

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Marketable Record Title:
Notice of Option

October 2009

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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October 22, 2009

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

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.

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 98 of the Statutes of 2009.

Respectfully submitted,

Associate Justice
John Zebrowski (Ret.)
Chairperson

MARKETABLE RECORD TITLE: NOTICE OF OPTION

The Marketable Record Title statute¹ facilitates real property title transactions in two general ways: (1) It provides for the expiration of obsolete interests of record,² and (2) it enables a person to rely on title records in determining the status of title.³

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

However, there appears to be a gap in the coverage of Section 884.010. In some circumstances, off-record information may be required to determine whether record notice of an option has expired. If that information is not

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.").

readily available, record notice of an option may remain as a cloud on title long after the option has become obsolete.

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

OPERATION OF EXISTING LAW

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

The period varies, depending on whether the option has an expiration date. If so, the period is six months after expiration of the option. If the option has no expiration date, the period is six months after recordation of notice of the option.⁵

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

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

That is because the status of record notice of an option depends on the expiration date of the option (if any). That information might not be included in the record,⁶ in which

5. Gov't Code § 884.010.

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.

case off-record information would be required to determine the status of the record notice.

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

RECOMMENDATION

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

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

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

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

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

The proposed revision would also be consistent with the approach taken in the Uniform Simplification of Land Transfers Act, which provides for expiration of record notice of an option to purchase real property six months after the “*recorded* expiration date (or, if there is no *recorded* expiration date, the date of recording)...”⁷

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

DEFERRED OPERATION

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

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

8. Civ. Code § 880.020(a)(4).

PROPOSED LEGISLATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Uncodified (added). Operative date

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