counseling agencies approved by the United States Department of Housing and Community Development to engage in reverse mortgage counseling and prohibits a lender from accepting a final and complete application for a reverse mortgage or assessing any fees upon a prospective borrower without receiving certification that the prospective borrower has received this counseling from an approved counseling agency.

This act requires the above certification to indicate that the reverse mortgage counseling was conducted in person, unless the borrower elected to receive the counseling in another manner.

Chapter 641 (AB 2010 - Bonilla); amending Section 1923.2 of the Civil Code.

Local Government

- Blight
- Enforcement Proceedings
- Lis Pendens

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, until January 1, 2013, authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to $1,000 per day for a violation. Existing law, until January 1, 2013, requires a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

This act deletes the repeal clause for these provisions and thus extends the operation of these provisions indefinitely.

The State Housing Law requires the housing or building department or, if there is no building department, the health department, of every city, county, or city and county, or a specified environmental agency, to enforce within its jurisdiction all of the State Housing Law, the building standards published in the State Building Standards Code, and other specified rules and regulations.

If there is a violation of these provisions or any order or notice that gives a reasonable time to correct that violation, or if a nuisance exists, an enforcement agency is required, after 30 days' notice to abate the nuisance, to institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

This act prohibits an enforcement agency from commencing any action or proceeding until at least 60 days after a person takes title to the property, unless a shorter period of time is deemed necessary by the enforcement agency in its sole discretion, if the person has purchased and is in the process of diligently abating any violation at a residential property that had been foreclosed on or after January 1, 2008.

This act requires any entity that releases a lien securing a deed of trust or mortgage on a property for which a notice of pendency of action, has been recorded against the property, as specified, to notify in writing the enforcement agency that issued the order or notice within 30 days of releasing the lien.

Existing law authorizes, among other things, the enforcement agency to seek and the court to order imposition of specified penalties or the enforcement agency, tenant, or tenant association or organization to seek, and the court to order, the appointment of a receiver for a substandard building, if the owner of the property fails to comply within a reasonable time with the terms of an order or notice.

This act authorizes a court to require the owner of the property to pay all unrecovered costs associated with the receivership in addition to any other remedy authorized by law.

Chapter 201 (AB 2314 - Carter); amending Section 2929.3 of the Civil Code, and amending Sections 17980 and 17980.7 of the Health and Safety Code.
## Property Taxation

- **Change in Ownership**
- **Exclusion**
- **Cotenancy Interests**

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. Existing property tax law specifies those circumstances in which the transfer of ownership interests results in a change in ownership of the real property, and provides that certain transfers do not result in a change of ownership.

This act provides that a transfer of a cotenancy interest in real property from one cotenant to the other that takes effect upon the death of the transferor cotenant and that occurs on or after January 1, 2013, does not constitute a change of ownership. This act requires the transferee cotenant to sign an affidavit under penalty of perjury.

NOTE: This act took effect as a tax levy on September 29, 2012.

Chapter 781 (AB 1700 – Butler); adding Section 62.3 to the Revenue and Taxation Code.

### Public Lands

- **State Lands Commission**
- **Requirement of Obtaining Permits**

Existing law establishes the State Lands Commission in the Natural Resources Agency. Under existing law, the commission classifies state land for its different possible uses and has jurisdiction over various state lands.

This act prohibits a person from constructing, placing, maintaining, owning, using, or possessing a structure or facility on land that is under the commission’s jurisdiction and owned by the state, without first obtaining all necessary easements, leases, or permits from the commission that authorize the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility, except for specified facilities owned by an electrical corporation, as defined, or a gas corporation.

This act establishes a civil penalty for a violation of that provision. A person who violates that provision would either be liable for a penalty of not more than $1,000 a day or an amount that is not more than 60% higher than the full fair market rental for each month that a violation occurs. The act states criteria for determining the appropriate penalty. The act exempts a telegraph or telephone corporation undertaking specified action and a franchised cable television corporation, limited to their usage of poles, conduits, cables, wires, and associated appurtenances under either their ownership or the ownership of an electrical corporation, from that penalty.

The act, among other things, also establishes procedures to enjoin such activity, remove a violating structure or facility, serve notice of any violation, and conduct an administrative hearing on the violation.

The act exempts certain persons from the act’s prohibitions and would authorize the commission to adopt regulations to carry out its provisions.

Chapter 202 (AB 2082 – Atkins); adding Sections 6224.3, 6224.4, and 6224.5 to the Public Resources Code.

