CLTA California Land Title Association
SINCE 1907

2021 Summary of Legislation

Contents

Editor's Note

Of the 770 bills signed into law in 2021, 30 have been summarized as significant for the title industry.

The CLTA wishes to express its appreciation to the Legislative Committee for reviewing the legislation and summaries, and Anthony Helton, CLTA Legislative Coordinator, for producing this publication.

The Summary is intended merely to provide shorthand references to selected bills of interest to the title industry. The actual chaptered versions should always be reviewed for specific details.

Copies of bill text, histories, committee analyses, voting records and veto messages are available from the California Legislature's official website at leginfo.legislature.ca.gov under the "Bill Information, 2021-22 Session" link. All bills summarized in this publication become effective January 1, 2022, unless otherwise noted.

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

Accessory Dwelling Units

- **Separate Conveyance**

The Planning and Zoning Law authorizes a local agency to provide, by ordinance, for the creation of accessory dwelling units in single-family and multifamily residential zones and requires a local agency that has not adopted an ordinance to ministerially approve an application for an accessory dwelling unit, and sets forth required ordinance standards, including that the ordinance prohibit the sale or conveyance of the accessory dwelling unit separately from the primary residence.

Existing law, notwithstanding the prohibition described above, authorizes a local agency to, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if certain conditions are met, including that the property was built or developed by a qualified nonprofit corporation and that the property is held pursuant to a recorded tenancy in common agreement. Existing law requires that tenancy in common agreement to, among other things, allocate to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

This act requires each local agency to allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if the above-described conditions are met.

The act imposes an additional condition on a tenancy in common agreement subject to these provisions and recorded on or after December 31, 2021, to include specified information, including a delineation of all areas of the property that are for the exclusive use of a cotenant, delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property, and procedures for dispute resolution among cotenants before resorting to legal action.

Chapter 343 (AB 345 - Quirk-Silva); amending Sections 65852.2 and 65852.26 of the Government Code.

Assessments

- **Consumer Legal Remedies Act**
- **Property Assessed Clean Energy (PACE)**

Existing law, the Consumer Legal Remedies Act, provides that specified unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that result in the sale or lease of goods or services to any consumer are unlawful. Existing law includes the home solicitation of a consumer who is a senior citizen as an unfair method of competition and unfair or deceptive act or practices if a loan is made encumbering the primary residence of the consumer for purposes of paying for home improvements and the transaction is part of a pattern or practice in violation of specified provisions of federal law.

Existing law, known commonly as the Property Assessed Clean Energy (PACE) program, authorizes a public agency, by making specified findings, to authorize public agency officials and property owners to enter into voluntary contractual assessments and voluntary special taxes to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property. Existing law defines a "program administrator" as an entity administering a PACE program on behalf of, and with the written consent of, a public agency, and prescribes a variety of requirements, authorizations, and prohibitions in connection with PACE program contract assessments and the actions of program administrators.

Existing law, the California Financing Law (CFL), provides for the licensing and regulation of PACE program administrators by the Commissioner of Financial Protection and Innovation and prohibits a person from engaging in the business of a PACE solicitor unless that person is enrolled with a program administrator, as specified. Existing law prohibits a program administrator from executing an assessment contract, and generally prohibits work under a home improvement contract that is financed by a PACE assessment contract, unless specified criteria are satisfied and the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment.

This act extends the above-described provisions of the Consumer Legal Remedies Act relating to home solicitations of a senior citizen where a loan encumbers the primary residence of the consumer for purposes of paying for home improvement to also apply to assessments. Under the act, if transactions are part of a pattern or practice in violation of specified provisions relating to the PACE program, or specified provisions regulating PACE program administrators under the California Financing Law, they would be unfair methods of competition and unfair or deceptive acts or practices.

Chapter 589 (AB 790 - Quirk-Silva); amending Section 1770 of the Civil Code.

CC&Rs

- **Enforceability of CC&Rs Against Owners of Affordable Housing Development**
- **Restrictive Covenant Modification Forms**

Existing law permits a person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant based on, among other things, source of income, to record a Restrictive Covenant Modification, which is to include a copy of the original document with the illegal language stricken. Before recording the modification document, existing law requires the county recorder to submit the modification document and the original document to the county counsel who is required to determine whether the original document contains an unlawful restriction.

This act makes any recorded covenants, conditions, restrictions, or limits on the use of private or publicly owned land contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale that restricts the number, size, or location of the residences that may be built on the property, or that restricts the number of persons or families who may reside on the property, unenforceable against the owner of an affordable housing development if an approved restrictive covenant affordable housing modification document has been recorded in the public record, unless a specified exception applies.

The act authorizes the owner of an affordable housing development to submit, among other things, a copy of the original restrictive covenant and a restrictive covenant modification document, pursuant to the above-described provisions of existing law, that modifies or removes any existing restrictive covenant language to the extent necessary to allow an affordable housing development to proceed. Before recording the restrictive covenant modification document, the act requires the county recorder to submit documentation received from the owner and the modification document to the county counsel, and requires the county counsel to make specified determinations, including whether the original restrictive covenant document contains an unlawful restriction in violation of these provisions and whether the property qualifies as an affordable housing development.

The act specifies that its provisions do not apply to restrictive covenants that relate to purely aesthetic objective design standards, provide for fees or assessments for the maintenance of common areas, or provide for limits on the amount of rent that may be charged to tenants. The act also specifies that its provisions do not apply to conservation easements that meet certain conditions, a recorded interest in land comparable to a conservation easement held by a political subdivision, or any settlement, conservation agreement, or conservation easement for which certain conditions apply. The act also specifies that its provisions do not apply to any recorded deed restriction, public access easement, or other similar covenant that was required by a state agency for the purpose of compliance with a state or federal law under certain circumstances.

This act declares that ensuring access to affordable and supportive housing and the production of additional affordable and supportive housing is a matter of statewide concern, not a municipal affair, and that this act therefore applies statewide to all cities and counties, including charter cities, and to all conditions, covenants, restrictions, or limits on the use of land, whether recorded previous to the effective date of this act or recorded at any time thereafter.

Chapter 349 (AB 721 - Bloom); adding Section 714.6 to the Civil Code.

- **Discriminatory Restrictions**
- **Duties of Title Companies**
- **Restrictive Covenant Modification Forms**

Existing law, the California Fair Employment and Housing Act, prohibits discrimination in housing based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information, and provides that discrimination in housing through a restrictive covenant includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the covenant is repealed or void. Existing law also provides that a provision in any deed of real property in California that purports to restrict the right of any person to sell, lease, rent, use, or occupy the property to persons having the characteristics specified above by providing for payment of a penalty, forfeiture, reverter, or otherwise, is void, except as specified. Additionally, existing law provides that any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, any deed or instrument, that contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use, or occupy the property on account of any of characteristics specified above, is deemed to be revised to omit that provision.

Existing law requires a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that delivers a copy of a declaration, governing document, or deed, to place a cover page or stamp on the first page of the previously recorded document stating that if the document contains any restriction that unlawfully discriminates based on any of the characteristics specified above, that restriction is void.

This act revises the language of the cover page or stamp that must accompany a copy of a declaration, governing document or deed. This act further requires a title company, escrow company, real estate broker, real estate agent, or association...

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...that delivers a copy of a declaration, governing document, or deed to a person who holds an ownership interest of record in property to also provide a Restrictive Covenant Modification form with specified procedural information.

Existing law authorizes a person who holds an ownership interest of record in property that they believe is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification, which is required to include a copy of the original document with the illegal language stricken. Existing law requires the county recorder, before recording the modification document, to submit the modification document and the original document to the county counsel who is required to determine whether the original document contains an unlawful restriction based on any of the characteristics specified above. Existing law requires the county counsel to return these documents and inform the county recorder of their determination and requires the county recorder to refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction. Existing law requires the county recorder to make Restrictive Covenant Modification forms available to the public.

This act additionally authorizes a title company, escrow company, county recorder, real estate broker, real estate agent, or other person to record a Restrictive Covenant Modification. This act now prescribes a statutory form for the Restrictive Covenant Modification form.

The act, beginning July 1, 2022, requires a title company, escrow company, real estate broker, or real estate agent that has actual knowledge of a declaration, governing document, or deed that is being directly delivered to a person who holds or is acquiring an ownership interest in property and includes a possible unlawfully restrictive covenant to notify the person of the existence of that covenant and their ability to have it removed through the restrictive covenant modification process.

The act, beginning July 1, 2022, and only upon request before the close of escrow, requires the title company or escrow company that is directly involved in the pending transaction to assist in the preparation of a Restrictive Covenant Modification.

The act requires the county counsel, after their review, to return the documents to the county recorder and inform the county recorder of their determination within a reasonable period of time, not to exceed three months. The act requires a person who requests to record a modification document to provide a return address in order for the county recorder to notify this person of the action taken by the county counsel. The act requires the county recorder to make Restrictive Covenant Modification forms available to the public onsite or online and requires the forms to permit the submission of a form that will correct unlawfully restrictive covenants for multiple dwellings within a subdivision.

This act requires the county recorder of each county to establish a restrictive covenant program to assist in the redaction of unlawfully restrictive covenants. In this regard, the act requires each county recorder to prepare an implementation plan by July 1, 2022 to identify and redact unlawfully restrictive covenants found within county records. The act requires the County Recorders Association of California to submit reports to the Legislature by January 1, 2023, and January 1, 2025, of the progress of each county's restrictive covenant program and to annually convene a best practices meeting to share concepts on the implementation of restrictive covenant programs.

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

This act additionally exempts from this $75 fee any real estate instrument, paper, or notice executed or recorded to remove a restrictive covenant that is in violation of specified provisions of the California Fair Employment and Housing Act.

