Of the 807 bills signed into law in 2015, 33 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, 2015-16 Session” link. All bills summarized in this publication become effective January 1, 2016, 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.
COMMON INTEREST DEVELOPMENTS

• Annual Budget Report Statement

Existing law governing common interest developments, the Davis-Stirling Common Interest Development Act, requires the association of a common interest development, which includes a condominium project, to prepare and distribute to all of its members certain documents, including an annual budget report that includes, among other items of information, a pro forma operating budget. The act requires a notice to be provided if an insurance policy described in the annual budget report lapses, is canceled, or is not immediately renewed, restored, or replaced, or if there is a significant change as to the policy.

This act, beginning July 1, 2016, requires the annual budget report of a condominium project to also include a separate statement describing the status of the common interest development as a Federal Housing Administration (FHA)-approved condominium project and as a federal Department of Veterans Affairs (VA)-approved condominium project.

Chapter 184 (AB 596 - Daly): amending, repealing, and adding Section 5300 of the Civil Code.

• 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, 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 or architectural or landscaping guidelines or policies 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.

Existing law also prohibits an association, except an association that uses recycled water for landscape irrigation, 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 makes void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of artificial turf or any other synthetic surface that resembles grass. This act also prohibits a requirement that an owner of a separate interest remove or reverse water-efficient landscaping measures, installed in response to a declaration of a state of emergency, upon the conclusion of the state of emergency.

NOTE: This act took effect as an urgency measure on September 4, 2015.

Chapter 266 (AB 349 – Gonzalez): amending Section 4735 of the Civil Code.

EASEMENTS

• Greenway Development and Sustainment Act

Existing law establishes various plans and programs intended to preserve, protect, and rehabilitate lands adjacent to rivers in the state. Existing law provides that a conservation easement is an interest in real property voluntarily created and freely transferable for specified purposes and provides for the creation and transfer of conservation easements. Existing law authorizes certain tax exempt nonprofit organizations, state or local governmental entities, and California Native American tribes to acquire and hold conservation easements if those entities meet specified criteria.

This act enacts the Greenway Development and Sustainment Act and applies to greenway easements certain creation and transfer provisions similar to those of conservation easements. Specifically, this act creates a new real property interest known as a greenway easement, defined as an interest in real property voluntarily created and freely transferable in whole or in part, for the purpose of developing greenways adjacent to urban waterways, by any lawful method for the transfer of interests in real property in the state. The act provides that a greenway easement shall be perpetual in duration, shall constitute an interest in real property, and that the particular interests of a greenway easement shall be those granted or specified in the instrument creating or transferring the easement.

This act also states that a greenway easement means any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition that is or has been executed by or on behalf of the owner of the land subject to the easement and is binding upon successive owners of the land, for the purpose of developing greenways adjacent to urban waterways.

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EASEMENTS (cont.)

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The act defines “greenway” as a pedestrian and bicycle, non-motorized vehicle transportation, and recreational travel corridor that meets specified requirements. The act also includes greenways in the definition of “open-space land” for local planning purposes.

This act provides that a recorded greenway easement constitutes an enforceable restriction for purposes of property tax provisions.

The act also makes findings with regard to the development of a greenway along the Los Angeles River and its tributaries.

This act incorporates additional changes in Section 402.1 of the Revenue and Taxation Code, proposed by AB 668 (Chapter 698, Statutes of 2015).

Chapter 639 (AB 1251 – Gomez); adding Chapter 4.5 (commencing with Section 816.50) to Title 2 of Part 2 of Division 2 of the Civil Code, amending Section 65560 of the Government Code, and amending Section 402.1 of the Revenue and Taxation Code.

ENERGY EFFICIENCY

Existing law requires electric and gas utilities to maintain records of the energy consumption data of all nonresidential buildings to which they provide service and requires that this data be maintained, in a format compatible for uploading to the United States Environmental Protection Agency’s ENERGY STAR Portfolio Manager, for at least the most recent 12 months. Existing law also requires, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, an electric or gas utility to upload all of the energy consumption data for the account specified for a building to the United States Environmental Protection Agency’s ENERGY STAR Portfolio Manager in a manner that preserves the confidentiality of the customer. Existing law requires an owner or operator to disclose the United States Environmental Protection Agency’s ENERGY STAR Portfolio Manager benchmarking data and rating to a prospective buyer, lessee of the entire building, or lender that would finance the entire building based on a schedule of compliance established by the Energy Commission.

This act revises and recasts these provisions. The act requires utilities to maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 complete months. Beginning no later than January 1, 2017, the act requires each utility, upon the request and the written authorization or secure electronic authorization of the owner, owner’s agent, or operator of a covered building, to deliver or provide aggregated energy usage data for a covered building to the owner, owner’s agent, operator, or to the owner’s account in the ENERGY STAR Portfolio Manager, subject to specified requirements. The act also authorizes the commission to specify additional information to be delivered by utilities for certain purposes.

Chapter 590 (AB 802 – Williams); amending Sections 25301 and 25303 of, and repealing and adding Section 25402.10 of, the Public Resources Code, and amending Section 381.2 of, amending and renumbering Section 384.2 of, and adding Section 913.8 to, the Public Utilities Code.

ELECTRONIC SIGNATURES

• Definition of Electronic Signatures

Existing law provides definitions for particular terms used within the Code of Civil Procedure, including the terms “signature” or “subscription,” which are defined to include a mark of a person, when the person cannot write, with his or her name being written near it by a person who writes his or her own name as a witness.

This act includes “electronic signature” to the list of defined terms under the Code of Civil Procedure. The term is defined to mean an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. The definition mirrors existing definitions of electronic signatures under the Civil Code, Corporations Code, and Financial Code. The act also provides that an electronic signature by a court or judicial officer would be as effective as an original signature.

Chapter 32 (AB 432 – Chang); amending Section 17 of, and adding Section 34 to, the Code of Civil Procedure.

ESCROW SERVICES

• Authorization to Transact Business
• Depository Requirements

Existing law authorizes an underwritten title company to engage in the escrow business and to act as an escrow agent if the company satisfies specified requirements, including maintenance of specified records, and the deposit of a specified sum of money with the commissioner. Existing law specifies the conditions under which the commissioner may release or return those deposits to the company.
This act clarifies the escrow authority for each underwritten title company (UTC) licensed in the state by repealing ambiguous provisions in the law. As of January 1, 2016, every UTC is expressly authorized to handle escrows relating to real property located anywhere in the state.

This act also, in lieu of cash deposits required under the current law, requires a bond satisfactory to the Insurance Commissioner that runs to the state for the use of the state, and for any person who has cause against the obligor of the bond or under the provisions of the law. The surety bond, modeled on bonds required for independent escrow companies regulated by the Department of Business Oversight, is required to be in the amount of either $50,000 or $100,000 depending upon the aggregate number of documents recorded the preceding calendar year in all counties where the UTC is licensed to do business. If the aggregate number of documents exceeds 100,000 then the bond is required to be in the amount of $100,000. The act does permit a UTC, in lieu of the bond, to maintain a deposit with the Commissioner.

The deposit is security for the same beneficiary and purposes as the bond. The cash deposit alternative approved in the legislation was seen as a necessary option by the CLTA in recognition that bond underwriters may not always be willing to write a bond satisfactory to the Commissioner and the bond pricing and availability may change with market conditions. The task force assembled by CLTA to draft AB 704 was able to find affordable bonds in California that should be within the reach of UTCs of all sizes, both large and small.

However, in the event that UTCs find there is no reasonable or adequate admitted market for the surety bonds required by the new law, the bill allows the Commissioner to permit a letter of credit or bond subject to several conditions: the letter of credit in the amount of the bond or deposit. The Commissioner is given the authority to fashion the letter of credit requirements as appropriate to the circumstances and cause. A letter of credit or bond is subject to several conditions: the UTC must faithfully conform to the title insurance law and rules regarding escrow services, and must honestly and faithfully apply all funds received and perform all obligations concerning the conduct of escrow services.

Finally, this act contains a specific provision that it does not prohibit a UTC from engaging in escrow, settlement, or closing activities on properties located outside California if those activities do not violate the laws of that other state or county. This provision allows UTCs that are operating centralized escrow departments for real property located outside California to continue to do so as long as the affected states allow such operations.

**Chapter 370 (AB 704 - Cooley): amending, repealing, and adding Section 12389 of, and adding Section 12340.13 to, the Insurance Code.**

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**Groundwater**

- **Comprehensive Adjudication**

The California Constitution requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable. Under the Sustainable Groundwater Management Act, which applies to all groundwater basins in the state, all basins designated as high- or medium-priority basins by the Department of Water Resources as basins that are subject to critical conditions of overdraft are required to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020.

This act establishes special procedures for a comprehensive adjudication, which is defined as an action filed in superior court to comprehensively determine rights to extract groundwater in a basin. The act authorizes the court to determine all groundwater rights of a basin, whether based on appropriation, overlying right, or other basis of right, and use of storage space in the basin. The act provides that these special procedures governing comprehensive adjudications do not apply in certain cases that do not involve a comprehensive allocation of a basin’s groundwater supply. The act authorizes a judge of the superior court to determine if the action is a comprehensive adjudication.

