Of the 931 bills signed into law in 2014, 37 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, 2013-14 Session” link. All bills summarized in this publication become effective January 1, 2015, 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

• Property and Business Improvement Areas

The California Constitution generally requires that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing.

The Property and Business Improvement District Law of 1994 authorizes cities to form property and business improvement districts that may levy assessments within a district for the purpose of making improvements and promoting activities of benefit to the properties and businesses within the district, and defines various terms for purposes of the law.

The law requires a management district plan to include, among other things, the name of the proposed district, a description of the boundaries of the district, and the total amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

This act requires a management district plan to additionally include, for districts that are property-based, the proportionate special benefit derived by each identified parcel, to be determined as prescribed, the total amount of all special benefits to be conferred on the properties located within the property-based district, the total amount of any general benefit, and a detailed engineer’s report.

This act defines the term “special benefit” for purposes of that law to mean a particular and distinct benefit over and above general benefits, conferred on real property located in a district or to the public at large, and would specify that special benefit includes incidental or collateral effects that arise even if those effects benefit property or persons not assessed.

The law additionally requires the city council to adopt a resolution of formation containing, among other things, a statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments and a finding that the property or businesses within the area of the district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

This act requires a finding that the property within the district will receive a special benefit and the total amount of all special benefits to be conferred on the properties within the property-based district.

Chapter 240 (AB 2618 - Perez): amending Sections 36601, 36602, 36603.5, 36621, 36622, 36624, 36625, 36628.5, 36650, and 36651 of, amending and renumbering Sections 36606, 36611, 36612, 36613, 36614, and 36614.5 of, and adding Sections 33609.4, 33609.5, 36614.6, 36614.7, and 36615.5 to, the Streets and Highways Code.

• Property Assessed Clean Energy (PACE) Program

This act makes a number of changes to various provisions of California law. Of interest to title companies, existing law defines a PACE program as a program that is financed by a PACE bond. Existing law requires the California Alternative Energy and Advanced Transportation Financing Authority to develop and administer a PACE Reserve program to reduce the overall costs to property owners of a Property Assessed Clean Energy bond, or PACE bond, issued by an applicant that has established a Property Assessed Clean Energy program, or PACE program, by providing a reserve of no more than 10% of the initial amount of the PACE bond. Existing law, in 2010, appropriates, until January 1, 2015, $50,000,000 from the Renewable Resource Trust Fund for the above purpose.

This act additionally requires the authority to develop and administer a PACE risk mitigation program for PACE loans to increase their acceptance in the marketplace and protect against the risk of default and foreclosure. The act additionally includes a PACE loan program as a PACE program.

Chapter 356 (SB 96 - Committee on Budget and Fiscal Review): as summarized, amending Sections 26052, 26055, 26060, 26062, 26063 of the Public Resources Code.

• Public Improvements

Existing law, the Improvement Act of 1911 (Improvement Act), authorizes the legislative body of any public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, as specified, within which authorized public agency officials and property owners may 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.

Under existing law, for the purpose of financing the installation of distributed generation renewable energy sources pursuant to the Improvement Act, “permanently fixed” includes, but is not limited to, systems attached to a residential, commercial, industrial, agricultural, or other 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 power purchase agreement or lease contains certain provisions, including, but not limited to, provisions intended to ensure that the property owner is guaranteed the electric power from the system for the length of the lien. One of the required provisions is that after installation, the power purchase agreement or lease is paid in full using the funds from the contractual assessment program.

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Property Assessed Clean Energy (PACE) Program

Existing law authorizes a public agency and a property owner 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 affixed on real property (PACE financing program).

Existing law requires the California Alternative Energy and Advanced Transportation Financing Authority to establish a Property Assessed Clean Energy (PACE) Reserve program to assist local jurisdictions in financing, among other things, the installation of distributed generation renewable energy sources or energy or water efficiency improvements on residential projects. Existing law requires the authority, in considering the eligibility of a public agency’s PACE financing program for assistance under the PACE Reserve program, to consider whether the PACE program provides a loan that is less than 10% of the value of the property.

This act requires the authority to consider whether a PACE financing program provides financial assistance that is less than 15% of the value of the property, for up to the first $700,000, and less than 10% of the remaining value of the property above $700,000, and whether the PACE financing program limits the total mortgage-related debt and PACE financing from exceeding the value of the property.

Chapter 614 (AB 2597 – Ting): amending Sections 26052, 26055, 26060, 26061, 26062, and 26063 of the Public Resources Code.

Fire Prevention Fees

State Responsibility Areas

Existing law requires the State Board of Forestry and Fire Protection, on or before September 1, 2011, to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed $150 to be charged on each structure, defined as a building used or intended to be used for human habitation, on a parcel that is within a state responsibility area.

This act deletes the definition of “structure” for purposes of the fire prevention fee and instead uses “habitable structure,” which the act defines to mean a building that contains one or more dwelling units that can be occupied for residential use. The act also includes the definition of “person” and “owner of a structure”.

The act requires the fee to be levied upon the owner of a habitable structure identified by the department as located within the state responsibility area if that person owns the habitable structure on July 1 of the year for which the fee is due. The act authorizes the board to exempt from the fire fee...
ASSESSMENTS (cont.)

...prevention fee any habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year the fee is due if certain conditions are met.

Existing law requires the board to adjust the fire prevention fee annually using prescribed methods. This act would instead authorize the board to adjust the fee using those methods.

Existing law establishes the State Responsibility Area Fire Prevention Fund and requires the board to report to the Legislature every January 1 on the status and uses of the fund. This act instead requires the board to report to the Legislature every January 31.

Existing law authorizes a person from whom the fire prevention fee is determined to be due to petition for a redetermination of whether the fee applies to that person within 30 days after service upon the person of a notice of determination. Existing law requires the petition for redetermination to be in writing and be sent to the department, the board, and the State Board of Equalization.

This act, if a petition for redetermination is filed after the expiration of the 30-day time period, authorizes the petition to be treated as an administrative protest claim for refund if the department determines that the facts presented indicate that the fire prevention fee originally determined may have been excessive or the amount or the application of the fee may have been the result of an error by the department, its agent, or the State Board of Equalization. This act deletes the requirements that the petition for redetermination be sent to the board and the State Board of Equalization.

Existing law requires a penalty of 20% of the fee determined to be due to be added to the amount due and payable for each 30-day period in which the fee remains unpaid.

This act prohibits the above penalty from being imposed or added after January 1, 2015, to any fee that remains unpaid or any fee that is not paid when due and payable. The act instead adds a penalty of 10% to the amount due in accordance with existing law relating to late fees payable.

Chapter 895 (AB 2048 - Dahle); amending Sections 4211, 4212, 4213, 4214, 4221, and 4225 of, and adding Sections 4213.1 and 4220.1 to, the Public Resources Code.

CALIFORNIA CONSERVATORSHIP JURISDICTION ACT

The Guardianship-Conservatorship Law generally establishes the standards and procedures for the appointment and termination of an appointment for a guardian or conservator of a person, an estate, or both. The law specifically requires, before the appointment of either a guardian or conservator is effective, the prospective guardian or conservator to take an oath to perform these duties according to the law.

This act, operative January 1, 2016, enacts the California Conservatorship Jurisdiction Act which is intended to be a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This act provides standards and procedures for establishing the proper jurisdiction for a proceeding to appoint a conservator of a person, an estate, or both. The act also establishes conditions for the transfer of a conservatorship established within this state to a jurisdiction outside the state, and a transfer of a conservatorship into this state, and for the registration and recognition by this state of a conservatorship established by another state, a United States territory, a federally recognized Indian tribe, or other specified jurisdiction. This act establishes rules relating to the appeals from orders made under the California Conservatorship Jurisdiction Act. This act authorizes a $30 charge for registering a conservatorship established outside this state to be deposited into the Trial Court Trust Fund.

This act authorizes a court in a conservatorship proceeding to take certain actions relating to that proceeding, including, but not limited to, holding an evidentiary hearing or ordering a person to produce testimony, and would further authorize a court in this state to grant similar requests from a court of another jurisdiction. This act requires the Judicial Council to develop court rules and forms to implement the provisions of this act on or before January 1, 2016.

This act modifies, limits, and supersedes specified portions of the federal Electronic Signatures in Global and National Commerce Act, as it relates to these provisions. This act also specifies that the scope of the required oath obligates a guardian or conservator to comply with applicable laws, at all times, in any location within or without the state.

Chapter 553 (SB 940 - Jackson); amending Section 1913 of the Code of Civil Procedure, adding Section 70663 to the Government Code, and amending Sections 1455, 1471, 1821, 1834, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1890, 2107, 2200, 2300, 2352, 2505, 2650, and 3800 of, adding Sections 1301.5 and 1851.1 to, and adding Chapter 8 (commencing with Section 1980) to Part 3 of Division 4 of, the Probate Code.
California Environmental Quality Act

Native Americans

Existing law, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.

The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA requires the lead agency to provide a responsible agency with specified notice and opportunities to comment on a proposed project. CEQA requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to follow in determining whether or not a proposed project may have a significant effect on the environment.

This act specifies that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. The act requires a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. The act specifies examples of mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources. The act makes the above provisions applicable to projects that have a notice of preparation or a notice of negative declaration filed or mitigated negative declaration on or after July 1, 2015. The act requires the Office of Planning and Research to revise on or before July 1, 2016, the guidelines to separate the consideration of tribal cultural resources from that for paleontological resources and add consideration of tribal cultural resources.

Exemption

Residential Infill Projects

This act additionally requires the commission to provide each California Native American tribe, on or before July 1, 2016, with a list of all public agencies that may be a lead agency within the geographic area in which the tribe is traditionally and culturally affiliated, the contact information of those agencies, and information on how the tribe may request those public agencies to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation.

Chapter 532 (AB 52 - Gatto); amending Section 5097.94 of, and adding Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to, the Public Resources Code.

Exemption

Residential Infill Projects

The California Environmental Quality Act, commonly referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA exempts from these requirements residential infill projects meeting specified criteria, including, among other things, that a community-level environmental review was adopted or certified within 5 years of the date that the application for the project is deemed complete and the project promotes higher density infill housing. For the purposes of this exemption, CEQA defines “residential” to include a use consisting of residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project.

This act instead exempts as “residential” a use consisting of residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25% of the total building square footage of the project.

Chapter 549 (SB 674 – Corbett); amending Section 21159.24 of the Public Resources Code.
COMMERCIAL LAW

• Secured Transactions

The Uniform Commercial Code - Secured Transactions governs security interests in collateral, including personal property and fixtures, as well as certain sales of accounts, contract rights, and chattel paper. That code, among other things, specifies requirements and procedures regarding perfecting a security interest, including the filing of a financing statement with the Secretary of State. Existing law specifies that a financing statement sufficiently provides the name of a debtor, where the debtor is an individual, if it provides the individual name of the debtor or the surname and first personal name of the debtor.

This act revises the manner in which a financing statement sufficiently provides the name of the debtor, where that debtor is an individual, to provide that, where the Department of Motor Vehicles has issued a driver's license that has not expired or identification card that has not expired to the individual, the statement sufficiently provides the name of the debtor only if the statement provides the name of the individual indicated on the license or card and, if the individual has not been issued a driver's license or identification card, the statement sufficiently provides the name of the debtor if it provides the individual name of the debtor or the surname and first personal name of the debtor. The act also implements transitional rules for carrying out these provisions.

Existing provisions of the Unruh Civil Rights Act, with certain exceptions, prohibit various forms of arbitrary discrimination by business establishments.

This act makes it a violation of the Unruh Civil Rights Act for a secured party or proposed secured party to decline to provide credit to a debtor or proposed debtor, or offer to make the terms and conditions of such credit less favorable to the debtor or proposed debtor, if that decision was based on the fact that the debtor's name to be included on the financing statement is or would be that provided by a debtor to whom the Department of Motor Vehicles has not issued a driver's license that has not expired or an identification card that has not expired and all elements that would be required to establish a claim for violation of the Unruh Civil Rights Act are established.

