California Real Estate Law

Text & Cases (10th Edition)

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All law books are obsolete on the date they are printed. This book has free semi-annual updates.

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This supplement contains new material since the publication in 2022 of the 10th edition of *California Real Estate Law: Text and Cases*. This supplement covers some of the laws the author selected as warranting special notice, but it is not intended to cover any subject completely nor is it an attempt to cover all the important laws and cases arising since the book's publication.

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Ch. 1 – Nature of Property

Pg. 2 Just before the headnote "Restrictions on Use," add the following new paragraphs.

> Another example concerns federal discrimination laws and is local covenants or ordinances that amount to illegal discrimination. Can local zoning prevent a disabled person from constructing a ramp for his or her front door? Generally, the wheelchair person can build the ramp as the Americans with Disabilities Act controls. However, if local architectural requirements mandate, a more elaborate and better-built ramp contract law prevails and outlines the nature of the ramp. If the owner sells to a non-disabled person, must the new owner demolish the ramp, and the general answer is that the ramp "runs with the land," meaning the ramp can stay. State property law applies. As the facts change, so does the balancing.

Pg. 6 Before the headnote "Bundle of Rights," add the following new paragraph.

> What is property is sometimes different in other states. In Illinois their Supreme Court ruled that homeowners with frontage on non-navigable rivers (not deep enough for commercial use) can only kayak in front of their property and cannot cross to portions the river in front of others land without permission. *Holms v. Kodat*, 2022 IL 127511 (Ill. 2022). In California you can acquire property by adverse possession (squatter's right) if you meet the requirements for five years. Conversely, in Louisiana you must meet the requirements for 30 years. LA Civ Code 742.

Pg. 7 Before the Headnote "Some Limitations," add the following new paragraph:

> *Another Example*
>
> In the last few years California has declared a state-wide emergency on affordable housing, with changes that some say override zoning and environmental laws. One of the many specifics of those laws are those affecting accessory dwelling units ("ADU"). An accessible dwelling unit can be added to an existing dwelling by attachment or located on the lot or on a parcel where a new home and ADU will exist. AUD now includes garages converted to livable space. Counties and cities must generally allow the expansion of existing units to permit AUDs of not less than 800 square feet. Setbacks and other lot restrictions are modified to meet the new requirements. Further, to streamline the process, local governments must approve or reject the project within 60 days. If rejected, the agency must what is needed to make the unit meet the existing requirement for approval.

Ch. 2 – Judicial System and History

Pg. 14 Delete the first two paragraphs under "Small Claims Court" and substitute:

> The *small claims court* provides a simple, unstructured atmosphere for presentation of claims for damages of not more than $12,500 for individuals ($6,250 for businesses). If you are suing an individual for personal injuries from an automobile case where you have automobile insurance, your limit is $7,500.
>
> If you have case over the $12,500 limit you have two choices. The first option (and probably the best solution considering the cost of an attorney), is the waive the excess amount and sue in small claims court. The second option is to file in superior court as either a *limited civil case* (up to $35,000) or an *unlimited civil case* (for amounts over $35,000).

However, there are certain waivers in specific restrictions on the use of small claims court. Although the jurisdictional limit is $12,500 for individuals and $6,250 for businesses, no one case file more than two cases over $2,500 per year in small claims court. Ther is no limit on cases under $2,500 cases.

Further, landlords cannot file unlawful detainer actions to recover possession in small claims court. They can sue for unpaid rent, or other monetary amounts. Collection agencies, an assignee of any claim are forbidden to use the small claims court. There are no rules of

Pg. 24 Add the following as a last sentence on the page.

The parties may well want to include the magic language of the *Cable Connection, Inc.* v. *Directv, Inc.* 44 Cal. 4th 1334 (2008), allowing judicial review of "errors of law and legal reasoning." For more information, read the inciteful and well-reasoned article in the California Lawyers Association's March 2023 issue of the *California Real Property Journal*, entitled *Moncharsh and the Risk of Arbitration*.

Ch. 3 – Elements of Property

Pg. 35 Add the following paragraph after the last sentence on the page.

