

Chapter 1

California Court System

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100 INTRODUCTION

The California Constitution, article VI, section 1, established and authorized the judicial power of California in the Supreme Court, Courts of Appeal, and Superior Courts.

101 APPELLATE COURTS

There are three levels of appellate courts in California: (1) appellate division of the superior court; (2) Courts of Appeal; and (3) Supreme Court. Decisions of small claims court are appealed to the appellate division of the superior court. Limited civil case appeals are generally taken to the appellate division of the superior court; and decisions in unlimited civil cases are appealed to the Courts of Appeal. Criminal court cases are appealed to the California Supreme Court when judgment of death has been pronounced. (Cal. Const., art. VI, § 11.)

102 CALIFORNIA SUPREME COURT

The Supreme Court of California is the state's highest court, and its decisions are binding on all other California state courts. It has:

A. *Original Jurisdiction.* The Supreme Court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus (mandate), habeas corpus (legality of confinement), prohibition (jurisdictional challenges), and certiorari (review). (Cal. Const., art. VI, § 10.)

B. *Appellate Jurisdiction.* The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. (Cal. Const., art. VI § 11.) It also has appellate jurisdiction in all other matters which it orders transferred to itself from a court of appeal, and it may also or-

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der a cause transferred from one court of appeal or division to another. (Cal. Const., art. VI, § 12.)

103 COURTS OF APPEAL

The Courts of Appeal are California's intermediate courts of review. They have:

A. *Original Jurisdiction.* A court of appeal may issue the same types of writs as the Supreme Court, directed to a lower court. (Cal. Const., art. VI, § 10.)

B. *Appellate Jurisdiction.* The courts of appeal have appellate jurisdiction in all cases where the superior courts have original jurisdiction, except when judgment of death has been pronounced, and in other causes specifically prescribed by statute. (Cal. Const., art. VI, § 11.)

104 SUPERIOR COURTS

A court may exercise jurisdiction not inconsistent with the California or U.S. Constitutions. (Code Civ. Proc., § 410.10.) The superior court is the trial court of general jurisdiction. Each county has a superior court which has:

A. *Original Jurisdiction.* Superior courts have original jurisdiction in all causes except those given by statute to other trial courts. Superior courts have original jurisdiction in unlimited civil cases (above \$35,000), limited civil cases (below \$35,000) (Code Civ. Proc., § 85 et seq.), family law matters (i.e., adoption, dissolution of marriage, annulments, legal separations, paternity), probate matters, misdemeanors and felonies. It may issue the same types of writs as the Supreme Court, directed to a lower court. (Cal. Const., art. VI, § 10.)

B. *Appellate Jurisdiction.* Superior courts have appellate jurisdiction in causes prescribed by statute that arise in limited civil cases in their counties. These causes would include those arising out of the small claims division. (Cal. Const., art. VI, § 11.)

104.1 Small Claims Courts

There is a small claims division (or small claims court) in each superior court. (Code Civ. Proc., § 116.210.) The judges of those courts exercise the functions of the small claims division.

A. *Original Jurisdiction.* The small claims division has *original jurisdiction* only in specified civil actions as outlined in Code of Civil Procedure sections 116.220 and 116.221, as follows:

Demand does not exceed:

1. \$6,250, action brought by a natural person or sole propri-

etor, and does not involve a defendant guarantor (someone who promises to pay what another person or business owes).

2. \$12,500, action brought by a natural person against the Registrar of the Contractors' State License Board as the defendant guarantor.

3. \$8,125, action brought by a natural person against a defendant guarantor that charges a fee for its guarantor or surety services.

4. \$6,250, action brought to recover money (and does not involve a defendant guarantor), enforce payment of delinquent unsecured personal property taxes (if legality of tax is not contested by the defendant, and does not involve a defendant guarantor), issue writ of possession authorized by Civil Code sections 1861.5 and 1861.10, to confirm, correct, or vacate a fee arbitration award between an attorney and client.

5. \$5,000, action brought by an entity other than a natural person against a defendant guarantor that charges a fee for its guarantor or surety services or against the Registrar of the Contractors' State License Board as the defendant guarantor.

6. \$3,125, action against a defendant guarantor that does not charge a fee for its guarantor or surety services.

B. Right to Appeal. Judgments rendered in the small claims court may be appealed only by the defendant to the superior court, but a plaintiff may appeal the judgment with respect to a claim of the defendant. (Code Civ. Proc., § 116.710.)

The insurer of the defendant may appeal the judgment to the superior court if the judgment exceeds \$2,500 and the insurer stipulates that defendant's policy covers the matter to which the judgment applies.

A defendant who does not appear at the hearing may not appeal the judgment but may make a motion to vacate the judgment pursuant to Code of Civil Procedure sections 116.730 or 116.740 and also may appeal the denial of that motion.

