#### 2004 STATE LEGISLATIVE TOPICS

If your state legislature considered legislation affecting title insurance business requirements or operations, please circle the appropriate issue area. Submitted By: Craig C. Page

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## 2004 California Legislation

(ALTA SLRAC Report)

## By Craig C. Page

Vice President & Legislative Counsel, CLTA

Notes:

California's bill text can be accessed through the Legislative Counsel's website address at www.leginfo.ca.gov or by clicking on the bill numbers as they appear throughout this report.

All legislation included in this report will go into effect on January 1, 2005 unless otherwise specified.

I. CIVIL ACTIONS
D. Statute of Frauds

<u>Chapter 50 (SB 1408 – Poochigian).</u> CIVIL ACTIONS – Factors Determining Fraudulent Transfers Amending Section 3439.04 of the Civil Code.

Existing law sets forth the conditions under which a transfer made or obligation incurred by a debtor is fraudulent as to a creditor.

This act sets forth eleven factors that may be considered in determining if such a transfer or obligation is fraudulent as to a creditor. The act also specifies that the proposed change is declaratory of existing law and not intended to affect any judicial decisions interpreting existing law.

#### H. Consumer Protection

#### Chapter 566 (SB 30 - Figueroa). LOANS - Home Improvement Contracts

NOTE: THIS ACT IS EFFECTIVE ON JULY 1, 2005.

Amending Section 7030 of, adding Sections 7159.4, 7159.5, 7159.6, 7159.10, 7159.11, 7159.12, 7159.13, and 7159.14 to, repealing Section 7018.5 of, and repealing and adding Sections 7159 and 7159.3 of, the Business and Professions Code, and amending Sections 1689.5, 1689.6, and 1689.7 of, adding Section 1689.13 of, the Civil Code.

This act requires that a home improvement contract and any changes made to that contract be in writing, legible, easy to understand, and inform a consumer of his or her right to cancel or rescind the contract. This act further requires that a home improvement contract contain various consumer protection disclosures and provides for disciplinary action for contractors who violate these requirements.

#### J. Child Support Liens

<u>Chapter 339 (AB 1704 – Committee on Judiciary), with respect to Section 827 of the Welfare and Institutions Code, superseded by Chapter 574 (AB 2228 – Garcia).</u> FAMILY LAW – Local Child Support Agencies – Abstracts and Satisfactions

Amending Section 724.060 of the Code of Civil Procedure, amending Sections 4014, 4202, 5002, 17400, 17406, 17432, and 17500 of, and adding Section 5003 to, the Family Code, amending Section 27282 of the Government Code, amending Section 19271.6 of the Revenue and Taxation Code, and amending Section 827 of the Welfare and Institutions Code.

In addition to some technical changes to fix statutory inconsistencies, this act authorizes a local child support agency to execute and acknowledge a satisfaction of judgment if the LCSA has been providing child support services, and allows that acknowledgement of satisfaction of judgment to be recorded without certification by the clerk of the court.

### Chapter 806 (AB 2358 - Steinberg). FAMILY LAW - Enforcement of Support Orders.

Amending Sections 5237, 17306, 17500, 17502, 17506, and 17522.5 of, and adding Section 17309.5 to, and Article 1.5 (commencing with Section 17450) to Chapter 2 of Division 17 of, the Family Code, adding Section 24351.5 to the Government Code, and adding Sections 19270 and 19276 to, and repealing Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code.

This act specifies the procedure in cases in which child support payments which obligees fail to make to the California Franchise Tax Board within 45 days due to the obligee's failure to provide an address change in a timely manner, failure of a child support obligee to notify specified entities of a change of address and also requires employers to make child support payments to the State Disbursement Unit. This act *further* implements an agreement in which the Department of Child Support Services shall assume responsibility for the collection of child support delinquencies from the Franchise Tax Board.

#### II. ENVIRONMENTAL ISSUES

B. Hazardous Waste

#### Chapter 705 (AB 389 - Montanez). ENVIRONMENTAL LAW - Land Reuse and Revitalization Act of 2004

An act to add Chapter 6.83 (commencing with Section 25395.110) to, and adding and repealing Chapter 6.82 (commencing with Section 25395.60) of, Division 20 of, the Health and Safety Code.

Among other things, this act enacts the California Land Reuse and Revitalization Act of 2004, which provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner qualifies for immunity from liability for response cost or damage claims under certain state statutory and common laws that impose liability upon an owner or occupant of property, for pollution conditions caused by a release or threatened release of a hazardous material on, under, or adjacent to that property, if the property is used solely for residential use, has four or fewer units at the time of acquisition by a nongovernmental or noncommercial entity, and a site inspection and title search does not reveal a basis for further investigation (Health & Safety Code Section 25395.65(c)).

Of further interest to title companies, Section 25395.83 of the Health & Safety Code of this act provides that if an agency incurs unrecovered response costs at a site for which an owner of the site is not liable as an innocent landowner, bona fide purchaser, or contiguous property owner, the agency shall have a lien on the site for the unrecovered costs. However, the amount of the lien will be the lesser of the amount of unrecovered costs and the increase in the fair market value of the site attributable to the response action. Notice of the lien must be recorded, and will have the force and effect of, and priority of, a judgment lien on the site.

If the agency determines that there are hazardous materials at the site at levels that are not suitable for unrestricted use, but that are suitable for the reasonably anticipated foreseeable use of the site based on current and projected land use and zoning designations, the agency shall find that no further action is necessary at the site except that a land use control that imposes appropriate restrictions pursuant to Section 25395.99 shall be executed and recorded and the public comment and participation requirements of Section 25395.96 shall be met before the execution and recording of any land use control. On or before 15 days after the date when the land use control is recorded pursuant to Section 25395.99, the agency shall state in writing that this act constitutes "appropriate care" for the purposes of Section 25395.67.

