

# Chapter 1



## The Legal System and Sources of Law

### Chapter 1 Goals:

- Learn about the law and ethics
- Recognize the difference between law and ethics
- How the legal system originated
- How the legal system adapted to its current state
- What is constitutional and statutory law
- Learn about the various amendments to the United States constitution
- Learn about the various government agencies that oversee the real estate market
- Understand the current legal system and court structure

# Chapter 1: The Legal System and Sources of Law

*Chapter 1 will explore the history of American law, the U.S. Constitution, and the U.S. court system. It will also explain how the California Court System and the California Department of Real Estate apply to modern real estate law.*

## Key Terms

administrative law	Department of Real Estate	precedent
Administrative Procedures Act	ethics	Real Estate Advisory Commission
arbitration	exemplary damages	rescission
California Dept. of Real Estate (CaldRE)	Federal Court of Appeals	reformation
civil code	First Amendment	specific performance
civil law	Fifth Amendment	stare decisis
common law	Fourteenth Amendment	State Administrative Agency
compensatory damages	Fourth Amendment	statutory law
constitutional law	injunction	Superior Court
criminal law	jurisdiction	Tenth Amendment
declaratory judgement	law	Thirteenth Amendment
declaratory relief	liquidated damages	United States Constitution
Department of Housing and Urban Development	mediation	
	nominal damages	

## The Law

### An Introduction



The law is a system of legally-enforced rules created by a government to set societal standards and regulate citizens' behavior. Laws are created, modified, and enforced by a legal system via the imposition of penalties. These laws are adopted by a society's citizens in order to protect their safety and security. In return, the law strives to uphold equality, fairness, and justice for all.

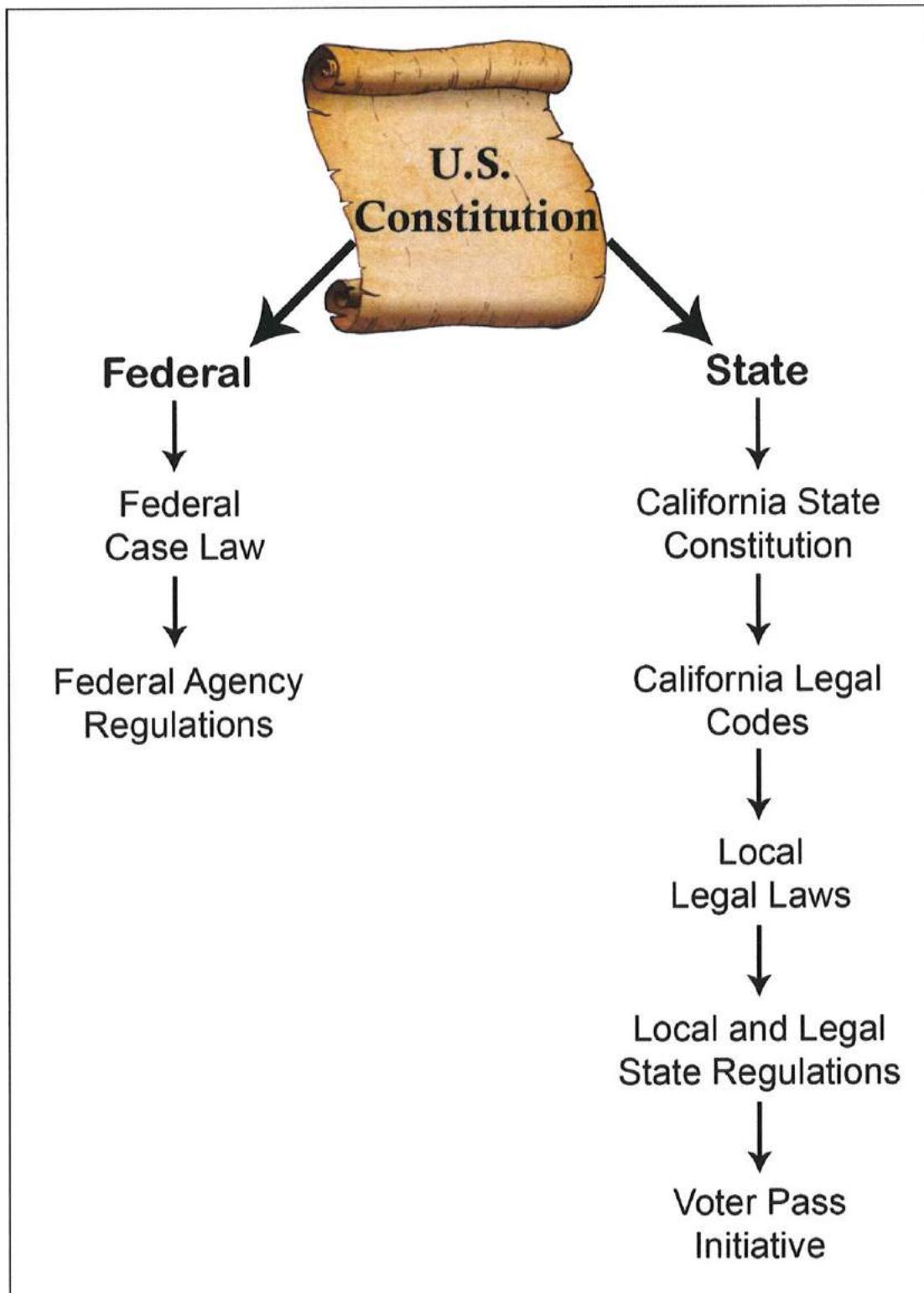
The legislature is responsible for writing and passing new laws, as well as amending existing laws. Although established laws are legally-binding, they can be modified or removed. The legislature, the government, and the legal system adapt to new societal changes by adopting or modifying laws that further protect the interests of the society's citizens.

The law operates at the local, state, and federal levels. In the absence of a formal legal system, inequity and anarchy reign supreme.

## **Ethics and the Law**

**Ethics** are moral principles that guide individuals' behavior. Ethics are created by people, religion, history, and culture in order to promote equality.

