PUBLICATION UPDATE

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California Real Estate Law and Practice

Publication 271 Release 127 March 2022

HIGHLIGHTS

California Real Estate Legislation

- This release includes updates pertaining to selected 2021 statutory changes.

Case Updating

- Coverage of recent real estate cases has been added throughout.

Landlord & Tenant

In 2021, the **Legislature enacted statewide mobilehome rent control for certain mobilehome parks.** 2021 Stats., ch. 125, AB 978; Civ. Code § 798.30.5. Section 798.30.5 provides that in the applicable counties, park management may not, over the course of any 12-month period, increase the gross rental rate for a tenancy in a qualified mobilehome park more than three percent plus the percentage change in the cost of living or five percent, whichever is lower, of the lowest gross rental rate charged for a tenancy at any time during the 12 months prior to the effective date of the increase. See Ch. 171, § 171.40[6]. For further discussion of rent control and the Mobilehome Residency Law, see Ch. 174, The Mobilehome Residency Law, § 174.12[6].

Required written notice to tenants pursuant to Tenant Protection Act of 2019 extended to certain mobilehome tenancies: For any tenancy commenced or renewed on or after July 1, 2020, the notice must be provided in the rental agreement. For a tenancy in a mobilehome existing before July 1, 2022, the notice may, but is not required to, be provided in the rental agreement. For any tenancy in a mobilehome commenced or renewed on or after July 1, 2022, the

notice must be provided in the rental agreement. Civ. Code 1946.2(e)(8)(B)(ii). See Ch. 200, Termination: Causes and Procedures, § 200.21[6].

The Judicial Council has approved Form 500, "Plaintiff's Claim and ORDER to Go to Small Claims Court (Covid 19 Rental Debt)" to reflect the exception to the jurisdictional limits for such cases, and approved a new information sheet, "COVID-19 Rental Debt in Small Claims Court." See Ch. 210, Unlawful Detainer, § 210.06[7].

Beginning July 1, 2022, a title company, escrow company, real estate broker, or real estate agent that has actual knowledge that a declaration, governing document, or deed that is being directly delivered to a person who holds or is acquiring an ownership interest in property includes a possible unlawfully restrictive covenant must notify the person who holds or is acquiring the ownership interest in the property of the existence of that covenant and their ability to have it removed through the restrictive covenant modification process. Gov. Code § 12956.2(a)(2). Additional aspects of the restrictive covenant modification process are also discussed. See Ch. 214, Government Regulation and Enforcement, § 214.42[4].

Zoning & Land Use Control

Procedural Requirements of the Subdivision Map Act. Stats. 2021 ch. 162 requires a proposed housing development containing no more than 2 residential units within a single-family residential zone or a parcel map for an urban lot split to be considered ministerially, without discretionary review or hearing, if the proposed housing development or parcel map meet certain requirements. Ch. 260, Sources and Limitations of Zoning Power, and Ch. 292, Procedural Requirements of the Subdivision Map Act, have been updated accordingly.

Sources and Limitations of Zoning Power. Stats. 2021 ch. 803 creates the Starter Home Revitalization Act of 2021 which prohibits a local agency from imposing specified requirements on a small home lot development that is created pursuant to the Act. Ch. 260 has been updated as a result. See Ch. 260, Sources and Limitations of Zoning Power, § 260.15[A].

In 2021, the Legislature enacted the **Jobs and Economic Improvement Through Environmental Leadership Act of 2021,** which reenacts the Jobs and Economic Leadership Act of 2011 Act with some changes. 2021 Stats., ch. 19, SB 7; Pub. Res. Code § 21178 et seq. See Ch. 303, Requirements of the California Environmental Quality Act, § 303.24[18][b].

Establishment of Board of Environmental Safety. The Board of Environmental Safety was created in 2021 pursuant to Health & Safety Code § 25125 et seq. This new Board's purpose is to represent the general public interest, and to protect public health and reduce risks of toxic exposure with a particular focus

on disproportionately burdened and vulnerable communities. Health & Safety Code § 25125(d). For additional discussion, see Ch. 304, Effect of Antipollution and Hazardous Waste Control Laws on Real Property Transactions, § 304.50[3].

