

The (California) Uniform Marketable Record Title Act
CALIFORNIA CIVIL CODE
DIVISION 2. PROPERTY
PART 2. REAL OR IMMOVABLE PROPERTY
TITLE 5. MARKETABLE RECORD TITLE

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Caveats: “Uniform” Don’t be fooled; the “uniformity” refers to the model legislation that was proposed for enactment. That uniformity has been destroyed by the various state legislatures in the enacting. Do not think that you can refer to the Texas, Oklahoma or Delaware “Uniform Marketable Record Title Act” and find the statute as enacted and applicable in California.

‘WHEN’ I have included here (to the best of my ability) the relevant law as it is in effect in California THIS YEAR (2003). If you need to know the law that applies in some other year (earlier or later than 2003) you need to review a source which reflects the relevant law FOR THAT YEAR.

What follows here is almost exclusively a bare recital of the text of the statutes, as codified in California, and some legislative and law revision commentary, with very little case law summary. If you have a question of any significance concerning the interpretation or application of the following you should consult an attorney.

In preparing these materials, I have not been asked to, and have not attempted to, provide the answer to any specific legal question.

Chapter 1—General Provisions; Article 1—Construction

§ 880.020. Legislative declaration and purpose

- (a) **The Legislature declares as public policy that:**
- (1) **Real property is a basic resource of the people of the state** and should be made freely alienable and marketable to the extent practicable in order to enable and encourage full use and development of the real property, including both surface and subsurface interests.
 - (2) **Interests in real property and defects in titles created at remote times, whether or not of record, often constitute unreasonable restraints on alienation and marketability of real property because the interests are no longer valid or have been abandoned or have otherwise become obsolete.**
 - (3) Such interests and defects produce litigation to clear and quiet titles, cause delays in real property title transactions, and hinder marketability of real property.
 - (4) Real property title transactions should be possible with economy and expediency. The status and security of recorded real property titles should be determinable to the extent practicable from an examination of recent records only.
- (b) **It is the purpose of the Legislature in enacting this title to simplify and facilitate real property title transactions in furtherance of public policy by enabling persons to rely on record title to the extent provided in this title, with respect to the property interests specified in this title,** subject only to the limitations expressly provided in this title and notwithstanding any provision or implication to the contrary in any other statute or in the common law. This title shall be liberally construed to effect the legislative purpose. (Added by Stats.1982, c. 1268, p. 4671, § 1.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of section 880.020 is drawn from North Carolina marketable title legislation, N.C. Gen. Stat. § 47B-1 (1976; Supp. 1981). The declaration of public policy is intended to demonstrate the significance of the state interest served by this title and the importance of the retroactive application of the law to the effectuation of that interest. See *In re Marriage of Bouquet*, 16 Cal.3d 583, 592, 546 P.2d 1371, 1376, 128 Cal.Rptr. 427, 432 (1976) (upholding changes in the community property laws as retroactively applied). **A statute may require recordation of previously executed instruments or of extensions of time if a reasonable time is allowed for recordation.** See discussion in 1 A. Bowman, *Ogden's Revised California Real Property Law* § 10.4, at 415-16 (1974). **The burden on holders of old interests of recording a notice of intent to preserve or an extension of time is outweighed by the public good of more secure land transactions.** See, e.g., *Wichelman v. Messner*, 250 Minn. 88, 121, 83 N.W.2d 800, 825 (1957) (upholding Minnesota marketable title legislation): . . . [A] number of marketable title acts have been passed by various states. Such limiting statutes are considered vital to all who are engaged in or concerned with the conveyance of real property. They proceed upon the theory that the economic advantages of being able to pass uncluttered title to land far outweigh any value which the outdated restrictions may have for the person in whose favor they operate. These statutes reflect the appraisal of state legislatures of the "actual economic significance of these interests weighed against the inconvenience and expense caused by their continued existence for

unlimited periods without regard to altered circumstances." . . . They must be construed in the light of the public good in terms of more secure land transactions which outweighs the burden and risk imposed upon owners of old outstanding rights to record their interests. Subdivision (b) is drawn from Section 9 of the Model Marketable Title Act. If the application of a particular statute or common law rule conflicts with the provisions of this title, this title governs. (16 Cal.L.Rev.Comm. Reports 401).

§ 880.030. Construction not to limit or affect equitable principles or recording statutes

Nothing in this title shall be construed to:

- (a) Limit application of the principles of waiver and estoppel, laches, and other equitable principles.
- (b) Affect the operation of any statute governing the effect of recording or failure to record, except as specifically provided in this title. (Added by Stats.1982, c. 1268, p. 4672, § 1.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of Section 880.030 is new; notwithstanding the maximum record duration or period of enforceability of interests in property pursuant to this title, the owner of an interest may waive or be estopped from asserting the interest within the prescribed time, or other equitable defenses may apply. Subdivision (b) is drawn from Section 7 of the Model Marketable Title Act. (16 Cal.L.Rev.Comm. Reports 401).

Article 2—Application of Title

§ 880.240. Interests not subject to expiration pursuant to title

The following interests are not subject to expiration or expiration of record pursuant to this title:

- (a) The interest of a person in possession (including use or occupancy) of real property and the interest of a person under whom a person in possession claims, to the extent the possession would have been revealed by reasonable inspection or inquiry.
- (b) An interest of the United States or pursuant to federal law in real property that is not subjected by federal law to the recording requirements of the state and that has not terminated under federal law.
- (c) An interest of the state or a local public entity in real property.
- (d) A conservation easement pursuant to Chapter 4 (commencing with Section 815) of Title 2. (Added by Stats.1982, c. 1268, p. 4672, § 1.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of Section 880.240 is drawn from Section 3-306(2) of the Uniform Simplification of Land Transfers Act (1977). Subdivision (a) makes clear that if a person in possession claims under another person, whether by lease, license or otherwise, the interest of the other person does not expire. Subdivision (b) is drawn from Section 6 of the Model Marketable Title Act and Section 3-306(4) of the Uniform Act. The Comment to the Model Act states, "The exception as to claims of the United States would probably exist whether stated in the statute or not." Subdivision (c) is comparable to provisions in a number of jurisdictions that have enacted marketable record title legislation. The interest of a public entity is not subject to fractionalization and the current address of the public entity is always known. Subdivision (d) recognizes that a conservation easement may be created that is perpetual in duration. Section 815.2. (16 Cal.L.Rev.Comm. Reports 401).

§ 880.250. Absolute nature of times prescribed; extending time; revival of interests

- (a) **The times prescribed in this title** for expiration or expiration of record of an interest in real property or for enforcement, for bringing an action, or for doing any other required act **are absolute and apply notwithstanding any disability or lack of knowledge of any person or any provisions for tolling a statute of limitation and notwithstanding any longer time applicable pursuant to any statute of limitation.**
- (b) Nothing in this title extends the period for enforcement, for bringing an action, or for doing any other required act, or revives an interest in real property that expires and is unenforceable, pursuant to any applicable statute of limitation. (Added by Stats.1982, c. 1268, p. 4672, § 1.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of Section 880.250 makes clear that **there can be no off-record waivers, extensions, or tolling of the expiration time for, or enforceability of, an interest in real property pursuant to this title.** While off-record waivers, extensions, or tolling (including partial payments in the case of a mortgage or deed of trust) may be effective for purposes of general statutes of limitation, they cannot extend the duration or enforceability of an interest past the times prescribed in this title. Whether a recorded waiver, extension, or tolling is effective depends upon the statute governing the particular interest. Compare Section 882.020 (waiver or extension of time for enforcement of mortgage or deed of trust) with Section 885.030 (no waiver or extension of time for expiration of power of termination). Subdivision (b) is drawn from Section 7 of the Model Marketable Title Act and Section 3-308 of the Uniform Simplification of Land Transfers Act (1977).

§ 880.260. Action or proceeding tolling expiration or expiration of record

An interest in real property, as specified in this title, does not expire or expire of record and is not unenforceable pursuant to this title at the time prescribed in this title if within the time an action is commenced to enforce, establish, clear title to, or otherwise affect the interest and a notice of the pendency of the action is recorded as provided by law. For the purpose of this section, action includes special proceeding and arbitration proceeding. (Added by Stats.1982, c. 1268, p. 4673, § 1.)

LAW REVISION COMMISSION COMMENT. Section 880.260 makes clear that there is no expiration of an interest in real property by operation of law pursuant to this title if a lis pendens is recorded before expiration. This is a specific application of the general provisions governing the effect of a lis pendens. See Code Civ.Proc. § 409. (16 Cal.L.Rev.Comm. Reports 401).

Article 3—Preservation of Interests

§ 880.310. Recordation of notice of intent

- (a) If the time within which an interest in real property expires pursuant to this title depends upon recordation of a notice of intent to preserve the interest, a person may preserve the person's interest from expiration by recording a notice of intent to preserve the interest before the interest expires pursuant to this title. **Recordation of a notice of intent to preserve an interest in real property after the interest has expired pursuant to this title does not preserve the interest.**
- (b) Recordation of a notice of intent to preserve an interest in real property does not preclude a court from determining that an interest has been abandoned or is otherwise unenforceable pursuant to other law, whether before or after the notice of intent to preserve the interest is recorded, and does not validate or make enforceable a claim or interest that is otherwise invalid or unenforceable. **Recordation of a notice of intent to preserve an interest in real property creates a**

presumption affecting the burden of proof that the person who claims the interest has not abandoned and does not intend to abandon the interest.

§ 880.320. Persons entitled to record notice of intent

A notice of intent to preserve an interest in real property may be recorded by any of the following persons:

- (a) A person who claims the interest.
- (b) Another person acting on behalf of a claimant if the person is authorized to act on behalf of the claimant or if the claimant is one of a class whose identity cannot be established or is uncertain at the time of recording the notice of intent to preserve the interest.

§ 880.330. Requisites of notice of intent

Subject to all statutory requirements for recorded documents:

- (a) A notice of intent to preserve an interest in real property shall be in writing and signed and verified by or on behalf of the claimant. If the notice is made on behalf of a claimant, the notice shall include a statement of the authority of the person making the notice.
- (b) **The notice shall contain** all of the following information:
 - (1) The name and mailing address of the claimant. If the notice is made by or on behalf of more than one claimant the notice shall contain the name and mailing address of each claimant.
 - (2) A statement of the character of interest claimed. The statement shall include a reference by record location to the recorded document that creates or evidences the interest in the claimant.
 - (3) A legal description of the real property in which the interest is claimed. The description may be the same as that contained in the recorded document that creates or evidences the interest in the claimant.

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§ 880.340. Form of notice of intent to preserve interest

Subject to all statutory requirements for recorded documents, a notice of intent to preserve an interest in real property shall be in substantially the following form:

Recording requested by:

[RECORDING INFORMATION]
[BY RECORDER]

After recording return to:

SPACE ABOVE FOR USE OF COUNTY RECORDER ONLY, PLEASE

Indexing instructions. This notice must be indexed as follows:
Grantor and grantee index--each claimant is a grantor.

NOTICE OF INTENT TO PRESERVE INTEREST

This notice is intended to preserve an interest in real property from extinguishment pursuant to Title 5 (commencing with Section 880.020) of Part 2 of Division 2 of the Civil Code (Marketable Record Title).

Claimant Name:
Mailing address: (must be given for each claimant)

Interest Character (e.g., power of termination):
Record location of document creating or evidencing interest in claimant:

Real Property Legal description (may be same as in recorded document creating or evidencing interest in claimant):

I assert under penalty of perjury that this notice is not recorded for the purpose of slandering title to real property and I am informed and believe that the information contained in this notice is true. If this notice is made on behalf of a claimant, I assert under penalty of perjury that I am authorized to act on behalf of the claimant.

Signed: _____ Date: _____
(claimant)

(person acting on behalf
of claimant)

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§ 880.350. County of recording notice of intent

- (a) A notice of intent to preserve an interest in real property shall be recorded in the county in which the real property is situated.
- (b) The county recorder shall index a notice of intent to preserve an interest in real property in the index of grantors and grantees. The index entry shall be for the grantor, and for the purpose of this index, the claimant under the notice shall be deemed to be the grantor. If a notice of intent to preserve is recorded by or on behalf of more than one claimant, each claimant shall be deemed to be a grantor and a separate index entry shall be made for each claimant.