Common Interest Developments

• Drought Emergency - Fines and Assessments

The Davis-Stirling Common Interest Development Act provides that a provision of the governing documents of a development is void and unenforceable if it prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group, or if it has the effect of prohibiting or restricting compliance with a local water-efficient landscape ordinance or water conservation measure.

This act prohibits an association from imposing a fine or assessment against a member of a separate interest for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency, or a local government has declared a local emergency, due to drought.

NOTE: This act took effect as an urgency measure on July 21, 2014.

Chapter 164 (AB 2100 – Campos); amending Section 4735 of the Civil Code.

• Common Interest Transfer Disclosure Documents

The Davis-Stirling Common Interest Development Act requires an association, upon written request, to provide the owner of a separate interest, or a recipient authorized by the owner, with a copy of specific documents relating to transfer disclosures that the owner is required to make to a prospective purchaser of the owner’s separate interest. That act authorizes the association to collect a reasonable cost for delivery of those documents but prohibits any additional fees for electronic delivery.

This act requires the cost for providing the required documents to be separately stated and acted from other charges that are part of the transfer or sales transaction. This act authorizes an association to collect a reasonable fee from a seller for its actual costs in providing documents under these provisions and would require a seller to be responsible for compensating an association, person, or entity for providing documents under these provisions. This act also requires a seller to provide a prospective purchaser with certain current documents that the seller possesses free of charge. This act prohibits a seller from giving a prospective purchaser the required documents bundled with other documents. This act makes conforming changes to a codified form.

Chapter 185 (AB 2430 – Maienschein); amending Sections 4528 and 4530 of the Civil Code.
• Maintenance and Repair of Common Areas

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. These provisions require that a common interest development be managed by an association and also set forth the duties and responsibilities of the association and the owners of the separate interests with regard to maintenance and repair of common and exclusive use areas, as defined. Unless otherwise provided in the common interest development declaration, the association is responsible for maintaining, repairing, or replacing the common area, other than the exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the interest.

This act, beginning January 1, 2017, instead provides that, unless otherwise provided in the declaration, the association is responsible for maintaining, repairing, and replacing the common area, the owner of each separate interest is responsible for maintaining, repairing, and replacing the separate interest, and the owner of the separate interest is responsible for maintaining the exclusive use common area appurtenant to the separate interest while the association is responsible for repairing and replacing the exclusive use common area.

Chapter 405 (AB 968 – Gordon); amending, repealing, and adding Section 4775 of the Civil Code.

• Dispute Resolution

The Davis-Stirling Common Interest Development Act defines a common interest development and requires it to be managed by an association. The act requires an association to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an association and a member involving their rights, duties, or liabilities under the act, the Nonprofit Mutual Benefit Corporation Law, or the association’s governing documents. The act authorizes an association to develop its own procedure for these purposes and requires this procedure to satisfy specified minimum standards, including, among others, that a resolution of a dispute, pursuant to the procedure, binds the association and is judicially enforceable, and that an agreement, pursuant to the procedure, binds the parties and is judicially enforceable, as specified. The act also requires that the procedure provide a means by which the member and the association may explain their positions.

This act additionally requires the resolution or agreement under an association’s procedure for resolving these disputes between an association and a member to be in writing and signed by both parties. The act authorizes a member and an association to be assisted by an attorney or another person in explaining their positions at their own cost.

The act also establishes an alternative procedure applicable to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure as described above. Under these provisions a procedure that, among other things, authorizes either party to request, in writing, the other party to meet and confer, prohibits the association from refusing a request to meet and confer, and requires the parties to meet and confer in good faith in an effort to resolve the dispute, is deemed a fair, reasonable, and expeditious dispute resolution procedure. The act provides that an agreement reached under this procedure binds the parties and is judicially enforceable if specified conditions are satisfied.

This act additionally requires the alternative procedure to provide either party the right to have an attorney or another person participate when meeting and conferring provided at their own cost. The act requires an agreement reached under the alternative procedure that binds the parties and is judicially enforceable to be in writing and signed by both parties.

Chapter 411 (AB 1738 – Chau); amending Sections 5910 and 5915 of the Civil Code.

• Water-Efficient Landscapes

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. That act provides that a provision of any of the common interest development governing documents, as defined, that governs the operation of a common interest development, is void and unenforceable if it prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group, or if it has the effect of prohibiting or restricting compliance with a local water-efficient landscape ordinance or water conservation measure.

This act provides that a provision of the governing documents or of the architectural or landscaping guidelines or policies shall be void and unenforceable if it contains the above-described prohibitions or prohibits, or includes conditions that have the effect of prohibiting, low water-using plants as a replacement of existing turf.

Chapter 421 (AB 2104 – Gonzalez); amending Section 4735 of the Civil Code.

• Water-Efficient Landscapes
• Property Use and Maintenance

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law provides that, unless otherwise provided in the common interest development declaration, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, etc.

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...and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest. Existing law makes void and unenforceable any provision of the governing documents of a common interest development or association that prohibits use of low water-using plants, or prohibits or restricts compliance with water-efficient landscape ordinances or regulations on the use of water.

This act provides that a provision of the governing documents or of the architectural or landscaping guidelines or policies shall be void and unenforceable if it contains the above-described prohibitions or prohibits, or includes conditions that have the effect of prohibiting, low water-using plants as a replacement of existing turf.

Existing law prohibits an association from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought.

This act exempts from these prohibitions against imposing a fine or assessment an association that uses recycled water for landscape irrigation.

This act also provides that a provision of the governing documents is void and unenforceable if it requires pressure washing the exterior of a separate interest and any exclusive use common area appurtenant to the separate interest during a state or local government declared drought emergency.

NOTE: This act took effect as an urgency measure on September 18, 2014.

Chapter 434 (SB 992 – Nielsen); incorporating additional changes in Section 4735 of the Civil Code made by Chapter 421 (AB 2104 – Gonzalez); Amending Section 4735 of, and adding Section 4736 to, the Civil Code.

Disclosures

• Change of Ownership of Timberland

The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations on timberland unless a timber harvesting plan has been prepared by a registered professional forester and has been submitted to the Department of Forestry and Fire Protection and approved by the Director of Forestry and Fire Protection or the State Board of Forestry and Fire Protection. A violation of the act is a crime.

Existing law authorizes a person who intends to become a working forest landowner, as defined, or nonindustrial tree farmer, as defined, to file a working forest management plan or a nonindustrial timber management plan, as applicable, with the department, with the long-term objective of uneven-aged timber stand and sustained yield through the implementation of the plan. Existing law requires, in the event of a change of ownership of the land described in the working forest management plan, the landowner to notify the new landowner of the existence of the plan and the need to notify the department of the new landowner’s intent regarding assumption of the plan. Existing law provides the new landowner one year from the date of the receipt of the notification by the department to notify the department in writing of the assumption of the working forest management plan and if the department does not receive notification within this period, the plan expires. In addition, existing law requires a nonindustrial timber management plan to expire 180 days from the date of change of ownership unless the new timberland owner notifies the department in writing of the change of ownership and his or her assumption of the plan.

This act, in the event of change of ownership of land described in a nonindustrial timber management plan, requires a transferring landowner to notify the acquiring landowner of the existence of the plan and the need to inform the department if he or she intends to assume the plan.

This act requires, upon change of ownership of land described in either a working forest management plan or a nonindustrial timber management plan, the transferring landowner to send the department a copy of the notice provided to the acquiring landowner. The act requires the department to provide the acquiring landowner with the notice if the transferring landowner fails to provide it and the department discovers the change of ownership. The act gives the acquiring landowner one year from the date of the receipt of either notice to notify the department of his or her intent to assume the plan. The act authorizes the department to cancel the plan if no notice is received within this period. This act makes other technical changes.

The act provides that a violation of the provisions relating to notice by a landowner does not constitute a crime.

Chapter 291 (AB 2239 – Chesbro); amending Sections 4593.10, 4597.2, 4597.9, 4597.15, and 4597.16 of the Public Resources Code.

Documentary Transfer Tax

• Amount of Tax on Deed

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 20 (AB 1888 - Ting); amending Sections 11932 and 11933 of the Revenue and Taxation Code.

**Foreclosure**

- **Tenant Rights in Foreclosures**

This act makes a number of changes to various provisions of California law. Of interest to title companies, existing law generally provides, in an unlawful detainer action, that if an owner or owner’s agent has obtained service of a prejudgment claim of right to possession, as specified, no occupant of the premises, whether or not that occupant is named in the judgment for possession, may object to the enforcement of the judgment against that occupant by filing a claim of right to possession as prescribed. Existing law provides, in any action for unlawful detainer resulting from a foreclosure sale of a rental housing unit pursuant to specified provisions, that the above provisions regarding objection to the enforcement of a judgment do not limit the right of a tenant or subtenant to file a prejudgment claim of right of possession or to object to enforcement of a judgment for possession by filing a claim of right to possession, regardless of whether the tenant or subtenant was served with a prejudgment claim of right to possession, as specified. Existing law includes the forms for claim of right to possession and for service of a prejudgment claim of right to possession.

This act, with regard to the foreclosure sale provision in existing law, makes conforming changes to statutory provisions and statutory forms regarding claim of right to possession and prejudgment claim of right to possession.

**Housing**

- **Disposal of Surplus Land**

Existing law prescribes requirements for the disposal of surplus land by a local agency, as defined. Existing law requires a local agency disposing of surplus land to negotiate in good faith with certain entities that provided notice of a desire to purchase or lease the land and, if the price or terms cannot be agreed upon within a period of not less than 60 days with those entities, the local agency may dispose of the surplus land without fulfilling further requirements, as specified. Existing law authorizes a local agency selling surplus land for specified purposes to specified entities, including, but not limited to, low- and moderate-income housing, to provide a payment period of up to 20 years in a sales contract or trust deed. Existing law requires a local agency disposing of surplus land to give first priority in a purchase or lease to an entity agreeing to use the site for housing for persons of low or moderate income, except as specified. Existing law specifies that these and other related provisions are not to be interpreted to empower a local agency to sell or lease surplus land at less than fair market value.

This act requires an entity proposing to use the surplus land for developing low- and moderate-income housing to agree to make available not less than 25% of the total number of units developed on the parcels at affordable housing cost or affordable rent for a period of at least 55 years to lower-income households, as those terms are defined in existing law. This act requires a local agency to give first priority in disposing of the surplus land to an entity that agrees to these requirements. This act also requires these requirements to be contained in a covenant or restriction recorded against the surplus land at the time of sale, to run with the land, and be enforceable, against any owner who violates the covenant or restriction and each successor-in-interest who continues the violation, by a resident’s association, as specified, and certain individuals, that include, but are not limited to, a resident of a unit subject to these requirements.

This act increases the minimum time that an agency disposing of surplus land is required to conduct negotiations with certain entities desiring to purchase or lease the surplus land from 60 to 90 days. This act requires, if the local agency does not agree to price and terms with those certain entities and the surplus land is used for the development of 10 or more residential units, the entity or a successor-in-interest that received the surplus land to provide not less than 15% of the total number of units developed on the parcels at affordable housing cost or...
HOUSING (cont.)

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...affordable rent, at terms similar to an entity that received first priority for providing not less than 25% of the total number of units at affordable housing cost or affordable rent.

This act permits the payment period for surplus land sold for low- and moderate-income housing purposes to exceed 20 years, subject to limits related to land use requirements for low- or moderate-income housing.

This act deletes the statement that these provisions are not to be interpreted to empower a local agency to sell or lease surplus land at less than fair market value, and would provide that a sale or lease at or less than fair market value shall not be construed as inconsistent with an agency’s purpose.

Chapter 677 (AB 2135 – Ting); amending Sections 54220, 54223, 54225, 54226, and 54227 of, and adding Sections 54222.5 and 54233 to, the Government Code.

