2006 STATE LEGISLATIVE TOPICS

Prepared by the California Land Title Association
For the American Land Title Association

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I. CIVIL ACTIONS

A. Dissolutions
B. Statute of Limitations
C. Appeals
D. Statute of Frauds
E. Receivership
F. Estates and Probate
G. Torts
H. Consumer Protection
I. Enforcement of Tax Lien
J. Child Support Lien
K. Courts

II. ENVIRONMENTAL ISSUES

A. Wetlands
B. Hazardous Waste
C. Public Trust/Riparian Rights

III. ESCROWS

A. Disclosures
B. Funding
C. Settlements
D. Trusts Accounts

IV. INSURANCE/BUSINESS ISSUES

A. Agents/Abstracter Licensing
B. Forms/Rates Regulation/Fees/ Commission Splits
C. Claims Administration Requirements
D. Reinsurance
E. Investment Risk Limitation and Tax Rules
F. Limited Liability Companies
G. NAIC
H. Controlled Business
I. Creditors' Rights
J. Deceptive Trade Practices/ Anti-Kickback Laws
K. Legal Ethics Opinions
L. Bulk Sales
M. Privacy
N. Electronic Transactions
O. Affiliated Business Arrangements

V. Statutory Liens

A. Mechanics' Liens
B. Judgment Liens
C. Attachments
D. Child Support Liens
E. Attorney
F. Estate Tax Liens

VI. TAXES

A. Real Estate
B. Transfer Taxes
C. Subdivision

VII. PUBLIC ENTITIES

A. Eminent Domain & Dedication
B. Indians
C. Sale of Municipal Lands
D. Zoning

VIII. REAL PROPERTY INTERESTS

A. Easements
B. Streets and Highways
C. Covenants, Conditions & Restrictions
D. Adverse Possession
E. Mineral Rights
F. Husband & Wife/Community Property
G. Condominiums
H. Trusts
I. Broker Regulations
J. Subdivisions

IX. DEEDS AND SECURITY INTERESTS

A. Assignments
B. Financing Statements
C. Conveyances/Deeds
D. Foreclosures
E. Mortgages/Deed of trust
F. Reconveyances/Releases
G. Leases
H. Usury
I. Tax Sales
J. Deficiency Judgments
K. Legal Description/Land Surveys
L. Obligations

X. RECORDING

A. Secretary of State
B. Acknowledgment/Notary
C. Recording Requirements
D. Seals
E. Recording Fees
F. Automation
G. Medicaid

2006 California Legislation
(ALTA SLRAC Report)

By Craig C. Page
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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, 2007 unless otherwise specified.

I. CIVIL ACTIONS
J. Child Support Lien

Chapter 797 (AB 2881 – Leno). CHILD SUPPORT COLLECTORS
Adding Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code.

This act enacts provisions regulating the activities of "private child support collectors." Among other things, this act requires 1) a private child support collector to provide certain notices and disclosures to the child support obligee in a written contract and additional information about child support payments during the term of the contract, 2) authorizes the obligee to cancel any contract entered into with that entity in certain circumstances, 3) prescribes the rights of the parties with respect to child support agencies and other governmental entities, and 4) prescribes procedures and remedies for enforcement of the provisions of this act.

This act also requires that every court order for child support issued on or after January 1, 2010, and every child support agreement providing for the payment of child support approved by the court on or after January 1, 2010, include a separate money judgment owed by the child support obligor to pay a fee to exceed a certain amount. This money judgment would be in favor of the private child support collector and the child support obligee, jointly. This act also establishes requirements relating to the conduct and compensation of attorneys who are private child support collectors.

This act, Family Code Section 5616(a) provides that the money judgment shall be in favor of the private child support collector and the child support obligee, jointly, but shall not constitute a private child support collector lien on real property unless an abstract of judgment is recorded pursuant to Section 566(d) of the Family Code which reads:

(d) Any fees or monetary obligations resulting from the contract between an obligee parent and a private child support collector, or moneys owed to a private child support collector by the obligor parent or obligee parent as a result of the private child support collector's efforts, does not create a lien on real property, unless an abstract of judgment is obtained from the court and recorded by the private child support collector against the real property in the county in which it is located, nor shall that amount be added to any existing lien created by a recorded abstract of support or be added to an obligation on any abstract of judgment. *A private child support collector lien shall have the force, effect, and priority of a judgment lien.*

Chapter 820 (AB 2440 – Klehs). JUDGMENTS – Liability for Assisting Avoidance of Child Support Judgments
Adding Sections 1714.4 and 1714.41 to the Civil Code.