§ 880.360. Slandering title; recording notice of intent

A person shall not record a notice of intent to preserve an interest in real property for the purpose of slandering title to the real property. If the court in an action or proceeding to establish or quiet title determines that a person recorded a notice of intent to preserve an interest for the purpose of slandering title, the court shall award against the person the cost of the action or proceeding, including a reasonable attorney's fee, and the damages caused by the recording.

§ 880.370. Extension of time for recordation of notice

If the period prescribed by statute during which a notice of intent to preserve an interest in real property must be recorded expires before, on, or within five years after the operative date of the statute, the period is extended until five years after the operative date of the statute.

CHAPTER 2. ANCIENT MORTGAGES AND DEEDS OF TRUST

§ 882.020. Expiration date; lien of security interest of record; power of sale deemed exercised

- (a) Unless the lien of a mortgage, deed of trust, or other instrument that creates a security interest of record in real property to secure a debt or other obligation has earlier expired pursuant to Section 2911, the lien expires at, and is not enforceable by action for foreclosure commenced, power of sale exercised, or any other means asserted after, the later of the following times:
 - (1) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is ascertainable from the record, 10 years after that date.
 - (2) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is not ascertainable from the record, or if there is no final maturity date or last date fixed for payment of the debt or performance of the obligation, 60 years after the date the instrument that created the security interest was recorded.
 - (3) If a notice of intent to preserve the security interest is recorded within the time prescribed in paragraph (1) or (2), 10 years after the date the notice is recorded.
- (b) For the purpose of this section, a power of sale is deemed to be exercised upon recordation of the deed executed pursuant to the power of sale.
- (c) The times prescribed in this section may be extended in the same manner and to the same extent as a waiver made pursuant to Section 360.5 of the Code of Civil

Procedure, except that an instrument is effective to extend the prescribed times only if it is recorded before expiration of the prescribed times. (Added by Stats.1982, c. 1268, p. 4676, § 1.)

LEGISLATIVE COMMITTEE COMMENT. Section 882.020 prescribes a maximum time for enforcement of a mortgage or deed of trust. It operates to bar enforcement of a mortgage or deed of trust after the time prescribed even though the general statutes of limitation may not have run due to tolling, partial payment, or waiver. See Code Civ.Proc. §§ 337 (four-year statute of limitation); 360 (partial payment turns back statute); 360.5 (waiver of statute of limitation); 351-358 (tolling of statute). The section does not extend the time provided by the general statutes of limitation that apply to enforcement of a mortgage or other lien. Cf. Code Civ.Proc. § 337 (four-year limitation period). The section limits the time for exercise of a power of sale under a deed of trust, reversing the rule of case law that such a power of sale "never outlaws." See, e.g., 3 B. Witkin, Summary of California Law, Security Transactions in Real Property §§ 84-85 (8th ed. 1973). If the underlying obligation of a mortgage or other lien is barred by the general statutes of limitation before the time prescribed in this section the mortgage or other lien may expire and be unenforceable pursuant to Section 2911, even though a power of sale under a deed of trust remains enforceable. The cloud on title of such a mortgage or other lien that has expired and is unenforceable may be removed by judicial action, or may be removed by operation of law after passage of the time prescribed in this section. See Sections 2911 (lien extinguished by lapse of statute of limitation) and 882.030 (effect of expiration).

Subdivision (a) adopts a 10-year maximum enforcement period after maturity of the obligation secured by the mortgage or deed of trust. This period is drawn from the comparable 10-year period of the Model Mortgage Limitation Act § 4(a) and the Uniform Simplification of Land Transfers Act (1977) § 3408(a). Subdivision (a) adopts a 60-year maximum enforcement period after recordation of the security instrument in cases where the maturity date of the obligation cannot be ascertained from the record, whether because the obligation provided no maturity date, because the maturity date is variable depending on facts not in the record, or because the obligation specifies no maturity date. In either case, subdivision (a) provides for a one-time only automatic extension of enforceability for an additional 10 years upon recording a notice of intent to preserve the lien. The effect of subdivision (a) is to prescribe a maximum life for a mortgage or deed of trust based exclusively on the record for marketability of title purposes.

Subdivision (c) provides for waiver or extension of the time for enforcement of a mortgage or deed of trust under subdivision (a). The waiver or extension must be recorded to be effective. This accomplishes the purpose of enabling a determination of enforceability based on the record alone. Under this provision, a waiver or extension may be made only for a period of four years at a time.

NOTES OF DECISIONS

1. Maturity date

Maturity date of promissory note secured by deed of trust was not ascertainable from the record, and thus power of sale under deed of trust did not expire until sixty years after its recordation; there was no evidence that the note was ever recorded, and the deed of trust did not state the maturity date of the note. *Nicolopolulos v. Superior Court* (App. 2 Dist. 2003) 130 Cal.Rptr.2d 626, 106 Cal.App.4th 304.

2. Ascertainable from the record

Term "ascertainable from the record" in statute stating that the lien of a deed of trust expires ten years after the final maturity date of the obligation if that date is ascertainable from the record does not include the contents of unrecorded documents referred to in a recorded document. *Nicolopolulos v. Superior Court* (App. 2 Dist. 2003) 130 Cal.Rptr.2d 626, 106 Cal.App.4th 304.

3. Estoppel

Holder of deed of trust was not estopped from relying on the sixty-year limitation period in foreclosing on property, although deed holder could have enforced his rights as soon as property owner stopped paying on promissory note secured by deed and owner made substantial improvements to the property

thereafter and no longer had records to prove entire obligation was satisfied; deed holder did not make any action or statement on which property owner relied, deed holder had no duty to speak, and property owner was aware of all facts known by deed holder. Nicolopolus v. Superior Court (App. 2 Dist. 2003) 130 Cal.Rptr.2d 626, 106 Cal.App.4th 304. Mortgages . 345

4. Laches

Doctrine of laches did not prevent deed holder from asserting sixty-year limitation period and exercising power of sale in deed of trust in nonjudicial foreclosure; deed holder was not seeking equitable relief or asserting an equitable right, deed holder did not file a lawsuit, and there was no particular prejudice or inequity to property owner, who had signed and benefitted from promissory note, signed deed of trust, and did not repay obligation. Nicolopolus v. Superior Court (App. 2 Dist. 2003) 130 Cal.Rptr.2d 626, 106 Cal.App.4th 304. Mortgages . 345

§ 882.030. Effect of expiration of lien of security interest

Expiration of the lien of a mortgage, deed of trust, or other security interest pursuant to this chapter or any other statute **renders the lien unenforceable by any means commenced or asserted thereafter and is equivalent for all purposes to a certificate of satisfaction, reconveyance, release, or other discharge of the security interest**, and execution and recording of a certificate of satisfaction, reconveyance, release, or other discharge is not necessary to terminate or evidence the termination of the security interest. Nothing in this section precludes execution and recording at any time of a certificate of satisfaction, reconveyance, release, or other discharge. (Added by Stats.1982, c. 1268, p. 4676, § 1.)

LEGISLATIVE COMMITTEE COMMENT. Section 882.030 is drawn from the Model Mortgage Limitation Act § 4 and from the Uniform Simplification of Land Transfers Act (1977) § 3-408(b). Under this section, running of the enforcement period prescribed in Section 882.020 (expiration of record of mortgage or deed of trust) or any other statute such as Section 2911 (lien extinguished by lapse of statute of limitation) has the effect of complete discharge of the mortgage or deed of trust; this reverses the rule that a mortgage or deed of trust barred by the statute of limitations may be equitably enforced. See, e.g., Puckhaber v. Henry, 152 Cal. 419, 93 P. 114 (1907); Mix v. Sodd, 126 Cal.App.3d 386, 178 Cal.Rptr. 736 (1981). (16 Cal.L.Rev.Comm. Reports 401; 82 S.J. 11018, 12489).

§ 882.040. Application of chapter

- (a) Subject to Section 880.370 (grace period for recording notice) and except as otherwise provided in this section, this chapter applies on the operative date to all mortgages, deeds of trust, and other instruments that create a security interest in real property to secure a debt or other obligation, whether executed or recorded before, on, or after the operative date.
- (b) This chapter shall not cause the lien of a mortgage, deed of trust, or other security interest in real property to expire or become unenforceable before the passage of five years after the operative date of this chapter. (Added by Stats.1982, c. 1268, p. 4676, § 1.)

LEGISLATIVE COMMITTEE COMMENT. Subdivision (a) of Section 882.040 makes clear the legislative intent to apply this chapter immediately to existing security interests. Section 880.370 provides a five-year grace period for recording a notice of intent to preserve a security interest that expires by operation of this chapter before, on, or within five years after the operative date of this chapter. Subdivision (b) provides a five-year grace period to enable enforcement of security interests that would be outlawed by the enactment of this chapter and a shorter grace period for enforcement of interests that would be outlawed within five years after the enactment of this chapter. The five-year grace periods do not operate as an

extension of any other statute of limitation or of the time within which an effective waiver or extension of the statute of limitation must be made pursuant to Code of Civil Procedure Sections 337 (statute of limitation) and 360.5 (waiver of statute of limitation). See Section 880.250 (relation of title to statutes of limitation) (16 Cal.L.Rev.Comm. Reports 401; 82 S.J. 11018, 12489).

CHAPTER 3. MINERAL RIGHTS

ARTICLE 1. GENERAL PROVISIONS

§ 883.110. Mineral right defined

As used in this chapter, "mineral right" means an interest in minerals, regardless of character, whether fugacious or nonfugacious, organic or inorganic, that is created by grant or reservation, regardless of form, whether a fee or lesser interest, mineral, royalty, or leasehold, absolute or fractional, corporeal or incorporeal, and includes express or implied appurtenant surface rights. (Added by Stats.1984, c. 240, § 2.)

LAW REVISION COMMISSION COMMENT. Section 883.110 defines mineral rights broadly to include a fee interest as well as any lesser interest and to include oil and gas as well as in-place minerals such as ores, metals, and coal. Cf. *In re Waltz*, 197 Cal. 263, 240 P. 19 (1925) (characterizing mineral rights). Section 883.110 also makes clear that for the purposes of this chapter, surface rights appurtenant to a mineral interest are included within the meaning of "mineral right." Cf. *Callahan v. Martin*, 3 Cal.2d 110, 43 P.2d 788 (1935) (grant of minerals includes implied right of entry to extract them).

§ 883.120. Application of chapter; mineral rights reserved to United States; mineral rights not subject to expiration

- (a) This chapter does not apply to a mineral right reserved to the United States (whether in a patent, pursuant to federal law, or otherwise) or to an oil or gas lease, mining claim, or other mineral right of a person entitled pursuant thereto, to the extent provided in Section 880.240.
- (b) This chapter does not apply to a mineral right of the state or a local public entity, or of any other person, to the extent provided in Section 880.240.

§ 883.130. Abandoned mineral rights

Nothing in this chapter limits or affects the common law governing abandonment of a mineral right or any other procedure provided by statute for clearing an abandoned mineral right from title to real property.

§ 883.140. Mineral right lease; expiration or abandonment; quitclaim deed

- (a) As used in this section:
 - (1) "Lessee" includes an assignee or other successor in interest of the lessee.
 - (2) "Lessor" includes a successor in interest or heir or grantee of the lessor.
- (b) If the term of a mineral right lease has expired or a mineral right lease has been abandoned by the lessee, the lessee shall, within 30 days after demand therefor by the lessor, execute, acknowledge, and deliver, or cause to be recorded, a deed quitclaiming all interest in and to the mineral rights covered by the lease. If the expiration or abandonment covers less than the entire interest of the lessee, the lessee shall execute, acknowledge, and deliver an appropriate instrument or notice

of surrender or termination that covers the interest that has expired or been abandoned.