Just like geothermal steam (the next case in this book), other properties of land cause litigation. Plaintiff acquired the surface rights to property in Montana, and the defendant seller retained the mineral rights. Plaintiffs found several dinosaurs fossils on private property in Montana worth millions of dollars. In *Murray v. BEJ Minerals, LLC,* the federal district court for Montana ruled for the surface owner. The court found that fossils are not minerals because they are not refined, mined, or made valuable by virtue of their physical properties. On appeal the 9th circuit, the court reversed finding fossils "rare and exceptional," and thus a mineral belongs to the subsurface owner. The case, in unusual circumstances, then moved to the Montana Supreme Court. They found minerals had to be a substance that its contents gave it value and rarity. The deed referred to "mining of hard compounds or oil and gas for refinement and economic exploitation." The surface owners won.

Pg.38 Add the following sentence to the last line on the page:

Beginning in 2025, the FAA will finalize rules on drones that merchants will likely use to deliver packages to your homes. The eVTOL rules s (electronic vertical takeoff and landing aircraft) will likely allow intrusion onto your property by air for specified functions.

Pg. 42 Before the Headnote, FIXTURES, add the following new paragraphs:

Water Shortages

Until a few years ago, water scarcity was not an urgent concern for most Californians, and 80% of our water usage went to agricultural needs. Water scarcity arises when the demand for human consumption, agricultural use, and industrial requirements exceeds the available water supply. Unfortunately, 2022 was a challenging year for California. The State suffered from drought, climate change, maybe El Nino, fragile supply lines of dams, aqueducts, poor water management, and pipelines inadequately controlling the spillover of excess snow melt, land unable to hold extra water, numerous large forest fires, and other causes. We also face the whip-saw effect of the excessive snowpack (200% of normal in 2023) that will melt and is expected to flood many areas of California.

Further, the six states that take water from the Colorado River now face a 12% reduction in allocation, meaning statistically greater than one in every ten homes will be without such

river water. Adding to the problem, especially in central California, at one time, groundwater provided up to 60% of California's water needs. However, until recently, the pumping was unregulated, and decades of great use have drastically reduced California's aquifers.

California is not out of the drought, despite the abundant rainfall of 2023, although some areas of the State will feel the effects words than other sections.

On August 1, 2023, the Governor of Arizona announced that the city of Phoenix, the 5th largest city in the US and the fastest-growing municipality in the nation, will no longer issue new building permits to residential developments unless the developer can show a source of water for the next 100 years that does not rely on groundwater. The 23-year drought and rising temperatures causing greater evaporation to have significantly reduced the available water in the Colorado River for California, Arizona, and four other states. At some time in the near future, California may follow the lead of Arizona and begin restricting development based on available water supply.

Ch. 4 – Contracts and Damages

Ch. 5 – Deposit Receipts

Pg. 97 Before the headnote "Allocation of Costs," add the following new paragraph:

In today's environment, due diligence may include investigating what was previously accepted as given and available. It may soon be wise to consider how property owners will obtain water for the next ten years. About 500 to 700 homeowners of Rio Verde, out in the Arizona desert, suddenly found themselves without water after the city of Scottsdale refused to continue their previous supply. Scottsdale claims the draught means the priority goes to its residents. Property values are falling in Rio Verde; as of this writing, it is still being determined if the banks will call their loans. You might be wise to investigate how the city or county receives water and their written analysis of their ten-year plans.

Page 102, before the Headnote, "Statutory Disclosures," add the following paragraph:

Banks Declining Loans if Inspection Waived. Starting October 1, 2025, Commonwealth Bank of Massachusetts will no longer issue loans to buyers who have waived the seller inspection. I would expect this trend to reach California, if it has not already.

Pg. 117 Just before the second to the last paragraph on the page, add the following new paragraph.

Just to emphasize how complex arbitration can be, a relatively new law requires attorneys going through arbitration to provide their clients with statutory warnings and oral explanations of certain facets of arbitration. Such regulation might further suggest that brokers should not advise clients about accepting or rejecting arbitration provisions.

Reading and advising clients about arbitration provisions requires an understanding of the law. It is hard to draft an enforceable arbitration clause in commercial leases because such alternate dispute resolutions are usually contrary to other provisions that exit later in the lease. *MCB Valley Properties v. Etter* (2021) __ CA5th __. Even the 2020 CAR deposit receipt contained an arbitration provision that the courts found invoked the very liberal federal arbitration law instead of the intended stricter California statutes. *Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337.

