



DAYTON BUSINESS JOURNAL

Members: [Log in](#)
Not Registered? [Register](#) for free extra services.

[HOME](#) | [ONLINE EDITION](#) | [PRINT EDITION](#) | [SUBSCRIBE](#) | [MARKETPLACE](#) | [BUSINESS RESOURCES](#) | [EVENTS & I](#)

Search | Keywords [Search Archive](#)

[News by Company](#) [News](#)

IN DEPTH:

[Dayton](#) > [Print Edition](#)

ALL stories from the Dayton Business Journal print edition are available online to print-edition subscribers ONLY. If you are already a print subscriber or you wish to subscribe, [click here to learn more](#).

Forensic appraising adds in the positive

Process involves combining all the variables affecting a property to create a predicted value

Dayton Business Journal - May 15, 1998 by [John Niehaus](#) News Staff Reporter

[Print this Article](#) [Email this Article](#) [Reprints](#) [RSS Feeds](#) [★ Most Viewed](#) [★ Most Emailed](#)

Joel Henson's business, Dixie Drywall Co., is located on about one-and-a-half acres of land off Valley Street. About one acre of the property is grass.

Instead of continually paying a landscaping company \$75 to cut the grass, he decided to try to sell that piece of his property. After determining an asking price, he called Ron Kuczak, a local real estate appraiser.

The complete small business bundle for under **\$95/month**

The new **at&t** now world delivery. [Click for details.](#)

"He came out and gave me my options," Henson said. "He more or less determined what the land would be worth if I kept it and put up some warehouses."

Kuczak was able to determine a potential property value through a process he has developed -- forensic appraisal. A forensic appraisal tries to combine all variables that can affect a property's value to create a predicted value.

"Real estate market activity is a behavioral quotient expressed in economic terms," said Kuczak, who serves as vice president of the Cincinnati chapter of the National Association of Independent Fee Appraisers. "We have to be

able to be a predictor of where things are going based on probability. It's not gut instinct. You have to go on what you perceive is being economically feasible, legally proximate and what will accrue the most economic benefit to the owner."

And in Henson's case, the appraisal showed that Henson's original asking price, \$32,000, was much lower than what he could get. He raised his asking price for the property and is expected to close its sale by the end of the month. Because the deal had not closed, he declined to release the price.

[Subscribe or re](#)

BUSINESS RESOURCES

[Entrepreneur](#)

Sponsored by MasterCard®

Refocus: His business la by changing.

[Sales Power](#)

Sponsored by Hoovers

Reaching the top: They figured out how to reach decision makers.

[Franchise Center](#)

Powered by Bison

Browse a comprehensive directory of the nation's fa growing franchise opportunities.

[bizwomen](#)

Lucky?: Sarla Nichols be her successful yoga studi without a business plan.

EMAIL ALERTS

Get the latest local busine news delivered to your int [Sign up Today!](#)

ENTREPRENEURIAL TO

Forensic appraising adds in the positive - Dayton Business Journal:

"After he sat down and went through the entire thing and looked at the land's use for the future, it really opened my eyes and showed me what I really should be selling it for," Henson said.

Creating a forensic appraisal involved looking at a property's prior values and combining it with current market conditions to help determine a price. But even the best forensic appraisers cannot predict the future, a fact that can impact the forensic appraisal's accuracy, said Michael Cahill, owner of Dayton-based Cahill Appraisers.

"There is a reason why an appraisal fits for a specific day," Cahill said. "An appraiser may be asked to do a property value for a time in the past, which is something that can be done with much more confidence than something done for five to six years from now."

While a typical residential real estate appraisal costs about \$250, a forensic appraisal typically takes about twice as long and costs twice as much, Kuczak said. Performing a forensic appraisal requires a substantial amount of research to provide credibility for the appraisal.

[Contact the Editor](#) [Need Assistance?](#) [More Latest News →](#)

Pages: [1](#) [2](#) [Continue Reading →](#)

[Subscribe or renew online](#)

TODAY'S LATEST NEWS STORIES

- [eBay store to open Monday](#)
- [Ohio offers \\$5M to towns hurt by mass layoffs](#)
- [Three new tenants to open in Dayton Mall addition](#)
- [Dayton airport traffic takes off](#)
- [Reports tying CEO to scandal send HP stock down 5%](#)
- [Most Viewed Stories](#)
- [Most Emailed Stories](#)
- [People in the News](#)

DAYTON JOBS

powered by [onTargetjobs](#)

- [EA - SAP FI/CO Senior Consultant](#)
- [SOUTHEASTERN OHIO FAMILY PRACTICE OPPORTUNITY](#)
- [SAP ISU FICO](#)
- [CHILD & ADOLESCENT PSYCHIATRIST](#)
- [Staff Pharmacist](#)

[Search Jobs](#) | [Post Resume](#) | [View More](#)

Employers - [Post a Job Today](#)

FEATURED SERVICE

NEED TALENT FOR YOUR CURRENT JOB OPENING?



Post your job and uncover the hidden talent in your local area. Discover the benefits of our local industry job listings across 30 popular industries.
[Post your job](#)

» [Sign up for breaking news alerts.](#) Brought to you by [Cingular](#)

MasterCard BusinessCard® for Small Business

See what it can do for you

MasterCard® Small Business

- [Build Your Biz](#)
- [Managing Cash Flow](#)
- [Expert Advice](#)
- [Develop a Business Plan](#)

BIZJOURNALS DIRECT

Find local business services

- [Health Insurance](#)
- [Sales Force Automation](#)
- [Currency Trading](#)
- [Domain Names](#)
- [Software Solutions](#)
- [Air Travel](#)

More Services:

**Consultant
qualified p
FAST!**

eWork Markets
have access to
of pre-screened
and resources to
your business.

**Click here to
winning new
NOW!**

SPONSORED LINKS

[Life Insurance Co](#)

[CD Burner Guide Dayton](#)

[Site Map](#)

verizonwireless

The largest high-speed wireless broadband network in the U.S.*

BroadbandAccess Now Built-in

*BROADBAND ACCESS IS AVAILABLE IN 181 MAJOR METROPOLITAN AREAS COVERING OVER 148 MILLION PEOPLE, AND IS EXPANDING COAST TO COAST. BROADBAND ACCESS IS AVAILABLE IN 72 PRIMARY AIRPORTS IN THE U.S.

LEA

Use of, registration on, this site constitutes acceptance of our User Agreement. Please read our Privacy Policy

ONLINE: [Home](#) | [News](#) | [Print Edition](#) | [Advertise](#) | [Marketplace](#) | [Business Resources](#) | [About Us](#) | [Search](#) | [RSS Feeds](#) | [Site FAQ](#) | [Contact Info](#)

PRINT EDITION: [Subscribe to Print Edition](#) | [Advertise](#) | [Book of Lists](#) | [Download Electronic Version](#) | [Article Reprints Rights](#)

BIZJOURNALS: [bizjournals](#) | [BizSpace.com](#) | [Jobs](#) | [bizwomen.com](#)

Search Engine Optimization by 

© 2006 American City Business Journals, Inc. and its licensors. All rights reserved. The material on this site may not be reproduced, distributed, transmitted, or the prior written permission of bizjournals.



The Harris Company, Real Estate Appraiser / Consultant

[Home Page](#)

Copyright 2005, 2006 All Rights Reserved



The Harris Company,
Real Estate Appraiser / Consultant
5780 West Centinela Avenue, Building 1, Suite 408
Los Angeles, California 90045
310.337.1973 harris_curtis@sbcglobal.net



PIRS/ HARRIS COMPANY AND THE SCIENCE OF REAL ESTATE - PARTNERS

- [Home Page](#)
- [About Us](#)
- [Services](#)
- [Contact Us](#)
- [Just For Fun](#)
- [InfoMine](#)
- [LinkPartners](#)
- [NewsFeeds](#)

A Full Service Commercial Appraisal / Consulting Firm

*Certified General [Real Estate Appraiser](#) (May Appraise Any Type of Real Estate)

*Estate Tax Appraiser

*Trust Appraiser

-Residential Real Estate Appraiser -

Multi Family (Apartment) Appraiser -

-[Commercial Appraiser](#)-

-Investment Property Appraiser-

-Medical Office Property Appraiser-

-Industrial Property Appraiser-

-Special Purpose Property Appraiser-

-Review Appraiser-

*Discount Real Estate Broker (Total Commission 4%)

*Real Property Inspector ([ASTM E-2018-01](#) Protocol)

Rehab/Remodel Consultant

*[HUD 203K Consultant](#)

"Established" Client Free Services
(Minimum 2 Assignments per Month)

Search Our Site Without Leaving Yours: [Click Here For Code](#)

[Desktop Appraisal](#) (limited appraisal/restricted -SFR ONLY)

↳ [Credit Report](#)

↳ [Property Profile and Sales Data](#)

↳ [Pre-Qualification Letter \(FastQual\)](#)

↳ [Building Cost Estimator](#)

↳ [Loan Calculator](#)

↳ [One Hour Consultation](#)

↳ [Real Estate Legal Documents](#)

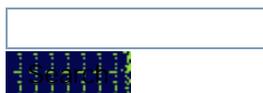
↳ [Attorney Referral Service](#)

↳ [Where do I go to get what I need?](#)

↳ [RealtyRates:](#)

↳ Los Angeles [Residential Listings](#)

Save to My Web |



For a more comprehensive search, download the [Yahoo! Toolbar](#)

June 13, 2006

[What's New? \(Archives\)](#)

IT'S THE LAW-Designation Discrimination is Illegal [FIRREA, Sec. 564.6]: Professional Association Membership: http://www.orea.ca.gov/html/fed_regs.shtml#Statement7

Membership in an appraisal organization: A State Certified General Appraiser may not be

excluded from consideration for an assignment for a federally related transaction by virtue of membership or lack of membership in any particular appraisal organization (Including the [Appraisal Institute](#). AKA mai)

What, in the world, are they Doing wRONG? Appraisal Institute suffers another loss! "AI commercial database bites the dust." Appraisal Institute (AI) will be closing down the AI Commercial Database on November 1, 2005.

The Great Texas Bank Job

"The FIRREA Cover Up - FDIC / RTC The South West Scam
The Whitewaters & Castle Grandes of Texas and ALL Across America
The S&L Gold Rush - The Lack Of Public Accounting

If the bank's board of directors were the ones doing the looting, however, they readily hired a pliant appraiser to cook up whatever appraisal value they wanted. Behind every fraudulent loan was a fraudulent appraisal. It is nearly impossible for appraisers to render independent appraisals if the people hiring them do not want one. **When I was in public accounting, auditors joked that MAI stood for "Made As Instructed."** The appraisals were largely worthless because they were not independently rendered. It is so obvious that it should be beneath mention, but that situation still exists.