This act requires the plaintiff in a comprehensive adjudication to provide notice of the comprehensive adjudication within a specified amount of time after filing the complaint to certain persons including a city, county, or city and county that overlies the basin or a portion of the basin. The act requires a draft notice and draft form answer to be lodged by the plaintiff with the court when filing the complaint. Within 30 days of the assignment of a judge by the Chairperson of the Judicial Council, the act requires the plaintiff to file a motion for approval of the draft notice and draft form answer. Following a court order approving the notice and form answer and authorizing service of landowners, the act requires the plaintiff to identify the assessor parcel numbers and physical addresses of all real property in the basin and the names and addresses of all holders of fee title to real property in the basin; mail the notice, complaint, and form answer to all holders of fee title to real property in the basin; and publish the notice in one or more newspapers of general circulation. The act requires the plaintiff to file with the court a notice of the completion of the mailing. The act deems fulfillment of the service and publication provisions as effective service of process of the complaint and notice on all interested parties of the comprehensive adjudication for purposes of establishing in rem jurisdiction and the comprehensive effect of the comprehensive adjudication.

This act authorizes a groundwater sustainability agency for the basin or a portion of the basin, a city, county, or city and county that overlies the basin or a portion of the basin, and certain persons to intervene in a comprehensive adjudication.

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This act requires the court to convene a case management conference and authorizes the court to consider certain matters, including dividing the case into phases to resolve legal and factual issues, in the initial case management conference or as soon as practicable. In addition, the act requires each party to serve within six months of appearing in the comprehensive adjudication, specified initial disclosures made under penalty of perjury to all other named parties and a special master, if one has been appointed in the action. The act authorizes the court to appoint one or more special masters in a comprehensive adjudication, whose duties could include, among other things, investigating technical and legal issues, as directed by the court, and compiling a report of the findings. The act authorizes the court to request the State Water Resources Control Board or the Department of Water Resources to recommend candidates for appointment as a special master or to review the qualifications of candidates.

This act authorizes the court, upon a showing that the basin is in a condition of long-term overdraft, to issue a preliminary injunction that could include, among other things, a moratorium on new or increased appropriations of water. The act provides that a judgment in a comprehensive adjudication is binding on the parties to the action, their agents and employees, and all their successors in interest. The act also provides the court with continuing jurisdiction to modify or amend a final judgment in a comprehensive adjudication in specified instances.

This act requires the Department of Water Resources and each county and groundwater sustainability agency that overlaps the basin or a portion of the basin to post and maintain the notice and form answer on their Internet Web sites.

Chapter 672 (AB 1390 - Alejo): adding Chapter 7 (commencing with Section 830) to Title 10 of Part 2 of the Code of Civil Procedure.

JUDGMENTS

- Wage Liens

The Enforcement of Judgments Law provides for the enforcement of money judgments and other civil judgments. Under that law, a judgment creditor may levy upon the property of a judgment debtor to satisfy a judgment, and a levying officer holds the property until the final determination of any exemptions claimed by the judgment debtor.

This act enacts special provisions for the enforcement of judgments against an employer arising from the employer’s nonpayment of wages for work performed in this state. The act authorizes the Labor Commissioner to use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution.

The act also authorizes the Labor Commissioner to issue a notice of levy if the levy is for a deposit, credits, money, or property in the possession or under the control of a bank or savings and loan association or for an account receivable or other general intangible owed to the judgment debtor by an account debtor.

Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation. Existing law requires the Labor Commissioner to determine all matters arising under his or her jurisdiction. Existing law makes any employer or other person acting on behalf of an employer who violates or causes to be violated specified provisions regulating hours and days of work in any order of the Industrial Welfare Commission to be subject to a civil penalty. A violation of the general provisions governing working hours is a crime.

This act authorizes the Labor Commissioner to provide for a hearing to recover civil penalties against any employer or other person acting on behalf of an employer for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare Commission. This act provides that any employer or other person acting on behalf of an employer who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, other related provisions of law is authorized to be held liable as the employer for such violation.

Under existing law, within a specified period of time after service of notice of an order, decision, or award, the parties are authorized to seek review by filing an appeal to the superior court, where the appeal is required to be heard de novo.

This act, beginning 20 days after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner, or in favor of any employee pursuant to an appeal, authorizes the Labor Commissioner to, with the consent of any employee in whose favor the judgment is entered, collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property, belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy. The act also requires the judgment debtor to be served with a copy of the notice of levy. The act requires any person who surrenders to the Labor Commissioner any credits,
money, or property, or pays the debts owed to the judgment debtor to be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the Labor Commissioner as a result of the levy. The act makes any person noticed with a levy who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor liable in his or her own person or estate to the Labor Commissioner in an amount equal to the value of the credits, money, or property or in the amount of the levy.

If a final judgment against an employer arising from the employer’s nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, the act prohibits an employer from continuing to conduct business in this state unless the employer has obtained a bond from a surety company and has filed a copy of that bond with the Labor Commissioner. As an alternative to the bond requirement, the act authorizes the employer to provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment. The act makes any employer conducting business without satisfying the bond requirement subject to a specified civil penalty. The act, where an employer is conducting business in violation of the bond requirement, authorizes the Labor Commissioner to issue and serve on such employer a stop order prohibiting the use of employee labor by the employer until the employer complies with the bond requirement provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The act makes the failure of an employer, owner, director, officer, or managing agent of the employer to observe a stop order guilty of a misdemeanor. Subject to required prior notice to the employer, the act authorizes the Labor Commissioner to create a lien on any real or personal property in California of an employer or a successor employer with respect to real property that is conducting business without satisfying the bond requirement for the full amount of any wages, interest, and penalties claimed to be owed to an employee.

Existing law generally provides for the licensure and regulation of various types of long-term care facilities by the State Department of Public Health and the State Department of Social Services.

If a final judgment against an employer arising from the employer’s nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal and an employer in the long-term care industry is found to be conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, this act authorizes those departments to deny a new license or the renewal of an existing license. The act also authorizes the Labor Commissioner to notify those departments of such a violation. The act requires any individual or business entity that contracts for services in the property services or long-term care industries to be jointly and severally liable for any unpaid wages where the individual or business entity has been provided notice, by any party, of any proceeding or investigation by the Labor Commissioner in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract.

Chapter 803 (SB 588 - de Leon): adding Chapter 10 (commencing with Section 690.020) to Division 1 of Title 9 of Part 2 of the Code of Civil Procedure, and amending Section 98 of, and adding Sections 96.8, 238, 238.1, 238.2, 238.3, 238.4, 238.5, and 558.1 to, the Labor Code.

Limited Liability Companies

- Disassociation of Member
- Dissolution of LLC

Existing law, the California Revised Uniform Limited Liability Company Act, authorizes one or more persons to form a limited liability company by, among other things, signing and delivering articles of organization to the Secretary of State. The act authorizes a person to dissociate as a member of a limited liability company at any time by withdrawing as a member by express will. The act deems a person to be dissociated from a limited liability company upon the occurrence of certain events, including, among others, an individual’s death. The act provides the effects when a person, including an individual, is dissociated from a limited liability company. Existing law limits the application of an operating agreement.

This act specifies that upon dissociation a person’s right to vote as a member in the management and conduct of the limited liability company’s activities terminates. The act authorizes, if a member dies, or a guardian or conservator of the estate is appointed for the member, or a member’s interest is being administered by an attorney-in-fact under a valid power of attorney, the member’s executor, administrator, guardian, conservator, attorney-in-fact, or other legal representative to exercise all of the member’s rights for the purpose of settling the member’s estate or administering the member’s property, including any power the member had under the articles of organization or an operating agreement to give a transferee the right to become a member. The act also modifies the definition of “electronic transmission by the limited liability company” and expands the definition of “person” under the act. The act would modify what an operating agreement may provide. The act provides (Continued on Next Page...
that specified provisions of the Labor Code, relating to consideration for employment and employment contracts, shall not apply to membership interests issued by any limited liability company or foreign limited liability company.

Existing law requires that any distributions made by a limited liability company before its dissolution and winding up be among the members in accordance with the operating agreement.

This act further requires that the profits and losses of a limited liability company be allocated among the members, and among classes of members, in the manner provided in the operating agreement, and requires that profits and losses be allocated in proportion to the value of the contributions from each member if the operating agreement does not otherwise provide.

Existing law requires the consent of all members of the limited liability company to approve a merger or conversion and to amend the operating agreement.

This act eliminates that requirement.

Existing law requires a limited liability company to reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed limited liability company or the manager of a manager-managed limited liability company in the course of the member’s or manager’s activities on behalf of the limited liability company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with specified duties.

This act requires the limited liability company to indemnify the agent of a limited liability company to the extent that the agent has been successful on the merits in defense or settlement of any claim, issue, or matter if the agent acted in good faith and in a manner that the agent reasonably believed to be in the best interests of the limited liability company and its members.

Under existing law, the persons who filed the certificate of dissolution are required to sign and file with the Secretary of State a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company. Existing law requires the certificate of cancellation of articles of organization to include, among other things, that upon the filing of the certificate of cancellation, the limited liability company is required to be canceled and its powers, rights, and privileges are required to cease. Under existing law, a limited liability company that is dissolved continues to exist for the purpose of, among other things, winding up its affairs and prosecuting and defending actions by or against it in order to collect and discharge obligations.

This act instead provides that a limited liability company that has filed a certificate of cancellation continues to exist for those purposes.

This act limits the applicability of the act to acts or transactions by a limited liability company or by the members or managers of the limited liability company occurring, or an operating agreement or other contracts entered into by the limited liability company or by the members or managers of the limited liability company, on or after January 1, 2014.

This act incorporates additional changes to Section 17710.06 of the Corporations Code by this act and AB 1471 (Chapter 189, Statutes of 2015), and incorporates additional changes to Section 17713.12 of the Corporations Code made by this act and AB 1517 (Chapter 190, Statutes of 2015).

**Nonprobate Transfers**

- **Revocable Transfer Upon Death Deeds**

Existing law provides that a person may pass real property to a beneficiary at death by various methods including by will, intestate succession, trust, and titling the property in joint tenancy, among others.