### Recording

- **Recording Authorized by Ordinance**
- **Recording of Notice to Preserve Interest**

Existing law requires the county recorder, upon payment of proper fees and taxes, to record any document that is authorized or required by statute or court order to be recorded, provided that the document meets certain standards.

(Continued on Next Page...)

Chapter 247 (AB 2082 – Atkins); adding Sections 6224.3, 6224.4, and 6224.5 to the Public Resources Code.
This act prohibits the county recorder from refusing to record any instrument, paper, or notice that is authorized or required by statute, court order, or local ordinance that relates to the recording of any instrument, paper, or notice that relates to real property to be recorded on the basis of its lack of legal sufficiency.

Existing law sets forth the required form that a notice of intent to preserve an interest in real property must take.

This act revises that form by repealing the existing acknowledgment required for a notice of intent to preserve interest in real property to instead require the use of the general acknowledgment form.

* Recording Fees for Fraud Investigation

Existing law authorizes the board of supervisors to adopt, by resolution, a fee of up to $3 for each recording of a real estate instrument, paper, or notice required or permitted by law to be recorded to fund the Real Estate Fraud & Protection Trust Fund. Existing law defines the term “real estate instrument” to mean a deed of trust, an assignment of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, or a notice of rescission of declaration of default. Existing law requires a district attorney in a participating county to annually submit a report to the Legislative Analyst’s Office on the effectiveness of deterring, investigating, and prosecuting real estate fraud crimes funded by the recording fee, and requires the Legislative Analyst’s Office to report to the Legislature on these efforts.

This act increases the highest fee that may be charged to $10 and also includes in the definition of “real estate instrument” an amended deed of trust, an abstract of judgment, an affidavit, an assignment of rents, an assignment of a lease, a construction trust deed, covenants, conditions, and restrictions (CC&Rs), a declaration of homestead, an easement, a lease, a lien, a lot line adjustment, a mechanics lien, a modification for deed of trust, a notice of completion, a quitclaim deed, a subordination agreement, a trustee’s deed upon sale, and any Uniform Commercial Code amendment, assignment, continuation, statement, or termination. The act specifies that “real estate instrument” does not include any deed, instrument, or writing recorded in connection with a transfer subject to the imposition of a documentary transfer tax as defined in state law.

The act repeals the specific reporting requirement from county district attorneys to the Legislative Analyst’s Office and from the Legislative Analyst’s Office to the Legislature.

* Filing of Financial Statements Prior to Transfer

Existing law provides generally that a transfer of personal property not accompanied by delivery and change of possession of the property is void against the transferor’s creditors, except for certain specified transfers or types of property, including personal property that satisfies certain conditions. Among these conditions, existing law requires the transferor or the transferee to file, prior to the date of the intended transfer, a signed financing statement with respect to the property transferred.

This act revises the above condition by requiring the transferor or the transferee to file, prior to the date of the intended transfer, a financing statement authorized in an authenticated record by the transferor with respect to the property transferred. This change recognizes signing or electronic authentication as provided in the U.C.C.

* Revocable Trusts

Under existing law, a trust that is revocable by the settlor may be revoked in whole or in part by either compliance with any method of revocation provided in the trust instrument or by a writing, other than a will, signed by the settlor and delivered to the trustee during the settlor’s lifetime.

This act also allows revocation of a trust to be made by a writing signed by any other person holding the power of revocation and delivered to the trustee during the lifetime of the settlor or the person holding the power of revocation.
(Continued from Previous Page...)

Under existing law, if a trust is created by more than one settlor, each settlor may revoke the trust as to the portion of the trust contributed by that settlor, unless the trust instrument provides otherwise and except with respect to certain community property interests.

This act specifies that a settlor may grant to another person, including his or her spouse, a power to revoke all or part of that portion of the trust contributed by that settlor, regardless of whether that portion was separate property or community property of that settlor, and regardless of whether that power to revoke is exercisable during the lifetime of that settlor or continues after the death of that settlor, or both.

Existing law establishes procedures governing the disposal of property when a trust is terminated. Under existing law, if a trust is revoked by the settlor, then the trust property is disposed of according to the directions of the settlor.

This act instead specifies that if a trust is revoked by the settlor, the trust property would be disposed of first as directed by the settlor, secondly, as provided in the trust instrument, and to the extent there is no direction by the settlor or in the trust instrument, to the settlor, or his or her estate. The act also specifies that if a trust is revoked by any person holding a power of revocation other than the settlor, the trust property would first be disposed of as provided in the trust instrument, secondly as directed by the person exercising the power of revocation, and to the extent there is no direction in the trust instrument or by the person exercising the power of revocation, to the person exercising the power of revocation, or his or her estate.

