

2018 SUMMARY OF LEGISLATION



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EDITOR'S NOTE

Of the 1016 bills signed into law in 2018, 30 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 leginfo.legislature.ca.gov under the "Bill Information, 2017-18 Session" link. All bills summarized in this publication become effective January 1, 2019, unless otherwise noted.

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

ASSESSMENTS

- **Property Assessed Clean Energy**
- **Wildfire Safety Improvements**

Existing law, known commonly as the Property Assessed Clean Energy (PACE) program, authorizes a public agency, by making specified findings, to authorize public agency officials and property owners to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.

Existing law, the California Financing Law (CFL), requires a program administrator who administers a PACE program on behalf of, and with the written consent of, a public agency to comply with specified requirements relating to the PACE program, including requiring, commencing on January 1, 2019, a program administrator to be licensed by the Commissioner of Business Oversight under the California Financing Law.

The Mello-Roos Community Facilities Act of 1982 authorizes a community facilities district to finance the purchase, construction, expansion, improvement, or rehabilitation of certain facilities, including, among others, finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements to or on real property and in buildings.

This act, until January 1, 2029, enacts the Wildfire Safety Finance Act, which expands these provisions to also authorize a legislative body that has accepted the designation of Very High Fire Hazard Severity Zone to designate an area for contractual assessments to finance the installation of wildfire safety improvements that are permanently fixed to real property, in accordance with specified procedures and requirements that are similar to requirements that apply to the PACE program under existing law. The act defines “public agency,” for purposes of financing the installation of wildfire safety improvements, to mean a city, county, or city and county. The act makes conforming changes in the CFL, the Mello-Roos Community Facilities Act of 1982, and other related laws to that effect.

This act incorporates additional changes to Section 5913 of the Streets and Highways Code as proposed by AB 2063 (Ch. 813, Statutes of 2018).

Chapter 837 (SB 465 - Jackson); amending, repealing, and adding Section 22003.5 of the Financial Code, amending, repealing, and adding Section 53313.5 and 53355.7 of the Government Code, amending, repealing, and adding Sections 5898.16, 5898.17, 5902, 5913, and 5954 of, and adding and repealing Section 5899.4 of, the Streets and Highways Code.

BLOCKCHAIN TECHNOLOGY

- **State Working Group**

Existing law, the Uniform Electronic Transactions Act, specifies that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form and that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. Among other things, the act provides that if a law requires a record to be in writing, or if a law requires a signature, an electronic record or signature satisfies the law.

Existing law specifies that there is, in the Government Operations Agency, the Department of General Services, which shall develop and enforce policy and procedures and institute or cause the institution of those investigations and proceedings as it deems proper to assure effective operation of all functions performed by the department and to conserve the rights and interests of the state.

This act, until January 1, 2022, requires the Secretary of the Government Operations Agency to appoint a blockchain working group on or before July 1, 2019. The act defines blockchain as a mathematically secured, chronological, and decentralized ledger or database. The act, on or before July 1, 2020, requires the working group to report to the Legislature on the potential uses, risks, and benefits of the use of blockchain technology by state government and California-based businesses.

Chapter 875 (AB 2658 - Calderon); adding and repealing Sections 11546.8 and 11546.9 of the Government Code.

BUILDING STANDARDS

- **Inspection of Decks and Balconies**
- **Recovery of Enforcement Costs**

Existing law provides authority for an enforcement agency to enter and inspect any buildings or premises whenever necessary to secure compliance with or prevent a violation of the California Building Standards Code and other rules and regulations. This act requires an inspection of exterior elevated elements and associated waterproofing elements, including decks and balconies, for buildings with three or more multifamily dwelling units by a licensed architect, licensed civil or structural engineer, a building contractor holding specified licenses, or an individual certified as a building inspector or building official, who is hired by the owner, to be completed by January 1, 2025, with certain exceptions and every six years hence, except as specified. The owner is to complete corrective repairs within prescribed time periods as specified.

The act authorizes local enforcement agencies to recover enforcement costs associated with these requirements and provides for specified civil penalties and recording of building safety liens against the property for the owner of the building who fails to comply with these provisions.

The act excludes a common interest development from these provisions.

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BUILDING STANDARDS (cont.)

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The act requires any building subject to these provisions that is proposed for conversion to condominiums to be sold to the public after January 1, 2019, to have the required inspection conducted prior to the first close of escrow of a separate interest in the project. Confirmation of completed repairs shall be a condition of the issuance of a final inspection or certificate of occupancy. The act authorizes a local governing entity to enact stricter requirements than those imposed by these provisions.

Existing law authorizes a landlord to enter the dwelling only in certain situations, including to make necessary repairs.

This act additionally authorizes a landlord to enter the dwelling unit to comply with the above-described requirements.

Chapter 445 (SB 721 – Hill); adding and repealing Sections 11546.8 and 11546.9 of the Government Code.

CIVIL ACTIONS

- **General Release**
- **Definition of “Creditor” and “Debtor”**

Under existing law, an obligation is a legal duty to do or not to do a certain thing and an obligation may be extinguished in various ways. An obligation is extinguished if a creditor releases a debtor from the obligation either upon new consideration or in writing, with or without new consideration. Under existing law, a general release from an obligation does not apply to claims that the creditor does not know or suspect to exist in his or her favor, as specified, and that would have materially affected his or her settlement with the debtor.

This act clarifies that the terms “creditor” and “debtor” as used in the above provisions include “releasing party” and “released party,” respectively. This act states that its changes are declaratory of existing law.

Because the provisions of Civil Code section 1542 are frequently quoted in settlement agreements and release documents, those types of forms should be reviewed to update the language as amended in this act.

Chapter 157 (SB 1431 – Morrell); amending Sections 1541 and 1542 of the Civil Code.

COMMON INTEREST DEVELOPMENTS

- **CC&Rs**
- **Electric Vehicle Charging Stations and Meters**

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives. The act provides that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, or any provision of the governing documents of a common interest development, that effectively prohibits or restricts the installation or use of an electric vehicle (EV) charging station in an owner’s designated parking space is void and unenforceable. The act authorizes an association, as defined, to impose reasonable restrictions on those stations, as specified, and imposes requirements with respect to an association’s approval process for those stations. If the station is to be placed in a common area or an exclusive use common area, the act requires the homeowner to pay for the electricity usage associated with the charging station and to be responsible for various costs associated with maintaining and repairing the station, as well as costs for damage to common areas and adjacent units resulting from installation and maintenance of the station. Existing law requires the owner and each successive owner of the charging station to, at all times, maintain a homeowner liability coverage policy in the amount of \$1,000,000 and name the association as a named additional insured. Existing law requires the award of reasonable attorney’s fees to a prevailing plaintiff in an action to enforce these provisions.

This act, with respect to an EV charging station placed in a common area or an exclusive use common area, (1) requires the homeowner to agree to pay the costs associated with the installation of the charging station; (2) requires the owner of the charging station, wherever located within the common interest development, to maintain a liability coverage policy without referencing an amount, and provide the association with a corresponding certificate of insurance, and; (3) requires the award of those fees to a prevailing plaintiff in an action by a homeowner requesting to have an EV charging station installed.

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COMMON INTEREST DEVELOPMENTS (cont.)

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The act also provides that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, or any provision of the governing documents of a common interest development, that effectively prohibits or restricts the installation or use of an electric vehicle charging station within an owner's unit or of an EV-dedicated TOU meter, as defined, is void and unenforceable. This act extends specified existing authorizations and requirements to these meters and certain wiring and would require the award of reasonable attorney's fees to a prevailing plaintiff in an action by a homeowner requesting to have an EV-dedicated TOU meter installed and seeking to enforce compliance with those requirements.

Chapter 376 (SB 1016 - Allen); amending Section 4745 of, and adding Section 4745.1 to, the Civil Code.

