

AMENDED IN SENATE MARCH 28, 2001

SENATE BILL

No. 562

Introduced by Senator Morrow

February 22, 2001

An act to amend Section 2924j of the Civil Code, to amend Sections 86, ~~396a, 398,~~ 472b, 564, ~~631,~~ 638, 912, 1206, and 1281.5 of, and to add Section 89 to, the Code of Civil Procedure, to amend Section 11937 of the Food and Agricultural Code, to amend Section 946.6 of the Government Code, and to amend Sections 16370, 16373, and 16379 of the Vehicle Code, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 562, as amended, Morrow. Civil procedure: limited civil cases.

(1) ~~Existing law governs the procedures for a trustee's sale of real property. Under existing law, when a trustee cannot determine the priorities of written claims to real property, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the court that portion of the sales proceeds that cannot be distributed.~~

~~This bill would specify that where the amount that a trustee deposits with a clerk is \$25,000 or less, the proceeding described above constitutes a limited civil case.~~

(2) ~~Existing law establishes the parameters for limited civil cases. Existing law provides that actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and all other persons having mechanics' liens, where the total amount of the liens is \$25,000 or less, constitute limited civil cases.~~

This bill would include petitions to release mechanics' liens where the total amount of a lien is \$25,000 or less, to the list of proceedings that constitute limited civil cases.

~~(3) Existing law specifies the circumstances in the court may, on motion change the place of trial. It also specifies the manner of selection of the court to which the place of trial is transferred.~~

~~This bill would revise the latter provision to clarify cross references to the former provision.~~

~~(4)~~

~~(2) Existing law establishes the requisite conditions for an action or proceeding to be treated as a limited civil case.~~

~~This bill would specify that the existence of a statute relating to the authority of the court in a limited civil case does not imply that the same authority does or does not apply in an unlimited case. The bill would also provide that the existence of a statute relating to the authority of the court in an unlimited case does not imply the existence of the same authority in a limited civil case.~~

~~(3) Existing law delineates various circumstances in which a superior court may appoint a receiver in a pending action, but limits that authority to cases other than limited civil cases.~~

~~This bill would delete the limitation of the provision to superior courts and the limitation of the authority to cases other than limited civil cases.~~

~~(5)~~

~~(4) Existing law establishes the requirements for the enforcement of arbitration agreements in the context of liens on works of improvement. Under existing law, a person who seeks to enforce a claim of lien on a work of improvement does not waive any arbitration rights pursuant to a written agreement if, in filing the complaint in the action, the claimant also provides the court with an application to stay the action pending arbitration.~~

~~This bill would provide that a person also does not waive any arbitration rights if the person includes an allegation in the complaint stating the intent not to waive arbitration rights and the intent to move the court for an order to stay proceedings within 30 days after service of the summons and complaint. The bill would additionally require a claimant seeking to preserve arbitration rights to file and serve a motion and notice of motion to stay the action pending arbitration within 30 days after service of the summons and complaint. This bill would also establish that pursuant to these provisions no party is entitled to discovery without leave of court unless the claimant expressly waives the right to arbitration, the court denies the motion for a stay, or the claimant fails to comply with certain requirements, as specified.~~



~~(6)~~

(5) Existing law provides that when an application to bring a claim against a public entity or public employee is denied by the governing body of that entity, a person may petition the court for an order relieving the petitioner from the prohibition against bringing a suit against the public entity.

This bill would specify that where an action to which the claim relates would be a limited civil case, the proceeding to petition a court pursuant to these provisions would also constitute a limited civil case.

~~(7)~~

(6) The bill would also make related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 2924j of the Civil Code is amended to~~
2 ~~read:~~

3 ~~2924j. (a) Unless an interpleader action has been filed, within~~
4 ~~30 days of the execution of the trustee's deed resulting from a sale~~
5 ~~in which there are proceeds remaining after payment of the~~
6 ~~amounts required by paragraphs (1) and (2) of subdivision (a) of~~
7 ~~Section 2924k, the trustee shall send written notice to all persons~~
8 ~~with recorded interests in the real property as of the date~~
9 ~~immediately prior to the trustee's sale who would be entitled to~~
10 ~~notice pursuant to subdivisions (b) and (c) of Section 2924b. The~~
11 ~~notice shall be sent by first-class mail in the manner provided in~~
12 ~~paragraph (1) of subdivision (c) of Section 2924b and inform each~~
13 ~~entitled person of each of the following:~~

14 ~~(1) That there has been a trustee's sale of the described real~~
15 ~~property.~~

16 ~~(2) That the noticed person may have a claim to all or a portion~~
17 ~~of the sale proceeds remaining after payment of the amounts~~
18 ~~required by paragraphs (1) and (2) of subdivision (a) of Section~~
19 ~~2924k.~~

20 ~~(3) The noticed person may contact the trustee at the address~~
21 ~~provided in the notice to pursue any potential claim.~~

22 ~~(4) That before the trustee can act, the noticed person may be~~
23 ~~required to present proof that the person holds the beneficial~~
24 ~~interest in the obligation and the security interest therefor. In the~~



1 ease of a promissory note secured by a deed of trust, proof that the
2 person holds the beneficial interest may include the original
3 promissory note and assignment of beneficial interests related
4 thereto. The noticed person shall also submit a written claim to the
5 trustee, executed under penalty of perjury, stating the following:

6 (A) The amount of the claim to the date of trustee's sale.

7 (B) An itemized statement of the principal, interest, and other
8 charges.

9 (C) That claims must be received by the trustee at the address
10 stated in the notice no later than 30 days after the date the trustee
11 sends notice to the potential claimant.