Ethics and the law are inextricably intertwined. The law is specific, and cannot solve every dispute. Ethics fill in the gaps, providing a general foundation for the concepts of right and wrong, and shaping behavior both within and beyond the law. Laws are created and updated based on evolving ethical standards. What is initially legal can become illegal, and vice versa, as the law becomes more attuned to ethical standards.



## **Influences on the United States Legal System**

### **England**

The United States based much of its early legal system on the English legal system.

In the late 1700s, the United States was in its infancy as a nation. Consequently, so was its legal system. Possessing little legal precedent of its own, the United States was forced to rely on English laws and precedents as the basis of its legal system.

**Precedent** is the legal principle created by a court decision that serves as an authoritative rule for future cases. The process of using past precedents in order to guide similar legal decisions is called **stare decisis**.

The subsequent accumulation of American legal cases allowed the United States to establish its own body of precedents. By the end of the 19th century, the country had developed its own unique legal system.

Prior to the implementation of precedents, legal courts relied solely on previous statutes. This created a system that was marred by inefficiency and inconsistency. The implementation of precedents dramatically improved the efficiency of the United States legal system by establishing a framework on which judges could issue verdicts. This practice of relying on previously established law is referred to as **common law**.

The term common law dates back to between the years 1100-1160. During this period, King Henry II of England created English legal tribunals. These tribunals were **staffed** by judges from various regions in the country. Their purpose was to compile legal cases from all categories of law in order to establish unified legal precedent. These standardized laws would allow legal cases in all regions in England to be evaluated in a consistent manner.

If comparable past cases were not similar enough to a legal case being decided, a judge was granted the right to create a new law. This produced additional precedents that would later be used by other courts.

At the outset of its legal history, The United States relied almost entirely on English precedents. However, by the beginning of the twentieth century, the U.S. had developed a unique and nearly independent legal system. Consequently, the number of citations to previous English cases were dramatically reduced.

The laws of each U.S. state typically mirror federal laws. Should any discrepancies arise between state and federal law, lower courts may turn to higher courts to clarify legal positions. For example, if a plaintiff or defendant feels that a state court has issued the wrong verdict, they may appeal the decision to an appellate court to have the case retried.

States adopt precedents from sister states that have similar legal characteristics or trends. For example, California is viewed as a liberal state that rules in favor of consumer rights. Therefore, other states with liberal viewpoints on consumer rights may adopt laws or use precedents set in California. Conversely, they will likely not use legal outcomes from conservative states that have opposing viewpoints and trends.

While the common law system provided a legal framework on which to build American law, relying solely on precedent does have drawbacks. Each legal case possesses unique details and facts that distinguish it from other cases, however similar. Determining the outcome of future legal cases based on a similar previous case can invite generalizations and assumptions. A further weakness in the common law system arises if the verdict in the initial, precedent-setting case is incorrect. In this case, the basis for subsequent legal determinations is flawed and inaccurate. This leads to unjust rulings for many individuals simply due to the reliance on erroneous precedent.

## Roman Empire

The United States also adopted various legal principles from the Roman Empire. One of the main principles was civil law.

**Civil law** is the area of law that handles civil private disputes that are not criminal, political, or military-related. Civil laws are enacted through the legislature and enforced by the courts. Unlike common law, civil law is a comprehensive legal structure that organizes laws based on codes and is readily available to the average citizen.

Laws written and passed by a legislative body are known as statutes. **Statutory law** is the law based on such statutes, rather than on previously determined legal outcomes.

Conversely, **criminal law** is the area of law concerning the punishment of individuals who commit crimes. It outlaws certain actions that are deemed a threat to public safety and welfare, and establishes penalties for violations of those laws. Both civil and criminal law affect nearly all other fields of law, including: contract law, trust law, tort law, constitutional law, and administrative law.

The establishment of civil law originated from the desire for a simpler, more understandable legal process for average citizens and lawyers. Previously, laws varied by location and were unpredictable. The complexity of the common law system made the law accessible only to legal scholars. Conversely, the civil law system gave legal courts the ability to interpret the law. By freeing the legal system from a rigid set of legal precedents, accused parties could more easily access and understand the law in order to prove their innocence.

The civil law system did not fix all of the problems of the common law system, but it greatly improved the efficiency, predictability, and fairness for all parties.

## **Real Estate Law and The Constitution**

Real estate laws protect homeowners, consumers, sellers, buyers, and anyone else that buys, rents, or uses property. These laws are created at the local, state, and federal levels. They incorporate everything from local ordinances requiring specific building codes to federal laws that promote fair housing. Governing real estate law as a whole are the United States Constitution and several of the Amendments held within it.

### **United States Constitution**

The United States Constitution was drafted as a replacement for the nation's original Articles of Confederation. Officially enacted in 1789, it remains the supreme law of The United States of America.

The framers of the Constitution had experienced the abuses of an English legal system that was ruled by the absolute authority of the king and his loyalists. That is why they chose to divide power between three distinct branches: legislative, executive, and judicial. This separation of powers, and the presence of checks and balances, prevents abuses of power and the federal government from overriding the democratic will of the people.

The original purpose of the Constitution was to create a set of laws that would govern the individual states. But while all local and state laws conform to the laws set forth within the Constitution, they remain semi-autonomous.

### **First Amendment (Free Speech)**

The First Amendment gives average citizens the legal right to express themselves without fear of government prosecution. In the context of real estate, the First Amendment gives real estate agents and sellers the right to advertise. For example, agents are able to put "for sale" signs on properties, to advertise in a local newspaper, or to post property brochures on local bulletin boards.

#### **Case Review: *Pruneyard Shopping Center v. Robins* (1980)**

The case, *Pruneyard Shopping Center v. Robins* (1980) 447 U.S. 74., involved a group of high school students petitioning at a private shopping center. The students set up a table at the Pruneyard Shopping Center and began disbursing pamphlets condemning a United Nations' anti-Israel resolution. Mall security informed the students that it was against the mall's policy for private individuals to set up such a table. The mall demanded the students vacate the mall and

advised them to demonstrate on the sidewalk outside.