CORPORATIONS

- **Dissolution or Cancellation of Limited Liability Companies**
- **Abatement of Taxes**

The General Corporation Law sets forth procedures for the creation and dissolution of a corporation. The California Revised Uniform Limited Liability Company Act governs the formation, operation, and dissolution of limited liability companies.

This act makes a domestic corporation and a limited liability company subject to administrative dissolution or administrative cancellation, if the corporation's or company's corporate powers are, and have been, suspended by the Franchise Tax Board for a specified period of time. Prior to the administrative dissolution or administrative cancellation of the corporation or company, the act requires the Franchise Tax Board to provide notice to the corporation or company of the pending administrative dissolution or administrative cancellation. The act requires the Franchise Tax Board to transmit to the Secretary of State the names and Secretary of State file numbers of the corporations and companies subject to administrative dissolution or administrative cancellation.

The act also requires the Secretary of State to provide notice of the pending administrative dissolution or administrative cancellation on its Internet Web site. The act authorizes a corporation or limited liability company to provide the Franchise Tax Board with a written objection to the administrative dis-

solution or administrative cancellation. If there is no written objection or the written objection fails, the act requires the corporation or company to be administratively dissolved or administratively canceled and provides that the certificate of the Secretary of State is prima facie evidence of the administrative dissolution or administrative cancellation. Upon administrative dissolution or administrative cancellation, the act abates the corporation's or company's liabilities for qualified taxes, interest, and penalties.

This act authorizes the Franchise Tax Board to abate, upon written request by a qualified entity, unpaid qualified taxes, interest, and penalties, for the taxable years in which the entity certifies, under penalty of perjury, that it was not doing business. The act makes this abatement conditioned on the dissolution or cancellation of the qualified entity prior to the abatement. The act requires the Franchise Tax Board to prescribe rules and regulations to carry out these abatement provisions and exempts these rules and regulations from the Administrative Procedure Act.

Existing state constitutional law prohibits the Legislature from making any gift, or authorizing the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation.

This act makes certain legislative findings and declarations that its provisions serve a public purpose.

Chapter 679 (AB 2503 - Irwin); adding Sections 2205.5 and 17713.10.1 to the Corporations Code, and adding Sections 23310 and 23311 to the Revenue and Taxation Code.

- **Representation on Boards of Directors**

The General Corporation Law provides for the formation of domestic general corporations by the execution and filing of articles of incorporation with the Secretary of State. Under that law, the business and affairs of these corporations are generally managed by their boards of directors.

This act, no later than the close of the 2019 calendar year, requires a domestic general corporation or foreign corporation that is a publicly held corporation whose principal executive offices, according to the corporation's SEC 10-K form, are located in California to have a minimum of one female on its board of directors. No later than the close of the 2021 calendar year, the act increases that required minimum number to three female directors if the corporation has five directors or to three female directors if the corporation has six or more directors. The act requires, on or before specified dates, the Secretary of State to publish various reports on its Internet Web site documenting, among other things, the number of corporations in compliance with these provisions. The act authorizes the Secretary of State to impose fines for violations of the act.

Chapter 954 (SB 826 - Jackson); adding Sections 301.3 and 2115.5 to the Corporations Code.

DEEDS

- **Conveyance of Federal Lands**
- **State Lands Commission**
- **Certificate of Compliance**

Existing law specifies that certain conveyances of federal public lands are void ab initio unless the State Lands Commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public land to another entity. Existing law requires the commission to issue a certificate of compliance if the commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public land to another entity. Existing law requires the commission to waive the right of first refusal or the right to arrange for the transfer of the federal public land to another entity and issue a certificate of compliance for certain conveyances.

This act authorizes the executive officer of the commission to issue a certificate of compliance for certain conveyances. The act additionally requires the executive officer to waive the right of first refusal or the right to arrange for the transfer of the federal public land to another entity and issue a certificate of compliance for conveyances of federal public land to the state and, except as provided, conveyances of federal public lands not managed by certain federal agencies.

Existing law, contained in Government Code Section 27338, requires a deed, instrument, or other document related to a conveyance of federal public lands subject to the above referenced right of first refusal to be titled “Federal Public Land Deed of Conveyance”.

This act deletes that requirement.

NOTE: The United States District Court for the Eastern District of California has declared as unconstitutional the law that this chapter amends (SB 50, Allen). In an order dated November 1, the court granted a motion for summary judgment filed by the United States and denied California’s motion for summary judgment. The Court also enjoined California from enforcing SB 50. California is expected to appeal the ruling.

Chapter 51 (SB 854 - Committee on Budget and Fiscal Review); amending Section 27338 of the Government Code, and Section 8560 of the Public Resources Code (as excerpted).

HOUSING

- **Installation of Manufactured Housing on Foundation Systems**

The Mobilehome Parks Act requires the Department of Housing and Community Development to establish regulations for manufactured home, mobilehome, and commercial modular foundation systems. Existing law requires an owner or licensed contractor to obtain a building permit from the appropriate enforcement agency to install a manufactured home, mobilehome, or commercial modular on a foundation system by, among other things, submitting written evidence that the manufactured home, mobilehome, or commercial modular owner owns, holds title to, or is purchasing the real property where the manufactured home, mobilehome, or commercial modular is to be installed.

This act specifies that a registered owner of a manufactured home or mobilehome in a mobilehome park that is converted or proposed to be converted to a resident-owned subdivision, stock cooperative, or condominium project, may submit written evidence of that owner’s resident ownership in the mobilehome park in order to comply with this requirement.

NOTE: This act took effect as an urgency statute on September 5, 2018.

Chapter 254 (AB 1943 - Waldron); amending Section 18551 of the Health and Safety Code.

- **Recorded Restrictions**

Existing law, enacted in 2017 (Chapter 366), establishes a streamlined process for approving local housing developments that meet specified standards.

This act makes various changes to those provisions enacted in 2017. Of particular interest to title companies, this act modifies the recording requirements for subsidized developments contained in Government Code Section 65913.4. The act requires that the development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower income housing units shall remain available at affordable housing costs or rent to persons and families of lower income for specified periods of time. In addition, the act requires that a city or county shall require the recording of covenants or restrictions for each parcel or unit of real property included in the development.

Chapter 840 (SB 765 - Wiener); amending Section 65913.4 of the Government Code.

HOUSING (cont.)

- **Affordable Housing Authorities**

Existing law authorizes a city, county, or city and county to adopt a resolution creating an affordable housing authority with powers limited to providing low- and moderate-income housing and affordable workforce housing, as provided, by means of tax increment financing. Existing law defines various terms for these purposes.

This act additionally defines the terms “authorizing resolution” and “property tax increment” for these purposes. The act additionally revises these provisions to limit the authority to providing low- and moderate-income housing and affordable housing.

Existing law sets forth the composition of the governing board of an authority created pursuant to these provisions and requires the governing board to be an odd number with at least five or seven members, at least three of which are required to be appointed by the legislative body of the city or county.

This act, in the case of an authority created by a city and county, requires the governing board to include appointments made by the mayor in the same number as are appointed by the legislative body of the city and county.

Existing law authorizes specified local entities to adopt a resolution to provide property tax increment revenues to the authority. Existing law requires that housing funds expended by an authority be spent in proportion to the share of the regional housing need allocated to the city, county, or city and county for income categories for low, very low, and moderate-income housing.

This act requires the resolution provision for receipt of property tax increment to become effective in the property tax year that begins after the December 1 immediately following the adoption of a resolution to provide property tax revenues to the authority. The act additionally authorizes the repeal of the resolution by giving the county auditor-controller at least 90 days’ notice prior to the end of the current fiscal year. The act establishes alternative purposes for which housing funds may be spent, including expending all housing funds for the development of very low income housing or for one or more activities relating to the rehabilitation, expansion, or construction of emergency shelters, supportive housing, or transitional housing, or a combination of that development and one or more of those activities. The act also requires the county auditor-controller to deduct any costs incurred by the county in administering these provisions, prior to distributing property tax increment to the authority.

