

# 2017 SUMMARY OF LEGISLATION



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## EDITOR'S NOTE

Of the 859 bills signed into law in 2017, 37 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](http://leginfo.legislature.ca.gov) under the "Bill Information, 2017-18 Session" link. All bills summarized in this publication become effective January 1, 2018, 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.

## AGRICULTURAL LANDS

- **Agricultural Land Component of General Plans**
- **Williamson Act**

The Planning and Zoning Law requires local governments to adopt general plans with certain mandatory elements, including a land use element and an open-space element. The land use element must designate the proposed general distribution and general location and extent of the uses of the land for agricultural use. The open-space element includes a plan for the comprehensive and long-range preservation and conservation of open-space land within the local government boundaries. Additionally, California has enacted the Williamson Act whereby agricultural land owners agree to continue using the property as agricultural land, and the city or county agrees to value the land accordingly for purposes of property taxation.

At the state level, the Department of Conservation prepares, and updates biennially, Important Farmland Series maps using data compiled by the United States Soil Conservation Service, and collect information on the amount of land converted to or from agricultural use using data for every county for which Important Farmland Series maps exist. Existing law also establishes the Agricultural Protection Planning Grant Program within the Department of Conservation to provide planning grants to improve the protection of agricultural lands and grazing lands, including oak woodlands and grasslands.

This act authorizes a city or county to develop an agricultural land component of their open-space element (ALC), as defined, or a separate agricultural land element (ALE), and requires the Department of Conservation (DOC) to give priority consideration for grants, bond proceeds, and other local assistance funding provided by DOC to a city or county that meets specified requirements. A city or county that develops an ALC or an ALE is required to take certain steps. These steps include identifying and mapping, utilizing the designation in the Farmland Monitoring and Mapping Program or the soil surveys conducted by the United States Natural Resources Conservation Service, agricultural lands within the city's or county's jurisdiction. The identification and mapping must include all parcels subject to Williamson Act contracts, as well as all parcels subject to conservation easements. Additionally, the identification process includes all agricultural preserves, all parcels subject to a farmland security zone contract, and all parcels being used for agricultural purposes within a sphere of influence or municipal service boundary and that are not subject to a permanent easement.

*Chapter 434 (SB 732 – Stern); amending Section 669.5 of the Evidence Code, amending Sections 51283, 65560, and 65570 of, and adding Sections 65565 and 65565.1 to, the Government Code, amending Section 5950.1 of the Harbors and Navigation Code, amending Sections 612, 10281.5, and 10282 of the Public Resources Code, and amending Section 79033.6 of the Water Code.*

## ASSESSMENTS

- **Property Assessed Clean Energy (PACE) Program**
- **Licensing of PACE Program Administrators**

Existing law generally provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight. Existing law requires a person seeking to become licensed as a finance lender or broker to submit an application to the commissioner, comply with specified licensure requirements, and comply with requirements related to the conduct of his or her business.

Existing law, known commonly as a Property Assessed Clean Energy (PACE program), authorizes a public agency to enter into voluntary contractual assessments with property owners to finance the installation of renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property. Existing law requires a public agency to comply with specified requirements before permitting a property owner to participate in a PACE program, including that the property owner's participation would not result in the total amount of any annual property taxes and assessments exceeding 5% of the property's market value, and that the property owner is provided with specified financial documents and other forms. Existing law authorizes a private entity to administer a PACE program on behalf of a public agency.

This act renames the "California Finance Lenders Law" the "California Financing Law," and requires specified criteria be satisfied before a program administrator approves an assessment contract for recordation by a public agency, including that all property taxes on the applicable property be current, the applicable property to not have specified debt recorded, that the property owner be current on specified debt and to have not been a party to a bankruptcy proceeding within a specified time, that the financing of the assessment, as well as the total value of all debt on the property, not exceed a specified amount, and that the terms of the assessment contract not exceed certain limitations.

This act, commencing on April 1, 2018, prohibits a program administrator from approving an assessment contract for funding and recording by a public agency unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the PACE assessments. The act requires a program administrator to comply with the requirements of the California Financial Information Privacy Act.

The act, commencing on January 1, 2019, requires a program administrator be licensed by the commissioner under

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# ASSESSMENTS (cont.)

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the California Financing Law. The act requires a program administrator licensee to comply with similar requirements to those of finance lenders and brokers as to the conduct of his or her business, including display of his or her license, business location, maintenance and preservation of records, reporting, including filing a specified annual report under oath, prohibiting making false or misleading statements, and advertising.

The act requires a program administrator to establish a process for the enrollment of a PACE solicitor and a PACE solicitor agent, including requiring a PACE solicitor or a PACE solicitor agent to meet specified minimum background checks, and prohibits a program administrator from enrolling a PACE solicitor or a PACE solicitor agent if the program administrator makes specified findings. The act requires a program administrator to establish a process to promote and evaluate the compliance of a PACE solicitor and a PACE solicitor agent with applicable law, and to establish a process to cancel the enrollment of a PACE solicitor or PACE solicitor agents who fail to meet minimum qualifications. The act requires a program administrator to establish a training program for PACE solicitor agents.

The act authorizes the commissioner to take disciplinary actions against a program administrator that are similar to the disciplinary provisions for a finance lender or broker. The act authorizes the commissioner to take disciplinary actions against a PACE solicitor or a PACE solicitor agent that violates any provision of the California Financing Law. The act provides that if the person subject to an investigation under these provisions complies with the commissioner's demands, or otherwise reaches a mutually agreeable resolution of any issues, then any examinations and correspondence related to that investigation is confidential.

This act requires a program administrator to submit to the commissioner information beneficial to evaluating various aspects of the PACE program to be included in a specified annual report. The act authorizes the commissioner, by rule, to require a program administrator to use a real-time registry or database system for tracking PACE assessments.

The act applies to all cities, including charter cities.

**NOTE:** This act took effect as an urgency measure on October 4, 2017.

*Chapter 475 (AB 1284 – Dababneh): amending, repealing, and adding Section 10133.1 of the Business and Professions Code, and amending Sections 22000, 22753, 22780 of, amending the heading of Division 9 (commencing with Section 22000) of, amending, repealing, and adding Sections 22001, 22007, 22010, 22101, 22101.5, 22102, 22103, 22104,*

*22105, 22105.3, 22106, 22107, 22109, 22151, 22152, 22153, 22154, 22155, 22156, 22157, 22159, 22161, 22162, 22163, 22164, 22168, 22169, 22700, 22701, 22706, 22712, 22714, and 22716 of, adding Sections 22003.5, 22015, 22016, 22017, 22018, 22018.5, 22019, 22020, 22068, 22100.5, 22252, 22552, and 22758 to, and adding Chapter 3.5 (commencing with Section 22680) to Division 9 of, the Financial Code.*

- **Property Assessed Clean Energy (PACE)**
- **Oral Confirmation of Assessment Contract**

Existing law, known commonly as a Property Assessed Clean Energy (PACE) financing program, authorizes a public agency, by making specified findings, to authorize public agency officials and property owners to enter into voluntary contractual assessments. These assessments can finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property. Existing law similarly authorizes a community facilities district to be formed pursuant to an alternative procedure under which the district initially consists solely of territory proposed for annexation to the community facilities district in the future and territory is annexed and subjected to special taxes only upon unanimous approval of the owners, to finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements. Existing law authorizes a public agency, or an entity that administers a PACE financing program on behalf of and with the written consent of a public agency, to issue PACE bonds that are secured by voluntary contractual assessments, voluntary special taxes, or special taxes on property to assist property owners in financing the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements.

The act requires a program administrator, before a property owner executes an assessment contract to make an oral confirmation that at least one owner of the property has a copy of specified documents and forms related to the contract, and to provide an oral confirmation of the key terms of an assessment contract with the property owner on the call or an authorized representative of the owner on the call that contains specified information. The act requires a program administrator to record the oral confirmation, and to retain that recording for a specified period of time. The act requires a program administrator to ask if the property owner would prefer the oral confirmation be provided in a language other than English, and requires the program administrator to deliver the oral confirmation in the property owner's language or via an interpreter chosen by the property owner in order for the contract to proceed, and requires the program administrator to provide the property owner with the translation of specified documents. This act prohibits a program administrator from waiving or deferring the first payment on an assessment...

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## ASSESSMENTS (cont.)

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...contract, and requires that a property owner's first assessment payment be due no later than the fiscal year following the fiscal year in which the installation of the efficiency improvement is completed.

The act prohibits a contractor or other third party from advertising the availability of an assessment contract that is administered by a program administrator, or from soliciting property owners on behalf of the program administrator, unless specified requirements are met. The act prohibits a program administrator from providing direct or indirect cash payments or anything of a material value to a contractor or third party that is in excess of the actual price charged to the property owner for the sale or installation of efficiency improvements financed by an assessment contract, except for reimbursement of bona fide and reasonable training expenses related to PACE financing.

The act also prohibits a program administrator from providing direct or indirect cash payments or anything of a material value to a property owner that is explicitly conditioned upon the property owner entering into the assessment contract. The act prohibits a program administrator, contractor, or other third party from making any representation as to the tax deductibility of an assessment contract, unless that representation is consistent with applicable state and federal law. The act prohibits a program administrator from providing information that discloses specified information relating to the property owner or the property. The act prohibits a contractor from providing a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner.

Existing law prohibits a public agency from permitting a property owner to participate in a PACE program unless the property owner satisfies certain conditions and the property owner is given the right to cancel the contractual assessment at any time before midnight on the 3rd business day after certain events occur, without penalty or obligation, consistent with certain requirements. Existing law requires a home improvement contract to be in writing and to contain certain information, notices, and disclosures, including a statement that a consumer has a right to cancel or rescind the contract within 3 days, and authorizes the consumer to waive that right to cancel in the case of an emergency or immediately necessary repairs.

The act makes it unlawful to commence work under a home improvement contract if the property owner entered into the home improvement contract based on the reasonable belief that the work would be covered by the PACE program, and the property owner rescinds the PACE financing within the three-day time period described above. The act requires a contractor who violates that provision to restore the property to its original condition, and to return any money, property, and other

consideration back to the property owner. The act authorizes a property owner to waive his or her right to cancel for a contract that the property owner initiated for emergency repair or immediately necessary repair.

The act requires a program administrator, for each PACE program that it administers, to submit reports to the public agency by a specified time that contains specified information regarding that program.

This act includes findings that the changes proposed by this act address a matter of statewide concern, and therefore shall apply to all cities and counties, including charter cities.

*Chapter 484 (SB 242 – Skinner); adding Chapter 29.1 (commencing with Section 5900) to Part 3 of Division 7 of the Streets and Highways Code.*

## COMMON INTEREST DEVELOPMENTS

### • Mechanics' Liens

The Davis-Sterling Common Interest Development Act and the Commercial and Industrial Common Interest Development Act prohibit a mechanics' lien from being filed against any other property of an owner in the condominium project unless that owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services, except in the case of emergency repairs to the condominium. Existing law authorizes the owner of a condominium to remove that owner's condominium from a lien filed against two or more condominiums or any part thereof by payment the lien holder the fraction of the total sum attributable to the owner's condominium. Existing law also provides that an owner of real property or an owner of any interest in real property subject to a recorded claim of lien, or a direct contractor or subcontractor affected by the claim of lien, that disputes the correctness or validity of the claim may obtain release of the real property from the claim of lien by recording a lien release bond.

This act allows an owner of a separate interest in a common interest development, to remove a lien against that owner's property either by paying the holder of the lien that fraction of the claim attributable to the owner's separate interest or by recording a lien release bond covering 125 percent of the claim attributable to that owner's separate interest.

This acts also deems the CID association to be the agent of the owners of all the separate interests in the development for purposes of work of improvement on a common area so that if delivery or service of a notice or claim on the owner of common area property is required, the notice or claim may be delivered to or served on the association. If the association of a common interest development or a commercial and industrial...

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# COMMON INTEREST DEVELOPMENTS (cont.)

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...common interest development is served with a claim of lien for a work of improvement on a common area, as provided, then the association shall give individual notice to the members, as provided for in the act.