Even if the bank could not find a bona fide buyer, it was supposed to write down the property to fair market value on the books, taking the loss on its financial statements. The S&L industry, however, was in dire straits. Reporting a loss on the deal would not look good, and might get bank regulators, auditors and others asking questions. Here is what the bank did to hide its loss. Another developer showed up, with similar delusions of grandeur and an equally pitiful pipedream, except his was twice as large. He wanted a \$6 million construction loan. The bank hired an appraiser to concoct the appraisal for the original empty strip mall that valued it at \$5 million, even higher than the original pie-in-the-sky price tag that the original developer dreamed up. **The MAI appraiser would appraise it for whatever number the bank wanted.** The bank would tell the second developer that it would loan him the \$6 million if he would buy the empty strip mall for \$5 million. The bank would loan the developer the money to make the down payment on the empty strip mall, and the first two years of loan payments. The developer never got his hands on that money, but the bank held it in escrow, taking the money out of the account to make the down payment and loan payments.

When the bank made the \$6 million construction loan to the second developer, and played internal accounting games to concoct the "sale" of the first strip mall, instead of recording the \$1 million loss, it recorded a \$2 million gain, had a new performing loan on the first strip mall, and the loan was guaranteed to have loan payments made on it for two years. Here is a chart to show how the bank hid the loss.

Original loan
\$3,000,000

Second MAI "appraisal" and sale price to second developer \$5,000,000

Gain on phony sale to second developer
\$2,000,000

So, with some fancy games and pliant appraisers, the bank recorded a \$2 million gain on its deal making. The reality, however, was that \$9 million had gone out the door, the bank was paying 15% interest to depositors, and no money was coming in, not even interest payments.

USPAP 2006: [The Loss Of A Few Terms Will Be Less Confusing](#), I Think December 28th, 2005 by John Cicero
In January 2006 the new edition of USPAP will be available and distributed, though its changes will not become effective until June. The Appraisal Standards Board

REVISIONS TO USPAP AND ADVISORY OPINIONS

The [revisions in the 2006 Edition of USPAP](#) are the result of two major Appraisal Standards Board (ASB) initiatives: (1) examination of the proper role of the scope of work and departure concepts in the appraisal process; and (2) specific review of STANDARDS 9 and 10. The ASB formally adopted the 2006 USPAP on October 28, 2005 based on testimony presented at public meetings, responses to three Concept Papers, six Exposure Drafts, and extensive deliberation by the ASB over a two-year period. ([USPAP 2006 Q & A](#)) The effective date of the 2006 USPAP is July 1, 2006.

UNIFORM [STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE](#) 2006

FHA training comes to the Pacific Northwest:

June 12, 2006 - Salem, OR. [FHA Program Update, Appraisal Reform](#), & Home Equity Conversion Mortgage Training. Approved for 6 hrs Continuing Education Credit. Registration required, no fee.

[Is property owner liable when horse and rider fall on driveway?](#)

[For information on registering your business capabilities to assist in the](#)

Hurricane Katrina disaster relief efforts please visit:

CONSTITUTIONAL , GOVERNMENT , TENANT , & REAL ESTATE

[Hillsboro Props. v. City of Rohnert Park , No A110441](#) (Cal. 1st App. Dist. April 06, 2006) A property owner prevented from charging increased rent by a rent control ordinance eventually ruled unconstitutional is not entitled to recover the lost rental income, either from its tenants or from the city that imposed the limit, if the ordinance did not deny the owner a fair return on its investment.

COMMERCIAL , CONSTITUTIONAL , ENVIRONMENTAL , GOVERNMENT , & REAL ESTATE, RETAIL [Wal-Mart Stores, Inc. v. City of Turlock, No. F047372](#) (Cal. 5th App. Dist. April 05, 2006)

Order denying a writ of mandate regarding a city zoning ordinance prohibiting the development of "big box" retail stores containing a full service grocery department is affirmed over a claim that defendant city unconstitutionally exceeded its police powers and failed to comply with the California (Appraiser, sic) Environmental Quality Act.
Commercial Appraiser

[First Ave. W. Bldg., LLC v. James \(02/23/06 - No. 04-35324\)](#)

District court order permitting a bankrupt tenant's trustee to pursue recovery from the landlord of damages up to the full amount of the tenant's security deposit, including a letter of credit, is affirmed where: 1) the landlord forfeited a timeliness issue; 2) rejection of a lease did not bar the trustee's action; and 3) the bankruptcy court clearly erred in finding it had no jurisdiction over the claim.

[Benavides v. State Farm Gen. Ins. Co. \(02/23/06 - No. B179028\)](#)

Judgment entered against defendant-insurer on a negligent investigation claim after a jury trial in an action based on the presence of mold in condominium units is reversed where plaintiff could not recover for the negligent handling of her claim because there was no coverage under the terms of the policy, and none of the circumstances which allow for a contract claim to be pursued as a tort cause of action were present.

Commercial Appraisal, Commercial Appraiser, Commercial Real Estate Appraisal, Estate Appraiser, Residential Appraiser, Apartment Appraiser, Appraisal, Special Purpose Property, Office Property, California Appraiser, PMI Removal Appraiser, Fee Appraisal. Certified General Appraiser, Tax Appraiser

[CONSTRUCTION, & REAL ESTATE, WATER](#)

[Barnes v. Hussa, No C049163](#) (Cal. 3d App. Dist. February 24, 2006)

A judgment for plaintiffs in a dispute over a pipeline used by plaintiffs to divert water from a creek for use on their ranch is affirmed where the trial court properly found that plaintiffs had an irrevocable license to continue using the pipeline, they were not violating a court decree in their use of the pipeline, and defendants did not prove their forfeiture claim.

[CIVIL PROCEDURE, DEBT COLLECTION, ETHICS & DISCIPLINARY CODE, ETHICS & PROFESSIONAL RESPONSIBILITY, PROFESSIONAL MALPRACTICE, PROPERTY LAW & REAL ESTATE](#)

[Fritz v. Ehrmann, No B178701](#) (Cal. 2d App. Dist. February 24, 2006)

Summary judgment for defendant-attorney pursuant to a statute of limitations defense in a malpractice action relating to a promissory note prepared by defendant is reversed where the facts did not indisputably show that the statute accrued until shortly before prior litigation commenced, and the statute was tolled while defendant represented plaintiff in that litigation.

Supreme Court of California

[CIVIL PROCEDURE, DEBT COLLECTION, ETHICS & PROFESSIONAL RESPONSIBILITY, & REAL ESTATE, REMEDIES](#)

[Rusheen v. Cohen, No S123203](#) (Cal. February 23, 2006)

Where a cause of action is based on a communicative act, the litigation privilege of Civil Code section 47 extends to those noncommunicative actions which are necessarily related to that communicative act.

California Appellate Districts

[ADMINISTRATIVE , EDUCATION , HEALTH](#)

[Excelsior College v. California Bd. of Registered Nursing, No C047824 \(Cal. 3d App. Dist. February 23, 2006\)](#)

A judgment for agency-defendant pursuant to its demurrer to a school's challenge of its interpretation and application of a statute involving nurse licensure is affirmed since the statute at issue does not require defendant to make prospective evaluations of out-of-state programs such as plaintiff's, and plaintiff has no right to an administrative hearing on defendant's interpretation and application of the provision.

[Bardin v. Daimlerchrysler Corp., No G034590 \(Cal. 4th App. Dist. February 23, 2006\)](#)

Judgment for defendant, car maker, pursuant to its demurrer to a complaint alleging violations of the unfair competition law and the Consumer Legal Remedies Act based on defendant's use of tubular steel in the exhaust manifolds of certain vehicles instead of cast iron is affirmed where plaintiffs failed to state a claim under any of their causes of action.

[CONTRACTS, HEALTH, INJURY AND TORT, INSURANCE, & REAL ESTATE](#) Benavides v. State Farm Gen. Ins. Co., No B179028 (Cal. 2d App. Dist. February 23, 2006)

Judgment entered against defendant-insurer on a negligent investigation claim after a jury trial in an action based on the presence of mold in condominium units is reversed where plaintiff could not recover for the negligent handling of her claim because there was no coverage under the terms of the policy, and none of the circumstances which allow for a contract claim to be pursued as a tort cause of action were present.

Appraisal Services: Appraiser, Commercial Appraisal, Commercial Real Estate Appraiser, Commercial Real Estate Appraisal, Residential Appraiser, Apartment Appraiser, Commercial Appraisal, Special Purpose Property, Office Property, California Appraiser, PMI Removal Appraiser, Free Appraisal. Certified General Appraiser, Tax Appraiser

[CIVIL PROCEDURE, DEBT COLLECTION, ETHICS & PROFESSIONAL RESPONSIBILITY, & REAL ESTATE, REMEDIES](#)

[Rusheen v. Cohen, No. S123203 \(Cal. February 23, 2006\)](#)

Where a cause of action is based on a communicative act, the litigation privilege of Civil Code section 47 extends to those noncommunicative actions which are necessarily related to that communicative act.

[BANKING, BANKRUPTCY, CIVIL PROCEDURE, CONTRACTS, LANDLORD TENANT, & REAL ESTATE](#)

[First Ave. W. Bldg., LLC v. James, No. 04-35324 \(9th Cir. February 23, 2006\)](#)

District court order permitting a bankrupt tenant's trustee to pursue recovery from the landlord of damages up to the full amount of the tenant's security deposit, including a letter of credit, is affirmed where: 1) the landlord forfeited a timeliness issue; 2) rejection of a lease did not bar the trustee's action; and 3) the bankruptcy court clearly erred in finding it had no jurisdiction over the claim.

[Western States Petroleum Ass'n v. S. Coast Air Quality Mgmt. Dist., No. B181303 \(Cal. 2d App. Dist. February 15, 2006\)](#)

Denial of a writ of mandate challenging a rule adopted by defendant, an air quality management district, requiring the oil refineries in its jurisdiction to reduce certain emissions is affirmed where: 1) substantial evidence supported defendant's findings of feasibility and cost effectiveness, and 2) defendant complied with the applicable California Environmental Quality Act requirements, and 3) substantial evidence supported the trial court's findings regarding the record.