INSURANCE COMPANIES

• Insurer Investments

Existing law requires each admitted insurer to provide information by January 1, 2014, to the Insurance Commissioner on all of its community development investments and community development infrastructure investments in California. Community development investments are investments where all or a portion of the investment has as its primary purpose community development for, or that directly benefits, California low- or moderate-income individuals, families, or communities, and includes, but is not limited to, investments in California in or through the California Organized Investment Network (COIN)-certified community development financial institutions (CDFIs) and investments made pursuant to the requirements of federal, state, or local community development investment programs or community development investment tax incentive programs, including green investments, if these investments directly benefit low- or moderate-income individuals, families, and communities and are consistent with applicable provisions. The commissioner and the Department of Insurance are required to provide certain information on community development investments and community development infrastructure investments to the public on the department’s Internet Web site, as specified, by May 31, 2014, and biennially with regard to green investments. These provisions are to remain in effect only until January 1, 2015, and are repealed as of that date.

This act revises and recasts these provisions by instead requiring each admitted insurer with annual premiums written in California equal to or in excess of $100,000,000 for any reporting year to provide information to the commissioner on all of its community development investments, community development infrastructure investments, and green investments in California. The act requires the information be reported by July 1, 2016. The act revises the information that the commissioner and the department are required to provide on the department’s Internet Web site by, among other things, including information on the actions taken by COIN to analyze the data by insurers for the purpose of creating and identifying potential investment opportunities, as specified. The act extends the department’s Internet Web site publication date from May 31, 2014, to December 31, 2016, and deletes the biennial publication requirement for green investments and instead requires a publication deadline of December 31, 2016. The act also extends the repeal date to January 1, 2020.

Existing law requires each insurer admitted in California that writes premium in California equal to or in excess of $100,000,000 annually to develop, and file with the commissioner no later than July 1, 2011, a policy statement on community development investments and community development infrastructure investments that expresses the insurer’s goals for those investments during the filing year and following calendar year. Thereafter, each insurer that these provisions apply to is required to biennially review its policy statement, and, if the insurer revises or changes its policy statement, submit the new policy statement to the commissioner no later than July 1 of each odd-numbered year.

This act deletes the provisions requiring a biennial review by each insurer of its policy statement and the submission of a new policy statement if there is a revision or change.

Existing law requires the department, COIN, or any successor thereof, to require the CDFIs receiving specified tax credit investments to submit reports to the department, COIN, or any successor thereof, on their use of the program. Existing law authorizes the commissioner to establish and appoint a California Organized Investment Network Advisory Board. The term of each board member is 2 years and is staggered as provided. The board has certain powers and duties, including, but not limited to, advising COIN, or any successor thereof, on the best methods to increase the level of insurance industry capital in safe and sound investments while providing fair returns to investors and social benefits to underserved communities, meeting quarterly or as deemed necessary by the commissioner, and recommending programmatic guidelines, but not specific allocations of the tax credit amount, to the COIN program. The provisions regarding the board are in effect only until December 1, 2015, and are repealed as of that date.

This act deletes the board members’ staggered terms requirement. The act deletes the quarterly meeting requirement, and instead requires a minimum of three or more meetings per year. The act also extends the repeal date to January 1, 2020.

Chapter 384 (AB 2128 – Gordon); amending Sections 926.1, 926.2, 926.3, and 12939.2 of the Insurance Code.
Judgments

- **Right of Redemption**

  Existing law provides that a sale of property pursuant to specified statutory provisions regarding enforcement of judgments is absolute and may not be set aside for any reason. The judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest if the judgment is reversed, vacated, or otherwise set aside. If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason, the judgment debtor, or the judgment debtor's successor in interest, may commence an action within 90 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor.

  This act declares that these provisions do not affect, limit, or eliminate a judgment debtor's equitable right of redemption.

  Chapter 183 (AB 2317 - Maienschein); amending Section 701.680 of the Code of Civil Procedure.

- **Tribal Court Civil Money Judgment Act**

  The existing Uniform Foreign-Country Money Judgments Recognition Act provides that foreign judgments that grant or deny recovery of a sum of money and that are final and conclusive are enforceable in California, with specified exceptions. The act includes within the definition of “foreign-country judgment” a judgment by any Indian tribe recognized by the government of the United States.

  This act, until January 1, 2018, exempts Indian tribal judgments from the Uniform Foreign-Country Money Judgments Recognition Act, and instead enacts the Tribal Court Civil Money Judgment Act. The new act likewise provides for the enforceability of tribal court money judgments in California. The act prescribes the procedure for applying for recognition and entry of a judgment based on a tribal court money judgment, the procedure and grounds for objecting to the entry of judgment, and the bases upon which the court may refuse to enter the judgment or grant a stay of enforcement.

  The act requires the Judicial Council to prescribe a form for the notice of filing the application for recognition of the tribal court money judgment. The act requires that this application be executed under penalty of perjury, which would expand the scope of the crime of perjury and thus impose a state-mandated local program. The act requires the California Law Revision Commission to conduct a study of the standards for recognition of a tribal court or a foreign court judgment under the Tribal Court Civil Money Judgment Act and the Uniform Foreign-Country Money Judgments Recognition Act, and submit a report of its findings and recommendations to the Legislature and the Governor no later than January 1, 2017.

  Chapter 243 (SB 406 - Evans); amending, adding, and repealing Section 1714 of, and adding and repealing Title 11.5 (commencing with Section 1730) to Part 3 of, the Code of Civil Procedure.

- **Exemption from Enforcement of Money Judgments**

  Under existing law, certain property is exempted from enforcement of money judgments. Existing law permits the spouse of a judgment debtor to claim an exemption in the case of community property, whether or not the spouse is also a judgment debtor under the judgment.

  This act also permits a domestic partner to claim an exemption in the case of community property.

  Chapter 415 (AB 1945 - Wieckowski); amending Section 703.020 of the Code of Civil Procedure.

Local Government

- **Joint Powers Authorities**

  Existing law provides that two or more public agencies, by agreement, may form a joint powers authority to exercise any power common to the contracting parties.

  This act provides that the parties to the agreement may exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax.

  Chapter 386 (AB 2170 - Mullin); amending Section 6502 of the Government Code.

Marriage

- **Definition of Marriage**

  An existing provision of the California Constitution, which has been held unenforceable, states that only marriage between a man and a woman is valid or recognized in this state. An existing statutory provision likewise provides that only marriage between a man and a woman is valid or recognized in this state.

  This act repeals that statutory provision.

  Existing statutory law provides that marriage is a personal relationship arising out of a civil contract between a man and a woman. Under existing law, a marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state, except that a marriage between two persons of the same sex contracted outside this state is valid in this state only if the marriage was contracted prior to November 5, 2008.

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MARriAGE (cont.)

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This act instead provides that marriage is a personal relation arising out of a civil contract between two persons, and makes conforming changes with regard to the consent to, and solemnization of, marriage. The act also deletes the limitation on the validity of marriages contracted outside this state between two persons of the same sex.

Under existing law, a reference to “husband” and “wife,” “spouses,” or “married persons,” or a comparable term, includes persons who are lawfully married to each other and persons who were previously lawfully married to each other, as is appropriate under the circumstances of the particular case.

The act deletes references to “husband” or “wife” in the Family Code and instead refers to a “spouse,” and makes other related changes.

Existing law establishes a rebuttable presumption of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex.

This act makes that rebuttable presumption of decreased need for spousal support applicable if the supported party is cohabitating with a “nonmarital partner.”

This act declares that the purpose of the act is to clarify that laws relating to marriage and the rights and responsibilities of spouses apply equally to opposite-sex and same-sex spouses and that the changes are not intended to affect existing decisional law otherwise interpreting the laws amended in the act.

Chapter 82 (SB 1306 – Leno) amending Sections 300, 301, 302, 420, 500, 720, 721, 750, 751, 752, 754, 761, 1102, 1500, 1620, 1839, 2200, 2201, 2210, 2211, 2322, 2400, 2401, 3120, 3450, 3551, 3580, 3585, 3600, 4323, and 4930 sf, amending the heading of Chapter 2 (commencing with Section 720) of Part 1 of Division 4 of, amending the heading of Chapter 3 (commencing with Section 1620) of Part 5 of Division 4 of, repealing Section 308.5 sf, and repealing and adding Section 308 of the Family Code.

MOTGrages AND DEEDs OF TRUST

• Mortgage Debt Forgiveness

The Personal Income Tax Law provides for modified conformity to specified provisions of federal income tax law relating to the exclusion of the discharge of qualified principal residence indebtedness, as defined, from an individual’s income if that debt is discharged after January 1, 2007, and before January 1, 2013, as provided. The federal American Taxpayer Relief Act of 2012 extended the operation of those provisions to qualified principal residence indebtedness that is discharged before January 1, 2014.

This act conforms to the federal extension, discharges indebtedness for related penalties and interest, and makes legislative findings and declarations regarding the public purpose served by the act.

NOTE: This act took effect as an urgency measure on July 21, 2014.

Chapter 152 (AB 1393 – Perea) amending Section 17144.5 of the Revenue and Taxation Code.

• Reverse Mortgage Notifications

Existing state and federal law regulate the activities of financial institutions. Existing state law regulates reverse mortgage loans and requires a lender to refer a prospective borrower to a housing counseling agency, as specified, and prohibits a lender from accepting a final and complete application for a reverse mortgage loan or assessing any fees without receiving certification, as specified, that the borrower has received loan counseling. Existing law prohibits a lender from taking a reverse mortgage application before having provided an applicant a specified disclosure notice and written checklist.

This act prohibits a lender from taking a reverse mortgage application or assessing any fees until seven days from the date of loan counseling. The act makes specified changes to the disclosure notice. The act deletes the requirement that the lender

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**Mortgages and Deeds of Trust (cont.)**

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provide a written checklist and instead prohibits a lender from taking a reverse mortgage application unless the applicant has received from the lender a specified reverse mortgage worksheet guide.

The act requires that the reverse mortgage worksheet guide contain certain issues that the borrower is advised to consider and discuss with the counselor. The act requires the counselor and the prospective borrower to sign the reverse mortgage worksheet guide.

Chapter 854 (AB 1700 – Medina); amending Sections 1923.2 and 1923.5 of the Civil Code.

- **Home Equity Lines of Credit (HELOC)**

Under existing law, within 30 days after a mortgage has been satisfied, the mortgagee or the assignee of the mortgagee is required to execute a certificate of the discharge of the mortgage, as specified, and to deliver, upon the request of the mortgagor or another authorized person, the original note and mortgage to the person making the request.

Existing law requires a creditor to make certain disclosures to a consumer applying for a home equity loan, as defined. Existing federal law relating to lending practices specifies certain circumstances under which a lender may reduce or terminate an existing home equity line of credit.

This act, on and after July 1, 2015, and until July 1, 2019, requires a lender, upon receipt of a specified written request from a borrower and a specified payment, to close a borrower’s equity line of credit, and to release or reconvey the property secured by the equity line of credit. The act prescribes the contents of the written request.

Chapter 206 (AB 1770 – Dababneh); adding and repealing Section 2943.1 of the Civil Code.

- **Notaries Public**

- **Verification of Identity**

Existing law provides that two or more public agencies, by agreement, may form a joint powers authority to exercise any power common to the contracting parties.

This act provides that the parties to the agreement may exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax.

Chapter 197 (SB 1050 – Monning); amending Sections 1189 and 1195 of the Civil Code, and amending Section 8202 of the Government Code.

- **Penalties**

Existing law authorizes the Secretary of State to appoint and commission notaries public in such number as the secretary deems necessary for the public convenience. Existing law authorizes the secretary to refuse to appoint any person as notary public or to revoke or suspend the commission of any notary public upon specified grounds. Existing law also makes specified violations by a notary public punishable by a civil penalty not to exceed $750 or $1,500.

This act makes a willful failure by a notary public to discharge fully and faithfully any of the duties or responsibilities of a notary public punishable by a civil fine not to exceed $1,500.

Chapter 913 (AB 2747 – Committee on Judiciary); amending Sections 56.06, 1633.3, 1936, and 1942.2 of the Civil Code, amending Sections 415.46, 1174.25, 1174.3, 1501.5, 1571, and 2025.510 of the Code of Civil Procedure, amending Sections 912, 917, and 1038.2 of the Evidence Code, amending Section 504 of the Family Code, amending Sections 831.7, 6103, 8214.15, 60371, 68085.1, 68631, and 68632 of, adding Section 68631.5 to, and repealing Section 1456 of, the Government Code, amending Section 1569.698 of the Health and Safety Code, amending Section 11163.3 of the Penal Code, amending Sections 1513.1, 1811, 1812, 1813, 1851.5, 2356.5, 6401, and 6402 of the Probate Code, amending Section 21189.2 of the Public Resources Code, and repealing Chapter 4.2 (commencing with Section 10830) of Part 2 of Division 9 of the Welfare and Institutions Code.

