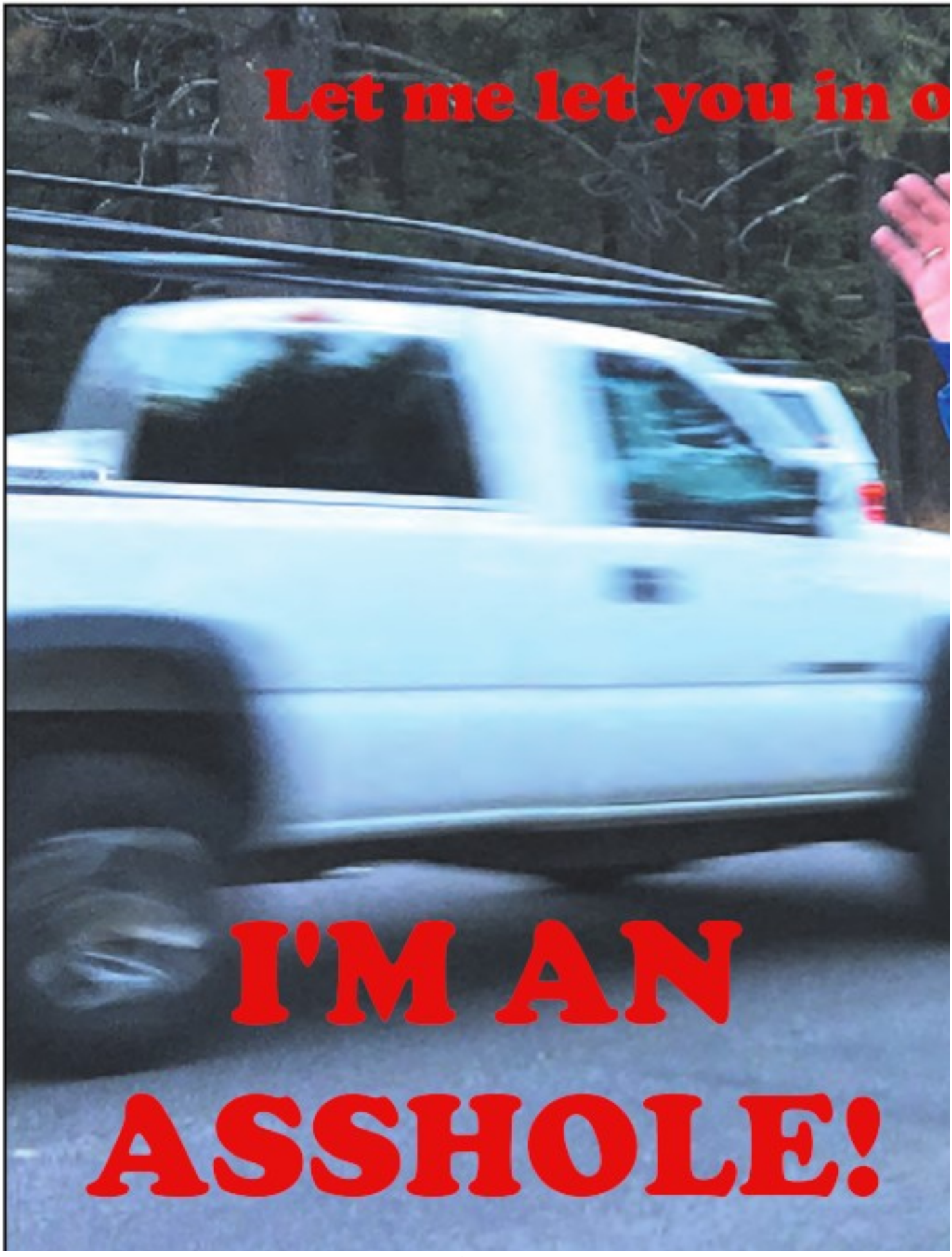
Scott Carey

From: Jacob Riis <jacob.riis@journalistmail.ch>
Sent: Tuesday, November 1, 2022 9:43 PM
To: Scott Carey
Subject: NTRPA Governing Board Meeting 11-03-2022 === Public Comment (Agenda Item 2)
Attachments: TMN_Teshara.pdf; TTD_Tahoe Beach Club.pdf; 2006-665313.pdf; 2020-954990.pdf; 2020-954991.pdf; 1318-15-611-055.pdf; 2016-883213.pdf; TTD_Housing.pdf; Tahoe Tribune_07-10-20_p27.pdf; Teshara—Be a Republican.pdf; THE STREISAND EFFECT.pdf; Cal.Rev. & T.Code § 1602 — Inspection of roll.pdf; 18 CCR § 266 — Location of Local Roll for Inspection.pdf; Cal.Rev. & T.Code § 602 — Contents of local roll.pdf; 18 CCR § 252 — Content of Assessment Roll.pdf; Publius v BoyerVine, 237 F.Supp.3d 997 (2017).pdf; Lorig v Medical Board, 92 Cal.Rptr.2d 862 (2000).pdf; Cal.Civ.Code § 2934 -- Assignments instruments subordinating or waiving priority recording effect.pdf; Cal.Gov.Code § 6257.5 -- Purpose of request for disclosure effect.pdf; Cal.C.C.P. § 1859 -- Construction of statutes or instruments intent.pdf; Cal.Civ.Code § 3510 -- Reason for rule ceasing.pdf; Cal.Civ.Code § 3511 -- Reason same.pdf; Cal.Civ.Code § 3542 -- Interpretation reasonableness.pdf; N.R.S. 250.130.pdf; 131815611055.jpg; Teshara.pdf; CA_Ownership_Deed_Recording.pdf; CA_Title to Real Property.pdf; KNSD Channels 739 v Superior Court, 74 Cal.Rptr.2d 595 (1998).pdf; Hibernia Sav And Loan Soc v Boyd, 100 P. 239 (1909).pdf

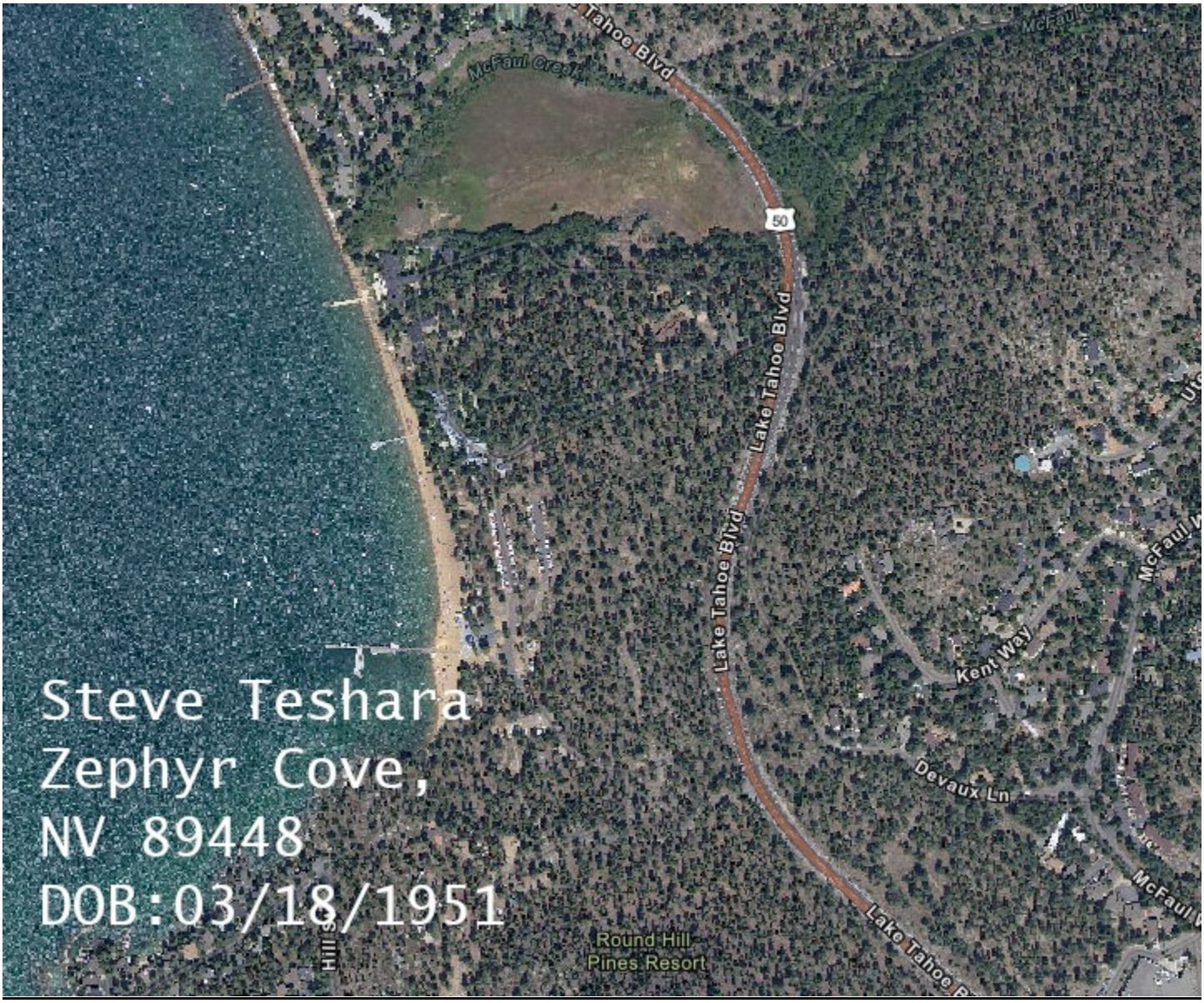
WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Nevada Tahoe Regional Planning Agency Governing Board,

We need to divest from the Tahoe Chamber.


Let me let you in o
I'M AN
ASSHOLE!

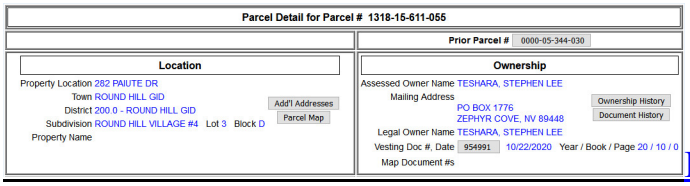
Steve Teshara does not live in the City of South Lake Tahoe. Mandatory public records show he owns title to his residence at 282 Paiute Drive, Zephyr Cove, NV:



Land patents, grants, title, and other records of ownership of finite land resources are inherently in the public interest, as is quieting title, preventing fraudulent land claims, abuses in adverse possession, prescriptive easements, squatting, and reducing litigation or extra-judicial violence. Hence ownership is maintained and published through national and state repositories as public documents and archives (Statute of Frauds; NRS §§ 250.130, & 239.010; Restatement (Third) of Property: Servitudes § 2.17 cmt. c (2000); RTC. §§ 458, 602, 1254(a), & 1602; GOV. §§ 6252(e), 6253, 27201, 27232-27233, 27257, 27264, 27279, 27280.5, 27282, & 66499.53; CCP. §§ **318**, **325**, **328**, & 1859; CIV. §§ 18-19, 678-703, 801, **1006-1009**, 1213, 1624, 2934, 3510, 3511, 3534, 3541, & 3542; ELEC. §§ 349.5 & 2184; 18 CCR §§ 252(a)(6) & 266). Since the founding of these states, it has been essential towards instilling legitimacy in government that land assessment and ownership is transparent and equitable. You may search for any Douglas County title record here, or El Dorado County title record here.

This is the County Assessor public return for querying "Teshara" with the below parcel number as you may verify.

http://assessor-search.douglasnv.us:1401/cgi-bin/asw101?Parcel=**131815611055**:


Parcel Detail for Parcel # 1318-15-611-055

Prior Parcel # 0000-05-344-030

Location

Property Location 282 PAIUTE DR
Town ROUND HILL GID
District 200.0 - ROUND HILL GID
Subdivision ROUND HILL VILLAGE #4 Lot 3 Block D
Property Name

Add'l Addresses | Parcel Map

Ownership

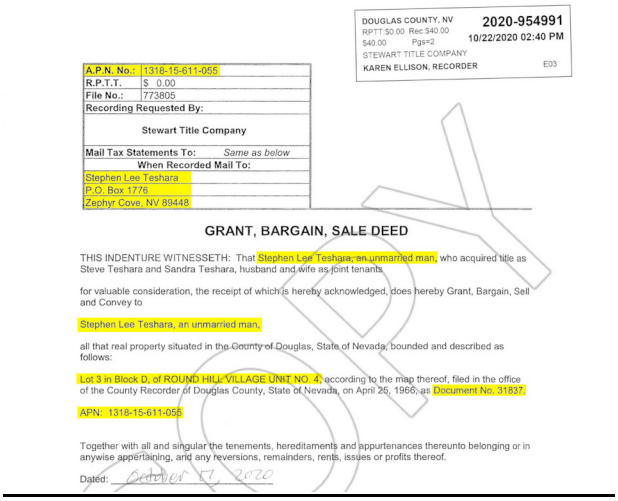
Assessed Owner Name TESHARA, STEPHEN LEE
Mailing Address PO BOX 1776
ZEPHYR COVE, NV 89448
Legal Owner Name TESHARA, STEPHEN LEE
Vesting Doc #, Date 954991 10/22/2020 Year / Book / Page 20 / 10 / 0
Map Document #s

Ownership History | Document History

Herein is an image of his house:

http://assessor-search.douglasnv.us:1401/photos/1318/**131815611055**.jpg

Here is a land grant public record:


DOUGLAS COUNTY, NV
RPTT:$0.00 Rec:$40.00
$40.00 Pgs=2
STEWART TITLE COMPANY
KAREN ELLISON, RECORDER
2020-954991
10/22/2020 02:40 PM
E03

A.P.N. No.: 1318-15-611-055
R.P.T.T. $ 0.00
File No.: 773805
Recording Requested By:
Stewart Title Company
Mail Tax Statements To: Same as below
When Recorded Mail To:
Stephen Lee Teshara
P.O. Box 1776
Zephyr Cove, NV 89448

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Stephen Lee Teshara, an unmarried man, who acquired title as Steve Teshara and Sandra Teshara, husband and wife as joint tenants

for valuable consideration, the receipt of which is hereby acknowledged, does hereby Grant, Bargain, Sell and Convey to

Stephen Lee Teshara, an unmarried man,

all that real property situated in the County of Douglas, State of Nevada, bounded and described as follows:

Lot 3 in Block D, of ROUND HILL VILLAGE UNIT NO. 4, according to the map thereof, filed in the office of the County Recorder of Douglas County, State of Nevada, on April 26, 1966, as Document No. 31837

APN: 1318-15-611-055

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: October 19, 2020

Censorship of this speech content "under the color of law" is an actionable 42 U.S.C. § 1983 violation of my First Amendment rights under the United States Constitution. *Publius v. Boyer-Vine*, 237 F.Supp.3d 997 (United States District Court, E.D. California, 2017). Notwithstanding, these documents do not even qualify as private records "under the color of law." Not only did the subjects willingly create these public records, but they also elected to personally hold land title under their names—knowing fully well that this would and must be disclosed and indexed by the County Assessor & Recorder. See *Lorig v. Medical Board*, 78 Cal.App.4th 462 (2000). *Cf.,Moreno v. Hanford Sentinel, Inc.,* 172 Cal.App.4th 1125 (2009) (a matter that is already public or that has previously become part of the public domain is not a private fact, and thus its disclosure does not constitute a public disclosure of private fact). To censor public speech about the content of public records long in the public domain, on the "unfounded conjecture and baseless speculation" that it might inspire the public to further seek unlawful discovery of "private facts" is a clear instance of abusive overreach (Cal. Const., art. I, § 3, subd. (b)(2); *New York Times Co. v. Superior Court*, 218 Cal.App.3d 1579 (1990); *CBS, Inc. v. Block*, 42 Cal.3d 646 (1986)). The State civil and criminal laws and delegated authority for municipal police powers are not only more than adequate to protect *bona fide* privacy interests, but are the least intrusive means on public rights and most direct method of obtaining those ends (*e.g.,* CA. CONS. ART. XI § 7; CIV. § 1708.8; PEN. §§ 602, 634, & 647; NRS §§ 200.650, 203.010; *Montesano v. Donrey Media Group*, 99 Nev. 644 (1983)).

Public disclosure proving that a person was astroturfing a legislative body or had a material financial interest in a municipal action—and resultant embarrassment—would: (1) provide undeniable incentive for persons to not mislead City officers causing miscarriages of justice; (2) the public would be better able to monitor and respond to "foreign influences;" and (3) advance the policy of the State to foster fair political practices, mitigate corruption, conflicts of interest, and dark influences—all of which unequivocally over-weigh very heavily in the public interest. This is of course, in addition to the long settled aforementioned issue that land titles are public records published as well as indexed by our governments—which as also resulted in this information being pervasively an irrevocably recompiled by commercial services (*e.g.,* traditional due diligence services such as Lexis Nexis, & **innumerable** novel online information broker companies).

In addition to the unconstitutional restriction of speech, censorship of land records does not square with the way Counties, States, and the federal government have always and must legally continue to treat this content, and such unlawful preemptive decision-making on that basis alone is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." The most common way to

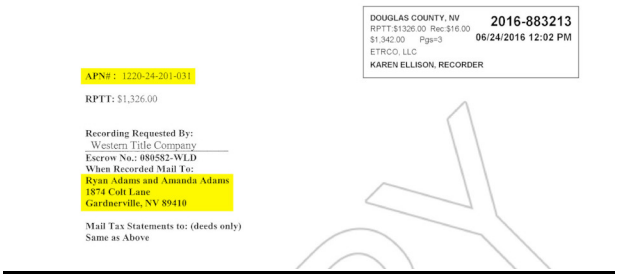
look-up recorded documents is by legal name, and the "APN" is nothing more than the Assessor's citation to the physical bounded book describing the parcel (assessor's map book - map page and block number - parcel in block). The purpose or effect of Blankenship's actions are to willfully injure, intimidate, interfere with, oppress, or threaten the free exercise or enjoyment of rights or privileges secured by the Constitution or laws of this state or by the Constitution or laws of the United States. The Clerk is covering-up material conflict of interest which expose her failure to do her job, fawns her to a corrupt political machine, and advances her misguided protection of the City's image. In fact, the Clerk was promoted while a City staff employee because of her willingness to submit to illegal and unethical requests by City officers.

It's well-known that Tahoe area businesses are often registered as tax-sheltering Nevada corporations even if they are physically in California. They also play games and cook the books on top of this to further undervalue their worth and reported profits in order to duck taxes. Cristi Creegan is a disgusting example of this.

We need to instate a minimum **living wage** and convert VHR's to workforce housing, before we consider building low-income housing projects and destroying our environment. Both Commerce Chambers are trying to pivot the discussion away from the underlying problem: **a living wage**. They want to avoid and deflate pressure for wage increases by having the public pay-for and railroad-through poverty housing and food stamps on their behalf so they don't have to pay their employees—a form of corporate socialism. They want *laissez-faire* polices whenever the government might stand in the way of their profits and then have the gall to turn around and ask the government to subsidize them by housing and feeding their employees! The City needs to implement a minimum **living wage** now, rather than implement perpetual poverty housing projects. A **living wage** is a human right. Trapping workers into poverty by not paying them is wrong. Businesses need to pay workers a **living wage** that can allow them to invest in a home, or send their children to college, or save for retirement, or otherwise realize "The American Dream," just like you have.

When Corporations pay employees nothing, or give them little more than housing and shift meals in return for work, they can't invest or even hope for a better future. Businesses that clawback wages through employer provided "housing" and "winter wear depreciation" are using the infamous playbook of mining companies. Nobody should die "owing their soul" to *Vail Corp.*, *Caesars Entertainment, Inc.*, *Marriott International*, *Joe "MBA" Sweatshop*, or other Tahoe Chamber consortium. There is a difference between a square deal and a fair deal. They deserve a square deal. You delude yourselves into believing poverty wage employment is a fair deal because, despite having no practical alternative, employees technically accept the job. Acceptance of an employment contract under duress is not fair!

The City needs to distance itself from the South Tahoe Chamber as well, for that matter. It's "president," Amanda Adams is not a South Lake Tahoe City resident or even a California resident. Mandatory public records show she owns title to a half-million dollar residential estate at 1874 Colt Lane, Gardnerville, NV 89410:


DOUGLAS COUNTY, NV
RPTT:$1326.00 Rec:$16.00
$1,342.00 Pgs=3
ETRCO, LLC
KAREN ELLISON, RECORDER
2016-883213
06/24/2016 12:02 PM

APN# : 1220-24-201-031

RPTT: $1,326.00

Recording Requested By:
Western Title Company
Escrow No.: 080582-WLD
When Recorded Mail To:
Ryan Adams and Amanda Adams
1874 Colt Lane
Gardnerville, NV 89410

Mail Tax Statements to: (deeds only)
Same as Above

The witch is trying to pivot the conversation way from implementing a **living wage**, and serve her own [real estate lobby]().

Good Day!

Jacob Riis

Beach Club loses appeal, stuck with $35.1M assessment

Laney Griffo
lgriffo@tahoedailytribune.com

TRIBUNE FILE

The amazing view from Tahoe Beach Club on Lake Tahoe's South Shore.

STATELINE, Nev. — The owners of Tahoe Beach Club are stuck with the $35.1 million assessment after the Douglas County Board of Equalization voted to deny their appeal for a lesser amount.

Attorney Josh Hicks, representing Tahoe Beach Club, claimed the property had been assessed too high based on a comparison to the neighboring Edgewood Tahoe Resort cabin property that was appraised at a much lower value, $24.57 million.

Hicks claimed that in some ways, Edgewood was superior. While both properties have private beach access, he said Edgewood has much more beach, a private road accessing the cabins and is closer to the casino corridor.

Tahoe Beach Club has 97 proposed units that the owners have not yet started construction. In the next phase of development, 32 units will be built, 59% of which have already sold.

After Hicks gave a lengthy presentation, Assessor Trent Tholen gave his rebuttal.

"What you have just heard was the longest, most drawn out, most desperate attempt to turn opinion into fact," Tholen said to start his rebuttal.

One of Tholen's biggest arguments was that Edgewood is zoned for recreational use while Tahoe Beach Club is zoned for residential use. Because of the different zonings, they cannot be considered comparable properties.

"Considering the different

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BEACH

From page 3

zoning, I just really don't know if they are alike," said board member James McKalip.

Another sticking point for the board was the fact that the land in question is undeveloped. The next phase of development likely won't be finished for two to two and half years. The project won't be fully developed for five years.

Patrick Rhamey, CEO of the Beach Development LLC which oversees real estate for Tahoe Beach Club, said while Tahoe development is on the up right now, it's hard to tell what the market will be like in five years.

Board member Tim Plaehn was disturbed by the significant difference between the values of Tahoe Beach Club and Edgewood, although he thought the issue is likely in Edgewood's assessment.

Ultimately, the board voted 4-1, with board member Gary Boudreau voting no. Tahoe Beach Club can appeal the decision to the State Board of Equalization and Hicks said he will be, "evaluating our next steps."

At $35 million, Beach Club is the third highest assessed value property in Douglas County, if all the condos were combined, the Tribune previously reported.

Caesars Entertainment, which owns Harrah's and Harveys in Stateline, is assessed at $78.8 million. Edgewood Co. has an assessed valuation of $49.8 million. Starbucks, which operates a roasting plant near Minden-Tahoe Airport, is valued at $31.4 million, according to the Assessor's Office.

Beach Club loses appeal, stuck with $35.1M valuation

Laney Griffo
lgriffo@tahoedailytribune.com

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By working together we can solve Tahoe's housing issues

Amanda Adams
Guest column

Housing at Lake Tahoe, it's something that affects everyone. From the locals who are searching for a place to live, to the businesses who struggle to keep good employees because they keep moving out of the area.

No one is immune from the problem. It's also not a problem that is unique to Tahoe. Many resort communities that rely on tourism have similar issues.

We hear the stories every day. A local small business is looking to fill a job opening but is having a hard time finding a well qualified employee who lives in the area. The 20-year-old who was born and raised in Tahoe but now is trying to find an affordable place to rent. The family whose landlord just gave them notice to vacate and they are looking for a new place to move in to. A young couple who run a small business and are looking to purchase their first home but prices are out of their reach.

On top of all that, we are currently dealing with the COVID pandemic and the restrictions on businesses that added even more stress to our community. It has brought many businesses to their breaking points, with some closing their doors for good and others just barely scraping by.

Many have had to lay off employees one month, only to try to rehire them back a few weeks later. But sadly with so many locals not being able to find a place to live, the number of available employees has dropped dramatically. What will happen when all of the local businesses are back open 100%? Will there be enough locals to fill all of the job openings? If we are having a housing shortage now, what will it be like in six months during the summer? We need to figure this out now before things get worse, but how?

The short answer is that we need more affordable housing for our locals. But what does

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TRPA is failing Tahoe residents on short term rentals

Richard Miner
Guest column

TRPA is failing Tahoe residents on short term rentals

April 2020 set a new benchmark for visitors to the Tahoe Basin – more than the usual high season in July – and that doesn't begin to capture the tens of thousands who came through Incline Village/Crystal Bay and other small communities around the lake throughout the pandemic.

Thousands booked their stays in short-term rentals, which surprisingly were allowed to operate while hotels were forced to shut down out of public health concerns about COVID community spread. The waves of visitors not only presented a danger to human health, but they were also a threat to the environmental health of the Lake Tahoe Basin.

Short-term rentals and Tahoe Regional Planning Agency have had a questionable history. While TRPA's stated mission is to "… lead the cooperative effort to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe Region, while improving local communities, and people's interactions with our irreplaceable environment," it is dropping the ball in preserving the unique natural environment when it comes to short-term rentals.

Indeed, in the past local Tahoe residents and businesses have known TRPA to be a lion when expanding a property, removing trees or taking on major projects such as eliminating invasive species. So, why has TRPA been a lamb when it comes to short-term rentals — the issue that in recent years has had a dramatically adverse effect on the fragile basin and the very fabric of communities TRPA was established to protect?

In 2004 TRPA approved short-term rentals as a permitted "residential use" in spite of initial staff recommendations against doing so. Furthermore, many of the critical historical documents surrounding this decision seem to have disappeared from TRPA files. We need to revisit this topic with urgency, due to the hyper acceleration of tourism driven by short term rentals.

Much has been written on the growth in STRs and their negative traveler impacts to Tahoe, as well as in national publications including the Washington Post and The New York Times.

The stories all center on the "overtourism" and "hotelification" created by short-term rentals. This results in neighborhoods — zoned as primary residential — being plagued by overflowing houses and condos; parked cars blocking streets and overflowing lots; and trash-strewn trails, beaches, and

MINER, 22

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- Anonymous submissions will not be published.
- Form letters, libelous letters or letters in poor taste will be rejected.
- We reserve the right to edit all letters and columns.
- Letters must be 300 words or less. Guest columns must be 750 words or less.

The Tahoe Daily Tribune is published Friday by the Sierra Nevada Media Group.

Postmaster: Send address changes to Tahoe Daily Tribune and the Lake Tahoe News, 3079 Harrison Ave., South Lake Tahoe, CA 96150.

Tahoe Daily Tribune is served by The Associated Press. The Tribune serves the Lake Tahoe area in El Dorado, Placer and Alpine counties in California; and Douglas, Carson and Washoe counties in Nevada.

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MINER

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parks. This past summer all of that came atop yet another dangerous wildfire season and a never-ending pandemic, severely compounding public safety and health crises and further endangering Tahoe communities.

It's been estimated that short-term rentals allow for 10 times the average number of occupants as an average owner-occupied residence.

An additional consequence of short-term rentals concerns affordable housing, another major issue in the basin. Each housing unit converted to a short-term rental reduces the overall housing stock available to long-term residents. This drives up rents and home prices and simply overwhelms any progress made by public-private initiatives to create more affordable housing.

Permanent residents with a stake in the community, environment and overall health of the basin are replaced by transient renters with no such vested interests. Again, the end result is the further degradation of Tahoe communities and the environment.

Yet, incredibly, TRPA has done no formal, comprehensive environmental impact study on short-term rentals. According to the agency, in 2004 they created a mere "check list" when making a determination on STRs. Ultimately, it has been left to the communities surrounding the lake to create a patchwork of STR ordinances, while fighting well-funded realtor groups, their lobbyists and PR agencies, who benefit from the input of attorneys at billion-dollar corporations such Airbnb.

The experience of this past year alone proves there has been a significant and material change in Tahoe due to short-term rentals. Online platforms (Airbnb, VRBO, HomeAway, etc.), which first came into existence beginning in 2008, have since enabled the commercialization of short-term rentals on an industrial scale. Both STRs and the web sites that flog them have grown exponentially ever since.

As the five California and Nevada counties surrounding the lake continue to struggle with mitigating the impact of short-term rentals, TRPA must now "lead from behind" and finally live up to its mission by weighing in with a full environmental impact study. Better late than never.

Richard Miner is the former president of the Incline Village & Crystal Bay Historical Society.

ADAMS

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that entail exactly? The cost to build new housing is expensive in Tahoe and existing housing isn't sufficient to support our workforce. So we need to find ways to add new housing developments and repurpose existing buildings that are obsolete. One size does not fit all regarding housing, thus the new housing projects should be multifaceted and include smaller apartments, larger townhomes, and single family homes. That way there is an option for everyone and every need.

That might be viewed as wishful thinking. But I am an optimist and I believe that we should aim high. I am also practical and know there are some massive roadblocks in the path to reach those goals. The main one being cost, as mentioned above. This isn't an easy roadblock to overcome and has caused many housing projects to fail in the past before they even got started. So how do we get past the roadblocks? By working together as one community.

For our community to thrive we need a robust workforce and thriving small businesses. Those two things are the backbone of every community. Even those in our area who are retired want to be able to go to the little coffee shop where the employees know them by name and have dinner with friends at the locally owned restaurant that serves their favorite meal.

But imagine if that coffee shop's owners have to move out of town because they can't afford to buy a home in town, or the restaurant cuts back on its hours due to lack of staffing. See, it affects everyone.

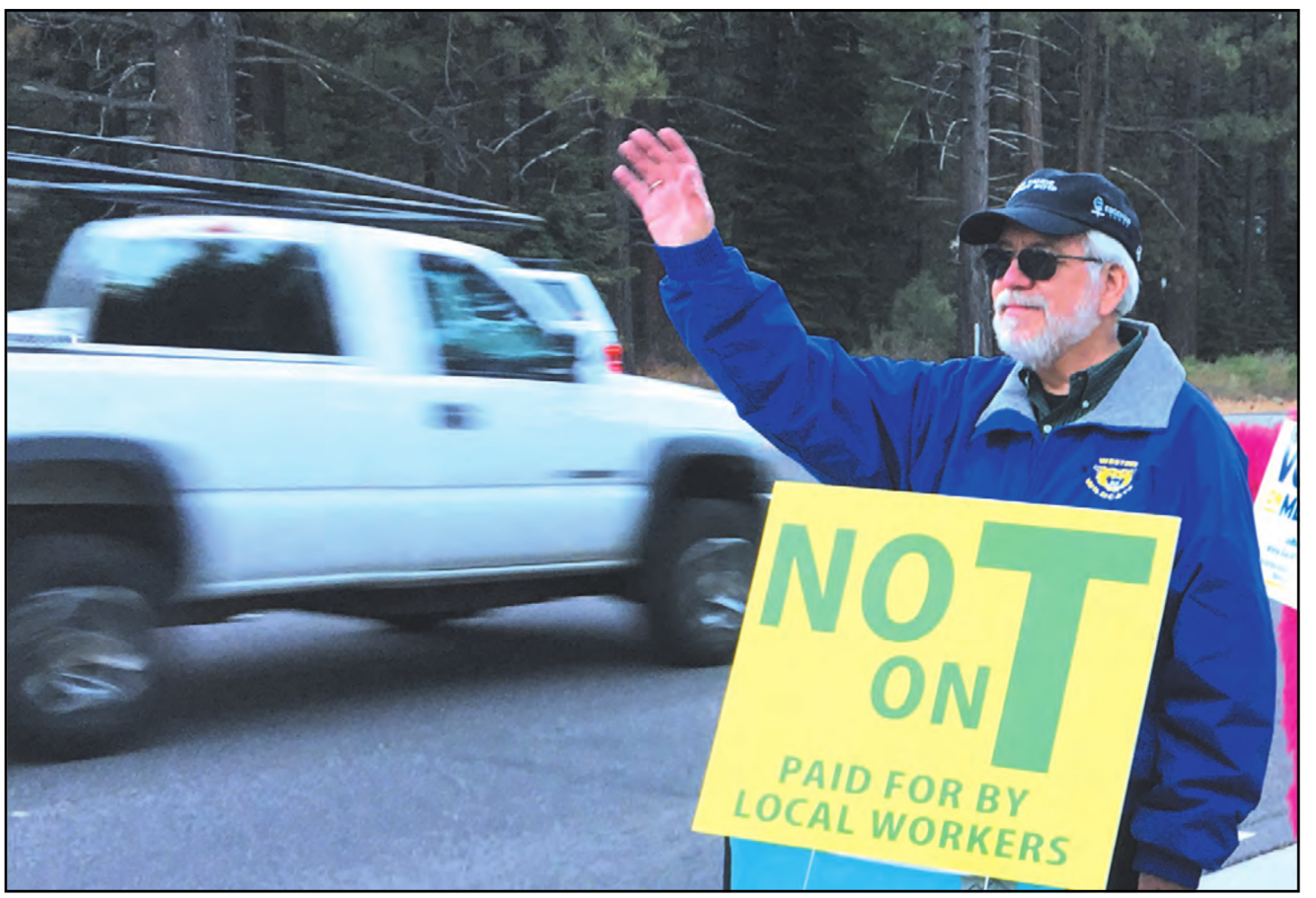
Thankfully our community is full of "helpers" who are working to provide solutions to the housing issues. Included in this group of "helpers" are individual locals, nonprofit organizations, city and county governments, businesses and chambers of commerce like us. They all work together on this issue because they want to see their Tahoe community thrive. There are even a few projects currently in the works around the lake.

Finally, what can you do to help? What's really needed is support. If the public and business community joined together with one voice and told the local governments that finding solutions to the housing shortage was important to them, it would make a huge difference. This means at the local level with the city and town governments, but also the counties and states.

My hope is that we can create enough affordable housing to accommodate our entire workforce over the next five years. I know we can get the job done if we work together. Let's make sure everyone in Tahoe, locals and businesses, can thrive and enjoy the mountain lifestyle we all came here for.

Amanda Adams is the president for the South Tahoe Chamber of Commerce.

TAHOE
MOUNTAIN NEWS
Serving Lake Tahoe's South Shore Since 1994
Vol. 26, No. 3 • September 2019



Photos by Taylor Flynn

Steve Teshara campaigns against Measure T (unsuccessfully) along Emerald Bay Road on November 6, 2018

Power Player

In this month's Cover Story we look at how TahoeChamber Executive Director Steve Teshara wears many different hats in overlapping roles on the South Shore.

Question Everything

Keeping It Real
by
Peggy Bourland

WHAT IS THE TTD?
" The agency (Tahoe Transportation District) is responsible for facilitating and implementing safe, environmentally positive, multi-modal transportation plans, programs and projects for the Lake Tahoe Basin, including transit operations."

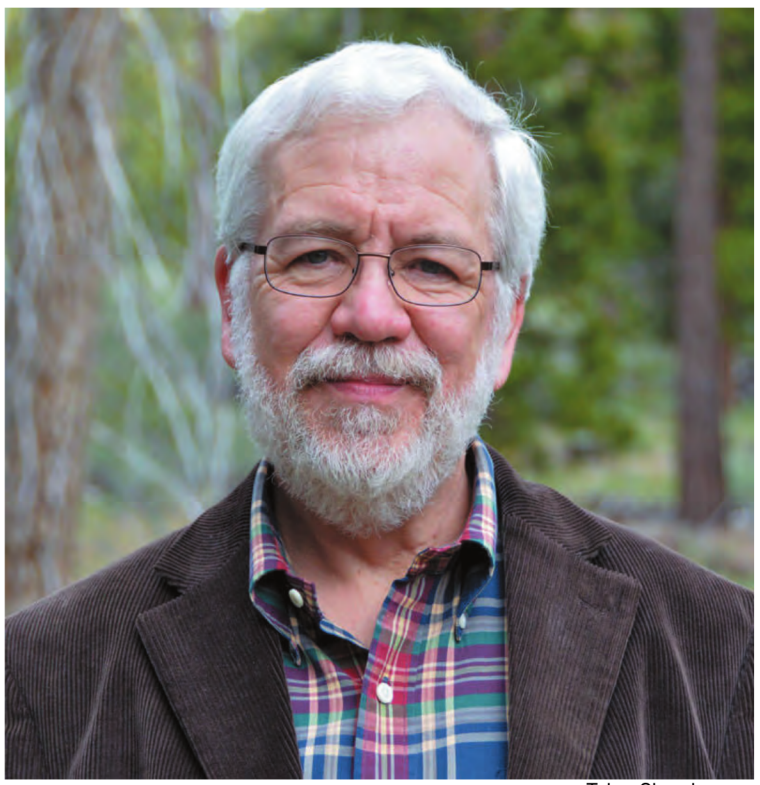
In practice, the TTD is responsible for the empty buses driving around town on fixed routes, a ten year multi-million dollar campaign to resurrect a Loop Road plan that takes out a low-income neighborhood and, sit down for this, they now want to be in charge of building low-income housing. This is a classic case of Mission Creep.

The TTD Board needs to reverse course on this train wreck and recognize that for years they have been influenced by a perennial board chairman (Steve Teshara) and an ineffective district manager (Carl Hasty). Cody Bass who represents the City as a member of the TTD board has thrown a wrench into the works by questioning the status quo. Keep it up councilman! The question now: Is it time for a regime change at the TTD?

IS THE TRPA SAVING LAKE TAHOE?

The Tahoe Basin's Grand Poobah for environmental policy has lost its focus and now seems to have joined developers in a rush to pave paradise. They have allowed more than 8,000 VHRs to proliferate the entire basin while imagining they are controlling the influx of tourists through a limited number of Tourist Accommodation Units (TAUs). Uncontrolled and unmanaged tourism has become this agency's greatest land use failure. It's time for the TRPA to uphold their original mission of environmental protection.

To be continued...



TahoeChamber.org

Steve Teshara uses the South Shore Transportation Management Association as a springboard to bigger roles.

One man, many faces

By Heather Gould

The South Shore Transportation Management Association. What is it and what does it do? Its slogan is "a non-profit community forum advocating transportation and mobility solutions."

Established in 1994, it once operated the Nifty 50 Trolley, had a paid executive director and was a player in transportation matters on the South Shore. For more than a decade, though, it has slowly eroded as transportation funds have dried up and funding requirements have tightened and suffered collateral damage as the BlueGo mass transit system imploded in 2010.

Its board is down to three people – Chair Steve Teshara, Andrew Strain and Mike Riley – and its activities seem to consist mainly of review, advocacy, and outreach for various transportation programs and projects, according to a summary provided to the South Lake Tahoe City Council at its September 3 meeting. Included in the materials were four letters written in 2018 and 2019 commenting on or supporting various transportation initiatives.

The SSTMA is, ideally, the "private" in a public/private partnership or a support companion to the Tahoe Transportation District. The TTD is a public agency, established by the same legislation that formed the TRPA, to handle transportation projects and programs in the basin while TRPA handles building and development. An imperfect analogy might be the relationship between the Lake Tahoe Unified School District and the Lake Tahoe Educational Foundation. One (TTD) is the public agency that runs the system, the other (SSTMA) a private entity that provides support and input and helps fill in the gaps.

Some involved in transportation would like to see the SSTMA be much more than it currently is. South Lake Tahoe City Councilmember Cody Bass, who was recently appointed to the board of the Tahoe Transportation District, would like to see the SSTMA board expanded and "reinvigorated." He would like to use the Truckee-North Tahoe Transportation Management Association as a "roadmap," for SSTMA, working hand in hand with the TTD to give the private sector a seat at the table on transportation matters. On the

Continued on Page 26

"Teshara"

Continued from Page 24

North Shore, said Bass, the private sector TMA is responsible for transit marketing and outreach and has a voice in the services provided. "The casinos, the ski resorts, the hotels, those need to make up the board," he said.

Over at the League to Save Lake Tahoe, Executive Director Darcie Goodman Collins agrees. She wants to see the SSTMA board include lodging, the casinos, Barton, LTCC, the environmental community and more. "We want to restructure it and bring in these private interests."

The private sector is "excited" for more transportation choices, said Goodman Collins, and transportation is something the League has made a key focus. Roads and exhaust have the biggest direct and indirect impacts on water quality and clarity in the basin through runoff and fine particulate matter, she said. The League has been central in bringing in Lime bikes and scooters and last summer brought in private micro-transit carrier, Chariot – mostly just to show that people would use various transportation options if they were available, she said. Now the League would like to take that data and those smaller successes and apply them on a larger scale.

"It would be a combination of the current traditional public transit and connecting it with other private opportunities, so people can come up here without a car and get around or bring a car and have options. With the current (SSTMA) structure, we haven't been getting participation from the private sector."