This act, subject to authorization from the county's board of supervisors and in accordance with applicable constitutional requirements, authorizes a county recorder to impose a fee of $2 to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded for the purpose of funding the restrictive covenant programs established under these provisions. The act exempts the following documents from a $2 fee established pursuant to these provisions:

- Any real estate instrument, paper, or notice recorded in connection with a transfer subject to the imposition of a documentary transfer tax, as defined in Section 11911 of the Revenue and Taxation Code.
- Any real estate instrument, paper, or notice recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier.
- Any real estate instrument, paper, or notice executed or recorded by the federal government in accordance with the Uniform Federal Lien Registration Act (Title 7 (commencing with Section 2100) of Part 4 of the Code of Civil Procedure).
- Any real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state.

The act prohibits a county recorder to charge the $2 fee...

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...after December 31, 2027, unless the county recorder has received reauthorization by the county's Board of Supervisors. The act provides that a county recorder shall not seek reauthorization of the fee by the board before June 1, 2027, or after December 31, 2027, and that any reauthorization period shall not exceed five years.

Existing law authorizes recordation of certain documents, including a release, discharge, or subordination of a lien for postponed property taxes, without acknowledgment, certificate of acknowledgment, or further proof.

This act authorizes the recordation of any modification document, instrument, paper, or notice to remove a restrictive covenant that is in violation of specified provisions of the California Fair Employment and Housing Act without acknowledgment, certificate of acknowledgment, or further proof.

Chapter 359 (AB 1466 - McCarty); amending Sections 12956.1, 12956.2, 27282, and 27388.1 of, and adding Sections 12956.3 and 27388.2 to, the Government Code.

Foreclosures

- **Post-Auction Bid Processes**

This act makes several changes to the post-auction bid process for trustee's sales established by Senate Bill 1079 (Chapter 202, Statutes of 2020). Specifically, changes to the process include:

- Extending the deadline to record the Trustee's Deed Upon Sale to retain the relation-back from 18 to 21 days (and from 45 to 60 days in the case of a Notice of Intent).
- Clarifying the definition of a Prospective Owner Occupant to exclude borrower-related trust, and related actors on behalf of an entity borrower.
- Clarifying that the Prospective Owner Occupant Affidavit must be delivered to the trustee at the auction or by 5:00 pm the business day after the sale.
- Requiring a Notice of Intent or bid received inside the 15-day period to include the statutory affidavit regarding category of authorized bidder. Also, the act requires that a Notice of Intent must contain a phone number and mailing address for the submitting party and be received by 5:00 p.m. on the 15th day after the sale.
- Requiring the Representative of All Tenant Bidders to state the representative capacity in the statutory affidavit and include a phone number and mailing address for the submitting party.
- Confirming the Representative of All Tenant Bidders can submit a bid by the 45th day if at least one tenant buyer submitted a Notice of Intent.
- Requiring bids received within a 45-day period must contain a phone number and mailing address for the submitting party
- Limiting the information required to be provided by the trustee about the post-sale auction process to the sale date, sale result, and trustee contact information.

NOTE: This act took effect immediately as an urgency measure on September 23, 2021.

Chapter 255 (AB 175 - Committee on Budget); amending Sections 2924h and 2924m of the Civil Code, adding Section 3332.2 to the Food and Agricultural Code, amending Section 54234 of the Government Code, and amending Sections 50218.6, 50220.7, 50220.8, 50515.08, 50515.09, and 50515.10 of the Health and Safety Code.

Housing

- **Ministerial Development Approvals**
- **Urban Lot Splits**

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This act, among other things, requires a proposed housing development containing no more than two residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The act also sets forth what a local agency can and cannot require in approving the construction of two residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, unless those standards would have the effect of physically precluding the construction of up to two units or physically precluding either of the two units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain...

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...circumstances, and setting maximum setback requirements under all other circumstances.

This act, among other things, requires a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The act sets forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of two units, as defined, on either of the resulting parcels or physically precluding either of the two units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The act requires an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation. The act prohibits a local agency from imposing any additional owner occupancy standards on applicants.

The act also extends the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and makes other conforming changes.

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This act, by establishing the ministerial review processes described above, thereby exempts the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone that shall be based on various coastal resources planning and management policies set forth in the act.

This act exempts a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

Chapter 162 (SB 9 - Atkins); amending Section 66452.6 of, and adding Sections 65852.21 and 66411.7 to, the Government Code.

- **Planning and Zoning in Transit-Rich or Urban Infill Sites**
- **Density Zoning Exempt from CEQA**

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This act, notwithstanding any local restrictions on adopting zoning ordinances, authorizes a local government to adopt an ordinance to zone any parcel for up to 10 units of residential density per parcel, at a height specified in the ordinance, if the parcel is located in a transit-rich area or an urban infill site. The act prohibits a local government from adopting an ordinance pursuant to these provisions on or after January 1, 2029. The act specifies that an ordinance adopted under these provisions, and any resolution to amend the jurisdiction's General Plan, ordinance, or other local regulation adopted to be consistent with that ordinance, is not a project for purposes of the California Environmental Quality Act. The act prohibits an ordinance adopted under these provisions from superseding a local restriction enacted or approved by a local initiative that designates publicly owned land as open-space land or for park or recreational purposes.

The act imposes specified requirements on a zoning ordinance adopted under these provisions, including a requirement that the zoning ordinance clearly demarcate the areas that are subject to the ordinance and that the legislative body make a finding that the ordinance is consistent with the city or county's obligation to affirmatively further fair housing. The act requires an ordinance to be adopted by a two-thirds vote of the members of the legislative body if the ordinance supersedes any zoning restriction established by local initiative.

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The act prohibits an ordinance adopted under these provisions from reducing the density of any parcel subject to the ordinance and would prohibit a legislative body from subsequently reducing the density of any parcel subject to the ordinance. The act prohibits a residential or mixed-use residential project consisting of ten or more units that is located on a parcel zoned pursuant to these provisions from being approved ministerially or by right or from being exempt from the California Environmental Quality Act, except as specified.

Chapter 163 (SB 10 – Wiener); adding Section 65913.5 to the Government Code.

- **Recorded Affordability Restrictions Exceeding 55 Years**

Existing law, referred to as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the city or county with a density bonus and other incentives or concessions, as specified, if the developer agrees to construct specified percentages of units for lower income, very low income, or senior citizen housing, among other things, and meets other requirements. Existing law prescribes an application process for a city or county to follow in this regard. Existing law specifies that, if permitted by local ordinance, that law is not to be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in these provisions for a development that meets specified requirements or from granting a proportionately lower density bonus than what is required for developments that do not meet these requirements.

This act also provides that, if permitted by local ordinance, the Density Bonus Law is not to be construed to prohibit a city, county, or city and county from requiring an affordability period that is longer than 55 years for any units that qualified the applicant for the award for the density bonus developed in compliance with a local ordinance that requires, as a condition of development of residential units, that a development include a certain percentage of units that are affordable to, and occupied by low-income, lower income, very low income, or extremely low income households and that will be financed without low-income housing tax credits.

Chapter 348 (AB 634 – Carrillo); adding Section 65915.2 to the Government Code.

- **Accessory Dwelling Units**
- **Homeowner Bill of Rights**
- **Mobilehome Park Definition**
- **Preservation Notice Law**

This act makes a series of technical, clarifying, and non-substantive changes to California law related to housing.

Of particular interest to title companies, this act makes the following technical changes to existing law:

1. Technical Clean-up to Accessory Dwelling Unit Laws

   AB 670 (Friedman, Ch. 178, Stats. 2019) voided conditions, covenants, and restrictions (CC&Rs) that unreasonably restrict or prohibit ADU construction, but did not expressly specify whether the rule applies to common interest developments that do not have an undivided interest in a common area. This act clarifies that it does.

2. Technical Fix to the Homeowner Bill of Rights (HBOR)

   AB 3088 (Chiu, Ch. 37, Stats. 2020) borrowed a provision from the July 27, 2020, version of Senate Bill 1447 (Bradford, 2020). That borrowed provision extended HBOR protections to small landlords. However, SB 1447 was amended later to include a technical "saving clause" fix to ensure HBOR protections can be accessed if an application is pending prior to the sunset date. SB 1447 was later amended to address taxation and not the HBOR. However, the borrowed provision from SB 1447 contained in AB 3088 was never updated to reflect the technical fix. As a result, the outdated language remained. This act corrected that oversight.

3. Technical Corrections to Preservation Notice Law

   AB 1521 (Bloom, Ch. 377, Stats. 2017) revised the Preservation Notice Law which requires affordable housing owners to give notice and an opportunity to affordable housing providers to purchase the property before it converts to market rate. This act includes clean-up and clarification of various provisions, including delaying when the five-year sale prohibition on sale can be recorded in the event an owner rejects a purchase offer until the end of the notice period. The delay period accounts for the right of first refusal available in the last six months of the notice period.

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4. Clarification Relating to Manufactured Home ADUs and Mobilehome Park Definition

   A manufactured home built consistent with Health and Safety Code § 18007 can be considered an ADU if it meets specified requirements. However, if two or more manufactured homes are installed as ADUs on "any area or tract of land" then, by definition, that land becomes a mobilehome park pursuant to Health and Safety Code § 18214. This act clarifies that two or more manufactured homes installed as ADUs do not constitute a mobilehome park.

Chapter 360 (AB 1584 – Committee on Housing and Community Development); amending Sections 798.56, 2924.15, and 4741 of, and add Section 714.3 to, the Civil Code, amending Section 1161.2 of the Code of Civil Procedure, amending Sections 65589.5, 65651, 65863.10, and 65863.11 of the Government Code, and amending Section 18214 of, and adding Section 34178.8 to, the Health and Safety Code.

