

CALIFORNIA PRACTICE GUIDE REAL PROPERTY TRANSACTIONS 2025 UPDATE

The 2025 softbound update completely replaces the 2024 update.

It's been another busy year! Among the many changes, a statutorily prescribed "buyer-broker representation agreement" is now available, mortgage servicers have been tasked with several new duties to subordinate mortgagees, and the "2025 Tax Act" (Pub.L. 119-21, July 4, 2025, 139 Stat. 72) has resulted in substantial revisions to the tax treatment of real estate.

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2025 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was July 15, 2025. Some of the new cases cited were not final as of that date, so be sure to check the subsequent histories before citing or relying on them.

Thank You! As always, we appreciate your comments and suggestions regarding this Practice Guide. *Please keep them coming!*

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2025 UPDATE HIGHLIGHTS

CHAPTER 1

COMMENCING REPRESENTATION: SCOPE OF ATTORNEY'S WORK AND FEE ARRANGEMENTS

Scope of Work

[1:25] **Buyer-broker representation agreements:** See ¶12:425 *ff. of the Highlights Summaries.*

CHAPTER 2

REAL ESTATE BROKERS, LISTING AGREEMENTS AND BUYER-BROKER REPRESENTATION AGREEMENTS

Brokers' Fiduciary Duties

[2:140] **Dual agency issues:** In a “matter of first impression,” a seller's claim for breach of fiduciary duty against his real estate brokers for not disclosing their dual agency was assignable to the seller's daughter. Reason: The damages being sought pertained solely to the seller's property and pecuniary interests. [*Lazar v. Bishop* (2024) 107 CA5th 668, 675, 328 CR3d 483, 487]

Buyer-Broker Representation Agreements

[2:425-425.9] **Effective January 1, 2025:** A statutorily prescribed “buyer-broker representation agreement” is now available. The agreement requires, among other things, that the terms related to the broker's compensation be set forth as well as the services to be rendered. In addition, the buyer and broker must execute the agreement as soon as practicable, but no later than execution of the buyer's offer to purchase the real property. [New Civ.C. §1670.50]

CHAPTER 3

TITLE INSURANCE

Insurer's Obligations

[3:323] **Duty to defend:** An insurer acted in bad faith when it repeatedly denied its insured's tender for defense by, among other things, ignoring the possibility of coverage. [*Bartel v. Chicago Ins. Co.* (2025) 111 CA5th 655, 690, 704-706, 333 CR3d 38, 66-80]

[3:332] **Duty of good faith and fair dealing:** The insurer not only violated its contractual duty to defend its insured (¶3:323), it also violated its implied covenant to fairly and in good faith assess the possibility of coverage based on any available facts. [*Bartel v. Chicago Ins. Co.* (2025) 111 CA5th 655, 704, 333 CR3d 38, 78]

Accrual of Action Against Insurer Based on Refusal to Defend

[3:366] **Equitable tolling until conclusion of underlying action:** An insured's tender of defense to its insurer in response to a neighbor's cross-complaint not only triggered the insurer's duty to defend (¶3:323), it also equitably tolled the two-year statute of limitations for bringing suit against the insurer. [*Bartel v. Chicago Title Ins. Co.* (2025) 111 CA5th 655, 681, 333 CR3d 38, 59-60]

CHAPTER 4
PURCHASE AND SALE AGREEMENT

Interests to be Conveyed

[4:102] **Express/implied easements:** A trial court's judgment was reversed where its findings regarding a seller's express or implied easement were inconsistent with its finding that the seller did not grant the buyer permission to use the seller's property. [*Batta v. Hunt* (2024) 106 CA5th 295, 305-306, 326 CR3d 761, 770-771]

[4:102g] **Statutory duty to maintain easement in good repair:** Easement owners have a duty to maintain in good repair any easement in the nature of a private right-of-way and any land to which the easement is attached (Civ.C. §845(a)). However, an apurtenant easement owner was not obligated to stabilize a riverbank on the servient estate that was located some 30 to 50 ft. away in order to protect her easement from the risk of the riverbank's future erosion. [*Schneider v. Lane* (2024) 107 CA5th 39, 51-52, 327 CR3d 786, 794-795]

