

# Simkin Law Update

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## New 2005 Real Estate Laws That May Affect You

*Dear Clients:*

*This newsletter contains a very brief summary of new laws and rulings that may be of interest to you. We encourage you to consult with us for a more complete explanation. Please call with any questions you may have concerning these or any other legal matters related to real estate, business, entertainment or asset protection.*

**Many Changes in LANDLORD/TENANT LAWS**

**Civil Code §1947.3: Restrictions on Demanding Cash Payments from Tenants**

Landlords cannot require rent or deposits to be paid in cash, unless a tenant fails to pay rent with a valid instrument. Tenants may not agree to waive this provision. On the landlord's side, cashier's checks and money orders are evidence only that the check was issued, not that the rent has been paid.

**Civil Code §1950.5 et seq.: Longer Notice Required for Raising Rent/ Privacy of Unlawful Detainer Files**

Permanent extension of law requiring a landlord who increases rent more than 10% on a month-to-month tenancy to give 60 rather than 30 days notice. The law also prohibits rental discrimination based on a person's source of income. The restriction on access to unlawful detainer court files is changed to allow the court clerk to provide access to specified persons, including a party to an action, or pursuant to a court order upon showing of good cause. This may prevent ascertaining whether future tenants have been involved in eviction proceedings.

**CCP §1161 New Procedures for Filing Unlawful Detainer Actions**

These changes include but are not limited to: 1) stating how and by whom the 3 day notice was served, and 2) for residential evictions, attaching a copy of the 3 day notice and written rental agreement, unless the lease was oral or the eviction is based on the non-payment of rent. Remember, not using a "new" (post 2004) 3 day notice may hamper your ability to obtain an eviction.

**Tenant Sues For Mildew Damage**

In *Burnett v. Chimney Sweep, LLC* (123 Cal.App.4th 1057, California Courts of Appeal - 2nd District) it was found that even though a lease contained a provision limiting the landlord's liability, because it failed to expressly preclude liability for negligence, the tenant could file suit for mildew damages. Leases should be reviewed in light of this new ruling.

**Commercial Tenant Defaults Causing Sale, But Landlord May Recover Lost Rents and Cost of Sale**

In *Millikan v. American Spectrum Real Estate Services California, Inc.* (117 Cal.App.4th 1094, California Courts of Appeal - 4th District) a tenant abandoned a lease. The landlord retained his available contract remedies under the termination of lease statute, including selling of the property. The landlord was able to claim remedies under Civil Code § 1954.4, including rental loss accruing after the date of sale, except to the extent the tenant could prove such rental loss was avoidable, together with consequential damages that included selling expenses.

*(More Landlord/Tenant developments on see pg 4)*

## New 2005 Real Estate Laws That May Affect You

### NEW TAX LAW

#### Revenue and Tax Code §18662 et seq.: Withholding Law Now Applies to Corporations, Trusts and Estates

Escrows closing on or after January 1, 2005 that transfer real property owned by corporations, trusts, and estates are subject to the same automatic withholding tax as individuals.



*Call us for more detailed explanations of how these laws affect your business. 310-788-9089*

### NEW DEVELOPMENTS FOR REAL ESTATE BROKERS

#### Business & Prof. Code §10176 et seq.: More Disciplinary Actions Implemented

This bill expands the causes of action for which a real estate broker can be disciplined. The Real Estate Commissioner may now discipline a real estate licensee for:

1) failing to disburse funds in accordance with an accepted commitment to make a mortgage loan when the real estate broker represents to the applicant that the broker is either a lender or authorized to issue the commitment on behalf of the lender or lenders; or 2) intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

#### Disclosure Duties Do Not Extend to Children of Buyers

In *Coldwell Banker Residential Brokerage Co., Inc. v. Superior Court* (117 Cal.App.4th 158, California Courts of Appeal - 4th District) the seller's broker had no duty of care toward the child of the mother who purchased a house. The child alleged that the broker failed to disclose the existence of toxic mold that caused the child to develop asthma, but the statutory inspection and disclosure duties applied exclusively to prospective buyers, and not to other persons who were not parties to the real estate transaction. The buyer would need to prove she personally suffered damages.