12 (b) The trustee shall exercise due diligence to determine the
13 priority of the written claims received by the trustee to the trustee's
14 sale surplus proceeds from those persons to whom notice was sent
15 pursuant to subdivision (a). In the event there is no dispute as to
16 the priority of the written claims submitted to the trustee, proceeds
17 shall be paid within 30 days after the conclusion of the notice
18 period. If the trustee has failed to determine the priority of written
19 claims within 90 days following the 30-day notice period, then
20 within 10 days thereafter the trustee shall deposit the funds with
21 the clerk of the court pursuant to subdivision (c) or file an
22 interpleader action pursuant to subdivision (c). Nothing in this
23 section shall preclude any person from pursuing other remedies or
24 claims as to surplus proceeds.

25 (c) If, after due diligence, the trustee is unable to determine the
26 priority of the written claims received by the trustee to the trustee's
27 sale surplus of multiple persons or if the trustee determines there
28 is a conflict between potential claimants, the trustee may file a
29 declaration of the unresolved claims and deposit with the clerk of
30 the superior or municipal court, as applicable, of the county in
31 which the sale occurred, that portion of the sales proceeds that
32 cannot be distributed, less any fees charged by the clerk pursuant
33 to this subdivision. Where the amount of the deposit is twenty-five
34 thousand dollars (\$25,000) or less, a proceeding pursuant to this
35 subdivision is a limited civil case. The declaration shall specify the
36 date of the trustee's sale, a description of the property, the names
37 and addresses of all persons sent notice pursuant to subdivision (a);
38 a statement that the trustee exercised due diligence pursuant to
39 subdivision (b), that the trustee provided written notice as required
40 by subdivisions (a) and (d) and the amount of the sales proceeds



1 ~~deposited by the trustee with the superior or municipal court.~~
2 ~~Further, the trustee shall submit a copy of the trustee's sales~~
3 ~~guarantee and any information relevant to the identity, location,~~
4 ~~and priority of the potential claimants with the superior or~~
5 ~~municipal court and shall file proof of service of the notice~~
6 ~~required by subdivision (d) on all persons described in subdivision~~
7 ~~(a).~~

8 ~~The clerk shall deposit the amount with the county treasurer~~
9 ~~subject to order of the superior or municipal court upon the~~
10 ~~application of any interested party. The clerk may charge a~~
11 ~~reasonable fee for the performance of activities pursuant to this~~
12 ~~subdivision equal to the fee for filing an interpleader action~~
13 ~~pursuant to Article 2 (commencing with Section 26820) of~~
14 ~~Division 2 of Title 3 of the Government Code. Upon deposit of that~~
15 ~~portion of the sale proceeds that cannot be distributed by due~~
16 ~~diligence, the trustee shall be discharged of further responsibility~~
17 ~~for the disbursement of sale proceeds. A deposit with the clerk of~~
18 ~~the superior or municipal court pursuant to this subdivision may~~
19 ~~be either for the total proceeds of the trustee's sale, less any fees~~
20 ~~charged by the clerk, if a conflict or conflicts exist with respect to~~
21 ~~the total proceeds, or that portion that cannot be distributed after~~
22 ~~due diligence, less any fees charged by the clerk.~~

23 ~~(d) Before the trustee deposits the funds with the clerk of the~~
24 ~~court pursuant to subdivision (e), the trustee shall send written~~
25 ~~notice by first-class mail, postage prepaid, to all persons described~~
26 ~~in subdivision (a) informing them that the trustee intends to deposit~~
27 ~~the funds with the clerk of the superior or municipal court, as~~
28 ~~applicable, and that a claim for the funds must be filed with the~~
29 ~~court within 30 days from the date of the notice, providing the~~
30 ~~address of the court in which the funds were deposited, and a phone~~
31 ~~number for obtaining further information.~~

32 ~~Within 90 days after deposit with the clerk, the court shall~~
33 ~~consider all claims filed at least 15 days before the date on which~~
34 ~~the hearing is scheduled by the court, the clerk shall serve written~~
35 ~~notice of the hearing by first-class mail on all claimants identified~~
36 ~~in the trustees' declaration at the addresses specified therein. The~~
37 ~~court shall distribute the deposited funds to any and all claimants~~
38 ~~entitled thereto.~~

39 ~~(e) Nothing in this section restricts the ability of a trustee to file~~
40 ~~an interpleader action in order to resolve a dispute about the~~



1 ~~proceeds of a trustee’s sale. Once an interpleader action has been~~
2 ~~filed, thereafter the provisions of this section shall not apply.~~

3 ~~(f) “Due diligence,” for the purposes of this section means that~~
4 ~~the trustee researched the written claims submitted or other~~
5 ~~evidence of conflicts and determined that a conflict of priorities~~
6 ~~exists between two or more claimants which the trustee is unable~~
7 ~~to resolve.~~

8 ~~(g) To the extent required by the Unclaimed Property Law, a~~
9 ~~trustee in possession of surplus proceeds not required to be~~
10 ~~deposited with the court pursuant to subdivision (b) shall comply~~
11 ~~with the Unclaimed Property Law (Chapter 7 (commencing with~~
12 ~~Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).~~

13 ~~(h) Prior to July 1, 2000, the Judicial Council shall adopt a form~~
14 ~~to accomplish the filing authorized by this section.~~

15 ~~SEC. 2.~~

16 *SECTION 1.* Section 86 of the Code of Civil Procedure is
17 amended to read:

18 86. (a) The following civil cases and proceedings are limited
19 civil cases:

20 (1) Cases at law in which the demand, exclusive of interest, or
21 the value of the property in controversy amounts to twenty-five
22 thousand dollars (\$25,000) or less. This paragraph does not apply
23 to cases that involve the legality of any tax, impost, assessment,
24 toll, or municipal fine, except actions to enforce payment of
25 delinquent unsecured personal property taxes if the legality of the
26 tax is not contested by the defendant.

27 (2) Actions for dissolution of partnership where the total assets
28 of the partnership do not exceed twenty-five thousand dollars
29 (\$25,000); actions of interpleader where the amount of money or
30 the value of the property involved does not exceed twenty-five
31 thousand dollars (\$25,000).

