

Real Estate Law - The Year Ahead

Online Resources.

To obtain PDF copies of the Assembly Bills and Senate Bills referenced in this *e-Update*, please see this article on our web site: www.luce.com/realestatelaw2012

Related Practices.

Real Estate Transactions
Common Interest Development
Construction Transactions
Land Use / Zoning
Leasing

Related Industry.

Real Estate

As we begin 2012, Luce Forward's Real Estate group would like to highlight a number of new developments in California law affecting developers, real estate professionals and others in the real estate industry. Below you will find a short summary of each new law and a link to the law. If you have any questions regarding this *e-Update*, please contact any member of Luce Forward's Real Estate Transactions group.

COMMON INTEREST DEVELOPMENTS**Prohibitions on rentals in common interest developments (SB 150; California Civil Code Sections 1368, 1373 and 1360.2; Operative January 1, 2012)**

Protects the rights of homeowners in common interest developments to rent or lease their home if the right to do so existed at the time of their purchase unless the owner subsequently consents to be subject to any restrictions on rental following the purchase of their home. Also requires homeowners to disclose to subsequent purchasers any such rental restrictions. This statute purports to supersede any amendment provisions of the governing documents. Leasing restrictions in CC&Rs and association rules should be considered carefully at the time of original recordation or adoption and the effect of this statute should be taken into account in proposing any amendments to those provisions.

Owners of homes in common interest developments will not be subject to restrictions prohibiting renting or leasing of their home set forth in governing documents (or amendments) becoming effective on or after January 1, 2012 unless (a) the governing document (or amendment) was effective prior to the date the owner acquired title to their home, or (b) the owner expressly consents to be subject to the governing documents (or amendments) containing the prohibition. In addition, if a governing document (or amendment) contains such a prohibition, owners transferring their home must provide prospective purchasers with a statement describing the provision prohibiting the renting or leasing of homes.

Installation and use of electric vehicle charging stations in common interest developments (SB 209; California Civil Code Section 1353.9; Operative January 1, 2012)

voids prohibitions on electric vehicle charging stations in common interest developments and imposes certain requirements on associations' approval and homeowners' use and/or installation of such stations.

Voids prohibitions or restrictions on the installation or use of an electrical vehicle charging station in any covenant, restriction, or condition contained in any instrument affecting transfers or sales of interests in a common interest development, or any provision in the governing documents of a common interest development.

Associations are permitted to impose "reasonable restrictions" on electrical vehicle charging stations; provided however, that any approval process for installation or use imposed by the association must meet certain requirements specified in the statute. In addition, an association's approval of a charging station located in common area or exclusive use common area is conditioned on the owner and each successive owner, agreeing to among other things, being responsible for various costs associated with

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maintaining and repairing the station, as well as costs for damage to common areas and adjacent units resulting from the installation and maintenance of the station, and the cost of electricity to the station. Other responsibilities imposed by statute on the owner include maintaining certain insurance coverage. Associations in violation of the statute are liable for actual damages, reasonable attorney's fees and civil penalties.

New requirements for association meetings (SB 563; California Civil Code Sections 1363, 1363.05, and 1365.2; Operative January 1, 2012)

Restricts the means by which associations can conduct regular and executive session meetings. Specifically, associations may no longer conduct meetings via email, although teleconferencing is permitted under certain circumstances.

Notice of association meetings held solely in executive session must be given to members of the association at least two (2) days prior to the meeting. In addition, agendas for meetings of the board of directors that are held in executive session must be made available to members, although minutes of executive session meetings will continue to be excluded from association records available to members.

Regular meetings of the board of directors may be conducted by a teleconference where a majority of the members are connected by audio and/or video so long as the meeting is conducted in a manner that protects the rights of members and otherwise complies with other requirements governing common interest developments. Notice of a teleconference meeting must identify at least one physical location where members may attend and at least one member of the board of directors is present. Except for certain limited exceptions and emergency matters, the board of directors is prohibited from considering any other matter at non-emergency meeting other than those agenda items included in the notice for such a meeting. In addition, except for emergency meetings where all board members properly consent, a meeting of the board of directors may not be conducted by electronic transmissions, including via email.

Documents provided to a prospective purchaser and related fees in the transfer of a separate interest in common interest development (AB 771; California Civil Code Sections 1368 and 1368.2; Operative January 1, 2012)

Requires homeowner associations (and third parties contracting with associations) to provide fee estimates to owners on a statutorily prescribed form for the associations' production of documents requested by owners in connection with the sale of their home. Additional fees for electronic delivery of documents is prohibited. Also requires associations to provide association meeting minutes for the past 12 months as part of those documents provided to prospective purchasers.