*Chapter 44 (AB 534 – Gallagher); amending Sections 4615 and 6658 of, and adding Sections 4620, 6660, and 8119 to, the Civil Code.*

## CONVEYANCES

- **Federal Public Lands**
- **Right of First Refusal**

Existing law vests the authority over public lands owned by the state with the State Lands Commission. Existing federal law authorizes federal agencies to convey federal public lands under certain circumstances.

This act establishes, except as provided, a policy of the state to discourage conveyances of federal public lands in California from the federal government. The act, except as provided, specifies that these conveyances are void ab initio unless the commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public land to another entity. The act requires the commission to issue a certificate of compliance if the commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public land to another entity. The act requires the commission to waive the right of first refusal or the right to arrange for the transfer of the federal public land to another entity for conveyances the commission deems to be routine.

The act requires the commission, the Wildlife Conservation Board, and the Department of Fish and Wildlife to enter into a memorandum of understanding establishing a state policy that they will undertake all feasible efforts to protect against future unauthorized conveyances of federal public lands or any change in federal public land designation. The act authorizes the commission to seek declaratory and injunctive relief in a court of competent jurisdiction to contest these conveyances. The act, except as provided, prohibits a person from knowingly presenting for recording or filing with the county recorder a deed, instrument, or other document related to the conveyance of federal public lands unless it is accompanied by a certificate of compliance and subjects a person who violates this prohibition to a civil penalty not to exceed \$5,000.

The act provides that the state shall not be responsible for any costs associated with conveyed federal public land that the commission did not accept, purchase, or arrange for the transfer of. The act requires the commission to ensure, for any con-

veyed federal public land the commission accepts, purchases, or arranges for the transfer of, that future management of the conveyed federal public land is determined in a public process that gives consideration of past recognized and legal uses of those lands.

*Chapter 535 (SB 50 – Allen); adding Section 27338 to, adding Chapter 3.4 (commencing with Section 6223) to Division 7 of Title 1 of, and repealing the heading of Chapter 3.4 (commencing with Section 6223) of Division 7 of Title 1 of, the Government Code, and adding Chapter 5 (commencing with Section 8560) to Part 4 of Division 6 of the Public Resources Code.*

- **Accessory Dwelling Units**
- **Prohibition on Conveyance**

The Planning and Zoning Law authorizes the legislative body of a city or county to provide by ordinance for the creation of accessory dwelling units in single-family and multifamily residential zones. Existing law requires the ordinance to designate areas within the jurisdiction of the local agency where these units may be permitted, impose specified standards on these units, provide that accessory dwelling units do not exceed allowable density and are a residential use, as specified, and require these units to comply with specified conditions, including a requirement that the unit is not intended for sale separate from the primary residence and may be rented. Existing law establishes the maximum standards that local agencies are required to use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling.

This act clarifies that an accessory dwelling unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separately from the primary residence. The act also includes special districts and water corporations in provisions regarding fees to ensure that no charges for connection fees or capacity charges occur when an existing structure is converted into an accessory dwelling unit. The act also more clearly defines tandem parking and clarifies that an accessory dwelling unit may reside on a lot with a proposed or existing single-family dwelling.

Existing law requires a local agency that has adopted an ordinance authorizing the creation of accessory dwelling units to submit a copy of the ordinance to the Department of Housing and Community Development within 60 days of adoption of the ordinance.

This act authorizes the department to review and comment on an ordinance submitted to the department pursuant to these provisions.

*Chapter 594 (SB 229 – Wieckowski); amending Section 65852.2 of the Government Code.*



## DISCLOSURES

### • Disclosures of Flood Risk

Existing law requires a person who is acting as an agent for a transferor of real property that is located within either a special flood hazard or an area of potential flooding, or the transferor if he or she is acting without an agent, to disclose to any prospective transferee the fact that the property located in a special flood hazard or an area of potential flooding if certain criteria are met.

This act requires, for every lease or rental agreement for residential property entered into on or after July 1, 2018, the owner or person offering the property for rent to disclose to the tenant specified information pertaining to the risk of flooding.

*Chapter 502 (AB 646 – Kalra); adding Section 8589.45 to the Government Code.*

### • Property Assessed Clean Energy (PACE) • Financing Estimate and Disclosure Form

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law requires licensed contractors to be classified and authorizes them to be classified as, among other things, a solar contractor. Under existing law, a solar contractor installs, modifies, maintains, and repairs thermal and photovoltaic solar energy systems. Existing law prohibits a solar contractor from performing building or construction trades, crafts, or skills, except when required to install a thermal or photovoltaic solar energy system.

Existing law authorizes the legislative body of a public agency to determine that it would be convenient, advantageous, and in the public interest to designate an area within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance certain improvements, and to utilize Property Assessed Clean Energy (PACE) financing for the installation of distributed generation renewable energy sources and energy or water efficiency improvements, as specified. Existing law requires a financing estimate and disclosure form to be completed and delivered to a property owner before the property owner consummates a voluntary contractual assessment pursuant to one of these programs.

This act requires the board, in collaboration with the Public Utilities Commission, on or before July 1, 2018, to develop and make available on its Internet Web site a disclosure document that provides a consumer with accurate, clear, and concise

information regarding the installation of a solar energy system. The act requires this disclosure document to be provided by the solar energy systems company to the consumer prior to completion of a sale, financing, or lease of a solar energy system, and that it, and the contract, be written in the same language as was principally used in the sales presentation and marketing material. The act also requires, for solar energy systems utilizing PACE financing, that the financing estimate and disclosure form satisfy these requirements with respect to the financing contract. The act also requires the board to post the PACE Financing Estimate and Disclosure form on its Internet Web site.

The act requires the Contractors' State License Board to receive and review complaints and consumer questions, and complaints received from state agencies, regarding solar energy systems companies and solar contractors. The act, beginning on July 1, 2019, requires the board annually to compile a report documenting complaints it received relating to solar contractors that it shall make available publicly on the board's and the Public Utilities Commission's Internet Web sites.

The California Constitution establishes the Public Utilities Commission and authorizes the commission to exercise rate-making and rulemaking authority over all public utilities, as defined, subject to control by the Legislature.

This act requires the Public Utilities Commission, on or before July 1, 2019, to develop standardized inputs and assumptions to be used in the calculation and presentation of electric utility act savings to a consumer that can be expected by using a solar energy system by vendors, installers, or financing entities and to post them on its Internet Web site. The act also requires electrical corporations to post the standardized inputs and assumptions.

*Chapter 662 (AB 1070 – Gonzalez-Fletcher); adding Sections 7169 and 7170 to the Business and Professions Code, and adding Section 2854.6 to the Public Utilities Code.*

## HOUSING

### • Community Revitalization Authority • Deed Restrictions

Existing law authorizes certain local agencies to form a community revitalization authority (authority) within a community revitalization and investment area, as defined, to carry out provisions of the Community Redevelopment Law in that area for purposes related to, among other things, infrastructure, affordable housing, and economic revitalization. Existing law provides for the financing of these activities by, among other things, the issuance of bonds serviced by property tax increment revenues, and requires the authority to adopt a community revitalization and investment plan for the community

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## Housing (cont.)

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...revitalization and investment area that includes elements describing and governing revitalization activities. Existing law requires a community revitalization and investment plan to include a 30-year limit for establishing loans, advances, and indebtedness by the authority.

This act authorizes a city, county, or city and county to adopt a resolution creating an affordable housing authority with power limited to providing low- and moderate-income housing and affordable workforce housing, as defined, funded through a low- and moderate-income housing fund. The act prohibits certain local government entities from participating in the authority.

The act authorizes an authority created pursuant to those provisions to have boundaries that are identical to the boundaries of the city, county, or city and county that created the authority. The act requires the authority to adopt, after holding a noticed public hearing, an affordable housing investment plan that includes, among other things, an affordable housing program. The act requires an authority created pursuant to these provisions to include a 45-year limit for establishing loans, advances, and indebtedness by the authority.

The revitalization authority is authorized to acquire and transfer real property as specified in the act, but it must retain controls and establish restrictions or covenants running with the land that is sold or leased for private use. An authority is also required to execute an enforceable and verifiable agreement with a public agency, a recorded deed restriction or other documents, that restricts a project's usage to lower income households. Additionally, all replacement dwelling units rehabilitated, retrofitted, developed, constructed or price restricted, must remain available to certain income categories for not less than 55 years for rental units or 45 years for owner-occupied units.

The act authorizes specified local entities to adopt a resolution to provide property tax increment revenues to the authority. The act also authorizes specified local entities to adopt a resolution allocating other tax revenues to the authority, subject to certain requirements. The act provides for the financing of the activities of the authority by, among other things, the issuance of bonds serviced by funds received pursuant to those property tax increment revenues or other tax revenues allocated to the authority.

*Chapter 764 (AB 1598 – Mullin); adding Division 5 (commencing with Section 62250) to Title 6 of the Government Code.*

## INSURANCE

- **Fees and Charges**
- **Insurer Redomestication**

Existing law authorizes the Insurance Commissioner to increase or decrease the fees set forth in the Insurance Code, as necessary, to allow the Department of Insurance to meet the appropriation authorized by the annual Budget Act.

This act updates and codifies various fees, including, but not limited to, application, licensing, renewal, and filing fees to reflect fee amounts currently charged by the Department.

Existing law provides the means by which an insurer may redomesticate its principal place of business to this state or redomesticate to any other state in which it is admitted to transact the business of insurance, including, but not limited to, seeking the approval of the commissioner, paying a fee, and filing a notice of intent to redomesticate with the Secretary of State, as provided. Existing law defines “redomestication” as the transfer of an insurer’s place of incorporation from another state to this state or from this state to another state.

This act requires an insurer redomesticating to this state to file articles of incorporation, and requires an insurer redomesticating to another state to file a statement and designation and a statement of redomestication. The act deletes the requirement to file a notice of intent to redomesticate and authorizes the commissioner to write a letter to the insurer confirming that the redomestication has been approved.

This act also deletes obsolete provisions and makes technical and conforming changes.

*Chapter 534 (AB 1699 – Committee on Insurance); amending Sections 132, 134, 705, 705.1, 709.5, 714, 717.5, 742.39, 857, 859, 881, 882, 884, 900.5, 924, 949, 1011.5, 1076, 1091, 1101, 1104.9, 1107.1, 1113, 1140.5, 1192.8, 1194.85, 1215.2, 1215.5, 1401.5, 1589, 1590, 1599, 1601, 1750, 1751, 1751.1, 1751.3, 1751.6, 1755, 1757.2, 1758.62, 1758.7, 1758.81, 1758.92, 1765, 1765.2, 1781.3, 1811, 1842, 4030, 4060, 4093, 5051, 7015.5, 7042, 7045, 9098, 10113.2, 10479.5, 10493, 10506.1, 10506.2, 10507.1, 11019, 11090, 11401, 11520.5, 11620, 11691, 11751, 11751.25, 12105, 12161, 12162, 12166, 12168, 12280.2, 12389, 12416, 12418.1, 12418.3, 12640.10, 12815, 12972, 12973.5, 12973.6, 12975, 12978, 14042, and 14097 of, and repealing and adding Section 12973 of, the Insurance Code.*

## JUDGMENTS

- **Recognition of Money Judgments**

Existing law, known as the Uniform Foreign-Country Money Judgments Recognition Act, requires a CA court to recognize a foreign-country judgment unless certain exceptions apply, including instances where the foreign court lacks personal jurisdiction over the defendant.

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## JUDGMENTS (cont.)

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This act revises and recasts these provisions. Of particular note, this act specifies that a foreign court lacks personal jurisdiction over a defendant if the court lacks personal jurisdiction under its own laws or California law; and adds a specific provision that a CA court shall not recognize a foreign country judgment for defamation if that judgment is not recognizable under Section 4102 of Title 28 of the United States Code (generally, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and press as would be provided by the first amendment to the Constitution). This act also adds a new CCP section 1725 to allow a defendant against whom a foreign country defamation judgment was rendered to seek declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable under section 1716, if the publication was published in this state.