This act extends these provisions to any case in which specifically given property is encumbered by a deed of trust, mortgage, or other instrument. The act also applies these provisions to property that is sold by a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust. The act further specifies that a transferee of a specific gift has the right to a general pecuniary gift equal to the net sale price of the property unreduced by the payoff of any such encumbrance or the amount of the unpaid encumbrance on the property, as well as the property itself.

Under existing law, if an eminent domain award for the taking of specifically given property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if the proceeds on fire or casualty insurance on, or recovery for injury to, specifically gifted property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the recipient of a specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery.

This act extends these provisions to eminent domain awards, or insurance proceeds or recovery, paid to a trustee acting for an incapacitated settlor of a trust established by the settlor as a revocable trust. The act also specifies that in those cases the recipient of the specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery unreduced by the payoff of any encumbrance paid on the property by the conservator, agent, or trustee, after the execution of the instrument.

Chapter 55 (AB 1683 - Hagman); amending Sections 15401 and 15410 of the Probate Code.

Chapter 195 (AB 1985 - Silva); amending Section 21134 of the Probate Code.

• **Construction of Instruments**

Existing law provides rules for the interpretation of wills, trusts, deeds, and other instruments, which are to be used as interpretive aids if the intention of the transferor is not indicated by the instrument. Under existing law, if after the execution of the instrument of gift, specifically given property is sold, or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, the transferee of the specific gift has the right to a general pecuniary gift equal to the net sale price of, or the amount of the unpaid loan encumbrance on, the property.
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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 Old Republic Title Company for providing the following case summary information.
**Antideficiency Law**

**Fait v. New Faze Dev., Inc.**

Plaintiffs sold a parcel of property and carried back a note secured by a deed of trust to finance the balance of the purchase price. The purchaser demolished a building on the property to make way for new development, but was unable to complete the development and defaulted on the loan. Plaintiffs foreclosed non-judicially and purchased the property at the foreclosure sale. They then sued for waste and impairment of security based on the demolition of the building and the resulting loss of value. Defendants claimed that the action was barred by California’s antideficiency laws.

The court held that the antideficiency laws bar recovery for waste only if it is caused by the economic pressures of a depressed market, such as where an owner is compelled as a result of an economic downturn to forego the general maintenance and repair of the property in order to keep up with payments on the mortgage debt. But antideficiency laws do not preclude this action because defendants’ demolition of the building was not induced by an economic downturn.

**Boundary Disputes**

**Martin v. Van Bergen**

The doctrine of boundary by agreement does not apply where: 1) a boundary was not uncertain where it can be ascertained by an accurate survey; and 2) evidence of an actual agreement to resolve a boundary dispute does not exist.

**CC&Rs**

**Pinnacle Museum Tower Assn. v. Pinnacle Market Development**
55 Cal. 4th 223 (2012)

The court held that a provision in CC&R’s providing that the homeowners association and each condominium owner agree to waive their right to a jury trial and to have any construction dispute resolved exclusively through binding arbitration is not unconscionable and is properly enforced against the association, as well as the individual owners.

**Damages: Diminution in Value**

**SCI Cal. Funeral Services, Inc. v. Five Bridges Found.**

In this non-title insurance case, plaintiff purchased property, including an easement that was determined, in another action, to be invalid. The court held that the buyer’s damages for loss of the easement included, in addition to diminution in value caused by loss of the easement, damages attributable to the fact that the easement had additional unique value to a neighbor, which plaintiff could have used as a “bargaining chip” to obtain a higher price when negotiating a sale of the easement to the neighbor.

**Domestic Partners**

**Burnham v. California Pub. Employees’ Ret. Sys.**

Presenting a declaration of domestic partnership for filing with the Secretary of State is a necessary prerequisite for a valid domestic partnership. Signing a declaration of domestic partnership and having it notarized is not sufficient alone.

Here, because plaintiff’s purported domestic partner was deceased when plaintiff presented the declaration of domestic partnership for filing with the Secretary of State, they never became domestic partners. Therefore, Plaintiff was not entitled to the decedent’s state pension survivor benefits.