This act further requires the Department of Toxic Substances Control to revise and upgrade the Department's database systems to enable compatibility with the existing databases of the State Water Resources Control Board by January 1, 2006, and requires the California Environmental Protection Agency, the Department, the California Regional Water Quality Control Boards, and the State Water Resources Control Board, to expand their respective Web sites, by January 1, 2006.

#### Chapter 717 (SB 805 - Escutia). - ENVIRONMENTAL LAW - Brownfields - Infill Sites

Amending Section 25401.1 of the Health and Safety Code.

Existing law, the California Land Environmental Restoration and Reuse Act (CLERRA), specifies a procedure for the selection of an oversight agency for a property subject to a phase I environmental assessment by representatives of the Department of Toxic Substances Control and the State Water Resources Control Board. The Act defines the term "property" as meaning real property, but excludes, from that definition, a site that is larger than five acres of contiguous property under the same ownership. The California Environmental Quality Act (CEQA), defines the term "infill site" as a site in an urbanized area that meets certain conditions, including that a certain percentage of the immediately adjacent parcels to the site or adjoining parcels to the site are developed with qualified urban uses.

This act instead includes a site that is larger than five acres of contiguous property under the same ownership if the site is an "infill site," as defined in CEQA, except this act includes for such purpose an industrial use, as a "qualified urban use" and a parcel that is adjoining or immediately adjacent to the site if the parcel is separated only by an improved public right-of-way.

#### C. Public Trust/Riparian Rights

<u>Chapter 97 (SB 1514 – Poochigian).</u> ASSESSMENTS – Water Districts, Enforcement of Delinquent Assessments Adding Article 8.5 (commencing with Section 53880) to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

Existing law establishes a procedure by which a local agency may acquire any accrued lien, or property required to be sold for nonpayment of an assessment or delinquency incurred by the nonpayment of an assessment.

This act requires that, before any water district takes action that will terminate another party's interest in real property as the means of enforcing delinquent assessments, fees, charges, or other levies, the district shall make a reasonable effort to ascertain the names and addresses of each holder of an interest in the delinquent property that would be terminated by virtue of the action by the district, and shall notify each interest holder of the intent to take action that would terminate the party's interest in the delinquent property.

III. ESCROWS A. Disclosures

<u>Chapter 66 (AB 920 – Nakano)</u>. DISCLOSURES – Nuisance Disclosures, Local Government Optional Disclosures, Natural Hazard Disclosure Statements

Amending Sections 1102.6a, 1102.17, and 1103.2 of the Civil Code.

Existing law requires disclosure of a property's location within an "airport influence area," to be made in new housing development reports, declarations for new common interest developments (CIDs), and transfer disclosure statement (TDS) forms on existing homes. In addition, existing law requires a seller to disclose to the buyer if the property is "affected by" nearby industrial uses.

Among other things, this act provides that, on or after January 1, 2006, unless a city or county adopts a different or additional disclosure form regarding the proximity or effects of an airport, the provision of an "airport influence area" disclosure shall be deemed to satisfy any city or county requirements for the disclosure of airports in connection with transfers of real property. In addition, this act provides that, on or after January 1, 2005, if a city or county adopts a different or additional disclosure form regarding the proximity or effects of an airport, the statement in the form must, at a minimum, contain the information in the "Notice of Airport in Vicinity" set forth in Business & Professions Code Section 11010 or Civil Code Sections 1103.4(c) and 1353(a)(1). Furthermore, this requires a seller to disclose whether the property is "adjacent to" nearby industrial uses, "or affected by a nuisance created by such a use.

Chapter 567 (SB 1090 - Dunn), MANUFACTURED HOMES AND MOBILEHOMES - Disclosure in Escrow

Amending Section 798.71 of the Civil Code, and amending Sections 18024, 18060.5, 18062.2, and 18063 of, and adding Sections 18014.5 and 18061.6 to, the Health and Safety Code.

Under the existing Mobilehome Residency Law, the management may not prohibit the listing nor the sale of a manufactured home or mobilehome within the park by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park. Existing law also does not require the selling homeowner, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park to authorize the management to act as the agent in the sale of a manufactured home or mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park.

The existing Mobilehomes-Manufactured Housing Act of 1980 prescribes conduct that is an unlawful business practice with respect to the sale of manufactured homes and mobilehomes, makes it unlawful for a dealer or salesperson to engage in certain conduct, and makes it a misdemeanor to engage in those practices or that conduct.

This act additionally provides that the management may not require the selling homeowner or an heir, joint tenant, or personal representative of the estate to authorize any other broker, dealer, or person to act as the agent in the sale of a manufactured home or mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park.

This act additionally makes it an unlawful business practice to fail to execute a document or provision within an existing document signed by both the dealer and seller that discloses the exact amount of the buyer's offer and the specific amounts of any commission within three days after accepting the buyer's offer, but no less than 48 hours prior to the close of escrow or transfer of title. This act requires the dealer to submit a copy of that disclosure into escrow and maintain, at the dealer's place of business, a copy of that disclosure for three years from the date of sale. This act also requires the escrow agent to ensure that the disclosure deposited into escrow is executed and complete. However, this act provides that it shall not be construed to require the escrow agent to be responsible for determining the accuracy of any of the statements in that disclosure. This act also requires a net listing agreement to contain certain disclosures.

IV. INSURANCE/BUSINESS ISSUES A. Agents/Abstracter Licensing

Chapter 940 (AB 2693 - Wiggins). LOANS - Delaying Claims, Failing to Disburse

Amending Section 10176 of, and adding Section 10131.8 to, the Business and Professions Code, amending Section 1916.5 of the Civil Code, adding Section 22317.5 to the Financial Code, and amending Section 677 of the Insurance Code.

This act prohibits real estate licensees and licensed finance lenders and brokers from failing to disburse funds in accordance with a commitment to make a loan, or intentionally delaying the closing of a loan for the purpose of increasing certain costs to the borrower.

Existing law sets forth the process for cancellation of a policy of insurance and requires a notice of cancellation to be in writing and to identify the grounds for cancellation.