Existing law, the Tribal Court Civil Money Judgment Act, provides for the enforceability of tribal court money judgments in California, except as specified. That act, among other things, prescribes the procedures for applying for recognition and entry of a judgment based on a tribal court money judgment, and requires this application be executed under penalty of perjury.

This act eliminates the Tribal Court Civil Money Judgment Act's sunset date of January 1, 2018, and after that date, tribal court money judgments will be governed by the Uniform-Foreign County Money Judgments Recognition Act.

*Chapter 168 (AB 905 – Maienschein); amending Sections 1714, 1716, 1717, 1730, 1731, 1732, 1733, 1737, and 1741 of, amending the heading of Title 11 (commencing with Section 1710.10) of Part 3 of, amending the heading of Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3 of, adding Section 1725 to, adding the heading of Chapter 3 (commencing with Section 1730) of Title 11 of Part 3 to, and repealing Sections 1714 and 1742 of, and repealing the heading of Title 11.5 (commencing with Section 1730) of Part 3 of, the Code of Civil Procedure.*

## LAND USE

- **Accessory Dwelling Units**
- **Setbacks and Parking**

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. That law requires the ordinance to require the accessory dwelling unit to comply with certain conditions, including, but not limited to, that the accessory dwelling unit is not intended for sale separate from the primary residence and may be rented. This act revises that condition to provide that the accessory dwelling unit may be rented separately from the primary residence.

Existing law provides that no setback be required for an existing garage that is converted to an accessory dwelling unit. This act also provides that no setback be required for an existing garage that is converted to a portion of an accessory dwelling unit.

Existing law requires that parking requirements for accessory dwelling units not exceed one parking space per unit or per bedroom and allows required parking spaces to be provided as tandem parking on an existing driveway. Existing law also requires specified offstreet parking to be permitted for an accessory dwelling unit unless, among other things, that specified offstreet parking is not allowed anywhere else in the jurisdiction. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those off-street parking spaces be replaced, existing law allows, with specified exceptions, the replacement spaces to be located in any configuration, including as tandem parking, on the same lot as the accessory dwelling unit.

This act instead requires that parking requirements for accessory dwelling units not exceed one parking space per unit or per bedroom, whichever is less. The act defines tandem parking for these purposes and also allows replacement parking spaces to be located in any configuration if a local agency requires replacement of offstreet parking spaces when a garage, carport, or covered parking structure is converted to an accessory dwelling unit. This act removes the prohibition on specified offstreet parking where that parking is not allowed anywhere else in the jurisdiction.

Existing law requires ministerial, nondiscretionary approval of an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure and specified other conditions are met.

This act provides that for these purposes, an accessory structure includes a studio, pool house, or other similar structure. The act also authorizes a city to require owner occupancy for either the primary or the accessory unit created through this process.

This act incorporates additional changes to Section 65852.2 of the Government Code proposed by SB 229.

*Chapter 602 (AB 494 – Bloom); amending Section 65852.2 of the Government Code.*

## MORTGAGES

- **Default Procedures**
- **Trustee's or Attorney's Fees**

Existing law regarding mortgages generally authorizes a beneficiary, trustee, mortgagee to collect reasonable costs and expenses, as allowed, that are actually incurred in enforcing...

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## MORTGAGES (cont.)

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...the terms of the obligation from the date of the notice of sale until the property is sold. This authorization includes trustee's or attorney's fees in an amount not exceeding \$475 if the unpaid principal sum secured is \$150,000 or less, or \$410, if the unpaid principal sum secured exceeds \$150,000 plus a percentage of the unpaid principal sum secured exceeding \$50,000, plus specified increasing additional amounts based on the unpaid principal.

This act restructures those permissible fees to authorize fees in an amount not exceeding a base amount of \$475, if the unpaid principal sum secured is \$50,000 or less, and a base amount not exceeding \$475 plus 1% of a specified amount if the unpaid principal exceeds \$50,000 but not \$150,000. The act specifies additional amounts for unpaid principal sums exceeding \$150,000.

Existing law authorizes, upon the sale of property under a power of sale, the trustee or his or her agent or successor in interest, to demand and receive, in lieu of other specified charges, from a beneficiary, or his or her agent or successor in interest, or to deduct from the proceeds of the sale, those reasonable costs and expenses that are actually incurred in enforcing the terms of the obligation and the trustee's or attorney's fees that are authorized in an amount not to exceed \$425 or 1% of the unpaid sum secured, whichever is greater.

This act increases the above maximum trustee's or attorney's fees from \$425 to \$475.

Existing law limits the amount of trustee's or attorney's fees that may be charged in connection a default, prior to reinstatement of a monetary default, or until the notice of sale is deposited in the mail, or otherwise at any time prior to the decree of foreclosure. The amount is limited to a base amount not to exceed \$350 for an unpaid principal balance sum of \$150,000 or less, or \$300 plus specified additional percentages of unpaid principal sums, if the unpaid principal balance exceeds \$150,000.

This act revises those fee provisions. The act instead provides that if the unpaid principal sum secured is \$50,000 or less, then the base amount may not exceed \$350. The act specifies that if the unpaid principal sum secured exceeds \$50,000, but does not exceed \$150,000, then the base amount may not exceed \$350, plus certain additional percentages of unpaid principal sums, which would increase by additional amounts on any portion of the unpaid principal sum that exceeds \$150,000.

*Chapter 217 (SB 479 – Morrell); amending Sections 2924c and 2924d of the Civil Code.*

## NOTICES

- **County Tax Collectors**
- **Publication of Notices and Due Dates**

Existing law requires a county tax collector to publish various notices in a newspaper, including a notice specifying, among other things, the dates when property taxes on the secured roll will be due and the penalties and costs for delinquency.

This act requires the tax collector to also provide notice on the tax collector's regularly maintained Internet Web site of any notice required to be published in a newspaper of general circulation under the Revenue and Taxation Code.

*Chapter 336 (SB 653 – Moorlach); adding Section 36.5 to the Revenue and Taxation Code.*

## PROPERTY TAXATION

- **No Liens on Minimal Amounts**

Existing law provides that every tax, penalty, or interest on real property is a lien against the property assessed. Existing law also provides that every tax on improvements is a lien on the taxable land on which they are located. Existing law provides that a tax on personal property is a lien against any real property on the secured roll also belonging to the owner of the personal property in specified circumstances. Existing law authorizes the county tax collector to record a lien with respect to certain types of taxes on real and personal property with the county recorder.

This act authorizes the board of supervisors of a county to provide that a tax on real or personal property is not a lien against the property assessed or the assessee if the amount of the tax assessed against that property or assessee is less than an amount set by that ordinance or resolution, up to \$200, excluding any interest, penalties, or other fees.

*Chapter 164 (SB 624 – Galgiani); adding Section 2191.10 to the Revenue and Taxation Code.*

- **Tax-defaulted Property Sales**
- **Minimum Price**

Under existing property tax law, taxes, assessments, penalties, and costs on real property, except as specified, become default by operation of law on July 1 at 12:01 a.m. Five years or more, or three years or more in the case of nonresidential commercial property, after the property has become tax defaulted, existing property tax law requires the tax collector to attempt to sell all or any portion of tax-defaulted property that has not

(Continued on Next Page...)

# PROPERTY TAXATION (cont.)

(Continued from Previous Page...)

...been redeemed, as provided. Existing property tax law requires that the minimum price of tax-defaulted property at a tax sale generally be an amount not less than the total amount necessary to redeem, plus costs and the outstanding balance of any property tax postponement loan. If the property or property interests do not receive an acceptable bid at this minimum price, existing property tax law authorizes the tax collector, in his or her discretion and with the approval of the board of supervisors, to offer that same property or those interests at the same or next scheduled sale at a minimum price that the tax collector deems appropriate.

This act prohibits the current owner of tax-defaulted property subject to sale from purchasing that property, directly or indirectly, below the minimum price determined as described above. The act prohibits a transfer of a deed to the purchaser if the property is purchased, directly or indirectly, by the current owner for lower than the minimum price determined as described above.

*Chapter 601 (SB 812 – Committee on Governance and Finance); amending Section 3698.5 of the Revenue and Taxation Code.*

- **Base Year Value**
- **New Construction**

The California Constitution generally limits the maximum amount of any ad valorem tax on real property to 1% of its full cash value and defines “full cash value.” Existing property tax law requires the assessor to determine a new base year value for the portion of any taxable real property which has been newly constructed and that new construction in progress on the lien date be appraised at its full value on that date, and each lien date thereafter, until construction is completed, at which time the entire portion of property which is newly constructed is reappraised at its full value.

This act instead prohibits new construction that is in progress from acquiring a new base year value until the date of completion.

Existing property tax law provides that an application for reduction in the base year value of an assessment on the current local roll may be filed during the regular filing period for that year, as provided and subject to certain limitations, including that the base year value determined in accordance with specified law is conclusively presumed to be the base year value unless the application is filed during the regular equalization period for the year in which the assessment is placed on the assessment roll or in any of the three succeeding years.

This act authorizes an application for reduction in the value of new construction that is in progress on the lien date on the

current roll to be filed during the regular filing period for that year. The act authorizes an application for reduction in the base year value determined upon completion of new construction to be filed during the regular equalization period for the year in which the assessment is placed on the assessment roll or in any of the three succeeding years.

*Chapter 80 (AB 652 – Flora); amending Sections 50, 71, and 110.1 of, and adding Section 82 to, the Revenue and Taxation Code.*

## REAL PROPERTY

- **Transfer Fees**
- **Notices**

Existing federal regulations generally prohibit the Federal Home Loan Mortgage Corporation and any affiliate thereof, the Federal National Mortgage Association and any affiliate thereof, and any Federal Home Loan Bank from purchasing, investing, or otherwise dealing in any mortgages on properties encumbered by private transfer fee covenants, securities backed by such mortgages, or securities backed by the income stream from such covenants, unless the private transfer fee covenant meets specified requirements, including that it provides a direct benefit to the encumbered property or is otherwise exempted as provided.

Existing law defines a transfer fee with respect to real property and requires the receiver of the fee as a condition of the payment of the fee, on and after January 1, 2009, to record specified information in the chain of title. Existing law specifies that when a transfer fee is imposed upon real property on or after January 1, 2008, the person or entity imposing the transfer fee, as a condition of payment of the fee, must record a separate document meeting specified requirements. Among other things, that document must contain the title “Payment of Transfer Fee Required” in at least 14-point boldface type and include names of all current owners of the real property subject to the fee, and the legal description and assessor’s parcel number for the affected property, and the fee amount.

This act:

- 1) Requires, for private transfer fees created on or after February 8, 2011, a specified advisory notice to be included with the statutory “Payment of Transfer Fee Required” notice currently required under California law.
- 2) Requires the advisory notice to appear in at least 14-point boldface type and state:

“The Federal Housing Finance Agency and the Federal Housing Administration are prohibited from dealing in mortgages on properties encumbered by private transfer fee covenants that do not provide a “direct benefit” to the real property encumbered by the covenant. As a result, if you purchase such a property, you or individuals you want to sell the property to, may have difficulty obtaining financing.”

*Chapter 148 (AB 1139 – Reyes); amending Section 1098.5 of the Civil Code.*

# RECORDED DOCUMENTS

- **Index Correction**
- **Recorder Liability**

Existing law requires the recorder to accept for recordation any instrument, paper, or notice that is authorized or required to be recorded, as provided. The recorder is required to maintain various indices of specified documents and records.

This act authorizes a person of or related to the record to request that the recorder correct the information contained in an index of a record. The request must identify the exact location of the error within a specifically identified index entry. If the person making the request provides sufficient evidence to the recorder to determine that there is an error in the index that needs to be corrected then the recorder must correct the index entry within 30 business days of receiving the request. The corrected entry must be entered in the public index to reflect both the error and the correction and the recorder must note that an index entry has been corrected in accordance with local policy.

Existing law provides for liability, including treble damages under specified circumstances, for a recorder to whom an instrument is proved or acknowledged or any paper or notice which may be recorded is delivered for record if the recorder commits specified acts, including neglecting or refusing to make the proper entries in the required indices and altering, changing, obliterating, or inserting any new matter in any records deposited in the recorder's office.

