

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Marketable Record Title: Notice of Option

June 2009

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **September 1, 2009.****

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

Civil Code Section 884.010 enhances marketability of title to real property by providing for the expiration of record notice of an obsolete option to purchase real property.

Effective operation of that provision requires that the status of record notice of an option be determinable solely by reference to title records.

The Law Revision Commission has learned that, in some circumstances, the application of Section 884.010 may require information that is not included in the title records. That undermines the purpose of Section 884.010.

The Commission recommends that Section 884.010 be revised so that, in all cases, the status of record notice of an option can be determined by reference to title records alone.

This recommendation was prepared pursuant to Resolution Chapter 100 of the Statutes of 2007.

## MARKETABLE RECORD TITLE: NOTICE OF OPTION

1 The Marketable Record Title statute<sup>1</sup> facilitates real property title transactions in  
2 two general ways: (1) It provides for the expiration of obsolete interests of record,<sup>2</sup>  
3 and (2) it enables a person to rely on title records in determining the status of title.<sup>3</sup>

4 Section 884.010 is the provision of the Marketable Record Title statute that  
5 governs record notice of an option to purchase real property. It provides that such  
6 notice expires, by operation of law, six months after the option itself expires  
7 pursuant to its terms, or if the option has no fixed expiration date, six months after  
8 the notice of the option is recorded.<sup>4</sup> Once record notice of an obsolete option to  
9 purchase real property has expired under Section 884.010, it no longer presents a  
10 cloud on title.

11 However, there appears to be a gap in the coverage of Section 884.010. In some  
12 circumstances, off-record information may be required to determine whether  
13 record notice of an option has expired. If that information is not readily available,  
14 record notice of an option may remain as a cloud on title long after the option has  
15 become obsolete.

16 The Commission recommends that Section 884.010 be revised so that its  
17 operation will depend entirely on information that is ascertainable from the record.  
18 In addition, Section 880.020 should be revised to correct a typographical error.

## OPERATION OF EXISTING LAW

19  
20 Existing law provides for the expiration of record notice of an option to  
21 purchase real property, if notice of the exercise or extension of the option is not  
22 recorded within a specified period.

23 The period varies, depending on whether the option has an expiration date. If so,  
24 the period is six months after expiration of the option. If the option has no  
25 expiration date, the period is six months after recordation of notice of the option.<sup>5</sup>

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1. Civ. Code §§ 880.020-886.050. The statute was enacted on the recommendation of the Law Revision Commission. See *Marketable Title of Real Property*, 16 Cal. L. Revision Comm'n Reports 401 (1982); 1982 Cal. Stat. ch 1268.

2. See, e.g., Civ. Code § 882.020 (expiration of lien creating security interest of record).

3. See Civ. Code § 880.020 (legislative declaration and purpose).

4. Section 884.010 only affects the legal effect of the recorded notice. See Civ. Code § 884.020 (“Upon the expiration of record of an option to purchase real property, the recorded instrument that creates or gives constructive notice of the option ceases to be notice to any person or to put any person on inquiry with respect to the exercise or existence of the option or of any contract, conveyance, or other writing that may have been executed pursuant to the option.”).

5. Gov't Code § 884.010.

1 Those rules enhance marketability of title by clearing obsolete record notice of  
2 an option, by operation of law.

3 In most cases, the status of record notice of an option can be readily determined  
4 from the information provided in the notice itself, without any need to consult off-  
5 record information. However, there are circumstances in which the status of record  
6 notice cannot be determined from the title records alone.

7 That is because the status of record notice of an option depends on the expiration  
8 date of the option (if any). That information might not be included in the record,<sup>6</sup>  
9 in which case off-record information would be required to determine the status of  
10 the record notice.

11 That would make it difficult or impossible for a title researcher to determine  
12 whether the record notice is effective, creating a cloud on title that may persist  
13 long after the underlying option has become obsolete. Judicial proceedings could  
14 be required to determine the status of title.

## 15 RECOMMENDATION

16 The Commission recommends that Section 884.010 be revised so that it operates  
17 solely on the basis of information that is ascertainable from the recorded  
18 instrument creating notice of the option.

19 Unless a notice of exercise or extension of the option is recorded first, record  
20 notice of an option would expire six months after either of the following events:

- 21 (1) The expiration date of the option, if that date is ascertainable from the  
22 recorded instrument.
- 23 (2) The date on which the instrument is recorded, if the expiration date of the  
24 option cannot be ascertained from that instrument.