This act provides that a lienholder's copy of this notice shall be deemed mailed if, with the lienholder's consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

## F. Limited Liability Companies

## Chapter 416 (AB 1859 - Nakano). LIMITED LIABILITY COMPANIES - Certificate of Cancellation

Adding Section 17350.5 to the Corporations Code and amending Sections 17941 and 17945 of the Revenue and Taxation Code.

This act provides that if a domestic limited liability company has not conducted any business, provides that a majority of the members, or if there are no members, the majority of the managers or, if none, the person or majority of the persons signing the articles of organization, could execute and acknowledge a certificate of cancellation of the articles of organization that must be filed with the Secretary of State within 12 months of the filing of the articles of organization. This act also provides that, upon the filing of that certificate of cancellation, a limited liability company is cancelled and its powers, rights, and privileges cease.

This act makes the exemption from the minimum franchise tax applicable to a limited liability company that files a certificate of cancellation, but would not entitle the company to a reimbursement of any annual taxes or fees already paid and exempts the limited liability company from the requirement to obtain a tax clearance certificate and requires the Secretary of State to notify the Franchise Tax Board of that cancellation.

#### M. Privacy

#### Chapter 45 (AB 782 - Kehoe). PRIVACY - Social Security Numbers in Family Law Pleadings.

NOTE: THIS ACT IS AN URGENCY MEASURE EFFECTIVE ON JUNÉ 7, 2004 Repealing and adding Section 2024.5 of, and adding Section 2024.6 to, the Family Code.

This act repeals and adds Section 2024.5 to the Family Code to allow the petitioner or respondent to redact any social security number from any pleading, attachment, document, or other written material filed with the court pursuant to a petition for dissolution of marriage, nullity of marriage, or legal separation. The Judicial Council form used to file such a petition, or a response to such a petition, must contain a notice that the parties may redact any social security numbers from those pleadings, attachments, documents, or other material filed with the court.

However, the act provides that an abstract of support judgment, or any similar form created for the purpose of collecting child or spousal support payments may not have the social security number removed.

This act also adds Section 2024.6 to the Family Code to establish procedures for keeping the location or identifying information about the assets and liabilities of the parties in a dissolution matter sealed from public disclosure.

#### N. Electronic Transactions

#### Chapter 621 (AB 578 - Leno). RECORDING - Electronic Recording

NOTE: THIS ACT IS AN URGENCY MEASURE EFFECTIVE ON SEPTEMBER 21, 2004. However, a letter was submitted by the author of the bill, Assemblyman Leno, to the Assembly Journal stating that it is NOT the intent of the legislation that the Attorney General be required to draft the necessary regulations immediately upon passage of this bill.

Adding Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of the Government Code.

Existing law requires county recorders to record written paper documents that transfer title to or impose liens on real property, or give a right to a debt or duty.

Existing law authorizes all 58 county recorders to accept digitized images from *any local, state or federal agency,* so long as the technology used to create the image conforms to all applicable statutes regulating document reliability. Existing law, Government Code Section 27279.1, also permits the recorders for the *Counties of Orange and San Bernardino only* to accept digitized images for recordation provided that the:

- a) Requester submitting the image is an entity or instrumentality of the state or federal government; or
- b) If the requester is not an instrumentality of state or federal government,
  - The county recorder finds that the requester will submit digitized records in sufficient quantity and will take effective
    precautions to prevent fraud and forgery; and
  - (2) The county recorder determines that accepting digitized images serves the public interest.

The Uniform Electronic Transactions Act (UETA) provides rules and procedures for the sending and receiving of electronic records and signatures, the formation of contracts using electronic records, and procedures governing changes and errors in electronically transmitted

records. The UETA applies to all transactions in which records or signatures are electronically transmitted by parties who have agreed to conduct the transaction electronically.

This act allows a county recorder, upon approval by the Board of Supervisors and system certification by the Attorney General, to establish an electronic recording delivery system for recordation of:

- a) <u>E-Recording of all digitized electronic records</u>:Digitized electronic records (scanned images) of instruments affecting title, right or interest in real property (other than reconveyances, substitutions of trustee or assignments of deeds of trust) *submitted by a title insurer, an underwritten title company, an institutional lender (as defined in subdivision (j) of Section 50003 of the Financial Code), or any local, state, or federal agency* (Section 27391 of the Government Code); and
- b) <u>E-Recording of digitized or digital reconveyance documents</u>: Digitized electronic records (scanned images) and digital electronic records (created and stored electronically without a paper original) of reconveyances, substitutions of trustee or assignments of deeds of trust submitted by a *title insurer*, *underwritten title company*, *institutional lender lender (as defined in subdivision (j) of Section 50003 of the Financial Code) or any local*, *state or federal agency* (Section 27397.5 of the Government Code).

The act permits a county to contract for use of the electronic recording delivery system (ERDS) by an authorized submitter using only a system that has been approved by the Attorney General. This act requires any person who has authorized access to the ERDS, including employees of the county and the authorized submitters (except as provided below for reconveyances, substitutions of trustee and assignments of deeds of trust) to undergo fingerprinting and criminal background checks prior to being authorized to have access to the ERDS.

This act requires the Attorney General to certify an electronic recording delivery system prior to its use. It also requires the Attorney General to adopt regulations that establish standards for the review, approval and oversight of electronic recording delivery systems, provide regulatory oversight of those systems, approve a list of computer security auditors, monitor security of those systems and evaluate the systems established according to these regulations in order to report back to the Legislature on or before June 30, 2009.

This act authorizes county reimbursement to the Attorney General for certifying a proposed electronic recording delivery system and for oversight of the system once implemented. It authorizes the Attorney General to charge a fee to cover the costs of regulatory oversight, and any other cost associated with implementation of this act.

This act authorizes the county to impose a fee of up to one dollar (\$1.00) for each instrument recorded by the county, which may be limited to those recorded using the electronic recording delivery system at the county's option. It also authorizes the county to impose a fee on any vendor seeking approval of software or other services as part of an electronic recording delivery system and to charge a fee on any person seeking approval as an authorized submitter.