This act eliminates the liability of a recorder for altering, changing, obliterating, or inserting any new matter in any records deposited in the recorder's office when the recorder is correcting an indexing error. The act instead makes the recorder liable for neglecting and refusing to make proper entries in the required indices. The act provides that liability for neglecting to make proper entries in the required indices does not prohibit a recorder from correcting an indexing error. The act also makes the recorder liable for failing to correct an indexing error.

*Chapter 349 (AB 794 – Gallagher); amending Sections 27201 and 27203 of the Government Code.*

- **Building Homes and Jobs Act**
- **Recording Fee**

Under existing law, there are various programs providing housing assistance. Existing law also authorizes the issuance of bonds to finance various existing housing programs, capital outlay related to infill development, brownfield cleanup that promotes infill development, and housing-related parks.

This act imposes a new recording fee effective January 1, 2018. The current recording fee will increase by \$75 per real estate instrument, per each single transaction per parcel of real property. This is in addition to other recording fees that

may apply to a document. The maximum extra fee allowable in connection with the act is \$225 per single transaction, per parcel.

There are, however, two exemptions to the new fee: the first exemption is for any real estate instrument recorded in connection with a transfer subject to the documentary tax; the second exemption is on any real estate instrument recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupant. The term “in connection with” is not defined within the act, and it is unclear whether a county recorder will know if a document, whenever it is recorded, is recorded in connection with an exempt transfer. Under the new law a real estate instrument is defined to include, but not be limited to, a list of more than 20 documents (as noted below).

- Deed
- Grant deed
- Trustee's deed
- Deed of trust
- Reconveyance
- Quit claim deed
- Fictitious deed of trust
- Assignment of deed of trust
- Request for notice of default
- Abstract of judgment
- Subordination agreement
- Declaration of homestead
- Abandonment of homestead
- Notice of default
- Release or discharge
- Easement
- Notice of trustee sale
- Notice of completion
- UCC financing statement
- Mechanics' lien
- Maps
- Covenants, conditions and restrictions

**NOTE:** This act took effect as an urgency measure on September 29, 2017.

*Chapter 364 (SB 2 – Atkins); adding Section 27388.1 to the Government Code, and adding Chapter 2.5 (commencing with Section 50470) to Part 2 of Division 31 of the Health and Safety Code.*

## • **Military Discharge Documents**

Existing law directs the county recorder, if any military veteran or a family member or legal representative of the veteran authorized by law to receive a certified copy of specified documents requests the recordation of any military discharge document, including a veteran's service form DD214, to sign a form that acknowledges that the document becomes part of the official record of the county.

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## RECORDED DOCUMENTS (cont.)

(Continued from Previous Page...)

This act:

1. Requires county recorders to record and maintain any military discharge document, including a DD214, in a non-public index.
2. Removed a requirement that a veteran or authorized person submitting a DD214 form to the county recorder sign a form acknowledging that the document will become an official record of the county and is open to inspection by any person.
3. Requires that the index of a DD214 recorded on or after January 1, 1980 be moved to a nonpublic index upon request of the military veteran or authorized persons.
4. Authorizes only the military veteran or authorized persons, as specified, to receive a copy of any military discharge document contained in a nonpublic index.
5. Allows individual county recorder discretion of the implementation and design of the nonpublic index, provided it meets minimum confidentiality protection standards, as specified.
6. Removes the directive to require the veteran or authorized person sign a form acknowledging that the document becomes part of the official record of the county.

*Chapter 399 (AB 331 – Eggman); amending Section 27337 of the Government Code.*

### • Social Security Number Truncation

Existing law requires the county recorder of each county to establish a social security number truncation program in order to create a public record version of each official record, in an electronic format, and requires the social security number contained in the record to be truncated, as specified. Existing law requires these provisions to apply to official records recorded on or after January 1, 1980.

This act, for each official record recorded before January 1, 1980, authorizes the county recorder to create a copy of that record in an electronic format and truncate any social security number contained in that record.

*Chapter 621 (SB 184 – Morrell); amending Section 27301 of the Government Code.*

## TAXATION

- **Creation of Department of Tax and Fee Administration**
- **Creation of Office of Tax Appeals**
- **Transfer of Board of Equalization Duties**

The California Constitution provides for the establishment of the State Board of Equalization and requires the board to consist of five voting members, consisting of the Controller and four members elected for four-year terms by the voters of an equalization district. Existing constitutional law prescribes the board's duties, powers, and responsibilities regarding the review, equalization, or adjustment of property tax assessments; the measurement of county assessment levels and adjustment of secured local assessment rolls; the assessment of pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and of property owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity; the assessment of taxes on insurers; and the assessment and collection of excise taxes on the manufacture, importation, and sale of alcoholic beverages in this state.

Existing statutory law prescribes the duties, powers, and responsibilities of the State Board of Equalization regarding the administration of various taxes and fees and generally makes the board responsible for administrative appeals relating to the collection of those taxes and fees and for the administrative appeals of state personal income taxes and corporation franchise and income taxes, which are administered by the Franchise Tax Board.

This act drastically scales down the California State Board of Equalization and creates a singular new state department, the California Department of Tax and Fee Administration, and state office, the Office of Tax Appeals, to handle taxpayer appeals and settlements.

Of particular interest to title companies, insurance company assessments will not be transferred from the Board. In addition, the Board will continue to be responsible for county property tax assessment rules. Nevertheless, many of the Board's duties will be assumed by the new California Department of Tax and Fee Administration. The tax appeals process will be taken over by an Office of Tax Appeals starting in January.

**NOTE:** This act took effect as an urgency measure on June 27, 2017.

*Chapter 16 (AB 102 – Committee on Budget); amending and repealing Sections 15605.5, 15618.5, and 15623 of, amending, repealing, and adding Sections 12803.2 and 15609.5 of, adding Sections 15600 and 15601 to, and adding Part 8.7 (commencing with Section 15570) and Part 9.5 (commencing with Section 15670) to Division 3 of Title 2 of, the Government Code, and amending, repealing, and adding Section 20 of the Revenue and Taxation Code.*

# WATER EFFICIENCY CHARGES

- **Water Bill Savings Act**
- **Joint Powers Authorities**

Existing law, the Marks-Roos Local Bond Pooling Act of 1985, authorizes joint powers authorities, among other powers, to issue bonds and loan the proceeds to local agencies to finance specified types of projects and programs.

This act enacts the Water Bill Savings Act, which authorizes a joint powers authority to provide funding for a customer of a local agency in the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma or its publicly owned utility to acquire, install, or repair a water efficiency improvement on the customer's property served by the local agency or its publicly owned utility. The act authorizes the authority to issue bonds to fund the program. The act requires an efficiency improvement to comply with certain provisions of the CalConserve Water Use Efficiency Revolving Loan Program guidelines to be eligible for financing under the act.

The water efficiency improvement is funded by an efficiency charge that must arise from and be evidenced by a written agreement executed at the time of the efficiency improvement's installation among the customer, all property owners of record, the Joint Powers Authority and the local agency or its publicly owned utility. The act specifies the terms of the agreement, including provisions for the period for repayment, a description of the improvements, the fact that the customer's obligation to pay continues if the improvement is damaged or removed by the customer and other items. Also, the written agreement is not valid unless the authority entering into the written agreement has verified certain specified information.

A customer's repayment of the water efficiency improvement is through an efficiency charge on the customer's water bill which will be established and collected by the local agency or its publicly owned utility on behalf of the authority pursuant to a servicing agreement. A customer's obligation to pay the efficiency charge remains associated with the meter at the property on which the efficiency improvement is located until the efficiency charge has been repaid in full or the efficiency charge is transferred to a subsequent customer who receives water service at the property. However, the act provides that in no event does the efficiency charge transfer to a subsequent customer if the efficiency improvements were removed or damaged, and not restored to service, by the previous customer.

No later than 10 days after funding an efficiency improvement, a notice of efficiency charge is required to be recorded with the county recorder of the county by the local agency or its publicly owned utility. The notice of efficiency charge is required to be indexed in the general index by the name of the owner of the real property where the meter affected by the efficiency charge will be located. The notice must include the address or legal description of, the assessor's parcel number of, and the name of the owner of, the real property where the meter affected by the efficiency charge will be located. The notice

must be entitled "NOTICE OF EFFICIENCY CHARGE" and must contain contact information for the person or entity authorized to provide a prompt and accurate written statement of the outstanding charges and payoff amounts related to the efficiency charge. The act provides that the recordation of the notice of efficiency charge shall be considered sufficient notice to a subsequent customer at a property with installed efficiency measures of the customer's obligation to pay the efficiency charge for installed measures. The act does not state that the recorded notice creates a lien on the real property.

Within 10 days of full repayment of the outstanding charges related to the recorded notice of efficiency charge, the entity responsible for the collection and servicing of the efficiency charge must record a notice of the full repayment and removal of the efficiency charge with the county recorder of the county in which the customer's property is located. The notice of the full repayment and removal of the efficiency charge is required to include a reference to the recorded notice of efficiency charge.

This act makes certain legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay Area and the County of Los Angeles.

*Chapter 430 (SB 564 – McGuire): adding Section 6588.8 to, and repealing and amending Section 6586.7 of, the Government Code.*

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## **SPECIAL SECTION ON AFFORDABLE HOUSING**

The following pages contain summaries of legislation considered to be of potential interest to members of, and industries affiliated with, the title insurance industry, related to affordable housing.

# HOUSING

## • Veterans and Affordable Housing Bond Act of 2018

Existing law also authorizes the issuance of bonds in specified amounts pursuant to the State General Obligation Bond Law and requires that proceeds from the sale of these bonds be used to finance various existing housing programs, capital outlay related to infill development, brownfield cleanup that promotes infill development, and housing-related parks. Existing law, the Veterans' Bond Act of 2008, authorized, for purposes of financing a specified program for farm, home, and mobile home purchase assistance for veterans, the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of \$900,000,000.

This act enacts the Veterans and Affordable Housing Bond Act of 2018, which, if adopted, would authorize the issuance of bonds in the amount of \$4,000,000,000 pursuant to the State General Obligation Bond Law. Of the proceeds from the sale of these bonds, \$3,000,000,000 would be used to finance various existing housing programs, as well as infill infrastructure financing and affordable housing matching grant programs, as provided, and \$1,000,000,000 would be used to provide additional funding for the above-described program for farm, home, and mobile home purchase assistance for veterans.

This act provides for submission of the bond act to the voters at the November 6, 2018, statewide general election.

**NOTE:** This act took effect as an urgency measure on September 29, 2017.

*Chapter 365 (SB 3 – Beall); adding Part 16 (commencing with Section 54000) to Division 31 of the Health and Safety Code, and adding Article 5z (commencing with Section 998.600) to Chapter 6 of Division 4 of the*

## • Planning and Zoning • Streamlined Approval Process

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. The Planning and Zoning Law requires a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs. Existing law requires the housing element portion of the annual report to be prepared through the use of forms and definitions adopted by the department pursuant to the Administrative Procedure Act.

This act requires the housing element portion of the annual report to be prepared through the use of standards, forms, and definitions adopted by the department. The act eliminates the requirement that the forms and definitions be adopted by the department pursuant to the Administrative Procedure Act and

instead authorizes the department to review, adopt, amend, and repeal the standards, forms, or definitions. The act also requires the planning agency to include in its annual report specified information regarding units of net new housing, including rental housing and for-sale housing that have been issued a completed entitlement, building permit, or certificate of occupancy. The act also requires the Department of Housing and Community Development to post an annual report submitted pursuant to the requirement described above on its Internet Web site.