In addition to the documents that a seller of a home in a common interest development is required to provide to a prospective purchaser, prospective purchasers may now require a seller to provide a copy of minutes of the meetings of the association's board of directors (excluding executive session meetings) conducted over the previous twelve months.

Upon receipt of a seller's written request for documents, an association (or a third party contractor) must provide to the seller a written or electronic estimate of the fees that will be assessed to provide the specified documents. Associations are permitted to collect a reasonable fee based on the actual cost for procuring, preparing, reproducing, and delivering the requested documents, but are prohibited from charging additional fees for electronic delivery of documents. The fees charged by the Association must be disclosed to the owner, a prospective purchaser and any authorized recipient on the form prescribed by the statute.

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DISCLOSURES**Disclosure of mining operations (SB 110; California Civil Code Section 1103.4; Operative January 1, 2012)**

Requires purchasers of property located within the vicinity of mining operations be informed of the location of mining operations prior to purchasing the property.

If a natural hazards report discloses certain conditions, the seller, and the listing or selling agent are, under certain conditions, exempt from liability for non-disclosure. This bill adds mining operations to those disclosures that must be included in a natural hazards report if the expert preparing the report determines a residential property is within one mile of mining operations.

LANDLORD TENANT**Prohibition on smoking in residential property (SB 332; California Civil Code Section 1947.5; Operative January 1, 2012)**

Authorizes landlords to prohibit smoking in residential dwellings, subject to certain requirements.

Landlords may prohibit the smoking of cigarettes or other tobacco products in residential dwellings. For leases entered into on or after January 1, 2012, the lease must include a provision specifying the areas on the property where smoking is prohibited if the lessee has not previously occupied the unit. For leases entered into before January 1, 2012, if smoking is prohibited in any portion of the property in which smoking was previously permitted, such a change will constitute a change in the terms of the tenancy, and landlords must give written notice to tenants and comply with any other requirements governing changes to tenancies. The statute does not preempt local ordinances that prohibit the smoking of cigarettes or other tobacco products.

Regulation of displays of political signs by tenants in residential property (SB 337; California Civil Code Section 1940.4; Operative January 1, 2012)

Protects tenant's rights to post or display political signs.

Except in limited circumstances, landlords may not prohibit tenants in residential dwelling units from posting or displaying political signs relating to any of the following: elections or legislative votes, including an election of a candidate to public office, initiatives, referendums, or recalls, or issues that are before a public commission, public board, or elected local body. Political signs may be posted or displayed in the window or on the door of the premises leased by the tenant in a multifamily dwelling, or from the yard, window, door, balcony, or outside wall of the premises leased by a tenant of a single-family dwelling.

However, landlords may prohibit tenants from posting or displaying political signs if the political sign is more than six square feet in size, or would violate a local, state, or federal law or provision of a common interest development governing document.

Tenants may display a permitted political sign for the time limits established by the local jurisdiction. If no such time limit exists, landlords are permitted to establish a reasonable time frame for display, which shall commence at least 90 days prior to the date of the election or vote to which the sign relates and end at least 15 days following the date of the election or vote.

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CONSTRUCTION**Contractor licensing and notification of dissociation of responsible managing officer, employee, member or manager (AB 1091; Business and Professions Code Section 7068.2; Operative January 1, 2012)**

Clarifies the timeframe in which licensed contractors must replace a qualifier or petition the Contractors' State License Board for an extension to do so.

Applicants for a contractor's license are required to demonstrate their knowledge and experience through a responsible managing officer, employee, member or manager. This law clarifies that if the responsible person disassociates from the licensed entity, the licensee must both provide notice of the disassociation to the registrar of the Contractors' State License Board and replace the responsible person within 90 days after the date of disassociation. This law also limits the circumstances where the registrar is authorized to grant one 90-day extension to replace the responsible person.

Indemnities in construction contracts (SB 474; Civil Code Sections 2782, 2783 and 2782.05; Operative January 1, 2012)

Regulates indemnification provisions in certain construction contracts where the indemnitee is actively negligent.