Ch. 6 – Listing Agreements

Pg. 127 Before the heading, "Broker's Right to Compensation," add the following new paragraphs:

New Buyer's Agreement

On August 17, 1924, the National Association of Realtors ("NAR") and all its subsidiary boards and Multiple Listing Service ("MLS") organizations formally adopt the new rules specified by the multi-billion-dollar class action lawsuit. The judge ruled that he is temporarily considering approving the settlement offer, although technically, it probably will not be final until sometime in late 2024. On June 25, 2024, the NAR released a new set of forms that adhered to the settlement.

Brokers are no longer required to place their listing on Multiple Listing Services (MLS) agencies run by the NAR subsidiaries and may use other services. Further, the commission rate (previously most commonly 5% or 6% for both listing and selling brokers) may no longer be shown on the MLS listing form. The most significant change is that buyers will hire their broker.

The buyers must have the equivalent of a 'buyer's representation and broker's commission" agreement <u>*before*</u> they can show a potential buyer property. Buyers will eventually learn to accept that they need a separate contract, just as sellers have accepted that they need a listing agreement for a broker to represent them. They must also agree to pay the buyers for the representation. Traditionally, that would also be 3% of the sales price, although many expect it might be 2½% % to 2%. Frequently, the buyers can ask and negotiate for the seller to pay all or any part of the commission. A buyer can have a listing agent represent them under a dual agency, but a separate buyer's agreement will be required. Before this litigation, many brokers had executed a simple share-splitting agreement, like the realtor's "compensation agreement between brokers."

By law, beginning in 2025, all agents will have to sign a buyer-broker representation form not later than executing an offer to purchase property and procedurally as soon as practical. B&PC §10130.

Pg. 148 Beginning in 2026, the disclosure statement must indicate if the prior owner used tobacco products, including cigarettes.

Pg. 161 Before the Study Questions, add the following new paragraph:

<u>Climate Change</u>. In 2014, the Paris Agreement and the Intergovernmental Panel on Climate Change (IPCC) called on state and local governments to help mitigate climate change. Many states have passed legislation requiring more energy-efficient buildings and meeting other *green* requirements. Local governments are also adopting ordinances. For example, Marin County requires homes over 4,000 square feet (the "mansions") to comply with the energy code by no more than 15%.

Ch. 7 – Nonpossessory Interests
Ch. 8 – Estates in Land
Ch. 9 – Voluntary Transfers of Property
Ch. 10 – Involuntary Transfers of Property
Ch. 11 – Joint Ownership
Ch 12 – Landowner's Liability for Injuries

<u>Ch 13 – Leases and Eviction</u>

Pg. 269 Just before the headnote, "Eviction for Cause," add the following new paragraphs:

San Francisco passed an ordinance that covers newly constructed units that are exempt from statewide rent control. The court allowed the ordinance, saying, "We agree that the [San Francisco ordinance] amendment is designed to deter landlords from attempting to avoid local eviction rules by imposing artificially high rents in bad faith, and thus is a reasonable exercise of the city's authority to regulate the grounds for eviction…" *San Francisco Apartment Association v. City and County of San Francisco,* 74 Cal.App.5th 288 (2022). Unless this case is later overruled, it appears local jurisdictions can go much farther than just using the rent control laws in regulating residential property.

Notice of Rent Increases

If the landlord is raising the rent ten percent or less within a 12-month period, then only a 30-day notice need be given to the tenant. If the rent is over 10 percent, a 90-day advance notice is needed. C.C. §827.

Pg. 273 Before the last headnote (Non-curable Defaults) add the following now paragraph below. Also note that all notices in this book and most three-day notices available from associations and on the web will probably be invalid if written before June. 26, 2025. Some cities and country impose additional requirements on evictions within their jurisdiction that must be followed, as well including the proper attachments to the three-day notice.

Tenant owed 8 months before he was served with an eviction notice, which on appeal, the court found invalid because it failed to meet strict procedural requirements of the law, including when the notice was prepared and when served, and that the tree-day period did not include weekends and judicial holidays. The court assessed attorney's fees against the landlord and left the tenant in possession of the premises. Anyone preparing a 3-day notice should read the case, and now attorneys are asking the Supreme Court if decertify the decision as *dicta* as the main issue was on other procedural grounds. It is uncertain the Supreme Court will do so. *Eshagian v. Cepeda*, __CA4th ___ (June 26, 2025).

Pg. 290 Delete the last five sentences on the page and substitute:

Effective July 1, 2024, all new residential leases will be governed by a new law on the amount of deposits that can be collected. According to the bill's author, the average rent in San Francisco is almost $3,500, so the first month's rent and two months security deposit is over $10,000. Further, the assemblyman claims by his survey that over half of all renters cannot come up with the required deposits and, therefore, are unable to rent.