Construction & Development

Intergenerational Housing Development. Stats. 2021 ch. 364 permits the creation of intergenerational housing developments that include senior citizens along with caregivers and transition-age youth if specified conditions are satisfied. Chs. 385 and 424 have been updated as a result. See Ch. 385, Homeowners' Associations, § 385.77[2], and Ch. 424, Regulation of Subdivided Land Sales, § 424.53.

Mobilehome Park Definition. Effective January 1, 2022, the Legislature has amended the definition of "Mobilehome Park" within the Mobilehome Parks Act by noting that an area or tract of land may not be deemed a mobilehome park due to the rental or lease of an accessory dwelling unit created by use of a manufactured home. Health & Safety Code § 18214(d). See Ch. 472, Mobilehome Parks, § 472.02.

Recent Cases

Duncan v. Kihagi (2021) 68 Cal. App. 5th 519, 538, 284 Cal. Rptr. 3d 426 (In an action alleging violation of the San Francisco owner move in provision [S.F. Admin. Code, § 37.9 (a)(8)(i)], and a provision barring landlords from harassing tenants [S.F. Admin. Code, § 37.10B], testimony of city inspectors and tenants of other properties regarding conditions at other properties and the landlords' conduct at those properties was admissible to show intent and bad faith.) See Ch. 171, Rent and Rent Control, § 171.40[7].

Elmassian v. Flores (2021) 69 Cal. App. 5th Supp. 1, 284 Cal. Rptr. 3d 401 (Trial court erred in granting directed verdict for landlord regarding tenant's domestic violence defense; there was evidence presented of defendant having committed a nuisance based on domestic violence and nondomestic violence acts and it could not be discerned from jury's verdict on which grounds jury rested its decision.) See Ch. 200, Termination: Causes and Procedures, § 200.41.

Lara v. Menchini (2021) 70 Cal. App. 5th Supp. 1 (Where the tenant defaulted on two months' rent and the landlord obtained a default unlawful detainer judgment against the tenant, subtenants who resided in the apartment with the tenant could not appeal the judgment on the basis that the landlord refused to allow them to cure the default in rent.) See Ch. 210, Unlawful Detainer, § 210.12.

Pear v. City and County of San Francisco (2021) 67 Cal. App. 5th 61. 65, 281 Cal. Rptr. 3d 841 (Deed authorized ornamental landscaping, three paved roads running across pipeline easement, and use of the property to access auto mechanic service bay, but express language of the deed did not allow use of the pipeline property as a parking lot.) See Ch.

343, Easements and Licenses, § 343.16[2].

Bailey v. Citibank, N.A. (2021) 66 Cal. App. 5th 335 (Where a mortgage was recorded prior to the start of the period of alleged adverse possession, the possession of the land will not be deemed hostile or adverse to the rights of the mortgage holder or to a successor thereof, and the statute will not begin to run, until such time as a right to possession of the property is acquired under the mortgage through foreclosure and delivery of the trustee's deed.) See Ch. 360, Adverse Possession, § 360.14[2].

Brown v. Montage at Mission Hills, Inc. (2021) 68 Cal. App. 5th 124, 135, 283 Cal. Rptr. 3d 215 (Civ. Code § 4740 applies to restrictions and limitations on leases, and thus, owner who purchased condominium prior to amendment of governing documents prohibiting short term rentals was not precluded from renting property for short terms.) See Ch. 385, Homeowners' Associations, § 385.90[1].

City of Escondido v. Pacific Harmony Grove Development, LLC (2021) 68 Cal. App. 5th 213, 235–236, 283 Cal. Rptr. 3d 540 (Trial court did not err by finding the project effect rule in Code Civ. Proc. § 1263.330 inapplicable in determining the fair market value under Code Civ. Proc. § 1263.310 of a strip of land condemned for road construction and instead applying the *Porterville* doctrine to value the property as undeveloped because the city's specific dedication requirement arose before the date of probable inclusion in the project.) See Ch. 508, [Condemnation Practice Handbook] Evidence: General, § 508.15.

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