32 (3) Actions to cancel or rescind a contract when the relief is
33 sought in connection with an action to recover money not
34 exceeding twenty-five thousand dollars (\$25,000) or property of
35 a value not exceeding twenty-five thousand dollars (\$25,000),
36 paid or delivered under, or in consideration of, the contract; actions
37 to revise a contract where the relief is sought in an action upon the
38 contract if the action otherwise is a limited civil case.



1 (4) Proceedings in forcible entry or forcible or unlawful
2 detainer where the whole amount of damages claimed is
3 twenty-five thousand dollars (\$25,000) or less.

4 (5) Actions to enforce and foreclose liens on personal property
5 where the amount of the liens is twenty-five thousand dollars
6 (\$25,000) or less.

7 (6) Actions to enforce and foreclose, or petitions to release,
8 liens of mechanics, materialmen, artisans, laborers, and of all other
9 persons to whom liens are given under the provisions of Chapter
10 2 (commencing with Section 3109) of Title 15 of Part 4 of Division
11 3 of the Civil Code, or to enforce and foreclose an assessment lien
12 on a common interest development as defined in Section 1351 of
13 the Civil Code, where the amount of the liens is twenty-five
14 thousand dollars (\$25,000) or less. However, where an action to
15 enforce the lien affects property that is also affected by a similar
16 pending action that is not a limited civil case, or where the total
17 amount of the liens sought to be foreclosed against the same
18 property aggregates an amount in excess of twenty-five thousand
19 dollars (\$25,000), the action is not a limited civil case, ~~and if the~~
20 ~~action is pending in a municipal court, upon motion of any~~
21 ~~interested party, the municipal court shall order the action or~~
22 ~~actions pending therein transferred to the proper superior court.~~
23 ~~Upon making the order, the same proceedings shall be taken as are~~
24 ~~provided by Section 399 with respect to the change of place of~~
25 ~~trial.~~

26 (7) Actions for declaratory relief when brought pursuant to
27 either of the following:

28 (A) By way of cross-complaint as to a right of indemnity with
29 respect to the relief demanded in the complaint or a
30 cross-complaint in an action or proceeding that is otherwise a
31 limited civil case.

32 (B) To conduct a trial after a nonbinding fee arbitration
33 between an attorney and client, pursuant to Article 13
34 (commencing with Section 6200) of Chapter 4 of Division 3 of the
35 Business and Professions Code, where the amount in controversy
36 is twenty-five thousand dollars (\$25,000) or less.

37 (8) Actions to issue temporary restraining orders and
38 preliminary injunctions, and to take accounts, where necessary to
39 preserve the property or rights of any party to a limited civil case;
40 ~~to appoint a receiver and to make any order or perform any act,~~



1 pursuant to Title 9 (commencing with Section 680.010) of Part 2
2 (enforcement of judgments) in a limited civil case; *to appoint a*
3 *receiver pursuant to Section 564 in a limited civil case*; to
4 determine title to personal property seized in a limited civil case.

5 (9) Actions under Article 3 (commencing with Section
6 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the
7 recovery of an interest in personal property or to enforce the
8 liability of the debtor of a judgment debtor where the interest
9 claimed adversely is of a value not exceeding twenty-five
10 thousand dollars (\$25,000) or the debt denied does not exceed
11 twenty-five thousand dollars (\$25,000).

12 (10) Arbitration-related petitions filed pursuant to either of the
13 following:

14 (A) Article 2 (commencing with Section 1292) of Chapter 5 of
15 Title 9 of Part 3, except for uninsured motorist arbitration
16 proceedings in accordance with Section 11580.2 of the Insurance
17 Code, if the petition is filed before the arbitration award becomes
18 final and the matter to be resolved by arbitration is a limited civil
19 case under paragraphs (1) to (9), inclusive, of subdivision (a) or if
20 the petition is filed after the arbitration award becomes final and
21 the amount of the award and all other rulings, pronouncements,
22 and decisions made in the award are within paragraphs (1) to (9),
23 inclusive, of subdivision (a).

24 (B) To confirm, correct, or vacate a fee arbitration award
25 between an attorney and client that is binding or has become
26 binding, pursuant to Article 13 (commencing with Section 6200)
27 of Chapter 4 of Division 3 of the Business and Professions Code,
28 where the arbitration award is twenty-five thousand dollars
29 (\$25,000) or less.

30 (b) The following cases in equity are limited civil cases:

31 (1) Cases to try title to personal property when the amount
32 involved is not more than twenty-five thousand dollars (\$25,000).

33 (2) Cases when equity is pleaded as a defensive matter in any
34 case that is otherwise a limited civil case.

35 (3) Cases to vacate a judgment or order of the court obtained in
36 a limited civil case through extrinsic fraud, mistake, inadvertence,
37 or excusable neglect.

38 ~~SEC. 3. Section 396a of the Code of Civil Procedure is~~
39 ~~amended to read:~~



1 ~~396a.—(a) In a limited civil case that is subject to Sections~~
2 ~~1812.10 and 2984.4 of the Civil Code, or subdivision (b) of~~
3 ~~Section 395 of the Code of Civil Procedure, or is an action or~~
4 ~~proceeding for an unlawful detainer as defined in Section 1161 of~~
5 ~~the Code of Civil Procedure, the plaintiff shall state facts in the~~
6 ~~complaint, verified by the plaintiff's oath, or the oath of the~~
7 ~~plaintiff's attorney, or in an affidavit of the plaintiff or of the~~
8 ~~plaintiff's attorney filed with the complaint, showing that the~~
9 ~~action has been commenced in the proper court for the trial of the~~
10 ~~action or proceeding, and showing that the action is subject to the~~
11 ~~provisions of Sections 1812.10 and 2984.4 of the Civil Code or~~
12 ~~subdivision (b) of Section 395 of the Code of Civil Procedure, or~~
13 ~~is an action for an unlawful detainer. When the affidavit is filed~~
14 ~~with the complaint, a copy thereof shall be served with the~~
15 ~~summons. Except as herein provided, if the complaint or affidavit~~
16 ~~be not so filed, no further proceedings shall be had in the action or~~
17 ~~proceeding, except to dismiss without prejudice. However, the~~
18 ~~court may, on terms as may be just, permit the affidavit to be filed~~
19 ~~subsequent to the filing of the complaint, and a copy of the~~
20 ~~affidavit shall be served on the defendant and the time to answer~~
21 ~~or otherwise plead shall date from that service.~~

