MILLER & STARR
REAL ESTATE NEWSALERT

Reprinted in part from
Volume 21, Number 3, January 2011
(Article starting on page 227 in the actual issue)

ARTICLE

To Do or Not To Do—Whose Instructions to Follow In Closing An Escrow

by Laura S. Lowe and Tara Castro Narayanan*

Few would hazard to consummate any real estate transaction without the services of a neutral escrow holder. Traditionally, general escrow law has defined the existence and scope of an escrow holder's liability based on whether one was a "party" to the escrow. At its most basic, each party deposits its documents and funds into escrow and provides instructions to the escrow holder, the conditions of escrow are satisfied, and escrow "closes." It all seems straightforward.

Two recent cases demonstrate how the function of an escrow holder can be complicated by the involvement of a third party, such as a lender, in the overall transaction. The relationship of a lender's closing instructions to the duties of an escrow holder in a purchase and sale transaction was addressed in both *The Money Store Investments Corp. v. Southern California Bank,*[1] and *Plaza Home Mortgage, Inc. v. North American Title Company, Inc.*[2] While one might conceptually argue that the lenders in these cases were "parties" to the larger escrow transaction, the courts in both cases focused on *contract* principles rather than the duties of an escrow holder as an agent of a party to the

* Laura S. Lowe is a senior counsel and Tara Castro Narayanan a shareholder in the Walnut Creek office of Miller Starr Regalia, both specializing in escrow and title insurance litigation. Ms. Narayanan is also the primary author of the rewritten Escrows Chapter, 3 Miller & Starr, California Real Estate, Chapter 6 (3d ed. 2010).

WEST®

escrow. As discussed further in this article, this distinction is critical, limiting the scope of the escrow holder's obligations as a neutral, and curtailing liability (e.g., based in tort or contract) to other non-parties. This article provides an analysis of the *Plaza* and *Money Store* cases and their implications for California law concerning escrow liability.

1. WHAT IS AN "ESCROW"?

a. Parties To An Escrow.

Any analysis of issues concerning the scope of the duties and obligations of an escrow holder must start with the definition of "escrow." California Civil Code §1057 defines an escrow as follows:

> A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

Escrow is further defined in Financial Code §17003, subd. (a),[3] as follows:

> "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.

Although the reference to encumbering real property makes this statute appear to apply to lenders in most circumstances, the issue of whether a lender is a party to a purchase and sale escrow continues to be uncertain, particularly in the modern world of creative financing.

In the seminal case of *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.*,[4] the California Supreme Court reviewed the issue of the duties owed by an escrow holder to the plaintiff, a lender who was the assignee of a loan that was to be paid off through the purchase and sale escrow. The Court described the nature and extent of an escrow holder's duties:

> An escrow involves the deposit of documents and/or money with a third party to be delivered on the occurrence of some

> condition. An escrow holder is an agent and fiduciary of the parties to the escrow. The agency created by the escrow is limited…to the obligation of the escrow holder to carry out the instructions of each of the parties to the escrow. If the escrow holder fails to carry out an instruction it has contracted to perform, the injured party has a cause of action for breach of contract.
>
> In delimiting the scope of an escrow holder's fiduciary duties, then, we start from the principle that "[a]n escrow holder must comply strictly with the instructions of the parties." On the other hand, an escrow holder "has no general duty to police the affairs of its depositors;" rather, an escrow holder's obligation are "limited to faithful compliance with [the depositors'] instructions.[5]

In *Summit*, therefore, the California Supreme Court affirmed the appellate court's determination that an escrow holder, as a matter of law, did not owe a duty of care to a non-party to an escrowed transaction, even if the escrow holder knew the non-party had an interest in the transaction.[6]

b. Escrow Holder Liability To Non-Parties Not In Contractual Privity.