- (c) If the lessee fails to comply with the requirements of this section, the lessee is liable for all damages sustained by the lessor as a result of the failure, including, but not limited to, court costs and reasonable attorney's fees in an action to clear title to the lessor's interest. The lessee shall also forfeit to the lessor the sum of one hundred fifty dollars (\$150).
- (d) Nothing in this section makes a quitclaim deed or other instrument or notice of surrender or termination, or a demand therefor, a condition precedent to an action to clear title to the lessor's interest. (Added by Stats.1984, c. 240, § 2.)

LAW REVISION COMMISSION COMMENT. Section 883.140 continues the substance of former Section 794. Cf. Section 886.020 and Comment thereto (release of contract for sale of real property). [17 Cal.L.Rev.Comm.Reports 957 (1984)].

ARTICLE 2. TERMINATION OF DORMANT MINERAL RIGHT

§ 883.210. Action to terminate dormant mineral right

The owner of real property subject to a mineral right may bring an action to terminate the mineral right pursuant to this article if the mineral right is dormant. (Added by Stats.1984, c. 240, § 2.)

LAW REVISION COMMISSION COMMENT. Section 883.210 authorizes termination of dormant mineral rights, subject to the limitations and conditions in this article. This is consistent with public policy to enable and encourage full use and development of real property, including both surface and subsurface interests. Section 880.020 (declaration of policy and purposes). Section 883.210 is also consistent with the common law rule that mineral rights in oil and gas are subject to abandonment, and applies to mineral rights in other substances as well. See Sections 883.110 ("mineral right" defined) and 883.130 (law governing abandonment not affected) and Comments thereto; cf. Section 883.140 (clearing record of expired or abandoned mineral right lease). This article supplements common law principles of abandonment by providing a separate and independent basis for terminating a dormant mineral right. [17 Cal.L.Rev.Comm.Reports 957 (1984)].

§ 883.220. Dormant rights; conditions

For the purpose of this article, a mineral right is dormant if all of the following conditions are satisfied for a period of 20 years immediately preceding commencement of the action to terminate the mineral right:

- (a) There is no production of the minerals and no exploration, drilling, mining, development, or other operations that affect the minerals, whether on or below the surface of the real property or on other property, whether or not unitized or pooled with the real property.
- (b) No separate property tax assessment is made of the mineral right or, if made, no taxes are paid on the assessment.
- (c) No instrument creating, reserving, transferring, or otherwise evidencing the mineral right is recorded. (Added by Stats.1984, c. 240, § 2.)

LAW REVISION COMMISSION COMMENT. Section 883.220 defines dormancy for the purpose of this article; it does not affect the common law of abandonment. See Section 883.130 (law governing abandonment not affected). The 20-year period prescribed in Section 883.220 is consistent with the 20-

year period prescribed by statute for termination of a right of entry or occupation of surface lands under an oil or gas lease. Code Civ.Proc. §§ 772.010-772.060. **The 20-year period can be extended indefinitely by recordation of a notice of intent to preserve the mineral right.** Section 883.230 (preservation of mineral right). [17 Cal.L.Rev.Comm.Reports 957 (1984)].

§ 883.230. Notice of intent to preserve mineral right; effect

- (a) **An owner of a mineral right may at any time record a notice of intent to preserve the mineral right.**
- (b) In lieu of the statement of the character of the interest claimed and the record location of the documents creating or evidencing the mineral rights claimed as otherwise required by paragraph (2) of subdivision (b) of Section 880.330 and in lieu of the legal description of the real property in which the interest is claimed as otherwise required by paragraph (3) of subdivision (b) of Section 880.330 and notwithstanding the provisions of Section 880.340 or any other provision in this title, **a notice of intent to preserve a mineral right may refer generally and without specificity to any or all mineral rights claimed by claimant in any real property situated in the county.**
- (c) **A mineral right is not dormant for the purpose of this article if:**
 - (1) **A notice of intent to preserve the mineral right is recorded within 20 years immediately preceding commencement of the action to terminate the mineral right.**
 - (2) **A notice of intent to preserve the mineral right is recorded pursuant to Section 883.250 after commencement of the action to terminate the mineral right. (Added by Stats.1984, c. 240, § 2.)**

LAW REVISION COMMISSION COMMENT. Section 883.230 makes recording a notice of intent to preserve a mineral right conclusive evidence of non-dormancy for purposes of this article. Recording a notice of intent to preserve also creates a presumption affecting the burden of proof that the claimant has not abandoned the mineral right for purposes of a determination of abandonment pursuant to common law. Section 880.310 (notice of intent to preserve interest). [17 Cal.L.Rev.Comm.Reports 957 (1984)].

§ 883.240. Actions; place; procedure

- (a) An action to terminate a mineral right pursuant to this article shall be brought in the superior court of the county in which the real property subject to the mineral right is located.
- (b) The action shall be brought in the same manner and shall be subject to the same procedure as an action to quiet title pursuant to Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure, to the extent applicable. (Added by Stats.1984, c. 240, § 2.)

LAW REVISION COMMISSION COMMENT. Section 883.240 incorporates, insofar as applicable, the general quiet title procedures for an action to terminate a dormant mineral right pursuant to this article. See Code Civ.Proc. §§ 760.010-764.070. [17 Cal.L.Rev.Comm.Reports 957 (1984)].

§ 883.250. Late notice of intent to preserve mineral right; condition of dismissal of action

In an action to terminate a mineral right pursuant to this article, the court shall permit the owner of the mineral right to record a late notice of intent to preserve the mineral right as a condition of dismissal of the action, upon payment into court for the benefit of the owner of the real property

the litigation expenses attributable to the mineral right or portion thereof as to which the notice is recorded. As used in this section, the term "litigation expenses" means recoverable costs and expenses reasonably and necessarily incurred in preparation for the action, including a reasonable attorney's fee. (Added by Stats.1984, c. 240, § 2.)

LEGISLATIVE COMMITTEE COMMENT. Section 883.250 enables a mineral right owner to preserve the mineral right after commencement of an action to terminate the right by filing a late notice of intent to preserve the interest. This authority is conditioned upon payment of the property owner's litigation expenses. If the mineral rights are fractionated, the mineral right owner must pay only the fraction of litigation expenses that corresponds to the mineral rights preserved. Litigation expenses include disbursements made for title reports and other disbursements made in preparation for the litigation as well as court costs and attorneys fees incurred in connection with the litigation. [17 Cal.L.Rev.Comm.Reports 957 (1984); 18 Cal.L.Rev.Comm. Reports 71 (1984)].

§ 883.260. Termination under article; effect

A mineral right terminated pursuant to this article is unenforceable and is deemed to have expired. A court order terminating a mineral right pursuant to this article is equivalent for all purposes to a conveyance of the mineral right to the owner of the real property. (Added by Stats.1984, c. 240, § 2.)

LAW REVISION COMMISSION COMMENT. Section 883.260 makes clear that termination of a dormant mineral right has the effect of a reconveyance to the surface owner. See also Section 883.240 (court procedure) and Code Civ.Proc. §§ 764.010-764.070 (effect of quiet title judgment). [17 Cal.L.Rev.Comm.Reports 957 (1984)].

§ 883.270. Application of article

Subject to Section 880.370 (grace period for recording notice), this article applies to all mineral rights, whether executed or recorded before, on, or after January 1, 1985. (Added by Stats.1984, c. 240, § 2.)

LAW REVISION COMMISSION COMMENT. Section 883.270 makes clear the legislative intent to apply this article to mineral interests existing on the date this article becomes operative (January 1, 1985). Section 880.370 provides a five-year grace period for recording a notice of intent to preserve a mineral interest that would be subject to termination pursuant to this article before, on, or within five years after the operative date of this article. See Sections 883.230 (preservation of mineral right) and 880.370 (grace period for recording notice) and Comments thereto. [17 Cal.L.Rev.Comm.Reports 957 (1984)].

CHAPTER 4. UNEXERCISED OPTIONS

§ 884.010. Expiration date; recorded instrument

If a recorded instrument creates or gives constructive notice of an option to purchase real property, the option expires of record if no conveyance, contract, or other instrument that gives notice of exercise or extends the option is recorded within the following times:

- (a) Six months after the option expires according to its terms.
- (b) If the option provides no expiration date, six months after the date the instrument that creates or gives constructive notice of the option is recorded. (Added by Stats.1982, c. 1268, p. 4677, § 1.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of Section 884.010 reduces the period of former Section 1213.5 for expiration of record of an option from one year to six months after expiration by its terms.

Under subdivision (b) an option with no prescribed term expires of record six months after its recordation rather than one year after its expiration by operation of law as provided under former Section 1213.5. This modifies the rule that if an option provides no expiration date it may be exercised within a reasonable time after it is executed. See, e.g., 1 B. Witkin, Summary of California Law, Contracts § 129 (8th ed. 1973). Subdivision (b) does not prescribe the time within which such an option must be exercised; it only limits the effect of the option on third persons. See Section 884.020 (effect of expiration).

Nothing in Section 884.010 affects the application of the Rule Against Perpetuities to an option, whether the option expires within a fixed or indefinite period in accordance with its terms or whether it expires by operation of law within a reasonable time after it is executed. See, e.g., 3 B. Witkin, Summary of California Law, Real Property § 304 (8th ed. 1973).

Nothing in Section 884.010 affects an option to purchase included in the terms of the lease of a lessee in possession. See Section 880.240(a) (interests excepted from title). [16 Cal.L.Rev.Comm. Reports 401]

§ 884.020. Effect of expiration of record

Upon the expiration of record of an option to purchase real property, the recorded instrument that creates or gives constructive notice of the option ceases to be notice to any person or to put any person on inquiry with respect to the exercise or existence of the option or of any contract, conveyance, or other writing that may have been executed pursuant to the option. (Added by Stats.1982, c. 1268, p. 4677, § 1.)

LAW REVISION COMMISSION COMMENT. Section 884.020 continues the substance of a portion of former Section 1213.5. An option that has expired of record does not affect third persons but may still affect the parties to the option. See Section 884.010 (expiration of record) and Comment thereto. [16 Cal.L.Rev.Comm. Reports 401]

§ 884.030. Application of chapter

- (a) Except as otherwise provided in this section, this chapter applies on the operative date to all recorded instruments that create or give constructive notice of options to purchase real property, whether executed or recorded before, on, or after the operative date.
- (b) This chapter shall not cause an option that expires according to its terms within one year before, on, or within one year after the operative date of this chapter to expire of record until one year after the operative date.
- (c) This chapter shall not cause an option that provides no expiration date and that is recorded before the operative date of this chapter to expire of record until five years after the operative date of this chapter.
- (d) Nothing in this chapter affects a recorded instrument that has ceased to be notice to any person or put any person on inquiry with respect to the exercise or existence of an option pursuant to former Section 1213.5 before the operative date of this chapter. (Added by Stats.1982, c. 1268, p. 4677, § 1.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of Section 884.030 continues the effect of former Section 1213.5 to govern all options now in existence or hereafter created. Subdivision (b) is intended to protect fixed term option holders who may have relied on the one-year expiration period formerly provided in Section 1213.5. Subdivision (c) is intended to protect indefinite term option holders before the operative date of this statute from expiration until an adequate time after the operative date, during which time an exercise or extension of the option may be recorded. Subdivision (d) makes clear that this chapter does not revive options that have expired pursuant to prior law (16 Cal.L.Rev.Comm. Reports 401).

CHAPTER 5. POWERS OF TERMINATION

§ 885.010. Definitions

- (a) As used in this chapter :
- (1) "Power of termination" means the power to terminate a fee simple estate in real property to enforce a restriction in the form of a condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as a power of termination, right of entry or reentry, right of possession or repossession, reserved power of revocation, or otherwise, and includes a possibility of reverter that is deemed to be and is enforceable as a power of termination pursuant to Section 885.020.
 - (2) "Power of termination" includes the power created in a transferee to terminate a fee simple estate in real property to enforce a restriction on the use of the real property in the form of a limitation or condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as an executory interest, executory limitation, or otherwise, and includes the interest known at common law as an executory interest preceded by a fee simple determinable.
- (b) A power of termination is an interest in the real property.
- (c) For the purpose of applying this chapter to other statutes relating to powers of termination, the terms "right of reentry," "right of repossession for breach of condition subsequent," and comparable terms used in the other statutes mean "power of termination" as defined in this section. (Added by Stats.1982, c. 1268, p. 4677, § 1. Amended by Stats.1991, c. 156 (A.B.1577), § 15.)

