CALIFORNIA PRACTICE GUIDE
REAL PROPERTY TRANSACTIONS
2026 UPDATE

The 2026 softbound update completely replaces the 2025 update.

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2026 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was July 15, 2026. Some of the new cases may not have been final at that time and may be affected by later developments. Counsel should check subsequent case histories and independently verify the current state of the law before citing or relying on them.

Thank You! Your comments and suggestions are an important contribution to this Practice Guide. *Please keep them coming!*

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2026 UPDATE HIGHLIGHTS

CHAPTER 4

PURCHASE AND SALE AGREEMENT

Common Interest Developments

[4:76.3] **Recorded covenants and restrictions violating fundamental public policy unreasonable:** See *Tulare Med. Ctr. Property Owners Ass'n v. Valdivia* (2026) 119 CA5th 967, 993, 344 CR3d 403, 421.

[4:79] **Condominium seller must provide exterior inspection report:** A copy of the report from the most recent visual inspection of exterior elevated elements must be provided to a prospective buyer. [New Civ.C. §4525(11)]

Long-Term Easements and Licenses

[4:102.11] **Prescriptive easement proven by preponderance of evidence:** Aerial photographs and testimony showing country club maintained boundary hedge and other landscaping adjacent to recorded easement for golf cart path for decades sufficient to establish elements of prescriptive easement. [*Montecito Country Club, LLC v. Root* (2026) 118 CA5th 1236, 1242-1243, 342 CR3d 44, 49-50]

Mediation

[4:501] **Initial refusal cured by later offer to mediate prior to filing of suit:** *See ¶11:138.16b of the Highlights Summaries.*

CHAPTER 5

ENVIRONMENTAL HAZARDS LIABILITY

Government Rights of Action

[5:121.12b] **Recovery for lost use of natural resources:** Damages for injury to, destruction or loss of natural resources include cost of assessment, restoration or replacement costs and value of interim lost use. [*Confederated Tribes of the Colville Reservation v. Teck Cominco Metals Ltd.* (9th Cir. 2025) 153 F4th 947, 954-956—Tribe entitled to recovery for lost use of natural resources which have cultural significance]

Insurance for Environmental Hazards

[5:254] **Pollution exclusion requires "sudden" discharge:** Use of "sudden" in pollution exclusion is unambiguous and cannot reasonably be construed to mean "gradual." [*Montrose Chemical Co. of Calif. v. Sup.Ct. (Canadian Universal Ins. Co.)* (2025) 114 CA5th 889, 915, 337 CR3d 222, 241, rev.grntd. on other grounds 12/30/25 (Case No. S293914)]

CHAPTER 6

FINANCING AND APPRAISALS

Third-Party Financing

[6:22.4] **Department of Housing and Community Development:** Effective July 1, 2026, the Department of Housing and Community Development is part of the new California Housing and Homelessness Agency. [Amended Health & Saf.C. §50400]

Deed of Trust

[6:374.4] **California's statutory interest on escrow account requirement not preempted by National Banking Act:** See *Kivett v. Flagstar Bank, FSB* (9th Cir. 2025) 154 F4th 640, 645-649.

Fixtures and Fixture Filings

[6:484] **Deed of trust as fixture filing:** A deed of trust satisfies the requirements for a financing statement except it need not indicate it is to be filed in the real property records and it sufficiently provides the name of a debtor if it provides the name of the debtor even though it does not match their driver's license. [Amended Comm'l C. §9502(c)]

Nonjudicial Trustee's Sale

[6:524.2] **Low volume foreclosures:** To qualify as a low volume foreclosure entity, a person or entity must service 7 or fewer loans encumbering residential real property located in California. [Amended Civ.C. §2924.18(b)(2)]

[6:527; 6:535.36] **Additional notice requirements for properties with recorded low-income housing use restriction:** Trustee must mail notice of default to Director of Housing and Community Development and Executive Director of California Tax Credit Allocation Committee when the subject property has recorded low-income housing use restriction. However, failure to provide this notice does not affect the validity of the trustee's sale. [New Civ.C. §2924b(c)(2)(G)]

[6:534.1a] **Building permit conditions survive foreclosure:** Post-foreclosure owners bound by low-income rental unit condition contained in development permit that also granted developer density bonus. [*Rodriguez v. City of Los Angeles* (2025) 116 CA5th 488, 496, 339 CR3d 332, 337]

[6:535.10a] **Special post-sale bidding rules:** Lien securing delinquent HOA assessments qualifies as mortgage requiring application of extended bidding period. [*Bird Rock Home Mortg., LLC v. Breaking Ground, LP* (2025) 114 CA5th 492, 502-503, 337 CR3d 93, 99-100] *See also* ¶*6:535.12 of the Highlights Summaries*.

[6:535.10b; 6:535.10d; 6:535.10m] **Prospective owner-occupant affidavit must meet all qualifications to establish eligibility:** Trustee not required to accept affidavit of prospective owner-occupant, a trust, that did not establish it was a natural person and not acting as the agent of another, thus failing to meet requirements to be a prospective owner-occupant. [*In re Garcia* (9th Cir. BAP 2026) 676 BR 408, 422-423]

[6:535.12] **Title remains with owner until sale is final:** Debtor retained title as of petition date even though public auction occurred 4 days before bankruptcy filing. Successful bidder was not prospective owner-occupant and sale could not be finalized until post-sale bidding process completed, which occurred post-petition. [*In re Tinsley* (9th Cir. BAP 2026) __ BR __, __ (2026 WL 1729811, *6)]