- **Covenants, Conditions, and Restrictions**
- **Intergenerational Housing Developments**

Existing law requires the covenants, conditions, and restrictions or other documents or written policy of a senior citizen housing development to set forth the limitations on occupancy, residency, or use on the basis of age. Existing law requires that the limitations on age require, at a minimum, that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as their primary residence on a permanent basis. Existing law defines "senior citizen housing development" for these purposes as a residential development for senior citizens that has at least 35 dwelling units. Existing law defines "qualifying resident" or "senior citizen" to mean a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

This act authorizes the establishment of an intergenerational housing development that includes senior citizens along with caregivers and transition age youth, if specified conditions are satisfied. The act requires that the covenants, conditions, and restrictions and other documents or written policy for the development set forth the limitations on occupancy, residency, or use. The act prescribes definitions for "senior citizen" and "transition age youth" for these purposes. The act requires at least 80% of the occupied dwelling units in an intergenerational housing development to be occupied by at least one senior citizen, and up to 20% of the occupied dwelling units in the development to be occupied by at least one caregiver or transition age youth. The act requires the development to be affordable to lower income households.

The act prescribes an optional process to be applied if a unit ceases to house a caregiver or transition age youth. The act also prohibits the eviction or lease termination of a family with children in order to comply with the senior citizen occupancy requirement described above. The act makes a conforming change in provisions regarding subdivided lands.

Chapter 364 (SB 591 – Becker); amending Section 11010.05 of the Business and Professions Code, and adding Section 51.3.5 to the Civil Code.

- **Density Bonus Law**
- **Affordability Restrictions in Recorded Contracts**
- **Equity Sharing Agreements**

Existing law, commonly referred to as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the city or county with a density bonus and other incentives or concessions if the developer agrees to construct, among other options, specified percentages of units for moderate-income or, lower, or very-low income households and meets other requirements. Existing law requires the developer and the city or county to ensure that the initial occupant of a for-sale unit that qualified the developer for the award of the density bonus is a person or family of very low, low, or moderate income.

Existing law requires the Department of Housing and Community Development to notify a city or county, and authorizes the department to notify the Attorney General, that the city or county has taken an action that violates specified provisions of law, including the Density Bonus Law. Existing law authorizes the Attorney General to seek all remedies available under law.

Existing property tax law establishes a welfare exemption under which property is exempt from taxation if the property is owned and operated by a nonprofit corporation that is organized and operated for the purpose of building and rehabilitating single-family or multifamily residences for sale at cost to low-income families.

This act, instead, requires the developer and the city or county to ensure that:

1) A for-sale unit that qualified the developer for the award of the density bonus is initially occupied by a person or family of the required income, offered at an affordable housing cost, and includes an equity sharing agreement, or;

2) A qualified nonprofit housing organization that is receiving the above-described welfare exemption purchases the unit pursuant to a specified recorded contract that includes an affordability restriction, an equity sharing agreement, and a repurchase option that requires a...

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> ...subsequent purchaser that desires to sell or convey the property to first offer the nonprofit corporation the opportunity to repurchase the property.

Existing law requires a city, county, or city and county to adopt an ordinance that specifies how it will implement the Density Bonus Law. Existing law provides incentive and concession calculations, and provides an exemption from the calculations, as adjusted in 2020, for a city, county, or city and county that has adopted an ordinance or a housing program, or both an ordinance and a housing program, that incentivizes the development of affordable housing that allows for density bonuses that exceed the density bonuses required by the Density Bonus Law.

This act updates cross references in those provisions.

Chapter 365 (SB 728 – Hertzberg); amending Section 65915 of the Government Code.

Liens

- **Regional Park District Nuisance Abatement Liens**

Existing law prescribes procedures, including the election of a board of directors, for the formation of regional park districts, regional park and open-space districts, or regional open-space districts. Existing law authorizes three or more cities, together with any parcel or parcels of city or county territory, whether in the same or different counties, to organize and incorporate, but requires that all the territory in the proposed district be contiguous. Existing law requires the board of directors to superintend, control, and make available to all the inhabitants of the district all public recreation lands and facilities. Existing law requires the board of directors to act only by ordinance, resolution, or a motion duly recorded in the minutes of a meeting of the board.

This act authorizes the board of directors of a district, by ordinance, to declare that an encroachment onto district lands constitutes a nuisance. The act authorizes a district that adopts such a nuisance ordinance to establish a nuisance abatement procedure, which would include notice and hearing requirements, and to collect abatement and related administrative costs and penalties, including through a recorded nuisance abatement lien having the force, effect, and priority of a judgment lien. The act authorizes a county recorder to impose a fee on a district to reimburse the costs of processing and recording a nuisance abatement lien and providing notice. The act additionally authorizes a district to initiate a civil action to abate a nuisance in the name of the district.

Chapter 268 (AB 959 – Mullin); adding Section 5558.5 to the Public Resources Code.

- **Labor Commissioner Alternative to Judgment Liens**

Existing law vests with the Labor Commissioner the authority to hear employee complaints regarding the payment of wages and other employment-related issues. Existing law imposes various civil penalties for violations of state law, including on employers for failure to pay minimum wage, on successors to judgment debtors, on persons who do not hold a valid state contractor's license and employ workers to perform services for which a license is required, and on persons who violate provisions relating to minor employees. Existing law permits the commissioner to, as an alternative to a judgment lien, create a lien on real property to recover amounts due under final orders in favor of an employee named in the order.

This act authorizes the Labor Commissioner to create, as an alternative to a judgment lien, a lien on real property to secure amounts due to the commissioner under any final citation, findings, or decision. The act specifies that a lien created pursuant to its provisions attaches to all interests in real property of those parties located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure, with the same priority as a judgment lien.

The act also requires the commissioner, among other things, to include specified information on the certificate of lien to be recorded on the relevant party's real property and to issue a certificate of release once the amount due, including any interest and costs, has been paid.

Chapter 335 (SB 572 – Hertzberg); adding Section 90.8 to the Labor Code.

- **Oil and Gas Wells and Facilities**
- **State Tax Lien for Remedial Work**

Existing law establishes the Geologic Energy Management Division in the Department of Conservation, under the direction of the State Oil and Gas Supervisor, who is required to supervise the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field, so as to prevent damage to life, health, property, and natural resources.

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Liens (cont.)

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Existing law requires the supervisor to order those tests or remedial work that in the judgment of the supervisor are necessary to prevent damage to life, health, property, and natural resources, to protect oil and gas deposits from damage by underground water, to prevent the escape of water into underground formations, or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or domestic purposes, to the best interests of the neighboring property owners and the public.

Existing law authorizes the supervisor or district deputy to order the plugging and abandonment of a well or the decommissioning of a production facility that has been deserted whether or not any damage is occurring or threatened by reason of that deserted well or production facility. Existing law requires the owner or operator to commence, in good faith, the work ordered and continue it until completion and, if the work has not been commenced and continued to completion, authorizes the supervisor to appoint necessary agents to enter the premises and perform the work and provides that any amounts expended are a perfected and enforceable state tax lien against real or personal property of the operator.

This act authorizes the division, before performing the work ordered by the supervisor or district deputy, to impose a lien against the real or personal property of the operator in an amount equal to an estimate of the cost of the work based on a bid from a contractor or previous costs to perform comparable work. The lien constitutes a perfected and enforceable state tax lien that is subject to the state tax lien provisions in the Government Code.

The act requires the division's accounting of actual or estimated costs to perform work ordered to be served upon the operator by personal service or certified mail. The act requires the supervisor, on or before July 1, 2022, to establish a collections unit within the division to be responsible for identifying persons responsible for specified charges, locating assets belonging to those persons, and fully implementing all of the division's authorities for collecting the amounts owed. Until January 1, 2027, to the extent feasible, the act requires the division to use existing resources and personnel in establishing the collections unit.

This act makes other changes to existing law relating to the obligations imposed upon the division and operators of idle wells, which are not summarized herein.

NOTE: Section 2.5 of this act, which would have incorporated additional changes to Section 3206.3 of the Public Resources Code, did not become operative due to this act being chaptered prior to Chapter 758 (SB 84).

Chapter 707 (AB 896 – Bennett); amending Sections 3206.3, 3226, and 3420 of, and adding Sections 3243 and 3417.5 to, the Public Resources Code.

- **Hazardous or Idle-Deserted Wells and Facilities**
- **Report on Liens**

Existing law establishes the California Geologic Energy Management Division (division) in the Department of Conservation that is led by the State Oil and Gas Supervisor (Supervisor). Existing law classifies oil and gas wells based upon their use, including idle wells, idle-deserted wells, and long-term idle wells. Under existing law, a current operator, or the previous operator, is responsible for the proper plugging and abandonment of the well or the decommissioning of idle-deserted production facilities and the Supervisor can order the plugging and abandonment or decommissioning of an idle-deserted well or facility. The Supervisor is required to make certain reports to the Legislature regarding idle and long-term idle wells and the division is required to develop criteria for determining the priority of plugging and abandoning hazardous or idle-deserted wells and decommissioning hazardous or deserted facilities.

This act revises and enhances the legislative reporting requirements of the division's idle well program, including lien information. Of particular interest this act:

1. Requires that for the report due on or before July 1, 2023, and each report thereafter, the division must provide a description of activities undertaken by the division's collections unit that includes the number of operators and amounts of idle well fees collected by the collections unit in the preceding year, the criteria, including timelines, used by the collections unit to determine a well or attendant facility is deserted, and the amount of costs recovered from operators or responsible parties for work ordered by the supervisor or undertaken by the division. Lien information related to the division's use of liens is also required to be furnished, including, but not limited to, the number of wells and facilities eligible to be subject to a lien, the number of liens placed by the supervisor, and the number of liens released by the supervisor.