The new law, which permits transfers by means of a revocable transfer upon death deed (RTDD), becomes effective January 1, 2016. The RTDD automatically transfers ownership of the property – defined to include 1-4 residential units, a condominium, or agricultural land of 40 acres or less that is improved with a single family residence – upon the death of the transferor, and must contain a legal description. A RTDD may only be revoked by a recorded document.

The new law makes the RTDD effective for any transferor who dies on or after January 1, 2016, regardless of when the RTDD was executed or recorded. No RTDD may be executed on or after January 1, 2021, which is when the new law is scheduled to be repealed (unless extended by the legislature prior to that date). However, any RTDD properly executed before that date remains valid and may also be revoked after that date. To be valid, the deed must be recorded within 60 days of execution. The deed is only effective at death and does not affect any ownership rights during the transferor’s lifetime.
The new law contains a statutory form RTDD, and a RTDD must be in that form or a substantially similar form in order to be valid. The statutory form provides information to the transferor, including an explanation of how the RTDD works, how it is effectuated, and some of its consequences. The statute also has a statutory form for revocation of a RTDD. The law also makes provisions for multiple beneficiaries and for what happens if multiple instruments are recorded affecting the same property.

The transfer is confirmed by the beneficiary recording an affidavit of the transferor’s death. However, a purported transfer is void if property is held in joint tenancy or as community property with right of survivorship when the transferor dies. A RTDD may also be challenged for various reasons, including lack of capacity to transfer, transfer to disqualified person, fraud, duress, and undue influence.

NOTE: Title companies are not required to rely on RTDDs when underwriting a policy of title insurance under the new law – an especially important detail given that there may be circumstances under which the RTDD may be void or superseded by another document. A probate proceeding or quitclaim deed may be required as a condition of issuing a policy of title insurance.

Chapter 293 (AB 139 - Gatto); amending Sections 2337 and 2040 of the Family Code, amending Sections 250, 267, 279, 2580, 5000, 5302, 13111, 13206, and 13562 of, amending and renumbering Sections 5600, 5601, 5602, 5603, and 5604 of, adding Section 69 to, adding the heading of Chapter 3 (commencing with Section 5040) to Part 1 of Division 5 of, adding and repealing Part 4 (commencing with Section 5600) of Division 5 of, and repealing the heading of Part 4 (commencing with Section 5600) of Division 5 of, the Probate Code.

Privacy

• Encryption

Existing law requires a person or business conducting business in California, or any state or local agency, that owns or licenses computerized data that includes personal information to disclose in specified ways 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 requires the disclosure to be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

This act defines “encrypted” for purpose of these provisions to mean rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information technology.

This act also makes any form of inmate identification that is current or has been issued within five years by a sheriff’s department, if the inmate is in custody in a local detention facility, an allowable form of identification for a credible witness to prove the identity of an individual who executes a written instrument.

Chapter 42 (AB 1036 – Quirk); amending Section 1185 of the Civil Code.

• Personal Information

• Breach

Existing law requires a person or business conducting business in California and any agency that owns or licenses computerized data that includes personal information to disclose a breach of the security of the system in the most expedient time possible and without unreasonable delay. Existing law requires a person, business, or agency that is required to issue a security breach notification to meet specific requirements, including that the notification be written in plain language.

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Chapter 522 (AB 964 – Chau); amending Sections 1185 of the Civil Code.
PRIVACY (cont.)

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This act additionally requires the security breach notification to be titled “Notice of Data Breach” and to present the information under prescribed headings. The act also prescribes a model security breach notification form.

This act incorporates additional changes to Section 1798.29 and Section 1798.82 of the Civil Code proposed by SB 34 (Chapter 532, Statutes of 2015) and AB 964 (Chapter 522, Statutes of 2015).

Chapter 543 (SB 570 - Jackson); amending Sections 1798.29 and 1798.82 of the Civil Code.

PROPERTY TAXATION

- Senior Citizens Property Tax Postponement

Existing law, on and after February 20, 2009, prohibited a person from filing a claim for postponement of tax, and prohibited the Controller from accepting applications for postponement of tax, under the Senior Citizens and Disabled Citizens Property Tax Postponement Law. Existing law, as of July 1, 2016, makes inoperative the prohibition against a qualifying person, as specified, filing a claim for postponement and the Controller from accepting applications for postponement under the program and repeals this prohibition on January 1, 2017.

This act, among other things, eliminates outdated references to “certificates of eligibility” that were previously used under the postponement law. The act permits the Controller to release a lien if there is a foreclosure on an obligation secured by a lien that is senior in recording priority. The act standardizes the definition of a claimant so that all references include blind and disabled persons.

The act eliminates references to certain duties on the part of local tax officials, with respect to lien notices, to conform to the superseding duties of the Controller in preparing and filing the notice of lien for postponed taxes with the county recorder at the time payment is made, and specifies payments by the Controller to the county and the refund by the county of taxes paid when a taxpayer successfully appeals his or her denial of postponement under the law. The act clarifies that the interest rate on existing loans made prior to the postponement law’s suspension will continue to accrue at the rate specified prior to the suspension of the program. The act removes references regarding the eligibility of mobilehome properties to participate in the program and adds references specifying that co-op properties are eligible for the program.

The act also deletes and updates outdated references and makes other technical and conforming changes.

Chapter 391 (SB 801 – Committee on Governance and Finance); amending Sections 16180, 16182, 16183, 16190, 16191, and 16192 of the Government Code, and amending Sections 2515, 20505, 20586, 20601, 20602, 20603, 20621, 20622, 20627, 20630, 20630.5, 20638, 20639.2, 20640.2, 20640.3, 20640.4, 20640.6, 20640.7, 20640.8, 20645.5, and 20645.6 of, and repealing Sections 20633, 20639.3, 20639.4, 20639.5, 20639.6, 20639.7, 20639.8, and 20639.9 of, the Revenue and Taxation Code.

- Property Statement
- Change in Ownership Statement
- Penalty

Existing law authorizes the county board of equalization or the assessment appeals board to order the penalty abated for failure to file a specified property statement or change in ownership statement, if the assessor establishes to the satisfaction of the county board of equalization or the assessment appeals board that the failure to file the property statement or change in ownership statement within the specified time period required was due to reasonable cause and not due to willful neglect and the assessor has filed a written application for abatement of the penalty.

This act instead authorizes the penalty to be abated if the assessor establishes that the failure to file the property statement or change in ownership statement within the specified time period was due to reasonable cause and circumstances beyond the assessee’s control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect.

Chapter 501 (AB 571 – Brown); amending Sections 463 and 483 of the Revenue and Taxation Code.

- Assessment
- Affordable Housing

Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions to which the use of the land may be subjected. Under existing law these restrictions include, but are not limited to, zoning, recorded contracts with governmental agencies, and various other restrictions imposed by governments.

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PROPERTY TAXATION

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Existing property tax law establishes a welfare exemption under which property is exempt from taxation if, among other things, that property is used exclusively for religious, hospital, scientific, or charitable purposes and is owned and operated by an entity that is itself organized and operated for those purposes. Under existing property tax law, the welfare exemption applies to property that is owned and operated by a nonprofit corporation, otherwise qualifying for the welfare exemption, that is organized and operated for the purpose of building and rehabilitating single-family or multifamily residences for sale, as provided, at cost to low-income families.

This act requires the county assessor to consider, when valuing real property for property taxation purposes, a recorded contract with a nonprofit corporation that meets prescribed requirements, including requirements that the nonprofit corporation has received a welfare exemption for properties intended to be sold to low-income families who participate in a special no-interest loan program, and that the contract includes a restriction on the use of the land for at least 30 years to owner-occupied housing available at affordable housing cost.

This act incorporates amendments to Section 402.1 of the Revenue and Taxation Code proposed by AB 1251 (Chapter 639, Statutes of 2015).

Chapter 698 (AB 668 – Gomez); amending Section 402.1 of the Revenue and Taxation Code.

REAL PROPERTY

• Restrictions
• Personal Energy Conservation

Existing law requires a landlord to permit a tenant to participate in personal agriculture in portable containers approved by the landlord if certain conditions are met, including, among others, that the plant crop will not interfere with the maintenance of the rental property.

This act requires a landlord to permit a tenant to utilize a clothesline or drying rack approved by the landlord in the tenant’s private area if certain conditions are met, including, among others, that the clothesline or drying rack will not interfere with the maintenance of the rental property and the use of the clothesline or drying rack does not violate reasonable time or location restrictions imposed by the landlord.

Under existing law, any provision of a governing document that effectively prohibits or unreasonably restricts the use of a homeowner’s backyard for personal agriculture is void and unenforceable, unless it imposes a reasonable restriction on the use of a homeowner’s backyard.

This act makes any provision of a governing document void and unenforceable if it effectively prohibits or unreasonably restricts the use of a clothesline or a drying rack, in an owner’s backyard, except that reasonable restrictions would be enforceable. The act specifies that these provisions would only apply to backyards that are designated for the exclusive use of the owner.

Chapter 602 (AB 1448 – Lopez); adding Sections 1940.20 and 4750.10 to the Civil Code.

REAL ESTATE TRUST FUND ACCOUNTS

• Bond Requirement for Trust Fund Account Withdrawals

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers by the Real Estate Commissioner. Existing law requires a real estate broker who accepts funds belonging to others in connection with a transaction to deposit all those funds in either a neutral escrow depository, into the hands of the broker’s principal, or into a trust fund account.