The court also held that the putative spouse doctrine did not apply because that doctrine protects the expectation of parties who accumulate property over time believing they are part of a valid union. Here, plaintiff and the decedent attempted to establish a domestic partnership shortly before one of them died, so they did not accumulate property over time in expectation of having a valid union.
**EASEMENTS**

**Sumner Hill Homeowners’ Assn., Inc. v. Rio Mesa Holdings, LLC**

205 Cal. App. 4th 999 (2012), as modified on denial of reh’g (May 30, 2012), review denied (July 18, 2012)

In the published portion of the opinion, the court held that a subdivision map failed to provide public access to a river as required by Government Code Section 66478.4 if the river is navigable, but that the challenge to the map was barred by the 90-day statute of limitations in Government Code Section 66499.37.

The court did not reach the question of whether or not the river is navigable. The court also held that implied and equitable easement rights are sufficient “title” to support a slander of title action, and that defendant slandered plaintiffs’ title by recording a Notice of Permission to Use Land Under Civil Code Section 813 that purported to restrict plaintiffs use of the easement.

The court also addressed Streets and Highways Code Section 8353, which provides that the vacation of a street or highway extinguishes all private easements claimed by reason of the purchase of a lot by reference to a map on which the street or highway is shown, unless within two years after the vacation, the claimant records a notice describing the private easement. The court held that this section does not apply to private easements that are based on other or additional grounds besides the fact that the purchase was by reference to a map depicting a street.

**Equitable Subrogation**

**JP Morgan Chase Bank v. Banc of America Practice Solutions**


The court applied the doctrine of equitable subrogation to competing deeds of trust and affirmed the trial court decision. Chase cross complained against Banc after Banc instituted a judicial foreclosure proceeding. The trial court granted Chase summary adjudication, establishing two equitable liens in favor of Chase.

The evidence showed that Chase intended to be in first position, and that Banc intended to be in third position, junior to the two deeds of trust that ended up being paid off in the Chase loan escrow.

**FIXTURES**

**Vieira Enterprises, Inc. v. City of E. Palo Alto**

208 Cal. App. 4th 584 (2012), as modified on denial of reh’g (Sept. 13, 2012)

The court held that Health & Safety Code Section 18551, which sets forth the requirements for approving the installation of a manufactured homes on a foundation, does not preempt the common law of fixtures. The notice and recording requirements of Section 18551 serve the sole purpose of placing the manufactured homes on the property tax rolls to permit taxing them as an improvement of real property.

Accordingly, the manufactured home in this case became a fixture at the time it was installed even though that was prior to the City’s issuance of a notice of installation. The case also contains a discussion of the law relating to fixtures.

**FORECLOSURE**

**Ragland v. U.S. Bank Nat. Assn.**


The court overruled the trial court’s order sustaining the bank's motion for summary judgment, holding that:

1. Plaintiff raised a triable issue of fact as to whether the bank’s representative told her not to make a payment. Plaintiff’s failure to tender the amount due does not preclude her from raising this issue because the amount claimed by the bank includes late charges and other charges that would not have been incurred if plaintiff had continued to make payments.

2. Civil Code section 2924g(d), prohibiting a trustee’s sale from being conducted prior to the seventh day after an injunction is terminated, creates a private right of action and is not preempted by federal law.

NOTE: Plaintiff conceded that her cause of action for rescission of the trustee’s deed was no longer viable because the property was resold to a bona fide purchaser for value.
Forgery

In re Estates of Collins


The son of one of two property owners forged a deed after they both had died. The court held that the administrator of the estates of the property owners was precluded from attacking the admittedly forged deed due to the “unclean hands” doctrine.

The administrator, prior to being appointed as such, wrongfully sought to control the house by filing a defective mechanics lien, filing a baseless quiet title action for his own benefit, and renting the property to tenants for his own benefit, without regard for the other heirs of the two deceased property owners. The court pointed out that a forged deed is a nullity, but a party’s conduct may estop him from asserting that the deed is forged, and that the unclean hands doctrine can prevent a party from attacking a forged deed.

The court also addressed the fact that as the other heirs should not suffer as a result of the administrator’s wrongful conduct. However, the court found that there was no evidence that any heirs who had not aided, ratified, or acquiesced in the administrator’s actions actually exist in this case.

Guaranty

Gray1 CPB, LLC v. Kolokotronis


The court rejected defendant’s contention that the guaranty he signed was actually a demand note, which would have meant that he could compel the lender to foreclose on the security first and that the waiver of his rights under various antideficiency statutes would be invalid. The court held that the following language in the guaranty did not turn the guaranty into a promissory note: “whether due or not due,” “on demand,” and “not contingent upon and are independent of the obligations of Borrower.”