2. Revises certain expenditure limits that apply to expenditures by the division from the Oil, Gas, and Geothermal Administrative Fund. The act provides that if the division obtains a lien against real or personal property of the operator of greater value than the amount of the expenditure, then the amount of the expenditure shall not count against the revised expenditure limits. If the division obtains a lien against real or personal property of lesser value than the amount of the expenditure, then only the difference between the amount of the expenditure and the value of the property counts against the revised expenditure limits.

This act incorporates additional changes to Section 3206.3 of the Public Resources Code proposed by AB 896 (Chapter 707). This act also incorporates additional changes to Section 3258 of the Public Resources Code proposed by SB 47 (Chapter 238).

Chapter 758 (SB 84 – Hurtado); a mending Sections 3206.3, 3237, and 3258 of the Public Resources Code.

Professional Land Surveyors Act

- **Definition of "Cadastral Surveying"**
- **Record of Survey Data**
- **Subdivision Map Act Appeal Period**

Existing law, the Professional Land Surveyors' Act, provides for the licensure and regulation of land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists and makes it unlawful to practice land surveying without a license, except as specified. Existing law includes within the practice of land surveying cadastral surveying.

This act defines cadastral surveying for purposes of the Professional Land Surveyors' Act.

Existing law requires a record of survey filed with the county surveyor by a licensed surveyor or licensed civil engineer to include, among other information, any data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor.

This act provides that this data may be in graphic or narrative form.

The Subdivision Map Act authorizes a subdivider, or any tenant of the subject property in specified circumstances, to appeal from an action of the advisory agency relating to a tentative map to the appeal board or legislative body, and provides for the appeal from the decision of the appeal board to the legislative body. The act further authorizes any interested person adversely affected by a decision of the advisory agency or appeal board to appeal the decision with the legislative body. Existing law requires a hearing to be held after an appeal is filed pursuant to those provisions within 30 days after the request is filed by the appellant.

This act instead requires a hearing to be held within 45 days after the request is filed and makes conforming changes.

Chapter 85 (SB 414 – Jones); amending Sections 8726, 8764, and 8780 of the Business and Professions Code, and amending Section 66452.5 of the Government Code.

Property Taxation

- **Cancellation of Delinquent Penalties and Costs**

Existing property tax law requires the county tax collector to collect all property taxes and provides for the payment of taxes on the secured roll in two installments, which are due and payable on November 1 and February 1, respectively. Under existing property tax law, the first installment becomes delinquent if unpaid on December 10, and the second installment becomes delinquent on April 10, at which point a delinquent penalty of 10% attaches to the applicable installment. Existing property tax law authorizes a county auditor or tax collector to cancel any penalty, costs, or other charges resulting from tax delinquency if the auditor or tax collector finds, among other reasons, that the failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect.

This act additionally authorizes the auditor or the tax collector to cancel any penalty, costs, or other charges resulting from tax delinquency upon a finding that failure to make a timely payment is due to a documented hardship, as determined by the tax collector, arising from a shelter-in-place order, as defined, if the principal payment for the proper amount of tax due is paid no later than June 30 of the fiscal year in which the payment first became delinquent.

NOTE: This act took effect as an urgency measure on July 23, 2021.

Chapter 131 (SB 219 – McGuire); amending Section 4985.2 of the Revenue and Taxation Code.

- **Taxable Value Transfers for Replacement Dwellings**
- **Exemption of Specific Transfers Between Family Members**

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property, defined as the county assessor's valuation of real property as shown on the 1975–76 tax act and, thereafter, the appraised value of the property when purchased, newly constructed, or a change in ownership occurs after the 1975 assessment, subject to an annual inflation adjustment not to exceed 2%. Existing property tax law provides that the purchase or transfer of the principal residence, and the first $1,000,000 of other real property, of a transferor in the case of a transfer between parents and their children, or between grandparents and their grandchildren if all the parents of those grandchildren are deceased, is not a "purchase" or "change in ownership" for purposes of determining the "full cash value" of property for taxation.

Existing provisions of the California Constitution, adopted as Proposition 19 by the voters at the November 3, 2020, general election, beginning on and after February 16, 2021, exclude from the terms "purchase" and "change in ownership" for purposes of determining the "full cash value" of property the purchase or transfer of a family home or family farm, as those terms are defined, of the transferor in the case of a transfer...

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Property Taxation (cont.)

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...between parents and their children, or between grandparents and their grandchildren if all the parents of those grandchildren are deceased. In the case of a transfer of a family home, existing law requires that the property continue as the family home of the transferee.

Existing law authorizes, if certain conditions are fulfilled, the new taxable value, defined as the base year value determined as provided above plus any inflation adjustment, of the purchased or transferred family home or family farm to be the sum of the taxable value of the property, subject to adjustment, as determined as of the date immediately prior to the transfer or purchase, and a portion, if any, of the assessed value of the property. In the case of property tax benefits provided to a family home under these provisions, existing law requires the transferee to claim the homeowner's or disabled veteran's exemption within one year of the transfer.

This act implements these newly adopted constitutional provisions. The act requires that the principal residence transferred be the principal residence of the transferor, and that it become the principal residence of the transferee within one year of the transfer. The act requires, in order to claim the exclusion, that a claim be filed with the assessor.

The act requires the State Board of Equalization to prescribe a form for claiming eligibility for the exclusion to be filed as provided. The act requires the State Board of Equalization to adopt emergency regulations in order to implement these provisions. The act also provides that a claim filed under this section is not a public document and is not subject to public inspection, except to specified parties.

Existing property tax law authorizes, pursuant to constitutional authorization, a person over 55 years of age, or any severely and permanently disabled person, who resides in property eligible for the homeowners' exemption to transfer the base year value of the property to a replacement dwelling, subject to certain conditions and limitations.

Existing provisions of the California Constitution, adopted as Proposition 19, beginning on and after April 1, 2021, instead authorizes an owner who is over 55 years of age, severely disabled, or a victim of a wildfire or natural disaster to transfer the taxable value, defined as the base year value determined as provided above plus any inflation adjustment, of a primary residence eligible for either the homeowner's exemption or the disabled veteran's exemption to a replacement primary residence located anywhere in this state, regardless of the value of the replacement primary residence, that is purchased or newly constructed as that person's principal residence within two years of the sale of the original primary residence. Under the California Constitution, a person who is 55 years of age or severely disabled may transfer the taxable value of their primary residence up to three times. The California Constitution requires that a person seeking to transfer the taxable value of a primary residence under these provisions file an application, containing specified information, with the assessor of the county in which the replacement primary residence is located.

This act, in accordance with the above-described constitutional provisions, on and after April 1, 2021, would authorize any person who is over 55 years of age, any severely and permanently disabled person, or a victim of wildfire or natural disaster who resides in property that is eligible for the homeowner's exemption or the disabled veteran's exemption to transfer the taxable value of that property to a replacement dwelling that is purchased or newly constructed as a principal residence within two years of the sale of the original property. The act requires that any claim be filed within three years of the date that the replacement dwelling was purchased or the new construction of the replacement dwelling was completed. The act limits a person to three transfers of taxable value under these provisions, except with respect to claims filed by victims of wildfire or natural disaster, and requires each county assessor to report quarterly to the State Board of Equalization specified information regarding all approved claims.

The act requires the State Board of Equalization to adopt emergency regulations in order to implement these provisions. The act also provides that a claim filed under this section is not a public document and is not subject to public inspection, except to specified parties.

NOTE: This act took effect immediately as a tax levy on September 30, 2021.

Chapter 427 (SB 539 – Hertzberg); adding Sections 63.2 and 69.6 to the Revenue and Taxation Code.

- **Transfer of Base Year Value**
- **Disaster Relief**

Existing property tax law provides, pursuant to a requirement of the California Constitution, that the property tax base year value of real property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to a comparable property located within the same county that is acquired or newly constructed within five years after the disaster as a replacement property.

This act extends the five-year time period described above by two years if the last day to transfer the base year value of the substantially damaged or destroyed property was on or after March 4, 2020, but on or before the COVID-19 emergency termination date, or March 4, 2022, whichever occurs sooner. The act also extends the five-year time period described above by two years if the property was substantially damaged or...

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Property Taxation (cont.)

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...destroyed on or after March 4, 2020, but on or before the COVID-19 emergency termination date or March 4, 2022, whichever occurs sooner. The act makes these provisions applicable to the determination of base year values for the 2015–16 fiscal year and fiscal years thereafter.

This act makes legislative findings and declarations as to the public purpose served by these provisions.

NOTE: This act took effect immediately as a tax levy on October 5, 2021.

Chapter 540 (SB 303 – Borgeas); amending Section 69 of the Revenue and Taxation Code.

Recorded Documents

- **Recording Fees Charged to the State or Political Subdivisions**

Existing law generally prohibits the state and a county, city, district, or other political subdivision, and a public officer or body, acting in their official capacity, from paying or depositing a fee for the filing of any document or paper. Existing law also specifically prohibits a county recorder from charging fees for services rendered to the state, any municipality, county, or other political subdivision, thereof, except for making a copy of a paper or record.

Under existing law, the above-described prohibitions do not apply to any fee or charge for recording full releases executed or recorded pursuant to specified law, where there is full satisfaction of the amount due under the lien that is released. Existing law requires that the fee for recording full releases, full releases for any document relating to an agreement to reimburse a county for public aid granted by the county, and full releases for filing any judgment that was in favor of a government agency under these provisions be six dollars.

This act, instead, requires that the fee for recording full releases as described above be two times the fee charged to record the first page of a lien, encumbrance, or notice under specified law.