As suggested by the Court in *Summit*, at the opposite end of the spectrum from a "party" to an escrow, which is owed fiduciary duties, is a third party. In some cases an escrow holder's duty of care to *non-parties* may exist, albeit in a limited fashion. *Summit*'s facts demonstrate this: The plaintiff lender, Summit Financial, received an *assignment* of a trust deed taken by the first lender on the borrower's property.[7] During a refinance with a third lender, the assignment appeared on the preliminary report, but the instructions of the *parties* to the escrow (i.e., the purchaser and the seller) were only to pay beneficiary demands, and only the original lender submitted one. In paying off the original lender and not the plaintiff lender, who was the original lender's assignee, the escrow holder was held not to have violated any duty because the plaintiff assignee was not considered a "party" to the escrow. In the Court's view, Summit Financial's loss was occasioned by the failure of its *assignor* to transfer the funds to Summit Financial as he was obligated to do, rather than the failure of the escrow agent to identify and protect the interests of the *assignee*, who had submitted no demand.[8]

According to *Summit*, a determination of whether a duty is owed by an escrow holder to a third party not in privity of contract should be analyzed based on the third party *tort liability* analysis in *Biakanja v. Irving*:[9]

> In [*Biakanja*] we stated: "The determination whether in a specific case the defendant will be held *liable to a third person not in privity* is a matter of policy and involves the balancing of various factors, among which are the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the policy of preventing future harm."[10]

It is important to note the six-factor *Biakanja* test applies to the potential liability of the escrow holder for those not in privity—that is, those who are *not* parties to the escrow. In contrast, *Money Store* and *Plaza* involved circumstances in which contractual privity existed between the lenders and escrow holders, rendering *Biankanja* inapplicable.[11] The potential liability in *Money Store* and *Plaza* therefore stemmed from ordinary contract principles, rather than tort principles.[12]

2. *THE MONEY STORE*: LIABILITY BASED IN CONTRACT.

In *The Money Store Investment Corp. v. Southern California Bank* ("*Money Store*"),[13] the court found that a lender's closing instructions constituted a valid *contract*, complete with "consideration" based on mutual consent to the lender's conditions to funding. The lender agreed to fund the loan on specified conditions, and the escrow holder accepted the conditions by signing the proffered acknowledgment.[14] The underlying transaction was the sale of a chiropractic practice from Teddy Springfield, seller, to Robert McKinley, buyer. Although the purchase price was $450,000, McKinley intended to obtain a Small Business Administration guaranteed loan in the total amount of $497,000. The funds were to be used to pay the purchase price and the SBA loan guaranty fee, with $35,203 remaining for working capital. The Money Store was the underlying lender.

The parties to the escrow in *Money Store*—that is, the buyer and the seller—required compliance with any lender instructions *as part of their escrow instructions*, which may have created a fiduciary duty by the escrow holder to *them* to comply with the lender's instructions. The court appears to have relied on that fact in rendering its decision: "Under the escrow instructions, the [escrow holder] was authorized to comply with the lender's instructions and to provide copies of escrow instructions, amendments, and other exhibits the lender might request."[15] The Money Store sent closing instructions to the escrow holder stating, in part, that the funds were to be disbursed with $450,000 to the seller and $35,203 for working capital. The closing instructions provided that the estimated closing statement was to be provided to The Money Store

for review and approval. In addition, the instructions indicated that "any deviation from the instructions without The Money Store's express authorization would be at the [escrow holder's] risk."[16]

Although the escrow holder acknowledged receipt and acceptance of The Money Store's instructions, it received an addendum to the escrow instructions from the buyer and seller. The new instructions provided, among other things, for a $172,685.88 payment to the buyer that had not previously been part of the deal. In addition, the seller was to retain a 100% interest in a medical lien from an accident case. The Money Store was not notified of the changes to the disbursements until the day of closing. Predictably, the loan went into default and The Money Store claimed that it would not have closed its loan if it had known about the changes to disbursements requested by the parties in the eleventh hour. The lower court granted summary judgment in favor of the escrow holder.

> The [escrow holder] argues summary judgment was proper on the breach of contract cause of action because: (1) The Money Store and the [escrow holder] were not parties to a contract; (2) The Money Store reserved the right to withdraw or amend its instructions at any time; (3) there was no consideration for a contract; and (4) the [escrow holder] did not breach any contract.[17]

The court of appeal found that the escrow holder and the lower court were incorrect in concluding the escrow holder owed no duty to The Money Store.

The escrow holder had claimed that no contract existed between it and The Money Store because "the closing instructions 'were provided to facilitate the [escrow holder] bank's performance of its obligations under the [e]scrow [i]nstructions, not to create a separate contractual agreement….'"[18] Nevertheless, the court found that *the closing instructions were a contract exhibiting mutual consent*, and that it was a question of fact whether the instructions were breached. The court found the closing instructions to be enforceable against the escrow holder. The court so held in order to protect the lender, who would not otherwise be entitled to the information required to protect itself.