This act authorizes the Attorney General, in the event of an emergency involving multiple fraudulent transactions linked to one county's use of an electronic recording delivery system, to suspend the use of the system in any county or in multiple counties, for a period of up to seven court days.

The act contains an urgency clause, for the purpose of allowing county recorders to implement electronic recording delivery systems at the earliest possible time in order to alleviate fiscal constraints.

This act establishes a limited electronic recording delivery system that may be used statewide to record digitized or digital electronic records of instruments affecting right, title or interest in real property. This act authorizes a county to enter into contracts with authorized submitters of digitized and digital instruments.

This act directs the Attorney General to adopt regulations for certification and oversight of electronic recording delivery systems for security and reliability, and for certifying software and other services for electronic recording delivery systems.

The act authorizes the county to pay the Attorney General's costs for the regulation and oversight of the electronic recording delivery system and to collect up to a one dollar (\$1.00) fee for some, or all, electronic recorded documents to pay for the actual costs associated with the system.

This act authorizes the Attorney General, district attorney or city attorney to bring an action for injunctive relief relating to violations of the act.

V. STATUTORY LIENS

F. Estate Tax Liens

<u>Chapter 829 (AB 1886 – Pavley).</u> PROPERTY TAXATION – Postponement of Delinquent Taxes Amending Sections 20584 and 20602 of the Revenue and Taxation Code.

The Property Tax Postponement Program allows eligible homeowners to postpone payment of part or all of the property taxes on their residence. To participate in this program, the homeowner must complete the claim form and submit it to the State Controller's Office. If the claim is approved, Certificates of Eligibility are mailed to the homeowner. The homeowner must mail or take the certificates to the county tax collector's office to postpone the property taxes due.

To secure the postponed amount, the State Controller's Office records a lien against the property. Interest is charged on the postponed taxes on a simple interest basis. The postponed amount and interest are not due until: (1) the homeowner moves from the qualified property; (2) the homeowner sells or conveys title to the home; (3) the homeowner dies and does not have a spouse, or domestic partner, or other qualified individual who continues to reside in the home; or (4) future property taxes or other senior liens are allowed to become delinquent. The homeowner may pay all or part of the obligation before it becomes due.

This act authorizes postponement for those who are either 62 years of age or older as of December 31, 2004, or blind or disabled at the time of application. All other recorded owners (except spouse, domestic partner, and direct-line relatives) must also meet this requirement. If disabled, the disability must be expected to last for a continuous period of at least 12 months. Direct-line relatives are defined as (a) parents, children, or grandchildren of the claimant and/or the claimant's spouse, and (b) the spouses of the relatives named in (a).

#### Chapter 407 (SB 1831 – Cedillo). PROPERTY TAXATION – Property Tax Administration

Amending Sections 1623.1, 1624, 1624.05, 1624.1, 2782, 3351, 3692, 3706.1, 3811, 4672, 4672.1, 4986, 5151, and 20583 of the Revenue and Taxation Code.

Existing law requires the county treasurer to keep an accounting of all moneys, including property tax payments that he or she pays or receives. Existing property tax law also requires a county treasurer or tax collector to pay interest on replicated property tax payments if that replicated payment is not returned to the tendering party within 60 days following the receipt of the replicated payment.

This act provides that the requirement to pay interest on a replicated payment only applies if the accrued interest is equal to or greater than ten dollars (\$10.00) at the time the replicated payment is returned to the tendering party.

Existing law requires the tax collector to publish annually a notice of impending default for failure to pay taxes on real property, and to publish annually the affidavit that real property, on which taxes, assessments, penalties, and costs had not been fully paid by the close of business on the last business day of the fiscal year, is in default.

This act instead specifies as the default date June 30, or the next business day if June 30 falls on a weekend or holiday.

Existing law requires the tax collector to attempt to sell tax-defaulted property within four years of the time that property becomes subject to sale for nonpayment of taxes. Existing law authorizes a tax collector, in the case of tax-defaulted property that is rendered unusable by its size, location, or other condition, to allow owners of contiguous parcels to place a bid on that tax-defaulted property.

This act authorizes a tax collector to also allow a holder of record of either a predominant easement or a right-of-way easement on that tax-defaulted property to place a bid on that tax-defaulted property.

Existing property tax law requires that notice of any postponed public auction sale of tax-defaulted property, that is held not less than eight days nor more than 60 days from the date of the originally scheduled sale, be given in the same manner as the notice for that originally scheduled sale.

This act increases the maximum postponement period stated in this requirement from 60 days to 90 days.

Existing property tax law requires a county auditor, without regard to the existing four-year statute of limitations, and upon receipt of satisfactory proof, to cancel certain classes of taxes, penalties, or costs levied or charged on property.

This act authorizes the county auditor to cancel erroneous assessments collected after the expiration of the four-year statute of limitations, if the request for cancellation is initiated within 120 days of the payment of those erroneous assessments.

Existing property tax law provides that certain individuals who have an "ownership interest" in a residential dwelling may request postponement of property taxes.

This act includes in the definition of an "ownership interest" an interest in residential property that is held in a certain type of trust, if the Controller determines that the state's interest is adequately protected.

#### VI. TAXES B. Transfer Taxes

## <u>Chapter 528 (AB 1338 – Chavez).</u> WITHHOLDING – Real Estate Withholding Requirements

Amending Sections 18662 and 18668 of the Revenue and Taxation Code.

As of January 1, 2003 existing law (patterned after the former Cal-FIRPTA law) requires all real estate transferees (buyers) to withhold three and one third percent (3-1/3%) of the sales price in withholding taxes unless one of the following exclusions applies:

- 1) The property sales price is less than \$100,000; or
- 2) The property is the principal residence of an individual transferor based on a written certification signed under penalty of perjury; or
- 3) The property is transferred to a corporate beneficiary by a foreclosure or a deed in lieu; or

- 4) The property transferred by an individual and will be replaced in a like kind exchange, based on a written certification by the transferor or signed under penalty of perjury; or
- 5) The property is transferred by an individual as an involuntary conversion and the transferor certifies an intent to acquire replacement property eligible for deferral under Section 1033 of the Internal Revenue Code.
- 6) The transferor is an individual who certifies under penalty of perjury that the transaction will result in a loss for California income tax purposes.
- 7) The transferor is a corporation unless immediately after the transfer, the corporation has no permanent place of business in California.