- **Privacy**

Existing law requires a person or business conducting business in California that owns or licenses computerized data that includes personal information, as defined, to disclose, as specified, a breach of the security of the system or data following discovery or notification of the security breach to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Existing law also requires a person or business that maintains computerized data that includes personal information that the person or business does not own to notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, as specified.

Existing law requires a person or business required to issue a security breach notification pursuant to these provisions to meet various requirements, including that the security breach notification provide specified information.

This act requires, with respect to the information required to be included in the notification, if the person or business providing the notification was the source of the breach, that the person or business offer to provide appropriate identity theft prevention and mitigation services, if any, to the affected person at no cost for not less than 12 months if the breach exposed or may have exposed specified personal information.

Existing law requires a business that owns or licenses personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. (Continued on Next Page...
PRIVACY (cont.)

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This act expands these provisions to businesses that own, license, or maintain personal information about a California resident.

Existing law prohibits a person or entity, with specified exceptions, from publicly posting or displaying an individual's social security number or doing certain other acts that might compromise the security of an individual's social security number, unless otherwise required by federal or state law.

This act also, except as specified, prohibits the sale, advertisement for sale, or offer to sell of an individual's social security number.

Chapter 855 (AB 1710 – Dickinson), amending Sections 1798.81.5, 1798.82, and 1798.85 of the Civil Code.

PROPERTY TAXATION

• Postponement

The Senior Citizens and Disabled Citizens Property Tax Postponement Law, until February 20, 2009, authorized a claimant, as defined, to file a claim with the Controller to postpone the payment of ad valorem property taxes, if household income, as defined, did not exceed specified amounts. That law authorized the Controller, upon approval of the claim, to either make a payment directly to specified entities, or to issue the claimant a certificate of eligibility that constituted a written promise of the state to pay the amount specified on the certificate, as provided. That law required these payments to be made out of specified funds appropriated to the Controller, and also required certain repaid property tax postponement payments to be paid into an impound account and transferred to the General Fund. That law also required all sums paid by the Controller for postponed property taxes to be secured by a lien in favor of the State of California.

Existing law, on and after February 20, 2009, prohibits a person from filing a claim for postponement, and prohibits the Controller from accepting applications for postponement, under the Senior Citizens and Disabled Citizens Property Tax Postponement Law.

This act makes inoperative the prohibition against a person filing a claim for postponement and the Controller from accepting applications for postponement under the program as of July 1, 2016, and repeals this prohibition on January 1, 2017. This act authorizes a claim for postponement to be filed after September 1 of the fiscal year in which the postponement is claimed and on or before April 10 of that fiscal year.

This act limits the household income amount of a claimant to $35,000 and excludes losses and nonexpenses from “income” for purposes of these provisions. This act also excludes mobilehomes and houseboats from the scope of these provisions.

The Senior Citizens Mobilehome Property Tax Postponement Law provides for all amounts postponed in the case of a mobilehome to be due if the claimant dies, unless the surviving spouse or other person eligible to postpone continues to occupy the mobilehome.

This act limits this exception to the circumstance in which the surviving spouse who was previously approved continues to occupy the mobilehome.

This act creates in the State Treasury a Senior Citizens and Disabled Citizens Property Tax Postponement Fund and requires the fund to be interest-bearing at a specified rate. This act deletes the requirement that funds be placed in an impound account and instead requires that repaid property tax postponement payments be directly deposited into the newly created fund. The act requires the Controller to transfer any moneys in the fund in excess of specified amounts to the General Fund each year. The act requires any impound account funds remaining upon the enactment of this act to be transferred to the fund. The act continuously appropriates these funds to the Controller for purposes of administering the property tax postponement program.

Existing law authorizes the Controller to establish a fee to implement these provisions, not to exceed $10.

This act authorizes the Controller to charge a fee not exceeding $30.

Existing law authorizes the Controller to subordinate the lien for postponed property taxes if the Controller determines subordination is appropriate.

This act eliminates that authorization and makes other conforming changes.

Existing law requires that the owner’s equity interest in the residential dwelling be at least 20% of the full value of the property at the time the claimant files an initial postponement claim in order to be eligible to participate in the postponement program.

This act increases the equity requirement to at least 40% for each postponement claim.

Existing law requires the repayment of postponed taxes in specified circumstances.

This act, in addition, requires repayment if the claimant refinances the dwelling or has elected to participate in a revenue mortgage program for the dwelling. The act requires the tax collector or the assessor to notify the Controller if assessment records applicable to property for which taxes have been postponed reveal a change in ownership within 60 days of processing that change, and requires that the county tax collector or assessor notify the Controller within 60 days of all property subject to a “Notice of Lien for Postponed Property Taxes” and processed for notice of becoming tax defaulted or of the claimant for that property, if residential, transferring ownership or changing his or her mailing address, or having been determined to be deceased.

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Suspension or Forfeiture

Existing law requires a claim for postponement to be filed after May 15 of the calendar year in which the fiscal year for which postponement is claimed begins, and on or before December 10 of that fiscal year.

This act instead requires a claim for postponement to be filed after September 1 of the calendar year in which the fiscal year for which postponement is claimed begins, and on or before April 10 of that fiscal year.

Existing law makes optional certain duties of local agencies related to recordation of the tax lien.

This act deletes that provision. The act requires the notice of lien to be recorded within 14 days of the transfer of funds and notice of lien to the county by the Controller. The act imposes additional requirements in the case of liens upon mobilehome loans established prior to February 20, 2009, and specifies procedures to be followed by the Controller if the obligation secured by the lien is paid in full or otherwise discharged.

Existing law requires, if a postponement claim is filed timely but before the delinquency date of the first or 2nd installment of property taxes, that any delinquent penalties and interest for the fiscal year be canceled unless the failure to perfect the claim was due to willful neglect on the part of the claimant or representative, in which case the certificates of eligibility for the fiscal year can be used to pay delinquent taxes only if accompanied by sufficient amounts to pay the delinquent interest and penalties.

This act instead requires, if a postponement claim is filed timely before the delinquency date of the second installment of property taxes on the secured roll, that any delinquent penalties, costs, fees, and interest accrued for the fiscal year be canceled. This act instead requires, in the event of willful neglect to perfect the claim, that an electronic funds transfer for that current fiscal year be used to pay only the delinquent taxes. This act authorizes the tax collector, if the payment amount sufficient to pay all of the delinquent penalties, costs, fees, and interest is not received by the tax collector within 30 days from the date of the electronic funds transfer, to return the electronic funds transfer to the Controller to deny the postponement claim. This act requires the Controller to provide a specified notification to the claimant and a copy of the notification to the tax collector.

This act also requires the Controller, upon written request of the tax collector, to provide the tax collector with information that is required for the preparation and enforcement of the sale of tax-defaulted property. The act requires the tax collector or assessor, in the case of a tax-defaulted property sale, to include the outstanding balance of the property tax postponement loan in the minimum bid. The act requires that, in the event that the property fails to receive the minimum bid and the minimum bid is reduced, all moneys paid to the Controller’s office and county tax collector be a proportionate allocation of the total moneys owed. The act also requires the tax collector or his or her designee to certify, under penalty of perjury, that the information is requested for these purposes. This act also provides that any information provided to the tax collector is not a public record and is not open to public inspection.

Existing law authorizes a tax collector, five years or more after a nonresidential commercial property has become tax defaulted, to sell the property.

This act authorizes a county to adopt conditions and procedures to delay the sale of property that it deems may be eligible to file a property tax postponement claim, and to cancel any delinquent penalties, costs, fees, and interest associated with these properties.

Existing law requires the price at which certain tax-defaulted property may be offered for sale to be the total amount necessary to redeem the property, plus costs.

This act requires the outstanding balance of any property tax postponement loan to also be included in the price described above.

Existing law requires, after certain other amounts have been satisfied, the proceeds from the sale of tax-defaulted property to be distributed to taxing agencies in specified proportions to each assessment fund with the remaining balance to each tax fund.

This act requires the proceeds remaining after the distributions described above to be distributed to the State Controller for the outstanding balance of any property tax postponement loan.

NOTE: This act took effect as an urgency measure on September 28, 2014.

Chapter 703 (AB 2231 – Gordon): amending Sections 16181, 16182, 16183, 16184, 16186, 16190, 16200, 16210, 16211, and 16211.5 of, repealing Sections 16185, 16212, 16213, and 16214 of, and repealing and adding Section 16180 of, the Government Code, and amending Sections 2514, 2515, 3375, 3691, 3698.5, 3698.7, 3793.1, 4673.1, 20503, 20583, 20584, 20585, 20595, 20602, 20621, 20622, 20639.10, 20639.11, 20639.12, 20645.5, and 20645.6 of, amending and repealing Section 20623 of, repealing Section 20583.1 of, adding Section 3376 to, the Revenue and Taxation Code.

- Suspension or Forfeiture
- Limited Liability Companies

Existing law authorizes a tax collector, five years or more after a nonresidential commercial property has become tax defaulted, to sell the property.

This act authorizes a county to adopt conditions and procedures to delay the sale of property that it deems may be eligible to file a property tax postponement claim, and to cancel any delinquent penalties, costs, fees, and interest associated with these properties.

Existing law requires the price at which certain tax-defaulted property may be offered for sale to be the total amount necessary to redeem the property, plus costs.

This act requires the outstanding balance of any property tax postponement loan to also be included in the price described above.

Existing law requires, after certain other amounts have been satisfied, the proceeds from the sale of tax-defaulted property to be distributed to taxing agencies in specified proportions to each assessment fund with the remaining balance to each tax fund.

This act requires the proceeds remaining after the distributions described above to be distributed to the State Controller for the outstanding balance of any property tax postponement loan.

NOTE: This act took effect as an urgency measure on September 28, 2014.

Chapter 325 (AB 1143 – Skinner): amending Sections 402.5, 23038, 23304.1, and 23305.5 of the Revenue and Taxation Code.
**PROPERTY TAXATION (cont.)**

- **Tax-Defaulted Property**
- **Excess Proceeds from Sale**

Existing law generally authorizes a county tax collector to sell tax-defaulted property five years or more, or three years or more, as applicable, after that property has become tax defaulted. Existing law requires the proceeds from the sale of tax-defaulted property to be deposited in the delinquent tax sale trust fund, and requires the proceeds in the fund to be distributed to the state, to the county for reimbursement of specified costs relating to the sale of the tax-defaulted property, and among taxing agencies, as provided. Existing law requires any proceeds remaining in the delinquent tax sale trust fund after distribution of the proceeds to be retained in the fund subject to being claimed by parties of interest, as specified. Existing law requires, at the expiration of one year following the recordation of the tax deed to the purchaser, that any excess proceeds not claimed be distributed among taxing agencies.

This act eliminates the requirement that any excess proceeds not claimed be distributed among taxing agencies, and would instead authorize any excess proceeds to be transferred to the county general fund at the expiration of a specified time period.

Existing law authorizes any party of interest to file with the county a claim for the excess proceeds from the sale of tax-defaulted property, as specified, at any time prior to the expiration of one year following the recordation of the tax collector’s deed to the purchaser. Existing law prohibits the excess proceeds from being distributed to the parties of interest, as specified, sooner than one year following the recordation of the tax collector’s deed to the purchaser.

This act prohibits the distribution of any excess proceeds to the parties of interest as described above if the board of supervisors has petitioned to rescind the tax sale, and instead requires the excess proceeds to be distributed no sooner than one year following the date the board of supervisors determines the tax sale should not be rescinded, and only if the person who petitioned the board of supervisors has not commenced a proceeding in court. If a proceeding has been commenced in a court, this act prohibits any excess proceeds from being distributed until final court order has been issued.