> A fair interpretation of the Money Store's instructions is it wanted the ability to determine before the close of escrow whether funds were being disbursed as its instructions required and to be able to prevent the disbursement of funds if they were not.[19]

Money Store demonstrates that while a lender may not be a *party* to the escrow, courts have taken into consideration the lender's steps to

protect itself and, therefore, have found a *contractual obligation* in lieu of an agency duty of the escrow holder to the lender.

3. THE *PLAZA* CASE.

The more recent case of *Plaza Home Mortgage, Inc. v. North American Title Company, Inc.*,[20] for purposes of liability on the part of an escrow holder, initially addressed a fundamental question: when does an escrow "close?" However, the court resolved the issue by concluding that the time at which the purchase and sale escrow "closed" was not relevant to the escrow holder's third party liability when the escrow holder owed separate *contractual* duties to the third party lender. The *Plaza* court made a distinction between "escrow instructions"—which were the instructions of the buyer and seller—and the "closing instructions" of the lender. The *Plaza* court ultimately concluded that escrow holders may have continuing obligations beyond the official close of escrow based on lender's closing instructions.

a. The *Plaza* Escrow Transaction.

The facts of the *Plaza* case were not disputed. In March 2007, Oliver Aleta purchased real property located in Northridge, California from Monette Santillian for $1.1 million. Plaza Home Mortgage, Inc. agreed to loan Aleta 100% of the purchase price. The first lien was set up as a hybrid loan with an adjustable rate of interest; Aleta had the option of paying interest only or a minimum monthly payment. North American Title Company was the escrow holder and Investors Title Company performed sub-escrow functions, charged with paying the then-existing liens against the subject property. North American prepared an estimated HUD-1 settlement statement that indicated the anticipated costs and disbursement from the escrow. The estimated settlement statement was provided to the lender.

On March 1, 2007, Plaza sent the loan amount to Investors. The sub-escrow holder paid the liens encumbering the property and sent the balance of the proceeds to the escrow holder, North American, for further distribution. The property was deeded from Santillian to Aleta and the grant deed and deeds of trust were recorded on March 2, 2007. *After recordation, but prior to the distribution of the remaining proceeds, the seller sent a written instruction to North American to pay $53,853 to another party, Edward Peregrino, who was Aleta's attorney-in-fact.* Peregrino had been involved in the transaction from the beginning and handled most of the transaction for Aleta. *North American, the escrow holder, complied with the new disbursement instruction without notice to the lender, Plaza.* Thus, the seeds were planted for the present litigation by the lender against the escrow holder. From the escrow holder's perspective, the escrow closed at

the moment the documents were recorded. Ultimately, the borrower never moved into the property as he had represented he would to the lender, and defaulted before making the third payment. The lender was unable to sell the loans on the secondary market. Eventually, the lender obtained title to the property through an agreement with Aleta and sold the property at a substantial loss for $760,000.

b. The Lawsuit By The Lender In *Plaza*.

The lender, Plaza, sued the escrow holder, North American, for breach of contract, negligence and equitable indemnity. The case focused on the legal consequence of the lender's instructions to North American, specifically after escrow "closed." In a bench trial, North American prevailed on a motion for judgment under California Code of Civil Procedure §631.8. The trial court found that North American had not breached the lender's closing instructions and, even if it had, there was no showing that the breach, by North American proximately caused the lender's damages, which actually arose from the buyer's and seller's scheme to overvalue the property to the lender's detriment. The appellate court disagreed entirely, holding as follows:

> [W]e conclude the [trial] court erred both when it found there was no breach of the closing instructions contract with Plaza [the lender] because escrow had closed, and when it failed to consider whether North American breached *the closing instructions contract* when it disbursed the $53,853 payment and closed the two loans to the buyer/borrower without first notifying Plaza of the last minute escrow instruction.[21] [Emphasis added.]

The outcome of the case hinged on whether North American had an obligation to notify the lender of the changed disbursal of the loan proceeds *after* escrow closed and before the money was disbursed. The lender's closing instructions guided the court's decision.

c. The Lender's Instructions In *Plaza*.

