

# SIMKIN LAW UPDATE

## Real Estate and Business Law

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### NEW LAWS FOR 2015

Dear Clients,

As 2014 draws to a close, we would like to draw your attention to new laws going into effect next year pertaining to real estate, business, and general matters that we thought might be of interest to our clients. For more information concerning any of the topics contained in this newsletter please contact our office or visit us on the web at [www.realproplaw.com](http://www.realproplaw.com). We welcome your inquiries about legal matters concerning real estate and business law, landlord-tenant, corporate formation, franchises, estate planning, asset protection, and probate and trust matters.

Sincerely,

*Michael Simkin*  
[michael@simkinlaw.com](mailto:michael@simkinlaw.com)

### About Our Firm

Simkin & Associates handles every case with individualized attention, creative approaches and honesty. For over 25 years 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

#### No Document Bundling for HOAs.

“Document bundling”, i.e. requiring the purchase of a package of documents together with the legally mandated disclosures, is prohibited with respect to the sale of units in a common interest development. The fees for these mandated common interest disclosure (“CID”) documents must be individually itemized for each document. The HOA must not charge an additional fee for electronic delivery in lieu of the hard copy. The seller must also provide a prospective buyer with all mandated CID documents in the seller’s possession free of charge.



If the association collects a reasonable fee based upon its actual cost to procure, prepare, reproduce and deliver the documents, it can only collect the fee from the seller. **Civil Code §§ 4528 and 4530.**

**Texts Don’t Count.** An electronic message of an ephemeral nature that is not designed to be retained or to create a permanent record, e.g. a text or instant message, does not create a contract to convey real property without written confirmation conforming to existing law. **Civil Code § 1624.**



**Documentary Transfer Tax - No More Secrets.** This law **repeals** the principal’s right to demand that the transfer tax be shown on a separate piece of paper from the recorded document, thus effectively enabling the principal to keep the purchase price a secret. Now the amount of the tax due must be shown on the face of every document subject to the documentary transfer tax when it is recorded. **Revenue and Tax Code §§ 11932 and 11933.**

**Auctions Selling Real Property—No Shills, No Thrills.** Effective July 1, 2015, for an auction that includes the sale of real property, this law prohibits causing or allowing any person to bid at a sale for the sole purpose of increasing the bid. But placing a bid on seller’s behalf during an auction is ok if notice, as specified, is given that liberty for that type of bidding is reserved. **Civil Code § 1812.610.**



**False Deeds May be Voided by a Criminal Court.** Upon motion by the prosecutor, a criminal court may void false (and forged) deeds when a defendant is convicted of filing, registering, or recording such an instrument. This new law effectively eliminates the need for a lengthy quiet title action to invalidate a false deed (a deed where ownership was procured falsely but no forgery took place). **Penal Code § 115.**



**Equitable Right of Redemption Beyond 90 days.** Existing law limits challenges to a sheriff's sale to 90 days after the date of sale to set it aside if the purchaser is the judgment creditor. This new law states that these provisions do not affect, limit, or eliminate a judgment debtor's equitable right of redemption (the judgment debtor's right to redeem property from a sale where there may be a grossly inadequate price, or where he purchaser is guilty of unfairness or has taken undue advantage, or in other circumstances warranting an equitable right to redeem the property). **Code of Civil Procedure § 701.680.**



**Real Estate Agent's Disclosure Obligations.** Listing and selling agents must provide the seller and buyer in a residential or **commercial** real property transaction, including a leasehold interest, with a disclosure form containing information on real estate agency relationships, disclose whether he or she is acting as the exclusive agent of buyer or seller, or as a dual agent representing both. **Civil Code § 2079.13.**

## Landlord-Tenant

**Evictions—Unlawful Weapons or Ammunition.** For the cities of Los Angeles, Long Beach, Sacramento and Oakland, to abate the nuisance caused by illegal conduct involving unlawful weapons or ammunition on real property, the City Attorney is allowed to demand that a landlord evict a tenant for unlawful possession of weapons or ammunition upon 30 calendar days' written notice to the owner. Within the 30 calendar days, the owner must provide the City Attorney with all relevant information relating to the unlawful detainer case, or provide a written explanation stating any safety-related reasons for noncompliance, along with an **assignment** to the city prosecutor/attorney of the right to bring an unlawful detainer action against the tenant. The owner may be billed up to \$600 for the eviction. **Civil Code § 3485.**



**Security Deposits.** Landlords and tenants may agree to use electronic communications for some notices and agreements relating to security deposits. However, Civil Code § 1950.5 still requires that the itemization of the security deposit and notice to the tenant of its disposition must still be made by either personal delivery or first class mail. **Civil Code § 1633.3.**