LAW REVISION COMMISSION. Section 885.010 redefines the right of entry as a power of termination, the more descriptive and technically accurate of the two terms. See, e.g., *Parry v. Berkeley Hall School Foundation*, 10 Cal.2d 422, 74 P.2d 55 (1937). Places in the code where old terminology is used include Sections 791 and 793 ("right of re-entry") and 1046 ("right of reentry, or of repossession for breach of condition subsequent").

Despite redefinition, the power of termination is an interest in property and is subject to provisions governing property interests. See, e.g., Section 699 (future interests pass by succession, will, and transfer). A power of termination is transferable whether it would be classified at common law as a right of entry or possibility of reverter. See Section 1046. This resolves uncertainty in the case law. See, e.g., *Johnston v. City of Los Angeles*, 176 Cal. 479, 168 P. 1047 (1917) and *Victoria Hospital Assn. v. All Persons*, 169 Cal. 455, 147 P. 124 (1915). (16 Cal.L.Rev.Comm. Reports 401).

1991 Amendment

Section 885.010 is amended to include an executory limitation on a fee simple within the scope of this chapter. The language of subdivision (a)(2) extends the definition of "power of termination" to include an executory interest created in a transferee of real property. For the purpose of this chapter, the inclusion of such executory interests extends the traditional use of the term "power of termination" beyond rights of entry and related interests that were retained by the grantor. The traditional description of an executory interest preceded by a fee simple determinable in subdivision (a)(2) makes the coverage of this provision complete. The fee simple determinable is abolished in Section 885.020. See Comment to Section 885.020.

Executory interests are also subject to the limitations provided in the statutory rule against perpetuities. See Prob.Code §§ 21202 (application of statutory rule), 21205 (90-year wait-and-see period). Thus, an executory interest that becomes invalid under the statutory rule against perpetuities may not be renewed

under this chapter. Similarly, if an executory interest terminates under this chapter, it is fully terminated and does not continue for purposes of the statutory rule against perpetuities. See Section 885.060 (effect of expiration of power of termination). [21 Cal.L.Rev.Comm.Reports 53 (1991)]

NOTES OF DECISIONS

1. Power of termination

"Power of termination" was reversionary interest held by grantor of 60-foot strip of land to be used for right-of-way for electric railroad. *Concord & Bay Point Land Co. v. City of Concord* (App. 1 Dist. 1991) 280 Cal.Rptr. 623, 229 Cal.App.3d 289. Reversions . 1

2. Personal covenant

Deed conveying right-of-way to railroad for construction of branch line "provided that" railroad continuously work and operate line contained personal covenant to build and operate branch line, rather than condition subsequent, although granting clause stated that conveyance was given in consideration of sum of \$1 and "in further consideration of conditions, provisions and covenants hereinafter contained." *Sanders v. East Bay Mun. Utility Dist.* (App. 1 Dist. 1993) 20 Cal.Rptr.2d 1, 16 Cal.App.4th 125, rehearing denied and modified. Deeds . 144(1)

§ 885.015. Application of chapter; power of termination

This chapter does not apply to any of the following:

- (a) A power of termination conditioned upon the continued production or removal of oil or gas or other minerals. [See § 885.020 & § 885.010(a)(1).]
- (b) A power of termination as to separately owned improvements or fixtures conditioned upon the continued leasehold or possessory interest in the underlying land. (Added by Stats.1982, c. 1268, p. 4678, § 1. Amended by Stats.1991, c. 156 (A.B.1577), §16.)

LEGISLATIVE COMMITTEE COMMENT. Section 885.015 makes clear that this chapter applies only to classical possibilities of reverter and rights of entry. It does not affect the characterization, duration, or manner of enforcement of such contemporary hybrids as a reversionary interest in mineral rights retained by the owner of property subject to an oil and gas lease, or a reversionary interest of the owner of land in separately owned buildings, improvements, or fixtures, built or to be built on land subject to a ground or air rights lease in which the owner of the buildings, improvements, or fixtures is the lessee. (16 Cal.L.Rev.Comm. Reports 401).

1991 Amendment

Section 885.015 is amended to refer to powers of termination, for consistency with the broadened scope of this chapter. See Section 885.010(b) ("power of termination" includes executory interest). This revision makes the exception provided in this section coextensive with the interests covered by this chapter. [21 Cal.L.Rev.Comm.Reports 53 (1991)]

§ 885.020. Fees simple determinable and possibilities of reverter abolished

Fees simple determinable and possibilities of reverter are abolished. Every estate that would be at common law a fee simple determinable is deemed to be a fee simple subject to a restriction in the form of a condition subsequent. Every interest that would be at common law a possibility of reverter is deemed to be and is enforceable as a power of termination. (Added by Stats.1982, c. 1268, p. 4678, § 1.)

LAW REVISION COMMISSION COMMENT 1982 ADDITION. Section 885.020 abolishes the estate known at common law as the fee simple determinable and the interest known as the possibility of reverter. Cf. Section 763 (estates tail abolished); Ky.Rev.Stats. § 381.218 (Baldwin 1979) (fee simple

determinable and possibility of reverter abolished). These interests were recognized late in California jurisprudence and added little to California land law. See *Dabney v. Edwards*, 5 Cal.2d 1, 53 P.2d 962 (1935) (recognizing fee simple determinable and possibility of reverter). Section 885.020 applies to existing estates and interests as well as to those created after its enactment. See Section 885.070 (transitional provisions). Section 885.020 does not affect determinable life estates or determinable terms for years; it applies only to fee simple estates. See Section 885.010 ("power of termination" defined). (16 Cal.L.Rev.Comm. Reports 401).

NOTES OF DECISIONS

1. Validity

Statute transforming possibility of reverter to a power of termination did not violate due process rights of grantor's successor in interest; possibility of a reverter was not abolished, but was merely transformed into a power of termination. *Walton v. City of Red Bluff* (App. 3 Dist. 1991) 3 Cal.Rptr.2d 275, 2 Cal.App.4th 117, review denied. Constitutional Law . 278(1.3); Estates In Property . 2

2. In general

Property grantee's failure to raise in the trial court the issue of grantor's successor's failure to record right of reentry under the marketable record title statutes precluded consideration of that issue on appeal; statute required holder of reversionary interest to file a notice of intent to preserve that interest once every 30 years. *Walton v. City of Red Bluff* (App. 3 Dist. 1991) 3 Cal.Rptr.2d 275, 2 Cal.App.4th 117, review denied.

Under marketable record title statute converting common law possibility of reverter to a power of termination, the interest held by the successor in interest to the grantor was a power of termination which had to be exercised through reentry; successor did not have immediate right to property. *Walton v. City of Red Bluff* (App. 3 Dist. 1991) 3 Cal.Rptr.2d 275, 2 Cal.App.4th 117, review denied.

Marketable record title statute did not require compliance with statute as an element of the cause of action to reenter property or quiet title to the property, and thus failure to plead compliance with statute did not defeat claim. *Walton v. City of Red Bluff* (App. 3 Dist. 1991) 3 Cal.Rptr.2d 275, 2 Cal.App.4th 117, review denied.

§ 885.030. Expiration dates; recorded instruments; contrary provisions

- (a) **A power of termination of record expires at the later of the following times:**
- (1) Thirty years after the date the instrument reserving, transferring, or otherwise evidencing the power of termination is recorded.
 - (2) Thirty years after the date a notice of intent to preserve the power of termination is recorded, if the notice is recorded within the time prescribed in paragraph (1).
 - (3) Thirty years after the date an instrument reserving, transferring, or otherwise evidencing the power of termination or a notice of intent to preserve the power of termination is recorded, **if the instrument or notice is recorded within 30 years after the date such an instrument or notice was last recorded.**
- (b) This section applies **notwithstanding any provision to the contrary in the instrument reserving, transferring, or otherwise evidencing the power of termination or in another recorded document unless the instrument or other recorded document provides an earlier expiration date.** (Added by Stats.1982, c. 1268, p. 4678, § 1.)

LAW REVISION COMMISSION COMMENT. Section 885.030 provides for expiration of a power of termination after 30 years, notwithstanding a longer or indefinite period provided in the instrument reserving the power. **The expiration period supplements the rule against perpetuities. The rule against perpetuities does not apply to reversionary powers of termination.** See *Strong v. Shatto*, 45 Cal.App. 29, 187 P. 159 (1919); Prob.Code § 21225(g) (exclusion from statutory rule against perpetuities). Executory

interests remain subject to the limitations provided in the statutory rule against perpetuities. See Comment to Section 885.010; Prob.Code §§ 21202 (application of statutory rule), 21205 (90-year wait-and-see period).

The expiration period runs from the date of recording rather than the date of creation of the power of termination because the primary purpose of Section 885.030 is to clear record title. The expiration period can be extended for up to 30 years at a time by recordation of a notice of intent to preserve the power of termination. See Section 880.310 (notice of intent to preserve interest). Recordation of a notice of intent to preserve the power of termination does not enable enforcement of a power that has expired because it has become obsolete due to changed conditions or otherwise. See Sections 880.310 (notice of intent to preserve interest), 885.040 (obsolete power of termination), & Comments.

For the effect of expiration of a power of termination pursuant to this section, see Section 885.060 (effect of expiration). This section does not affect conservation easements pursuant to Sections 815-816. See Section 880.240 (interests excepted from title) & Comment. See also Section 885.015 (exceptions from chapter) & Comment. [21 Cal.L.Rev.Comm. Reports 53 (1991).]

§ 885.040. Obsolete powers; expiration; grants to public entities, etc.

- (a) **If a power of termination becomes obsolete, the power expires.**
- (b) As used in this section, a power of termination is obsolete if any of the following circumstances applies:
 - (1) **The restriction to which the fee simple estate is subject is of no actual and substantial benefit to the holder of the power.**
 - (2) **Enforcement of the power would not effectuate the purpose of the restriction to which the fee simple estate is subject.**
 - (3) **It would be otherwise inequitable to enforce the power because of changed conditions or circumstances.**
- (c) No power of termination shall expire under this section during the life of the grantor if it arises from a grant by a natural person without consideration to a public entity or to a society, corporation, institution, or association exempt by the laws of this state from taxation. (Added by Stats.1982, c. 1268, p. 4678, § 1.)

LEGISLATIVE COMMITTEE COMMENT. Section 885.040 is drawn from New York law. See N.Y., Real Prop. Actions and Proc. Law § 1951 (McKinney 1979). It codifies the rule that reversionary interests will not be enforced if the restriction does not benefit the holder of the interests. See, e.g., *Young v. Cramer*, 38 Cal.App.2d 64, 100 P.2d 523 (1940) (holder of interest not an owner of appurtenant property). It also codifies existing case law relating to obsolete rights of entry. See, e.g., *Letteau v. Ellis*, 122 Cal.App. 584, 10 P.2d 496 (1932) (changed circumstances). However, Section 885.040 also imposes a limitation on equitable doctrines denying enforcement where a public or charitable donation is involved.

A power of termination may expire pursuant to this section if it becomes obsolete notwithstanding the fact that the 30-year statutory duration of the power has not elapsed and notwithstanding the fact that a notice of intent to preserve the power may have been filed. See Section 885.030 (expiration of power of termination). If the 30-year statutory duration of the power has elapsed the power expires regardless whether it has become obsolete within the meaning of this section. For the effect of expiration of a power of termination pursuant to this section, see Section 885.060 (effect of expiration) (16 Cal.L.Rev.Comm. Reports 401; 82 S.J. 11018, 12489).