As part of the transaction, Plaza had submitted instructions to North American. Again, distinguishing between "escrow instructions" and "closing instructions" the court of appeal defined the latter as follows:

> Unlike escrow instructions, which constitute an agreement between the escrow company, on the one hand, and the buyer and seller, on the other hand, the closing instructions at

> issue here set forth the terms and conditions of closing the loans funded by Plaza [the lender] and set out the duties and responsibilities of the settling agent, North American, in connection with that closing.[22]

The "closing instructions" included the following addendum, which was central to the appellate court's ruling:

> By signing, the settlement agent certifies that there are no additional payoffs or fees that were not disclosed to the lender either verbally or on an Estimated HUD-1.[23]

The addendum also provided as follows:

> Prior to funding-max seller concessions 3% not to exceed actual amount of costs, *no cash credits allowed to borrower on HUD-1*.[24]

The addendum was required to be signed and *was* signed by a North American company representative. The estimated settlement statement that North American had provided to the lender prior to closing did not disclose the shift of the payment from seller Santillian to Peregrino, the buyer Aleta's attorney-in-fact. (This is not surprising because North American did not receive the instruction to shift the payment from Santillian to Peregrino until after recordation or, in escrow terms, "after closing.")

d. The Court's Conclusion In *Plaza*.

The pivotal issue was on whether North American had an obligation to notify the lender of the changed disbursal of the loan proceeds *after* escrow closed and before the money was disbursed. The *Plaza* court determined that the duties undertaken by the "closing instructions" were explicitly intended to continue after escrow closed based on certain duties by North American listed in the closing instructions that could only occur after escrow closed: the preparation of the final HUD-1 settlement statement, a review of borrower fees listed in the truth-in-lending itemization, and verification that the borrower fees matched the final settlement statement. The final settlement statement can only be prepared after recordation of the documents salient to the transaction. The court of appeal explained as follows:

> [W]e are concerned in the instant case with the duties and obligations of North American as set forth in the *closing in-*

> *structions contract*. One such duty was the obligation of North American to disclose to Plaza any "additional payoffs or fees" that were not included in the estimated HUD-1, or otherwise disclosed by North American. We conclude this duty to disclose continued until the loans closed, and not, as North American argues and the trial court concluded, when escrow closed.[25] [emphasis added].

The appellate court remanded the case with instructions for the trial court to re-determine whether North American breached the closing instructions and, if so, whether the breach proximately caused the lender's damages.

The *Plaza* court, based on the obligations stemming from a "closing instruction" contract, extended an escrow holder's potential liability beyond the "close" of escrow, at least in the circumstances presented by the case. The court's determination to find contractual obligations arising out of the closing instructions is not so surprising when one considers the impact of declaring there to be no duty to anyone just because escrow has closed:

> [W]e would be creating a void or "legal holiday" so to speak, between escrow and settlement. That void, in turn, would actually encourage potentially illegal and unlawful conduct, such as the "kickbacks" in *Money Store* or here, which Plaza claims was a "red flag" that the property was overvalued and the appraisal inflated.[26]

4. DIVINING LESSONS FROM *SUMMIT, MONEY STORE,* AND *PLAZA*: A LENDER'S LEGAL STATUS IN AN ESCROW.

a. Post-*Plaza*: Lender Scenarios.

With the *Plaza* case creating separate "escrow instruction" and "closing instruction" relationships, one may wonder what the future holds in terms of the extent of future liability, particularly with regard to lenders. In the complex world of real estate loans and the schemes that have been devised of late, it is difficult to identify the line between a party to the escrow and a third party to which the escrow holder does not owe *fiduciary* duties but to whom the escrow holder may now hold *contractual* duties, based on this recent line of cases. To illustrate the point, current "lenders" are often a conglomerate of investors, and the escrow holder's contact and closing instructions come

from the loan servicer or administrative agent, not the actual "lender." But, if the loan servicer tenders a beneficiary demand for payment, does that make the loan servicer a "party" to the escrow? The *Summit* case seems to indicate that it would not be a party to the escrow.[27]

Another related modern anomaly is the funding entity. Again, the instructions come to the escrow holder from one entity. However, in commercial transactions, the "lender" might be only a name on the loan documents, with a syndicate of other lending institutions behind it as the actual loan participants funding the loan. The circumstances might be further complicated in that funds may be delivered into escrow by an entity that is not the lender and is a stranger to the transaction, but who handles money for the syndicate. Is the funder a party to the escrow? Are the principal lenders in a syndicate parties to the escrow? Again, whether a "party" or not, *Plaza* and *Money Store* demonstrate that, via a contractual relationship with the escrow holder, there are obligations owed to the lender, which could lead to potential liability based in contract. If there is no privity of contract, a non-party is left to grapple with the *Biakanja* factors.

b. Potential Issues Associated With Damages.

