

SIMKIN LAW UPDATE

Real Estate and Business Law

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NEW LAWS FOR 2012

Dear Clients,

Happy new year! We hope this year brings you good health and good fortune. This newsletter discusses some new laws related to real estate and business matters. For more information please contact our office or visit us on the web at www.realproplaw.com. We welcome your inquiries about legal matters from real estate and business law, to HOA, landlord-tenant, corporate formation, copyright, franchises, estate planning, asset protection, probate, and trust litigation.

Sincerely,

Michael Simkin
 michael@simkinlaw.com

About Our Firm

At Simkin & Associates, every case is handled with individualized attention, creative approaches and honesty. For over two decades Mr. Simkin has practiced law in California and is also admitted in New York and the District of Columbia as well as being AV[®]-rated by Martindale-Hubbell, an indicator of the highest ethical standards and professional ability.

Real Estate



OWNERSHIP STATEMENT PROCEDURE CHANGES AND NEW PENALTIES

Rev. & Tax Code Section 480 et seq.

Filing a Change in Ownership statement with the property tax assessor's office will have some new procedures, including: (1) the statement is deemed filed on the date it is postmarked; (2) the penalty cap for a non-willful failure to file a statement is increased to \$5,000 (from \$2,500) for properties eligible for the homeowners' exemption, and \$20,000 for properties ineligible for the homeowners' exemption; (3) the time to file a statement is extended from 45 days to 90 days (including change in ownership/control of corporations, LLCs and other entities); and (4) specifies where the assessor may mail a request for the statement or notice of penalty for an identified property.

SELLER MUST DISCLOSE IF HOME HAS WATER-CONSERVING FIXTURES

Civil Code Section 1102.6

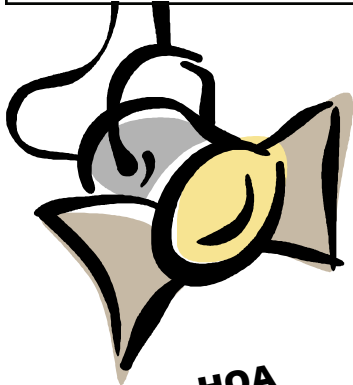
Transfer Disclosure Statements must now include a checkbox for the seller of a single family residential property built before 1994 to disclose to potential buyers whether the property is equipped with the required water conserving plumbing fixtures.



DESIGN PROFESSIONALS CAN FILE MECHANICS LIENS

Civil Code Section 8319

A design professional (a person who provides services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement) may file for a mechanics lien for the unpaid balance of payment for professional services if the design professionals lien expires, the lien is not fully paid, and the mechanics lien is recorded within 30 days of the expiration of the design professionals lien.



**HOA
SPOTLIGHT**

SHORT SALES EXTINGUISH JUNIOR MORTGAGES

Code of Civil Procedure Section 580e

This law, which took effect July 15, 2011, provides greater anti-deficiency protection for short sale sellers to mortgages other than their first mortgage. All lenders still have to agree to a short sale process. The protections do not apply to commercial loans with multiple security which includes security of residential property.



CONDOMINIUM OWNER'S RIGHT TO RENT

Civil Code Section 1360.2

Beginning January 1, 2012, a homeowner in a common interest development is exempt from any prohibition in a governing document, e.g. the CC&Rs, against renting or leasing the unit, unless the prohibition was in effect before the owner acquired title to the unit. The owner's right to rent does not terminate for certain title transfers including spousal, parent to child, and probate. For sales, the HOA must disclose any prohibition against renting or leasing and for rentals, the homeowner must give the HOA verification of the homeowner's acquisition date, and name and contact information of the prospective tenant.

HOMEOWNER ASSOCIATIONS CANNOT PROHIBIT THE INSTALLATION OR USE OF ELECTRIC VEHICLE CHARGING STATIONS

Civil Code Section 1353.9



An HOA must allow the installation and use of an electric vehicle charging station, but may impose reasonable restrictions, i.e. those that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance. The HOA may not willfully avoid or delay an application for approval of the charging station, which may be deemed approved if not denied within 60 days. If a homeowner seeks to install a charging station in a common area or exclusive use common area, that owner and each successive owner of the parking stall on or near the charging station will be responsible for certain costs related to the charging station and for disclosing to prospective buyers the existence of the charging station and the related responsibilities of the homeowner. An HOA that willfully violates this law is liable for actual damages, plus a \$1,000 civil penalty as well as attorney's fees.