NOTES OF DECISIONS

1. Effect

Town which was granted property for use as a library was not justified in abandoning property for library uses under the "changed conditions" doctrine; town alleged that it needed a bigger, modern library building, not that the present building could not be used for the purposes of the grant or that the use of surrounding property made operation of library impracticable. *Walton v. City of Red Bluff* (App. 3 Dist. 1991) 3 Cal.Rptr.2d 275, 2 Cal.App.4th 117, review denied. *Municipal Corporations* . 223

§ 885.050. Exercise of power; notice or civil action; record

A power of termination shall be exercised only by notice or by civil action and, if the power of termination is of record, the exercise shall be of record. The notice shall be given, and any civil action shall be commenced, within five years after breach of the restriction to which the fee simple estate is subject, or such longer period as may be agreed to by the parties by a waiver or extension recorded before expiration of that period. (Added by Stats.1982, c. 1268, p. 4678, § 1.)

LAW REVISION COMMISSION COMMENT. Section 885.050 provides that even if a power of termination is phrased in terms of a right of entry, the power may be exercised only by notice or by civil action. This is consistent with Sections 791 (notice) and 793 (action for possession). See also *Jordan v. Talbot*, 55 Cal.2d 597, 361 P.2d 20, 12 Cal.Rptr. 488 (1961) (right of entry in lease).

Section 885.050 makes clear that the statutory limitation period applicable to a power of termination is five years. Cf. Code Civ.Proc. §§ 319-320 (five years). Former law was not clear. Compare, e.g., 3 B. Witkin, *Summary of California Law Real Property* § 188, at 1926 (8th ed. 1973) (enforcement within a "reasonable time") and *Lincoln v. Narom Development Co.*, 10 Cal.App.3d 619, 89 Cal.Rptr. 128 (1970) (statute of limitation not applicable) with 2 A. Bowman, *Ogden's Revised California Real Property Law* § 23.32 (1975) (five years pursuant to Code of Civil Procedure Section 320).

Although Section 885.050 prescribes the limitation period for exercise of a power of termination to enforce breach of a restriction, it does not otherwise affect the existence or continued vitality of the power of termination as to other breaches. Nor does Section 885.050 preclude earlier termination of a power of termination through waiver or estoppel. See Section 880.030(a) (application of waiver and estoppel). See, e.g., *Santa Monica v. Jones*, 104 Cal.App.2d 463, 232 P.2d 55 (1951) (waiver); *Wedum-Aldahl Co. v. Miller*, 18 Cal.App.2d 745, 64 P.2d 762 (1937) (waiver or estoppel); *Hanna v. Rodeo Vallejo Ferry Co.*, 89 Cal.App. 462, 265 P. 287 (1928) (waiver or estoppel) (16 Cal.L.Rev.Comm. Reports 401).

NOTES OF DECISIONS

1. Accrual

Under statute requiring suit to enforce power of termination to be commenced within a year after entry is made or within five years from accrual of right to enter, right to reentry accrues upon breach of condition giving rise to power of termination. *Sanders v. East Bay Mun. Utility Dist.* (App. 1 Dist. 1993) 20 Cal.Rptr.2d 1, 16 Cal.App.4th 125, rehearing denied and modified. *Limitation Of Actions* . 44(1)

§ 885.060. Effect of expiration of power; application to equitable servitude; construction of law

- (a) Expiration of a power of termination pursuant to this chapter makes the power unenforceable and is equivalent for all purposes to a termination of the power of record and a quitclaim of the power to the owner of the fee simple estate, and execution and recording of a termination and quitclaim is not necessary to terminate or evidence the termination of the power.

- (b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.
- (c) However, subdivision (b) does not apply to a restriction for which a power of termination has expired under this chapter if the restriction is also an equitable servitude alternatively enforceable by injunction. Such an equitable servitude shall remain enforceable by injunction and any other available remedies, but shall not be enforceable by a power of termination. This subdivision does not constitute a change in, but is declaratory of, the existing law. However, nothing in this subdivision shall be construed to make enforceable any restriction prohibited or made unenforceable by other provisions of law, including Section 53. (Added by Stats.1982, c. 1268, p. 4679, § 1. Amended by Stats.1990, c. 1114 (A.B.3220), § 1.)

LAW REVISION COMMISSION COMMENT. Section 885.060 provides for the clearing of record title to real property by operation of law after a power of termination has expired under Section 885.030 (expiration of power of termination). Title can be cleared by judicial decree prior to the time prescribed in Section 885.030 in case of an obsolete power of termination. See Section 885.040 (obsolete power of termination); Hess v. Country Club Park, 213 Cal. 613, 2 P.2d 782 (1931) (16 Cal.L.Rev.Comm. Reports 401).

§ 885.070. Operative date; application of chapter; prior breach of restriction on fee simple estate

- (a) Subject to Section 880.370 (grace period for recording notice) and except as otherwise provided in this section, this chapter applies on the operative date to all powers of termination, whether executed or recorded before, on, or after the operative date.
- (b) If breach of the restriction to which the fee simple estate is subject occurred before the operative date of this chapter and the power of termination is not exercised before the operative date of this chapter, the power of termination shall be exercised, or in the case of a power of termination of record, exercised of record, within the earlier of the following times:
 - (1) The time that would be applicable pursuant to the law in effect immediately prior to the operative date of this chapter.
 - (2) Five years after the operative date of this chapter.
- (c) As used in this section, "operative date" means the operative date of this chapter as enacted or, with respect to any amendment of a section of this chapter, the operative date of the amendment. (Added by Stats.1982, c. 1268, p. 4679, § 1. Amended by Stats.1991, c. 156 (A.B.1577), § 17.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of Section 885.070 makes clear the legislative intent to apply this chapter immediately to existing powers of termination. Section 880.370 provides a five-year grace period for recording a notice of intent to preserve a power of termination that expires by operation of this chapter before, on, or within five years after the operative date of this chapter.

Subdivision (b) provides a five-year grace period to enable enforcement of powers of termination that would be barred upon enactment of this chapter by the absolute limitation period for enforcement provided by Section 885.050 (time for exercise of power) and a shorter grace period for enforcement of powers of termination that would be barred within five years after enactment of this chapter (16 Cal.L.Rev.Comm. Reports 401).

1991 Amendment

Subdivision (c) is added to Section 885.070 to clarify the application of this section to executory interests included within the scope of this chapter by the amendment of Section 885.010. The effect is the same as the effect on powers of termination when this chapter was enacted. See 1982 Cal.Stat. ch. 1268, § 1. [21 Cal.L.Rev.Comm.Reports 53 (1991)]

1. Governing section

Under deed conveying right-of-way to railroad on condition that property would revert to grantors on abandonment, and defining abandonment as discontinuance of "either passenger or freight service," grantors were required to enforce condition within five years of termination of passenger service, rather than within five years of subsequent termination of freight service. *Sanders v. East Bay Mun. Utility Dist.* (App. 1 Dist. 1993) 20 Cal.Rptr.2d 1, 16 Cal.App.4th 125, rehearing denied and modified.

Under statute requiring suit to enforce power of termination to be commenced within a year after entry is made or within five years from accrual of right to enter, right to reentry accrues upon breach of condition giving rise to power of termination. *Sanders v. East Bay Mun. Utility Dist.* (App. 1 Dist. 1993) 20 Cal.Rptr.2d 1, 16 Cal.App.4th 125, rehearing denied and modified.

Action to enforce power of termination was based on right of entry, accrued no later than 1975 breach of condition to use land as railroad right-of-way, and was governed by statute of limitations requiring action to be brought within five years from accrual of right to enter [West's Ann.Cal.C.C.P. § 320]. *Concord & Bay Point Land Co. v. City of Concord* (App. 1 Dist. 1991) 280 Cal.Rptr. 623, 229 Cal.App.3d 289.

CHAPTER 6. UNPERFORMED CONTRACTS FOR SALE OF REAL PROPERTY

§ 886.010. Definitions

As used in this chapter:

- (a) "Contract for sale of real property" means an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which requires conveyance of title within one year from the date of formation of the contract, whether designated in the agreement a "contract for sale of real property," "land sale contract," "deposit receipt," "agreement for sale," "agreement to convey," or otherwise.
- (b) "Recorded contract for sale of real property" includes the entire terms of a contract for sale of real property that is recorded in its entirety or is evidenced by a recorded memorandum or short form of the contract. (Added by Stats.1982, c. 1268, p. 4679, § 1.)

LAW REVISION COMMISSION COMMENT. Section 886.010 is drawn from Sections 2985 and 2985.51 and Business and Professions Code Section 10029 (real property sales contracts), but applies only to contracts of a type not covered by the other sections (contracts to be performed within one year). The section also applies to agreements to convey that are dependent on performance of conditions other than payment of money. Real property sales contracts (not to be performed within one year), popularly called installment land contracts (not to be performed within one year. (16 Cal.L.Rev.Comm. Reports 401).

§ 886.020. Demand; release of unperformed contract; action to clear title

If the party to whom title to real property is to be conveyed pursuant to a recorded contract for the sale of real property fails to satisfy the specified conditions set forth in the contract and does not seek performance of the contract or restitution of amounts paid under the contract, the party shall, upon demand therefor made after the operative date of this chapter, execute a release of

the contract, duly acknowledged for record, to the party who agreed to convey title. Willful violation of this section by the party to whom title is to be conveyed without good cause makes the party liable for the damages the party who agreed to convey title sustains by reason of the violation, including but not limited to court costs and reasonable attorney's fees in an action to clear title to the real property. Nothing in this section makes a release or a demand therefor a condition precedent to an action to clear title to the real property. (Added by Stats.1982, c. 1268, p. 4679, § 1.)

LAW REVISION COMMISSION COMMENT. Section 886.020 is new. Cf. Section 2941 (reconveyance upon termination of a mortgage or deed of trust); Section 1109 (reconveyance of estate on condition that is defeated by nonperformance). Section 886.020 is intended to enhance marketability of title clouded by an unperformed real property sales contract without the need to quiet title or await the lapse of the five-year period provided in Section 886.030 (expiration of record of unperformed contract for sale of real property). (16 Cal.L.Rev.Comm. Reports 401).

§ 886.030. Expiration date; recorded extension; waiver

- (a) Except as otherwise provided in this section, a recorded contract for sale of real property expires of record at the later of the following times:
 - (1) Five years after the date for conveyance of title provided **in the contract** or, if no date for conveyance of title is provided **in the contract**, five years after the last date provided in the contract for satisfaction of the specified conditions set forth **in the contract**.
 - (2) If there is a recorded extension of the contract within the time prescribed in paragraph (1), five years after the date for conveyance of title provided **in the extension** or, if no date for conveyance of title is provided in the extension, **five years after the last date provided in the extension for satisfaction of the specified conditions set forth in the contract**.
- (b) The time prescribed in this section may be waived or extended only by an instrument that is recorded before expiration of the prescribed times. (Added by Stats.1982, c. 1268, p. 4680, § 1.)

LAW REVISION COMMISSION COMMENT. Section 886.030 prescribes the maximum duration of a contract for sale of real property of record for purposes of marketability. The maximum duration does not affect the rights and obligations of the parties to the contract but only the effect of the recorded notice of the contract on third parties. See Section 886.040 (effect of expiration). Section 886.030 operates to clear record title of the contract after the time prescribed even though the general statute of limitation to enforce the contract may not have run due to tolling, possession by the purchaser, or for some other cause. The section does not extend the time provided by the general statute of limitation that applies to enforcement of a real property sales contract. See Code Civ.Proc. § 337(1) (four-year limitation period). The cloud on title of an unperformed real property sales contract, whether or not barred by the general statute of limitation, may be removed by judicial action or may be removed by operation of law after passage of the time prescribed in this section. See Section 886.040 (effect of expiration).

Subdivision (a) adopts the five-year period of the Model Act Limiting Encumbrances Arising from Recorded Land Contracts (Simes & Taylor 1960). The effect of subdivision (a) is to prescribe a maximum life for a real property sales contract based exclusively on the record for marketability of title purposes.