This act authorizes certain persons, including, among others, a real estate salesperson licensed to the broker to withdraw funds from a trust fund account of the broker if specifically authorized in writing. The act authorizes an unlicensed employee of the broker to withdraw funds from the broker’s trust fund account if the broker has fidelity bond coverage equal to the maximum amount of the trust funds to which the unlicensed employee has access to at any time. The act authorizes this bond to have a deductible of up to five percent of the coverage amount, if the employing broker has evidence of financial responsibility and require financial responsibility to be a separate fidelity bond coverage or a cash deposit adequate to cover the amount of the fidelity bond deductible, or any other evidence of financial responsibility approved by the commissioner. The act prohibits an arrangement from relieving the persons authorized by a broker or officer from responsibility or liability in handling trust funds in the broker’s custody.

Chapter 216 (AB 607 – Dodd); amending Section 10145 of the Business and Professions Code.


**REAL PROPERTY AUCTIONS**

- **Credit Bids**

  Existing law regulates the activities of auctioneers and auction companies and, 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, including stating an increased bid greater than that offered by the last highest bidder was made when no person actually made an increased bid. Existing law 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 provides that anyone who violates this provision is guilty of a misdemeanor.

  This act eliminates the creditor bid exemption to the existing prohibition. Instead, this act prohibits an auctioneer from stating an increased bid greater than that offered by the last highest bidder was made when no person actually made an increased bid. The act eliminates the exception for credit bids.

  NOTE: This act took effect as an urgency statute on September 28, 2015.

  *Chapter 354 (SB 474 - Wieckowski): amending Section 1812.610 of the Civil Code, relating to auctions.*

**REAL PROPERTY SALES**

- **Time-Shares**

- **Public Report**

  Existing law, the Vacation Ownership and Time-share Act of 2004, requires a developer, defined as a person who creates a time-share plan or is in the business of selling time-share interests, to prepare, for issuance by the Real Estate Commissioner, a public report that discloses certain facts concerning the developer and time-share plan and to provide a copy of the public report in writing to each purchaser of a time-share interest in a time-share plan at the time of purchase. Existing law requires a developer who offers a purchaser the opportunity to subscribe or become a member of an exchange program to provide the purchaser with specified disclosures in writing. Existing law makes a violation of the public report disclosure requirement a public offense.

  This act requires the developer to provide the purchaser with the public report or other disclosures in writing or in a digital format at the discretion of the purchaser.

  Existing law provides that it is the duty of a real estate broker or salesperson to a prospective purchaser of residential real property comprising one to 4 inclusive, residential dwelling units or a manufactured home, to make a reasonably competent and diligent visual inspection of, and disclosure regarding, the property, as specified, except for transfers that are required to be preceded by the furnishing of a copy of a specified public report and to transfers that can be made without a specified public report, unless the property has been previously occupied.

  This act also creates an exception for a transfer that is required to be preceded by the furnishing of a copy of the public report required pursuant to the above-described act, unless the property has been previously occupied.

  *Chapter 88 (AB 905 - Gaines): amending Sections 11216 and 11234 of the Business and Professions Code, and amending Section 2079.6 of the Civil Code.*

**RECORDED DOCUMENTS**

- **Real Estate Transfer Fees**

  Existing law defines a transfer fee as a fee payment requirement imposed in any covenant, restriction, or condition contained in any deed, contract, security instrument, or other document affecting the transfer or sale of real property that requires a fee be paid upon transfer of the real property, with specified exceptions. Existing law, with regard to a transfer fee imposed upon real property on or after January 1, 2008, requires the person or entity imposing the transfer fee, as a condition of payment of the fee, to record a specified document describing the transfer fee concurrently with the instrument creating the transfer fee requirement. Existing law requires these recorded documents to include information on the amount of the fee and actual dollar examples of the fee for a residential property, among other things. Existing law requires a transferor of residential real property subject to transfer fees to make a specified disclosure regarding those fees.

  This act specifies that the required information on the recorded document include the method for calculating the amount of the transfer fee, if not a flat amount or a percentage of the sales price, and include the actual dollar examples of the fee for a residential property if the amount of the fee is based on the price of the real property. The act also requires the transferor of residential real property subject to transfer fees to make the specified disclosure regarding those fees if the recorded document describing the transfer fees has not already been provided. The act also clarifies the definition of a transfer fee.

  Existing law excludes from the definition of a transfer fee any fee reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that provides a prospective transferee notice of specified information, including the amount or method of calculation of the fee.

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This act specifies that the information shall be set forth in a single document and may not be incorporated by reference from any other document.

This act provides that a fee reflected in a document recorded against the property on or before December 31, 2007, that is not separate from any covenants, conditions, and restrictions, or that incorporates by reference from another document, constitutes a transfer fee for the purposes of requirements relating to these fees. The act makes unenforceable a transfer fee recorded against the property on or before December 31, 2007, that complies with the provisions described above and that incorporates by reference from another document unless it is recorded against the property on or before December 31, 2016, in a single document that complies with the provisions described above.

This act also makes a legislative finding that certain changes made by this act are clarifying and declaratory of existing law.

Chapter 634 (AB 807 – Stone); amending Sections 1098, 1098.5, and 1102.6e of the Civil Code.

This act recasts this latter exclusion from a “real estate instrument” as a statement that the above-described fee does not apply to any real estate instrument, paper, or notice accompanied by a declaration stating that the transfer is subject to a documentary transfer tax, is recorded concurrently with a transfer subject to a documentary transfer tax, or is presented for recording within the same business day as, and is related to the recording of, a transfer subject to a documentary transfer tax.

Chapter 76 (AB 661 – Mathis); amending Section 27388 of the Government Code.

• Military Service Records

Existing law prohibits a public entity, including notaries public, from demanding a fee or compensation for, among other things, a certified copy of specified military records, and of public records or rendering any other service in connection with an application or claim related to veterans’ benefits, as specified, provided to the person who is the subject of the record, a family member or legal representative of that person, a county office that provides veterans’ benefits services, or a federal official upon written request.

This act permits a county recorder to furnish a certified copy of these specified military records in response to a written, faxed, or digitized image of a request accompanied by a legible notarized statement that the requester is the person who is the subject of the record, a family member or legal representative of that person, a county office that provides veterans’ benefits services, or a federal official. The act also permits an official to furnish a certified copy of these records to a requester in person upon taking a sworn statement.

Chapter 84 (AB 778 – Maienschein); amending Section 6107 of the Government Code.

• Liens Against Public Officers

Existing law prohibits a person from filing or recording a lawsuit, lien, or other encumbrance, pertaining to actions arising in the course and scope of the duties of a public officer or employee, against a public officer or employee, knowing that it is false, with the intent to harass the public officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties. Existing law also provides that a person who records or files a lawsuit, lien, or encumbrance against a public officer or employee in violation of this prohibition, as specified, is liable for a civil penalty not to exceed $5,000. Existing law requires a court to issue an order directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief should not be granted.

This act repeals and recasts these provisions and instead prohibits a person from filing or recording, or directing another to file or record, a lawsuit, lien, or other encumbrance against any person or entity, knowing that it is false, with the intent to harass the person or entity or to influence or hinder the person in discharging his or her official duties if the person is a public officer or employee. The act also provides that a person who files a lawsuit, lien, or other encumbrance against any person...

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THIS ACT PROVIDES THAT A FEE REFLECTED IN A DOCUMENT RECORDED AGAINST THE PROPERTY ON OR BEFORE DECEMBER 31, 2007, THAT IS NOT SEPARATE FROM ANY COVENANTS, CONDITIONS, AND RESTRICTIONS, OR THAT INCORPORATES BY REFERENCE FROM ANOTHER DOCUMENT, CONSTITUTES A TRANSFER FEE FOR THE PURPOSES OF REQUIREMENTS RELATING TO THESE FEES. THE ACT MAKES UNENFORCEABLE A TRANSFER FEE RECORDED AGAINST THE PROPERTY ON OR BEFORE DECEMBER 31, 2007, THAT COMPLIES WITH THE PROVISIONS DESCRIBED ABOVE AND THAT INCORPORATES BY REFERENCE FROM ANOTHER DOCUMENT UNLESS IT IS RECORDED AGAINST THE PROPERTY ON OR BEFORE DECEMBER 31, 2016, IN A SINGLE DOCUMENT THAT COMPLIES WITH THE PROVISIONS DESCRIBED ABOVE.

THIS ACT ALSO MAKES A LEGISLATIVE FINDING THAT CERTAIN CHANGES MADE BY THIS ACT ARE CLARIFYING AND DECLARATORY OF EXISTING LAW.

CHAPTER 634 (AB 807 – STONE); AMENDING SECTIONS 1098, 1098.5, AND 1102.6E OF THE CIVIL CODE.

• RECORDED DOCUMENTS (cont.)

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THIS ACT SPECIFIES THAT THE INFORMATION SHALL BE SET FORTH IN A SINGLE DOCUMENT AND MAY NOT BE INCORPORATED BY REFERENCE FROM ANY OTHER DOCUMENT.

THIS ACT PROVIDES THAT A FEE REFLECTED IN A DOCUMENT RECORDED AGAINST THE PROPERTY ON OR BEFORE DECEMBER 31, 2007, THAT IS NOT SEPARATE FROM ANY COVENANTS, CONDITIONS, AND RESTRICTIONS, OR THAT INCORPORATES BY REFERENCE FROM ANOTHER DOCUMENT, CONSTITUTES A TRANSFER FEE FOR THE PURPOSES OF REQUIREMENTS RELATING TO THESE FEES. THE ACT MAKES UNENFORCEABLE A TRANSFER FEE RECORDED AGAINST THE PROPERTY ON OR BEFORE DECEMBER 31, 2007, THAT COMPLIES WITH THE PROVISIONS DESCRIBED ABOVE AND THAT INCORPORATES BY REFERENCE FROM ANOTHER DOCUMENT UNLESS IT IS RECORDED AGAINST THE PROPERTY ON OR BEFORE DECEMBER 31, 2016, IN A SINGLE DOCUMENT THAT COMPLIES WITH THE PROVISIONS DESCRIBED ABOVE.