Existing law additionally authorizes specified local entities to adopt a resolution allocating other tax revenues to the au-

thority, subject to certain requirements.

This act authorizes the repeal of this resolution.

Existing law authorizes an authority to take specified actions, including issuing bonds in conformity with provisions governing the issuance of general obligation bonds.

This act additionally authorizes an authority to issue bonds in conformity with the Housing Authorities Law and to finance water, sewer, or other public infrastructure necessary to support the development of affordable housing.

Existing law requires the authority to contract for an independent audit every five years beginning in the calendar year in which the authority has allocated a cumulative total of more than \$1,000,000 in property tax revenues or other revenues, including any proceeds of a debt issuance.

This act instead requires an authority to contract for an independent audit commencing in the calendar year in which the authority has been allocated a cumulative total of more than \$1,000,000 in revenues, including any proceeds of a debt issuance, and annually thereafter.

The act additionally requires any proceeding to attack, review, set aside, void, or annul the creation of an authority, the adoption of an affordable housing plan, the allocation of tax revenues to an authority, or the issuance of bonds by an authority to be commenced within 30 days of the enactment of the resolution authorizing the action.

Chapter 862 (AB 2035 - Mullin); amending Sections 62250, 62251, 62252, 62253, 62254, and 62255 of, and adding Section 62261.1 to, the Government Code.

- **Retroactive Building Permits**

The State Housing Law requires local ordinances or regulations governing alterations and repair of existing buildings to permit the replacement, retention, and extension of original materials and the use of original methods of construction for any building or accessory structure subject to this law, including a dwelling or portions thereof, as long as the portion of the building and structure subject to the replacement, retention, or extension of original materials and the use of original methods of construction complies with the building code provisions governing that portion of the building or accessory structure at the time of construction, and the other rules and regulations of the department or alternative local standards governing that portion at the time of its construction and adopted pursuant to provisions of existing law regarding fire safety, and the building or accessory structure does not become or continue to be a substandard building.

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HOUSING (cont.)

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This act requires the Department of Housing and Community Development to propose the adoption of a building standard to the California Building Standards Commission pursuant to existing law that authorizes, when a record of the issuance of a building permit for the construction of an existing residential unit does not exist, local enforcement officials to determine when the residential unit was constructed and then apply the State Housing Law, the building standards published in the California Building Standards Code, and other specified rules and regulations in effect on that date and issue a retroactive building permit for that construction. This act declares that the provisions of the act are declaratory of existing law.

NOTE: The act states that it is the intent of the Legislature to clarify that when a building permit for a residential unit does not exist, the appropriate enforcement official may make a determination of when a residential unit was constructed and then apply the California Building Standards Code and other specified rules and regulations in effect when the residential unit was determined to be constructed for purposes of using a building permit for the residential unit.

Chapter 1010 (SB 1226 – Bates); adding Section 17958.12 to the Health and Safety Code.

INSURANCE

- **Child Support Obligors**
- **Interception of Insurance Payments**

Existing law creates the Department of Child Support Services and provides for the interception of funds from state tax refunds, lottery winnings, unemployment compensation benefits, and benefits under the Public Employees' Retirement System that otherwise would be paid to a person owing past due child support. Existing law creates the Department of Insurance, headed by the Insurance Commissioner, and prescribes the department's powers and duties.

This act, beginning January 1, 2020, requires an insurer to cooperate with the Department of Child Support Services to identify claimants who are also obligors who owe past-due child support, and to report those claimants to the department. The act requires an insurer to identify and report a claimant if his or her claim seeks an economic benefit, but exempts specified economic benefits, including a payment to the mortgagee or lienholder of the property or a payment from an accelerated death benefit, and limits withholding from a qualifying disability insurance payment to 50% of the claim for the benefits. The act requires an insurer to comply with the requirements of a notice from the Department of Child Support Services that a reported insurance claim is payable to an obligor who owes past-due child support, unless the notice is received after

the insurer has paid the claim. The act provides that an insurer, specified agent, specified insured, and a central reporting organization, that releases information in accordance with this act, withholds payments, and makes disbursements, is immune from liability under certain circumstances.

The act also requires that the data obtained by the department, or by an insurer or its designated agent, only be used for the purpose of identifying claimants who are also obligors who owe past-due child support, and specifies that various laws protecting the privacy and security of data apply.

The act authorizes an insurer to use a central reporting organization to automate its claims identifying process, and requires an insurer that does not use a central reporting organization to determine if a claimant owes past-due child support before paying a claim.

NOTE: The act defines economic benefits under a life insurance policy, disability income insurance policy, property and casualty policy and an annuity. The act does not address title insurance or economic benefits under a title insurance policy.

Chapter 439 (AB 2802 – Friedman); adding Article 8 (commencing with Section 13550) to Chapter 2 of Division 3 of the Insurance Code.

LOCAL DISTRICTS

- **Enhanced Infrastructure Financing Districts**
- **Recorded Restrictions**

Existing law establishes procedures for the formation of infrastructure financing districts, enhanced infrastructure financing districts, infrastructure and revitalization financing districts, and community revitalization and investment authorities, as specified, to undertake various economic development projects, including financing public facilities and infrastructure, affordable housing, and economic revitalization. Existing law authorizes the issuance of bonds for the funding of these purposes, and, in the case of an enhanced infrastructure financing district, requires voter approval, as specified, for the issuance of those bonds. Existing law, the Neighborhood Infill Finance and Transit Improvements Act, authorizes a city, county, or city and county to adopt a resolution, at any time before or after the adoption of the infrastructure financing plan for an enhanced infrastructure financing district, to allocate, under specified circumstances, tax revenues of that entity to the district, including revenues derived from local sales and use taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or transactions and use taxes imposed in accordance with the Transactions and Use Tax Law.

This act enacts the Second Neighborhood Infill Finance and Transit Improvements Act, which similarly authorizes a city, county, or city and county to adopt a resolution, at any time before or after the adoption of the infrastructure financing plan for an enhanced infrastructure financing district, to...

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LOCAL DISTRICTS (cont.)

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...allocate tax revenues of that entity to the district, including revenues derived from local sales and use taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or transactions and use taxes imposed in accordance with the Transactions and Use Tax Law, if the area to be financed is within one-half mile of a major transit stop, and, among other things, certain conditions relating to housing and the infrastructure financing plan are or will be met.

Of particular interest to title companies, the act states that the district shall require, by recorded covenants or restrictions, that affordable housing units financed pursuant to this section remain permanently available at affordable housing costs to, and occupied by, very low income households, persons and families of low income, or persons and families of low or moderate income for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units. The act also states that a legislative body shall not adopt an ordinance terminating an enhanced infrastructure financing district created pursuant to this section if the district has not complied with its affordable housing obligations.

The act authorizes bonds to be issued for the purposes of the Second Neighborhood Infill Finance and Transit Improvements Act without voter approval. The act requires an enhanced infrastructure financing district utilizing these provisions to follow specific notice, protest, and election proceedings for the adoption of the infrastructure financing plan.

Existing law, the Planning and Zoning Law, establishes the Office of Planning and Research in the Governor's office to provide the Governor and his or her cabinet with long-range planning and research and to serve as the comprehensive state planning agency, and sets forth the duties of the office.

This act requires the Office of Planning and Research, on or before January 1, 2021, to complete a study on the effectiveness of tax increment financing tools for increasing housing production, including a comparison of the relative advantages and disadvantages of infrastructure financing districts, enhanced infrastructure financing districts, affordable housing authorities, use of the Neighborhood Infill Finance and Transit Improvements Act, and use of the Second Neighborhood Infill Finance and Transit Improvements Act.