Indians: Sovereign Immunity

Am. Prop. Mgmt. Corp. v. Superior Court


The court held that a California limited liability company (“the LLC”), which was wholly owned through a series of California limited liability companies by an Indian tribe, was not entitled to sovereign immunity.

The LLC owned a hotel and the lawsuit involved a dispute with its property management company. The court stated that the dispositive fact was that the LLC was a California limited liability company.

Nevertheless, it went through the weighing process prescribed by the US 10th Circuit Court of Appeals in Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort 629 F.3d 1173, which concluded that a court needs to determine whether a tribe’s entities are an “arm of the tribe” by looking to a variety of factors when examining the relationship between the tribe and its entities, including but not limited to: (1) their method of creation; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) whether the tribe intended for the entities to have tribal sovereign immunity; (5) the financial relationship between the tribe and the entities; and (6) whether the purposes of tribal sovereign immunity are served by granting immunity to the entities. The court concluded that the balance of these factors weighed heavily against sovereign immunity, and reiterated that the most significant fact was the LLC’s organization as a California limited liability company.

The concurring opinion would not accord the same dispositive effect of formation under state law as a limited liability company that the majority did, but agreed that the factors set forth by the 10th Circuit weighed against sovereign immunity.
Arabia v. BAC Home Loans Servicing, L.P.


The court held:

1. A loan servicer may prosecute a judicial foreclosure action in its own name as long as the right to foreclose has been assigned to the loan servicer. Here the lender assigned that right pursuant to a Pooling and Servicing Agreement.

2. Failure to name a junior lienholder does not preclude a judgment against the named parties, although the judgment does not affect the junior lien.

3. Filing a cross-complaint for judicial foreclosure in an action by the borrower for alleged violations concerning earlier attempts to non-judicially foreclose is valid and does not undermine the extensive procedures California has put in place for non-judicial foreclosure. Judicial foreclosures are conducted under the supervision of a court and do not require the same procedural protections as non-judicial foreclosures.

Barroso v. Ocwen Loan Servicing, LLC


In this action to set aside a trustee’s sale, the trial court sustained the loan servicer’s demurrer, and the appellate court reversed. The court held that the demurrer was properly sustained to the extent the action was based on a Revised Modification Agreement because the borrower’s signature was not notarized as required by the agreement and the borrower signed it after the deadline for accepting the offer.

However, the demurrer should not have been sustained as to a previous Modification Agreement because that agreement did not contain a requirement that the signature be notarized, and it was timely submitted. Also, the general rule that a borrower must tender payment of the debt in order to set aside a trustee’s sale did not apply here because there was no default under the terms of the Modification Agreement.

Cal Sierra Const., Inc. v. Comerica Bank


The court held that only owners, and not lenders, are entitled to bring a “Lambert” motion. This term refers to Lambert v. Superior Court (1991) 228 Cal.App.3d 383, which held that where a claimant has already filed suit to enforce a mechanics lien or stop notice, the owner may file a motion in the action to have the matter examined by the trial court.

On such motion, the claimant bears the burden of establishing the “probable validity” of the claim underlying the lien or stop notice. If the claimant fails to meet that burden, the lien and stop notice may be released in whole or in part.

Pioneer Const., Inc. v. Global Inv. Corp.


The court held that:

1. A mechanics lien claimant who provided labor and materials prepetition to a debtor in bankruptcy can record a mechanics lien after the property owner files for bankruptcy without violating the automatic stay. (11 U.S.C. §362(b)(3).)

2. A mechanics lienor must, and defendant did, file a notice of lien in the debtor’s bankruptcy proceedings to inform the debtor and creditors of its intention to enforce the lien. (11 U.S.C. §546(b)(2)

3. The 90-day period to file an action after recording a mechanics lien is tolled during the pendency of the property owner’s bankruptcy. Accordingly, an action to enforce the lien was timely when filed 79 days after a trustee’s sale by a lender who obtained relief from the automatic stay. (The property ceased to be property of the estate upon completion of the trustee’s sale.)

Shady Tree Farms v. Omni Fin.


Plaintiff contracted directly with the owner of a development to deliver trees, and recorded a mechanics lien after not being paid. The court held that plaintiff’s mechanics lien was invalid

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Mechanics’ Liens (cont.)