Existing law requires the county recorder to charge and collect specified fees for services performed by the recorder's office. Existing law authorizes a fee for recording and indexing every instrument, paper, or notice required or permitted by law to be recorded to reimburse the county for the costs of specified services related to recording those documents, not to exceed $10 for recording the first page and three dollars for each additional page. Existing law authorizes various additional recording fees, to be charged in connection with filing an instrument, paper, or notice, for specified purposes.

This act, except as specified with respect to certain fees for recording a notice of state tax lien and a certificate of release, expressly prohibits charging the above-described fees for recording, indexing, or filing an instrument, paper, or notice to those entities expressly exempted from the payment of recording fees.

Existing law authorizes a county board of supervisors to adopt a resolution providing for a fee of up to $10 for recording each real estate instrument, paper, or notice required or permitted by law to be recorded, which is in addition to any other recording fees under specified law, and defines the term "real estate instrument" for these purposes. Existing law requires that the fees paid under these provisions, after deduction for actual and necessary administrative costs, be paid quarterly to the county auditor or director of finance, to be placed in the Real Estate Fraud Prosecution Trust Fund and used for specified purposes. Existing law exempts from this fee any real estate instrument, paper, or notice accompanied by a declaration stating that the transfer is subject to a documentary transfer tax, is recorded concurrently with a transfer subject to a documentary transfer tax, or is presented for recording within the same business day as, and is related to the recording of, a transfer subject to a documentary transfer tax.

This act additionally exempts from this fee any real estate instrument, paper, or notice presented for recording for the benefit of the state or any county, municipality, or other political subdivision of the state.

This act also makes various others changes to existing law relating to state government.

NOTE: This act is one of several acts that implement the Budget Act of 2021. The provisions regarding recording fees that counties may charge to the state or other political subdivisions are unrelated to multiple other provisions contained in the act.

Chapter 77 (AB 137 – Committee on Budget); amending Sections 6103.8, 27361, 27361.2, 27361.4, 27361.8, and 27388 of the Government Code, as summarized.

Revocable Transfer on Death Deeds

- **Extension of Operative Date**
- **Revocation and Reformation of a Transfer on Death Deed**

Existing law governs the execution, revocation, and effectiveness of a revocable transfer on death (TOD) deed, defined as an instrument that makes a donative transfer of property to a named beneficiary, as defined, that operates on the transferor's death, and remains revocable until the transferor's death. Existing law establishes statutory forms for executing and revoking a revocable TOD deed that include provisions and instructions for the forms to be notarized by the transferor and recorded with the county recorder. Existing law requires that subsequent pages of the form to execute a revocable TOD deed include statutory "common questions" regarding the use of that form. Existing law requires that, to be effective, a revocable TOD deed be recorded on or before 60 days after the date it was executed. Existing law makes these provisions inoperative on January 1, 2022.

This act revises and recasts those provisions, and instead makes them operative until January 1, 2032. Among other things, the act redefines and newly defines terms for these purposes, including, but not limited to, "beneficiary," "real property," "subscribing witness," and "unsecured debts." The act makes changes to how and when a revocable TOD deed becomes effective or revoked, and instead requires the deed or revocation to be signed by the transferor, acknowledged by the transferor before a notary public, dated, and signed by two witnesses. The act adds additional provisions to the statutory forms for executing and revoking a revocable TOD deed to conform to these changes, and adds additional information to the statutory "common questions" pages. The act requires, after the death of a transferor, that the beneficiary serve notice on the transferor's heirs, and creates a new statutory notice form for these purposes.

Under specified circumstances, the act authorizes a court in which a transferor's estate is being administered to apply the doctrine of cy pres to reform a revocable TOD deed that was made by the transferor for a charitable purpose. The act also provides that an error or ambiguity in describing property or designating a beneficiary would not invalidate a revocable TOD deed if the transferor's intention can be determined by a court. The act establishes new processes for, and adds provisions relating to, among other things, the enforceability of unrecorded interests, the personal liability of a beneficiary, calculating a beneficiary's share of liability, the return of property to an estate by a beneficiary, and contesting the validity of a transfer or revocation.

The act specifies that the provisions relating to contesting a TOD deed do not limit the application of other law that imposes a penalty or provides a remedy for the creation of a revocable TOD deed by means of fraud, undue influence, menace, or duress.

The act specifies that these changes do not apply to TOD deeds or revocation forms that were signed before January 1, 2022.

The act requires the California Law Revision Commission to study the effect of these provisions, as specified, and report its findings and recommendations to the Legislature on or before January 1, 2031.

Existing law prohibits a deed or grant conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes from being accepted for recordation without the consent of the grantee evidenced by a certificate or resolution of acceptance attached to or printed on the deed or grant pursuant to a specified form.

This act makes these provisions inapplicable to a revocable TOD deed, and instead specifies that title does not transfer under a revocable TOD deed until the political corporation or governmental agency records a resolution of acceptance or certificate of consent in a form substantially similar to the form described above.

Chapter 215 (SB 315 – Roth); amending Section 27281 of the Government Code, and amending Sections 5600, 5608, 5624, 5626, 5632, 5642, 5644, 5652, 5660, 5674, 5682, 5690, and 5694 of, adding Sections 5605, 5615, 5618, 5625, 5658, 5659, 5677, 5678, 5681, and 5698 to, repealing Section 5676 of, and repealing and adding Section 5610 of, the Probate Code.

Starter Home Revitalization Act of 2021

- **Small Home Lot Development**

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This act authorizes a development proponent to submit an application for the construction of a small home lot development that meets specified criteria. The act requires a small home lot development to be located on a parcel that is no larger than five acres, is substantially surrounded by qualified urban uses, and is zoned for multifamily residential use. The act requires a small home lot development to meet a minimum unit requirement and to consist of single-family housing units...

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Starter Home Revitalization Act of 2021(cont.)

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...with an average total area of floorspace of 1,750 net habitable square feet or less. The act requires that the units comply with external existing height and setback requirements applicable to the multifamily site. The act requires that the small home lot development comply with any local inclusionary housing ordinance. The act prohibits the small home development on the proposed site from being subdivided if the development requires the demolition or alteration of specified types of housing, and prohibits a small home development on a site identified in the jurisdiction's housing element to accommodate that jurisdiction's regional housing need for low-income or very low income households.

This act prohibits a local agency from imposing specified requirements on a small home lot development created pursuant to these provisions, including setback requirements between units within the small home lot development, requirements on the minimum size of each small home lot development, and specified parking requirements. The act requires a city, county, or city and county to approve an application for a small home lot development unless it makes a specified finding.

Chapter 154 (AB 803 – Boerner Horvath); adding Chapter 8 (commencing with Section 66499.40) to Division 2 of Title 7 of the Government Code.

Subdivided Lands Act

- **Commercial and Industrial Exemption from the Subdivided Lands Act**

This act makes several changes to existing law governing the powers and duties of local agencies. Of particular interest to title companies, this act also makes a technical correction to the commercial and industrial exemption from the Subdivided Lands Act.

Senate Bill 1473 (Chapter 371, Statutes of 2020) corrected the commercial/industrial exemption so that it applies to individual commercial or industrial lots, rather than requiring the entire subdivision to be non-commercial or industrial to be exempt. It also clarified that the operation of an apartment complex is a commercial use under the Subdivided Lands Law.

However, in connection with the 2020 legislation that dealt with correcting Business & Professions Code Section 11010.3, language changes resulted in the statute stating that the exemption was from the "article" instead of the entire "chapter". Prior to 2020, however, the commercial/industrial exemption was from all of the chapter (specifically, Chapter 1 of Part 2 of Division 4 of the Business & Professions Code). This act restates that the exemption is from the chapter by changing the reference in subparagraph (a)(1) of Business & Professions Code Section 11010.3 from "article" to "chapter."

Chapter 224 (SB 813 – Comm. on Governance and Finance); amending Section 11010.3 of the Business and Professions Code, as summarized.

Surplus Residential Property

Existing law prescribes requirements for the disposal of surplus land by a local agency. Existing law provides that certain dispositions of real property by local agencies are subject to surplus land disposal procedures as they existed on December 31, 2019, without regard to specified amendments that took effect on January 1, 2020, if those dispositions comply with specified requirements. Under existing law, these provisions apply to dispositions by a local agency that, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property, provided that the disposition is completed not later than December 31, 2022.

This act, except in the case of specified property, additionally provides that the surplus land disposal procedures as they existed on December 31, 2019, apply if a local agency, as of September 30, 2019, has issued a competitive request for proposals for the development of the property that includes a residential component of at least 100 residential units and 25% of the total units developed complying with specified affordability criteria, provided that a disposition and development agreement is entered into not later than December 31, 2024. If the property is not disposed of pursuant to a qualifying disposition and development agreement before March 31, 2026, or if no disposition and development agreement is entered into before December 31, 2024, the act requires that future negotiations for and disposition of the property comply with the surplus land disposal procedures then in effect. The act extends these dates in the event of a judicial challenge to six months following the final conclusion of litigation.

Existing law establishes priorities and procedures that any state agency disposing of surplus residential property is required to follow. Under existing law, specified single-family residences must first be offered to their former owners or present occupants. Existing law then requires the property to be offered to housing-related entities prior to placing the property up for sale, subject to specified priorities. Existing...

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Surplus Residential Property (cont.)

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...law requires, if a property that is not a historic home is sold to a private housing-related entity or a housing-related public entity, that the entity develop the property as limited equity cooperative housing with first right of occupancy to present occupants, or use the property for low- and moderate-income rental or owner-occupied housing where the development of cooperative or cooperatives is not feasible. Existing law requires, if a property is a historic home, that the property be offered first to a housing-related entity, subject to the above-described requirements, or a nonprofit private entity dedicated to rehabilitating and maintaining the historic home for public and community access and use.