Chapter 559 (SB 961 - Allen); amending Section 53398.69 of, and to add Sections 53398.75.7 and 65040.15 to, the Government Code.

MORTGAGE LENDING

- **Language of Loan Modification Documents**
- **Residential Mortgage Lending Act Administrative Hearings**

Existing law requires a supervised financial organization that negotiates residential property loans primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, provide a specific form, created by the Department of Business Oversight, in each of these languages to summarize the terms of a mortgage loan. Existing law authorizes the department, in creating the form, to use a specific federal disclosure form from the United States Department of Housing and Urban Development as guidance.

This act also requires a supervised financial organization that negotiates the modification of any of the terms of a loan or extension of credit secured by residential real property primarily in one of the above languages and that offers a borrower a final loan modification in writing, to deliver to that borrower, at the time the final loan modification offer is made, a specified form summarizing the modified loan terms in the same language as the negotiation.

The act additionally requires delivery of an applicable form or forms for transactions subject to certain federal regulations, and in this regard would authorize the Department of Business Oversight, in making available each of its forms in each of the languages set forth above, to use as guidance two additional forms from the Consumer Financial Protection Bureau and three additional forms from the Federal National Mortgage Association. The act specifies that these provisions become operative 90 days following the issuance of the forms by the Department of Business Oversight, but in no instance before January 1, 2019.

Existing law authorizes the DBO commissioner to summarily revoke the license of a licensee who fails to file a certified financial statement prepared by an independent certified public accountant.

This act specifies that, if, after a revocation order is made, a request for hearing is filed in writing within 30 days and a hearing is not held within 90 days, the order would be deemed rescinded as of its effective date. The act prohibits a licensee, during the revocation period, from conducting business unless otherwise specified. The act provides that the revocation of a license does not affect the powers of the commissioner pursuant to the act.

Chapter 356 (SB 1201 - Jackson); amending Section 1632.5 of the Civil Code, and amending Section 50200 of the Financial Code.

MORTGAGES AND DEEDS OF TRUST

• Home Equity Lines of Credit

Under existing law governing home equity lines of credit, upon receipt of a specified written request from a borrower, a lender must suspend the borrower's equity line of credit for a minimum of 30 days. Upon receipt of both that request and a specified payment, existing law requires a lender to close the borrower's equity line of credit and release or reconvey the property secured by the line of credit, as specified. Existing law provides for the repeal of these equity line of credit suspension and closure provisions on July 1, 2019.

Under the existing law, various significant terms are defined and a suggested form for the Borrower's Instruction to Suspend and Close Equity Line of Credit form is included.

This act only removes the sunset provision and extends the operation of those provisions indefinitely.

Chapter 90 (SB 1139 – Morrell); amending Section 2943.1 of the Civil Code.

• Successors in Interest

Existing state law regulates reverse mortgages.

Existing law, known as the Survivors Bill of Rights, prohibits a mortgage servicer, upon notification that a borrower has died by a person claiming to be a successor in interest, from recording a notice of default until the mortgage servicer gives an opportunity for the claimant to show that he or she is a successor in interest. Within 10 days of a claimant being deemed a successor in interest, a mortgage servicer must provide the successor in interest with information about the loan. Existing law also requires a mortgage servicer to allow a successor in interest to assume the deceased borrower's loan or to apply for foreclosure prevention alternatives on an assumable loan, as specified. Existing law provides other protections for these successors in interest and deems a mortgage servicer, mortgagee, or beneficiary of the deed of trust, or an agent thereof, to be in compliance with the above-described provisions if they comply with specified federal laws. Existing law makes these provisions inoperative on January 1, 2020.

This act makes those provisions inapplicable to reverse mortgages and deletes certain obsolete references.

NOTE: This act clarifies an ambiguity in California law that requires notification to heirs of deceased borrowers that they may contact lenders and seek to qualify as successors in interest of borrowers and assume the mortgage. Because reverse mortgages are by their very nature not assumable, without an express exemption, lenders might be required to send notices about assumption rights which do not exist.

Chapter 136 (SB 1183 – Morrell); amending Section 2920.7 of the Civil Code.

• Homeowners Bill of Rights Reinstatement

Laws enacted in 2012 and repealed on January 1, 2018, commonly referred to as the California Homeowner Act of Rights, established a variety of requirements in connection with foreclosures on mortgages and deeds of trust, including restrictions on mortgage servicers actions while a borrower is attempting to secure a loan modification or has submitted a loan modification application. The foreclosure provisions of the act were generally limited to first lien mortgages and deeds of trust on owner-occupied residences.

This act reenacts various provisions of the California Homeowner Act of Rights. The law is largely unchanged from when it was first enacted, with some differences: loan modification applications received less than five business days before a foreclosure sale are now excerpted from HOBR provisions, and; a "cease and desist" exception has been added, allowing borrowers to opt out of telephone outreach in cases where a borrower has submitted a cease and desist request.

NOTE: The act states that it is the intent of the Legislature that any amendment, addition, or repeal of a section or part of a section enacted by Senate Bill 900 (Chapter 87 of the Statutes of 2012) and Assembly Bill 278 (Chapter 86 of the Statutes of 2012), commonly known as the California Homeowner Bill of Rights, that took effect as of January 1, 2018, shall not have the effect to release, extinguish, or change, in whole or in part, any liability that shall have been incurred under that section, or part of a section, prior to January 1, 2018, unless the amendment, addition, or repeal expressly so provides. The section, or part of a section, that was amended, added, or repealed shall be treated as still remaining in force for the purpose of sustaining any proper action, suit, or proceeding for the enforcement of such a liability, as well as for the purpose of sustaining any judgment, decree, or order.

Chapter 404 (SB 818 – Beall); amending Section 2924 of, amending and repealing Sections 2923.4, 2923.5, 2923.6, 2923.7, 2924.12, 2924.15, and 2924.17 of, adding Sections 2923.55, 2924.9, 2924.10, 2924.18, and 2924.19 to, repealing Section 2920.5 of, and repealing and adding Section 2924.11 of, the Civil Code.

PRIVACY

• California Consumer Privacy Act of 2018

The California Constitution grants a right of privacy. Existing law provides for the confidentiality of personal information in various contexts and requires a business or person that suffers a breach of security of computerized data that includes personal information, as defined, to disclose that breach.

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PRIVACY (cont.)

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This act enacts the California Consumer Privacy Act of 2018. Beginning January 1, 2020, the act grants a consumer a right to request a business to disclose the categories and specific pieces of personal information that it collects about the consumer, the categories of sources from which that information is collected, the business purposes for collecting or selling the information, and the categories of 3rd parties with which the information is shared.

The act requires a business to make disclosures about the information and the purposes for which it is used. The act grants a consumer the right to request deletion of personal information and requires the business to delete upon receipt of a verified request. The act grants a consumer a right to request that a business that sells the consumer's personal information, or discloses it for a business purpose, disclose the categories of information that it collects and categories of information and the identity of third parties to which the information was sold or disclosed. The act requires a business to provide this information in response to a verifiable consumer request.

The act authorizes a consumer to opt out of the sale of personal information by a business and prohibits the business from discriminating against the consumer for exercising this right, including by charging the consumer who opts out a different price or providing the consumer a different quality of goods or services, except if the difference is reasonably related to value provided by the consumer's data. The act authorizes businesses to offer financial incentives for collection of personal information. The act prohibits a business from selling the personal information of a consumer under 16 years of age, unless affirmatively authorized, to be referred to as the right to opt in. The act prescribes requirements for receiving, processing, and satisfying these requests from consumers.

The act prescribes various definitions for its purposes and defines "personal information" with reference to a broad list of characteristics and behaviors, personal and commercial, as well as inferences drawn from this information. The act prohibits the provisions described above from restricting the ability of the business to comply with federal, state, or local laws, among other things.

