ARTICLE:
LOSING GROUND: THE PERILS AND PITFALLS OF THE LIS PENDENS IN CONNECTION WITH AN ARBITRATION PROCEEDING

By Karl E. Geier[*]

The notice of pending action, usually referred to by its Latin antecedent, "lis pendens," is an important pretrial mechanism for preserving or maintaining priority of a litigant's claim to title or a lien on the real property held by the opposing party. A properly recorded notice of a pending action not only places any successor in interest to the property on notice that the action is pending, but it also means that the judgment in the action will "relate back" to the filing of the lis pendens and potentially supersede any intervening lien or transfer of the property that is recorded after the date of the notice and prior to the date of the judgment.[1] As a result, the lis pendens effectively clouds the title of the defendant in the action,[2] making it unlikely anyone will accept a conveyance or lien from the defendant until the action is resolved, which in turn can give the plaintiff who filed the notice of lis pendens significant leverage over the defendant as long as the notice remains of record.[3]

Typically, the notice of lis pendens is filed at the commencement of an action and served concurrently with the complaint, meaning there is no need for a prefiling motion or court order authorizing the filing. In view of the serious potential for abuse of the lis pendens when filed as an illicit or unfair means of controlling an adverse party or its property, however, the Legislature has enacted a detailed statutory scheme governing the use of the lis pendens.[4] This procedural framework governs the initial filing of the notice by the plaintiff,[5] the right of the defendant to move for and obtain an expungement of the notice,[6] the right of the plaintiff to require a bond from the defendant as alternative security when the lis pendens is ordered expunged,[7] the process for the plaintiff to keep the notice in effect rather than have it expunged by filing a bond to cover injury to the defendant if the action is ultimately unsuccessful,[8] the procedure for withdrawing a lis pendens after it is filed,[9] and the consequences for the parties, including the priority of the judgment and the right to file a subsequent lis pendens, when an initial notice of pending action has been

---

[*]Karl E. Geier is Shareholder Emeritus of Miller Starr Regalia and Editor in Chief of the firm's 12-volume treatise, *Miller & Starr, California Real Estate 4th*, published by Thomson-Reuters.

expunged or withdrawn.[10] Among other things, a properly recorded notice of pending action is an absolutely privileged communication that cannot be the basis of an action for slander of title or otherwise expose the party recording it to tort liability under defamation law.[11]

The specific effects of the lis pendens statute in the context of ordinary civil litigation have been the subject of a significant body of case law[12] and will not be discussed at length in this article. Despite its significant detail, however, the lis pendens statute does not specifically address the subject of arbitration, and the even lengthier California Arbitration Act[13] is similarly silent on the general subject of the lis pendens. This combination of omissions has led to some harsh consequences for the unwitting plaintiff in arbitration proceedings—both in a misguided effort to utilize the lis pendens in the arbitration proceeding itself, and also in the arbitration plaintiff's failure to preserve the availability or utility of the notice of pending action for a subsequent court proceeding. The following discussion outlines the nature of these mistakes by parties to arbitration proceedings and some potential means of avoiding them.

1. Recording a lis pendens in connection with an arbitration proceeding without first filing a court action to compel arbitration

The lis pendens statute provides that "[a] party to an *action* who asserts a real property claim may record a notice of pendency of action . . . . The notice shall contain the names of all parties to the *action* and a description of the property affected by the *action*."[14] It permits the lis pendens to be signed by "[a]n attorney of record in the *action*" or by "a *judge of the court* in which the *action* is pending."[15] There is no provision in the statute that suggests a lis pendens can be filed or recorded at commencement of the arbitration or otherwise, except in connection with a court action, and the Arbitration Act also contains no provision directly authorizing a party or its counsel to record a lis pendens or characterizing an arbitration proceeding as an "action" or the arbitrator as a "court."

Despite these omissions, some parties to an arbitration have sought to record a lis pendens on the theory that, by analogy, an arbitration is an "action" and the arbitration panel a "court" within the meaning of the lis pendens statute. This argument might have some superficial appeal in light of the general policy of the state to encourage the use of arbitration in lieu of court proceedings,[16] or on the theory that a notice of pending action is a form of "provisional remedy"

that is within the general powers of an arbitrator.[17] However, there is no statutory basis for these arguments, as parties who relied on them have learned to their regret. A lis pendens filed in connection with an arbitration proceeding without leave of a court of justice is neither a privileged communication nor effective as a notice of the pending claim, and a party who attempts to record such a notice of pending action is potentially liable for slander of title and other tort claims.[18]

The argument that an "arbitration proceeding" could be an "action" for purposes of the lis pendens statute was emphatically rejected in *Manhattan Loft, LLC v. Mercury Liquors, Inc.*, a 2009 decision by the Second District Court of Appeal.[19] There, the court observed that the term "action" is defined in Section 22 of the Code of Civil Procedure as "an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."[20] Because there is no reference to arbitration in Section 22 and an arbitrator is not a "court of justice," the court rejected the propriety of a lis pendens in an arbitration proceeding where no court action has been filed. The court found numerous locations in the lis pendens statute where the term "action" is used advisedly, with no basis for concluding the term meant anything more than what is contained in Section 22. Moreover, as the court noted,[21] the "provisional remedies" included in the Arbitration Act do not mention a "notice of pending action"; they include only attachments and temporary protective orders, writs of possession, preliminary injunctions and temporary restraining orders, and receiverships,[22] and in any case, the Act requires an application to a court, rather than an arbitrator, for issuance of those provisional remedies.[23]

2. Recording a lis pendens in connection with an action to compel arbitration or while arbitration is pending

Although the Arbitration Act does not authorize filing a lis pendens at the commencement of an arbitration proceeding, as such, an addition to the Act that is specifically applicable to real estate contract arbitrations, Code of Civil Procedure section 1298.5, states that "[a] party to an action who proceeds to record a notice of pending action . . . [24] shall not thereby waive any right of arbitration that the person may have . . . if, *in filing an action to record that notice*, the party at the same time presents the court an application that the action be stayed pending the arbitration . . . ."[25] This provides a safe haven *of sorts* for

an action to be filed, and immediately stayed, in order to record a lis pendens in connection with a real property claim that is subject to arbitration without the court action resulting in a waiver of the right to arbitrate or compel arbitration of the claim. However, as the court in *Manhattan Loft* concluded, that section does not provide for recording a lis pendens except by filing an *action*, and it conditions the nonwaiver of arbitration by the recording party upon that party presenting to the *court* an application that the *action* be stayed pending the arbitration.[26]

The availability of the procedure authorized by Section 1298.5 has not been directly considered in a reported decision since *Manhattan Loft*, which itself only rejected the filing of a lis pendens without court authorization and did not directly involve a lis pendens recorded in compliance with Section 1298.5.[27] It should be possible under this statute to file a direct court action on a contract or lien stating a real property claim even though it is contractually subject to arbitration, and to simultaneously record a lis pendens in that action, *provided the court action is immediately stayed and held in abeyance* while the matter proceeds to arbitration.[28]

A closer question is whether a petition or motion to compel arbitration of a real property claim, as such, constitutes an action involving a real property claim for purposes of the lis pendens statute. A "real property claim" means the cause or causes of action in a pleading that would, if meritorious, affect title to, or the right to possession of, specific real property, or the use of an easement, as specified in Section 405.4.[29] The Arbitration Act, in several sections, provides for a motion or petition to compel arbitration of a matter subject to an arbitration provision,[30] but in doing so does not confirm that such a petition is an "action" or states a "cause of action" within the meaning of Section 22, Section 405.4, or Section 1298.5. The language of Section 1298.5 provides that the filing of a court action for purposes of recording a lis pendens does not constitute a waiver of the right to petition the court to compel arbitration, which also suggests that the petition itself may not suffice as a basis for the petitioner also to record the lis pendens, but the question is not addressed by any reported case authority.

If the underlying matter in the arbitration would, if filed in a court, constitute a real property claim for purposes of the lis pendens statute, then it would seem a party's petition to a court to compel arbitration of that claim should also be a real property claim that supports the recording of a lis pendens, as should a

motion to compel arbitration of a real property claim on which the adverse party has filed a court action. However, there is no direct authority for either approach. One court, in rejecting as spurious a party's claim that they did not intend to waive arbitration despite participating in litigation without objection for a number of months, has suggested the analogous availability of Section 1298.5 to communicate an intention not to waive arbitration, but that court did not specifically consider whether a standalone action to compel arbitration would suffice for purposes of filing a lis pendens in that action.[31]

In any case, the decision whether to file a court action under the safe harbor allowed by Section 1298.5 in order to record a lis pendens in part depends on whether the action, or the underlying arbitration itself, involves a real property claim, which is the essential element of an action to support the recording of a lis pendens under Section 405.20. As the next portions of this discussion indicate, there is a material risk to a litigant if the action and the related arbitration are not found to involve a "real property claim," or if the lis pendens itself is withdrawn or expunged for lack of a real property claim.

3. Consequences of having a premature or improper lis pendens expunged or withdrawn in connection with an action to compel arbitration or to enforce the judgment in such an action

Although even a defective notice of pending action filed in connection with a court action is absolutely privileged as a communication in a judicial proceeding, other consequences may follow from having an improper lis pendens expunged or from withdrawing it before it is ordered expunged. One consequence is that following the recordation of a notice of withdrawal or a certified copy of an order expunging the notice of pending action, even parties with actual notice of the former notice of pending action are not charged with knowledge of the action, or the matters pled in the action, whether constructive or otherwise, unless they were a nonfictitiously named party in the action.[32] This could mean that a lis pendens recorded in connection with a pending arbitration, even where properly recorded within the nonwaiver provisions of Section 1298.5 and under the specific criteria of Section 405.20, effectively erases even actual notice of the subject matter of the action on the part of future parties dealing with the property. This alone makes the decision to file a lis pendens an important strategic matter.

Another important consideration in filing a notice of pending action when pursuing an arbitration, or any other litigation, is the potential ramifications for

the claimant if the notice is ordered expunged and future litigation arises involving the same real property. Under Section 405.36 of the Code of Civil Procedure, once a notice of pending action is ordered expunged, the claimant may not record another notice of pending action as to the affected property without leave of the court in which the action is pending.[33] Failure to obtain leave of court renders a subsequent notice of pending action ineffective and subject to expungement, even when that subsequent action is properly filed in a court of law, asserts a real property claim within the meaning of Section 405.20, and is not somehow barred by the preclusive effect of the first action. This was the holding in a recent decision by the First District Court of Appeal, in *De Martini v. Superior Court*.[34]

De Martini v. Superior Court involved two successive lawsuits arising out of a real property purchase and sale agreement. The first action was to enforce an arbitration award obtained by the *buyer* in a breach of contract arbitration initiated by the seller pertaining to a clause that required certain pre-closing applications for historical review by the seller and certain milestones for additional deposits by the buyer. The seller claimed it satisfied the requirements for the buyer to increase the deposit, which the buyer disputed, and the parties arbitrated the dispute under the arbitration clause of the purchase and sale agreement. The buyer prevailed in the arbitration proceeding and obtained an arbitrator's award compelling the seller to perform the contractual application process. The buyer then filed a court action to enforce the arbitration award, and in connection with that action, the buyer obtained a judgment, which she then moved to enforce. In connection with that action to enforce, the buyer had recorded a lis pendens against the property, but that lis pendens was ordered expunged due to failure to plead a real property claim. (Although the claim had arisen out of a purchase and sale transaction, the arbitrator's award simply resulted in an order to perform collateral obligations, not a claim against the specific property as required under Section 405.20.) At the same time, the court denied the buyer's motion to enforce the judgment because the notice of entry of judgment had not been properly filed or served.

Subsequently, the buyer abandoned the judgment in the first action, and instead filed a second court action to enforce the purchase and sale agreement, including claims for breach of various pre-closing obligations of the seller under that agreement, and seeking a decree of specific performance. In connection with this second action, the buyer also recorded a new notice of pending action, but without seeking leave of court to do so. The trial court denied the seller's

motion to expunge, concluding that the buyer had pleaded a valid real property claim and that the Section 405.36 requirement for leave of court did not apply because the lis pendens was filed in a separate action, not in the first action.

The court of appeal in *De Martini,* applying extensive case law concerning what was required to plead a real property claim for purposes of the lis pendens statute, as well as to prove the probable validity of that claim in an expungement motion, affirmed the lower court's denial of expungement for failure to plead or to demonstrate probable validity of a real property claim. In other words, *considered solely in the context of the second action*, the lis pendens was perfectly appropriate and would not be ordered expunged.[35] The court of appeal nevertheless reversed the trial court's denial of an order expunging the new lis pendens on the basis that the plaintiff seller had failed to seek leave of court to record a second lis pendens as required by Section 405.36. In doing so, the court held that the literal language of Section 405.36 requires leave of court to file a new lis pendens on the same property as was involved in the previously expunged lis pendens, even where the lis pendens is filed in a completely separate action and where the claims asserted in the present action were not included in the first action.[36]

4. Risks of filing an action and seeking an immediate stay for purposes of proceeding to arbitration

The filing of an action on the underlying real property claim in order to record a lis pendens and seeking an immediate stay of that action under Section 1298.5 carries other risks for the parties, depending on how the stay is fashioned. As has been pointed out by one commentator, a court-issued stay order against all proceedings in the court may deprive the court of jurisdiction to consider a motion to expunge a lis pendens or for leave to re-file the lis pendens if it is ordered expunged or withdrawn.[37] While these issues may seem more problematic for the party wishing to avoid the effect of a lis pendens, the consequences of a stay of the underlying action, of a dismissal upon completion of the arbitration, or of a judgment enforcing an arbitration award could cut both ways, as exemplified in the *De Martini* case.

5. Recording a lis pendens in connection with an action to enforce the arbitration award rather than first filing and staying an action on the underlying claim to support a lis pendens

While the decision to file a court action in connection with an arbitration

proceeding carries some risks, the decision not to file a court action raising an underlying real property claim with a simultaneous request to stay the action while recording a lis pendens also carries risks. As in *De Martini*, there may be circumstances in which an initial arbitral award is merely for a monetary sum or an order compelling performance of some contractual obligation that is not itself a "real property claim." In such a case, an action to enforce the arbitration award may itself not be a "real property claim" to support a lis pendens. The first lis pendens in the *De Martini* case had been expunged by the trial court for that reason.[38] Although the reported decision by the court of appeal does not affirm or reject the propriety of that first expungement, the outcome of the case reflects the potential hazards of *not* having filed an action stating a real property claim in order to file a lis pendens while arbitration is pending and before the arbitration award. When the time came for the second action, the judgment of the court affirming the arbitration award in the first action presumably had deprived that court of jurisdiction to consider a motion granting relief from Section 405.36—which requires obtaining leave of court "in which the action is pending," i.e., the action in which the lis pendens was previously expunged.[39] (The court of appeal in *De Martini* does not directly say this, and portions of the opinion could be read as allowing for a leave of court to be obtained from the court in the present "pending action," but if so, one would think the trial court's denial of expungement in the second action could have satisfied the "leave of court" requirement, a possibility that the *De Martini* opinion does not address.)

The *De Martini* case involving serial lawsuits among the same parties involving the same property and the same underlying contract may seem unusual, but the potential for similar fact patterns to arise is particularly acute when a contract requires or is claimed to require arbitration. On the one hand, the claimant may be contractually required to arbitrate, and in order to preserve the claim against the underlying real property, may file a judicial action in order to record a lis pendens. On the other hand, the circumstances of the case may lead to a second action at some later date that falls outside the arbitration provision, and the ability to record a second lis pendens may have been jeopardized by the first action. In the meantime, the protective purpose of the first lis pendens may have been permanently lost by expungement, leaving the claimant with no alternative but to pursue leave of court to file a second notice of pending action.

Conclusion

The problems posed in this article stem from the absence of an explicit statutory scheme for recording and filing a lis pendens when an arbitration involves or potentially will involve a claim affecting the title to, or possession of, real property, or the use of an easement over real property. The provisions of Section 1298.5 are unnecessarily elliptical and vague, and could be amended to better address the issues posed by the scant case law discussed above. In the meantime, caution is in order, and the decision whether and when to file an action to hold a claim in abeyance in order to support a lis pendens requires careful thought. It is sometimes assumed that arbitration will be a quicker, easier, and simpler forum for resolution of disputes without the technical baggage and precision required of litigants in a judicial action. As these cases show, however, the opposite might turn out to be true.

ENDNOTES:

[1]Civ. Code, § 1214. See 3 Miller & Starr, California Real Estate 4th, § 10:147.

[2]*BGJ Associates, LLC v. Superior Court*, 75 Cal. App. 4th 952, 966-967, 89 Cal. Rptr. 2d 693 (2d Dist. 1999). The reference to "plaintiff" or "defendant" should not be taken to mean that the parties recording and subject to the lis pendens necessarily fall on the plaintiff or defense side of the action. A cross-complaint may support a lis pendens recorded by the cross-complainant. It is possible that the defendant's answer to a complaint also may support a lis pendens recorded by the defendant in some circumstances. The lis pendens statute merely requires that the "complainant" who records a notice of pending action must be a "party" to the action who "asserts" a "real property claim" in the action, and that "real property claim" must be a "cause of action" that is asserted in a "pleading." See Civ. Proc. Code, §§ 405.1, 405.4, 405.20.

[3]*Malcolm v. Superior Court*, 29 Cal. 3d 518, 524, 174 Cal. Rptr. 694, 629 P.2d 495 (1981).

[4]Civ. Proc. Code, §§ 405 to 405.61.

[5]Civ. Proc. Code, § 405.20.

[6]Civ. Proc. Code, §§ 405.30 to 405.32.

[7]Civ. Proc. Code, § 405.33.

[8]Civ. Proc. Code, § 405.34.

[9]Civ. Proc. Code, § 405.50.

[10]Civ. Proc. Code, §§ 405.36, 405.60, 405.61.

[11]Civ. Code, § 47, subd. (b)(4); see *La Jolla Group II v. Bruce*, 211 Cal.

App. 4th 461, 471, 149 Cal. Rptr. 3d 716 (5th Dist. 2012) ("Unquestionably, the recording of the lis pendens constituted a written statement made in connection with issues under consideration in a judicial proceeding").

[12]See generally 4 Miller & Starr, California Real Estate 4th, §§ 10:147 to 10:156 (effect of a lis pendens, pending litigation, and judgment).

[13]Civ. Proc. Code, §§ 1280 to 1294.4.

[14]Civ. Proc. Code, § 405.20 (emphasis added).

[15]Civ. Proc. Code, § 405.21 (emphasis added).

[16]See generally 12 Miller & Starr, California Real Estate 4th, § 45:8 (public policy in favor of arbitration), citing numerous cases.

[17]See *Urez Corp. v. Superior Court*, 190 Cal. App. 3d 1141, 1144-1145, 235 Cal. Rptr. 837 (2d Dist. 1987).

[18]*Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal. App. 4th 1040, 1057, 93 Cal. Rptr. 3d 457 (2d Dist. 2009).

[19]*Id.* at 1051.

[20]*Id.* at 1051, quoting Civ. Proc. Code, § 22.

[21]*Id.* at 1054.

[22]Civ. Proc. Code, § 1281.8, subd. (a).

[23]Civ. Proc. Code, § 1281.8, subd. (b).

[24]Section 1298.5 literally says the party must "record a notice of pending action pursuant to section 409 . . . . " As a matter of fact, however, section 409 of the Code of Civil Procedure no longer exists; it was repealed in 1992 when the former lis pendens statute was replaced by current Civ. Proc. Code, §§ 405 to 405.61, but without amending the reference to the now-repealed section 409 in section 1298.5. This glitch in the statutory language might plausibly lead some litigants to assume they could simply record a lis pendens when commencing an arbitration proceeding and without filing an action in court. In *Manhattan Loft*, the possible implications of the obsolete reference to section 409 were avoided by a subtle elision in the court of appeal's opinion; the court quoted the language of section 1298.5 but replaced the words "pursuant to section 409" with an ellipsis (. . .), leaving the word "action" to stand on its own in that section. 173 Cal. App. 4th at 1054. More importantly, however, the court found so many references to an "action" and a "court" in the lis pendens statute that it could readily conclude that the legislature's omission of the right to file a lis pendens in a stand-alone arbitration proceeding without a court action was intentional.

[25]Civ. Proc. Code, § 1298.5 (emphasis added).

[26]*Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal. App. 4th 1040, 1057, 93 Cal. Rptr. 3d 457 (2d Dist. 2009).

[27]*Id.*

[28]See *Kokubu v. Sudo*, 76 Cal. App. 5th 1074, 1086, 292 Cal. Rptr. 3d 164 (2d Dist. 2022); *Greif v. Sanin*, 74 Cal. App. 5th 412, 455, 289 Cal. Rptr. 3d

484 (4th Dist. 2022) (both acknowledging availability of the procedure, but not directly involving the use of the procedure).

[29]Civ. Proc. Code, §§ 405.4, 405.20.

[30]See Civ. Proc. Code, §§ 1281.2, 1281.4.

[31]*Kokubu v. Sudo*, 76 Cal. App. 5th 1074, 1086, 292 Cal. Rptr. 3d 164 (2d Dist. 2022).

[32]Civ. Proc. Code, §§ 405.60, 405.60.

[33]Civ. Proc. Code, § 405.36

[34]*De Martini v. Superior Court of San Mateo County*, 98 Cal. App. 5th 1269, 317 Cal. Rptr. 3d 441 (1st Dist. 2024).