This act, with respect to surplus residential property that is located within the City of Los Angeles, instead requires that if the surplus residential property is not sold to a former owner or present occupant, the property be offered at fair market value to present tenants who have occupied the property for five years or more and who are in good standing with all rent obligations current and paid in full, with first right of occupancy to the present occupants. If the surplus residential property is a historic home, the act then requires that the property be offered to the city in which the property is located or a nonprofit private entity dedicated to rehabilitating and maintaining the historic home for public and community access and use, subject to specified terms and conditions. Finally, the act requires that surplus residential property be offered to a housing-related entity, subject to specified terms and conditions.

The act requires a housing-related entity to cause the property to be used, under specified conditions, either for low- and moderate-income rental housing for a term of at least 55 years, subject to a recorded covenant, to ensure use as affordable housing, and to provide a first right of occupancy to the present tenants, or, if the surplus residential property is a single-family residence, the act provides the surplus residential property may be used for owner- occupied affordable housing for a term of at least 45 years, subject to a covenant recorded against the property to ensure its use as affordable housing.

The act requires the Department of Transportation to monitor or designate a public agency to monitor a property's compliance with the act's terms, conditions, and restrictions, in the case of a historic home, and requires the City of Los Angeles to monitor compliance with the recorded covenant, in the case of surplus residential properties sold to a housing-related entity, and authorizes the monitoring entity to charge the property owner a fee to cover the cost of monitoring and reporting. The act requires the city to prepare and submit to the Legislature reports that describe how the purchasers complied with these provisions and how they were monitored for compliance.

This act prohibits surplus residential property from being sold at less than the price paid by the Department of Transportation for original acquisition of the property. The act prohibits the adjustment of this original acquisition price for inflation. The act requires the Department of Transportation to offer to sell specified unimproved properties at the original acquisition price paid by the department to a housing-related entity for affordable housing purposes.

Existing law generally requires that not less than the general prevailing rate of per diem wages be paid to workers employed on a public work project that exceeds $1,000. Existing law establishes requirements that apply when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project. Existing law also authorizes a public entity to require that a bidder, contractor, or other entity use a skilled and trained workforce to complete a contract or project.

This act requires the housing-related entity to provide an enforceable commitment to the selling agency that it will comply with specified requirements, if a project on the property involves construction, regarding the payment of prevailing rate of per diem wages for construction work related to the project, except as provided.

Existing law, known as the Administrative Procedure Act, governs the procedures for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law establishes procedures for the adoption of emergency regulations, including requiring that the state agency make a finding that the adoption of a regulation or order of repeal is necessary to address an emergency. Under existing law, a regulation, amendment, or repeal adopted as an emergency regulatory action may only remain in effect for up to 180 days, unless the adopting agency complies with specified requirements relating to notice of regulatory action and public comment.

This act requires the Department of Transportation to adopt emergency regulations not later than six months from when the provisions of the act are enacted, to implement the requirements relating to the disposal of surplus property. The act includes findings and declarations that an emergency exists for purposes of specified provisions of the Administrative Procedure Act. The act, notwithstanding the 180-day limit for emergency regulations, provides that emergency regulations adopted under its provisions would remain in effect for two years after their effective date, or until the adoption of permanent regulations, whichever occurs sooner.

NOTE: This act took effect immediately as a tax levy on July 23, 2021.

Chapter 130 (SB 51 – Durazo); amending Sections 54234 and 54237 of, and adding Sections 54237.9, 54237.10, 54239.1, 54239.2, and 54239.3 to, the Government Code.

Taxation

- **Withholding For Like-Kind Exchanges**

Existing law generally requires the transferee of a California real property interest, in specified circumstances, to withhold for income tax purposes three and one-third percent of the sales price of the property when the property is acquired from either an individual, or a partnership or corporation without a permanent place of business.

Under existing law, a transferee is not required to withhold any amount under these provisions if the transferee, in good faith and based upon the information of which the transferee has knowledge, certifies under penalty of perjury that the California real property being conveyed is either: (A) the seller's or decedent's principal residence, or (B), is being exchanged, or will be exchanged, for property of like kind, but only to the extent of the amount of the gain not required to be recognized for California income or franchise tax purposes. In the case of a real property sale not subject to withholding by reason of a like kind exchange under these provisions, existing law requires the transferee to notify the Franchise Tax Board in writing within 10 days of the expiration of the statutory periods specified in federal law and thereafter remit the applicable withholding amounts determined as provided.

This act, with respect to dispositions of California real property interests that occur on or after January 1, 2022, provides that the transferee is required to notify the Franchise Tax Board and remit the applicable withholding amount, as described above, only to the extent that an intermediary or accommodator has received amounts from the disposition of California real property and has not disbursed those amounts for the purpose of completing an exchange or exchanges. The act authorizes the Franchise Tax Board to prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of these provisions and exempt those rules, guidelines, procedures, or other guidance from the rulemaking provisions of the Administrative Procedure Act.

NOTE: This act was sponsored by the Franchise Tax Board (FTB) to clarify that an intermediary is required to withhold and remit amounts related to a deferred exchange only in cases where the intermediary has received amounts from the disposition of the property and has not disbursed those amounts to complete the exchange. In addition, the act makes a technical amendment to the due date of the annual Taxpayers' Bill of Rights' report by changing the due date to January 15th of each year.

Chapter 66 (AB 1582 – Comm. on Revenue and Taxation); amending Sections 18662 and 21006 of the Revenue and Taxation Code.

Trusts and Estates

- **Charitable Trusts**

Existing law regulates trust administration and requires a trustee to administer the trust according to the trust instrument. Existing law defines a charitable trust and prescribes the duties of the trustee of a charitable trust.

This act, on and after July 1, 2022, requires a trustee holding assets subject to a charitable trust to give written notice to the Attorney General at least 20 days before the trustee sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of the charitable assets. The act requires the Attorney General to establish rules and regulations to administer these provisions.

Chapter 708 (AB 900 – Reyes); adding Section 16106 to the Probate Code.

- **Revocable Trusts**
- **Trustee Requirements**

Existing law establishes procedures for the creation, modification, and termination of a trust, and regulates the administration of trusts by trustees on behalf of beneficiaries. Except as specified, existing law authorizes the revocation of a trust when the person holding the power to revoke the trust is competent. Existing law provides that, during this time, the duties of the trustee are owed to the person holding the power to revoke the trust.

This act imposes additional requirements on the trustee of a trust if, during the time that a trust is revocable, no person holding the power to revoke the trust is competent, including, but not limited to, requiring the trustee to provide a copy of the trust instrument and any amendments to the beneficiaries under the trust instrument. The act authorizes the trustee to rely on specified methods to establish incompetency, but clarifies that the act does not affect any legal standard for establishing incompetency. The act makes conforming changes to a related provision.

Chapter 749 (AB 1079 – Gallagher); amending Sections 15800 and 16069 of the Probate Code.

Uniform Partition of Heirs Property Act

Existing law authorizes an owner of an estate in real property to commence and maintain an action for partition of the property against all persons having or claiming interests in...

(Continued on Next Page...)

Uniform Partition of Heirs Property Act (cont.)

(Continued from Previous Page...)

...the estate as to which partition is sought. If the court finds that the plaintiff is entitled to partition, it is required to make an interlocutory judgment that determines the interests of all owners of the property and orders that the property be divided among those parties in accordance with their interests or sold with the proceeds divided among them.

This act enacts the Uniform Partition of Heirs Property Act, which requires specified procedures in an action to partition real property that is heirs property, defined as property for which there is no written agreement regarding partition that binds the cotenants of the property, one or more of the cotenants acquired title from a relative, and meets one of specified thresholds regarding cotenants who are relatives or who acquired title from a relative.

If a cotenant requests partition by sale, the act gives cotenants who did not request the partition the option to buy all of the interests of the cotenants that requested partition by sale. If all of those interests are not purchased or a cotenant who has requested partition in kind remains after purchase, the act requires the court to partition the property in kind or by sale. The act provides procedures pursuant to which the property is appraised.

The act permits the court to apportion the costs of partition among the parties in proportion to their interests, but prohibits the apportionment of costs among parties that oppose the partition, except as specified. The act provides that these provisions supplement existing law and control over existing law that is inconsistent if an action is governed by these provisions.

Chapter 119 (AB 633 – Calderon); amending Section 872.020 of, and adding Chapter 10 (commencing with Section 874.311) to Title 10.5 of Part 2 of, the Code of Civil Procedure.

Vital Records

- **Certified Copies**
- **Electronic Requests**

Existing law generally authorizes the State Registrar, a local registrar, or a county recorder to furnish a certified copy of a birth, death, or marriage certificate to an authorized person who submits a written, faxed, or digitized image of a request accompanied by a notarized statement, sworn under penalty of perjury, that the applicant is an authorized person. Existing law, until January 1, 2022, additionally authorizes these officials to accept an electronic request for a certified copy of these records if the request is accompanied by an electronic verification of identity and an electronic statement sworn under penalty of perjury.

This act deletes the January 1, 2022, sunset date for authorizing an official to accept an electronic request, thereby applying those provisions indefinitely. The act also specifies the guidelines for the electronic verification of identity and requires the completion of a privacy risk assessment, as required by those guidelines.

Chapter 623 (AB 751 – Irwin); amending and repealing Section 103526 of the Health and Safety Code.

Williamson Act

- **Cancellation and Non-Renewal of Contracts**

The California Land Conservation Act of 1965, otherwise known as the Williamson Act, authorizes a city or county to contract with a landowner to limit the use of agricultural land located in an agricultural preserve designated by the city or county, whereby the landowner agrees to continue using the property for that purpose, and the city or county agrees to value the land accordingly for purposes of property taxation. Existing law authorizes the cancellation of a Williamson Act contract under certain circumstances. Under the act, the board of supervisors or city council may grant tentative approval for a cancellation by petition of a landowner as to all or any part of land subject to a contract.

Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor is required to determine the current fair market value of the land as though it were free of the contractual restriction, and requires the assessor to send the fair market value to the Department of Conservation at the same time the assessor sends the value to the landowner. Existing law provides for a certificate of tentative cancellation upon tentative approval of a petition by a landowner accompanied by a proposal for a specified alternative use of the land. Existing law requires the board of supervisors or city council to provide notice to the department related to cancellation of the contract as well as in other specified instances.

This act revises and recasts these provisions to no longer require the assessor to provide notice to the department and to require the board of supervisors or city council to provide notice to the department if the certificate of tentative cancellation is withdrawn. The act removes various other requirements to provide the department with notice, except as provided.

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Williamson Act (cont.)

(Continued from Previous Page...)

Under existing law, if either the landowner or the city or county desires in any year not to renew the contract, that party is required to serve written notice of nonrenewal of the contract upon the other party in advance of the annual renewal date of the contract under specified timelines. The city or county is required to serve notice on the department in the case of nonrenewal by a landowner or expiration of a contract.

This act, similarly, removes the requirement to serve notice on the department of nonrenewal by a landowner or expiration of a contract.

This act also makes a number of other changes to existing law related to the Williamson Act, including:

1. Removal of a provision that authorizes the department and the landowner to agree on a cancellation value of the land and requires the agreement to be transmitted to the county board of supervisors or the city council.
2. Revision and recasting of a provision requiring the department to, on or before May 1 of every other year, post information regarding the implementation of the act on its internet website instead of providing a report to the Legislature, and revising the specified information required.
3. Revision and recasting of a provision requiring each city or county in which an agricultural preserve is located to provide the department with GIS data files, by January 30 of each year, of all agricultural preserves and Williamson Act contracted land.
4. Removal of a provision that requires that a board of supervisors or city council provide the director of the department with a sample of a form contract when a new contract is used.
5. Removal of a provision that authorizes the department to approve cancellation of a farmland security contract.
6. Removal of a reference to the department with respect to authorization of enforcement of certain provisions of the act by mandamus proceedings.
7. Removal of a reference to the department with respect to a provision stating that if the landowner wishes to pay a cancellation fee when a formal review has been requested, that the landowner pay the fee required in the current certificate of cancellation and provide security determined to be adequate by the department for 20% of the cancellation fee based on the assessor's valuation.

This act also makes other conforming changes.

Chapter 644 (SB 574 – Laird); amending Sections 51207, 51237.5, 51245, 51246, 51280.1, 51283, 51283.4, 51283.5, 51284, 51284.1, 51291, 51294, 51294.1, 51295, and 51297 of, amending and renumbering Section 51203 of, and repealing Section 51249 of, the Government Code.

Index by Bill Number

Index by Chapter Number

Legislative Index by Topic

Legislative Index by Topic (cont.)

Legislative Index by Topic (cont.)

The Following Pages Contain

New Cases

of Importance to the Title Industry

PLEASE NOTE: The CLTA would like to thank Roger Therien of Old Republic Title Company for providing the following case summary information.

Bad Faith

Pinto v. Farmers Ins. Exchange

(2021) 61 Cal.App.5th 676.

The court held that in the context of a third-party insurance claim, failing to accept a reasonable settlement offer does not constitute bad faith per se. Rather, bad faith liability requires a finding that the insurer acted unreasonably in some respect.

Community Property

Estate of Wall

(2021) 68 Cal.App.5th 168.

In a probate case the wife claimed that property held in her decedent husband's name was community property. The court held that in a probate case Family Code Section 760's presumption that title acquired during marriage is community property does not prevail over Evidence Code Section 662's presumption that ownership is as set forth in the legal title. (Section 760 does prevail in a dispute between spouses.) However, in the unpublished sections of the opinion, the court held that the property was community property because the undue influence presumption of Probate Code Section 721 does prevail over Section 662, and there was evidence that the husband had led the wife to believe they owned the property together.

Debt Collection

Best v. Ocwen Loan Servicing, LLC

(2021) 64 Cal.App.5th 568.

The Rosenthal Fair Debt Collection Practices Act (Civil Code Section 1788 et seq.) is California's counterpart to the Federal Fair Debt Collection Practices Act. The court held that a nonjudicial foreclosure can be "debt collection" by a "debt collector" so as to trigger the protections of the Rosenthal Act. (Subsequent to the case being filed the Rosenthal Act was amended to state: "The term 'consumer debt' includes a mortgage debt." (Civil Code Section 1788.2(f))

Deeds

McMillin v. Eare

(2021) 70 Cal.App.5th 893.

The court quieted title in the grantees of two deeds, holding that a deed cannot be delivered to the grantee under any condition not expressed in the deed; any delivery to the grantee, or to the grantee's agent, is absolute and the deed therefore takes effect upon delivery, and any purported condition is ignored. (Civil Code Section 1056.) If the grantor executes and delivers a deed to the grantee with the intent of divesting title, but imposes an oral condition on the transfer, the condition is disregarded and the grantee receives title free and clear of the condition. If the condition does not occur, the grantor may be able to recover damages from the grantee, but the title cannot be recovered.

Deeds of Trust

Trenk v. Soheili

(2020) 58 Cal.App.5th 1033.

The court held:

1. A power of sale in a trust deed is enforceable even if the statute of limitations has run on the underlying obligation.
2. Because the trust deed here did not state the last date for payment under the promissory note, under Civil Code Section 882.020(a)(2) appellants would have 60 years to exercise the power of sale in the trust deed.
3. However, the power of sale is not enforceable because the real property, held by husband and wife as joint tenants, presumptively is community property under Family Code Section 760. Because appellants did not rebut that presumption, and the wife did not execute the trust deed, she has the power to void it.

Easements

Pear v. City and County of San Francisco

(2021) 67 Cal.App.5th 61.

Plaintiff's predecessor granted defendant fee title to property, which defendant needed for an underground pipeline, reserving the right to use the surface of the property for pasturage...

(Continued on Next Page...)

Easements (cont.)

(Continued from Previous Page...)

...and the right to construct roads and streets "over and across" the property "but not along in the direction of the pipeline or lines". The court held that grass and ornamental landscaping, three existing roads, and access to automotive service bays are authorized uses under the deed, but the existing parking lot use is not authorized under the deed.

Elder Abuse

Keading v. Keading

(2021) 60 Cal.App.5th 1115.

A son executed a deed conveying real property out of a trust to himself and his father as joint tenants, relying on a power of attorney executed by the father. The son recorded the deed after his father died. The court held that the deed was invalid because the power of attorney did not give the son the authority to transfer property out of the trust and because it was the result of elder abuse. (Note: The significance of the case is that it is an example of the danger of relying on uninsured deeds.)

Equitable Servitudes

Southern California School of Theology v. Claremont Graduate University

(2021) 60 Cal.App.5th 1.

The case involves a dispute over a 1957 deed that contained two conditions subsequent, one regarding permissible uses of the property and one regarding conditions that would require plaintiff to offer the property for sale to defendant on agreed terms, enforceable by a power of termination and right of reentry. The court held that the power of termination expired under the Marketable Record Title Act (Civil Code Section 880.020 et seq.), but that the conditions could be enforced as equitable servitudes under Civil Code Section 885.060(c).

Homeowners Associations

Brown v. Montage at Mission Hills, Inc.

(2021) 68 Cal.App.5th 124.

The court held that a condominium owner was exempt from an amendment to the condominium CC&Rs that prohibited renting properties for less than 30 days where the owner purchased her unit before the amendment was adopted. The court cited Civil Code Section 4740(a), which provides that an owner of a property in a common interest development "shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of" the owner's property unless that document or amendment "was effective prior to the date the owner acquired title" to the property.

Homeowner Bill of Rights

Billesbach v. Specialized Loan Servicing LLC

(2021) 63 Cal.App.5th 830.

In this action against a mortgage servicer under the Homeowner Bill of Rights (Civil Code Section 2923.4 et seq.), the court held that where a mortgage servicer's violations stem from its failure to communicate with the borrower before recording a notice of default, the servicer may cure these violations by doing what respondent did here: postponing the foreclosure sale, communicating with the borrower about potential foreclosure alternatives, and fully considering any application by the borrower for a loan modification. Following these corrective measures, any remaining violation relating to the recording of the notice of default is immaterial, and a new notice of default is therefore not required to avoid liability.

Indian Tribe / Sovereign Immunity

Self v. Cher-Ae Heights Indian Community of Trinidad Rancheria

(2021) 60 Cal.App.5th 209.

The court held that sovereign immunity bars a quiet title action to establish a public easement for coastal access on property owned by an Indian tribe. The Tribe had purchased coastal property in fee simple absolute. Then it applied to the federal Bureau of Indian Affairs to take the property into trust for the benefit of the Tribe. California worked with the Bureau and the Tribe in that process. The state secured assurances from the Tribe to preserve coastal access, and it has remedies if there are problems in the future: If the Tribe violates the state's coastal access policies, the Coastal Commission may request that the Bureau take appropriate remedial action.

Insurance

Nede Mgmt. Inc. v. Aspen American Ins. Co.

(2021) 68 Cal.App.5th 1121.

The court held that reservation of rights for punitive damages and damages beyond policy limits did not create a conflict of interest requiring the insurer to provide Cumis counsel pursuant to Civil Code Section 2860. Additionally, the conflicts of interest contemplated by section 2860 do not include an insured's mere dissatisfaction with the performance of insurer-appointed counsel.

Interspousal Deed

In re Marriage of Wozniak

(2020) 59 Cal.App.5th 120.