This act adds two new Sections to the Civil Code dealing with assisting child support obligors to evade their obligation.

Section 1714.4 is added to the Civil Code providing that any person or business entity that knowingly assists a child support obligor who has an unpaid child support obligation to escape, evade, or avoid paying court-ordered or court-approved child support shall be liable for three times the value of the assistance provided, such as the fair market value of the obligor's assets transferred or hidden. The maximum liability imposed by this Section is limited to the entire child support obligation due. Any funds or assets collected pursuant to this Section must be paid to the child support obligee, and does not reduce the amount of the unpaid child support obligation. Upon the satisfaction of the unpaid child support obligation, this section does not apply.

Actions taken to knowingly assist a child support obligor to escape, evade, or avoid paying court-ordered or court-approved child support include, with actual knowledge of the child support obligation, helping to hide or transfer assets of the child support obligor.

The above provisions do not apply to a financial institution unless the financial institution has actual knowledge of the child support obligation and, with that knowledge, knowingly assists the obligor to escape, evade, or avoid paying the child support obligation. However, a financial institution with knowledge of an asset transfer has no duty to inquire into the rightfulness of the transaction, nor shall it be deemed to have knowingly assisted an obligor to escape, evade, or avoid paying the child support obligation if that assistance is provided by an employee or agent of the financial institution acting outside the terms and conditions of employment or agency without the actual knowledge of the financial institution.

Section 1714.41 is also added to the Civil Code to provide similar provisions and specifies that actions taking in violation of this Section include certain failures to report information to the Employment Development Department. This Section does not have the specific provision addressing financial institutions contained in Section 1714.4.

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IV. INSURANCE/BUSINESS ISSUES

B. Forms/Rates Regulation/Fees/Commission Splits

Chapter 456 (AB 925 – Ridley Thomas). TITLE INSURANCE – Community Investments
Adding and Repealing Article 10.1 (commencing with Section 926.1) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

Existing law generally regulates the investments of insurers through numerous Insurance Code Sections, including, the (COIN).

This act thoroughly defines "Community Development Investments" and "Community Development Infrastructure Investments" made by licensed insurers and credited by the Department under the California Organized Investment Network (COIN) Program.

This act also imposes certain reporting requirements on participating insurers to the Department of Insurance and requires the Commissioner to provide certain information on these investments to the public for purposes of quantifying investments under the COIN Program.

This act also requires insurers that did not comply with the voluntary community investment data call issued by the commissioner in May 2005 to provide the information requested therein to the Commissioner on or before February 28, 2007, and that information be posted on the Department's internet web site. This act provides that its provisions will remain in effect only until January 1, 2011.

D. Reinsurance

Chapter 321 (AB 2400 – Benoit). TITLE INSURANCE - Reinsurance
Amending Sections 922.2, 922.5, 922.6, and 1781.10 of, and adding Section 1781.14, to the Insurance Code.

This act makes minor changes in the law regarding credit for reinsurance, insolvency of a ceding company, assets or deductions for reinsurance, and foreign ceding insurers. This act also provides that during an examination of a reinsurance intermediary, all documents disclosed may be used by the Insurance Commissioner, and given confidential treatment and further provides that the examination shall be at the expense of the insurance intermediary, and that the Commissioner may revoke the license of the insurance intermediary for a refusal to promptly pay the examination expense when due. This act also provides the manner in which insurance intermediaries must comply with court or arbitration panel orders regarding production of documents or witnesses.

M. Privacy

Chapter 472 (AB 2005 – Emmerson). PRIVACY – Confidentiality; Public Safety Officials
Amending Section 6254.24 of the Government Code.

This act adds to the definition of a "public safety official" whose information is protected, an employee of the Attorney General, a district attorney, or a public defender.

This act also adds to the definition of a "public safety official" an attorney employed by the United States Attorney or the Federal Public Defender, state and federal judges and court commissioners, a non-sworn employee of the Department of Justice or a police department or sheriff's office with certain duties in the course of his or her employment, a sworn employee who supervises inmates, and a probation officer.

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VII. PUBLIC ENTITIES

A. Eminent Domain & Dedication

Chapter 591 (SB 53 – Kehoe). REDEVELOPMENT - Eminent Domain; Description of Program

Amending Sections 33333.2 and 33333.4 of, and adding Sections 33342.5 and 33342.7 to, the Health and Safety Code.