In response, the students brought legal action against the mall and its management company. The Superior Court ruled in favor of the mall owner, contending that the students were not entitled to exercise their First Amendment rights at a private establishment. They concluded that the students had “adequate, effective channels of communication” outside of the mall. The plaintiffs appealed to a higher court. The California Supreme Court reversed the lower court’s ruling, asserting that the California Constitution protects “speech and petitioning, in a shopping center, even if privately owned.”

## **Fourth Amendment (Protection from Unwarranted Search and Seizure)**

The Fourth Amendment requires the government (and any of its agencies) to obtain a warrant prior to entering an individual’s property. The government agency must prove reasonable suspicion in order to obtain a warrant from a judge.

## **Fifth Amendment**

The Fifth Amendment allows an individual to refuse to answer potentially incriminating questions that may lead to their conviction in a legal case. This includes an individual’s right to not testify against themselves in court. The government and law enforcement may not penalize an individual for exercising this privilege.

The Fifth Amendment also states the following:

*“No person shall be held to answer for a capital, or otherwise infamous crime, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”*

A defendant must explicitly state that they are invoking their right to the Fifth Amendment to use this privilege. If he or she does not, they may be forced to answer on a witness stand.

The Fifth Amendment also bars the government from seizing private land for public use without fair compensation.

### **Case Review: *Bank of Stockton v. Church of Soldiers of the Cross of Christ* (1996)**

In the case, *Bank of Stockton v. Church of Soldiers of the Cross of Christ* (1996) 44 Cal.4th 1623., involved a church soliciting donations on the doorstep of a bank entrance. The Bank of Stockton brought legal suit against the Church of Soldiers in order to stop donation solicitation on their property. The trial court granted a preliminary injunction in favor of the bank. The court held that although the church had the right to solicit donations and to engage in free speech, it did not have the right to solicit donations at a “modest retail establishment”.

The verdict in the *Pruneyard Shopping Center v Robins* case differed as the case revolved around a large place of business. In contrast, the Bank of Stockton is a small location and could not be expected to have the necessary space to accommodate private citizens on its property for purposes other than banking.

### **Tenth Amendment (Power Reserved for the State)**

The Tenth Amendment grants states the power to make independent decisions:

*“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”*

In other words, all laws not controlled by the federal government are delegated to the state.

### **Thirteenth Amendment (Abolishment of Slavery)**

The Thirteenth Amendment states:

*“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”*

In the context of real estate, the abolishment of slavery gave former slaves -- now citizens -- the right to purchase, own, and sell property.

### **Fourteenth Amendment (Equal Protection)**

The Fourteenth Amendment states:

*“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”*

The Fourteenth Amendment provides equal protection under the law for all citizens, regardless of race or socioeconomic standing. In real estate terms, it protects a citizen's right to property.

## Federal Real Estate Laws

Among the most important federal real estate laws are:

- Civil Rights Act of 1866, Ch. 31, 14 Stat. 27.
- Civil Rights Act of 1968, 18 U.S.C. §§ 241, et seq.
- Fair Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq.
- Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq.
- Federal Bankruptcy Act, 11 U.S.C.
- Truth in Lending Act, 15 U.S.C. §§ 1601, et seq.
- Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701, et seq.
- Foreign Investment in Real Property Tax Act (FIRPTA), I.R.C. §§ 13455, et seq.
- Mortgage Acts and Practices.
- Mortgage Assistance Relief Services, “Omnibus Appropriations Act of 2009”, Public Law No. 111-18.
- Residential Lead-Based Paint Hazard Reduction Act, “The Residential Lead-Based Paint Hazard Reduction Act of 1992”, Public Law No. 102-550
- USA Patriot Act, “USA PATRIOT Act”, Public Law No. 107-56.
- Dodd-Frank Wall Street Reform and Consumer Protection Act, “The Dodd-Frank Wall Street Reform and Consumer Protection Act”, Public Law No. 111-203.
- Financial Institutions Reform, Recovery, and Enforcement Act, “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, Public Law No. 101-73.
- National Flood Insurance Program, “National Flood Insurance Act of 1968”, Public Law No. 90-448.
- Mortgage Reform and Anti-Predatory Lending Act, “The Housing and Community Development Act of 1977”, Public Law No. 95-128.
- Community Reinvestment Act, “The Housing and Community Development Act of 1977”, Public Law No. 95-128.

- Equal Credit Opportunity Act, “The Equal Credit Opportunity Act of 1974”, Public Law No. 93-495.
- Home Ownership and Equity Protection Act, “Home Ownership and Equity Protection Act of 1994”, Public Law No. 103-325.
- Mortgage Interest Deductions, Taxpayer Relief Act of 1997 (Public Law No. 105-34, H.R. 2014, 111 Stat. 787).
- Capital Gains Exclusion, Taxpayer Relief Act of 1997 (Public Law 105-34, H.R. 2014, 111 Stat. 787).
- Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq.
- Federal Housing Act, 12 U.S.C. §§ 1701, et seq.
- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) 18 U.S.C. §§ 1014.
- Can Spam Act, 151 U.S.C. §§ 7701, et seq.

## **Administrative Agencies**

Administrative agencies are created by the government to address various social and operational issues. They implement rules and regulations, address particular problems and crises, and lend specific expertise to matters that extend beyond the general knowledge of legislators.

Congress has the ability to delegate the enforcement duties of a specific federal act to one or more agencies. **Administrative law** is the system of law that governs the activities of government agencies. This includes creating and enforcing specific laws to achieve a predetermined purpose.

The **Administrative Procedures Act (APA)** dictates the procedures that agencies must adhere to when passing new laws and regulations that affect the public. Specifically, it requires agencies to submit a proposal prior to the implementation of a potential change so that the public has the ability to object. This prevents agencies from abusing their power and protects citizen rights.