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 authorizes a development proponent to submit an application for a multifamily housing development, which satisfies specified planning objective standards, that is subject to a streamlined, ministerial approval process, and not subject to a conditional use permit. The act requires a local government to notify the development proponent in writing if the local government determines that the development conflicts with any of those objective standards by a specified time; otherwise, the development is deemed to comply with those standards. The act limits the authority of a local government to impose parking standards or requirements on a streamlined development approved pursuant to these provisions. The act provides that if a local government approves a project pursuant to that process, that approval will not expire if that project includes investment in housing affordability, and would otherwise provide that the approval of a project expire automatically after three years, unless that project qualifies for a one-time, one-year extension of that approval. The act provides that approval pursuant to its provisions would remain valid for three years and remain valid thereafter so long as vertical construction of the development has begun and is in progress, and authorizes a discretionary one-year extension. The act prohibits a local government from adopting any requirement that applies to a project solely or partially on the basis that the project receives ministerial or streamlined approval pursuant to these provisions. The act repeals these provisions as of January 1, 2026.

*Chapter 366 (SB 35 – Wiener); amending Sections 65400 and 65582.1 of, and adding and repealing Section 65913.4 of, the Government Code.*

## • Residential Density and Affordability

The Planning and Zoning Law requires a city, county, or city and county to ensure that its housing element inventory, as described, can accommodate its share of the regional housing need throughout the planning period. The law also prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density to a lower residential density that is below the density that was...

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# Housing (cont.)

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...utilized by the Department of Housing and Community Development in determining compliance with housing element law, unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan, including the housing element, and that the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The city, county, or city and county may reduce the residential density for a parcel if it identifies sufficient sites, as prescribed, so that there is no net loss of residential unit capacity.

This act, among other things, prohibits a city, county, or city and county from permitting or causing its inventory of sites identified in the housing element to be insufficient to meet its remaining unmet share of the regional housing need for lower and moderate-income households. The act also expands the definition of "lower residential density" if the local jurisdiction has not adopted a housing element for the current planning period or the adopted housing element is not in substantial compliance. The act additionally requires a city, county, or city and county to make specified written findings if the city, county, or city and county allows development of any parcel with fewer units by income category than identified in the housing element for that parcel. Where the approval of a development project results in fewer units by income category than identified in the housing element for that parcel and the remaining sites in the housing element are not adequate to accommodate the jurisdiction's share of the regional housing need by income level, the act requires the jurisdiction within 180 days to identify and make available additional adequate sites. The act provides that an action that creates an obligation to identify or make available additional adequate sites and the action to identify or make available those sites would not create an obligation under the California Environmental Quality Act to identify, analyze, or mitigate the environmental impacts of that subsequent action.

*Chapter 367 (SB 166 – Skinner); amending Section 65863 of the Government Code.*

## • Housing Accountability Act

The Housing Accountability Act prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based upon substantial evidence in the record.

This act requires the findings of the local agency to instead be based on a preponderance of the evidence in the record.

The Housing Accountability Act also authorizes a local agency to disapprove or condition approval of a housing development or emergency shelter, if, among other reasons, the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and gen-

eral plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with specified law.

This act specifies that a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete does not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

The Housing Accountability Act defines various terms for purposes of its provisions, including the term "housing development project," which is defined as a project consisting either of residential units only, mixed-use developments consisting of residential and nonresidential units, or transitional housing or supportive housing. For a mixed-use development for these purposes, the Housing Accountability Act requires that nonresidential uses be limited to neighborhood commercial uses, and to the first floor of buildings that are two or more stories.

This act instead requires, with respect to mixed-use developments, that two-thirds of the square footage be designated for residential use.

If a local agency proposes to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria, or to approve it on the condition that it be developed at a lower density, the Housing Accountability Act requires that the local agency base its decision upon written findings supported by substantial evidence on the record that specified conditions exist.

This act specifies that a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or

other similar provision for purposes of the above-described provisions if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity. The act, if the local agency considers the housing development project to be inconsistent, not in compliance, or not in conformity, requires the local agency to provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity within specified time periods. If the local agency fails to provide this documentation, the act provides that the housing development project would be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

The Housing Accountability Act authorizes the project applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization to bring an action to enforce its provisions.

This act entitles a housing organization to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce the act.

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If a court finds that the local agency disapproved, or conditioned approval in a manner that renders infeasible the project or emergency shelter or housing for very low, low-, or moderate-income households without making the required findings or without making sufficient findings, the Housing Accountability Act requires the court to issue an order or judgment compelling compliance with its provisions within 60 days, including an order that the local agency take action on the development project or emergency shelter and awarding attorney's fees and costs.

This act additionally requires the court to issue an order compelling compliance with the act if it finds that either the local agency, in violation of a specified provision of the act, disapproved or conditioned approval of a housing development project in a manner rendering it infeasible for the development of an emergency shelter or certain housing without making the required findings or without making findings supported by a preponderance of the evidence, or, the local agency, in violation of another specified provision of the act, disapproved a housing development project complying with specified standards and criteria or imposed a condition that the project be developed at a lower density, without making the required findings or without making findings supported by a preponderance of the evidence. The act authorizes the court to issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development project or emergency shelter in violation of the act.

The Housing Accountability Act authorizes the court to impose fines if it finds that a local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter and failed to carry out the court's order or judgment compelling compliance within 60 days of the court's judgment. The Housing Accountability Act requires that the fines be deposited into a housing trust fund and

committed for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

This act, upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with these provisions within 60 days, instead requires the court to impose fines in every instance in which the court determines that the local agency disapproved, or conditioned approval in a manner that renders infeasible, the housing development project or emergency shelter without making the required findings or without making sufficient findings. The act requires that the fine be in a minimum amount of \$10,000 per housing unit in the housing development project on the date the application was deemed complete. In determining the amount of fine to impose, the act requires the court to consider the local agency's progress in attaining its target allocation of the regional housing need and any prior violations of the act. The act authorizes the local agency to instead deposit the fine into a specified state fund, and also provides that any funds in a local housing trust fund not expended after five years would

revert to the state and be deposited in that fund, to be used upon appropriation by the Legislature for financing newly constructed housing units affordable to extremely low, very low, or low-income households. If the local agency has acted in bad faith and failed to carry out the court's order, as described above, the act requires the court to multiply the fine by a factor of five.

This act also requires that a petition to enforce the act be filed and served no later than 90 days from the later of (a) the effective date of a decision of the local agency imposing conditions on, disapproving, or taking any other final action on a housing development project or (b) the expiration of certain time periods specified in the Permit Streamlining Act.

In order to obtain appellate review of a trial court's order, the act requires a party to file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow.

This act allows a party to instead appeal a trial court's order or judgment to the court of appeal pursuant to specified law.

This act makes various technical and conforming changes to the Housing Accountability Act.

*Chapter 368 (SB 167 – Skinner); amending Section 65589.5 of the Government Code.*

## • Workforce Housing Opportunity Zone

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 reforms and incentives intended to facilitate and expedite the construction of affordable housing.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This act authorizes a local government to establish a Workforce Housing Opportunity Zone by preparing an EIR pursuant to CEQA and adopting a specific plan that is required to include text and a diagram or diagrams containing specified information. The act requires a local government that proposes to adopt a Workforce Housing Opportunity Zone to hold public hearings on the specific plan. The act authorizes a local government, after a specific plan is adopted and the zone is formed, to impose a specific plan fee upon all persons seeking governmental approvals within the zone. The act requires...

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...a local government to comply with certain requirements when amending the specific plan for the zone, including seeking a new EIR. The act authorizes a local government to apply for a grant or no-interest loan, or both, from the Department of Housing and Community Development to support its efforts to develop a specific plan and accompanying EIR within the zone. The act, upon appropriation by the Legislature, authorizes a transfer from the Treasurer to the Department of Housing and Community Development for purposes of issuing grants or loans, or both, pursuant to these provisions.

The act requires a local government, for a period of five years after the plan is adopted, to approve a development that satisfies certain criteria, unless the local government makes certain findings regarding the site. The act provides that, after the zone is adopted, a lead agency is not required to prepare an EIR or negative declaration for a housing development that occurs within the zone if specified criteria are met. The act requires a local government to approve a housing development located within the zone that is consistent with the plan and meets specific criteria within 60 days after the application for that development is deemed complete.

The Planning and Zoning Law requires a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs.

This act requires a local government that has formed a Workforce Housing Opportunity Zone to include within this report the number of housing units approved within a zone that complies with specified criteria.

The act declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair.

*Chapter 369 (SB 540 – Roth); adding Article 10.10 (commencing with Section 65620) to Chapter 3 of Division 1 of Title 7 of the Government Code.*

## • Consistency of Local Government Actions with Housing Element

The Planning and Zoning Law requires a city or county to adopt a comprehensive, long-term general plan for the physical development of the city or county and of any land outside its boundaries that bears relation to its planning. That law also requires the general plan to contain specified mandatory elements, including a housing element for the preservation, improvement, and development of housing. Existing law prescribes requirements for the preparation of the housing element, including a requirement that a planning agency submit a draft of the element or draft amendment to the element to

the Department of Housing and Community Development prior to the adoption of the element or amendment to the element. Existing law requires the department to review the draft and report its written findings, as specified. Existing law also requires the department, in its written findings, to determine whether the draft substantially complies with the housing element.

This act requires the department to also review any action or failure to act by the city, county, or city and county that it determines is inconsistent with an adopted housing element or a specified provision and to issue written findings whether the action or failure to act substantially complies with the housing element. If the department finds that the action or failure to act by the city, county, or city and county does not substantially comply with the housing element, and if it has issued findings as described above that an amendment to the housing element substantially complies with the housing element, the act authorizes the department, after allowing no more than 30 days for a local agency response, to revoke its findings until it determines that the city, county, or city and county has come into compliance with the housing element.

The act also requires the department to notify the city, county, or city and county and authorize the department to notify the Office of the Attorney General that the city, county, or city and county is in violation of state law if the department makes certain findings of noncompliance or a violation.

*Chapter 370 (AB 72 – Santiago); amending Section 65585 of the Government Code.*

## • Planning and Zoning • Housing Sustainability Districts

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

This act authorizes a city, county, or city and county, including a charter city, charter county, or charter city and county, to establish by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The act authorizes the city, county, or city and county to apply to the Department of Housing and Community Development for approval for a zoning incentive payment and requires the city, county, or city and county to provide specified information about the proposed housing sustainability district ordinance. The act requires the department to approve a zoning incentive payment if the ordinance meets the above-described requirements and the city's housing element is in compliance with specified law. The act also requires the department, each October 1 following the approval of the housing sustainability district, to issue a certificate of compliance if the city, county, or city and county meets specified criteria pertaining to the continued compliance with these provisions or to deny certification. The act provides that a city, county, or city and county with a housing sustainability district would be entitled to a zoning...

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...incentive payment, subject to appropriation of funds for that purpose, and require that half the amount be provided upon zone approval by the department and half the amount upon verification by the department of the issuance of permits for the projected units of residential construction within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year. The act, if the city, county, or city and county reduces the density of sites within the district from specified levels, requires the city, county, or city and county to return the full amount of zoning incentive payments it has received to the department.

The act also authorizes a developer to develop a project in a housing sustainability district in accordance with the already existing land use approval procedures that would otherwise apply to the parcel in the absence of the establishment of the housing sustainability district pursuant to its provisions.

The act authorizes a city, county, or city and county to incorporate provisions in its housing sustainability district ordinance prescribing the contents of an application for a permit for residential development, to adopt design review standards, and to charge a project application fee to defray the costs of preparation, adoption, and administration of the housing sustainability district plan. The act requires that a housing sustainability district ordinance be effective for no more than ten years, but authorizes the city, county, or city and county to renew the ordinance for not more than ten years. The act also requires that prevailing wages be paid, and a skilled workforce employed, in connection with all projects within the housing sustainability district. The act establishes procedures for review of an application by an approving authority, including requiring the approving authority to conduct a public hearing on an application and issue a written decision within 120 days of receipt of the application. The act, if a proposed development within a housing sustainability district includes any parcels being used for affordable housing, requires that the approving authority condition approval of the application on the applicant's agreement to replace those affordable housing units. The act also prescribes procedures for review of a decision of the approving authority to deny or approve with conditions an application for a permit in the superior court.

