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PRACTICE BRIEF · REAL PROPERTY

Recent Developments in California Real Property Law: 2023-2024

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The 2023-2024 period was marked by the first real-world testing of California's ambitious housing legislation, intensifying tenant protection enforcement, and a renewed focus on construction defect liability. As local agencies grappled with mandatory lot-splitting under SB 9 and developers pursued CEQA streamlining pathways with mixed success, the practical limits of the state's pro-housing framework came into view. Simultaneously, the Tenant Protection Act's statewide rent cap and just-cause eviction regime generated significant enforcement activity and litigation. This article surveys five of the most consequential developments and their practical implications for California real property stakeholders.

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I. SB 9 Lot Splits: First-Year Implementation Challenges

The California Housing Opportunity and More Efficiency (HOME) Act, codified at Government Code sections 65852.21 and 66411.7, took effect on January 1, 2022, and by the 2023-2024 review period the first significant body of implementation experience had emerged. The statute established a statewide right to ministerially approve both duplexes and urban lot splits on parcels zoned for single-family residential use, but the gap between legislative intent and local implementation proved substantial.

Section 65852.21 requires local agencies to ministerially approve the construction of up to two residential units on a single-family-zoned parcel. Section 66411.7 requires ministerial approval of a parcel map for an urban lot split dividing a qualifying single-family parcel into two lots, each of which may then support duplex development under section 65852.21 -- yielding a theoretical maximum of four units on what was formerly a single-family lot. Because both approvals are ministerial, they are categorically exempt from CEQA review under Public Resources Code section 21080(b)(1).

Local agency resistance emerged as the dominant implementation challenge. Multiple cities adopted "objective design standards" under Government Code section 65913.4(a) that functioned as de facto discretionary review. Requirements for conditional use permits, design review board approval, or traffic impact analyses were imposed on SB 9 applications in apparent conflict with the ministerial mandate. The California Department of Housing and Community Development (HCD) issued formal findings of noncompliance against several jurisdictions, including cities that established minimum lot sizes exceeding 1,200 square feet or imposed setback requirements rendering lot splits physically infeasible.

The interaction between SB 9 and HOA governing documents raised distinct issues. Civil Code section 4751, enacted as part of the HOME Act package, voids any covenant that effectively prohibits or unreasonably restricts ADU or JADU construction on single-family-zoned land. Courts addressed whether section 4751's preemption extends to CC&Rs restricting lot splitting -- a question the statute does not expressly answer -- with early rulings suggesting the preemptive reach is limited to ADU/JADU construction and does not categorically void HOA restrictions on subdivision.

The three-year owner-occupancy requirement for lot splits under section 66411.7(a)(2)(B) also generated enforcement questions. The statute requires an affidavit affirming intent to occupy one of the resulting units as a principal residence for at least three years, but enforcement mechanisms remained underdeveloped and investor-driven applications tested whether the requirement constitutes a substantive restriction or a procedural formality.

> *"SB 9 mandated ministerial approval, but it did not provide a self-executing enforcement mechanism against local agencies that impose objective standards functioning as disguised discretionary review. The practical question is whether an applicant's remedy lies in administrative mandamus, HCD enforcement, or Attorney General action -- and how long each pathway takes."*

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II. CEQA Streamlining for Housing Projects

The California Environmental Quality Act continued to function as the primary legal battleground for housing development during 2023-2024, but several streamlining mechanisms gained traction. SB 35, codified at Government Code section 65913.4, provided a ministerial approval pathway for multifamily housing projects in jurisdictions that had not met their Regional Housing Needs Allocation (RHNA) targets -- a category that encompasses the majority of California cities.

The "builder's remedy" emerged as one of the period's most significant developments. Under the Housing Accountability Act, Government Code section 65589.5(d), a jurisdiction lacking a compliant housing element may not deny a housing development project for very low, low, or moderate-income households if the project complies with applicable objective standards. Because hundreds of California jurisdictions entered the sixth RHNA cycle (2021-2029) without compliant housing elements, developers filed builder's remedy applications for projects that would otherwise face denial -- including multi-story apartment buildings in single-family-zoned neighborhoods. Local agencies resisted, but the statutory text left little room for denial absent a compliant housing element.

AB 1307, effective January 1, 2024, created a significant new CEQA exemption for student housing projects, adding Public Resources Code section 21080.58 to exempt qualifying housing on property owned by or affiliated with a public university. The categorical exemption for infill development under CEQA Guidelines section 15332 continued to provide a pathway for smaller urban projects, but its conditions -- general plan consistency, no significant environmental effects, and adequate utility infrastructure -- limited its utility for projects involving general plan amendments. Courts reinforced that the infill exemption is not self-certifying: lead agencies must evaluate whether all five conditions are met, and the unusual circumstances exception under Guidelines section 15300.2(c) remains available to opponents.

The net effect was uneven. Developers with sophisticated counsel successfully leveraged SB 35, the builder's remedy, and categorical exemptions to advance projects in resistant jurisdictions. But smaller developers and individual property owners -- the constituencies SB 9 was designed to serve -- often lacked the resources to navigate the administrative and legal obstacles that local agencies interposed.

III. Tenant Protection Act Enforcement

The Tenant Protection Act of 2019 (AB 1482), codified at Civil Code sections 1946.2 and 1947.12, completed its fourth year of implementation during the 2023-2024 period with a substantial and growing body of enforcement experience. The statute established two principal protections: a statewide rent cap limiting annual increases to the lesser of 5 percent plus the local Consumer Price Index (CPI) or 10 percent, and just-cause eviction protections applicable to tenants who have occupied the unit for 12 months or more.