The act provides for its enforcement by the Attorney General, and provides a private right of action in connection with certain unauthorized access and exfiltration, theft, or disclosure of a consumer's nonencrypted or nonredacted personal information. The act prescribes a method for distribution of proceeds of Attorney General actions. The act creates the Consumer Privacy Fund in the General Fund with the moneys in the fund, upon appropriation by the Legislature, to be applied to support the purposes of the act and its enforcement. The act provides for the deposit of penalty money into the fund. The act requires the Attorney General to solicit public participation for the purpose of adopting regulations. The act authorizes a business, service provider, or 3rd party to seek the Attorney General's opinion on how to comply with its provisions.

The act voids a waiver of a consumer's rights under its provisions.

Subsequent to the enactment of the above provisions, the Legislature further amended the CCPA of 2018 via the passage of SB 1121 (Dodd), Chapter 735 (Statutes of 2018). SB 1121 amends the CCPA in the following ways:

1) Makes various technical and clarifying amendments, including the removal of provisions inadvertently included and the clarification that relevant "verifiable requests" are "verifiable consumer requests." It also clarifies that the specified examples of "personal information" detailed in the Act must also meet the basic definition of the term.

2) Provides that the rights afforded to consumers and the obligations imposed on businesses pursuant to the Act shall not apply to the extent that they infringe on the noncommercial activities of a person or entity described in subdivision (b) of Section 2 of Article I of the California Constitution.

3) Provides that the cause of action established by the Act only applies to violations of Civil Code Section 1798.150(a).

4) Makes a series of amendments to the provisions governing medical information and other information collected by covered entities, as defined. It provides that the Act does not apply to specified medical information.

5) Makes changes to the provisions regarding the Gramm-Leach-Bliley Act and the Driver's Privacy Protection Act of 1994. It additionally exempts information that is collected, processed, sold, or disclosed pursuant to the California Financial Information Privacy Act.

6) Removes the reference to Section 17206 of the Business and Professions Code in connection with the imposition of civil penalties. The act instead provides that any business, service provider, or other person that violates the Act is subject to an injunction and liable for a civil penalty of not more than \$2,500 for each violation or \$7,500 for each intentional violation. Provides that all such proceeds are to be deposited into the Consumer Privacy Fund.

7) Extends the date by which the Attorney General is required to adopt regulations to implement the Act from January 1, 2020, to July 1, 2020, and eliminates the requirement that specified rules and procedures be established within one year of passage of the Act. The act also restricts the Attorney General from bringing an enforcement action until six months after publication of final regulations or July 1, 2020, whichever is sooner.

8) Removes the delayed operative date of the preemption provision of the Act.

Chapter 55 (AB 375 - Chau); and Chapter 735 (SB 1121 - Dodd); adding Title 1.81.5 (commencing with Section 1798.100) to Part 4 of Division 3 of the Civil Code.

PROPERTY TAXATION

• Notice of Tax Deficiency

Under existing property tax law, unpaid property taxes are declared delinquent and subject to penalties and costs, and, if the taxes remain unpaid, the property is declared tax-defaulted and subject to sale, as provided, if not redeemed by the owner within a certain amount of time. Existing property tax law requires the tax collector to provide assessesees or parties of interest, as applicable, of tax-defaulted property subject to sale with specified notices, including, among others, a notice of default and power to sell the property for nonpayment of taxes, a notice of intended sale, and a notice of proposed sale. Under existing federal law, the filing of certain bankruptcy petitions or an application under the Securities Investor Protection Act of 1970, as provided, operate as a stay of specified enforcement and collection actions, except for the issuance by a governmental unit of a notice of tax deficiency.

This act requires the notices described above to constitute a “notice of tax deficiency” for the purposes of the exception under federal law described above if the property subject to the notices is the subject of a bankruptcy proceeding.

Chapter 119 (SB 1506 - Committee on Governance and Finance); amending Sections 3365, 3691, 3691.1, 3701, and 3704.7 of the Revenue and Taxation Code.

• Disaster Relief • Payment of Deferred Taxes

Existing law authorizes the board of supervisors of a county to provide, by ordinance, for the reassessment of property that is damaged or destroyed, without fault on the part of the assessee, by a major misfortune or calamity, upon the application of the assessee or upon the action of the county assessor with the approval of the board of supervisors. Existing law also authorizes owners of eligible property, as defined, who have applied for reassessment under that ordinance, to apply for a deferral of payment of that installment of property taxes.

This act requires that the application for a deferral of payment be made in conjunction with the claim for reassessment.

Existing law requires the payment to be deferred without penalty or interest until the assessor has reassessed the property and a corrected bill has been sent to the property owner, at which time the taxes deferred pursuant to these provisions become due 30 days after receipt by the owner of the corrected tax bill and, if unpaid thereafter, are delinquent.

This act instead provides that deferred taxes on the corrected tax bill are due and payable for the current tax year, as described above, on the later of: (1) December 10 for the first installment or April 10 for the second installment, or (2) 30 days after the date that the corrected bill is mailed or electronically transmitted to the owner. The act additionally requires the payment to be deferred without penalty and interest until the assessor has

determined that the property is not eligible to be reassessed and the assessor has so notified the property owner.

Chapter 149 (AB 3122 - Gallagher); amending Section 194.1 of the Revenue and Taxation Code.

• Tax-Defaulted Property Sales

Existing property tax law attaches, as a lien against property, taxes that are owed on that property. Existing law generally declares in default the taxes, assessments, and penalties on real property if those charges are not paid by a specified time. Existing law requires the tax collector to attempt to sell property that has become tax defaulted five years or more after that property has become tax defaulted, and in the case of tax-defaulted property that is also subject to a nuisance abatement lien, three years or more after that property becomes tax defaulted. During these three- and five-year periods, existing law allows a taxpayer a right of redemption whereby the taxpayer may pay specified charges to remove the lien against the property. Existing law specifies that this right of redemption terminates on the last business day prior to the date that the sale of the property begins and, if the tax collector approves a sale as a credit transaction and does not receive full payment on or before the date upon which the tax collector requires, the right of redemption is revived on the next business day following that date. Existing law also provides that the right of redemption is revived if the property is not sold.

This act specifies that the commencement of the tax sale constitutes the actual sale date, regardless of the date of the conclusion of the auction. The act provides that the taxpayer loses all rights in the property during the auction period for failure to redeem the property by the final redemption date. The act provides that if a property has not been redeemed, any person or entity with title of record to the property loses all rights in the property, including all legal and equitable interest therein, upon close of the redemption period. However, those rights return if the right of redemption is revived. The act specifies that the provisions relating to the right of redemption do not affect the distribution of proceeds, and apply regardless of whether the tax collector or his or her designee conducts the tax sale in person.

NOTE: This act allows counties holding tax sales to treat the Bankruptcy Court stay as ineffective as to the tax-sale because the taxpayer/bankruptee no longer has a legal or equitable interest in the property if they did not redeem the property prior to the redemption termination deadline. This express “loss of rights” provision addresses a bankruptcy-related court decision that has created uncertainty over the tax sale process where a property owner files bankruptcy in the window period after the tax sale commences but before the auction concludes. The issue giving rise to this act relates to public auction tax sales spanning multiple days and that involve Internet sales. To deal with internet sales more explicitly, the bill was amended to provide that the commencement of the tax sale constitutes the actual sale date regardless of the auction conclusion.

Chapter 284 (AB 2746 - Eduardo Garcia); amending Section 3707 of the Revenue and Taxation Code.

PROPERTY TAXATION (cont.)