## **Federal Administrative Agencies**

Federal administrative agencies operate on a national level and set general standards to be upheld by the states. The following federal administrative agencies are important to the real estate profession:

- **Department of Housing and Urban Development (HUD):** enforces civil rights laws related to housing.
- **Federal Trade Commission (FTC):** enforces acts related to consumer rights. This includes the “Truth in Lending Act”, which affects the real estate financing

market.

- **Federal Deposit Insurance Corporation (FDIC):** protects the financial interests of consumers by guaranteeing up to \$250,000 of an account holder's deposit for each member bank.
- **Federal Housing Administration (FHA):** enforces most aspects of the housing market, including consumer rights and fair access to credit.
- **Environmental Protection Agency (EPA):** creates and implements rules and regulations that affect the environment and the well-being of American citizens.

## State Administrative Agencies

The separation of powers provision of the U.S. Constitution allows power to be delegated from the federal level to the state level. State administrative offices are responsible for implementing and enforcing legislation within their specific states. Consequently, while every state possesses the same administrative agencies, the issues that each addresses are specific and unique to that state.

Examples of state administrative agencies tied to real estate include:

- California Department of Real Estate
- Department of Real Estate
- Office of Real Estate Appraisers
- Department of Corporations
- Department of Health
- Department of Motor Vehicles

## City Administrative Agencies

Government power can be delegated further still, from the state level to the county or city levels. This ensures that the unique interests and needs of a particular community are met on a personalized level. County and city agencies are responsible for creating and implementing local building codes, including zoning policy, traffic lights, and other vital services. Specific rules and regulations are developed by agencies working in tandem with local residents.

## Department of Real Estate

Created in 1917, the **Department of Real Estate (DRE)** is a government agency that regulates real estate activity and administers real estate law. Each state also has its own Department of Real Estate.

The California Department of Real Estate was created to promote and protect the

interests of current and prospective California property owners. It regulates the licensing process, hears complaints, creates enforcement mechanisms, and oversees policies that promote fair and open real estate property trade. The Department also encompasses various agencies, including the Business, Transportation, and Housing Agency (BTH).

## **California Department of Real Estate (CaldRE)**

One state agency within the Department of Consumer Affairs is the California Dept. of Real Estate (CaldRE). CaldRE establishes legal principles and practices of the real estate market, administers real estate licensing exams, and issues real estate licenses.

### **Real Estate Commissioner**

The chief executive of CaldRE is the Real Estate Commissioner. The Real Estate Commissioner is appointed by the governor. He or she must have been an active real estate broker for the last five of ten years. The Commissioner is responsible for regulating the California real estate market using statutory and administrative law.

The Real Estate Commissioner's job includes:

- protecting the financial interests of buyers, sellers, tenants, and professionals in the real estate market
- creating or revoking administrative real estate policy and real estate laws
- employing necessary personnel for the Department of Real Estate
- overseeing the licensing process, including the issuing and revocation of real estate licenses
- assisting in fraud prevention
- establishing trust funds for victims of real estate licensee abuse
- choosing the members of the Real Estate Advisory Commission

The **Real Estate Advisory Commission** is a panel of ten members appointed by the Commissioner whose purpose is to make recommendations on matters relating to real estate.

Although the Real Estate Commissioner is the authority over real estate law and real estate activities in the state, their power is not limitless. Residents have the ability to appeal certain regulations or statutes set forth by the Commissioner, if they are deemed unnecessary or overly burdensome.

The Commissioner also does not have the right to settle legal disputes; like other legal cases, only the court can determine a legal verdict. However, he or she does have the right to bring legal suit against a violator of real estate law on behalf of the people of California.

The “Regulations of the Real Estate Commissioner” contained in the California Code of Regulations details the legal authority of the Real Estate Commissioner.

### **Case Review: *Donaldson v. California Department of Real Estate (2006)***

The case, *Donaldson v. California Department of Real Estate* (2006) 134 Cal.4th 948., involved a California real estate agent (Donaldson) who was charged with having sexual intercourse with a minor.

In response to these charges, the California Real Estate Commissioner filed a disciplinary action against Donaldson. He argued that Donaldson’s “moral turpitude” was in violation of Business and Professions Code Section 10177 and that it was unreasonable to expect that he could practice real estate in a moral manner. The Commissioner subsequently revoked Donaldson’s license.

Donaldson objected to the Commissioner’s decision and filed a lawsuit. The Superior Court ruled in favor of the Real Estate Commissioner. Donaldson appealed, and the case was taken to appellate court. The Court of Appeals stated that Donaldson’s personal actions, though unlawful, were not related to his professional conduct and it reversed the Superior Court’s ruling. This case set precedent for future lawsuits involving moral turpitude. The ruling meant that claims filed must be directly related to the agent’s profession, which in this case did not.

## **California Legal Codes**

### **California Civil Code**

The Civil Code of California (or California Civil Code) is a collection of statutes for the State of California. Division 2 of the Civil Code deals primarily with real estate and includes the following real estate-related subjects:

- Conditions of ownership
- Duration of leases
- Accumulations
- Legal estate principals
- Income law
- Rights of owners
- Termination of ownership

- Definitions
- Estate in real property
- Rental agreements
- Rules and regulations
- Fees and charges
- Utilities
- Default
- Easements
- Boundaries
- Rights and responsibilities of owners and tenants

The California Civil Code will be explored further in Chapter 3.

## **Additional Codes**

Although the vast majority of real estate codes are found in the Civil Code, they are found all throughout California law, including in:

- Business and Professions Code
- Code of Civil Procedure
- Corporations Code
- Labor Code
- Commercial Code
- Financial Code
- Insurance Code
- Military and Veteran Code
- Health and Safety Code
- Fish and Game Code
- Evidence of Food and Agricultural Code
- Education Code

## **Uniform Codes / Uniform Laws**

Prior to the current legal system we have today, there was often confusion between various local, state, and federal laws. This created uncertainty for plaintiffs, defendants, lawyers, and even judges. (For example, disputes between parties of interstate trade or transportation.) This confusion, along with increases in trade between local, state, and federal borders, led to the need for standardized laws. Consequently, the National Conference of Commissioners of Uniform Laws was created in 1892.