25 That revision would close the existing gap in the coverage of Section 884.010,  
26 permitting a title researcher to determine the status of record notice of an option in  
27 all cases, regardless of whether the expiration date of the option is included in the  
28 recorded instrument giving notice of the option.

29 That approach would be consistent with the approach taken in another provision  
30 of the Marketable Record Title statute. Section 882.020 provides for expiration of  
31 a lien creating a security interest, a specified period of time after the final maturity  
32 date or the last date fixed for payment or performance of an obligation, if that date  
33 is ascertainable from the record.

34 The proposed revision would also be consistent with the approach taken in the  
35 Uniform Simplification of Land Transfers Act, which provides for expiration of  
36 record notice of an option to purchase real property six months after the “*recorded*

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6. Civil Code Section 884.010 permits recordation of an instrument giving constructive notice of an option to purchase real property, rather than the instrument that creates the option. An instrument giving constructive notice of the option might not include any information about the expiration term of the option.

1 expiration date (or, if there is no *recorded* expiration date, the date of  
2 recording)...”<sup>7</sup>

3 By making it possible in all circumstances to determine the status of record  
4 notice without having to refer to off-record information, the proposed revision  
5 would further the Legislature’s goal that “[r]eal property title transactions should  
6 be possible with economy and expediency.”<sup>8</sup>

7

## DEFERRED OPERATION

8 In order to avoid any unfair surprise to those who have recorded notice of an  
9 option to purchase real property under existing law, the proposed law would not  
10 operate until one year after its effective date. This would provide sufficient time  
11 for those who have recorded notices to adjust to the change in the law.

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7. Unif. Simplification of Land Transfers Act § 3-206 (1976) (emphasis added).

8. Civ. Code § 880.020(a)(4).



## PROPOSED LEGISLATION

1 **Civ. Code § 880.020 (amended). Legislative declaration and purpose**

2 SECTION 1. Section 880.020 of the Civil Code is amended to read:

3 880.020. (a) The Legislature declares as public policy that:

4 (1) Real property is a basic resource of the people of the state and should be  
5 made freely alienable and marketable to the extent practicable in order to enable  
6 and encourage full use and development of the real property, including both  
7 surface and subsurface interests.

8 (2) Interests in real property and defects in titles created at remote times,  
9 whether or not of record, often constitute unreasonable restraints on alienation and  
10 marketability of real property because the interests are no longer valid or have  
11 been abandoned or have otherwise become obsolete.

12 (3) Such interests and defects produce litigation to clear and quiet titles, cause  
13 delays in real property title transactions, and hinder marketability of real property.

14 (4) Real property title transactions should be possible with economy and  
15 expediency. The status and security of recorded real property titles should be  
16 determinable to the extent practicable from an examination of recent records only.

17 (b) It is the purpose of the Legislature in enacting this title to simplify and  
18 facilitate real property title transactions in ~~furtherance~~ furtherance of public policy  
19 by enabling persons to rely on record title to the extent provided in this title, with  
20 respect to the property interests specified in this title, subject only to the  
21 limitations expressly provided in this title and notwithstanding any provision or  
22 implication to the contrary in any other statute or in the common law. This title  
23 shall be liberally construed to effect the legislative purpose.

24 **Comment.** Subdivision (b) of Section 880.020 is amended to correct a typographical error.

25 **Civ. Code § 884.010 (amended). Notice of option to purchase real property**

26 SEC. 2. Section 884.010 of the Civil Code is amended to read:

27 884.010. If a recorded instrument creates or gives constructive notice of an  
28 option to purchase real property, the option expires of record if no conveyance,  
29 contract, or other instrument that gives notice of exercise or extends the option is  
30 recorded within the following times:

31 (a) ~~Six~~ If the expiration date of the option is ascertainable from the recorded  
32 instrument, six months after the option expires according to its terms that  
33 expiration date.

34 (b) If the expiration date of the option is not ascertainable from the recorded  
35 instrument or the recorded instrument indicates that the option provides no  
36 expiration date, six months after the date the instrument that creates or gives  
37 constructive notice of the option is recorded.

1       **Comment.** Section 884.010 is amended to facilitate determination of the status of record notice  
2 of an option to purchase real property. Under former law, if the expiration date of an option was  
3 not ascertainable from the recorded instrument giving notice of the option, the status of the record  
4 notice could not be determined without consulting off-record information.

5       **Uncodified (added). Operative date**

6       SEC. 3. This act becomes operative on January 1, 2012.