[4:102.19; 4:102.20e] **Action to determine prescriptive/equitable easement's existence; unpermitted retaining wall:** As a "matter of law," owners of a purported dominant tenement could not establish a prescriptive or equitable easement for an unpermitted retaining wall and other encroachments they built over a portion of the purported servient property. [*Wang v. Peletta* (2025) 112 CA5th 478, —, 334 CR3d 474, — (2025 WL 1779191, *4-5 & *7-8)]

Liquidated Damages Clause

[4:316.6] **Enforceable against shopping center landlord:** The California Supreme Court has determined a commercial lease provision that varied a retail tenant's rent based on a shopping center's occupancy level or number of anchor stores was valid and thus enforceable against the shopping center landlord. [*JJD-HOV Elk Grove, LLC v. Jo-Ann Stores, LLC* (2024) 17 C5th 256, 260, 269-270, 328 CR3d 61, 63, 70-72]

Disclosure Requirements

[4:366.24] **Transfer fees created on or after 1/1/19 prohibited; exceptions:** Civ.C. §1098.6's transfer fee prohibition does *not* apply to a *private transfer fee covenant* if four requirements are met. [See New Civ.C. §1098.6(a)(3)]

Admissibility of Extrinsic Evidence

[4:529] The parol evidence rule barred a commercial lessee's use of extrinsic evidence to establish the termination date for its amended municipal airport property lease. [*Coyote Aviation Corp. v. City of Redlands* (2025) 111 CA5th 955, 974, 333 CR3d 273, 287-288]

CHAPTER 5
ENVIRONMENTAL HAZARDS LIABILITY

CERCLA Liability

[5:60] **Federal government immunity:** Sovereign immunity shielded

the federal government from plaintiffs' claim that a shipyard's environmental hazardous condition fell within the scope of the Federal Tort Claims Act's misrepresentation exception. Thus, plaintiffs' argument that CERCLA (42 USC §9620(h)) *implicitly* limits or suspends said exception was rejected. [*Abbey v. United States* (9th Cir. 2024) 112 F4th 1141, 1143, 1152-1153]

CHAPTER 6

FINANCING AND APPRAISALS

Legislative Protection From Foreclosures

[6:512.13-512.18; 6:526.11; 6:538.1; 6:544.4] **Mortgage servicer's duties to subordinate mortgagees:** Commencing June 30, 2025, certain conduct in connection with a subordinate mortgage is deemed unlawful (e.g., failing to provide the borrower with any communication regarding a loan secured by the mortgage for at least three years). Thus, mortgage servicers are prohibited from conducting, or threatening to conduct, *nonjudicial* foreclosures until they comply with several statutory duties; their failure to do so is a basis for enjoining or setting aside a *nonjudicial* foreclosure. And, in a *judicial* foreclosure proceeding, failure to comply with these statutory duties is an affirmative defense. [New Civ.C. §2924.13]

[6:524.2] **Low volume foreclosures:** The low volume foreclosure bucket has been expanded to include a person or entity that makes and services 7 or fewer residential real estate purchase money loans in a calendar year. [New Civ.C. §2924.18(b)(2)]

[6:524.3] **"Contact" requirement:** Mortgage servicers must now notify a borrower during the initial "contact" that a third party (e.g., family member, HUD-certified housing counselor, or attorney) may record a request to receive foreclosure related notices and that receiving a copy of these documents may allow a third party to assist the borrower in avoiding foreclosure. [New Civ.C. §2923.5a(2)(B)]

Nonjudicial Trustee's Sale

[6:532] **Trustor's interim right of reinstatement; five-day presale deadline:** If a trustee's sale is postponed to allow the trustor to list a property for private sale, Civ.C. §2924c's reinstatement deadline is extended until five business days before the postponed sale date. [New Civ.C. §2924f(e)(2)]