Appraisal Services: Appraiser, Commercial Appraisal, Commercial Real Estate Appraiser, Commercial Real Estate Appraisal, Residential Appraiser, Apartment Appraiser, Commercial Appraisal, Special Purpose Property, Office Property, California Appraiser, PMI Removal Appraiser, Free Appraisal. Certified General Appraiser, Tax Appraiser

[Hotel valuation is a taxing issue](#)

Debate centers on how to account for factors like brand recognition Are two hotels, comparable in size, location, age and condition, worth the same if one is a Ritz-Carlton and the other is an unbranded unknown?

[Mayer v. I & B Real Estate, No B180540 \(Cal. 2d App. Dist. February 14, 2006\)](#)

Judgment quieting title in an action brought by plaintiffs to restore their ownership of commercial property that was sold by a county tax collector to defendant, real estate company, for unpaid property taxes is reversed where plaintiffs had constructive and actual notice of the tax sale, and thus had time to comply with a one-year statute of limitations period.

[ADMINISTRATIVE, ENVIRONMENTAL, GOVERNMENT, PROPERTY & REAL ESTATE](#)

[Hale v. Norton, No. 03-36032 \(9th Cir. February 09, 2006\)](#)

Denial of a motion for a temporary restraining order and dismissal of plaintiffs' case for lack of subject matter jurisdiction is affirmed in a case challenging an agency's regulation of plaintiffs' use of a trail crossing federally

protected land to access their property which was surrounded by the federal park at issue.

[Howard S. Wright Constr. Co. v. BBIC Investors, LLC \(01/31/06 - No. A109876\)](#)

Judgment for defendant following a non-jury trial in an action to foreclose a mechanic's lien recorded against defendant's property pursuant to a finding that the mechanic's lien was premature and therefore void is reversed where plaintiff recorded its claim of lien after its contract was completed, upon the anticipatory breach of the other contracting party.

[City & County of San Francisco v. Ballard](#), No A107227, A108569 (Cal. 1st App. Dist. February 02, 2006)

An award of attorney's fees to defendant, a building owner, in an action by a municipality alleging that defendant's building was a public nuisance is reversed where the statute at issue under which fees were awarded only applies to receivership proceedings, which did not occur in the case.

GOVERNMENT , LANDLORD TENANT , & REAL ESTATE

[Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles](#), No B179133 (Cal. 2d App. Dist. January 31, 2006) Judgment against defendant-municipality in a declaratory relief action invalidating a municipal ordinance is affirmed where an ordinance limiting certain charges a landlord could make from tenants in a housing assistance program is affirmed where the ordinance conflicts with, and is preempted, by another law.

CONSTITUTIONAL , CONSTRUCTION, GOVERNMENT , PROPERTY & REAL ESTATE [D & M Fin. Corp. v. City of Long Beach](#), No B173977 (Cal. 2d App. Dist. January 31, 2006) Judgment for inverse condemnation in favor of a holder of a security interest in real property on which defendant-municipality demolished an alleged substandard apartment building is affirmed where defendant violated plaintiff's due process rights.

ENVIRONMENTAL , GOVERNMENT , & REAL ESTATE

[108 Holdings, Ltd. v. City of Rohnert Park](#), No A108629 (Cal. 1st App. Dist. January 31, 2006) Judgment in favor of defendant-municipality on plaintiff's, property owner, challenge to certain actions is affirmed where defendant did not unlawfully surrender its police power or improperly amended its General Plan by entering into a settlement agreement to resolve environmental litigation brought against it.

[Crawford v. Weather Shield Mfg., Inc. \(02/01/06 - No. G032301\)](#)

Order granting a new trial and judgment of the trial court in a construction defect case involving a window manufacturer are affirmed where there was no abuse of discretion in the grant of a new trial, the trial court correctly interpreted and adjudicated the subcontract at issue, and there was no abuse of discretion as to attorneys' fees.

[Davis v. Newmar Corp. \(02/01/06 - No. B174944\)](#)

Judgment for plaintiff on a claim under the Song-Beverly Consumer Warranty Act involving plaintiff's purchase of a mobile home is reversed where the trial court erred in denying a pretrial motion to dismiss since the Act applies only to vehicles sold in California and plaintiff's motor home was not sold in California.

California Appellate Districts

[ATTORNEY'S FEES, CIVIL PROCEDURE, COMMERCIAL, CONSTRUCTION, CONTRACTS, MANUFACTURING, PRODUCT LIABILITY, PROPERTY & REAL ESTATE](#)

[Crawford v. Weather Shield Mfg., Inc.](#), No G032301 (Cal. 4th App. Dist. February 01, 2006)

Order granting a new trial and judgment of the trial court in a construction defect case involving a window manufacturer are affirmed where there was no abuse of discretion in the grant of a new trial, the trial court correctly interpreted and adjudicated the subcontract at issue, and there was no abuse of discretion as to attorneys' fees.

The National Association of [Realtors is protesting rulings by the Office of the Comptroller of the Currency](#) that the trade group says "will inevitably lead to national banks becoming actively involved in real estate development and brokerage." The OCC regulates banking activities.

[Taxpayer Alert for Property Tax Assessor Records Corp.](#)

This is an alert concerning a company that may be sending misleading letters to taxpayers. The company, Property Tax Assessor Records Corp. sends forms and letters to Los Angeles, Riverside and San Diego county property owners telling them that they have not filed Homeowners' Exemption forms and they are entitled to file them. In many cases, these letters are sent to people who are not entitled to the exemption or to property owners who have already filed for the exemption. For a fee, the company offers to file a claim for exemption on the property owners' behalf. The assessor's office does NOT charge a fee to file the homeowners' exemption claim form.

ADMINISTRATIVE , CIVIL PROCEDURE, CONSTITUTIONAL , ENVIRONMENTAL , GOVERNMENT , & REAL ESTATE

[Dunn v. County of Santa Barbara](#), No B175149 (Cal. 2d App. Dist. January 25, 2006)

Judgment on the pleadings for defendant-county on regulatory takings claims, and constitutional and civil rights claims involving defendant's determinations as to a subdivision application is reversed where those claims are ripe for adjudication because defendant issued what amounted to a final decision, and the permissible use of the property is known to a reasonable degree of certainty.

Appraisal, Appraiser, Commercial Appraisal, Commercial Real Estate Appraiser, Commercial Real Estate Appraisal, Residential Appraiser, Apartment Appraiser, Commercial Appraisal, Special Purpose Property, Office Property, California Appraiser, PMI Removal Appraiser, Free Appraisal. Certified General Appraiser, Tax Appraiser

ETHICS & DISCIPLINARY CODE, ETHICS & PROFESSIONAL RESPONSIBILITY, PROFESSIONAL MALPRACTICE, PROPERTY & REAL ESTATE

[Gackstetter v. Frawley](#), No B173070 (Cal. 2d App. Dist. January 25, 2006)

Denial of defendant-attorney's summary judgment motion in an action for breach of fiduciary duties, professional negligence and additional claims by plaintiff-trustee is reversed where defendant's good faith settlement of an underlying malpractice action brought by trust beneficiaries against him barred plaintiff-trustee's claims.

What is Building [Commissioning](#)? Michael Dadjou, PinnacleOne

In essence, building commissioning is similar to the commissioning of a ship. The captain (or, in this case, commissioning consultant) takes the building for a trial run PRIOR to opening the building for occupancy. The performance of the building is compared to specifications (and expectations) and areas requiring correction are identified.

Developers Raising Roof Over Rights to Downtown's 'Hot' Air

By ANDY FIXMER Los Angeles Business Journal Staff

There is nearly \$100 million worth of thin air sitting on top of the Los Angeles Convention Center – and downtown boosters want the financially strapped city to cash in on it.

California Appellate Districts

[Strebel v. Brenlar Invs., Inc.](#) (01/12/06 - No. A104681)

Judgment of damages for plaintiff in a real estate fraud case involving plaintiff's contract to buy an encumbered house is affirmed where there was no error in trial court's allowing a jury to include lost appreciation in the value of plaintiff's sold home, and lost use of plaintiff's property in the measure of recovery.

[CIVIL PROCEDURE, CONTRACTS, INSURANCE, & REAL ESTATE](#)

1231 Euclid Homeowners Ass'n v. State Farm Fire & Cas. Co., No B175242 (Cal. 2d App. Dist. January 20, 2006)

Summary judgment for defendant on breach of contract and breach of the implied covenant of good faith and fair dealing claims against defendant-insurer involving damages resulting from the Northridge earthquake is affirmed where plaintiff-homeowners association's earlier withdrawal of claims excused defendant from further performance of any coverage obligation under its policy and precluded plaintiff's claims.

[CIVIL PROCEDURE, GOVERNMENT, LANDLORD TENANT, PROPERTY & REAL ESTATE, REMEDIES](#) Carson

Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Bd., No B180308 (Cal. 2d App. Dist. January 17, 2006)

Trial court order declaring a decision by defendant-rent control board null and void, and setting a rent increase based on methodology defendant had considered and rejected is reversed where the trial court exceeded its authority by setting the amount of a rent increase itself instead of remanding the matter to the board.

[PROPERTY & REAL ESTATE](#)

Torres v. Torres, No B179146 (Cal. 1st App. Dist. January 17, 2006) Judgment for defendants in a quiet title action disputing the validity of a certain power of attorney is affirmed where a valid power of attorney was created even though in using the statutory form the principal placed an X instead of her initials next to the line conferring the powers.

[ATTORNEY'S FEES, DEBT COLLECTION, GOVERNMENT, & REAL ESTATE, WATER LAW](#) Souza v. Wetlands

Water Dist., No F045293 (Cal. 5th App. Dist. January 17, 2006)

Judgments and award of attorney's fees in favor of plaintiffs, farmland owners, against defendants, a water district and finance company, is reversed in a dispute over certain assessed water charges where the district court's conclusions were in error.

[COMMUNICATIONS, CONSTRUCTION, GOVERNMENT, PROPERTY & REAL ESTATE](#)

Sprint PCS Assets, L.L.C. v. City of La Canada Flintridge, No. 05-55014 (9th Cir. January 17, 2006)

Summary judgment in favor of defendant-municipality upholding certain permit denials involving wireless telecommunications facilities based on aesthetic impact is reversed where defendant overstepped its regulatory

authority under state law, its wireless ordinance is invalid, and no evidence supported the permit denial.