**PUBLIC WORKS**

- **Definition of Construction**

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages. Existing law generally defines “public works” to include construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds. Existing law defines “construction” for these purposes to include work performed during the design and preconstruction phases of construction. Existing law makes a willful violation of laws relating to payment of prevailing wages on public works a misdemeanor.

This act revises the definition of “construction” to also include work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite.

**PUBLIC RECORDS**

- **Exception to Disclosure**
- **Public Officials**

The California Public Records Act requires state and local agencies to make public records available for inspection by the public, subject to specified criteria and with specified exceptions. The act prohibits a person, business, or association from publicly posting or displaying on the Internet the home address or telephone number of any elected or appointed official, defined to include a public safety official, if that official has made a written demand to not have that information disclosed. Existing law permits an elected or appointed official to designate the official’s employer, a related governmental entity, or a voluntary professional association of similar officials to act as that official’s agent with regard to making that written demand. Existing law requires a written demand made by an official’s agent to describe a threat or fear for safety of the official or any person residing at the official’s home address.

This act additionally permits the recognized collective bargaining representative of an appointed official who is a peace officer, a District Attorney, or a Deputy District Attorney, to make a written demand for nondisclosure under this law on behalf of that appointed official.

**Chapter 791 (AB 634 - Gomez): amending Section 6254.21 of the Government Code.**

**Chapter 864 (AB 26 - Bonilla): amending Section 1720 of the Labor Code.**

**Chapter 501 (AB 2257 – Cooley): amending Sections 4674 and 4675 of the Revenue and Taxation Code.**

**Labor Commissioner**

**Notice of Completion**

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if, after an investigation, the commissioner determines there has been a violation of the law regulating public works projects, including the payment of prevailing wages. Existing law tolls the period for service of assessments for the period of time required by the Director of Industrial Relations to determine whether a project is a public work, as...
...specified. Existing law, with respect to the determination of whether a project is a public work, requires a person filing a notice of completion of the project to also provide notice to the Labor Commissioner, as specified, and requires the awarding body or political subdivision accepting a public work to provide to the Labor Commissioner notice of that acceptance.

This act instead requires the body awarding the contract for a public work to furnish, within 10 days after receipt of a written request from the Labor Commissioner, a copy of the valid notice of completion for the public work or a document evidencing the awarding body’s acceptance of the public work on a particular date, whichever occurs later, in accordance with specified provisions.

The act requires the awarding body to notify the appropriate office of the Labor Commissioner if, at the time of receipt of the Labor Commissioner’s written request, there has been no valid notice of completion filed by the awarding body in the office of the county recorder, and no document evidencing the awarding body’s acceptance of the public work on a particular date. If the awarding body fails to timely furnish the Labor Commissioner with the applicable document, the act requires that the period for service of assessments be tolled until the Labor Commissioner’s actual receipt of the applicable document.

Chapter 916 (SB 266 - Lieu); amending Section 1741.1 of the Labor Code.

### Real Property Contracts

- **Electronic Messages**

Existing law prescribes the manner in which contracts may be created. Under existing law, certain contracts are invalid unless the contract, or some note or memorandum of the contract, is in writing and subscribed by the party to be charged. Under existing law, an agreement or contract that is valid in other respects and is otherwise enforceable is not invalid for lack of a note, memorandum, or other writing and is enforceable by way of action or defense, provided that the agreement or contract is a qualified financial contract, as defined, and there is sufficient evidence to indicate that a contract has been made, including, among other alternatives, a written confirmation or the parties have agreed by some other means to be bound by the terms of the qualified financial contract from the time they reached agreement on those terms.

This act provides that an electronic message of an ephemeral nature that is not designed to be retained or to create a permanent record, such as a text message or an instant message, is insufficient to constitute a contract to convey real property, in the absence of a written confirmation that conforms to a specified requirement of existing law.

Existing law requires a licensed real estate broker to retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required.

This act prohibits this requirement from being construed to require retention of electronic messages of an ephemeral nature, as described in the act.

Chapter 107 (AB 2136 - Daly); amending Section 10148 of the Business and Professions Code, and amending Section 1624 of the Civil Code.

### Real Property Sales

- **Auctions**
- **Agency Disclosures**

Existing law regulates the activities of auctioneers and auction companies and prohibits, with a certain exception, a person from causing or allowing any person to bid at a sale for the sole purpose of increasing the bid on any item or items being sold by the auctioneer. Existing law defines an auction in this regard and excepts from this definition a sale of real estate. A violation of these provisions is a misdemeanor generally punishable by a fine of up to $1,000, or by imprisonment for not more than a year, unless another penalty is specified.

This act, on and after July 1, 2015, with respect to an auction that includes the sale of real property, prohibits a person from causing or allowing any person to bid at a sale for the sole purpose of increasing the bid on any real property being sold by the auctioneer. The act, however, allows an auctioneer or another person to place a bid on the seller’s behalf during an auction of real property if notice is given that liberty for that bidding is reserved. The act also requires in this regard that the person placing that bid contemporaneously disclose to all auction participants that the particular bid has been placed on behalf of the seller. The act excepts from the application of these provisions a credit bid made by a creditor with a security interest in the property that is the subject of auction when the credit bid can result in the transfer of title to property to the creditor.

Existing law requires listing and selling agents, as defined, to provide sellers and buyers in a residential real property transaction with a disclosure form, as prescribed, containing general information on real estate agency relationships. Existing law authorizes a contract between a principal and agent, in this context, to be modified to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties.
This act prohibits a lender or an auction company that is retained to control aspects of a residential real property transaction from requiring, as a condition of receiving a lender’s approval of the transaction, a homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company and would declare a clause, provision, covenant, or agreement in violation of this prohibition to be against public policy, void, and unenforceable.

Chapter 893 (AB 2039 - Muratsuchi): amending Section 2079.23 of, and adding Section 1812.610 to, the Civil Code.

Recorded Documents

Veterans

The California Public Records Act provides that the public records, as defined, of every state or local agency are open for inspection at all times during the office hours of the agency, that every person has a right to inspect any public record except as provided in the act, and that every agency, upon request, shall make copies of records available upon payment of fees to cover costs. The act authorizes any agency to withhold disclosure of requested public records pursuant to specific statutory exemptions or by demonstrating that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Existing law establishes that the officers of a county include a county recorder, with specified duties, including the recording of various documents according to specified procedures.

Existing law requires that if any military veteran requests the recordation of any military discharge document, including a veteran’s service form DD214, that the county recorder shall require the veteran to sign a form that acknowledges that the document becomes part of the official record of the county, and subject to inspection.

Existing law permits a family member or legal representative of the veteran authorized by law to receive a certified copy of those documents to request recordation of those documents on the same terms as a veteran.


Redevelopment Agencies

- Successor Agencies Obligation Payment Schedule
- Allowable Housing Administrative Costs

Existing law authorizes the creation of infrastructure financing districts, as defined, for the sole purpose of financing public facilities, subject to adoption of a resolution by the legislative body and affected taxing entities proposed to be subject to the division of taxes and voter approval requirements. Existing law prohibits an infrastructure financing district from including any portion of a redevelopment project area.

This act deletes that prohibition and authorizes a district to finance a project or portion of a project that is located in, or overlaps with, a redevelopment project area or former redevelopment project area.

Existing law requires a successor agency to submit a Recognized Obligation Payment Schedule to the Department of Finance, and requires the successor agency to make payments pursuant to that schedule.

This act authorizes the successor agency to schedule Recognized Obligation Payment Schedule payments beyond the existing Recognized Obligation Payment Schedule cycle upon a showing that a lender requires cash on hand beyond the Recognized Obligation Payment Schedule cycle, or when a payment is shown to be due during the Recognized Obligation Payment Schedule period. The act authorizes the successor agency to utilize reasonable estimates and projections to support payment amounts where a payment is shown to be due during the Recognized Obligation Payment Schedule period, but an invoice or other acting document has not been received, if the successor agency submits appropriate supporting documentation for the basis of the estimate or projection to the department and the auditor-controller. The act provides that a Recognized Obligation Payment Schedule may also include appropriation of moneys from bonds subject to passage during the Recognized Obligation Payment Schedule cycle when an enforceable obligation requires the agency to issue the bonds and use the proceeds to pay for project expenditures.

Existing law requires the county auditor-controller to determine the amount of property taxes that would have been allocated to each redevelopment agency if it had not been dissolved and to deposit this amount in a Redevelopment Property Tax Trust Fund in the county. Existing law requires the conducting of a due diligence review to determine the unbonded balances available for transfer to affected taxing entities. Existing law requires the county auditor-controller for each fiscal year to allocate moneys in the Redevelopment Property Tax Trust Fund for passthrough payment obligations, enforceable obligations of the dissolved redevelopment agency, and administrative costs, as specified. Any remaining moneys in the Redevelopment Property Tax Trust Fund are required to be distributed as local property tax revenues to local agencies and school entities.

(Continued on Next Page...)
Redevelopment Agencies (cont.)

This act requires that, under specified conditions, on July 1, 2014, and twice yearly thereafter until July 1, 2018, funds be allocated to cover the housing entity administrative cost allowance of a local housing authority that has assumed the housing duties of the former redevelopment agency, before remaining moneys are distributed to local agencies and school entities. The act defines “housing entity administrative cost allowance” for these purposes. This act also excludes from the calculation of the amount distributed to taxing entities during the 2012-13 base year the amounts distributed to taxing entities pursuant to the due diligence review process.

Existing law requires a successor agency to prepare a long-range property management plan that addresses the disposition and use of the real properties of a former redevelopment agency and requires a transfer of the property to the city, county, or city and county if the plan directs the use or liquidation of the property for a project identified in an approved redevelopment plan.

This act specifies that the term “identified in an approved redevelopment plan” includes properties listed in a community plan or a five-year implementation plan.

NOTE: This act took effect as an urgency statute on February 18, 2014.


Asset Transfers by Successor Agencies

Existing law dissolved redevelopment agencies as of February 1, 2012, and provided for the designation of successor agencies. Successor agencies are required to wind down the affairs of the dissolved redevelopment agencies, subject to review by oversight boards. The oversight board is required to direct a successor agency to, and a successor agency is required to, among other things, dispose of assets and properties of the former redevelopment agency as directed by the oversight board. Existing law suspends this requirement, except as it applies to the transfer or assets and properties for governmental use, until the Department of Finance has approved a long-range property management plan, as specified. Upon approval of a long-range property management plan, the plan governs and supersedes all other provisions relating to the disposition and use of the real property assets of the former redevelopment agency. If the department has not approved a long-range property management plan by January 1, 2015, existing law requires the property of a former redevelopment agency to be disposed of according to law.

This act instead requires the property of a former redevelopment agency to be disposed of according to law if the department has not approved a long-range property management plan by January 1, 2016.

Existing law requires the Controller to review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012, between the successor agency and the city, county, or city and county that created a redevelopment agency, or any other public agency, that was not made pursuant to an enforceable obligation on an approved and valid Recognized Obligation Payment Schedule, and if so, to order the return of the asset, except as specified. Existing law further requires an affected local agency, upon receiving such an order from the Controller, to reverse the transfer and return the applicable assets to the successor agency.

This act repeals those requirements.

NOTE: This act took effect as an urgency statute on July 18, 2014.

Chapter 146 (AB 1963 - Atkins): amending Sections 34176 and 34191.3 of, and repealing Section 34178.8 of, the Health and Safety Code.

Redevelopment Housing Successor Report

Existing law dissolved redevelopment agencies and community development agencies, and provides for the designation of successor agencies that are required to wind down the affairs of the dissolved redevelopment agencies and to, among other things, make payments due for enforceable obligations.

Existing law provides that the city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. Existing law requires that any funds transferred to the city, county, or city and county or the entity assuming the housing functions of the former redevelopment agency, together with any funds generated from housing assets, to be maintained in a separate Low and Moderate Income Housing Asset Fund to be used in accordance with applicable housing-related provisions of the Community Redevelopment Law, except as specified. Existing law requires the housing successor annually to provide an independent financial audit of the fund to its governing body, and to post on its Internet Web site specified information.