(Continued from Previous Page...)

because it failed to provide defendant construction lender with a preliminary 20-day notice under Civil Code Section 3097(b). Section 3097(a), requiring a 20-day notice to the owner, original contractor and construction lender, did not apply because plaintiff was under direct contract with the owner, and the subsection contains an exception for such persons.

However, Section 3097(b) requires a 20-day notice to the construction lender by anyone under direct contract with the owner, except “the contractor”. The court interpreted that term to refer only to the general contractor, so the exception did not apply to plaintiff.

Montgomery Sansome LP v. Rezai

204 Cal. App. 4th 786 (2012)

Plaintiff’s certificate of limited partnership with the California Secretary of State was in the name of “Montgomery-Sansome, LP”. Its contractor’s license was in the name of Montgomery Sansome LTD. A fictitious business name statement named Montgomery Sansome LTD, L.P. and incorrectly stated that it was a general partnership. The contract entered into with defendant to perform certain repairs named plaintiff as Montgomery Sansome LTD, LP.

The trial court granted a summary judgment in favor of defendant, holding that plaintiff could not recover because the entity that signed the contract was not licensed. The appellate court reversed, holding that the doctrine of laches was inapplicable in an action involving a claim for a prescriptive easement because:

1) Once a prescriptive easement is established for the statutory period, the owner of the easement is under no obligation to take further action, rather, it is the record owner who must bring an action within 5 years after the prescriptive period commences.

2) This was an action at law, not equity, and laches applies only to equitable actions.

3) There was no evidence that plaintiffs were aware of the error in deed until shortly before they filed this action.

Option to Renew Lease

Jeffrey Kavin, Inc. v. Frye

204 Cal. App. 4th 35 (2012)

1. An option to renew a lease was not effective where it was exercised by only one of four tenants, and the other tenants did not authorize the first tenant to do so.

2. A lease provision stating that all lessees are jointly and severally liable for lease obligations is not an authorization for only one lessee to execute an option to extend the lease.
**Qui et Titl E**

**Deutsche Bank Nat. Trust Co. v. McGurk**

206 Cal. App. 4th 201 (2012)

Defendant McGurk filed a previous quiet title action against a purchaser who had defrauded her, and recorded a lis pendens. She also named as a defendant the lender holding a deed of trust executed by the purchaser. McGurk dismissed the lender after the lender filed bankruptcy intending to pursue the lender in the bankruptcy action. The lender then assigned the note and deed of trust to plaintiff, after which McGurk took the default of the purchaser. Plaintiff brought this declaratory relief action seeking a determination of the validity of the deed of trust.

The court held that: 1) even though the assignment was recorded subsequent to the lis pendens, plaintiff stands in the shoes of the lender, whose deed of trust recorded prior to the lis pendens, 2) while plaintiff took the assignment subject to the risk that its assignor’s interest would be proven to have been invalid, that risk never came to fruition because the assignor was dismissed, 3) the case was remanded to the trial court to determine the validity of the deed of trust.

**Harbour Vista, LLC v. HSBC Mortg. Services Inc.**

201 Cal. App. 4th 1496 (2011)

Normally, a defendant has no right to participate in the case after its default has been entered. But Code of Civil Procedure Section 764.010, pertaining to quiet title actions, provides that “[t]he court shall not enter judgment by default but shall in all cases require evidence of plaintiff’s title and hear such evidence as may be offered respecting the claims of any of the defendants . . .”

The court held that, while default may be entered, Section 764.010 requires that before issuing a default judgment the trial court must hold an evidentiary hearing in open court, and that defendants were entitled to participate in the hearing even though their answers to the complaint had been stricken as a result of sanctions, and their defaults had been entered.

**Redevelopment Agencies**

**California Redevelopment Assn. v. Matosantos**

53 Cal. 4th 231 (2011)

1. Assembly Bill 1X 26, which bars redevelopment agencies from engaging in new business and provides for their windup and dissolution, is constitutional.

2. Assembly Bill 1X 27, which offers redevelopment agencies the alternative to continue to operate if the cities and counties that created them agree to make payments into funds benefiting the state’s schools and special districts, is unconstitutional.

**Trustee’s Sales**

**Bardasian v. Superior Court**


Civil Code Section 2923.5 requires that before a notice of default can be filed, a lender must attempt to contact the borrower and explore options to prevent foreclosure. Where the trial court ruled on the merits that a lender failed to comply with Section 2923.5, it was proper to enjoin the sale pending compliance with that section, but it was not proper to require plaintiff to post a bond and make rent payments.