This act requires redevelopment plans to contain a description of the redevelopment agency's program to acquire real property by eminent domain, including prohibitions, if any, on the use of eminent domain. This act requires a redevelopment agency to find, based on substantial evidence, that significant blight remains in the project area and cannot be eliminated without the use of eminent domain before amending a redevelopment plan to extend the time limitation for the commencement of eminent domain proceedings to acquire property within the project area.

Chapter 594 (SB 1210 – Torlakson). EMINENT DOMAIN – Settlement Offers; Orders of Possession

Amending Sections 1250.410, 1255.040, 1255.410, 1255.450, and 1255.460 of, adding Section 1263.025 to, and repealing Sections 1255.420 and 1255.430 of, the Code of Civil Procedure, adding Section 1091.6 to the Government Code, and amending Sections 33333.2 and 33333.4 of the Health and Safety Code.

This act defines a defendant's litigation recovery expenses to mean reasonable attorney's fees and costs, including reasonable expert witness and appraiser fees.

This act authorizes a plaintiff to make an ex parte application to the court for possession when the record owner cannot be located, authorizes the plaintiff to make a motion to the court for possession and provides for a noticed hearing. This act requires the plaintiff to serve a copy of the motion on the record owner and on the occupants of the property within certain time periods. This act authorizes a defendant or occupant of the property to oppose the motion and seek a hearing on the motion regardless of whether the hardship of having possession taken at the time specified in the order is substantial. This act requires the written opposition to be signed under penalty of perjury. This act requires the court to make an order for possession if the motion is not opposed and the court makes certain findings. This act also authorizes a court to issue an order of possession upon an ex parte application by a utility if an emergency exists.

This act requires a public entity to offer to pay the reasonable costs, not to exceed $5,000, of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain at the time the public entity makes the offer to purchase the property. This appraisal would be required to be conducted by an appraiser licensed by the Office of Real Estate Appraisers.

This act prohibits an officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain from voting on any matter affecting that organization.

This act provides that the maximum time limitation of 12 years may only be extended by amendment of the redevelopment plan after the redevelopment agency finds, based on substantial evidence, that significant blight remains within the project area and that the blight cannot be eliminated without the use of eminent domain.

Chapter 602 (SB 1650 – Kehoe). EMINENT DOMAIN – Leaseback; Repurchase Rights

Amending Section 1263.510 of, and adding Sections 1245.245 and 1263.615 to, the Code of Civil Procedure.

This act requires the governing body of a public entity, before the public entity may use property that is subject to a resolution of necessity for a public use other than the public use stated in the resolution to adopt a resolution authorizing a different use of the property by a vote of at least two thirds of all members of the governing body of the public entity or a greater vote as required by statute, charter, or ordinance. This act also requires a public entity to sell property that is not used for the public use stated in the resolution within ten years of the adoption of the resolution unless the governing body adopts a resolution authorizing a different use or reauthorizing the existing stated public use by a vote as described above.

This act requires certain property subject to the new resolution procedure to be offered back to the person or persons from whom the property was acquired if the public entity fails to adopt a new resolution or a resolution reauthorizing the stated public use, and that property was not used for the public use stated in the original resolution of necessity or a new resolution authorizing a different use or reauthorizing the existing stated public use between the time of the property's acquisition and the time of the public entity's failure to adopt a new resolution.

This act also requires a public entity acquiring property under certain circumstances to offer the owner of the property a one-year leaseback agreement for that property owner's continued use, subject to the property owner's payment of fair market rents and compliance with other certain conditions, unless the public entity states in writing that the development, redevelopment, or use of the property is scheduled to begin within two years of its acquisition. With regard to the calculation of compensation for the property taken, the act prohibits additional goodwill value from accruing during the leaseback.

Chapter 603 (SB 1809 – Machado). REDEVELOPMENT – Eminent Domain; Recorded Documents
Amending Section 33373 of, and repealing and adding Section 33456 of, the Health and Safety Code.

This act provides that, under the newly revised Health and Safety Code Section 33373, as of January 1, 2007, if a **newly adopted redevelopment plan** authorizes the agency to acquire property by eminent domain that **a document be recorded within 60 days of the adoption of the redevelopment plan** and contain a "statement" which has the following information:

(1) A prominent heading in boldface type noting that the property that is the subject of the statement is located within a redevelopment project.

