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Simkin Law Update

Inside this issue:

Dear Clients:

We wish you a happy and prosperous 2006. This newsletter includes new laws and information we think 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 including real estate, HOA's, business, franchises, entertainment law, asset protection, or trust litigation.

Los Angeles Landlords Can Help Hurricane Disaster Victims without Becoming Victims to the LA Rent Stabilization Ordinance

The Los Angeles City Housing Department voted in December to suspend the Rent Stabilization Ordinance rules for Los Angeles landlords who would like to offer temporary discounted rental rates to disaster victims without getting locked into a permanent "rent control" situation. The Hurricane Katrina and Hurricane Rita Temporary Relief Program provides that:

- RSO restricted properties may be rented to qualified disaster victims for a maximum of 75% of the area Fair Market Value.
- The rental term must be for a limited time agreed to by the landlord and tenant and must end by December 31, 2006.
- At the end of the term, the landlord may raise the rent back to the original market rate. The tenant may choose to stay at the regular rent or move out.

Call Simkin & Associates, Inc. for assistance in applying for this voluntary program or visit the Los Angeles Housing Department website at www.lacity.org/lahd/ for forms and more information.

Legislation to Watch

No More Junk Faxes?

Depending on which side of the fax machine you sit, this could be a good or bad change to existing law. The Federal Junk Fax Prevention Act prohibits unsolicited faxes except to persons with whom a company has already conducted business. California SB 833 was set to take effect January 1, 2006 without the "prior business" exception but the U.S. Chamber of Commerce has filed a legal challenge. The law will be reviewed by a federal court and the institution of the law is stayed until at least January 31, 2006. The federal prohibition was implemented because junk faxes cost fax owners in used toner, paper, and wear and tear. However, California lawmakers say the federal law is flawed because it does not require the sender to prove the existing business relationship. Senders of unsolicited faxes may be sued by the recipient for $1,500 per fax.

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FOR OWNERS, TENANTS, BUYERS & SELLERS

Of Interest…

Don't forget to send your Los Angeles RSO (rent control) tenants an anniversary present each year on the anniversary of the tenancy – the interest on their security deposits. The RSO-required percentage rate has been raised, effective January 1, 2006, from 1.21.% to 1.74%.

Breaking News—California Supreme Court Invalidates Los Angeles Municipal Code §151.04

In Apartment Association of L.A. County v. City of L.A. (released January 31, 2006, Case No. B179133), the Court stated that L.A.M.C. §151.04, which states that a landlord who terminates or fails to renew a Section 8 housing contract, cannot charge the tenant more than the tenant's share of the rent, violated California Civil Code §1954.535 which provides for only a 90 day notice period during which the tenant cannot be required to pay more rent than he or she personally paid under the Section 8 contract.

Increase in the Rent!

Landlords owning RSO registered properties in the city of Los Angeles may increase the rent annually by 4% starting July 1, 2006. The previous amount was 3%. Landlords may increase the rent by an additional percentage point for each utility paid, up to 6%.

HOA Foreclosure More Difficult

Civil Code §1365.1 is amended with new requirements for Homeowners Associations looking to foreclose because of delinquent payments. Now the delinquency must be either (a) for more than an amount totaling $1,800, or (b) outstanding for more than twelve months. The bill also requires that the decision to foreclose be made by majority vote at an executive board meeting at least 30 days prior to the auction date. The homeowner must be made aware of the decision to foreclose and given the opportunity, if it is requested, to meet with the HOA board to discuss a resolution of the matter.

The 30-Day Notice To Quit Is Reinstated!

Unless otherwise required by a local rent stabilization act or lease, only 30-days notice is required from landlords who wish to terminate a tenancy. The now expired Civil Code section 1946.1 previously required 60-days notice for tenants who have resided in the property for one year or more. No legislation was passed to extend it. To protect your rights, consult Simkin & Associates, Inc. concerning any landlord/tenant issues.

New Law Requires Disclosure of Supplemental Tax

Because the County Assessor only recalculates property taxes upon changes in ownership, the "Supplemental Tax" is assessed upon a sale to make up for the difference in tax rate triggered by the new price. The sellers may have paid the current year property tax, but the buyers are on the hook for the remainder of the year at the new tax rate.

The Supplemental Tax, which can be several thousand dollars, is assessed via a tax bill that arrives several weeks after closing. The bill can be quite a surprise, especially for first-time buyers who don't expect this addition to their closing costs. But a new law effective January 1, 2006 requires disclosure of the fact that this bill is on its way.

California Association of Realtors has a form called "Notice of Supplemental Property Tax," which may be used. The law does not require the sellers to state the amount of the tax. When purchasing a home, contact Simkin & Associates, Inc. to help you find the previous sales price in order to calculate the supplemental tax.

Protecting Your Assets

Why Should You Avoid Probate with a "Revocable" Living Trust?