[35]*De Martini v. Superior Court of San Mateo County*, supra, 317 Cal. Rptr. 3d at 448-449.

[36]*De Martini v. Superior Court of San Mateo County*, supra, 317 Cal. Rptr. 3d at 447-448.

[37]See Bernard M. Resser, *How to Manage Complications when Arbitrating Real Estate Disputes,* Los Angeles Daily Journal, May 22, 2023, available online at https://www.dailyjournal.com/articles/373008-how-to-minimize-complications-when-arbitrating-real-estate-disputes.

[38]*De Martini v. Superior Court of San Mateo County*, supra, 317 Cal. Rptr. 3d at 444.

[39]See Civ. Proc. Code, § 405.36.

ASSEMBLY BILLS:

BROKER COMPENSATION

LIMITS TERMS AND ALLOWABLE DURATION OF EXCLUSIVE LISTING AGREEMENTS AFFECTING RESIDENTIAL REAL PROPERTY.

Bill Number: AB 1345 (Ch. 577)

Adds Section 1670.12 to the Civil Code, and adds Section 27280.6 to the Government Code, relating to residential exclusive listing agreements.

This bill defines an "exclusive listing agreement" as any contract providing an exclusive right to list or sell single-family residential property, which it defines as (1) a one- to four-unit residential property, (2) a unit in a stock cooperative, condominium, or planned development, or (3) a mobile home or manufactured home where offered for sale or sold through a real estate licensee, as further detailed. The bill prohibits automatic renewal of any such agreement, limits the duration to a maximum term of 24 months, limits any renewal to a maximum term of 12 months, and restricts enforcement of, or recording of, any agreement that is in violation of these restrictions.

>> *See Miller & Starr, California Real Estate 4th, Ch. 4, Broker Regulation, § 4:28; Ch. 5, Broker Compensation, §§ 5:28, 5:29, 5:35; Ch. 10, Recording and Priorities, § 10:6.*

BROKER REGULATION

LIMITS TERMS AND ALLOWABLE DURATION OF EXCLUSIVE LISTING AGREEMENTS AFFECTING RESIDENTIAL REAL PROPERTY.

Bill Number: AB 1345 (Ch. 577)

Adds Section 1670.12 to the Civil Code, and adds Section 27280.6 to the Government Code, relating to residential exclusive listing agreements.

For a summary of this bill see BROKER COMPENSATION

>> *See Miller & Starr, California Real Estate 4th, Ch. 4, Broker Regulation, § 4:28; Ch. 5, Broker Compensation, §§ 5:28, 5:29, 5:35; Ch. 10, Recording and Priorities, § 10:6.*

BUILDING CODES

ADDITIONAL INSPECTIONS, ABATEMENT NOTICES, AND REMEDIAL ACTIONS REQUIRED WITH RESPECT TO OTHER AFFECTED UNITS IN A MULTIPLE UNIT BUILDING WHERE ONE UNIT IS FOUND IN VIOLATION OF HABITABILITY STANDARDS OR OTHER REQUIREMENTS OF THE STATE HOUSING LAW.

Bill Number: AB 548 (Ch. 744)

Adds Section 17970.7 to the Health and Safety Code, pertaining to housing and habitability.

This bill requires all local building departments or other local enforcement agencies to develop policies and procedures for inspecting all potentially affected units of a building with multiple units for code violations and substandard conditions whenever a single unit is found to be substandard or in violation of the State Housing Law and the inspector or code enforcement officer determines the defects or violations have the potential to affect other units in the building. The bill further requires the local agency to provide the property owner with notice and an order to repair or abate within a reasonable time after conducting the inspection, and to advise the owner or operator of each known violation and the actions required to remedy the same, as well as to schedule a reinspection to verify correction of the violations.

>> *See Miller & Starr, California Real Estate 4th, Ch. 25, Building Codes, §§ 25:7, 25:44, 25:46.*

PROVIDES THAT BUILDING PERMITS, DEMOLITION PERMITS, AND ONSITE AND OFFSITE GRADING AND IMPROVEMENT PERMITS AND APPROVALS AS WELL AS "INTERDEPARTMENTAL REVIEW" ALL NOW CONSTITUTE "POST-ENTITLEMENT PHASE PERMITS" FOR PURPOSES OF THE HOUSING ACCOUNTABILITY ACT, FURTHER CONSTRAINING LOCAL AGENCY PROCESSING OF APPLICATIONS FOR AND ISSUANCE OF SUCH POST-ENTITLEMENT PHASE PERMITS.

Bill Number: AB 1114 (Ch. 753)

Amends Section 65913.3 of the Government Code, pertaining to housing.

For a summary of this bill see LAND USE

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:12, 21:32; Ch. 25, Building Codes, § 25:25.*

PROHIBITS LOCAL AGENCY FROM INCREASING PARKING REQUIREMENTS FOR A SINGLE-FAMILY RESIDENCE AS A CONDITION OF APPROVAL TO REMODEL, RENOVATE, OR ADD TO A SINGLE-FAMILY RESIDENCE.

Bill Number: AB 1308 (Ch. 756)

Adds Section 65863.3 to the Government Code, pertaining to land use.

This bill prohibits any state or local agency from increasing the minimum parking requirement that applies to an existing single-family residence as a condition of approval to remodel, renovate, or add to the residence, provided the project does not cause the residence to exceed any maximum size limit imposed by the applicable housing regulation, including height, lot coverage, and floor area ratio. It is not to be construed as allowing a local agency to impose parking restrictions more restrictive than those allowed by Gov. Code, § 65852.2 if the residence is on the same lot as an accessory dwelling unit.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, § 21:10; Ch. 25, Building Codes, § 25:32.*

CEQA

STATUTORY EXCLUSION OF AESTHETIC EFFECTS FROM CEQA REVIEW IN CONNECTION WITH REPURPOSING, CONVERSION, REFURBISHING, OR REPLACEMENT OF EXISTING BUILDINGS IS EXTENDED TO 2029, BUT WITH ADDITIONAL NOTIFICATION REQUIREMENTS.

Bill Number: AB 356 (Ch. 116)

Amends Section 210081.3 of the Public Resources Code, pertaining to environmental quality.

An existing statute, Pub. Resources Code, § 210081.3, provides that the aesthetic effects of a project are not considered significant effects on the environment and need not be evaluated if the project involves the refurbishment, repurposing, conversion, or replacement of an existing building where the project meets certain criteria, including that the building is dilapidated, abandoned, or vacant, and is located in an existing urban setting, as specified, the project involves the construction of housing, and the project will not involve a substantial increase in height or a new source of substantial light and glare nor have potentially significant aesthetic effects on historical or cultural resources or on an

officially designated state scenic highway.

This bill extends the current sunset date of this provision from January 1, 2024, to January 1, 2029, and also requires that a lead agency that determines it is not required to evaluate aesthetic effects of a project under this provision must file a notification of this determination with the State Office of Planning and Research and the county clerk when it decides to approve or proceed with the project.

>> See Miller & Starr, California Real Estate 4th, Ch. 26, CEQA, §§ 26:1, 26:4.

PROVIDES THAT FOR RESIDENTIAL PROJECTS, THE EFFECTS OF NOISE GENERATED BY PROJECT OCCUPANTS AND THEIR GUESTS ON HUMAN BEINGS IS NOT A SIGNIFICANT EFFECT ON THE ENVIRONMENT.

Bill Number: AB 1307 (Ch. 160)

Adds Sections 21085 and 21085.2 to the Public Resources Code, pertaining to environmental quality.

This bill provides, first, that for residential projects, the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment and, second, that an institution of higher education cannot be required to evaluate alternate locations for residential or mixed use projects already provided for in a long-range plan, as specified. As to the first provision, a "residential project" is not defined. As to the second provision, the bill defines residential or mixed use housing projects and further requires a location significantly surrounded by urban uses. The bill took effect as an urgency measure on September 7, 2023.

>> See Miller & Starr, California Real Estate 4th, Ch. 26, CEQA, §§ 26:1, 26:4, 26:7, 26:15, 26:18.

CREATES EXEMPTION FROM ENVIRONMENTAL REVIEW FOR CERTAIN MULTIFAMILY AFFORDABLE HOUSING PROJECTS AND MIXED USE PROJECTS IN EXISTING URBANIZED AREAS THAT ARE DESIGNATED FOR OCCUPANCY BY LOWER INCOME HOUSEHOLDS AND MEET ADDITIONAL CRITERIA AS SPECIFIED.

Bill Number: AB 1449 (Ch. 761)

Adds and repeals Section 21080.40 of the Public Resources Code, related to environmental review and affordable housing projects.

This bill creates an exemption from CEQA for certain multifamily residential projects or mixed use projects with at least two-thirds of the square footage designated for res-

idential use and which consist solely of affordable housing units that are reserved for lower income households, as defined. The exemption is narrowly drawn and includes specific labor force criteria for projects of 50 or more dwelling units as well as proximity to transit facilities, level of vehicular travel, adjacency to existing urban uses, and availability of other amenities within specific distances, as further specified. In order to qualify for the exemption, the local agency must also make a number of findings, including the absence of tribal resources, preparation of environmental assessments demonstrating absence of hazardous materials and associated risks to occupants, and satisfaction of additional criteria set forth in Gov. Code, § 65913.4, as specified. Whenever a lead agency determines that an activity is not subject to CEQA under this exemption, it must file a notice of exemption with the Office of Planning and Research and with the county clerk. This exemption statute lapses and is repealed as of January 1, 2033.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:11, 21:12; Ch. 26, CEQA, §§ 26:8, 26:10.*

PROVIDES THAT LOCAL AGENCY FAILURE OR DELAY IN DETERMINING WHETHER A PROJECT IS EXEMPT FROM CEQA REVIEW OR ABUSE OF DISCRETION OR DELAY IN FAILING TO CERTIFY AN ENVIRONMENTAL DOCUMENT FOR CERTAIN HOUSING DEVELOPMENT PROJECTS, IS A "DISAPPROVAL OF A HOUSING DEVELOPMENT PROJECT" FOR PURPOSES OF THE HOUSING ACCOUNTABILITY ACT.

Bill Number: AB 1663 (Ch. 768)

Amends Section 65589.5 of the Government Code, relating to housing.

For a summary of this statute, see LAND USE

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, Planning and Zoning Laws, § 21:12; Ch. 26, CEQA, §§ 26:8, 26:10.*

COMMON INTEREST DEVELOPMENTS

PROVIDES FOR CREATION AND SEPARATE SALE AND CONVEYANCE OF ACCESSORY DWELLING UNITS AND PRIMARY DWELLING UNITS AS CONDOMINIUMS.

Bill Number: AB 1033 (Ch. 752)

Amends Sections 65852.2 and 65852.26 of the Government Code, pertaining to housing.

For a summary of this bill, see LAND USE

>> See Miller & Starr, California Real Estate 4th, Ch. 20, Subdivision Map Act, § 20:10; Ch. 21, Land Use, §§ 21:8, 21:10; Ch. 28, Common Interest Developments, § 28:6; Ch. 29, Subdivision Sales and Leasing, § 29:8.

AMENDS NOTIFICATION, SCHEDULE, AND QUORUM REQUIREMENTS FOR ASSOCIATION MEMBERSHIP MEETINGS.

Bill Number: AB 1458 (Ch. 303)

Amends Section 5115 of the Civil Code and Section 7512 of the Corporations Code, pertaining to common interest developments.

This bill amends the law governing residential common interest developments to authorize adjournment of a membership meeting for 20 days or more in order to obtain a quorum, reduces the quorum requirement upon adjournment to 20 percent, adds requirements for notice of meetings to obtain a quorum, and changes related provisions of the non-profit mutual benefit corporation law governing adjournment and quorum requirements for such meetings. The latter provision may also affect some commercial or other non-residential common interest developments.

>> See Miller & Starr, California Real Estate 4th, Ch. 28, Common Interest Developments, §§ 28:18, 28:20, 28:21, 28:23, 28:148.

COVENANTS

IMPOSES MANDATORY RESTRICTIONS ON SALE OF UNITS CONSTRUCTED PURSUANT TO LOCAL INCLUSIONARY ZONING ORDINANCE EXCEPT TO QUALIFIED OWNER-OCCUPANT PURCHASERS OR QUALIFIED NONPROFIT HOUSING CORPORATIONS.

Bill Number: AB 323 (Ch. 738)

Adds Section 714.7 to the Civil Code, and amends Section 65915 of the Government Code, relating to land use and the Density Bonus Law.

By the enactment of Civ. Code, § 714.7, this bill imposes a statutory prohibition on sale by the developer of a for-sale dwelling unit that qualified the developer for a density bonus to anyone other than (a) a qualifying owner-occupant meeting the income standards and other requirements that made the unit eligible for the density bonus, and is subject to an equity sharing agreement, or (b) if the unit has not been sold to such a qualifying owner-occupant within

180 days of issuance of the certificate of occupancy, a qualified nonprofit housing corporation that will ensure owner occupancy pursuant to the income limitation recorded on the deed or other instrument defining the terms of conveyance eligibility. A violation of this restriction subjects the violator to an action by the county counsel or city attorney for recovery of a civil penalty of up to $15,000 per violation, which is "the exclusive enforcement mechanism used against violators" of this limitation. The bill makes related amendments to Gov. Code, § 65915, subd. (c)(2)(A) defining the owner-occupant persons or families and nonprofit corporations that are eligible transferees of such units.

◆ **Comment:** The bill does not provide for recording any special notice that a property is subject to this restriction, but would apply where the property is subject to recorded affordability covenants embodied in an equity sharing agreement that is enforceable by the municipality or county approving the project in accordance with Gov. Code, § 65915, subd. (c). It is not clear how this statute would be harmonized with Gov. Code, § 27281.5, which requires any restriction on sale or lease of real property imposed by a governmental entity to be reflected in a recorded instrument specifically describing the affected property.

>> *See Miller & Starr, California Real Estate 4th, Ch. 10, Recording and Priorities, § 10:5, 10:6; Ch. 16, Covenants, §§ 16:20, 16:29; Ch. 21, Land Use, § 21:11.*

CHANGES PROCEDURE AND NOTICE REQUIREMENTS FOR SUBMITTING MODIFICATION OF EXISTING COVENANTS AND RESTRICTIONS OF RECORD TO REMOVE PROVISIONS THAT UNLAWFULLY RESTRICT THE NUMBER, SIZE, OR LOCATION OF RESIDENCES OR THE NUMBER OF PERSONS OR FAMILIES THAT MAY RESIDE ON THE PROPERTY.

Bill Number: AB 911 (Ch. 750)

Amends Section 714.6 of the Civil Code, relating to modification of unlawfully restrictive or discriminatory covenants.

Under legislation first enacted in 2021, Civil Code § 714.6, an owner or prospective owner may submit a modification to existing covenants or restrictions of record that unlawfully restrict the use or occupancy of property for an affordable housing project, as defined, including unlawful restrictions on the number, size, or location of residences that may be constructed on the property or the number of persons or families that may reside on the property.

This bill changes the procedure by which the owner is to submit the modification for review by the county counsel and to notify other

persons with an interest in the property or the restrictive covenant of the prospective modification, prohibits recordation of the modification by a beneficial owner or purchaser of the property prior to becoming owner of record title, imposes a 35-day statute of limitations for filing any suit to challenge any such modification document, and adds definitions of "permit applications" and "control" or "owner" of the subject property.

>> *See Miller & Starr, California Real Estate 4th, Ch. 10, Recording and Priorities, § 10:5, 10:6; Ch. 16, Covenants, §§ 16:35, 16:37; Ch. 21, Land Use, § 21:11.*

DEEDS

AMENDS LAW GOVERNING REVOCABLE TRANSFER ON DEATH DEEDS TO APPLY ALSO TO CERTAIN INTERESTS IN REAL PROPERTY NOT CUSTOMARILY TRANSFERRED BY DEEDS, I.E., INTERESTS IN A STOCK COOPERATIVE.

Bill Number: AB 288 (Ch. 62)

Amends Sections 5610, 5614, 5642, 5652, and 5660 of, and adds Section 5614.5 to, the Probate Code, pertaining to revocable transfer on death deeds.

The existing statute authorizing revocable transfer on death deeds, allowing for deeds taking effect on death but revocable at any time prior to death of the grantor to be used in the transfer of interests in real property, does not allow for such transfer of interests in stock cooperatives, which are not interests in real property and are not customarily transferred by deed. This bill extends the revocable transfer on death law to also apply to interests in stock cooperatives, and makes related technical changes in the existing statute.

>> *See Miller & Starr, California Real Estate 4th, Ch. 8, Deeds, § 8:43; Ch. 11, Holding Title, § 11:67; Ch. 12, Estates, §§ 12:18, 12:29.*

DISCRIMINATION

AUTHORIZATION OF LOCAL RENT CONTROL JURISDICTIONS TO REQUIRE LANDLORDS TO ACCOMMODATE CERTAIN DISABLED PERSONS BY PERMITTING RELOCATION TO ACCESSIBLE PREMISES IN THE SAME BUILDING WITHOUT CHANGE OF RENT OR OTHER TERMS OF THEIR EXISTING LEASE.

Bill Number: AB 1620 (Ch. 767)

Amends Section 1954.53 of the Civil Code, relating to rental of real property.

For a summary of this bill see LANDLORD AND TENANT

>> *See Miller & Starr, California*

Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:100, 34:245, 34:258; Ch. 38, Discrimination, §§ 38:13, 38:18.

ESTATES

AMENDS LAW GOVERNING REVOCABLE TRANSFER ON DEATH DEEDS TO APPLY ALSO TO CERTAIN INTERESTS IN REAL PROPERTY NOT CUSTOMARILY TRANSFERRED BY DEEDS, I.E., INTERESTS IN A STOCK COOPERATIVE.

Bill Number: AB 288 (Ch. 62)

Amends Sections 5610, 5614, 5642, 5652, and 5660 of, and adds Section 5614.5 to, the Probate Code, pertaining to revocable transfer on death deeds.

For a summary of this bill see DEEDS

>> See Miller & Starr, California Real Estate 4th, Ch. 8, Deeds, § 8:43; Ch. 11, Holding Title, § 11:67; Ch. 12, Estates, §§ 12:18, 12:29.

HOLDING TITLE

AMENDS LAW GOVERNING REVOCABLE TRANSFER ON DEATH DEEDS TO APPLY ALSO TO CERTAIN INTERESTS IN REAL PROPERTY NOT CUSTOMARILY TRANSFERRED BY DEEDS, I.E., INTERESTS IN A STOCK COOPERATIVE.

Bill Number: AB 288 (Ch. 62)

Amends Sections 5610, 5614, 5642, 5652, and 5660 of, and adds Section 5614.5 to, the Probate Code, pertaining to revocable transfer on death deeds.

For a summary of this bill see DEEDS

>> See Miller & Starr, California Real Estate 4th, Ch. 8, Deeds, § 8:43; Ch. 11, Holding Title, § 11:67; Ch. 12, Estates, §§ 12:18, 12:29.

LAND USE

IMPOSES MANDATORY RESTRICTIONS ON SALE OF UNITS CONSTRUCTED PURSUANT TO LOCAL INCLUSIONARY ZONING ORDINANCE EXCEPT TO QUALIFIED OWNER-OCCUPANT PURCHASERS OR QUALIFIED NONPROFIT HOUSING CORPORATIONS.

Bill Number: AB 323 (Ch. 738)

Adds Section 714.7 to the Civil Code, and amends Section 65915 of

the Government Code, relating to land use and the Density Bonus Law.

For a summary of this bill see COVENANTS

>> *See Miller & Starr, California Real Estate 4th, Ch. 10, Recording and Priorities, §§ 10:5, 10:6; Ch. 16, Covenants, §§ 16:20, 16:29; Ch. 21, Land Use, § 21:11.*

AMENDS HOUSING ELEMENT LAW TO REQUIRE REVIEW BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT OF LOCAL HOUSING ELEMENTS OR AMENDMENTS WITHIN 60 DAYS OF SUBMISSION AND TO FURTHER REQUIRE THE DEPARTMENT TO DETERMINE AND REPORT LOCAL AGENCY COMPLIANCE WITH STATE LAWS MANDATING EXPEDITED REVIEW AND APPROVAL OF SPECIFIED HOUSING DEVELOPMENT PROJECTS AND SMALL SUBDIVISIONS TO THE LOCAL AGENCY AS WELL AS THE STATE ATTORNEY GENERAL.

Bill Number: AB 434 (Ch. 740)

Amends Section 65585 of the Government Code, pertaining to housing.

This bill reduces the time within which the Department of Housing and Community Development must review and report findings on local agency housing elements and amendments from 90 days to 60 days after mandatory submission by the local agency to the Department. It also expands the authority of the Department over local permitting and approval processes by requiring the Department to review and notify the local agency or state attorney general where it finds the local agency not in compliance with specified state-mandated permit processing and approval requirements. These now include, in addition to the Housing Accountability Act and other areas previously subject to such review and referral under Gov. Code, § 65585, subd. (j), another 13 specific statutes dealing with expedited review of variances and development approvals for housing development projects in compliance with objective general plan and zoning standards at the time a preliminary development application is submitted (Gov. Code, § 65905.5), ministerial review and approval of permits for accessory dwelling units (Gov. Code, § 65852.2), for unpermitted accessory dwelling units constructed prior to January 1, 2018 (Gov. Code, § 65852.23), for construction of two dwelling units on existing parcels zoned for single-family residential use (Gov. Code, § 65852.21), for junior accessory dwelling units in single-family residential zones (Gov. Code, § 65852.22), or for convey-

ance of accessory dwelling units separately from the primary residence (Gov. Code, § 65852.26), ministerial review and approval of urban lot splits (Gov. Code, § 66411.7), development of housing on religious organization owned property (Gov. Code, § 65913.16), limitations on demolition of existing housing to facilitate new construction (Gov. Code, §§ 66300.5, 66300.6), limited discretion to disapprove housing development projects on property subdivided pursuant to Gov. Code, § 66499.41, pertaining to small urban subdivisions of ten or fewer lots (Gov. Code, § 65852.28), mandatory issuance of building permits for parcels created in subdivisions of 10 or fewer parcels based on conditions of the tentative map or parcel map (Gov. Code, § 65913.4.5), and mandatory approval of such subdivisions of 10 or fewer lots in urban areas (Gov. Code, § 66499.41).