(2) A general description of the provisions of the redevelopment plan that authorize the use of the power of eminent domain by the agency.

(3) A general description of any limitations on the use of the power of eminent domain contained in the redevelopment plan, including, without limitation, the time limit required by Section 33333.2.

The act also prohibits the redevelopment agency from commencing an eminent domain action until after this document and statement are recorded. (Health and Safety Code Section 33373 (d) of the act)

In addition, the act further provides that for **redevelopment plans adopted on or before December 31, 2006**, that authorize the use of eminent domain powers, the local agency shall, before December 31, 2007, **cause a document with a revised statement to be recorded** with the county recorder that provides the three items of information discussed above. (Health and Safety Code Section 33373 (c) of the act)

This act also provides that **amended redevelopment plans** shall require the **recordation of an additional document** containing a statement that the redevelopment plan has been amended.

If the amendment **to the plan adds territory to the redevelopment project area**, the document with the recorded statement shall contain:

(1) A description of the added territory.

(2) A prominent heading in boldface type noting that the property that is the subject of the statement is located within a redevelopment project.

(3) A general description of the provisions of the amended redevelopment plan, if any, that authorize the use of the power of eminent domain by the agency within the added territory, and a general description of any limitations on the use of the power of eminent domain within the added territory and relevant statutory time limits.

(4) A description of the land within the project area and a general description of any change on the limitation of the eminent domain powers of the redevelopment agency.

B. Indians

Chapter 863 (AB 2641 – Coto). EASEMENTS – Native American Human Remains; Recorded Documents
Amending Sections 5097.91 and 5097.98 of the Public Resources Code.

Existing law requires the Native American Heritage Commission ("Commission") once it receives notification of Native American human remains from a county coroner, to notify the most likely descendents, and the descendents, with permission of the landowner, or his or her authorized representative, may inspect the site and recommend appropriate disposition of human remains and grave goods, but are required to do so within 24 hours of notification by the Commission.

This act requires that the identified descendents make recommendations or preferences for treatment within 48 hours of being granted access to the site instead of within 24 hours of the notification by the Commission. This act also requires the landowner, upon discovery of Native American human remains, to ensure that the immediate vicinity is not damaged or disturbed by further redevelopment activity until specific conditions are met, including discussing and conferring with the descendents regarding their preferences for treatment.

This act authorizes the parties to mutually agree to extend the discussions, taking into account the possibility that multiple human remains are located in the project area, providing a basis for additional treatment measures.

This act requires that when the Commission is unable to identify descendents, the descendents fail to make a recommendation, or other certain circumstances occur, and the landowner is required to reinter the human remains, the landowner is also required to protect the site where the remains are reinterred from further and future disturbance by doing one of the following:

1) Record the site with the Commission or the appropriate Information Center.

2) Utilize an open space or conservation zoning designation or easement.

3) Record a document with the county in which the property is located.

VIII. REAL PROPERTY INTERESTS

A. Easements

Chapter 77 (AB 1803 – Committee on Budget). EASEMENTS – Conservation Easements
Adding Section 12805.6 to the Government Code.

This act adds Government Code Section 12805.6 which requires the Resources Agency to identify, for future conservation, key buffer properties adjacent to large ecologically valuable working landscapes that provide significant economic benefits to the state whose future viability could be threatened by encroachment of incompatible land use. This act also requires that an acquisition of a land or conservation easement for use as a buffer property occur with a willing seller.

Chapter 531 (SB 1360 – Kehoe). PUBLIC RECORDS – Conservation Easement Registry
Amending Section 27255 of the Government Code, and adding Article 3 (commencing with Section 5096.520) to Chapter 1.695 of Division 5 of the Public Resources Code.

This act requires the Secretary of the Resources Agency to establish a central public registry of all conservation easements held or required by the state, or purchased with state grant funds provided by any agency, department, or division of the state on or after January 1, 2006. This act provides that the registry shall be available for use by the general public, on or before January 1, 2009. This act requires the registry to include, and the secretary to provide on the Internet, information on these conservation easements.

E. Mineral Rights

Chapter 892 (AB 2638 – Laird). HOUSING TRUST FUND
Amending Section 50843 of, and adding Sections 50842.1, 50842.2, and 50843.5 to, the Health and Safety Code, and amending Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code.