Although the term Uniform Codes suggest that all uniform laws between states are the same, the Codes act as more of a framework of mutual understanding between states

that residents and jurors of any state can understand.

Typically, new uniform laws are not accepted by all states. In fact, nearly half of the proposed uniform laws have been rejected. Very few states adopt the same measures; even when they do adopt similar uniform laws as nearby states, the uniform laws may still differ.

Nevertheless, the creation of one uniform code of law greatly increased the efficiency of the legal system.

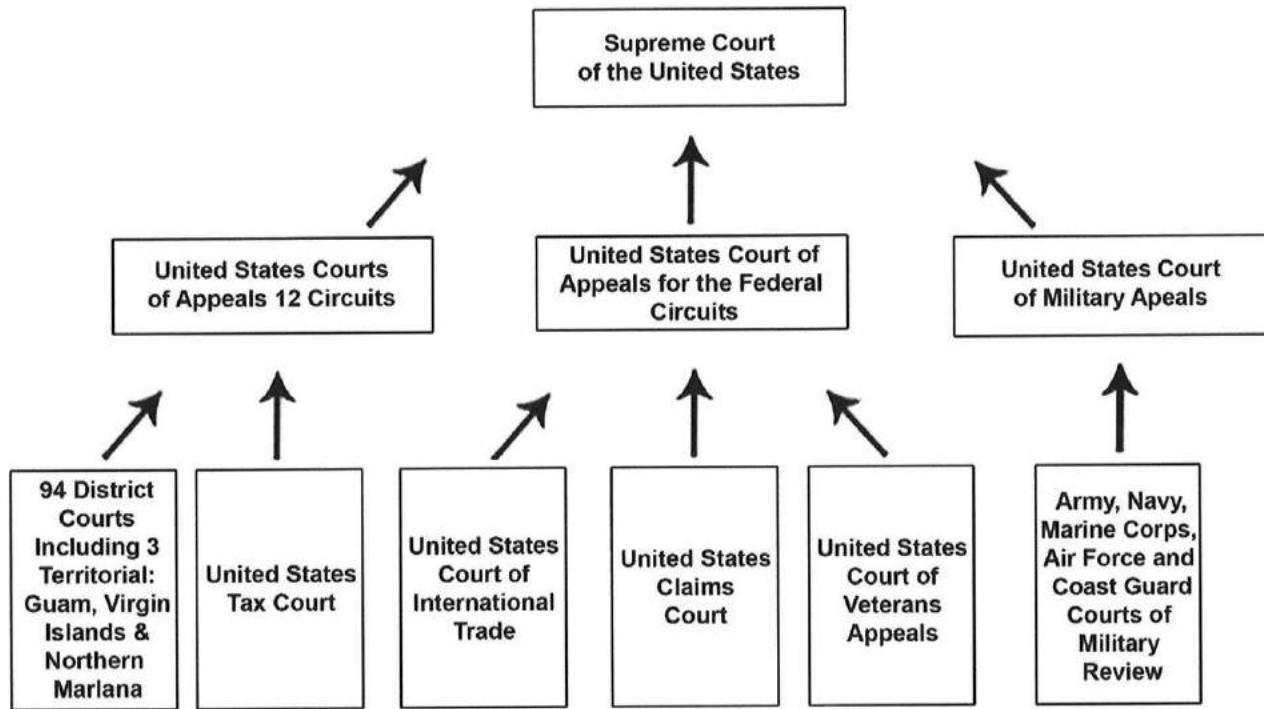
## **City Building Codes**

Although the federal government delegates real estate and property-related law to the state, the implementation of building codes is made at the city level. Because each city has unique characteristics that differ from other parts of the state, only the city has ability to create codes that best meet their particular needs.

## **Federal Court System**

A legal case enters the federal court system in a District Court. In general terms, if the verdict of that court is challenged and the case is granted an appeal, it moves to the Federal Court of Appeals. If that verdict is subsequently appealed, it moves to the highest court in the country, the United States Supreme Court.

## The United States Court System



### District Courts

Established through Congress, district courts hear civil and criminal cases relating to federal law. For example, a district court is used instead of a state court when residents of multiple states have a legal dispute. As both parties reside in different states with unique laws, federal law must be used to fairly hear the case.

There are four district courts in California, and 94 total throughout the country.

### Federal Court of Appeals

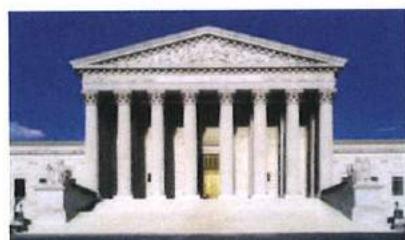
The United States Court of Appeals or circuit courts as they are otherwise known as, are intermediate level courts within the U.S. federal court system. The purpose of the appeals court is to hear appeals from party's that believe the verdict of their court case was mistaken or misinterpreted by a lower court. Because less than 2% of cases submitted to the U.S. Supreme Court are tried, the United States Court of Appeals oftentimes acts as the final reviewer of the law.

Furthermore, as the reviewer of appealed decisions, the United States Court of Appeals has the ability to dramatically shape public policy by determining the constitutionality of political and economic bills passed by congress or the president. For this reason, the

United States Court of Appeals plays a significant role in politics, although judges are required to follow existing law, rather than to create it.

The U.S. Court of Appeals has 179 judgeships all of whom are nominated by the President of the United States and confirmed by the senate. There are thirteen U.S. Court of Appeals. All appellate judges have lifetime tenure and typically serve the court until they die or retire.

## United States Supreme Court



The United States Supreme Court is the highest level court in the entire United States. The U.S. Constitution grants the Supreme Court the power to preside over all federal and state courts. It has the ability to review important legal cases that affect the entire country and can appeal decisions from state

Supreme Courts. Should the Supreme Court elect not to listen to an appeal from a lower court, however, the lower court's original verdict stands with no recourse to reverse.