22 ~~(b) If it appears from the complaint or affidavit, or otherwise,~~
23 ~~that the court in which the action or proceeding is commenced is~~
24 ~~not the proper court for the trial thereof, the court in which the~~
25 ~~action or proceeding is commenced, or a judge thereof, shall,~~
26 ~~whenever that fact appears, transfer it to the proper court, on its~~
27 ~~own motion, or on motion of the defendant, unless the defendant~~
28 ~~consents in writing, or in open court (consent in open court being~~
29 ~~entered in the minutes of the court), to the keeping of the action or~~
30 ~~proceeding in the court where commenced. If that consent be~~
31 ~~given, the action or proceeding may continue in the court where~~
32 ~~commenced. Notwithstanding the provisions of Section 1801.1~~
33 ~~and subdivision (f) of Section 2983.7 of the Civil Code, that~~
34 ~~consent may be given by a defendant who is represented by~~
35 ~~counsel at the time the consent is given, and where an action or~~
36 ~~proceeding is subject to subdivision (b) of Section 395 or is for an~~
37 ~~unlawful detainer, that consent may only be given by a defendant~~
38 ~~who is represented by counsel at the time the consent is given. In~~
39 ~~any case where the transfer of the action or proceeding is ordered~~
40 ~~under the provisions of this paragraph, if summons is served prior~~



1 to the filing of the action or proceeding in the court to which it is
2 transferred, as to any defendant, so served, who has not appeared
3 in the action or proceeding, the time to answer or otherwise plead
4 shall date from service upon that defendant of written notice of the
5 filing.

6 ~~(e) When it appears from the complaint or affidavit of the~~
7 ~~plaintiff that the court in which the action or proceeding is~~
8 ~~commenced is a proper court for the trial thereof, all proper~~
9 ~~proceedings may be had, and the action or proceeding may be tried~~
10 ~~therein; provided, however, that a motion for a transfer of the~~
11 ~~action or proceeding may be made as in other cases, within the~~
12 ~~time, upon the grounds, and in the manner provided in this title,~~
13 ~~and if upon that motion it appears that the action or proceeding is~~
14 ~~not pending in the proper court, or should for other cause be~~
15 ~~transferred, the same shall be ordered transferred as provided in~~
16 ~~this title.~~

17 ~~(d) When any action or proceeding is ordered transferred as~~
18 ~~herein provided, proceedings shall be had, and the costs and fees~~
19 ~~shall be paid, as provided in Sections 398 and 399.~~

20 ~~SEC. 4. Section 398 of the Code of Civil Procedure is~~
21 ~~amended to read:~~

22 ~~398. (a) If, for any cause specified in subdivision (b), (c), or~~
23 ~~(d) of Section 397, the court orders the transfer of an action or~~
24 ~~proceeding, it must be transferred to a court having jurisdiction of~~
25 ~~the subject matter of the action which the parties may agree upon,~~
26 ~~by stipulation in writing, or made in open court and entered in the~~
27 ~~minutes; or, if they do not so agree, then to the nearest or most~~
28 ~~accessible court, where the like objection or cause for making the~~
29 ~~order does not exist.~~

30 ~~(b) If an action or proceeding is commenced in a court, other~~
31 ~~than one designated as a proper court for the trial by the provisions~~
32 ~~of this title, and the same be ordered transferred for that reason, it~~
33 ~~shall be transferred to any proper court which the parties may agree~~
34 ~~upon by stipulation in writing, or made in open court and entered~~
35 ~~in the minutes; if the parties do not so agree, then to any proper~~
36 ~~court in the county in which the action or proceeding was~~
37 ~~commenced which the defendant may designate, or, if there be no~~
38 ~~proper court in such county, to any proper court, in a proper county,~~
39 ~~designated by the defendant; if the parties do not so agree, and the~~
40 ~~defendant does not so designate the court, as herein provided, or~~



1 ~~where the court orders the transfer of an action on its own motion~~
2 ~~as provided in this title, to the proper court as the court in which~~
3 ~~the action or proceeding is pending may determine.~~

4 ~~(e) The designation of the court by the defendant, herein~~
5 ~~provided for, may be made in the notice of motion for change of~~
6 ~~venue or in open court, entered in the minutes or docket, at the time~~
7 ~~the order for transfer is made.~~

8 ~~SEC. 5.~~

9 *SEC. 2. Section 89 is added to the Code of Civil Procedure, to*
10 *read:*

11 *89. (a) The existence of a statute relating to the authority of*
12 *the court in a limited civil case does not, by itself, imply that the*
13 *same authority does or does not exist in an unlimited civil case.*

14 *(b) The existence of a statute relating to the authority of the*
15 *court in an unlimited civil case does not, by itself, imply that the*
16 *same authority does or does not exist in a limited civil case.*

17 *SEC. 3. Section 472b of the Code of Civil Procedure is*
18 *amended to read:*

19 *472b. When a demurrer to any pleading is sustained or*
20 *overruled, and time to amend or answer is given, the time so given*
21 *runs from the service of notice of the decision or order, unless the*
22 *notice is waived in open court, and the waiver entered in the*
23 *minutes. When an order sustaining a demurrer without leave to*
24 *amend is reversed or otherwise remanded by any order issued by*
25 *a reviewing court, any amended complaint shall be filed within 30*
26 *days after the clerk of the reviewing court mails notice of the*
27 *issuance of the remittitur.*