Landlord-Tenant



SMOKING BAN Civil Code Section 1947.5. A landlord of a residential dwelling unit may prohibit the smoking of cigarettes or other tobacco products on the property or in any building or portion of the building, including any interior or exterior area of the building. The rental agreement for new tenants in 2012 must state the areas where smoking is prohibited, whereas for tenants preexisting before 2012, proper written notice of a change in the terms of the tenancy stating the new smoking ban must first be provided to the tenants.

DOMESTIC VIOLENCE VICTIMS Civil Code Section 1946.7. A victim of domestic violence and members of the household have the right to terminate their lease when they provide specific documentation to the landlord within 180 days of receipt showing that that person was a victim of domestic violence. The tenant also has the option to change the locks if he/she has written proof that he/she was a victim of domestic violence, so long as the tenant gives the owner a duplicate key. A landlord also cannot terminate a tenancy or fail to renew a tenancy solely upon an act of domestic violence against a tenant. However, the landlord does have a right to evict the tenant if he/she allows the perpetrator to visit the property or the landlord reasonably believes the perpetrator poses a physical threat to others or to the right to quiet enjoyment of the property.

Business

NO INDEMNIFICATION IN COMMERCIAL CONSTRUCTION CONTRACTS

Civil Code Section 2782.05

A general contractor cannot demand its subcontractors to indemnify the general contractor. Provisions contained in or affecting any construction contract entered into on or after January 1, 2013 containing indemnity language, including the cost to defend, which protect general contractors, construction managers, or other subcontractors, against a subcontractor are unenforceable if the claims are related to active negligence or willful misconduct of that contractor, manager, or their agents. This statute cannot be waived or modified by contractual agreement, and requires application of California law to the contracts regardless of any choice of law rules. This law does not apply to residential construction contracts which are covered under other laws, or contracts with the owners of private property, among others who can request indemnification.



EMPLOYEE V. INDEPENDENT CONTRACTORS

Labor Code Section 226.8

An employer cannot willfully misclassify an employee as an independent contractor or charge that person a fee or make a deduction from compensation for materials, space rental, services, and other purposes, if these acts would have violated the law had the person not been misclassified. Violators of this law face civil penalties ranging from \$5,000 up to \$25,000 for each violation, plus other penalties as permitted by law. A violator must also prominently display a notice of the violation as specified on its website for one year.





SMALL CLAIMS COURT LIMIT INCREASES

Code of Civil Procedure Section 116.221



The maximum small claims court filing amount is increased from \$7,500 to \$10,000 for an action brought by a natural person (except for claims of bodily injury from a car accident for which the increase does not occur until 2015). For corporations the limit is still \$5,000.

Estate Planning

PROBATE EXEMPTION VALUES INCREASE

Probate Code Sections 7620, 13200, and 13600

The total value of a decedent's estate that can now be transferred using simpler petition procedures instead of a formal probate administration has increased to \$150,000 (from \$100,000). The total value of all real property in a decedent's estate that can now be transferred by an affidavit procedure instead of a formal probate administration or the petition procedures has been increased to \$50,000 (from \$20,000). The total salary or other compensation that a surviving spouse can collect from an employer for the personal services of the deceased spouse has been increased to \$15,000 net (from \$5,000).



RESIDENCY SPOTLIGHT

Lifestyle

WORKPLACE RESIDENCY FOR SCHOOL ATTENDANCE

Education Code Section 48204

A school district may deem a pupil to have complied with the residency requirements for school attendance in the district if at least one parent or the legal guardian of the pupil is physically employed within the boundaries of that district for a minimum of 10 hours during the school week. While this law does not require the school district to admit the pupil to its schools, the school district must not refuse to admit a pupil on the basis of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration. except as otherwise provided.

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NO RESIDENCY REQUIREMENT TO OBTAIN A DIVORCE FOR SAME SEX COUPLES MARRIED IN CALIFORNIA

Family Code Section 2320

California courts may now grant divorces to same sex couples who were married in California but now reside in a jurisdiction that will not grant them a divorce because the state refuses to recognize same sex marriage. Previously, California courts required a six month residency in the state and a three month minimum residency in the county.

COMMON RESIDENCE NOT REQUIRED FOR DOMESTIC PARTNERSHIP

Family Code Section 297

There is no longer a common residence requirement for persons wishing to enter into a Domestic Partnership.