This act requires the grantee to record deed restrictions on for sale housing to ensure that the owner and grantee share the equity when the property is sold or, if the property is sold within 30 years from the date trust funds are used to acquire, construct, or rehabilitate the property, the owner or subsequent owner sell the home at an affordable housing cost to a household that meets the relevant income qualifications. *This act is an urgency measure effective on September 30, 2006.*

I. Broker Regulations

Chapter 107 (AB 2602 – Lieu). LOANS – Benefits of Trust Fund Deposits
Amending Section 854.1 of, and adding Section 854.2 to, the Financial Code.

Under existing law, a real estate broker, who accepts funds belonging to others, is required to deposit those funds into a specified trust fund account. However, existing law also provides that benefits accruing from the placement in a non-interest bearing account of a commercial bank of funds received by a real estate broker who collects payments or provides services in connection with certain loans shall inure to the broker, unless otherwise agreed by the broker and lender.

This act instead provides that those benefits shall inure to the real estate broker if they are derived from the placement of those funds in a non-interest bearing account of a financial institution. This act also provides that benefits accruing from the placement in an interest bearing account of a financial institution of funds received by a real estate broker who collects payments or provides services for an institutional investor in connection with a loan secured by commercial real property may inure to the broker, if agreed to in writing by the broker and investor.

J. Subdivisions

Chapter 636 (SB 983 – Lowenthal). SUBDIVISION MAP ACT – Lot Line Adjustments
Amending Sections 66412, 66452.8, and 66452.9 of the Government Code.

Existing law provides that the Subdivision Map Act shall be inapplicable to a lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency or advisory agency.

This act additionally requires that this determination includes whether or not the parcels resulting from the lot line adjustment will conform to any applicable specific plan.

The Subdivision Map Act requires a subdivider prior to the filing of a tentative map to give a 60-day notice in a specified form to each tenant of the subject property and to each person applying after the date for rental of a unit of the subject property immediately prior to the acceptance of any rent or deposit from the prospective tenant by the subdivider. This act also requires a subdivider who fails to give the required notice to pay each prospective tenant his or her actual moving expenses and the first month's rent in an amount not to exceed $500 for each expense. This act increases this maximum expense amount to $1,100 for each expense.

IX. DEEDS AND SECURITY INTERESTS
F. Reconveyances/Releases

Chapter 202 (SB 1609 – Simitian). LOANS – Reverse Mortgages and Annuities
Amending Sections 1632, 1923.2, and 1923.5 of the Civil Code.

This act prohibits a lender from requiring the purchase of an annuity as a condition of obtaining a reverse mortgage loan and prohibits a reverse mortgage lender or a broker arranging a reverse mortgage loan from offering an annuity to the borrower or referring the borrower to anyone for the purchase of an annuity prior to the closing of the loan or before the expiration of the borrower's right to rescind.

This act also requires a lender to refer a prospective borrower to a housing counseling agency for counseling prior to accepting a final and complete application for a reverse mortgage or assessing any fees, and prohibits a lender from accepting a full and complete application for a reverse mortgage loan or assessing any fees without receiving certification that the borrower had received this counseling. In addition, Civil Code Section 1923.5 is revised to change the statutory disclosure notice provided to an applicant for a reverse mortgage and Civil Code Section 1923.2 is amended to require lenders to provide a certain list of independent loan counselors.

This act requires any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean in the course of entering into certain contracts to deliver to the other party, prior to the execution of a contract or agreement, a translation of it in the language in which it was negotiated.

X. RECORDING
F. Automation

Chapter 356 (AB 2416 – Torrico). LOANS – Automated Valuations for Consumer Loans
Adding Section 22317.2 to the Financial Code.

This act authorizes a licensee to collect a fee for use of an automated valuation model result prepared by a third party not to exceed the actual cost paid to the third party for a written automated valuation model result in lieu of an appraisal and authorizes a licensee to charge a reduced appraisal fee for appraising the same real property one year after collecting a fee for an automated valuation model result if the borrower has obtained a new or additional loan. This act requires a licensee in a loan transaction secured by real property to provide notice to a borrower that, upon request, the borrower is entitled to receive a copy of the automated valuation model result, provided he or she has paid for the automated valuation model result.

Chapter 423 (AB 2715 - Runner). LIENS – Recording of State Tax Liens
Amending Sections 7171 and 31000.6 of the Government Code.

This act authorizes the transmission, recording, and indexing of Notices of State Tax Liens and related documents by electronic or magnetic means. *This act is an urgency measure effective on September 22, 2006.*