Existing law requires the escrow agent to provide written notice to the transferee of the withholding obligation and, if necessary, to withhold the money in escrow and transmit it directly to the Franchise Tax Board on behalf of the transferee. While existing law does not state that escrow agents may remit aggregated withholding amounts on a monthly basis, the FTB has interpreted the law to so provide and has been demanding that title companies submit the withholding amounts in this fashion.

This act allows escrow agents the option of submitting the withholding on individual transactions or accumulating them and submitting them in one aggregate amount on a monthly basis (Revenue and Tax Section 18662 (e) (4) (A)). In addition, this act also exempts a residential seller from having to withhold the 3-1/3 % if the real property was last used as a residence immediately before the sale, irrespective of the time period.

#### C. Subdivision

#### Chapter 526 (SB 1404 - Soto). ASSESSMENTS - Multi-Family Improvement Districts

Adding Part 8 (commencing with Section 36700) to Division 18 of the Streets and Highways Code.

This act enacts the Multifamily Improvement District Law to supplement the business improvement district law of 1994. Until January 1, 2012, it will provide for the establishment of improvement districts within a city or county to levy assessments on multifamily residential rental properties and other business properties within the district for the purpose of financing certain improvements and promoting certain activities beneficial to those properties.

In this act, sections 36713, 36716(b) and 36718 of the Streets and Highways Code require recordation of a notice and district map that specifically identifies individual parcels subject to the new assessments. The assessments may be collected with ad valorem property taxes.

# <u>Chapter 479 (SB 1037 – Sher).</u> SUBDIVISIONS – Local Agency Recommendations, Required Communication Systems Designs

Amending Sections 66453 and 66473.3 of, and repealing Section 66473.2 of, the Government Code.

Under the Subdivision Map Act, with respect to the review of tentative maps, a local agency may make recommendations concerning proposed subdivisions in any adjoining city, or in any adjoining unincorporated territory provided that the proposed subdivisions are within three miles of the exterior boundary of the requesting local agency. This act permits those recommendations to be made for any proposed subdivision within the planning area of the requesting local agency.

This act authorizes the legislative body to require the design of a subdivision for which a tentative map is required to provide for appropriate cable television systems and communication systems, including, but not limited to, telephone and Internet services to each parcel in the subdivision.

## <u>Chapter 697 (AB 2252 – Montanez)</u> with respect to Sections 1365.1 and 1367.1 of the Civil Code, superseded by Chapter 754 (AB 1836 – Harman). TIME SHARES – The Vacation Ownership and Time-Share Act of 2004

NOTE: THIS ACT CREATES A COMPREHENSIVE BODY OF LAW GOVERNING TIME-SHARES TOO EXTENSIVE TO FULLY SUMMARIZE AND THEREFORE THE ACT SHOULD BE CONSULTED FOR DETAILS.

Amending Sections 11000, 11000.1, 11004.5, 11018.1, and 11018.5 of, adding Chapter 2 (commencing with Section 11210) to Part 2 of Division 4 of, repealing Sections 11003.5, 11004.6, 11018.8, 11018.9, 11018.10, 11018.11, and 11024 of, and repealing Article 8.5 (commencing with Section 10250) of Chapter 3 of Part 1 of Division 4 of, the Business and Professions Code, amending Sections 1365.1 and 1367.1 of the Civil Code, amending Section 25021 of the Corporations Code, amending Section 30610 of the Public Resources Code, and amending Sections 998, 2188.8, 2188.9, and 7280 of the Revenue and Taxation Code.

This act deletes the provisions in existing law relating to certain time-share projects and instead enacts, effective July 1, 2005, the Vacation Ownership and Time-share Act of 2004 that provides disclosure to purchasers and prospective purchasers of time-share plans and exchange programs by time-share developers and exchange companies and requires certain time-share plans offered for sale in this state or created and existing in this state to comply with fee, registration, notice, and disclosure requirements with respect to oral and written communications, including the issuance of a public report by the commissioner. This act provides that time-share plans, exchange programs, incidental benefits, and short-term products subject to this act are not "subdivisions" or "subdivided lands" within the meaning of the Subdivided Lands Act, and are exempt from other provisions of existing law.

This act authorizes the commissioner to prescribe filing fees for an application for a public report and provides that a violation of the act's provisions is subject to an order to desist and refrain from specific acts if certain requirements are met. This act also makes it a public offense for any person who fails to comply with the requirements for the issuance of a final public report, or makes any material misrepresentation that is false or misleading in connection with any advertisement or promotion of a time-share plan, or violates or fails to comply with provisions of the act. The act declares that a time share estate is a real property interest (Business & Professions Code 11213). There are specific escrow requirements imposed upon developers and title companies are included as acceptable escrow depositories (Business & Professions Code Section 11243).

VII. PUBLIC ENTITIES B. Indians

#### Chapter 905 (SB 18 - Burton). LAND USE - Traditional Tribal Cultural Places

Amending Section 815.3 of the Civil Code, amending Sections 65040.2, 65092, 65351, 65352, and 65560 of, and adding Sections 65352.3, 65352.4, and 65562.5 to the Government Code.

Existing law requires the Office of Planning and Research (OPR) to implement various long range planning and research policies and goals that are intended to shape statewide development patterns and significantly influence the quality of the state's environment and, in connection with those responsibilities, to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans. Existing law also establishes the Native American Heritage Commission (NAHC) and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property.

This act includes a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission, among those entities and organizations that may acquire and hold conservation easements.