In the *Plaza* case, the court made a distinction between escrow instructions and closing instructions. Through a contractual concept of "closing instructions," the *Plaza* court was able to extend the duties of the escrow holder beyond what the escrow holder may have anticipated.

Courts commonly refer to lenders' instructions as "closing instructions" rather than escrow instructions. For example, the *Money Store* court described the instructions as follows:

> On June 24, the Money Store transmitted "closing instructions" to the [escrow holder] Bank.... The instructions directed disbursal of $450,000 to Springfield and $35,203 for working capital and indicated the Money Store would pay the loan guarantee fee directly to the SBA. The instructions directed the Bank to provide the Money Store "[p]rior to close of escrow...with an estimated closing statement for [Money Store's] review and approval." They indicated any deviation from the instructions without the Money Store's express authorization would be at the Bank's risk.[28]

There is good reason for the distinction between calling instructions "closing instructions" as compared to "escrow instructions." The key

significance may relate to the type of liability to the escrow holder.

As discussed previously, an escrow holder's "fiduciary" duties are generally limited to strict compliance with the parties' escrow instructions.[29] Accordingly, it follows that escrow instructions requiring the escrow holder to comply with lenders' "closing instructions" may result in the measure of damages being limited to those available for breach of contract, rather than the potentially greater damages available in tort. The *Money Store* court explained it well:

> The Supreme Court has rejected the transmutation of contract actions into tort actions "in favor of a general rule precluding tort recovery for noninsurance contract breach, at least in the absence of violation of an independent duty arising from principles of tort law other than…liability under the breached contract."[30]

In other words, a lender may be able to find an escrow holder liable for breach of its closing instructions as a breach of contract. It may not, however, be able to expand that potential liability into the arena of tort, which may be critical in the context of damages and remedies.

c. Limitations Periods.

The distinction between a contractual duty through closing instructions and a "limited fiduciary duty" through escrow instructions bears relevance in the determination of the potential period of limitations, which would depend on the type of potential liability. In *Amen v. Merced County Title Co.*,[31] the California Supreme Court reviewed the statute of limitations in an action by a buyer against an escrow holder. Buyer Amen entered into an agreement to purchase a tavern. Merced County Title Company acted as the escrow for the purchase. As part of the purchase price, Amen was to assume certain debts in the amount of $10,000. Amen instructed the escrow holder as follows: "Any debts over $10,000 will be paid by the Merced Title Company out of the proceeds of the sale…."[32] A notice was mailed by the State Board of Equalization to Amen, *care of the escrow holder*, that Amen should obtain a tax clearance certificate to avoid liability for sales taxes owed by the seller. The escrow holder did not communicate that information to Amen. Predictably, the sellers did not pay the sales taxes, and Amen received a notice that she was liable as the successor to the sellers. With the $10,000 in liability Amen had already assumed, her debt load

exceeded the agreed amount.

The court acknowledged that "[u]pon the escrow holder's breach of an instruction…the injured party acquires a cause of action for breach of contract. Similarly, if the escrow holder acts negligently, 'it would ordinarily be liable for an loss occasioned by its breach of duty.'"[33] Thus, although the *Amen* court determined that the limitations period did not run on either breach of contract or negligence, the case illustrates that there is the potential for different limitations periods depending on the bases for escrow holder liability.

5. WHAT THE FUTURE HOLDS FOR LENDER CLOSING INSTRUCTIONS.

Over the past few years, the American Escrow Association, the American Land Title Association and the Mortgage Banker's Association have been working to develop standard lender closing instructions for a typical escrow involving the financing of residential properties. Although drafts have circulated, no agreement has been reached to date. Some parties remain optimistic that an agreement will be reached to make uniform the application and treatment of lender closing instructions to an escrow holder. With the involvement of escrow, title and lender stakeholders, it is possible that form lenders' closing instructions will be drafted in a manner that can avoid, or at least limit, the disputes that have given rise to the recent cases analyzing lenders' closing instructions in the context of an escrow. In the interim, escrow holders should proceed with caution. Whether instructions are deposited into escrow by the lender, buyer, or seller, it is best for the escrow holder to read the entirety of the deposited instruction and to seek clarification when any provision is potentially a conflicting or ambiguous instruction.