[U.S. 9th Circuit Court of Appeals Carson Harbor Village, Ltd. v. County of Los Angeles \(01/12/06 - No. 04-55024\) Summary judgment for defendant, oil company, denying plaintiff recovery of certain cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act is affirmed where there are no genuine issues of material fact regarding whether plaintiff substantially complied with the National Oil and Hazardous Substances Pollution Contingency Plan.](#)

[AGRICULTURE, GOVERNMENT, & REAL ESTATE, PUBLIC UTILITIES](#)

[Placer County Local Agency Formation Comm'n v. Nevada County Local Agency Formation Comm'n, No. C047697 \(Cal. 3d App. Dist. January 13, 2006\)](#)

[Government Code section 56387 gives principal counties jurisdiction over spheres of influence and service reviews of multicounty districts within neighboring counties. Judgment entered in favor of defendant in a dispute between neighboring Local Agency Formation Commissions \(LAFCO\) under the Cortese-Knox-Hertzberg Local Government Reorganization Act is affirmed where plaintiff failed to show grounds for reversal of the judgment.](#)

[ADMINISTRATIVE, ENVIRONMENTAL, GOVERNMENT, OIL & GAS, PROPERTY & REAL ESTATE](#)

[Carson Harbor Village, Ltd. v. County of Los Angeles, No. 04-55024 \(9th Cir. January 12, 2006\)](#)

Summary judgment for defendant, oil company, denying plaintiff recovery of certain cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act is affirmed where there are no genuine issues of material fact regarding whether plaintiff substantially complied with the National Oil and Hazardous Substances Pollution Contingency Plan.

[CONSTRUCTION, GOVERNMENT, & REAL ESTATE, PUBLIC UTILITIES, REMEDIES](#)

[Metro. Water Dist. of S. California v. Campus Crusade for Christ, Inc., No. E034248 \(Cal. 4th App. Dist. January 09, 2006\)](#)

[Judgment of damages in an eminent domain action to condemn land owned by defendants to construct a water pipeline is reversed where the trial judge erred in overruling a prior judge's earlier evidentiary rulings in the case, in allocating the burden of proof as to severance damages, and defendants offered substantial evidence that should have been presented to a jury in determining the amount of just compensation.](#)

[Metro. Water Dist. of S. California v. Campus Crusade for Christ, Inc., No. E034248 \(Cal. 4th App. Dist. January 09, 2006\)](#) Judgment of damages in an eminent domain action to condemn land owned by defendants to construct a water pipeline is reversed where the trial judge erred in overruling a prior judge's earlier evidentiary rulings in the case, in allocating the burden of proof as to severance damages, and defendants offered substantial evidence that should have been presented to a jury in determining the amount of just compensation.

Appraisal, Appraiser, Commercial Appraisal, Commercial Real Estate Appraiser, Commercial Real Estate Appraisal, Residential Appraiser, Apartment Appraiser, Commercial Appraisal, Special Purpose Property, Office Property, California Appraiser, PMI Removal Appraiser, Free Appraisal. Certified General Appraiser, Tax Appraiser

New Laws Passed by the California/Federal Legislature Bankruptcy (2005)

- Common Interest Developments and Homeowners' Associations
- Disclosure Issues
- Discrimination - Fair Housing
- Electronic Communications
- Housing and Landlord/Tenant
- Licensing Issues
- Loan Issues
- Miscellaneous
- Mobilehomes
- Privacy Issues
- Tax Issues

Appraisal Services: Appraiser, Commercial Appraisal, Commercial Real Estate Appraiser, Commercial Real Estate Appraisal, Residential Appraiser, Apartment Appraiser, Commercial Appraisal, Special Purpose Property, Office Property, California Appraiser, PMI Removal Appraiser, Free Appraisal. Certified General Appraiser, Tax Appraiser

Bankruptcy

U.S.P.L. 108-8 Section 311

(Portion of the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" – 11 U.S.C. § 362(b))

The federal legislature passed the Bankruptcy Abuse and Consumer Protection Act of 2005 with most provisions going into effect on October 17, 2005. One particular change in the bankruptcy law involving the "automatic stay" and found in 11 U.S.C. § 362(b) will affect residential landlords. The new law permits the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against the debtor/tenant of residential property so long as the lessor has obtained a judgment for possession of the property before the date of the filing of the bankruptcy petition.

In addition, the new law also permits an eviction action that seeks possession of the residential property based on endangerment of the property or the illegal use of controlled substances on the property, but only if the lessor files with the court a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered the property or illegally used or allowed to be used a controlled substance on the property.

Common Interest Developments and Homeowners' Associations

AB 1098* (HOA Records - Adds Civil Code Section 1363.07 and Replaces Civil Code Section 1365.2 - Select provisions effective 1/1/06, 7/1/06 and 1/1/07)

AB 1098 requires an affirmative vote of the owners of at least 67% of the separate interests in the common interest development—unless the CC&Rs require a different percentage—to grant exclusive use of any portion of a common area to any member, with exceptions. The law also requires the HOA of a common interest development to make the accounting books and records, and the minutes of meetings of the association available for inspection and copying by a member of the association, (or the member's designated representative) and authorizes a member to bring an action to enforce that right and also authorizes a court to assess a civil penalty of up to \$500 for each violation of that provision. The revised Section 1365.2 now defines "association records" and also "enhanced association records."

SB 61*

(HOA Elections - eff. 7/1/06)

SB 61 requires homeowners' associations to use secret ballots for elections regarding assessments, selection of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property. It also requires an independent third party as inspector of elections

SB 137*

(HOA Assessments - eff. 1/1/06)

SB 137 revises the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2006. The law provides that when an association of a common interest development seeks to collect delinquent assessments of less than \$1,800, not including accelerated assessments and specified late charges and fees, the association must either file a civil action in small claims court or record a lien but the association would be prohibited from foreclosing on this lien until the amount equals or exceeds \$1,800 or the assessments are more than 12 months delinquent.

SB 853*

(Physical Changes to Unit - eff. 1/1/06)

SB 853 deals with an owner's request to make physical changes to the owner's separate interest or to the common area. In responding to such a request, the homeowners' association must comply with certain conditions including the requirement that a decision on a proposed change be consistent with the Fair Employment and Housing Act.

Disclosure Issues

top of page

AB 1078* and SB 536*

(methamphetamine lab clean-up and clean-up standards - eff. 1/1/06 for AB 1078 and 10/1/09 for SB 536)

Civil Code Section 1102.18 requiring disclosure of methamphetamine lab contamination will sunset on January 1, 2006. The new Government Code Section 25400.28 created by AB 1078—which requires the seller or landlord to give a written disclosure of the clean-up order to buyers and tenants—is intended to replace the existing law in Civil Code section 1102.18. The seller/landlord's disclosure obligation under AB 1078 is somewhat different since it deals with the disclosure of clean-up orders rather than contamination. Another significant change to the law is that it applies not only to residential one-four unit properties, but all types of properties since "property" is now defined as "any parcel of land, structure, or part of a structure. . . including mobilehomes and manufactured housing." However, the law exempts mobilehomes and manufactured homes if they are located in a "park." The typical TDS

exemptions no longer apply (e.g., no exemption for probate or trusts). However, the law has incorporated the same delivery requirements as for the TDS (3 or 5 day rescission period).

AB 1078 requires a property owner who receives an order that the owner's property was contaminated by a methamphetamine laboratory activity, and any other person occupying the property, to immediately vacate the affected unit. The law also requires the property owner to hire an authorized methamphetamine laboratory site remediation contractor (meeting certain requirements as defined by law) to remediate the contamination caused by methamphetamine laboratory activity.

Furthermore, AB 1078 requires a local health officer to issue a "no further action determination" if the local health officer determines that remediation is not required on the property, based either on a "preliminary site assessment report" (PSA Report) or if the site has been remediated.

The law also requires a property owner who has not received a "no further action determination" to notify the prospective buyer in writing of the pending order, and provide the prospective buyer with a copy of the pending order. In addition, the property owner must provide written notice to all prospective tenants that have an application to rent a dwelling unit ("or other property") subject to the remediation order, and must provide the prospective tenant with a copy of the order. The prospective tenant must acknowledge, in writing, the receipt of the notice and pending order before signing a rental agreement. The notice must be attached to the rental agreement. If the property owner does not comply with this law, the prospective tenant may void the rental agreement.

SB 536 requires the Department of Toxic Substances Control to develop sampling and analytical methods for the collection of methamphetamine residue, and by October 1, 2009 to establish investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine.

AB 1323* (Megan's Law Revised - 4/1/06)

Information about registered sex offenders is currently available by the Department of Justice through an internet website. This law requires notice of this website to be included in lease or rental agreements, and contracts for sale of residential real property.

AB 1323 deletes those provisions of Megan's Law that established the "900" telephone number by which members of the public could call to inquire whether a named individual was a registered sex offender. The new law requires the Department of Justice to operate a service permitting the public to make an inquiry, regarding at least 6 individuals, and to charge a fee for these requests to be deposited into the Sexual Predator Public Information Account. In addition, this bill makes misuse of this information provided by the Department of Justice a criminal violation.

Effective April 1, 2006, the revised disclosure language will be mandatory for residential sellers of 1-4 unit properties, as well as for residential landlords. C.A.R. will be updating the standard form, Data Base Disclosure (DBD), as well as its purchase and lease agreements to reflect this change in the law. The updated forms should be available in January 2006.

Discrimination - Fair Housing

AB 394*

(Housing Discrimination - eff. 1/1/06)

AB 394 makes it easier and less expensive for homeowners to remove unlawful and discriminatory language in the recorded CC&Rs by modifying the procedure. A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry may record a document titled

Restrictive Covenant Modification which would include a copy of the original document with the illegal language stricken.

AB 1400*

(Unruh Civil Rights Act Revisions - eff. 1/1/06)

The Unruh Civil Rights Act (California Civil Code Section 51) prohibits business establishments from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, or medical condition. AB 1400 adds marital status and sexual orientation to this list. However, AB 1400 states that "it is the intent of the Legislature that these enumerated bases shall continue to be construed as illustrative rather than restrictive." This means that California law continues to prohibit any arbitrary discrimination.

Electronic Communications

[top of page](#)

SB 833* (Unsolicited Faxes - eff. 1/1/06)

Effective January 1, 2003, California repealed its unsolicited fax law, leaving the federal Telephone Consumer Protection Act of 1991 as the sole regulation of unsolicited faxes. Now California has passed another law governing junk faxes. Effective January 1, 2006, SB 833 bans the sending of unsolicited advertising faxes from someone in California to someone in California and provides for damages of at least \$500 per violation.