The court held that where the wife evidenced an intent to reject a deed from the husband quitclaiming his interest in community property real estate to the wife as her separate property, the deed was ineffectual, and did not become effective when the wife recorded the deed 6 years later. Acceptance of the property interest by the transferee spouse is required for a valid transmutation to be effectuated. Accordingly, the property remained as community property. The court pointed out that, while there is a presumption of undue influence when the recipient spouse receives an advantage over the donor spouse, there is no need to consider whether undue influence was present here because no effective transaction amounting to a transmutation occurred.

Joint Tenancy / Community Property

Pearce v. Briggs

(2021) 68 Cal.App.5th 466.

The court had two main holdings:

1. A provision in the wife's will distributing property held in joint tenancy with her husband did not sever the joint tenancy, so the property passed to the husband as the surviving joint tenant upon the wife's death, and

2. Where one spouse is a partner in a partnership, and community property funds are invested in the partnership, the other spouse has a community property interest in the partner spouse's interest in the partnership, which is personal property. Here, the husband did not distribute the wife's community property interest in partnership property at the time of dissolution of the partnership, but the 3-year statute of limitations for conversion of personal property (C.C.P. Section 338(c)(1)) applied here to bar an action by the wife's successors.

Judgment Liens

Starcevic v. Pentech Financial Services, Inc.

(2021) 66 Cal.App.5th 365.

The court held that in a partition action, a judgment creditor who was deemed the priority lien holder loses that status if it does not renew its judgment.

Loan Impound Accounts

Gray v. Quicken Loans, Inc.

(2021) 61 Cal.App.5th 524.

Civil Code Section 2954.8(a) requires a lender "that receives money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property" to pay two percent interest per annum on the amount being held. The court held that this applies to escrows maintained to pay taxes, assessments, and insurance premiums, not to hazard insurance proceeds held by a lender pending property rebuilding. Accordingly, defendant did not have to pay interest on the hazard insurance proceeds it held.

Prescriptive Easements

Husain v. California Pacific Bank

(2021) 61 Cal.App.5th 717.

The court held that defendant established a prescriptive easement over plaintiff's property for driveway, parking, storage of garbage bins and garden purposes. The properties were under one ownership until 2011 when the properties were separately foreclosed by different lien holders. The 5-year time for establishing prescriptive rights began at that point. The court rejected an argument that the use of plaintiff's property was permissive. Defendant never requested or received permission to use plaintiff's property, and simply used the property in a manner that was open, notorious, continuous, and hostile for more than five years. The court also rejected an argument that defendant's use of the property was pursuant to a license and pointed out that a conveyance (by way of foreclosure) of property burdened with a license revokes the license.

Quiet Title

Bailey v. Citibank, N.A.

(2021) 66 Cal.App.5th 335.

Plaintiffs filed this action to quiet title based on adverse possession against Citibank whose deed of trust was recorded before plaintiffs' possession began. Citibank foreclosed and purchased the property at the trustee's sale when plaintiff had been occupying the property for nearly 5 years. The court ruled in favor of Citibank, holding:

1. Plaintiffs could not establish that their possession of the property was adverse or hostile to Citibank for the required five-year period. Rather, plaintiffs' possession of the property did not become adverse or hostile to Citibank's rights until such time as Citibank took title under the trustee's deed. The court noted an exception to this rule, not applicable here: Where a transfer affecting the state of title (e.g., the recording of a deed of trust or a grant deed) is made after the adverse possession has already begun, a successful claim of adverse possession will prevail over the subsequent transferee's title once the five-year period is completed.
2. A default judgment cannot be set aside under C.C.P Section 473 based on the defendant's attorney's neglect where the attorney was not retained until after the default was entered. [This holding did not affect the outcome in Paragraph 1, above.]

Humphrey v. Bewley

(2021) 69 Cal.App.5th 571.

In this quiet title action where service of the summons was by publication, the court held that plaintiff did not properly effect service by publication because the notices that he published specified the property only by assessor's parcel number (APN) and not by either legal description or street address.

Tsasu LLC v. U.S. Bank Trust, N.A.

(2021) 62 Cal.App.5th 704.

The Court of Appeal held that California's Quiet Title Act (C.C.P. 760.010 et seq.), insulates a third party from the effect of a subsequent invalidation of an earlier quiet title judgment only if the third party has no actual or constructive knowledge of any defects or irregularities in that judgment. Here, the chain of title showed that a quiet title judgment setting aside a deed of trust named the original lender as a party, but failed to include U.S. Bank, the assignee who is the current lender pursuant to a recorded assignment of the deed of trust. Plaintiff made a loan secured by a deed of trust and, subsequently, U.S. Bank was successful in setting aside the quiet title judgment. The court upheld a summary judgment setting aside the quiet title judgment and reinstating U.S. Bank's deed of trust as a lien senior to plaintiff's deed of trust, on the basis that plaintiff had constructive knowledge that U.S. Bank was not named as a defendant in the quiet title action.

Weeden v. Hoffman

(2021) 70 Cal.App.5th 269.

The trial court granted defendant's anti-SLAPP (Strategic Litigation Against Public Participation) motion with respect...

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Quiet Title (cont.)

(Continued from Previous Page...)

...to plaintiffs' complaint against defendant, which pleaded causes of action for quiet title, slander of title, and cancellation of an instrument. The appellate court held that the litigation privilege shields a defendant from liability only for tort damages that are based on litigation related communications; plaintiffs' causes of action for quiet title and cancellation of an instrument do not seek to hold defendant liable for tort damages but, rather, seek to ascertain t he interests of the parties with respect to a parcel of real property and to determine the validity of an instrument. The litigation privilege does not shield defendant from these claims. The appellate court further held that defendant's abstract of judgment did not accurately reflect the terms of the judgment. The trial court therefore erred in granting defendant's anti-SLAPP motion with respect to the causes of action for quiet title and cancellation of an instrument.

Title Insurance

Villanueva v. Fidelity National Title Co.

(2021) 11 Cal.5th 104.

The court held that plaintiff was not barred from bringing a class action lawsuit alleging that defendant charged certain escrow fees (overnight delivery fee, courier fee, and draw deed fee) without filing them as part of its rate filing with the Department of Insurance.

Defendant argued that the sole remedy for rate filing violations is to bring them before the Insurance Commissioner. The court disagreed, reasoning that Insurance Code Section 12414.26, which bars suits under noninsurance laws for any "act done, action taken, or agreement made pursuant to the authority conferred" by the rate-filing statutes, applies only to actions authorized by the Insurance Code, not to charging fees that are not authorized.

Also, Insurance Code Section 12414.29, which provides that the administration and enforcement of certain Articles of the Insurance Code are governed solely by the provisions relating to title insurance, does not give the Insurance Commissioner exclusive jurisdiction over damages caused by unfiled rates.

NOTE: Opinion on remand from the Supreme Court is available here.

Transfer Tax

Ashford Hospitality Advisors LLC v. City and County of San Francisco

(2021) 61 Cal.App.5th 498.

The court held that San Francisco's transfer tax ordinance that sorts taxpayers into different classifications based on the gross value of the property sold and taxes them at differing rates according to their classification does not violate the Equal Protection Clause.

Trusts

Boshernitsan v. Bach

(2021) 61 Cal.App.5th 883.

In this case concerning the City of San Francisco's rent control ordinance, the court held that a trust is not a legal entity. Rather, a trust is a fiduciary relationship with the trustee holding legal title and the beneficiary holding equitable title.

Haggerty v. Thornton

(2021) 68 Cal.App.5th 1003.

The court that where a trust agreement provided that an amendment of a trust must be done "by an acknowledged instrument in writing", the amendment did not need to be notarized because the term "acknowledged" is broader than the Civil Code's provisions regarding notarization. Accordingly, the settlor complied with the trust provision by signing the amendment without having her signature notarized and delivering it to herself as trustee.

Uniform Voidable Transactions Act

Nagel v. Westen

(2021) 59 Cal.App.5th 740.

The court held that under the Uniform Voidable Transactions Act (Civil Code Sections 3439 et seq.), selling real property in California and using the sale proceeds to purchase real property out of state, may constitute a direct or indirect mode of parting with assets or one's interest in those assets. As such, plaintiff adequately alleged a "transfer" under the UVTA.

Usury

Korchemny v. Piterman

(2021) 68 Cal.App.5th 1032.

The court upheld a summary judgment in favor of a borrower, holding that after making interest-only payments on two promissory notes for many years, no principal amount was owing. The notes were usurious, and when a loan is usurious the creditor is entitled to repayment of the principal sum only and all interest payments are to be applied to principal. When all of the interest payments were applied to the principal, the notes were fully paid.

New Cases Index by Case Name

New Cases Index by Topic

CLTA Legislative Committee (2021/22)

Shari Schneider, Chair
Stewart Title Guaranty Company

Tom Imperiale, Vice Chair
First American Title Insurance Co.

Stephen Anderson
Fidelity National Title Group

Kazmer Bernath
Stewart Title Guaranty Company

Randall Bradley
Placer Title Company

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First American Title Insurance Co.

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Old Republic Title Company

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WFG National Title Insurance Co.

James Duncan
Fidelity National Title Group

Mary French
Placer Title Company

Greg Herrington
Fidelity National Title Group

Trevor Joyner
Bidwell Title & Escrow Company

Margery Lee
States Title / NATC / NATIC

Cynthia Long
Old Republic Title Company

Gary McMillan
First American Title Company

James Nelson
First American Title Company

Rick Nelson
Stewart Title Guaranty Company

Timothy Reardon
Old Republic Title Company

Kevin Sachs
Equity Title Company

Lisa Steele
Placer Title Company

Roger Therien
Old Republic Title Company

Steve Tjaden
Old Republic Title Company

Mickey Vandenberg
North American Title Company

CLTA Legislative Committee Functions

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

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

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

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