The act authorizes the department to adopt, amend, and repeal standards, forms, or definitions to implement its provisions and exempt those standards, forms, or definitions from specified provisions of the Administrative Procedure Act governing rulemaking. The act requires the department to publish a report containing specified information about the housing sustainability district program on its Internet Web site no later than November 1, 2018, and each November 1 thereafter.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency

to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This act requires a lead agency, when designating housing sustainability districts, to prepare an EIR for the designation. The act exempts from CEQA housing projects undertaken in the housing sustainability districts that meet specified requirements.

This act's provisions are not severable.

This act incorporates additional changes to Section 65582.1 of the Government Code proposed by SB 35.

*Chapter 371 (AB 73 – Chiu); amending Section 65582.1 of, and adding Chapter 11 (commencing with Section 66200) to Division 1 of Title 7 of, the Government Code, and adding Chapter 4.3 (commencing with Section 21155.10) to Division 13 of the Public Resources Code.*

- **Planning and Zoning**
- **Housing Element**

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes a housing element. That law requires, after the legislative body of the city or county has adopted all or part of a general plan, the planning agency to investigate and make recommendations to the legislative body of the city or county regarding reasonable and practical means to implement the general plan or element and to provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes specified information pertaining to the implementation of the general plan.

Existing law requires the housing element portion of the annual report to be prepared through the use of forms and definitions adopted by the department pursuant to the Administrative Procedure Act. Existing law excludes a charter city from these requirements.

This act requires that this report additionally include the number of housing development applications received in the prior year, units included in all development applications in the prior year, units approved and disapproved in the prior year, and a listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on specified sites. The act additionally requires the housing element portion of the annual report to be prepared through the use of standards adopted by the department. The act eliminates the requirement that the forms and definitions be adopted by the department pursuant to the Administrative Procedure Act and instead authorizes the department to review, adopt, amend, and repeal the standards, forms, or definitions. The act applies the above report requirement to a charter city.

The Planning and Zoning Law requires the housing element to include an analysis of potential and actual governmental...

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...and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels. That law requires the analysis of governmental constraints as so described to include constraints on certain types of housing and housing for persons with disabilities, as provided, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. That law requires the analysis of nongovernmental constraints as so described to include the availability of financing, the price of land, and the cost of construction.

This act requires the analysis of governmental constraints to also include any locally adopted ordinances that directly impact the cost and supply of residential development. The act requires the analysis of nongovernmental constraints to also include the requests to develop housing at densities below those anticipated in a specified analysis, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder

the construction of a locality's share of the regional housing need. The act requires the analysis of nongovernmental constraints to demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing.

That Planning and Zoning Law also requires the housing element to include a program which sets forth a schedule of actions during the planning period, as specified, and requires the program, in order to make adequate provision for the housing needs of all economic segments of the community to address and, where appropriate and legally possible, remove governmental constraints on the maintenance, improvement, and development of housing.

This act requires the program to also address and remove nongovernmental constraints to the maintenance, improvement, and development of housing.

Existing law requires the Department of Housing and Community Development to collect, publish, and make available to the public information about laws regarding housing and community development and authorizes the department to provide a statistics and research service for the collection and dissemination of information affecting housing and community development.

This act additionally requires the department, by June 30, 2019, to complete a study to evaluate the reasonableness of local fees charged to new developments. The act requires the study to include findings and recommendations regarding potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development.

This act incorporates additional changes to Section 65400 of the Government Code proposed by SB 35.

*Chapter 374 (AB 879 – Grayson); amending Sections 65400, 65583, and 65700 of the Government Code, and amending Section 50456 of the Health and Safety Code.*

- **Local Planning**
- **Inventory of Land for Residential Development**

Existing law requires a local government's housing element to contain, among other things, an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment.

This act requires the inventory of land to be available for residential development in addition to being suitable for residential development and to include vacant sites and sites that have realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level.

Existing law requires the inventory of land to include, among other things, a listing of properties by parcel number or other unique reference and a general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities. Existing law specifies that this information does not need to be identified on a site-specific basis.

This act instead requires the listing of properties to be by assessor parcel number and require parcels included in the inventory to have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan to secure sufficient water, sewer, and dry utilities supply to support housing development.

Existing law requires the housing element to contain a program that sets forth a schedule of actions during the planning period that the local government is undertaking, or intends to undertake, to implement the policies and achieve the goals and objectives of the housing element. Existing law requires a city or county, based on the inventory of land, to determine whether each site in the inventory can accommodate some portion of its share of the regional housing need.

This act also requires the inventory to specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower income housing, moderate-income housing, or above moderate-income housing.

Existing law requires a city or county, for specified sites, to specify additional development potential for each site within the planning period and to provide an explanation of the methodology used to determine the development potential. Existing law requires the methodology to consider specified factors, including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

This act requires the methodology to consider, among other things, the city's or county's past experience with converting existing uses to higher density residential development, the current demand for the existing use, and an analysis of existing leases or other contracts that would perpetuate the existing use or prevent redevelopment.

Existing law requires the program to accommodate 100% of the allocated very low and low-income housing need for which

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site capacity has not been identified. Existing law requires these sites to be zoned to permit owner-occupied and rental multifamily residential use by right and to be zoned with specified minimum density and development standards.

This act restricts the use by right of these sites to developments in which at least 20% of the units are affordable to lower income households during the planning period and require these sites to have sufficient water, sewer, and other dry utilities available and accessible or be included in an existing general plan program or other mandatory program or plan to secure sufficient water, sewer, dry utilities supply to support housing development.

This act incorporates additional changes to Section 65583 of the Government Code proposed by AB 879.

*Chapter 375 (AB 1397 – Low); amending Sections 65580, 65583, and 65583.2 of the Government Code.*

## • Zoning Regulations

This act authorizes the legislative body of any county or city to adopt ordinances to require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, moderate-income, lower income, very low income, or extremely low income households or by persons and families of low or moderate income, and declares the intent of the Legislature in adding this provision.

This act also authorizes the Department of Housing and Community Development, within 10 years of the adoption or amendment of an ordinance by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in the development be affordable to, and occupied by, households at 80% or less of the area median income, to review that ordinance if the county or city meets specified conditions. The act authorizes the department to request, and requires that the county or city provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study that meets specified standards. If the department finds that economic feasibility study does not meet these standards, or if the county or city fails to submit the study within 180 days, the act requires the county or city to limit any requirement to provide rental units in a development affordable to households at 80% or less of the area median income to no more than 15% of the total number of units in the development. The act requires the department to report any findings made pursuant to these provisions to the Legislature.

*Chapter 376 (AB 1505 – Bloom); amending Section 65850 of, and adding Section 65850.01 to, the Government Code.*

## • Compliance with Local Requirements

The Planning and Zoning Law requires an owner of an assisted housing development proposing the termination of a subsidy contract or prepayment of governmental assistance,

or the owner of an assisted housing development for which there will be the expiration of rental restrictions, to provide notice of the proposed change to each affected tenant household. The law also requires that a copy of any notices issued be provided to any prospective tenant at the time he or she is interviewed for eligibility. That law provides injunctive relief for persons aggrieved by a violation of these provisions.

This act requires the owner of an assisted housing development that is within three years of a scheduled expiration of rental restrictions to also provide notice of the scheduled expiration of rental restrictions to any prospective tenant at the time he or she is interviewed for eligibility, and to existing tenants by posting the notice. The act additionally specifies that injunctive relief may include, but is not limited to, the reimposition of prior restrictions, and restitution of rent increases that were collected improperly. The act additionally authorizes the court to award attorney's fees and costs to a prevailing plaintiff bringing an action for injunctive relief pursuant to these provisions.

The Planning and Zoning Law prohibits an owner of an assisted housing development from terminating a subsidy contract or prepaying the mortgage unless the owner or its agent has first provided specified entities an offer to purchase the development. That law requires an owner of an assisted housing development in which there will be the expiration of rental restrictions to also provide specified entities an opportunity to submit an offer to purchase the development. That law also requires an owner of an assisted housing development to provide specified entities with notice of an opportunity to submit an offer to purchase under specified circumstances. Existing law requires an opportunity to purchase the development to be provided to entities that include, among others, regional or national nonprofit organizations, regional or national public agencies, and profit-motivated organizations.

This act limits the opportunity to purchase the development to those agencies and organizations described above that own and operate at least three comparable rent- and income-restricted affordable rental properties governed under a regulatory agreement with a department or agency of the State of California or the United States, either directly or by serving as the managing general partner of limited partnerships or managing member of limited liability corporations.

Existing law requires, to qualify as a purchaser of an assisted housing development, specified entities to, among other things, be capable of managing the housing and related facilities for its remaining useful life.

This act revises that requirement by instead requiring specified entities to be certified by the Department of Housing and Community Development, based on demonstrated relevant prior experience in California and current capacity, as capable of operating the housing and related facilities.

The act requires the department to establish a process for certifying these entities and to maintain a list of entities that are certified.

Existing law, if a qualified entity elects to purchase an assisted housing development, requires the qualified entity to make a bona fide offer to purchase the development. Existing law authorizes the owner or the qualified entity to request the fair market value of the property be determined by an...

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...independent appraiser. Existing law, during the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, requires an owner to accept a bona fide offer to purchase only from a qualified entity and requires a purchase agreement to be executed when a bona fide offer to purchase has been made to an owner and the offer is accepted.

This act revises the offer and acceptance process described above by requiring the bona fide offer to purchase made by the qualified entity to be at the market value determined by negotiation and agreement between the parties, and if the parties fail to reach an agreement regarding market value, by an appraisal process initiated by the owner's receipt of the bona fide offer. The act prohibits the owner, if the owner has received a bona fide offer to purchase made within 180 days of the owner's notice of the opportunity to submit an offer, from accepting offers from any other entity, and requires the owner to either accept this bona fide offer to purchase or declare to the Department of Housing and Community Development under penalty of perjury that the owner will not sell the property for at least five years from the date of the declaration.

This act requires an owner who wishes to sell, and who has received a bona fide offer that meets these requirements, to accept the offer and execute a purchase agreement within 90 days of receipt of the offer. The act requires the owner to take all steps reasonably required to renew any expiring housing assistance contract, or extend any available subsidies or use restrictions once a bona fide offer is made.

Existing law requires an independent appraiser determining the fair market value of the property as described above to possess qualifications equivalent to those required by the members of the Appraisers Institute.

This act additionally requires appraisers to be certified by the Department of Housing and Community Development as having sufficient experience in appraising comparable rental properties in California.

Existing law requires the Department of Housing and Community Development to undertake specified responsibilities and duties with respect to the provisions described above.

This act additionally requires the department to refer violations of these provisions to the Attorney General and monitor compliance with specified provisions by owners of assisted housing developments and to provide a report to the Legislature.

Existing law authorizes the requirements described above to be enforced either in law or in equity by specified entities.

This act additionally authorizes a tenant association at the property or any affected public entity to enforce these requirements either in law or in equity. The act authorizes the court to waive any bond requirement and award attorney's fees and costs to a prevailing plaintiff under these provisions.

*Chapter 377 (AB 1521 – Bloom); amending Sections 65863.10 and 65863.11 of the Government Code.*

## • Compliance with Local Requirements

The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified findings. Under the act, the local agency may disapprove or condition approval of a housing development project or emergency shelter if, among other reasons, the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation. The act makes various findings and declarations relating to its provisions.

This act specifies that a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity. The act would make additional findings related to the Housing Accountability Act in this regard.

This act incorporates additional changes to Section 65589.5 of the Government Code proposed by AB 678 and SB 167.

*Chapter 378 (AB 1515 – Daly); amending Section 65589.5 of the Government Code.*

## • Redevelopment Agencies • Enhanced Infrastructure Financing Districts

Existing law establishes procedures for the formation of infrastructure financing districts, enhanced infrastructure financing districts, infrastructure and revitalization financing districts, and community revitalization and investment authorities, as specified, to undertake various economic development projects, including financing public facilities and infrastructure, affordable housing, and economic revitalization. Existing law authorizes an infrastructure financing plan or a community revitalization and investment plan to provide for the division of taxes levied upon taxable property, if any, between the affected taxing entities, as defined, and the district or authority.