Existing law invalidates certain indemnity provisions in construction contracts. For example, existing law invalidates provisions in contracts for residential construction that require a subcontractor to indemnify the builder or general contractor for their negligence or for design defects. This statute extends similar limits to other types of construction contracts entered into on or after January 1, 2013. Indemnification provisions in such contracts requiring a subcontractor to indemnify or insure a general contractor, construction manager or other subcontractor against liability for claims of death or bodily injury to persons, injury to property, or any other loss, damages, or expenses are unenforceable to the extent the claims relate to the active negligence or willful misconduct of that general contractor, construction manager, or other subcontractor, or their other agents, or for defects in design furnished by those persons. Such provisions are also invalid to the extent the claims do not arise out of the scope of work of the subcontractor. Subject to specified conditions, certain contractual provisions and types of insurance are permitted, including mutual agreement by a subcontractor and general contractor or construction manager to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs. In addition, such provisions do not apply to a wrap-up insurance program. Such contracts will be governed by California law regardless of any choice-of-law rules that might otherwise apply. Any waiver of these provisions is contrary to public policy, void, and unenforceable.

This law limits indemnity provisions that an owner of private property who is not acting as a contractor or supplier may impose. For all construction contracts entered into on and after January 1, 2013, provisions that impose on any contractor, subcontractor, or supplier of goods or services, or that relieve the owner from, liability are unenforceable to the extent of the active negligence of the owner and its employees. These provisions do not apply to a homeowner performing a home improvement project on his or her own single family dwelling.

Existing law provides that construction contracts with a public agency imposing on any contractor, or relieving the public agency from, liability for the active negligence of the public agency are void and unenforceable. For contracts entered into on or after January 1, 2013, this protection is expanded to subcontractors and supplier of goods or services.

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MARKETABLE RECORD TITLE ACT**Expiration of recorded purchase options. (SB 284; Civil Code Sections 880.020 and 884.010) Operative January 1, 2013**

Beginning January 1, 2013, parties need only to look to the text of recorded documents to ascertain if record notice of an option has expired, and need not investigate off-record agreements to make that determination.

Existing law provides that if a recorded instrument creates or gives constructive notice of an option to purchase real property, the option expires of record if no instrument that gives notice of exercise or extends the option is recorded within the following times: (a) six months after the option expires according to its terms, or (b) if the option provides no expiration date, six months after the date the instrument that creates or gives constructive notice of the option is recorded. Current law implies that persons examining title may have to review off-record option agreements in order to determine when the six month period begins, and when the consequent expiration date occurs.

This law provides that beginning January 1, 2013, only recorded documents need be examined. The new law provides that if no instrument that gives notice of exercise or extends the option is recorded, the option will expire of record within the following times: (a) if the expiration date of the option is ascertainable from the recorded instrument, six months after that expiration date, or (b) if the expiration date of the option is not ascertainable from the recorded instrument or the recorded instrument indicates that the option provides no expiration date, six months after the date the instrument that creates or gives constructive notice of the option is recorded.

Even though the law goes into effect January 1, 2013, it will affect documents executed and recorded beforehand, so parties should take the new law into account immediately.

MECHANICS LIENS**Conversion of design professional liens to mechanics lien (SB 424; Civil Code Section 8319; Operative July 1, 2012)**

Gives design professionals who provide services for private works of improvements the ability to convert a design professionals lien into a mechanics lien in certain circumstances.

Design professionals may now convert recorded design professional liens into mechanics' liens if the design professional lien has expired due to the commencement of the work of improvement for which the design professional provided services, provided certain other specified requirements are met, including recording the mechanic's lien for the amount of the unpaid design professional lien within 30 days of the expiration of the design professional lien.

MORTGAGES**Prohibition on deficiency judgment in short sales involving dwellings of not more than four units. (SB 458; Code of Civil Procedure Section 580e) Operative July 15, 2011**

The anti-deficiency protections on short sales of dwellings of not more than four units has been extended to cover all deeds of trust encumbering by the sold property, not just the first deed of trust.

Under the prior provisions of Code of Civil Procedure Section 580(e), a deficiency judgment was prohibited on any loan secured by a first priority deed of trust or mortgage on a dwelling of not more than four units if (i) the property is sold for less than the amount of the remaining indebtedness under that first deed of trust, (ii) the lender has consented to the sale; (iii) the conveyance is accomplished by a recorded document, and (iv) the proceeds of the sale are distributed as the lender has agreed. This new law removes the request that the subject deed of trust be a "first" lien, thereby extending the reach of this section to all deeds of trust encumbering the property.