This act requires that, by March 1, 2005, the OPR guidelines contain advice, developed in consultation with the NAHC, for consulting with California Native American tribes for the preservation of, or the mitigation of impacts to, certain Native American places, features, and objects. This act also requires those guidelines to address procedures for identifying the appropriate California Native American tribes, for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects, and for facilitating voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects. This act defines a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission as a "person" for purposes of provisions relating to public notice of hearings relating to local planning issues.

This act requires the planning agency on and after March 1, 2005, to refer the proposed action to California Native American tribes and also provides opportunities for involvement of California Native American tribes. This act requires that, prior to the adoption or amendment of a city or county's general plan, the city or county conduct "consultations" with California Native American tribes for the purpose of preserving certain places, features, and objects that are located within the city or county's jurisdiction.

On and after March 1, 2005, this act includes open space for the protection of California Native American historical, cultural, and sacred sites within the definition of "local open-space plan" for purposes of provisions governing the preparation of the open-space element of a city and county general plan.

#### C. Sale of Municipal Lands

### Chapter 708 (AB 1701 - Laird). STATE LANDS - Acquisition of Conservation Land

Adding Chapter 1.695 (commencing with Section 5096.500) to Division 5 of the Public Resources Code.

This act enacts the Public Review of State Agency Acquisition of Conservation Lands Act and requires an acquisition agency, prior to acquiring land costing more than \$25,000,000, to contract for at least one independent appraisal of the fair market value of the land. This act requires the independent appraisal to be conducted by a qualified member of the Appraisal Institute and reviewed by a qualified independent appraiser retained by the acquisition agency for this purpose.

This act requires the acquisition agency to make the independent appraisal available for public review and along with a summary of the basis for the recommendation of approval for the acquisition of the land, any relevant environmental studies, documents, or other information.

This act generally prohibits conservation lands from being sold to another owner or having possession and control transferred to another agency and requires proceeds from the sale or transfer of conservation lands to be used solely for acquisition of conservation lands to achieve the same or equivalent objectives as the original acquisition of the property that was sold or transferred, or to further the purposes of the State Coastal Conservancy, the Wildlife Conservation Law of 1947, or another specific conservation program.

VIII. REAL PROPERTY INTERESTS C. Covenants, Conditions & Restrictions

# <u>Chapter 789 (AB 2473 – Wolk).</u> – COMMON INTEREST DEVELOPMENTS – Covenants, Conditions & Restrictions – Energy Systems

Amending Section 714 of the Civil Code, repealing and adding Section 65850.5 of the Government Code, repealing and adding Section 17959.1 of the Health and Safety Code.

Existing law provides that any CC&R affecting property that prohibits or restricts the installation or use of a solar energy system is void and unenforceable unless the restrictions are necessary to protect the public and do not "significantly" increase the cost of the system or decrease its efficiency. Existing law prohibits the legislative body of any city or county from enacting an ordinance that prohibits or unreasonably restricts the use of solar energy systems other than for the preservation or protection of the public health and safety.

This act redefines the term "significantly" with regard to the restrictions imposed on solar domestic water heating systems or swimming pool heating systems and photovoltaic systems so that CC&Rs affecting solar energy systems are less restrictive. This act revises and recasts those provisions to require every city, county, or city and county to formally approve the installation of a solar energy system through a permitting process. This act also requires solar energy systems to meet certain standards and requires the issuance of a use permit by a city or county to allow installation of a solar energy system unless it makes written findings that the proposed installation would have an adverse impact upon the public health or safety within its jurisdiction.

#### D. Adverse Possession

## <u>Chapter 569 (SB 1228 – Perata).</u> LOANS – Assumption of Loans, Disaster Relief for Owner-Occupied Dwellings Adding Section 50662.8 to the Health and Safety Code.

This act authorizes loan assumption, with monies from the Housing Rehabilitation Loan Fund, for the purposes of repairing, including reconstructing, owner-occupied dwellings and rental dwellings of one to four units that were damaged or destroyed as a result of a natural disaster resulting in a state of emergency and requires the Department of Housing and Community Development to mail annual statements with certain information to the borrowers of the loans for owner-occupied dwellings and adopt a written application process and evaluation guidelines for borrowers pursuing loan subordination or assumption.

This act also authorizes the Department to delay the foreclosure of loans for owner-occupied dwellings if the Department determines that its security interest is not jeopardized and further authorizes the Department to adopt guidelines to implement these provisions and that these guidelines shall not be subject to the Administrative Procedure Act.

#### F. Husband & Wife/Community Property

#### <u>Chapter 119 (SB 1407 – Kuehl).</u> COMMUNITY PROPERTY – Separate Property Contributions Amending Section 2640 of the Family Code.

This act requires, in connection with the division of property upon the dissolution of marriage, that a party be reimbursed for the party's separate property contributions to the acquisition of property of the other spouse's separate property estate during the marriage, unless there has been a transmutation in writing or a written waiver of this right. This act requires that the reimbursed amount be without interest or adjustment for change in monetary value and would prohibit it from exceeding the net value of the property at the time of the division.

#### Chapter 947 (AB 2580 - Goldberg). FAMILY LAW - Domestic Partnerships.

NOTE: AB 2580 WAS CONSIDERED A CLEAN-UP BILL TO AB 205 (CHAPTER 421, STATUTES OF 2003 (SEE PAGES 6-7 OF THE CLTA 2003 SUMMARY OF LEGISLATION), WHICH RECASTED THE ORIGINAL DOMESTIC PARTNERSHIP ACT (DPA) AND ENACTED THE DOMESTIC PARTNER RIGHTS AND RESPONSIBILITIES ACT OF 2003 (CDPRRA) WHICH BECOMES EFFECTIVE ON JANUARY 1, 2005.

Amending Section 377.60 of the Code of Civil Procedure, amending Sections 297.5, 299, and 299.3 of the Family Code, and amending Section 14771 of the Government Code.