28 ~~SEC. 6.~~

29 *SEC. 4. Section 564 of the Code of Civil Procedure is*
30 *amended to read:*

31 *564. (a) A receiver may be appointed, in the manner*
32 *provided in this chapter, by the court in which an action or*
33 *proceeding is pending in any case in which the court is empowered*
34 *by law to appoint a receiver.*

35 *(b) A receiver may be appointed by the court in which an action*
36 *or proceeding is pending, or by a judge thereof, in the following*
37 *cases:*

38 *(1) In an action by a vendor to vacate a fraudulent purchase of*
39 *property, or by a creditor to subject any property or fund to the*
40 *creditor's claim, or between partners or others jointly owning or*



1 interested in any property or fund, on the application of the
2 plaintiff, or of any party whose right to or interest in the property
3 or fund, or the proceeds thereof, is probable, and where it is shown
4 that the property or fund is in danger of being lost, removed, or
5 materially injured.

6 (2) In an action by a secured lender for the foreclosure of a deed
7 of trust or mortgage and sale of property upon which there is a lien
8 under a deed of trust or mortgage, where it appears that the
9 property is in danger of being lost, removed, or materially injured,
10 or that the condition of the deed of trust or mortgage has not been
11 performed, and that the property is probably insufficient to
12 discharge the deed of trust or mortgage debt.

13 (3) After judgment, to carry the judgment into effect.

14 (4) After judgment, to dispose of the property according to the
15 judgment, or to preserve it during the pendency of an appeal, or
16 pursuant to Title 9 (commencing with Section 680.010)
17 (enforcement of judgments), or after sale of real property pursuant
18 to a decree of foreclosure, during the redemption period, to collect,
19 expend, and disburse rents as directed by the court or otherwise
20 provided by law.

21 (5) Where a corporation has been dissolved, ~~or as provided in~~
22 *Section 565.*

23 (6) *Where a corporation* is insolvent, or in imminent danger of
24 insolvency, or has forfeited its corporate rights.

25 ~~(6)~~

26 (7) In an action of unlawful detainer.

27 ~~(7)~~

28 (8) At the request of the Public Utilities Commission pursuant
29 to Sections 855 and 5259.5 of the Public Utilities Code.

30 ~~(8)~~

31 (9) In all other cases where necessary to preserve the property
32 ~~or rights of any party, or where receivers have heretofore been~~
33 ~~appointed by the usages of courts of equity.~~ *or rights of any party.*

34 ~~(9)~~

35 (10) At the request of the Office of Statewide Health Planning
36 and Development, or the Attorney General, pursuant to Section
37 129173 of the Health and Safety Code.

38 ~~(10)~~

39 (11) In an action by a secured lender for specific performance
40 of an assignment of rents provision in a deed of trust, mortgage,



1 or separate assignment document. The appointment may be
2 continued after entry of a judgment for specific performance if
3 appropriate to protect, operate, or maintain real property
4 encumbered by a deed of trust or mortgage or to collect rents
5 therefrom while a pending nonjudicial foreclosure under power of
6 sale in a deed of trust or mortgage is being completed.

7 ~~(11)~~

8 (12) In a case brought by an assignee under an assignment of
9 leases, rents, issues, or profits pursuant to subdivision (g) of
10 Section 2938 of the Civil Code.

11 (c) A receiver may be appointed, in the manner provided in this
12 chapter, including, but not limited to, Section 566, by the superior
13 court in an action brought by a secured lender to enforce the rights
14 provided in Section 2929.5 of the Civil Code, to enable the secured
15 lender to enter and inspect the real property security for the
16 purpose of determining the existence, location, nature, and
17 magnitude of any past or present release or threatened release of
18 any hazardous substance into, onto, beneath, or from the real
19 property security. The secured lender shall not abuse the right of
20 entry and inspection or use it to harass the borrower or tenant of
21 the property. Except in case of an emergency, when the borrower
22 or tenant of the property has abandoned the premises, or if it is
23 impracticable to do so, the secured lender shall give the borrower
24 or tenant of the property reasonable notice of the secured lender's
25 intent to enter and shall enter only during the borrower's or
26 tenant's normal business hours. Twenty-four hours' notice shall be
27 presumed to be reasonable notice in the absence of evidence to the
28 contrary.

29 (d) Any action by a secured lender to appoint a receiver
30 pursuant to this section shall not constitute an action within the
31 meaning of subdivision (a) of Section 726.

32 (e) For purposes of this section:

33 (1) "Borrower" means the trustor under a deed of trust, or a
34 mortgagor under a mortgage, where the deed of trust or mortgage
35 encumbers real property security and secures the performance of
36 the trustor or mortgagor under a loan, extension of credit,
37 guaranty, or other obligation. The term includes any successor in
38 interest of the trustor or mortgagor to the real property security
39 before the deed of trust or mortgage has been discharged,
40 reconveyed, or foreclosed upon.



1 (2) “Hazardous substance” means (A) any “hazardous
2 substance” as defined in subdivision (f) of Section 25281 of the
3 Health and Safety Code as effective on January 1, 1991, or as
4 subsequently amended, (B) any “waste” as defined in subdivision
5 (d) of Section 13050 of the Water Code as effective on January 1,
6 1991, or as subsequently amended, or (C) petroleum, including
7 crude oil or any fraction thereof, natural gas, natural gas liquids,
8 liquefied natural gas, or synthetic gas usable for fuel, or any
9 mixture thereof.

10 (3) “Real property security” means any real property and
11 improvements, other than a separate interest and any related
12 interest in the common area of a residential common interest
13 development, as the terms “separate interest,” “common area,”
14 and “common interest development” are defined in Section 1351
15 of the Civil Code, or real property consisting of one acre or less that
16 contains 1 to 15 dwelling units.