• Senior Citizens Manufactured Home Property Tax Postponement Law

Existing law authorizes a claimant to file a claim with the Controller to postpone the payment of property taxes that are due on the residential dwelling of the claimant pursuant to the Senior Citizens and Disabled Citizens Property Tax Postponement Law, the Senior Citizens Tenant-Stockholder Property Tax Postponement Law, and the Senior Citizens Possessory Interest Holder Property Tax Postponement Law. Existing law, for purposes of these laws, defines a “residential dwelling” to mean a dwelling occupied as the principal place of residence of the claimant and owned by the claimant, the claimant and spouse, or by the claimant and another individual, as specified, including condominiums that are assessed as realty for local property tax purposes. Existing law continuously appropriates revenues in the Senior Citizens and Disabled Citizens Property Tax Postponement Fund for, among other things, disbursements relating to the postponement of property taxes pursuant to these laws. Existing law authorizes the postponement of the payment of property taxes of a claimant who is the owner of a mobilehome for loans established prior to February 20, 2009, pursuant to the Senior Citizens Mobilehome Property Tax Postponement Law.

This act expands the definition of a “residential dwelling” to include a manufactured home, thereby authorizing a claimant who is the owner of a manufactured home to postpone the payment of property taxes. The act, on July 1, 2019, and on July 1 each year thereafter, requires up to 1% of the amount available in the Senior Citizens and Disabled Citizens Property Tax Postponement Fund for disbursements relating to postponement of property taxes to be available for residential dwellings that are manufactured homes.

The act repeals the Senior Citizens Mobilehome Property Tax Postponement Law and, instead, enacts the Senior Citizens Manufactured Home Property Tax Postponement Law, which, commencing July 1, 2019, establishes a procedure for the postponement of the payment of property taxes of a claimant who is the owner of a manufactured home. The act requires a claimant applying for postponement under this law to file a claim under penalty of perjury. The act also makes related conforming changes.

Existing law requires all sums paid by the Controller to be secured by a lien in favor of the state when funds are transferred to the county by the Controller upon the real property for which property taxes have been postponed. Existing law also requires the Controller to maintain a record of all properties against which a notice of lien for postponed property taxes has been recorded.

This act additionally requires all sums paid by the Controller to be secured by a lien in favor of the state when funds are transferred to the county by the Controller upon a manufactured home situated on real property owned by the claimant for which property taxes have been postponed. The act, in the case of a manufactured home situated on real property not owned by the claimant, requires the state’s interest to be secured by a security agreement in favor of the State of California. The act also requires the Controller to maintain a record of all properties against which the Department of Housing and Community Development has been notified to withhold the transfer of title or permit for transport. The act requires the Controller, or authorized delegate of the Controller, if at any time the amount of the obligation secured by the lien or security agreement for postponed property taxes is paid in full or otherwise discharged in the case of a manufactured home, to direct certain local tax officials to remove specified information from the secured roll or assessment records.

NOTE: This act took effect as an urgency measure on September 29, 2017.

Chapter 896 (SB 1130 - Leyva); amending Sections 16180, 16181, 16182, 16183, 16184, 16186, and 16192 of, and repealing Article 4 (commencing with Section 16210) of Chapter 5 of Part 1 of Division 4 of Title 2 of, the Government Code, and amending Sections 2514, 20503, 20505, 20583, 20585, 20586, 20640.2, and 20641 of, adding Section 20639.13 to, and adding Chapter 3.3 (commencing with Section 20639) to Part 10.5 of Division 2 of, the Revenue and Taxation Code.

• Change in Ownership • Retroactive Exclusion for Local Registered Domestic Partners

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, “full cash value” is defined as, among other things, the appraised value of that real property when a change in ownership has occurred. Existing law provides that specified transfers are not deemed a change in ownership, including any transfer between registered domestic partners, as provided.

This act also excludes from the definition of “change in ownership” any transfer of property occurring on or after January 1, 2000, to June 26, 2015, inclusive, between local registered domestic partners. The act requires any transferee whose property was reassessed in contravention of this provision to obtain a reversal of that reassessment upon application to the county assessor. The act authorizes the county to charge a fee related to the application and reassessment reversal. The act requires the State Board of Equalization to prescribe the form for claiming the reassessment reversal. The act requires any reassessment reversal to apply commencing with the lien date of the assessment year in which the claim is filed.

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PROPERTY TAXATION (cont.)

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NOTE: Registered domestic partners at the state level were eligible for the change of ownership exclusion. This act retroactively extends the exclusion to domestic partners who were only registered with a local jurisdiction.

Chapter 919 (AB 2663 - Friedman); amending Section 62 of the Revenue and Taxation Code.

REAL ESTATE

- **Uniform Standards of Professional Appraisal Practice**

Under existing law, the Chief of the Bureau of Real Estate Appraisers regulates appraisers. That law makes the Uniform Standards of Professional Appraisal Practice the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards.

This act instead provides that until January 1, 2020, a licensee is not required to comply with provisions of the Uniform Standards of Professional Appraisal Practice that provide a limitation on restricted appraisal reports to intended users other than or in addition to the client, if certain requirements are met, including that the consent of the client is obtained in advance.

Chapter 928 (SB 70 - Bates); amending Section 11319 of the Business and Professions Code.

REAL ESTATE TRANSFER FEES

- **Direct Benefit Requirement**

Existing law allows various fees to be authorized in covenants, conditions, and restrictions and included in the price of a residential real estate transfer every time property is transferred.

This act prohibits the creation of a transfer fee on or after January 1, 2019, other than excepted transfer fee covenants that provide a “direct benefit” to the property as defined by Sec. 1228.1 of Title 12 of the Code of Federal Regulations. The act provides that any transfer fee created in violation of this prohibition is void as against public policy.

This act provides that those transfer fee covenants that pro-

vide a “direct benefit” as defined above are not required to comply with existing notice requirements advising that federal restrictions associated with private transfer fees may make it more difficult to obtain mortgage financing.

Chapter 306 (AB 3041 - Cunningham); adding Section 1098.6 to the Civil Code.

RECORDED DOCUMENTS

- **Recording Fees**
- **Government Exemption from the Building Homes and Jobs Act**

Existing law, known as the Building Homes and Jobs Act or SB 2, imposes a fee, except as provided, of \$75 to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, per each single transaction per single parcel of real property, not to exceed \$225. Existing law exempts from this fee any real estate instrument, paper, or notice recorded in connection with a transfer subject to the imposition of a documentary transfer tax, as provided, or with a transfer of real property that is a residential dwelling to an owner-occupier.

This act additionally exempts from this fee any real estate instrument, paper, or notice executed or recorded by the federal government pursuant to the Uniform Federal Lien Registration Act, or by the state, or any county, municipality, or other political subdivision of the state. The act provides that these exemptions apply retroactively to any real estate instrument, paper, or notice executed or recorded by the federal government, or by the state, or any county, municipality, or other political subdivision of the state on or after January 1, 2018. The act also states that the exemption for real estate instruments, papers, or notices executed or recorded by the state, or any county, municipality, or other political subdivision of the state is declaratory of existing law.

Chapter 8 (AB 110 - Committee on Budget); amending Section 27388.1 of the Government Code.

SUBDIVISION MAP ACT

- **Extension of Approved Map**

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...

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SUBDIVISION MAP ACT (cont.)

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...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 authorizes the legislative body of certain qualifying counties to permit up to a 24 month extension of any approved tentative map or vesting tentative map that was approved on or after January 1, 2006, and not later than July 11, 2013, and for which the expiration date has been previously extended pursuant to specified provisions, if tentative map, vesting tentative map, or parcel map relates to the construction of single or multifamily housing.

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.

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.

Chapter 830 (AB 2973 - Gray); amending Section 65961 of, and adding Section 66452.26 to, the Government Code.

TRUSTS, WILLS, AND ESTATES

• Revocable Transfer on Death Deeds

Existing law governs the execution, revocation, and effectiveness of a revocable transfer on death deed, defined as an instrument that makes a donative transfer of property to a named beneficiary that operates on the transferor's death, and remains revocable until the transferor's death. Existing law establishes a statutory form of revocable transfer on death deed that must be notarized and signed under penalty of perjury by the transferor and recorded with the county recorder, as specified. Existing law requires that subsequent pages of that form include common questions regarding the use of the form. Existing law requires that, in order to be effective, a revocable transfer on death deed must be recorded on or before

60 days after the date it was executed.