THIS ACT ALSO MAKES A LEGISLATIVE FINDING THAT CERTAIN CHANGES MADE BY THIS ACT ARE CLARIFYING AND DECLARATORY OF EXISTING LAW.

CHAPTER 634 (AB 807 – STONE); AMENDING SECTIONS 1098, 1098.5, AND 1102.6E OF THE CIVIL CODE.

• RECORDING

• RECORDING FEES

EXISTING LAW AUTHORIZES THE BOARD OF SUPERVISORS TO ADOPT, BY RESOLUTION, A FEE OF UP TO $10 FOR EACH RECORDED OF A REAL ESTATE INSTRUMENT, PAPER, OR NOTICE REQUIRED OR PERMITTED BY LAW TO BE RECORDED, EXCEPT AS SPECIFIED. EXISTING LAW DEFINES THE TERM “REAL ESTATE INSTRUMENT” TO INCLUDE A DEED, INSTRUMENT, OR WRITING RECORDED IN CONNECTION WITH A TRANSFER SUBJECT TO A DOCUMENTARY TRANSFER TAX.

THIS ACT RECASTS THIS LATTER EXCLUSION FROM A “REAL ESTATE INSTRUMENT” AS A STATEMENT THAT THE ABOVE-DESCRIBED FEE DOES NOT APPLY TO ANY REAL ESTATE INSTRUMENT, PAPER, OR NOTICE ACCOMPANIED BY A DECLARATION STATING THAT THE TRANSFER IS SUBJECT TO A DOCUMENTARY TRANSFER TAX, IS RECORDED CONCURRENTLY WITH A TRANSFER SUBJECT TO A DOCUMENTARY TRANSFER TAX, OR IS PRESENTED FOR RECORDED WITHIN THE SAME BUSINESS DAY AS, AND IS RELATED TO THE RECORDED OF, A TRANSFER SUBJECT TO A DOCUMENTARY TRANSFER TAX.

CHAPTER 76 (AB 661 – MATHIS); AMENDING SECTION 27388 OF THE GOVERNMENT CODE.
This act allows any person or entity subject to a lien or other encumbrance in violation of its prohibitions to petition the superior court of the county in which the person or entity resides or in which the property is located for an order directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief should not be granted. The act expands the requirement for a court to issue an order striking and releasing a lien or other encumbrance to apply to a lawsuit, lien, or other encumbrance against any person or entity. The act also makes other conforming changes.

Chapter 208 (AB 1267 – Bloom); amending Sections 765.030, 765.040, and 765.060 of, repealing and adding Section 765.010 of, the Code of Civil Procedure, and repealing Section 6223 of the Government Code.

• Recorded Restrictions
• Federal Housing Trust Fund

Existing law establishes the Department of Housing and Community Development in the Business, Consumer Services, and Housing Agency. The department is responsible for administering various housing and home loan programs throughout the state. Existing law also establishes the California Housing Finance Agency within the department, and provides that the primary purpose of the agency is to meet the housing needs of persons and families of low to moderate income.

Existing federal law requires the Secretary of the Department of Housing and Urban Development to establish a Housing Trust Fund to provide grants to states to increase the supply of rental housing for extremely low- and very low income families, including homeless families, and home ownership for extremely low- and very low income families.

This act designates the Department of Housing and Community Development as the state agency responsible for administering funds received by the state from the federal Housing Trust Fund. This act requires the department to administer the funds through existing or newly created programs that produce, preserve, rehabilitate, or support the operation of rental housing for extremely low income and very low income households, except that up to 10% of funding may be used to support home ownership for extremely low income and very low income households. The act requires any rental project funded from the federal Housing Trust Fund to restrict affordability for 55 years through a recorded and enforceable affordability covenant. It also requires any home ownership program funded from the federal Housing Trust Fund to restrict affordability for 30 years either through a recorded and enforceable affordability covenant or a recorded and enforceable equity recapture agreement.

This act requires the department to collaborate with the California Housing Finance Agency to develop an allocation plan to demonstrate how the funds will be distributed, based on the priority housing needs identified in the state’s consolidated plan, and to convene a stakeholder process to inform the development of the plan. The act requires the allocation plan and guidelines to give priority to projects based on specified factors. The act requires the department to submit the plan to the Assembly Committee on Housing and Community Development and the Senate Transportation and Housing Committee 30 days after receipt of the federal funds.

The act authorizes the department to adopt, amend, or repeal guidelines to implement these provisions. The act exempts these guidelines from the Administrative Procedure Act.

Existing law requires, on or before December 31 of each year, the department to submit an annual report, containing specified information, to the Governor and both houses of the Legislature on the operations and accomplishments during the previous fiscal year of the housing programs administered by the department.

This act requires that annual report to also include an evaluation of any program established by the department to meet the legal requirements of the Federal Housing Trust Fund program guidelines.

This act would incorporate additional changes to Section 50408 of the Healthy and Safety Code proposed by AB 388 (Chapter 692, Statutes of 2015).

Chapter 686 (AB 90 – Chau); amending Section 50408 of, and adding Chapter 6.8 (commencing with Section 50676) to Part 2 of Division 31 of, the Health and Safety Code.

Redevelopment Agencies

• Community Revitalization Authority

The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined by means of redevelopment projects financed by the issuance of bonds serviced by tax increment revenues derived from the project area. Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies to wind down the affairs of the dissolved agencies and to fulfill the enforceable obligations of those agencies. Existing law also provides for various economic development programs that foster community sustainability and community and economic development initiatives throughout the state.

This act authorizes certain local agencies to form a Community Revitalization Investment Authority (CRIA) within a community revitalization and investment area to carry out provisions of the Community Redevelopment Law in that area for purposes related to, among other things, infrastructure, affordable housing, and economic revitalization. The act authorizes a CRIA to acquire interests in real property and exercise the power of eminent domain.

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**Enhanced Infrastructure Financing Districts**

Existing law authorizes the legislative body of a city or a county to establish an enhanced infrastructure financing district to finance public capital facilities or other specified projects of communitywide significance, including the acquisition, construction, or rehabilitation of housing for persons of low and moderate income for rent or purchase.

This act requires the legislative body to establish the public financing authority at the same time that it adopts a resolution of intention. This act further requires, after the adoption of a resolution of intention to establish the proposed district, the legislative body to send a copy of the resolution to the public financing authority. This act revises the duties of the public financing authority after the resolution of intention to establish the proposed district has been adopted, so that the public financing authority, instead of the legislative body, will perform the specified duties related to the preparation, proposal, and adoption of the infrastructure financing plan and the adoption of the formation of the district.

This act provides that if a resolution is adopted to abandon proceedings to adopt the infrastructure financing plan, then the public financing authority ceases to exist and the legislative body is prohibited from enacting a resolution of intent to establish a district that includes the same geographic area within one year of the date of the resolution abandoning the proceedings.

Existing law authorizes an enhanced infrastructure financing district to utilize any powers under the Polanco Redevelopment Act, which authorizes a redevelopment agency to take action to remedy or remove a release of hazardous substances on, under, or from property, subject to specified conditions. Existing law also authorizes a local agency to take any action similar to that authorized under the Polanco Redevelopment Act.

This act instead authorizes an enhanced infrastructure financing district to utilize any powers under either law.

Existing law requires the infrastructure financing plan to provide for specific actions if any dwelling units are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, including, but not limited to, causing or requiring the construction or rehabilitation, for rent or sale to persons or families of low or moderate income, of an equal number of replacement dwelling units at affordable housing cost within the territory of the district and providing relocation assistance to persons displaced by any public or private development occurring within the territory of the district.

This act revises and recasts those provisions, and requires the infrastructure financing plan to contain those provisions if any dwelling units are proposed to be removed or destroyed either in the course of public works construction or private development within the area of the district subject to a written agreement with the district or financed in whole or in part by the district.

This act incorporates additional changes in Sections 53398.52, 53398.62, and 53398.69 of the Government Code proposed by SB 63 (Chapter 793, Statutes of 2015).

**Successor Agencies**

This act amends several sections of Part 1.85 - Dissolution of Redevelopment Agencies and Designation of Successor Agencies, of Division 24, of the Health and Safety Code, as well as adding thereto new statutes.

Areas of interest include changes in protocol concerning findings of completion; long-range property management plans; enforceable obligations and modifications thereof; ...
REDEVELOPMENT AGENCIES

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...postponement of oversight board consolidations until July 1, 2018; recognized obligation payment schedules (including provision for a “last and final recognized obligation payment schedule”; and dissolution of successor agencies.

Where a finding of completion has been issued based on an agreement between a successor agency and the Department of Finance for installment payments of sums owed taxing agencies, this act includes penalties for the failure to timely pay such installments, including rendering of department approved long-range property management plans ineffective after such defaults.

Of interest, as well, is removal of the department’s jurisdiction over transfers of real estate assets by successor agencies implementing dispositions set forth in department approved long-range property management plans.

NOTE: This act took effect as an urgency measure on September 22, 2015.

Chapter 325 (SB 107 - Committee on Budget and Fiscal Review): amending Sections 34471, 34473, 34476, 34476.1, 34477, 34477.3, 34477.5, 34478, 34479, 34479.7, 34480, 34481, 34483, 34486, 34487, 34489, 34491.3, 34491.4, and 34491.5 of, and adding Sections 34470.1, 34477.7, 34479.9, and 34491.6 to, the Health and Safety Code, and amending Sections 96.11 and 98 of, and adding Section 96.24 to, the Revenue and Taxation Code.