◆ **Comment:** The effect of these amendments to § 65585, subd. (j) is also to expand the authority of the state attorney general to enforce compliance with the specified provisions of the Government Code pursuant to § 66685, subd. (k).

>> *See Miller & Starr, California Real Estate 4th, Ch. 20, Subdivision Map Act, § 20:22; Ch. 21, Land Use, §§ 21:5, 21:11, 21:12.*

AMENDS MITIGATION FEE ACT PROVISIONS REGARDING REPORTING, ACCOUNTING FOR, AND AUDITING OF PUBLIC IMPROVEMENT FUNDS, PROJECT STATUS, AND REFUNDS TO PERSONS ENTITLED.

Bill Number: AB 516 (Ch. 741)

Amends Sections 66006, 66008, and 66023 of the Government Code, pertaining to development fees.

This bill makes several changes to the provisions of the Mitigation Fee Act with regard to local agency reporting on usage of funds and status of construction of public improvements for which fees are collected from developers, accounting for and distribution of unutilized funds, and the audit rights of persons entitled to such refunds.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, § 21:19.*

MANDATES AMENDMENT OF ZONING ORDINANCE TO CONFORM WITH GENERAL PLAN OR ELSE REQUIRES PROCESSING OF DEVELOPMENT APPLICATION IN ACCORDANCE WITH GENERAL PLAN AND WITHOUT AMENDMENT OF ZONING ORDINANCE WHERE GENERAL PLAN AND EXISTING ZONING ARE IN CONFLICT.

Bill Number: AB 821 (Ch. 748)

Amends Sections 65860 of the Government Code, pertaining to land use.

Whenever a general plan amendment results in a zoning inconsistency with the general plan, this bill requires the local agency to amend the zoning ordinance within 180 days of receipt of a development application that is consistent with the general plan or else to process the application without a zoning change in accordance with the standards of the general plan. It further requires that any development application that can reasonably be determined to be consistent with objective standards and criteria of the general plan not be deemed to require a zoning change nor to be inconsistent with existing zoning, and to require processing without a zoning change. It authorizes any resident or property owner to bring an action to enforce compliance with these provisions within 90 days of a local agency's failure to comply. The bill recites that it applies to counties and to all cities, including charter cities.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:3, 21:8, 21:43, 21:48.*

CHANGES PROCEDURE AND NOTICE REQUIREMENTS FOR SUBMITTING MODIFICATION OF EXISTING COVENANTS AND RESTRICTIONS OF RECORD TO REMOVE PROVISIONS THAT UNLAWFULLY RESTRICT THE NUMBER, SIZE, OR LOCATION OF RESIDENCES OR THE NUMBER OF PERSONS OR FAMILIES THAT MAY RESIDE ON THE PROPERTY.

Bill Number: AB 911 (Ch.750)

Amends Section 714.6 of the Civil Code, relating to modification of unlawfully restrictive or discriminatory covenants.

For a summary of this bill see COVENANTS

>> *See Miller & Starr, California Real Estate 4th, Ch. 10, Recording and Priorities, §§ 10:5, 10:6; Ch. 16, Covenants, §§ 16:35, 16:37; Ch. 21, Land Use, § 21:11.*

PROVIDES THAT A LOCAL AGENCY MAY CONDITION APPROVAL OF ACCESSORY DWELLING UNITS TO PROHIBIT SHORT-TERM OCCUPANCY OF 30 DAYS OR LESS, BUT MAY NOT REQUIRE OWNER OCCUPANCY OF ANY ACCESSORY DWELLING UNIT.

Bill Number: AB 976 (Ch. 751)

Amends Sections 65852.2 of the Government Code, pertaining to land use.

This bill prohibits a local agency from requiring owner occupancy of any accessory dwelling unit, removing a prohibition of such local agency requirements that formerly applied only if the accessory dwelling unit was permitted between January 1, 2020, and January 1, 2025. It also expressly authorizes a local agency to require that the minimum term of any rental of an accessory dwelling unit must be 30 days or longer.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:8, 21:10.*

PROVIDES FOR CREATION AND SEPARATE SALE AND CONVEYANCE OF ACCESSORY DWELLING UNITS AND PRIMARY DWELLING UNITS AS CONDOMINIUMS.

Bill Number: AB 1033 (Ch. 752)

Amends Sections 65852.2 and 65852.26 of the Government Code, pertaining to housing.

This bill augments the existing provision of law (§ 65862.26) allowing sale and conveyance of an accessory dwelling unit separate from the primary unit through the use of a tenancy in common agreement and enforceable restrictions, including affordability requirements, by creating another alternative detailed in the amended portions of § 65852.2, subd. (a)(10), that also allow the primary unit and accessory unit located on a lot to be subdivided and sold as condominiums without regard to the restrictions of § 65862.26. For such condominium projects, the bill requires compliance with *objective* provisions of the Subdivision Map Act and the local subdivision ordinance, as well as with the Davis Stirling Common Interest Development Act, consent of lienholders, safety inspections by the building department, and recording of a condominium plan. It also requires specific notices to permit applicants and other "consumers," obtaining authorization from the existing owners association if the property is located in an existing common interest development, and compliance with other requirements detailed in the statute.

>> *See Miller & Starr, California Real Estate 4th, Ch. 20, Subdivision*

Map Act, § 20:10; Ch. 21, Land Use, §§ 21:8, 21:10; Ch. 28, Common Interest Developments, § 28:6; Ch. 29, Subdivision Sales and Leasing, § 29:8.

PROVIDES THAT BUILDING PERMITS, DEMOLITION PERMITS, AND ONSITE AND OFFSITE GRADING AND IMPROVEMENT PERMITS AND APPROVALS AS WELL AS "INTERDEPARTMENTAL REVIEW" ALL NOW CONSTITUTE "POST-ENTITLEMENT PHASE PERMITS" FOR PURPOSES OF THE HOUSING ACCOUNTABILITY ACT, FURTHER CONSTRAINING LOCAL AGENCY PROCESSING OF APPLICATIONS FOR AND ISSUANCE OF SUCH POST-ENTITLEMENT PHASE PERMITS.

Bill Number: AB 1114 (Ch. 753)

Amends Section 65913.3 of the Government Code, pertaining to housing.

This bill amends existing provisions of the Housing Accountability Act regarding "post-entitlement phase permits," which require a local agency to identify all post-entitlement phase permits required for a housing development project at the time a preliminary application is submitted for approval. Building permits, demolition permits, and grading and improvement permits, as well as all "interdepartmental review" of such permits, all now constitute post-entitlement phase permits and are subject to the timeframes for processing applications for post-entitlement phase permits, and to the limits on the discretion of a local agency to approve or disapprove issuance of such post-entitlement permits, as prescribed by the Housing Accountability Act. This bill further tightens certain timeframes and standards for review and processing of all such post-entitlement phase permits.

◆ **Comment:** By including "interdepartmental review" of building permits, demolition permits, grading permits, and other onsite and offsite improvement permits in the definition of "post-entitlement phase permits," this bill effectively subjects the process of reviewing such permits by the usual permitting departments (building departments and public works or engineering departments) to the same timeframes and standards that apply to the planning department of a local agency in administering the Housing Accountability Act. By separate legislation, Ch. 740, AB 434, Gov. Code, § 65585 has also been amended to give the Department of Housing and Community Development authority to oversee and report on local agency compliance with this statute, and to authorize the State Attorney General to bring enforcement actions against local agencies who fail to comply with these requirements.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:12, 21:32; Ch. 25, Building Codes, § 25:25.*

EXPANDS HOUSING CRISIS ACT'S LIMITATIONS ON APPROVAL OF DEVELOPMENTS REQUIRING DEMOLITION OF EXISTING OCCUPIED OR VACANT HOUSING UNITS TO APPLY TO ALL PROJECTS, WHETHER OR NOT FOR CONSTRUCTION OF HOUSING, AND TO NOW REQUIRE CONCURRENT REPLACEMENT NOT ONLY OF ALL PROTECTED UNITS BUT ALSO ANY UNITS PREVIOUSLY DEMOLISHED ON OR AFTER JANUARY 1, 2020.

Bill Number: AB 1218 (Ch. 754)

Amends Sections 65912.114, 65912.124, 65940, and 66300 of the Government Code, and adds headings to related portions of the Government Code, pertaining to land use.

The existing Housing Crisis Act generally requires any local agency desiring to approve a housing development project that would require demolition of existing occupied or vacant protected housing to condition development upon the construction of at least an equal amount of replacement affordable housing, allowing current residents to remain in their units until six months before construction begins, providing a right of first refusal to occupants of affordable housing to occupy replacement units constructed as part of the project, and providing relocation benefits to certain lower income households.

This bill changes the scope of this law to apply also to projects other than housing development projects, and to expand the required replacement to include any protected units that were demolished in the previous five years as well as those to be demolished. It also requires the project proponent to assure that the required replacement housing is developed prior to or concurrently with the development project if the development project is not a housing development. It further strengthens the authority of the Department of Housing and Community Development to oversee compliance with the requirements of the Housing Element Law by the local agency, and gives the state attorney general additional enforcement powers regarding compliance with these provisions.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:11, 21:12.*

AMENDS STATUTORY DEFINITION OF "MAXIMUM ALLOWABLE RESIDENTIAL DENSITY" AND THE STATUTORY FORMULA FOR DETERMINING DENSITY BONUS AND NUMBER OF CONCESSIONS OR INCENTIVES REQUIRED UNDER RELATED PROVISIONS OF THE DENSITY BONUS LAW.

Bill Number: AB 1287 (Ch. 755)

Amends Section 65915 of the Government Code, the Density Bonus Law.

The existing Density Bonus Law provides that a local agency must provide a density bonus for a housing development based on a statutory formula depending on the number of specific types of affordable or other housing units provided, as well as other concessions or incentives, all of which are in addition to the density allowed by the general plan and zoning for the site, and provides that if the density of the zoning ordinance is inconsistent with the general plan, the higher density of the general plan prevails.

This bill redefines the notion of "maximum allowable residential density" to mean the maximum amount of units allowed by the general plan, specific plan, or zoning ordinance, whichever is highest, and if a range of units is specified, the highest number of units in the range. It removes the requirement that an inconsistency exist for the highest density or highest number in a range of units to prevail. It further modifies the formula for determining the required density bonus and the number of incentives or concessions required for projects meeting specified affordability requirements in various ways. The bill also clarifies that a local agency can require a project applicant to provide reasonable documentation to establish eligibility for a requested density bonus and parking ratios despite the limitation on requiring additional reports or studies beyond those required by state law to substantiate a requested incentive or concession.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:11, 21:12.*

PROHIBITS LOCAL AGENCY FROM INCREASING PARKING REQUIREMENTS FOR A SINGLE-FAMILY RESIDENCE AS A CONDITION OF APPROVAL TO REMODEL, RENOVATE, OR ADD TO A SINGLE-FAMILY RESIDENCE.

Bill Number: AB 1308 (Ch. 756)

Adds Section 65863.3 to the Government Code, pertaining to land use.

For a summary of this bill see BUILDING CODES

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, § 21:10; Ch. 25, Building Codes, § 25:32.*

CREATES EXEMPTION FROM ENVIRONMENTAL REVIEW FOR CERTAIN MULTIFAMILY AFFORDABLE HOUSING PROJECTS AND MIXED USE PROJECTS IN EXISTING URBANIZED AREAS THAT ARE DESIGNATED FOR OCCUPANCY BY LOWER INCOME HOUSEHOLDS AND MEET ADDITIONAL CRITERIA AS SPECIFIED.

Bill Number: AB 1449 (Ch. 761)

Adds and repeals Section 21080.40 of the Public Resources Code, related to environmental review and affordable housing projects.

For a summary of this statute, see CEQA

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:11, 21:12; Ch. 26, CEQA, §§ 26:8, 26:10.*

AUTHORIZATION FOR EXTREMELY AFFORDABLE MULTIFAMILY HOUSING PROJECTS AS AN "ADAPTIVE REUSE" OF EXISTING RESIDENTIAL OR COMMERCIAL BUILDINGS ON INFILL PARCELS AND NOT IN OR ADJOINING INDUSTRIAL USES, AS DEFINED.

Bill Number: AB 1490 (Ch. 764)

Adds Sections 65913.12 and 65960.1 to the Government Code, relating to housing.

This bill creates a narrowly drawn authorization for the development of "extremely affordable housing" in existing residential or commercial buildings located on "infill parcels" (defined as either located within a half mile of public transit or else adjacent to existing urban uses on at least 75 percent of the perimeter of the site), provided the site is not in or adjoining industrial uses, as further specified. Where authorized, the development must be entirely within the existing building envelope and not result in the loss of any existing open space, and the residential units developed must be deed restricted and 100 percent affordable, with all of the units designated for lower income households and 50 percent designated for very low-income households, as defined. A project proposal meeting all of these criteria and others specified in the bill must be permitted as an allowable use regardless of a local agency's existing general plan, specific plan, zoning, ordinance, or regulation, and the local agency may only impose objective design review standards and may not impose or require curing of any preexisting deficit or conflict with maximum density standards, maximum floor area ratio requirements,

additional parking requirements, or additional open space requirements. The local agency is required to process a development proposal submitted under this provision and to provide written explanation of any conflicts with objective standards as permitted within specified timeframes, or the project will be deemed consistent, compliant, and in conformity with all applicable standards, as further detailed in the statute.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:11, 21:12.*

PROVIDES THAT LOCAL AGENCY FAILURE OR DELAY IN DETERMINING WHETHER A PROJECT IS EXEMPT FROM CEQA REVIEW OR ABUSE OF DISCRETION OR DELAY IN FAILING TO CERTIFY AN ENVIRONMENTAL DOCUMENT FOR CERTAIN HOUSING DEVELOPMENT PROJECTS, IS A "DISAPPROVAL OF A HOUSING DEVELOPMENT PROJECT" FOR PURPOSES OF THE HOUSING ACCOUNTABILITY ACT.

Bill Number: AB 1663 (Ch. 768)

Amends Section 65589.5 of the Government Code, relating to housing.

The existing Housing Accountability Act, Gov. Code, § 65589.5, provides for certain remedies when a local agency fails to approve a housing development project, unless it makes written findings, supported by a preponderance of evidence on the record, within specified timeframes, and requires an action to enforce the Act to be filed not later than 90 days after the local agency disapproves of a housing development project.

This extensive and detailed bill, for a period ending January 1, 2031, adds a number of additional actions or failures to act on the part of a local agency in the course of processing a qualifying housing development proposal that may constitute "failure to approve" in this context, including, as further detailed in the statute, a failure, delay, or abuse of discretion in failing to approve or certify a negative declaration, mitigated negative declaration, environmental impact report, or other environmental determination, or in determining whether an exemption from CEQA applies based on one of several detailed exceptions to exemptions. The bill requires a housing development project subject to these provisions, among other things, to be on a legal parcel or parcels within an urbanized area and to meet one or more additional criteria, as specified, and also to meet or exceed 15 dwelling units per acre.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use,*

§ 21:12; Ch. 26, CEQA, §§ 26:8, 26:10.

LANDLORD AND TENANT

RESIDENTIAL SECURITY DEPOSITS LIMITED TO ONE MONTH'S RENT, WHETHER FOR FURNISHED OR UNFURNISHED PREMISES, EXCEPT FOR CERTAIN SMALL RESIDENTIAL LANDLORDS WHO ARE NATURAL PERSONS, OR THEIR LIMITED LIABILITY COMPANIES, AND WHO OWN NO MORE THAN TWO RESIDENTIAL PROPERTIES COMPRISING NO MORE THAN FOUR DWELLING UNITS.

Bill Number: AB 12 (Ch. 733)

Amends, repeals, and adds Section 1950.5 to the Civil Code, pertaining to residential tenancies.

Under existing law, the amount of security deposits a residential landlord may require, however denominated, is limited to an amount equal to two months' rent for an unfurnished dwelling unit, and three months' rent for a furnished unit, plus the amount of the first month's rent payable prior to commencement of the residential occupancy.

This bill continues to permit the foregoing amounts of security deposits to be required by a residential landlord who is a natural person or limited liability company of which all the members are natural persons, and who owns no more than two residential rental properties containing an aggregate of no more than four dwelling units. Other landlords, effective July 1, 2024, are limited to a security deposit equal to a single month's rent whether the unit is furnished or unfurnished, in addition to the first month's rent due before occupancy of the unit.

>> See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, § 34:60.

PROHIBITS OWNER OF QUALIFIED RESIDENTIAL PROPERTY WHO PROVIDES PARKING FROM "BUNDLING" PARKING CHARGES WITH THE PRICE OF RENT, REQUIRES PARKING TO BE COVERED BY A SEPARATE AGREEMENT OR ADDENDUM TO THE LEASE, AND GRANTS EXISTING TENANTS WITHOUT PARKING A RIGHT OF FIRST REFUSAL FOR PARKING THAT BECOMES AVAILABLE DURING THEIR TENANCY.

Bill Number: AB 1317 (Ch. 757)

Adds Section 1947.1 to the Government Code, pertaining to tenancy.

This bill requires a residential landlord who provides parking to "unbundle" charges for parking from

the price of rent (meaning that the parking spaces must be sold or leased separate from the lease of the residential property), and apparently, although not explicitly, gives a tenant the option not to rent a parking space when renting a qualifying unit. The bill requires parking to be covered by a separate agreement or addendum to the lease, grants existing tenants without parking a right of first refusal for parking that becomes available during their tenancy, and allows only revocation of parking rights but not unlawful detainer proceedings in the case of a tenant who fails to pay the parking charge. It applies only to property consisting of 16 or more residential units for which a certificate of occupancy is issued after January 1, 2025, and which is located in one of ten specified counties in the state. It does not apply to townhouses, row houses, or other residential units with a parking garage that is "functionally a part of the unit" or to certain other enforceably restricted affordable housing and tax credit or bond financed property, as defined.

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:46, 34:49, 34:242.*

AUTHORIZATION OF LOCAL RENT CONTROL JURISDICTIONS TO REQUIRE LANDLORDS TO ACCOMMODATE CERTAIN DISABLED PERSONS BY PERMITTING RELOCATION TO ACCESSIBLE PREMISES IN THE SAME BUILDING WITHOUT CHANGE OF RENT OR OTHER TERMS OF THEIR EXISTING LEASE.

Bill Number: AB 1620 (Ch. 767)

Amends Section 1954.53 of the Civil Code, relating to rental of real property.

This bill authorizes a jurisdiction that has enacted an ordinance or charter provision that regulates the rental rate of a dwelling unit to enact a further provision requiring a landlord of an existing rent-restricted tenant who is subject to a permanent physical disability as defined in Gov. Code, § 12926, subd. (m), that is related to mobility to permit that tenant to move to an available comparable or smaller unit located on an accessible floor of the property while maintaining the same rental and other terms as the existing lease. The bill includes additional criteria, requirements, and exceptions. It also provides that it shall not be construed to prevent owners of residential real property from granting reasonable requests for accommodation to change housing units at the same rental rate and terms in order to ac-

commodate *any disability* as defined in Gov. Code, § 12926, subd. (m).

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:100, 34:245, 34:258; Ch. 38, Discrimination, §§ 38:13, 38:18.*

RECORDING AND PRIORITIES

IMPOSES MANDATORY RESTRICTIONS ON SALE OF UNITS CONSTRUCTED PURSUANT TO LOCAL INCLUSIONARY ZONING ORDINANCE EXCEPT TO QUALIFIED OWNER-OCCUPANT PURCHASERS OR QUALIFIED NONPROFIT HOUSING CORPORATIONS.

Bill Number: AB 323 (Ch. 738)

Adds Section 714.7 to the Civil Code, and amends Section 65915 of the Government Code, relating to land use and the Density Bonus Law.

For a summary of this bill see COVENANTS

>> *See Miller & Starr, California Real Estate 4th, Ch. 10, Recording and Priorities, §§ 10:5, 10:6; Ch. 16, Covenants, §§ 16:20, 16:29; Ch. 21, Land Use, § 21:11.*

CHANGES PROCEDURE AND NOTICE REQUIREMENTS FOR SUBMITTING MODIFICATION OF EXISTING COVENANTS AND RESTRICTIONS OF RECORD TO REMOVE PROVISIONS THAT UNLAWFULLY RESTRICT THE NUMBER, SIZE, OR LOCATION OF RESIDENCES OR THE NUMBER OF PERSONS OR FAMILIES THAT MAY RESIDE ON THE PROPERTY.