The Supreme Court is also the ultimate reviewer and interpreter of constitutional law. **Constitutional law** is the system of law as indicated in state and federal constitutions.

The Supreme Court has nine justices that serve out lifetime appointments. All justices are nominated by the President of the United States and must subsequently be confirmed by the Senate. Justices can only be removed if they retire or if they are impeached.

### Case Review: *Marbury v. Madison* (1803)

The landmark legal case, *Marbury v. Madison* (1803) 1 Cranch 137., established the United States Supreme Court as an equal, but separate branch of government.

Thomas Jefferson won the 1800 presidential election over incumbent President John Adams. Sensing that the power of his Federalist Party was waning, President Adams nominated a large number of justices of peace in the final days of his administration to secure some federalist influence. The nominees -- which included a William Marbury -- were approved by the Senate and signed by President Adams. However, the appointments were not delivered at the behest of James Madison, President-Elect Jefferson's new Secretary of State.

The case went to the Supreme Court. The Supreme Court concluded that Marbury's appointment was in conflict with the Constitution and therefore, he

was denied his appointment. This case established that the Supreme Court could declare an act of Congress void if it was inconsistent with the Constitution.

## California Court System

### An Introduction

A legal case first enters the California Court System in the Superior Court. In general terms, if the verdict of that court is challenged and the case is granted an appeal, it moves to the California Court of Appeals. If that verdict is subsequently appealed, it moves to the highest court, the California Supreme Court.

### California Superior Courts

A Superior Court, or trial court, is the lowest level court in California's court system. California has the largest Superior Court system in the United States, with a Superior Court located in each county and over 1,500 judges.

Superior Court judges hear general legal matters ranging from financial disputes, to traffic hearings, to mental health hearings and others. Superior Courts have general jurisdiction to determine legal outcomes relating to civil or criminal action. **Jurisdiction** is the right or power of a court, agency, or department to try a case or resolve a legal matter.

California unified all of their trial courts in 1998; thus, a Superior Court is not superior to other trial courts.

### Small Claims Court

The Small Claims Court is a division of the Superior Courts. It holds hearings for financial disputes below \$5,000. The purpose of these courts is to resolve relatively small financial matters amongst parties without going to a standard court.

Unlike standard court cases whereby plaintiffs or defendants typically hire attorneys to represent them, most people in Small Claims Court represent themselves. Parties are required to bring any evidence that may prove their innocence or guilt.

Decisions reached in these courts cannot be reversed; however, defendants have the legal right to appeal a decision to the Superior Court.

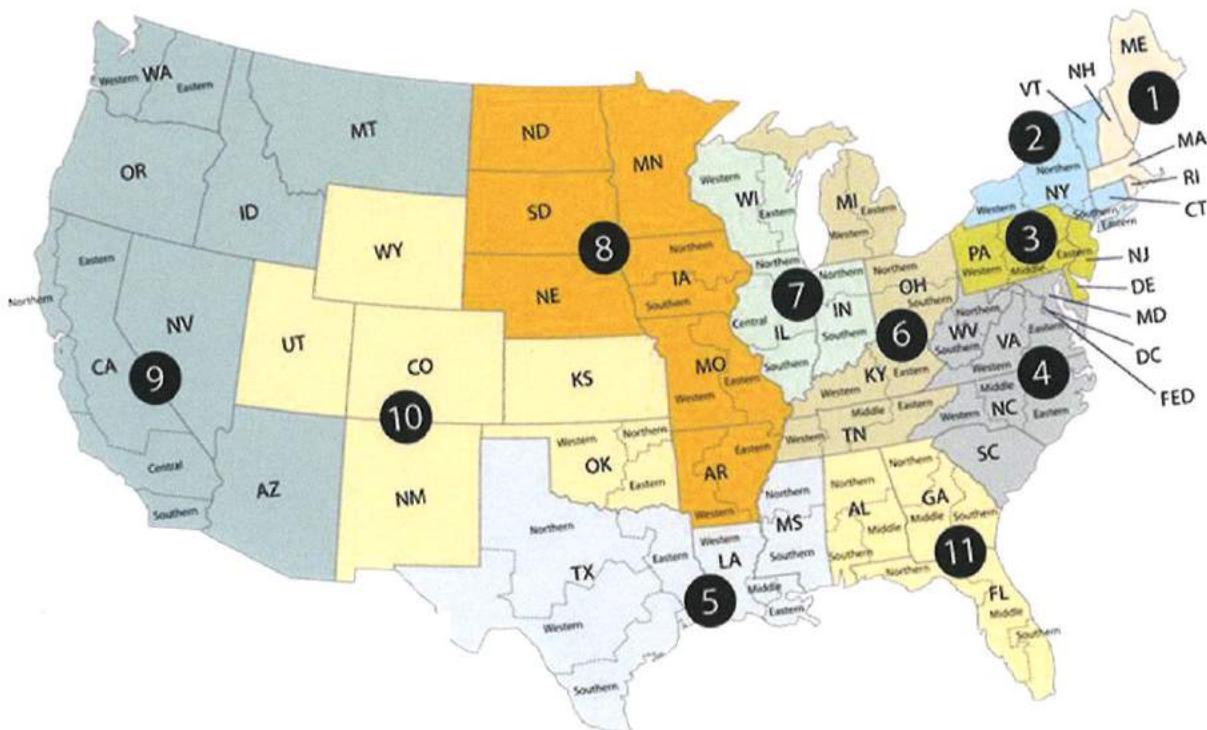
## Superior Court's Appellate Division

The Superior Court's Appellate Division reviews the legal outcomes and the evidence used in a trial court hearing. The Appellate Division hears cases relating to the following:

- Misdemeanor
- Infraction
- Small claims orders
- Limited civil cases
- Unlawful eviction cases

The objective of the Appellate Division is not to review evidence or hold another trial; rather, they are tasked with reviewing the legal procedures used during the Superior Court trial. If the Appellate Division finds that the Superior Court made a procedural error, the court may reverse the original decision.