Teshara said SSTMA is in the process of amending its by-laws to expand the board. He wouldn't comment on how it would expand or with whom since the changes haven't been finalized. He also said SSTMA is hosting the operator of the Squaw Valley shuttle to talk about providing service on the South Shore. The smaller, seven-person shuttles are cheaper and easier to operate. Their small size makes them nimbler – they can go more places physically and service more routes since they don't need as many passengers to reach capacity – and the driver does not need a commercial driver's license.

One specific change Bass would like to see to SSTMA is for Teshara to step down as chair. He has headed the organization since its inception a quarter-century ago. "A chair should be a chair for a term or two at the most, not for 25 years. That's crazy." Teshara responded tartly, "Cody is entitled to his opinion."

SSTMA has provided Teshara with a springboard into other opportunities for influence and authority. Through his board membership in SSTMA, Teshara is accorded a seat on the Tahoe Transportation District board, where he has served as chair for the past six years. Through his seat on TTD, he is granted a seat on TRPA's Advisory Planning Commission, where he has served as chair for the past five years. He is also executive director of the Lake Tahoe South Shore Chamber of Commerce (TahoeChamber) and heads his own consulting firm, Sustainable Community Advocates, which has worked with the Tahoe Prosperity Center and the Lake Tahoe Sustainability Collaborative among others. He was previously executive director of the Gaming Alliance, now known at STAR (South Tahoe Alliance of Resorts). On his Sustainable Community Advocates website, Teshara says he is able to "successfully 'connect the dots.'"

> *"I don't consider it to be power hungry. I consider it to be contributing to the community. These are volunteer opportunities and I've contributed thousands of hours. I've been in Tahoe for more than 40 years and I have the understanding and am able to contribute at a higher level than maybe those who haven't been around as long."*
>
> – Steve Teshara

Sometimes, Teshara seems to embody the dots.

For example, as executive director of the TahoeChamber he advocated for the Loop Road and, in fact, signed a ballot argument against allowing the issue to go to a vote of the people. As a member of the TTD and the APC, he was on the decision-making side, voting to move the Loop Road forward.

As head of the SSTMA, he wrote a letter to the Federal Transit Administration in support of a grant for a storage and maintenance facility for TTD, which he chairs.

As head of SSTMA, he wrote a letter praising TTD District Manager Carl Hasty, whom Teshara supervises as chair of TTD, for obtaining grant-funded zero-emission busses.

Teshara personally demonstrated against a ballot measure to limit vacation rentals in the city of South Lake Tahoe, an official position of the TahoeChamber. He will be voting on a basin-wide VHR measure that is scheduled to come before the APC later this year.

SSTMA, which he heads, recently hired Design Workshop to prepare a vision plan for the Highway 50 corridor between Lake Parkway and Elks Point Drive. He was a cheerleader for the plan as executive director of the TahoeChamber. He will vote on the plan if it eventually comes before the TTD and APC. This is taking a page from the Loop Road playbook whereby STAR paid Design Workshop to draw up plans and artist's renderings for the Loop Road to get the ball rolling. At a recent community meeting, where Teshara spoke as a representative of SSTMA, he said there was no connection between the latest vision plan and the recent development of the new Edgewood Hotel, the upcoming Stateline Events Center and the Tahoe Beach Club, which took out a trailer park and is replacing it with a luxury development.

Teshara denied his various roles were a way to amass power or manipulate decisions on the South Shore.

"I don't consider it to be power hungry," he said. "I consider it to be contributing to the community. These are volunteer opportunities and I've contributed thousands of hours. I've been in Tahoe for more than 40 years and I have the understanding and am able to contribute at a higher level than maybe those who haven't been around as long. Everything except the chamber is a volunteer position."

He also said that when it comes to TahoeChamber, "positions and advocacy are directed by the board."

Teshara also said he is able to keep the various functions of his different roles separate and avoid conflicts.

"I am fully committed to the decision-making integrity of each board or commission on which I serve. Final decisions are made only after staff recommendations are considered, public comment is received, and the board or commission deliberates its decision and moves to a vote."

26 No. 5 ACC Docket 96

ACC Docket
June, 2008

Department

CareerPath
Bill Mordan[a1]

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***96 THE STREISAND EFFECT**

WESTLAW LAWPRAC INDEX

INH -- In-House Counsel & Corporate Law Departments

If you want a child to notice something, just tell him he's not allowed to look at it. He will simply have to see it.

And if you want the world to notice something on the internet, just try to cover it up. Not only will everyone online want to see it, everyone will.

If you have children, you call this human nature. On the internet, such behavior deserves its own terminology: the Streisand Effect.

Mike Masnick, the editor of TechDirt.com, coined the expression “the Streisand Effect” in 2005. Now the Streisand Effect has become one of the more popular internet euphemisms, qualifying for national media attention and even its own website.

The Streisand Effect owes its name to Barbra herself and a decision she made to sue an environmentalist who photographed her Malibu home. Kenneth Adelman took over 12,000 photographs of the California coastline as part of his project to record the effects of development and construction. He carefully cataloged and published these photographs on his website. Given the breadth of Adelman's work, the pages included images of many private homes.

Unfortunately for Adelman, one of those photographs included a clear image of Streisand's beachfront estate.

Streisand's attorneys complained, then filed suit, arguing that Adelman had violated her privacy rights under California's unique antipaparazzi law. As with all celebrity events in California, Streisand's lawsuit garnered worldwide attention. As a result, the photograph she tried to suppress was duplicated and distributed around the globe. Her ultimate objective had been undermined by the populist anarchy of the internet.

This once obscure and unknown photo, posted among thousands on an unpopular site, suddenly became one of the world's more reproduced images. And from this legal action and public reaction we have the Streisand Effect: by attempting to squelch information you can inadvertently make it wildly popular.

In-house attorneys have been dealing with the Streisand Effect for years. Facing a rouge third party that infringes your client's trademark? Dealing with an irate consumer whose life's mission is to disparage your company? Suffering under the wrath of a former executive who ignites a new false rumor about your CEO every day? Legally, you have an easy win. Morally, you hold the high ground. But publicly, taking action may only grant your adversary even more undeserved attention.

The introduction of the internet changed the venue for this type of popular backlash, but it also greatly increased the risk that you will fall victim to the Streisand Effect. Letter or email message--and even simple voicemail messages--are easily posted on the internet for all to see (or hear). If you dare to challenge a small opponent with a bit of web savvy and little to lose, you risk having your challenge published around the globe, probably laced with a snide color commentary.

So before you even start to craft that poignant cease-and-desist letter, think strategically about your adversary.

Thinking strategically means knowing when not to act. You were hired to help protect the company's reputation and assets; but if you try to battle every miscreant on the internet, you are toying with the Streisand Effect. On the web, you are already playing on a field that favors sensationalist news, regardless of the source. And once you send that letter or complaint, it is out of your control.

Thinking strategically means understanding your opponent's stature in the community. If you were dealing with a lone individual who merely derides your company in barroom chatter, you wouldn't do a thing about it. The same holds true for an adversary with a clunky website or blog. In the overabundance of misinformation on the internet, such drunken diatribes, are better left lost at sea.

But if your opponent starts to build respect, if her words attract the attention of a sizable crowd or the mainstream media, you have a more difficult choice. Then you must prepare yourself and your client for legal action that will beg attention. A mild protest can quickly transform into an internet blockbuster, but you may have little choice.

Streisand did have a choice, but her efforts backfired. She lost her case and ended up paying her opponent's attorneys' fees. And the photo of her home is still on the internet, forever famous.

Quite often, if you don't want a child to notice something, it's better to just keep quiet.

Have a comment on this article? Email editorinchief@acc.com.

Footnotes

a1 BILL MORDAN is area vice president and general counsel for Reckitt Benckiser Inc., a global consumer products company. He oversees the legal and government affairs of the company in North America, Australia, and New Zealand. Prior to joining Reckitt Benckiser in 2003, Bill served as senior counsel and also as associate general counsel for Proctor & Gamble, working in the US corporate headquarters as well as in Mexico and Brazil. He can be contacted at *bill.mordan@reckittbenckiser.com*.

26 No. 5 ACCDKT 96

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Don't be disenfranchised in Douglas election

Steve Teshara
Guest Column

In Douglas County, if you're not a registered Republican, you won't be able vote to help determine who wins the three seats on the county commission in the upcoming primary election.

Why? Primary elections in Nevada are closed, meaning that a voter must be registered with a party in order to participate in that party's primary. As is typically the case in Douglas, all commission candidates are Republicans. If you are registered in any other party, the candidates for county commission will not appear on your ballot.

Also, in Nevada, the winners of primary contests are determined by plurality vote. That means the candidate with the highest number of votes is declared the winner of the primary even if he or she did not win with more than 50 percent of the vote. There are no Democrat or other party candidates for County Commission this year, so those who prevail in the primary are elected and there is no General Election for Commission in November. It's also important to point out that while commission candidates must run from the district in which they live, all registered voters, Republicans in the case of this year's primary, can vote for all three open seats. We believe all registered voters in Douglas County should be able to vote for candidates for county commission.

Fortunately, Douglas voters can act to ensure they are able to cast ballots for three county commissioners in this spring's election. You can change your party registration to Republican for just this primary and then change it back.

If you are not affiliated with the party candidates you want to vote for, you can make a change at http://cltr.douglasnv.us/elections/voter-registration/.

Tahoe Chamber has joined with the Carson Valley Chamber, Business Council of Douglas County, and others to sponsor a Douglas County Commission candidates forum at 6 p.m. Monday, May 4.

This will be a virtual forum. You can watch live or OnDemand on many different platforms including Roku TV, Apple TV, Amazon Fire, Android TV, Mobile devices and on the Internet. Retired Judge Tom Perkins will be the moderator.

The program will be available for viewing on multiple platforms if you're not able to view on May 4.

The June 9 Douglas County Primary will be conducted entirely by mail. If you are a Douglas County resident, Tahoe Chamber urges you to change your party registration if necessary so you are not disenfranchised from voting in this pivotal election.

Steve Teshara serves as chief executive officer of the Lake Tahoe South Shore Chamber of Commerce (Tahoe Chamber.)

STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

State of California

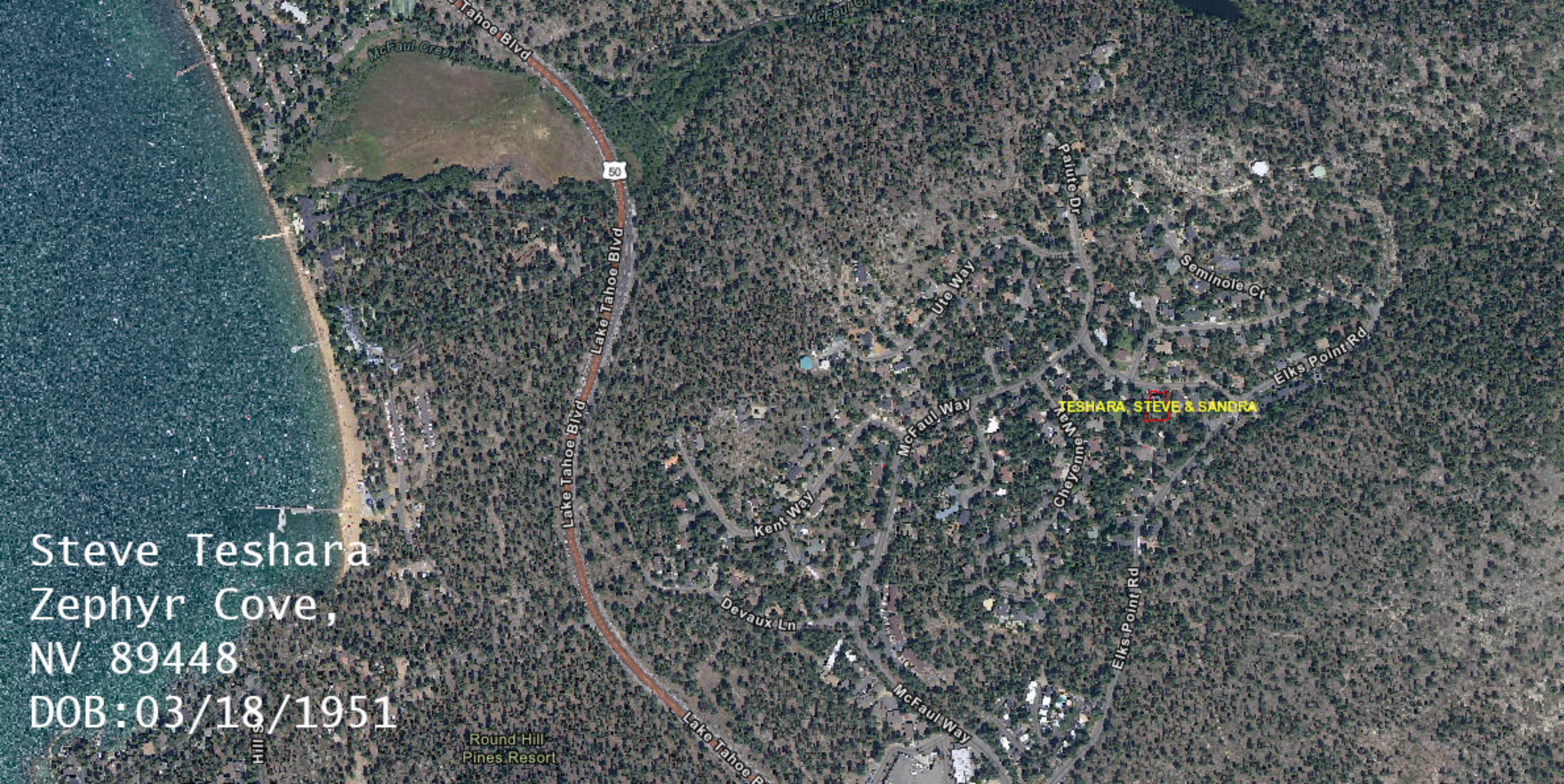
PENAL CODE

Section 596.5

596.5. It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior towards the elephant, which behavior shall include the discipline of the elephant by any of the following methods:

(a) Deprivation of food, water, or rest.
(b) Use of electricity.
(c) Physical punishment resulting in damage, scarring, or breakage of skin.
(d) Insertion of any instrument into any bodily orifice.
(e) Use of martingales.
(f) Use of block and tackle.

(Added by Stats. 1989, Ch. 1423, Sec. 1.)


Steve Teshara
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NV 89448
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Lake Tahoe Blvd
Lake Tahoe Blvd
Lake Tahoe Blvd
McFaul Creek
50
Round Hill
Pines Resort
Hill
Devaux Ln
Kent Way
McFaul Way
McFaul Way
McFaul Way
Ute Way
Paiute Dr
Seminole Ct
Elks Point Rd
Elks Point Rd
Cheyenne Way
TESHARA, STEVE & SANDRA

Penny Teshara

July 1, 1944 - June 29, 2020

Sandra Elisabeth Van Fossen (Penny) was born July 1, 1944 in Charlottesville, Virginia to Hansel Young and Ruth Van Fossen, the sister to older brother Danny. She passed peacefully from this earth the afternoon of Monday, June 29, 2020 with her loving husband and life partner Steve Teshara by her side.

Danny had trouble pronouncing Sandra so she became Penny. The family moved west to Santa Barbara before Penny entered high school. Early on, and throughout her life, Penny exhibited intelligence, a compassion for others, great organizational skills, a flair for creativity, and, like her father, an aptitude for figuring out and fixing things.

In 1977, Penny moved to South Lake Tahoe with her young daughter Kelley. They enjoyed the change from the coast to the mountains. Penny often said she was sold on Tahoe when she saw deer on the runway as the plane she was in touched down on the runway at Lake Tahoe Airport. Together, Penny and Kelley experienced the full range of activities, challenges, and joys of living at the Lake. Penny especially loved bike riding and long walks.

Penny and Steve met while working at KTHO AM radio in the summer of 1982, Penny as the capable business manager and Steve as the dedicated news director. Station General Manager Ollie Hayden, as farseeing as he was, had no real idea what his hiring decisions had brought together. After several years collaborating in community service at KTHO, when Ollie stepped down, Penny left to work for another local radio station. Steve, still a West Shore resident, eventually returned north to work for the Tahoe North Visitors and Convention Bureau, and subsequently for the Tahoe Sierra Preservation Council.

Penny and Steve remained close friends, so stayed in touch even when not working together. In the early 1990s, they had a second opportunity to collaborate at what was then the South Tahoe Gaming Alliance, later the Lake Tahoe Gaming Alliance. Fortune played another hand when they resolved to get married, which they did on August 29, 1999, at the former Christiania Inn in South Lake Tahoe. Their commitment to each other was strong. They each sold their individual homes and together purchased a home in Round Hill, Zephyr Cove. When the Gaming Alliance office closed down in December of 2002, Penny established her own company, Teshara Management Services, and Steve was hired as Executive Director of the North Lake Tahoe Resort Association/ North Lake Tahoe Chamber of Commerce. Their relationship as life partners in marriage continued to blossom and grow.

In the spring of 2010, with Penny's support, Steve stepped down from the Resort Association and established his own company, Sustainable Community Advocates, specializing in government affairs and initiatives designed to foster community sustainability. One of Steve's early clients was the Lake Tahoe South Shore Chamber of Commerce (Tahoe Chamber). In the summer of 2016, again with Penny's full support, he accepted the position of interim chamber chief executive officer, then, in the spring of 2017, was named CEO.

For nine years, they also worked together as producers, along with long-time broadcaster Lloyd Higuera, of a local television program, The Regional Report, a feature of Douglas County Community Access Television. Penny continued in the field of radio broadcasting, working at stations based in Carson City.

In 2018, in recognition of their many years of service, Penny and Steve were inducted together into the Nevada Broadcasters Hall of Fame, one of the few couples to achieve that honor.

Penny and Steve shared a total of 38 years as the best of friends and nearly 21 years as partners in marriage. Penny passed two days shy of her birthday and two months before what would have been their 21st wedding anniversary.

In addition to Steve, Penny is survived by her daughter Kelley Hopper and husband Rick Hopper of Reno. Her interment is at Happy Homestead Cemetery in South Lake Tahoe near the final resting place of her mother Ruth. She is remembered fondly by many throughout the Tahoe region for her smile, her caring and unique contributions, and for the love story of her partnership with Steve in service to the community.

Anyone wishing to make contributions in Penny's memory can do so with a donation to the Lake Tahoe Community College Foundation, helping to support the educational advancement of many working hard to become the leaders of today and the future.

237 F.Supp.3d 997
United States District Court, E.D. California.

Doe PUBLIUS and Derek Hoskins, Plaintiffs,
v.
Diane F. BOYER–VINE, in her official capacity as Legislative Counsel of California, Defendant.

1:16–cv–1152–LJO–SKO
|
Signed February 27, 2017

Synopsis

Background: Writer of political blog who had compiled and posted the names, home addresses, and phone numbers of California legislature members who had voted in favor of gun control measures, and operator of online forum for discussion of issues related to firearms, brought § 1983 action against counsel for California state legislature, alleging that state statute that made it unlawful to post online home addresses and telephone numbers of certain government officials violated the First Amendment, the Commerce Clause, and the Communications Decency Act (CDA). Plaintiffs moved for preliminary injunction preventing counsel from enforcing statute against them.

Holdings: The District Court, Lawrence J. O'Neill, J., held that:

[1] takedown demand letter coupled with plaintiffs' compliance with demand constituted cognizable constitutional injury, for purposes of standing;

[2] writer's injury would have been redressed by favorable decision, for purposes of standing;

[3] counsel acted under color of state law in demanding removal of list from websites, for purposes of § 1983 liability;

[4] addresses and telephone numbers of legislators touched on matters of public concern, and thus publication of information was protected speech;

[5] statute was not narrowly tailored to state's asserted compelling interest;

[6] statute was underinclusive with respect to state's asserted compelling interest for regulating speech;

[7] operator was likely to succeed in challenging statute as invalid under the dormant Commerce Clause's extraterritoriality doctrine, supporting issuance of injunction; and

[8] public interest supported grant of preliminary injunction.

Motion granted in part and denied in part.

West Headnotes (41)

[1] Injunction Grounds in general; multiple factors

To secure injunctive relief prior to a full adjudication on the merits, a plaintiff must show that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

[2] Injunction Extraordinary or unusual nature of remedy

Injunction Clear showing or proof

Injunctive relief is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.

[3] Injunction Balancing or weighing factors; sliding scale

Under "sliding scale" approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another.

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[4] **Federal Civil Procedure** In general; injury or interest

Federal Courts Case or Controversy Requirement

Standing is a judicially created doctrine that is an essential part of the case-or-controversy requirement of Article III. U.S. Const. art. 3, § 2, cl. 1.

[5] **Federal Courts** Injury, harm, causation, and redress

To satisfy the Article III case or controversy requirement, a litigant must have suffered some actual injury that can be redressed by a favorable judicial decision. U.S. Const. art. 3, § 2, cl. 1.

[6] **Federal Civil Procedure** In general; injury or interest

Doctrine of Article III standing requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. U.S. Const. art. 3, § 2, cl. 1.

[7] **Constitutional Law** Criminal Law

Where a plaintiff has refrained from engaging in expressive activity for fear of prosecution under the challenged statute, such self-censorship is a constitutionally sufficient injury for purposes of Article III standing as long as it is based on an actual and well-founded fear that the challenged statute will be enforced. U.S. Const. art. 3, § 2, cl. 1; U.S. Const. Amend. 1.

[8] **Constitutional Law** First Amendment in General

When the threatened enforcement of challenged statute implicates First Amendment rights, the inquiry into whether plaintiff suffered a constitutionally sufficient injury tilts dramatically toward a finding of standing. U.S. Const. Amend. 1.

[9] **Constitutional Law** Facial challenges

Constitutional Law As applied challenges

First Amendment challenges may be brought as "facial" or "as-applied" challenges. U.S. Const. Amend. 1.

[10] **Constitutional Law** Freedom of Speech, Expression, and Press

Takedown demand letter sent by legislative counsel for state legislators pursuant to state statute that made it unlawful to post legislators' home addresses and phone numbers on public forum, threatening legal action against operator of online forum for discussion of issues related to firearms if he did not immediately comply and remove posting on forum of names, home addresses, and phone numbers of California legislature members who had voted in favor of gun control measures, coupled with operator's compliance with the demand, constituted a cognizable constitutional injury, and thus operator had Article III standing to challenge statute both on its face and as applied to him as violating his First Amendment right to distribute and facilitate protected speech on the site. U.S. Const. art. 3, § 2, cl. 1; U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

1 Cases that cite this headnote

[11] **Constitutional Law** Freedom of Speech, Expression, and Press

The mere threat of prosecution under a challenged statute that results in actual self-censorship constitutes a constitutionally sufficient injury as long as it is based on an actual and well-founded fear that the challenged statute will be enforced. U.S. Const. art. 3, § 2, cl. 1; U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

[12] **Constitutional Law** Freedom of Speech, Expression, and Press

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Finding that California statute that prohibited publication online of home addresses and telephone numbers of certain government officials was invalid would have redressed asserted constitutional injury of writer of political blog who compiled and posted the names, home addresses, and phone numbers of California legislature members who had voted in favor of gun control measures, and thus writer had Article III standing to challenge statute as violative of the First Amendment; although website that hosted writer's blog could have removed the post because it violated website's terms of service, website removed post immediately after receiving takedown demand letter from counsel, and explained to writer that post was taken down because state demanded its removal. U.S. Const. art. 3, § 2, cl. 1; U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

[13] **Civil Rights** Officers and public employees, in general

Civil Rights Pursuit of private or judicial remedies

Office of state legislative counsel acted under color of state law when it sent letters demanding removal from websites of list of names, home addresses, and phone numbers of California legislators who voted in favor of gun control measures to website that was host to writer's blog and operator of online forum for firearms issues, for purposes of § 1983 liability; although defendant argued that legislators were acting as private citizens who made private decisions to threaten private lawsuits if their personal information was not removed, office sent takedown demands at request of legislators, and explicitly stated that office represented state legislature. 42 U.S.C.A. § 1983.

1 Cases that cite this headnote

[14] **Civil Rights** Liability of Public Employees and Officials

State official defendants named in their official capacities are subject only to suit for prospective declaratory and injunctive relief to enjoin an alleged ongoing violation of federal law under § 1983. 42 U.S.C.A. § 1983.

[15] **Civil Rights** Color of Law

An individual acts under color of state law, for purposes of § 1983 liability, when he or she exercises power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. 42 U.S.C.A. § 1983.

[16] **Civil Rights** Officers and public employees, in general

Test for determining whether an individual acts under color of state law, for purposes of § 1983 liability, is generally satisfied when a state employee wrongs someone while acting in his official capacity or while exercising his responsibilities pursuant to state law. 42 U.S.C.A. § 1983.

[17] **Constitutional Law** Substantial impact, necessity of

A law may be invalidated as overbroad under the First Amendment if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep. U.S. Const. Amend. 1.

[18] **Constitutional Law** Third-party standing in general

Constitutional Law Freedom of Speech, Expression, and Press

A party seeking to challenge the constitutionality of a statute generally must show that the statute violates the party's own rights, but the First Amendment overbreadth doctrine carves out a narrow exception to that general rule. U.S. Const. Amend. 1.

[19] **Constitutional Law** Content-Based Regulations or Restrictions

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Constitutional Law Strict or exacting scrutiny; compelling interest test

Content-based laws, i.e., those that target speech based on its communicative content, are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests; this requires the government to show that the law is the least restrictive means to further a compelling interest. U.S. Const. Amend. 1.

[20] **Constitutional Law** Internet

Individuals who use the internet to disseminate their speech are entitled to full First Amendment protections. U.S. Const. Amend. 1.

1 Cases that cite this headnote

[21] **Constitutional Law** Website content

States Members

Home addresses and telephone numbers of California legislators who voted in favor of gun control measures touched on matters of public concern in the context of speech of political blog writer and operator of online forum, and thus publication of information, which was prohibited under California law, was speech that was protected by the First Amendment; although viewed in isolation, legislators' home address and phone numbers did not constitute a matter of public significance, specific context of plaintiffs' political protest against legislation that required government to maintain database with personal information of individuals who bought firearms and ammunition in California rendered information a matter of public concern. U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

[22] **Constitutional Law** Freedom of Speech, Expression, and Press

When lawfully obtained, the truthful publication of information falls within the First Amendment's ambit. U.S. Const. Amend. 1.

[23] **Constitutional Law** Matters of public concern

When an individual's personal information is relevant to issues of public significance, its truthful dissemination, particularly when already in the public domain and lawfully obtained, triggers exacting First Amendment scrutiny. U.S. Const. Amend. 1.

[24] **Constitutional Law** Website content

States Police power

California statute that prohibited posting or displaying online home addresses and telephone numbers of certain government officials was not narrowly tailored to state's asserted compelling interest for regulating speech, i.e., protecting the personal safety of covered officials and their families; statute did not require that threat was credible or that a third-party review of whether official's request to remove information was well-founded, made no distinction between those who published a covered official's home address or phone number online for wholly lawful reasons and those who did so for wholly unlawful reasons, and did not differentiate between acts that made public previously private information and those that made public information that was already publicly available. U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

[25] **Constitutional Law** Website content

States Police power

California statute that prohibited posting or displaying online home addresses and telephone numbers of certain government officials was underinclusive with respect to state's asserted compelling interest for regulating speech, i.e., protecting the personal safety of covered officials and their families, where statute proscribed the dissemination of a covered official's home address and phone number only on the internet, regardless of the extent to which it was available or disseminated elsewhere. U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

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[26] **Constitutional Law** Necessity of Determination

Under the canon of constitutional avoidance, a court should avoid deciding unnecessary constitutional issues.

[27] **Constitutional Law** Necessity of Determination

Constitutional Law Resolution of non-constitutional questions before constitutional questions

Doctrine of constitutional avoidance, under which a court should avoid deciding unnecessary constitutional issues, generally applies only when there is a viable alternate, nonconstitutional ground to reach the same result.

[28] **Commerce** Telecommunications and internet

As both the means to engage in commerce and the method by which transactions occur, the internet is an instrumentality and channel of interstate commerce; thus, regulation of the internet impels traditional Commerce Clause considerations. U.S. Const. art. 1, § 8, cl. 3.

[29] **Commerce** Powers Remaining in States, and Limitations Thereon

Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state. U.S. Const. art. 1, § 8, cl. 3.

[30] **Commerce** Powers Remaining in States, and Limitations Thereon

The dormant Commerce Clause doctrine bars state regulations that unduly burden interstate commerce. U.S. Const. art. 1, § 8, cl. 3.

[31] **Commerce** Powers Remaining in States, and Limitations Thereon

A statute violates the dormant Commerce Clause per se when it directly regulates interstate commerce. U.S. Const. art. 1, § 8, cl. 3.

[32] **Commerce** Powers Remaining in States, and Limitations Thereon

Direct regulation occurs, for purposes of the dormant Commerce Clause, when a state law directly affects transactions that take place across state lines or entirely outside of the state's borders. U.S. Const. art. 1, § 8, cl. 3.

[33] **Commerce** Powers Remaining in States, and Limitations Thereon

Under the extraterritoriality doctrine, any statute that directly controls commerce occurring wholly outside the boundaries of a state exceeds the inherent limits of the enacting state's authority and is invalid under the dormant Commerce Clause regardless of whether the statute's extraterritorial reach was intended by the legislature, and regardless of whether or not the commerce has effects within the state. U.S. Const. art. 1, § 8, cl. 3.

2 Cases that cite this headnote

[34] **Commerce** Powers Remaining in States, and Limitations Thereon

To determine whether state legislation violates the dormant Commerce Clause, the critical inquiry is whether the practical effect of the legislation is to control conduct beyond the boundaries of the state. U.S. Const. art. 1, § 8, cl. 3.

1 Cases that cite this headnote

[35] **Civil Rights** Preliminary Injunction

Operator of online forum for firearms issues was likely to succeed in § 1983 action challenging California statute that prohibited posting or displaying online home addresses and telephone

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numbers of certain government officials as invalid under the dormant Commerce Clause's extraterritoriality doctrine, so as to support issuance of preliminary injunction preventing counsel for state legislators whose names, home addresses, and phone numbers were posted on forum from enforcing statute against operator; statute regulated conduct occurring wholly outside borders of state, and statute required operator, who did not live in California, to remove post from his forum and ensure that legislators' contact information was not reported on forum, even if only people accessing it were located outside of state. U.S. Const. art. 1, § 8, cl. 3; 42 U.S.C.A. § 1983; Cal. Gov't Code § 6254.21(c).

1 Cases that cite this headnote

[36] **Commerce** Telecommunications and internet

Because the internet does not recognize geographic boundaries, it is difficult, if not impossible, for a state to regulate internet activities without projecting its legislation into other states, for purposes of the dormant Commerce Clause. U.S. Const. art. 1, § 8, cl. 3.

[37] **Telecommunications** Persons and entities liable; immunity

Communications Decency Act (CDA) precludes liability that treats a website as the publisher or speaker of information users provide on the website; in general, CDA protects websites from liability for material posted on the website by someone else. Communications Act of 1934 § 230, 47 U.S.C.A. § 230.

[38] **Telecommunications** Persons and entities liable; immunity

Immunity under the Communications Decency Act (CDA) applies when (1) the defendant is a provider or user of an interactive computer service; (2) the cause of action treats the defendant as a publisher or speaker of information; and (3) the information at issue is provided by another information content provider. Communications Act of 1934 § 230, 47 U.S.C.A. § 230.

[39] **Telecommunications** Persons and entities liable; immunity

Counsel for California state legislature did not violate purported immunity of operator of online forum for firearms issues for content created on website by third parties under the Communications Decency Act (CDA), when counsel demanded operator take down posting by third party user of forum that listed names and home addresses of California state legislators who voted in favor of gun control measures; takedown letter was not a cause of action, and only liability operator faced was a potential lawsuit and attorney's fees and costs if he failed to comply with request. Communications Act of 1934 § 230, 47 U.S.C.A. § 230(c)(1); Cal. Gov't Code § 6254.21(c).

[40] **Telecommunications** Damages and other relief

California statute that prohibited posting or displaying online home addresses and telephone numbers of certain government officials was likely to cause irreparable harm to writer of political blog and operator of online forum for discussion of issues related to firearms, supporting grant of plaintiffs' motion for preliminary injunction to enjoin enforcement of statute against them, in action challenging statute as violative of the First Amendment and the Commerce Clause. U.S. Const. art. 1, § 8, cl. 3; U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

[41] **Telecommunications** Damages and other relief

Preliminary injunction prohibiting enforcement of California statute that prohibited posting or displaying online home addresses and telephone numbers of certain government officials against writer of political blog and operator of online

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forum for discussion of issues related to firearms was in the public interest, supporting issuance of injunction in action challenging statute as violative of the First Amendment and the Commerce Clause, where ongoing enforcement of the potentially unconstitutional statute would have infringed right to freedom of expression of plaintiffs and other members of the public. U.S. Const. art. 1, § 8, cl. 3; U.S. Const. Amend. 1; Cal. Gov't Code § 6254.21(c).

West Codenotes

Validity Called into Doubt
Cal. Gov't Code § 6254.21(c)

Attorneys and Law Firms

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MEMORANDUM DECISION AND ORDER RE PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION (Doc. 19)

Lawrence J. O'Neill, UNITED STATES CHIEF DISTRICT JUDGE

I. INTRODUCTION

Plaintiffs Doe Publius[1] and Derek Hoskins bring this civil rights case under 42 U.S.C. § 1983 ("§ 1983"), challenging California Government Code § 6254.21(c) ("§ 6254.21(c)") under the First Amendment, the Commerce Clause, and 47 U.S.C. § 230 ("§ 230"). Plaintiffs move for a preliminary injunction that prevents Defendant Diane F. Boyer–Vine, Legislative Counsel for the Office of Legislative Counsel of California ("the Office"), from enforcing § 6254.21(c) against them. *See* Doc. 19–1 at 26.

The Court took the matter under submission on the papers pursuant to Local Rule 230(g). Doc. 23. For the following reasons, the Court GRANTS IN PART and DENIES IN PART Plaintiffs' motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 1, 2016, California Governor Jerry Brown signed several gun control bills into law. Doc. 12, First Amended Complaint ("FAC"), at ¶ 15. One of those bills established a database tracking all ammunition purchases in California. *See* Cal. Penal Code §§ 30352, 30369. The database includes the driver's license information, ***1004** residential address and telephone number, and date of birth for anyone who purchases or transfers ammunition in California. *See id.*

Publius maintains a political blog under the name, "The Real Write Winger." FAC at ¶ 15. On July 5, 2016, in response to the California legislature's gun control legislation, he posted the following blog entry, titled "Tyrants to be registered with California gun owners":

> If you're a gun owner in California, the government knows where you live. With the recent anti gun, anti Liberty bills passed by the legisexuals in the State Capitol and signed into law by our senile communist governor, isn't it about time to register these tyrants with gun owners?
>
> Compiled below is the names, home addresses, and home phone numbers of all the legislators who decided to make you a criminal if you don't abide by their dictates. "Isn't that dangerous, what if something bad happens to them by making that information public?" First, all this information was already public; it's just now in one convenient location. Second, it's no more dangerous than, say, these tyrants making it possible for free men and women to have government guns pointed at them while they're hauled away to jail and prosecuted for the crime of exercising their rights and Liberty.
>
> These tyrants are no longer going to be insulated from us. They used their power we entrusted them with to exercise violence against us if we don't give up our rights and Liberty. This common sense tyrant registration addresses this public safety hazard by giving the public the knowledge of who and where these tyrants are in case they wish to use their power for violence again.
>
> So below is the current tyrant registry. These are the people who voted to send you to prison if you exercise your rights and liberties. This will be a constantly updated list

> depending on future votes, and if you see a missing address or one that needs updating, please feel free to contact me. And please share this with every California gun owner you know.
>
> To be fair, the only way for a tyrant to have their name removed from the tyrant registry is to pass laws which repeal the laws that got them added to the list, or upon the tyrant's death. Otherwise, it is a permanent list, even after the tyrant leaves office. The people will retain this information and have access to it indefinitely.

FAC at ¶ 17. Through searching public records for free on zabasearch.com[2], Publius compiled the names, home addresses, and phone numbers of 40 California legislature members who had voted in favor of the gun control measures. *Id.* at ¶¶ 17–18. He then posted that information on his blog. *Id.* at ¶ 17.

In the days that followed, several legislators received threatening phone calls and social media messages that appeared to have been prompted by Publius's blog entry. Doc. 21, Declaration of Frederic ***1005** Woocher ("Woocher Decl."), at ¶ 2. Specifically,

> there were reports from at least four different State Senators that either they or one of their family members had received a phone call at their residence from an unidentified male speaker saying, "I know your address and don't you wish you knew who I am?" One of the calls was received by the step-son of a Senator who was alone in the home while the Senator and his wife were away. At least two other Senators had reported receiving (and forwarded to the [California Senate] Sergeant-at-Arms) threatening social media messages; one warned: "You have no right to pass laws to take my constitutional rights away. (2nd & 1st amendments) Let alone pass a bill that makes you exempt from the very same laws. I've have [sic] shared your home address in the Internet. The People will be acting on this."

Id.

The Senate Sergeant-at-Arms sent the Office "a request to seek the removal of the legislators' home addresses from the internet pursuant to section 6254.21(c)." Doc. 20 at 13. In response, on July 8, 2016, Deputy Legislative Counsel Kathryn Londenberg sent a written demand to WordPress.com, who hosted Plaintiff's blog. FAC at ¶ 19. The demand stated:

> To whom it may concern:
>
> My office represents the California State Legislature. It has come to our attention that the home addresses of 14 Senators and 26 Assembly Members have been publically posted on an Internet Web site hosted by you without the permission of these elected officials. Specifically, the user on your platform by the name of "therealwritewinger" posted the home addresses of these elected officials on his or her Web site....
>
> This letter constitutes a written demand under subdivision (c) of Section 6254.21 of the Government Code that you remove these home addresses from public display on that Web site, and to take steps to ensure that these home addresses are not reposted on that Web site, a subsidiary Web site, or any other Web site maintained or administered by WordPress.com or over which WordPress.com exercises control. Publicly displaying elected officials' home addresses on the Internet represents a grave risk to the safety of these elected officials.
>
> On the "therealwritewinger" blog site, the user describes the listed legislators as "tyrants," encourages readers to share the legislators' home addresses with other gun owners, and threatens that the home addresses will not be removed unless the legislator repeals specified gun laws or "upon the tyrant's death." The Senators and Assembly Members whose home addresses are listed on this Web site fear that the public display of their addresses on the Internet will subject them to threats and acts of violence at their homes.
>
> To comply with the law, please remove the home addresses of these elected officials from your Web site no later than 48 hours after your receipt of this letter (cl. (i), subpara. (D), para. (1), subd. (c), Sec. 6254.21, Gov. C.). You are also required to continue to ensure that this information is not reposted on that Web site, any subsidiary Web site, or any other Web site maintained by you (subpara. (D), para. (1), subd. (c), Sec. 6254.21, Gov. C.).
>
> .... If these home addresses are not removed from this Web site in a timely manner, we reserve the right to file an action seeking injunctive relief, as well as associated court costs and attorney's ***1006** fees (para. (2), subd. (c), Sec. 6254.21, Gov. C.).

Id. WordPress immediately removed Publius's entire blog entry. *Id.* at ¶ 20. Publius requested a copy of the demand from WordPress. Doc. 12–2 at 1. WordPress forwarded the letter, explaining that "[u]nder subdivision (c) of Section 6254.21 of the Government Code, an authorized representative from the

state of California ha[d] demanded that we disable" Publius's blog entry. *Id.*

Hoskins, a resident of Massachusetts, *id.* at ¶ 13[3] owns and moderates the website Northeastshooters.com, "a popular New England online forum for discussing firearms issues and shooting sports activities." *Id.* at ¶ 21. On July 11, 2016, Northeastshooters.com users began a discussion about the Legislative Counsel's takedown demand to WordPress concerning Publius's blog entry. *Id.* at ¶ 22. One commenter, under the name "headednorth," reposted Publius's compiled list of names, addresses, and home addresses of the California legislators. *Id.* at ¶ 23. Legislative Counsel Londenberg immediately emailed Hoskins, noted that headednorth had reposted the legislators' personal information removed from Publius's blog on Northeastshooters.com, and demanded that Hoskins remove it immediately via a takedown demand that was "materially identical" to the one sent to WordPress. *Id.* at ¶ 24. Hoskins complied. *Id.* at ¶ 5.

Plaintiffs seek a declaratory judgment from the Court that § 6254.21(c) violates (1) the First Amendment both facially and as applied to both of them; (2) the Commerce Clause, U.S. Const., art. I, § 8, cl. 3, as applied to Hoskins's out-of-state speech; and (3) § 230 as to Hoskins and other computer service providers. FAC at 16. Plaintiffs currently seek a preliminary injunction on these grounds, and ask the Court to enjoin Defendant from "enforcing or applying" § 6254.21(c) against them. Doc. 19 at 2. Defendant argues, among other things, that: (1) Plaintiffs lack standing; (2) Plaintiffs fail to state a claim under § 1983; and (3) the statute is entirely lawful. Doc. 20 at 8.