Bill Number: AB 911 (Ch. 750)

Amends Section 714.6 of the Civil Code, relating to modification of unlawfully restrictive or discriminatory covenants

For a summary of this bill see COVENANTS

>> *See Miller & Starr, California Real Estate 4th, Ch. 10, Recording and Priorities, §§ 10:5, 10:6; Ch. 16, Covenants, §§ 16:35, 16:37; Ch. 21, Land Use, § 21:11.*

LIMITS TERMS AND ALLOWABLE DURATION OF EXCLUSIVE LISTING AGREEMENTS AFFECTING RESIDENTIAL REAL PROPERTY.

Bill Number: AB 1345 (Ch. 577)

Adds Section 1670.12 to the Civil Code, and adds Section 27280.6 to the Government Code, relating to residential exclusive listing agreements.

For a summary of this bill see BROKER COMPENSATION

>> See Miller & Starr, California Real Estate 4th, Ch. 4, Broker Regulation, § 4:28; Ch. 5, Broker Compensation, §§ 5:28, 5:29, 5:35; Ch. 10, Recording and Priorities, § 10:6.

SPECIFIC CONTRACTS

REQUIRES SELLER OF SINGLE-FAMILY PROPERTY WHO ACQUIRED TITLE WITHIN PREVIOUS 18 MONTHS TO DISCLOSE WHETHER IT HAS BEEN MODIFIED, ALTERED, OR REPAIRED AFTER SELLER ACQUIRED TITLE AND WHETHER A LICENSED CONTRACTOR AND BUILDING PERMIT WERE USED AND OBTAINED IN CONNECTION WITH SUCH MODIFICATION, ALTERATION, OR REPAIR.

Bill Number: AB 968 (Ch. 95)

Amends Section 1102.6h to the Civil Code, relating to real property disclosure requirements.

This bill creates an affirmative obligation on the part of any seller of a single-family residential property who accepts an offer for sale within 18 months after title was transferred to the seller, to affirmatively disclose whether the property has been modified, altered, or repaired during the period after title was transferred to the seller, whether a licensed contractor was engaged to do the work, and whether the contractor or owner obtained a building permit for the work, and to provide contact information, copies of permits, and related information as specified, with limited exceptions further detailed in the statute. It applies to any sale of single-family real property where the offer to purchase is accepted by the seller on or after July 1, 2024.

Comment: "Single-family property" in this context includes one-to-four unit properties as well as condominium or stock cooperative units, units in a planned development, and some mobile homes and manufactured homes. See Civ. Code, § 1102, subd. (b).

>> See Miller & Starr, California Real Estate 4th, Ch. 2, Specific Contracts, § 2:28.

INFORMATION THAT SINGLE-FAMILY PROPERTY IS LOCATED IN A FIRE HAZARD SEVERITY ZONE, WITH ADDITIONAL DETAIL AS SPECIFIED, IS REQUIRED TO BE INCLUDED IN THE NATURAL HAZARD DISCLOSURE STATEMENT ON SALE.

Bill Number: AB 1280 (Ch. 99)

Amends Section 1103.2 of the Civil Code, relating to real property disclosure statements.

This bill amends the statutory Natural Hazard Disclosure Statement form to now require disclosure that a "single-family property" is in a fire hazard severity zone, and to specify whether the property is located in a high or very high fire hazard severity zone, as well as whether it is in a state responsibility area or local responsibility area, as further provided in the revised form.

Comment: "Single-family property" in this context includes one-to-four unit properties as well as condominium or stock cooperative units, units in a planned development, and some mobile homes and manufactured homes. See Civ. Code, § 1102, subd. (b).

>> See Miller & Starr, California Real Estate 4th, Ch. 2, Specific Contracts, §§ 2:24, 2:27.

SUBDIVISION MAP ACT

AMENDS HOUSING ELEMENT LAW TO REQUIRE REVIEW BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT OF LOCAL HOUSING ELEMENTS OR AMENDMENTS WITHIN 60 DAYS OF SUBMISSION AND TO FURTHER REQUIRE THE DEPARTMENT TO DETERMINE AND REPORT LOCAL AGENCY COMPLIANCE WITH STATE LAWS MANDATING EXPEDITED REVIEW AND APPROVAL OF SPECIFIED HOUSING DEVELOPMENT PROJECTS AND SMALL SUBDIVISIONS TO THE LOCAL AGENCY AS WELL AS THE STATE ATTORNEY GENERAL.

Bill Number: AB 434 (Ch. 740)

Amends Section 65585 of the Government Code, pertaining to housing.

For a summary of this bill see LAND USE

>> See Miller & Starr, California Real Estate 4th, Ch. 20, Subdivision Map Act, § 20:22; Ch. 21, Land Use, §§ 21:5, 21:11, 21:12.

PROVIDES FOR CREATION AND SEPARATE SALE AND CONVEYANCE OF ACCESSORY DWELLING UNITS AND PRIMARY DWELLING UNITS AS CONDOMINIUMS.

Bill Number: AB 1033 (Ch. 752)

Amends Sections 65852.2 and 65852.26 of the Government Code, pertaining to housing.

For a summary of this bill see LAND USE

>> *See Miller & Starr, California Real Estate 4th, Ch. 20, Subdivision Map Act, § 20:10; Ch. 21, Land Use, §§ 21:8, 21:10; Ch. 28, Common Interest Developments, § 28:6; Ch. 29, Subdivision Sales and Leasing, § 29:8.*

SUBDIVISION SALES

PROVIDES FOR CREATION AND SEPARATE SALE AND CONVEYANCE OF ACCESSORY DWELLING UNITS AND PRIMARY DWELLING UNITS AS CONDOMINIUMS.

Bill Number: AB 1033 (Ch. 752)

Amends Sections 65852.2 and 65852.26 of the Government Code, pertaining to housing.

For a summary of this bill, see LAND USE

>> *See Miller & Starr, California Real Estate 4th, Ch. 20, Subdivision Map Act, § 20:10; Ch. 21, Land Use, §§ 21:8, 21:10; Ch. 28, Common Interest Developments, § 28:6; Ch. 29, Subdivision Sales and Leasing, § 29:8.*

SENATE BILLS:

BUILDING CODES

IMPOSES OBLIGATION OF LOCAL AGENCY TO WARN PERMIT APPLICANT OF POTENTIAL LIABILITY FOR FAILURE TO MEET ACCESSIBILITY REQUIREMENTS IN ADDITION TO PROVIDING INFORMATION ON HOW TO OBTAIN A CASp INSPECTION.

Bill Number: SB 748 (Ch. 76)

Amends Section 4469 of the Government Code, pertaining to disability access.

This bill amends the previously enacted provisions requiring a local agency to provide permit or business license applicants with information concerning the CASp inspection and compliance requirements to now further require the local agency by a separate document to explicitly inform the applicant of their exposure to liability if they fail to comply with accessibility requirements as well as information on how to obtain a CASp inspection.

>> *See Miller & Starr, California Real Estate 4th, Ch. 25, Building Codes, § 25:12; Ch. 38, Discrimination, §§ 38:18, 38:30.*

DEEDS OF TRUST

TRANSFEROR OF SERVICING OF MORTGAGES ON PROPERTY LOCATED IN AREAS DECLARED DISASTER AREAS REQUIRED TO DELIVER RECORDS CONCERNING REPAIRS AND INSURANCE PROCEEDS TO SUCCESSOR SERVICER.

Bill Number: SB 684 (Ch. 873)

Adds Section 2968 to the Civil Code, pertaining to mortgages.

For a summary of this bill see MORTGAGE LENDING

>> *See Miller & Starr, California Real Estate 4th, Ch. 13, Deeds of Trust, §§ 13:49, 13:80; Ch. 36, Mortgage Lending, § 36:23.*

DISCRIMINATION

LIMITATION ON LANDLORD REQUIRING CREDIT HISTORY OF PROSPECTIVE TENANT, IN INSTANCES INVOLVING A GOVERNMENT RENT SUBSIDY, WHERE APPLICANT PROVIDES LAWFUL, VERIFIABLE ALTERNATIVE EVIDENCE OF ABILITY TO PAY RENT, INCLUDING GOVERNMENT BENEFIT PAYMENTS, PAY RECORDS, AND BANK STATEMENTS.

Bill Number: SB 267 (Ch. 776)

Amends Section 12955 of the Government Code, relating to housing and credit discrimination.

For a summary of this bill see LANDLORD AND TENANT

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:11, 34:242, 34:267; Ch. 38, Discrimination, §§ 38:17, 38:21.*

IMPOSES OBLIGATION OF LOCAL AGENCY TO WARN PERMIT APPLICANT OF POTENTIAL LIABILITY FOR FAILURE TO MEET ACCESSIBILITY REQUIREMENTS IN ADDITION TO PROVIDING INFORMATION ON HOW TO OBTAIN A CASp INSPECTION.

Bill Number: SB 748 (Ch. 76)

Amends Section 4469 of the Government Code, pertaining to disability access.

For a summary of this bill see BUILDING CODES

>> *See Miller & Starr, California Real Estate 4th, Ch. 25, Building Codes, § 25:12; Ch. 38, Discrimination, §§ 38:18, 38:30.*

FIXTURES

STATE WATER RESOURCES CONTROL BOARD NOW EXPRESSLY AUTHORIZED TO INVESTIGATE AND DETERMINE WHETHER OR NOT A WATER RIGHT IS VALID.

Bill Number: SB 389 (Ch. 486)

Amends Section 1051 of the Water Code, pertaining to investigation of water rights.

Under existing law, the State Board is authorized to investigate and determine whether water has been appropriated properly, but is not explicitly authorized to investigate and determine the validity of riparian or appropriative water rights. This bill expressly grants the Board this authority, and includes a process and standards by which the Board is to conduct such proceedings.

>> *See Miller & Starr, California Real Estate 4th, Ch. 9, Fixtures § 9:31.*

LAND USE

HOUSING DEVELOPMENTS ON LAND OWNED BY RELIGIOUS INSTITUTIONS OR HIGHER EDUCATION INSTITUTIONS (COLLEGES AND UNIVERSITIES) MEETING CERTAIN CRITERIA ARE A USE AS OF RIGHT IRRESPECTIVE OF CURRENT ZONING AND PLANNING DESIGNATIONS, AND ARE SUBJECT TO A STREAMLINED MINISTERIAL APPROVAL PROCESS.

Bill Number: SB 4 (Ch. 771)

Adds Section 65913.16 to the Government Code, relating to housing development, higher education institutions, and religious organizations.

This bill, the Affordable Housing on Faith and Higher Education Lands Act of 2023, creates an additional category of housing development project that is eligible for approval as of right, irrespective of current zoning, general or specific plan, ordinance, or regulation of the local jurisdiction. In order to be eligible for such treatment, the property must have been owned by a religious or higher education institution prior to January 1, 2024, the development proposal must be by a "qualified developer" as defined (generally, a nonprofit corporation or public entity, a religious institution, or another person who contracts with an eligible nonprofit corporation or who owns or manages tax exempt housing projects), and the project must satisfy a detailed list of additional criteria, including specific location, existing or surrounding uses, affordability requirements, and labor force and prevailing wage requirements, among others. A qualifying project is deemed eligible for a density bonus, incentives and concessions, or waivers of development and parking standards under the Density Bonus Act (Gov. Code, § 65915), may be exempt from CEQA, and is subject only to objective development standards implemented through a streamlined ministerial approval process in accordance with Gov. Code, § 65913.4 and related provisions of law.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:8, 21:12.*

CHANGES PROVISIONS OF PLANNING AND ZONING LAW FOR PROJECTS SUBJECT TO A STREAMLINED MINISTERIAL APPROVAL PROCESS TO REDUCE SCOPE OF REVIEW BY LOCAL PLANNING AUTHORITIES AND LIMIT EXISTING EXCEPTIONS FROM THE PROCESS, INCLUDING EXTENSION OF SUNSET DATE TO JANUARY 1, 2036.

Bill Number: SB 423 (Ch. 778)

Amends Section 65913.4 of the Government Code, relating to land use and housing development projects.

Certain housing development projects are eligible for approval as of right, irrespective of any current zoning, general or specific plan, ordinance, or regulation of the local jurisdiction, and are subject to a streamlined ministerial approval process in accordance with Gov. Code, § 65913.4 and related provisions of law (originally enacted as SB 35 in the 2017 legislative session and since amended numerous times).

This bill makes several significant changes in the existing statute: (a) it

provides that the Department of General Services rather than the local jurisdiction is the reviewing authority for a qualifying project on state owned or leased land; (b) it narrows the scope of the exemptions from the streamlined, ministerial review process for projects located in the coastal zone or in a high fire hazard severity zone; (c) for projects of fewer than 50 housing units, it removes the requirement to utilize a skilled and trained workforce while maintaining the requirement to pay a prevailing wage with modifications; (d) for projects containing 10 or fewer housing units, it also removes any requirement to use an apprenticeship program or pay prevailing wages or health care expenditures unless the project is a public work; (e) it removes the determination of whether a project meets objective planning standards of a local government from the planning commission or other body and requires approval as of right under the streamlined ministerial approval process if the jurisdiction's planning director or equivalent officer determines that the project meets the objective planning standards; (f) it makes further changes to the provisions for determining the number of units in a project, the process and timeframes for action and response to a project proponent's notice of intent to apply for a project meeting the requirements of the statute, and the scope of public review; and (g) it extends the current January 1, 2026, repeal date of § 65913.4 to January 1, 2036.

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, §§ 21:12, 21:14.*

EXPEDITED MINISTERIAL APPROVAL REQUIRED FOR SUBDIVISION OF 10 OR FEWER PARCELS TO BE DEVELOPED WITH 10 OR FEWER RESIDENTIAL UNITS MEETING CERTAIN MINIMUM PARCEL SIZE AND DENSITY REQUIREMENTS, INCLUDING STREAMLINED MINISTERIAL APPROVAL OF HOUSING TO BE CONSTRUCTED ON SUCH SUBDIVIDED LOTS.

Bill Number: SB 684 (Ch. 783)

Adds Sections 65852.28, 65913.4.5, and 66499.41 to the Government Code, pertaining to land use and subdivisions.

For a summary of this bill see SUBDIVISION MAP ACT

>> *See Miller & Starr, California Real Estate 4th, Ch. 20, Subdivision Map Act, §§ 20:8, 20:12, 20:16; Ch. 21, Land Use, §§ 21:8, 21:12, 21:14.*

LANDLORD AND TENANT

LIMITATION ON LANDLORD REQUIRING CREDIT HISTORY OF PROSPECTIVE TENANT, IN INSTANCES INVOLVING A GOVERNMENT RENT SUBSIDY, WHERE APPLICANT PROVIDES LAWFUL, VERIFIABLE ALTERNATIVE EVIDENCE OF ABILITY TO PAY RENT, INCLUDING GOVERNMENT BENEFIT PAYMENTS, PAY RECORDS, AND BANK STATEMENTS.

Bill Number: SB 267 (Ch. 776)

Amends Section 12955 of the Government Code, relating to housing and credit discrimination.

This bill prohibits a landlord from requiring, in instances in which there is a government rent subsidy, a review of the tenant's credit history as part of the rental application process without offering the applicant the option of providing lawful, verifiable alternative evidence of the applicant's reasonable ability to pay the portion of rent to be paid by the tenant, including but not limited to government benefit payments, pay records, and bank statements. In such cases, the landlord also must provide the applicant reasonable time to respond with that evidence and must reasonably consider that evidence in lieu of the person's credit history in determining whether to offer the rental accommodation to the tenant. The landlord is not prohibited from also requesting information or documentation to verify employment, requesting landlord references, or requiring verification of identity of the prospective renter.

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:11, 34:242, 34:267; Ch. 38, Discrimination, §§ 38:17, 38:21.*

AMENDS STATEWIDE JUST CAUSE EVICTION STATUTE TO IMPOSE ADDITIONAL LIMITATIONS AND CONDITIONS ON EVICTION FOR "OWNER MOVE-IN" OR DEMOLITION PURPOSES, AND INCREASES PENALTIES AND AUTHORIZES ATTORNEY GENERAL, DISTRICT ATTORNEY, OR CITY ATTORNEY TO ENFORCE BOTH THE JUST CAUSE EVICTION STATUTE AND THE STATEWIDE RENT INCREASE CAP STATUTE.

Bill Number: SB 567 (Ch. 290)

Amends, adds, and repeals Sections 1946.2 and 1947.12 of the Civil Code, pertaining to residential tenancies.

This bill amends the no-fault "owner move-in" eviction clause of the statewide just cause eviction statute effective April 1, 2024, to require the owner or specified members of

the owner's immediate family to occupy the property for a full 12 months after terminating a tenancy or else to allow the evicted tenant to return at previous rental rates and pay moving costs. It requires an owner evicting a tenant in order to withdraw from the rental market to actually withdraw the unit from the rental market. It further requires the owner terminating a tenancy for purposes of repairing, remodeling, or demolishing the unit to provide the tenant with written notice of specific information concerning the planned work, including a description of the work, schedule and duration of demolition or repairs, and copies of permits. The bill also creates a treble damages remedy for a tenant against a landlord who violates either the just cause eviction statute or the rent increase cap statute, and confers authority on the state attorney general and the local district attorney or city attorney to bring actions to enforce the statutes and obtain injunctive relief against the owner.

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:227, 34:237, 34:243, 34:244.*

LANDLORDS PROHIBITED FROM PREVENTING OWNERSHIP, USE, RECHARGING, AND STORAGE OF "PERSONAL MICROMOBILITY DEVICES" FOR UP TO ONE SUCH DEVICE PER OCCUPANT OF THE DWELLING UNIT.

Bill Number: SB 712 (Ch. 630)

Adds Section 1940.41 to the Civil Code, pertaining to residential tenancies.

This bill prohibits a landlord from prohibiting a tenant from owning a "personal micromobility device" (defined as a device propelled by an electric motor or by physical exertion by the rider and designed to transport no more than one individual or one adult accompanied by not more than three minors). It also prohibits a landlord from prohibiting a tenant from storing and recharging up to one personal micromobility device inside the dwelling unit for each person occupying the dwelling unit. The tenant's right to store and recharge micromobility devices is subject to compliance of the device with specified safety standards for e-bikes and e-scooters and requires that the device be powered by an electric motor and that the tenant must carry insurance for the device. The bill provides that the provision for storage and recharging within the tenant's unit "is inapplicable" if the landlord

provides "secure long-term storage on the premises reserved for tenants' personal micromobility devices with at least one electrical outlet for each personal micromobility device that is so stored." It also exempts a personal mobility device required as an accommodation for a disability from all of these standards and requirements.

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, § 34:60.*

MORTGAGE LENDING

TRANSFEROR OF SERVICING OF MORTGAGES ON PROPERTY LOCATED IN AREAS DECLARED DISASTER AREAS REQUIRED TO DELIVER RECORDS CONCERNING REPAIRS AND INSURANCE PROCEEDS TO SUCCESSOR SERVICER.

Bill Number: SB 455 (Ch. 873)

Adds Section 2968 to the Civil Code, pertaining to mortgages.

This bill requires a servicer of a mortgage on residential property consisting of one to four dwelling units to deliver any records between the servicer and the mortgagor concerning repairs and use of insurance proceeds to the successor servicer, where the property is located within an area that has been declared a disaster area due to a state of emergency.

>> *See Miller & Starr, California Real Estate 4th, Ch. 13, Deeds of Trust, §§ 13:49, 13:80; Ch. 36, Mortgage Lending, § 36:23.*

RECORDING AND PRIORITIES

AUTHORIZATION AND REQUIREMENTS FOR ONLINE NOTARIES PUBLIC OPERATING WITHIN THE STATE OF CALIFORNIA AND FOR RECOGNITION OF NOTARIAL ACTS PERFORMED IN JURISDICTIONS OTHER THAN CALIFORNIA.

Bill Number: SB 696 (Ch. 291)

Adds, amends, and repeals portions of the Civil Code, including Sections 1181.1, 1182, 1183, 8207.4, 8214.1, and adds Sections 8231 et seq. and 8232 et seq., to the Government Code, all pertaining to notaries public.

This bill provides for recognition of notarial acts performed in another state, in tribal lands, under federal law, or in a foreign state as if performed within California, subject to certain qualifications and limitations. It also authorizes the registration of online notaries public and performance and compensation for on-line notarial services, subject to utiliza-

tion of an online platform or depository, as further specified. The bill further imposes privacy and security standards for such online platforms and depositories, requires an online notary public's maintenance of an electronic journal with provision for depositing the electronic journal with the Secretary of State upon disqualification or expiration of an online notary public's registration, and provides that violation of some of these requirements is a misdemeanor.

>> *See Miller & Starr, California Real Estate 4th, Ch. 10, Recording and Priorities, §§ 10:11, 10:24, 10:26, 10:28.*

SUBDIVISION MAP ACT

EXPEDITED MINISTERIAL APPROVAL REQUIRED FOR SUBDIVISION OF 10 OR FEWER PARCELS TO BE DEVELOPED WITH 10 OR FEWER RESIDENTIAL UNITS MEETING CERTAIN MINIMUM PARCEL SIZE AND DENSITY REQUIREMENTS, INCLUDING STREAMLINED MINISTERIAL APPROVAL OF HOUSING CONSTRUCTED ON SUCH SUBDIVIDED LOTS.

Bill Number: SB 684 (Ch. 783)

Adds Sections 65852.28, 65913.4.5, and 66499.41 to the Government Code, pertaining to land use and subdivisions.