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The new law also covers situations in which the mortgage or deed of trust on the dwelling is not the only security for the loan. The new law provides that if other security has been given for the loan, and the property subject to the mortgage or deed of trust is sold in a short sale that enjoys the anti-deficiency protection, such anti-deficiency protection nevertheless applies. However, it does not prohibit the lender from pursuing foreclosure or other realization on the other collateral given for the loan; it merely prohibits rendering a deficiency judgment after all that security is exhausted.

Waivers of these protections are void as against public policy.

The law is intended to protect individuals; the protections do not apply if the trustor or mortgagor is a corporation, limited liability company, limited partnership, or political subdivision of the state, or if the deed of trust secures the payment of bonds or other evidence of indebtedness of the Commissioner of Corporations lien a public utility subject to the Public Utilities Act.

LAND USE AND LOCAL GOVERNMENT

Extension of expiration date for tentative maps (AB 208; Government Code Sections 65961 and 66452.23; Operative July 15, 2011)

Extends the expiration date for tentative and vesting tentative maps that have not expired as of July 15, 2011, and would have otherwise expired before January 1, 2014 for two years.

For more information, see <http://www.luce.com/subdivisionmaps>.

Fees for transportation facilities (AB 147; Government Code Sections 66484.7 and 66484.9; Operative January 1, 2012) - Review AB 147

Authorizes local agencies to collect fees in connection with new development to fund certain non-vehicle transportation system elements.

Subject to the Mitigation Fee Act, as a condition of approval of a final map or as a condition of issuing a building permit, local agencies may require the payment of fees for purposes of defraying the actual or estimated cost of constructing pedestrian, bicycle, transit, and traffic-calming facilities.

Property tax revenues and contracts for land devoted to agricultural use (AB 1265; Government Code Sections 16142, 16142.1, 51244, 51244.4 and 51244.3; Operative July 15, 2011)

Creates a temporary program by which counties are authorized until January 1, 2015, to revise the terms of contracts with owners of agricultural lands under certain circumstances.

From January 1, 2011 through January 1, 2016, counties are authorized to revise the term for new and newly renewed contracts with landowners who agree to devote their land to agricultural use, and require the assessor to value the restricted property, as specified, based on the revised contract term, in any fiscal year in which payments authorized for reimbursement to a county for lost revenue are less than 1/2 of the participating county's actual foregone general fund property tax revenue. If a county makes the determination to revise a contract term, landowners may choose to not to renew their contract and begin the cancellation process. Any increased revenues generated by properties under a new contract will be paid to the county.

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Changes in time periods for filing changes in ownership statements and penalties (SB 507; Revenue and Taxation Code Sections 480, 480.1, 480.2, 482, and 483; Operative January 1, 2012)

Extends the time period in which change of ownership or change in control statements must be filed and increases the penalties if new property owners fail to file a change in ownership statement upon a change in ownership of real property or manufactured homes.

Property tax law requires a transferee of real property or a manufactured home that is locally assessed to file a change in ownership statement with the county in which the property or manufactured home is located. The time period for filing a change in ownership statement if the transfer is not recorded has been extended from 45 days to 90 days. The cap on the penalty for failing to file a change in ownership statement within 90 days from the date a written request is mailed by the assessor has been increased from \$2,500 to \$5,000 if the property is eligible for the homeowners' exemption or \$20,000 if the property is not eligible for the homeowners' exemption.

Similarly, corporations, partnerships, limited liability companies or other legal entities that suffer a change in control or change in ownership, as defined in Revenue and Taxation Code Section 64, are required to file a change in ownership statement. The time period for filing a change in ownership statement in those cases has also been extended from 45 days to 90 days.

The county board of equalization, the assessment appeals board, or the assessor are authorized to order penalties abated under certain circumstances, provided that proper notice is provided by the transferee or legal entity.

New requirements for notification by the assessor of requests for change in ownership statements and penalties are also prescribed by statute.

Parking citations issued by private property owners (11 C.D.O.S. 15460, No. 07-804, December 22, 2011)

Private property owners may not issue parking citations imposing monetary sanctions on owners of vehicles parked on their property absent statutory authority to do so.

The California Attorney General has concluded that no state law authorizes private property owners to issue parking citations imposing monetary sanctions on owners of vehicles parked on their property and that such citations may not be issued without that statutory authority.

Although opinions of the Attorney General are not binding, courts have stated that they are entitled to great weight. Owners of property with private streets and/or private parking areas should consider this opinion in adopting and enforcing parking rules and regulations.