III. STANDARD OF DECISION

[1] **[2]** **[3]** To secure injunctive relief prior to a full adjudication on the merits, a plaintiff must show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* at 22, 129 S.Ct. 365. The Ninth Circuit follows a "sliding scale" approach to preliminary injunctions. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). "Under this approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Id.* at 1131–32. For example, if the moving party is unable to establish a likelihood of success on the merits, preliminary injunctive relief may still be proper if the party can show that (1) there are at least "serious questions" going to the merits; (2) the balance of the hardships tips "sharply" in ***1007** its favor; and (3) the other factors listed in *Winter* (*i.e.*, irreparable harm and in the public interest) are satisfied. *Id.* at 1135.

IV. ANALYSIS

A. Plaintiffs have standing

1. Standing principles

[4] **[5]** **[6]** Standing is a judicially created doctrine that is an essential part of the case-or-controversy requirement of Article III. *Pritikin v. Dept. of Energy*, 254 F.3d 791, 796 (9th Cir. 2001). "To satisfy the Article III case or controversy requirement, a litigant must have suffered some actual injury that can be redressed by a favorable judicial decision." *Iron Arrow Honor Soc. v. Heckler*, 464 U.S. 67, 70, 104 S.Ct. 373, 78 L.Ed.2d 58 (1983). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). The doctrine of standing "requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted." *Allen v. Wright*, 468 U.S. 737, 752, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). The court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing. *Whitmore v. Arkansas*, 495 U.S. 149, 155–56, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990); *Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279 F.3d 817, 821 (9th Cir. 2002).

[7] **[8]** Generally, to have standing, a plaintiff must show three elements.

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.

> Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (internal citations and quotations omitted). First Amendment cases, however, "present unique standing considerations." *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003). "In an effort to avoid the chilling effect of sweeping restrictions, the Supreme Court has endorsed what might be called a 'hold your tongue and challenge now' approach rather than requiring litigants to speak first and take their chances with the consequences" *Id.* (citations omitted). "[A]s the Supreme Court has recognized, a chilling of the exercise of First Amendment rights is, itself, a constitutionally sufficient injury." *Id.* Accordingly, "the Supreme Court has dispensed with rigid standing requirements [in First Amendment cases] and recognized 'self-censorship' as a harm that can be realized even without an actual prosecution." *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1000 (9th Cir. 2010).[4] "[W]here a plaintiff has refrained from engaging in expressive activity for fear of prosecution under the challenged statute, such self-censorship is a constitutionally sufficient injury as long as it is based on an actual and well-founded fear that the challenged statute will be enforced." *Id.* at 1001 (quotation ***1008** marks omitted). Thus, "when the threatened enforcement effort implicates First Amendment rights, the inquiry tilts dramatically toward a finding of standing." *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000).

[9] First Amendment challenges may be brought as "facial" or "as-applied" challenges. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1033 (9th Cir. 2006). The Ninth Circuit succinctly described the challenges as follows:

> Facial constitutional challenges come in two varieties: First, a plaintiff seeking to vindicate his own constitutional rights may argue that an ordinance is unconstitutionally vague or ... impermissibly restricts a protected activity. Second, an individual whose own speech or expressive conduct may validly be prohibited or sanctioned is permitted to challenge a statute on its face because it also threatens others not before the court. The former sort of challenge ... may be paired with the more common as-applied challenge, where a plaintiff argues that the law is unconstitutional as applied to his own speech or expressive conduct.

Id. at 1033–34 (citations and quotation marks omitted). "It is within this framework that [Plaintiffs] ... must establish standing." *Id.* at 1034.

2. Analysis

Defendant contends Plaintiffs cannot demonstrate that Defendant caused them to suffer any injury that could be favorably addressed by the Court. As to Publius, the thrust of Defendant's position is that it is "quite plausible, if not probable" that WordPress removed Publius's blog entry on its own accord because it violated WordPress's terms of service and, in any event, Plaintiffs have not presented any evidence that WordPress would permit the blog entry even if Defendant never invoked § 6254.21(c) or if the Court found the statute unlawful. *See* Doc. 20 at 18–19. As to Hoskins, Defendant concedes (and the Court agrees) that "there is no issue regarding the causation and redressability prongs of the constitutional standing requirements," but argues that Hoskins did not suffer any injury. *Id.* at 19. Instead, Defendants argue that only the user of his site, "headednorth," whose post Hoskins removed, suffered any asserted injury. *Id.*

[10] **[11]** That Hoskins did not produce the content contained in headednorth's removed post does not mean he did not and cannot suffer a First Amendment injury. As the owner of Northeastshooters.com, Hoskins has a First Amendment right to distribute and facilitate protected speech on the site. *See Smith v. California*, 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d 205 (1959) (striking down statute imposing strict liability on a seller of obscene books as violating First Amendment); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 497, 72 S.Ct. 777, 96 L.Ed. 1098 (1952) (striking down statute prohibiting movie producer's distribution of movie); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 59–61, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963) (holding book distributors had standing to challenge law restricting the sale of certain books). The mere threat of prosecution under a challenged statute that results in actual self-censorship constitutes "a constitutionally sufficient injury as long as it is based on an actual and well-founded fear that the challenged statute will be enforced." *Human Life*, 624 F.3d at 1001. Defendant's takedown demand letter threatening legal action against Hoskins if he did not immediately comply and remove headednorth's post, coupled with Hoskins's compliance with the demand, constitutes a cognizable constitutional injury. *See id.*;*Bayless*, 320 F.3d at 1006 (finding that plaintiff, who was "forced to modify its speech and behavior to comply with the ***1009** statute," had suffered sufficient injury even though it had "neither violated

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the statute nor been subject to penalties for doing so").[5] The Court therefore finds that Hoskins has standing to challenge § 6254.21(c) both on its face and as-applied to him.

[12] Defendant does not dispute that Publius suffered a constitutional injury, but disputes whether the Office caused his asserted injury and whether the Court could redress it favorably. Defendant essentially argues that there is no evidence that WordPress removed Publius's blog post as a result of the Office's demand letter, and that it is plausible that WordPress did so on its own accord because the post violated WordPress's terms of service. Thus, Defendant claims, it is plausible that WordPress would remove the post regardless of the Court's decision.

The only evidence concerning WordPress's motivation in removing Publius's blog entry does not support Defendant's position. As explained above, WordPress removed the blog post immediately after the Office sent the takedown demand. Publius, somehow cognizant of the Office's demand, requested a copy of it. WordPress forwarded the Office's demand to Publius, and explained that "[u]nder subdivision (c) of Section 6254.21 of the Government Code, an authorized representative from the state of California has demanded that we disable [your blog entry]." Doc. 19–2 at 13. WordPress provided no other explanation for its removing the blog entry. On the current record, Defendant's assertion that WordPress removed the entry because it violated the site's terms of service is entirely speculative, not "quite plausible, if not probable." Doc. 20 at 18. Likewise, because the only evidence (direct and circumstantial) submitted suggests that WordPress removed the blog post because of the Office's takedown demand, it is plausible that it would not have been removed but for the demand.

Further, Publius does not simply claim his asserted First Amendment right is to post as he sees fit on WordPress alone, as Defendant suggests. Publius challenges § 6254.21(c)'s prohibition on his ability to repost the legislators' personal information anywhere online—or "through any other medium." § 6254.21(c)(1)(D)(ii). Although this case does not present the Court with any jurisdiction to control the content on WordPress, a private entity, the Court does have the authority (and obligation) to determine whether legislation violates the First Amendment. The Court's finding that § 6254.21(c) does so would redress Publius's asserted injury. Accordingly, the Court finds that Publius has standing to challenge § 6254.21(c).

***1010 B. Defendant's conduct was under color of law**

[13] **[14]** "To state a claim for relief under section 1983, the Plaintiffs must plead two essential elements: 1) that the Defendant[ ] acted under color of state law; and 2) that the Defendant[ ] caused them to be deprived of a right secured by the Constitution and laws of the United States." *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997).[6] Defendant asserts Plaintiffs fail to state a claim under § 1983 because the Office's sending the takedown demand letters was not "under color of law" and, consequently, the Court lacks jurisdiction over this case. Doc. 20 at 20–21; *West v. Atkins*, 487 U.S. 42, 46, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988) (holding that acting under color of state law is "a jurisdictional requisite for a § 1983 action"). Distilled, Defendant argues that the Office's sending the takedown demand letters to WordPress and Hoskins on behalf of the California legislators was not state action because the legislators were acting as private citizens who made private decisions to threaten private lawsuits if their personal information was not removed. Doc. 20 at 20.

[15] **[16]** "An individual acts under color of state law when he or she exercises power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Naffe v. Frey*, 789 F.3d 1030, 1036 (9th Cir. 2015) (citations and quotation marks omitted). "This test is generally satisfied when a state employee ... wrongs someone while acting in his official capacity or while exercising his responsibilities pursuant to state law." *Id.* (citations and quotation marks omitted).

Defendant relies primarily on *Gritchen v. Collier*, 254 F.3d 807 (9th Cir. 2001), and *Laxalt v. McClatchy*, 622 F.Supp. 737 (D. Nev. 1985), for her position that the Office's conduct was not state action. In *Gritchen*, the plaintiff (Gritchen) filed a formal complaint against a police officer, Collier, claiming that Collier "had been discourteous, argumentative, and that his breath smelled like alcohol." 254 F.3d at 809. After the police department "found no misconduct," Collier, through his attorney, sent Gritchen a letter threatening to bring suit for defamation under California Civil Code § 47.5, which permits peace officers to bring defamation actions against someone who files a false complaint. *Id.* at 809–10. Gritchen then filed a § 1983 suit alleging, among other things, that § 47.5 violates the First Amendment. *Id.* at 810. The Ninth Circuit held that Collier's conduct—threatening to sue Gritchen for defamation under § 47.5—was not "under color of state law" because

he acted "entirely by himself, without assistance from state officials." *Id.* at 813–14.

In *Laxalt*, the plaintiff (Laxalt), a United States Senator, brought suit against numerous newspapers and their staff for their allegedly defamatory articles. 622 F.Supp. at 739. The defendants counterclaimed against Laxalt under § 1983, arguing that the Senator had violated their ***1011** First Amendment rights by using his office to chill their speech. *Id.* at 746. The basis for their claims was that, shortly after the defendants published their articles, Laxalt sent them a letter on Senate stationary with his signature demanding the sources for the articles and that they be retracted. *Id.* at 747. The defendants construed the letter as a threat from Laxalt that he would use his office "to retaliate against them if they did not comply." *Id.* The court rejected the defendants' claim, finding that Laxalt "ha[d] proceeded, as any other private citizen would have, to clear his name ... and to recover damages for an alleged libel." *Id.* at 748.

Gritchen and *Laxalt* are easily distinguishable from this case. In both of those cases, the government officials acted individually as wholly private citizens without the aid of any other government official. That is not what happened here. At the legislators' request, the Office sent the takedown demands to WordPress and Hoskins, which explicitly stated that the Office "represents the California State Legislature." The letter concluded: "If these home addresses are not removed from this Web site in a timely manner, *we reserve* the right to file an action seeking injunctive relief, as well as associated court costs and attorney's fees." FAC at ¶ 19 (Emphasis added.). Unlike *Gritchen* and *Laxalt*, this case does not involve a state employee's private attorney threatening legal action on behalf of one individual. The Office informed WordPress and Hoskins that if they did not comply, the Office—on behalf of the legislators—would consider legal action, including attempting to recover the Office's statutorily available fees and costs. The Office, a government entity, therefore provided legal services on behalf of 40 state legislators *at their request* and made that clear to WordPress and Hoskins when doing so. In the Court's view, it is difficult to conceive how this could not constitute state action. *See Frey*, 789 F.3d at 1036.

C. Plaintiffs' First Amendment challenge

Plaintiffs contend § 6254.21(c) is a content-based restriction on constitutionally protected speech that violates the First Amendment on its face and as applied to them. *See* Doc. 19–1 at 15. Defendant does not dispute the statute is content-based, but argues it is nonetheless lawful under the First Amendment. *See* Doc. 20 at 15.

[17] **[18]** As to Plaintiffs' facial challenge, they contend § 6254.21(c) is impermissibly overbroad. "[A] law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.' " *United States v. Stevens*, 559 U.S. 460, 473, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008)). "Technically, the overbreadth doctrine does not apply if the parties challenging the statute engage in the allegedly protected expression," as Plaintiffs did here, because the doctrine is used "to overcome what would otherwise be a plaintiff's lack of standing." *Nunez ex rel. Nunez v. City of San Diego*, 114 F.3d 935, 949 (9th Cir. 1997). "A party seeking to challenge the constitutionality of a statute generally must show that the statute violates the party's own rights," but "[t]he First Amendment overbreadth doctrine carves out a narrow exception to that general rule." *United States v. Stevens*, 559 U.S. 460, 483, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010) (Alito, J., dissenting) (citations omitted). Plaintiffs, however, may still "seek, as a remedy, the facial invalidation of [a statute] if it is an overly broad regulation that create[s] an unacceptable risk ***1012** of the suppression of ideas." *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 790 n.9 (9th Cir. 2006) (citation and quotation marks omitted).

But "because a successful overbreadth challenge renders a statute unconstitutional and, therefore, invalid in *all* its applications ... the doctrine is employed sparingly and only as a last resort." *United States v. Alvarez*, 617 F.3d 1198, 1236 (9th Cir. 2010) (emphasis in original) (citations and quotation marks omitted), *aff'd*, 567 U.S. 709, 132 S.Ct. 2537, 183 L.Ed.2d 574 (2012). Accordingly, when a litigant brings both an as-applied and facial challenge, the Supreme Court has strongly suggested that courts should address the facial challenge only if the as-applied challenge fails. *See Serafine v. Branaman*, 810 F.3d 354, 363 n.19 (5th Cir. 2016) (collecting cases). The Court therefore turns first to Plaintiffs' as-applied challenge.

1. Background on § 6254.12(c)

Section § 6254.21(c)(1)(A) prohibits anyone from posting or displaying the home address or telephone number of certain government officials, *see* § 6254.21(f), if the official makes "a written demand" that his or her personal information not be displayed. The written demand must "include a statement

describing a threat or fear for the safety of that official or of any person residing at the official's home address." § 6254.21(c)(1)(B). A written demand is "effective for four years." § 6254.21(c)(1)(C). After receiving such a written demand, the recipient must remove the official's home address and/or phone number from the internet within 48 hours, and may not "transfer" it to anyone through any medium. § 6254.21(c)(1)(D)(i)–(ii).

"An official whose home address or telephone number is made public as a result of a violation of [§ 6254.21(c)(1)] may bring an action seeking injunctive or declarative relief." § 6254.21(c)(2). "If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees." *Id.*

Briefly summarized, if someone publishes the home address or telephone number of certain officials on the internet, those officials may demand that it be removed. The official must make the demand in writing, and must describe the threat or fear for safety the official feels personally or for his or her family who reside at the official's home address. Anyone who receives such a demand must remove it within 48 hours, must takes steps to ensure it is not reposted, and may not communicate the information to anyone through any medium. If the official's home address or telephone number "is made public" because someone posted the information online without the official's consent, the official may seek a court order to have the information removed from the internet. If the court finds that the individual who posted the information online failed to comply timely with the official's demand, then the court must award attorney's fees to the official, regardless of the relief the court orders.[7]

2. Section 6254.21(c) is content-based

Section 6254.21(c)(1)(A) states, "[n]o person, business, or association shall publicly post or publicly display on the Internet the home address or telephone number of any elected or appointed [California] official" if the official makes a written demand that his or her personal contact information be removed. An enforcing official could not ***1013** determine whether § 6254.21(c)(1) applies to particular speech without determining if (1) the speech contains a home address and/or phone number of (2) a covered official. The statute is therefore content-based on its face: it applies only to speech that contains certain content—the "home address or telephone number of any elected or appointed [California] official." *See Reed v. Town of Gilbert, Ariz.*, —— U.S. ——, 135 S.Ct. 2218, 2227, 192 L.Ed.2d 236 (2015) ("Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." (citations omitted)); *see also S.O.C., Inc. v. Cty. of Clark*, 152 F.3d 1136, 1145 (9th Cir. 1998) (holding that regulations that require officials to examine content of speech to determine whether regulation applies are content-based (collecting cases)).

3. Analysis

[19] "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 135 S.Ct. at 2226. This requires the government to show that the law is "the least restrictive means to further a compelling interest." *Foti v. City of Menlo Park*, 146 F.3d 629, 637 (9th Cir. 1998) (citation omitted). Because § 6254.21(c)(1) is content-based, Defendant must establish that, when applied to Plaintiffs' speech, the statute is narrowly tailored to a compelling state interest. *See Reed v. Town of Gilbert, Ariz.*, 587 F.3d 966, 974 (9th Cir. 2009), *rev'd on other grounds*, —— U.S. ——, 135 S.Ct. 2218, 192 L.Ed.2d 236.

[20] "As a general matter, 'state action to punish the publication of truthful information seldom can satisfy constitutional standards.' " *Bartnicki v. Vopper*, 532 U.S. 514, 527, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) (quoting *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 102, 99 S.Ct. 2667, 61 L.Ed.2d 399 (1979)). "More specifically, [the Supreme Court] has repeatedly held that 'if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need ... of the highest order.' " *Id.* at 527–28, 121 S.Ct. 1753 (quoting *Daily Mail*, 443 U.S. at 103, 99 S.Ct. 2667).[8]

a. The legislators' personal information is a matter of public significance

[21] Defendant suggests, in a footnote, that it is "questionable" whether the legislators' personal information is "a matter of public significance." Doc. 20 at 23 n.12. For decades, the Supreme Court has broadly held that "[p]ublic records by their very nature are of interest to those connected with the administration of government, and a public benefit

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is performed by the reporting of the true contents of the records by the media." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975).[9] Thus, several ***1014** cases demonstrate that the First Amendment protects the right to publish highly personal information of private individuals, such as the names of rape victims and juveniles involved in legal proceedings, when they relate to matters of public concern.[10]

Viewed in isolation, the legislators' home address and phone numbers may not, in and of themselves, constitute "a matter of public significance." But when considered in the specific context of Plaintiffs' speech—political protest, which is "core political speech," with First Amendment protection "at its zenith," *Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 186–87, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999)—the information takes on new meaning. Publius searched publicly available documents and compiled, and headednorth reposted, the legislators' personal information specifically in response to legislation that required the government to maintain a database with the personal information of individuals who buy firearms and ammunition in California. When viewed in that context of political speech, the legislators' personal information becomes a matter of public concern. *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011) ("Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community" (citation and quotation marks omitted)); *see also Org. for a Better Austin v. Keefe*, 402 U.S. 415, 417, 91 S.Ct. 1575, 29 L.Ed.2d 1 (1971) (holding injunction on dispersing pamphlets with realtor's home phone number and urging recipients to call him to urge certain political stance was prior restraint that violated First Amendment). Four cases on which Plaintiffs primarily rely support this proposition well: *Florida Star*, 491 U.S. 524, 109 S.Ct. 2603, 105 L.Ed.2d 443; *Brayshaw v. City of Tallahassee*, 709 F.Supp.2d 1244 (N.D. Fla. 2010); *Sheehan v. Gregoire*, 272 F.Supp.2d 1135 (W.D. Wash. 2003); and *Ostergren v. Cuccinelli*, 615 F.3d 263 (4th Cir. 2010).

Florida Star involved a challenge to a Florida statute ("§ 794.03") that made "it unlawful to 'print, publish, or broadcast ... in any instrument of mass communication' the name of the victim of a sexual offense." 491 U.S. at 524, 109 S.Ct. 2603. A sheriff's department investigating a reported rape "prepared a report, which identified [the victim] by her full name, and placed it in the Department's press room," which was open to the public. *Id.* A reporter for *The Florida Star* "copied the press report verbatim, including [the victim's] full name," and subsequently published her full name in an article about the reported crime and the department's investigation of it. *Id.* at 528, 109 S.Ct. 2603. The victim successfully sued *The Florida Star* under § 794.03 for publishing her name.

***1015** The Supreme Court reversed, and held the First Amendment prohibited imposing liability on *The Florida Star* for publishing the victim's name under the circumstances of the case. *Id.* at 537, 109 S.Ct. 2603. The Court held that "the article generally, as opposed to the specific identity contained within it, involved a matter of paramount public import: the commission, and investigation, of a violent crime which had been reported to authorities." *Id.* at 536–37, 109 S.Ct. 2603. The Court therefore concluded that, under its precedent, the article concerned "a matter of public significance." *See id.* at 536–37, 109 S.Ct. 2603 ("*Cox Broadcasting*, *supra* (article identifying victim of rape-murder); *Oklahoma Publishing Co. v. Oklahoma County District Court*, 430 U.S. 308, 97 S.Ct. 1045, 51 L.Ed.2d 355 (1977) (article identifying juvenile alleged to have committed murder); *Daily Mail*, *supra* (same); *cf. Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978) (article identifying judges whose conduct was being investigated).").

In *Brayshaw*, the plaintiff truthfully posted the personal information of a peace officer, including her personal address, phone number, and email, all of which was publicly available. 709 F.Supp.2d at 1247. The plaintiff was charged with a misdemeanor for violating a Florida statute that provided:

> Any person who shall maliciously, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, publish or disseminate the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer, shall be guilty of a misdemeanor of the first degree.

Id. at 1247.

The court rather summarily rejected the government's argument that the plaintiff's speech was unprotected because it was not a matter of public significance. *Id.* at 1249. The court found that the issue of police accountability was "of legitimate public interest," and the "publication of truthful personal information about police officers is linked" to that interest "through aiding in achieving service of process, researching criminal history of officers, organizing lawful pickets, and

other peaceful and lawful forms of civic involvement that publicize the issue." *Id.*

Sheehan involved an overbreadth challenge to a Washington statute that provided:

> A person or organization shall not, with the intent to harm or intimidate, sell, trade, give, publish, distribute, or otherwise release the residential address, residential telephone number, birthdate, or social security number of any law enforcement-related, corrections officer-related, or court-related employee or volunteer, or someone with a similar name, and categorize them as such, without the express written permission of the employee or volunteer unless specifically exempted by law or court order.

272 F.Supp.2d at 1139. The plaintiff removed from his website the personal information of numerous officials covered by the statute, then challenged it as overbroad. *Id.* As in *Brayshaw*, the court found the officials' personal information to be a matter of public concern because it was related to the issue of police accountability and could be relevant "to achieve service of process, research criminal history, and to 'organize an informational picket [at individual officers' homes] or other lawful ***1016** forms of civic involvement to force accountability.' " *Id.* at 1139, 1139 n.2.

Ostergren, 615 F.3d 263, a case Plaintiffs characterize as "closely analogous" to this one, is particularly illustrative here. In that case, the plaintiff brought an as-applied challenge to a Virginia statute that prohibited "[i]ntentionally communicat[ing] another individual's social security number ("SSN") to the general public." *Id.* at 266. "Calling attention to Virginia's practice of placing land records on the Internet without first redacting SSNs, [the plaintiff] displayed copies of Virginia land records containing unredacted SSNs on her website." *Id.* By doing so, she sought "to publicize her message that governments are mishandling SSNs and generate pressure for reform." *Id.* at 269 (footnote omitted). The information the plaintiff posted on her website was publicly available for a nominal fee, but her website made the public records "more accessible to the public than they [we]re through Virginia's [records] system." *Id.*

Before she could be prosecuted for posting the SSNs on her website, the plaintiff challenged the Virginia statute as applied to her website on First Amendment grounds. *Id.* As a threshold matter, the Fourth Circuit rejected the government's position that unredacted SSNs are entirely unprotected speech under the First Amendment. *Id.* at 271. The court reasoned that, in the plaintiff's case, the unredacted SSNs "are integral to her message," and, in fact, "they *are* her message" because her "[d]isplaying them proves Virginia's failure to safeguard private information and powerfully demonstrates why Virginia citizens should be concerned." *Id.* (emphasis in original and footnote omitted). Although the plaintiff could have redacted the SSNs, the First Amendment protected the plaintiff's "freedom to decide how her message should be communicated." *Id.* at 271 n.8. The Fourth Circuit therefore concluded that the plaintiff's speech "plainly concern[ed] a matter of public significance ... because displaying the contents of public records and criticizing Virginia's release of private information convey political messages that concern the public, *see Cox Broad.*, 420 U.S. at 495, 95 S.Ct. 1029, ('Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media.')." *Id.* at 276 (citation omitted).

Florida Star, *Brayshaw*, *Sheehan*, and *Ostergren* thus show that highly personal information has public significance when inextricably associated with political speech. That principle applies here. Plaintiffs oppose, among other things, California legislation that requires the creation and maintenance of a database run by the California Department of Justice that compiles the residential address and telephone number of anyone who purchases or transfers firearms ammunition in California. *See* Cal. Penal Code § 30352(a)(6). Plaintiffs' means of protesting the legislation is by compiling their own "database" of the legislators' residential addresses and phone numbers. Like the plaintiff in *Ostergren*, that information is not just "integral to [Plaintiffs'] message," it *is* their message. 615 F.3d at 271.

At its core, Plaintiffs' speech is a form of political protest.[11] The Court therefore finds that the legislators' home address and telephone number touch on matters of public concern in the context of Plaintiffs' speech.

***1017 b. § 6254.21(c) is not narrowly tailored**

[22] **[23]** There is no dispute that Plaintiffs lawfully obtained and truthfully published information that was readily available online. When lawfully obtained, the truthful publication of that information falls within the First Amendment's ambit. *See Florida Star*, 491 U.S. at 524, 109 S.Ct. 2603; *see also Bartnicki*, 532 U.S. at 516, 121 S.Ct. 1753 (holding First Amendment protected radio

commentator's playing anonymously and illegally wiretapped recording on air). And as *Florida Star*, *Sheehan*, *Brayshaw*, and *Ostergren* demonstrate, when an individual's personal information is relevant to issues of public significance, its truthful dissemination—particularly when already in the public domain and lawfully obtained—triggers exacting First Amendment scrutiny under Supreme Court precedent.[12] *See Florida Star*, 491 U.S. at 533, 109 S.Ct. 2603. Specifically, if an individual publishes lawfully obtained, "truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need ... of the highest order." *Daily Mail*, 443 U.S. at 103, 99 S.Ct. 2667. Any law that seeks to meet that need must be narrowly tailored. *Florida Star*, 491 U.S. at 540–41, 109 S.Ct. 2603.

The Court in *Florida Star* seemingly assumed without deciding that protecting a rape victim's identity is a state interest "of the highest order," but held the challenged Florida statute was not narrowly tailored to that interest for three reasons. *See Florida Star*, 491 U.S. at 538, 541, 109 S.Ct. 2603; *see also id.* at 550, 109 S.Ct. 2603 (White, J., dissenting). First, the state had released the victim's name, though inadvertently, in a publicly available document. *Id.* at 538, 109 S.Ct. 2603. The Court found that when "the government has failed to police itself in disseminating information, it is clear ... that the imposition of damages against the press for its subsequent publication can hardly be said to be a narrowly tailored means of safeguarding anonymity," reasoning that the government's doing so "can only convey to recipients that the government considered dissemination lawful, and indeed expected the recipients to disseminate the information further." *Id.* at 538–39, 109 S.Ct. 2603.

Second, the Florida statute imposed a "negligence *per se* standard" in that it did not permit "case-by-case findings" concerning liability, but instead imposed it "automatically." *Id.* at 539, 109 S.Ct. 2603. Liability followed publication regardless of the publisher's intent, and "regardless of whether the identity of the victim is already known throughout the community; whether the victim has voluntarily called public attention to the offense; or whether the identity of the victim has otherwise become a reasonable subject of public concern-because, perhaps, questions have arisen whether the victim fabricated an assault ***1018** by a particular person." *Id.* The Court therefore concluded the statute imposed an impermissible "categorical prohibition" even when "important First Amendment interests are at stake." *Id.*

Third, the Florida statute was facially underinclusive. *Id.* at 540, 109 S.Ct. 2603. Although it prohibited publication in "instrument[s] of mass communication," it did not prohibit the same information from being published and distributed through other means. *Id.* The Court noted that "[a]n individual who maliciously spreads word of the identity of a rape victim is thus not covered [by the statute], despite the fact that the communication of such information to persons who live near, or work with, the victim may have consequences as devastating as the exposure of her name to large numbers of strangers." *Id.* For these reasons, the Court held that *The Florida Star* could not be held liable under § 794.03 because the statute was not narrowly tailored under the facts of the case. *Id.* at 541, 109 S.Ct. 2603.

In *Ostergren*, the court assumed without deciding that Virginia's asserted state interest was "of the highest order" because, even if it were, the statute was not narrowly tailored to that interest in the plaintiff's case. *Id.* at 280. The court succinctly reasoned that the statute could not be narrowly tailored to protecting individuals' privacy when Virginia made the records publicly available online and the plaintiff obtained the records through Virginia's online records system. *Id.* at 286. The court noted that, at the very least, Virginia could have redacted the SSNs before making the documents accessible to the public. *Id.* Accordingly, the Fourth Circuit held that the Virginia statute violated the First Amendment as applied to the plaintiff. *Id.* at 287.

The courts in *Brayshaw* and *Sheehan* likewise found the contested laws were not narrowly tailored without much difficulty. In *Brayshaw*, the court found that the challenged statute was both overinclusive and underinclusive. 709 F.Supp.2d at 1249. The court reasoned:

> It is overinclusive in proscribing speech that is not a true threat. It is underinclusive both in its failure to prohibit dissemination of the same information by other entities to third-parties who do intend to harm or intimidate officers, and in its failure to punish parties who actually wish to harm or intimidate police officers and obtain the officer's identifying information.

Id. at 1249–50. Further, the court found that "punishing Plaintiff for his dissemination of information which is already publicly available is relatively unlikely to advance the interests claimed by the State." *Id.* (citing *Florida Star*, 491 U.S. at 535, 109 S.Ct. 2603 ("punishing the press for its dissemination of information which is already publicly

available is relatively unlikely to advance the interests in the service of which the State seeks to act")).

The court in *Sheehan* used largely the same reasoning. *See* 272 F.Supp.2d at 1145. Additionally, the court observed:

> [W]hen the government itself injects personal identifying information into the public domain, it cannot credibly take the contradictory position that one who compiles and communicates that information offends a compelling state interest. Further, defendants can demonstrate no compelling interest because the statute hinges solely on the subjective intent of the speaker. Any third party wishing to actually harm or intimidate these individuals may freely acquire the personal identifying information from myriad public and private sources, including for-profit commercial entities, without entering the scope of the statute.

Id. at 1147 (footnotes omitted).

[24] The Court assumes that the interest underlying § 6254.21(c)—protecting ***1019** the personal safety of covered officials and their families—is a state interest of the highest order. But the Court need not decide whether it is because the statute is not narrowly tailored to further that interest. The logic of *Florida Star*, *Ostergren*, *Brayshaw*, and *Sheehan* applies here, and shows that there are a number of reasons why § 6254.21(c) is not narrowly tailored.

First, § 6254.21(c) makes no attempt to prohibit or prevent true threats. Under the statute, a covered official need only subjectively fear for his or her safety (or that of his or her family) due to his or her home address or telephone number being online. § 6254.21(c)(1). To make a compliant request that the information be removed, the official need only send the publisher of the information a "statement describing a threat or fear for the safety of that official or of any person residing at the official's home address." *Id.* If the official does so, the recipient must comply or face a lawsuit. An official can therefore make an effective takedown demand by informing someone who has posted the official's home address or phone number that doing so has made the official fear for his or her safety. On its face, § 6254.21(c)(1) does not require that the threat be credible or that a third-party review whether the official's request is well-founded. The statute makes no distinction between those who publish a covered official's home address or phone number online for wholly lawful reasons and those who do so for wholly unlawful reasons. So long as an official subjectively feels threatened, the official may make a takedown request under § 6254.21(c)(1). And if the publisher fails to comply with an official's takedown request within 48 hours, then he or she has violated § 6254.21(c)(1), which will entitle the official to bring suit in which attorney's fees would be awarded automatically to the official. *See id.* §§ 6254.21(c)(1)(D)(i), 6254.21(c)(2). This lack of case-by-case oversight and effective *per se* liability suggests that § 6254.21(c) is not narrowly tailored. *See Florida Star*, 491 U.S. at 539, 109 S.Ct. 2603.

Defendant disputes this characterization of the statute. *See* Doc. 20 at 25 n.15. Defendant argues that § 6254.21(c)(2)'s mandatory attorney's fees and costs award does not impose "automatic liability" for two reasons:

> First, of course, no fees are awarded unless the Court has already determined that issuance of an injunction, with the resulting fee award, would not violate the First Amendment. Second, it is well-established that attorney's fee awards under fee-shifting statutes like section 6254.21(c) are considered "costs," not "damages," and are not provided to "punish" the defendant in any way but merely to ensure that the plaintiff will be fully compensated.

Id. (citations omitted). Defendant provides no authority for her first point, and the plain language of the statute contradicts it. On its face, § 6254.21 does not contemplate a First Amendment defense, and no court has found one applicable. (In fact, the Court cannot find any court decision that even mentions the statute.) As the Court interprets the provision, under § 6254.21(c)(2), if a court finds that the defendant has violated § 6254.21(c)(1)—that is, whether the defendant has failed to timely comply with a covered official's appropriate and effective takedown request—then the court *must* award the plaintiff-official attorney's fees and costs, regardless of the whether the court orders injunctive or declaratory relief.

Defendant's second point is a straw man. Regardless of whether attorney's fees are "damages," the imposition of attorney's fees and costs is a form of liability, particularly in the First Amendment context, where even their mere potential may have ***1020** a chilling effect on First Amendment rights. *See, e.g.*, *Dean v. Riser*, 240 F.3d 505, 510 (5th Cir. 2001); *Riddle v. Egensperger*, 266 F.3d 542, 551 (6th Cir. 2001); *see also New York Times Co. v. Sullivan*, 376 U.S. 254, 279, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) ("would-be critics of official conduct may be deterred from voicing their criticism ... because of doubt whether it can be proved in court *or fear of the expense of having to do so*" (emphasis added)). Defendant does not cite, and the Court cannot find, any authority that suggests First Amendment scrutiny of a content-based statute should be any different simply because

attorney's fees and costs are the only financial relief possible under the statute.

Section § 6254.21(c)(1) is not narrowly tailored for the additional reason that it does not differentiate between acts that "make public" previously private information and those that "make public" information that is already publicly available. There is no dispute that the information Publius compiled and posted, and a member of Hoskins's forum re-posted, was publicly available and readily accessible online. "[P]unishing [Plaintiffs] for [their] dissemination of information which is already publicly available is relatively unlikely to advance the interests in the service of which the State seeks to act." *Florida Star*, 491 U.S. at 535, 109 S.Ct. 2603. When "the government has failed to police itself in disseminating information, it is clear ... that the imposition of damages against the press for its subsequent publication can hardly be said to be a narrowly tailored means" to further the state's interests. *Id.* at 538, 109 S.Ct. 2603. Because the information Plaintiffs published came from freely available public records, § 6252.21(c)(1) is not narrowly tailored to protecting the safety of covered officials and their families. *See id.*; *Ostergren*, 615 F.3d at 286.[13]

[25] Third, § 6254.21(c)(1) is underinclusive. *See Florida Star*, 491 U.S. at 540, 109 S.Ct. 2603 (holding that statute was not narrowly tailored in part because it was underinclusive on its face). A statute is underinclusive when it affects "too little speech," such that there are "doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Williams–Yulee v. Florida Bar*, —— U.S. ——, 135 S.Ct. 1656, 1668, 191 L.Ed.2d 570 (2015) (emphasis, quotation marks, and citation omitted). "The Supreme Court has looked skeptically on statutes that exempt certain speech from regulation, where the exempted speech implicates the very same concerns as the regulated speech." *Chaker v. Crogan*, 428 F.3d 1215, 1227 (9th Cir. 2005) (citations omitted). In *Florida Star*, for instance, the challenged statute only prohibited the publication of information identifying a rape victim on "an instrument of mass communication." 491 U.S. at 540, 109 S.Ct. 2603. That the statute did not prohibit the same information being spread by other means raised "serious doubts" as to whether the statute was serving the interests it purportedly served.*Id.* at 525, 540, 109 S.Ct. 2603.

Section 6254.21(c)(1) is similarly underinclusive. It proscribes the dissemination of a covered official's home address and phone number only on the internet, regardless of the extent to which it is available ***1021** or disseminated elsewhere.[14] That the statute does not prohibit a major newspaper[15] or television channel from publishing the information, but would potentially prohibit an online blog with a limited audience from doing so, raises serious questions about whether it is serving its intended goals. *See id.* "[A] law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction upon truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited." *Id.* at 541–42, 109 S.Ct. 2603 (Scalia, J., concurring) (citation and quotation marks omitted).

The Court therefore concludes § 6254.21(c)(1) is not narrowly tailored to serve its underlying interests. In addition, because the statute is content-based, Defendant had to show that it is "the least restrictive means to further a compelling interest." *Foti v. City of Menlo Park*, 146 F.3d 629, 637 (1998) (citation omitted). Defendant has failed to do so. In fact, Defendant made no attempt to explain how § 6254.21 is the least restrictive means to further the statute's goal of protecting covered officials. As noted above, the statute could be less restrictive in that it could proscribe only true threats, or it could require a neutral third-party to determine if the official's fear is objectively sound, or it could permit an objective case-by-case determination for liability instead of permitting a covered official to trigger its protections due to the official's subjective concerns. In summary, the Court finds that Plaintiffs are likely to succeed on their claim that § 6254.21(c)(1) is unconstitutional as applied to them.

D. Hoskins's Commerce Clause challenge[16]

[26] **[27]** Plaintiffs contend that § 6254.21(c) violates the dormant Commerce Clause as applied to Hoskins and out-of-state actors[17] because the statute ***1022** restricts speech that occurs wholly outside California's borders. Doc. 19–1 at 23 (citing *Healy v. Beer Inst.*, 491 U.S. 324, 336, 109 S.Ct. 2491, 105 L.Ed.2d 275 (1989)) ("The 'Commerce Clause ... precludes the application of state statutes to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State").

Defendant counters that the extraterritoriality doctrine articulated in *Healy* does not apply to § 6254.21(c) because the statute does not control prices. Doc. 20 at 26. Defendant argues that, even if the doctrine applies, "[§] 6254.21(c) does not significantly burden interstate commerce." *Id.* at 27. Specifically, Defendant asserts that the statute does not

project any regulatory regimes or affirmative obligations onto Hoskins, but rather "authorizes California public officials to request to have certain specifically identified sensitive personal information removed from a particular post." *Id.* Although Defendant acknowledges that § 6254.21(c) requires Hoskins to remove the information specific in the Office's takedown request or face the possibility of a suit for injunctive and declaratory relief, Defendant argues that § 6254.21(c) does not impose any substantial burden on Hoskins. *Id.* Defendant also contends there is no evidence that § 6254.21(c) conflicts with or is incompatible with New Hampshire or any other State's laws. *Id.*

[28] "[A]s both the means to engage in commerce and the method by which transactions occur, 'the Internet is an instrumentality and channel of interstate commerce,' " *United States v. Sutcliffe*, 505 F.3d 944, 953 (9th Cir. 2007) (quoting *United States v. Trotter*, 478 F.3d 918, 921 (8th Cir. 2007) (per curiam)). Thus, "regulation of the Internet impels traditional Commerce Clause considerations." *American Libraries Ass'n v. Pataki*, 969 F.Supp. 160, 173 (S.D.N.Y. 1997).

[29] "The Commerce Clause of the United States Constitution assigns to Congress the authority '[t]o regulate Commerce with foreign Nations, and among the several States.' " *Sam Francis Foundation v. Christies, Inc.*, 784 F.3d 1320, 1323 (9th Cir. 2015) (quoting U.S. Const. art. I, § 8, cl. 3). "Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State." *Healy*, 491 U.S. at 336, 109 S.Ct. 2491.

[30] **[31]** **[32]** "Courts have long read a negative implication into the clause, termed the 'dormant Commerce Clause,' that prohibits states from discriminating against interstate commerce." *Yakima Valley Mem'l Hosp. v. Wash. State Dep't of Health*, 731 F.3d 843, 846 (9th Cir. 2013). The doctrine "bars state regulations that unduly burden interstate commerce." *Quill Corp. v. North Dakota*, 504 U.S. 298, 312, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992) (citation omitted). "[A] statute violates the dormant Commerce Clause per se when it directly regulates interstate commerce." *Pharm. Research and Mfrs. of America v. Cty. of Alameda*, 768 F.3d 1037, 1043 (9th Cir. 2014) (quoting *Assoc. des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 949 (9th Cir. 2013)) (internal quotation marks omitted). "Direct regulation occurs when a state law directly affects transactions that take place across state lines or entirely outside of the state's borders." *Id.* (quoting *S.D. Myers, Inc. v. City and Cty. of S.F.*, 253 F.3d 461, 467 (9th Cir. 2001)) (internal quotation marks omitted).