This act enacts the Neighborhood Infill Finance and Transit Improvements Act, which authorizes a city, county, or city and county to adopt a resolution, at any time before or after the adoption of the infrastructure refinancing plan, to allocate specified tax revenues to the district under specified circumstances. These circumstances include the requirement that a portion of the funds be utilized for acquisition, construction, or rehabilitation of low income housing and that a portion of the housing units constructed be affordable to persons of very low, low and moderate income. This act requires the legislative body of a city or county establishing an enhanced infrastructure financing district that will allocate those revenues, as described, to adopt an ordinance to establish the procedure by which the city or county will calculate the amount of revenues that will be dedicated to the proposed district.

*Chapter 562 (AB 1568 – Bloom); amending Section 53398.59 of, and adding Section 53398.75.5 to, the Government Code.*

**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.



## BONA FIDE PURCHASERS

### *Deutsche Bank Nat'l Tr. Co. v. Pyle*

13 Cal. App. 5th 513 (2017)

The court held that a judgment that was obtained without giving notice to Deutsche Bank was void and that a subsequent bona fide purchaser took title subject to the deed of trust that was purportedly cancelled by the void judgment. The court pointed out that the action in which the void judgment was issued was an action to cancel an instrument, and not an action to quiet title. Accordingly, the quiet title statutes do not apply, in particular C.C.P. Section 764.060, which provides: "The relief granted in an action or proceeding directly or collaterally attacking the judgment in the action, whether based on lack of actual notice to a party or otherwise, shall not impair the rights of a purchaser or encumbrancer for value of the property acting in reliance on the judgment without knowledge of any defects or irregularities in the judgment or the proceedings." The court noted that in a quiet title action a court does not simply issue a default judgment. Rather, in default situations in a quiet title action the court must hold an evidentiary hearing where it considers evidence of the plaintiff's title.

### *OC Interior Servs., LLC v. Nationstar Mortg., LLC*

7 Cal. App. 5th 1318 (2017), reh'g denied (Feb. 27, 2017), review denied (May 10, 2017)

Plaintiff purchased real property knowing about a recorded default judgment in the chain of title that vacated the lien interest of defendant's deed of trust. The default judgment was later adjudicated as void due to lack of service of process. The trial court's judgment, that plaintiff was a bona fide purchaser for value that took title to the property free of defendant's lien, was reversed because the void default judgment was a nullity for all purposes, including as against a purported bona fide purchaser for value.

## DEDICATION

### *Surfrider Found. v. Martins Beach 1, LLC*

14 Cal. App. 5th 238 (2017), review denied (Oct. 25, 2017)

The court affirmed the trial court's conclusion that appellants' conduct is "development" requiring a coastal develop-

ment permit under section 30106 of the Coastal Act. Further, the court concluded that appellants' constitutional challenge to the Coastal Act's permitting requirement under the state and federal takings clauses was not ripe because the Coastal Commission has not yet rendered a decision. Finally, the court rejected appellants' contention that the trial court's temporary injunction is a per se taking and, since appellants did not assert a claim that the injunction was unconstitutional under a different "multifactor" analysis, the court allowed the injunction to stand.

## DEFICIENCY JUDGMENTS

### *Black Sky Capital, LLC v. Cobb*

12 Cal. App. 5th 887 (2017), review granted, (Sept. 27, 2017)

Where a lender who holds both a senior and junior deed of trust nonjudicially forecloses on the senior lien and wipes out its junior lien, the lender may enforce the junior note. Civil Code Section 580d does not apply to preclude a sold-out junior lienholder from enforcing the junior debt, even where the lienholder foreclosed under its own senior deed of trust.

## DOCUMENTARY TRANSFER TAX

### *926 N. Ardmore Ave., LLC v. Cty. of Los Angeles*

3 Cal. 5th 319 (2017), reh'g denied (Aug. 9, 2017)

The court affirmed the appellate court, holding that documentary transfer tax is owed when there is a change in ownership or control of an entity that owns real property. The concept of "realty sold" in the documentary transfer tax statutes (Revenue and Taxation Code Sections 11911 et seq.) has the same meaning as "change in ownership" in the statutes requiring a reassessment of the property for property tax purposes (Revenue and Taxation Code Sections 60 et seq.), and "change in ownership" includes transfer of ownership or control of an entity. The court points out that prior to 2010, County Recorders could not determine when a change in ownership of an entity occurred. Tax forms reflecting the change in ownership were required to be filed with the State Board of Equalization, which would share that information with Tax Assessors. But R&TC Sections 408 and 481 barred that information from being shared with County Recorders. In 2009, the Legislature adopted SB 816, which amended several R&TC Sections by requiring the assessor to provide access to his or her record to the county recorder when conducting an investigation to determine whether a documentary transfer tax should be imposed.

## EQUITABLE EASEMENTS

### *Hinrichs v. Melton*

11 Cal. App. 5th 516 (2017)

The court affirmed the trial court's judgment providing access to plaintiff's landlocked parcel of property, holding that a court may grant an equitable easement without there being a preexisting use by the landowner seeking the easement and that an easement by necessity cannot be extinguished by adverse possession as long as the necessity exists.

## EQUITABLE SUBROGATION

### *Bank of New York Mellon v. Citibank, N.A.*

8 Cal. App. 5th 935 (2017), as modified (Mar. 1, 2017)

Defendant refinanced its own home equity line of credit (HELOC) loan and, almost simultaneously, plaintiff refinanced defendant's second loan. The HELOC account was paid down to zero, but not closed, and additional funds were subsequently loaned under the terms of the HELOC. The court held that plaintiff stated a cause of action for equitable subrogation, and that the 3-year statute of limitations under C.C.P. Section 338 did not apply because the action was not in the nature of relief from a statutory violation, fraud or mistake. The court also held that the doctrine of equitable subordination did not apply because this was not a case of "replacement and modification" of a senior mortgage by the same lender.

## ESCROW

### *Alereza v. Chicago Title Co.*

6 Cal. App. 5th 551 (2016)

Chicago Title admitted its employee negligently listed the wrong name of the insured (the purchaser of a gas station business) when securing a new certificate of insurance for the business. This was the first of a series of missteps by several persons that eventually led to plaintiff giving a personal guarantee to save the gas station business, and allegedly resulted in damages to plaintiff. The court held in favor of Chicago Title on the basis that it did not owe a duty of care to plaintiff because he was not a party to the escrow, not mentioned in the escrow instructions as a third party beneficiary, and did not sustain his losses as a direct result of the escrow officer's negligence.

## EXECUTION SALE

### *Lee v. Rich*

6 Cal. App. 5th 270 (2016), review denied (Feb. 15, 2017)

The court reversed the trial court's order granting plaintiff-debtor's motion for restitution and cancellation of a sheriff's deed of sale. C.C.P. Section 701.680(a) unequivocally states that an execution sale is "absolute and shall not be set aside for any reason." Because defendant was a third-party purchaser at the sheriff's sale, and was not the judgment creditor, the remedies available for the judgment debtor are recovery of the proceeds of the sale under C.C.P. Section 701.680(b), or to seek equitable redemption. Plaintiff is not, however, entitled to equitable redemption in this case because defendant was not guilty of unfairness, and did not manipulate the system or take undue advantage, and the record shows the property was not sold for a grossly inadequate price. The dissent argued that a judgment that is void due to lack of service on a debtor is void ab initio, and all subsequent actions, including a writ of execution and execution sale, have no legal force or effect.

## FORECLOSURE

### *Dr. Leevil, LLC v. Westlake Health Care Ctr.*

9 Cal. App. 5th 450 (2017), review granted (June 14, 2017)

1. Where a lease that had recorded before a deed of trust contained both an automatic subordination clause and permissible subordination clause with a nondisturbance provision, the court held that the ambiguity is to be interpreted against the drafter of the lease, which in this case was the tenant under the lease. Accordingly, the foreclosure of the deed of trust wiped out the lease where the foreclosing lender never invoked the permissible subordination clause.

2. The court also held that a Notice to Quit by the purchaser at the trustee's sale could be served before the trustee's deed was recorded because C.C.P. Section 1161a(b)(3) only requires that title be perfected before a tenant "may be removed" from the property, and a tenant is not "removed" by the service of a Notice to Quit. In this case the trustee's deed was recorded before the unlawful detainer action was filed.

## LEASES / FORECLOSURE

### *BRE DDR BR Whittwood CA LLC v. Farmers & Merchants Bank of Long Beach*

14 Cal. App. 5th 992 (2017)

After a shopping center tenant defaulted on a loan secured by a deed of trust, the lender foreclosed and took possession of the premises, then transferred the leasehold interest to a third party. The third party then surrendered the premises and the landlord filed suit against the lender to enforce the lease obligations. The court reversed a grant of summary adjudication for the landlord, holding that the lender was obligated to pay rent during the time of possession, but was not otherwise bound by the terms of the lease because acquiring the leasehold estate by foreclosure did not constitute an express agreement to assume the obligations of the lease.

## PARTITION

### *Cummings v. Dessel*

13 Cal. App. 5th 589 (2017)

The court held that the trial court erred when it ordered partition of the property by appraisal because the parties had not agreed to that method, as is required by the statute (C.C.P. 873.910 et seq.) Partition by appraisal is a procedure in which the court sets a minimum bid amount for each owner to bid to buy out the other owner's interest. However, in the unpublished portion of the opinion, the court concluded that defendants did not show that the error was prejudicial because they did not show that a higher price could have been obtained by a sale to a third party.

## REDEVELOPMENT AGENCIES

### *City of Grass Valley v. Cohen*

17 Cal. App. 5th 567 (2017), republished with modifications at CITY OF GRASS VALLEY, as Successor Agency, etc., et al., Plaintiffs & Appellants, v. MICHAEL COHEN, as Dir., etc., Defendant & Appellant., No. C078981, 2017 WL 6503953 (Cal. Ct. App. Nov. 20, 2017), as modified on denial of reh'g (Dec. 19, 2017)

This case arises out of the "Great Dissolution" of redevelopment agencies ("RDAs"). The bottom line is that the Court directed the trial court to issue a writ commanding the De-

partment of Finance to consider the City's claim regarding a highway project agreement, which was entered into between the City and RDA in an effort to create an "enforceable obligation" before the RDA was dissolved.

### *Cuenca v. Cohen*

8 Cal. App. 5th 200 (2017), review denied (May 10, 2017)

The court held that, while stipulated judgments that required the City to set aside various percentages of the tax increment for low and moderate-income housing projects were enforceable obligations, money that had been set aside pursuant to the judgments but not spent at the time redevelopment agencies were dissolved were "unencumbered moneys" if they were not subject to a contract to build housing. Accordingly, such funds that had been set aside and were not subject to a contract to build housing had to be turned over to the county auditor-controller to be released to taxing entities.

## STREET DEDICATION

### *Scher v. Burke*

3 Cal. 5th 136 (2017), as modified on denial of reh'g (Aug. 9, 2017)

The California Supreme Court upheld the decision of the court of appeal. The Supreme Court held that plaintiffs could not establish an implied dedication of a road on non-coastal property because Civil Code Section 1009(b) bars all use of private real property after March 1972, not just recreational use, from ripening into a public dedication absent an express, written, irrevocable offer of such property to such use, and acceptance by a city or county.

## TITLE INSURANCE

### *Hovannisian v.*

### *First Am. Title Ins. Co.*

14 Cal. App. 5th 420 (2017)

Plaintiffs purchased property from Wells Fargo Bank at a non-judicial foreclosure sale and later discovered there was a prior deed of trust on the property that had not been extinguished by the foreclosure. They sued Wells Fargo for intentional and negligent misrepresentation based on a statement in Wells Fargo's deed of trust that it was a first deed of trust. Wells Fargo tendered defense of the action to its title insurer, First American Title Insurance Company, which refused to indemnify or defend. After Wells Fargo assigned any claim it had against First...

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## TITLE INSURANCE (cont.)

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...American to the plaintiffs, they sued First American for breach of contract and breach of the implied covenant of good faith and fair dealing.