17 (4) “Release” means any spilling, leaking, pumping, pouring,
18 emitting, emptying, discharging, injecting, escaping, leaching,
19 dumping, or disposing into the environment, including continuing
20 migration, of hazardous substances into, onto, or through soil,
21 surface water, or groundwater.

22 (5) “Secured lender” means the beneficiary under a deed of
23 trust against the real property security, or the mortgagee under a
24 mortgage against the real property security, and any successor in
25 interest of the beneficiary or mortgagee to the deed of trust or
26 mortgage.

27 ~~SEC. 7. Section 631 of the Code of Civil Procedure is~~
28 ~~amended to read:~~

29 ~~631. (a) Trial by jury may be waived by the several parties to~~
30 ~~an issue of fact in any of the following ways:~~

31 ~~(1) By failing to appear at the trial.~~

32 ~~(2) By written consent filed with the clerk or judge.~~

33 ~~(3) By oral consent, in open court, entered in the minutes.~~

34 ~~(4) By failing to announce that a jury is required, at the time the~~
35 ~~cause is first set for trial, if it is set upon notice or stipulation, or~~
36 ~~within five days after notice of setting if it is set without notice or~~
37 ~~stipulation.~~

38 ~~(5) By failing to deposit with the clerk, or judge, advance jury~~
39 ~~fees 25 days prior to the date set for trial, except in unlawful~~
40 ~~detainer actions where the fees shall be deposited at least five days~~



1 prior to the date set for trial, or as provided by subdivision (b). An
2 advance jury fee deposited pursuant to this paragraph may not
3 exceed a total of one hundred fifty dollars (\$150).

4 ~~(6) By failing to deposit with the clerk or judge, promptly after
5 the impanelment of the jury, a sum equal to the mileage or
6 transportation (if allowed by law) of the jury accrued up to that
7 time.~~

8 ~~(7) By failing to deposit with the clerk or judge, at the
9 beginning of the second and each succeeding day's session a sum
10 equal to one day's fees of the jury, and the mileage or
11 transportation, if any.~~

12 ~~(b) In a superior court action, other than a limited civil case, if
13 a jury is demanded by either party in the memorandum to set the
14 cause for trial and the party, prior to trial, by announcement or by
15 operation of law, waives a trial by jury, then all adverse parties
16 shall have five days following the receipt of notice of the waiver
17 to file and serve a demand for a trial by jury and to deposit any
18 advance jury fees that are then due.~~

19 ~~(c) When the party who has demanded trial by jury either (1)
20 waives the trial upon or after the assignment for trial to a specific
21 department of the court, or upon or after the commencement of the
22 trial, or (2) fails to deposit the fees as provided in paragraph (6) of
23 subdivision (a), trial by jury shall be waived by the other party by
24 either failing promptly to demand trial by jury before the judge in
25 whose department the waiver, other than for the failure to deposit
26 the fees, was made, or by failing promptly to deposit the fees
27 described in paragraph (6) of subdivision (a).~~

28 ~~(d) The court may, in its discretion upon just terms, allow a trial
29 by jury although there may have been a waiver of a trial by jury.~~

30 ~~SEC. 8.~~

31 *SEC. 5.* Section 638 of the Code of Civil Procedure is
32 amended to read:

33 638. A referee may be appointed upon the agreement of the
34 parties filed with the clerk, or judge, or entered in the minutes, or
35 upon the motion of a party to a written contract or lease that
36 provides that any controversy arising therefrom shall be heard by
37 a referee if the court finds a reference agreement exists between the
38 parties:



1 (a) To hear and determine any or all of the issues in an action
2 or proceeding, whether of fact or of law, and to report a statement
3 of decision.

4 (b) To ascertain a fact necessary to enable the court to
5 determine an action or proceeding.

6 (c) In any matter in which a referee is appointed pursuant to this
7 section, a copy of the order shall be forwarded to the office of the
8 presiding judge. The Judicial Council shall, by rule, collect
9 information on the use of these referees. The Judicial Council shall
10 also collect information on fees paid by the parties for the use of
11 referees to the extent that information regarding those fees is
12 reported to the court. The Judicial Council shall report thereon to
13 the Legislature by January 1, 2003. This subdivision shall become
14 inoperative on January 1, 2004.

15 ~~SEC. 9.~~

16 *SEC. 6.* Section 912 of the Code of Civil Procedure is
17 amended to read:

18 912. Upon final determination of an appeal by the reviewing
19 court, the clerk of the court shall remit to the trial court a certified
20 copy of the judgment or order of the reviewing court and of its
21 opinion, if any. The clerk of the trial court shall file the certified
22 copy of the judgment and opinion of the reviewing court, shall
23 attach the same to the judgment roll if the appeal was from a
24 judgment, and shall enter a note of the judgment of the reviewing
25 court stating whether the judgment or order appealed from has
26 been affirmed, reversed or modified, in the margin of the original
27 entry of the judgment or order, and also in the register of actions.

28 ~~SEC. 10.~~

29 *SEC. 7.* Section 1206 of the Code of Civil Procedure is
30 amended to read:

31 1206. (a) Upon the levy under a writ of attachment or
32 execution not founded upon a claim for labor, any miner,
33 mechanic, salesman, servant, clerk, laborer or other person who
34 has performed work or rendered personal services for the
35 defendant within 90 days prior to the levy may file a verified
36 statement of the claim therefor with the officer executing the writ,
37 file a copy thereof with the court that issued the writ, and give
38 copies thereof, containing his or her address, to the plaintiff and the
39 defendant, or any attorney, clerk or agent representing them, or
40 mail copies to them by registered mail at their last known address,



1 return of which by the post office undelivered shall be deemed a
2 sufficient service if no better address is available, and that claim,
3 not exceeding nine hundred dollars (\$900), unless disputed, must
4 be paid by the officer, immediately upon the expiration of the time
5 for dispute of the claim as prescribed in Section 1207, from the
6 proceeds of the levy remaining in the officer's hands at the time of
7 the filing of the statement or collectible by the officer on the basis
8 of the writ.