Landlords have a new limit on the maximum amount of security deposit they can charge. The fall only applies to leases entered after the July one date, so if my landlord executed the lease before that date and collected an amount over the new limits, everything is fine. However, if the lease is later renewed after the effective date, the landlord must refund the overage to meet the new statutory amounts. The new limits apply to both furnished and unfurnished tenancies. All security deposits, whether called security deposits, last must's rent, key deposits, or any other name, cannot exceed the new limits. Finally, the landlord cannot charge extra for an emotional support animal or a service animal.

1. **General Rule**. Landlords cannot charge more than one month's rent as a security deposit.

2. **Limited Exception**. If the landlord is either a natural person or a member of an LLC that owns the property and does not have more than two units that collectively contain no more than four separate units, they can charge up to two months' rent as a security deposit. Thus, for example, a landlord could have two duplexes and still qualify, or a single-family residence and triplex.

Pg. 291-2 Delete the section of the "Types of Advance Deposits."

Pg. 309 After the third line of the page, add the following new paragraph:

> In commercial leases, it might be hard to draft an enforceable arbitration or mediation clause because such alternate dispute resolutions are usually contrary to other provisions that exist later in the lease. *MCB Valley Properties v. Etter* (2021) __ CA5th __.

Pg. 312 An increase in the price of homes and the larger number of renters have made service animal issues more relevant and important than they were ten years ago. Before the Headnote "Other Discrimination," add the following paragraphs:

> The federal discrimination laws (three Acts and a design and construction requirement) often apply and can apply enforcement opportunities for disabled people. The courts must first find if the public and private restrictions violated the disability laws, and then, if so, does that violation amount to discrimination?
>
> A federal website raises the question if a landlord can raise the deposit required for a disabled. The answer is "No. An individual with a disability who uses a wheelchair is no more likely than anyone else to cause damage, beyond typical wear and tear, to a dwelling unit. However, if a person who uses a wheelchair causes damage to a unit that is beyond normal wear and tear that may be caused by use of a wheelchair, that individual may be required to cover the cost of such damage."

Ch. 14 -Recording System

Pg. 316 Adda new paragraph under the heading Notary and the existing paragraph as follows:

> California has not adopted a statute to allow a document to be notarized over the Internet; but note the Revised (2022) Uniform Law of Notarial Acts. The Uniform Law provides remote ink notarization (RIN) and remote online notarization (RON).

Ch 15 – Mortgages and Deeds of Trusts
Ch 16 – Involuntary Liens

Ch 17 – Property Taxes

Pg. 405 Delete paragraph #7, since it is no longer accurate after Proposition 19, and replace it with the following:

> To raise money, Proposition 19 removed most of the exemptions beginning January 1, 2026. In the normal situation when someone dies, their property tax on the decedent's share will be increased to fair market value. One of the few exemptions that remains is that this does not apply to transfers between spouses.
>
> You still get an income tax-free step-up in basis to fair market value, without paying capital gains. However, for most transactions, that property is reassessed to fair market value for property tax purposes. If a mother owns a house that she's had for 30 years, and the daughter inherited it, she may find that the property tax will triple or quadruple.
>
> One exception is for up to $1 million if the child will live in the residence within one year of death. If there's more than one child inheriting the property, as long as one child meets the exemption, all the children get the exemption. The child living in the property must file a $70 homeowners' exemption within that one-year period.

If you want to pass property to a child or a stranger as a gift without facing an increase in property tax, you should see an estate planning attorney. It will take a minimum of five years, but you can transfer property to a limited liability company, then terminate the LLC, and repeat the process and most attorneys believe it will escape property tax reevaluation.

Ch. 18 – Homesteads

Pg. 415 Delete the first paragraph under the headnote, "Amount," and substitute:

Begging in 2025, the homestead amount is a minimum of $361,113 to a maximum of $722,151. The exact amount varies annually calculated on the increase in the amount of the median home sales price over the prior year.