[6:532.10; 6:532.15] **Postponement of foreclosure sale; "act of force majeure":** A nonjudicial foreclosure sale may be postponed at any time prior to completion of the sale if an "act of force majeure" prevents access to the sale location. [Amended Civ.C. §2924g(c)(1)(D) & (E); see also New Civ.C. §2924g(f) (defining "act of force majeure")]

In the event of an "act of force majeure," the trustee's sale is postponed seven calendar days at the same time and location. However, the trustee need not make the public declaration of postponement that otherwise would be required. [New Civ.C. §§2924g(a)(2)(B) & (d)(2); see also amended Civ.C. §2924g(a)(4)]

[6:532.10a-532.10f] **Mandatory postponements of foreclosure**

sales for residential properties to prevent “equity stripping”: Recognizing that foreclosure auctions often yield artificially low prices, thereby depriving borrowers of the equity in their homes, the Legislature has introduced two preforeclosure requirements intended to encourage sales of homes in foreclosure at prices close to fair market value. [New Civ.C. §2924f(e) & (f)]

[6:533] **Foreclosure sale by public auction:** A trustee may now require any non-cash bid be made payable directly to the trustee provided the notice of sale sets forth this requirement. [New Civ.C. §2924h(b)(2)]

And, if necessary, the trustee may require a successful bidder to replace a check drawn on a credit union or savings and loan association or cash equivalent with a similar instrument made payable directly to the trustee. [Amended Civ.C. §2924h(c)]

[6:533b] **Minimum bid requirement for residential properties with no more than four dwelling units:** Commencing January 1, 2025, a trustee may not accept a bid at the trustee’s initially scheduled foreclosure sale for less than 67% of the fair market value of a residential property with no more than four dwelling units. And the beneficiary must provide the trustee with a fair market value number at least ten days prior to the initially scheduled date of sale. [New Civ.C. §2924f(f)(1); see also new Civ.C. §2924f(f)(3) (defining “fair market value”)]

Notwithstanding the foregoing, failure to comply with the above requirements does not affect the validity of a trustee’s sale or sale to a bona fide purchaser for value. [New Civ.C §2924f(f)(4)]

If the property does not sell for the minimum price at the initial auction, the trustee must postpone the sale for at least seven days. Thereafter, the property may be sold to the highest bidder. [New Civ.C. §2924f(f)(2)]

[6:535.10k] **Eligible bidders; bid requirements:** As of July 18, 2024, eligible bidders have had to limit their bids to a single amount and cannot include instructions for successive bid amounts. [Amended Civ.C. §2924m(c)(4)(A)]

[6:535.10m] **Trustee’s post-sale duties:** As of July 18, 2024, if Civ.C. §2924m does not require the winning bidder to submit an affidavit or declaration, the trustee must instead attach a statement to the trustee’s deed affirming that no affidavit or declaration is required. The lack of an affidavit or declaration does not prevent recordation of the trustee’s deed or invalidate the transfer of title. [Amended Civ.C. §2924m(d)]

[6:535.14] **Additional notice to potential claimants; 90 day prohibition re contacting owner:** No person is permitted to contact, solicit or initiate communication with an owner to claim the surplus funds from a foreclosure sale of the owner’s residence for 90 days after the trustee’s deed has been recorded. [New Civ.C. §2924.21]

CHAPTER 12

RESIDENTIAL CO-OWNERSHIP AGREEMENTS

Termination of Relationship/Sale of Property

[12:38] **Partition:** A deceased co-owner’s siblings lacked standing

to prosecute a partition claim absent clear title to the subject property. Reason: Ongoing probate proceedings had yet to determine whether decedent's co-owner was entitled to all or part of the property. [*Amundson v. Catello* (2025) 111 CA5th 817, —, 333 CR3d 548, 551]