This bill creates an expedited ministerial approval requirement for a subdivision of an existing multifamily zoned parcel of five acres or less located in an urban area, as specified, into 10 or fewer parcels for the purpose of constructing permanently affordable single-family homes in the nature of fee simple lots or as part of a planned development or a housing cooperative. The bill requires expedited review and approval by the local agency of tentative or parcel maps and final maps for such projects without public hearings, and further provides for streamlined ministerial approval as of right of the housing developments to be constructed on the resulting lots and the individual homes to be built on the lots, subject only to objective zoning, subdivision, and design standards that do not render the development infeasible, provided the project satisfies certain density minimums and other criteria. For qualifying projects under these provisions, the bill also requires issuance of building permits for lots on a tentative subdivision or parcel map prior to final map, provided specified subdivision security is supplied by the subdivider. The bill includes additional detailed requirements and exceptions.

>> *See Miller & Starr, California*

Real Estate 4th, Ch. 20, Subdivision Map Act, §§ 20:8, 20:12, 20:16 Ch. 21, Land Use, §§ 21:8, 21:12, 21:14.

CASE BRIEFS:

CEQA

PROJECT OPPONENTS' PETITION WAS UNTIMELY WHERE IT WAS FILED MORE THAN 30 DAYS AFTER THE FIRST NOTICE OF DECISION WAS FILED, AND SUBSEQUENT PROJECT APPROVALS AND NOD DID NOT RE-TRIGGER THE STATUTE OF LIMITATIONS WHERE THERE WERE NO CHANGES TO THE PROJECT WARRANTING A SUBSEQUENT OR SUPPLEMENTAL MND.

Guerrero v. City of Los Angeles, 98 Cal. App. 5th 1087, 2024 WL 177163 (2d Dist. 2024)

In 2016, the City of Los Angeles approved a project to build 42 single-family homes on a 218,270 square-foot hillside parcel. The project required the removal of 68 protected black walnut trees. After conducting an initial study, the City concluded that it could prepare a mitigated negative declaration (MND) rather than an environmental impact report (EIR). The project was redesigned in 2017 to change lot sizes and rearrange the locations of homes, as well as to address tree removal and replacement. The redesign required zoning changes, and the City approved the project in three stages. The first stage was to approve the vesting tentative tract map and adopt the MND. This required "execution of a covenant and agreement binding applicants and all successors to various obligations, including restrictions on haul routes and specifics relating to tree removal and replacement," as well as confirming there were no zoning violations. The City Council filed a Notice of Determination (NOD) on March 25, 2020, stating that "the Planning Department adopted the MND and mitigation monitoring program, and approved the vesting tentative tract map."

The second stage was a public hearing in May 2020 at which the Planning Commission adopted the MND and recommended that the City Council adopt the proposed zoning changes required for the project. A letter summarizing these actions was mailed on January 14, 2021, and an NOD was filed on February 4, 2021. The third stage was the City adopting the zoning change recommended by the Planning Commission on June 8, 2021, and filing an NOD on June 18, 2021.

Delia Guerrero and others (Objectors) filed a petition for writ of mandate alleging violations of CEQA, the Planning and Zoning Law (Gov. Code, §§ 65000, et seq.), and the Subdivision Map Act (Gov. Code, §§ 66410, et seq.). The trial court sustained demurrers to the Planning

and Zoning Law and Subdivision Map Act causes of action, but overruled as to the CEQA cause of action, finding the petition to be timely because it was filed within 30 days of the June 18, 2021 NOD. The trial court also found the project might have significant environmental impacts that were not mitigated by the MND. It vacated the City's various approvals, and ordered the project to stop until additional approvals were granted "based on a legally adequate EIR." The City and Applicants appealed.

The court of appeal gave an overview of CEQA, emphasizing that it operates "not by dictating pro-environmental outcomes, but rather by mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions." *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal. 4th 439, 477, 160 Cal. Rptr. 3d 1, 304 P.3d 499 (2013). It also acknowledged that CEQA is "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, 7 Cal. 5th 1171, 1184, 250 Cal. Rptr. 3d 818, 446 P.3d 317 (2019). Next, the court examined CEQA's statutes of limitations, noting that "CEQA specifically requires that any lawsuit alleging CEQA noncompliance must be filed within 30 days after a facially valid NOD is filed." *Coalition for an Equitable Westlake/MacArthur Park v. City of Los Angeles*, 47 Cal. App. 5th 368, 378, 260 Cal. Rptr. 3d 731 (2d Dist. 2020); Pub. Resources Code, § 21167, subds. (b), (c), and (e).

Based on the fact that the City filed an NOD on March 25, 2020, and Objectors filed their petition more than a year later, on July 16, 2021, the court of appeal found that the trial court erred in finding that Objectors had filed a timely petition under § 21667. Because the NOD triggered the statute of limitations on challenges to the adequacy of the MND, any challenge filed more than 30 days later was untimely. Objectors argued that their petition was timely under the June 18, 2021 NOD because that was when the City approved the zoning changes "necessary to vest the Applicants' right under the Subdivision Map Act." The court of appeal disagreed for several reasons. First, such an interpretation conflicted with the obligation for "a public agency to conduct environmental review of a proposed project as early as feasible in the land use planning process."

Second, projects are often subject to multiple discretionary approvals, the first of which triggers the running of the statute of limitations. Third, the NOD is what triggers the running of the statute of limitations. Finally, Objectors identified "no material changes to the Project that arguably could have triggered a new statute of limitations."

Examining each of these reasons in detail, the court began by stating that "[a]lthough environmental review must take place as early as feasible, it also must be 'late enough to provide meaningful information for environmental assessment.' " CEQA Guidelines, § 15004, subd. (b). The possibility that a project may change does not negate the requirement for review at the early stages of a project. Indeed, the "California Supreme Court has rejected the argument that approval of a private project for CEQA purposes was limited to an *unconditional* agreement by the agency which *irrevocably* vested development rights." *Van de Kamps Coalition v. Board of Trustees of Los Angeles Community College Dist.*, 206 Cal. App. 4th 1036, 1046-1047, 142 Cal. Rptr. 3d 276 (2d Dist. 2012). Rather, environmental review is required when "the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116, 139, 84 Cal. Rptr. 3d 614, 194 P.3d 344 (2008). Accordingly, the court here found that the City was correct in conducting environmental review of the project before making project approvals.

Next examining such project approvals, the court found that the term " 'project' does not mean each separate governmental approval." Guidelines, § 15378, subd. (c). Rather, it refers to the underlying activity, "which may be subject to approval by one or more governmental agencies," because it is the activity, not the approval, that is being reviewed under CEQA. Moreover, "approval" is defined as "the decision by a public agency which commits the agency to a definite course of action in regard to a project in intended to be carried out by any person" (Guidelines, § 15352, subd. (a)), and relates to an agency's earliest firm commitment to a project, not the final or last discretionary approval made. *North Coast Rivers Alliance v. Westlands Water Dist.*, 227 Cal. App. 4th 832, 859, 174 Cal. Rptr. 3d 229 (5th Dist. 2014).

Here, the court found the earliest firm commitment was the City's ap-

proval of the vesting tentative tract map, despite there being conditions attached to that approval. See *Youngblood v. Board of Supervisors*, 22 Cal. 3d 644, 652, 150 Cal. Rptr. 242, 586 P.2d 556 (1978). This represented a firm commitment because if the conditions were met, the final map would be approved. Citing Miller & Starr, the court noted that although Gov. Code, § 66498.3, subd. (a) allows a city to condition approval of a vesting tentative tract map on the developer obtaining a zoning change, the delay in the tentative tract map's vesting status "only impacts the developer's protection against subsequent changes in local regulations (see 7 Miller & Starr, Cal. Real Estate (4th ed., Dec. 2023 update) § 20:13); it does not change our analysis that approval of the tentative tract map constitutes project approval under CEQA."

Third, with respect to notices of decision, the court noted that an NOD "alerts the public that any lawsuit to attack the noticed action or decision on grounds it did not comply with CEQA must be mounted immediately." *Committee for Sound Water & Land Development v. City of Seaside*, 79 Cal. App. 5th 389, 401, 294 Cal. Rptr. 3d 215 (6th Dist. 2022). This is because the Legislature intended there to be strict limits on the time for a challenge under CEQA. Accordingly, "[t]he filing of the notice of determination begins a 30-day statute of limitations on court challenges to approval of the project under CEQA." *El Dorado Union High School Dist. v. City of Placerville*, 144 Cal. App. 3d 123, 129, 192 Cal. Rptr. 480 (3d Dist. 1983). The court disagreed with Objectors that there was no project approval until the City Council approved the zoning change in June 2021, reiterating that "the City correctly conducted its environmental review as early as feasible, and the March 2020 approval of the vesting tentative tract map was a valid project approval under CEQA." Thus, the March 25, 2020 NOD triggered the 30-day statute of limitations.

Finally, the court considered whether material changes to the project triggered a new statute of limitations, noting that once the EIR, MND, or negative declaration is certified, environmental review is generally complete, with the statute of limitations beginning on the date the project is approved by the public agency. The limitations period is not re-triggered each time that agency takes another action toward implementing the project. *Citizens for a Green San Mateo v. San Mateo County Community College Dist.*, 226 Cal. App. 4th 1572, 1594-1595, 173 Cal. Rptr. 3d 47 (1st Dist. 2014). Fur-

ther, only substantial changes to the project or the project's circumstances, or new information will necessitate a subsequent or supplemental EIR. *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.*, 1 Cal. 5th 937, 945, 207 Cal. Rptr. 3d 314, 378 P.3d 687 (2016).

However, if the limitations period has expired, challenges to later approvals or changes in the project are "limited to the legality of the agency's decision about whether to require a subsequent or supplemental EIR, or subsequent negative declaration, and the underlying EIR or negative declaration may not be attacked." *Citizens for a Megaplex-Free Alameda v. City of Alameda*, 149 Cal. App. 4th 91, 110, 56 Cal. Rptr. 3d 728 (1st Dist. 2007). Because Objectors did not challenge the MND within 30 days after the March 3, 2020 NOD was filed, and because there were no changes to the project requiring a subsequent or supplemental MND, the court found that "later adoptions of the same MND cannot restart or retrigger a new limitations period." Accordingly, the judgment was reversed and the matter was remanded.

>> *See Miller & Starr, California Real Estate 4th, Ch. 26, CEQA, §§ 26:13, 26:20, 26:24.*

CONTRACTS

PROPERTY OWNER WAIVED ITS RIGHT TO THE REMEDY OF UNLAWFUL DETAINER BY ENTERING INTO CONTRACTUAL AGREEMENT THAT EXPRESSLY CREATED A REVOCABLE LICENSE GOVERNED BY CONTRACT LAW, NOT LANDLORD TENANT LAW, WHERE OWNER RETAINED LEGAL POSSESSION OF THE PROPERTY.

Castaic Studios, LLC v. Wonderland Studios LLC, 97 Cal. App. 5th 209, 315 Cal. Rptr. 3d 163 (2d Dist. 2023)

For a summary of this case see LANDLORD AND TENANT

>> *See Miller & Starr, California Real Estate 4th, Ch. 1, Contracts, §§ 1:1, 1:3, 1:62; Ch. 15, Easements, §§ 15:2, 15:4; Ch. 34, Landlord and Tenant, §§ 34:5, 34:175, 34:195, 34:199.*

WRITING CREATED BY TWO BUSINESSMEN OUTLINING A DEAL TO PURCHASE 13 GAS STATIONS WAS NOT TOO INDEFINITE TO BE A CONTRACT WHERE PRICE WAS INDICATED BY AN "X" PLACEHOLDER, AND PLAINTIFF'S DECLARATION ADEQUATELY CLARIFIED THE TERMS OF THE CONTRACT AND WAS NOT INTERNALLY INCONSISTENT.

Tiffany Builders, LLC v. Delrahim, 97

Cal. App. 5th 536, 315 Cal. Rptr. 3d 582 (2d Dist. 2023)

Edwart Der Rostamian was in negotiations through his company, Tiffany Builders LLC, to purchase 13 gas stations from Ibrihim Mekhail for $12.8 million. Nine of the 13 gas stations included the land, while the other four (the dealer sites) included only the businesses. Rostamian assembled a group of investors for this purpose, but escrow did not close for unknown reasons. A mutual acquaintance then introduced Rostamian to David Delrahim, who proposed that Rostamian "back his company out of the pending escrow so Delrahim could buy the stations from Mekhail for $12.4 million, or less if Delrahim and Rostamian could negotiate a lower price." Delrahim would pay Rostamian to do this, then Rostamian would own the dealer sites, and Delrahim would charge Rostamian a monthly fee to run the dealer sites with Rostamian retaining any remaining profit. Delrahim and Rostamian memorialized this agreement on a two-page handwritten document they put together at a coffee shop in Calabasas. The agreement stated that:

> [1] From $12,400,000, bring the value to X amount difference between $12.4 million and X amount will be allocated based on the following.
>
> [2] $500,000 to Tiffany builders to get out of the GlenOaks escrow.
>
> [3] Balance will be charged against the purchase of 4 dealer sites from 3rd party based on existing allocated price. That is provided the X amount covers the entire value.
>
> [4] 4 stations will be run 100% by David Delrahim (buyer of the 13th stations) in behalf of Edward Rostamian for 24 months or sooner with $4,000 per month cost for the 4 stations.

Rostamian explained at trial that the parties used "X amount" as a placeholder to represent a price below $12.4 million that they hoped they could negotiate, and that they planned to fill in the X with the actual contract price once it was established. He also testified that section 4 "established Delrahim would be listed on title as the owner until either Rostamian got listed as owner or they sold" the four dealer sites. As the court of appeal characterized it, "Delrahim would take the lead in the stations deal in return for guaranteeing benefits for Rostamian," including $500,000 and ownership of, and profits from, the dealer sites.

However, although Rostamian withdrew from the escrow, Delrahim decided to deal directly with Mekhail and cut Rostamian out of the deal. He purchased the 13 stations for about $11 million and Rostamian received nothing. Rostamian sued

Delrahim and his company, Blue Vista Partners, for breach of contract, specific performance, intentional and negligent interference with prospective economic advantage, and unfair business practices. Delrahim moved for summary judgment, which the trial court granted on the ground that the writing was too indefinite to be a contract, and that Rostamian's declaration "failed to clarify the terms to a legally acceptable degree." Although the trial court accepted two portions of the declaration, it elected to disregard the portion declaring that Rostamian would be the owner of any portion of the stations. Rostamian appealed.

After determining that Rostamian's declaration satisfied the parol evidence rule because it proved a meaning to which the writing was reasonably susceptible, the court of appeal considered whether the writing was too indefinite to enforce. It found that it was not, but rather that it was an exchange of promises signified by Delrahim's and Rostamian's signatures on their "joint creation." The court noted the cardinal importance of construing "instruments to make them effective rather than void." *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 81 Cal. Rptr. 3d 282, 189 P.3d 285 (2008); Civ. Code, § 3541; Civ. Code, § 1655 ("Courts will imply stipulations necessary to make a contract reasonable regarding matters to which the contract manifests no contrary intention."). The court pointed out that indefiniteness is a matter of degree and something present in all agreements. Although courts should not enforce an agreement that is too indefinite to administer because no remedy can be properly framed, or an agreement that shows a lack of contractual intent, courts should fill gaps left by the parties rather than frustrate their intention. *Rivers v. Beadle*, 183 Cal. App. 2d 691, 695-696, 7 Cal. Rptr. 170 (1st Dist. 1960); Restatement Second, Contracts § 204.

Here, the court found that Rostamian's explanation by way of his declaration showed a series of clear promises: that he would withdraw from the escrow in order to allow Delrahim to take his place, that he would cooperate with Delrahim's effort to negotiate a lower price than $12.4 million, that he would pay Delrahim $4,000 a month to operate the dealer sites, and that in return Delrahim would pay him $500,000, grant ownership of and profits from the dealer sites, and operate the dealer sites for Rostamian. The court found these promises definite enough for judicial enforcement.

The court of appeal rejected the trial court's four reasons for invalidat-

ing the contract. First, the trial court objected that Rostamian did not identify the location of the gas stations, but the court of appeal found this information to be easily discoverable. Second, the court of appeal disagreed that it was not clear who would own the non-dealer sites, finding the reasonable implication to be that it would be Delrahim. Third, the court of appeal found the trial court's determination that the writing was ambiguous as to whether it included individuals or their entities to be a hypothetical issue that did not invalidate the contract. Fourth, the court of appeal disagreed that using the term "X" to denote a price-related term destroyed the contract because the price could be objectively determined by a formula or process set forth in the writing and the writing made clear how that determination would occur. Thus, "[t]he Writing was definite enough to enforce contractually."

Finally, the court of appeal found that the trial court misapplied the doctrine against sham declarations when it disregarded part of Rostamian's declaration. The court of appeal quoted at length from Rostamian's declaration to illustrate that there was no contradiction between different portions of the declaration as to who would own the dealer stations at the conclusion of the transaction. Moreover, the court pointed out that "the sham declaration doctrine operates to attack a contradiction between an earlier deposition and a later declaration. Supposed inconsistencies within a single declaration are not within its purview." Accordingly, it reversed the summary judgment ruling on the breach of contract claim as well as the specific performance and unfair competition claims, and remanded for further proceedings. However, it affirmed the judgment as to the tortious interference with prospective economic advantage claims because there was no economic relationship between Rostamian and Mekhail.

>> *See Miller & Starr, California Real Estate 4th, Ch. 1, Contracts, §§ 1:27, 1:28, 1:62, 1:63.*

DEEDS

HISTORICAL EVIDENCE OF SAND AND GRAVEL MINING SUPPORTED ARGUMENT THAT ORIGINAL INTENT OF CONVEYANCE SEVERING SURFACE AND MINERAL ESTATES AND RESERVING A ONE-HALF INTEREST IN ALL MINERALS WAS THAT "MINERALS" INCLUDED SAND AND GRAVEL, PARTICULARLY IN LIGHT OF LACK OF EVIDENCE TO THE CONTRARY.

Vulcan Lands, Inc. v. Currie, 98 Cal. App. 5th 113, 316 Cal. Rptr. 3d 494 (4th Dist. 2023)

For a summary of this case see FIXTURES

>> *See Miller & Starr, California Real Estate 4th, Ch. 8, Deeds, § 8:58; Ch. 9, Fixtures, § 9:25.*

DISCRIMINATION

SUBSTANTIAL EVIDENCE SUPPORTED THAT GOLF AND COUNTRY CLUB THAT MODIFIED ITS GOLF CART POLICY TO ACCOMMODATE DISABLED MEMBERS, AND WHICH NOTIFIED EMPLOYEES OF PLAINTIFF'S DISABILITY AND DID NOT ENFORCE THE MODIFIED POLICY AGAINST PLAINTIFF, EFFECTIVELY MODIFIED ITS POLICY TO ACCOMMODATE PLAINTIFF'S DISABILITY.

Lurner v. American Golf Corporation, 97 Cal. App. 5th 121, 315 Cal. Rptr. 3d 148 (4th Dist. 2023)

Jefferey Lurner was a member of the Marbella Golf and Country Club since before he was diagnosed with pulmonary arterial hypertension (PAH) in 2011. Prior to 2011, he had been in good physical health, but after his diagnosis, he said he "could not exert himself or walk up inclines without experiencing shortness of breath." Because the golf course at Marbella had hills and inclines, Lurner asserted that he needed to use a golf cart to play golf and access all parts of the golf course due to his disability. Lurner claimed that Marbella did not accommodate his disability because their policy restricted the use of golf carts in certain areas of the golf course, and because Marbella did not inform other members or its employees of Lurner's disability, which he alleged resulted in taunting and humiliation by other members when he used his golf cart on all parts of the course.

Golf cart policies at Marbella were based on safety and traffic, and generally required golf carts to be driven on cart paths, and prohibited carts from being driven over sprinkler heads or in areas that were newly planted, wet, or under repair. They also restricted carts to more than 10 yards from any tee, green, bunker, or respective shoulder. In 2014, Marbella implemented a special cart access flag (SCAF) policy to provide greater access to disabled golfers. The SCAF policy allowed such golfers to access the golf course in conditions such as after light rain or during the grow-in period after planting grass, which gave disabled members access to the golf course on days that other members were not able to enter at all. However, the SCAF policy still imposed certain restrictions, such as not allowing golf carts on certain holes, "on downhill 'rough height slopes,' " and within 30 feet of the green. These restrictions were based on

safety concerns (e.g. where a cart could spin out or flip over), or where the cart path was very close to the hole and walking would be minimal.

After receiving complaints from other members that Lurner was not abiding by the SCAF policy because he was driving his golf cart in restricted areas, Marbella sent him a letter stating that all members must abide by the rules, and that he could qualify for the SCAF policy if he provided a DMV handicapped placard and a note from his doctor. Marbella asked Lurner to sign the letter, but he refused. Lurner testified that Marbella did not tell him he could not drive his golf cart to his golf ball, and that he continued to do so ever since despite the SCAF policy. He also conceded that Marbella did not discipline him for violating the SCAF policy.

Marbella testified that they met with Lurner to try to provide him with appropriate accommodations, that they changed their announcement system so that Lurner was not called out for violating the policy, and that they kept a note in the pro shop describing his disability so that staff could respond appropriately to members who expressed concerns about him violating the policy. However, Marbella refused to email the entire membership about Lurner's disability on privacy grounds. Marbella also introduced evidence that complaints by other members against Lurner were not limited to violations of the SCAF policy, but extended to his hostile behavior towards other members and that he "did not follow even some of the reasonable rules that we asked him to follow."