9 (b) The court issuing the writ must make a notation in the
10 register of actions of every preferred labor claim of which it
11 receives a copy and must endorse on any writ of execution or
12 abstract of judgment issued subsequently in the case that it is
13 issued subject to the rights of a preferred labor claimant or
14 claimants and giving the names and amounts of all preferred labor
15 claims of which it has notice. In levying under any writ of
16 execution the officer making the levy shall include in the amount
17 due under the execution any and all preferred labor claims that
18 have been filed in the action and of which the officer has notice,
19 except any claims that may have been finally disallowed by the
20 court under the procedure provided for herein and of which
21 disallowance the officer has actual notice. The amount due on
22 preferred labor claims that have not been finally disallowed by the
23 court shall be considered a part of the sum due under any writ of
24 attachment or execution in augmentation of the amount thereof
25 and it shall be the duty of any person, firm, association or
26 corporation on whom a writ of attachment or execution is levied
27 to immediately pay to the levying officer the amount of the
28 preferred labor claims, out of any money belonging to the
29 defendant in the action, before paying the principal sum called for
30 in the writ.

31 (c) If any claim is disputed within the time, and in the manner
32 prescribed in Section 1207, and a copy of the dispute is mailed by
33 registered mail to the claimant or the claimant's attorney at the
34 address given in the statement of claim and the registry receipt is
35 attached to the original of the dispute when it is filed with the
36 levying officer, or is handed to the claimant or the claimant's
37 attorney, the claimant, or the claimant's assignee, must within 10
38 days after the copy is deposited in the mail or is handed to the
39 claimant or the claimant's attorney petition the court having
40 jurisdiction of the action on which the writ is based, for a hearing



1 before it to determine the claim for priority, or the claim to priority
2 is barred. If more than one attachment or execution is involved, the
3 petition shall be filed in the court having jurisdiction over the
4 senior attachment or execution. The hearing shall be held within
5 20 days from the filing of the petition unless the court continues
6 it for good cause. Ten days' notice of the hearing shall be given by
7 the petitioner to the plaintiff and the defendant, and to all parties
8 claiming an interest in the property, or their attorneys. The notice
9 may be informal and need specify merely the name of the court,
10 names of the principal parties to the senior attachment or execution
11 and name of the wage claimant or claimants on whose behalf it is
12 filed but shall specify that the hearing is for the purpose of
13 determining the claim for priority. The plaintiff or the defendant,
14 or any other party claiming an interest may contest the amount or
15 validity of the claim in spite of any confession of judgment or
16 failure to appear or to contest the claim on the part of any other
17 person.

18 (d) There shall be no cost for filing or hearing the petition and
19 the hearing on the petition shall be informal but all parties
20 testifying must be sworn. Any claimant may appear on the
21 claimant's own behalf at the hearing and may call and examine
22 witnesses to substantiate his or her claim. An appeal may be taken
23 from a judgment in a proceeding under this section in the manner
24 provided for appeals from judgments of the court where the
25 proceeding is had, in an action of the same jurisdictional
26 classification.

27 (e) The officer shall retain in possession until the determination
28 of the claim for priority so much of the proceeds of the writ as may
29 be necessary to satisfy the claim, and if the claim for priority is
30 allowed, the officer shall pay the amount due, including the
31 claimant's cost of suit, from such proceeds, immediately after the
32 order allowing the claim becomes final.

33 ~~SEC. 11.~~

34 *SEC. 8.* Section 1281.5 of the Code of Civil Procedure is
35 amended to read:

36 1281.5. (a) Any person who proceeds to record and enforce
37 a claim of lien by commencement of an action pursuant to Title 15
38 (commencing with Section 3082) of Part 4 of Division 3 of the
39 Civil Code, does not thereby waive any right of arbitration that the
40 person may have pursuant to a written agreement to arbitrate, if,



1 in filing an action to enforce the claim of lien, the claimant does
2 either of the following:

3 (1) Includes an allegation in the complaint that the claimant
4 does not intend thereby to waive any right of arbitration, and
5 intends to move the court, within 30 days after service of the
6 summons and complaint, for an order to stay further proceedings
7 in the action.

8 (2) At the same time that the complaint is filed, the claimant
9 files an application that the action be stayed pending the arbitration
10 of any issue, question, or dispute that is claimed to be arbitrable
11 under the agreement and that is relevant to the action to enforce the
12 claim of lien.

13 (b) Within 30 days after service of the summons and complaint,
14 the claimant shall file and serve a motion and notice of motion
15 pursuant to Section 1281.4 to stay the action pending arbitration
16 of any issue, question, or dispute that is claimed to be arbitrable
17 under the agreement and that is relevant to the action to enforce the
18 claim of lien.

19 (c) Notwithstanding Article 3 (commencing with Section
20 2016) of Chapter 3 of Title 3 of Part 4, if the claimant complies
21 with subdivision (a), no party to the action is entitled to discovery
22 without leave of court, until one of the following occurs:

23 (1) The claimant expressly waives the right to arbitration.

24 (2) The court denies the motion for a stay.

25 (3) The claimant fails to comply with subdivision (b).

26 (d) The failure of a defendant to file a petition pursuant to
27 Section 1281.2 at or before the time the defendant answers the
28 complaint filed pursuant to subdivision (a) is a waiver of the
29 defendant's right to compel arbitration.

30 ~~SEC. 12.~~

31 *SEC. 9.* Section 11937 of the Food and Agricultural Code is
32 amended to read:

33 11937. Upon the expiration of 30 days after any judgment
34 becomes final, which is not stayed or satisfied in any action which
35 results in a judgment for damages, the clerk of a court shall forward
36 to the director a certified copy of the judgment or a certified copy
37 of the register of actions, and a certificate of facts relative to the
38 judgment, on a form which is provided by the director.