This act requires that posted information to also include an inventory of homeownership units assisted by the former redevelopment agency or the housing successor that are subject to covenants or restrictions or to an adopted program that protects the former redevelopment agency’s investment of moneys from the Low and Moderate Income Housing Fund.

**Enhanced Infrastructure Financing Districts**

Existing law authorizes a legislative body of a city or a county to establish an enhanced infrastructure financing district, adopt an infrastructure financing plan, and issue bonds, for which only the district is liable, to finance specified public facilities upon approval by 55% of the voters; to finance public capital facilities or other specified projects of communitywide significance, including, but not limited to, brownfield restoration and other environmental mitigation; the development of projects on a former military base; the repayment of the transfer of funds to a military base reuse authority; the acquisition, construction, or rehabilitation of housing for persons of low and moderate income for rent or purchase; the acquisition, construction, or repair of industrial structures for private use; transit priority projects; and projects to implement a sustainable communities strategy. The act also authorizes an enhanced infrastructure financing district to utilize any powers under the Polanco Redevelopment Act.

This act requires the legislative body to establish a public financing authority comprised of members of the legislative body of the participating entities and of the public, prior to the adoption of a resolution to form an enhanced infrastructure district and infrastructure financing plan. This act requires proceedings for the establishment of a district to be instituted by the adoption of a resolution of intention that, among other things, states the boundaries of the district, the type of public facilities and development proposed to be financed or assisted by the district, and the need for the district and the goals the district proposes to achieve.

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**Local Government**

Existing law authorizes the creation by a city, county, or city and county of an infrastructure financing district, as defined, for the sole purpose of financing public facilities, subject to adoption of a resolution by the legislative body and affected taxing entities proposed to be subject to division of taxes and 2/3 voter approval. Existing law authorizes the legislative body to, by majority vote, initiate proceedings to issue bonds for the financing of district projects by adopting a resolution, subject to specified procedures and 2/3 voter approval. Existing law requires an infrastructure financing plan to include the date on which an infrastructure financing district will cease to exist, which may not be more than 30 years from the date on which the ordinance forming the district is adopted. Existing law prohibits a district from including any portion of a redevelopment project area. Existing law, the Polanco Redevelopment Act, authorizes a redevelopment agency to take any action that the agency determines is necessary and consistent with state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area, whether the agency owns that property or not, subject to specified conditions. Existing law also declares the intent of the Legislature that the areas of the district created be substantially undeveloped, and that the establishment of a district should not ordinarily lead to the removal of dwelling units.

This act authorizes the creation by a city, county, city and county, or joint powers authority of an infrastructure and revitalization financing district and the issuance of debt with 2/3 voter approval. The act authorizes the creation of a district for up to 40 years and the issuance of debt with a final maturity date of up to 30 years. The act authorizes a district to finance projects in redevelopment project areas and former redevelopment project areas and former military bases. The act authorizes the legislative body to dedicate any portion of its funds from the Redevelopment Property Tax Trust Fund to the district, if specified criteria are met. The act authorizes the formation of a district to finance a project or projects on a former military base, if specified conditions are met.

The act authorizes a district to fund various projects, including, among others, watershed land used for the collection and treatment of water for urban uses, flood management, levees, bypasses, open space, habitat restoration, brownfields restoration, environmental mitigation, purchase of land and property for development purposes, including commercial property, hazardous cleanup, former military bases, and specified transportation purposes. The act authorizes a district to implement hazardous cleanup pursuant to the Polanco Redevelopment Act. The act imposes a specified reporting requirement on districts. The act states that it is the intent of the Legislature that the establishment of a district should not ordinarily lead to the removal of existing functional, habitable, and safe dwelling units. The act defines the term “public works” for purposes of these provisions.

This act incorporates additional substantive changes in Section 33459 of the Health and Safety Code made by SB 470, to become operative if SB 470 and this act become effective on or before January 1, 2014, and this act is enacted last.

**Chapter 775 (AB 229 – Perez): adding Chapter 2.6 (commencing with Section 53369) to Part 1 of Division 2 of Title 5 of the Government Code, and amending Section 33459 of the Health and Safety Code.**
If the resolution is adopted by the legislative body after a public hearing, the act prohibits the public financing authority from implementing the infrastructure financing plan until specified events occur. This act authorizes the public financing authority to initiate proceedings to issue bonds, and requires the proposal to issue bonds to be submitted to qualified electors of the proposed district.

This act authorizes an enhanced infrastructure financing district to fund infrastructure projects through tax increment financing, pursuant to the infrastructure financing plan and the agreement of affected taxing entities. This act authorizes the creation of an infrastructure financing district for up to 45 years from the date on which the issuance of bonds is approved. This act requires an infrastructure financing district to contract for the performance of an independent financial and performance audit every two years. This act authorizes a city, county, or special district that contains territory within the boundaries of an infrastructure financing district, upon approval of its governing body, to loan moneys to the infrastructure financing district to fund the activities described in the infrastructure financing plan.

This act authorizes an enhanced infrastructure financing district to finance a project or portion of a project that is located in, or overlaps with, a redevelopment project area or former redevelopment project area. This act prohibits a city or county that created a redevelopment agency from creating a district until specified conditions related to the wind down of the former redevelopment agency have been satisfied. This act provides that any debt or obligation of an enhanced infrastructure financing district is subordinate to an enforceable obligation of a former redevelopment agency. This act additionally authorizes the legislative body of the city forming an enhanced infrastructure financing district to choose to dedicate any portion of its net available revenue, as defined, to the enhanced infrastructure financing district through the infrastructure financing plan.

Chapter 785 (SB 628 – Beall); adding Chapter 2.99 (commencing with Section 53398.50) to Part 1 of Division 2 of Title 5 of the Government Code.

REDEVELOPMENT AGENCIES (cont.)

(Continued from Previous Page...)

Rentals Property

- Electric Vehicle Charging Stations

This act, for any lease executed, renewed, or extended on and after July 1, 2015, requires a lessor of a dwelling to approve a written request of a lessee to install an electric vehicle charging station at a parking space allotted for the lessee in accordance with specified requirements and that complies with the lessor's approval process for modification to the property. The act excerpts from its provisions specified residential property, including a residential rental property with fewer than five parking spaces and one subject to rent control. The act requires the electric vehicle charging station and all modifications and improvements made to the property comply with federal, state, and local law, and all applicable zoning requirements, land use requirements, and covenants, conditions, and restrictions.

The act also requires a lessee's written request to make a modification to the property in order to install and use an electric vehicle charging station include his or her consent to enter into a written agreement including specified provisions, including compliance with the lessor's requirements for the installation, use, maintenance, and removal of the charging station and installation of the infrastructure for the charging station. The act also requires the lessee to maintain in full force and effect a $1,000,000 lessee's general liability insurance policy.

Existing law regulates the terms and conditions of residential and commercial tenancies. Existing law defines and regulates common interest developments and voids any condition affecting the transfer or sale of an interest in a common interest development that prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in a designated parking space in the development.

This act voids any term in a lease renewed or extended on or after January 1, 2015, that conveys any possessory interest in commercial property that either prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in a parking space associated with the commercial property. The act prescribes requirements for lessor approval of a lessee request to install or use an electric vehicle charging station and would require that a lessor approve a request to install a charging station if the lessee agrees in writing to do specified acts, including paying for various costs associated with the charging station and maintaining insurance naming the lessor as an insured.

Chapter 529 (AB 2565 – Muratsuchi); adding Sections 1947.6 and 1952.7 to the Civil Code.

Subdivisions

- Co-Ops

Existing law exempts a limited-equity housing cooperative or a workforce housing cooperative trust from provisions of existing law governing subdivided land transactions that are applicable to stock cooperatives if the limited-equity housing cooperative or workforce housing cooperative trust complies with specified conditions.

(Continued on Next Page...)
Subdivisions (cont.)

(Continued from Previous Page...)

This act revises the conditions for the exemption, among other things, to require that each party that executes a regulatory agreement with the cooperative satisfy itself that the rights of the cooperative members are provided adequate protection.

Existing law prohibits the sale or lease of lots or parcels within a subdivision that is subject to a blanket encumbrance unless the encumbrance includes a specified release clause or certain conditions are met.

This act authorizes the sale or lease of an individual interest in a defined stock cooperative or limited-equity housing cooperative that is subject to a blanket encumbrance if specified conditions are met.

The Davis-Stirling Common Interest Development Act establishes procedures for elections.

This act exempts a stock cooperative with bylaws that provide that all members and shareholders automatically become directors of the homeowners’ association from the procedures applicable to the election of directors of the homeowners’ association.

Chapter 669 (AB 569 – Chau); amending Sections 11003.4 and 11013.1 of, and adding Section 11013.6 to, the Business and Professions Code, and amending Section 5100 of the Civil Code.

Title and Escrow

• Buyer’s Choice Act

Existing law, the Buyer’s Choice Act, prohibits a mortgagee or beneficiary under a deed of trust who acquired title to residential real property improved by four or fewer dwelling units at a foreclosure sale from requiring, directly or indirectly, as a condition of selling the property, that the buyer purchase title insurance or escrow services in connection with the sale from a particular title insurer or escrow agent. Under existing law, a seller who violates these provisions is liable to the buyer for an amount equal to three times all the charges made for the title insurance or escrow services. Existing law makes the act operative until January 1, 2015.

This act deletes the termination date, thereby making the Buyer’s Choice Act operate indefinitely.

Chapter 198 (SB 1051 – Galgiani); repealing Section 1103.23 of the Civil Code.

Voided Deeds

• Court Order of Void Deed

Under existing law, a person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

This act provides that after a person is convicted of a violation of that law, or a plea is entered whereby a charge alleging a violation of that law is dismissed and a waiver is obtained, upon written motion of the prosecuting agency, the court, after a hearing, is required to issue a written order that the false or forged instrument be adjudged void ab initio if the court determines that an order is appropriate under applicable law. The act requires the order to state whether the instrument is false or forged, or both false and forged, and describe the nature of the falsity or forgery. The act requires a copy of the instrument to be attached to the order, at the time the order is issued by the court, and a certified copy of the order to be filed, registered, or recorded at the appropriate public office by the prosecuting agency.

The act requires a prosecuting agency to follow specific procedures for filing the motion, including, but not limited to, requirements to provide notice to interested parties, including, when a criminal action has commenced that may result in adjudications against the false or forged instrument or the property affected by the false or forged instrument. The notice of motion may be served by certified mail only on interested parties. The act requires a court to take specified procedural actions. The act does not define the term “false instrument”. Current California case law defines the term broadly to include documents otherwise valid on their face but include false information. Rendering such false documents void ab initio rather than voidable may be a change in the current law, which may adversely affect the rights of bona fide purchasers or lenders whose title rests on such false documents.

Chapter 455 (AB 1698 – Wagner); amending Section 115 of the Penal 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 Old Republic Title Company for providing the following case summary information.
ANTIDEFICIENCY

**Thoryk v. San Diego Gas & Elec. Co.**

Highland Valley Investors (“Highland”), a junior lienholder, acquired title at its non-judicial foreclosure, but the debt was not fully extinguished. The senior lienholder then foreclosed. The borrower filed an action against third parties seeking damages to the property as a result of a wildfire, and Highland filed a complaint in intervention seeking to impose a lien for the balance that remained owing under the terms of its note and deed of trust, and/or under the doctrine of equitable conversion, upon any recovery that the borrower might eventually obtain against the third party tortfeasors. The court ruled in favor of the borrower, holding that imposing a lien on the proceeds of a recovery of tort damages would amount to an improper antideficiency judgment because:

1. There was no express language in the deed of trust that assigned tort claims as additional security, and
2. The Doctrine of Equitable Conversion, which provides that proceeds from a condemnation action or tort damages can stand in place of the original real property security, did not apply because Highland will no longer hold a security interest in the property when the entitlement to any money damages is determined in the borrower’s action against third parties.

**Deeds**

**Jenkins v. Teegarden**

A deed prepared by a caregiver and executed by a dependent adult in favor of the caregiver, for inadequate consideration, is an invalid “donative transfer” under former Probate Code Section 21350 (as well as current Probate Code Section 21380). The fact that the recipient gave good consideration, sufficient to support a contract, does not prevent the transfer from being an invalid donative transfer.