CHAPTER 7

GROUND LEASEHOLDS

Distinguishing Features of Ground Leases

[7:9] **Presence of cattle on land does not mean lease is for agricultural purposes:** A lease stating that land may be used for "any lawful purpose" does not become a lease for agricultural purposes due to the presence of cattle grazing on the land for purpose of fire prevention. [*Pacho Ltd. Partnership v. Eureka Energy Co.* (2025) 115 CA5th 598, 609, 338 CR3d 237, 245]

CHAPTER 11

REMEDIES IN PURCHASE AND SALE TRANSACTIONS

Seller's Breach of Contract Damages

[11:138.16b] **Mediation as condition precedent to contractual attorney fees award:** Prevailing sellers entitled to attorney fees under residential purchase agreement even though they refused initial request to mediate because their later offer to mediate prior to buyer's filing suit effectively retracted the prior refusal such that they fulfilled condition precedent to fee award contained in contract. [*Evleshin v. Meyer* (2025) 115 CA5th 1021, 1040, 338 CR3d 669, 684-685]

Damages for Fraud

[11:360.5] **"Tort of another" fees not recoverable for direct litigation with tortfeasor:** Buyer's attorney fees incurred in specific performance action filed against seller are recoverable as damages from tortfeasor who induced the breach, but buyer not entitled to attorney fees incurred in action filed to recover the "tort of another" fees against tortfeasor directly. [*Guinnane Const. Co., Inc. v. Chess* (2026) 119 CA5th 689, 704, 342 CR3d 850, 860]

Quiet Title Action

[11:532.1] **Challenge to condition attached to development permit insufficient to state cause of action for quiet title:** *See ¶6:534.1a of the Highlights Summaries.*

[11:542.1] **Under Quiet Title Act, affirmative adverse action not required to trigger accrual of claim:** Limitations period is triggered when government's claim is adverse to plaintiff, so affirmative adverse action by government not required to trigger accrual of claim for easement over private land when there is a long history of known public use of Forest Service road across easement. [*Wilkins v. United States* (2025) 163 F4th 636, 649]

Lis Pendens

[11:608.3] **Action affecting title to real property:** An action to revive an expunged deed of trust granting power of sale to satisfy attorney's lien is an action affecting title. Therefore, recorded lis pendens identifying such action protected by litigation privilege. [*Kim v. New Life Oasis Church* (2025) 115 CA5th 659, 669, 338 CR3d 473, 480]

CHAPTER 13

REAL PROPERTY PURCHASE AND SALE TAX CONCERNS

Property Tax Valuation of Purchased Property

[13:65.1] **Assessed value includes revenues from intangible property attributable to use of property itself:** City's assignment of occupancy tax and management company's key money payment are a type of intangible asset that enable the property, not the business operating it, to generate more revenue and can be included in determining property's assessed value. [*Olympic & Georgia Partners, LLC v. County of Los Angeles* (2025) 18 C5th 739, 766-767, 777-780, 336 CR3d 169, 189-190, 199-200]

Disabled Veterans' Exemption

[13:96.2] **Exemption applies to dwelling destroyed in disaster:** A dwelling, damaged by disaster for which state of emergency proclaimed, qualifies for the property tax exemption if it was on property qualifying as veteran's principal residence prior to the disaster, the property has not changed ownership since the disaster, and the veteran intends to rebuild and occupy a dwelling on the property. [Amended Rev. & Tax.C. §205.5(b)]

Transfers Between Parents and Children and Grandparents and Grandchildren

[13:104] **Special deemed timely filing date for property affected by 2025 fires:** For a property damaged or destroyed by the 2025 fires, claims for exclusion are deemed timely filed if filed within 3 years after the date of mailing of a notice of supplemental or escape assessment, as long as claims are filed before January 1, 2031. [New Rev. & Tax.C. §63.1(e)(2); New Rev. & Tax.C. §63.2(f)(2)]

Deduction for Interest

[13:165.3] **Withdrawal of election for exclusion from business interest deductibility limitation:** Due to the permanent continuation of the business interest deduction limit based on EBITDA, rather than drop depreciation and amortization, the IRS allows taxpayers to withdraw their election for 2022-2024 and retroactively make IRC §168(k)(7) elections for those years. [Rev.Proc. 2026-17, 2026-15 IRB 1]

Deduction of Operating Losses

[13:213] **Business with no profit motive cannot deduct operating losses:** Where there was a lack of even occasional profits, a failure to keep complete and accurate records and the business checking account was used as an extension of their personal account, the proprietors of a show horse breeding business were found to lack a profit motive. [*Schumacher v. Commissioner*, TC Memo 2026-47]

Charitable Contributions of Conservation Easements

[13:394.7] **Valuation:** Use of discounted cash flow method nonsensical for easement valuation. [*Veribest Vest LLC v. Commissioner* (Tax Ct. 2025) 2025 WL 1939887]

Highest and best use of properties must be based on reliable market data or specific property attributes. [*Kimberly Road Fulton 25, LLC v. Commissioner*, TC Memo 2026-36; *Harman Road Property, LLC v. Commissioner*, TC Memo 2026-23; *North Donald LA Property, LLC v. Commissioner*, TC Memo 2026-19]

[13:394.7b] **Qualified appraisal:** Although appraisal prepared by employee of promoter of the conservation easement transaction met most requirements to be qualified appraisal, the use of unreasonable assumptions reduces the credibility and weight of the appraisal to zero. [*North Donald LA Property, LLC v. Commissioner*, TC Memo 2026-19]

[13:394.10] **IRS Settlement Initiatives:** The IRS announced a time-limited settlement initiative for certain conservation easement cases that included a deduction for cash out-of-pocket expenses, interest, and a 10% penalty. [IR-2026-65, May 13, 2026]

[13:394.12] **Argument that civil fraud penalties impermissible without jury trial rejected:** See *Silver Moss Properties, LLC v. Commissioner* (2025) 165 TC 37.