

The Arnold Law Practice

News From the Practice

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Real Estate Agent Liable for Buyer's Premature Sale

A recent decision of the Court of Appeals should concern realtors and buyers of property. The plaintiff signed a contract to buy a home. The “dual agency” real estate agent (in other words, the realtor for both the plaintiff buyer and the sellers) did not tell the plaintiff that the home had a negative net value – due to liens and judgments. The plaintiff sold his own home in order to buy the new home. The plaintiff then learned that the sellers could not clear the liens and deliver title. The plaintiff tried to buy another home, but the rapid run-up in prices of California property priced him out of the market. So, the plaintiff sued the realtor and the sellers. The jury awarded the plaintiff “economic damages” – the money he lost when he prematurely sold his home.

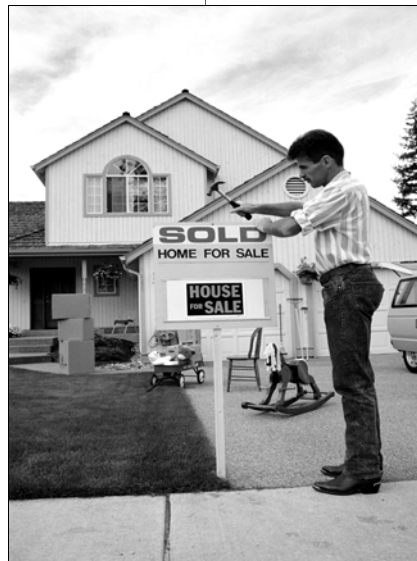
The appeals court agreed. *Strebel v. Brenlar Investments, Inc.*, 135 Cal.App.4th 740 (2006).

This case gives a “green light for lost opportunity damages” when people rely on a realtor who promises them a new property doesn't have liens. When they sell the old house, and can't buy the new house, they miss out on a run-up in property values. The court says the realtor who made the false promises owes the buyer money damages for the loss of the opportunity to profit. It is obvious how this rule can apply to contaminated properties — and realtors & consultants beware!

Increasing Property Values Means More Fights Over Fences, Driveways, and Easements

Rapid run-ups in the values of San Francisco Bay Area properties can make real estate agents liable. The result in *Strebel v. Brenlar Investments*— reviewed on this page — shows how increased values may mean more fights among property owners.

Also, increased values bring more attention to boundary lines, access roads, and easements. Some attorneys report handling more fights over property in the last few years than in decades of representing clients in lawsuits.



The Arnold Law Practice reports the same thing. We have experience in litigation over titles, easements, rights of way, licenses, and survey problems. When a local city passed an ordinance to force an elderly widow with no other property to repair roads she inherited, we were there. When another city attempted to “take” from another client a loading dock and truck yard, we were there. And, when a company bought “railroad rights” to land a client had used for many years, we were there.

Because of our experience with property rights, we have been asked to join the faculty at a legal education program, “Road and Access Law” for attorneys, title companies, and realtors. The program will be presented in San Francisco, Sacramento, and San Jose in July 2006. **Contact us for more information.**

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The Arnold Law Practice represents business owners in multi-defendant litigation with claims of groundwater pollution by drycleaning practices, USTs, waste disposal practices, OSHA penalty issues, claims against environmental consultants as to site audits, Fish & Game civil penalty proceedings, condemnation of portions of business for road expansion, failure of seller to disclose buried contamination, compliance with air pollution control laws, civil penalties from air quality management districts, spill response claims, toxics reporting and disclosure requirements, UST closure laws.

The Arnold Law Practice represents individuals in state and federal courts in a variety of lawsuits, including complaints for specific performance of real estate contracts, quiet title, defending permits issued by the National Marine Fisheries Service, defending and prosecuting construction claims, breach of contract, negligence, fraud, property trespass and damages, and related matters.

The Arnold Law Practice associates with specialized counsel in complex real estate closings, estate and trust planning, partition actions involving contamination, and transfers of real estate with indemnities and cleanup rights under the California UST Fund.

Owner Owes Employee of Independent Contractors for Hidden Hazards

California property owners are not liable when employees of independent contractors are hurt – unless the owner knows of a concealed hazard and fails to warn the contractor. *Privette v. Superior Court*, 5 Cal. 4th 689 (1993). (Note: Each state has its own rule for this situation.) The California Supreme Court recently extended this rule.

Now, a property owner is liable to employees of independent contractors if (a) the owner should have known of the concealed hazard, (b) the contractor does not know and can't discover it, and (c) the owner doesn't warn the contractor (so the contractor can warn its employees). *Kinsman v. Unocal Corp.* 37 Cal. 4th 659 (2006). (The defendant company knew in the 1930s that asbestos was dangerous. It hired a contractor in the 1950s but didn't warn of the asbestos danger. The contractor's former employee is sick and is suing.)

"This new rule expands the liability of property owners for past hazards," explains Jim Arnold, who has taught and written on legal reporting and disclosure requirements for environmental conditions in purchases and sales.

Careful Property Owners Know About "Permission to Pass" Signs

The next time you go to your favorite California mall, look down at your feet. You will see that during the "love generation" in the 1960s, the California legislature did a big favor for property owners. It added Section 1008 to the Civil Code, which says that "no use by any person or persons, no matter how long continued, shall ever ripen into an easement by prescription..." if a sign is posted that says, "**Right to pass by permission, and subject to control, of owner. Section 1008, Civil Code.**"

The California Court of Appeals in San Francisco recently upheld Section 1008 in a case with a 20 year old private access road. A tenant of the property owners had built the road to get to some gas wells the tenant was leasing from the defendants' predecessors. The tenant put up Section 1008 signs. But, a neighbor used the road for twenty years and gained **permanent rights** to the road. The appeals court ruled that Section 1008 "permission to pass" signs can prevent prescriptive easements *only if the owner posts them.* *Aaron v. Dunham*, No. A109488 (March 27, 2006).

The lesson for owners is clear. Either physically prevent trespassers from using your property – or post a sign that meets **all** the requirements of Section 1008.

(For a complimentary copy of Section 1008 of the Calif. Civil Code, please contact The Arnold Law Practice.)