CHAPTER 13

REAL PROPERTY PURCHASE AND SALE TAX CONCERNS

Inherited Property

[13:22] **“2025 Tax Act”**: The 2017 Tax Act's estate tax exemption was set to expire after 2025, but the “2025 Tax Act” has permanently increased the estate tax exemption to *\$15 million* starting in 2026, with adjustment for inflation annually. [Amended IRC §2010(c)(3) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

Deductions in Connection with Purchase of Property

[13:56] **Real property taxes**: If the purchase price of real property includes reimbursement of the seller for property taxes already paid by the seller, that portion of the taxes allocable to the period after the sale occurs are treated as imposed on the buyer and may be deductible by the buyer, subject to a *\$40,000* cap on the aggregate amount of state property, sales and state and local income taxes deductible on federal returns. They are not capitalized as part of the cost of the property. [Amended IRC §164(b)(6), (d) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

Depreciation Deductions

[13:132.2] **Immediate expensing in year of purchase of tangible personal property**: The maximum aggregate cost of tangible personal property used in a trade or business is *\$2,500,000*. The phaseout level is *\$4,000,000* in 2025, adjusted annually for inflation in *\$10,000* increments. If the total cost of §179 purchases exceeds the phaseout level, the maximum §179 deduction is reduced dollar-for-dollar by the excess of such purchase over the phaseout level. [Amended IRC §179(a), (b)(1),(2),(6) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

[13:137.2] **Improvements; “bonus depreciation”**: For qualified property placed in service by a taxpayer during the first taxable year ending *after 1/19/25*, the taxpayer may elect to use a *40%* recovery rate (or *60%* for property with a longer production period), instead of the *100%* rate with respect to certain qualified property. [Amended IRC §168(k)(10) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

[13:137.2b] **Qualified production property (QPP)**: Certain nonresidential property used by a taxpayer as an integral part of a “qualified production activity,” where construction starts after 1/19/25 and before 1/1/29 and the property itself is placed in service before 1/1/31, is entitled to a *100%* deduction of the property's adjusted basis in the year it is placed in service. [New IRC §168(n)(1), (2) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

Deduction for Interest

[13:165.2] **Business interest**: The term “business interest” means any interest paid or accrued on indebtedness properly allocable to

a trade or business. It does not include investment interest and does not include interest that is capitalized. [Amended IRC §163(j)(5) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

[13:178] **Qualifying debt for qualified residence interest (QRI):** For debts incurred *after 12/15/17*, the aggregate amount treated as acquisition indebtedness cannot exceed \$750,000 (\$375,000 in the case of a married person filing a separate return). [Amended IRC §163(h)(3)(F)(i) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

Deduction of Real Property Taxes

[13:200.2] **“Applicable Limitation Amount”:** The aggregate amount of property, sales, and state and local income taxes that may be deducted on a federal return, may not exceed the “Applicable Limitation Amount” which is *\$40,000 in 2025 and \$40,400 in 2026*. In the years beginning after 2026 and before 2030, the “Applicable Limitation Amount” is 101% of the dollar amount in effect in the preceding calendar year. In the case of any taxable year beginning after 2029, the “Applicable Limitation Amount” is *\$10,000*. [Amended IRC §164(b)(6), (7)(A)(i)-(iv) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

There also is a phasedown based on modified gross income. [See Amended IRC §164(b)(7)(B)(i)-(iii) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

Deduction for Qualified Business Income

[13:258.11] Starting in 2026, taxpayers having at least \$1,000 of qualified business income from all their active qualified trades or businesses will receive the greater of the deduction permitted under §199A and \$400, with annual adjustments to both numbers for inflation. [Amended §199(A)(i) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

“Qualified Opportunity Zones” (Economically Distressed Communities)