This act provides that the requirement of recordation described above does not require the recordation of the pages of the statutory form that include the common questions about the use of the form, and a failure to record those pages does not affect the effectiveness of a revocable transfer on death deed. The act applies these provisions to revocable transfer on death deeds executed before, on, or after the effective date of these provisions.

NOTE: This act took effect as an urgency measure on July 9, 2018.

Chapter 65 (AB 1739 - Chau); amending Section 5626 of the Probate Code.

• Uniform Trust Decanting Act

Existing law regulates trust administration and generally requires a trustee to administer the trust according to the trust instrument. Under existing law, a trustee may exercise specified powers without court authorization, including the power to acquire or dispose of property. Existing law authorizes the beneficiaries of an irrevocable trust to compel modification of the trust upon petition to the court, if all beneficiaries of the trust consent.

This act enacts the Uniform Trust Decanting Act, under which a fiduciary of an irrevocable trust may distribute the property of a first trust to one or more second trusts or modify the terms of the first trust without the consent of the beneficiaries or approval of the court, subject to certain exceptions. The act requires specified persons, including qualified beneficiaries and, if the trust contains a determinable charitable interest, the Attorney General, to be provided notice of the intended exercise of the decanting power, and authorizes the court, on application by specified persons, to, among other things, approve an exercise of the decanting power. Among other provisions, the act requires a fiduciary exercising the decanting power to act in accordance with its fiduciary duties and in accordance with the purposes of the first trust. The act also specifies that the decanting power does not apply to a trust held solely for charitable purposes.

NOTE: This act was sponsored by the California Commission on Uniform State Laws.

Chapter 407 (SB 909 - Hertzberg); adding Part 9 (commencing with Section 19501) to Division 9 of the Probate 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.

CONTRACTS

Yeh v. Tai

18 Cal. App. 5th 953 (2017)

Plaintiff claims to have purchased a condominium with her deceased husband, subsequently transferring it to him so that they could obtain a more favorable loan. She claims that he promised to place her back on the title to the property, and that she could sell it or keep it after his death. Instead, he transferred the title to a trust, of which his children from a prior marriage are beneficiaries. The court overturned the probate court's sustaining of a demurrer, holding that the statute of limitations in C.C.P. Sections 366.2 and 366.3, which provide that an action must be filed within one year of death, did not apply. Instead, Family Code Section 1101 applied, which contains its own statute of limitations and specifically addresses marriages ending by death. Under Section 1101, breach of fiduciary duty claims filed after the death of a spouse are governed only by equitable principles of laches, and defendants did not argue that plaintiff's claim is untimely under laches principles.

DEEDS OF TRUST

SMS Fin. XXIII, LLC v.

Cornerstone Title Co.

19 Cal. App. 5th 1092 (2018)

The court overruled the trial court's sustaining of a demurrer, holding that an assignee of a deed of trust has a cause of action for damages under Civil Code Section 2941(b)(6) against a title company that improperly records a release of a deed of trust pursuant to C.C. Section 2941.

DEFICIENCY JUDGMENTS

Black Sky Capital, LLC v. Cobb

12 Cal. App. 5th 887 (2017), review granted, (Sept. 27, 2017)

Where a lender who holds both a senior and junior deed of trust nonjudicially forecloses on the senior lien and wipes out its junior lien, the lender may enforce the junior note. Civil Code Section 580d does not apply to preclude a sold-out junior lienholder from enforcing the junior debt, even where the lienholder foreclosed under its own senior deed of trust.

EQUITABLE EASEMENTS

Hansen v. Sandridge Partners, L.P.

22 Cal. App. 5th 1020 (2018), reh'g denied (May 1, 2018)

Citing *Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, the court explained that three factors must be present to establish an equitable easement: 1) The encroacher must be innocent. That is, the encroachment must not be willful or negligent, 2) Unless the rights of the public would be harmed, the court should stop the encroachment if the burdened landowner will suffer irreparable injury regardless of the injury to the encroacher, and 3) The hardship to the encroacher from ordering removal of the encroachment must be greatly disproportionate to the hardship caused the burdened landowner by the continuance of the encroachment. Here, plaintiffs negligently planted a pistachio orchard on defendant's property, and defendant was not contributorily negligent, so plaintiffs did not establish the first element of an equitable easement. Plaintiffs also could not establish a prescriptive easement because the encroachment would be exclusive. An exclusive easement has the same effect on property rights as adverse possession, so the elements of adverse possession must be established. Plaintiff was not able to establish the element of adverse possession requiring payment of property taxes.

HOA LIEN PRIORITY

Bear Creek Master Ass'n v. S. California Inv'rs, Inc.

28 Cal. App. 5th 809 (2018), reh'g denied (Nov. 14, 2018)

The court held that a homeowner's association assessment lien is not created or perfected until it records, and that it does not relate back to the recordation of the CC&R's. However, the plaintiff's HOA lien was prior to a subsequently recorded 3rd deed of trust because Section 3 of the CC&R's provides that assessment liens "shall have priority over all liens or claims created subsequent to the recordation of this Declaration ... except for certain trust deeds as provided in Section 4 ..." and Section 4 provides that "The lien for the Assessment provided for herein shall not be subordinate to the lien of any deed of trust or mortgage, except the lien of a first deed of trust or first mortgage". Accordingly, a deed of trust that is not in first position is subordinated to a subsequently recorded assessment lien.

INSURANCE

**Centex Homes v.
St. Paul Fire & Marine Ins. Co.**

19 Cal. App. 5th 789 (2018), review denied (Apr. 11, 2018)

The court held that defendant insurance company did not have a duty under Civil Code Section 2860 to provide independent counsel to defend an insured where the defense was accepted with a reservation of rights and the coverage issues did not have anything to do with the issues the insurer was defending in the action. Counsel retained by the insurer had no control over the outcome of the coverage issues, so he did not have a conflict of interest.

**PacifiCare Life & Health Ins. Co.
v. Jones**

27 Cal. App. 5th 391 (2018), review filed (Oct. 30, 2018)

The court held that:

1. Insurance Code Section 790.03(h) defines an unfair claims settlement practice to be either an insurer's single knowing commission of the described conduct, or its performance of the conduct "with such frequency as to indicate a general business practice."
2. California Code of Regulations Section 2695.2(l) is valid. It defines "knowingly committed" to mean acts performed with actual, implied or constructive knowledge.
3. CCR Section 2695.2(y) is valid. It states that "Willful" or "Willfully" when applied to the intent with which an act is done or omitted means simply a purpose or willingness to commit the act, or make the omission, and does not require any intent to violate law, or to injure another, or to acquire any advantage.

JUDGMENTS

Tikosky v. Yebuda

19 Cal. App. 5th 1224 (2018), review denied (May 9, 2018)

The court held that a title insurance company's payment to a judgment creditor for an assignment of an interest in the judgment did not constitute a payment on the judgment. Accordingly, the debtor was not entitled to a partial satisfaction of judgment.

JUDGMENT LIENS

**Cty. Line Holdings, LLC v.
McClanahan**

22 Cal. App. 5th 1067 (2018), review denied (Aug. 8, 2018)

The court held that Probate Code Section 366.2, requiring an action against a decedent to be commenced within one year of death, does not apply to judgment liens. Rather the lien continues for its statutory duration. Probate Code Section 9300 terminates the right of the creditor to enforce the judgment lien by execution and sale. But the judgment creditor has two options: Either file a timely claim in the estate probate proceeding and seek a deficiency (the priority of the lien will be protected) or, without filing a claim, bring an action to foreclose the lien during its statutory duration, waiving any right to a deficiency.