***1023** **[33]** **[34]** Under the extraterritoriality doctrine, any "statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature," *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1101 (9th Cir. 2013) ("*RMFU*") (quoting *Healy v. Beer Inst.*, 491 U.S. 324, 336, 109 S.Ct. 2491, 105 L.Ed.2d 275 (1989)), and regardless of "whether or not the commerce has effects within the State." *Healy*, 491 U.S. at 336, 109 S.Ct. 2491. To determine whether state legislation violates the dormant Commerce Clause, "[t]he critical inquiry is whether the practical effect of the [legislation] is to control conduct beyond the boundaries of the State." *Id.*

"Although the Ninth Circuit has not reached this issue, courts in several circuits have invalidated state laws regulating the internet" where the statute regulates conduct occurring outside the borders of the state. *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F.Supp.2d 946, 958 (N.D. Cal. 2006) (collecting cases). In contrast, courts have upheld state regulation of the internet where application of the law has been limited to only local conduct, or where "[a] state would enforce the law only against conduct occurring within the state." *Id.* (collecting cases); *see also Greater Los Angeles Agency on Deafness, Inc. v. Cable News Network, Inc.*, 742 F.3d 414, 432–33 (9th Cir. 2014) ("*Agency on Deafness*") (holding that California statute that required captioning of online videos for California viewers did not regulate out-of-state conduct because CNN could create a separate website specific to California users).

[35] Defendant claims that the extraterritoriality doctrine articulated in *Healy* is inapplicable to this case because *Healy* has been limited to its facts, namely, "price control or price affirmation statutes that involve tying the price of ... in-state products to out-of-state prices." Doc. 20 at 26. For support, Defendant cites to *Pharmaceutical Research and Mfrs. of America v. Walsh*, 538 U.S. 644, 669, 123 S.Ct. 1855, 155 L.Ed.2d 889 (2003), *Harris*, 729 F.3d at 951, and *RMFU*, 730 F.3d at 1101.

These cases do not support Defendant's position. *Walsh*, *Harris*, and *RMFU* all concerned state laws that regulated in-state conduct which were found not to directly regulate extraterritorial behavior, and thus, *Healy* was inapplicable.

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See Walsh, 538 U.S. at 669, 123 S.Ct. 1855 ("the Maine Act does not regulate the price of any out-of-state transaction, either by its express terms or by its inevitable effect"); *Harris*, 729 F.3d at 951 ("Section 25982 applies to both California entities and out-of-state entities and precludes sales within California of products produced by force feeding birds regardless of where the force feeding occurred.")[18]; *RMFU*, 730 F.3d at 1104 ("[California] does not control the production or sale of ***1024** ethanol wholly outside California."). As the Ninth Circuit observed in *RMFU*, "[c]ourts have extended the [extraterritoriality] rule from *Healy* and *Brown–Forman* to cases where the 'price' floor being imposed on another jurisdiction was not monetary but rather a minimum standard of environmental protection." 730 F.3d at 1102.

Sam Francis Foundation, 784 F.3d at 1323–24, and *Agency on Deafness*, 742 F.3d at 432–33, a case Defendant cites (albeit for a different proposition), make clear that extraterritoriality doctrine applies beyond statutes that regulate out-of-state prices. *Sam Francis Foundation* involved a challenge to California's Resale Royalty Act, which required "the payment of royalties to the artist after a sale of fine art whenever 'the seller resides in California *or* the sale takes place in California.' " 784 F.3d at 1323 (emphasis in original). The plaintiff challenged the statute as violating the dormant Commerce Clause because it regulated sales that took place outside California. *Id.* The Ninth Circuit "easily conclude[d]" that the royalty requirement violated the dormant Commerce Clause because it mandated that royalties be paid for sales that had no connection to California. *Id.*

Agency on Deafness involved the California Disabled Person Act ("DPA"), a law having nothing to do with prices or sales of any kind.[19] 742 F.3d at 419. The plaintiffs in that case argued that the defendant's failure to provide closed captioning for its online videos for California viewers violated the DPA, which mandated the captioning. *Id.* The defendant argued the DPA violated the dormant Commerce Clause because it attempted to regulate conduct wholly outside of California. *Id.* at 433. The Ninth Circuit rejected the argument, holding instead that the DPA did not have the practical effect of regulating conduct outside of California because the defendant could enable close captioning for California residents only, thereby limiting the statute's effect to California's borders. *Id.* Although the court found that the DPA did not violate the dormant Commerce Clause, there is no indication that the plaintiffs' challenge under that provision was improper.

[36] Accordingly, the Court finds that Defendant's contention that the extraterritoriality doctrine is limited to price control or price affirmation statutes is without merit. The Court now turns to analyze § 6254.21(c) for its extraterritorial effects as applied to Hoskins and out-of-state actors. "Because the internet does not recognize geographic boundaries, it is difficult, if not impossible, for a state to regulate internet activities without project[ing] its legislation into other States." *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 103 (2d Cir. 2003) (internal quotation marks omitted). For example, if "[a] person outside [California] posts information on a website or on an electronic discussion group ... for the intended benefit of other people [outside California], that person must assume that someone from [California] may also view the material." *Id.* As a result, posters outside of California must comply with § 6254.21(c) or risk subsequent litigation and attorney's fees. California therefore has projected § 6254.21(c) "onto the rest of the nation." *Id.*

Defendant's alternative argument that § 6254.21(c) does not significantly burden interstate commerce ignores that § 6254.21(c) as applied to out-of-state actors, such as Hoskins, directly regulates wholly out-of-state conduct. ***1025** Section 6254.21(c) requires the recipient of a demand letter—anywhere in the country—sent by an elected official to remove the "official's home address or telephone number from public display on the internet," and to "continue to ensure that this information is not reposted on ... any ... Internet Web site maintained by the recipient of the written demand." Cal. Gov. Code. § 6254.21(c)(1)(D)(i). It also prohibits the demand recipient from "transfer[ring] the appointed or elected official's home address or telephone number to *any* other person, business, or association through *any* other medium." Cal. Gov. Code. § 6254.21(c)(1)(D)(ii) (emphasis added). The statute does not limit its application to California, nor does it require that websites displaying officials' home address or telephone numbers bar California only internet users' access. *See Agency on Deafness*, 742 F.3d at 432–33 (rejecting dormant Commerce Clause challenge to statute requiring website to provide captioning for California residents who access its online videos because captioning could be limited to only California residents).

Rather, § 6254.21(c) requires Hoskins, a Massachusetts resident, to remove a post from his online forum, FAC ¶ 45, and mandates that he "continue to ensure that [the legislators' contact information] is not reported on the forum or any

other website maintained by him," Doc. 19–1 at 23 (internal quotation marks omitted), even if the only people accessing the forum are New Hampshire residents (or citizens of states other than California). Section § 6254.21(c) also prohibits Hoskins from transferring the specified information to any other entity, "through any medium," even if Hoskins and the recipient have no connection to California or the transfer "takes place wholly outside of the State's borders." *Healy*, 491 U.S. at 336, 109 S.Ct. 2491. Thus, California has projected § 6254.21(c) "onto the rest of the nation." *Dean*, 342 F.3d at 103. The Court therefore concludes that Hoskins is likely to succeed on his claim that § 6254.21(c), as applied to out-of-state actors like Hoskins, violates the dormant Commerce Clause. *See Sam Francis Found.*, 784 F.3d at 1324 (holding that statute "regulating out-of-state art sales where 'the seller resides in California,' ... and no other connection to California need exist, violates the dormant Commerce Clause as an impermissible regulation of wholly out-of-state conduct."); *see also Dean*, 342 F.3d at 103 (holding that Vermont statute that directly regulated speech on the internet outside of Vermont was a "*per se* violation of the dormant Commerce Clause").

E. Hoskins's § 230 challenge

[37] **[38]** Under § 230(c)(1) "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Under § 230(e), "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." Section 230 therefore "precludes liability that treats a website as the publisher or speaker of information users provide on the website. In general, this section protects websites from liability for material posted on the website by someone else." *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 850 (9th Cir. 2016). More specifically, § 230 immunity applies when "(1) the defendant [is] a provider or user of an interactive computer service; (2) the cause of action treat[s] the defendant as a publisher or speaker of information; and (3) the information at issue [is] provided by another information content provider." *Hassell v. Bird*, 247 Cal.App.4th 1336, 1362, 203 Cal.Rptr.3d 203 (2016) (citation and quotation marks omitted).

***1026** **[39]** Hoskins claims that, as owner and operator of Northeastshooters.com, he is a "provider of an interactive computer service" under § 230(c)(1), who is entitled to immunity from any liability for the content created on the website by third parties. Doc. 19–1 at 24 (citing § 230(c)). He argues that the Office's takedown request "treat[s] [him] as the publisher or speaker of third-party content in violation of § 230." Doc. 19–1 at 24 (internal quotation marks omitted). Hoskins further asserts § 6254.21(c) is inconsistent with § 230(e), which provides that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *See* FAC at ¶ 56. Hoskins therefore requests "a declaratory judgment stating that the Defendant has violated his rights under Section 230." *Id.* at 17 ¶ 3.[20]

Defendant takes no position on whether Hoskins qualifies as "a provider of an interactive computer service" or whether he is entitled to immunity under § 230(c). *See* Doc. 20 at 28. Instead, Defendant argues that § 6254.21(c) is entirely consistent with § 230(c) in that both preclude Hoskins from facing any liability because "subdivision (e) of section 6254.21 ... provides Hoskins with the same immunity from liability, using the exact same definition of interactive computer service, as does 47 U.S.C. § 230." *Id.*[21]

Hoskins's claim is premised on the assumption that the Office's takedown request violates his § 230 immunity. Although the Office's takedown demand may have erroneously assumed Hoskins qualified as a "publisher" or "speaker" of the speech at issue here (headednorth's re-posting the legislators' personal information)—an issue the Court need not and does not decide—the demand did not violate his purported immunity under § 230.[22]

To the extent Plaintiffs assert § 6254.21(c)'s mandatory attorney's fees provision violates § 230, that issue is not properly before the Court. As explained in detail above, attorney's fees are not available under § 6254.21(c) unless and until (1) the plaintiff brings a lawsuit in state court for declaratory and/or injunctive relief and (2) the court finds that the defendant violated § 6254.21(c)(1). If the defendant asserts it is entitled to § 230 immunity as an "interactive computer service provider or access software provider," the court would have to determine (1) whether that is correct; and, if so, (2) whether imposing attorney's fees would amount to "liability" in violation of § 230 immunity; and, if so, (3) whether § 6254.21(e) precludes a fee award. Those issues are not ripe for the court's review.

Though not on all fours with the facts of this case, *Google, Inc. v. Hood*, 822 F.3d 212, 225–26 (5th Cir. 2016), guides the Court's analysis here as the only analogous case the Court can find. *Hood* involved Google's declaratory judgment challenge to a state attorney general's administrative

subpoena that "sought information on Google's ***1027** platforms, advertising practices, and knowledge of and efforts to police 'dangerous' or 'illegal' content." *Id.* at 218. The subpoena stated that if Google refused to comply, the attorney general " 'may apply to' a state court 'for an order compelling compliance.' " *Id.*

Before responding to the subpoena or seeking relief in state court, Google filed a declaratory judgment case in federal court. *Id.* at 219. Google alleged, among other things, that the attorney general's investigation violated its § 230 immunity, and that any further proceedings to enforce the subpoena would likewise violate that immunity. *Id.* at 219–20. The attorney general moved to dismiss the case on numerous grounds, including that Google's claims were not ripe for adjudication. *See Google, Inc. v. Hood*, 96 F.Supp.3d 584, 592 (S.D. Miss. 2015), *rev'd*, 822 F.3d 212. The district court disagreed, and found that the claims were ripe because "Google is not required to expose itself to civil or criminal liability before bringing a declaratory action to establish its rights under federal law, particularly where the exercise of those rights have been threatened or violated." *Id.* at 594 (citing *MedImmune*, 549 U.S. at 128–29, 127 S.Ct. 764).

The Fifth Circuit reversed, holding that the "administrative subpoena was not ripe for adjudication." *Hood*, 822 F.3d at 224. The court so held because (1) the subpoena was "non-self-executing," meaning that Google could not be sanctioned for not complying with it; (2) the attorney general could, but did not file a state court action to enforce Google's compliance; and (3) if the attorney general did file such a suit, Google could raise its claimed § 230 immunity as a defense. *See id.* at 224–26; *see also id.* at 227 n.12 ("[W]e do not suggest that section 230 of the CDA would not apply if Hood were to eventually bring an enforcement action, or cannot be applied at the motion-to-dismiss stage."). For these reasons, the Fifth Circuit held that Google's "pre-enforcement challenge" was unripe. *Id.* at 226.

This is consistent with the Court's understanding that § 230 immunity is an affirmative defense. *See Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997); *Doe v. GTE Corp.*, 347 F.3d 655, 657 (7th Cir. 2003); *Barnes*, 570 F.3d at 1109. As the Ninth Circuit explained, § 230(c)(1) "*only* protects from liability (1) a provider or user of an interactive computer service (2) whom a *plaintiff* seeks to treat, *under a ... cause of action*, as a publisher or speaker (3) of information provided by another information content provider." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100–01 (9th Cir. 2009) (emphasis added); *see also Fed. Trade Comm'n v. LeadClick Media, LLC*, 838 F.3d 158, 173 (2d Cir. 2016) (observing that courts have interpreted § 230 to provide immunity from "claims"). Section 230(c)(1) therefore "protects certain internet-based actors from certain kinds of *lawsuits*." *Barnes*, 570 F.3d at 1099 (emphasis added)); *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (holding "lawsuits seeking to hold a service provider liable [for third party content] ... are barred" under § 230(c)(1)).

As § 6254.21(c) and the demand letter make clear, the only liability Hoskins faced was a potential lawsuit and attorney's fees and costs if he failed to comply with the Office's request. Despite extensive research, the Court cannot find any authority that suggests the Office's letter even triggers Hoskins's purported § 230 immunity, much less violates it, as the letter is not a "cause of action," and did not impose any kind of "liability" on Hoskins—even if he ignored it. *See Barnes*, 570 F.3d at 1099; *Hassell*, 247 Cal.App.4th at 1363, 203 Cal.Rptr.3d 203 ("The [court's] removal order does not violate section 230 because it does not impose any liability on ***1028** Yelp."). Assuming that Hoskins is entitled to § 230 immunity, Hoskins does not cite, and the Court cannot find, any case holding that the mere *threat* of a lawsuit that ostensibly would violate his § 230(c) immunity constitutes a violation of § 230 itself. Likewise, the Court is unaware of any authority that suggests the Court has jurisdiction over a declaratory judgment claim that a threatened lawsuit would violate § 230. *Hood*, the only case with similar circumstances the Court can locate, suggests otherwise. Accordingly, the Court finds that Hoskins's claim that Defendant "violated Hoskins' rights under Section 230," FAC at ¶ 55, is not ripe for review.[23] Hoskins is therefore not likely to succeed on the merits of his § 230 claim.

F. Remaining preliminary injunction factors

[40] As outlined above, the Court finds that Plaintiffs are likely to succeed on the merits of their challenges to § 6254.21(c) under the First Amendment and the Commerce Clause. "Both [the Ninth Circuit] and the Supreme Court have repeatedly held that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.' " *Klein v. City of San Clemente*, 584 F.3d 1196, 1207–08 (9th Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)). "The harm is particularly irreparable where, as here, [Plaintiffs] seek[ ] to engage in political speech." *Id.* Plaintiffs have

"therefore demonstrated a likelihood of irreparable injury in the absence of an injunction." *Id.*

[41] Plaintiffs have also demonstrated that an injunction is in the public interest, and that the equities tip in their favor. The Ninth Circuit has broadly held that "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); *see also Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("the [district] court acknowledged the obvious [when issuing an injunction]: enforcement of an unconstitutional law is always contrary to the public interest" (collecting cases)). Further, any "ongoing enforcement of the potentially unconstitutional regulations ... would infringe not only the free of expression interests of [Plaintiffs], but also the interests of other people" subjected to § 6254.21(c). *Klein*, 584 F.3d at 1208 (quoting *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002)). "The balance of equities and the public interest thus tip sharply in favor of enjoining the [statute]." *Id.*; *see also id.* (noting that Ninth Circuit "caselaw clearly favors granting preliminary injunctions to a plaintiff ... who is likely to succeed on the merits of his First Amendment claim"). Accordingly, the Court finds that a preliminary injunction restraining and enjoining the Office from enforcing § 6254.21(c) against Plaintiffs is proper.[24]

*1029 V. CONCLUSION AND ORDER

For the foregoing reasons, the Court finds that Plaintiffs are likely to succeed on their claims that § 6254.21(c) violates the First Amendment as applied to them, and also violates the dormant Commerce Clause as applied to Hoskins. The Court further finds that the remaining preliminary injunction factors weigh in Plaintiffs' favor. The Court therefore preliminarily RESTRAINS AND ENJOINS Defendant from applying or enforcing § 6254.21(c) against Plaintiffs.

Under Federal Rule of Civil Procedure 65(c), the Court "may issue a preliminary injunction ... only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to be wrongfully enjoined or restrained." Plaintiffs request that the Court set a nominal bond of $1.00. Doc. 19–5 at 2. Defendant offers no opinion on the matter, and has not indicated it will suffer any financial loss as a result of the injunction. Accordingly, Plaintiffs shall post a nominal bond of $1.00 before the preliminary injunction will issue.

On or before March 10, 2017, the parties shall file a joint status report informing the Court how they wish to proceed.

IT IS SO ORDERED.

All Citations

237 F.Supp.3d 997, 45 Media L. Rep. 1827, 66 Communications Reg. (P&F) 343

Footnotes

1 Publius brings this suit anonymously under *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000), because he believes doing so is "necessary to preserve [his] First Amendment right to speak anonymously when criticizing the government ... and to guard against the risk of retaliatory and unfounded prosecution under the criminal provisions of the statutory scheme [he] challenges," specifically, California Government Code § 6254.21(c). Doc. 12, First Amended Complaint ("FAC"), at ¶ 12 n.1. Publius states in the FAC that he intends to file a motion to pursue this case anonymously, but, to date, he has not done so. *Id.* Defendant, however, has not objected to his anonymity.

2 Defendant describes zabasearch as "a commercial vendor," and therefore contends Publius "did not obtain the legislators' addresses from public records." Doc. 20 at 24–25. But, according to zabasearch.com, "[a]ll information found using ZabaSearch comes from public records databases. That means information collected by the government, such as court records, country records, state records, such as the kind of information that becomes public when you buy a new house or file a change-of-address form with the United States Postal Service." *See* www.zabasearch.com/faq (last visited February 7, 2017). Defendant therefore does not dispute that the legislators' personal information Publius posted was publicly available.

3 In the FAC, Plaintiffs allege Hoskins is a resident of Massachusetts, but in their moving papers they claim he is a resident of New Hampshire. *See, e.g.*, Doc. 19–1 at 23. His residency is relevant only insofar as he challenges § 6254.21(c)'s reach beyond California, so the analysis of his claims is the same whether he is a resident of Massachusetts or New Hampshire.

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4 Self-censorship for fear of civil liability may be a sufficient injury for standing purposes. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 277, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

5 In any event, Defendant seemingly does not dispute that headednorth would have standing to challenge § 6254.21(c) under the First Amendment. *See* Doc. 20 at 19. Though Plaintiffs do not make the argument, Hoskins, as the owner and operator of Northeastshooters.com, has third-party standing to assert the First Amendment rights of its anonymous users, such as headednorth. *Enterline v. Pocono Med. Ctr.*, 751 F.Supp.2d 782, 785 (M.D. Pa. 2008) (holding as matter of first impression that website owner may assert First Amendment rights of third-party anonymous users of its site);*McVicker v. King*, 266 F.R.D. 92, 95–96 (W.D. Pa. 2010) (relying on *Enterline* and holding the same);*In re Drasin*, No. ELH-13-1140, 2013 WL 3866777, at *2 n.1 (D. Md. July 24, 2013) (same); *In re Verizon Internet Servs., Inc.*, 257 F.Supp.2d 244, 257–58 (D.D.C. 2003) (holding that Verizon had standing to assert First Amendment rights of its customers), *rev'd on other grounds*, 351 F.3d 1229, 1239 (D.C. Cir. 2003) *see also Trawinski v. Doe*, No. L-8026-12, 2015 WL 3476553, *4–5 (N.J. Super. Ct. App. Div. June 2, 2015) (applying First Amendment standing principles); *Indiana Newspapers, Inc. v. Miller*, 980 N.E.2d 852, 858–59 (Ind. 2012) (same).

6 Although not raised in the briefs, the Court notes that the "Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and state officials acting in their official capacities." *Aholelei v. Dep't of Pub. Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007). State official defendants named in their official capacities are subject only to suit "for prospective declaratory and injunctive relief ... to enjoin an alleged ongoing violation of federal law" under § 1983. *Flint v. Dennison*, 488 F.3d 816, 824–25 (9th Cir. 2007) (citation omitted); *Lacano Investments, LLC v. Balash*, 765 F.3d 1068, 1072 (9th Cir. 2014) ("[The Eleventh Amendment does not bar actions when citizens seek only injunctive or prospective relief against state officials who would have to implement a state law that is allegedly inconsistent with federal law.") (citations omitted).

7 Defendant disputes how § 6254.21(c)'s attorney's fees and costs provision operates. The Court discusses its disagreement with Defendant's interpretation in a more relevant context below.

8 Individuals who use the internet to disseminate their speech, such as Plaintiffs, are entitled to full First Amendment protections. *See Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). ("We agree with [the district court's] conclusion that our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to [the internet]."). Cases that concern other forms of media (*e.g.*, newspapers) therefore apply with full force to speech on the internet.

9 *Cox* concerned only information contained and placed into the public record through "official court records." 420 U.S. at 495, 95 S.Ct. 1029. But the Supreme Court has long "recognize[d] a general right to inspect and copy public records and documents." *Nixon v. Warner Commnc'ns, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). This is true even if the government inadvertently releases the information. *See Florida Star v. B.J.F.*, 491 U.S. 524, 534, 538, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989) (holding First Amendment protected newspaper's publishing a rape victim's name that local police department had inadvertently released to the public).

10 *See, e.g.*, *Cox*, 420 U.S. at 496–97, 95 S.Ct. 1029 (holding television reporter had First Amendment right to publish name of 17–year-old rape victim when learned through court documents); *Florida Star*, 491 U.S. at 526, 109 S.Ct. 2603 (holding newspaper had First Amendment right to publish name of rape victim inadvertently disclosed by police); *Oklahoma Publishing Co. v. Dist. Ct.*, 430 U.S. 308, 308, 97 S.Ct. 1045, 51 L.Ed.2d 355 (1977) (holding media had First Amendment right to publish name and photograph of 11–year-old involved in criminal proceedings that media had attended); *Daily Mail*, 443 U.S. at 99, 99 S.Ct. 2667 (holding newspapers had First Amendment right to publish names of juvenile offenders)

11 Defendant does not suggest Publius's speech was a threat or otherwise not protected by the First Amendment.

12 The Court is not suggesting that the truthful dissemination of an individual's personal information is always entitled to First Amendment protections under any circumstance, even if it is already in the public domain. *See Florida Star*, 491 U.S. at 532, 109 S.Ct. 2603 ("Nor need we accept appellant's invitation to hold broadly that truthful publication may never be punished consistent with the First Amendment. Our cases have carefully eschewed reaching this ultimate question, mindful that the future may bring scenarios which prudence counsels our not resolving anticipatorily." (collecting cases)). As the Fourth Circuit recognized: "*Cox Broadcasting* and its progeny avoided deciding the ultimate question of whether truthful publication could ever be prohibited. Each decision resolved this ongoing conflict between privacy and the First Amendment 'only as it arose in a discrete factual context.' " *Ostergren*, 615 F.3d at 276 (quoting *Florida Star*, 491 U.S. at 530, 109 S.Ct. 2603).

13 Plaintiffs also point out that the voter registration affidavit of any voter, which includes his or her "home address, telephone number, [and] email number," Cal. Elec. Code § 625.4, "[s]hall be provided with respect to any voter ... to any person for

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election, scholarly, journalistic, or political purposes." Cal. Elec. Code § 2194(a)(3). So, even if the legislators' personal information was not freely available online, Plaintiffs potentially could have obtained it through lawful means.

14 The statute does prohibit the recipient of an official's takedown demand from "transfer[ring]" the information on "any other medium." § 6254.21(c)(1)(D)(ii). But there can be no liability under § 6254.21(c)(1) unless an official's home address or phone number is posted on the internet.

15 Ironically, a newspaper could face no liability under § 6254.21(c)(1) for publishing in print the same information that it posts online.

16 Under the canon of constitutional avoidance, a court should avoid deciding unnecessary constitutional issues. *See Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 56 S.Ct. 466, 80 L.Ed. 688 (1936). The doctrine generally applies only when "there is a viable alternate, nonconstitutional ground to reach the same result." *Ariz Dream Act Coal. v. Brewer*, 855 F.3d 957, 962–63, 2017 WL 461503, at *6 (9th Cir. Feb. 2, 2017) (citations omitted). But when a plaintiff challenges a law on multiple constitutional grounds, courts have discretion to decide which ground (or grounds) on which to decide the case. *Compare Am. Booksellers Found. v. Dean*, 342 F.3d 96, 102–03 (2d Cir. 2003) (finding federal statute unconstitutional under First Amendment and dormant Commerce Clause), *PSINet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004) (same) *with Old Coach Dev. Corp., Inc. v. Tanzman*, 881 F.2d 1227, 1231 n.2 (3d Cir. 1989) (declining to address whether challenged statute violated the First Amendment after finding that it violated the dormant Commerce Clause). And because the Court concludes Hoskins's § 230 challenge is unlikely to succeed, the Court may address his constitutional claims.

17 It appears Plaintiffs' Commerce Clause claim is an as-applied challenge brought by Hoskins only. *See* FAC at 17 ¶ 2 ("Plaintiff Hoskins respectfully requests that this Court enter a declaratory judgment stating that applying California Government Code section 6254.21(c) to Hoskins' out-of-state speech violates the Commerce Clause."); *see also id.* at ¶ 45 ("The application of Section 6254.21(c) to out-of-state actors like Hoskins violates the so-called dormant Commerce Clause"), ¶ 53 ("Defendant, acting under color of state law, has applied California Government Code section 6254.21(c) in violation of the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, thus in turn violating 42 U.S.C. § 1983."). To the extent Hoskins brings both a facial and as-applied dormant Commerce Clause challenge, the Court need only address his as-applied challenge.

18 The court in *Harris* analyzed the statute at issue for whether it was directed wholly at extraterritorial activity. 729 F.3d at 949. While the court did not explicitly mention *Healy* during its analysis, it applied the extraterritoriality doctrine to determine that the statute was not directed solely at out-of-state producers. *Id.* To the extent Defendant relies on the court's statement that "*Healy* and *Baldwin* are not applicable to a statute that does not dictate the price of a product" for support that the extraterritoriality doctrine is limited to price-fixing statutes, the court's own application of the extraterritoriality doctrine in that case to a statute that does not dictate the price of a product undermines Defendant's argument. *Id.* at 951. Furthermore, subsequent decisions apply *Healy* and the extraterritoriality doctrine to non-price-fixing statutes. *See, e.g.*, *Sam Francis Found.*, 784 F.3d at 1323–24.

19 The California Disabled Person Act assures that "[i]ndividuals with disabilities or medical conditions have the same rights as the general public to the full and free use" of public places and areas open to the public. Cal. Civ. Code §§ 54(a)–(b).

20 The Court notes that this is a particularly narrow request and, accordingly, the Court limits its analysis to its confines.

21 Section 6254.21(e) provides in full:

> (e) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

22 Neither party addresses whether Hoskins has standing to assert his § 230 claim. The Court notes, however, that the Office's threat to bring suit under § 6254.21(c) is sufficient to confer Hoskins with standing to bring the claim. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 118–19, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007).

23 Because of this conclusion, the Court need not address Hoskins's alternative argument that § 6254.21(e) is inconsistent with § 230 because the former excludes immunity for interactive computer service providers, as defined in § 230(f), if the "provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official." First, Hoskins made this argument for the first time in reply. Doc. 22 at 11; *Ass'n of Irritated Residents v. C & R Vanderham Dairy*, 435 F.Supp.2d 1078, 1089 (E.D. Cal. 2006) ("It is inappropriate to consider arguments raised for the first time in a reply brief."). Second, it is questionable whether Hoskins can challenge that aspect of § 6254.21(e), which is wholly inapplicable to this case.

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24 Because the Court only addressed Plaintiffs' as-applied challenge and because Plaintiffs ask only for an order directing the Office not to enforce § 6254.21(c) against them, *see* Doc. 19–1 at 26, the Court limits the preliminary injunction to preclude enforcement of § 6254.21(c) against Plaintiffs only.

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West's Nevada Revised Statutes Annotated
Title 20. Counties and Townships: Formation, Government and Officers (Chapters 243-260)
Chapter 250. County Assessors (Refs & Annos)
Confidential Information

N.R.S. 250.130

250.130. Court order to maintain confidentiality of personal information

Effective: October 1, 2017
Currentness

1. Any person or entity listed in NRS 250.140 who wishes to have the personal information of the person or entity that is contained in the records of a county assessor be kept confidential must obtain an order of a court that requires the county assessor to maintain the personal information of the person or entity in a confidential manner. Such an order must be based on a sworn affidavit by the person or, if an entity, a person authorized to sign on behalf of the entity, which affidavit:

(a) States that the affiant qualifies as a person listed in NRS 250.140 or that the entity on behalf of whom the person is signing qualifies as an entity listed in NRS 250.140; and

(b) Sets forth sufficient justification for the request for confidentiality.

2. Upon receipt of such an order, a county assessor shall keep such information confidential and shall not:

(a) Disclose the confidential information to anyone, unless disclosure is specifically authorized in writing by that person or entity; or

(b) Post the confidential information on the Internet or its successor, if any, or make the information available to others in any other way.

Credits
Added by Laws 2005, c. 384, § 5, eff. July 1, 2005. Amended by Laws 2017, c. 294, § 13.5, eff. Oct. 1, 2017.

N. R. S. 250.130, NV ST 250.130
Current through the end of both the 31st and 32nd Special Sessions (2020)

End of Document

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78 Cal.App.4th 462
Court of Appeal, First District, Division 4, California.

Milton LORIG et al.,
Plaintiffs and Appellants,
v.
MEDICAL BOARD of California et al., Defendants and Respondents.

No. A086261.
|
Feb. 18, 2000.

Synopsis
State-employed physicians and union of state-employed physicians and dentists brought action seeking declaratory and injunctive relief, alleging that Medical Board violated the Information Practices Act (IPA) or the California Public Records Act (CPRA) by posting physicians' names and "addresses of record" on its Internet Web site. The Superior Court, San Francisco County, Super.Ct. No. C990144, David A. Garcia, J., entered judgment in favor of Board, and physicians and union appealed. The Court of Appeal, Sepulveda, J., held that: (1) physicians' addresses of record were not exempt from public disclosure under CPRA; (2) IPA did not prohibit public disclosure of physicians' addresses of record; and (3) there was no legal basis for enjoining the Board from posting its licensees' addresses of record on its Internet Web site.

Affirmed.

West Headnotes (8)

[1] **Records** Judicial enforcement in general

Interpretation of the California Public Records Act (CPRA) and application of the statute to undisputed facts is a question of law subject to de novo review. West's Ann.Cal.Gov.Code § 6250 et seq.

7 Cases that cite this headnote

[2] **Records** In general; freedom of information laws in general

Records Matters Subject to Disclosure; Exemptions

California Public Records Act (CPRA) embodies a strong policy in favor of disclosure of public records, and any refusal to disclose public information must be based on a specific exception to that policy. West's Ann.Cal.Gov.Code §§ 6250, 6252(a, b).

5 Cases that cite this headnote

[3] **Records** Personal privacy considerations in general; personnel matters

Addresses of record for physicians, who were employed by State and who used their home addresses as their "address of record," did not fall within an exception to California Public Records Act's (CPRA) definition of "public records" for home addresses and home telephone numbers of state employees; Medical Board required physicians maintain business addresses for mailings from Board and for disclosure to the public upon request and, once physicians elected to designate home addresses as their "address of record," in full knowledge that they would be disclosed, the Board was justified in treating addresses as public record information. West's Ann.Cal.Gov.Code § 6254.3.

1 Cases that cite this headnote

[4] **Records** Personal privacy considerations in general; personnel matters

Courts closely scrutinize any proposed disclosure of names and home addresses contained in public records because individuals have a substantial privacy interest in their home addresses.

1 Cases that cite this headnote

[5] **Records** Personal privacy considerations in general; personnel matters

Addresses of record for state-employed physicians, who used their home addresses as

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their "address of record," were not exempt from disclosure to the public under provision of California Public Records Act (CPRA) governing personnel records, the disclosure of which would constitute an unwarranted invasion of personal privacy; Medical Board did not require physicians to use their home addresses as their "address of record," but allowed them to designate addresses of their place of business, or post office boxes, as their "address of record." West's Ann.Cal.Gov.Code § 6254(c).

[6] **Records** Regulations limiting access; offenses

To the extent a state-employed physician chose to continue using a home address as an address of record, knowing fully well that it would be posted on the Medical Board Web site, the physician waived any privacy interest in the confidentiality of personal information, for purposes of the Information Practices Act (IPA). West's Ann.Cal.Civ.Code §§ 1798.1(a), 1798.3(a), 1798.24, 1798.61(a).

[7] **Records** Access to records or files in general

Statute authorizing State Medical Board to post licensed physicians' "address of record" on its Internet Web site permitted Board to limit physicians to single "address of record" corresponding to required mailing address used by Board for official correspondence with physicians; thus, state-employed physicians, who did not have regular mail delivery at their workplace, were not entitled to home delivery of mail from the Board, while foregoing the cost or personal inconvenience of maintaining separate business addresses or post office boxes as their addresses of record for disclosure to the public. West's Ann.Cal.Bus. & Prof.Code § 2027; West's Ann.Cal.Gov.Code § 6252(e).

1 Cases that cite this headnote

[8] **Records** Judicial enforcement in general

State Medical Board's interpretation of its statutory authority and duty to provide public access to address information of its licensees is entitled to great weight and respect from the Court of Appeal. West's Ann.Cal.Bus. & Prof.Code §§ 136(a), 2021; West's Ann.Cal.Civ.Code § 1798.61(a); West's Ann.Cal.Gov.Code §§ 6252(e), 6253(a, b); Cal.Code Regs. title 16, § 1303.

1 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

SEPULVEDA, J.

Milton Lorig and Michael Burton are physicians licensed by respondent Medical Board of California (the Board). Lorig and Burton are also members of the Union of American Physicians and Dentists (the Union), which is the recognized bargaining representative for approximately 2,000 physicians and dentists employed by the State of California and nine political subdivisions. Lorig, Burton, and the Union (collectively appellants) timely appeal from a judgment by which the San Francisco Superior Court denied their request for injunctive and declaratory relief, and dismissed their complaint. The issue presented is whether the Board violated the Information Practices Act (Civ.Code, § 1798 et seq. (IPA)), or the California Public Records Act (Gov.Code, § 6250 et seq. (CPRA)), by posting appellants ****864** names and "addresses of record" on its Internet Web site. The trial court ruled that the address of record filed with the Board by a licensed physician is an item of public information, and that disclosure of that information on respondents' Web site gives rise to no triable issue of fact with respect to any violation of the IPA or the CPRA. We agree, and will affirm.

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i. Factual And Procedural Background

By statute and regulation, each physician licensed to practice in California is required to file a proper and current mailing address with the Board, and to immediately notify the Board of any and all changes of mailing address, giving both the old and new address. (Bus. & Prof.Code, §§ 136, subd. (a), 2021, subds. (a) & (b); Cal.Code Regs., tit. 16, § 1303.) Pursuant to Board policy, moreover, "all business mail ... including your renewal notices and renewal licenses" is sent to what the Board calls the physician's "address of record," which is the same as the mailing address provided by the doctor.

In May 1997, pursuant to Business and Professions Code section 2027, the Board established an Internet Web site (http://www.medbd.ca.gov) that provides general information regarding Board services, as well as licensing and discipline information about physicians and other licensees. The Web site can be accessed 24 hours a day, and the Board has no direct means of determining who is accessing the Web site or for what purpose.

Prior to July 1997, many doctors used their home addresses as their addresses of record. This was especially true with respect to psychiatrists— ***465** such as appellants Lorig and Burton —who are employed by state and local government clinics and prisons, and are unable to receive mail where they treat patients. Many of these doctors treat mentally ill or violent patients, and have taken steps to protect their homes and families by such means as using unlisted telephone numbers. These doctors justifiably fear that unlimited, anonymous access to their home addresses poses a serious danger to themselves and their families. However, it is undisputed that, before it established its Internet Web site, the Board received tens of thousands of requests each month for address information about California physicians, and that the Board provided such information to anyone who made a request in writing, or by telephone during business hours, without requiring the individual to identify himself or herself.[1]

On July 10, 1997, the Board announced that it would begin posting physicians' addresses of record on its Web site, and gave licensees until September 1, 1997, to provide an alternative address of record if they did not want their home mailing addresses disclosed in this manner. The Board informed the doctors that a post office box could serve as an address of record so long as a street address, which would remain confidential, was also provided. By the end of calendar year 1997, approximately 45,000 physicians requested ****865** a change of address in response to the Board's notice.

On October 7, 1997, appellants filed the instant action seeking declaratory relief and an injunction against the disclosure of licensees' home addresses on the Board's Web site. Appellants' complaint contained two causes of action, alleging that the planned disclosure violated certain provisions of the IPA and PRA. On November 10, 1997, the parties stipulated that the address line of the Web site listings would remain blocked pending resolution of this case in the trial court.

In January 1998, appellants moved for summary judgment on their complaint. Respondents filed a cross-motion for summary judgment, which was ***466** heard along with appellants' motion on February 25, 1998. On the same date, the trial court granted respondents' motion and concluded: "There is no triable issue of material fact as to the following matters, for the reasons indicated: 1. The address of record of physicians licensed to practice medicine in California is an item of public information. 2. The Medical Board of California does not violate the provisions of the [CPRA] nor of the [IPA] by publishing the address of record of California-licensed physicians on the Medical Board's [Internet Web site]"

Judgment was entered on February 23, 1999. Appellants' notice of appeal was timely filed on March 10, 1999.

iI. Discussion

A. *Providing Public Access to a Physician's Address of Record Serves Significant Public Interests.*

At the outset, it is important to note that appellants have framed the issues in this case around an assumption that the Board has acted arbitrarily and in violation of the CPRA and the IPA by mandating disclosure of their *home* addresses. The Board has done no such thing. Nor did the trial court find, as appellants assert in their opening brief, that "home addresses of physicians [are] subject to public disclosure."

It is undisputed that the Board has long required licensed physicians to provide it with a mailing address, also known as the licensee's "address of record," and that the Board —as the agency charged with regulating the practice of medicine in California (Bus. & Prof.Code, § 2000 et seq.)—

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has interpreted certain statutes as imposing upon it a duty to make that information available to the public. (See Gov.Code, §§ 6252, subd. (e), 6253, subds. (a) & (b); see also Civ.Code, § 1798.61, subd. (a).)[2] However, it is entirely up to the licensed physician to designate his or her address of record, and the licensee has several options in that regard. As the Board stated in a letter to all licensees on July 10, 1997: "You can use an address at which you can receive mail such as a home or business address, or a post office box. If you choose a post office box number, by law you also must provide a street address. *In this case, the street address will remain confidential.*" (Italics in original.)

It is also important to note that providing ready public access to an accurate, current address of record for physicians licensed in California ***467** serves significant—in some respects, compelling—public interests. It enables patients to locate medical records maintained by their former physicians. It establishes a certain and reliable location for effecting service of process on the licensee. (See Code Civ. Proc., § 415.30; but cf. *id.,* § 415.20, subd. ****866** (b).) It also helps to more accurately identify a particular physician (e.g., where two or more physicians share the same name) about whom a prospective or former patient may wish to inquire (e.g., to locate medical records, or to find out about a record of discipline or malpractice judgments for a given physician).

With the foregoing considerations in mind, we proceed to the merits of appellants' statutory claims.

B. *The CPRA Does Not Prohibit Public Disclosure of Physicians' Addresses of Record.*

[1] Appellants first claim the trial court erred when it concluded that posting physicians' addresses of record on the Board's Web site would not violate the CPRA. This is really an argument that the address of record for a physician who is employed by the state, and who uses his or her home address as an address of record, falls within an exception to the CPRA definition of "public records." The parties appear to agree that this issue involves interpretation of the CPRA, and application of the statute to undisputed facts. This is a question of law subject to de novo review. (See *Kurtz v. Calvo* (1999) 75 Cal.App.4th 191, 193, 89 Cal.Rptr.2d 99; *Murphy v. Padilla* (1996) 42 Cal.App.4th 707, 711, 49 Cal.Rptr.2d 722.)

