

## PUBLICATION UPDATE

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# California Legal Forms

Publication 187      Release 128

November 2008

## HIGHLIGHTS

### New Commercial & Business Transactions Center:

- Visit the Commercial & Business Transactions Center at <http://law.lexisnexis.com/practiceareas/commercial> and explore the latest news, trends, and issues in commercial law. The center includes commentaries from our experts on the latest legal developments and emerging issues impacting your practice, and also offers you the ability to comment, share, and participate in specific blogs and online discussions. Explore the Commercial & Business Transactions Center at <http://law.lexisnexis.com/practiceareas/commercial>.

### Personal Transactions:

- Chapter 110, Nonmarital Cohabitation Agreements and Related Transactions, and Chapter 125, Provisions for Payment of Income Taxes, Attorneys' Fees, and Costs, are updated to discuss *In re Marriage Cases* (2008) 43 Cal. 4th 757, where the California Supreme Court has held that California statutes limiting marriage to opposite-sex couples violate the state con-

stitution, and same-sex couples may now marry.

### Contracts and Obligations:

- Chapter 75, Formation of Contracts and Standard Contractual Provisions, examines *Burks v. Kaiser Found. Health Plan, Inc.* (2008) 160 Cal. App. 4th 1021, which clarifies that an arbitration provision must "stand out" from the ordinary text of the agreement so as to "be reasonably expected to command the notice of a person."

This release of CALIFORNIA LEGAL FORMS contains miscellaneous text revisions and updates, and incorporates significant recent judicial decisions. Highlights of this release include the following:

### Wills and Trusts

**Estate Planning—Surviving Spouse.** A decedent's former wife was not entitled to inherit from the decedent's estate, as she was a party to a valid dissolution proceeding which concluded in an order terminating all marital property rights; therefore, she was not a surviving spouse under Prob. Code §78(d) at the time of decedent's death [*Estate of McDaniel* (2008) 161 Cal. App. 4th 458, 463, 73 Cal. Rptr. 3d 907]. See

Chapter 60, Estate Planning, §60.19[2][d].

**Will Drafting—No-Contest Clause.** In a Probate Code §21320 proceeding seeking a declaration that a proposed action against a trustee would not amount to a will contest, the court held that the no-contest clause, which contained no reference to the testamentary trust, was not incorporated by reference into the trust provisions of the decree of distribution. The court noted that Probate Code §21304 requires that a no-contest clause be strictly construed and even though the decrees of distribution contained some language in the recitals that referred to the will, the clear statement in the distributing clause that the trust was completely set forth in the decree established that no trust provisions were omitted and that there was no room to supplement trust provisions by incorporating provisions contained in the will. Furthermore, the no-contest clause in the will did not refer to contests regarding the trust [*Meyer v. Meyer* (2008) 162 Cal. App. 4th 983, 998, 76 Cal. Rptr. 3d 546]. See Chapter 61, Will Drafting and Complete Will Forms, §61.18[1].

### Contracts and Obligations

**Contracts—Arbitration Provisions.** A statute or regulation might require that a contractual provision for arbitration must be prominent. A court of appeal has clarified that unless the statute or regulation specifies how to meet such a requirement, it means that the arbitration provision must “stand out” from the ordinary text of the agreement so as to “be reasonably expected to command the notice of a person” [*Burks v. Kaiser Found. Health Plan, Inc.* (2008) 160 Cal. App. 4th 1021, 1024, 73 Cal. Rptr. 3d 257]. See Chapter 75, Formation of Contracts and Standard Contractual Provisions, §75.250[1][i].

### Arbitration Agreement—Limitations

**on Arbitrator’s Powers.** An arbitration agreement must explicitly and unambiguously state the parties’ intention to limit the arbitrator’s generally broad powers. In a case involving an attempt to do that, the California Supreme Court concluded that a provision barring the arbitrator from modifying the parties’ contract did not explicitly and unambiguously bar the arbitrator from deciding that a contractual condition—a requirement to give notice of a breach and an opportunity to cure it—was simply inapplicable in view of the facts of the case [*Gueyffier v. Ann Summers, Ltd.* (Cal. 2008) 43 Cal. 4th 1179, 184 P.3d 739, 2008 Cal. LEXIS 6738, at \*9-\*10]. See Chapter 75, Formation of Contracts and Standard Contractual Provisions, §75.250[2][k].

## Performance of Services

**Employment Agreements—No Special Duty Toward Unlicensed Worker.** The California Supreme Court has held that Penal Code §385, which makes it a misdemeanor for anyone, either personally or through an employee or agent, to move a tool or equipment within six feet of a high-voltage overhead line, does not impose a special duty on a homeowner toward an unlicensed worker hired by the homeowner to trim trees. Because the statute created no special duty toward the worker, the Court had no occasion to decide whether the worker should be treated as the homeowner’s employee at law for purposes of imposing vicarious tort liability on the homeowner for the death of the worker caused by contact with an overhead line [*Ramirez v. Nelson* (Aug. 4, 2008) 2008 Cal. LEXIS 9474]. See Chapter 84, Independent Contractors, §84.11[5], and Chapter 85, Employment Agreements, §85.10[3][c][i].

**State Government Contracts—Approval by Department of General Services.** A court of appeal has

clarified that, although there is no statutory definition of “state agency” as the term is used in Pub. Contract Code §10295, which requires any state agency to submit a contract for services to the Department of General Services for review and approval, the term does not include any agency in the judicial branch [*Los Angeles County Dependency Attorneys, Inc. v. Department of Gen. Servs.* (2008) 161 Cal. App. 4th 230, 240, 73 Cal. Rptr. 3d 817]. See Chapter 90A, State Government Contracts, §90A.12.

#### **Personal Transactions**

**Same-Sex Couples May Marry.** The California Supreme Court has held that California statutes limiting marriage to opposite-sex couples violate the state constitution, and same-sex couples may now

marry [*In re Marriage Cases* (2008) 43 Cal. 4th 757]. See Chapter 110, Nonmarital Cohabitation Agreements and Related Transactions, §110.50[1][a],[c], and Chapter 125, Provisions for Payment of Income Taxes, Attorneys’ Fees, and Costs, §125.20[1][b][i],[ii].

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