### Posted Notice for Trespassers.

Under existing law a person trespasses who fails to leave property belonging to or lawfully occupied by another and not open to the general public, after being asked to leave by a peace officer as requested by the owner. Each request is valid for a period not to exceed **12 months** when the property is closed to the public and posted as being closed. **Penal Code § 602.**



### "The Buyer's Choice Act" is now Permanent re: REOs.



The Buyer's Choice Act makes it unlawful for a REO lender to require upon resale that the buyer purchase title insurance or escrow services from a particular title insurer or escrow agent, for residential real property of four dwelling units or less. **Civil**

**Code § 1103.22.**

### Lenders Must Close Equity Lines of Credit During Escrow.

Starting July 1, 2015 through July 1, 2019, upon receipt of a written request from a borrower and a specified payment, lenders must close a borrower's equity line of credit and release or reconvey the property secured by the equity line of credit, as specified. **Civil Code § 2943.1.**



**Evictions—Controlled Substances.** Existing law authorizes, in the City of Los Angeles, a city prosecutor or city attorney to file an unlawful detainer action in the name of the people against any person causing a nuisance or violating the illegal purpose provisions of the unlawful detainer provision involving controlled substances. This new law extends this law to include the cities of Los Angeles, Oakland, and the County of Sacramento with respect to illegally selling controlled substances, but also requires the court to enter a specified order depending on whether the grounds for an eviction or partial eviction have been established. The court has the discretion to dismiss the action or stay the execution of an order for eviction for a reasonable time if the tenant can show by clear and convincing evidence that immediate eviction would pose extreme hardship that outweighs the benefit to the community. **Civil Code §§ 3486, 3486.5.**

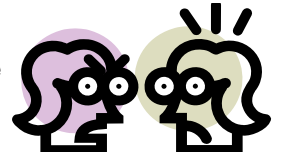




**Landlords and HOAs Must Allow Personal Agriculture.** A landlord must allow a tenant to participate in “personal agriculture” in portable containers approved by the landlord in the tenant’s outdoor backyard area, which must be on the ground level of the rental unit, for planting edible fruits or vegetables, for personal use or donation, and cannot include marijuana or any unlawful crops. This law also applies to HOAs and voids any provision of the CC&R’s prohibiting or unreasonably restricting the use of a homeowner’s backyard for personal agriculture. **Civil Code §§ 1940.10 and 4750.**

## Homeowners Associations

**Dispute Resolution.** The Davis-Stirling Common Interest Development Act requires an association to provide a fair, reasonable, and expeditious procedure or resolving disputes between an association and members involving their rights, duties, or liabilities under the law, or the association’s governing documents (the CC&Rs). This law requires a written agreement under an association’s procedure for resolving disputes between an association and a member to be signed by both parties. The law also authorizes a member and the association, at their own cost, to have an attorney or another person explain their positions. It also establishes an alternative procedure that authorizes either party to request, in writing, the other part to meet and confer, prohibits the association from refusing such a request and requires the parties to meet and confer in good faith. Any agreement reached under this procedure is binding and judicially enforceable. **Civil Code §§ 5910 and 5915.**



**Reduced Water Use—Brown is the New Green.** In January of 2014 Governor Brown declared a State of Emergency to exist in California due to severe drought conditions. This law prohibits a homeowner’s association from imposing a fine or assessment against a member who reduces or eliminates watering of vegetation or lawns during any period during which the Governor or local government has declared an emergency due to drought. **Civil Code § 4735.**

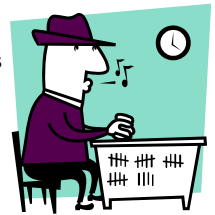


## Employment

**Employers Must Provide Paid Sick Leave.** The Healthy Workplaces, Healthy Families Act of 2014 provides that an employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days for prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked. An employee is entitled to use accrued sick days beginning on the 90th day of employment. It authorizes an employer to limit an employee’s use of paid sick days to 24 hours or 3 days in each year of employment, and prohibits an employer from discriminating or retaliating against an employee who requests paid sick days. **Labor Code §§ 245 et seq. and 2810.5.**



**Waiting Time Penalties for Minimum Wage Violations.** There are various statutory penalties for employers who fail to timely pay wages of a resigned or discharged employee. This law authorizes employees to recover a monetary civil penalty, restitution of wages, and liquidated damages. There are three ways to pursue such violations (e.g., through a “Berman Hearing” before the Labor Commissioner, through a civil action, or through a Labor Commissioner citation). Previous law authorized waiting time penalties under section 203 only under the first two methods and not through Labor Commissioner Citations. This law authorizes waiting time penalties for Labor Commissioner Citations too. **Labor Code § 1197.1.**