**Community Property**

**In re Marriage of Valli**
58 Cal. 4th 1396, 1399 (2014)

The Family Code’s transmutation rules, requiring an express written declaration in order to convert community property to separate property, apply to property acquired during marriage in the name of one spouse, even where both parties agreed to hold title in that manner. The court abrogated In re Marriage of Brooks & Robinson, and held that there is no exemption from the transmutation rules for spousal purchases from third parties.

**Deed in Lieu of Foreclosure**

**Decon Grp., Inc. v. Prudential Mortgage Capital Co., LLC**

The lien of a senior deed of trust and fee title ordinarily do not merge when a deed in lieu of foreclosure is given where there are junior lienholders of record. In this case, where a property owner conveyed title to the holder of a first deed of trust and there was a junior mechanic’s lien, the lien of the deed of trust and fee title did not merge. Accordingly, the deed of trust could subsequently foreclose and wipe out the mechanic’s lien.

**Deficiency Judgments**

**First California Bank v. McDonald**

In order to obtain a deficiency judgment, all real property collateral must be included in one single action for judicial foreclosure. If any of the real property collateral is previously exhausted through any other means, such as a private sale without the consent of all debtors, a deficiency judgment against non-consenting debtors is barred.

Here, prior to bringing this judicial foreclosure action, the lender and one of the debtors agreed to a sale of one of the two secured parcels and a release of that property from the security of the deed of trust. The court held that while the lender was entitled to judically (or non-judicially) foreclose on the remaining parcel, it was not entitled to a deficiency judgment against the non-consenting debtors.
**Documentary Transfer Tax**

*926 N. Ardmore Ave., LLC v. Cnty. of Los Angeles*


The court held that documentary transfer tax is owed when there is a change in ownership or control of an entity that owns real property. The concept of “realty sold” in the documentary transfer tax statutes (Revenue and Taxation Code Sections 11911 et seq.) has the same meaning as “change in ownership” in the statutes requiring a reassessment of the property for property tax purposes (Revenue and Taxation Code Sections 60 et seq.), and “change in ownership” includes transfer of ownership or control of an entity.

The court points out that prior to 2010, County Recorders could not determine when a change in ownership of an entity occurred. Tax forms reflecting the change in ownership were required to be filed with the State Board of Equalization, which would share that information with Tax Assessors. But R&TC Sections 408 and 481 barred that information from being shared with County Recorders. In 2009, the Legislature adopted SB 816, which amended several R&TC Sections by requiring the assessor to provide access to his or her record to the county recorder when conducting an investigation to determine whether a documentary transfer tax should be imposed.

**Easements**

*Dolnikov v. Ekizian*

222 Cal. App. 4th 419 (2013)

The court held that conduct can constitute actionable interference with the use and enjoyment of an easement even when the conduct does not physically obstruct the servitude. The easement in question was for ingress and egress to undeveloped lots. Defendants, the servient tenement owners, interfered with the easement during plaintiff’s construction of two residences by refusing to sign both a covenant for community driveway and permission for a building permit to construct a retaining wall.

When an easement is based on a grant, as in this case, the grant gives the easement holder both those interests expressed in the grant and those necessarily incident thereto. Every easement includes what are termed “secondary easements”; that is, the right to do such things as are necessary for the full enjoyment of the easement itself. Defendants’ refusal to sign the documents interfered with plaintiff’s rights and rendered plaintiff’s easement useless for the purpose for which it was intended.

*Rye v. Tahoe Truckee Sierra Disposal Co., Inc.*

222 Cal. App. 4th 84 (2013), as modified on denial ofreh’g (Jan. 10, 2014), review denied (Apr. 9, 2014)

The court rejected defendant’s attempt to use an easement beyond the area it had been used for many years, holding that when an instrument of conveyance grants an easement in general terms, without specifying or limiting the extent of its use, the permissible use is determined by the intention of the parties and the purpose of the grant. Once the easement has been used for a reasonable time, the extent of its use is established by its “historical use”, and once the extent of an easement’s use has been established, the easement owner cannot subsequently enlarge its character so as to materially increase the burden on the servient tenement.

The court rejected defendant’s alternative theory that the same easement was created by a lease because the lease had been ignored for 22 years, permitting the inference that it had been abandoned.

*Schmidt v. Bank of Am., N.A.*

223 Cal. App. 4th 1489 (2014)

The court held that a reservation of an easement for “the right of ingress and egress for public road purposes over, along and across the Easterly 40 feet” created only a private easement and did not create a public right of way. Accordingly, the easement did not include all purposes for which a governmental entity might use a public road.

The court reversed a summary judgment in favor of defendants because there were triable issues of fact as to whether the easement included grading and pavement of the easement area, installation of a locked gate and various subterranean infrastructure elements, including sewer pipes, storm drains, oil and sand separators, and construction nails designed to hold steep dirt slopes in place.

Finally, the court rejected Bank of America’s argument that by foreclosing on units in a condominium development it did not acquire easement rights that had previously been conveyed to the homeowner’s association because the homeowners association acquired only a portion of the dominant tenement. Where a dominant tenement is partitioned in this manner, the easement rights are apportioned according to the division of the dominant tenement.
**Equitable Subrogation**

*Brunscomb v. JPMorgan Chase Bank N.A.*


The court applied the doctrine of equitable subrogation to give priority to defendants’ deeds of trust that had refinanced first and second priority deeds of trust. Equitable subrogation was not precluded by the fact that defendants had knowledge of plaintiff’s deed of trust because defendants did not know that plaintiff’s deed of trust would remain on the property after their refinance transactions.

Also, the escrow holder’s alleged negligence did not preclude equitable subrogation because it did not affect the equities between the parties, and the escrow holder did not owe a duty to plaintiff who was not a party to the loan escrows.

**Escrow**

*Ash v. N. Am. Title Co.*


A plaintiff-buyer obtained a judgment in an action where plaintiff alleged that defendants seller and escrow company were at fault for an escrow not closing on the agreed day. The judgment included damages for the loss of tax benefits because the transaction was part of a 1031 exchange transaction that failed to qualify for deferred taxation when the exchange intermediary filed for bankruptcy on the following day, and delayed disbursing plaintiff’s funds until after the 1031 exchange time limits had expired.

The appellate court reversed in part and remanded because:

1) there was insufficient evidence that the bankruptcy of the exchange intermediary was foreseeable; and

2) as to defendant escrow company, the trial court failed to instruct the jury on an intervening and superseding cause, i.e., the bankruptcy of the exchange intermediary.

**Guaranties**

*California Bank & Trust v. Lawlor*

222 Cal. App. 4th 625 (2013), as modified (Dec. 20, 2013)

A guarantor is protected by anti-deficiency laws where the guaranty is a sham because the legal relationship between the guarantor and the borrower is such that the guarantors are effectively the primary obligors on the loan. Where there is legal separation between the guarantor and borrower through a corporate or other legal structure so that the guarantor is not liable for corporate obligations and where the lender does not require the transaction to be structured in a manner intended to evade the anti-deficiency laws, the guaranty will normally not be deemed to be a sham.

Here, the court upheld a deficiency judgment against the guarantors in spite of an apparently legitimate legal separation from the borrower because the guarantor failed to present evidence showing that the borrower was a properly formed corporation and that the necessary corporate formalities had been followed to protect the shareholders from corporate liabilities, or that the lender had required the transaction to be structured in a manner intended to evade the anti-deficiency laws.

**Homeowners Associations**

*Huntington Cont’l Townhouse Ass’n, Inc. v. Miner*


The court held that under Civil Code Section 5655(a), a homeowners association must accept a partial payment made by an owner of a separate interest in a common interest development and must apply that payment in the order prescribed by statute.

The obligation to accept partial payments continues after a lien has been recorded against an owner’s separate interest for collection of delinquent assessments. The remedies available to an association under Civil Code Section 5720 depend upon the amount and the age of the balance of delinquent assessments following application of the partial payment.
Judgments


When a judgment directs a party to execute documents and the party refuses to do so, the court may issue a post-judgment order appointing the clerk of the court as an elisor to execute the documents.

Liens

Van Horn v. Dep’t of Toxic Substances Control


The lien hearing procedure, used by the Department of Toxic Substances Control to impose a lien for the cost of hazardous substance cleanup, violates due process by failing to allow the affected landowner to dispute 1) the amount of the lien or the lien increase, 2) the extent of the property burdened by the lien or the lien increase, and 3) the characterization of the landowner as a responsible party rather than an innocent landowner.

Loan Modification

Alvarez v. BAC Home Loans Servicing, L.P.

228 Cal. App. 4th 941 (2014)

In this action for fraud and unfair business practices in the origination of a loan and for negligence in reviewing plaintiff’s application for a loan modification, the court reversed the trial court’s sustaining of a demurrer, holding that:

1. Allegations of fraud were sufficient in alleging that the actual interest rate and monthly payments were hidden in the complexity of the Option ARM contract terms and that the monthly payment amounts listed in the loan documents were based entirely on the low “teaser” interest rate that existed only for a single month.

2. Allegations that Countrywide was liable as an aider and abettor were sufficient even though Countrywide was an assignee of the loan, and not the loan originator, because the complaint alleged that Countrywide dictated the use of deceptive loan documents and deceptively marketed Option ARM loans by aggressively promoting the teaser rate.

3. Bank of America could be liable for the conduct of Countrywide because it is a successor by merger. (Liability would not attach if the transaction were merely an asset purchase.)

4. Violation of the Unfair Competition Law was properly pled based on defendants’ alleged fraudulent conduct.

5. A cause of action for negligence in handling plaintiff’s request for a loan modification was stated because, while a lender does not have a duty to modify a loan, it does have a duty to timely and carefully consider a request for a loan modification.

Fleet v. Bank of Am. N.A.

229 Cal. App. 4th 1403 (2014)

The court held that plaintiffs stated causes of action sufficient to overcome a demurrer for breach of contract, promissory fraud, fraudulent misrepresentation and promissory estoppel where plaintiffs alleged the usual: The lender approves the homeowner’s participation in a government-funded program meant to lower mortgage payments and avoid foreclosure; the homeowner tries to comply with the terms of the mortgage modification program; he or she contacts the lender to make sure everything is proceeding according to plan and either receives assurances that it is or is passed from person to person, each of whom professes to know nothing about the loan in question or its modification, sometimes both; then the foreclosure notice is posted on the door, and the house is sold.

Rufini v. CitiMortgage, Inc.

227 Cal. App. 4th 299 (2014), as modified on denial of reh’g (July 22, 2014)

Plaintiff alleged that defendant breached an agreement to modify a loan pursuant to the federal Home Affordable Modification Program (“HAMP”). The court overruled an order sustaining a demurrer as to causes of action for breach of contract, wrongful foreclosure and the California Unfair Competition Law (“UCL”), holding that:

1) temporarily renting out the home does not violate the requirement under HAMP that the property be the borrower’s primary residence,

(Continued on Next Page...)
**Loan Modification (cont.)**

(Continued from Previous Page...)

2) Plaintiff was not required to tender payment of the amount due under the loan because he is seeking damages and not seeking to set aside the foreclosure sale, and because the complaint alleges that the borrower was not in default, in which case a tender is not required and,

3) The UCL applies to unfair practices even where a statute is not violated. Without deciding whether the statute of frauds bars a negligent misrepresentation claim based on an oral agreement to modify the loan, the court also upheld the demurrer as to the cause of action for negligent representation because plaintiff alleged a written agreement to modify the loan.

Finally, the court upheld the demurrer as to causes of action for general negligence and breach of fiduciary duty on the basis that no fiduciary duty exists between a borrower and lender.

**Mechanics’ Liens**

*Brewer Corp. v. Point Ctr. Fin., Inc.*

223 Cal. App. 4th 831 (2014), as modified on denial of reh’g (Feb. 27, 2014), review denied (Apr. 30, 2014)

1. A construction lender must make available to stop notice claimants those amounts from the construction loan that the lender has already disbursed to itself for interest and other fees because the disbursement of funds constitutes an “assignment” under Civil Code Section 3166 (current Section 8544). A lender cannot avoid this result by segregating the loan fund into separate accounts, one for paying interest and fees and the other for construction costs.