### COMMON INTEREST DEVELOPMENTS -

#### THE THEME THIS YEAR IS MORE, MORE, MORE

#### Civil Code §1354 et seq.: More Rights to Enforce

This statute expands the rights of homeowners or homeowners' associations to pursue civil actions based not only the CC&R's but also on other governing documents of the association such as the bylaws, operating rules of the association, or articles of incorporation. HOA's and homeowners should review these documents in order to determine their respective rights and responsibilities.

#### Civil Code § 1357 et seq.: More Reasonable Review

This bill amends the Davis-Stirling Common Interest Development Act to require homeowners' associations to follow fair and reasonable decision making procedures when considering a homeowner's request to modify his or her property. HOA's should establish procedures to comply with the new requirements to implement fair and logical design changes.

#### Civil Code § 1365 et seq.: More Information to Homeowners

This bill amends the Davis-Stirling Act to expand the financial information that homeowners' associations must provide to homeowners with respect to assessments and reserve accounts. New requirements include providing information on reserves, repairs, contemplated assessments, and insurance coverage.

#### More Consideration to Resident Disabilities

In *Auburn Woods Homeowners Ass'n v. Fair Employment and Housing Com'n* (121 Cal.App.4th 1578, California Courts of Appeal - 3rd District) substantial evidence supported a Fair Employment and Housing Commission (FEHC) determination that a condominium association had discriminated against condominium residents, a married couple who suffered from depression and other disorders, in failing to reasonably accommodate their disabilities by permitting them to keep a small companion dog, even though the CC&R's prohibited dogs.

## New 2005 Real Estate Laws That May Affect You

### REAL PROPERTY- SALES & PERMITS

#### Civil Code §1102 et seq. New Disclosure Requirements

Real estate disclosure forms for certain sales or transfers must now

- 1) reflect recent changes regarding the disclosure of nearby airports;
- 2) clarify disclosure requirements regarding nearby industrial use;
- 3) provide for use of a consultant's report for natural hazard disclosures; and
- 4) indicate whether the information in the Natural Hazard Disclosure Statement is based on the transferors or agent's personal knowledge or on information provided by an independent third party disclosure provider as a substitute disclosure.

#### Govt. Code §27390: County Recorders Invited Into 21<sup>st</sup> Century

County recorders are now encouraged to use electronic recording of title transfer documents. This ends the costly and inefficient requirement that transfer title documents must be physically delivered to the county recorder and should save money and time in real estate transactions.

#### Government Code §51182 et seq.: Help Prevent Fire...or Pay

Brush, flammable vegetation, or combustible growth within 100 feet from an occupied dwelling, building or structure, or 100 feet from the property line, must be moved. State law or local ordinance, rule or regulation may require a greater distance be cleared or the property owner may be fined up to \$500 per violation.

#### When Seeking Permits, To Err is Expensive

In *Horwitz v. City of Los Angeles* (124 Cal.App.4th 1344, California Courts of Appeal - 2nd District) the City of Los Angeles revoked a permit that allowed construction of house 14 feet closer to street than allowed by the municipal code. The permit had been issued based on an error in calculations, and the construction was completed, but the city required the homeowner to comply with the proper requirements, which may require reconstructing the premises.

#### Environmental Impacts Range Broadened

In *Bakersfield Citizens for Local Control v. City of Bakersfield* (124 Cal.App.4th 1184, California Courts of Appeal - 5th District) it was ruled that the City must assess both individual and cumulative environmental impact of two shopping centers located 3.6 miles apart. An EIR must take into account the area as a whole.

#### Subsequent Homeowners Have Standing to Sue Builder

In *Siegel v. Anderson Homes Inc.* (118 Cal.App.4th 994, California Courts of Appeal - 5th District) successive homeowners have standing to sue for construction defects that existed prior to purchase. If a defect was not evident prior to purchase, the new homeowner may be able to sue the builder. However, the statute of limitations of CCP § 337.1 et seq. may still bar an action over 10 years from completion of the building.