[2] The CPRA defines "public records" in Government Code section 6252, subdivision (e), as follows: " 'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." By its own terms, the CPRA embodies a strong policy in favor of disclosure of public records (see Gov.Code, §§ 6250 & 6252, subds. (a), (b)), and any refusal to disclose public information must be based on a specific exception to that policy (*Johnson v. Winter* (1982) 127 Cal.App.3d 435, 437, 179 Cal.Rptr. 585).

[3] **[4]** Appellants rely on two statutory exceptions for their argument that the Board policy requiring Web site posting of physicians' addresses of record violates the CPRA. The first of these exceptions is found in Government Code section 6254.3, subdivision (a), which provides: "The home addresses and home telephone numbers of state employees ... shall not be deemed to be public records and shall not be open to public inspection ***468** ...." As our colleagues in the Sixth Appellate District recently noted, courts closely scrutinize any proposed disclosure of names and home addresses contained in public records because individuals have a substantial privacy interest in their home addresses. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1019–1020, 88 Cal.Rptr.2d 552.) Appellants' argument under subdivision (a) of Government Code section 6254.3 fails, however, because the Board is not proposing to disclose any physician's home address. The Board has long required physicians to maintain a current, accurate address of record for mailings from the Board and for disclosure to the public upon request. The required information is, in essence, a business address. Once a physician elects to designate a home address as his or her address of record, in full knowledge that it will be disclosed—whether in response to a telephonic request or an inquiry at the Board's Web site—the Board is justified in treating it as public record information.

[5] Appellants further contend that their home addresses are in a class of information defined by subdivision (c) of Government Code section 6254, which exempts from disclosure all "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." If the Board were *requiring* physicians to use their ****867** home addresses as their addresses of record, there might be room for such an argument. (See *City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at pp. 1019–1020, 88 Cal.Rptr.2d 552.) But, once again, appellants and others similarly situated are free to designate the address of their place of business, or a post office box, as their address of record. Any privacy interest a physician may have with respect to this type of information is minimal and far

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outweighed by the public interests asserted by the Board. In addition, any privacy interest the licensee may have in his or her address of record—even if it is also a home address—may be deemed waived by the affirmative decision to provide that address to the Board with full knowledge that it will be posted on the Internet. (See *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 448–449, 57 Cal.Rptr.2d 46.) Moreover, to the extent the cost of maintaining a separate address of record imposes a burden on the privacy interests of appellants and other physicians, it is a very small one and one that is justified in the circumstances. Thus, we conclude the trial court did not err by rejecting appellants' claims under the CPRA.

C. *The IPA Does Not Prohibit Public Disclosure of Physicians' Addresses of Record.*

[6] Appellants further contend that disclosure of their addresses of record on the Board's Web Site violates the IPA. Again, this issue involves the interpretation and application of a statute to undisputed facts, and is a ***469** question of law subject to de novo review. (*Kurtz v. Calvo, supra,* 75 Cal.App.4th at p. 193, 89 Cal.Rptr.2d 99; *Murphy v. Padilla, supra,* 42 Cal.App.4th at p. 711, 49 Cal.Rptr.2d 722.) This contention is related to appellants' claim under the CPRA, and fails for similar reasons.

In relevant part, the IPA forbids the "indiscriminate ... dissemination of personal information" by state agencies, and prohibits them from disclosing "any personal information in a manner that would link the information disclosed to the individual to whom it pertains." (Civ.Code, §§ 1798.1, subd. (a), 1798.24.) The IPA also defines " 'personal information' " to include home addresses. (*Id.,* § 1798.3, subd. (a).) However, the IPA expressly allows the disclosure of "the names and addresses of persons possessing licenses to engage in professional occupations." (*Id.,* § 1798.61, subd. (a).)

Once again, appellants' claim rises and falls on an argument that the Board is asserting the authority to publicly disclose the home addresses of physicians under its regulatory jurisdiction. As we have noted, the Board has done no such thing. And, to the extent a licensee chooses to continue using a home address as an address of record, knowing fully well that it will be posted on the Board Web site, the physician may be deemed to have waived any interest he or she may have in the confidentiality of such information. (See *Pettus v. Cole, supra,* 49 Cal.App.4th at pp. 448–449, 57 Cal.Rptr.2d 46.) Thus, we conclude the trial court did not err when it found that the Board policy with respect to disclosure of physicians' addresses of record on its Web site does not violate the IPA.

D. *There is No Other Legal Basis for Granting the Requested Relief.*

[7] In reality, appellants' arguments boil down to a claim that physicians who do not have regular mail delivery at their workplace are entitled to home delivery for mail from the Board and may not be put to the cost (estimated at approximately $40 per year) or inconvenience of having to maintain a post office box. Further, they argue that they must be allowed to use their business or institutional address as their address of record for disclosure to the public, while retaining their home address ****868** for Board mailings. Thus, appellants argue that the Board must allow perhaps the only option it has foreclosed, i.e., that physicians be permitted to have *two* addresses of record—a home address for mailings from the Board and another address, of their choosing, to be provided to members of the public on the Board's Internet Web site. Only to that extent do appellants concede that the Board has the authority to post address of record information on the Internet. The problem with this argument is that neither the CPRA nor the IPA supports ***470** appellants' argument, and appellants do not cite any other constitutional, statutory, or case law limitation on the Board's authority to determine for itself the specifics of its policy for collecting, compiling, and disseminating address of record information.

[8] As we have noted, appellants do not as a general matter dispute the Board's interpretation of its statutory obligations to collect and maintain reliable, current address information about licensees (see Bus. & Prof.Code, §§ 136, subd. (a), 2021; Cal.Code Regs., tit. 16, § 1303), or to provide members of the public with that information upon request (see Gov.Code, §§ 6252, subd. (e), 6253, subds. (a) & (b); Civ.Code, § 1798.61, subd. (a).) Of course, any argument to the contrary would be quite surprising in light of the wide array of data regarding discipline, malpractice judgments and the like, which the Board is *expressly* required to disclose to the public upon request (see Bus. & Prof.Code, § 803.1, subd. (b); Cal.Code Regs., tit. 16, § 1354.5). We presume all physicians would want such information to be accurately attributed to the correct, specifically identified individual physician, and to no other. Moreover, the Board's interpretation of its statutory authority and duty to provide public access to address information of its licensees is entitled to great weight and respect from this court. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11–12, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *International Business Machines v. State Bd. of Equalization*

(1980) 26 Cal.3d 923, 931, fn. 7, 163 Cal.Rptr. 782, 609 P.2d 1.)

With the enactment of Business and Professions Code section 2027, the Board was required to post such information on the Internet. In response to that statutory mandate, the Board decided to include as identifying information both the names and addresses of record for all its licensees. In a declaration submitted with respondents' motion for summary judgment, the Board's executive director quite reasonably predicted that posting addresses of record and other public information about physicians on the Internet would both expand public access to, and reduce the cost of responding to the daily onslaught of written and telephonic inquiries for, such information.

Once again, however, section 2027 did not provide *express* statutory authorization for the Board to post physicians' address information on the Internet. Nevertheless, appellants concede that the Board has the authority to do so, but only so long as they "have the choice of using their office or institution address instead of their home, mailing address" as the address of record for that purpose. As we have already discussed, appellants plainly have that choice and there is simply no authority for appellants' claim that the Board may not limit physicians to a single address of record. It is entirely ***471** reasonable for the Board to insist that the address of record posted for public information be the same as the required mailing address, i.e., the one the Board uses for official correspondence with its licensees. Having a single address on file for both purposes reduces the risk of confusion and improper disclosure of a home address the physician wishes to protect, and increases the likelihood that both the Board and members of ****869** the public will be able to locate the correct licensee when necessary.

When appellants' complaint is thus boiled down to its essence, it becomes clear that they are simply objecting to an economic burden (and a certain amount of personal inconvenience) that will result from the Board's policy with respect to posting licensees' address information on its Web site. In that regard, the Board has effectively forestalled the use of a home address for that purpose, and required each physician to maintain *either* a business address or a post office box for that purpose. However, this approach is neither unlawful nor arbitrary but, rather, a reasonable accommodation of the physicians' legitimate concerns about privacy and personal safety, the public interest in access to "information relating to the conduct of the public's business" (Gov.Code, § 6252, subd. (e)), and the Board's obligations with respect to disclosure of public information and the regulation of the practice of medicine.

In sum, there was no legal basis for enjoining the Board from posting its licensees' addresses of record on its Internet Web site. Accordingly, we conclude the trial court did not err by granting respondents' summary judgment motion and, on that basis, denying the relief requested by appellants.

iII. Conclusion

For all the foregoing reasons, the judgment of the trial court is affirmed. Respondents shall recover their costs on appeal.

HANLON, P.J., and REARDON, J., concur.

All Citations

78 Cal.App.4th 462, 92 Cal.Rptr.2d 862, 00 Cal. Daily Op. Serv. 1306, 2000 Daily Journal D.A.R. 1831

Footnotes

1 Appellants do not explain how Web site posting of an address of record is any more dangerous than the prior system of unfettered disclosure of a home mailing address upon telephonic inquiry by an anonymous requester. For the first time at oral argument, appellants claimed that they did not know the Board was releasing their address of record information to members of the public until they received notice of the Board's plan to post that information on the Internet in July 1997. This argument finds no support in the record and is, indeed, contradicted by evidence that, with every license renewal notice and in some of its publications, the Board informs licensees that their address of record is public information. Nevertheless, we will accept for the sake of argument appellants' claim that the ability to access address information on the Internet around the clock, with a higher level of anonymity and without leaving a trail of "hard" evidence, will make it marginally easier for a hostile or dangerous patient to find and injure a physician who uses his or her home address as an address of record.

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2 It is also undisputed that a licensee must report any change in his or her address of record within 30 days after each change. (Bus. & Prof.Code, § 2021, subd. (b).) This statute further requires the licensee to provide a street address, as to which he or she may request confidentiality, if the address provided to the Board is a post office box. (*Ibid.*)

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63 Cal.App.4th 1200
Court of Appeal, Fourth District, Division 1, California.

KNSD CHANNELS 7/39 et al., Petitioners,
v.
The SUPERIOR COURT of San Diego County, Respondent;
Ricardo Vasquez et al.,
Real Parties in Interest.

No. D029949.
|
May 13, 1998.

Synopsis
After the Superior Court, San Diego County, No. SCD120491, John M. Thompson, J., denied motion of television stations that sought copies of audiotapes introduced in criminal trial, stations brought proceedings for writ of mandate. The Court of Appeal, McIntyre, J., held that absent showing that providing access would create a significant risk of impairment of integrity of evidence, court was required to make evidence previously presented to jury in open court reasonably available to the public by allowing news media to make copies of audiotape.

Writ of mandate issued.

West Headnotes (6)

[1] **Criminal Law** Mootness

To extent that issue of news media's right to access to audiotape presented in criminal trial was mooted by conclusion of trial, issue would nonetheless be reviewed because of importance of question involved, possibility of its recurrence, and fact that orders denying access to such evidence might otherwise evade review.

[2] **Records** Right of Access and Limitations Thereon in General

Records from judicial proceedings, including evidence introduced at such proceedings, are subject to a public right of access that exists not by virtue of the First Amendment, but rather as continuation of common law right to inspect and copy judicial records.

7 Cases that cite this headnote

[3] **Records** Right of Access and Limitations Thereon in General

The common law right of access to judicial records is not absolute.

4 Cases that cite this headnote

[4] **Records** Presumptions, inferences, and burden of proof

There is presumption of public access to judicial records in criminal cases, which allows trial court only limited authority to preclude such access.

3 Cases that cite this headnote

[5] **Constitutional Law** Evidence and Witnesses

Records Sealing, unsealing, and impoundment of judicial records in criminal proceedings

Public, through news media, was entitled to obtain copies of audiotapes introduced and played for jury in murder trial pursuant to public right of access to judicial records, as providing access to material already presented to jury did not create significant risk that integrity of evidence would be impaired in violation of defendants' due process right to fair trial. U.S.C.A. Const.Amend. 6.

1 Cases that cite this headnote

[6] **Records** Sealing, unsealing, and impoundment of judicial records in criminal proceedings

Absent a showing that providing access would create a significant risk of impairment of the integrity of the evidence, the court in a criminal case must make evidence previously presented to

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a jury in open court reasonably available to the public. U.S.C.A. Const.Amend. 6.

1 Cases that cite this headnote

Attorneys and Law Firms

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No appearance for Respondent.

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Opinion

***1202** McINTYRE, Associate Justice.

We are presented with the issue of whether the public, through the news media, has a right to obtain copies of evidence introduced and played for the jury in a criminal trial. Absent a showing that providing such access threatens the integrity of the evidence, we conclude that the answer to this question is "yes;" accordingly, we grant the petition and issue the writ.

Real parties in interest (the defendants) were arrested and charged in connection with the murder of an elderly gentleman for $5. Because of considerable community interest in the case, petitioners KNSD Channels 7/39 and KGTV Channel 10 (KNSD/KGTV) were present during the criminal proceedings. At trial, the prosecution offered into evidence an audiotape of a conversation that occurred between two of the defendants in the back of a police car after their arrest. The audiotape was introduced into evidence and played for the jury in open court, although the media apparently did not film this part of the proceedings.

Thereafter, KNSD/KGTV filed a motion seeking access to the audiotape, pursuant to federal and constitutional law, as well as common law, so that they could copy the audiotape and air it for the public. The superior court denied the motion, finding in part that the public had had adequate access to the audiotape. It stated:

"[O]n balance[,] the necessity to ensure a fair trial in this matter far exceeds the public right to access of material, and this is even more important given the fact that all of this material has already been made available to anyone who wanted to take the time to come down to the trial.

"....

"This trial has received a tremendous amount of pre-trial publicity and on-going publicity. This jury has been bombarded with the opportunity to violate its promise to me not to be exposed to these matters they should not consider. And I will do nothing further to fuel that possibility."

DISCUSSION[1]

[1] The fundamental notion of public access to court proceedings is grounded in the common law of England and the United States. ***1203** (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 569, 100 S.Ct. 2814, 2823, 65 L.Ed.2d 973 ["at the time when our organic laws were adopted, criminal trials both here and in England had long been presumptively open"].) Based on this history of openness, the public's right of access to such court proceedings is now recognized as an integral part of the freedoms of speech and press guaranteed under the First Amendment to the United States Constitution. (*Id.* at pp. 575–581, 100 S.Ct. at pp. 2826–2838.) Similarly, the California Constitution, article I, sections 2, subdivision (a), and 15 provide for a right of access to judicial proceedings. (See also Pen.Code, § 686.)

[2] Records from judicial proceedings, including evidence introduced at such proceedings, are also subject to a public right of access. However, this right exists not by virtue of the First Amendment (*Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, 608–610, 98 S.Ct. 1306, 1317–1318, 55 L.Ed.2d 570; compare *Cox Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469, 495, 95 S.Ct. 1029, 1046, 43 L.Ed.2d 328), but rather as a continuation of the common law right to inspect and copy judicial records. (See *In re Nat. Broadcasting Co., Inc.* (D.C.Cir.1981) 209 U.S.App.D.C. 354, 653 F.2d 609, 612.) The right of access "serves the important functions of ensuring the integrity of judicial proceedings in particular and of the law enforcement process more generally." (*United* ****597** *States v. Hubbard* (D.C.Cir.1980) 208 U.S.App.D.C. 399, 650 F.2d 293, 315, fn. omitted.)

[3] The common law right of access to judicial records is not absolute, but "must be reconciled with legitimate countervailing public or private interests...." (*In re Nat. Broadcasting Co., Inc., supra,* 653 F.2d at p. 613.) However, the fundamental nature of the right gives rise to a "presumption" in favor of public access. (*Richmond Newspapers, Inc. v. Virginia, supra,* 448 U.S. at p. 569, 100 S.Ct. at p. 2823.)[2]

[4] California also recognizes the presumption of accessibility of judicial records in criminal cases and allows a trial court limited authority to ***1204** preclude such access. "[W]here there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. In this regard the term 'public policy' means anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel has a tendency to be injurious to the public or the public good." (*Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 222, 71 Cal.Rptr. 193; compare *Estate of Hearst* (1977) 67 Cal.App.3d 777, 785, 136 Cal.Rptr. 821 [in a civil case, the trial court may preclude public access to judicial records "under exceptional circumstances and on a showing of good cause"].)

As in this case, the most oft-invoked public policy in a criminal proceeding is the defendant's due process right to a fair trial. (E.g., *Craemer v. Superior Court, supra,* 265 Cal.App.2d at pp. 222–223, 71 Cal.Rptr. 193.) The United States Supreme Court has observed "free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them." (*Bridges v. State of California* (1941) 314 U.S. 252, 260, 62 S.Ct. 190, 192, 86 L.Ed. 192.) However, in the circumstances presented, we find the balancing of conflicting fundamental rights not so difficult.

[5] The trial court justified its decision to deny access to the tape because it felt that excessive prejudicial publicity would impair the defendants' fair trial rights, certainly a legitimate concern. (*Craemer v. Superior Court, supra,* 265 Cal.App.2d at p. 223, 71 Cal.Rptr. 193, citing *Estes v. Texas* (1965) 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d 543.) However, where the evidence to which access is sought has already been presented to the jury, a defendant's interest in precluding access to it is diminished, if not ameliorated altogether. (E.g., *United States v. Mitchell* (D.C.Cir.1976) 179 U.S.App.D.C. 293, 551 F.2d 1252, 1261 ["[i]t suffices to note that once an exhibit is publicly displayed, the interests in subsequently denying access to it necessarily will be diminished"], reversed on other grounds in *Nixon v. Warner Communications, Inc., supra,* 435 U.S. at p. 603, 98 S.Ct. at p. 1315; *Application of National Broadcasting Co., Inc., supra,* 635 F.2d at p. 952.)

Further, once the evidence is presented in open court before the jury, the public's interest in access to that evidence is particularly clear. (See *Oklahoma Publishing Co. v. District Court* (1977) 430 U.S. 308, 310, 97 S.Ct. 1045, 1046, 51 L.Ed.2d 355 ["the First and Fourteenth Amendments will not permit a state court to prohibit the publication of widely disseminated information obtained at court proceedings which were in fact open to the public"], and cases cited therein.)

[6] In this context, a balancing of the parties' conflicting interests surely requires that the evidence be accessible to the public. Accordingly, we hold ***1205** that, absent a showing that providing access would create a significant risk of impairment of the integrity of the evidence, the court must make evidence ****598** previously presented to a jury in open court reasonably available to the public. No showing of impairment risk was made here and thus the court erred in denying KNSD/KGTV access to the tape.

DISPOSITION

Let a writ of mandate issue directing the superior court to vacate its order denying reasonable access to the audiotape for copying and broadcast and enter a new order permitting such access.

WORK, Acting P.J., and NARES, J., concur.

All Citations

63 Cal.App.4th 1200, 74 Cal.Rptr.2d 595, 26 Media L. Rep. 2022, 98 Daily Journal D.A.R. 5031

Footnotes

1 The trial is now over. To the extent that the issue presented has been rendered moot, we nonetheless proceed to address it because of the importance of the question involved, the possibility of its recurrence and the fact that trial court orders

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denying access to such evidence would otherwise evade review. (*Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 102 S.Ct. 2613, 73 L.Ed.2d 248.)

2 Despite the universal agreement that a presumption of accessibility exists, the federal courts have described the level of discretion that a trial court has to deny such access in differing ways. (See *United States v. Criden* (3d Cir.1981) 648 F.2d 814, 823 ["strong presumption" in favor of accessibility, such that the trial court must state articulable facts, rather than conjecture, to support denial of access]; *Application of National Broadcasting Co., Inc.* (2d Cir.1980) 635 F.2d 945, 952 [compelling circumstances required to overcome the presumption]; *In re Nat. Broadcasting Co., Inc., supra,* 653 F.2d at p. 613 [access may be denied only where the court concludes that "justice so requires"]; *Belo Broadcasting Corp. v. Clark* (5th Cir.1981) 654 F.2d 423, 430 [no strong presumption; trial court entitled to deference in determining whether to deny access]; *United States v. Webbe* (8th Cir.1986) 791 F.2d 103, 106 [same].)

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West's Annotated California Codes
Revenue and Taxation Code (Refs & Annos)
Division 1. Property Taxation (Refs & Annos)
Part 3. Equalization (Refs & Annos)
Chapter 1. Equalization by County Board of Equalization
Article 1. Generally (Refs & Annos)

West's Ann.Cal.Rev. & T.Code § 1602

§ 1602. Inspection of roll

Currentness

The roll or a copy thereof shall be made available for inspection by all interested parties during regular office hours of the officer having custody thereof.

Credits

(Stats.1939, c. 154, p. 1301, § 1602. Amended by Stats.1939, c. 1008, p. 2793; Stats.1966, 1st Ex.Sess., c. 147, p. 671, § 69.)

West's Ann. Cal. Rev. & T. Code § 1602, CA REV & TAX § 1602
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West's Annotated California Codes
Revenue and Taxation Code (Refs & Annos)
Division 1. Property Taxation (Refs & Annos)
Part 2. Assessment
Chapter 3. Assessment Generally
Article 6. Assessment Roll (Refs & Annos)

West's Ann.Cal.Rev. & T.Code § 602

§ 602. Contents of local roll

Effective: January 1, 2000
Currentness

This local roll shall show:

(a) The name and address, if known, of the assessee. The assessor is not required to maintain electronic mail addresses.

(b) Land, by legal description.

(c) A description of possessory interests sufficient to identify them.

(d) Personal property. A failure to enumerate personal property in detail does not invalidate the assessment.

(e) The assessed value of real estate, except improvements.

(f) The assessed value of improvements on the real estate.

(g) The assessed value of improvements assessed to any person other than the owner of the land.

(h) The assessed value of possessory interests.

(i) The assessed value of personal property, other than intangibles.

(j) The revenue district in which each piece of property assessed is situated.

(k) The total taxable value of all property assessed, exclusive of intangibles.

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(*l*) Any other things required by the board.

Credits

(Stats.1939, c. 154, p. 1291, § 602. Amended by Stats.1939, c. 1008, p. 2793; Stats.1967, c. 417, p. 1636, § 1; Stats.1973, c. 842, p. 1508, § 6; Stats.1979, c. 813, p. 2810, § 1, operative July 1, 1980; Stats.1981, c. 186, p. 1112, § 1; Stats.1999, c. 941 (S.B.1231), § 13.)

Notes of Decisions (23)

West's Ann. Cal. Rev. & T. Code § 602, CA REV & TAX § 602
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West's Annotated California Codes
Government Code (Refs & Annos)
Title 1. General
Division 7. Miscellaneous
Chapter 3.5. Inspection of Public Records (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

West's Ann.Cal.Gov.Code § 6257.5

§ 6257.5. Purpose of request for disclosure; effect

Currentness

This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

Credits
(Added by Stats.1998, c. 1049 (S.B.2174), § 1.)

Notes of Decisions (9)

West's Ann. Cal. Gov. Code § 6257.5, CA GOVT § 6257.5
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Civil Code (Refs & Annos)
Division 4. General Provisions (Refs & Annos)
Part 4. Maxims of Jurisprudence

West's Ann.Cal.Civ.Code § 3542

§ 3542. Interpretation; reasonableness

Currentness

Interpretation must be reasonable.

Credits
(Enacted in 1872.)

Notes of Decisions (60)

West's Ann. Cal. Civ. Code § 3542, CA CIVIL § 3542
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West's Annotated California Codes
Civil Code (Refs & Annos)
Division 4. General Provisions (Refs & Annos)
Part 4. Maxims of Jurisprudence

West's Ann.Cal.Civ.Code § 3511

§ 3511. Reason same

Currentness

Where the reason is the same, the rule should be the same.

Credits
(Enacted in 1872.)

Notes of Decisions (27)

West's Ann. Cal. Civ. Code § 3511, CA CIVIL § 3511
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West's Annotated California Codes
Civil Code (Refs & Annos)
Division 4. General Provisions (Refs & Annos)
Part 4. Maxims of Jurisprudence

West's Ann.Cal.Civ.Code § 3510

§ 3510. Reason for rule ceasing

Currentness

When the reason of a rule ceases, so should the rule itself.

Credits
(Enacted in 1872.)

Notes of Decisions (15)

West's Ann. Cal. Civ. Code § 3510, CA CIVIL § 3510
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West's Annotated California Codes
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 4. Obligations Arising from Particular Transactions (Refs & Annos)
Title 14. Lien
Chapter 2. Mortgage (Refs & Annos)
Article 1. Mortgages in General (Refs & Annos)

West's Ann.Cal.Civ.Code § 2934

§ 2934. Assignments; instruments subordinating or waiving priority; recording; effect

Currentness

Any assignment of a mortgage and any assignment of the beneficial interest under a deed of trust may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof to all persons; and any instrument by which any mortgage or deed of trust of, lien upon or interest in real property, (or by which any mortgage of, lien upon or interest in personal property a document evidencing or creating which is required or permitted by law to be recorded), is subordinated or waived as to priority may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof, to all persons.

Credits

(Enacted in 1872. Amended by Code Am.1873-74, c. 612, p. 261, § 258; Stats.1931, c. 80, p. 101, § 1; Stats.1935, c. 818, p. 2229, § 1.)

Notes of Decisions (20)

West's Ann. Cal. Civ. Code § 2934, CA CIVIL § 2934
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West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 4. Miscellaneous Provisions (Refs & Annos)
Title 1. Of the General Principles of Evidence

West's Ann.Cal.C.C.P. § 1859

§ 1859. Construction of statutes or instruments; intent

Currentness

In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Credits
(Enacted in 1872.)

Notes of Decisions (1930)

West's Ann. Cal. C.C.P. § 1859, CA CIV PRO § 1859
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5 Title to Real Property

In California, the basic principles followed governing title to real property were derived from England's Common Law generally implemented by case law known as stare decisis. This term is Latin for "to stand by a decision". Stare decisis is applied as a doctrine to bind a trial court by higher court decisions (appellate and supreme court) that become precedents on a legal question raised in the lower/trial court. Reliance on such precedents is required of lower/trial courts until a higher court changes the rule.

California has a 150-year history of development and evolution in the way its courts have applied legal principles regarding the title to real property and the conveyance/transfer of the title. These legal principles also apply to the encumbering of title to real property through mortgages or deeds of trust and to provide notice of and to evidence monetary claims against the title in the form of liens. This history is documented by the enactment of constitutional provisions and statutes and by a long line of case law. In the absence of some specifically applicable constitutional or statutory provisions, the Common Law/case law prevails.

CALIFORNIA ADOPTS A RECORDING SYSTEM

California was admitted to the Union by the United States on September 9, 1850. One of the first acts of the Legislature of the new state was to adopt a recording system by which evidence of title or interests in the title could be collected and maintained in a convenient and safe public place. The purpose of establishing a recording system was to inform persons planning to purchase or otherwise deal with land about the ownership and condition of the title. This system was designed to protect innocent lenders and purchasers against secret sales, transfers, or conveyances and from undisclosed encumbrances/liens. The purpose of this system is to allow the title to the real property to be freely transferable.

The California Legislature adopted a recording system modeled after the system established by the original American Colonies. It was strictly an American device for safeguarding the ownership of and the encumbering of land/property. Recording of sales, transfers, or conveyances and encumbrances/liens as part of a public record was established to impart *constructive* notice. This system of recording is known as the "Race Recording", or as the "Race-Notice Recording" statute/law.

Actual v. Constructive Notice

Actual notice consists of express information of a fact. *Constructive* notice means notice given by the public records. By means of *constructive* notice, people are presumed to know the contents of recorded instruments. Publicly recording instruments of transfer/conveyance or to encumber/lien the title to real property imparts *constructive* notice. For example, Civil Code Section 2934 enacted in 1872 states in part, "Any assignment of a mortgage and any assignment of the beneficial interest under a deed of trust may be recorded, and from the time the same is filed for record operates as *constructive* notice of the contents thereof to all persons…".

Which Instruments May Be Recorded

The Government Code of California provides that, after being acknowledged (executed in front of a Notary Public, or properly witnessed as provided by applicable law), any instrument or judgment affecting the title to or possession of real property may be recorded. See *Government Code Sections 27201, 27201.5, 27287, and 27288.*

The word "instrument" as defined in Section 27279(a) of the Government Code "…means a written paper signed by a person or persons transferring the title to, or giving a lien on real property, or giving a right to a debt or duty." A similar definition is set forth in a historic 19th century case. See *Hoag v Howard (1880) 55 Cal. 564-567*. The definition of an "instrument" does not necessarily include every writing purporting to affect real property. However, the term "instrument" does include, among others, deeds, mortgages, leases, land contracts, deeds of trust and agreements between or among landowners/property owners.

Purpose of Recording Statutes

The general purpose of recording statutes is to permit (rather than require) the recordation of any instrument which affects the title to or possession of real property, and to penalize the person who fails to take advantage of recording.

However, existing law includes examples where recording is required as a predicate to accomplish a defined public policy objective. One such example is Civil Code Section 2932.5 that provides, "Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money …[T]the power of sale may be exercised by the assignee of the assignment **if duly acknowledged and recorded** (emphasis added)."

Another example is in Business and Professions Code Section 10233.2 regarding perfecting ownership of promissory notes or interests therein. This Section states in part "…the delivery, transfer and perfection shall be deemed complete even if the broker retains possession of the note or collateral instruments and documents, provided that the deed of trust or assignment of the deed of trust or collateral documents in favor of the lender or purchaser **is recorded in the office of the county recorder in the county in which the security property is located, and the note is made payable to the lender or is endorsed or assigned to the purchaser** (emphasis added)."

Because of the recording of instruments of conveyance or encumbrance/lien, purchasers (and others dealing with title to property) may in good faith discover and rely upon the ownership of title or an interest therein. While the Government Code does not specify any particular time within which an instrument must be recorded, priority of recordation will ordinarily determine the rights of the parties if there are conflicting claims to the same parcel of land/property, i.e., the title thereto or an interest therein. The instrument recorded first in the chain of title would generally achieve priority over subsequently recorded instruments (fact issues such as subordination or *actual* notice may affect priority notwithstanding recording dates). The definition of the "Race Recording" or "Race-Notice Recording" statutes/laws is intended to describe the manner of achieving priority in the chain of title. Generally, the person winning the race gains priority.

The county recorder in the county within which the property is located must record instruments affecting real property. If the property lies in more than one county, the instrument, or certified copy of the record, must be recorded in each county in which the property is located in order to impart *constructive* notice in the respective counties.

If it is necessary to record a document written in a foreign language, the recorder will file the foreign language instrument with a certified translation. In those counties in which a photographic or electronic method of recording is employed, the foreign language instrument and the translation may be recorded and the original instrument returned to the party who requested recordation. See *Government Code Section 27293.*

When an Instrument is Deemed Recorded

Generally, an instrument is recorded when it is duly acknowledged or verified and deposited in the recorder's office with the proper officer and marked "filed for record." It is the duty of the recorder to number the instrument in the order in which it is deposited, including the year, month, day, hour, and minute of its reception, and indicate at whose request it was "filed for record." The contents of the document are transferred to its appropriate book or image of records upon the page or pursuant to the number endorsed on the document, and the original document is returned to the party who left it for recording.

The recorder indexes all recorded documents in alphabetical order according to the names of the grantors and grantees or mortgagors or mortgagees, which terms include holders of beneficial interests in and trustors/borrowers of deeds of trusts, and the name or nature of the document. The documents are also indexed by date of recording and the recording reference. See *Government Code 27230 et seq.*

Effect of Recording as Imparting Notice

The courts have ruled that the benefits of a recording statute are not available to one who takes title with *actual* notice of a previously executed though unrecorded instrument. For example, possession of land/property by one other than the seller is *actual* notice to an intending buyer sufficient to impose a duty to inquire about the possession. Despite the recording statutes and the assurance they give about the status of title, a prudent purchaser should inspect the premises in person or through a trusted agent.

The obligation to inspect includes inquiring of persons in possession of the real property (e.g., a tenant or lessee), what claim such persons have to occupy and use the property, and is there a written agreement supporting the claim. The agreement may be a month-to-month tenancy, a leasehold or an estate for years, a land contract of sale, an option to purchase, a lease with a first right of refusal, etc. Such a claim would be

imparted by *actual* notice because of the occupancy of the persons in possession. The agreement evidencing the claim need not be recorded to affect the title to the real property.

In addition to the foregoing, there are many types of unrecorded interests that a prospective purchaser may discover during a physical inspection of property. For example, a pathway or sewer line may mean adjoining owners have an unrecorded easement. Lumber or recent carpentry work may mean certain persons have a right to file mechanics' liens.

The recording laws do not protect the party "first to record" against what may be discovered through a physical inspection, nor do standard form title insurance policies cover the situations previously described. As previously mentioned, the inspection of a property to be purchased or encumbered is recommended and advice from a qualified professional is often required (e.g., lawyer, title officer, civil engineer, etc.) before proceeding to purchasing or encumbering the land/property. The intended title insurer should be asked about extended coverage to insure against the unrecorded interests that may be discovered by physical inspection as discussed in this section.

Priorities in Recording

The California recording statutes encourage prompt recording of conveyances and encumbrances and prohibits use of the *constructive* notice doctrine as an aid to proven fraud. The recording laws protect only innocent parties.

Certain priorities are affected by statutory provisions. For example and for the purposes of establishing priority, existing California Law distinguishes between a mortgage and deed of trust given for the price of real property (purchase money mortgage) from such instruments of encumbrance given to refinance or further encumber the property (non-purchase money mortgage). The former have priority over all other liens created against the purchaser, subject to the operation of the recording laws, and the later do not have priority over the defined liens. Further, the priority to be established for mortgagees or deeds of trust on an estate for years in real property (leasehold) shall be determined in the same manner as establishing the priorities of such liens against the title of real property. See *Civil Code Section 2898.*

Not all liens on real property rank in priority according to their respective dates of recording. For example, with respect to the same parcel of property, A executed a mortgage in favor of B dated June 1 and recorded June 20. A executed a mortgage in favor of C dated June 10 and recorded June 15. C's mortgage will be superior in priority to B's only if C did *not* have, on or prior to June 15, notice of B's mortgage.

Special Lien/Encumbrance Situations

Liens and encumbrances are discussed again later in this chapter. However, it will be helpful to note here the impact of the recording laws on liens and encumbrances. Liens are imposed for monetary claims against the title to real property or for the performance of an act in connection therewith. Liens are encumbrances, but there are encumbrances that are not monetary claims, e.g., an easement. These forms of encumbrances typically affect the condition or use of the property. It can be said that all liens are encumbrances, but not all encumbrances are liens.

California Law refers to mortgages and deeds of trust as functional equivalents. The historic distinctions between the two instruments include the application of the "lien" vs. "legal title" theories (to be discussed later in this chapter), and the use of a third party trustee with certain defined powers in a deed of trust but not in a classic mortgage instrument. The perceived limitation of the use of the trustee in a deed of trust was eliminated in 1986 through the enactment of Civil Code Section 2920. For the purposes of this chapter, the terms "mortgage" and "deed of trust" are used interchangeably and for each other as functional equivalents, as defined in current California Law.

A lender/encumbrancer will often agree in the deed of trust (the senior instrument) to make "future advances" as a part of a secured loan transaction. Another lien/encumbrance (for example, a junior deed of trust or a mechanic's lien) may intervene between the time of recordation of the lender's senior deed of trust and the time of a "future advance". A question of priority is then posed regarding the sums advanced by the senior lender.

When the terms of the senior deed of trust obligate the lender to make "future advances" (e.g., progress payments under a construction loan), these "obligatory advances" have the same priority as the loan secured by the senior deed of trust, regardless of intervening liens (monetary claims). See *Civil Code Section 2884.*

In other cases, the senior lender may have the option of making "future advances" of money to the borrower/trustor, but is not required to do so. These "optional advances" for priority purposes date from the time the advance is made, unless the lender can show no *actua*l or *constructive* notice of intervening liens. This does not mean lenders are excused from checking the public record.

The issue of "future advances" is of particular concern in loan products known as Home Equity Lines of Credit ("HELOC"). Such loan products have become popular in the last 15 to 20 years. The advances made as part of a HELOC loan transaction are generally "optional", i.e., defined conditions must first be met prior to the lender extending to the borrower/trustor additional credit. To facilitate the use of these loan products, the title insurance industry has offered endorsements to the institutional lending community (financial depository institutions and certain licensed lenders) maintaining for the purposes of the coverage provided the priority of the "optional advances" to protect the interests of the lenders making HELOCs. See *Civil Code Section 2884.*

Mechanics' liens generally relate back to the time of the commencement of the construction work as a whole. Thus, a deed of trust must be executed, delivered, accepted and recorded prior to commencement of any work regarding the security property to assure the priority of the construction loan secured by the deed of trust over the claims that may be made by contractors, laborers, material houses, suppliers, design professionals and the like in the form of mechanics liens. See *Civil Code Section 3134.*

Liens for real property taxes and other general taxes, as well as special county and municipal taxes and assessments are superior in priority to the lien of any mortgage or deed of trust regardless of the date of creation, including execution, delivery, acceptance, and recording. California Law provides that any tax or assessment declared a lien on real property should be given priority over all other liens, including judgments, deeds, mortgages, deeds of trust, etc. See *Revenue & Taxation Code Section 2192.1.*

Provided they are bona fide encumbrances/liens, deeds of trust and mortgages recorded prior to general federal tax liens or state tax liens are superior in priority to those liens. However, subsequent to the non-judicial foreclosure of the security property, the IRS has asserted the priority of its tax claims are altered to a senior position when the assets to which such claims attached become the cash available from the foreclosure proceeds.

Persons having priority may by agreement waive this priority in favor of others. An agreement to do this is called a "subordination agreement." These agreements are often executed in connection with deeds of trust to subordinate a senior encumbrance/lien to a later recorded junior encumbrance/lien. An example is where a landowner's/property owner's "purchase-money" deed of trust (securing a debt in the form of a seller "carry-back" established at the time the security property was purchased) is subordinated by agreement to a construction loan to finance the improvements to be made to the property.

Without such priority of claim for payment against the real property, a construction lender would typically decline to extend credit and, therefore, funds would not be available for the building contractor to expend time and materials on the construction project.

In certain loan transactions, statutory requirements are imposed regarding the use of subordination clauses. These requirements include notice of the existence of a subordination clause, and a disclosure of the contents of the subordination agreement. While these requirements apply to loans in the amount of $25,000 or less, they represent good guidelines to be considered when engaging in the use of subordination clauses and agreements. See *Civil Code Section 2953.1 et seq.*

As previously mentioned, a mortgage or deed of trust given for the purchase price of real property at the time of the conveyance of the security property has priority over all other liens created against the purchaser, subject to operation of the recording laws. See *Civil Code Section 2898.*

Two or more deeds of trust recorded at the same time (concurrently) may contain on the face of each deed of trust (as part of an industry practice) a recital about which is intended by the parties to be first, second, or third in priority. The recitals can be effective subordination agreements with the informed knowledge and consent of the lenders and the trustors/borrowers (referred to as mortgagors).

OWNERSHIP OF REAL PROPERTY

All property has an owner, the government - federal, state, or local— or some private party or entity (typically referred to as persons). Very broadly, an estate in real property may be owned in the following ways:

1. Sole or several ownership;
2. Joint, common, or community ownership;
   a. Tenancy in common;
   b. Joint tenancy;
   c. Community property; or,
   d. Partnership interests.
3. Ownership by other lawfully created entities.

SOLE OR SEVERAL OWNERSHIP

Sole or several ownership is defined to mean ownership by one person. Being the sole owner, one person enjoys the benefits of the property and is subject to the accompanying burdens, such as the payment of taxes. Subject to applicable federal and state law, a sole owner is free to dispose of property at will. Typically, only the sole owner's signature is required on the instrument of transfer/deed of conveyance. See *Civil Code Section 681*.

JOINT, COMMON, OR COMMUNITY OWNERSHIP

Joint, common, or community ownership or co-ownership means simultaneous ownership of a given piece of property by several persons (two or more). See *Civil Code Section 682*. The types of such ownership interests include the following:

Tenancy in Common

Tenancy in common exists when several (two or more) persons are owners of undivided interests in the title to real property. It is created if an instrument conveying an interest in real property to two or more persons does not specify that the interest is acquired by them in joint tenancy, in partnership, or as community property. Some instruments of transfer/deeds of conveyance clearly state the intentions of the persons acquiring are to hold title as tenants in common. See *Civil Code Section 685.*

Example: Interests of such tenants in common may be any fraction of the whole. One party may own one-tenth, another three-tenths, and a third party may own the remaining six-tenths. If the deed to cotenants does not recite their respective interests, the interests will be presumed to be equal.

There is a unity of possession in tenancy in common. This means each owner has a right to possession and none can exclude the others nor claim any specific portion for him or herself alone. It follows that no tenant in common can be charged rent for the use of the land/property, unless otherwise agreed to by all the cotenants. On the other hand a tenant in common who receives rent for the premises/property from a third party, must divide such profits with the other tenants in common in proportion to the shares owned. Similarly, payments made by one tenant in common for the benefit of all may normally be recovered on a proportionate basis from each. These might include, among others, moneys spent for necessary repairs, taxes, and interest and principal payments under a deed of trust.