Existing law, the California Domestic Partner Rights and Responsibilities Act (CDPRRA), provides that the rights or duties of domestic partners are to be ascertained in most circumstances as being that of the rights or duties of spouses. The CDPRRA assigns rights and duties of spouses, in the context of a dissolution or nullity of marriage or legal separation, or distribution of property due to death of a spouse, with reference to the "date of marriage" and grants or assigns debts or benefits to spouses based upon the date of marriage. The CDPRRA becomes effective on January 1, 2005 (Family Code Section 297 et seq.).

This act provides that, domestic partners who registered their partnership prior to January 1, 2005 may enter agreements intended to be governed by the requirements of the Uniform Premarital Agreement Act (UPAA), and those agreements are enforceable provided the agreement is compliant with the UPAA, fully executed, and in force as of June 30, 2005. The notice required to be sent by the Secretary of State to registered domestic partners was changed by this act to include the following:

"If you registered your domestic partnership with the state prior to January 1, 2005, you have until June 30, 2005, to enter into a written agreement with your domestic partner that will be enforceable in the same manner as a

#### H. Trusts

#### Chapter 54 (SB 1021 – Poochigian). TRUSTS – Notice of Proposed Action

Amending Section 16337 of, and adding Chapter 5 (commencing with Section 16500) to Part 4 of Division 9 of, the Probate Code.

This act revises and recasts the provisions by which a trustee may give a notice of proposed action. This act enlarges the circumstances under which a notice of proposed action could be used, the circumstances under which it is not to be used, to whom it is to be given, and the methods by which a beneficiary may object to a proposed action.

#### J. Subdivisions

Chapter 754 (AB 1836 - Harman), with respect to Section 1357.120 of the Civil Code superseded by Chapter 346 (AB 2376 - Bates). COMMON INTEREST DEVELOPMENTS - Dispute Resolution, Approval of Physical Changes, Architectural Review

Amending Sections 1354 and 1357.120 of, amending and renumbering Section 1368.4 of, and to add Article 5 (commencing with Section 1363.810) to Chapter 4 of, and Article 1 (commencing with Section 1368.3) and Article 2 (commencing with Section 1369.510) to Chapter 7 of, Title 6 of Part 4 of Division 2 of, the Civil Code, and repealing Section 383 of the Code of Civil Procedure.

This act specifies that a common interest development association (CIDA) and an owner of a separate interest may enforce governing documents other than the declaration and creates a new dispute resolution procedure for conflicts between an association and a member. This act also requires a CIDA to provide a fair, reasonable, and expeditious procedure for resolving these disputes and provides a procedure for associations that do not have a procedure of their own that meets the minimum standards, among them that the member not be charged a fee to participate in the process. This act further requires that the CIDA provide notice of its dispute resolution process.

This act revises the existing dispute resolution provisions to clarify their application to other nonjudicial processes and to broaden their applicability to include actions enforcing the Davis-Stirling Common Interest Development Act and the Nonprofit Mutual Benefit Corporation Law. Among other things, this act also provides for the tolling of a statute of limitations in certain circumstances, expands the permissible methods of service of a request to submit a dispute to the resolution process, and changes the confidentiality protections applied to these procedures. This act also requires that a CIDA's procedures for the resolution of all disputes, not only those related to assessments, satisfy requirements regarding association operating rules.

This act requires the procedures of CIDAs for reviewing and approving proposed physical changes to a member's separate interest to satisfy the requirements regarding operating rules described above. This act also revises the definition of a CID that is limited to industrial or commercial use for purposes of exempting that development from certain provisions of the act. This act includes in these exemptions provisions regarding physical changes in a separate interest or the common area.

The act provides that, if a CIDA's governing documents require association approval before an owner may make a physical change to the owner's separate interest or to the common area, the CIDA must satisfy certain requirements in reviewing a proposed change, including providing a fair, reasonable, and expeditious procedure for making its decision and making a decision on a proposed change in writing. This act also provides that an applicant whose proposal is denied is entitled to reconsideration at an open meeting of the board of directors of the CIDA. This act further provides that its provisions do not authorize a change to the common area that is inconsistent with the association's governing documents or governing law. The provisions of this act do not apply to CIDs that are limited to industrial or commercial uses. Finally, this act requires a CIDA to provide notice annually of any requirements for association approval of physical changes to property.

## Chapter 110 (SB 1328 - Torlakson). HOUSING - Notices to Tenants, Restrictions on Sale or Disposition

NOTE: THIS ACT IS AN URGENCY MEASURE EFFECTIVE ON JULY 6, 2004.

Amending Sections 65863.10, 65863.11, and 65863.13 of the Government Code.

Existing law, until January 1, 2011, requires, prior to the anticipated date of the termination of a subsidy contract, expiration of rental restrictions, or prepayment on an assisted housing development that the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions provide a notice of the proposed change to each affected tenant household residing in the assisted housing development and to the affected public entities. Those defined terms are limited to certain federal subsidy programs.

This act includes additional state, local, and private subsidy programs within the definitions of "assisted housing development," "prepayment," and "termination" and would define "low or moderate income" and "very low income" for those purposes. This act also requires the notice to contain additional information.

Existing law provides that an owner of an assisted housing development shall not sell, or otherwise dispose of, the development in a manner that would result in either (a) a discontinuance of its use as an assisted housing development, or (b) the termination or expiration of any lowincome use restrictions that apply to the development, unless the owner or its agent first allows certain entities an opportunity to submit an offer to purchase the development.

This act deletes the conditions specified in (a) and (b), above, thereby extending the prohibition to all assisted housing developments. This act limits the prohibition to the sale or disposal of the housing development within a five-year period.

IX. DEEDS AND SECURITY INTERESTS

D. Foreclosures

Chapter 177 (SB 1277 – Ackerman). DEEDS OF TRUST - Foreclosure

Amending Sections 2924b, 2924h, 2924j, 2924l, 2934a, 2945, 2945.1, 2945.3, and 2945.4 of the Civil Code.