The motion shall be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties. The motion shall be accompanied by a supporting declaration, and shall be filed within 180 days after the defendant discovers or should have discovered that judgment was entered against the defendant. If the motion is denied, the defendant may appeal to the superior court only on the denial of the motion to vacate the judgment. The defendant shall file the notice of appeal with the clerk of the small claims court within 10 days after the small claims court has mailed or delivered notice of the court's denial of the motion to vacate the judgment.

C. Limitations. No one, except a public entity, may file more

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than two small claims actions anywhere in the state in any calendar year where the demand exceeds \$2,500. If the amount demanded exceeds \$2,500, the claimant shall file a declaration, under penalty of perjury, stating that claimant has not filed more than two small claims actions during the calendar year in which the demand exceeded \$2,500. (Code Civ. Proc., § 116.231.)

105 RULES OF COURT

California Rules of Court are adopted by the Judicial Council pursuant to the California Constitution, article VI, section 6. They are published in Deering's Annotated Codes, Matthew Bender's Standard California Codes, and West's Annotated Codes, among other places. Periodic additions and amendments are published in advance sheets, official and *California Reporter* (Cal.Rptr.), and in legal newspapers in some counties. They may also be found on the Internet at courts.ca.gov/rules.

In addition to Judicial Council forms, you may use CEB Essential Forms store.ceb.com/essential-forms-judicial-council-forms-2, (800) 232-3444. Essential Forms is a powerful California legal resource that allows you to easily and efficiently complete, print, and store California Judicial Council Forms. It features shrink-to-fit fonts, custom form groups, custom fields, and a database that automatically fills in new forms with shared data.

Essential Forms software is electronically updated when California Judicial Council Forms are updated.

Essential Forms' top-end features include add-on County Forms Packages. These forms packages are updated electronically when counties issue updated forms.

Local court rules, adopted by the individual courts in each county, are available from the court clerk, legal publishers, or bar associations. In some counties, they are published in legal newspapers. They are also on the Internet at courts.ca.gov/rules. (Refer to Paragraph 106 below. Essential Publishers offers access to court rules for all 58 counties.)

106 LOCATION OF COURTS

A roster of all California and federal courts located in this state, together with fee schedules is contained in the *California Courts Directory and Fee Schedule*, compiled and published annually by The California Court Association, Inc., and may be ordered from calcourt.org. This information may also be found at courts.ca.gov/courts.

Chapter 2

Statutes of Limitation/Jurisdiction

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200 INTRODUCTION

A civil action is a proceeding filed in a court of law, by which one party prosecutes another for the declaration, enforcement, or protection of a private right, or the redress or prevention of a private wrong. In such action, the party complaining is known as the plaintiff, and the adverse party is known as the defendant.

Civil actions are commenced in one of the following courts having jurisdiction of the subject matter of the claim or complaint (or, in an appellate court, in exercise of its power to grant writs):

- A. Superior Court.
- B. U. S. District Courts. (LPH Ch. 12)

(Cross-Refer: Weil & Brown et al., *California Practice Guide: Civil Procedure Before Trial* (TRG), Chs. 1-4.)

201 TIME OF COMMENCING CIVIL ACTIONS— STATUTES OF LIMITATIONS

Civil actions must be filed within prescribed periods of time after the cause of action accrues. This prescribed period of time is known as the “statute of limitation.” Otherwise, in the absence of waiver or estoppel, the action will be barred. If an action is filed, a defendant may challenge the pleading based on the applicable statute of limitation by way of demurrer only if the bar is disclosed in the matters alleged in the complaint. The statute of limitation, and the precise subdivision thereof, must be pleaded as a defense in the answer and specifically itemized in the demurrer. (Forms of demurrers and answers, LPH Ch. 4.)

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The statute of limitation may be tolled while a defendant is out of the state. (Code Civ. Proc., § 351.) Other exceptions are located in Code Civ. Proc., § 328 (minority or lacking legal capacity tolling statute—real property), Code Civ. Proc., § 328.5 (imprisonment), Code Civ. Proc., § 340.6 (tolling in legal malpractice during continuing representation), Code Civ. Proc., § 352 (minority and lacking legal capacity general tolling), and Code Civ. Proc., §§ 352.1-358 (specific rare instances for tolling). (Code Civ. Proc., §§ 312-366.3.)

These statutes of limitations do not apply to claims against public entities. Review Government Code sections 900, et seq., for a presentation of government claim filing within six months of accrual of a cause of action against public entities.

NOTE: This does not affect Code of Civil Procedure section 697.310(b), which provides that a judgment lien continues for 10 years from entry of judgment.

CAUTION: General descriptions have been provided with references to specific code sections. A careful understanding of the issues and the individual circumstances must be considered in the application of various statutes.