[13:344.4] **IRC §1400Z-1 et seq.:** Gains from property sales that are reinvested within 180 days in “Qualified Opportunity Funds” (¶13:344.5) are, at the election of the taxpayer, deferred until the earlier of the date the investments are sold or exchanged and December 31, 2026, provided the investments were made *before December 31, 2026*. For investments made *after December 31, 2026*, the reinvested gains may, at the election of the taxpayer, be deferred until the earlier of the date the investments are sold or exchanged *or* by the date that is five years *after* the date the investments in the “Qualified Opportunity Fund” were made. [Amended IRC §1400Z-2(a), (b) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

[13:344.8] **Substantial improvement to “Qualified Opportunity Zone Business Property”:** Substantial improvement is measured by additions to the basis during any 30-month period from when a property was originally acquired that exceed an amount equal to the adjusted basis at the beginning of the 30-month period (or 50% of the adjusted basis of the property in the case of property comprised entirely of a rural area). [Amended IRC §1400Z-2(d)(2)(ii) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

[13:344.10] **Low income community:** To qualify as low income,

a community's poverty rate (i) must be at least 20% and (ii) the median family income may not exceed 125% of the metropolitan area median family income or, if the community is *not* located within a metropolitan area, the median family income may not exceed 125% of the statewide median family income. Alternatively, a community located within a metropolitan area qualifies as low income if its median family income does not exceed 70% of the metropolitan area median family income *or*, if the community is located outside a metropolitan area, the median family income does not exceed 70% of the statewide median family income. [Amended IRC §1400Z-1(c)(1) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

A designation as a “Qualified Opportunity Zone” must remain in effect for a period of 10 years from January 1 following the date on which the qualified opportunity zone was certified and designated by the Secretary. [Amended IRC §1400Z-1(e)(1), (2) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

[13:344.13] **“Qualified Rural Opportunity Fund”:** For investments in a “Qualified Opportunity Fund” (¶13:344.5) that holds at least 90% of its assets in qualified opportunity zone property located entirely within qualified opportunity zone property outside (and not contiguous with or adjacent to) areas with populations over 50,000 (a “Qualified Rural Opportunity Fund”), the basis of any investment held for at least five years must be increased by an amount equal to 30% of the amount of the gain deferred. [Amended IRC §1400Z-2(b)(2)(B)(iii), (C) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

[13:344.14] **Ten Years:** The basis for any investment held by a taxpayer for at least ten years, and for which the taxpayer makes an election, “shall” be equal to (i) the fair market value of the investment on the date it is sold or exchanged provided the investment was sold before the date that is 30 years after the date of the investment or (ii) in all other cases, the fair market value of the investment on the date that is 30 years after the date of the investment. [Amended IRC §1400Z-2(c) (Pub.L. 119-21, July 4, 2025, 139 Stat. 72)]

Charitable Contributions of Conservation Easements

[13:394.7] **Valuation:** The charitable contribution amount may take into account the financial feasibility of the highest and best use of the property. However, when this involves a speculative venture, an income method usually is considered inappropriate. [See *Beaverdam Creek Holdings, LLC v. Commissioner*, TC Memo 2025-53; *Seabrook Property LLC v. Commissioner*, TC Memo 2025-6]

[13:394.7a] **Inventory issue:** In one action, the IRS’s inventory characterization of donated property was rejected based on the IRS’s attempt to impute the other partners’ business activities to the contributing partner and partnership. [*Jackson Crossroads, LLC v. Commissioner*, TC Memo 2024-111]

[13:394.9] **Syndicated conservation easements’ four elements:** After several courts struck down the IRS’s syndicated conservation easements listing notice, the IRS published regulations identifying the four elements of a syndicated conservation easement. [See New Treas.Reg. §1.6011-9(b), eff. 10/8/24]

Amount of Gain or Loss Realized

[13:395] **Income realized by corporations abroad:** The Supreme Court has upheld the constitutionality of a tax that attributes income realized by corporations abroad to their U.S. shareholders. [*Moore v. United States* (2024) 602 US 572, 577-578, 584, 599-600, 144 S.Ct. 1680, 1684-1685, 1688-1689, 1697]