Subject to applicable federal and state law, a tenant in common is free to sell, transfer or otherwise convey, or mortgage the tenant's own interest as he or she sees fit. The new owner becomes a tenant in common with the others. Few lenders are willing to extend credit to be secured by a mortgage or deed of trust against only the interest of a single tenant in common. In the event of a foreclosure of their mortgage encumbrance/lien, lenders typically do not want to end up as co-owner with other tenants in common. Because of the practical difficulties involved in selling, transferring or otherwise conveying, or mortgaging the interest of a single tenant in common, the tenant may be limited in his/her effort to liquidate the single interest to forcing a sale of the entire property by filing an action before a court of competent jurisdiction known as a "partition action."

No right of survivorship exists for individual tenants when title is held as tenants in common. The undivided interest of a deceased tenant in common passes to the beneficiaries (heirs or devisees) of the estate subject to

probate, pursuant to the last will and testament of the deceased or by intestate succession. The heirs or devisees of the deceased simply take the tenant's place among the other owners who continue to hold title to the property as tenants in common. See *Probate Code Section 6400 et seq.*

Joint Tenancy

Joint tenancy exists if two or more persons are joint and equal owners of the same undivided interest in real property. Generally, to establish a joint tenancy a fourfold unity must exist: interest, title, time, and possession. Joint tenants have the same interest, acquired by the same conveyance, commencing at the same time, and held by the same possession. See *Civil Code Section 683.*

The most important characteristic of a joint tenancy is the right of survivorship that flows from the unity of interest. If one joint tenant dies, the surviving joint tenant (or tenants) become(s) the owner(s) of the property to the exclusion of the heirs or devisees of the deceased. Thus, joint tenancy property cannot be disposed of by the last will and testament, is not subject to intestate succession, and typically does not become part of the estate of a joint tenant subject to probate.

Further, the surviving joint tenant(s) is/are not liable to creditors of the deceased who only hold existing encumbrances/liens on the joint tenancy property. The words "with the right of survivorship" are not necessary for a valid joint tenancy deed, although they are often inserted. To perfect the ownership interests of the surviving joint tenants, severance of the joint tenancy of the deceased is to be accomplished and evidenced in the public record.

The creditors of a living joint tenant (as distinct form a deceased joint tenant) may proceed against the interest of that tenant and force an execution sale. This would sever the joint tenancy and leave title in the execution purchaser and the other joint tenant as tenants in common.

Creating A Joint Tenancy. With limited exception, California appellate courts have accepted and enforced the common law rule that if any one of the four unities — time, title, interest or possession — is lacking, a tenancy in common, not a joint tenancy, exists. An exception to the general rule has been more recently applied in connection with the time of acquisition of the title to the property. Consultation with knowledgeable legal counsel is recommended to answer questions that may be posed by property owners regarding the establishment of joint tenancies and the legal, practical, tax, estate planning, and other considerations involved.

However, by statute a joint tenancy may be created:

1. By transfer from a sole owner to himself or herself and others as joint tenants.
2. By transfer from tenants in common to themselves or to themselves, or any of them, and others as joint tenants.
3. By transfer from joint tenants to themselves, or to any of them, or to others as joint tenants.
4. By transfer from a husband and wife (when holding title as community property or otherwise) to themselves, or to themselves and others, or to one of them and to another or others as joint tenants.
5. By transfer to executors of an estate or trustees of a trust as joint tenants.

See *Civil Code Section 683.*

Severance. A joint tenant may sever the joint tenancy as to his or her own interest by a conveyance to a third party, or to a cotenant. If there are three or more joint tenants, the joint tenancy is severed as to the interest conveyed but continues as between the other joint tenants as to the remaining interests. If title is in A, B and C as joint tenants, and A conveys to D, then B and C continue as joint tenants as to a two-thirds interest and D owns a one-third interest, as tenant in common. If A and B only are joint tenants and B conveys to C, then A and C would be in title as tenants in common. See *Civil Code Section 683.2*

Another method is a partition action by the joint tenants. If the partition cannot be made without prejudice to the owners, a court may order the property sold and the division of the proceeds of the sale distributed ratably to the owners. In some circumstances, a severance will not terminate the right of survivorship interest of the other joint tenants in the severing joint tenant's interest. Nor, under the circumstances set out in Civil Code

Section 683.2, may a severance contrary to a written agreement of the joint tenants defeat the rights of a purchaser or encumbrancer for value and in good faith and without knowledge of the written agreement.

On death of a joint tenant, the joint tenancy is automatically terminated. Nevertheless, for record title purposes, the following must be recorded in the county where the property is located:

- A certified copy of a court decree determining the fact of death and describing the property; or
- A certified copy of the death certificate or equivalent, or court decree determining the fact of death, or letters testamentary or of administration or a court decree of distribution in probate proceedings. With each of these alternatives, it is customary to attach an affidavit that identifies the deceased as one of the joint tenants of the property.

Some of the Pros and Cons of Joint Tenancy. On the plus side, the major advantage of joint tenancy is the comparative simplicity of vesting title in the surviving joint tenant (or joint tenants). The marketable title delay arising from probate proceedings in the form of a stay for as much as six months (or even longer) is avoided. Although certain legal costs are ultimately involved in terminating the joint tenancy, the customary commissions and fees payable to executors or administrators and to their attorneys may become unnecessary.

As previously mentioned, a further advantage of joint tenancy is that the survivor holds the property free from debts of the deceased tenant and from liens against the deceased tenant's interest. This can work an injustice to creditors, but a diligent creditor can usually take appropriate precautionary steps to avoid such loss, or may have access to other assets of the decedent. On the other hand, in many situations joint tenancy is a pitfall for the uniformed or unwary.

The supposed advantages may be imaginary. A joint tenant may not want the other (surviving) joint tenant to get the title free and clear; the likely saving of probate fees is at least partly offset by costs of terminating the joint tenancy, and may be completely offset by added taxes. The probate delay is not unreasonably long, and there may be no creditors of the estate. Moreover, the joint tenant gives up the right to dispose of his or her interest by a last will and testament.

Giving advice about the way to hold title to real property is ill advised and considered the unauthorized practice of law when offered by persons who are not members of the State Bar of California. As previously mentioned, significant legal, practical, tax, estate planning, and other issues and consequences may result from holding title in one form or another. The advice of knowledgeable legal counsel and other appropriate professionals is strongly recommended before selecting the form of ownership of the title to real property

Community Property

Community property generally consists of all property acquired by a husband and wife, or either, during a valid marriage, other than separate property acquired prior to the marriage, by gift, or as an individual heir or devisee of a deceased. Separate property may also include the fruits falling from the previously described tree of categories of separate property, as well as property designated as separate by the husband or wife or by court order. Separate property of either the husband or the wife is not community property.

Separate property of a married person includes:

1. All property owned before marriage.
2. All property acquired during marriage by gift or inheritance.
3. All rents, issues and profits of separate property, as well as other property acquired with the proceeds from sale of separate property. For instance, if a wife owned a duplex prior to marriage, the rents from the duplex would remain her separate property. If she sold the duplex and bought common stock, the stock and dividends would be her separate property. It would have to be clearly and unequivocally identifiable as separate property, and separate records should be maintained to make certain any separate property is not commingled in any way with the community property. Very often husband and wife deliberately may allow their separate property to merge with community property in keeping with their intentions or with their conduct and actions.
4. Earnings and accumulations of a spouse while living separate and apart from the other spouse.

5. Earnings and accumulations of each party after a court decree of separate maintenance.

6. Property conveyed by either spouse to the other with the intent of making it the grantee's separate property.

It should be recalled that a husband and wife often hold property as joint tenants. Yet, even when title is held in joint tenancy, it is possible (e.g., by separate written agreement) to own the assets as community property. The record title may not be controlling in light of off-record agreements showing other intentions of the parties. For example, joint tenancy property owned by married persons may, in fact, be considered separate property. See *Civil Code Sections 682.1 and 687* and the *Family Code under Part 1 and 2, Division 4, commencing with Section 720*.

Management and control. Each spouse has equal management and control of community property. An exception exists if one of the spouses manages a community personal property business. That spouse generally has sole management and control of that business. Community property is liable for the debts of either spouse contracted after marriage. Community property is liable for a debt contracted prior to marriage, except that portion of the community property comprised of the earnings of the other spouse.

Neither spouse may make a gift of community property without the consent of the other. Neither spouse may encumber personal property such as the furniture, furnishings, or fittings of the home, or the clothing of the other spouse or minor children without the written consent of the other spouse. However, each must join in the sale/transfer or conveyance, or the encumbrancing or leasing of community real property.

If real property is owned by several (two or more) persons, real estate licensees should obtain the necessary signatures of each person in title to listing agreements and to purchase and sale agreements, whether for the purpose of countering or accepting offers from the intended buyer/purchaser.

Each spouse has the right to dispose of his or her half of community property by will. Absent a will, title to the decedent's half of the community property passes to the surviving spouse. See *the Family Code under Part 4, Division 4, commencing with Section 1100.*

Joint tenancy and community property. Considerable confusion surrounds the status of some family homes in California, since the husband and wife may acquire their home with community funds but proceed (as previously mentioned) to take record title "as joint tenants." It is not generally understood that some of the consequences of holding title in joint tenancy are entirely different from the consequences of holding title as community property.

As previously mentioned, California courts are aware of this problem and have established the rule that the true intention of husband and wife as to the status of their property shall prevail over the record title. Ambiguity results from the specific circumstance of having the record title in joint tenancy while the true character of the property, as intended by the husband and wife, is community property. This transition might be accomplished by appropriate agreement in writing, or even by a deed from themselves "as joint tenants" to themselves "as community property."

Among themselves, the rights and duties of joint tenants are generally the same as among tenants in common, with the vital exception of the rule of survivorship. As previously discussed, a joint tenant may borrow money and, as security for the repayment of the debt, execute a mortgage or deed of trust on his/her interest just as a tenant in common may. This does not destroy the joint tenancy, but if the borrower should default, and the mortgage or deed of trust should be foreclosed while the borrower is still alive, the joint tenancy would be ended (a severance) and a tenancy in common created. As previously noted, most lenders would hesitate to make such a loan.

Should the borrower/trustor/mortgagor die before the mortgage is paid off or foreclosed, the surviving joint tenant gets title free and clear of the mortgage executed by the deceased joint tenant. When title is held as community property, no separate interest exists for the purpose of encumbering through a mortgage or a deed of trust. As previously mentioned, the signatures of both the husband and wife are required to sell, transfer, or otherwise convey or encumber the community property.

While a probate is typically required to dispose of the community property in the event of the death of either spouse, in certain fact situations a limited probate proceeding has been authorized by existing law. This limited

probate proceeding is commonly known as a community property or small estate "set-aside". For example, the court may find that the entire estate of the deceased spouse is property passing to the surviving spouse. In such event, the court may determine that no administration of the estate is required. See *Probate Code Section 6600 et seq. and Section 13656.*

TENANCY IN PARTNERSHIP

At the time of initial codification in California Law of the various forms of ownership of property interests, the recognized entity for ownership was a partnership. Tenancy in partnership exists if two or more persons, as partners, own property for partnership purposes. Under the Uniform Partnership Act, the incidents of tenancy in partnership are such that:

1. A partner has an equal right with all other partners to possession of specific partnership property for partnership purposes. Unless the other partners agree, however, no partner has a right to possession for any other purpose.
2. A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.
3. A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership.
4. On death, a partner's right in specific partnership property vests in the surviving partner (or partners). The rights in the property of the last surviving partner would vest in the decedent's legal representative. In either case, the vesting creates a right to possess the partnership property only for partnership purposes.
5. A partner's right in specific partnership property is not subject to dower or curtesy (both have been abolished in California by statute) nor allowance to widows, heirs, or next of kin. Even when married, a partner's right is not community property. On the other hand, a partner's interest in the partnership as such (that is, a partner's share of profits and of surplus) is governed by community property rules for some purposes.

These incidents make sense because two or more persons are attempting to carry on a business for profit. Without these incidents, continuity and unified, efficient operation would be difficult. Partners are not, however, prevented from owning different fractional parts of the business. Thus, although each partner has unlimited liability to third parties for firm debts, each partner's interest in profits and losses may be any percentage to which the parties agreed.

Partners may also structure the business relationship as a partnership in many different ways. By agreement, one partner may have greater authority than the other partners. An example that is often used is a limited partnership. The general partner or partners manage and control the partnership and the limited partners (in exchange for limited liability) give up management and control. In a partnership where all partners have equal rights of management and control, the partnership is commonly referred to as a general or co-partnership.

The Uniform Partnership Act set forth in 15001 et seq. of the Corporations Code and the Limited Uniform Partnership Act set forth in 15501 et seq. of the Corporations Code each have been or will be repealed effective January 1, 2010. The Uniform Partnership Act of 1994, commencing with Section 16100 of the Corporations Code, remains operative and describes, among other issues, the scope of and limitations imposed on general or co-partnerships in California. This law includes language describing the relationships between partners, the handling of charging orders and claims of creditors against the partnership or an individual partner, and how the partnership is to be wound-up and dissolved.

Limited Liability Partnerships are described in the Corporations Code, commencing with Section 16951. However, the Uniform Limited Partnership Act of 2008 (enacted subsequent to the previous sections of the Corporations Code describing Limited Liability Partnerships) is set forth in the Corporations Code, commencing with Section 15900.

The foregoing body of law is complex and comprehensive. Understanding what portions have been or will be repealed and what portions remain operative is essential. Furthermore, to establish partnership relationships

requires an understanding of practical, legal, tax and other important issues. Accordingly, the advice of knowledgeable legal counsel is recommended before proceeding to form a partnership or determining to hold title to real property or interests therein in a partnership entity.

OTHER LAWFULLY CREATED ENTITIES

In the 19th century when some of the applicable Civil Code Sections previously cited were enacted, the entity most commonly used to hold title or interests therein was a partnership. Corporations and trusts existed, and when they joined in a common economic enterprise, were often identified as "combinations". Two additional entities have been more recently authorized by state legislative action. They are Limited Liability Companies ("LLCs") and, as previously discussed, Limited Liability Partnerships ("LLPs").

Each of the foregoing entities may and do hold title to real property or to interests therein. The body of law describing corporations and their organization, operation, and management is enormous. Three categories of corporations are recognized in California Law. Included are general corporations, nonprofit corporations, and corporations for a specific purpose.

The law applicable to corporations is set forth in federal and state statutes and regulations. For example, the State of Delaware publishes statutes and regulations regarding corporations, which are instructive as many corporations are organized under Delaware law. Organizing and operating a corporation under California Law requires review of California Corporations Code Sections 100 through 2319 (General Corporation Law), Sections 5000 through 10841 (Nonprofit Corporation Law), and Sections 12000 through 14451(Corporations for Specific Purposes).

Limited Liability Partnerships were discussed in the previous section entitled, "TENANCY IN PARTNERSHIP". Limited Liability Companies are organized similar to a corporation, but taxed similar to a partnership. The legislation authorizing the use of such entitles was enacted in 1994 and is set forth in Corporations Code Sections 17000 through 17656. LLCs may hold title to real property and to interests therein. However, a real estate broker may **not** license an LLC entity to perform acts for which a real estate license is required. See *Corporations Code Section 17375.* Real estate brokers may license corporations as brokers and partnerships are able to perform acts for which a real estate license is required through licensed partners that are real estate brokers. See *Business and Professions Code Sections 10137.1, 10158, and 10211.*

The body of law describing the administration of trusts, the duties of trustees, the accounting of trust assets, federal and state tax issues, etc. is complex and appears in various state and federal statutes and regulations. The primary reference for trust administration is found in California Probate Code Sections 16000 through 16504. The use of trusts to hold title or interests therein occurs most often in family trusts or in other forms of inter vivos trusts.

Again, it is important to understand that the use of trusts, as well as other entities, to hold title or interests therein should occur only with the advice of knowledgeable legal counsel and of other appropriate professionals. A word of caution is necessary regarding the demands frequently made upon real estate and mortgage brokers by lenders and title insurers (or their underwritten companies), either directly or through escrow holders, regarding properties where the title is held in trusts by principals of the brokers.

Typically, the real estate or mortgage broker is directed to instruct his/her principals to transfer the title to the real property from an existing trust to the individual beneficiaries/settlers/trustors for purposes of encumbering the property with new financing; or to sell, transfer or convey title to the property to third parties. The practical, legal, estate planning, and tax consequences may be significant and should be reviewed, in advance, by legal counsel and appropriate professionals representing the principals for this purpose. Real estate and mortgage brokers may be engaging in the unauthorized practice of law to provide such instructions to their principals (even when directed to do so by representatives of the lending, title, or escrow industries) without making it perfectly clear the information required to make such a decision is beyond the scope of the practice of real estate and requires the advice of knowledgeable legal counsel and competent professionals.

ENCUMBRANCES/LIENS

In this section, the principal types of encumbrances/liens are examined that may be imposed on a given parcel of land/property without affecting the fee title to the owner's real property as part of the owner's estate. This

discussion includes the distinctions between the "lien" vs. "legal title" theories, and the fact that the "lien" theory has been adopted by California and represents current law.

Definition- Encumbrance
An encumbrance may be defined very generally as any right or interest in land/property, possessed by a stranger to the title, which affects the value of the owner's estate, but does not prevent the owner from enjoying and selling, transferring, or otherwise conveying the fee title.

Two categories of encumbrances exist: those affecting title and those affecting condition or use of the property**.**

Encumbrances that affect title. Most notably, these are liens. A lien is defined as a charge imposed on property and made security for the payment of a monetary claim or the performance of an act in connection therewith. Typically, the lien is imposed for the payment of a debt evidenced by a promissory note. Liens may also be imposed solely for the performance of an act in the form of a performance deed of trust.

Liens may affect real or personal property and may be voluntary (e.g., a home mortgage to secure a loan) or involuntary (e.g., imposed by law for overdue taxes). A lien may be specific, affecting only a particular property (e.g., a trust deed, or a mechanic's lien on a given property) or may be a general lien, affecting all property of the owner not exempt by law (e.g., a money judgment, or a lien for overdue state or federal income taxes). As previously mentioned in this chapter, all liens are encumbrances, but not all encumbrances are liens.

Encumbrances that affect the physical condition or use of the property. Examples are easements, building restrictions and zoning requirements, and encroachments.

A buyer will commonly accept a deed to encumbered property, with the price adjusted accordingly. Often, the encumbrance may not be objectionable, e.g., an easement for utility purposes. But sometimes a buyer may insist that the encumbrance be removed or cleared from the public record before the transaction closes.

Cloud on the title. A "cloud on the title" is defined as any outstanding claim or encumbrance that would, if valid, affect or impair the owner's title to a particular property/estate. While the cloud remains, the owner is prevented from selling transferring, or conveying marketable title. The ability to further encumber the title may also be impaired by a "cloud on the title".

Examples are: a mortgage paid off but without official recordation of that fact (a reconveyance of a deed of trust); an apparent interest in the property which remains because one of a group of heirs fails to sign the deed on sale of the property; or a notice of action (a lis pendens) which remains on the public record even after the plaintiff and defendant have agreed to dismissal of the court action. Removal of a cloud may require time and patience. Meanwhile, closing will be postponed until the persons requesting coverage obtain a title insurance policy without reference to the cloud.

It is important to understand the distinction between the "lien" theory and the "legal title" theory and the impact of these theories on the use of mortgages and deeds of trust as security devices/instruments for the repayment of a monetary claim or the performance of an act.

LIEN THEORY VS. LEGAL TITLE THEORY

History. An essential concept of California Law is the ability to secure the repayment of monetary claims or the performance of an act typically in connection therewith by a "lien" that does not impair the owner's rights to freely enjoy the benefits of the use and ownership of the property. These benefits include the right to sell, transfer, or otherwise convey, or further encumber the title to the land/real property. It is settled law that California is a "lien" and not a "legal title" theory state when imposing encumbrances/liens against the title of real property.

California has a 150-year history of development and evolution in the way its courts have applied legal principles to mortgages and deeds of trust. As of 2009, this 150-year history is split approximately in half, creating two 75-year periods. The first 75-year period begins in 1859, ends in 1933, and is marked by the California Supreme Court's historic insistence that mortgages create "liens" and deeds of trust transfer "legal title". The Court held that the two instruments/security devices have no common features, and each are controlled by different bodies of real property law ("Title Period").

The second 75-year period begins in 1933, runs to the present, and is marked by the 180-degree reversal of position in which the California Supreme Court currently insists that a deed trust is the functional equivalent of a mortgage with power of sale. Therefore, both instruments (mortgages and deeds of trust) are governed by mortgage laws ("Lien Period"). In these two periods, dramatically differing opinions on the same legal issue were offered by California courts. These differing opinions evolved the law regarding deeds of trust over the last 75 years to reconcile the law applicable to mortgages with power of sale, and thus established the "lien theory" as the applicable California Law.

The most comprehensive analysis of distinctions in the legal status of deeds of trusts and mortgages during the Title Period is contained in two California Law Review articles. The first published in 1915 by Professor Kidd is *Trust Deeds and Mortgages in California*. See, *A. M. Kidd, Trust Deeds and Mortgages in California, 3 Cal. L. Rev 381 (1915).*

The second analysis, *Applications of the Distinction between Mortgages and Trust Deeds in California,* was published in 1938 and brings Professor Kidd's 1915 article current through the watershed Bank of Italy II decision in 1933. See, *Joseph M. Cormack and James B. Irsfeld Jr., Applications of the Distinction between Mortgages and Trust Deeds in California, 26 Cal. L. Rev. 206 (1938).*

In the 1915 article, Professor Kidd identifies the paradoxical character of California mortgage and deed of trust law, which applied the "lien" theory and "legal title" theory of real property security instruments in the same state at the same time. The Title Period begins with the California Supreme Court's decision in Koch v. Briggs, 14 Cal. 256 (1859.

The California Supreme Court held in the Koch v. Briggs case: "It [a deed of trust] has no feature in common with a mortgage, except that it was executed to secure an indebtedness." As the 1915 and 1938 articles detail, the legal effect of seeking to impose the "lien" theory for mortgages and the "legal title" theory for deeds of trust resulted in numerous distinctions that seemingly had no foundation in legal principle, since both instruments were clearly real property instruments/security devices. These distinctions were most prominent in substantive areas such as the right of redemption (none historically recognized for deeds of trust), the one form of action rule, limitations on deficiencies, and negotiability of a note secured by a mortgage versus deed of trust, the fiduciary duties imposed on foreclosure trustees, homestead exemptions, mechanics liens, and the impact of bankruptcy.

As noted by the leading treatise on California real estate: "Creditors began using the deed of trust as a real property security instrument during the 19th century because of the procedural inhibitions imposed on the mortgage by the courts and the impediments attendant with judicial foreclosure of the debtor's equity of redemption. The use of a conveyance to a trustee clothed with a power of sale offered the creditor several advantages over the mortgage so that, by the time the distinctions between the two security instruments were removed during the early part of the 20th century, the deed of trust had become the generally accepted and preferred security device in California."

"Except for some minor distinctions, for all practical purposes, a mortgage that contains a power of sale has a similar legal effect and economic function as the deed of trust. Each is subject to the same procedures and limitations on judicial and non-judicial foreclosure, each is subject to the same redemption provisions both prior to and after the foreclosure sale, and each is subject to the same anti-deficiency limitations. Both are intended by the parties to serve the same economic function of providing security for the performance of an obligation." See, *Miller & Starr, California Real Estate 3d, § 10:1.*

The depression era years of 1932 and 1933 were the turning point for beginning the process of reconciling California mortgage and deed of trust law. Two California Supreme Court opinions arising from the same case symbolize the fitful end of the "Legal Title" period and the beginning of the "Lien" period. Although Bank of Italy II is universally cited as the seminal decision reconciling mortgage and deed of trust law, little attention is paid to the fact that just six (6) months earlier, the California Supreme Court decided Bank of Italy Nat. Trust & Savings Ass'n v. Bentley, 14 P. 2d 85 (1932) – Bank of Italy I.

In Bank of Italy I, the California Supreme Court held: "It must be considered as thoroughly settled in California that a deed of trust is not a mortgage. Substantial differences between two types of security have been recognized, and statutes applicable to mortgages have generally been held inapplicable to deeds of trust…".[citations omitted]…Stockwell v. Barnum, 7 Cal. App. 413, 94 P. 400 …Id., 14 P. 2d at 86.

This holding of Bank of Italy I makes even more remarkable the reversal of position contained in Bank of Italy II (only six months later in the same case before the same court): "This view, that deeds of trust, except for the passage of title for the purpose of the trust, are practically and substantially only mortgages with a power of sale…". See, *Bank of Italy Nat'l Trust and Savings Ass'n v. Bentley, 217 Cal. 644, 657 (1933).*

Current Law. The California Supreme Court's recognition in Bank of Italy II that deeds of trust are "practically and substantially only mortgages with power of sale" renders obsolete all pre-1933 case law that was built upon the legal foundation of Koch v. Briggs that holds a deed of trust "has no feature in common with a mortgage, except that it was executed to secure an indebtedness." In case after case published over the last 75 years, the California courts have reconciled any remaining distinctions between a deed of trust and mortgage with power of sale. See, The 1989 California Supreme Court case of *Monterey S.P. Partnership v. W.L. Bingham, Inc., 261 Cal. 3d 454 (1989).* ("Monterey") reveals just how far the unification of trust deeds and mortgages has come.

In Monterey, the court considered whether service of a complaint to the trustee of a deed of trust in a mechanic's lien foreclosure action is sufficient to bind the beneficiary of the deed of trust. In its holding, the court makes it abundantly clear that a deed of trust creates a "lien" on the property and has the same legal effect as a mortgage with a power of sale: "Although Whitney, supra, 10 Cal. 547, involved the effect of a mechanic's lien foreclosure on the rights of a mortgagee, the holding applies equally to a beneficiary under a deed of trust. As explained in describing "the anomalous nature of deeds of trust in this state" (Bank of Italy etc. Assn. v. Bentley (1933) 217 Cal. 644, 657, 20 P.2d 940), "deeds of trust, except for the passage of title for the purpose of the trust, are practically and substantially only mortgages with a power of sale...".

In practical effect, if not in legal parlance, a deed of trust is a "lien" on the property and not a transfer of fee title to the trustee, i.e., establishing and adopting the "lien" theory vs. the "legal title" theory. It would be inconsistent with Bank of Italy, supra, 217 Cal. 644, 20 P.2d 940, to deny the beneficiaries the rights of mortgagees recognized in Whitney, supra, 10 Cal. 547, merely because the beneficiaries' security interest took the form of a deed of trust, which conveys "title" to a trustee. The deed of trust conveys "title" to the trustee "only so far as may be necessary to the execution of the trust." (Lupertino v. Carbahal (1973) 35 Cal.App.3d 742, 748, 111 Cal.Rptr. 112.)

The Court of Appeal also relied on Johnson v. Curley (1927) 83 Cal.App. 627, 257 P. 163, which held that beneficiaries under a deed of trust were not necessary parties to an action to have that deed declared void for fraud. However, as plaintiff Monterey and amici curiae on its behalf point out, the Court of Appeal's reliance on Johnson was misplaced for several reasons. First, **Johnson was decided before the court clarified that a deed of trust is tantamount to a mortgage with a power of sale**. (Bank of Italy, supra, 217 Cal. at p. 657, 20 P.2d 940.) Id., at 590-591 (emphasis added).

As Monterey makes clear, pre-Bank of Italy II cases premised on the distinction between trust deeds and mortgages are no longer good law. The same result was recently reached in Aviel v. Ng, 161 Cal. App. 4th 809 (2008). In Aviel, the court considered whether a subordination agreement subordinating a lease to "mortgages" also subordinated the lease to a deed of trust beneficiary that had foreclosed on the lessor's property. The lessee argued strenuously that the perceived distinctions between a mortgage and a deed of trust should result in the court finding that the subordination did not apply to the deed of trust. The court rejected the arguments as follows:

Here there was a subordination clause within the lease rendering the lease subordinate to "mortgages which may now or hereafter affect" the real property. The Ngs, however, emphasize distinctions between mortgages and deeds of trust that are either illusory or unimportant. For example, they underscore that a deed of trust conveys legal title, and, citing Anglo-California T. Co. v. Oakland Rys. (1924), 193 Cal. 451, 225 P. 452, urge that "the interest in the property [vests] as an estate and not as a lien." Anglo-California T. Co. predates Bank of

Italy and is predicated on the obsolete "lien" versus "legal title" theory historically relied on to differentiate the two security devices/instruments. That theory has been discredited by the more contemporary jurisprudence discussed above which functionally equates the two instruments and recognizes that a deed of trust, for all practical purposes, is a "lien" on the property. Also See, *Domarad v. Fisher & Burke, Inc., 270 Cal.App.2d 543, 553 (1969).*

These authorities and many more since 1933 confirm that any pre-Bank of Italy II authorities are premised on the distinction between deeds of trust and mortgages with power of sale are no longer good law. These earlier decisions have been rendered obsolete based on the evolution of California Law and the consistently applied holding that mortgages and deeds of trust are functionally equivalent and trust deeds are evaluated under general mortgage law. Also See, *Cornelison v. Kornbluth, 15 Cal.3d 590 (1975).*

MECHANIC'S LIEN

California law expressly provides that persons furnishing labor or material for the improvement of real estate may file liens upon the property affected, if the persons furnishing labor or material are not timely paid. Thus, an unpaid contractor, or a craftsman employed by the contractor to work on a building project, but who has not been paid by the owner or contractor may protect their right as an unpaid contractor or craftsman employed by a contractor, to receive payment by filing a lien against the property in a manner prescribed by law. Any person who has furnished material such as lumber, plumbing, or roofing holds the same right, if the claim is not timely paid. It is because of the possibility of these liens being recorded that an owner employing a contractor often requires that a bond be furnished to guarantee payment of possible mechanics' lien claims.

DESIGN PROFESSIONAL'S LIEN

Effective January 1, 1991, California Civil Code Sections 3081.1 through 3081.10 provide for the filing of a design professional's lien.

For this purpose, a "design professional" is defined as a certificated architect, a registered professional engineer, or a licensed land surveyor who furnishes services, pursuant to a written contract with a landowner (property owner) for the design, engineering, or planning of a work of improvement.

If a landowner (property owner) defaults under a written contract with a design professional, a 10-day written demand for payment must be made on the landowner (property owner) prior to the recordation of a design professional's lien. Section 3081.3 requires the 10-day written demand for payment be mailed by first-class registered or certified mail, postage prepaid, addressed to the landowner (property owner), which notice of and demand for payment shall specify that a default has occurred (pursuant to the contract or agreement) and the amount of the default. Subsequently, the design professional may record a notice of lien against the real property on which a work of improvement is to be constructed, with the notice of lien describing the real property being improved, and further specifying the building permit or other governmental approval of the work as a condition of recording the notice of lien. See *Civil Code Section 3081.2 and 3081.3.*

The design professional's lien will not take priority over the interests of record of a purchaser/ buyer/lessee/encumbrancer, if the interests of the foregoing in question was duly recorded prior to the recording of the design professional's lien. See *Civil Code Section 3081.9*. The design professional's lien does not apply to the work of an improvement related to a single-family owner occupied residence where the construction costs are less than $100,000 in value. See *Civil Code Section 3081.10.*

Except as previously discussed, the statutes provide for enforcement of a design professional's lien in the same manner as a mechanic's lien.

Definition

A lien is a charge imposed in some way, other than by a transfer in trust upon specific property by which it is made security for the performance of an act. A mechanic's lien is a lien that secures payment to persons who have furnished material, performed labor, or expended skill in the improvement of real property belonging to another. See *Title 15 of the Civil Code, commencing with Section 3082*.

It is helpful to keep in mind while reading and thinking about this material on mechanics' liens that:

- The mechanic's lien claimant's fundamental objective is to get paid; and
- The claim of mechanic's lien is the claimant's security used to reach the objective of payment.

To convert the security for the lien into money requires:

1. Timely recordation of a notice and claim of lien (one document) in the county recorder's office in which the work of improvement is located;
2. Perfection of the recorded notice and claim of lien by the filing of an action (a lawsuit) in the right court;
3. Recordation of a lis pendens (a written notice that a lawsuit has been filed concerning real property, involving either the title to the property or a claimed ownership in the property);
4. Timely pursuit of the lawsuit to judgment; and
5. Enforcement of that judgment by a mechanic's lien foreclosure sale.

Origin

The basic lien rights of mechanics, materialmen, artisans and laborers is found at Article XIV, Section 3 of the California State Constitution:

"Sec. 3. Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."

The statutes enacted pursuant to this constitutional provision are, as previously mentioned found in Title 15, Division 3, Part 4, of the Civil Code, commencing with Section 3082. This Section of the law is entitled, "WORKS OF IMPROVEMENT".

The Theory

The mechanic's lien law is based on the theory that improvements to real property contribute additional value to land; therefore, it is only equitable to impose a charge on the land/property equal to such increase in value. This charge may exist in the absence of any direct contract relationship between the lien claimant and the landowner. The lien must, however, be founded upon a valid contract with the contractor, subcontractor, material house, supplier, lessee or vendee. Also, ordinarily the lien is valid only to the extent of labor and materials furnished for and actually used in the job.

Public Policy

The mechanics' lien statutes and the decisions of the courts interpreting and construing them reflect a strong public policy of providing extraordinary rights to unpaid contributors of services and material in the property they were instrumental in improving, and in the funds intended for payment for the improvements. The rights of these unpaid contributors accrue and may be enforced against the property, even though (in certain fact situations) the owner of the property has not contracted with the claimant and no personal liability exists to the claimant.

The mechanic's lien device is the traditional remedy giving security to people who improve the property of others. However, owners are given means within the California statutes to protect against the burdening of their land/property with improper liens. The basic elements of California's system of protection for mechanics' lienors and owners are:

1. Mechanic's lien;
2. Stop notice on private work;
3. Stop notice on public work;
4. Payment bond on private work;
5. Payment bond on public work;
6. Contractor's license bond; and
7. Notice of nonresponsibility.

Persons Entitled to a Mechanic's Lien

The constitutional guarantee of the right to a mechanic's lien upon the property is provided to mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, design professionals, machinists, builders, teamsters, draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services upon, or bestowing materials, or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to works of improvement. See *Section 3110 of the Civil Code*. Persons specifically entitled to mechanics' liens by virtue of the constitution and the statutes include the following:

Mechanics	Registered Engineers
Materialmen	Licensed Land Surveyors
Contractors	Machinists
Subcontractors	Builders
Lessors of Equipment	Teamsters
Artisans	Draymen
Architects	Union Trust Fund

See *Section 3111 of the Civil Code*

Property Subject to Mechanics' Liens

The land/property that may be subject to a claim of mechanic's lien should be the property described in a recorded claim of mechanic's lien. Perhaps the only safe exception to this is real property owned and used by the public. No lien for work or material attaches to a "public work." See *Los Angeles Stone Co. v. National Surety Co.*, 178 C 247, 173 P 79 (1918). In situations in which private enterprise undertakes improvement of public lands/properties, a claim of lien could be sustained against the improvements, although it would be invalid as to the land/property. See Western Electric Co. Inc. v. Colley, 79 CA 770, 251 P 331 (1926).

With every statutory increase in the designation of those contributors of services and material entitled to a claim of mechanic's lien, there has usually been a corresponding broadening of the land/property interests that may be subjected to a claim of mechanic's lien. Today, under appropriate circumstances, a claim of mechanic's lien may attach to only a building or structure; only to land/property beneath a building or structure; to both land/property and the building or structure; or, to a parcel of land upon/property for which there is no structure.

Public Works

This discussion of the mechanic's lien law applies only to private works of improvement. Sections 3179 through 3214 and Sections 3247 through 3252 of the Civil Code should be consulted in connection with any question or problem arising from the contribution of labor or material to a public work of improvement. A "public work of improvement" means any work of improvement contracted for by a public entity. "Public entity" means the state, Regents of the University of California, a county, a city, district, public authority, public agency, and any other political subdivision or public corporation in the state. See *Civil Code Sections 3099 and 3100.*

Work of Improvement

Mechanics' liens are triggered by the commencement of a work of improvement. A work of improvement is defined in Section 3106 of the Civil Code as including the construction, alteration, addition to, or repair of a building or structure. The structure could be a bridge, ditch, well, fence, etc. It may also include activities not directly associated with a building or structure such as seeding, sodding, planting, or grading. A work of improvement includes "site improvements" such as trees or other vegetation located on the land/property, the drilling of test holes, grading, filling, or otherwise improving the land/property as well as the street, highway, or sidewalk in front of adjoining the land/property. "Site improvements" also improve constructing or installing sewers or other public utilities, the construction of areas, vaults, cellars, or rooms under the land/property including sidewalks and demolishing or removing of any improvements on the land/property. See *Civil Code Section 3102.*

Lender's Priority

If commencement of work has occurred on a project prior to recordation of a mortgage or deed of trust, all mechanics' liens are prior to the recorded instrument of encumbrance. The lender's margin of security for repayment of a construction loan is jeopardized by the commencement of work on the project prior to recordation of the instrument of encumbrance. If any mechanic's lien claimant can show that commencement of work occurred prior to recordation of the lender's instrument of encumbrance, all mechanic's lienors will take priority over the lender if the real property/land subject to the work of improvement is sold at sheriff's sale. See *Civil Code Section 3134.*

Preliminary 20-Day Notice

The right to claim a lien and to assert the privileges of a mechanic's lien claimant is dependent on compliance with numerous statutory procedural requirements.

The initial step in the perfection of a claim of mechanic's lien for all claimants, except one under direct contract with the owner, one performing actual labor for wages or an express labor trust fund, as defined in Civil Code Section 3111, is to give the preliminary 20-day notice specified in Section 3097 of the Civil Code. That is, before recording a mechanic's lien, the lien claimant gives a written notice to certain persons, depending on the relationship of the lien claimant to the work of improvement and the owner of the real property/land on which the work has been done or will be done. The notice may be given any time after the contract has been entered into, but it must be given no later than 20 days after claimant has first furnished labor, services, equipment or materials to the job site. This 20-day notice is preliminary to the recording of a mechanic's lien. It is a prerequisite to the validity of a claim of mechanic's lien. The persons who are entitled to *receive* the notice depends on the relationship of the mechanic's lien claimant to the owner of the property. Thus:

1. If the claimant has a direct contract with the owner, the notice needs to be given only to the construction lender, if any, or to the reputed construction lender, if any. See *Section 3097(b) of the Civil Co*de.
2. If the claimant does not have a direct contract with the owner, the notice is required to be given to the following persons. See *Section 3097 (a) of the Civil Code:*
    a. The owner, or reputed owner;
    b. The original contractor, or reputed contractor; and
    c. The construction lender, or reputed construction lender.
    d. Any subcontractors with whom the claimant has contracted.

The purpose of the notice is to inform the owner, original contractor, and construction lender, if any, prior to the time of recording a claim of lien, that the improved property may be subject to liens arising out of a contract to which they are parties. See *Wand Corp. v. San Gabriel Valley Lumber Co. 236 CA2d 855, 46 Cal. Rptr. 486 (1965).*

The preliminary 20-day notice shall contain all of the following:

1. Name and address of the person furnishing the labor, service, equipment, or materials;
2. Name of the person who contracted for purchase of the labor, service, equipment, or materials;
3. A description of the job site sufficient for identification (e.g., common street address of the job site or legal description);
4. A general description of the labor, service, equipment, or materials furnished, or to be furnished and an estimate of the total price thereof; and
5. A Notice To Property Owner in bold face type as required by law.

See *Civil Code Section 3097.*

An up-to-date form should be used since a failure to use a current form that complies with the statute may cause the court to disregard the preliminary 20-day notice. See *Harold James Inc. v. Five Points Ranch, Inc., 158 CA3 1, 204 CR 494 (1984).*

Every written contract entered into between a land/property owner and an original contractor shall provide space for the owner to enter his name and address of residence and place of business. The original contractor must make available the name and address of residence of the owner and the name and address of the construction lender or lenders to any person seeking to serve a preliminary 20-day notice. See *Section 3097 (m) of the Civil Code*.

If one or more construction loans are obtained after commencement of construction, the property owner must provide the name and address of the construction lender or lenders to each person who has given to the property owner a preliminary 20-day notice. See *Section 3097 (n) of the Civil Code*.

Filing a Preliminary 20-day Notice

Each person serving a preliminary 20-day notice may file (not record) that notice with the county recorder in which any portion of the real property is located. The filed preliminary 20-day notice is not a recordable document and, hence, is not entered into the county recorder's indexes that impart *constructive* notice. The recorder is to maintain a separate and distinct index of the filings of the preliminary 20-day notice that does not impart *actual* or *constructive* notice to any person of the existence (or contents) of the filed 20-day notice. No duty of inquiry on the part of any party to determine the existence or contents of the preliminary 20-day notice is imposed by the filing. See *Civil Code Section 3079(o).*

The purpose of filing the preliminary 20-day notice is limited. It is intended to provide the necessary information for the county recorder to issue notices of recorded notices of completion and of cessation to those persons who filed the 20-day notice. Once the county recorder's office records either a notice of completion or cessation, it must mail to those persons who filed a preliminary 20-day notice, notification that a notice of completion or cessation has been recorded and the date of recording of the foregoing. See *Section 3097 (o) (2) of the Civil Code*.