Subdivision (b) provides that a waiver or extension of the expiration date of a real property sales contract must be recorded to be effective. This accomplishes the purpose of enabling a determination of marketability based on the record alone. [16 Cal.L.Rev.Comm. Reports 401]

§ 886.040. Effect of expiration of recorded contract

Upon the expiration of record of a recorded contract for sale of real property pursuant to this chapter, **the contract has no effect**, and does not constitute an encumbrance or cloud, on the title to the real property **as against a person other than a party to the contract**. (Added by Stats.1982, c. 1268, p. 4680, § 1.)

LAW REVISION COMMISSION COMMENT. Section 886.040 is drawn from the Model Act Limiting Encumbrances Arising from Recorded Land Contracts (Simes & Taylor 1960). A contract for sale of real property that has expired of record does not affect third persons but may still affect the parties to the contract. See Section 886.030 (expiration of record of contract for sale of real property) and Comment thereto. In addition, expiration of record does not affect the interest of a person in possession of the real property. Section 880.240 (interests excepted from title). (16 Cal.L.Rev.Comm. Reports 401).

§ 886.050. Application of chapter; limitation on expiration of recorded contracts

- (a) Except as otherwise provided in this section, this chapter applies on the operative date to all recorded contracts for sale of real property, whether recorded before, on, or after the operative date.
- (b) This chapter shall not cause a recorded contract for sale of real property to expire of record before the passage of two years after the operative date of this chapter. (Added by Stats.1982, c. 1268, p. 4680, § 1.)

LAW REVISION COMMISSION COMMENT. Section 886.050 makes clear the legislative intent to apply this chapter immediately to existing contracts for sale of real property. It provides a two-year grace period to enable enforcement of contracts that would expire upon enactment of this chapter and a shorter grace period for enforcement of contracts that would expire within two years after enactment of this chapter. The two-year grace period does not operate as an extension of the statute of limitation itself. See Code Civ.Proc. §§ 337(1) (statute of limitation). Notwithstanding the grace period for expiration, a person required to execute a release of the contract pursuant to Section 886.020 (release of unperformed contract for sale of real property) has an immediate duty to do so upon request therefor upon the operative date of this chapter. (16 Cal.L.Rev.Comm. Reports 401).

CHAPTER 7. ABANDONED EASEMENTS

§ 887.010. Definition

As used in this chapter, "easement" means a burden or servitude upon land, whether or not attached to other land as an incident or appurtenance, that allows the holder of the burden or servitude to do acts upon the land. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.010 provides a special definition of an easement for the purposes of this chapter. This chapter applies to affirmative easements, whether appurtenant or in gross. Contrast Sections 801 and 803 ("easement" is an appurtenant servitude). **Negative easements are not governed by this chapter.** [18 Cal.L.Rev.Comm. Reports 257 (1985)]

§ 887.020. Application of chapter

This chapter does not apply to an easement that is part of a unified or reciprocal system for the mutual benefit of multiple parties. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.020 is intended to exclude planned developments and their sets of interrelated easements and servitudes from the scope of this chapter. Thus condominium covenants, conditions, and restrictions would not be covered, nor would reciprocal easement agreements. Easements held by public entities and conservation easements are not subject to

expiration pursuant to this section. See Section 880.240 (interests excepted from title); Section 887.080 (abandoned easement deemed to have expired). [18 Cal.L.Rev.Comm. Reports 257 (1985)].

§ 887.030. Common law

This chapter supplements and does not limit or otherwise affect the common law governing abandonment of an easement or any other procedure provided by statute or otherwise for clearing an abandoned easement from title to real property. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.030 makes clear that although this chapter prescribes a standard for determining that an easement has been abandoned, it is not intended to limit the common law of abandonment of easements. See discussion in 3 B. Witkin, Summary of California Law Real Property §§ 374-376 (8th ed. 1973); 1 A. Bowman, Ogden's Revised California Real Property Law §§ 13.49-13.50 (1974); 3 H. Miller & M. Starr, Current Law of California Real Estate §§ 18:64-18:66 (rev.1977). [18 Cal.L.Rev.Comm. Reports 257 (1985)].

§ 887.040. Bringing action; venue; procedure

- (a) The owner of real property subject to an easement may bring **an action to establish the abandonment of the easement** and to clear record title of the easement.
- (b) The action shall be brought in the superior court of the county in which the real property subject to the easement is located.
- (c) The action shall be brought in the same manner and shall be subject to the same procedure as an action to quiet title pursuant to Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure, to the extent applicable. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Subdivision (a) of Section 887.040 authorizes an action to establish abandonment of an easement, subject to the limitations and conditions in this chapter. This is consistent with public policy to enable and encourage full use and development of real property. Section 880.020 (declaration of policy and purposes). This is also consistent with the common law rule that easements are subject to abandonment. See Section 887.030 and Comment thereto (common law of abandonment not affected). This chapter supplements common law principles of abandonment by providing a separate and independent basis for determining abandonment of an easement.

Subdivisions (b) and (c) incorporate, insofar as applicable, the general quiet title procedures for an action pursuant to this chapter. See Code Civ.Proc. §§ 760.010-764.070. [18 Cal.L.Rev.Comm. Reports 257 (1985)]

§ 887.050. Conditions necessary

- (a) For purposes of this chapter, **an easement is abandoned if all of the following conditions are satisfied for a period of 20 years immediately preceding commencement of the action to establish abandonment of the easement:**
 - (1) The easement is **not used** at any time.
 - (2) **No separate property tax assessment is made of the easement or, if made, no taxes are paid on the assessment.**
 - (3) **No instrument creating, reserving, transferring, or otherwise evidencing the easement is recorded.**
- (b) This section applies notwithstanding any provision to the contrary in the instrument creating, reserving, transferring, or otherwise evidencing the easement or in another

recorded document, unless the instrument or other document provides an earlier expiration date. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.050 provides for **expiration** of an unused easement after 20 years, notwithstanding a longer or an indefinite period provided in the instrument creating the easement. This reverses prior law that an easement obtained by grant cannot be lost by mere nonuse.

The expiration period can be extended for up to 20 years at a time by recordation of a notice of intent to preserve the easement before the easement expires. See Section 887.060 (preservation of easement). Recordation of a notice of intent to preserve the easement does not necessarily preclude abandonment of the easement pursuant to general principles governing abandonment for nonuse upon a showing of intent to abandon. See Section 880.310 (notice of intent to preserve interest).

For purposes of subdivision (a)(3), in the case of an appurtenant easement, a transfer of the dominant tenement without reference to the easement does not start the 20-year period running anew, even though such a transfer may be effective to convey the easement. Sections 1084, 1104. [18 Cal.L.Rev.Comm. Reports 257 (1985)].

§ 887.060. Notice of intent to preserve easement; recording

- (a) The **owner of an easement may at any time record a notice of intent to preserve** the easement.
- (b) In lieu of the statement of the character of the interest claimed and the record location of the documents creating or evidencing the easement claimed, as otherwise required by paragraph (2) of subdivision (b) of Section 880.330, and in lieu of the legal description of the real property in which the interest is claimed, as otherwise required by paragraph (3) of subdivision (b) of Section 880.330, and notwithstanding the provisions of Section 880.340, or any other provision in this title, **a notice of intent to preserve an easement may refer generally and without specificity to any or all easements claimed by the claimant in any real property situated in the county.**
- (c) An **easement is not abandoned** for purposes of this chapter if either of the following occurs:
 - (1) **A notice of intent to preserve** the easement is **recorded within 20 years immediately preceding commencement** of the action to establish the abandonment of the easement.
 - (2) A notice of intent to preserve the easement **is recorded pursuant to Section 887.070 after commencement of the action to establish the abandonment** of the easement and before judgment is entered in the action. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.060 makes recording a notice of intent to preserve an easement conclusive evidence of non-abandonment for purposes of this chapter. Recording a notice of intent to preserve also creates a presumption affecting the burden of proof that the claimant has not abandoned the easement for purposes of a determination of abandonment pursuant to common law. Section 880.310 (notice of intent to preserve interest). [18 Cal.L.Rev.Comm. Reports 257 (1985)].

§ 887.070. Late notice of intent to preserve easement; recording; litigation expenses

In an action to establish the abandonment of an easement pursuant to this chapter, the court shall permit the owner of the easement to record a late notice of intent to preserve the easement as a condition of dismissal of the action, upon payment into court for the benefit of the

owner of the real property the litigation expenses attributable to the easement or portion thereof as to which the notice is recorded. As used in this section, the term "litigation expenses" means recoverable costs and expenses reasonably and necessarily incurred in preparation for the action, including a reasonable attorney's fee. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.070 enables the owner of an easement to preserve the easement, after commencement of an action to establish its abandonment and clear title, by filing a late notice of intent to preserve the interest. This authority is conditioned upon payment of the property owner's litigation expenses. Litigation expenses include disbursements made for title reports and other disbursements made in preparation for the litigation as well as court costs and attorneys fees incurred in connection with the litigation. [18 Cal.L.Rev.Comm. Reports 257 (1985)].

NOTES OF DECISIONS

1. Construction and application

Principles of statutory construction require that Court of Appeal interpret language of statute governing late notice of intent to preserve an easement in manner to implement legislative intent; that intent is divined by looking first to words used in statute. *Worthington v. Alcala* (App. 2 Dist. 1992) 13 Cal.Rptr.2d 374, 10 Cal.App.4th 1404. Costs . 48

2. Litigation expenses

Easement holders were not required to pay burdened landowners' litigation costs in action to extinguish easement where late notice of intent to preserve the easement failed because the easement was extinguished on theory of prescription. *Worthington v. Alcala* (App. 2 Dist. 1992) 13 Cal.Rptr.2d 374, 10 Cal.App.4th 1404. Costs . 48

Legislature intended litigation costs to be imposed pursuant to statute governing late notice of intent to preserve easements only where the sole theory of extinguishment of the easement was statutory abandonment or other theories were voluntarily dismissed and application of the statute would therefore result in preserving easement interest. *Worthington v. Alcala* (App. 2 Dist. 1992) 13 Cal.Rptr.2d 374, 10 Cal.App.4th 1404. Costs . 48

§ 887.080. Court order; enforceability

An abandoned easement is unenforceable and is deemed to have expired. A court order establishing abandonment of an easement pursuant to this chapter is equivalent for all purposes to a conveyance of the easement to the owner of the real property. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.080 makes clear that establishment of abandonment of an easement has the effect of a reconveyance to the owner of the land. See also Section 887.040 (action authorized) and Code Civ.Proc. §§ 764.010-764.070 (effect of quiet title judgment). [18 Cal.L.Rev.Comm. Reports 257 (1985)].

§ 887.090. Application of chapter; exceptions

Subject to Sections 880.370 (grace period for recording notice) and 887.020, this chapter applies to all easements, whether executed or recorded before, on, or after January 1, 1986. (Added by Stats.1985, c. 157, § 2.)

LAW REVISION COMMISSION COMMENT. Section 887.090 makes clear the legislative intent to apply this chapter to easements existing on the date this chapter becomes operative (January 1, 1986). Section 880.370 provides a five-year grace period for recording a notice of intent to preserve an easement that would be subject to termination pursuant to this chapter before, on, or within five years after the operative date of this chapter. See Sections 887.060 (preservation of easement) and 880.370 (grace period for recording notice) and Comments thereto. [18 Cal.L.Rev.Comm. Reports 257 (1985)].

**CIVIL CODE
DIVISION 2. PROPERTY
PART 2. REAL OR IMMOVABLE PROPERTY
TITLE 3. RIGHTS AND OBLIGATIONS OF OWNERS
CHAPTER 2. OBLIGATIONS OF OWNERS**

§ 848. Mineral rights owners; notice of entry on real property to exercise rights; contents; injunctions

The owner of mineral rights, as defined by Section 883.110, in real property shall give a written notice to the owner or the owner's representative of the real property who is listed as the assessee on the current local assessment roll or lessee, if different from the mineral rights owner, and to any public utility which has a recorded interest in the real property, if there is to be excavation of the utility interest, prior to the first entry upon the real property to prospect for, mine, or extract any mineral. The written notice shall be given by certified mail or acknowledged personal delivery to the owner, the owner's representative, or lessee, and shall inform the owner, the owner's representative, or lessee and the public utility of the extent and location of the prospecting, mining, or extracting operation, and the approximate time or times of entry and exit upon the real property.