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Enforcement activity focused on several recurring issues. Owner move-in evictions under Civil Code section 1946.2(b)(2)(A)(ii) generated substantial litigation. The statute permits a landlord to recover possession for use by the landlord or qualifying family members but requires the landlord to actually occupy the unit for at least 12 months. Tenants displaced by purported owner move-in evictions who discovered the unit was re-rented at a higher rent filed wrongful eviction claims, asserting the landlord's stated intent was pretextual.

The corporate ownership exemption for single-family homes proved to be another significant area of dispute. AB 1482 exempts from both rent cap and just-cause protections any dwelling "owned by a natural person" (as opposed to a corporation, LLC, or other entity), provided the owner delivers a written notice of exemption. Civil Code section 1947.12(d)(5). Individual landlords who held single-family properties through LLCs -- a common asset-protection strategy -- inadvertently subjected themselves to AB 1482's full protections. Disputes arose when such landlords attempted to impose rent increases exceeding the cap or terminate tenancies without just cause, only to learn that their LLC ownership structure brought them within the statute's coverage.

The interaction between AB 1482 and local rent control ordinances added complexity. Cities with existing rent stabilization frameworks -- Los Angeles (RSO), San Francisco, Oakland, Berkeley, West Hollywood, and others -- maintained protections exceeding AB 1482's statewide floor. AB 1482 operates as a floor, not a ceiling, but the dual-track enforcement structure created confusion about which rules applied and which body had jurisdiction. A landlord in Los Angeles must comply with both the local RSO and AB 1482, with different rent adjustment formulas, different exemption criteria, and different enforcement mechanisms.

IV. Construction Defect: Right to Repair Act Litigation

The Right to Repair Act, Civil Code sections 895 through 945.5, continued to generate significant litigation during 2023-2024, with appellate decisions clarifying the statute's procedural requirements and substantive scope. The Act, applicable to new residential construction sold on or after January 1, 2003, establishes building performance standards and a mandatory pre-litigation notice and repair process intended to resolve construction defect claims without court action.

The pre-litigation notice requirements of sections 910 through 938 remained the primary source of procedural disputes. Section 910 requires the claimant to provide written notice of defects, after which the builder may inspect (section 916), offer to repair (section 917), or make a monetary offer (section 919). Section 930 provides that if the builder elects to repair or offer payment, the claimant may not file suit until the repair period expires or the offer is rejected. Builders frequently moved to stay or dismiss actions where homeowners had not complied, arguing the section 930 stay is jurisdictional.

Courts continued to refine builder notice adequacy. Under section 912, the builder's response must describe the inspection process, state its position on the claimed defects, and detail proposed repair work. Several decisions held that boilerplate notices not addressing the particular defects in the homeowner's claim were insufficient to trigger the section 930 stay, reasoning that the statute contemplates a genuine exchange of information.

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The economic loss rule produced the period's most complex disputes. Under *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, a party may not recover in tort for purely economic losses from a contractual relationship absent an independent duty violation. In construction defect cases, this confines claims to breach of contract and statutory theories where defects caused only economic loss -- diminished value, cost of repair -- without physical injury or damage beyond the defective construction. Homeowners whose defects have not yet caused consequential damage are generally confined to the Act's pre-litigation process, which they frequently argued favors builders by imposing delay and allowing builders to control the inspection timeline.

V. Micro-Mobility and Emerging Premises Liability Issues

The proliferation of e-scooters and other micro-mobility devices during 2023-2024 created a novel category of premises liability claims for California property owners. Shared e-scooter fleets operated under franchise agreements with municipalities raised questions about the duty of care owed by both the operators and the property owners on whose frontage the devices were staged, abandoned, or operated. Under traditional premises liability principles, a property owner owes a duty of reasonable care to maintain the property in a reasonably safe condition. Civil Code section 1714(a). Where e-scooters were abandoned on sidewalks or in building entryways, property owners faced claims from pedestrians who tripped over the devices. The threshold legal question -- whether the property owner had sufficient control over the instrumentality to owe a duty -- turned on case-specific facts: whether the owner could remove the devices, whether the owner had requested operator retrieval, and whether the accumulation was a recurring condition the owner knew or should have known about.

Municipal regulations varied widely. Some cities required operators to indemnify adjacent property owners and to maintain GPS-enforced geofencing restricting device parking in specified zones. Others imposed no such requirements. The legal landscape remained unsettled, but the trend toward municipal regulation suggested that franchise agreements -- rather than common-law duty analysis -- would increasingly define liability allocation among operators, property owners, and municipalities.

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PRACTICAL RECOMMENDATIONS FOR PROPERTY OWNERS

- **SB 9 lot splits:** Before pursuing an urban lot split, confirm that each resulting parcel meets the 1,200-square-foot minimum, that existing easements and utility infrastructure can accommodate the split, that the city's objective standards are genuinely ministerial, and that any applicable HOA restrictions have been evaluated for preemption under Civil Code section 4751
- **CEQA streamlining:** Developers should evaluate whether their jurisdiction has a compliant housing element; if not, the builder's remedy under Government Code section 65589.5(d) may provide an alternative approval pathway -- but expect local agency resistance and budget for potential mandamus proceedings
- **Tenant protections:** Landlords holding single-family properties through LLCs or other entities should evaluate whether their ownership structure inadvertently brings the property within AB 1482's coverage; owner move-in evictions require documented, genuine intent to occupy for at least 12 months
- **Construction defect:** Homeowners asserting claims under the Right to Repair Act must strictly comply with the pre-litigation notice requirements of Civil Code sections 910-938; failure to do so may result in a section 930 stay or dismissal, and builders' responsive notices must specifically address the claimed defects to be legally adequate
- **Premises liability:** Property owners should document efforts to remove abandoned micro-mobility devices, contact operators for retrieval, and review municipal franchise agreements for indemnification provisions that may shift liability to the device operator

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