## Judicial Court Districts



## California Courts of Appeals

The California Courts of Appeals (or appellate court) is the intermediate court between the lower Superior Court and the California Supreme Court. This court is tasked with retrying cases that have been tried in the lower Superior Court.

Although the Court of Appeals can reverse the lower Superior Court's decision, they do not have the ability to retry the case. Rather, it merely has the ability to look at the procedural process used to convict or acquit a defendant or plaintiff. Its decision must then conform to the laws of the California Supreme Court.

There is no constitutional right to an appeal. However, the California Court of Appeals allows plaintiffs to have their cases reviewed an additional time if the matter is considered appealable.

California has six appellate courts, located in Los Angeles, San Francisco, Fresno, San Jose, Sacramento, and San Diego. Each court has a judge and two or more associates. Only governors have the ability to appoint justices. Once nominated by the governor, the state must review and approve the governor's appointment. Justices hold power for 12 years and are subject to an election following the first prescribed 12-year period.

## California Supreme Court

The California Supreme Court is the highest court in California and the final legal authority in the state. It consists of one chief justice and six associate justices. When a legal case is disputed between parties, both the defendant and plaintiff have the ability to appeal the court's decision.

If the California Supreme Court agrees to hear the case, the appealing party has the ability to have a lower court's ruling reversed with proper evidence. Although the state Supreme Court can reverse a court of appeals decision, its ruling cannot become precedent. In the event that the court denies an appellant's plea to review a case, the previous lower court's decision stands.

## Alternatives to Litigation

Should a legal dispute arise, filing a lawsuit and going through the litigation process can be lengthy and expensive. Consequently, most real estate-related lawsuits settle out of court.

## Arbitration

**Arbitration** is the process whereby a neutral third party is selected to resolve legal disputes between a defendant and a plaintiff. The neutral third party is called an **arbitrator**.

The arbitration process is similar to a court proceeding in that both parties still provide testimony and supply evidence supporting their position. However, it is usually a less formal procedure and allows both parties to avoid expensive and time-consuming litigation. Once the arbitrator has the evidence and testimony of both parties, he or she will make a determination as to whether one party is guilty.

Arbitration is becoming an increasingly common alternative to court proceedings. However, drawbacks include forgoing a court's standardized legal procedure and rules, and losing the ability to appeal the arbitrator's decision.

If a contract's terms are violated and the contract contains an arbitration clause, both parties may be required to attend arbitration.

## Mediation

Similar to arbitration, the **mediation** process negotiates a legal dispute between parties out of court. Unlike arbitration, however, a resolution is not reached by a third party's determination; rather, it is reached when all parties agree.

While most parties elect to involve a neutral third party in the mediation process, doing so is not required. Mediation is often used to reach a settlement.

## Settlement

**Settlement** is the process whereby parties of a lawsuit settle a legal case in order to avoid the time and costs incurred by a trial. Settlement can occur before or during a trial. Both parties have the ability to settle at any time prior to the court's decision.

## Lawsuit / Litigation

Should a legal dispute require litigation, it follows a fairly standard procedure.

### Plaintiff Filing

To begin the process of a lawsuit, a plaintiff must file suit with the court. The vast

majority of real estate cases are tried as civil matters.

Typically, most real estate cases are filed in the county court where the property is located and/or where the dispute originated. However, should the plaintiff or defendant object to a specific court hearing their case, they may have the ability to have it heard in a different court.

When filing a lawsuit, the plaintiff is required to issue a complaint against the defendant indicating why he or she is suing, and the damages required to correct the situation. The defendant is then served a copy of the lawsuit.

## Defendant Response

The defendant is given a set amount of time to respond to the plaintiff's complaint. The defendant's answer will usually be an objection, or a sequence of events disputing the plaintiff's complaint. They also have the ability to:

- Deny the allegations
- Request a dismissal by providing evidence
- File a counter lawsuit

## Discovery

Discovery is the period in which both the defense and prosecution gather facts and evidence to support their legal case. This includes reviewing paperwork, subpoenaing and interviewing witnesses, gaining written testimony, and holding depositions.

As every aspect of a case is based on the information found in discovery, it is one of the most important and exhaustive processes in the litigation process.

## Expert Witness

Certain legal claims may require the testimony of an expert witness. Expert witnesses have technical information about a particular subject and use their expertise to bolster the strength of either party's case.

In the context of real estate, an expert witness could be a contractor, engineer, architect, or chemical tester.

## Motions

A motion is a formal request by a plaintiff or defendant to make the court act or rule in

some manner. For example, one party can file a motion for more evidence, a postponement of a trial, a request for more time, or a ruling. A motion must be made in writing, and is typically filed before a trial.

## **Brief**

A legal brief summarizes all of the evidence and arguments that will be used by both the defense and prosecution during the course of the trial. Both parties must supply the judge with a brief before the trial begins.

## **Opening Statement**

The first step of the trial process is an opening statement. Both parties in a legal case present opening statements to give direction to the case they will be arguing.

## **Trial**

Throughout the course of the trial, both parties have the ability to call for witnesses who may help prove the defendant's innocence or guilt.

## **Appeal**

Once the court reaches a verdict, both the plaintiff and defendant have the right to file an appeal. An appeal requests that a higher court review the legal procedure that was used by the lower court to reach its verdict. If an appellate court finds that the lower court violated the procedural legal process, it may reverse the original decision or require the lower court to retry the case.

## **Damages**

The legal concept of equity means that a violated party may be made "whole" when proper damages, or compensations, are awarded. The amount of the damages is based on the loss or injury that a violated party had to endure.

## **Compensatory Damages**

**Compensatory damages** are financial compensations recovered on behalf of a plaintiff in response to the unlawful and/or negligent actions of a defendant. These damages may cover actual injuries sustained by the plaintiff, and/or the economic losses

incurred, such as the cost of hiring an attorney and filing a lawsuit.

In the context of real estate, compensatory damages often award a plaintiff the difference of the contract price and the fair market value of the property.