If the mineral rights owner has not complied with this notice requirement, the owner of the real property listed on the current assessment roll or any public utility which has a recorded interest in the real property may request a court to enjoin the prospecting, mining, or extracting operation until the mineral rights owner has complied. The absence of a known owner on the assessment roll or any public utility which has a recorded interest in the real property relieves the mineral rights owner of the obligation to give the written notice to the owner or public utility.

For purposes of this section, an "acknowledged personal delivery" means that the written notice is personally delivered to the owner, the owner's representative, or lessee, and the owner, the owner's representative, or lessee acknowledges, in writing, receipt of the notice. (Added by Stats.1988, c. 535, § 1.)

**CODE OF CIVIL PROCEDURE
PART 2. OF CIVIL ACTIONS
TITLE 10. ACTIONS IN PARTICULAR CASES
CHAPTER 4.5. SPECIAL ACTIONS AND PROCEEDINGS TO CLEAR TITLE
ARTICLE 3. RIGHT OF ENTRY OR OCCUPATION OF
SURFACE LANDS UNDER OIL OR GAS LEASE**

§ 772.010. Application of article; cities in Los Angeles and Orange counties

This article applies only to lands within a city in any county with a population exceeding 4,000,000, or with a population of more than 700,000 and less than 710,000 as determined by the 1960 Federal Decennial Census.

§ 772.030. Action to terminate right of entry or occupation; effect on valid unit or operating agreement

- (a) If a mining rights lease, including a community lease, exists for the production of oil, gas, or other hydrocarbons, and a right of entry or occupation provided by the lease encumbers all or part of the surface or surface zone of the leasehold lands, any person who owns a fee interest in the surface of the leasehold lands may bring an action in the superior court to terminate the right of entry or occupation as to all or some described portion of the surface and surface zone of the leasehold lands in which the person owns an interest.
- (b) No judgment rendered pursuant to this article shall change or affect the terms or operation of any valid unit agreement or valid operating agreement which comes within the provisions of Section 3301 or 3321 of the Public Resources Code. (Added by Stats.1980, c. 44, p. 117, § 16.)

NOTES OF DECISIONS

1. Validity

Former § 751.3 (repealed; now, § 772.030 et seq.), authorizing owner of land upon which there is an oil and gas lease to institute an action to terminate the lessee's right of entry to or occupation of the surface or surface zone of the leasehold land, does not unconstitutionally impair obligation of contracts, where impairment, if any, is small, and interest of state to be served by enactment of the legislation is substantial and significant. *Donlan v. Weaver* (App. 4 Dist. 1981) 173 Cal.Rptr. 566, 118 Cal.App.3d 675. Constitutional Law . 148; Mines And Minerals . 73.1(6)

Former § 751.3 (repealed; now, § 772.010 et seq.), authorizing owner of land upon which there is an oil and gas lease to institute an action to terminate the lessee's right of entry to or occupation of surface or surface zone of leasehold land, does not deny lessees substantive due process, where significant interest of state in encouraging proper development and utilization of fallow land in highly populated urban areas and of eliminating attendant social and economic blight greatly outweighs circumscribed interference with lessees' vested rights. *Donlan v. Weaver* (App. 4 Dist. 1981) 173 Cal.Rptr.

§ 772.040. Judgment terminating right of entry or occupation; conditions; rights of lessee

The court may render a judgment terminating the lessee's right of entry or occupation of the surface and surface zone, subject to such conditions as the court deems fair and equitable, if the evidence shows each of the following:

- (a) The document that created the leasehold interest was originally executed more than 20 years prior to filing the action under this article regardless of any amendments to the document. However, if any amendment was entered into expressly for the

purpose of waiving, limiting, or rearranging surface rights of entry and occupation by the lessee, the 20-year period shall be computed as if the document were originally executed on the date of execution of the amendment.

- (b) The subject land is not presently occupied by any of the following:
 - (1) A producing oil or gas well or well bore.
 - (2) A well or well bore being utilized for injection of water, gas, or other substance into geologic substrata as an aid to oil or gas production or to ameliorating subsidence.
 - (3) A well or well bore being utilized for the disposal injection of waste oil well brine and byproducts.
 - (4) A well or well bore being utilized for the production of water for use in oil field injection, waterflood, and pressure maintenance programs.
- (c) Termination of the right of entry or occupation within the subject land in the manner requested by the plaintiff, or subject to such conditions as the court may impose pursuant to this section, will not significantly interfere with the right of the lessee, under the lease, to continue to conduct operations for the continued production of oil from leasehold strata beneath the surface zone in a practical and economic manner, utilizing such production techniques as will be appropriate to the leasehold area, consistent with good oilfield practice, and to gather, transport, and market the oil. (Added by Stats.1980, c. 44, p. 117, § 16.)

§ 772.050. Qualification of judgment; limited easements; relocation of facilities; costs; setoff; proof of benefit

- (a) The court may qualify the judgment terminating the surface and surface zone right of entry or occupation so as to provide for limited surface and surface zone easements that the lessee may continue to enjoy within the subject land.
- (b) A judgment may be conditioned upon the relocation of pipelines, roadways, equipment, or lease facilities in such manner as will most effectively free the subject land for surface use while safeguarding continued oil and gas operations in a practical and economic manner. Any such condition of the judgment shall require the plaintiff to pay the costs of the relocation. However, the plaintiff shall be entitled to a setoff against the costs to the extent of any benefit to the lessee resulting from the installation of new equipment or material. The plaintiff has the burden of proving any benefit accruing to the lessee. (Added by Stats.1980, c. 44, p. 117, § 16.)

§ 772.060. Public policy; waiver of rights

It is against public policy for any oil or gas lease, at its inception, to provide for the waiver of any rights created by this article, or for such rights to be waived by amendment to any oil or gas lease within 20 years of the date of its execution by a plaintiff or the plaintiff's predecessor in interest. (Added by Stats.1980, c. 44, p. 117, § 16.)

UNIFORM RULE “*ABOUT*” PERPETUITIES

CALIFORNIA PROBATE CODE DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS PART 2. PERPETUITIES CHAPTER 1. UNIFORM STATUTORY RULE AGAINST PERPETUITIES ARTICLE 1. GENERAL PROVISIONS

§ 21200. Short title

This chapter shall be known and may be cited as the Uniform Statutory Rule Against Perpetuities.

LAW REVISION COMMISSION COMMENT

Section 21200 provides a short title for this chapter and is the same as Section 6 of the Uniform Statutory Rule Against Perpetuities (1990). As to the construction of uniform acts, see Section 2(b). This part applies to nonvested property interests regardless of whether they were created before or after January 1, 1992. See Section 21202. [20 Cal.L.Rev.Comm.Reports 2501 (1990).] This section is similar to § 6 of the Uniform Statutory Rule Against Perpetuities. See 8B Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

§ 21201. Common law rule superseded

This chapter supersedes the common law rule against perpetuities. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21202. Application of part

(a) Except as provided in subdivision (b), this part applies to nonvested property interests and unexercised powers of appointment regardless of whether they were created before, on, or after January 1, 1992.

(b) This part does not apply to any property interest or power of appointment the validity of which has been determined in a judicial proceeding or by a settlement among interested persons. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

ARTICLE 2. STATUTORY RULE AGAINST PERPETUITIES

§ 21205. Nonvested property interests; validity; conditions

A nonvested property interest is invalid unless one of the following conditions is satisfied:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive.

(b) The interest either vests or terminates within 90 years after its creation. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21206. General power of appointment; condition precedent; validity; conditions

A general power of appointment not presently exercisable because of a condition precedent is invalid unless one of the following conditions is satisfied:

- (a) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive.
- (b) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21207. Nongeneral power of appointment; general testamentary power of appointment; validity; conditions

A nongeneral power of appointment or a general testamentary power of appointment is invalid unless one of the following conditions is satisfied:

- (a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive.
- (b) The power is irrevocably exercised or otherwise terminates within 90 years after its creation. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21208. Posthumous births

In determining whether a nonvested property interest or a power of appointment is valid under this article, the possibility that a child will be born to an individual after the individual's death is disregarded. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21209. Construction of "later of" language in perpetuity saving clause; application of section

(a) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (1) seeks to disallow the vesting or termination of any interest or trust beyond, (2) seeks to postpone the vesting or termination of any interest or trust until, or (3) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period that exceeds 21 years after the death of the survivor of the specified lives.

(b) Notwithstanding Section 21202, this section applies only to governing instruments, including instruments exercising powers of appointment, executed on or after January 1, 1992. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

ARTICLE 3. TIME OF CREATION OF INTEREST

§ 21210. Nonvested property interests or powers of appointment

Except as provided in Sections 21211 and 21212, the time of creation of a nonvested property interest or a power of appointment is determined by other applicable statutes or, if none, under general principles of property law. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21211. Powers exercisable by one person alone

For purposes of this chapter:

(a) If there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (1) a nonvested property interest or (2) a property interest subject to a power of appointment described in Section 21206 or 21207, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(b) A joint power with respect to community property held by individuals married to each other is a power exercisable by one person alone. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21212. Interests or powers arising from transfer of property; previously funded trusts; other existing property arrangement

For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

ARTICLE 4. REFORMATION

§ 21220. Petition; conditions

On petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by the applicable provision in Article 2 (commencing with Section 21205), if any of the following conditions is satisfied:

(a) A nonvested property interest or a power of appointment becomes invalid under the statutory rule against perpetuities provided in Article 2 (commencing with Section 21205).

(b) A class gift is not but might become invalid under the statutory rule against perpetuities provided in Article 2 (commencing with Section 21205), and the time has arrived when the share of any class member is to take effect in possession or enjoyment.

(c) A nonvested property interest that is not validated by subdivision (a) of Section 21205 can vest but not within 90 years after its creation. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

ARTICLE 5. EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES

§ 21225. Application of specified article

Article 2 (commencing with Section 21205) does not apply to any of the following:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (1) a premarital or postmarital agreement, (2) a separation or divorce settlement, (3) a spouse's election, (4) or a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (5) a contract to make or not to revoke a will or trust, (6) a contract to exercise or not to exercise a power of appointment, (7) a transfer in satisfaction of a duty of support, or (8) a reciprocal transfer.

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.

(c) A power to appoint a fiduciary.

(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse.

(g) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this state.

(h) A trust created for the purpose of providing for its beneficiaries under hospital service contracts, group life insurance, group disability insurance, group annuities, or any combination of such insurance, as defined in the Insurance Code. (Added by Stats.1991, c. 156 (A.B.1577), § 24. Amended by Stats.1996, c. 563 (S.B.392), § 33.)

LAW REVISION COMMISSION COMMENT

Subdivisions (a)-(g) of Section 21225 are the same in substance as Section 4 of the Uniform Statutory Rule Against Perpetuities (1990). Subdivision (e) supersedes former Civil Code Section 715 (no perpetuities allowed except for eleemosynary purposes). For a statutory exclusion under (g), see Health & Safety Code § 8559 (cemeteries). Subdivision (h) restates former Civil Code Section 715.4 without substantive change. For other limitations on interests not subject to the statutory rule against perpetuities, see, e.g., Civil Code §§ 715 (leases to commence in future), 883.010-883.270 (mineral rights), 884.010-884.030 (unexercised options), 885.010-885.070 (powers of termination), 887.010-887.090 (abandoned easements).

Section 21225 identifies the interests and powers that are excluded from the Statutory Rule Against Perpetuities. This section is in part declaratory of existing common law. All the exclusions from the common law rule recognized at common law and by statute in this state are preserved. In line with long-standing scholarly commentary, Section 21225(a) excludes nondonative transfers from the statutory rule. The rule against perpetuities is an inappropriate instrument of social policy to use as a control on such arrangements. The period of the rule--a life in being plus 21 years--is suitable for donative transfers only. [20 Cal.L.Rev.Comm.Reports 2501 (1990).]