Ch. 19 – Private Restrictions on Land

Ch. 20 – Zoning

Pg. 446 Before the Study Questions, add the following new section:

Accessory Dwelling Units

New changes to the law beginning in 2024 make it evident that there is a severe need to reform and allow the use of accessory dwelling units ("ADU" or "Granny Units") for its citizens who are unable to find affordable housing. AUDs are additions to existing single-family residences to create a second unit. Such units arise by taking over part of an existing house, converting a basement or attic, adding to the square footage of the house, or building a separate unit in the backyard. The unit must contain a kitchen, bathroom, and living area (although in certain homes, such amenities may be part of the main house). Legally, the space is less than 800 square feet (although cities can adopt ordinances allowing up to 1200 square feet and up to two bedrooms). ADUs are permanently part of the law. The primary residence has just one tax bill and may not sell the unit separately. However, since 2024, the owner can make his AUD a condominium, which means it would have its separate tax bill and could be sold separately.

AB 2221 has successfully eliminated the three biggest roadblocks to constructing accessory dwelling units, providing a significant boost to flexibility. Such units are no longer limited to 16 feet tall and can reach as high as 28 feet. Moreover, if the ADU encroaches on the front set-back requirement for the property line, that violation is no longer a reason to deny the ADU. Finally, building a department must respond properly within 60 days to a request for an ADU. If it does not approve the unit, it must offer suggestions to meet approval, giving property owners and real estate professionals more control over the process.

Beginning in 2024, an owner of an AUD can turn his home into a condominium and sell the home and the AUD separately. A municipal ordinance must allow such conversion, and the lender must agree if there is a deed of trust on the property.

Ch. 21 – Environmental Controls and Subdivision Law

Pg. 450 Add a new paragraph above the headnote "Other Legislation:":

Interesting the American Bar Association (March, *Probate & Property Journal)* expressed concern that President Trump's administration might not try to change federal environmental law. It worries that it could just decide not to participate in court action to

enforce the legislation. From a practical point of view of homeowners, builders, and developers, most environmental controls in California come from state regulations.

Pg. 452 Before "Timing of Procedure" add the following:

Exemptions for Residential in Fill Areas

In July 2025, Governor Newsom signed legislation that made a significant change to the California Environmental Quality Act (CEQA). The new law now exempts new housing in urban "In Fill Areas" (existing housing areas), making it difficult for other homeowners and environmentalists to stop new residential buildings. Before this law, the CEQA was used as much as it was abused to prevent residential development.

Ch. 22 – Title Insurance and Escrow
Ch 23 – Relationship between Agency and Broker

Supplement 1 – Real Estate Syndication
Supplement 2 – Ordinary Wear and Tear (Leases)

Supplement3 – Tax Free Exchanges (IRC §1031)

Pg. 544 At the end of the page, add the following new paragraph:

While federal law allows you to defer capital gains until death, California law is not so generous. They have a "claw back" provision that provides if you transfer property under a §1031 exchange and the replacement property (the so-called "up leg" property) is in another state, California requires you to notify them on form FTB 3840 every year until you finally sell the property or die. Then California wants back its deferred tax.

Supplement 4 – Back Up Offers

Extra Material Not in Supplement

Pg. 312

Service animals are an area of frequent concern, and the law differs based on which Act is involved (ADA, FHA, or §504 or RHA), although for residential leases executed on or after July 1, 2024, there cannot be a charge.

	ADA	**FHA**	**§504 of RHA**
Term	Service Animal	Service Animal	
Definition	Dog or miniature horse, trained to serve, and not a pet.	Most animals, often pets, can be service animals. They need to be trained as such. Includes ADA service animal as well as emotional support animals.	
Must Allow	All areas open to the public	Animal allowed in all areas open to the public, unless the animal is out of control and a threat to the health and safety of others, and the owner does act to control the animal. The animal may also be disallowed in the animal is not housebroken. The housing authority cannot set rules on size, weight, or bread, of such animals. (*Baughman v. City of Elkhard* (Texas, 2018).	

To claim discrimination, the person must provide first that he or she is disabled as provided under the Act. Then the person must prove disparate treatment, disparate impact, or failure to provide reasonable accommodation or modification. Disparate treatment requires showing an intent to discriminate, while disparate impact only requires actual discrimination to exist without proving intent. If a person asks for "reasonable accommodations at work or in covered housing, it must be provided unless such modification provides an "unnecessary hardship." A typical example of reasonable *accommodation* would be a parking space near the front door for a person with limited walking ability. A reasonable *modification* would be to modify and widen a door to allow a wheelchair or provide a wheelchair ramp instead of a step. *Fair Housing Bd. V. Windsor Plaza Condo*., 768 SE2nd 79, 87 (VA 2014). Reasonable accommodations do not mean better or best accommodations.