This act provides that the term "trustee," for the purpose of a trustee under a deed of trust who is named in an action or proceeding in which that deed of trust is the subject, be expanded to include substituted trustees and agents of a beneficiary or trustee.

This act permits that a copy of the substitution of trustee be mailed prior to, or concurrently with, the recording thereof. This act also provides that once recorded the substitution constitutes conclusive evidence of the authority of the substituted trustee to act pursuant with the law. This act further sets forth similar notice procedures for a substitution that is executed prior to or concurrently with the recording of a notice of default.

Existing law defines the term "foreclosure consultant" to be a person who for compensation offers or purports to offer, among other things, to stop or postpone a foreclosure sale, with certain exceptions for persons of certain occupations or professions. While still excluding an owner's attorney from the definition, this act expands the definition of "foreclosure consultant" to include a person who assists a prior owner in obtaining surplus proceeds from a foreclosure sale of the owner's residence.

I. Tax Sales

<u>Chapter 194 (SB 1832 – Cedillo).</u> PROPERTY TAXATION – Tax-Defaulted Property Sales, Copy of Subdivision Maps by Board Resolution or Order.

Amending Section 1812.601 of the Civil Code, and amending Sections 72, 327.1, 2503.1, 2503.2, 2504, 2508, 3451, 3456, 3693, 3693.1, 3695, 3701, 3702, 3704, 3704.7, 3707, 3710, and 3716 of, adding Sections 3692.1, 3692.2, and 3692.3 to, and repealing Sections 3450, 3453, 3454, 3457, and 3717.5 of, the Revenue and Taxation Code.

This act provides the manner in which the sales of tax-defaulted property may be conducted by public auction, including the Internet and defines "public auction," "close of auction," and "date of the sale" for purposes of these provisions. This act also provides that property sold under these provisions is sold "as is," and disclaims any liability of the state, the county, and its officers and employees for any patent or latent condition on the property or for the failure of certain devices that may be used to submit bids on this property. In addition, this act authorizes the tax collector to accept electronic funds transfers as payment for tax-defaulted property that is sold under these provisions.

This act authorizes the tax collector to treat any sale of any amount of tax-defaulted property as a credit transaction and allows a tax collector to require a deposit in the context of these property sales. This act also grants a county a claim, for the actual cost of the sale, against any bidder whose bid on tax-defaulted property was accepted, but who did not make a payment on that property when the payment was due.

Existing law authorizes the board of supervisors of any city or county to adopt an ordinance that requires any party that records a digital subdivision map, in connection with a legal description of lands for assessment purposes, to also file a duplicate digital copy with the assessor office. This act authorizes the board of supervisors to additionally enact those requirements by resolution or board order.

<u>Chapter 944 (AB 2144 – Ridley-Thomas)</u> with respect to Sections 3361, 3362, 3691, 3691.2 and 4217 of the Revenue and Taxation Code, superseded by Chapter 923 (SB 1596 – Ducheny).

Amending Sections 3361, 3362, 3691, 3691.2, 3791, 3791.3, 3792, and 4217 of the Revenue and Taxation Code.

Current law requires a county tax collector to attempt to sell real property when the owner has failed to pay the real property taxes for five years or more and authorizes the tax collector to sell real property with outstanding taxes due after three years if the real property is also subject to a nuisance abatement lien.

This act requires the county tax collector to attempt to sell nonresidential commercial property (and residential property that could serve the public benefit by providing housing or services directly related to low-income persons) three years or more after the property taxes become delinquent, unless a county elects not to have this requirement apply. Other residential property may be sold after five years. It also provides that this requirement applies only to property that has delinquent taxes owing on or after January 1, 2005, and requires the tax collector to notify parties of an intended sale of property.

X. RECORDING B. Acknowledgment/Notary

# <u>Chapter 539 (AB 2062 – Nakano).</u> NOTARIES PUBLIC – Journal Information, Form of Jurats, Educational Requirements for Appointment

Amending Sections 8201 and 8206 of, and adding Section 8202 to, the Government Code.

Notaries public appointed on or after January 1, 2005 are currently required to have satisfactorily completed a 6-hour course of study approved by the Secretary of State concerning the functions and duties of a notary public. This act changes that appointment date to July 1, 2005 or after.

Also, this act makes clear that as to the active journal of all official acts performed as a notary public required to be kept by notaries public, the required journal information applies to every instrument sworn to or affirmed before the notary.

## Chapter 6 (AB 1179 – Parra). PUBLIC RECORDS – Certified Copies of Birth & Death Certificates, Veterans Records NOTE: THIS ACT IS AN URGENCY MEASURE EFFECTIVE ON JANUARY 22, 2004.

Amending Section 6107 of, and adding Section 27201.5 to, the Government Code, and amending Section 103526 of the Health and Safety Code.

Under existing law, the State Registrar of Vital Statistics, local registrar, or county recorder receives a written request accompanied by a sworn statement that the requester is an "authorized person," it may provide a certified copy of a birth or death record to an "authorized person," including a funeral director. This act expands the definition of "authorized person" to include an agent or employee of a funeral establishment.

This act specifies that a notary acknowledgment shall be deemed complete for recording purposes without a photographically reproducible official seal of the notary public if the official seal is present and legible, and the necessary information is typed or printed in a manner that is photographically reproducible below, or immediately adjacent to, the notary's signature in the acknowledgment. The act also requires, when a request for a certified copy of a birth or death record is received by mail, that a notarized statement accompany the request stating that the requester is an authorized person.

#### C. Recording Requirements

### Chapter 136 (AB 1848 - Harman). TRUSTS - Recordation of a Certification of Trust

Amending Section 18100.5 of, and adding Sections 18105, 18106, 18107, and 18108 to, the Probate Code.

This act authorizes any person to record a certification of trust that relates to an interest in real property and permits a successor trustee to execute and record an affidavit of change of trustee if title to an interest in real property is affected by a change of trustee. This act further requires the county recorder to index this document and to impose any fee prescribed by law for recording and indexing these documents.

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