Housing and Landlord/Tenant

[top of page](#)

SB 51 (60-day Notice Extension - Not Passed)

Starting January 1, 2006, landlords may give a 30-day notice—instead of a 60-day notice—to terminate their month-to-month tenants (unless rent control or subsidized housing rules apply). Existing law requiring a 60-day notice of termination expired on December 31, 2005 as a result of the defeat of SB 51. C.A.R. Standard Form "Notice of Termination of Tenancy" (NTT) will be revised to reflect this change in the law.

SB 326* (Rental Housing and Government Control - eff. 1/1/06)

Two years ago, C.A.R. successfully co-sponsored a measure providing that low and moderate rental housing developments of 100 units or less cannot be denied a permit if they comply with local government development standards and receive a negative declaration or a mitigated declaration under the California Environmental Quality Act. SB 326 expands this law to duplexes, triplexes, and fourplexes, and expands the state "Anti-Nimby " (see below) to charter cities.

SB 575* (the "Anti-Nimby " - eff. 1/1/06)

SB 575 ("Anti-Nimby ") contains important limits on the ability of local municipalities to turn down housing by claiming that there is "no need" or the zoning is "inconsistent." This law, which amends Government Code Section 65589.5, changes the conditions upon which a disapproval or a conditional approval of the housing development project is based.

SB 435*

(Density Bonuses - eff. 1/1/06)

Last year, C.A.R. successfully sponsored a bill to improve the use of the state's density bonus law. This year C.A.R. sponsored SB 435 to provide that the law will be more easily understood, implemented and functional by applying the law to all forms of common interest developments; assuring that units built as a result of a density bonus may also extend to moderate income ownership housing and states that localities can recover any initial subsidy for moderate income units upon sale.

HVAC Changeouts*

(link to California Energy Commission - eff. 10/1/05)

Effective October 1, 2005, Title 24 of the Building Energy Efficiency Standards requires that air conditioning and heating ducts be tested for leaks when a central air conditioner or furnace is installed or replaced. Ducts that leak 15 percent or more must be repaired.

Licensing Issues

[top of page](#)

AB 223*

(Risk Management Education Course - eff. 7/1/07)

Prior to license renewal every licensee must take 4 required courses (agency, ethics, fair housing, and trust fund management) as 12 of their 45 hours of continuing education. C.A.R sponsored AB 223 to designate as part of that 45 hours, a 3-hour mandatory continuing education course in Risk Management. It also requires existing licensees to keep current with the increasingly complex demands of documentation, newly required disclosures and the newest options available to shield themselves from avoidable liability. Having taken Risk Management training may entitle a licensee to lower cost "E&O" insurance coverage.

Beginning July 1, 2007, the 45-hour continuing education requirement for brokers and salespersons which must include coursework on risk management, also includes principles, practices, and procedures for avoiding errors and omissions. For a first-time license renewal, a licensee must complete, among other things, a 3-hour course in risk management. For subsequent renewals, a licensee must complete, among other things, an 8-hour update survey course covering ethics, agency, trust funds, fair housing, and risk management. However, this law goes into effect on January 1, 2006 so the DRE can begin preparing for implementation.

Loan Issues

[top of page](#)

AB 885*

(Real Property Trustee Sale Foreclosures - eff. 1/1/06)

Civil Code Section 2925b requires a person recording a notice of default or a notice of sale under any deed of trust or mortgage with power of sale to perform specified actions. These actions include mailing a copy of the notice with the recording date shown and a copy of the notice of the time and place of sale to each person requesting a copy and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale. AB 885 modifies the definition of "last known address" for these purposes. In addition, former Civil Code Section 2925g permitted a maximum of three postponements of the sale proceedings. AB 885 amends Section 2925g to permit any number of postponements of the sale proceedings at any time prior to the completion of the sale, for any period of time not to exceed a total of 365 days from the date set forth in the notice of sale, upon the order of any court, where stayed by operation of law, by mutual agreement of any trustor and any beneficiary (or any mortgagor and any mortgagee) at the discretion of the trustee, or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed. Any postponements beyond the 365-day period require a new notice of sale to be given before any further sale proceedings may be scheduled.

AB 901*

(Predatory Lending - eff. 1/1/06)

Under the state predatory lending law, the term "covered loan" meant a consumer loan in which the original principal balance of the loan does not exceed \$250,000. Effective January 1, 2006, AB 901 changes this definition so that a "covered loan" means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association.

AB 1419*

(California Finance Lenders Law - eff. 1/1/06)

The California Finance Lenders Law provides for the licensing and regulation of finance lenders by the Commissioner of Corporations. AB 1419 specifies application requirements for a licensee to operate at an additional location and authorizes the licensee to operate at that new location 10 days after the date of mailing of the application. The new law also requires the Commissioner to investigate any person responsible for the conduct of the lending activities of the applicant and authorizes the Commissioner to deny an application based on any unlawful activities as indicated in the statute (Financial Code Section 22109).

AB 1729*

(Real Estate Loans and Notes Disclosure - eff. 1/1/06)

AB 1729 amends Business and Professions Code Section 10232.4 dealing with exemptions to the requirement of providing the mortgage loan disclosure statement. It also amends Business and Professions Code Section 10233 dealing the requirements of real estate licensees who service promissory notes. AB 1729 also amends Business and Professions Code Section 19238 regarding the form that needs to be filed with the Real Estate Commissioner.

Miscellaneous

top of page

AB 1640*

(Residential Insurance Claims - eff. 7/1/06)

Effective July 1, 2006, AB 1640 requires any insurer who issues a policy of insurance covering residential property and reports claims history or loss experience to an insurance support organization, to provide the insured with a specified disclosure regarding contacting the claims information database, and to include the disclosure in the California Residential Property Insurance Bill of Rights.

SB 422*

(Small Claims Court Jurisdictional Amount - eff. 1/1/06)

Prior to passage of this law, a small claims court would hear various actions but only up to the jurisdictional amount of \$5,000, with a few specified exceptions. This law increases the small claims court jurisdictional amount to \$7,500—again with a few specified exceptions. Legal entities other than natural persons (e.g., corporations, partnerships, or governmental entities) do not qualify for this jurisdictional increase.

Mobilehomes

top of page

SB 237*

(Mobilehome Transfers - eff. 1/1/06)

This law adds Civil Code Section 798.19.5 to the Mobilehome Residency Law prohibiting a mobilehome park rental agreement entered into or renewed on and after January 1, 2006, from including a provision that grants to management the right of first refusal to purchase a homeowner's mobilehome that is in the park and offered for sale to a third party. However, SB 237 does permit a separate agreement for separate consideration between the mobilehome owner and the park owner granting the park owner or management a right of first refusal to purchase a homeowner's mobilehome that is in the park and offered for sale.

Privacy Issues

top of page

SB 101*

(Employee – Use of Social Security Number – eff. July 21, 2005 but impact eff. 1/1/08)

This law restates and clarifies existing law which requires every employer—including governmental entities—by January 1, 2008, to include on the itemized statement provided to an employee only the last 4 digits of the employee's social security number or an employee identification number other than a social security number.

Tax Issues

top of page

AB 14*

(Property Tax on New Subdivisions - eff. 1/1/06)

AB 14 prohibits a county tax assessor from assigning parcel numbers or preparing a separate assessment or separate valuation to divide any existing residential structure into a subdivision, until a subdivision final map or parcel map has been recorded as required by law.

AB 459

(Disclosure Notice of Supplemental Tax Bill - eff. 1/1/06)

Although change of ownership triggers reassessment of property taxes, buyers may not realize that they may have to pay supplemental tax bills. Effective January 1, 2006, AB 459—which adds Civil Code Section 1102.6c—requires sellers of residential properties of 1-4 units, or their agents, to disclose to prospective buyers that they may owe supplemental taxes. C.A.R. standard form “Notice of Your Supplemental Property Tax Bill” (SPT) will satisfy this requirement.

AB 1099*

(Property Tax and Solar Energy - retro. to 1999-2000 fiscal year)

This law excludes property from property tax reassessment for the construction or addition of an active solar energy system and is applicable from the 1999-2000 fiscal year to the 2008-09 fiscal year.

SB 565*

Commercial Appraiser

Commercial appraisal, Appraiser Commercial, Trust Appraiser, Probate Appraiser, Tax Appraiser, LA, L.A., Commercial Real Estate Appraiser, Commercial Real Estate Appraisal, Residential Appraiser, Apartment Appraiser, Commercial Appraisal, Special Purpose Property, Office Property, California Appraiser, PMI Removal Appraiser, Free Appraisal. Certified General Appraiser
Tax Appraiser

(Property Tax and Domestic Partners - eff. 2006-7 fiscal year)

Beginning the lien date for the 2006-07 fiscal year, SB 565 permits registered domestic partners to transfer property to each other without triggering a reassessment and taxation at the current market value. As a result, registered domestic partners will be treated the same as spouses under California property tax laws.

[Federal Estate Tax Changes Take Effect In 2006](#)

Mortgagee Letter 2005-19 ([ML 05-19](#)) announced the Streamlined (k) Limited Repair Program to augment FHA's existing Section 203(k) rehabilitation program for less extensive repairs and improvement. This Mortgagee Letter replaces in its entirety ML 05-19 and is designed to make the program more reflective of the desire of many homebuyers and existing homeowners to improve their homes including making them more energy efficient...