After Lurner filed suit against Marbella alleging violations of the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101 et seq.), the Unruh Civil Rights Act (Civ. Code, §§ 51 et seq.), and the California Disabled Persons Act (Civ. Code, §§ 54 et seq.), Marbella adopted an adaptive cart policy that utilized adaptive carts that could be driven on any portion of the golf course that was determined to be safely accessible. Lurner then began using an adaptive cart or a golf cart with a yellow flag, which gave disabled members the same adaptive cart privileges. However, in May 2019, Marbella suspended Lurner's membership for driving his adaptive cart into a bunker. The jury found for Marbella, concluding that it did not discriminate against Lurner or deny him "full and equal access to and enjoyment of accommodations or advantages or facilities or services" at Marbella. Lurner filed a JNOV motion and motion for retrial, which the trial court denied on the basis that "substantial evidence established

defendants modified the SCAF policy for plaintiff" and never told him he could not drive his golf cart to his ball after he informed Marbella about his disability. The court noted that he continued to drive his golf cart to his ball, and was never disciplined for doing so, meaning that the SCAF policy was not enforced against him.

On appeal, Lurner argued that even though Marbella did not discipline him for violating the SCAF policy, they did not provide a reasonable modification of the policy for him. The court of appeal reviewed the Unruh Act, which provides that "all persons within the jurisdiction of this state . . . no matter what their . . . disability . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Civ. Code, § 51, subd. (b). Title III of the ADA provides similar protection, adding that discrimination includes "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary" to effectively accommodate the disabled person. 42 U.S.C.A. § 12182(b)(2)(A)(ii).

The court of appeal noted that "plaintiff must show defendants discriminated against him by 'failing to make a requested reasonable modification that was . . . necessary to accommodate [his] disability.' " *Fortyune v. American Multi-Cinema, Inc.*, 364 F.3d 1075, 1082 (9th Cir. 2004). It also pointed out that while facilities must make all possible accommodations to provide full and equal access to disabled patrons, those accommodations must only be "reasonable" taking into account cost, safety, and disruption to business. *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1135 (9th Cir. 2012). Here, the court found substantial evidence that Marbella modified the SCAF policy by allowing Lurner to drive on prohibited areas of the golf course, telling management about his disability, and not disciplining him for violating the SCAF policy. Although Lurner pointed to communications from Marbella emphasizing the need to comply with the SCAF policy, the court reiterated that the policy was not enforced against Lurner. Further, the court found no support for Lurner's contention that failure to enforce the SCAF policy did not constitute a reasonable modification because the policy was not withdrawn, and the modification was not in writing. The court clarified that it was "not suggesting a modification never has to be in writing," but found in this case defendants had provided a reasonable modification by allowing Lurner to disregard the SCAF policy.

Finally, the court disagreed that Marbella imposed "de facto discipline" on Lurner by failing to tell members that he was exempt from the SCAF policy. Rather, the court found evidence that Marbella did exactly that, and it found no authority "suggesting defendants had to inform all Marbella members about plaintiff's disability." Thus, it found substantial evidence that Marbella did not discriminate against Lurner, and therefore found that the trial court did not err by denying Lurner's motion for new trial or JNOV motion. Accordingly, the judgment was affirmed.

>> *See Miller & Starr, California Real Estate 4th,, Ch. 38, Discrimination, §§ 38:7, 38:13, 38:30.*

EASEMENTS

PROPERTY OWNER WAIVED ITS RIGHT TO THE REMEDY OF UNLAWFUL DETAINER BY ENTERING INTO CONTRACTUAL AGREEMENT THAT EXPRESSLY CREATED A REVOCABLE LICENSE GOVERNED BY CONTRACT LAW, NOT LANDLORD TENANT LAW, WHERE OWNER RETAINED LEGAL POSSESSION OF THE PROPERTY.

Castaic Studios, LLC v. Wonderland Studios LLC, 97 Cal. App. 5th 209, 315 Cal. Rptr. 3d 163 (2d Dist. 2023)

For a summary of this case see LANDLORD AND TENANT

>> *See Miller & Starr, California Real Estate 4th, Ch. 1, Contracts, §§ 1:1, 1:3, 1:62; Ch. 15, Easements, §§ 15:2, 15:4; Ch. 34, Landlord and Tenant, §§ 34:5, 34:175, 34:195, 34:199.*

FIXTURES

HISTORICAL EVIDENCE OF SAND AND GRAVEL MINING SUPPORTED ARGUMENT THAT ORIGINAL INTENT OF CONVEYANCE SEVERING SURFACE AND MINERAL ESTATES AND RESERVING A ONE-HALF INTEREST IN ALL MINERALS WAS THAT "MINERALS" INCLUDED SAND AND GRAVEL, PARTICULARLY IN LIGHT OF LACK OF EVIDENCE TO THE CONTRARY.

Vulcan Lands, Inc. v. Currie, 98 Cal. App. 5th 113, 316 Cal. Rptr. 3d 494 (4th Dist. 2023)

Vulcan Lands, Inc. and two other mining companies (collectively, Vulcan) are the surface owners of 19 plots of land in San Bernardino County. The original grantors severed the surface estate from the mineral estate, reserving for themselves a one-half interest of "all oil, gas and other hydrocarbons and minerals now or at any time hereafter situated therein and thereunder or produced therefrom . . . together with the free

and unlimited right to mine, drill and bore . . . . " When Vulcan sought to extract sand and gravel from the parcels through open pit excavation, the mineral rights holders claimed a one-half interest in the mining proceeds. The mining companies filed suit to quiet title, claiming the "mineral reservations did not cover sand and gravel because those materials lacked definite chemical composition, and their removal would significantly impair the surface estate." The mineral rights holders filed a cross-complaint for declaratory relief that the mineral reservations included sand and gravel, stating that "there is no question that the property will be used for mining sand and gravel; the only question is whether the *profits* of the mining must be shared with" them.

Both sides filed motions for summary judgment, with the mining companies submitting no evidence, and the mineral rights holders submitting declarations summarizing the mineral rights reservations in each of the grant deeds as well as the mining companies' discovery responses admitting that they lacked "documentary or testimonial evidence of the original parties' intent as to sand or gravel mining rights." They also submitted evidence of historical aggregate mining on the property dating back to 1922.

Citing *Bambauer v. Menjoulet*, 214 Cal. App. 2d 871, 29 Cal. Rptr. 874 (5th Dist. 1963), the mining companies argued that in construing the language of the reservation referring to "minerals" the court must consider "(1) whether the substance had a distinct chemical composition apart from the earth; (2) whether its removal would destroy the surface estate and render the land conveyed useless; and (3) whether the substance had commercial value." They also argued that *Bambauer* ruled categorically that sand and gravel are not minerals based on the first two factors. The mineral rights owners disagreed, arguing that the chemical composition test had been "expressly rejected" in *Pariani v. State of California*, 105 Cal. App. 3d 923, 164 Cal. Rptr. 683 (1st Dist. 1980), and that the plain meaning of "mineral" included sand and gravel. They also argued that subsequent legislation requiring surface reclamation negated the mining companies' argument that mining would destroy the surface.

The trial court agreed with the mining companies as to the three factors required to determine whether sand and gravel was a mineral, but it also found that the mining rights owners' evidence adequately addressed these factors. It further found that Civ. Code, § 1069 "would com-

pel construing the mineral reservations broadly to encompass sand and gravel," and it noted that *Bambauer* did not address § 1069. Thus, the trial court denied the mining companies' motion, and granted the mining rights holders' motion. The mining companies appealed.

The court of appeal began by noting that the word "mineral" has no fixed meaning, and that "[a]bsent evidence of specific intent, mineral reservations must be construed to effectuate the most reasonable intent of the grantor in severing the mineral estate from the surface estate." It agreed with the trial court that chemical composition, commercial value, and whether extraction would harm the surface estate were all relevant factors to consider in making a determination. Looking to the original parties' mutual intent, the court of appeal found ambiguity as to whether the term "minerals" was meant to include sand and gravel. Thus, extrinsic evidence would be permissible "to prove a meaning to which contractual language is reasonably susceptible." *Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 69 Cal. 2d 33, 37, 69 Cal. Rptr. 561, 442 P.2d 641, 40 A.L.R.3d 1373 (1968). The court pointed out that extrinsic evidence could be useful to determine the parties' unstated specific intent where, as here, there was a history of aggregate extraction from the properties. Finally, the court noted that "[a]lthough grants are generally construed in favor of the grantee, in this state, '[A] *reservation* in any grant . . . is to be interpreted in favor of the grantor.' " Civ. Code, § 1069 (italics by the court). Where specific intent cannot be discerned, general intent controls. *Pariani v. State of California* (1988) 105 Cal. App. 3d at 931.

The court of appeal next examined in detail *Bambauer*, *Pariani*, and *Geothermal Kinetics, Inc. v. Union Oil Co.*, 75 Cal. App. 3d 56, 141 Cal. Rptr. 879 (1st Dist. 1977) to determine how to discern the general intent underlying the mineral reservations here. While the trial court in *Bambauer* "was swayed by the fact that excavating a 12-foot-deep hole over [a 200-acre area] 'would render the land useless for agricultural purposes,' " the court of appeal did not find that to be dispositive, instead focusing on the fact that "gravel deposits had no definite or uniform chemical composition by which they could be easily distinguished from the earth itself" and therefore could not be reserved as "minerals." *Geothermal Kinetics*, by contrast, adopted what it called a functional approach, asking whether the substance at issue had commercial value and could be

extracted without causing surface destruction. Finally, *Pariani* focused on general intent and what the parties reasonably intended to be conveyed, while taking into account that § 1069 "required construing an ambiguous reservation in favor of the grantor." Because the extraction of geothermal resources in that case would not affect the beneficial use of the surface estate, *Pariani* found those resources to constitute "mineral deposits" reserved to the state.

Applying the holdings from these cases, the court of appeal here first noted that the mineral rights owners presented evidence of historic mining operations, including sand and gravel mining, in the area as early as 1922. Because the deeds were drafted in the 1950s and 1960s, it found sand and gravel mining operations in the region to have been "long-standing and of common knowledge." The court noted the absence of any evidence of contrary intent, and an admission by the mining companies that they had no evidence of the original parties' intent regarding sand and gravel mining. However, it found that evidence of specific intent was not dispositive and therefore examined the general intent factors identified in the cases previously discussed.

First, the mineral rights owners had provided evidence that sand and gravel were distinct from topsoil, which meant that the topsoil could be restored "and used to reclaim the surface after mining operations concluded." This conclusion was bolstered by the mining companies' own evidence suggesting the variability (as opposed to uniformity) of subsurface layers. Further, the parties did not dispute the commercial value of sand and gravel. Finally, although legally mandated reclamation under the Surface Mining and Reclamation Act would occur after 30 years, the court agreed with the mining companies that this did nothing to illuminate the original intent of the parties. However, there also was no evidence of agricultural or residential purposes, which would have made it likely the parties intended sand and gravel to be included in the term "minerals."

What the court found significant was that the mineral estate retained only partial mining rights, which lessened any concern that "interpreting the mineral reservations broadly to include sand and gravel 'would destroy the value of a fee simple conveyance' or 'vitiate the surface estate,' rendering the conveyance 'a mere nullity.' " Thus, it found that "[c]onstruing the mineral reservation to include mined sand and gravel does not deprive the surface estate owners

of any economically viable use of their property."

Finally, the court found that despite the extrinsic evidence, ambiguity as to specific and general intent remained, bringing § 1069 into play, which, in turn, required interpretation in favor of the grantor. Thus, the court "construe[d] the mineral reservations broadly to encompass sand and gravel." The court rejected out-of-state cases relied upon by the mining companies as inapposite, and affirmed the judgment.

>> *See Miller & Starr, California Real Estate 4th, Ch. 8, Deeds, § 8:58; Ch. 9, Fixtures, § 9:25.*

HOMESTEADS

CALIFORNIA'S AUTOMATIC HOMESTEAD EXEMPTION DID NOT APPLY WHERE DEBTOR TESTIFIED OF HER INTENT TO RETURN TO THE HOME BUT ALL EVIDENCE CONTRADICTED THAT INTENTION, AND "IMPOSSIBILITY" OF RETURNING TO HOME IS RELEVANT ONLY WHERE EVIDENCE OF INTENT TO RETURN IS DEMONSTRATED.

In re McKee, 90 F.4th 1244 (9th Cir. 2024)

About 10 years after they began dating, Michelle McKee and Laura O'Kane, along with O'Kane's mother, purchased a lot in Palm Springs and built a house on it. However, after only about one year living there, McKee broke up with O'Kane in December 2016 based on years of alleged extreme verbal abuse. In October 2017, McKee and O'Kane entered into a settlement agreement whereby O'Kane would eventually buy out McKee's interest in the property. McKee then rented a condominium and listed that address on her driver's license and voter registration. It appeared that at some point the parties decided to sell the Palm Springs property. However, McKee's finances deteriorated and she filed for chapter 7 bankruptcy in February 2021, claiming a $488,250 homestead exemption on the Palm Springs property, which had not yet been sold. O'Kane, her mother, and the bankruptcy trustee all objected to the homestead exemption because McKee did not reside there at the time she filed the petition. The bankruptcy court sustained those objections, and the Bankruptcy Appellate Panel confirmed. McKee appealed to the Ninth Circuit.

After noting that California has opted out of the federal bankruptcy exemption scheme, the court of appeals explained California's "automatic" homestead exemption (Civ. Proc. Code, § 704.730), which protects a debtor "who resides (or is re-

lated to one who resides) in the homestead property at the time of a forced judicial sale of the dwelling." *In re Anderson*, 824 F.2d 754, 757 (9th Cir. 1987); Civ. Proc. Code, § 704.720(a). For purposes of this exemption, a bankruptcy petition constitutes a forced judicial sale. *In re Gilman*, 887 F.3d 956, 964 (9th Cir. 2018). The effect of the exemption is that "the debtor's homestead cannot be sold unless the proceeds are enough to pay out all encumbrances on the property and the debtor's homestead exemption in full." Civ. Proc. Code, § 704.800.

"Homestead" is defined as the "principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." Civ. Proc. Code, § 704.710(c). The court pointed out that McKee had the burden of proving that she resided at the property on the date of her petition. Civ. Proc. Code, § 703.580(b). To determine residency for homestead purposes, "courts consider the debtor's physical occupancy of the property and the intent to reside there." *In re Gilman*, 887 F.3d at 965. Although physical occupancy is not strictly necessary, if the debtor does not live there, they can only claim the homestead exemption if they intend to return to the property and have "a bona fide intention to make the place his residence, his home" (*Ellsworth v. Marshall*, 196 Cal. App. 2d 471, 475, 16 Cal. Rptr. 588 (1st Dist. 1961)), and the debtor's absence is only temporary. *Michelman v. Frye*, 238 Cal. App. 2d 698, 706, 48 Cal. Rptr. 142 (2d Dist. 1965).

The parties here agreed that McKee did not physically occupy the property, but disagreed as to whether she had the requisite intent to return. Although she initially moved out because it was "impractical" to remain, the bankruptcy court found by the time of her petition, McKee's primary desire was to cash out her interest and buy a new home, and the only evidence of her intent to return was her testimony. The court of appeals then considered McKee's argument that California law distinguishes between lack of intention to return and it being impossible to return. It found that the two cases cited by McKee, *Moss v. Warner*, 10 Cal. 296, 1858 WL 913 (1858), and *Michelman*, did not support her position. *Moss* involved a 19th century family that fled its home due to "the hostility of the Indians of the vicinity," while the family in *Michel-*

man actually did return to the home. The court found these cases to "merely stand for the unremarkable proposition that a debtor *may* claim California's homestead exemption even when it is impossible for her to return home," but that impossibility alone does not entitle one to the exemption unless there is evidence of intent to return. Thus, a debtor must *demonstrate*, not merely *claim*, their intent to return.

Here, McKee changed her driver's license and voter registration to her new rental address, removed all of her personal effects from the Palm Springs property, and sought to cash out her interest. Despite her post hoc testimony that she would have returned if O'Kane ever vacated, the court found this testimony to be insufficient where all of the other evidence was inconsistent with such an intention. Accordingly, it affirmed the Bankruptcy Appellate Panel's decision affirming the order sustaining objections to McKee's claimed homestead exemption.

>> *See Miller & Starr, California Real Estate 4th, Ch. 43, Homesteads, §§ 43:15, 43:16.*

LANDLORD AND TENANT

TENANTS IN FEDERALLY SUBSIDIZED HOUSING SUBJECT TO STATUTE REQUIRING TENANTS BE GIVEN 30 DAYS' NOTICE BEFORE EVICTION HAD STANDING TO CHALLENGE THREE-DAY NOTICES BECAUSE THEY SUFFERED LOSS OF PROPERTY RIGHTS DESPITE REMAINING IN POSSESSION; HOWEVER, SECTION 8 TENANTS HAD NO STANDING BECAUSE NO STATUTE REQUIRED 30 DAYS' NOTICE.

Campbell v. FPI Management, Inc., 198 Cal. App. 5th 1151, 317 Cal. Rptr. 3d 391 (2d Dist. 2024)

This case involved three sets of plaintiffs comprised of low-income housing tenants. The first two sets of tenants (Campbell and Gray) lived in federally subsidized housing that received funding from the HOME Investment Partnerships Program pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C.A. §§ 12701 et seq.). The HOME program provides money to housing owners and requires tenants to be given 30 days' notice before termination of a tenancy. The Campbell and Gray apartments were both managed by FPI Management, Inc. The third set of tenants (Handy) also lived in housing managed by FPI, but that

housing was subsidized by Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. § 1437f).

The Campbells lived in a 49-unit building called Casa De Angeles in Los Angeles, California from 2011 to 2016. The owner of Casa De Angeles received approximately $3.5 million in HOME funds in exchange for renting some units to low-income tenants and following the rules of the HOME program. The Campbells' sole source of income was government assistance that came in three separate payments per month, which necessitated paying their rent late, and which the building owners knew. In March 2015, FPI served the Campbells with a three-day notice to pay rent or quit, and shortly thereafter the sprinklers in an upstairs unit flooded their apartment causing significant damage to their personal property. Building management refused to offer alternative accommodations or replace the ruined property. Although the Campbells asserted that they attempted to make partial payments, FPI filed an unlawful detainer action against them in April 2015, which was resolved with a stipulation that required the Campbells to vacate the unit in January 2016 in exchange for a waiver of alleged back rent.

In 2016, Tenant Gray lived in the Terracina Apartments in Los Angeles, the owner of which had received approximately $5.8 million in HOME funds to finance the apartment building in 2012. FPI served Gray with a three-day notice to pay rent or quit on February 4, 2016. She paid the rent but was served with another three-day notice on March 4, 2016. She tried to negotiate with management to accept late payment, but FPI continued to serve three-day notices on April 4, May 4, and August 4, 2016. FPI filed an unlawful detainer action on August 12, 2016 and Gray moved out on September 21, 2016.

Tenant Handy moved into Casa De Angeles in 2009, and her rent was subsidized by Section 8. FPI served her with a three-day notice on March 10, 2015, but when Handy tried to pay her rent, the rent mailbox had been removed and no one was in the management office. She received another three-day notice on April 6, 2015 and alleged that FPI refused her attempt to pay the rent within three days of receiving the notice. FPI filed an unlawful detainer action on April 16, 2015, and Handy moved out in July 2015.

After several iterations of plaintiffs, the four tenants who brought this appeal remained, with three putative classes composed of former HOME tenants, Section 8 tenants, and tenants whose tenancies were

subject to federal regulatory agreements between local housing authorities and business owners. They brought claims for unfair business practices under the Unfair Competition Law (UCL) (Bus. & Prof. Code, §§ 17200 et seq.), violation of the Consumer Legal Remedies Act (CLRA) (Civ. Code, §§ 1750 et seq.), and for wrongful termination of tenancies. The trial court denied plaintiffs' motion for summary adjudication, finding that the Section 8 tenants were not legally entitled to 30 days' notice, which negated their unfair business practices claim, and that the HOME tenants lacked standing because even if 30 days' notice was required, they remained in their apartments for more than 30 days after FPI served the three-day notices. The trial court then granted FPI's motion for summary judgment on the UCL and wrongful termination of tenancy claims, and awarded FPI $42,710.42 in costs.

On plaintiffs' appeal, the court began with the UCL claim, noting that the UCL "borrows violations from other laws by making them independently actionable as unfair competitive practices." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143, 131 Cal. Rptr. 2d 29, 63 P.3d 937 (2003). Here, "[t]he predicate alleged by the HOME plaintiffs is FPI's violation of the HOME statute, Title 42 United States Code section 12755 (b)." The HOME statute clearly requires that tenants be given 30 days' notice before termination of a tenancy, absent circumstances not relevant here such as serious health or safety threats. The court of appeal observed that the 30 days' notice requirement is stated in both the statute and the HOME program regulations. See 24 C.F.R. § 92.253(c). It then related how the owners of the apartment buildings at issue received more than $9 million in federal funds under the HOME program and were therefore bound to follow the program rules, including giving 30 days' notice prior to terminating a tenancy. Yet FPI served the HOME tenants with three-day notices, meaning that their tenancies were terminated after the three-day period expired. *Downing v. Cutting Packing Co.*, 183 Cal. 91, 95-96, 190 P. 455 (1920).