Estate of Casserley

22 Cal. App. 5th 824 (2018), reh'g denied (May 17, 2018)

C.C.P. Section 686.020 states: "After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor's estate is governed by the Probate Code, and not by this title." The court held that because the abstract of judgment in this case was recorded after decedent's death, the probate court correctly found the abstract did not create a lien on estate assets.

PARTITION

Summers v. Superior Court

24 Cal. App. 5th 138 (2018), as modified (June 27, 2018)

The court held that California's partition statutes do not allow a court to order the manner of a property's partition, such as the sale ordered by the trial court in this case, before it determines the ownership interests in the property.

PRESCRIPTIVE EASEMENTS

McBride v. Smith

18 Cal. App. 5th 1160 (2018)

The court overruled the trial court's sustaining of a demurrer, concluding that plaintiff asserted two core allegations which, if proven, were sufficient to raise a triable issue of fact as to whether plaintiff's use of an easement for five years was adverse to defendants property rights: 1) the allegation that plaintiff used the easement in a way that exceeded the usage authorized by the recorded grant and 2) the allegation that plaintiff and her associates used the easement on a "daily basis" because daily use of the easement significantly expanded the use allowed under the terms of the recorded grant.

McLear-Gary v. Scott

25 Cal. App. 5th 145 (2018)

In this appeal from a judgment declaring plaintiff's prescriptive and implied easement extinguished by adverse possession, the court affirmed in part and reversed in part, holding:

1. Where an easement is not separately assessed, the servient tenement owner must pay property taxes on the servient tenement in order to extinguish the easement by adverse possession.
2. C.C.P. Section 325(b) provides that one of the elements of adverse possession is the "timely" payment of property taxes for the statutory period. This requirement was not satisfied where several years of delinquent taxes were paid in a lump sum.
3. The provision in CC&R's for a 60-foot wide easement for ingress and egress "to or from any Parcel" applied only to the original 160 acre parcels and not to subsequent subdivisions of those parcels.

RECORDING

MTC Fin., Inc. v. Nationstar Mortg., LLC

19 Cal. App. 5th 811 (2018)

The court held that although defendant's deed of trust securing a \$205,080 loan was recorded one recording number after a simultaneously recorded HELOC deed of trust securing a \$15,000 loan, defendant's deed of trust was senior to the HELOC deed of trust because the intent of the parties was clear

that the deed of trust securing the large loan would be senior. Where two deeds of trust are submitted at the same time for recording, the order in which they are indexed is not determinative of priority. Rather, the intent of the parties determines priority. Accordingly, the court held that defendant was not entitled to any of the surplus proceeds remaining from a foreclosure of the junior HELOC deed of trust and defendant's senior deed of trust remained as a lien on the property.

TITLE INSURANCE

Villanueva v. Fid. Nat'l Title Co.

26 Cal. App. 5th 1092 (2018), review filed (Oct. 17, 2018)

Fidelity's escrow rate filing failed to establish classifications of services for document preparation services and for third party delivery services. It also failed to indicate in its rate filings that it intended to charge for those services. By charging for such services, Fidelity violated Insurance Code Sections 12401.1, 12401.2, and 12401.7. However, this conduct is subject to the Section 12414.26 immunity, which precludes plaintiffs' Unfair Competition Law claims. Instead, allegations of rate filing violations must be brought before the Insurance Commissioner pursuant to Section 12414.13.

TRANSMUTATION

In re Marriage of Kushesh & Kushesh-Kaviani

27 Cal. App. 5th 449 (2018)

The court held that an interspousal transfer grant deed to the wife as her sole and separate property met the requirements for a transmutation of the character of marital property under Family Code Section 852. However, the case was remanded to the trial court to determine whether the transmutation should nevertheless be deemed ineffective under Family Code Section 721 if the wife gained an unfair advantage over the husband.

TRUSTEE'S SALES

Chacker v.

JPMorgan Chase Bank, N.A.

27 Cal. App. 5th 351 (2018), as modified on denial of reh'g (Oct. 17, 2018), review filed (Oct. 29, 2018)

The lender prevailed in this wrongful foreclosure action, but was not entitled to an award of attorney's fees. The attorney's fee clause in the deed of trust provided that attorney's fees were an expense that would be added to the amount due under the note like other costs incurred by the lender, and did not provide for a separate award of attorney's fees.

NOTE: This case has the same holding as *Hart v. Clear Recon Corp.*

Hacker v. Homeward Residential, Inc.

23 Cal. App. 5th 111 (2018), review granted and cause transferred sub nom. *Hacker v. Homeward Residential*, 420 P.3d 1140 (Cal. 2018)

The court held that plaintiff stated a cause of action for wrongful foreclosure where the lender foreclosed on a note and deed of trust that it obtained by assignment, where the loan had previously been assigned to a different assignee. The court distinguished this situation from the case where an assignment to a securitized trust after the trust's "closing date" is voidable by the lender and assignee, not void, so the trustor does not have standing to challenge the assignment. In contrast, a foreclosure by a party that never possessed legal title to the deed of trust is void.

Hart v. Clear Recon Corp.

27 Cal. App. 5th 322 (2018)

The lender prevailed in this wrongful foreclosure action, but was not entitled to an award of attorney's fees. The attorney's fee clause in the deed of trust provided that attorney's fees were an expense that would be added to the amount due under the note like other costs incurred by the lender, and did not provide for a separate award of attorney's fees.

NOTE: This case has the same holding as *Chacker v. JPMorgan Chase Bank, N.A.*

Integrated Lender Servs., Inc. v. Cty. of Los Angeles

22 Cal. App. 5th 867 (2018)

There were surplus proceeds after a deed of trust was foreclosed on property once owned by a convicted fraudster. There were two claims to the funds: 1) the County of Los Angeles, which had been awarded criminal restitution against the fraudster, and claimed the right to collect the restitution from the property by means of a lis pendens and temporary restraining order recorded in the criminal prosecution; and 2) several trusts, whose interests in the property were both junior to that of the foreclosing trustee and had post-dated the criminal lis pendens. The court affirmed the trial court's award of the surplus proceeds to the trusts, holding that the lis pendens was inadequate to give the County any interest in the property because the criminal court had ordered restitution but had not ordered the property levied upon to satisfy the restitution award.

TRUSTEE'S SALES / INTERPLEADER

Placer Foreclosure, Inc. v. Aflalo

23 Cal. App. 5th 1109 (2018)

Placer Foreclosure, acting as trustee, conducted a trustee's sale of property owned by Aflalo. The sale resulted in surplus proceeds. When Aflalo filed an action against Placer and the third-party buyer for wrongful foreclosure and quiet title, Placer filed a complaint in interpleader and deposited the surplus proceeds with the court. The court affirmed a judgment of dismissal after Aflalo's demurrer was sustained and remanded with instructions to release the interpleaded funds to Aflalo. Placer did not face a valid threat of double liability because the purchaser's claim was against Aflalo, not Placer. If the wrongful foreclosure action invalidated the sale, the third party would be entitled to a refund from Aflalo of its purchase proceeds.

WRONGFUL FORECLOSURE

Turner v. Seterus, Inc.

27 Cal. App. 5th 516 (2018)

The court held that tender of the full amount of the debt was not necessary to state a cause of action for wrongful foreclosure where the lender had wrongfully refused a timely tender of the amount necessary to reinstate the loan, rendering the subsequent sale void. Also, actual payment of the amount to reinstate the loan was not necessary where the borrower offered payment and the lender told the borrower that payment would not be accepted. Accordingly, payment was effectively tendered. The case also discusses the fact that the borrower acquired title before marriage and the loan was in her name alone. The court points out that the husband was an interested party because, while the property was the wife's separate property, loan payments had been made with community property funds, giving the community an interest in the property.

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

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

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

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