SUBDIVISION MAP ACT

• Open Space
• Recorded Restriction

The Subdivision Map Act required the legislative body of a city or county to deny approval of a tentative map, or a parcel map for which a tentative map was not required, unless it makes certain findings. Under that act, the legislative body of a county is required to make 3 specified findings before approving a tentative map, or a parcel map for which a tentative map was not required, for an area located in a state responsibility area or a very high fire hazard severity zone.

This bill exempts from those requirements the approval of a tentative map, or a parcel map for which a tentative map was not required, that would subdivide land identified in the open space element of the general plan for the managed production of resources. The bill applies the exemption to the subdivision of land that is consistent with the open space purpose.

If the subdivision would result in parcels that are 40 acres or smaller in size, this bill requires the land to be subject to a binding and recorded restriction prohibiting the development of a habitable, industrial, or commercial building or structure.

The bill also requires all other structures to comply with specified defensible space requirements. The bill additionally requires the legislative body to make the three specified findings before later approving the removal of a binding restriction placed as a condition of a tentative map, or a parcel map for which a tentative map was not required, for land that was previously exempt from those requirements if the proposed subdivision would allow the development of a building or structure.


• Map Expiration

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency, and sets forth procedures governing the local agency’s processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification thereof. The act generally requires a subdivider to file a tentative map or vesting tentative map with the local agency, as specified, and the local agency, in turn, to approve, conditionally approve, or disapprove the map within a specified time period. The act requires an approved tentative map or vesting tentative map to expire 24 months after its approval, or after an additional period of time prescribed by local ordinance, not to exceed 12 months. However, the act extends the expiration date of certain approved tentative maps and vesting tentative maps.

This act extends by 24 months the expiration date of any approved tentative map or vesting tentative map that was approved on or after January 1, 2002, and not later than July 11, 2013, within a county that meets certain criteria. The act additionally requires the extension of an approved or conditionally approved tentative map or vesting tentative map, or parcel map for which a tentative map or vesting tentative map was approved on or before December 31, 2001, upon application by the subdivider at least 90 days prior to the expiration of the map.

The Permit Streamlining Act prohibits a local agency, after its approval of a tentative map for a subdivision of single- or multiple-family residential units, from requiring conformance with, or the performance of, any conditions that the local agency could have lawfully imposed as a condition to the previously approved tentative or parcel map, as a condition to the issuance of any building permit or equivalent permit upon approval of that subdivision, during a five-year period following the recordation of the final map or parcel map for that subdivision. The act also prohibits a local agency from refusing to issue a building permit or equivalent permit for a subdivider’s failure to conform with or perform those conditions. However, the act also provides that this five-year period is a three-year period for a tentative map extended pursuant to a specified provision of law, and the local agency is not prohibited from levying a fee, or imposing a condition that requires the payment of a fee upon the issuance of a building permit, with respect to the underlying units.

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This act provides that a tentative map extended pursuant to its provisions is also subject to the truncated three-year period described above, and that the local agency is not prohibited from levying a fee or imposing a condition that requires the payment of a fee upon the issuance of a building permit, with respect to the underlying units.

NOTE: This act took effect as an urgency measure on October 10, 2015.

Chapter 751 (AB 1303 - Gray); amending Section 65961 of, and adding Section 66452.25 to, the Government Code.

Title Insurance

• Corporate Governance
• Insurance Holding Companies

Existing law regulates the business of insurance, including, but not limited to, requiring that each domestic, foreign, and alien insurer doing business in this state annually, on or before the first day of March of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with any additional filings as prescribed by the Insurance Commissioner for the preceding year. The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This act encourages an insurer or insurance group of which the insurer is a member, to, by no later than June 1 of each calendar year, submit to the commissioner a Corporate Governance Annual Disclosure (CGAD) that contains specified information relating to corporate governance structure, policies, and practices. The act provides that an insurer who fails, without just cause, to timely file the CGAD as required by these provisions would be subject to specified late filing fees.

The Insurance Holding Company System Regulatory Act, requires each insurer that is authorized to do business in this state and that is a member of an insurance holding company system to register with the commissioner and to file a registration statement containing specified information, contains certain prohibitions concerning the tender offers and other acquisition of control of a domestic insurer. These prohibitions do not apply if, at the time copies of the offer, purchase, request, or invitation are first published, sent, or given to security holders or the agreement or transaction is entered into, the person has filed with the commissioner, and has sent to the insurer, a statement containing specified information and any additional information the commissioner prescribes in the public interest or to protect policyholders or shareholders.

This act requires the tender offer or merger statement and the notification of proposed affiliate transaction filed with the commissioner to be submitted on a form and in a format prescribed by the National Association of Insurance Commissioners.

This act authorizes the commissioner to act as groupwide supervisor for any internationally active insurance group, or, alternatively, authorizes the commissioner to acknowledge another regulatory official as the groupwide supervisor if the internationally active insurance group meets any specified condition pertaining to its insurance operations in the state. The act also authorizes the commissioner, as the groupwide supervisor, to engage in specified supervision activities.

NOTE: This act took effect as an urgency measure on August 17, 2015.

Chapter 213 (AB 553 - Daly); amending Sections 1215, 1215.1, 1215.2, 1215.5, 1215.6, and 1215.8 of, adding Section 1215.75 to, and adding Article 10.8 (commencing with Section 936.1) to Chapter 1 of Part 2 of Division 1 of, the Insurance Code.

• Title Marketing Representatives

This act is the annual insurance omnibus act. It contains numerous technical and clarifying changes to the Insurance Code that do not affect title insurance.

However, of particular interest to title companies, the act amends section 12418.4 of the Insurance Code relating to title marketing representatives. Under existing law most CDI licensees must report criminal convictions and bankruptcies. However, life settlement brokers, life settlement providers, and title marketing representatives are not subject to the reporting requirements. This act adds those licensees to the reporting requirements.

NOTE: The act alters the notice required by Insurance Code section 790.034 to be given by insurers respecting claims. The new notice adds an additional reference to the phone number of the CDI consumer information line. This change takes effect on January 1, 2017. However, Subdivision (c) of Section 790.034 makes the notice provisions of the section inapplicable to title insurers. The Fair Claims Practices Regulations do have a specific provision for title insurance.

Chapter 348 (AB 1515 – Committee on Insurance); amending Sections 739.3, 922.41 1729.2, 1861.02, 1861.025, 10111.2, 10127.13, 10232.3, 10235.35, 12418.4, and 12921 of, amending, repealing, and adding Sections 510, 742.34, 790.034, 1725.5, 1764.1, 10169, 10192.18, and 12820 of, and repealing Section 10233.9 of, the Insurance Code, and amending Section 1299.04 of the Penal Code.
**Uniform Fraudulent Transfer Act**

- **Renaming and Revision**

The Uniform Fraudulent Transfer Act, based in part on the model Uniform Fraudulent Transfer Act, generally establishes the conditions under which a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, and sets forth the remedies of a creditor with respect to a fraudulent transfer or obligation, including, but not limited to, voiding the transfer.

This act renames the act the Uniform Voidable Transactions Act and revises the act to adopt certain provisions proposed by the 2014 Uniform Voidable Transactions Act, which is based upon the Uniform Fraudulent Transfer Act, both of which were promulgated by the Uniform Law Commission.

The new law now uses the term “voidable” rather than referring to “fraud.” The burden of proof is also changed from one of clear and convincing evidence, to one of a preponderance of the evidence. The new law also specifies that an action is governed by the law of the state of the debtor at the time of the transfer. The act modernizes the language relating to records by referencing electronic records. It also retains the protection for persons who acquire property in good faith and for a reasonably equivalent value.

The new act differs in some respects from the uniform act adopted by the Uniform Law Commission, including failing to include certain provisions of the uniform act relating to recovering insider preferences. Title insurance policies typically contain an exclusion for transfers that are invalid because of being a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors’ rights laws.

**Williamson Act**

- **Agricultural Land**
- **Contracts**
- **Cancellation**

Existing law establishes the California Land Conservation Act of 1965, otherwise known as the Williamson Act, and authorizes a city or county to enter into 10-year contracts with owners of land devoted to agricultural use, whereby the owners agree to continue using the property for that purpose, and the city or county agrees to value the land accordingly for purposes of property taxation, as specified. Existing law provides for the procedure to cancel a contract entered into under these provisions, and provides that the landowner and the Department of Conservation may agree on the cancellation value of the land.

This bill requires the department to provide a preliminary valuation of the land to the county assessor and the city council or board of supervisors at least 60 days prior to the effective date of the agreed upon cancellation valuation if the contract includes an additional cancellation fee.

*Chapter 631 (AB 707 – Wood); amending Section 51203 of the Government 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.
**Boundary Disputes**

**Belle Terre Ranch, Inc. v. Wilson**


In this boundary dispute involved a “battle of the surveyors”, the court held that testimony of property owners was admissible as evidence of the historical beliefs of adjoining landowners as to where the boundary lay. The court also held that defendant’s claim of a prescriptive easement failed where the evidence showed that the use of the disputed area was permissive.

**Community Property**

**In re Marriage of Laflkas**

237 Cal. App. 4th 921 (2015), reh’g denied (July 1, 2015), review denied (Sept. 9, 2015)

When a spouse places separate property in joint title form, the transmutation requirements of Family Code Section 852 must be satisfied before the joint title presumption of Section 2581 applies. The modification of a partnership agreement in this case added the husband’s wife as a joint tenant as to husband’s partnership interest, but did not contain an express transmutation of husband’s separate property interest in the partnership, so therefore, it remained husband’s separate property.