Failure of the county recorder to mail the notices required by law to the person who filed the preliminary 20-day notice, or the failure of those persons to receive such notices shall not affect the period within which a claim of lien is required to be recorded. However, the county recorder is to make a good faith effort to mail within 5 days after the recording of a notice of completion or cessation notices thereof to those persons who filed the preliminary 20-day notice. See *Section 3079 (o)(3) of the Civil Code*.

Determination of Completion Time

Fixing the time of completion, to the exact day, is critical to establishing whether a given claim of lien (mechanic's or design professional's lien) has been recorded within the time limit fixed by law. The determination of completion of works of improvement can be complex under California law. Generally, any one of the following alternatives is recognized by the law as equivalent to completion:

l. Occupation or use by the owner or owner's agent, accompanied by cessation of labor on the work of improvement;

2. Acceptance by the owner or owner's agent of the work of improvement;

3. A cessation of labor on the work of improvement for a continuous period of 60 days; or

4. A cessation of labor on the work of improvement for a continuous period of 30 days or more, if the owner records in the county recorder's office a prescribed notice of cessation. See *Section 3092 of the Civil Code.*

If the work of improvement is subject to acceptance by any public entity, the completion date is considered as the date of acceptance or a cessation of labor for a continuous period of 30 days. See *Civil Code Section 3086*.

Thereafter, generally within 10-days the owner may file the notice of completion. If properly drawn, it will show the date of completion, the name and address of the owner, the nature of the interest or estate of the owner, a description of the land/property (which includes the official street address of the property, if it has one, or a sufficient legal description of the site), and the name of the original contractor, if any. If the notice is given only of completion of a contract for a particular portion of the total work of improvement, then the notice will also generally state the kind of work done or materials furnished.

As previously mentioned, the notice of completion should be filed with the recorder of the county where the property is situated within 10 days after completion of the work of improvement. See *Civil Code Sections 3093 and 3117.*

A mechanic's claim of lien may be filed:

1. By the *original contractor* within 60 days after the date of filing for record of the notice of completion or of cessation. An original contractor is one who contracts directly with the owner or owner's agent to do the work and furnish materials for the entire job, or for a particular portion of the work of construction. The owner may enter into different original contracts, for example, framing, plumbing, painting, or papering. A material supplier, as such, is not an original contractor. (It should be noted that contracting with more than one original contractor may be subject to applicable provisions of the Contractors State License Law. See *Business and Professions Code Section 7000 et seq).*
2. By *any claimant, other than the original contractor*, within 30 days after filing for record of the notice of completion or of cessation.
3. If the notice of completion or cessation is not recorded, the original contractor (as defined) or *any other claimant must file/record a claim of mechanic's lien* within 90 days after completion of the work of improvement. See *Civil Code Section 3106.*

If there are two or more original contractors, as defined, and a notice of completion or cessation is properly recorded as to one of them, the original contractor under the contract covered by the notice must, within 60 days after recording of such notice, file/record the claim of mechanic's lien. The claimant under the contract for which notice of completion or cessation has been recorded must, within 30 days after the recording of the notice, file/record the claim of a mechanic's lien. Each original contractor and any claimants under the contract with the original contractor are subject to their own notice of completion or cessation and the recording of a claim of mechanic's lien within the periods prescribed by applicable law. If no notice of completion or cessation has been recorded, the period of recording claims of mechanic's liens is the 90 days specified in Sections 3115 and 3116. See *Sections 3114, 3115, 3116, and 3117 of the Civil Code.*

Termination of the Lien

Voluntary release of a mechanic's lien, normally after payment of the underlying debt, will terminate the lien. But even in the absence of release, the lien does not endure indefinitely. If a mechanic's lien claimant fails to commence an action to foreclose the claim of lien within 90 days after recording the claim of lien and if within that time no extended credit is recorded, the lien is automatically null, void and of no further force and effect. (Section 3144(b), Civil Code) When credit is extended for purposes of this limitation, it may not extend for more than one year from the time of completion of the work. Moreover, a notice of the fact and terms of the credit must be filed for record within the 90-day lien period.

If the lien is foreclosed by court action, there may ultimately be a judicial sale of the property and payment to the lienholder out of the proceeds.

Notice of Nonresponsibility

The owner or any person having or claiming any interest in the land may, within 10 days after obtaining knowledge of construction, alteration, or repair, give notice that he or she will not be responsible for the work by posting a notice in some conspicuous place on the property and recording a verified copy thereof. The notice must contain a description of the property; the name of the person giving notice and the nature of his/her title or interest; the name of the purchaser under the contract, if any, or lessee if known; and a statement that the person giving the notice will not be responsible for any claims arising from the work of improvement. If such notice is posted, the owner of the interest in the land may not have his/her interest liened, provided the notice is recorded within the ten-day period.

The validity of a notice of nonresponsibility cannot be determined from the official county records since they will not disclose whether compliance has been made with the code requirements as to posting on the premises. If such posting has not been made, a recorded notice affords no protection from a mechanic's lien.

Release of Lien Bond

Owners and contractors disputing the correctness or the validity of a recorded claim of mechanic's lien may record, either before or after the commencement of an action to enforce the claim of lien, a lien release bond in accordance with the provisions of Civil Code Section 3143. A proper lien release bond, properly recorded, is effective to "lift" or release the claim of lien from the real property described in the lien release bond as well as any pending action brought to foreclose the claim of lien.

CONDITIONS REQUIRING OWNER TO PROVIDE CONTRACTOR WITH COPY OF RECORDED CONSTRUCTION LOAN INSTRUMENTS AND SECURITY FOR PAYMENT

Recent amendments to the law require (in those fact situations where a lending institution is extending credit in the form of a construction loan) the owner must provide the original contractor with a copy certified by the county recorder of the recorded construction mortgage or deed of trust. The recorded instrument is to disclose the amount of the construction loan. The trigger for the foregoing is when the contract for the work of improvement is more than $5,000,000 and the owner is the fee simple title holder of the property, or the contract for the work of improvement is more than $1,000,000 and the owner holds less than a fee simple title interest such as a leasehold interest.

In certain defined fact situations, the owner may be required to provide security for the payment obligations under the construction contract. The security may be in the form of a payment bond, an irrevocable letter of credit, or an escrow account with funds deposited therein subject to a security interest established in favor of the original contractor being determined sufficient by written opinion of legal counsel. This body of law is complex and should be reviewed by knowledgeable legal counsel. See *Civil Code Section 3110.5*.

ATTACHMENTS AND JUDGMENTS

Property Subject to Attachment

Attachment is the process by which real or personal property of a defendant in a lawsuit is seized and retained in the custody of the law as security for satisfaction of the judgment the plaintiff hopes to obtain in the pending litigation. The plaintiff gets the lien before entry of judgment, and is somewhat more assured of availability of the defendant's property for eventual execution in satisfaction of the claim (if the judgment is awarded to the plaintiff).

The purpose of an attachment is to protect a plaintiff who is a prospective judgment creditor against attempts by the defendant/debtor to transfer or dissipate the property subject to the attachment, and thus, in so dissipating the property, frustrate efforts to obtain satisfaction of a judgment subsequently obtained. The property seized and held under the attachment process constitutes an asset, or assets, which a judgment creditor may cause to be sold through execution proceedings in satisfaction of the judgment.

An attachment has always been referred to as a harsh remedy because it imposes a lien on the defendant's property and deprives him or her of absolute dominion and control over it for so long as it takes the court to adjudicate the plaintiff's claim. It is because of the deprivation of the defendant's right to dispose of defendant's attached property that the procedural framework of the attachment process has not been adopted to accommodate time consuming complex legal issues or disputes. Instead, the attachment process is based on the theory that the existence of a debt owed by the defendant to the plaintiff is conceded and that the principal function of the court is merely to ascertain the amount of that debt. This is why the right of a plaintiff to an attachment lien before trial (a prejudgment attachment lien) has been historically confined to actions arising out of contracts, express or implied, for the payment of money. Even in case of a claim arising out of a contract, the courts have been reticent to issues orders for prejudgment attachment liens.

Section 488.720 of the Code of Civil Procedure introduces a novel method of tempering the harsh consequences of an attachment lien and preventing its abuse. In noticed proceedings before the court, should the value of the defendant's interest in the property sought to be attached be shown to be clearly in excess of the amount necessary to satisfy plaintiff's claim, the court may order a release of as much of the property as it considers excess security.

Prejudgment attachments of the property of a natural person (individual) have been limited by case law and statute to claims arising out of the conduct of a business, trade, or profession. There are numerous other limitations on obtaining a prejudgment attachment.

Property Exempt from Attachment and Execution

As a matter of public policy, certain property is exempt from attachment or execution where the defendant is a natural person. The exemptions include, among others, property that is necessary for the support of the defendant or the family of the defendant; "earnings" as provided for and defined in Code of Civil Procedure Sections 706.010 and 706.011; interests in real property except leasehold estates with unexpired terms of less

than a year; accounts receivable of a trade, business, or profession conducted by the defendant, as defined; equipment; farm products; inventory; money judgments arising out of the conduct of the defendant regarding a trade, business, or profession; money on the premises where a trade, business, or professions is conducted by the defendant, except the first $1000.00 located elsewhere, as defined; negotiable documents of title; instruments; securities; and minerals or the like. Community property interests of the defendant are subject to the attachment. A proper claim is to be made for the exemptions to apply. See *Code of Civil Procedure Sections 487.010, 487.020, 487.030 and 706.010, et seq.*

The most important exemption is the homestead, and the formalities of declaration of homestead by the owner are discussed later in this chapter. See *Code of Civil Procedures Section 487.025.*

Judgment

A final judgment is the final determination of the rights of the parties in an action or proceeding by a court of competent jurisdiction. Of course, the possibility exists that either party will appeal the judgment and, following the appeal, the judgment might subsequently be reversed or amended. Notwithstanding the foregoing, comparatively few judgments are appealed. Even for those judgments that are not appealed, the judgment is enforceable until the time to appeal or seek other procedural legal relief has elapsed.

A simple money judgment does not automatically create a lien. However, as soon as a properly certified abstract of the judgment is recorded with the recorder of any county, it becomes a lien upon all real property of the judgment debtor located in that county. It extends in that county to all real property the debtor may thereafter acquire before the lien expires. The lien of a lump sum money judgment normally continues for ten years from the date of entry of the judgment or decree. See Code *of Civil Procedure Section 664 et seq.* As with the lien on attachment, a judgment lien is discharged if enforcement of the judgment is stayed on appeal and the defendant executes a sufficient undertaking (promise or security) or deposits in court the requisite amount of money. See *Code of Civil Procedure Sections 489.010 et. seq. and 515.010 et seq.*

California Law has been amended to limit the inclusion of the social security number of the debtor on the abstract of judgment to the last four digits of the number. However, the listing of the social security number and the driver's license number of the judgment debtor pursuant to Section 4506 of the Family Code applies to abstracts of judgment recorded after January 1, 1979, unless otherwise limited pursuant to the previously mentioned section of the Family Code.

The abstract of judgment is to contain the title of the court where the judgment is entered, the cause and number of the action, and the date of the entry of the judgment in the records of the court. In addition, the name and last know address of the judgment debtor and the name and address of the judgment creditor are to be included along with the date of the issuance of the abstract. Generally, the priority of an abstract of judgment is the date of recordation of the original abstract of judgment. Exceptions to this rule have been provided by law. See *Code of Civil Procedure Section 674.*

EASEMENTS

Generally

Having considered various types of liens which are encumbrances affecting the title to property, it is important to consider encumbrances which affect the physical condition or use of the property. Easements, probably the most common of this category, are ordinarily rights to enter and use another person's land or a portion thereof within definable limits. Therefore, an easement is a right, privilege, or interest limited to a specific purpose which one party has in the land/property of another.

Easement rights are often created for the benefit of the owner of adjoining land. The benefitted land is called the "dominant tenement," and the land subject to the easement is described as the "servient tenement." Unless the easement is specifically described to be "exclusive," its creation does not prevent the owner of the land from using the land/property and the portion covered by the easement in a way that does not interfere with the use of the easement.

Appurtenant Easements

Typical statutory easements (or land burdens or servitudes as they are also known) include, among others: a right of ingress and egress (a right to go on the land and to exit from the land); the right to use a wall as a party wall; or the right to receive more than natural support from adjacent land/property or things affixed thereto.

These easements, when attached to a ‘‘dominant tenement,” are considered “appurtenant” thereto, and pass automatically upon transfer of the dominant tenement without explicit mention in the instrument of transfer. “Appurtenant” means “belonging to.” Civil Code Section 801 lists a variety of easements commonly used in real property transactions. Civil Code Section 801.5 provides for a solar easement to ensure that solar collectors receive direct and unimpaired sunlight to facilitate the operation of the solar energy system.

Easements in Gross

It is possible to have an easement that is not appurtenant to particular land/property. Thus A, who owns no related land/property, may have a right-of-way over B’s land/property. Public utilities frequently enjoy easements to erect poles and string wires over private lands, yet own no related dominant tenement. Such easements are technically known as easements in gross, and are personal rights attached to the person of the easement holder and not attached to any specific land/property, yet in reality they encumber someone’s land/property and in effect constitute an interest therein.

If the instrument creating an easement is unclear, the following factors are useful in determining whether the easement is appurtenant or in gross: (1) if the easement can fairly be construed as being attached to the land/property, it will be so construed; (2) the intention of the parties and the right created are important considerations; and (3) outside evidence may be considered.

How Easements Are Created

Easements may be created in various ways, such as by express grant, express reservation, implied grant or implied reservation, agreement, prescription, necessity, dedication, condemnation, sale of land/property with reference to a plat, or estoppel.

Normally, easements arise in one of three ways. Either they are expressly set forth in some writing (such as a deed or a contract), or they arise by implication of law, or by virtue of long use. Those created by deed must comply with the usual requirements of any deed and may arise either by express grant to another or by express reservation to oneself.

While the most common method of creating an easement is by express grant or reservation in a grant deed, written agreements/contracts between adjoining landowners/property owners often are used. Generally, a deed or other recorded instrument to impart *constructive* notice of the easement established by the agreement/contract. The person who can grant a permanent easement is the fee owner of the servient tenement, or a person with the power to dispose of the fee.

Easements created by agreement/contract with a deed or other instrument of record to impart *constructive* notice must not violate applicable law, public policy implementing the law, or public policy even though not expressly applicable law. In a recent case, the agreement/contract between the dominant tenement and the servient tenement established an easement for maintaining horses on the land/property of the servient tenement. The applicable zoning ordinance prohibited the maintenance of horses on the land/property affected by the easement. Because of the violation of the zoning ordinance, the court held the easement unenforceable and the agreement/contract void. See Civil Code Section 1667 and Baccouche v. Blankenship (2007), Cal.App.4th [No. B192291. Second Dist., Div. Four. Sep. 11, 2007.]

Easement by Implication of Law

Civil Code Section 1104 contains the rule for implied grants. Certain conditions must exist at the time land/property is conveyed before an easement by implied grant will have effect. An easement by necessity is one example of an easement by implication, but an easement by necessity differs somewhat in its requirements from other easements by implication.

The “way of necessity” is generally recognized whenever a transfer occurs which truly “landlocks” a parcel of real estate (land/property) and no method of access exists, except over the servient tenement retained by the seller, or over the land/property of a stranger. The former is established by implication. The later would generally require a quit claim deed from the seller describing the road used by the seller and the seller’s predecessors in title to the parcel of land/property conveyed that otherwise is “landlocked”. To implement the claim to the access may require establishing the easement by perscription.

Another implied easement is recognized when land/property in one ownership is divided, and at the time of division, one portion is being used for the benefit of the other portion, e.g., a sewer lateral. See *Civil Code Section 801 and 1104.*

Easement by Prescription

Continuous and uninterrupted use for five years will create an easement by prescription where such use is hostile and adverse (without license or permission from the owner), open and notorious (the owner knows of the use or may be presumed to have notice of the use), exclusive (although use is not necessarily by one person only, it is such as to indicate to the landowner/property owner that a private right is being asserted), and under some claim of right. Generally, payment of ad valorem or other relevant real property taxes is not required to establish an easement by prescription, although it is among the requirements to establish adverse possession and ownership of the land/property. The obtaining of a quitclaim deed as discussed in the previous section may join the concept of easement by implication with easement by prescription. Should the stranger have been in chain of title to the subject land/property, an easement by implication with a quitclaim deed may be established. See *Civil Code Section 813 and 1008.*

Termination of Easements

Easements may be extinguished or terminated in several ways, including express release, legal proceedings, nonuse of a prescriptive easement for five years, abandonment, merger of the servient tenement and the easement in the same person, destruction of the servient tenement, and adverse possession by the owner of the servient tenement. An easement obtained by grant cannot be lost by nonuse. See *Civil Code Section 811*.

RESTRICTIONS

A very common type of encumbrance is the restriction, which, as the name suggests, in some way restricts the free use of the land by the owner. Commonly, restrictions are referred to as the covenants, conditions, and restrictions (CC&Rs) or the declaration.

Restrictions are generally created by private owners, typically by appropriate clauses in deeds, or in agreements, or in general plans of entire subdivisions. A restriction usually assumes the form of a *covenant*—a promise to do or not to do a certain thing—or a *condition*. Zoning is an example of a public use restriction on the use of land.

Distinction between Covenants and Conditions

A covenant is essentially a promise to do or not to do a certain thing. It is generally used in connection with instruments pertaining to real property, and is created by agreement. Typically it is embodied in deeds, but it may be found in any other writing. For example, a tenant might covenant in a lease to make certain repairs, or a buyer might covenant to use certain land/property only for a retail grocery store. A mere recital of fact, without anything more, is not a covenant.

A condition, on the other hand, is a qualification of an estate granted. Conditions, which can be imposed in conveyances, are classified as conditions precedent and conditions subsequent. A condition precedent requires certain action or the happening of a specified event before the estate granted can vest (i.e., take effect).

A familiar example is a requirement found in most of the installment contracts of sale of real estate (also known as a land contract of sale). All payments required under the agreement shall be made at the time specified before the buyer may demand transfer of title. It is important to understand that the use of such contracts are subject to legal issues where there is existing mortgages or deeds of trust encumbering the title of the land/property described therein. Accordingly, such contracts should not be used without the advice of knowledgeable legal counsel.

If there is a condition subsequent in a deed, the title vests immediately in the grantee, but upon breach of the condition, the grantor has the power to terminate the estate. This is termed a forfeiture, since the title may revert or be forfeited to the creator of the condition or to the heirs or successors in interest of the creator without payment of any consideration. An example is a condition subsequent in the deed stating that the property may not be used for the sale of liquor or other forms of alcoholic beverage. Should this condition subsequent be violated, title reverts to the grantor that created the condition or to the lawful heirs or successors in interest of the grantor.

Covenants and conditions are distinguishable in two further respects, in regard to the relief awarded and second, as to the persons by or against whom they may be enforced.

Relief awarded. As to the first, while a condition affects the estate created, and the failure to comply with it may result in a forfeiture of title, the only remedy to a breach of covenant is an action of damages or an injunction. Breach of a condition may prevent any right arising in favor of the breaching party, or destroy a right previously acquired, but does not subject the breaching party to liability and damages. While a breach of a covenant gives rise to a right of actual damages, does not necessarily excuse the other party from performance.

Enforcement. As to the second difference, a covenant normally does not bind successors of the promisor who may become owners of the affected land/property. However, some covenants "run with the land" (i.e., they bind the assigns of the covenantor or promisor and vest in and benefit the assigns of the covenantee or promisee), or they may be binding and effective by statute or in equity. Conditions, on the other hand, run with the restricted land into the indefinite future, unless abandoned or vacated by the grantor creating the condition or the lawful heirs or successors in interest of the grantor.

How construed. Whether a particular provision is a condition or covenant is a question of construction. Since the law abhors forfeitures, the courts ordinarily will construe restrictive provisions as covenants only, unless the intent to create a condition is plain. The use of the term "condition" or "covenant" is not always controlling. The real test is whether the intention is clearly expressed and the enjoyment of the estate conveyed was intended to depend upon the performance of a condition; otherwise, the provision will be construed as a covenant only.

For instance, the deed reciting that it is given upon the agreement of the grantee to do or not to do a certain thing implies a covenant and not a condition. So also with a recital that the land conveyed is or is not to be used for certain purposes.

Certain Covenants and Conditions Are Void

Covenants and conditions that are unlawful, impossible of performance, or in restraint of alienation, are void.

For example, a condition that a party shall not marry is void, but a condition to give use of property only *until* marriage is valid. A condition against conveying without the consent of the grantor, or for only a specified price, is void as in restraint of alienation. In such cases, title passes free of the condition subsequent. Recently, owner/developers of subdivision properties have sought to impose conditions subsequent upon the deeds conveying title to the individual parcels/properties within the subdivision requiring the payment of fees at the time of sale or transfer to an entity established for a community purpose (such as the maintenance of a commonly or publicly owned land/property functioning as a preserve).

Title does not pass at all if a condition precedent is impossible to perform or requires the performance of a wrongful act. However, if the act itself is not wrong, but is otherwise unlawful, the deed takes effect and the condition is void.

Covenants Implied in Grant Deed

When the word "grant" is used in any conveyance of an estate of inheritance or fee simple, it implies the following covenants on the part of the grantor (and grantor's heirs or successors in interest) to the grantee (and grantee's heirs, successors and assigns):

1. That the grantor has not already conveyed the same estate or any interest therein to any other person;
2. That the estate is free from undisclosed encumbrances made by the grantor, or any person claiming under grantor. As noted earlier, encumbrances include, among others, liens, taxes, easements, restrictions, conditions, mortgages and deeds of trust.

Thus, a grant deed by a private party is presumed by law to convey a fee simple title, unless it appears from the wording of the deed itself that a lesser estate was intended. Moreover, if a grantor subsequently acquires any title or claim of title to the real property that the grantor had purported to grant in fee simple, the after-acquired title usually passes by operation of law to the grantee or grantee's successors. When fee title to the land/property is being conveyed that is subject to encumbrances such as mortgages and deeds of trust, the practice in California is to rely on title insurance coverage (obtained at the time of the sale or transfer) listing the encumbrances as exceptions to the coverage in the order of their priority. The title insurance coverage issued to the purchaser is relied upon in lieu of describing these instruments of encumbrance on the face of the

deed. Accordingly, it is important that title insurance coverage be obtained at the time of the sale or transfer of the land/property.

Deed Restrictions

Restrictions imposed by deeds, or in similar private contracts, may be drafted to restrict, for any legitimate purpose, the use or occupancy of land/property. The right to acquire and possess property includes the right to dispose of it or any part of it, and to impose upon the grant any legal restrictions the grantor deems appropriate. However, the right may not be exercised in a manner forbidden by law. Restrictions prohibiting the use of property on the basis of race, color, sex, religion, ancestry, national origin, age (generally), disability, sexual orientation, marital status, familial status, or source of income are unenforceable under state and federal law.

Declarations that impose restricted covenants that discriminate on the basis of race, color, religion or other prohibited basis included in a deed or grant in violation of Section 12955 of the Government Code are unlawful and unenforceable. Should historic restrictions include covenants that contain unlawful discriminatory prohibitions, the conditions, covenants and restrictions, or other governing documents must contain a cover page or stamp on the face thereof stating such restrictive covenants are unlawful and unenforceable. Further, a statutory procedure is provided through which the documents may be created and recorded by a person who holds an ownership record in the land/property that he or she believes is the subject of an unlawful restrictive covenant. The document is entitled, "Restrictive Covenant Modification". See *Government Code Sections 12956.1 and 12956.2.*

In addition, conditions restraining alienation, when "repugnant to the interest created", are void. However, federal law has been enacted that preempts state law in this regard to the extent mortgagees or beneficiaries of mortgage/deed of trust instruments have the right (pursuant to the provisions of these instruments) to accelerate all sums due thereunder irrespective of the majority date stated in such instruments of encumbrance in the event of the sale, transfer, further encumbrance, or other conveyance of the security property. See *Section 711 of the Civil Code* and *the Federal Depository Institutions Act of 1982*.

Restrictions may validly cover a multitude of matters: use for residential or business purposes; character of buildings (single family or multiple units); cost of buildings (e.g., a requirement that houses cost more than $100,000); location of buildings (e.g., side lines of five feet and 20-foot setbacks); and even requirements for architectural approval of proposed homes by a local group/committee established for that purpose.

Unless the language used in the deed clearly indicates that the grantor intended the conditions or restrictions to operate for the benefit of other lots or persons, the restrictions run to the grantor only, and a quitclaim deed from the grantor, or the grantor's heirs, successors in interest or assigns, is a sufficient release. However, if the language used in the deed shows that the conditions or restrictions were intended for the benefit of adjoining owners, or other lots or owners of separate interests in the tract/subdivision (such as a common interest development), quitclaim deeds may be required from each owner of separate interests having the benefit thereof, as well as from the grantor or the grantor's heirs, successors in interest or assigns, to release the conditions or restrictions. When the subdivision is a common interest development, the vote of the owners of separate interests is generally required. The requirements and conditions imposed by the political subdivision of jurisdiction (local government) to establish the common interest development may prevent the release of the covenants or restrictions without the concurrence of the governmental entity.

Notice of Discriminatory Restrictions

Effective January 2000, a county recorder, title insurance company, escrow company, or real estate licensee who provides a declaration, governing documents or deed to any person that contain an unlawful covenant or restriction must provide a specified statement about the illegality of discriminatory restrictions and the right of homeowners to have such language removed. As previously mentioned, the statement must be contained in either a cover page placed over the document or a stamp on the first page of the document. See *Government Code Sections 12956.1 and 12956.2.*

New Subdivisions

In contrast to zoning ordinances, private contract restrictions need not promote public health, general public welfare or safety. They may be intended to create a particular type of neighborhood deemed desirable by the tract/subdivision owner and may be based solely on aesthetic conditions. These tracts/subdivisions are typically know and described as common interest developments. As might be expected, the most common use of covenants and restrictions today is in new subdivisions. The original owner/developer/subdivider establishes

uniform regulations as to occupancy, use, character, cost and location of buildings and records a "declaration of restrictions" when the subdivision is first created. Thereafter, all lot owners or owners of separate interests, as among themselves, may enforce the covenants and restrictions against any one or all of the others, provided the covenants and restrictions have been properly imposed and have not been otherwise waived.

In some cases, when land/property is originally subdivided, arrangement is made in the nature of a covenant whereby a perpetual property owners' association is formed to be governed by rules and regulations set forth in an agreement signed by all new lot purchasers/owners of separate interests. Such associations (typically described as homeowner's associations) are often given the power to amend tract/subdivision restrictions from time to time to correspond with community growth (provided the amendments are not inconsistent with the conditions imposed by the local government having jurisdiction over the land/property when the tract/subdivision was established and are not inconsistent with applicable law, including zoning ordinances and building codes. Homeowner's associations may have the power to revise building restrictions pertaining to certain blocks of lots/parcels in the development/subdivision, impose architectural restrictions, and make other authorized requirements from time to time.

Termination

Restrictions may be terminated by

l. expiration of their terms;

2. voluntary cancellation;

3. merger of ownership;

4. act of government; or

5. changed conditions (i.e., a court finds that the restrictions should be terminated because the conditions which the restrictions addressed have changed).

Restrictions usually have either a fixed termination date or one which becomes effective on recordation of a cancellation notice by a given the appropriate percentage of the lot owners or owners of special interests.

Zoning Regulations

Restrictions on the use of land may be imposed by government regulation as well as by private contracts.

The governing authority of a city or county (local government) has the power to adopt ordinances establishing zones within which structures/improvements must conform to specified standards as to character (including aesthetic considerations) and location, and to limit buildings designed for business or trade to designated areas consistent with the general plan. Zoning ordinances apply to each form of use that may be contemplated by the owner of the land/property (agricultural, industrial, commercial retail, commercial office, research and development, multi-family residential, single family residential, among others),

However, zoning restrictions, to be valid, should be substantially related to the preservation or protection of public health, safety, morals, or general welfare. They must be uniform and cannot be discriminatory or created for the benefit of any particular group. Public authorities may enjoin or abate improvements or alterations that are in violation of a zoning ordinance, but only the use of the land/property, not the title, is affected.

ENCROACHMENTS

Adjoining owners of real property often find themselves involved with *encroachments* in the form of fences or walls and buildings extending over the boundary lines. The party encroaching on a neighbor may be doing so with legal justification. The person who encroached may have gained title to the strip encroached on by adverse possession, or may have acquired an easement by prescription or possibly by implication to the land/property upon which the encroachment has occurred.

On the other hand, the encroachment may be wrongful. If it is, the party encroached upon may sue for damages and a court may require removal of the encroachment.

Note: If the encroachment is slight (e.g., measurable in inches), the cost of removal great, and the cause an excusable mistake, a court may deny removal and award dollar damages to the owner of the land/property subject to the encroachment. In such an event, the local government would require either a boundary line adjustment or an appropriate variance to establish the minimum "setbacks" required by the applicable zoning

ordinance. The determination whether the encroachment may remain and damages may be paid in lieu of removal requires exhausting administrative remedies with the local government prior to a court of competent jurisdiction being able to rule on the matter.

HOMESTEAD EXEMPTION

The principal purpose of the *homestead exemption* is to shield the home against creditors of certain types whose claims might be exercised through judgment lien enforcement. Few areas of California real property law are more misunderstood.

Obligations unaffected by the declaration. Over the years, the homestead exemption amount has been increased from time to time, with the type of homestead determining the actual amount of the exemption. However, the validity of a homestead depends not only upon the recordation of the homestead declaration but on certain off-record matters including, actual residency in the declared homestead dwelling at the time the declaration is recorded and an actual interest in the "dwelling".

The homestead declaration does not protect the homestead from all forced sales. For example, it is subject to a forced sale if a judgment is obtained: (l) prior to the recording of the homestead declaration; (2) on debts secured by encumbrances on the premises executed by the owner before the declaration was filed for record; and (3) obligations secured by mechanics', contractors', subcontractors', laborers', materialmen's, suppliers' or vendors' liens on the premises. Voluntary encumbrances by the owner of the homestead are not affected by a declaration of homestead. A mortgage or deed of trust is an example of a voluntary encumbrance.

Two Homestead Statutes

Articles 4 and 5 of Chapter 4, Division 2, Title 9, Part 2 of the California Code of Civil Procedure (commencing with Section 704.710) contain respectively the applicable law regarding the "Homestead Exemption" and "Declared Homesteads".

While both Articles deal with granting homeowners homestead protection from the claims of certain creditors, the Articles are in part mutually exclusive. Article 4 provides protection to homeowner debtors who meet the requirements but have not filed a declaration of homestead. Article 5 concerns homeowners who undertake the actual filing of a homestead declaration. In either case, there is protection against certain judgment liens to the amount of the exemption afforded by law.

The following discussion concerns primarily the "Declared Homestead" under Article 5.

(**NOTE:** A "Probate Homestead" also exists in California. See Probate Code Sections 60 and 6520 through 6528.)

Declared Homestead

A dwelling in which an owner or his or her spouse resides may be selected as a "Declared Homestead" by recording a homestead declaration in the office of the county recorder of the county where the dwelling is located. From and after the time of recording, the dwelling is a "Declared Homestead". See *the Code of Civil Procedure Sections 704.710 and 704.910.*

Definitions for Declared Homestead

A "Declared Homestead" is the dwelling described in a homestead declaration and a "Declared Homestead Owner" includes both (1) the owner of an interest in the "Declared Homestead" who is named as a "Declared Homestead Owner" in a homestead declaration recorded pursuant to Code of Civil Procedure Section 704.920 and, (2) the declarant named in a declaration of homestead, including the spouse of the declarant, recorded prior to July 1, 1983, pursuant to the former Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code. See *the Code of Civil Procedure Section 704.910.*

"Dwelling" means any interest in real property (whether present or future, vested or contingent, legal or equitable) that is a "dwelling" as defined in Section 704.710 of Article 4 and Section 704.910 of Article 5 of the Code of Civil Procedure, but does not include a leasehold estate with an unexpired term of less than two years or the interest of the beneficiary of a trust. See *the Code of Civil Procedure Section 704.910.*

For the purpose of Article 4 and Article 5 of the Code of Civil Procedure, "Spouse" means a "spouse" as defined in Sections 704.710 and 704.910.

Definitions and Terminology

Some of the terminology for "Declared Homesteads" depends for their meaning on definitions from Article 4, which describes a residential exemption, even if there is no filing of a "Declared Homestead". These definitions are:

1. **"Dwelling"** means a place where a person actually resides and may include, but is not limited to, the following:
    a. A house together with the outbuildings and the land upon which they are situated;
    b. A mobilehome together with the outbuildings and the land upon which they are situated;
    c. A boat or other waterborne vessel;
    d. A condominium, as defined in Section 783 of the Civil Code;
    e. A Planned Development, as defined in Section 11003 of the Business and Professions Code;
    f. A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code; and
    g. A community apartment project, as defined in Section 11004 of the Business and Professions Code.
2. **"Family unit"** means any of the following:
    a. The judgment debtor and the judgment debtor's spouse if the spouses reside together in the homestead.
    b. The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:
        (1) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.
        (2) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.
        (3) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.
        (4) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.
    c. The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the homestead.

See *the Code of Civil Procedure Section 704.710.*

3. **"Homestead"** means the principal dwelling (l) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired. See *the Code of Civil Procedure Section 704.710.*
4. **"Spouse"** does *not* include a married person following entry of a judgment decreeing legal separation of the parties, or an interlocutory judgment of dissolution of the marriage, unless such married persons reside together in the same dwelling. See *the Code of Civil Procedure Section 704.710.*

Amount of Homestead Exemption

The amount of the homestead exemption is the same under Articles 4 and 5 and is based upon the debtor's status at the time the creditor's lien is recorded. The current protected homestead exemption values and the required status of the debtor or spouse are as follows:

1. $50,000, unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is the person described in paragraph (2) or (3);
2. $75,000, if the judgment debtor or the spouse of the judgment debtor who resides in the homestead at the time of the attempted sale of the homestead is a member of the family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor;
3. $150,000, if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at that time of the attempted sale of the homestead any one of the following:
    A. A person 65 years of age or older
    B. A person physically or mentally disabled and because of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that the person receiving disability insurance payments under Title II or supplemental security income payments under Title XVI of the Federal Social Security Act satisfies the requirement of this paragraph as to his or her inability to engage insubstantial gainful employment.
    C. A person 55 years of age or older with a gross annual income of not more than $15,000 or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than $20,000 and the sale is an involuntary sale.

Regardless of any other provision of this law, the combined homestead exemptions of spouse on the same judgment shall not exceed the amount specified in paragraph (2) or (3) above, which ever is applicable, regardless of whether the spouses are jointly obligated on the judgment or whether the homestead consists of community or separate property or both. If both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead. See *the Code of Civil Procedure Section 704.730.*

Contents of the Declaration of Homestead

1. A recorded homestead declaration will contain all of the following:
    a. The name of the "Declared Homestead" owner. A husband and wife both may be named as "Declared Homestead" owners in the same homestead declaration if each owns an interest in the dwelling selected as the "Declared Homestead".
    b. A description of the "Declared Homestead".
    c. A statement that the "Declared Homestead" is the principal dwelling of the "Declared Homestead" owner or such person's spouse, and that the "Declared Homestead" owner or such person's spouse resides in the "Declared Homestead" on the date the homestead declaration is recorded.
2. The homestead declaration shall be executed and acknowledged in the manner of an acknowledgment of a conveyance of real property by at least one of the following persons.
    a. The "Declared Homestead" owner.
    b. The spouse of the "Declared Homestead" owner.
    c. The guardian or conservator of the person or estate of either of the persons listed in (a) or (b) above. The guardian or conservator may execute, acknowledge, and record a homestead declaration without the need to obtain court authorization.
    d. A person acting under a power of attorney or otherwise authorized to act on behalf of a person listed in (a) or (b) above.
3. The homestead declaration shall include a statement that the facts stated in the homestead declaration are known to be true as of the personal knowledge of the person executing and acknowledging the homestead declaration. If the homestead declaration is executed and acknowledged by a person listed in (c) or (d) above, it shall also contain a statement that the person has authority to so act on behalf of the "Declared

Homestead" owner or the spouse of the "Declared Homestead" owner and the source of the person's authority.

See *the Code of Civil Procedure Section 704.930.*

The definition of "dwelling" for purposes of Article 5 means an interest in real property that is a dwelling as defined in Section 704.710 (Article 4), but excludes a leasehold estate with an unexpired term of less than two years at the time of the filing of the homestead declaration. A "dwelling" that is personal property (boat, waterborne vessel or mobilehome not affixed to land/property) appears to be excluded under Article 5. Prior to applying the definition of "dwelling", the advise of knowledgeable legal counsel should be obtained. See *the Code of Civil Procedure Section 704.910.*

The law does not set a limit on the amount of land/property that may be contained in the homestead "dwelling" property Ownership interests and occupancy by the owner or owner's spouse at the time of filing the declaration are the principal governing factors.

Where unmarried persons hold interests in the same "dwelling" in which they both reside, they must record separate homestead declarations, if each desires to have a valid homestead.

Under previous law, a person who was a "head of household" was entitled to qualify for the amount of the greater exemption. Under current law, the amount of the exemption will depend upon whether or not the judgment debtor qualifies as a "family unit."

See *Article 4 and 5 of the Code of Civil Procedure commencing with Section 704.710.*

Declarations recorded prior to July 1, 1983. Any declaration of homestead filed prior to July 1, 1983, remains valid, but the effect is limited to the effect given a homestead declaration under current statutes, i.e., the previously filed declaration must be qualified under present law. See *Article 5 of the Code of Civil Procedure commencing with Section 704.910*.

Effect of recording - how terminated. When a valid declaration of homestead has been filed in the office of the county recorder where the property is located, containing all of the statements and information required by law, the property becomes a homestead protected from execution and forced sale, except as otherwise provided by statute. The homestead remains operative until terminated by conveyance, abandoned by a recorded instrument of abandonment, or sold at execution sale.

A homestead declaration does not restrict or limit any right to convey or encumber the declared homestead.

To be effective, the declaration must be recorded; when properly recorded, the declaration is prima facie evidence of the facts contained therein; but off-record matters could prove otherwise.

See *the Code of Civil Procedure Sections 704.920, 704.940, 704.965, 704.970, 704.980, and 704.990.*

Rights of spouses. A married person who is not the owner of an interest in the dwelling may execute, acknowledge, and record a homestead declaration naming the other spouse who is an owner of an interest in the dwelling as the "Declared Homestead" owner but at least one of the spouses must reside in the dwelling as his or her principal dwelling at the time of recording. See *the Code of Civil Procedure Sections 704.920 and 704.930.*

Either spouse can declare a homestead on the community or quasi-community property, on property held as tenants in common, or held as joint tenants, but cannot declare a homestead on the separate property of the other spouse in which the declarant has no ownership interest. A homestead cannot be declared after the homeowner files a petition in bankruptcy. The phrase, "Quasi-community property", refers to real property situated in this state acquired in any of the following ways:(1) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition. (2) In exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

If a husband and wife own separate interests as separate property, each spouse qualifies for his or her own exemption but the combined exemptions cannot exceed the amount that is due to a "family unit." A declaration intended to be for the "joint benefit" of both spouses, one or both spouses must qualify as a "family unit."

After a decree of legal separation or interlocutory judgment of dissolution of marriage, if a spouse no longer resides on the property, the spouse cannot declare a homestead on the property.

See the *Code of Civil Procedure Sections 704.710 and 704.910* and *Family Code Section 910 et seq.*

Levy and execution sale. When an execution for the enforcement of a judgment is levied on a homestead dwelling, the judgment creditor must follow specific procedures.

Within 20 days after a writ of execution is levied and the creditor is notified of this fact, the creditor must apply to the court where the judgment was rendered for an order to execute the sale of the property. See *the Code of Civil Procedure Sections 704.740, 704.750 and 704.760.*

The value of the property is determined by the court. The court may appoint an appraiser and will consider other evidences of value to set a minimum bid for the property. Creditors must prove sufficient value to receive the minimum bid or the court may not make a finding for the sale.

If the court makes an order for sale of the dwelling upon a hearing at which neither the judgment debtor's spouse nor attorney debtor or spouse appeared, then within 10 days after the order for sale, the creditor must serve a copy of the order and statutory notice of sale on the debtor. The property is not sold if no bid is received at least equal to the court's prescribed minimum bid (which is a sum at least equal to the amount needed to pay all liens and encumbrances on the property, the amount of the homestead exemption, and the lien of the judgment creditor enforcing the lien), and the creditor cannot subject the property to an additional order for sale for at least one year. See *the Code of Civil Procedure Sections 704.770, 704.780, 704.790, and 704.800.*

After the sale, the proceeds of sale are distributed as follows: (a) to discharge all liens and encumbrances on the property recorded prior to the judgment lien; (b) to the owner/debtor for the amount of the homestead exemption; (c) to costs of execution; (d) to the amount due the judgment creditor; and finally (e) balance to owner/debtor.