[FEATURE: 2005 COST vs. VALUE REPORT Remodeling's Payoff](#)

Minor Kitchen Remodel

Project Description: In a functional but dated 200-square-foot kitchen with 30 linear feet of cabinetry and countertops, leave cabinet boxes in place but replace fronts with new raised-panel wood doors and drawers. Replace wall oven and cooktop with new energy-efficient models. Replace laminate countertops. Install midpriced sink and faucet. Repaint trim, add wall covering, and replace existing flooring with resilient flooring. Commercial Appraiser

[ADMINISTRATIVE LAW, ENVIRONMENTAL, GOVERNMENT, PROPERTY & REAL ESTATE, TAX](#)

[Martin v. City & County of San Francisco, No A107768 \(Cal. 1st App. Dist. December 30, 2005\)](#)

[A municipality may not lawfully require the owner of a private single-family residence who proposes to modify a](#)

[portion of the interior of his residence, in an area not visible to the general public, to undergo the burden and expense of a review of his proposed project pursuant to the California Environmental Quality Act.](#)

[CIVIL PROCEDURE, CONTRACTS, INJURY AND TORT, INSURANCE, & REAL ESTATE](#)
[Davaloo v. State Farm Ins. Co., No B171352, B171353 \(Cal. 2d App. Dist. December 30, 2005\)](#)
[Orders of dismissal of plaintiffs' complaints containing claims for policy benefits against insurers for losses caused by the Northridge earthquake is affirmed since the relation-back doctrine cannot be used to find plaintiffs' first amended complaints timely filed under a revival statute.](#)

[Free Landscaping Course](#)

[Don't know where to begin with landscape design? The online landscape design course that I'm offering may be just the thing for you. Have a lesson delivered to your e-mailbox daily, for 108 days. Each lesson contains 3 links, plus a link to the Discussion, should you wish to discuss your "homework" with other students \(don't worry: there aren't any tests!\). The links take you directly to landscape design and maintenance tips. All in all, just about the right dose of landscape design talk to enjoy over a cup of coffee. To sign up for free, click the link above.](#)

[CIVIL PROCEDURE, DEBT COLLECTION, PROPERTY & REAL ESTATE](#)

Ung v. Koehler, No. A109532 (Cal. 1st App. Dist. December 28, 2005)
Civil Code section 882.030, a provision of the Marketable Record Title Act, does not override the 10 or 60 year time limits for the exercise of a power of sale in a deed of trust from the "final maturity date" of the underlying debt. Further, once the beneficiary of a deed of trust has become entitled to claim the 60-year time limit, the beneficiary does not lose that entitlement merely by filing a notice of default that specifies the "final maturity date" of the underlying debt.

[ATTORNEY'S FEES, CONSTRUCTION, GOVERNMENT, & REAL ESTATE](#)

City & County of San Francisco v. Jen, No A107911 (Cal. 1st App. Dist. December 29, 2005)
Award of attorneys fees to plaintiff-municipality is affirmed as to claims of public nuisance, violation of state housing law, failure to comply with an abatement order, and unlawful business practices where the trial court properly awarded fees and costs to plaintiff under the State Housing Law.

[COMMERCIAL, CONTRACTS, INJURY AND TORT, LANDLORD TENANT, PROPERTY & REAL ESTATE, RETAIL](#)

Hinesley v. Oakshade Town Ctr., No C045865 (Cal. 3d App. Dist. December 29, 2005)
Summary judgment for defendant on plaintiff's complaint for fraud and rescission of his commercial lease with defendant is affirmed where defendant successfully demonstrated no triable issue of fact existed as to whether plaintiff justifiably relied on any material misrepresentation or concealment.

[ADMINISTRATIVE, GOVERNMENT, INJURY AND TORT, & REAL ESTATE, WATER](#)

Brady v. Abbott Labs., No. 04-15257 (9th Cir. December 29, 2005)
Judgment for plaintiffs on negligence and nuisance claims regarding defendant's illegal removal of groundwater from their property and subsequent resulting damages to plaintiffs' adjacent property is reversed where defendant owed plaintiff's no duty under the common law doctrine of reasonable use. Commercial Appraiser

[ENVIRONMENTAL, GOVERNMENT, PROPERTY & REAL ESTATE, REMEDIES](#)

Butler v. City of Palos Verdes, No B177260 (Cal. 2d App. Dist. December 28, 2005)
Judgment for plaintiffs in an action to enjoin a municipality's peafowl management program is reversed since the peafowl management program does not violate certain deed restrictions under which title to the parklands and canyons was taken by defendant-municipality.

[Two Pennsylvania residents were indicted on charges of bank fraud](#), mail fraud and making false statements on loan applications in connection with alleged mortgage fraud schemes said to have taken place in 2002 and 2003.

[Crooked appraisers fuel scams. Stolen identities used in mortgage swindles.](#)

By David Jackson

Tribune staff reporter

Published December 14, 2005

This story contains corrected material, published Dec. 16, 2005. A loose network of crooked real estate appraisers is stealing the identities of legitimate colleagues to file false reports and fuel the surge of mortgage fraud in Chicago and across the nation.

[2006 Real Estate Capital Markets Industry Outlook Top Ten Issues](#)

The U.S. economy is expanding, now at a slower rate, and investments are on the increase again. The economy appears poised for continued positive growth in 2006. Interest rates remain relatively low and, contrary to conventional wisdom, are not increasing as quickly as expected, creating the famous "conundrum" in the economy.

Yet a number of concerns remain on the horizon, especially with the budget and trade deficits; selected residential "bubbles;" post hurricane Katrina, Rita and Wilma impacts; along with the Iraqi war.

The California Housing Finance Agency has announced changes in servicing release requirements of first mortgage loans made in conjunction with a [HiCAP](#) subordinate loan.

Supreme Court of California

[ADMINISTRATIVE, CONSTRUCTION, GOVERNMENT, PROPERTY & REAL ESTATE](#)

Barratt Am., Inc. v. City of Rancho Cucamonga, No S117590 (Cal. December 22, 2005)

Grant of a demurrer for municipal defendant in an action regarding plaintiff's challenge, under the Mitigation Fee Act, to fees imposed relating to development projects is reversed to the extent that the court erred in determining that plaintiff could not challenge the validity of a resolution reenacting a fee previously set forth in an earlier resolution.

[CONSTRUCTION, CONTRACTS, INSURANCE, & REAL ESTATE](#)

Amwest Surety Ins. Co. v. Patriot Homes, Inc., No B175822 (Cal. 2d App. Dist. December 22, 2005)

Judgment for defendants, real estate developers, in an action for breach of an indemnity contract and statutory indemnity regarding plaintiff-insurer's provision of an appeal bond to defendants is reversed since the parties' indemnity agreements covered all bonds, including appeal bonds.

[ADMINISTRATIVE, CONSTRUCTION, GOVERNMENT LAW, LABOR & EMPLOYMENT, PROPERTY & REAL ESTATE](#)

[Greystone Homes, Inc. v. Cake, No A107763, A107769 \(Cal. 1st App. Dist. December 21, 2005\)](#)

[Determination that a housing development project was a public work for purposes of being subject to California's Prevailing Wage Law is reversed where the determination was based on an erroneous application of former Labor Code section 1720\(a\), and plaintiff-developer paid all demolition and construction costs with private funds.](#)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER December 19, 2005

[MORTGAGEE LETTER 2005-48](#) TO: ALL APPROVED MORTGAGEES, ALL APPROVED APPRAISERS

SUBJECT: FHA Repair and Inspection Requirements for existing properties and revisions to FHA Appraisal Protocol In a continuing effort to reform and standardize its appraisal requirements, FHA has shifted from its historical emphasis on the repair of minor property deficiencies and now only requires repairs for those property conditions that rise above the level of cosmetic defects, minor defects or normal wear and tear. FHA Roster Appraisers are reminded to report all readily observable property deficiencies, as well as any adverse conditions discovered performing the research involved in completing the appraisal, within the appraisal reporting form. Lenders should use professional judgment and rely upon prudent underwriting practices in determining when a property condition poses a threat to the safety of an occupant and/or jeopardizes the soundness and structural integrity of the property, such that additional inspections and/or repairs are necessary...

[CONSTITUTIONAL, GOVERNMENT, PROPERTY & REAL ESTATE](#)

Cathedral City Redevelopment Agency v. Stickles, No E036456 (Cal. 4th App. Dist. December 19, 2005)

Judgment condemning properties for redevelopment purposes in quick take eminent domain proceedings is affirmed where the trial court did not abuse its discretion in setting the date of valuation for purposes of a trial on the compensation issue, and defendants' constitutional rights were not violated.

Preserving Bond Coverage

Hubert J. Bell & Reginald M. Jones, Smith, Currie, & Hancock LLP

Preserving Bond Coverage Most construction contracts require the general contractor to obtain a performance bond in order to protect the owner in the event that the contractor defaults and cannot, or will not, complete its contractual obligation. Many general contractors obtain performance bonds for some or all of the key subcontractors. Once a claim is made under the performance bond, it is an unlikely scenario that the surety will immediately take over the contractor's responsibilities or pay another replacement contractor to complete the project. Thus, the question often arises: "What do I, as the claimant, need to know in order to protect my rights and trigger the surety's obligations under the performance bond?"

[[Read More...](#)]

[INJURY AND TORT, LABOR & EMPLOYMENT, & REAL ESTATE](#)

Kinsman v. Unocal Corp., No. S118561 (Cal. December 19, 2005)

A landowner that hires an independent contractor may be liable to the contractor's employee if: 1) the landowner knew, or should have known, of a latent or concealed preexisting hazardous condition on its property; 2) the contractor did not know and could not have reasonably discovered the hazardous condition; and 3) the landowner failed to warn the contractor about the condition.

Revisions May Mean More Goes to Your Heirs, Less to Uncle Sam Rea & Associates, Inc.

In terms of changes, the federal estate rules are a complex, moving target that will shift again on January 1, 2006. On that date, the federal estate tax exemption will jump from \$1.5 million to \$2 million and the maximum tax rate will drop from 47 percent to 46 percent. (The exemption will then stay at \$2 million until 2009, when it is scheduled to increase again to \$3.5 million, assuming Congress does not make any changes.)

[[Read More...](#)]

HUD has recently released a new Partnership for Advancing Technology in Housing (PATH) report, "Residential Panels Benchmark Requirements." Manufacturers are reinventing the process of home construction using assembly line automation and prefabricated panels made from a wide variety of materials. The installed panels form a structural envelope that eliminates the need for conventional framing, provides integrated insulation, and can be assembled swiftly by less skilled laborers. These advantages have spurred production and introduced a thermally efficient structural method of light construction to a broad market.

[Download your free copy of "Residential Panels Benchmark](#)

California Appellate Districts

[Banis Rest. Design, Inc. v. Serrano \(12/12/05 - No. C048900\)](#)

Dismissal of plaintiff's complaint pursuant to Business and Professions Code section 7031, which precludes an unlicensed contractor from filing suit for compensation for acts where a license is required, is affirmed where plaintiff was a contractor and did not meet its burden of proof to demonstrate how its complaint might be amended.