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Also, discussions in connection with a loan modification three years previously did not constitute compliance with the code section.

**Brown v. Wells Fargo Bank, NA**

204 Cal. App. 4th 1353 (2012)

Plaintiff filed suit and sought a preliminary injunction to prevent a trustee’s sale. The trial court granted the injunction on the condition that plaintiff deposit $1,700 a month into a client trust account. The trial court subsequently dissolved the injunction after plaintiff failed to make any payments.

The appellate court affirmed, and further determined that the appeal was frivolous because no viable issue was raised on appeal. It directed the court clerk to send a copy of the opinion to the California State Bar for consideration of discipline of plaintiff’s attorney.

**Debrunner v. Deutsche Bank Nat. Trust Co.**

204 Cal. App. 4th 433 (2012), reh’g denied (Apr. 6, 2012), review denied (June 13, 2012)

The court upheld the trial court’s grant of a demurrer in favor of the lender without leave to amend, holding:

1. Since each assignment of deed of trust provided for the assignment “together with the note or notes therein described”, it was not necessary to separately endorse the promissory note.

2. Physical possession of the note is not a precondition to nonjudicial foreclosure.

3. A notice of default does not need to be filed by the person holding the note. C.C. 2924(a)(1) permits a notice of default to be filed by the “trustee, mortgagee or beneficiary, or any of their authorized agents”.

4. A notice of default (NOD) is valid even though the substitution of the trustee identified in the NOD is not recorded until after the NOD records.

**Haynes v. EMC Mortg. Corp.**


Civil Code Section 2932.5, which requires the assignee of a mortgagee to record the assignment before exercising a power to sell the real property, applies only to mortgages and not to deeds of trust. Section 2932.5 requires the assignment of a mortgage to be recorded so that a prospective purchaser knows that the mortgagee has the authority to exercise the power of sale. This is not necessary when a deed of trust is involved, since the trustee conducts the sale and transfers title.

**Lona v. Citibank, N.A.**

202 Cal. App. 4th 89 (2011)

The court reversed a summary judgment in favor of defendants in an action seeking to set aside a trustee’s sale on the basis that the loan was unconscionable. The court held that summary judgment was improper for two reasons:

1. The homeowner presented sufficient evidence of triable issues of material fact regarding unconscionability. Plaintiff asserted that the loan broker ignored his inability to repay the loan (monthly loan payments were four times his monthly income) and, as a person with limited English fluency, little education, and modest income, he did not understand many of the details of the transaction which was conducted entirely in English.

2. Plaintiff did not tender payment of the debt, which is normally a condition precedent to an action by the borrower to set aside the trustee’s sale, but defendants’ motion for summary judgment did not address the exceptions to this rule that defendant relied upon.

The case contains a good discussion of four exceptions to the tender requirement: 1. If the borrower’s action attacks the validity of the underlying debt, a tender is not required since it would constitute an affirmation of the debt. 2. A tender will not be required when the person who seeks to set aside the trustee’s sale has a counter-claim or set-off against the beneficiary. 3. A tender may not be required where it would be inequitable to impose such a condition on the party challenging the sale. 4. No tender will be required when the trustor is not required to rely on equity to attack the deed because the trustee’s deed is void on its face.
Trustee’s Sales (cont.)

Park v. First Am. Title Co.
201 Cal. App. 4th 1418 (2011)

A trustee’s sale was delayed due to defendant’s error in preparing the deed of trust. However, the court held that plaintiff could not establish damages because she could not prove that a potential buyer was ready, willing and able to purchase the property when the trustee’s sale was originally scheduled. Such proof would require showing that a prospective buyer made an offer, entered into a contract of sale, obtained a cashier’s check, or took any equivalent step that would have demonstrated she was ready, willing, and able to purchase plaintiff’s property.

Also, plaintiff would need to show that the prospective buyer was financially able to purchase the property, such as by showing that the prospective buyer had obtained financing for the sale, preapproval for a loan or had sufficient funds to purchase the property with cash.

207 Cal. App. 4th 690 (2012)

The trial court sustained defendant’s demurrer to a complaint asserting that defendant failed to comply with Civil Code Section 2923.5 (which requires that before recording a notice of default, a lender must contact the borrower to “explore” options for avoiding foreclosure). The appellate court reversed, holding that:

1. A court can take judicial notice of the fact that a Notice of Default has been recorded with an attached declaration asserting compliance with CC 2923.5. But whether the lender actually complied with CC 2923.5 is a question of fact that cannot be resolved on demurrer.

