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Got Privity? Understanding Privity Of Estate And Privity Of Contract In California Real Property Leases

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Parties to real estate contracts often change over time, whether as the result of an assignment, financing, or otherwise. Relatedly, additional parties (beyond those named in the underlying contract) may claim a property interest in the subject of such a contract, perhaps in connection with a security interest in the underlying fee in the form of a mortgage or a deed of trust, or a security interest in a leasehold estate by way of a leasehold mortgage. Just as it is fundamentally important for parties to real estate contracts to understand the nature and priority of their real estate interest as it relates to the rights of other interested parties, it is also crucial that parties be aware of the nature of the contractual relationships (and the consequential rights and obligations) between the various parties with potentially competing interests in the real property at issue. The distinction between privity of estate and privity of contract is an important part of this understanding, and as the recent California case, *BRE DDR BR Whittwood CALLC v. Farmers & Merchants Bank of Long Beach*, makes clear, awareness of the distinction, which may appear esoteric at first glance, becomes crucial for understanding the ongoing rights and obligations of parties to real estate contracts as well as those of their successors and assigns.

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