[Zwirn v. Schweizer \(12/14/05 - No. B180714\)](#)

[Trial court order finding that plaintiff's filing of creditor's claims to property in his aunt's trust and estate would violate no contest clauses in documents signed by his aunt in her trust and will is affirmed since his proposed actions do not fall within the "creditor's claim" exception of Probate Code section 21305.](#)

<http://login.findlaw.com/scripts/callaw?dest=ca/caapp4th/slip/2005/b180714.html>

[Trust One Mortgage Corp. v. Invest Am. Mortgage Corp. \(12/15/05 - No. G035111\)](#)

Summary judgment for plaintiff on contract claims involving loans made pursuant to a broker agreement between the parties is affirmed where a contractual indemnification provision in the agreement was an indemnity, and not a guaranty, and does not violate California's antideficiency laws.

[KB Reports Profits Through the Roof](#)

[KB Home on Thursday said its fourth-quarter profit soared 66 percent, beating analysts' estimates, as it sold more homes with higher selling prices.](#)

[CALIF. REGULATORS UNVEIL \\$3.2 BILLION PLAN TO EXPAND SOLAR POWER](#)

[Associated Press](#)

State energy regulators unveiled one of America's most ambitious programs to expand the market for solar power, proposing to offer more than \$3 billion (€2.52 billion) in consumer rebates over the next decade.

Federal And State [Solar Power Incentives](#), Rebates, Deductions:

U.S. Department of Energy Million Solar Roofs Initiative

California's Emerging Renewables [Rebate Program](#) (includes solar)

California Solar and Wind Energy [System Credit](#)

[ATTORNEY'S FEES, CONTRACTS, INJURY AND TORT, LANDLORD TENANT, & REAL ESTATE](#)

[Butler-Rupp v. Lourdeaux, No A102706, A103925 \(Cal. 1st App. Dist. December 14, 2005\).](#)

[Judgment and award for plaintiff on a negligent infliction of emotional distress claim in a landlord-tenant dispute involving contract and tort causes of action is reversed where plaintiff's injury was economic in nature and resulted from defendants' failure to perform their contractual obligations.](#)

[USC Lusk Center Casden Real Estate Economics Forecas](#)t Says Southern California Office and Industrial Markets Poised for Solid Growth in 2006

Press Release

New [Commercial Real Estate Index](#) Results Announced

Washington, DC—November 29 The Society of Industrial & Office (SIOR)

[ADMINISTRATIVE, CRIMINAL & PROCEDURE, ETHICS & DISCIPLINARY CODE, ETHICS & PROFESSIONAL](#)

[RESPONSIBILITY, & REAL ESTATE](#)

[Donaldson v. Dep't of Real Estate, No H027112 \(Cal. 6th App. Dist. December 09, 2005\)](#)

[Order revoking petitioner's realtor license is reversed since agency defendant lacked the authority to revoke a real estate license based on the licensee's conviction of unlawful intercourse with a minor, where evidence failed to establish that the minor participated unwillingly in the conduct underlying the conviction.](#)

[AEROSPACE & DEFENSE, CONSTITUTIONAL, PROPERTY & REAL ESTATE, TAX](#)

[Slocum v. State Bd. of Equalization, No A107905 \(Cal. 1st App. Dist. December 09, 2005\)](#)

The California State Board of Equalization's Rule 139, permitting midyear reassessment of property suffering loss in value because of diminished access in the aftermath of September 11, 2001, is invalid because it is inconsistent with Tax Code section 170 and the constitution.

[Southern California Office Rents to Rise](#)

Southern California office rents will continue to rise next year as steady gains in the economy will cause employers to expand, further pushing down vacancy rates, according to the Casden Real Estate Economics Forecast released by the USC Lusk Center for Real Estate. Rents are rising in all parts of Southern California with the San Fernando Valley rates growing at the fastest rate with a 20 percent increase from last year. West Los Angeles experienced the greatest absorption of space this year and commands the region's highest monthly rents at \$2.79/sf.

[Sacramento Can't Meet Demand for Industrial Land](#)

The demand for warehouses and plants in the Sacramento, CA area has more than tripled since the start of the year. This speaks well for Sacramento's economy, but without any available industrial land several companies, including Wal-Mart, Kohl's and Lowe's, have already gone elsewhere to build. The supply of land will improve when the 1,800-acre Metro Air Park hits the market next year, but there won't be much else available for quite a while.

Visit Commercial Real Estate Direct at www.crenews.com for up-to-the-minute commercial real estate news.

[BANKING, BANKRUPTCY, CONSTRUCTION](#)

[In re: Cooper Commons, No. 03-56818 \(9th Cir. December 07, 2005\)](#)

[A lender to a bankrupt condominium development may specify that post-petition loans it makes are to be used only for certain purposes. \(Amended opinion\)](#)

[CIVIL PROCEDURE, COMMERCIAL, CONTRACTS, DEBT COLLECTION, FOOD & BEVERAGES, LANDLORD TENANT, & REAL ESTATE](#)

[Navarro v. IHOP Props., Inc., No. G034987 \(Cal. 4th App. Dist. December 07, 2005\)](#)

[Order denying defendant's special motion to strike Flora Navarro's complaint for fraud and contract causes of action pursuant to the anti-SLAPP statute is reversed where plaintiff's claim arose from litigation activity and she was barred from prevailing on the merits.](#)

[THE HEAT IS ON MORTGAGE REFERRAL SCHEMES](#), December 2, 2005

It's one of American real estate's seamier practices, and it's almost impossible for consumers to detect - kickbacks and sweetheart payoffs among realty agents, title and escrow companies, lawyers and lenders for referrals of home-buyers' mortgage or closing services.

[California Appellate Districts](#)

[Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego Redevelopment Agency](#) (11/30/05 - No.

D045274) Judgment denying plaintiff's petition for a writ of mandate and dismissing its complaint is affirmed in an action under the California Environmental Quality Act seeking to require defendants to prepare a specific environmental impact report (EIR) analyzing a hotel project.

[Title Company's Motion to Dismiss Denied In Closing Protection Letter Lawsuit](#)

Primary Residential Mortgage, Inc., filed a civil lawsuit against Guarantee Title Insurance Co., dba Bar Plan Title Insurance Company brings seeking to recover amounts it lost as a result of a real estate fraud.

[BANKRUPTCY, CONSTRUCTION, CONTRACTS, DEBT COLLECTION, INSURANCE, & REAL ESTATE](#)

[Casa Eva I Homeowners Ass'n v. Ani Constr. & Tile, Inc., No B176985 \(Cal. 2d App. Dist. December 05, 2005\)](#)

[Denial of a judgment-creditor's motion for an order for satisfaction of its judgment lien is affirmed where there was no error in finding that judgment-creditor was not entitled to insurance or assignment proceeds relating to its debtor but from an unrelated construction action.](#)

[Recent AG Opinion Makes Clear that an Assessor's Office Must Provide Public Records at a Reasonable Cost and in a Timely Manner](#)

[On October 3, 2005, the State Attorney General's Office released a legal opinion concluding that a parcel boundary](#)

[map is required to be released to the public for copying and inspection and the assessor must provide this information as promptly as possible in an electronic format \(if the data is held in that matter\) and can charge only a fee that covers the direct cost of producing that copy or a fee set by statute.](#)

[ADMINISTRATIVE, CIVIL PROCEDURE, CONSTRUCTION, GOVERNMENT, PROJECT FINANCE, & REAL ESTATE, SANCTIONS](#)

Black Historical Soc'y v. City of San Diego, No D045481 (Cal. 4th App. Dist. December 01, 2005)
Dismissal of plaintiff's petition challenging defendant's approval of a low income housing development on a site with historical significance is affirmed where plaintiff failed to obtain the record, file an opening brief, or pursue the litigation, and there were time constraints for financing of the housing project.

[Advanced Residential Roof Systems \(September 2005, 34p\)](#)

[This Partnership for Advancing Technology in Housing \(PATH\) report outlines a research agenda for developing residential roof systems that serve multiple functions and improve performance over current systems. The scope of this agenda covers residential single-family type buildings, roofs of all ranges of pitch, and roof systems encompassing all components and subsystems from the top of the wall at the ceiling to the roof covering. In particular, five sets of strategies are detailed to achieve gains in \(1\) hazard mitigation, \(2\) energy performance of roofs, \(3\) safety and efficiency in roof system construction, \(4\) roof functionality, and \(5\) improving the environmental impact of roofs.](#)

[AEROSPACE & DEFENSE, GOVERNMENT CONTRACTS, & REAL ESTATE, REMEDIES, TAX](#)

[Northrop Grumman v. County of Los Angeles, No. B172863 \(Cal. 2d App. Dist. November 28, 2005\)](#)
[Overhead property allocated to government contracts as an indirect cost becomes the property of the federal government and is therefore not taxable.](#)

[BANKING, CONTRACTS, CORP. GOVERNANCE, CORPORATION & ENTERPRISE, PROFESSIONAL MALPRACTICE, PROPERTY & REAL ESTATE, SECURITIES, WHITE COLLAR CRIME](#)

[Frame v. PricewaterhouseCoopers LLP, No. A106383 \(Cal. 1st App. Dist. November 28, 2005\)](#)
[Summary judgment for defendant, auditor, on a class action claim of aiding and abetting fraud is reversed where a triable issue of material fact as to appellants' aiding and abetting claim precludes summary judgment on that issue.](#)

[BANKING, DEBT COLLECTION, PROPERTY & REAL ESTATE](#)

McElroy v. Chase Manhattan Mortgage Corp., No. G034588 (Cal. 4th App. Dist. November 28, 2005)
Judgment of dismissal of plaintiffs' complaint in an action for quiet title, declaratory relief, and fraudulent foreclosure against their lender and a third party purchaser is affirmed where plaintiffs failed to cure their default and subsequently had no adverse claim to the property.

[CIVIL PROCEDURE, CONTRACTS, GOVERNMENT, INSURANCE, PROPERTY & REAL ESTATE](#)

[Arocho v. California Fair Plan Ins. Co., No. B177188 \(Cal. 2d App. Dist. November 28, 2005\)](#)
[Summary judgment for defendant in an insurance dispute case brought under the Northridge earthquake revival statute is reversed where the superior court erred in concluding plaintiffs' broker was not a representative of defendant for purposes of notice under the revival statute.](#)

[Funding now available!](#)

California's Petroleum Brownfield Grant Program: Orphan Site Cleanup Account (OSCA)

[The Problem with Conventional Heat-Blocking Window Film](#)

NOVEMBER 28, 2005 – By Marty Watts, president and CEO, V-Kool Inc.