**In re Marriage of Davis**

61 Cal. 4th 846 (2015)

Family Code Section 760 provides that all property acquired by the spouses during the marriage is community property except as otherwise provided by statute. One such statute is Family Code Section 771(a), which provides that the earnings and accumulations of a spouse while “living separate and apart” from the other spouse, are the separate property of the spouse.

The court held that living in separate residences is an indispensable threshold requirement for a finding that spouses are living separate and apart for purposes of Section 771(a). However, the court expressly reserved the question of whether there could be circumstances that would support a finding that the spouses were “living separate and apart”, i.e. they had established separate residences with the requisite objectively evidenced intent, even though they continued to literally share one roof.

**Dedication**

**Coppinger v. Rawlins**


A County’s acceptance of a dedication of a road on a Parcel Map is valid even where it is qualified by a statement that the road shall not become part of the county-maintained road system until accepted by resolution of the Board of Supervisors. The fact that a County refuses to accept a road as a county road, imposing responsibilities for maintenance on the County, is not inconsistent with its status as a “public road.”

**Scher v. Burke**


In the published portion of the opinion, the court held that plaintiffs could not establish an implied dedication of a road because Civil Code Section 1009(b) bars all use of private real property after March 1972, not just recreational use, from ripening into a public dedication absent an express, written, irrevocable offer of such property to such use, and acceptance by a city or county.

In the nonpublished portions of the opinion, the court held that:

1. There was insufficient evidence of the government’s intent to establish an implied easement in the patent to defendants’ properties, and pointed out that in determining whether the doctrine of implied easements applies to a federal land grant, extreme caution must be exercised in determining whether the circumstances surrounding a government land grant are sufficient to overcome the omission of an express reference to a reserved right of access and

2. There was insufficient evidence to establish an express, prescriptive or equitable easement.

**Deficiency**

**Alborzian v. JPMorgan Chase Bank, N.A.**


The parties did not dispute that under C.C.P. Section 580b, an institutional lender, whose loan is secured by the borrower’s residence, cannot obtain a deficiency judgment. Nevertheless, defendant, who was a sold-out junior purchase money lender, sent letters to the borrower offering to accept less than the amount...

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

(Continued from Previous Page...)

...of the loan and implying that the debt was still owed. The court held that the plaintiff/borrower stated causes of action sufficient to overcome a demurrer under the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), the Rosenthal Fair Debt Collection Practices Act (Civ. Code 1788 et seq.) and the Unfair Competition Law (Bus. & Prof. Code 17200 et seq.). However, the borrower may not sue for violations of the Consumer Legal Remedies Act (Civ. Code 1750 et seq.).

NOTE: The court cited the wrong subsection of Section 580b, but got to the right result. Section 580b was subsequently amended to specifically prohibit efforts to collect a debt where a deficiency is not owed.

DISCLOSURES

Ram’s Gate Winery, LLC v. Roche

After purchasing real property from defendants, plaintiff brought this action alleging that defendants breached the purchase agreement by failing to disclose the existence of geological reports discussing potentially hazardous seismic conditions on the property.

The court held that the trial court improperly granted summary adjudication on the breach of contract cause of action, based on the trial court’s determination that the obligations under the purchase agreement and grant deed had merged, because:

1. Merger only occurs if the parties so intended, and there was a triable issue of fact as to the parties’ intent,

2. The cause of action accrued at the time of the breach, so defendants’ liability for that breach was fixed before escrow closed, even though plaintiff was unaware of its right to sue and damages had not yet been incurred, and

3. Even if the doctrine of merger applied in this case, the “collateral obligations exception” prevented the merger doctrine from extinguishing the disclosure duty.

EASEMENTS

Pulido v. Pereira

In the published portion of the opinion, the court held that Civil Code Section 1009, which prevents the use of private property for recreational purposes by members of the public from ripening into a permanent right, is inapplicable to the facts of this case because the Pulidos claim a private prescriptive easement for the purpose of accessing their own property, even though their use of their property was recreation.

Richardson v. Franc

The court granted plaintiffs an irrevocable license to maintain vegetation and an irrigation system within the area of the easement for access and utilities. An otherwise revocable license becomes irrevocable when the licensee, acting in reasonable reliance either on the licensor’s representations or on the terms of the license, makes substantial expenditures of money or labor in the execution of the license; and the license will continue “for so long a time as the nature of it calls for.”

The court affirmed the trial court’s ruling that the license applied to the entire easement area, rather than only the landscaped areas because the trial court apparently concluded that providing a level of certainty to the parties by defining the scope of the irrevocable license with the precise arithmetic measurements of the easement area, rather than attempting to describe more generally the location of areas previously landscaped, will prevent the parties from returning to court for further clarification as to the scope of the irrevocable license.

Finally, the court held that plaintiffs did not satisfy the requirements for an equitable easement because an equitable easement requires that the party claiming the easement must be without knowledge or means of knowledge of the facts, and here plaintiffs knew or should have known at the time of their purchase that the grant deed, on its face, described the easement for “access and utility purposes.”

Shoen v. Zacarias
237 Cal. App. 4th 16 (2015), as modified on denial of reh’g (June 17, 2015), review denied (Aug. 12, 2015)

A court may grant an equitable easement in favor of a trespasser, and instead force the landowner to accept damages as compensation for the judicial creation of an easement over the trespassed-upon property, provided that the trespasser shows that (1) the trespass was innocent rather than willful or negligent, (2) the public or the property owner will not be irreparably injured by the easement, and (3) the hardship to the trespasser from having to cease the trespass is greatly disproportionate to the hardship caused to the owner by the continuance of the encroachment.

Here the court refused to grant an equitable easement because the nominal cost of removing patio furniture did not amount to greatly disproportionate hardship.
Escrow

Rideau v. Stewart Title of California, Inc.

An indemnity provision in escrow instructions requiring a party to the escrow to indemnify the escrow holder for all costs, including attorney’s fees, incurred in defending against third party claims does not invoke the reciprocal attorney’s fee provisions of Civil Code Section 1717. Instead, the indemnity clause was a one-way protection for Stewart Title, due to the nature of an escrow holder’s duties if they are properly performed, but such indemnity rights never come into play where a party to the escrow sues the escrow holder.

Tribeca Companies, LLC v. First Am. Title Ins. Co.

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Foreclosure

Miles v. Deutsche Bank Nat’l Trust Co.

The trial court granted summary judgment for the lender in a wrongful foreclosure action on the sole basis that plaintiff could not prove damages because he did not have any equity in the home when it was sold at a non-judicial foreclosure sale. The appellate court reversed, holding that since wrongful foreclosure is a tort, plaintiff may recover any damages proximately caused by defendants’ wrongdoing, and plaintiff offered evidence that he lost rental income and suffered emotional distress as a result of the foreclosure.

Monterossa v. Superior Court of Sacramento Cnty.

A borrower who obtains a preliminary injunction enjoining, pursuant to Civil Code Section 2924.12, a trustee’s sale of his or her home is a “prevailing borrower” within the meaning of the statute and is entitled to attorney’s fees, even if a permanent injunction is never obtained.

Valbuena v. Ocwen Loan Servicing, LLC

It is not necessary for a borrower to tender the loan balance in an action to set aside a trustee’s sale based on alleged violations of the Homeowner’s Bill of Rights (CC 2923.6 etc.).

Wells Fargo Bank, N.A. v. 6354 Figarden Gen. Partnership
238 Cal. App. 4th 370 (2015), reh’g denied (July 30, 2015)

1. When the property subject to redemption contains multiple parcels, some vacant and unimproved, and some improved and occupied by rent paying tenants, the measure of the offset in determining the redemption price under C.C.P. Section 729.060 for “the value of the use and occupation of the property to the purchaser” is calculated by adding (1) the amount of rents paid for the improved portion of the property with tenants and (2) the value to the purchaser of the use and occupation of the unimproved and unleased portion of the property, if any such value was realized. In this case, the purchaser’s use and occupation of the unleased portion had no value, so the redemption price is reduced only by the rents paid.

2. Section 729.060(c) refers to net rents, so the trial court properly subtracted the management fees and operating expenses related to the business of the renting units of the property from the redemption price.
Guarantees

**CADC/RAD Venture 2011–1 LLC v. Bradley**
235 Cal. App. 4th 775 (2015), review denied (July 8, 2015)

A guaranty is a sham where the guarantor is the principal obligor on the debt, either because he or she personally executed the note or deed of trust, or because the guarantor is liable for the debts of the borrower by operation of some legal principle (e.g., partners of a general partnership). Where there is legal separation between the borrower and guarantor, however, the guaranty is enforceable unless the loan transaction has been structured to subvert the antideficiency laws.

Here, the entity in title, whose loan was guaranteed by defendants, was a shell corporation owned by No Boundaries, Ltd., which was wholly owned by defendant guarantors. The evidence showed that No Boundaries observed the necessary formalities, including passing corporate resolutions, holding corporate meetings, and maintaining separate bank accounts and assets, and there was no indication that plaintiff/lender forced defendants to borrow through a shell entity or that it dictated the form that shell entity should take. Accordingly, the court held that the guaranties were enforceable.

**California Bank & Trust v. DelPonti**

Where a bank breached the loan agreement by stopping funding the construction loan, the court held that the bank could not recover a deficiency judgment against the guarantors after foreclosing. The guarantee contained a waiver of rights and defenses that would otherwise be available to a guarantor, as permitted by Civil Code Section 2856, but that section does not allow a pre-default waiver of the bank’s own misconduct.