The court upheld a motion for summary judgment in favor of First American, holding that there was no coverage under the policy after the property was foreclosed because 1) the trustee's deed stated that it was without warranty and the provisions in the policy allowing for continuation of insurance after a sale only apply to the extent the insured gives a warranty of title to the purchaser, 2) the statement in the deed of trust that it was a first deed of trust did not constitute a warranty, and 3) the insured lender does not suffer damages unless it fails to recoup the debt because of the undisclosed senior lien.

## TRANSFER FEE COVENANTS

### *Marina Pacifica Homeowners Ass'n v. S. California Fin. Corp.*

**11 Cal. App. 5th 54 (2017), review denied (July 12, 2017)**

An "Assignment Fee" set forth in unrecorded condominium leases and certain other recorded documents, requiring payment of a monthly fee to the original developers, fell within the general definition of a "Transfer Fee" within the meaning of Civil Code Section 1098. However, Subsection 1098(i) excepts from that definition any fee recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that substantially complies with subdivision (a) of Section 1098.5. In a previous appeal this court held that provisions in the leases that notify lessees of the existence of the fee satisfied the notice requirements of Subsection 1098(i). Therefore, the court held that the persons entitled to collect the fee did not have to record the notice of transfer fee required by CC Section 1098.5. Subsequent to the decision, and in direct response to the decision, the legislature amended CC Sections 1098 and 1098.5, effective January 1, 2016 to provide that a transfer fee covenant cannot be contained in an unrecorded document that is incorporated by reference. The legislation also provided that such a transfer fee would remain in place, so long as a document reflecting the assignment fee was recorded, "in a single document that complies with subdivision (b) [of Section 1098] and with Section 1098.5," before December 31, 2016. Accordingly, the court affirmed the trial court's judgment determining that the transfer fee was valid.

## TRUSTEE'S SALES

### *Berman v. HSBC Bank USA, N.A.*

**11 Cal. App. 5th 465 (2017)**

The court held that plaintiff stated a cause of action under Civil Code Section 2924.12 to enjoin a trustee's sale. Under that section, one of the grounds for an injunction is to enjoin a violation of Section 2924.6, which provides for a 30-day appeal period after a borrower's application for a loan modification is denied. Here the lender violated Section 2924.6 by sending a denial letter to plaintiff incorrectly informing him that he had only 15 days to appeal.

### *Conroy v. Wells Fargo Bank, N.A.*

**13 Cal. App. 5th 1012 (2017), reh'g granted, (Aug. 25, 2017)**

This is another case in which homeowners lived in a house for many years while challenging a lender's right to foreclose. The homeowners finally lost. The court concluded that the complaint did not state valid causes of action for intentional or negligent misrepresentation because plaintiffs did not properly plead actual reliance or damages proximately caused by Wells Fargo. The trial court properly determined that plaintiffs could not assert a tort claim for negligence arising out of a contract with Wells Fargo. For lack of detrimental reliance on any of Wells Fargo's alleged promises, plaintiffs did not set forth a viable cause of action for promissory estoppel. The claim under Civil Code Section 2923.6 was not viable because subdivision (g) of that statute excludes loan modification applications undertaken before January 2, 2013. Because Wells Fargo considered and rejected a loan modification before that date, section 2923.6 does not apply to them. Section 2923.7 requires a borrower to expressly request a single point of contact with the loan servicer and the complaint did not allege plaintiffs ever requested a single point of contact. Finally, the trial court properly dismissed the UCL claim because it is merely derivative of other causes of action that were properly dismissed.

### *Gillies v. JPMorgan Chase Bank, N.A.*

**7 Cal. App. 5th 907 (2017)**

Plaintiff homeowner filed this action, following several other similar actions, to prevent a trustee's sale based on alleged violations of the Homeowner's Bill of Rights, lack of the lender's standing to foreclose and various other theories. The court ruled in favor of the bank, applying the principal of res judicata. Interestingly, the court stated: "Nonpayment of the..."

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## TRUSTEE'S SALES (cont.)

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... mortgage for approximately eight years while the borrower remains in possession is an egregious abuse. [The bank] argued, and the trial court agreed, that appellant is 'gaming the system'. The game is over."tional role.

### **Kalnoki v. First Am. Tr. Servicing Sols., LLC**

**8 Cal. App. 5th 23 (2017), reh'g denied (Feb. 22, 2017), review denied (May 10, 2017)**

In this action to set aside a trustee's sale on numerous grounds, the court ruled in favor of defendant, holding in the published portion of the opinion:

1. The substitution of trustee was valid even though a) the word "Inc." was omitted after the words "Wells Fargo Home Mortgage", b) it was signed by the company into which the original beneficiary merged because the legal effect of that merger was supplied by other documents of which the court properly took judicial notice, c) it was signed by the lender's attorney in fact, d) the power of attorney was not attached and e) the substituted trustee had previously been the agent of the lender, but this did not create a conflict of interest, as alleged by plaintiffs, because a trustee under a deed of trust is a trustee for very limited purposes and does not have any fiduciary duties to the owner during the foreclosure process.

2. The assignment of the deed of trust was valid because a) even though the lender allegedly did not have physical possession of the note, California's nonjudicial foreclosure do not require it and b) an assignment to a securitized trust after the trusts "closing date" is voidable by the lender and assignee, not void, so the trustor does not have standing to challenge the assignment.

3. The trustee's deed upon sale was valid where the lender credit bid at the sale.

4. The Notice of Default was valid in spite of plaintiffs' allegations that it was "robo-signed" because plaintiffs did not dispute the accuracy of any of the salient facts, such as the amount owed or that their loan was in default.

5. Plaintiffs were required to tender the amount owing on the debt because none of the exceptions to the tender rule applied, and plaintiffs did not do so.

### **Mendoza v. JPMorgan Chase Bank, N.A.**

**6 Cal. App. 5th 802 (2016), review denied (Mar. 22, 2017)**

In this action to set aside a trustee's deed, a borrower challenged a securitized trust's ownership of a deed of trust by alleging that the attempts to transfer the deed of trust to the securitized trust (which was formed under New York law) occurred after the trust's "closing date". Under New York law, transfers that violate the terms of the trust instrument are voidable by the parties to the trust agreement, not void, and the borrower is a third party without standing to challenge the validity of an assignment that is merely voidable by the parties to the assignment.

### **Schep v. Capital One, N.A.**

**12 Cal. App. 5th 1331 (2017), as modified on denial of reh'g (July 18, 2017), review denied (Oct. 11, 2017)**

The court held that a trustee's acts in recording a notice of default, a notice of sale, and a trustee's deed upon sale in the course of a nonjudicial foreclosure are privileged under Civil Code section 47. Accordingly, a plaintiff does not state a cause of action for slander of title based on the recording of those documents.

## UNLAWFUL DETAINER / COLLATERAL ESTOPPEL

### **Ayala v. Dawson**

**13 Cal. App. 5th 1319 (2017), review denied (Nov. 15, 2017)**

Plaintiff was evicted from the subject property in a previous unlawful detainer action, and brought the current action claiming that he held equitable title pursuant to an oral installment sale contract. The court explained that because an unlawful detainer action is a summary proceeding ordinarily limited to resolution of the question of possession, any judgment arising therefrom generally is given limited res judicata effect. As a general matter in such cases, collateral estoppel will only apply if the party to be bound agreed expressly or impliedly to submit an issue to prior adjudication and had a full and fair opportunity to litigate under circumstances affording due process protections.

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## UNLAWFUL DETAINER / COLLATERAL ESTOPPEL (cont.)

(Continued from Previous Page...)

The court held that plaintiff was barred from relitigating the equitable title issue. Plaintiff could have moved to consolidate the unlawful detainer proceeding with this action, thus requiring the court to determine whether the issues presented were so complex and so intertwined with the issue of title that the entire case should be treated as an ordinary civil action, and not as a summary proceeding. But plaintiff did not do so. Instead, he acceded to the summary and expedited procedures of unlawful detainer with respect to his claim to equitable title.

## USURY

### Hardwick v. Wilcox

11 Cal. App. 5th 975 (2017)

The court upheld a judgment in favor of plaintiff, finding, among other things, that usurious interest payments made over the course of several loans offset the principal debt, and that plaintiff could recover \$227,235.83 in interest payments he made during the two years prior to the filing of this lawsuit. Specifically, the court held:

1. Plaintiff did not waive his usury claim by signing a forbearance agreement because the agreement did not clearly apply to the usury claim and, even if it did, a waiver of usury would violate public policy.
2. Even though the two-year statute of limitations (C.C.P. 339) applies to plaintiff's cause of action to recover usurious interest, payments on a usurious note are deemed to apply first to principal, and the statute of limitations does not begin to run until the debtor has paid the entire principal amount of the debt.

## VOIDABLE CONVEYANCE

### PGA W. Residential Ass'n, Inc. v. Hulven Int'l, Inc.

14 Cal. App. 5th 156 (2017), as modified (Aug. 23, 2017), review denied (Nov. 15, 2017)

Plaintiff alleged that defendant Mork tried to fraudulently insulate the equity in his condominium from creditors by naming

Hulven, a sham corporation entirely owned and controlled by Mork, as the beneficiary of a deed of trust and note, and by later directing Hulven International, Inc. to foreclose on the condominium. The court held 1) the former Uniform Fraudulent Transfer Act (later renamed the Uniform Voidable Transactions Act) applied to the alleged fraudulent deed of trust, but 2) plaintiff's claims were extinguished by the expiration of the seven-year limitations period set forth in Civil Code Section 3439.09(c) even though defendant did not raise the statute as a defense because that statute is a statute of repose and not a statute of limitations. Although a defendant must plead a statute of limitations defense, it is the plaintiff who must plead facts showing that a substantive right has not been extinguished by a statute of repose.

## VOIDABLE CONVEYANCES / EQUITABLE SUBROGATION

### Nautilus, Inc. v. Chao Chen Yang

11 Cal. App. 5th 33 (2017), reh'g denied (May 8, 2017), review denied (Aug. 9, 2017)

Nautilus, Inc. obtained a judgment against Stanley Kuo Hua Yang, and recorded an abstract of judgment against real property on which Stanley and his brother, Peter Chun Hua Yang, held title. Stanley and Peter transferred title to the property to their father, Chao Chen Yang, who obtained a reverse mortgage loan on the property. In its title search, the title insurance company missed Nautilus's abstract of judgment when the reverse mortgage loan funded. The court upheld the judgment awarding an equitable lien in favor of the lender in the amount of liens that were paid off that were senior to the judgment lien, holding:

1. The trial court properly ruled that the transfer of Stanley's 1/2 interest was a fraudulent conveyance, but not as to the lender because the lender acted in good faith. Lack of good faith would require a showing, not present in this case, that the transferee had actual knowledge of facts showing the transferor had fraudulent intent.
2. The title company's error in failing to find the abstract of judgment does not defeat the lender's right to equitable subrogation because the title company's knowledge or negligence is not imputed to the insured lender, and the ability of the lender to recover from the title company does not defeat the lender's claim for equitable subrogation.
3. The trial court's imposition of a lien on the property to support a judgment in favor of plaintiff rendered in the current action was within the court's equitable authority.

## WRONGFUL FORECLOSURE

### *Crossroads Inv'rs, L.P. v. Fed. Nat'l Mortg. Ass'n*

13 Cal. App. 5th 757 (2017)

The court reversed the trial court's denial of Fannie Mae's anti-SLAPP motion (C.C.P. 425.16) in this wrongful foreclosure action, because the actions on which Crossroads based its complaint arose from the exercise of Fannie Mae's constitutional rights of speech and petition; specifically, statements and omissions made in, or concerning issues under review in, Crossroad's bankruptcy action. However, the court held that allegations relating to Fannie Mae's alleged breach of an oral agreement to provide notice of the foreclosure sale were not constitutionally protected, and it remanded the case for that issue to be decided in the trial court.

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## 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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# THE CLTA'S 111TH ANNUAL CONVENTION

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Sponsorship opportunities are now available! More information is available on the CLTA website at [www.clta.org](http://www.clta.org).

Registration information and program details will be forwarded in January.

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