[ADMINISTRATIVE, GOVERNMENT, & REAL ESTATE, REMEDIES](#)

Shapiro v. Bd. of Dirs., No. D045506 (Cal. 4th App. Dist. November 22, 2005)
Trial court's judgment denying plaintiff injunctive relief is reversed where defendant's practice of meeting in closed session with legal counsel for the the Redevelopment Agency of the City of San Diego regarding the Agency's eminent domain litigation is not permitted by the Brown Act since defendant is not a party to that litigation.

[CONSTRUCTION, CONTRACTS, INJURY AND TORT INSURANCE, & REAL ESTATE](#)

[Davis v. Farmers Ins. Group, No. D044724 \(Cal. 4th App. Dist. November 18, 2005\)](#)
[Judgment in favor of defendant-insurer is affirmed where it had no duty to defend or indemnify plaintiffs in an underlying lawsuit since a policy exclusion precluded coverage for claims brought against plaintiffs, sellers of certain real property, by the purchasers of the property.](#)

[CIVIL PROCEDURE, COMMERCIAL, CONTRACTS, & REAL ESTATE](#)

[Santa Anita Cos. v. Westfield, No. B175820 \(Cal. 2d App. Dist. November 17, 2005\). Judgment reforming grant deeds and quieting title to a parcel of real property mistakenly conveyed to defendant is affirmed where the statute of limitations did not begin to run until plaintiff discovered the mistaken conveyance and plaintiff did not fail to exercise reasonable diligence prior to that discovery.](#)

[An Assessment Tool for Residential Construction Planning](#)

[The calculator provides a means of calculating a "whole house score." Each characteristic of a house and each](#)

design and construction process receives a performance score. These scores are then modified by values of the prospective homebuyer or builder and further modified by the way in which construction materials and processes interact with one another to produce the "whole house score." Two sample applications of the calculator are included with this report as Microsoft Excel files.

[HR 3405](#)

[CONSTITUTIONAL, GOVERNMENT, & REAL ESTATE, TAX](#)

[Neilson v. City of California City, No F046860 \(Cal. 5th App. Dist. November 03, 2005\) The California Constitution does not prohibit a tax on the mere ownership of real property if the tax is a special tax and not an ad valorem tax.](#)

[CONTRACTS, LANDLORD TENANT, & REAL ESTATE ASP Properties Group v. Fard, Inc., No D044896 \(Cal. 4th App. Dist. November 03, 2005\) In a landlord-tenant unlawful detainer action, judgment against plaintiff is affirmed where the maintenance language in the parties' lease agreement and amendment thereto did not require the defendant to replace the roofs of the premises.](#)

[ADMINISTRATIVE, ENVIRONMENTAL, & REAL ESTATE](#)

[California Oak Found. v. City of Santa Clarita, No B175580 \(Cal. 2d App. Dist. November 02, 2005\) In an action under the California Environmental Quality Act regarding a proposed industrial/business park, approval of an environmental impact report \(EIR\) was inappropriate because the EIR did not adequately discuss the adequacy of water supplies for the project; therefore, the trial court is directed to issue a writ of mandate vacating the certification until a corrected EIR is submitted and approved.](#)

[SUPREME COURT of TEXAS](#)

[\(Real Estate Contract/FAA\)](#)

[In re Weekley Homes, L.P. \(10/28/05 - No. 04-0119\)](#)

[Nonparties may be bound to an arbitration clause in a contract when the rules of law or equity would bind them to the contract generally.](#)

[CONTRACTS, & REAL ESTATE](#)

[Behniwal v. Super. Ct. of Orange County \(Gene C.\), No G035299 \(Cal. 4th App. Dist. October 28, 2005\)](#)

[In a suit to determine whether prospective buyers of a condo obtained a contract for its sale, plaintiffs-buyers are entitled to maintain a lis pendens on their property where they have at least a "probably valid"](#)

[PROPERTY & REAL ESTATE](#)

[Fishback v. County of Ventura, No B177462 \(Cal. 2d App. Dist. October 26, 2005\)](#)

[Under the Subdivision Map Act, on the creation of a fifth parcel on a tract of land within a one-year period, the previous four parcels created during that same one-year period become a subdivision.](#)

[INJURY AND TORT, PROPERTY & REAL ESTATE](#)

[Miller v. Weitzen, No D044911 \(Cal. 4th App. Dist. October 21, 2005\)](#)

[Plaintiff's payment of trail maintenance fees to her riding club is consideration which triggers the statutory exception to Civil Code section 846, which immunizes property owners from liability arising from the recreational use of their property.](#)

[CONSTITUTIONAL, & REAL ESTATE](#)

[County of Alameda v. Super. Ct. of Alameda, No A109576 \(Cal. 1st App. Dist. October 18, 2005\)](#)

[In an inverse condemnation action, defendant-land developer may not proceed with its regulatory taking action before the County has the opportunity to decide and explain the reach of the land use regulation at issue.](#)

[LANDLORD TENANT, & REAL ESTATE](#)

[Bohbot v. Santa Monica Rent Control Bd., No B179921 \(Cal. 2d App. Dist. October 13, 2005\)](#)

[Santa Monica's Rent Control Law provision, which prohibits owner-occupancy evictions in conversions, does not prohibit owner-occupancy evictions where the condominium was legally converted under the Tenant Ownership Rights Charter Amendment.](#)

[CIVIL PROCEDURE, & REAL ESTATE](#)

[McFarland v. Norton, No. 03-35831 \(9th Cir. October 11, 2005\) Dismissal of plaintiff's action to quiet title is reversed where he properly filed his suit within the 12-year statute of limitations.](#)

[CONTRACTS, & REAL ESTATE](#)

[Villacreses v. Molinari, No G034719 \(Cal. 4th App. Dist. September 26, 2005\) In a real estate contract dispute, a judgment confirming an arbitration decision in favor of defendants is reversed where the contract does not contain language to create a cognizable arbitration agreement.](#)

[LANDLORD TENANT, & REAL ESTATE](#)

[Underwood v. Corsino, No B175020 \(Cal. 2d App. Dist. October 06, 2005\) In an unlawful detainer action, judgment in favor of defendant-tenant is reversed where the trial court exceeded its authority in ordering abatement of rent.](#)

[FALSE ADVERTISING, & REAL ESTATE](#)

[Pallco Enter. Inc. v. Beam, No C047314 \(Cal. 3d App. Dist. September 29, 2005\) The trial court's finding, that advertising displays erected on defendant's property are not a public nuisance, is affirmed over plaintiff's claim that the court misapplied the provisions of the state Outdoor Advertising Act.](#)

[CONTRACTS, & REAL ESTATE](#)

[Enea v. Super. Ct. of Monterey County, No H027511 \(Cal. 6th App. Dist. September 30, 2005\) Fiduciary duties imposed on partners by operation of law unquestionably bar them from renting partnership property to themselves at less than its fair market value, even in the absence of an agreement requiring fair market rents.](#)

[Creating Vibrant Communities: Redeveloping California's Brownfields](#)

Thursday, September 29, 2005

8:00am - 4:30pm

to be held at the:

The University Club

750 B Street, Suite 750

Downtown San Diego

U.S. 5th Circuit Court of Appeals

[Int'l Ins. Co. v. RSR Corp. \(09/19/05 - No. 04-10311\) Defendant is entitled to coverage from plaintiff-insurance company for the EPA's costs of environmental remediation since the evidence is sufficient to support the jury's determination that the EPA made a claim against defendant within its policy coverage period. \[PDF File\]](#)

[INSURANCE, & REAL ESTATE](#)

[Mirpad v. Cal. Ins. Guarantee Ass'n, No B176080 \(Cal. 2d App. Dist. September 20, 2005\) Under the terms of a standard commercial general liability policy, there is no coverage liability for a claim for wrongful eviction of an "organization" since coverage is only extended under the policy to a claim by a natural person. \[PDF File\]](#)

[PROPERTY & REAL ESTATE](#)

[Prop. Owners of Whispering Palms v. Newport Pacific, Inc., No D045150 \(Cal. 1st App. Dist. September 08, 2005\) The requirements of California Code of Regulations section 2792.28, related to a developer's obligation to turn over control of an architectural committee to subdivision homeowners, are inapplicable in the context of a standard subdivision. \[PDF File\]](#)

[PROPERTY & REAL ESTATE](#)

[Fripp v. Walters, No C046733 \(Cal. 3d App. Dist. September 07, 2005\) In a boundary dispute between neighbors, a parcel map conducted by a civil engineer was not a government sanctioned survey, and the boundaries established by the parcel map can therefore be challenged.](#)

[\[PDF File\]](#)

<http://caselaw.lp.findlaw.com/data2/californiastatecases/c046733.pdf>

[CONTRACTS, INJURY AND TORT, & REAL ESTATE](#)

[Autery v. US, No. 04-35105 \(9th Cir. September 12, 2005\) Plaintiffs' claim under the Federal Tort Claims Act \(FTCA\), alleging negligence against the US for not maintaining firebreaks to prevent a large wildfire, is barred by the independent-contractor exception to the FTCA.](#)

[\[PDF File\]](#)

[BANKING, CONSTRUCTION, CONTRACTS Dell Merk, Inc. v. Franzia, No C046171 \(Cal. 3d App. Dist. August 31, 2005\)](#)

[In a suit arising from a defaulted payment obligation for a construction contract, judgment against plaintiff-bank is affirmed over its claim that defendant breached its obligation to pay by not making the first progress payment. To read the full text of this opinion, go to: \[PDF File\]](#)

[California's Petroleum Brownfield Grant Program](#)

[A new \\$30,000,000 Petroleum Contamination Cleanup Site Grant Fund is coming soon. The fund will provide grants of up to \\$1,000,000 per site for cleanup costs at brownfield sites contaminated by petroleum, including contamination caused by a refined product of petroleum or a petroleum derivative. Please feel free to call us or check our website, \[www.tcrf.org\]\(http://www.tcrf.org\) for updates on this program and other brownfield funding resources.](#)

We Make a Simple Pledge to

Communicate, in a timely fashion, each appraisal, analysis, and opinion without bias or partiality

Abstain from behavior that is deleterious to our clients, the appraisal profession, and the public

Hold paramount the confidential nature of the appraiser/consultant - client relationship

and

Comply with the requirements of the Uniform Standards of Professional Appraisal Practice and the

Code of Professional Ethics of the National Society of Real Estate Appraisers

Commercial Real Estate Appraiser, Los Angeles, Southern California, Real Estate Consultant, Real Estate A

Copyright 2005, 2006 All Rights Reserved

No portion of this page, text, images or code, may be copied, reproduced, published or distributed in any medium without the expressed written permission of the copyright holder.