#### INFORMATION FOR LENDERS

##### Business and Professions Code §14700: Mortgage Loans & Advertising

This bill prohibits the inclusion of the trade name, logo, or tag line of a lender, in a written solicitation for financial services directed to a consumer, but not sent from that lender, unless clearly disclosed. The bill also prohibits the misleading use of the name of the lender, or the use of a similar name, in a solicitation for financial services directed to a consumer; or the inclusion of certain loan information of a consumer in a solicitation for services or products.

##### No Requirement to Share the Wealth with Lender

In *Dieckmeyer v. Redevelopment Agency of the City of Huntington Beach* (24 Cal.Rptr.3d 395, California Courts of Appeal - 4th District) the owner of a low-income condominium was allowed to pre-pay a loan without paying an equity share to lender. The equity sharing requirement as placed in the loan to secure the lender's profit on the sale of the house but not merely on prepayment of the loan.

## New 2005 Real Estate Laws That May Affect You

### (LANDLORD/TENANT CONTINUED)

#### Say What You Will in San Francisco - Recent Ordinance Violates First Amendment

In *Baba v. Board of Supervisors of the City and County of San Francisco* (124 Cal.App.4th 504, California Courts of Appeal - 1st District) a local rent ordinance making it unlawful for a residential landlord to request that a tenant move was found unconstitutional, even when analyzed as a commercial speech regulation. The landlord is allowed to make a request but cannot force the tenant to move except pursuant to the regulation.

#### Landlord's Late Fee Found Void

In *Orozco v. Casimiro* (17 Cal.Rptr.3d 175, Los Angeles Appellate Court) a landlord's late fee provision was void and unenforceable because the landlord neither pleaded nor proved, in an unlawful detainer action, that a late rental payment fee was impracticable or extremely difficult to fix. He was not entitled to the presumption that the late fee specified in the lease represented the actual damages he suffered as a result of the tenant's late payment. Appropriate late fees are allowed, but must be addressed correctly in unlawful detainer actions to be enforceable. See also Liquidated Damages, discussed in Civil Code §1671 and §3302

#### Key Money Should be Mentioned in Lease

In *Edamerica, Inc. v. Superior Court* (114 Cal.App.4th 819, California Courts of Appeal - 2nd District) commercial landlords were not liable to tenants for simply demanding a "key money" payment before the landlords would agree to renew or extend the lease, notwithstanding that key money was not mentioned in the existing lease. Key Money is a bonus paid to secure a lease and is generally illegal unless properly addressed in the lease. Because this was a *renewal* and not a new lease, it was allowed, but it is a better idea to put it in the lease.

#### Business and Professions Code Section §11010: Notice of Intention to Sell or Lease Subdivided Land Requirements

Except as otherwise provided pursuant to subdivision (c) or elsewhere in the chapter, any person who intends to offer subdivided lands within CA for sale or lease shall obtain a public report from the Department of Real Estate. The public report can be obtained by filing an application with the DRE.

#### Government Code §65863 et seq.: Housing Law Changes- Effective July 1, 2005

Among other changes, the definition of "assisted housing development" has been expanded. The law states that an owner of an assisted housing development cannot sell the development at any time within the five years prior to the expiration of rental restrictions, or at any time if the owner is eligible for prepayment or termination within five years, unless the owner or its agent has first provided each of certain specified entities an opportunity to submit an offer to purchase the development. Owners of low-income units should review this law prior to listing the property for sale.

### CONTRACTORS

#### Mechanic's Lien Not Valid Before Construction Begins

In *D'Orsay Intern. Partners v. Superior Court* (123 Cal.App.4th 836, California Courts of Appeal - 2nd District) a contractor who provided design services for a property owner but did not commence construction of the project was not entitled to assert a mechanic's lien against the property owner for unpaid fees.

**\*\*Welcome to our newest Associate Rashel Mereness\*\***

Rashel joins the firm from 20th Century Fox. You can now call Simkin & Associates for your entertainment law needs including licensing, production, talent agreements, copyrights, music and more.



Next Issue: Protecting Your Assets