Recovering compensatory damages requires the plaintiff to prove the defendant's actions -- whether intentional or out of negligence -- resulted in a loss for the plaintiff.

For example, say a buyer discovers a mold infestation after purchasing a house from a seller. If the buyer were to discover that the seller forged the mold inspection paperwork, the buyer can file suit against the seller. The court will likely determine that the seller (the defendant) is responsible to pay the buyer (the plaintiff) compensatory damages to remove the mold and make any associated repairs.

If the forgery was intentional, the court may also impose additional penalties that go beyond the direct damages caused by the mold. These are called exemplary damages.

## Exemplary Damages

**Exemplary damages**, more commonly known as punitive damages, are financial compensations that surpass the cost of losses directly sustained by the plaintiff. The purpose of these damages is to set an example that prevents and deters future parties from engaging in similar illegal activities. Exemplary damages are typically only rewarded when the defendant's actions are egregious or particularly fraudulent.

## Liquidated Damages

**Liquidated damages** are agreed-upon financial compensations within a contract that are awarded in the event that one party violates the contract terms. These damages represent the cost to cure a default on the contract.

For example, when a homeowner works with a contractor, there may be a liquidated damages section in their contract that stipulates: "if contractor damages any part of the house, they are responsible to pay for those damages." Courts will follow the terms of a contract's liquidated damages section if the terms are fair and reasonable according to industry standards.

## Punitive Damages

**Punitive damages** are damages that result from one party's intentional or malicious acts towards another party. Behavior must go beyond the scope of standard illegal activity in order to constitute punitive damages. These damages are awarded on top of compensatory damages and exceed simple compensation for the cost of damages.

A court imposes punitive damages in order to punish the defendant and, in many instances, to establish a precedent to deter future actions.

## **Nominal Damages**

**Nominal damages** are compensation awarded to the wronged party in the amount of one dollar. They are typically awarded in cases where the plaintiff suffered limited or no financial loss. The purpose of nominal damages is to recognize the accused party's violation with a symbolic reference, rather than an extensive financial compensation.

## **Equitable Remedies**

### **Declaratory Judgment**

**Declaratory judgment**, or **declaratory relief**, is a legal determination made by a court that clarifies the rights and obligations of each party in a legal dispute prior to a lawsuit being filed. Although an official declaration, this type of judgment does not order anything to be done or award damages to either party. Rather, it aims to resolve legal uncertainty that could escalate a dispute and lead to an actual legal case.

### **Specific Performance**

**Specific performance** is a legal direction that requires a violator of an agreement or contract to perform a specific action that he or she had been obligated to perform. Courts typically enforce specific performance if the violating party (or defendant) has the capacity to perform the obligated action and/or financial damages are deemed inadequate to resolve the dispute.

Not all violated parties (or plaintiffs) can request specific performance against a defendant. Specific performance can only be claimed when there is legally-binding contract with definitive terms and consideration (i.e. compensation), and when there is a lack of appropriate, alternative legal remedies.

### **Injunction**

An **injunction** is a temporary or permanent court order that mandates a violating party to perform, or suspend, a specific act.

In a legal dispute, a violated party may go to the court to obtain an injunction against a violating party. If the court awards an injunction, the violating party must alter their

actions. Should the violating party refuse to do so, the court has the ability to impose criminal or civil penalties, such as fines or imprisonment.

The specific injunction that a court issues is dependent on the severity of the violation. Forms of injunctions include a temporary restraining order, preliminary injunctions, and permanent injunctions.

Permanent injunctions are issued as a final judgment of a case. Failure of the party to comply with a permanent injunction will result in the violating party being held in contempt of the court.

## Reformation

**Reformation** refers to a court's ability to alter the contents of a legally-binding contract in order to clarify conflicting or unclear terms. It is common for parties to misunderstand one or more sections of contract. Reformation is used to correct the language in a contract to further the intended goals of both parties.

Reformation can only be utilized by parties who have acted in good faith in the original execution of the contract.

## Rescission

**Rescission** is the legal term used to describe the release of parties from a legally-binding contract. This typically occurs when the terms of a contract become unenforceable, impossible to uphold, or are subject to a mutual mistake by both parties. Rescission is also used when a new law makes the terms of an agreement illegal or unenforceable.

The aforementioned equitable remedies will be discussed further in the context of real estate law in Chapter 6. Additional equitable remedies -- such as foreclosure and quiet title -- will be explored in Chapter 10.

### Case Review: *Kelo v. City of New London (Connecticut) (2005)*

The case, *Kelo v. City of New London (Connecticut) (2005)* 125 S. Ct. 2655., involved nine residents who refused to vacate their homes after a local ordinance required them to do so.

The City of New London had recently approved a development plan for restaurants, homes, retail businesses, and a private waterfront hotel. The city invoked eminent domain of certain residents' properties to make room for the

plan, which allowed them to take away private property for public use. The residents, organized by a lead plaintiff named Kelo, sued the city.

The Superior Court judge rejected the city's ordinance and granted the plaintiffs a permanent injunction against the city. This injunction prevented the City of New London from invoking eminent domain to acquire the plaintiffs' properties. The city appealed and the case was retried at the Court of Appeals. The city contended that the private development plan would produce economic growth, thereby increasing tax revenues and helping to restore the city. They argued that increased economic activity was beneficial to the public and therefore, the city's right to invoke eminent domain was valid. The Court of Appeals sided with the city and reversed the lower court's ruling. The plaintiffs appealed to the United States Supreme Court.

In the Supreme Court, the plaintiffs claimed that the government's efforts to enforce eminent domain violated their Fifth Amendment rights. The plaintiffs further stated that because the city was in good economic standing, the city's "public use" claim was not valid. In a narrow vote, the Supreme Court voted 5-4 in favor of the City of New London. The Supreme Court agreed that the city had the right to pursue economic development plans for the sake of public good. The court contended that cities and counties have historically relied on legislature-passed bills to promote local economic growth. The ruling affirmed the role of local government in helping private businesses bring greater economic growth to cities.