(Cross-Refer: Banke & Segal, *California Practice Guide: Civil Procedure Before Trial—Statutes of Limitations* (TRG).)

201.1 10-Year Statute of Limitations

- A. **Deficiency.** An action against a developer, contractor, architect, etc. (or the surety of such persons), of real property for a latent deficiency in design, supervision, etc., or an injury to property arising out of such deficiency. (Code Civ. Proc., § 337.15(a).) “Latent deficiency” means a deficiency which is not apparent by reasonable inspection. (Code Civ. Proc., § 337.15(b).)
- B. **Bonds.** An action upon bonds or coupons issued by the state of California or general obligation bonds or coupons not secured by a lien on real property issued by any of its political subdivisions (including school districts). (Code Civ. Proc., § 337.5(a).)
- C. **Judgment.** An action upon a judgment or decree of any court of the United States or of any state within the United States. (Code Civ. Proc., § 337.5(b).)
- D. **Damages Against Felon.** An action for damages against a defendant based upon defendant’s commission/conviction of a felony involving certain sex crimes (excluding voluntary manslaughter) must be commenced within 10 years from the date discharged from parole. (Code Civ. Proc., § 340.3(b).)

201.2 6-Year Statute of Limitations

An action upon corporate bonds, notes, or debentures issued to or held by the public or upon any mortgage, trust deed, or other agree-

ment pursuant to which they were issued; not applicable to such items issued by a public district or corporation. (Code Civ. Proc., § 336a.)

201.3 5-Year Statute of Limitations

- A. Possession. Adverse possession, recovery, or possession of real property. (Code Civ. Proc., § 318.)
- B. Adverse Possession. Adverse possession by tenant. (Code Civ. Proc., § 326.)
- C. Mesne Profits. An action for mesne profits of real property. (Code Civ. Proc., § 336.)
- D. Penalties. An action for civil penalties or punitive damages based upon alleged violation of hazardous waste control law. (Code Civ. Proc., § 338.1.)

201.4 4-Year Statute of Limitations

- A. Rescission. An action upon any written contract or for rescission of a written contract. (Code Civ. Proc., § 337(c).)
- B. Book Account. An action to recover upon a book account, whether consisting of one or more entries. (Code Civ. Proc., § 337(b).)
- C. Account Stated. An action to recover upon an account stated based upon an account in writing, but acknowledgment of the account stated need not be in writing. (Code Civ. Proc., § 337(b).)
- D. Balance Due. An action to recover a balance due upon a mutual, open, and current account, the items of which are in writing. (Code Civ. Proc., § 337(b).)

NOTE: If items B, C, and D are based on one item, the time begins to run from the date of said item; if based on more than one item, the time begins to run from the date of the last item. (Code Civ. Proc., § 337(b).)

- E. Patent Deficiency. An action against a developer, contractor, etc. for injury to property, or injury or death of a person, for any patent deficiency of planning or construction of an improvement to real property. “Patent deficiency” means a deficiency which is apparent by reasonable inspection. (Code Civ. Proc., § 337.1(e).)
- F. Lease or Abandonment. An action for breach of a written lease and abandonment of the property. (Code Civ. Proc., § 337.2.)
- G. Miscellaneous. All actions not otherwise provided for in the sections preceding Code of Civil Procedure section 343.

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- H. **Equity Seller or Equitable Relief.** An action by an equity seller for recovery of damages or equitable relief against an equity purchaser of a residence in foreclosure for violation of specified statutory provisions. (Civ. Code, § 1695.7.)
- I. **Foreclosure Consultant.** An action against a mortgage “foreclosure consultant” for violation of Civil Code sections 2945, et seq., on foreclosure of a residence. (Civ. Code, § 2945.6(b).)
- J. **Nullity of Marriage.** Nullity of marriage (the statute begins to run at different times). (Fam. Code, § 2211.)
- K. **Breach of Contract.** An action for breach of contract for a sale between buyer and seller. (Cal. U. Com. Code, § 2725.)
- L. **Award of Arbitrator.** A petition to confirm the award of an arbitrator. (Code Civ. Proc., § 1288.)
- M. **Licensed Contractor.** An accusation against licensed contractor—within four years after act or omission alleged or within duration of warranty, if warranty is longer than four years. (Bus. & Prof. Code, § 7091(a).)