The proceeds from the execution sale are exempt for 6 months after the debtor receives the proceeds. If reinvested in a new "dwelling" and a new declaration of homestead is recorded within this 6-month period, the new filing has the same effect as though recorded on the date the prior declaration was recorded. See *the Code of Civil Procedure Section 704.960(b).*

Federal Homestead Act of 1862

The declared homestead discussed above has nothing to do with the term "homesteading" as applied to filings on federal lands whereby a person acquired title to acreage by establishing residence or making improvements upon the land.

The purpose of the Federal Homestead Act of 1862 was to encourage settlement of the nation. Except for Alaska, homesteading was discontinued on public lands in 1976. Because all the good agricultural land had already been homesteaded and deeded, Congress recognized that the Homestead Act had outlived its usefulness and passed the Federal Land Policy and Management Act of 1976that immediately repealed the old law (as to all states except Alaska).

ASSURING MARKETABILITY OF TITLE

Casual reflection on the nature of title to real property and its use and transfer must lead to the conclusion that establishing marketable title is often a complex and difficult undertaking. The term itself has no universally accepted meaning. It does not mean a perfect title, but rather one that is free from plausible or reasonable objections. In effect, the title is marketable (or merchantable) if there is reasonable assurance as to the extent of the rights involved. The title must be such that a proper court would compel the buyer to accept it, if asked to decree specific performance of the purchase and sale contract/agreement.

Establishing a marketable title is especially important whenever land/property is transferred for consideration, and when, in connection with such transfer or otherwise, money is loaned with land as security. The prospective buyer or lender would be reluctant to commit funds to the transaction without some assurance of

getting what was bargained for. Buyers of real property expect some assurance that there are no hidden interests in the real property they propose to buy.

For example: One uses the surface, another extracts subsurface minerals, and a third controls the air space above the surface. Interests in land/real property may be divided, distributed, and distinguished in many different manners or ways. This occurs since much land/property is of comparatively high value, especially in urban areas where the growth and concentration of population have placed a premium on such parcels. Consequently, the land/property has been divided, subdivided and recombined into a patchwork measured in feet and sometimes even in inches.

Since the persons who own or deal with land/property are themselves subject to a variety of laws which determine the extent of their rights (e.g., probate, dissolution, guardianship, bankruptcy, business association laws, among others), an understanding of how these laws affect ownership rights is necessary. Since creditors and others may burden the real property with a variety of liens and encumbrances, an understanding of how applicable law affects the rights of mortgagees and mortgagors (beneficiaries and trustors) and creditors and debtors is also essential.

Who owns what? The issue is one of determining all the important facts with reference to who owns what interests or rights in the title to a particular parcel of land. Actual possession of the land/property has always been important and helpful in providing the answer. But possession may be by someone other than the owner, and transfers may be made without taking possession. Hence, the documentary record of ownership in the county recorder's office of the county in which the parcel is located assumes great significance. Reliance on recorded documents is encouraged by the official recording system under which deeds and other instruments affecting title may be recorded with the recorder of the county in which the land/property is situated.

Thus, a "chain of paper title" could be traced back to the original conveyance from the government. However, recordation is not generally compulsory, although there are fact situations were it is required. The "Race Recording" or "Race-Notice Recording" systems were created to accomplish a "chain of paper title" and to establish the priority of recorded instruments/documents. However, the record of the "chain of paper title" is not always properly achieved or maintained. Records may be erroneous, or sometimes may even reflect fraudulent and unenforceable transactions. When done thoroughly and conscientiously, the resulting records over the years become a complicated history in themselves, yet they may be woefully incomplete for purposes of determining the status of the title in question. This is so for a variety of reasons.

For example: In an intestate transfer, a qualified heir might have inadvertently been excluded; or a transfer, valid on its face may have been made by a person incompetent because of age or mental condition. Then too, other official records (e.g., tax records and records of court judgments) may profoundly affect the picture. In short, title to land/property and marketability of that title depends not only on recorded facts of title transfer, but also on a vast array of extraneous information outside of the documents recorded in the county recorder's office.

Abstract of Title

As might be expected under such complex circumstances, historically the individual buyer or lender was ill equipped to make the necessary *investigation* of the status of the title to property. They soon came to rely on the title specialist who made a business of studying the records and preparing summaries or abstracts of title of all pertinent documents discovered in the search. An abstract of title is a summary statement of the successive conveyances and other facts (appearing in the proper place in the public records) on which a person's title to real property rests. The abstract of title and a lawyer's opinion of the documents appearing in the abstractor's "chain of title" were the basis of our earliest attempts to establish marketable title. This method still exists today, with modern refinements.

Certificate of Title

In time, abstractors accumulated extensive files of abstracts and other useful data, including "lot books" wherein references to recorded documents were systematically arranged according to the particular property affected, and "general indices" wherein landowners were listed alphabetically together with information concerning them and affecting titles (e.g., probates and property settlements).

These files came to be known as "title plants" and provided classified and summarized histories of real estate transactions and of other activities that affect or might affect ownership of the land/property in the areas

covered. With the growth and improvement of title plants and increased proficiency of examiners employed by the abstractors, the formal abstract of title for delivery to the customer and the related legal opinion were sometimes dispensed with completely. The abstract company would simply study its records and furnish the customer with a certificate of title in which it stated that it found the title properly vested in the present owner, subject to noted encumbrances. The certificate plan has strictly limited use today, for it was a transitional method of assuring not insuring titles.

Guarantee of Title

The next step was the guarantee of title under which the title insurance company did more than certify the correctness of its research and examination.

Thus, the company provided written *assurances* (not insurance) about the title to real property. The coverage was usually limited to a particular condition of title, a certain period of time, and a certain kind of information. This meant it was engaged in the insurance business and generally was subject to regulation as such.

Title Insurance

As already noted, the public records may be incomplete or erroneous and do not necessarily disclose shortcomings arising from forgery, incompetence, and failures to comply with legal requirements, among others. Accordingly, the policy of title insurance was developed as the culmination of the quest for a reliable and marketable title as well as compensation for incorrect assurances that cause a covered loss. Although still covering most risks that are a matter of public record, it alone extends protection against many nonrecorded types of risks, depending on the type of policy purchased. The title insurance company continues to utilize the "title plant" to conduct as accurate a search of the records as possible and seeks to interpret correctly what it finds in the records. Its unique contribution is the protection it affords against risks that lie outside the public records.

Preliminary report. In current practice, the title insurance industry typically issues a "preliminary report" rather than a "search" or "abstract" that are intended to assure the status of title and for which there would be liability, as defined in the document issued as a "search" or "abstract". The Insurance Code defines "preliminary report" as a "commitment" or "binder" furnished in connection with an application for title insurance and such reports are offers to issue a title policy subject to the stated exceptions set forth therein and such other matters as may be incorporated by reference. Preliminary reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of such reports. Preliminary reports are not to be construed as nor constitute a representation as to the condition of title to real property (a "search" of the title). Preliminary reports are a statement of the terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted. See *Insurance Code Section 1234.11*.

Standard policy. In addition to risks of record, the standard policy of title insurance protects against:

- off-record hazards such as forgery, impersonation, or lack of capacity of a party to any transaction involving title to the land (e.g., a deed of an incompetent or an agent whose authority has terminated, or of a corporation whose charter has expired);
- the possibility that a deed of record was not in fact delivered with intent to convey title (typically excluding a fraudulent conveyance);
- the loss which might arise from the lien of federal estate taxes, which is effective without notice upon death; and
- the expense, including attorneys' fees, incurred in defending the title, whether the plaintiff prevails or not.

The standard policy of title insurance does *not* however protect the policyholder against defects in the title known to the holder or to the agent of the holder to exist at the date of the policy and not previously disclosed to the insurance company. Further, the standard policy neither protects against easements and liens which are not shown by the public records; nor against rights or claims of persons in physical possession of the land/property, yet which are not shown by the public records (since the insurer typically does not inspect the property when offering such coverage); nor against rights or claims not shown in public records, yet which could be ascertained by physical inspection of the land/property, or by appropriate inquiry of persons on the

land/property, or by a correct survey; nor against mining claims, reservations in patents, or water rights; nor against zoning ordinances.

These limitations may not be as dangerous as they might appear to be. To a considerable degree, the limitations can or may be eliminated by careful inspection of the land/property by the purchaser/buyer or his or her agents (e.g., brokers/appraisers) and a routine inquiry as to the status of persons in possession. However, if desired, most of these risks can be covered by special endorsement or use of extended coverage policies at added premium cost.

ALTA Policy (for lenders). In California, many loans secured by real property have been made by out-of-state financial institutions/licensed lenders that were not in a position to make personal inspection of the properties involved except at disproportionate expense. For them and other nonresident lenders, the special ALTA (American Land Title Association) Policy was developed. This policy expands the risks normally insured against to include: rights of parties in physical possession, including tenants and buyers under unrecorded instruments; reservations in patents; and, most importantly, unmarketable title. The new ALTA Loan Policy (issued 10-17-92 and further revised 6-17-2006) also covers recorded notices of enforcement of excluded matters (like zoning), as well as recorded notices of defects, liens or encumbrances affecting title that result from a violation of matters excluded from policy coverage. A review by knowledgeable legal counsel of the provisions of ALTA Loan Policies is recommended before purchasing coverage, including specific endorsements.

Extended coverage. The American Land Title Association has adopted an owner's extended coverage policy (designated as ALTA Owner's Policy [10-17-92]) that provides to buyers or owners much the same protection that the ALTA policy gives lenders. The owner's policy has been recently revised and the coverage expanded. The California Land Title Association ("CLTA") has also provided expanded protection for the owner's policies it issues under standard coverage.

However, reliance on the owner's or the owner's agent notice or knowledge of defects affecting the title and not of record has also been expanded and enhanced. These policies offer no protection against defects or other matters concerning the title that are known to exist by the insured (the owner or the agents of the owner) as of the date of the policy that have not previously been communicated in writing to the insurer. These policies also offer no protection regarding governmental regulations concerning occupancy and use. The former limitation is self-explanatory; the latter exists because zoning regulations concern the condition of the land/property rather than the condition of title.

For homeowner's (1 to 4 residential units) a new CLTA/ALTA policy was developed in 1998; (ALTA Homeowner's Policy (10-17-98), and CLTA Homeowners Policy (6-2-98). As previously mentioned, these polices have been revised again. Generally, the policies are the same with the exception: the CLTA policy provides a form of Subdivision Map coverage, while the ALTA policy makes the Map Act coverage optional. The idea of the new and revised policies is to provide homeowners with a form of extended coverage. The new and revised policies contain maximums payable under certain categories of coverage and small deductibles payable by the insured. Both policies incorporate protection against certain risks that conventionally were available only to lenders and only by endorsement.

Domestic Title Insurance Companies in California

Section 12359 of the Insurance Code of California requires that a title insurance company organized under the laws of this State have at least $500,000 paid-in capital represented by shares of stock. Section 12350 requires that the insurer deposit with the Insurance Commissioner a "guarantee fund" of $100,000 in cash or approved securities to secure protection for title insurance policy holders. A title insurer must also set apart annually, as a title insurance surplus fund, a sum equal to 10 percent of its premiums collected during the year until this fund equals the lesser of 25 percent of the paid-in capital of the company or $1,000,000. This fund acts as further security to the holders and beneficiaries of policies of title insurance.

Policies of title insurance are now almost universally used in California, largely in the standardized forms prepared by the California Land Title Association ("CLTA"), the trade organization of the title companies in this State. Every title insurer must adopt and make available to the public a schedule of fees and charges for title policies. Today, it is the general practice in California for buyers, sellers and lenders, as well as the

attorneys and real estate brokers who serve them, to rely on title insurance companies for title information, title reports and policies of title insurance.

Rebate Law

Title insurance companies are required to charge for preliminary reports under the terms of legislation adopted at the 1967 general session of the California Legislature. The rebate law requires title insurance companies to not only charge for reports, but also to make sincere efforts to collect for them except in certain defined circumstances.

Title insurance companies can still furnish “the name of the owner of record and the record description of any parcel or real property” without charge. Such information may be referred to as a “property profile” or “subject property history”.

The statute extends the anti-commission provisions of Section 12404 of the Insurance Code to prohibit direct or indirect payments by a title insurance company to principals in a transaction as a consideration for title business.

Thus, the law prohibits a title insurance company from paying, either directly or indirectly, any commission, rebate, or other consideration as an inducement for or as compensation on any title insurance business, escrow or other title business in connection with which a title policy is issued. Rebates are also precluded in the Real Estate Law, as defined.

See *Business and Professions Code Section 10177.4.*

DOUGLAS COUNTY, NV	**2020-954991**
RPTT:$0.00 Rec:$40.00	
$40.00 Pgs=2	**10/22/2020 02:40 PM**
STEWART TITLE COMPANY	
KAREN ELLISON, RECORDER	E03

A.P.N. No.:	1318-15-611-055
R.P.T.T.	$ 0.00
File No.:	773805
Recording Requested By:	
Stewart Title Company	
Mail Tax Statements To:	*Same as below*
When Recorded Mail To:	
Stephen Lee Teshara	
P.O. Box 1776	
Zephyr Cove, NV 89448	

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Stephen Lee Teshara, an unmarried man, who acquired title as Steve Teshara and Sandra Teshara, husband and wife as joint tenants

for valuable consideration, the receipt of which is hereby acknowledged, does hereby Grant, Bargain, Sell and Convey to

Stephen Lee Teshara, an unmarried man,

all that real property situated in the County of Douglas, State of Nevada, bounded and described as follows:

Lot 3 in Block D, of ROUND HILL VILLAGE UNIT NO. 4, according to the map thereof, filed in the office of the County Recorder of Douglas County, State of Nevada, on April 25, 1966, as Document No. 31837.

APN: 1318-15-611-055

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: October 17, 2020

SIGNATURES AND NOTARY ON PAGE 2
THIS GRANT BARGAIN SALE DEED MAY BE SIGNED IN COUNTERPART.

COPY

(One inch Margin on all sides of Document for Recorder's Use Only)

Stephen Lee Teshara

State of NV)
) ss
County of Douglas)

This instrument was acknowledged before me on the 17 day of October, 2020
By: Stephen Lee Teshara

Signature: _____
Notary Public

My Commission Expires: 7-1-2021

ERIKA D MARSTON
Notary Public-State of Nevada
APPT. NO. 17-2694-5
My Appt. Expires 07-01-2021

COPY

(One inch Margin on all sides of Document for Recorder's Use Only)

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 1318-15-611-055
   b) _____
   c) _____
   d) _____
2. Type of Property:
   a. ☐ Vacant Land b. ☒ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ EXEMPT
   b. Deed in Lieu of Foreclosure Only (value of property) _____
   c. Transfer Tax Value: $ EXEMPT
   d. Real Property Transfer Tax Due $ 0.00

4. **If Exemption Claimed**:
   a. Transfer Tax Exemption per NRS 375.090, Section 3
   b. Explain Reason for Exemption: Transfer of title to recognize true status of ownership (correct name and vesting), without consideration
5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity Title agent

Signature _____ Capacity Title agent

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: Stephen Lee Teshara
Address: P.O. Box 1776
City: Zephyr Cove
State: NV 89448

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Stephen Lee Teshara
Address: P.O. Box 1776
City: Zephyr Cove
State: NV 89448

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: Stewart Title Company Escrow # 773805
Address: 10539 Professional Cir, Ste 102
City: Reno State: NV Zip: 89521

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

DOUGLAS COUNTY, NV
Rec:$40.00
$40.00 Pgs=4
STEWART TITLE COMPANY
KAREN ELLISON, RECORDER

2020-954990
10/22/2020 02:40 PM

APN# 1318-15-611-055

Recording Requested by:
Name: Stewart Title Company
Address: 10539 Professional Circle #102
City/State/Zip: Reno, NV 89521

When Recorded Mail to:
Name: Stephen Lee Teshara
Address: P.O. Box 1776
City/State/Zip: Zephyr Cove, NV 89448

Mail Tax Statement to:
Name: Stephen Lee Teshara
Address: P.O. Box 1776
City/State/Zip: Zephyr Cove, NV 89448

(for Recorder's use only)

Affidavit - Death of Joint Tenant

(Title of Document)

Please complete Affirmation Statement below:

○ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the personal information of any person or persons. (Per NRS 239B.030)

-OR-

◉ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the personal information of a person or persons as required by law: NRS 440-380 (1) (a) and 40.525 (5)
(State specific law)

Signature — Title Agent
Signature **Title**

Danny E Montes.
Printed Name

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030 Section 4.

This cover page must be typed or printed in black ink.

COPY

A.P.N. No.:	1318-15-611-055
File No.:	773805
Recording Requested By:	
Stewart Title Company	
Mail Tax Statements To:	*Same as below*
When Recorded Mail To:	
Stephen L. Teshara	
P.O. Box 1776	
Zephyr Cove, NV 89448	

AFFIDAVIT - DEATH OF JOINT TENANT

State of Nevada)
) ss
County of Carson City)

Stephen Lee Teshara of legal age, being first duly sworn, deposes and says: That Sandra Elisabeth Teshara, the decedent mentioned in the attached certified copy of Certificate of Death, is the same person as Sandra Teshara, named as one of the parties in that certain Grant, Bargain, and Sale Deed dated February 9, 2005 executed by Steve L. Teshara and Sandra E. Teshara, husband and wife to Steve Teshara and Sandra Teshara, husband and wife, as joint tenants, recorded as Document No. 0665313, on January 10, 2006 in Book N/A, Page N/A of Official Records of Douglas County Nevada, covering the following described property situated in Douglas County, State of Nevada.

Lot 3 in Block D, of ROUND HILL VILLAGE UNIT NO. 4, according to the map thereof, filed in the office of the County Recorder of Douglas County, State of Nevada, on April 25, 1966, as Document No. 31837.

APN: 1318-15-611-055

Dated: October 17, 2020.

Stephen Lee Teshara

State of NV)
) ss
County of Douglas)

This instrument was acknowledged before me on the 17 day of October, 2020
By: Stephen Lee Teshara.

Signature: _____
Notary Public

ERIKA D MARSTON
Notary Public-State of Nevada
APPT. NO. 17-2694-5
My Appt. Expires 07-01-2021

(One inch Margin on all sides of Document for Recorder's Use Only)

STATE OF NEVADA
CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
VITAL STATISTICS

CASE FILE NO. 4152856

CERTIFICATE OF DEATH

2020013503
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK

DECEDENT

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX)			2. DATE OF DEATH (Mo/Day/Year)	3a. COUNTY OF DEATH
Sandra Elisabeth	TESHARA		June 29, 2020	Carson City
3b. CITY, TOWN, OR LOCATION OF DEATH	3c. HOSPITAL OR OTHER INSTITUTION -Name(If not either, give street and number)		3e.If Hosp. or Inst. indicate DOA,OP/Emer. Rm. Inpatient(Specify)	4. SEX
Carson City	Carson Tahoe Regional Medical Center		Intensive Care Unit (ICU)	Female

5. RACE (Specify)	6. Hispanic Origin? Specify	7a. AGE-Last birthday (Years)	7b. UNDER 1 YEAR MOS	DAYS	7c. UNDER 1 DAY HOURS	MINS	8. DATE OF BIRTH (Mo/Day/Yr)
White	No - Non-Hispanic	75					July 01, 1944

IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS

9a. STATE OF BIRTH (If not US/CA, name country)	9b. CITIZEN OF WHAT COUNTRY	10.EDUCATION	11. MARITAL STATUS (Specify)	12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage)
Virginia	United States	12	Married	Stephen L TESHARA

13. SOCIAL SECURITY NUMBER	14a. USUAL OCCUPATION (Give Kind of Work Done During Most of	14b. KIND OF BUSINESS OR INDUSTRY	Ever in US Armed Forces?
[redacted]-0647	Bookkeeper	Radio Broadcasting	No

15a. RESIDENCE - STATE	15b. COUNTY	15c. CITY, TOWN OR LOCATION	15d. STREET AND NUMBER	15e. INSIDE CITY LIMITS (Specify Yes or No)
Nevada	Douglas	Zephyr Cove	282 Paiute Dr	Yes

PARENTS

16. FATHER/PARENT - NAME (First Middle Last Suffix)	17. MOTHER/PARENT - NAME (First Middle Last Suffix)
Hansel Young VAN FOSSEN	Ruth WRIGHT

18a. INFORMANT- NAME (Type or Print)	18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip)
Stephen L TESHARA	PO Box 1776 Zephyr Cove, Nevada 89448

DISPOSITION

19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify)	19b. CEMETERY OR CREMATORY - NAME	19c. LOCATION City or Town State
Cremation	Fitzhenry's Crematory	Carson City Nevada 89701

20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such)	20b. FUNERAL DIRECTOR LICENSE NUMBER	20c. NAME AND ADDRESS OF FACILITY
CHRISTIE D WILDE SIGNATURE AUTHENTICATED		Fitzhenrys Funeral Home 3945 Fairview Dr Carson City NV 89701

TRADE CALL

TRADE CALL - NAME AND ADDRESS

CERTIFIER

To Be Completed by CERTIFYING PHYSICIAN

21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated.(Signature & Title) SIGNATURE AUTHENTICATED
TODD CHAPMAN MD

21b. DATE SIGNED (Mo/Day/Yr)	21c. HOUR OF DEATH
June 30, 2020	12:11

21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)

To Be Completed by CORONER'S OFFICE

22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)

22b. DATE SIGNED (Mo/Day/Yr)	22c. HOUR OF DEATH

22d. PRONOUNCED DEAD (Mo/Day/Yr)	22e. PRONOUNCED DEAD AT (Hour)

23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print)	23b. LICENSE NUMBER
Todd Chapman MD 1470 Medical Pkwy Carson City, NV 89703	5933

REGISTRAR

24a. REGISTRAR (Signature)	24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr)	24c. DEATH DUE TO COMMUNICABLE DISEASE
WESLEY T STOREY SIGNATURE AUTHENTICATED	July 01, 2020	YES ☐ NO ☒

CAUSE OF DEATH

CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST

25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)

		Interval between onset and death
PART I (a)	Left Ventricular Rupture	
	DUE TO, OR AS A CONSEQUENCE OF:	
(b)	Mitral Valve Replacement	Interval between onset and death
	DUE TO, OR AS A CONSEQUENCE OF:	
(c)	Mitral Stenosis	Interval between onset and death
	DUE TO, OR AS A CONSEQUENCE OF:	
(d)	Etiology Unknown	Interval between onset and death

PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part 1.

26. AUTOPSY (Specify Yes or No)	27. WAS CASE REFERRED TO CORONER (Specify Yes or No)
No	No

28a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST. (Specify)	28b. DATE OF INJURY (Mo/Day/Yr)	28c. HOUR OF INJURY	28d. DESCRIBE HOW INJURY OCCURRED

28e. INJURY AT WORK (Specify Yes or No)	28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)	29g. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE

000822567

CERTIFIED COPY OF VITAL RECORDS

This is a true and exact reproduction of the document officially registered and placed on file in the office of the State Registrar and Vital Records.

DATE ISSUED: 7/7/2020

STATE REGISTRAR

This copy is not valid unless prepared on engraved border displaying date, seal and signature of Registrar.

THE GREAT SEAL OF THE STATE OF NEVADA

STATE OF NEVADA OFFICE of the STATE REGISTRAR and VITAL RECORDS DEPARTMENT OF HEALTH AND HUMAN SERVICES

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

WASHOE COUNTY
RECORDER

OFFICE OF THE RECORDER
KALIE M. WORK, RECORDER

1001 E. NINTH STREET
RENO, NV 89512
PHONE (775) 328-3661
FAX (775) 325-8010

LEGIBILITY NOTICE

The Washoe County Recorder's Office has determined that the attached document may not be suitable for recording by the method used by the Recorder to preserve the Recorder's records. The customer was advised that copies reproduced from the recorded document would not be legible. However, the customer demanded that the document be recorded without delay as the parties rights may be adversely affected because of a delay in recording. Therefore, pursuant to NRS 247.120 (3), the County Recorder accepted the document conditionally, based on the undersigned's representation (1) that a suitable copy will be submitted at a later date (2) it is impossible or impracticable to submit a more suitable copy.

By my signing below, I acknowledge that I have been advised that once the document has been microfilmed it may not reproduce a legible copy.

Signature

10/21/2020
Date

Danny E Montes
Printed Name

COPY

DOUGLAS COUNTY, NV
RPTT:$1326.00 Rec:$16.00
$1,342.00 Pgs=3
ETRCO, LLC
KAREN ELLISON, RECORDER

2016-883213
06/24/2016 12:02 PM

APN# : 1220-24-201-031

RPTT: $1,326.00

Recording Requested By:
Western Title Company
Escrow No.: 080582-WLD
When Recorded Mail To:
Ryan Adams and Amanda Adams
1874 Colt Lane
Gardnerville, NV 89410

Mail Tax Statements to: (deeds only)
Same as Above

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons.
(Per NRS 239B.030)

Signature _____
Wendy Dunbar **Escrow Officer**

Grant, Bargain, and Sale Deed

This page added to provide additional information required by NRS 111.312
(additional recording fee applies)

COPY

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE WITNESSETH: That

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Pamela A. Beekhof, a single woman

do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to

Amanda Adams and Ryan Adams, wife and husband as joint tenants with right of survivorship

and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of Gardnerville, County of Douglas State of Nevada bounded and described as follows:

All that certain real property situate in the County of Douglas, State of Nevada, described as follows:

Parcel 1 as shown on that certain Parcel Map for ROBERT AND YOSHIKO OSWALD recorded January 19, 1993 in Book 193, Page 2246, Official Records of Douglas County, State of Nevada as Document No. 297501.

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: 06/14/2016

COPY

Pamela A. Beekhof

STATE OF Nevada }
} ss
COUNTY OF Douglas

This instrument was acknowledged before me on

June 21, 2016.

By Pamela A. Beekhof.

Notary Public

SHERRY ACKERMANN
NOTARY PUBLIC
STATE OF NEVADA
No. 05-96319-5 My Appt. Exp. Apr. 26, 2017

COPY

STATE OF NEVADA DECLARATION OF VALUE

1. Assessors Parcel Number(s)
   a) 1220-24-201-031

2. Type of Property:
   a) ☐ Vacant Land b) ☒ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other_____

FOR RECORDERS OPTIONAL USE ONLY
DOCUMENT/INSTRUMENT #:_____
BOOK_____PAGE_____
DATE OF RECORDING:_____
NOTES:_____

3. Total Value/Sales Price of Property: $340,000.00
   Deed in Lieu of Foreclosure Only (value of property) (
   Transfer Tax Value: $340,000.00
   Real Property Transfer Tax Due: $1,326.00

4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section
   b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ **Capacity** Grantor

Signature _____ **Capacity** _____

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)	
Print Name:	Pamela A. Beekhof	**Print Name:**	Ryan Adams and Amanda Adams
Address:	1921 Wiseman Ln.	**Address:**	1874 Colt Lane
City:	Gardnerville	**City:**	Gardnerville
State:	NV **Zip:** 89410	**State:**	NV **Zip:** 89410

COMPANY/PERSON REQUESTING RECORDING
(required if not the seller or buyer)
Print Name: eTRCo, LLC. On behalf of Western Title Company Esc. #: 080582-WLD
Address: Douglas Office
1362 Highway 395, Ste. 109
City/State/Zip: Gardnerville, NV 89410

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

DOC # 0665313
01/10/2006 02:42 PM Deputy: KLJ
OFFICIAL RECORD
Requested By:
T S I TITLE & ESCROW

Douglas County - NV
Werner Christen - Recorder
Page: 1 Of 1 Fee: 14.00
BK-0106 PG-02971 RPTT: # 3

A.P. No. 1318-15-611-055
R.P.T.T. $0.00 # 3 EXEMPT
Recorded by: Fidelity National Title
Escrow No. 601198-LMR
Title Order: 05-51296-SCC
WHEN RECORDED MAIL TO:
Steve Teshara
P.O. Box 1776
Zephyr Cove, NV 89448
MAIL TAX STATEMENT TO:
Same as above

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
STEVE L. TESHARA AND SANDRA E. TESHARA, husband and wife

do(es) hereby GRANT, BARGAIN and SELL to
STEVE TESHARA AND SANDRA TESHARA, husband and wife, as joint tenants

the real property situate in the County of Douglas, State of Nevada, described as follows:

All that certain Lot, Piece or Parcel of Land situate in the County of Douglas, State of Nevada more particularly described as follows:

Lot 3, Block D. as shown on the map of Round Hill Village Unit No. 4, filed in the Office of the County Recorder of Douglas County, Nevada on April 25, 1966 as Document No. 31837.

Date: February 9, 2005

Steve L. Teshara

STATE OF California
: ss.
COUNTY OF El Dorado

Sandra E. Teshara

On 1-5-2006 before me, Lila M Rohrich
Personally appeared Steve L. Teshara & Sandra E Teshara
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my ~~hand and official~~ seal.

LILA M. ROHRICH
COMM. # 1576183
NOTARY PUBLIC-CALIFORNIA
EL DORADO COUNTY
COMM. EXP. MAY 3, 2009

DOUGLAS COUNTY, NEVADA

Assessor's Parcels
Douglas County Assessor

Map Legend

Parcel Boundary	001 Parcel Number
Subdivision Boundary	110 Parcel Sub/Seq Number
Town Boundary	1.0 Ac Parcel Acreage
Township/Range/Section	B L K A Parcel Block Number
Open Space/Conservation Easements	1 Parcel Lot Number
	1100 Parcel Address

T 13 N R 18 E

R18E R19E R20E
R21E R22E R23E R24E
T14N
T13N
T12N
T11N
T10N
T9N
T8N

SEC. 15

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

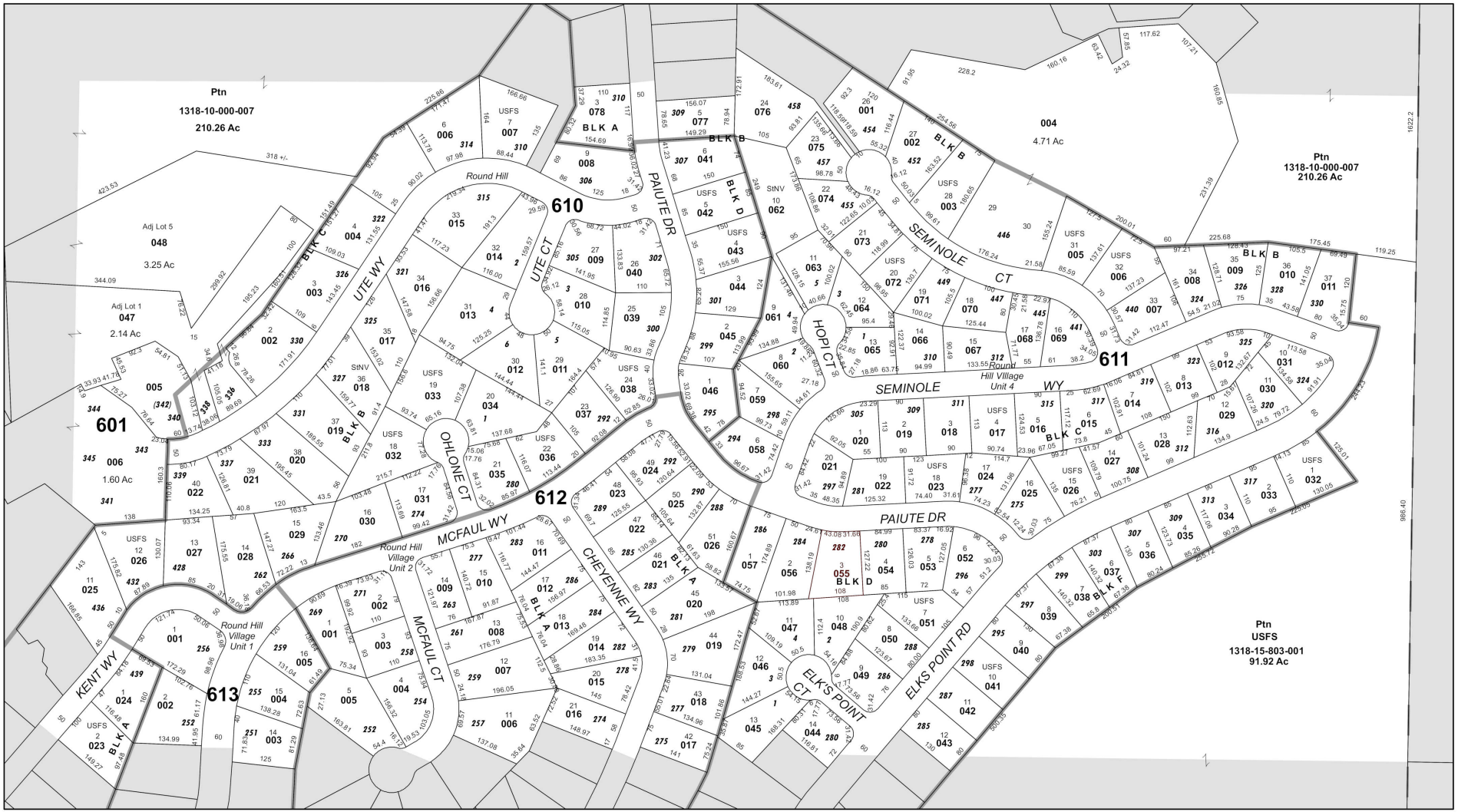
S 1/2 NE 1/4

1	5
2	6
3	7
4	8

1318-15-6

DOUGLAS COUNTY GIS

SCALE: 1 " = 200 '
REVS'D: 8/10/2016



NOTE: This map is prepared for the use of the Douglas County Assessor, for assessment and illustrative purposes only. It does not represent survey of the premises. No liability is assumed as to the sufficiency or accuracy of the data delineated hereon.

Barclays Official California Code of Regulations Currentness
Title 18. Public Revenues
Division 1. State Board of Equalization - Property Tax (California Department of Tax and Fee Administration - Timber Yield Tax, See Chapter 11)
Chapter 2. Assessment
Article 6. Local Roll

18 CCR § 266

§ 266. Location of Local Roll for Inspection.

The local roll or a copy thereof shall be made available for inspection by all interested parties during regular office hours of the officer having custody thereof. Copies may be made available for inspection at other places for the convenience of the public.

Note: Authority cited: Section 15606, Government Code. Reference: Section 1602, Revenue and Taxation Code.

HISTORY

1. Renumbering of former section 304 to section 266 filed 6-11-2002; operative 7-11-2002 (Register 2002, No. 24).

This database is current through 2/19/21 Register 2021, No. 8

18 CCR § 266, 18 CA ADC § 266

End of Document

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Barclays Official California Code of Regulations Currentness
Title 18. Public Revenues
Division 1. State Board of Equalization - Property Tax (California Department of Tax and Fee Administration - Timber Yield Tax, See Chapter 11)
Chapter 2. Assessment
Article 6. Local Roll

18 CCR § 252

§ 252. Content of Assessment Roll.

(a) Minimum Contents of "Machine-Prepared" or "Electronic" Local Rolls. "Machine-prepared" roll within the meaning of Revenue and Taxation Code section 109.5 includes any preparation of the local roll by the assessor of each county by an electronic medium. In accordance with Revenue and Taxation Code section 601 et seq., each local assessment roll shall contain, at a minimum, the following information:

(1) The name of the county.

(2) Either the calendar year in which the roll is prepared or the fiscal year for which the taxes are levied.

(3) An explanation of abbreviations and legends appearing on the roll.

(4) On the secured roll, the assessor's parcel number or other legal description that identifies each parcel of taxable land, each parcel for which an exemption is enrolled, and each taxable possessory interest in tax-exempt real estate to which the exemption authorized by section 218 of the Revenue and Taxation Code has been applied. The assessment of the taxable possessory interest shall not be a lien on the tax-exempt real estate and that fact shall be noted on the secured roll.

(5) On the unsecured portion of the roll, the assessor's parcel number or other legal description that sufficiently identifies the location of each taxable possessory interest, improvement, or personal property.

(6) The name of the assessee, if known.

(7) The latest mailing address (not an e-mail address) of the assessee contained in the assessor's records.

(8) The separately stated assessed values of all land, improvements, and personal property subject to taxation at general property tax rates (or payments in lieu of property tax computed by applying general property tax rates to fixed or variable "assessed values"), and the separately assessed values of any privately owned land, improvements, and personal property of a type that is exempt from taxation, but is subject to ad valorem special assessments when within a district levying such assessments. If real property is situated within a resource conservation district that is levying a special assessment, the assessed value of mineral rights must be separated from the land value.

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(9) The tax rate area in which each piece of property assessed is situated.

(10) The penalties imposed upon such assessments, in the form required by California Code of Regulations, title 18 (Public Revenue), section 261 (Rule 261).

(11) The assessed value of any property that escaped assessment in a prior year, together with the following notation: Escape-(Date).

(12) The exempt amount of any assessed values required by paragraph (a)(8) to be enrolled, with identifying legends or distinctive positions for amounts allowed pursuant to any reimbursable exemption.

(13) The total net taxable value.

(14) In a separate section of the roll, the assessed value of any personal property for which tax revenues are subject to allocation in a manner different from that provided for general property tax revenues (e.g., general aircraft).

(15) On the secured roll, a cross-reference notation made pursuant to Revenue and Taxation Code section 2190.2 that is adjacent to the assessment of any taxable land when a possessory interest in such land or an improvement thereon is separately assessed to another owner pursuant to section 2188.2 of the Revenue and Taxation Code.

(16) After each assessment of tax-defaulted property, the assessor shall enter on the roll the fact that it is tax-defaulted and the date of declaration of the default.

(17) Any other items required by the State Board of Equalization for the purpose of identification and valuation of all locally assessed property and the collection of property taxes thereon.

(b) Assessed Values of Exempt Property Not Required to Be Enrolled. Parcel numbers or other legal descriptions of exempt real property may be entered on the roll without assessed values. Alternatively, such exempt real property may be listed with assessed values shown in a separate column or field (e.g., a comments field) or in the exemption column or field on lines that are coded in such manner as to preclude the addition of the assessed values when the exemption column or field is totaled; the assessed values shall not be shown in land or improvement columns or fields.

(c) Content of Extended Roll. The extended assessment roll or new local assessment roll for the extension of taxes prepared by the county auditor shall contain, in addition to all of the contents required by subsection (a) of this rule at least the following:

(1) The mailing address, if known, of the assessee.

(2) The revenue district for each group if assessments are grouped by revenue district, and for each assessment if assessments are not so grouped.

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(3) All tax rates and ad valorem special assessment extensions required by law.

(4) The amount of tax to be paid on the property listed. The amounts due in installments shall be stated separately and shall be totaled. All rates applicable to any assessment may be combined into a single figure for purposes of computation and extension of the roll.

(5) At the beginning of the roll, or at the beginning of each tax-rate area grouping on the roll, a list of all revenue districts levying taxes within each tax-rate area in the county.

(6) An identification of each tax-defaulted property sold, with the date of sale.

(d) Minimum Contents of Local Rolls Not "Machine-Prepared."

(1) The local roll of each county utilizing a roll that is not "machine-prepared" within the meaning of Revenue and Taxation Code section 109.5 shall have the contents specified in subsections (a) and (c) of this rule.

(2) The secured assessments shall be arranged in ascending parcel number order within tax-rate area groupings, with unparcelled properties at the end of each tax-rate area group if there are both parcelled and unparcelled properties in the tax-rate area.

(e) Roll Posted on the Internet. If a local roll is posted on the Internet, the home address or telephone number of any elected or appointed official, as defined in Government Code section 6254.21, or of the official's residing spouse or child, shall not be posted without first obtaining the written permission of that official.

(f) Nothing in this regulation is meant to alter the intent of section 109.6 of the Revenue and Taxation Code.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 75.31, 109, 109.5, 109.6, 601, 602, 618, 619, 1612, 1614, 1646, 2152, 2188.2, 2190, 2190.2 and 2601, Revenue and Taxation Code; and Section 6254.21, Government Code.

HISTORY

1. Amendment filed 7-20-71; effective thirtieth day thereafter (Register 71, No. 30). For prior history, see Register 69, No. 3.

2. Amendment of subsection (f)(1) filed 8-7-73; effective thirtieth day thereafter (Register 73, No. 32).

3. Amendment of subsection (a) filed 2-18-75; effective thirtieth day thereafter (Register 75, No. 8).

4. Amendment of NOTE filed 10-26-77; effective thirtieth day thereafter (Register 77, No. 44).

5. Amendment filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).

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6. Amendment of section and Note filed 6-11-2002; operative 7-11-2002 (Register 2002, No. 24).

7. Editorial correction of subsections (a) and (e)(2)(E) (Register 2002, No. 30).

8. Amendment of subsections (a) and (a)(10)-(11), repealer of subsection (a)(16), subsection renumbering, amendment of subsection (b), repealer of subsections (e)-(e)(3), new subsection (e) and amendment of Note filed 1-14-2013; operative 4-1-2013 (Register 2013, No. 3).

This database is current through 2/19/21 Register 2021, No. 8

18 CCR § 252, 18 CA ADC § 252

End of Document

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