

HOT TOPICS IN CALIFORNIA REAL ESTATE LAW, 2016

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OVERVIEW OF HOT TOPICS IN CALIFORNIA LAW 2016

A. Recent Legislative Actions

The California Legislature has historically been very active in creating legislation affecting real estate. It is often difficult to keep up the new legislation

B. Recent Legal Cases

Historically, there has been a tug and pull between the Courts and the Legislature. Often Courts will render a decision that is later abrogated by legislation

C. New Issues and Trends in California Real Estate Law

As in many areas, California tends to be a leader in new laws affecting real estate. We will be exploring some of those new trends.



RECENT LEGISLATION AFFECTING REAL ESTATE

A. COMMON INTEREST DEVELOPMENTS

-Civil Code Section 4740. The Real Estate lobby gets a big win limiting HOA's ability to restrict rentals.

-Civil Code Sections 4528 and 4539. HOA's can no longer bundle document packages and charge.

-Civil Code Section 4735. Amended to prohibit HOA's from barring drought resistant or water conserving landscaping.

B. LANDLORD/TENANT LAW

-Civil Code Section 1956.7 amended and extended, victims or household members of victims may terminate tenancy on notice to landlord. Liable for only 14 days rent.

-Civil Code Section 1940.8.5, landlords must give notice of intent to apply pesticides.

-B&P Code 22590 et seq., short term housing rental platforms like Airbnb and VRBO to provide notice to tenants that list property for short term rentals may be a violation of their lease and result in legal action.



C. LAND USE AND ZONING

-Marijuana cultivation and medical dispensaries, Counties and Cities are creating ordinances regulating all aspects of medical marijuana cultivation and sale. Ordinances vary from City to City or County to County but all address indoor cultivation v. outdoor, an application, inspection and permitting system to operate a dispensary, appropriate zoning for cultivation and dispensaries, background checks on operators. Sophisticated operators forum shop for most dispensary friendly communities.

-Gov't Code Section 65850.7, cities and counties must establish expedited procedures to permit electric vehicle charging station construction. Creates a presumption that there are no adverse effects.

-Civil Code Section 1708.8, regulation of Drones. The legislature has stepped in to fray over drone use. Civil Code Section 1708.8 creates a specific right of privacy in the airspace over property and restricts drone use for the purposes of taking pictures or videos.

-Civil Code Section 4740 limiting HOA ability to restrict right to rent property

RECENT LEGAL CASES AFFECTING REAL ESTATE

A. COMMON INTEREST DEVELOPMENTS

-Countryside Villas HOA v. Ivie (2011) 193 Cal.App.4th 1110. HOA's are considered quasi governmental entities. Therefore, attempts to restrict speech or conduct made in furtherance of a 1st amendment right via a lawsuit subject to a SLAPP Motion. Now covers virtually all HOA's in California.

-But see Boswell v. The Retreat Community Association (2016) 2016 Cal.App. Unpub. Lexis 5133. Where an office of an HOA's conduct, even if otherwise protected, is so extreme as to cause emotional distress, suit not subject to a SLAPP Motion.

-Property Owners for a Better HOA v. Northwoods Property Owners Association (2016). Sonoma County Superior Court case where court ruled a standard subdivision had morphed into a common interest development due to its acquisition of real property for the benefit of its members.

-Auburn Woods I HOA v. FEHC (2004) 121 Cal.App.4th 1578. Despite CC&R ban on pets, owner may possess a "companion animal" that mitigates effects of emotional disability.



RECENT TOP LEGAL CASES IN REAL ESTATE

B. EASEMENTS

-Equitable Easements. *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003. Even where the requirements for a traditional easement do not exist, a court can exercise its powers of equity to fashion an equitable easement. 3 factors must be present: The easement claimant must be innocent of misconduct, the claim must face a risk of irreparable injury absent the easement, and the hardship faced by the claimant must be greater than that faced by the servient owner. *Richardson v. Franc* (2015) 233 Cal.App.4th 744. Long term permitted use can evolve into an “irrevocable license.”

-Public Easements. Mere public use of a road previously dedicated to public use but not accepted can create a public easement by user. *Hanshaw v. Long Valley Road Ass’n*. (2004) 116 Cal.App.4th 471. However, the user must be actual members of the public, not just guests and invitees or the claimants. (*Biagini v. Beckham* (2008) 163 Cal.App.4th 1000.

-Civil Code section 1009 bars any public use from developing into an implied dedication after 1972. *Scher v. Burke* (2015) 2015 WL 7527683. Currently subject to Supreme Court review.



RECENT TOP CASES IN REAL ESTATE

C. LANDLORD/TENANT LAW

-Boston LLC v. Juan Juarez (2015) 240 Cal.App.4th Supp. 28. A tenant may be evicted for a non-material breach of the lease if the lease provides for such.

-Grand Prospect Partners, LP v. Ross Dress for Less (2015) 232 Cal.App.4th 1332. Co-tenancy provision in retail lease not unconscionable and enforceable.

-Birkner-Lam (2007) 156 Cal.App.4th 275; Feldman v. 100 Park Lane Associates (2008) 160 Cal.App.4th 1467. Service of a legally required eviction notice protected speech for Anti Slapp purposes



TRENDING ISSUES IN CALIFORNIA REAL ESTATE

SHORT TERM RENTALS, EMINENT DOMAN, AND REAL ESTATE SALES

SHORT TERM VACATION RENTALS- Not in my backyard!

Short term vacation rentals through Airbnb, VRBO and others are on the rise in both urban and suburban areas.

-Cases: Watts v. Oak Shores Community Association (2015) 235 Cal.App.4th 466 (pre-section 4740 case. Gamache et al v. Airbnb (2014) SF Superior Court case #CGC-14-541477. Class action suit dismissed. City and County of San Francisco v. Darren Lee et al (2014) SF Superior Court case #CGC-14-538857. City sued to enjoin illegal conversion of rental units to short term rentals.

-Ordinances/Statutes: San Francisco Short Term Rental Law, Indio licensing requirements, Ojai ban, Laguna Beach and Anaheim moratorium, tax ordinances



EMINENT DOMAIN- not much “public” left in public purpose

Kelo v. City of New London (2005) 545 U.S. 469.

California’s Urban Blight law of 1945 and use by Redevelopment Agencies. Private property taken for redevelopment by private entities under “public purpose” claim.

Prop. 99 and the 2008 amendment to the Cal. Const., Art. I, section 19. Restrictions on taking for private entities for redevelopment of owner occupied residences.



REAL ESTATES SALES- let the seller and the agents beware

The trend in holding agents liable for non-disclosure on real estate sales.

- E&O insurance and the deeper pockets
- Civil Code section 1102.6
- B&P Code 2079 et seq.
- The applicable standard of care owed to the buyer
- Partial disclosure insufficient