201.5 3-Year Statute of Limitations

- A. **Liability.** An action upon a liability created by statute, except penalty or forfeiture. (Code Civ. Proc., § 338(a).)
- B. **Trespassing.** An action for trespass upon or injury to real property. (Code Civ. Proc., § 338(b).)
- C. **Recovery of Personal Property.** An action for taking, detaining, injuring, or specific recovery of personal property. (Code Civ. Proc., § 338(c).)
- D. **Fraud or Mistake.** An action for relief on the ground of fraud or mistake—three years from discovery of the facts constituting fraud or mistake. (Code Civ. Proc., § 338(d).)
- E. **Public Officer.** An action against a public officer, except any action based on fraud or embezzlement is not deemed to have accrued until discovery. (Code Civ. Proc., § 338(e).)
- F. **Notary Public.** An action against a notary public on his or her bond, if based on malfeasance or misfeasance, within one year after discovery, or within three years from performance of the notarial act giving rise to the action, whichever is later; provided, any action against a notary public on bond or official capacity must be commenced within six years. (Code Civ. Proc., § 338(f)(1)-(3).)
- G. **Slander.** An action for slander of title to real property. (Code Civ. Proc., § 338(g).)

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- H. False Advertising. An action commenced under Business and Professions Code section 17536 (false advertising); a cause of action is deemed not to have accrued until discovery by the aggrieved party, the Attorney General, the district attorney, county counsel, city prosecutor, or city attorney of the facts constituting the grounds for commencement of the action. (Code Civ. Proc., § 338(h).)
- I. Hazardous Waste. An action commenced under the Porter-Cologne Water Quality Control Act or the provisions of the law relating to hazardous waste control. (Code Civ. Proc., § 338(i).)
- J. Damage to Private Property. An action to recover for physical damage to private property under Section 19 of Article I of the California Constitution (eminent domain). (Code Civ. Proc., § 338(j).)
- K. Domestic Violence. A civil action for domestic violence. (Code Civ. Proc., § 340.15.)
- L. Sexual Child Abuse. A civil action for recovery of damages suffered as a result of childhood sexual assault that occurred before January 1, 2024, the time for commencement of the action shall be within 22 years of the date the alleged victim/plaintiff attains the age of majority or within five years from the date the alleged victim/plaintiff discovers that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever expires later. Specific limitations for filing a civil action are contained within this code section. Due to the complexities of the allegations of sexual child abuse, as a precaution read the code section to ensure observance and compliance with the statutes of limitation. (Code of Civ. Proc., § 340.11.)

201.6 2-Year Statute of Limitations

- A. Oral Contract. An action upon an oral contract or for rescission of an oral contract. (Code Civ. Proc., § 339(1) and (3).)
- B. Contract/Loss. An action upon a contract, obligation, or liability, evidenced by a certificate, abstract, or guaranty of title of real property or by a policy of title insurance; cause of action shall not be deemed to have accrued until discovery of loss or damage suffered thereunder. (Code Civ. Proc., § 339(1).)
- C. Public Officer. An action against a sheriff or coroner upon liability incurred by doing of an act in an official capacity or omission of an official duty. (Code Civ. Proc., § 339(2).)
- D. Breach of Oral Lease. An action based upon breach of an

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unwritten lease accruing from the date of breach and abandonment or termination of right to possession, whichever is earlier. (Code Civ. Proc., § 339.5.)

- E. Assault/Battery/Personal Injury. An action for assault, battery, or personal injury or death caused by a wrongful act or neglect of another. (Code Civ. Proc., § 335.1.)
- F. Uninsured Motorist Claim. An action for personal injury under an insured's uninsured motorist coverage. (Ins. Code, §§ 11580.2(i), 11580.23.)
- G. Exposure to Hazardous Material or Toxic Substance. An action for personal injury or illness based upon exposure to a hazardous material or toxic substance. (Code Civ. Proc., § 340.8.)

201.7 1-Year Statute of Limitations

- A. Penalty/Forfeiture. An action upon a statute for penalty or forfeiture. (Code Civ. Proc., § 340(a), (b).)
- B. Libel/Slander. An action for libel, slander, false imprisonment, seduction of a person below the age of consent, or against a bank for payment of a forged or raised check or a forged or unauthorized endorsement. (Code Civ. Proc., § 340(c).)
- C. Seizure of Property. An action against an officer for recovery of damages for the seizure of property for statutory forfeiture to the state, for detention of or injury to the property seized, or for damages done to any person in making such seizure. (Code Civ. Proc., § 340(d).)
- D. Good Faith Improver. An action by a good faith improver of real property. (Code Civ. Proc., § 340(e).)
- E. Asbestos. An action for injury or illness based upon exposure to asbestos. The statute is one year after the date plaintiff first suffered disability, from the date of death, or one year after the date plaintiff first knew or should have known that the disability or death was caused or contributed to by exposure to asbestos, whichever is later. (Code Civ. Proc., § 340.2.)
- F. Medical Malpractice. An action for injury or death against a "health care provider" (medical malpractice)—three years after the date of injury or one year after plaintiff discovers or should have discovered the injury, whichever occurred first. A negligence action against a health care provider may not exceed three years unless tolled for any one of the following: (1) proof of fraud; (2) intentional concealment; or (3) presence of foreign body. An action by a minor shall be com-