39 ~~SEC. 13.~~



1 SEC. 10. Section 946.6 of the Government Code is amended
2 to read:

3 946.6. (a) Where an application for leave to present a claim
4 is denied or deemed to be denied pursuant to Section 911.6, a
5 petition may be made to the court for an order relieving the
6 petitioner from Section 945.4. The proper court for filing the
7 petition is a ~~court which would be a competent~~ *superior court that*
8 *would be a proper* court for the trial of an action on the cause of
9 action to which the claim relates ~~and which is located in a county~~
10 ~~or judicial district which would be a proper place for the trial of the~~
11 ~~action, and if.~~ *If* the petition is filed in a court which is not a proper
12 court for the determination of the matter, the court, on motion of
13 any party, shall transfer the proceeding to a proper court. Where
14 an action on the cause of action to which the claim relates would
15 be a limited civil case, a proceeding pursuant to this section is a
16 limited civil case.

17 (b) The petition shall show each of the following:

18 (1) That application was made to the board under Section 911.4
19 and was denied or deemed denied.

20 (2) The reason for failure to present the claim within the time
21 limit specified in Section 911.2.

22 (3) The information required by Section 910.

23 The petition shall be filed within six months after the application
24 to the board is denied or deemed to be denied pursuant to Section
25 911.6.

26 (c) The court shall relieve the petitioner from Section 945.4 if
27 the court finds that the application to the board under Section 911.4
28 was made within a reasonable time not to exceed that specified in
29 subdivision (b) of Section 911.4 and was denied or deemed denied
30 pursuant to Section 911.6 and that one or more of the following is
31 applicable:

32 (1) The failure to present the claim was through mistake,
33 inadvertence, surprise, or excusable neglect unless the public
34 entity establishes that it would be prejudiced in the defense of the
35 claim if the court relieves the petitioner from Section 945.4.

36 (2) The person who sustained the alleged injury, damage or loss
37 was a minor during all of the time specified in Section 911.2 for
38 the presentation of the claim.

39 (3) The person who sustained the alleged injury, damage or loss
40 was physically or mentally incapacitated during all of the time



1 specified in Section 911.2 for the presentation of the claim and by
2 reason of that disability failed to present a claim during that time.

3 (4) The person who sustained the alleged injury, damage or loss
4 died before the expiration of the time specified in Section 911.2 for
5 the presentation of the claim.

6 (d) A copy of the petition and a written notice of the time and
7 place of hearing shall be served before the hearing as prescribed
8 by subdivision (b) of Section 1005 of the Code of Civil Procedure
9 on (1) the clerk or secretary or board of the local public entity, if
10 the respondent is a local public entity, or (2) the Attorney General,
11 if the respondent is the state. However, if the petition involves a
12 claim arising out of alleged actions or inactions of the Department
13 of Transportation, service of the petition and notice of the hearing
14 shall be made on the Attorney General or the Director of
15 Transportation. Service on the Attorney General may be
16 accomplished at any of the Attorney General's offices in Los
17 Angeles, Sacramento, San Diego, or San Francisco. Service on the
18 Director of Transportation may be accomplished only at the
19 Department of Transportation's headquarters office in
20 Sacramento.

21 (e) The court shall make an independent determination upon
22 the petition. The determination shall be made upon the basis of the
23 petition, any affidavits in support of or in opposition to the
24 petition, and any additional evidence received at the hearing on the
25 petition.

26 (f) If the court makes an order relieving the petitioner from
27 Section 945.4, suit on the cause of action to which the claim relates
28 shall be filed with the court within 30 days thereafter.

29 ~~SEC. 14.~~

30 *SEC. 11.* Section 16370 of the Vehicle Code is amended to
31 read:

32 16370. The department shall suspend the privilege of any
33 person to operate a motor vehicle upon receiving a certified copy
34 of a judgment, *or* a certified copy of the register of actions (or a
35 comparable court record of another jurisdiction) in an action
36 resulting in a judgment for damages, and a certificate of facts
37 relative to the judgment, on a form provided by the department,
38 indicating that the person has failed for a period of 30 days to
39 satisfy a judgment rendered against him or her.

40 ~~SEC. 15.~~



1 SEC. 12. Section 16373 of the Vehicle Code is amended to
2 read:

3 16373. (a) The clerk of a court shall, subject to subdivision
4 (b), issue upon the request of a judgment creditor a certified copy
5 of any judgment or a certified copy of the register of actions (or a
6 comparable court record of another jurisdiction) in an action
7 resulting in a judgment for damages, and a certificate of facts
8 relative to the judgment on a form provided by the department.

9 (b) The judgment creditor may pay the required fees and
10 request the documents specified in subdivision (a) upon the
11 expiration of 30 days after the judgment has become final, if the
12 judgment has not been stayed or satisfied within the amounts
13 specified in this chapter as shown by the records of the court. The
14 court shall determine the required fees, which shall be
15 commensurate with the cost incurred by the court in carrying out
16 this section.

17 ~~SEC. 16.~~

18 SEC. 13. Section 16379 of the Vehicle Code is amended to
19 read:

20 16379. (a) The department shall not suspend a license and
21 shall restore any suspended license following nonpayment of a
22 final judgment when the judgment debtor gives proof of financial
23 responsibility for future damages and when the trial court in which
24 the judgment was rendered orders the payment of the judgment in
25 installments and while the payment of any installment payment is
26 not in default.

27 (b) Whenever the trial court orders the payment of a judgment
28 in installments as provided in this section, upon payment of the
29 required fees by the judgment creditor, it shall forward a certified
30 copy of the order to the department, together with a certified copy
31 of the judgment or a certified copy of the register of actions (or a
32 comparable court record of another jurisdiction) in an action
33 resulting in a judgment for damages and a certificate of facts
34 relative to the judgment on a form provided by the department.

35 (c) The court shall determine the required fees, which shall be
36 commensurate with the cost incurred by the court in carrying out
37 the provisions of this section.

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