FPI argued that the three-day notices did not terminate the tenancies because termination occurs only when the tenant gives up possession of the property. The court of appeals disagreed, pointing out that the notices at issue said just the opposite, warning tenants to pay or vacate within three days, and stating that failure to comply would result in forfeiture of the lease. This, the court found, "effectuated the termination

of the tenancies at the conclusion of the third day." Accordingly, it found that "[b]y providing just three days' notice instead of the legally required 30 days' notice, FPI violated the HOME statute." The court also disagreed with FPI's assertion that the 30-day requirement does not apply where a tenant has failed to pay rent, finding nothing in the statute or regulations to support that position. Rather, the 30-day requirement applies unless "the grounds for the termination . . . involve a direct threat to the safety of the tenants or employees of the housing, or an imminent and serious threat to the property." 42 U.S.C.A. § 12755(b); 24 C.F.R. § 92.253(c).

Next, the court rejected that the HOME statute's 30-day notice requirement conflicts with the three-day notice and opportunity to cure requirement in Civ. Proc. Code, § 1161, finding that § 1161 does not preclude a longer notice period, and that multiple notice requirements can exist if they do not conflict. See *Devonshire v. Langstaff*, 10 Cal. App. 2d 369, 372, 51 P.2d 902 (3d Dist. 1935). Thus, FPI could have complied with both statutes by serving a 30-day notice, and then after 27 days had elapsed, serving a three-day notice with opportunity to cure. Finally, the court disagreed that FPI could not be held liable because it was merely acting as an agent for the owners. See Civ. Code, § 2343 ("[O]ne who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency . . . ¶ . . . ¶ [w]hen his acts are wrongful in their nature.").

The court of appeals then considered whether the HOME plaintiffs had suffered injury despite remaining in possession of their apartments for more than 30 days after receiving the three-day notice. It found the trial court to have taken too narrow a view, and it distinguished between the loss of property *possession* and the loss of property *rights*. Specifically, the court found that even while remaining in possession, the tenants "no longer have the property rights of lawful tenants" because "once the tenancy is terminated . . . the tenant loses both contractual rights and property rights under state law," even if they remain in possession of the property. See *Gartlan v. C.A. Hooper & Co.*, 177 Cal. 414, 426, 170 P. 1115 (1918) (discussing "tenancy at sufferance" and "hold over tenancy"); *Multani v. Knight*, 23 Cal. App. 5th 837, 852, 233 Cal. Rptr. 3d 537 (2d Dist. 2018).

The court noted that a holdover tenant no longer enjoys the right to the covenant of quiet enjoyment and therefore "has far fewer protections if

their home or property is destroyed" and has no right to sue for nuisance, as was the case in *Multani*. Thus, "[o]nce a landlord terminates a tenancy . . . a person who remains in possession of the property as a holdover tenant loses significant property rights and is immediately subject to legal peril that did not exist under the tenancy." By contrast, the court pointed out that if the HOME plaintiffs had received the proper 30 days' notice, subsequent time in possession would have been accompanied by all the property rights associated with lawful tenancy, free from the risk of losses to property, as well as the opportunity to seek alternative housing without the threat of imminent eviction. Thus, the court found that FPI's three-day notice deprived the HOME plaintiffs of these rights.

Turning to application of the UCL to these circumstances, the court stated that standing is established by "a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., economic injury" that was "caused by" the unfair business practice. *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 322, 120 Cal. Rptr. 3d 741, 246 P.3d 877 (2011). The court clarified that "economic injury" "is not limited to out-of-pocket expenditures for which no value has been received" (*California Medical Assn. v. Aetna Health of California Inc.*, 14 Cal. 5th 1075, 1086, 310 Cal. Rptr. 3d 415, 532 P.3d 250 (2023)), but includes "a present or future property interest diminished." *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 323. The court also cautioned against conflating "the issue of standing with the issue of remedies to which a party may be entitled." See *Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758, 789, 111 Cal. Rptr. 3d 666, 233 P.3d 1066 (2010); *Sarun v. Dignity Health*, 232 Cal. App. 4th 1159, 1164, 181 Cal. Rptr. 3d 545 (2d Dist. 2014) ("bare fact that plaintiff had been overbilled constituted sufficient injury").

Here, although the tenants temporarily remained in possession, they lost property rights when they became holdover tenants facing imminent eviction; remaining in possession merely mitigated the loss of property rights, it did not erase them. The court also found that the tenants' failure to make rent payments did not prove an absence of injury, and it rejected FPI's argument that inevitable eviction for nonpayment of rent somehow negated tenants' injury. Accordingly, the court found sufficient injury to confirm standing under the UCL.

FPI next argued that the HOME plaintiffs had no viable remedy under the UCL. The court disagreed, ob-

serving that they sought restitution, which is a form of equitable relief under the UCL. It disagreed that restitution would not be appropriate because an agent of the owner could not restore plaintiffs' rent money or possession. Rather, plaintiffs could be awarded "the monetary equivalent of the loss of property rights they suffered as result of FPI's unlawful termination of their tenancies," including disgorgement of FPI's profits earned from unlawful management practices. Nevertheless, the court disagreed that the trial court erred in denying the HOME plaintiffs' motion for summary adjudication, finding that although plaintiffs had demonstrated their loss of property rights was caused by FPI's unlawful actions sufficient to give them standing under the UCL, and restitution was a potential remedy, plaintiffs "ha[d] not demonstrated specific harm suffered for which they are entitled to restitution."

Finally, the court of appeal found the trial court did not err in rejecting the Section 8 tenants' claim because they did not identify a statute that required FPI to give them 30 days' notice before terminating their tenancies. The court distinguished cases relied upon by plaintiffs, which stood for the principle that "Section 8 tenancy can only be terminated if the notice specifies good cause for termination," not that 30 days' notice was required. Accordingly, FPI's motion for summary adjudication was affirmed in part and reversed in part, the cost order was rendered moot, and the case was remanded.

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:29, 34:63, 34:181, 34:183, 34:204, 34:237, 34:268.*

PROPERTY OWNER WAIVED ITS RIGHT TO THE REMEDY OF UNLAWFUL DETAINER BY ENTERING INTO CONTRACTUAL AGREEMENT THAT EXPRESSLY CREATED A REVOCABLE LICENSE GOVERNED BY CONTRACT LAW, NOT LANDLORD TENANT LAW, WHERE OWNER RETAINED LEGAL POSSESSION OF THE PROPERTY.

Castaic Studios, LLC v. Wonderland Studios LLC, 97 Cal. App. 5th 209, 315 Cal. Rptr. 3d 163 (2d Dist. 2023)

Castaic Studios, LLC owns commercial property in Castaic, California, and in October 2021, entered into a "License Agreement" with Wonderland Studios, LLC that granted Wonderland "the exclusive," but "non-possessory" right "for the use of" a small portion of the property. The agreement characterized itself as follows:

> This agreement is not a lease or any other interest in real property. It is a contractual agreement that creates a revocable license. Licensor retains legal possession and control of the Premises and the area(s) assigned to licensee. Licensor has the right to terminate this Agreement due to Licensee's default. When this agreement is terminated . . . the license to use the Premises is revoked. Licensee agree(s) to remove Licensee's personal property and leave the areas(s) of the date of termination. Licensor is not responsible for personal property left in the area(s) after termination.

Significantly, the Agreement allowed Castaic to "cease to provide . . . access to the Licensee's area(s) on use without notice or the need to initiate legal process," and also provided that "this agreement will be governed by the contract[] laws and not by the landlord tenant laws." The Agreement gave Wonderland 35 consecutive one-month options to extend, but in order to do so, Wonderland had to timely make all payments and give Castaic written notice of intention to extend the term at least 20 days before the end of the current month.

Wonderland defaulted in July 2022, and failed to send written notice of intention to extend the term for August 2022. Therefore, Castaic considered "the agreement expired by its own terms as of July 31, 2022." After Castaic notified Wonderland that it was in default, Wonderland attempted to exercise its option, but Castaic filed an unlawful detainer complaint against Wonderland in August 2022 seeking possession of the property and unpaid "rent." Wonderland demurred on the basis that the Agreement expressly stated that it was not governed by landlord tenant laws, but also because the three-day notice Castaic served on Wonderland did not comply with Civ. Proc. Code, § 1161(2). The trial court sustained the demurrer without leave to amend, finding that the agreement constituted a revocable license, not a lease, and that therefore Castaic had "waived its right to pursue the remedy of unlawful detainer." Further, even if Castaic could pursue the unlawful detainer remedy, it failed to comply with the statutory notice requirements of § 1161(2).

On appeal, Castaic argued that the express designation of "contract[] laws" and disavowal of "landlord tenant laws" in the Agreement did not preclude it from pursuing unlawful detainer proceedings. The court of appeal first observed that "[w]hen the contract is clear and explicit, the parties' intent is determined solely by reference to the language of the agreement." *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1385, 137 Cal. Rptr. 3d 293 (2d Dist.

2012) (citing Civ. Code, §§ 1638, 1639). The court also noted that "anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." Civ. Code, § 3513; *Simmons v. Ghaderi*, 44 Cal. 4th 570, 585, 80 Cal. Rptr. 3d 83, 187 P.3d 934 (2008). The court then examined the nature of the unlawful detainer remedy, concluding that it is "intended and designed to provide an expeditious remedy for the recovery of possession of real property." *Borden v. Stiles*, 92 Cal. App. 5th 337, 344, 309 Cal. Rptr. 3d 483 (4th Dist. 2023).

Addressing whether the Agreement constituted a lease or a license, the court found that even if the Agreement contained some elements of a lease, "its express terms show the parties' intent to waive any rights afforded by the landlord-tenant laws, including a landlord's remedy of unlawful detainer." Citing the all caps and bolded font used in the Agreement, the court found it "hard to imagine contractual language clearer than that found in section 29," which stated that it was a license agreement, and not a lease or other interest in real property. The court found the parties' "intent to avoid application of landlord tenant law [to be] further evinced by Castaic retaining 'legal possession' of the premises."

The court rejected Castaic's assertion that the parties may not "elect to contract around particular statutory protections," finding no authority for that position. Castaic also argued that "the parties' express disavowal of 'landlord tenant laws' " conflicted with its justified expectations under the contract, and also conflicted with the principle that the advantage of a law established for a public reason may not be waived. Civ. Code, § 3513. The court of appeal disagreed, finding no public reason "that would prohibit a landowner from agreeing to waive the unlawful detainer remedy in any particular undertaking."

The court also rejected Castaic's argument that the unlawful detainer statute does not qualify as a landlord tenant law because by its express terms it is applicable where the person in possession is a licensee. See Civ. Proc. Code, § 1161(1). To the contrary, the court found that "the unlawful detainer statute primarily concerns landlord tenant relationships," and that "the existence of 'a conventional relationship of landlord and tenant . . . is *sine qua non* to maintenance of [an unlawful detainer action]." *Cavanaugh v. High*, 182 Cal. App. 2d 714, 716, 6 Cal. Rptr. 525 (2d Dist. 1960). The court

rejected Castaic's argument that the express language of the statute demonstrated its application was not limited solely to landlord-tenant relationships, instead finding that the "popular meaning" of "unlawful detainer" meant the statute shall be treated as a "landlord tenant law."

Thus, the court found Castaic to have waived any right to bring an unlawful detainer action against Wonderland and therefore affirmed the judgment without reaching the question of whether Castaic had complied with the unlawful detainer statute's notice requirements.

Comment: The court of appeal does not explain why the "popular meaning" of a term—"unlawful detainer"—should prevail over the actual wording of the statute, which is not limited to landlord-tenant situations, nor does it consider the alternative remedies that might be available if the summary proceeding of unlawful detainer cannot be used against a mere licensee. In doing so, it gives a licensee—who disavows any interest in the real estate—a stronger position against eviction than a tenant would have in the same circumstances, which is seemingly the opposite of what the drafter of the license agreement was attempting to accomplish.

>> *See Miller & Starr, California Real Estate 4th, Ch. 1, Contracts, §§ 1:1, 1:3, 1:62; Ch. 15, Easements, §§ 15:2, 15:4; Ch. 34, Landlord and Tenant, §§ 34:5, 34:175, 34:195, 34:199.*

LANDOWNERS' LIABILITY

LESS THAN ONE-INCH MISALIGNMENT BETWEEN UTILITY PLATE AND SIDEWALK WAS TRIVIAL AS A MATTER OF LAW WHERE LAW DID NOT REQUIRE REPAIR OF MISALIGNMENT, AND CIRCUMSTANCES DID NOT CREATE A TRIABLE ISSUE AS TO THE EXISTENCE OF A DANGEROUS CONDITION DESPITE ITS TRIVIAL NATURE AND SIZE.

Miller v. Pacific Gas and Electric Company, 97 Cal. App. 5th 1161, 316 Cal. Rptr. 3d 183 (1st Dist. 2023)

Crista Miller was walking on a "steep downhill slope" in San Francisco one evening when she tripped on "the vertical misalignment between a metal plate covering an underground utility vault owned by PG&E and the surrounding sidewalk adjacent to property" owned by Hip Sen Benevolent Association. Although the evening was dark, foggy, and misty, Miller did not recall it feeling dark because it was an urban setting illuminated by streetlight and store lights. The height differential between the plate and the pavement

was less than one inch, and Miller asserted that she did not see it because she was going downhill and looking several feet ahead. The City had no records of complaints, service requests, or incidents at that location, and Hip Sen was similarly unaware of any tripping incidents. The City's guidelines for sidewalk repair prioritized defects of vertical displacement of one-half inch or more, and after the incident the City repaired the vertical misalignment of the sidewalk and metal plate cover that Miller tripped on.

Miller sued PG&E and Hip Sen for general negligence and premises liability, alleging that the vertical misalignment was a dangerous condition that they allowed to exist. Both defendants filed motions for summary judgment asserting that there was no dangerous condition because the alignment was trivial and "no other factors raised a question of fact regarding the triviality of the defect." Miller responded that there was a triable issue of fact because the misalignment was more than one-half inch in height and therefore required repair according to the City's guidelines. She also argued that the circumstances surrounding the accident "raised a triable issue as to the existence of a dangerous condition despite its trivial nature and size." The trial court granted the defendants' motions, finding the defendants had met their burden of demonstrating that the height differential was trivial in nature and did not constitute a dangerous condition requiring repair or warning. It further found that despite it being the City's policy to issue notices of repair for sidewalk differentials exceeding one-half inch, those guidelines did not impose a legal duty to repair. Thus, the court found it unnecessary for sidewalks throughout the City to meet the half inch differential standard in order for the defendants to rely on the trivial defense doctrine.

On Miller's appeal, the court of appeal first examined the trivial defect doctrine, under which landowners are "not liable for damages caused by a minor, trivial or insignificant defect in property." *Caloroso v. Hathaway*, 122 Cal. App. 4th 922, 927, 19 Cal. Rptr. 3d 254 (2d Dist. 2004). In sidewalk defect cases, landowners are not required to protect pedestrians from every possible defect, but rather, "only those defects that create a *substantial* risk of injury to a pedestrian using reasonable care." *Nuñez v. City of Redondo Beach*, 81 Cal. App. 5th 749, 757, 297 Cal. Rptr. 3d 461 (2d Dist. 2022). "Whether a particular sidewalk defect is trivial and nonactionable may be resolved as a matter of law using a two-step analysis"

(*Huckey v. City of Temecula*, 37 Cal. App. 5th 1092, 1109-1110, 250 Cal. Rptr. 3d 336 (4th Dist. 2019)), whereby the court reviews evidence regarding the size and nature of the defect, and whether, despite being trivial, the defect was likely to pose a significant risk of injury due to surrounding conditions or circumstances. Even where courts have chosen instead a "holistic multifactor framework for assessing triviality," the size of the defect remains the most important factor in determining the dangerous condition. See *Stack v. City of Lemoore*, 91 Cal. App. 5th 102, 114, 308 Cal. Rptr. 3d 45 (5th Dist. 2023).

The court here concluded that under either approach, the misalignment in this case was trivial as a matter of law. First, the court found defendants had met their burden of demonstrating prima facia that the defect was trivial based on the size and visibility of the defect, coupled with a lack of prior incidents. The court rejected Miller's reliance on City guidelines as raising a triable issue because she presented "*no* evidence that the City's standard for repair of sidewalk defects has 'been accepted as the proper standard in California for safe sidewalks.' " See *Caloroso v. Hathaway*, 122 Cal. App. 4th at 928-929. The court found her reliance on *Laurenzi v. Vranizan*, 25 Cal. 2d 806, 155 P.2d 633 (1945), and on the City's repair orders to be misplaced, noting that this was "an unobscured vertical misalignment of less than one inch, a nighttime urban location illuminated by artificial lights from multiple sources, and no evidence that the City inspector's decision to order repairs was premised on a finding that the vertical misalignment was a hazardous condition."

Turning to whether surrounding conditions or circumstances raised a triable issue, the court considered factors such as the downward decline of the sidewalk, the weather, time of day, and crowds on the street, which Miller argued "all combined to make the height differential less obvious than it would appear in the daylight, thereby creating a dangerous condition necessitating denial of summary judgment." The court disagreed, finding no evidence the downward slope created an optical illusion, as Miller alleged, and finding instead that it was "a typical February evening" that was foggy but not rainy, with an illuminated street and no evidence of anyone other than Miller tripping at that location. The court of appeal agreed that Miller failed to produce evidence sufficient to raise a triable issue as to whether any circumstances concerning the differential rendered the condition

dangerous. See *Huckey v. City of Temecula*, 37 Cal. App. 5th at 1108. Finally, the court found Miller's argument that the defendants were liable under a theory of negligence per se to be forfeited because it was not raised in the trial court. Accordingly, the judgment was affirmed.

>> *See Miller & Starr, California Real Estate 4th, Ch. 19, Landowners' Liability, §§ 19:42, 19:45.*

RUNNING RAINWATER ON SLANTED DRIVEWAY WAS A SUFFICIENTLY OBVIOUS DANGER THAT A REASONABLY CAREFUL PERSON WOULD HAVE BEEN AWARE OF THE DANGER, AND PLAINTIFF DID NOT TRAVERSE THE DRIVEWAY, WHICH WAS ONE OF FOUR ENTRANCES, OUT OF NECESSITY SO AS TO MAKE ENCOUNTERING THE DANGER UNAVOIDABLE.

Nicoletti v. Kest, 97 Cal. App. 5th 140, 315 Cal. Rptr. 3d 110 (2d Dist. 2023)

Susan Nicoletti was injured in April 2020 as she walked her neighbor's dog around the Dolphin Marina Apartments. It was a rainy day and as Nicoletti crossed the driveway of the north side gate entrance, the rainwater current running down the driveway knocked her down and she hit the gate at the bottom of the driveway. Nicoletti testified that she had gone past the north side gate "thousands of times" without incident, and that on this occasion there was no caution tape or other warning sign posted. Nicoletti sued Dolphin for general negligence and premises liability, arguing that Dolphin had a duty to warn of the running rainwater on the driveway. Dolphin moved for summary judgment on the basis that because the running rainwater was open and obvious, it had no duty to warn. The trial court granted the motion, finding the dangerous condition to be sufficiently obvious, concluding that "[a] reasonably careful person would know that the running water on the driveway was dangerous and thus, the undisputed facts show that she was aware of an open and obvious condition for which the Defendant had no duty of care about which to warn her."

On appeal, Nicoletti argued that "the dangerous condition caused by the lateral force of rainwater was not open and obvious," and therefore "Dolphin had a duty to warn of the dangerous condition." The court of appeal acknowledged that a landowner must "maintain land in its possession and control in a reasonably safe condition" (*Alcaraz v. Vece*, 14 Cal. 4th 1149, 1156, 60 Cal. Rptr. 2d 448, 929 P.2d 1239 (1997)), but also pointed out that a plaintiff "must prove duty, breach of

duty, causation, and damages." *Jacobs v. Coldwell Banker Residential Brokerage Co.*, 14 Cal. App. 5th 438, 446, 221 Cal. Rptr. 3d 701 (2d Dist. 2017). Whether a duty should be imposed depends on considerations known as the *Rowland* factors (see *Rowland v. Christian*, 69 Cal. 2d 108, 112-113, 70 Cal. Rptr. 97, 443 P.2d 561 (1968)), the most important of which is foreseeability of injury to another.

A "task in determining duty is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party." *Ballard v. Uribe*, 41 Cal. 3d 564, 572, fn. 6, 224 Cal. Rptr. 664, 715 P.2d 624 (1986). "A harm is typically not foreseeable if the dangerous condition is open and obvious." Thus, "if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition." *Jacobs v. Coldwell Banker Residential Brokerage Co*., 14 Cal. App. 5th at 447; see *Sanchez v. Swinerton & Walberg Co.*, 47 Cal. App. 4th 1461, 1470, 55 Cal. Rptr. 2d 415 (2d Dist. 1996) ("the danger that the water might create slippery surfaces and cause one to slip and fall" was "obvious and apparent to any reasonably observant person").

Here, Nicoletti asserted that although she was aware of the rainwater, she did not know that the current of the rainwater was dangerous, and she distinguished *Sanchez* on the basis that in that case the water was standing, whereas here it was running. The court found that argument to be unpersuasive, noting that "running water on a surface is arguably a more obvious danger than standing water" because it makes the surface more slippery and could create a force that would cause someone to fall. The court also observed that wet concrete, particularly on a slanting incline such as a driveway, is slippery and does not provide safe footing. Thus, it found the dangerous condition to be open and obvious, and it found that Dolphin had no duty to warn Nicoletti.

