CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] *(Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.)*

PART 2. REAL OR IMMOVABLE PROPERTY [[755.] - 945.5] *(Part 2 enacted 1872.)*

TITLE 3. RIGHTS AND OBLIGATIONS OF OWNERS [818 - 855] *(Title 3 enacted 1872.)*

CHAPTER 2. Obligations of Owners [840 - 848] *(Chapter 2 enacted 1872.)*

840. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

(Enacted 1872.)

841. (a) Adjoining landowners shall share equally in the responsibility for maintaining the boundaries and monuments between them.

(b) (1) Adjoining landowners are presumed to share an equal benefit from any fence dividing their properties and, unless otherwise agreed to by the parties in a written agreement, shall be presumed to be equally responsible for the reasonable costs of construction, maintenance, or necessary replacement of the fence.

(2) Where a landowner intends to incur costs for a fence described in paragraph (1), the landowner shall give 30 days' prior written notice to each affected adjoining landowner. The notice shall include notification of the presumption of equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence. The notice shall include a description of the nature of the problem facing the shared fence, the proposed solution for addressing the problem, the estimated construction or maintenance costs involved to address the problem, the proposed cost sharing approach, and the proposed timeline for getting the problem addressed.

(3) The presumption in paragraph (1) may be overcome by a preponderance of the evidence demonstrating that imposing equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence would be unjust. In determining whether equal responsibility for the reasonable costs would be unjust, the court shall consider all of the following:

(A) Whether the financial burden to one landowner is substantially disproportionate to the benefit conferred upon that landowner by the fence in question.

(B) Whether the cost of the fence would exceed the difference in the value of the real property before and after its installation.

(C) Whether the financial burden to one landowner would impose an undue financial hardship given that party's financial circumstances as demonstrated by reasonable proof.

(D) The reasonableness of a particular construction or maintenance project, including all of the following:

(i) The extent to which the costs of the project appear to be unnecessary or excessive.

(ii) The extent to which the costs of the project appear to be the result of the landowner's personal aesthetic, architectural, or other preferences.

(E) Any other equitable factors appropriate under the circumstances.

(4) Where a party rebuts the presumption in paragraph (1) by a preponderance of the evidence, the court shall, in its discretion, consistent with the party's circumstances, order either a contribution of less than an equal share for the costs of construction, maintenance, or necessary replacement of the fence, or order no contribution.

(c) For the purposes of this section, the following terms have the following meanings:

(1) “Landowner” means a private person or entity that lawfully holds any possessory interest in real property, and does not include a city, county, city and county, district, public corporation, or other political subdivision, public body, or public agency.

(2) “Adjoining” means contiguous to or in contact with.

(Repealed and added by Stats. 2013, Ch. 86, Sec. 3. (AB 1404) Effective January 1, 2014.)

841.4. Any fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property is a private nuisance. Any owner or occupant of adjoining property injured either in his comfort or the enjoyment of his estate by such nuisance may enforce the remedies against its continuance prescribed in Title 3, Part 3, Division 4 of this code.

(Added by Stats. 1953, Ch. 37.)

843. (a) If real property is owned concurrently by two or more persons, a tenant out of possession may establish an ouster from possession by a tenant in possession in the manner provided in this section. This section does not apply to the extent the tenant out of possession is not entitled to possession or an alternative remedy is provided under the terms of an agreement between the cotenants or the instrument creating the cotenancy or another written instrument that indicates the possessory rights or remedies of the cotenants. This section supplements and does not limit any other means by which an ouster may be established.

(b) A tenant out of possession may serve on a tenant in possession a written demand for concurrent possession of the property. The written demand shall make specific reference to this section and to the time within which concurrent possession must be offered under this section. Service of the written demand shall be made in the same manner as service of summons in a civil action. An ouster is established 60 days after service is complete if, within that time, the tenant in possession does not offer and provide unconditional concurrent possession of the property to the tenant out of possession.

(c) A claim for damages for an ouster established pursuant to this section may be asserted by an independent action or in an action for possession or partition of the property or another appropriate action or proceeding, subject to any applicable statute of limitation.

(d) Nothing in this section precludes the cotenants, at any time before or after a demand is served, from seeking partition of the property or from making an agreement as to the right of possession among the cotenants, the payment of reasonable rental value in lieu of possession, or any other terms that may be appropriate.

(Added by Stats. 1984, Ch. 241, Sec. 1. Applicable to property acquired before January 1, 1985, as prescribed by Sec. 2 of Ch. 241.)

845. (a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.

(b) If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose. In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner.