Waiver of statutory defenses is not deemed to waive all defenses, especially equitable defenses, such as unclean hands, where to enforce the guaranty would allow a lender to profit by its own fraudulent conduct.

**Indemnity**

**First Am. Title Ins. Co. v. Spanish Inn, Inc.**

The court upheld the trial court’s grant of summary adjudication in favor of First American, which sought recovery under a mechanics lien indemnity executed by defendants. Defendants asserted that the mechanics lien actions defended by First American were not covered by the title policy because Exclusion 3(a) excludes “liens . . . created, suffered, assumed or agreed to by the insured claimant”, and the insured construction lender created the liens by failing to disburse the full loan amount.

The court pointed out that it only needed to interpret the indemnity agreement and did not interpret Exclusion 3(a). The court held that the following provision in the agreement was determinative because it gave First American the right to conclusively determine coverage: “Any determination of coverage by First American shall be conclusive evidence that the matter is within the Title Policy coverage as to the Mechanic Liens for purposes of this Agreement.”

The court also held that defendants’ challenge to the reasonableness of the amounts of attorney’s fees and damages sought by First American failed because defendants failed to produce any actual evidence that such amounts were unreasonable.

Life Estates

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

The court held that: 1) a life estate can be created without using the term “life estate” where decedent was given the right to live in the property rent-free during her life, with the property passing to other people upon her death, and that 2) even though decedent also had the right to sell the property and split the proceeds with the remaindermen, that right did not convert the life estate into a fee simple estate.

Accordingly, a deed of trust executed by the life tenant terminated upon her death.

Lis Pendens

**Mira Overseas Consulting Ltd. v. Muse Family Enterprises, Ltd.**
237 Cal. App. 4th 378 (2015), as modified on denial of reh’g (June 30, 2015), review denied (Sept. 16, 2015)

A fraudulent conveyance action, if successful, may result in the voiding of a transfer of title of specific real property. By definition, the voiding of a transfer of real property will affect title to or possession of real property. Therefore, a fraudulent conveyance action is a real property claim for the purposes of the lis pendens statutes, and the priority of a subsequent judgment dates back to the recodification of the lis pendens.
**Prepayment**

*U.S. Bank Nat’l Ass’n v. Yashouafar*


In this action to enforce a guaranty, the court held that under the terms of a note and deed of trust, a prepayment penalty was not payable until actual prepayment, which occurred when lender purchased the secured property at its foreclosure sale, and not at the earlier date when the lender notified the buyer that it was exercising its right to accelerate the due date of the note. The court pointed out that it was not holding that a creditor can never recover a prepayment penalty prior to actual prepayment, but only that under the clear and explicit terms of the note and deed of trust at issue in this case, no prepayment fee was due until defendants actually prepaid the note’s indebtedness.

**Probates / Trusts**

*Ukkestad v. RBS Asset Fin., Inc.*


The court granted the trustee’s petition under Probate Code Section 850(a)(3) (a “Heggstad petition”) for an order confirming that two parcels of land are part of the trust’s assets, holding that where the trust instrument stated that all of the settlor’s “right, title and interest” to “all of his real . . . property” was included in the trust’s assets, and it is possible by resorting to extrinsic evidence to determine that the settlor held title to the two parcels of land, the statute of frauds creates no bar to the petition.

**Quiet Title**

*Salazar v. Thomas*


In the published part of the opinion, the court held that notices of default under a void deed of trust provided notice of a cloud on the plaintiffs’ title, but did not dispute or disturb the plaintiffs’ possession of the property. Consequently, the 3-year statute of limitations under C.C.P. Section 338(d) does not bar their quiet title action. Also, plaintiffs remained in possession through occupation by their tenants, as well as their own occupation.

**Reassessment**

*Dyanlyn Two v. Cnty. of Orange*


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.

**Subdivision Map Act**

*Save Mount Diablo v. Contra Costa Cty.*


The court held that a “division” of property within the meaning of the Subdivision Map Act does not occur simply because an eminent domain proceeding results in a physical separation of a property’s non-condemned portions. The owner of such a property is therefore not entitled to a certificate of compliance for each of the resulting separate parts.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.
Title Insurance

Stockton Mortgage, Inc. v. Tope


1. A Notice of Abatement Action is not a defect, lien or encumbrance on title.

2. The mere accrual of assessments – without the recording of a lien to enforce those assessments – does not transform a notice of abatement into a defect, lien, or encumbrance on title. That is true even where, as here, the County actually undertakes “abatement activity.”

3. The loan policy did not continue in favor of the insured assignor after an assignment, where the assignor did not provide evidence showing that warranties were given to the assignees.

4. A cause of action for breach of contract based on a Preliminary Report does not exist because a Preliminary Report is an offer to issue a title insurance policy, and not a contract.

5. The negligence cause of action against the title insurer did not have merit because there was no evidence that the title insurer had any duty, other than the duty under the title policy.

NOTE: Plaintiff’s deed of trust recorded in 2005, so the policy must have either been a 1990 CLTA Policy or a 1992 ALTA Loan Policy. The relevant provisions of the CLTA policy have not changed, but ALTA policies were significantly modified in 2006.

Transfer Fees

Marina Pacifica Homeowners Ass’n v. S. California Fin. Corp.


An “Assignment Fee” set forth in unrecorded condominium leases and certain other recorded documents, requiring payment of a monthly fee to the original developers, fell within the general definition of a “Transfer Fee” within the meaning of Civil Code Section 1098. However, Subsection 1098(i) excepts from that definition any fee recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that substantially complies with subdivision (a) of Section 1098.5. The court held that provisions in the leases that notify lessees of the existence of the fee satisfy the notice requirements of Subsection 1098(i). Therefore, the court held that the persons entitled to collect the fee did not have to record the notice of transfer fee required by CC Section 1098.5.

Trustee’s Sale

Boyce v. T.D. Serv. Co.


An impropriety in the transfer of a promissory note affects only the parties to the transaction, not the borrower, so a borrower lacks standing to challenge the allegedly deficient assignments and securitization.

Granadino v. Wells Fargo Bank, N.A.


In an action by homeowners against a bank for promissory estoppel following the collapse of negotiations to modify the loan and foreclosure of their home, a grant of summary judgment to the bank was affirmed. The court held that the claim based on defendant’s alleged oral promise that no foreclosure sale was scheduled was barred by the statute of frauds because an agreement that modifies a contract subject to the statute of frauds (the deed of trust) is likewise subject to the statute of frauds.

The court also held that summary judgment was properly granted as to the promissory estoppel allegations because an alleged oral statement by defendant’s employee that the proposed modification was under review and a trustee’s sale was no longer scheduled was not a “promise” required by the cause of action, and because plaintiffs could not establish detrimental reliance where they could not show they would have been able to bring the loan current and stop the trustee’s sale if they had been provided accurate information that the sale had not been postponed.
TRUSTEE’S SALE (cont.)

Ram v. OneWest Bank, FSB


The court upheld the trial court’s sustaining of a demurrer and dismissal of the action, holding:

1. A notice of default (“NOD”) was valid where it was executed and recorded by the trustee before the substitution of the trustee was executed and recorded because a) Civil Code Section 2934a(c) allows a substitution of trustee to be effected after an NOD is recorded and the affidavit required by 2934a(c) was not required here because the terms of the deed of trust gave OneWest the option of substituting a successor trustee without the need for an affidavit, b) Section 2934a(d) provides that once recorded, the substitution shall constitute conclusive evidence of the authority of the substituted trustee or its agents to act pursuant to that section, c) even if the trustee lacked authority to sign the notice of default at the time it took that action, it had the authority to execute the notice of default as OneWest’s agent and d) even if the trustee lacked authority to sign the notice of default as trustee at the time it took that action, its authority was subsequently ratified by OneWest when it formally substituted the trustee several weeks later.

2. Because the court concluded that any alleged defect or omission in the representation of OneWest at the time the notice of default was filed was not substantial, making the subsequent sale at most voidable, and not void, the borrowers were required to allege tender of the amount owed, which they did not do.

UNIFORM COMMERCIAL CODE

Feresi v. The Livery, LLC


The court held that if a perfected security interest is created by breaching a fiduciary duty owed to another person, then equitable principles may be applied to give priority to an earlier unperfected security interest.

VOTER APPROVAL

Linda Vista Vill. San Diego Homeowners Ass’n, Inc. v. Tecolote Investors, LLC


Plaintiff sought to invalidate a master lease and its subleases that the City and Landlord Defendants entered into, alleging that the park site was “Pueblo Lands” within the meaning of San Diego City Charter section 219. The court affirmed the trial court’s dismissal of the action because plaintiff did not establish any entitlement to relief based on its claim that reacquired City Pueblo lands, following periods of severed City ownership rights, remained subject to section 219 requirements for voter approval of property transactions.
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CLTA Legislative Committee Functions

The CLTA Legislative Committee is established in the Bylaws. It is a 23 member committee whichdevotes approximately 588 volunteer hours per year in support of this Association.

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

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

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The CLTA’s 109th Annual Convention

Mark Your Calendar – April 24-26, 2016

Mark your calendar for the CLTA’s 109th Annual Convention!

With this year’s Convention slated to be held at the stunning Balboa Bay Resort, you won’t want to miss the schedule of events, including the Icebreaker Reception, Business Program, and President’s Dinner!

Sponsorship opportunities will be available soon! Be sure to visit the CLTA website at www.clta.org and sign up for our electronic newsletter, the CLTA eNews, for more information as it becomes available.

Registration information and program details will be forwarded in January.

The 2016 CLTA Directory of Members...

Available in January, 2016

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