Nicoletti next argued that necessity required her to cross the driveway. The necessity exception to the open and obvious rule recognizes that "it is foreseeable that even an obvious danger may cause injury, if the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such

that under the circumstances, a person might choose to encounter the danger." *Kinsman v. Unocal Corp.*, 37 Cal. 4th 659, 673, 36 Cal. Rptr. 3d 495, 123 P.3d 931 (2005). Noting that this argument was made for the first time on appeal, the court of appeal disagreed, finding that even if the argument was not forfeited, Nicoletti could have used a different entrance to enter the apartment complex. The court distinguished *Kaney v. Custance*, 74 Cal. App. 5th 201, 215, 289 Cal. Rptr. 3d 356 (2d Dist. 2022), because in that case a party was injured on stairs that had to be used to access the lone bathroom. By contrast, Nicoletti offered no evidence that the north side gate entrance was the only one she could use; the fact that she commonly used it rather than the other two entrances "[fell] short of establishing a 'necessity' to use that entrance when water current impeded it" because common use does not constitute necessity.

Moreover, the court found "the undisputed facts indicate that it was not foreseeable that Nicoletti would 'knowingly embrace an entirely obvious risk by choosing to cross the north side gate driveway.' " *Jacobs v. Coldwell Banker Residential Brokerage Co.*, 14 Cal. App. 5th at 448. The court found its holding to be consistent with the Supreme Court's direction that tort duties be assigned "to ensure that those best situated to prevent such injuries are incentivized to do so." *Kesner v. Superior Court*, 1 Cal. 5th 1132, 1153, 210 Cal. Rptr. 3d 283, 384 P.3d 283 (2016). Under this analysis, the court found that "[t]he burden imposed on Dolphin to constantly monitor weather conditions and immediately install warning signals [was] outweighed by Nicoletti's ability to avoid conditions she should have observed as obviously dangerous." Thus, the judgment was affirmed.

>> *See Miller & Starr, California Real Estate 4th, Ch. 19, Landowners' Liability, §§ 19:42, 19:45.*

MECHANICS LIENS

AGENCY THAT PROVIDED WORKERS TO A SUBCONTRACTOR WAS NOT A "LABORER" UNDER THE MECHANICS LIEN LAW, AND MECHANICS LIEN LAW PROVISION EXCLUDING CONTRACTS BY CERTAIN STATE ENTITIES FROM PAYMENT BOND REQUIREMENT DID NOT EXCLUDE THOSE CONTRACTS FROM ALL REQUIREMENTS OF THE MECHANICS LIEN LAW, SO AN AWARD OF ATTORNEY'S FEES UNDER THAT LAW WAS PROPER.

K & S Staffing Solutions, Inc. v. Western Surety Company, 98 Cal. App.

5th 647, 316 Cal. Rptr. 3d 834 (3d Dist. 2024)

The California Department of Transportation awarded two road maintenance contracts exceeding $25,000 each—both with a payment bond from Western Surety Company—to VSS International, Inc., which in turn hired Titan DVBE Inc. as a subcontractor. Although Titan originally employed its workers directly, after its insurance carrier stopped offering worker's compensation insurance in California, Titan used K&S Staffing Solutions, Inc. for its staffing needs. Titan continued to supervise both the existing employees and new ones hired by K&S, but K&S employed them, paying wages, payroll taxes, vacation, sick pay, and unemployment insurance. Unfortunately, K&S's fees diminished Titan's profitability, and Titan failed to pay K&S for all the amounts owed for the Caltrans projects.

K&S sued VSSI and Western, asserting that it was a "laborer" under the mechanics lien law, giving it the right to recover against the payment bonds for the amount owing by Titan. The trial court disagreed, pointing to the definition of "laborer" as "a person who, acting as an employee, performs labor upon, or bestows skill or other necessary services on, a work of improvement." Civ. Code, § 8024, subd. (a). It also found that "K&S was not a 'laborer' because it failed to show it was the employer of the laborers here, noting among other things that K&S failed to show that it hired, trained, or supervised the workers." The trial court then awarded defendants their attorney's fees under the mechanics lien law, which authorizes such an award to the prevailing party in any "action to enforce the liability on [a] [payment] bond." Civ. Code, § 9564, subd. (c). The court rejected K&S's argument that the payment bonds here were not actually "payment bonds" under the mechanics lien law. K&S appealed.

The court of appeals first assessed whether K&S was a "laborer" as contemplated by the mechanics lien law. K&S argued it was because "it took on the legal responsibilities of an employer for those who worked for Titan." Respondents argued that was not enough, and that K&S also needed to, but did not, "furnish workers for the project." The court quoted the statute, which states that " 'laborer' means a person who, acting as an employee, performs labor upon, or bestows skills or other necessary services on, a work of improvement." Civ. Code, § 8024, subd. (a). It quickly found K&S not to be a "laborer" under that definition, and it disagreed with K&S's contention that "laborer" was synon-

ymous with "employer." The court reiterated that § 8024 references an "employee," not "employer," bestowing labor on a work of improvement, and found that by this definition, "K&S is not a person who was 'acting as an employee' in any capacity, nor does it even allege as much."

The court rejected K&S's reliance on a 1917 case (*Sweet v. Fresno Hotel Co.*, 174 Cal. 789, 164 P. 788 (1917)) holding that an "employer is entitled to collect on payment bonds for labor provided to a project," noting that the relevant statute in that case was not the relevant statute here. Similarly, *Contractors Labor Pool, Inc. v. Westway Contractors, Inc.*, 53 Cal. App. 4th 152, 61 Cal. Rptr. 2d 715 (2d Dist. 1997) involved a version of the statute that changed more than a decade ago. Emphasizing that its decision was narrow, focusing only on the arguments tendered, the court held that K&S could not be characterized as a "laborer" under the current version of the mechanics lien law.

Next, the court considered K&S's challenge to the award of attorney's fees under § 9564. K&S argued that "a payment bond for a state project is not a 'payment bond' within the meaning of the mechanics lien law" because "payment bond" is defined as "a bond required by Section 9550" and that section does not require a payment bond for "state entit[y]" projects such as the one here. The court found that § 9550 is one of two provisions that require a payment bond for public works contracts, the other being Pub. Contract Code, § 7103. While § 9550 covers most public entities, the court recognized that it includes an exemption for any state entities identified in § 7103, of which Caltrans is one. Thus, the requirement for a payment bond for a Caltrans contract is imposed by § 7103, not by § 9550.

The court acknowledged the "persuasive force" "of K&S's position that therefore, the attorney's fees provision of § 9564 should not be applicable because § 9564 does not apply to § 7103." However, the court found it needed to consider "the statutory scheme as a whole, the relevant legislative history, and the absurd consequences that would follow from" K&S's reading. First, the court pointed to a 2010 revision of the mechanics lien law which "was intended to be non-substantive in effect." Stats. 2010, ch. 697, § 107, p. 3905. Second, it found that the mechanics lien law still "explicitly declares that the portion covering public works of improvement . . . applies to all work[s] of improvement contracted for by a public entity," with public entity including "the state." §§ 8036, 9000. Most

significantly, while § 9550 "exempts 'state entity' projects from its requirement for a payment bond, no similar provision explicitly exempts these projects from all the mechanics' lien law's requirements for payment bonds."

Accordingly, the court found that the Legislature did not intend to exempt state projects from all requirements covering payment bonds. In addition to being a fundamental, as opposed to a non-substantive, change, K&S's interpretation would leave contracts covered by § 7103 with no procedure for making a claim against the bond. The court found that the purpose of § 7103 "would be defeated without the provisions of the mechanics' lien law" because merely obtaining a payment bond "serves little purpose if unpaid parties have no right to assert a claim against the bond." The court also found the legislative history of § 7103 demonstrated that it was not intended to be a standalone provision on payment bonds. Rather, it was meant "to lower the expenditure amount required to trigger the bond requirement for state projects and thereby provide added protections to those working on these projects." See Assem. Consumer Protection Com., Analysis of Assem. Bill No. 2406 (1985-1986 Reg. Sess.) as introduced March 8, 1985, p. 2.

Thus, based on all of these considerations, the court found that the mechanics lien law's payment bond requirements, including the attorney's fees provision in § 9564, "applied both to state projects that require a bond under public contract code section 7103 and other 'public entity' projects that require a bond under section 9550." The court conceded that this interpretation diverged from a literal reading of § 8030's definition of "payment bond," but found it to be "one of those rare cases where it is necessary to depart from a statute's plain language." See *California School Employees Assn. v. Governing Board*, 8 Cal. 4th 333, 335-336, 346, 33 Cal. Rptr. 2d 109, 878 P.2d 1321 (1994). Accordingly, the judgment and attorney's fees award were affirmed.

>> *See Miller & Starr, California Real Estate 4th, Ch. 32, Mechanics Liens, §§ 32:9, 32:13, 32:14, 32:92, 32:120, 32:125.*

TABLE OF CASES (*NEWSALERT* VOL 34)

TABLE OF STATUTES (*NEWSALERT* VOL 34)

The Table of Statutes reflects legislative action in the 2023 Portion of the 2022–2023 Regular Sessions of the California Legislature. The full text of the statutes listed below is available in West's Annotated California Codes and West's California Legislative Service (2023). The statutes can also be accessed in the WESTLAW® databases: CA-ST-ANN and CA-LEGIS-OLD (1987-2024).

Code §		Newsalert Page
Gov. Code 65852.28	added	303, 307
Gov. Code 65860	amended	287
Gov. Code 65863.3	added	278, 291
Gov. Code 65912.114	amended	290
Gov. Code 65912.124	amended	290
Gov. Code 65913.3	amended	277, 289
Gov. Code 65913.4	amended	302
Gov. Code 65913.4.5	added	303, 307
Gov. Code 65913.12	added	292
Gov. Code 65913.16	added	301
Gov. Code 65915	amended	281, 284, 291, 296
Gov. Code 65940	amended	290
Gov. Code 65960.1	added	292
Gov. Code 66006	amended	286
Gov. Code 66008	amended	286
Gov. Code 66023	amended	286
Gov. Code 66300	amended	290
Gov. Code 66499.41	added	303, 307
Health & Saf. Code 17970.7	added	277
Prob. Code 5610	amended	283, 284
Prob. Code 5614	amended	283, 284
Prob. Code 5614.5	added	283, 284
Prob. Code 5642	amended	283, 284
Prob. Code 5652	amended	283, 284
Prob. Code 5660	amended	283, 284
Pub. Resources Code 21080.40	added, repealed	279, 292
Pub. Resources Code 21085	added	279
Pub. Resources Code 21085.2	added	279
Pub. Resources Code 210081.3	amended	278
Wat. Code 1051	amended	301

SUBJECT MATTER INDEX

Provides that local agency failure or delay in determining whether a project is exempt from CEQA review or abuse of discretion or delay in failing to certify an environmental document for certain housing development projects, is a "disapproval of a housing development project" for purposes of the Housing Accountability Act. (p. 280)

COMMON INTEREST DEVELOPMENTS

Provides for creation and separate sale and conveyance of accessory dwelling units and primary dwelling units as condominiums. (p. 280)

Amends notification, schedule, and quorum requirements for association membership meetings. (p. 281)

COVENANTS

Imposes mandatory restrictions on sale of units constructed pursuant to local inclusionary zoning ordinance except to qualified owner-occupant purchasers or qualified nonprofit housing corporations. (p. 281)

Changes procedure and notice requirements for submitting modification of existing covenants and restrictions of record to remove provisions that unlawfully restrict the number, size, or location of residences or the number of persons or families that may reside on the property. (p. 282)

DEEDS

Amends law governing Revocable Transfer on Death Deeds to apply also to certain interests in real property not customarily transferred by deeds, i.e., interests in a stock cooperative. (p. 283)

DISCRIMINATION

Authorization of local rent control jurisdictions to require landlords to accommodate certain disabled persons by permitting relocation to accessible premises in the same building without change of rent or other terms of their existing lease. (p. 283)

ESTATES

Amends law governing Revocable Transfer on Death Deeds to apply also to certain interests in real property not customarily transferred by deeds, i.e., interests in a stock cooperative. (p. 284)

HOLDING TITLE

Amends law governing Revocable Transfer on Death Deeds to apply also to certain interests in real property not customarily transferred by deeds, i.e., interests in a stock cooperative. (p. 284)

LAND USE

Imposes mandatory restrictions on sale of units constructed pursuant to local inclusionary zoning ordinance except to qualified owner-occupant purchasers or qualified nonprofit housing corporations. (p. 284)

Amends Housing Element Law to require review by the Department of Housing and Community Development of local housing elements or amendments within 60 days of submission and to further require the Department to determine and report local agency compliance with state laws mandating expedited review and approval of specified housing development projects and small subdivisions to the local agency as well as the state attorney general. (p. 285)

Amends Mitigation Fee Act provisions regarding reporting, accounting for, and auditing of public improvement funds, project status, and refunds to persons entitled. (p. 286)

Mandates amendment of zoning ordinance to conform with general plan or else requires processing of development application in accordance with general plan and without amendment of zoning ordinance where general plan and existing zoning are in conflict. (p. 287)

Changes procedure and notice requirements for submitting modification of existing covenants and restrictions of record to remove provisions that unlawfully restrict the number, size, or location of residences or the number of persons or families that may reside on the property. (p. 287)

Provides that a local agency may condition approval of accessory dwelling units to prohibit short-term occupancy of 30 days or less, but may not require owner occupancy of any accessory dwelling unit. (p. 288)

Provides for creation and separate sale and conveyance of accessory dwelling units and primary dwelling units as condominiums. (p. 288)

Provides that building permits, demolition permits, and onsite and offsite grading and improvement permits and approvals as well as "interdepartmental review" all now constitute "post-entitlement phase permits" for purposes of the Housing Accountability Act, further constraining local agency processing of applications for and issuance of such post-entitlement phase permits. (p. 289)

Expands Housing Crisis Act's limitations on approval of developments requiring demolition of existing occupied or vacant housing units to apply to all projects, whether or not for construction of housing, and to now require concurrent replacement not only of all protected units but also any units previously demolished on or after January 1, 2020. (p. 290)

Amends statutory definition of "maximum allowable residential density" and the statutory formula for determining density bonus and number of concessions or incentives required under related provisions of the Density Bonus Law. (p. 291)

Prohibits local agency from increasing parking requirements for a single-family residence as a condition of approval to remodel, renovate, or add to a single-family residence. (p. 291)

Creates exemption from environmental review for certain multifamily affordable housing projects and mixed use projects in existing urbanized areas that are designated for occupancy by lower income households and meet additional criteria as specified. (p. 292)

Authorization for extremely affordable multifamily housing projects as an "adaptive reuse" of existing residential or commercial buildings on infill parcels and not in or adjoining industrial uses, as defined. (p. 292)

Provides that local agency failure or delay in determining whether a project is exempt from CEQA review or abuse of discretion or delay in failing to certify an environmental document for certain housing development projects, is a "disapproval of a housing development project" for purposes of the Housing Accountability Act. (p. 293)

LANDLORD AND TENANT

Residential security deposits limited to one month's rent, whether for furnished or unfurnished premises, except for certain small residential landlords who are natural persons, or their limited liability companies, and who own no more than two residential properties comprising no more than four dwelling units. (p. 294)

Prohibits owner of qualified residential property who provides parking from "bundling" parking charges with the price of rent, requires parking to be covered by a separate agreement or addendum to the lease, and grants existing tenants without parking a right of first refusal for parking that becomes available during their tenancy. (p. 294)

Authorization of local rent control jurisdictions to require landlords to accommodate certain disabled persons by permitting relocation to accessible premises in the same building without change of rent or other terms of their existing lease. (p. 295)

RECORDING AND PRIORITIES

Imposes mandatory restrictions on sale of units constructed pursuant to local inclusionary zoning ordinance except to qualified owner-occupant purchasers or qualified nonprofit housing corporations. (p. 296)

Changes procedure and notice requirements for submitting modification of existing covenants and restrictions of record to remove provisions that unlawfully restrict the number, size, or location of residences or the number of persons or families that may reside on the property. (p. 296)

Limits terms and allowable duration of exclusive listing agreements affecting residential real property. (p. 296)

SPECIFIC CONTRACTS

Requires seller of single-family property who acquired title within previous 18 months to disclose whether it has been modified, altered, or repaired after seller acquired title and whether a licensed contractor and building permit were used and obtained in connection with such modification, alteration, or repair. (p. 297)

Information that single-family property is located in a fire hazard severity zone, with additional detail as specified, is required to be included in the Natural Hazard Disclosure Statement on sale. (p. 297)

SUBDIVISION MAP ACT

Amends Housing Element Law to require review by the Department of Housing and Community Development of local housing elements or amendments within 60 days of submission and to further require the Department to determine and report local agency compliance with state laws mandating expedited review and approval of specified housing development projects and small subdivisions to the local agency as well as the state attorney general. (p. 298)

Provides for creation and separate sale and conveyance of accessory dwelling units and primary dwelling units as condominiums. (p. 299)

SUBDIVISION SALES

Provides for creation and separate sale and conveyance of accessory dwelling units and primary dwelling units as condominiums. (p. 299)

SENATE BILLS:

BUILDING CODES

Imposes obligation of local agency to warn permit applicant of potential liability for failure to meet accessibility requirements in addition to providing information on how to obtain a CASp inspection. (p. 300)

DEEDS OF TRUST

Transferor of servicing of mortgages on property located in areas declared disaster areas required to deliver records concerning repairs and insurance proceeds to successor servicer. (p. 300)

DISCRIMINATION

Limitation on landlord requiring credit history of prospective tenant, in instances involving a government rent subsidy, where applicant provides lawful, verifiable alternative evidence of ability to pay rent, including government benefit payments, pay records, and bank statements. (p. 300)

Imposes obligation of local agency to warn permit applicant of potential liability for failure to meet accessibility requirements in addition to providing information on how to obtain a CASp inspection. (p. 301)

FIXTURES

State Water Resources Control Board now expressly authorized to investigate and determine whether or not a water right is valid. (p. 301)

LAND USE

Housing developments on land owned by religious institutions or higher education institutions (colleges and universities) meeting certain criteria are a use as of right irrespective of current zoning and planning designations, and are subject to a streamlined ministerial approval process. (p. 301)

Changes provisions of Planning and Zoning Law for projects subject to a streamlined ministerial approval process to reduce scope of review by local planning authorities and limit existing exceptions from the process, including extension of sunset date to January 1, 2036. (p. 302)

LANDLORD AND TENANT

MORTGAGE LENDING

RECORDING AND PRIORITIES

SUBDIVISION MAP ACT

CASE BRIEFS:

CEQA

Project opponents' petition was untimely where it was filed more than 30 days after the first Notice of Decision was filed, and subsequent project approvals and NOD did not re-trigger the statute of limitations where there were no changes to the project warranting a subsequent or supplemental MND. (p. 309)

CONTRACTS

Property owner waived its right to the remedy of unlawful detainer by entering into contractual agreement that expressly created a revocable license governed by contract law, not landlord tenant law, where owner retained legal possession of the property. (p. 313)

Writing created by two businessmen outlining a deal to purchase 13 gas stations was not too indefinite to be a contract where price was indicated by an "X" placeholder, and plaintiff's declaration adequately clarified the terms of the contract and was not internally inconsistent. (p. 313)

DEEDS

Historical evidence of sand and gravel mining supported argument that original intent of conveyance severing surface and mineral estates and reserving a one-half interest in all minerals was that "minerals" included sand and gravel, particularly in light of lack of evidence to the contrary. (p. 316)

DISCRIMINATION

Substantial evidence supported that golf and country club that modified its golf cart policy to accommodate disabled members, and which notified employees of plaintiff's disability and did not enforce the modified policy against plaintiff, effectively modified its policy to accommodate plaintiff's disability. (p. 317)

EASEMENTS

Property owner waived its right to the remedy of unlawful detainer by entering into contractual agreement that expressly created a revocable license governed by contract law, not landlord tenant law, where owner retained legal possession of the property. (p. 320)

FIXTURES

Historical evidence of sand and gravel mining supported argument that original intent of conveyance severing surface and mineral estates and reserving a one-half interest in all minerals was that "minerals" included sand and gravel, particularly in light of lack of evidence to the contrary. (p. 320)

HOMESTEADS

California's automatic homestead exemption did not apply where debtor testified of her intent to return to the home but all evidence contradicted that intention, and "impossibility" of returning to home is relevant only where evidence of intent to return is demonstrated. (p. 324)

LANDLORD AND TENANT

Tenants in federally subsidized housing subject to statute requiring tenants be given 30 days' notice before eviction had standing to challenge three-day notices because they suffered loss of property rights despite remaining in possession; however, Section 8 tenants had no standing because no statute required 30 days' notice. (p. 326)

Property owner waived its right to the remedy of unlawful detainer by entering into contractual agreement that expressly created a revocable license governed by contract law, not landlord tenant law, where owner retained legal possession of the property. (p. 331)

LANDOWNERS' LIABILITY

Less than one-inch misalignment between utility plate and sidewalk was trivial as a matter of law where law did not require repair of misalignment, and circumstances did not create a triable issue as to the existence of a dangerous condition despite its trivial nature and size. (p. 334)

Running rainwater on slanted driveway was a sufficiently obvious danger that a reasonably careful person would have been aware of the danger, and plaintiff did not traverse the driveway, which was one of four entrances, out of necessity so as to make encountering the danger unavoidable. (p. 337)

MECHANICS LIENS

Agency that provided workers to a subcontractor was not a "laborer" under the mechanics lien law, and mechanics lien law provision excluding contracts by certain state entities from payment bond requirement did not exclude those contracts from all requirements of the mechanics lien law, so an award of attorney's fees under that law was proper. (p. 339)

CROSS-REFERENCES TO
Miller & Starr California Real Estate 4th