NOTES

1. *Money Store Investment Corp. v. Southern California Bank*, 98 Cal. App. 4th 722, 120 Cal. Rptr. 2d 58 (4th Dist. 2002), as modified, (May 29, 2002).
2. *Plaza Home Mortg., Inc. v. North American Title Co., Inc.*, 184 Cal. App. 4th 130, 109 Cal. Rptr. 3d 9 (4th Dist. 2010).
3. Escrows and escrow holders are regulated differently depending on their operating license and the nature of the business. For a description of the difference, see Miller & Starr, California Real Estate 3d §6:4.
4. *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.*, 27 Cal. 4th 705, 27 Cal. 4th 1160a, 117 Cal. Rptr. 2d 541, 41 P.3d 548 (2002), as modified on denial of reh'g, (May 15, 2002).
5. *Id*. at 711 (citations omitted).
6. *Id* at 715-716. See also *Markowitz v. Fidelity Nat. Title Co.*, 142 Cal. App. 4th 508, 48 Cal. Rptr. 3d 217 (2d Dist. 2006), applying the *Summit* analysis.
7. *Id.* at 708-709.
8. *Id.* at 716.

9. *Biakanja v. Irving*, 49 Cal. 2d 647, 650, 320 P.2d 16, 65 A.L.R.2d 1358 (1958).
10. *Summit Financial Holdings, supra*, 27 Cal. 4th at 715.
11. *The Money Store Investment Corp. v. Southern California Bank, supra*, 98 Cal. App. 4th at 731-732.
12. See *Plaza Home Mortg.*, *supra*, 194 Cal. App. 4th at 129 (noting similarity to *The Money Store Investment*).
13. *The Money Store Investment Corp. v. Southern California Bank, supra*, 98 Cal. App. 4th 722.
14. *Id.* at 728; *see Plaza Home Mortg., supra*, 184 Cal. App. 4th at 137.
15. *Id.* at 726.
16. *Id.*
17. *Id.* at 727-728.
18. *Id.* at 728.
19. *Id.* at 730.
20. *Plaza Home Mortg., Inc. v. North American Title Co., Inc.*, 184 Cal. App. 4th 130, 109 Cal. Rptr. 3d 9 (4th Dist. 2010).
21. *Id.* at 132.
22. *Id.* at 136.
23. *Id.* at 137 (emphasis omitted).
24. *Id.* (emphasis added).
25. *Id.* at 138.
26. *Id.* at 140.
27. *Summit Financial Holdings, supra*, 27 Cal. 4th 705.
28. *The Money Store Investment Corp, supra*, 98 Cal. App. 4th at 726.
29. *See Summit Financial Holdings, supra,* 27 Cal. 4th at 711; *Amen v. Merced County Title Co.*, 58 Cal. 2d 528, 532, 25 Cal. Rptr. 65, 375 P.2d 33 (1962).
30. *The Money Store Investment Corp, supra,* 98 Cal. App. 4th at 732 (citing *Summit Financial Holdings, supra,* 27 Cal. 4th at 711).
31. *Amen v. Merced County Title Co.*, 58 Cal. 2d 528, 25 Cal. Rptr. 65, 375 P.2d 33 (1962).
32. *Id.* at 531.
33. *Id.* at 532.

Miller & Starr Real Estate Newsalert

Managing Editor:	**Karl E. Geier**
Executive Editor:	**Karen Turk**
Editor Emeritus:	**Edmund L. Regalia**
Founding Editors:	**Harry D. Miller & Marvin B. Starr**
Attorney Editor:	**John Frey**
Production Assistant:	**Cortney Carter**
Design & Layout:	**Specialty Composition/Rochester DTP**

Miller & Starr Real Estate Newsalert (USPS # pending) is issued six times per year, published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Application to mail at periodic rate is pending as St. Paul, MN. POSTMASTER: Send address changes to: Miller & Starr Real Estate Newsalert, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

The law firm of Miller Starr Regalia, founded by Edmund Regalia, Marvin Starr, and Harry Miller is headquartered in Walnut Creek. Members of the firm have been writing and editing the treatise, Miller & Starr, since shortly after the firm was founded in 1964. Karl E. Geier, a shareholder of the firm, is the current editor-in-chief of the treatise.

MILLER STARR
REGALIA