Section 21225 lists several exclusions from the statutory rule against perpetuities (statutory rule). Some are declaratory of existing law; others are contrary to existing law. Since the common law rule against perpetuities and the Civil Code perpetuities provisions are superseded by this chapter, a nonvested property interest, power of appointment, or other arrangement excluded from the statutory rule by this section is not subject to the rule against perpetuities, statutory or otherwise.

A. Subdivision (a): Nondonative Transfers Excluded

1. Rationale

In line with long-standing scholarly commentary, subdivision (a) excludes (with certain enumerated exceptions) nonvested property interests and powers of appointment arising out of a nondonative transfer. The rationale for this exclusion is that the rule against perpetuities is a wholly inappropriate instrument of social policy to use as a control over such arrangements. The period of the rule--a life in being plus 21 years--is not suitable for nondonative transfers, and this point applies with equal force to the 90-year allowable waiting period under the wait-and-see element of Sections 21205-21207 because that period represents an approximation of the period of time that would be produced, on average, by using a statutory list identifying actual measuring lives and adding a 21-year period following the death of the survivor.

No general exclusion from the common law rule against perpetuities is recognized for nondonative transfers, and so subdivision (a) is contrary to existing common law. (But see *Metropolitan Transportation Authority v. Bruken Realty Corp.*, 67 N.Y.2d 156, 165-66, 492 N.E.2d 379, 501 N.Y.S.2d 306 (1986), pointing out the inappropriateness of the period of a life in being plus 21 years to cases of commercial and governmental transactions and noting that the rule against perpetuities can invalidate legitimate transactions in such cases.)

Subdivision (a) is therefore inconsistent with decisions holding the common law rule to be applicable to the following types of property interests or arrangements when created in a nondonative, commercial-type transaction, as they almost always are: options (e.g., *Milner v. Bivens*, 255 Ga. 49, 335 S.E.2d 288 (1985)); preemptive rights in the nature of a right of first refusal (e.g., *Atchison v. City of Englewood*, 170 Colo. 295, 463 P.2d 297 (1969); *Robroy Land Co., Inc. v. Prather*, 24 Wash.App. 511, 601 P.2d 297 (1969)); leases to commence in the future, at a time certain or on the happening of a future event such as the completion of a building (e.g., *Southern Airways Co. v. DeKalb County*, 101 Ga.App. 689, 115 S.E.2d 207 (1960)); nonvested easements; top leases and top deeds with respect to interests in minerals (e.g., *Peveto v. Starkey*, 645 S.W.2d 770 (Tex.1982)); and so on.

2. Consideration Does Not Necessarily Make the Transfer Nondonative

A transfer can be supported by consideration and still be donative in character and hence not excluded from the statutory rule. A transaction that is essentially gratuitous in nature, accompanied by donative intent on the part of at least one party to the transaction, is not to be regarded as nondonative simply because it is for consideration. Thus, for example, the exclusion would not apply if a parent purchases a parcel of land for full and adequate consideration, and directs the seller to make out the deed in favor of the purchaser's daughter for life, remainder to such of the daughter's children as reach 25. The nonvested property interest of the daughter's children is subject to the statutory rule.

3. Some Transactions Not Excluded Even If Considered Nondonative

Some types of transactions--although in some sense supported by consideration and hence arguably nondonative--arise out of a domestic situation, and should not be excluded from the statutory rule. To avoid uncertainty with respect to such transactions, subdivision (a) specifies that nonvested property interests or powers of appointment arising out of any of the following transactions are not excluded by the nondonative-transfers exclusion in subdivision (a): a premarital or postmarital agreement; a separation or divorce settlement; a spouse's election, such as the "widow's election" in community property states; an arrangement similar to any of the foregoing arising out of a prospective, existing, or previous marital relationship between the parties; a contract to make or not to revoke a will or trust; a contract to exercise or not to exercise a power of appointment; a transfer in full or partial satisfaction of a duty of support; or a reciprocal transfer. The term "reciprocal transfer" is to be interpreted in accordance with the reciprocal transfer doctrine in the tax law (see *United States v. Estate of Grace*, 395 U.S. 316 (1969)).

4. Other Means of Controlling Some Nondonative Transfers

Some commercial transactions respecting land or mineral interests, such as options in gross (including rights of first refusal), leases to commence in the future, nonvested easements, and top leases and top

deeds in commercial use in the oil and gas industry, directly or indirectly restrain the alienability of property or provide a disincentive to improve the property. Although controlling the duration of such interests is desirable, they are excluded by subdivision (a) from the statutory rule because, as noted above, the period of a life in being plus 21 years--actual or by the 90-year proxy--is inappropriate for them; that period is appropriate for family-oriented, donative transfers. Other provisions limit these types of interests. See, e.g., Civil Code §§ 715 (lease to commence in future), 883.110-883.270 (mineral rights), 884.010- 884.030 (unexercised options), 887.010-887.090 (abandoned easements).

B. Subdivisions (b)-(g): Other Exclusions

1. Subdivision (b)--Administrative Fiduciary Powers

Fiduciary powers are subject to the statutory rule against perpetuities, unless specifically excluded. Purely administrative fiduciary powers are excluded by subdivisions (b) and (c), but distributive fiduciary powers are generally speaking not excluded. The only distributive fiduciary power excluded is the one described in subdivision (d). The application of subdivision (b) to fiduciary powers can be illustrated by the following example.

Example (1). G devised property in trust, directing the trustee (a bank) to pay the income to A for life, then to A's children for the life of the survivor, and on the death of A's last surviving child to pay the corpus to B. The trustee is granted the discretionary power to sell and to reinvest the trust assets and to invade the corpus on behalf of the income beneficiary or beneficiaries. The trustee's fiduciary power to sell and reinvest the trust assets is a purely administrative power, and under subdivision (b) of this section is not subject to the statutory rule. The trustee's fiduciary power to invade corpus, however, is a nongeneral power of appointment that is not excluded from the statutory rule. Its validity, and hence its exercisability, is governed by Section 21207. Since the power is not initially valid under Section 21207(a), Section 21207(b) applies and the power ceases to be exercisable 90 years after G's death.

2. Subdivision (c)--Powers to Appoint a Fiduciary

Subdivision (c) excludes from the statutory rule against perpetuities powers to appoint a fiduciary (a trustee, successor trustee, or co-trustee, a personal representative, successor personal representative, or co-personal representative, an executor, successor executor, or co-executor, etc.). Sometimes such a power is held by a fiduciary and sometimes not. In either case, the power is excluded from the statutory rule.

3. Subdivision (d)--Certain Distributive Fiduciary Power

The only distributive fiduciary power excluded from the statutory rule against perpetuities is the one described in subdivision (d); the excluded power is a discretionary power of a trustee to distribute principal before the termination of a trust to a beneficiary who has an indefeasibly vested interest in the income and principal.

Example (2). G devised property in trust, directing the trustee (a bank) to pay the income to A for life, then to A's children; each child's share of principal is to be paid to the child when he or she reaches 40; if any child dies under 40, the child's share is to be paid to the child's estate as a property interest owned by such child. The trustee is given the discretionary power to advance all or a portion of a child's share before the child reaches 40. G was survived by A, who was then childless. The trustee's discretionary power to distribute principal to a child before the child's 40th birthday is excluded from the statutory rule against perpetuities. (The trustee's duty to pay the income to A and after A's death to A's children is not subject to the statutory rule because it is a duty, not a power.)

4. Subdivision (e)--Charitable or Governmental Gifts

Subdivision (e) codifies the common law principle that a nonvested property interest held by a charity, a government, or a governmental agency or subdivision is excluded from the rule against perpetuities if the interest was preceded by an interest that is held by another charity, government, or governmental agency or subdivision. See L. Simes & A. Smith, *The Law of Future Interests* §§ 1278-87 (2d ed. 1956); Restatement (Second) of Property (Donative Transfers) § 1.6 (1983); Restatement of Property § 397 (1944).

Example (3). G devised real property "to the X School District so long as the premises are used for school purposes, and upon the cessation of such use, to Y City." The nonvested property interest held by Y City (an executory interest) is excluded from the statutory rule under subdivision (e) because it was preceded by a property interest (a fee simple determinable) held by a governmental subdivision, X School District.

The exclusion of charitable and governmental gifts applies only in the circumstances described. If a nonvested property interest held by a charity is preceded by a property interest that is held by a noncharity, the exclusion does not apply; rather, the validity of the nonvested property interest held by the charity is governed by the other sections of this chapter.

Example (4). G devised real property "to A for life, then to such of A's children as reach 25, but if none of A's children reaches 25, to X Charity." The nonvested property interest held by X Charity is not excluded from the statutory rule.

If a nonvested property interest held by a noncharity is preceded by a property interest that is held by a charity, the exclusion does not apply; rather, the validity of the nonvested property interest in favor of the noncharity is governed by the other sections of this chapter.

Example (5). G devised real property "to the City of Sidney so long as the premises are used for a public park, and upon the cessation of such use, to my brother, B." The nonvested property interest held by B is not excluded from the statutory rule by subdivision (e).

5. Subdivision (f)--Trusts for Employees and Others; Trusts for Self-Employed Individuals

Subdivision (f) excludes from the statutory rule against perpetuities nonvested property interests and powers of appointment with respect to a trust or other property arrangement, whether part of a "qualified" or "unqualified" plan under the federal income tax law, forming part of a bona fide benefit plan for employees (including owner-employees), independent contractors, or their beneficiaries or spouses. The exclusion granted by this subdivision does not, however, extend to a nonvested property interest or a power of appointment created by an election of a participant or beneficiary or spouse.

6. Subdivision (g)--Pre-existing Exclusions from the Common Law Rule Against Perpetuities

Subdivision (g) ensures that all property interests, powers of appointment, or arrangements that were excluded from the common law rule against perpetuities or are excluded by another statute of this state are also excluded from the statutory rule against perpetuities. Possibilities of reverter and rights of entry (also known as rights of re-entry, rights of entry for condition broken, and powers of termination) are not subject to the common law rule against perpetuities, and so are excluded from the statutory rule. [20 Cal.L.Rev.Comm.Reports 2543 (1990).]

This section is similar to § 4 of the Uniform Statutory Rule Against Perpetuities. See 8B Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

NOTES OF DECISIONS

1. Gratuitous or donative transfers

Lease amendment to commercial lease which provided for perpetual options to renew was not essentially gratuitous in nature, so as to be donative, and thus outside of exemption from operation of statutory rule against perpetuities. *Shaver v. Clanton* (App. 4 Dist. 1994) 31 Cal.Rptr.2d 595, 26 Cal.App.4th 568, review denied.

2. Construction with other law

Amendment to commercial lease giving tenants series of five-year options to renew, although exempt from statutory rule against perpetuities as commercial transaction, was nonetheless limited to total term of 99 years from effective date of lease. *Shaver v. Clanton* (App. 4 Dist. 1994) 31 Cal.Rptr.2d 595, 26 Cal.App.4th 568, review denied.

Although commercial, nondonative transactions such as options to renew, rights of first refusal and commercial leases are exempt operation of Uniform Rule Against Perpetuities Act, they are nonetheless

limited to term of 99 years if they involve lease or grant of town or city lot. *Shaver v. Clanton* (App. 4 Dist. 1994) 31 Cal.Rptr.2d 595, 26 Cal.App.4th 568, review denied.

CHAPTER 2. RELATED PROVISIONS

§ 21230. Validating lives

The lives of individuals selected to govern the time of vesting pursuant to Article 2 (commencing with Section 21205) of Chapter 1 may not be so numerous or so situated that evidence of their deaths is likely to be unreasonably difficult to obtain. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)

§ 21231. Spouse as life in being

In determining the validity of a nonvested property interest pursuant to Article 2 (commencing with Section 21205) of Chapter 1, an individual described as the spouse of an individual alive at the commencement of the perpetuities period shall be deemed to be an individual alive when the interest is created, whether or not the individual so described was then alive. (Added by Stats.1991, c. 156 (A.B.1577), § 24.)