2. A private cause of action exists to enjoin a trustee’s sale for a violation of CC 2923.5.

3. CC 2923.5 is not preempted by the National Bank Act (12 U.S.C. 21, et seq.).

Stebley v. Litton Loan Servicing, LLP

The court upheld the trial court’s sustaining of a demurrer without leave to amend in an action alleging that defendant violated Civil Code Section 2923.5, which requires that before a notice of default can be filed, a lender must attempt to contact the borrower and explore options to prevent foreclosure. The court held:

1. Section 2923.5 does not provide for damages or for setting aside a foreclosure sale. The only remedy available is to provide the borrower more time before a foreclosure sale occurs. After the sale, the statute provides no relief.

2. The statute does not require a lender to modify the loan.

3. While a tender of the loan amount is not necessary to delay a foreclosure sale, it is necessary in order to set aside a sale after it occurs.

4. Plaintiff’s cause of action for dependant adult abuse fails because plaintiff failed to allege that the property was taken wrongfully where an ordinary foreclosure sale occurred.

Trustee’s Sales / Deficiency Judgments

Bank of Am., N.A. v. Mitchell
204 Cal. App. 4th 1199 (2012)

The court acknowledged existing case law holding that a “sold out” junior holder of a deed of trust can obtain a deficiency judgment when the junior lien is wiped out by a trustee’s sale under a senior deed of trust.

But the court held that a deficiency judgment was not available in this case where the same lender held both deeds of trust and assigned the junior deed of trust to plaintiff after the trustee’s sale. The court also held that this applies regardless of whether the lender purchases at its own trustee’s sale or where, as here, a 3rd party purchases at the sale.

Cadlerock Joint Venture, L.P. v. Lobel

When a single lender contemporaneously makes two non-purchase money loans secured by two deeds of trust referencing a single parcel of real property and soon thereafter assigns the junior loan to a different entity, the assignee of the junior loan, who is subsequently “sold out” by the senior lienholder’s non-judicial foreclosure sale, may pursue the borrower for a money judgment in the amount of the debt owed.

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Trustee’s Sales / Deficiency Judgments (cont.)

(Continued from Previous Page...)

The court pointed out that there was no suggestion in the record that the loan originator and assignees were affiliated in any way or that two loans were created, when one would have sufficed, as an artifice to evade C.C.P. Section 580d. (Section 580d prohibits a lender from obtaining a deficiency judgment after non-judicially foreclosing its deed of trust.)

Trustee’s Sales / MERS


as nominee beneficiary, has the power to assign its interest under a deed of trust. Even assuming plaintiffs can allege specific facts showing that MERS’ assignment of the deed of trust was void, a plaintiff in a suit for wrongful foreclosure is required to demonstrate the alleged imperfection in the foreclosure process was prejudicial to the plaintiff’s interests.

Not only did plaintiffs fail to show prejudice, but if MERS lacked the authority to assign the deed of trust, the true victim would not be the plaintiffs, who were admittedly in default, but the lender whose deed of trust was improperly assigned. Finally, Civil Code Section 2932.5, requiring recordation of an assignment of a mortgage, applies only to mortgages that give a power of sale to the creditor, not to deeds of trust which grant a power of sale to the trustee.

Trusts

Portico Mgmt. Group, LLC v. Harrison


In the published portion of the opinion, the court held that an arbitration award and judgment against a trust, and not against the trustees in their capacity as trustees, were not valid because a trust is not an entity or person capable of owning title to property. A trust is, rather, a fiduciary relationship with respect to property. The court pointed out that if the judgment had been against the trustees in their representative capacities, it would have also bound successor trustees. Although the lawsuit properly named the trustees, for some reason plaintiff did not seek to correct or modify the arbitration award or judgment to indicate that it was properly against the trustees.
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The CLTA Legislative Committee is established in the Bylaws. It is a 23 member committee which devotes approximately 588 volunteer hours per year in support of this Association.

The purpose of the Legislative Committee is to review and make recommendations with respect to legislative matters that may have an impact on the conduct of the business of title insurance in this state.

The Legislative Committee is charged with the following responsibilities: to review the write ups for the annual Summary of Legislation; to refer legislation to the Forms and Practices Committee for Manual or practice changes; to review legislative proposals; to report significant legislation to the Board of Governors; to determine which legislation the CLTA should sponsor; and to review and determine CLTA positions on all legislation.
The CLTA’s 106th Annual Convention

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