Mirriam-Webster defines probate simply as "the judicial determination of the validity of a will," but the probate of an estate is nowhere near that simple. Once a person passes, a costly and lengthy process begins which diminishes the estate assets and can prolong the distribution of inheritance for months or even years.

First, the estate executor must file a petition in the probate court to distribute the assets of the deceased. Sometimes, the executor is required to personally post a bond.

If the deceased left surviving immediate family, the executor may petition the court to distribute an allowance to them during probate.

The executor must provide an inventory and appraisal of the estate assets and pay all known creditors, selling the assets if necessary. Court approval is required on all sales of real property and it is difficult for the executor to finance repairs, usually resulting in a sale for less than fair market value.

After the creditors are paid, the estate taxes and outstanding state and federal taxes are paid and finally the heirs receive what is left.

With a living trust the assets are passed to the heirs immediately upon the trustor's death so there is no probate process. Many attorney costs and court fees are eliminated. Beneficiaries may dispose of or retain the property as they see fit. A trust also provides privacy as well as asset transfers that minimize estate tax liability, increasing the amount that may pass to beneficiaries such as a spouse, children, or a favorite charity.

Living with a living trust is no different than living without one. All property placed in the trust may be transferred or sold freely.

Asset Protection During Your Lifetime

Asset protection protects your assets so you can enjoy the fruits of your labor, including possible income tax and death tax savings. Some entity choices for lifetime asset protection are:

- Family Limited Partnership—Provides asset protection, as well as income tax and estate tax benefits.
- Limited Liability Corporation—Limits your personal liability for issues arising from your business or real estate.
- Professional Corporation— For Doctors, Lawyers, and other professionals, limits personal liability.
- Offshore LLC or Asset protection Trust—legally protects assets .

The Cost of Probate *(Probate Code §§10800 & 10810)*

The Probate Code sets the rates attorneys and executors may charge during Probate. The rates are calculated based on the gross estate: 4% for the first $100,000; 3% for the next $100,000; 2% for the next $800,000; 1% of the next $9,000,000 and .5% on the next $15,000,000. Both the executor and the attorney are entitled to the same statutory fee.

Example: Client Morticia dies owning a home worth $1,000,000 and assets in stock and other property of $200,000. Her base probate attorney and executor fees would total $50,000.

Morticia's probate attorney is entitled to *additional* fees, called "extraordinary fees" for his time and effort in selling the home, billed at the attorney's hourly rate.

Simkin & Associates, Inc. can help you preserve your assets for future generations.

New 2006 Real Estate Laws That May Affect You

(Legislation to Watch, continued from Page 1)

Can Private Property in California be Taken for Private development?

The Supreme Court ruled in Kelo v. City of New London, CT, 126 S.Ct 326 (2005), that private property could be condemned for construction by private developers, because the new construction was pursuant to a redevelopment plan to revitalize the city and therefore constituted a "public use" under the Takings Clause of the Constitution. The ruling allows states to enact stricter guidelines for takings so California State Senator Tom McClintock drafted and filed the California Property Owner's Protection Act, a measure designed to limit state and local government takings to strictly public uses such as roads, parks, and public facilities. If passed, the bill may also limit local government rent control rights.

Elimination of Stepped Up Tax Basis to take Effect in 2010.

Unless congress changes the current law, beginning in 2010 those selling inherited property will be responsible for taxes on the gain calculated using the deceased's basis, rather than the value at inheritance. For example, under current law, if old uncle Ed passes away and leaves you his 2 bedroom bungalow worth $1 Million, when you sell it you only pay taxes on the gain over $1 Million. Under the law set to take effect in 2010, you would pay taxes on the gain over what uncle Ed paid for the house, even if that was very little way back in 1922.

There are exceptions; each estate may increase the basis by $1.3 Million or up to $3 Million for a transfer to a spouse. In California's growing real estate market, however, there still may be taxable gain! No matter what happens with this law, proper estate planning is always a good idea.

Copyright Corner

Question: When is a work "published"?

"Publication" is the distribution of copies to the public, or the transfer of ownership by sale, rental or lease. This includes offering copies for the purpose of further distribution. A public performance or display does not necessarily constitute publication. 17 U.S.C.A. §101.

Question: Is my work protected from infringement once it is "published."

Copyright attaches when the work is created, however a work must be registered with the U.S. Copyright office in order to file a federal lawsuit for infringement. Registration provides benefits such as recovery of attorneys fees in certain circumstances and registration with the U.S. Customs office for protection from foreign piracy. 17 U.S.C.A. §§411 & 412.

Santa monica Regulation Invalidated

The Court of Appeals ruled in Bohbot v. Santa Monica Rent Control Board, 133 Cal.App.4th 456 (2005), that a regulation prohibiting an owner-eviction suit within four years of a previously dismissed suit violated state law. The court said the regulation eliminated procedural rights granted landlords by the Code of Civil Procedure §581. Simkin & Associates assisted appellate counsel for the landlord in this matter.