**Joint Liability of Employers and Labor Contractors for Violations.** This law requires a “client employer” to share liability with a labor contractor for the payment of wages, the failure to obtain valid workers’ compensation coverage, and all legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. These new requirements do not apply to employers who have fewer than 25 employees or who hire fewer than 5 employees from the labor contractor. Also exempted from the definition of “labor contractor” are specified nonprofit, labor, and motion picture payroll services organizations and 3rd parties engaged in an employee leasing arrangement, as specified. Client employers and labor contractors can mutually contract for otherwise lawful remedies for violations of its provisions by the other party. **Labor Code § 2810.3.**



**Limited Use of Arbitration Agreements.** This law limits the use of arbitration agreements by employers with employees. Employers are prohibited from requiring employees to waive certain legal rights and agree to arbitrate instead, and also prohibits businesses from refusing to contract with individuals who refused to waive such legal rights. This law applies to any contracts entered into, modified or extended after January 1, 2015. **Civil Code §§ 51.7, 52, and 52.1.**

## Miscellaneous



### Unlawful Contracts Limiting Opinions.

A contract for the sale or lease of consumer goods or services may not include a provision waiving the consumer's right to make any derogatory statement regarding the seller or lessor or its employees or agents, or concerning the goods or services. This law also makes it unlawful to threaten or to seek to enforce such a provision, or to otherwise penalize a consumer for making any such statement. The law also imposes civil penalties for a violation, i.e. \$2,500 for the initial violation and \$5,000 for each subsequent violation, as well as an additional penalty of \$10,000 if the violation was willful, intentional, or reckless. It does not prohibit or limit a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove. **Civil Code § 1670.8.**



### Attention lawyers!

**Native American Day** is being added as a state holiday. Beginning January 1, 2015, Native American Day will occur every 4th Friday in September (so for 2015, Native American Day will fall on September 25th). Not only will the courts be closed on this day, but this new holiday will affect court day calculations for litigation purposes and will also be considered a holiday for the purposes of computing time (Code of Civil Procedure ["CCP"] § 12b). This will affect motion filings (CCP § 1005(b)), discovery responses if served by overnight delivery or fax, etc. (CCP § 1013). **Government Code § 6700.(a).**



### Sheriff Service and Fees.

This law removes the requirement that a person identify the person(s) to be served with service of process or a subpoena to the guard or security personnel before being granted access to a gated community. In addition, this new law removes the requirement that an order or injunction be related to harassment, workplace violence, domestic violence or elder abuse, and allows the sheriff to provide the notification to the plaintiff/petitioner by publishing notice of service of process on the sheriff's website. The law also revises and increases fees for services provided by sheriffs or marshals. **Code of Civil Procedure §§ 262.7 and 415.21.**



### Did you know?

#### New Definition of Marriage.

A marriage is no longer recognized as only a personal relationship arising out of a civil contract between a man and a woman. This law provides that marriage is a personal relationship arising out of a civil contract between **2 persons** and makes related changes with respect to the consent to, and solemnization of, marriage. The law also deletes the limitation on the validity of marriages contracted outside this state between 2 persons of the same sex. **Family Code §§ 300, 301, 302, 308, et seq.**



#### Start Counting Those Calories.

Calorie information must be listed on menus and menu boards in chain restaurants, similar retail food establishments and vending machines with 20 or more locations to provide consumers with more nutritional information about the foods they eat outside of the home. **21 CFR 101.**

**Contractors With a Suspended License.** Unless exempted, it is a misdemeanor to engage in the business of, or act in the capacity of, a contractor while his or her license is suspended. This law also prohibits an advertisement for construction work or work of improvement by an unlicensed person unless the total contract price for labor, materials, and all other items is less than \$500 and the work is casual, minor, or inconsequential. **Business & Professions Code §§ 7011.4, 7027.2, 7028, and 7110.5.**



**New Disclaimer for Notaries.** All acknowledgment, jurat and subscribing witness certificates must have the following new disclaimer printed above the venue: "A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document." This disclaimer must be enclosed in a box and must be legible. **Civil Code §§ 1189 and 1195. Government Code § 8202.**

**Enforcement of Money Judgments.** Existing law permits the spouse of a judgment debtor to claim an exemption for certain property from enforcement of money judgments of community property, whether or not the spouse is also a judgment debtor under the judgment. This law now permits a **domestic partner** (as defined in Family Code § 297) to also claim an exemption from the enforcement of money judgments in the case of community property. **Code of Civil Procedure § 703.020.**

#### Unlocked Cell Phones.

The Unlocking Consumer Choice and Wireless Competition Act **reverses** a decision made by the Library of Congress that said it was illegal for consumers to "unlock" their cell phones for use on other networks without their service provider's permission. The Act re-authorizes the use of computer programs, firmware or software, that enable a wireless telephone handset originally acquired from the operator of a wireless telecommunications network or retailer to connect to a different wireless network. **37 CFR 201.**