2. A contractor who has a direct contract with the owner, but who is not the general contractor, must serve the lender with a preliminary 20-day notice pursuant to CC 3097 (now see CC 8200) in order to enforce a stop notice.

3. The requirement in CC 3172 (current 8550(e)) of giving the construction lender notice within 5 days of the filing of an action to enforce a stop notice (now called a “stop payment notice”) is not mandatory unless some detriment can be shown to have resulted from the failure to give notice.

**Moorefield Constr., Inc. v. Intervest-Mortgage Inv. Co.**


A direct contractor may prospectively subordinate its mechanics lien to a construction loan. Civil Code Section 3262 (now 8120 - 8138) prohibits a direct contractor from waiving or impairing the claims and liens of other claimants, but does not prohibit a direct contractor from impairing his own lien rights. (Ed. note: C.C. 3262 was repealed and re-cast in C.C. 8120 - 8138. The new code sections are similar to, but not exactly the same as, the previous code section.)

**Palomar Grading & Paving, Inc. v. Wells Fargo Bank, N.A.**


The court held in the published part of the opinion that the constitutional 7% default rate of interest applies to prejudgment interest on a mechanics lien as to a non-contracting owner, rather than the 10% rate set forth in Civil Code Section 3289(b). In the unpublished part of the opinion the court held:

(a) The fact Cass (a subcontractor) did not name Kohl’s (property owner who purchased the property after construction began) on its preliminary notice was not fatal to the later foreclosure of its mechanics lien, because Kohl’s wasn’t an owner or a reputed owner at the time Cass recorded its preliminary notice.

(b) The fact Cass did some work after it recorded its mechanics lien was similarly not fatal to the foreclosure of its lien, because the work it did was all pursuant to its subcontract with the general contractor.

(c) Cass’s failure to name either Kohl’s or Wells Fargo (who acquired two parcels by foreclosure of the construction loan) on its mechanics lien was also not fatal, because Cass had no actual knowledge either Kohl’s or Wells Fargo was an owner of land in the tract at the time of the recording of Cass’s mechanics lien.

(d) R3’s (a subcontractor) listing of an address that was not, strictly speaking, the address of Kohl’s store, was not fatal to its lien on the tract (which includes the store), because the address it gave was sufficient for identification of the whole tract.

(e) Cass and R3 filed their suits to foreclose their liens timely even though they later had to add Kohl’s and Wells Fargo as Doe defendants, because at the time of filing their suits neither had actual knowledge Kohl’s or Wells Fargo was an owner in the tract.

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(f) Cass can collect an amount in its foreclosure action in excess of the amount it listed on its lien because the excess amount was pursuant to its contract and incurred prior to the recording of the lien.

(g) The trial court did not err in including within Cass’s lien foreclosure amount a sum Cass owed to TNT, even though by the time of trial TNT was a suspended corporation, because TNT, at the time of the judgment, did not qualify as a “claimant” under the statute which requires deduction of amounts owed to “claimants” in figuring lien judgments.

(h) Given the unitary nature of the project, even though it involved three contiguous parcels, the trial court was within its discretion not to allocate Cass's and R3's lien judgments between the one parcel owned by Kohl's and the two parcels owned by Wells Fargo.

(i) In light of the court’s decision on the allocation question, lien amounts were susceptible of precise calculation; therefore both Cass and Palomar Grading can collect “prejudgment” interest on their liens.

Predatory Lending

Cansino v. Bank of Am.

224 Cal. App. 4th 1462 (2014)

A borrower filed this action for damages and for a loan modification alleging that the lender was guilty of fraud for representing that the property would appreciate in the future and for misrepresenting the value of the property. The court held that a demurrer was properly sustained without leave to amend because a prediction about future appreciation is regarded as an opinion and not a representation of fact, and because any representation of value was correct at the time the loan was made even though the value of the property declined afterward.

Graham v. Bank of Am., N.A.


The court affirmed the trial court’s sustaining of a demurrer without leave to amend. Plaintiff did not state a cause of action for reliance on defendant’s appraisal because a lender obtains an appraisal for its own benefit, and the borrower cannot reasonably rely on it.

Railroads

Union Pac. R.R. Co. v. Santa Fe Pac. Pipelines, Inc.


Under Congressional Acts prior to 1871, the federal government conveyed a “limited fee” to railroads for the purpose of constructing and maintaining a railroad. Congressional Acts in 1875 and afterward conveyed only an easement. Both the pre-1871 and 1875 Acts alone did not provide railroads with sufficient property rights to rent the subsurface to defendant pipeline company.

Surveys

Bloxham v. Saldinger


In a dispute over the location of the parties’ common property lines, a judgment quieting title in favor of plaintiffs is affirmed, where there is no basis for concluding that plaintiffs’ survey was insufficient as a matter of law. (Ed: The case contains a good discussion of surveying principles.)

Title Insurance

RNT Holdings, LLC v. United Gen. Title Ins. Co.


Plaintiff claimed that there was a defect in title covered by its title insurance policy because the insured deed of trust was executed by the borrower prior to transferring title into a trust, but was recorded after title had been transferred to the trust.

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**Title Insurance (cont.)**

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Plaintiff subsequently reconveyed the deed of trust to make clear that the deed of trust was invalid. The court held:

1. The deed of trust was valid as between the parties, and the only potential title defect (if any) was that a third party who obtained the property as a bona fide purchaser for value might take the property free of the deed of trust.

2. Plaintiff’s full release of its mortgage lien terminated coverage under title insurance policy.

3. Since plaintiff was aware that the borrower was going to transfer the property to a non-borrower trust after the deed of trust was executed, any claims arising out of the title to the property being held in the trust were excluded as created, suffered, assumed or agreed to by plaintiff.

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**Trustee’s Sales**

**Fonteno v. Wells Fargo Bank, N.A.**

228 Cal. App. 4th 1358 (2014)

In this action to set aside a trustee’s deed, the court overruled the trial court’s sustaining of a demurrer, holding:

1. Plaintiff stated a cause of action for equitable cancellation of a trustee’s deed where plaintiff alleged that defendant failed to comply with the provisions of the National Housing Act (NHA) requiring the lender to attempt a pre-foreclosure meeting with the borrower in an effort to avoid foreclosure, which requirement was also incorporated by the provisions of the deed of trust.

2. A borrower is not required to tender the amount owed on the debt where a lender does not comply with requirements for a pre-foreclosure meeting that is intended to prevent any need for a foreclosure.

3. A trustee conducting trustee’s sale proceedings is not subject to the Federal Debt Collection Practices Act (FDCPA).

4. The court rejected plaintiffs’ argument that the signature of an attorney in fact under a power of attorney on the substitution of trustee was defective, and the substitution void, because the name of the principal was not identified. The signature block sufficiently indicated that the signatory was acting for the trustee by identifying the signatory as “its” attorney in fact.

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**Jones v. Wachovia Bank**


The court upheld a summary judgment in an action for damages based on the doctrine of promissory estoppel after plaintiffs lost their home in a foreclosure sale, which they allegedly understood from a phone conversation with the bank, would be postponed to June 18, a date 10 days after the actual sale date. The court held that:

1. An informal agreement to borrow money from a friend is not a change of position, much less a substantial change of position needed to establish an estoppel. Had the sale actually been scheduled for June 18 and had the bank refused a further postponement, that refusal may have induced plaintiffs to actually borrow funds from the friend at that time to pay the loan in full. But plaintiffs’ decision to do nothing before that time reflected no substantial change in position and failed to establish detrimental reliance; and

2. Plaintiff failed to establish damages because they were unable to overcome defendant’s showing that the value of the home was less than the outstanding balance of the loan.

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**Kan v. Guild Mortgage Co.**


Plaintiff/borrower brought this pre-foreclosure quiet title action alleging that a deed of trust was improperly securitized and, therefore, void. The court upheld the trial court’s sustaining of a demurrer because California’s non-judicial foreclosure statutes do not provide a basis to challenge the authority of an entity initiating the foreclosure process.

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**Keshtgar v. U.S. Bank, N.A.**

226 Cal. App. 4th 1201, as modified on denial of reh’g (June 30, 2014), review granted and opinion superseded sub nom. (Oct. 1, 2014)

The court followed Gomes v. Countrywide Home Loans, 192 Cal. App. 4th 1149 (2011), in holding that the California non-judicial foreclosure scheme does not allow a judicial action to determine whether the person initiating the foreclosure process is authorized.

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The court also held that a borrower does not have standing to challenge an assignment of a deed of trust absent a showing of prejudice, disagreeing with Glaski v. Bank of America, 218 Cal. App. 4th 1079 (2013) on this point. The court also distinguished Glaski because that case involved an action for damages brought after a foreclosure, whereas this case and Gomes involve attempts to enjoin a trustee’s sale.

Lyons v. Santa Barbara Cnty. Sheriff’s Office


After losing her property to a trustee’s sale and eviction, plaintiff sued the sheriff’s office and county recorder for wrongful eviction. The court held that such an action is not available because the sheriff is statutorily required to levy on property once a writ of execution is issued by a court, and a county recorder is prohibited from refusing to record documents on the basis of a lack of legal sufficiency.

Mendoza v. JPMorgan Chase Bank, N.A.

228 Cal. App. 4th 1020 (2014) review granted and opinion superseded (Nov. 12, 2014)

In this action to set aside a trustee’s deed, the court sustained the trial court’s sustaining of a demurrer, holding:

1. Tender of the amount owed is not necessary in an action to set aside a trustee’s sale where the sale is alleged to be void.

2. The court rejected Glaski v. Bank of America, and held that a borrower does not have standing to challenge a securitized trust’s chain of ownership of a deed of trust by alleging that the attempts to transfer the deed of trust to the securitized trust occurred after the trust’s “closing date”.

3. Plaintiff lacked standing to challenge the validity of an assignment of deed of trust that was allegedly “robo-signed” (i.e. signed by an individual who signs numerous documents without proper legal or corporate authority).


Because a mortgage debt is extinguished by a full credit bid, a mortgagee who purchases an encumbered property at a foreclosure sale by making a full credit bid is not entitled to insurance proceeds payable for pre-foreclosure damage to the property. This rule holds true whether the party making the claim for insurance proceeds is the holder of the first trust deed or a more junior creditor.

The court distinguished Kolodge v. Boyd, 88 Cal. App. 4th 349 (2001), which only stands for the proposition that the full credit bid rule is inapplicable where the lender is fraudulently or negligently induced to make the bid.

Nativi v. Deutsche Bank Nat’l Trust Co.


The federal law known as the Protecting Tenants Against Foreclosure Act of 2009 and Code of Civil Procedure Section 1161b cause a bona fide lease of residential property to survive foreclosure through the end of the lease term, subject to the limited authority of the immediate successor in interest to terminate the lease, upon 90-days notice, upon sale to a purchaser who intends to occupy the unit as a primary residence. This applies even where the leased premises is occupied illegally in violation of the local building code.

Yvanova v. New Century Mortgage Corp.


Plaintiff alleged that the deed of trust on her residence was improperly securitized and assigned from the original lender to several successive mortgagees and trustees, and ultimately improperly sold at foreclosure.

The court held that a demurrer was properly sustained without leave to amend because 1) plaintiff is not entitled to quiet title because she failed to allege she tendered funds to discharge her debt and 2) an impropriety in the transfer of a promissory note affects only the parties to the transaction, not the borrower, so plaintiff lacks standing to challenge the allegedly deficient assignments and securitization.
Usury

Bisno v. Kahn


California’s usury law does not apply to a judgment creditor’s agreement to forbear collecting on a judgment. However, a forbearance fee does not become part of the judgment and is not an amount that must be paid to satisfy the judgment. Rather, a forbearance agreement is a contract between the judgment creditor and the judgment debtor that is separate from the judgment to which it applies. Consequently, a forbearance agreement must be enforced in a separate contract action and is subject to standard contractual defenses such as duress and unconscionability.

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.
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