(c) If any owner refuses to perform, or fails after demand in writing to pay the owner’s proportion of the cost, an action to recover that owner’s share of the cost, or for specific performance or contribution, may be brought by the other owners, either jointly or severally. The action may be brought before, during, or after performance of the maintenance work, as follows:

(1) The action may be brought in small claims court if the amount claimed to be due as the owner’s proportion of the cost does not exceed the jurisdictional limit of the small claims court. A small claims judgment shall not affect apportionment of any future costs that are not requested in the small claims action.

(2) Except as provided in paragraph (1), the action shall be filed in superior court and, notwithstanding Section 1141.13 of the Code of Civil Procedure, the action shall be subject to judicial arbitration pursuant to Chapter 2.5 of Title 3 of Part 3 (commencing with Section 1141.10) of the Code of Civil Procedure. A superior court judgment shall not affect apportionment of any future costs that are not requested in the action, unless otherwise provided in the judgment.

(3) In the absence of an agreement addressing the maintenance of the easement, any action for specific performance or contribution shall be brought in a court in the county in which the easement is located.

(4) Nothing in this section precludes the use of any available alternative dispute resolution program to resolve actions regarding the maintenance of easements in the small claims court or the superior court.

(d) In the event that snow removal is not required under subdivision (a), or under any independent contractual or statutory duty, an agreement entered into pursuant to subdivision (b) to maintain the easement in repair shall be construed to include snow removal

within the maintenance obligations of the agreement if all of the following exist:

(1) Snow removal is not expressly precluded by the terms of the agreement.

(2) Snow removal is necessary to provide access to the properties served by the easement.

(3) Snow removal is approved in advance by the property owners or their elected representatives in the same manner as provided by the agreement for repairs to the easement.

(e) This section does not apply to rights-of-way held or used by railroad common carriers subject to the jurisdiction of the Public Utilities Commission.

(Amended by Stats. 2012, Ch. 244, Sec. 1. (AB 1927) Effective January 1, 2013.)

846. (a) An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on those premises to persons entering for a recreational purpose, except as provided in this section.

(b) A "recreational purpose," as used in this section, includes activities such as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, private noncommercial aviation activities, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

(c) An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby do any of the following:

(1) Extend any assurance that the premises are safe for that purpose.

(2) Constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed.

(3) Assume responsibility for or incur liability for any injury to person or property caused by any act of the person to whom permission has been granted except as provided in this section.

(d) This section does not limit the liability which otherwise exists for any of the following:

(1) Willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.

(2) Injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose.

(3) Any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

(e) This section does not create a duty of care or ground of liability for injury to person or property.

(Amended by Stats. 2018, Ch. 92, Sec. 33. (SB 1289) Effective January 1, 2019.)

846.1. (a) Except as provided in subdivision (c), an owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the Department of General Services for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner.

(3) The owner prevails in the civil action.

(b) Except as provided in subdivision (c), a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the Department of General Services for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the public entity.

(3) The public entity prevails in the civil action.

(c) An owner of any estate or interest in real property, whether possessory or nonpossessory, or a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on, or use of, the real property for a recreational purpose, as defined in Section 846, pursuant to an agreement with a public or nonprofit agency, and is a defendant in a civil action brought by, or on behalf of, a person who seeks to restrict, prevent, or delay public use of that property, may present a claim to the Department of General Services for reasonable attorney's fees incurred in the civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner or public entity.

(3) The owner or public entity prevails in the civil action.

(d) The Department of General Services shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorney's fees, for purposes of this section, may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made, and may not exceed an aggregate amount of twenty-five thousand dollars ($25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.

(e) The total of claims allowed by the Department of General Services pursuant to this section shall not exceed two hundred thousand dollars ($200,000) per fiscal year.

(Amended by Stats. 2016, Ch. 31, Sec. 8. (SB 836) Effective June 27, 2016.)

846.2. No cause of action shall arise against the owner, tenant, or lessee of land or premises for injuries to any person who has been expressly invited on that land or premises to glean agricultural or farm products for charitable purposes, unless that person's injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. The immunity provided by this section does not apply if the owner, tenant, or lessee received any consideration for permitting the gleaning activity.

(Added by Stats. 1988, Ch. 1062, Sec. 1.)

846.5. (a) The right of entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying and it shall be the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant. However, the owner or tenant shall be notified of the proposed time of entry where practicable.

(b) The requirements of subdivision (a) do not apply to monuments within access-controlled portions of freeways.

(c) When required for a property survey, monuments within a freeway right-of-way shall be referenced to usable points outside the access control line by the agency having jurisdiction over the freeway when requested in writing by the registered civil engineer or licensed land surveyor who is to perform the property survey. The work shall be done within a reasonable time period by the agency in direct cooperation with the engineer or surveyor and at no charge to him.

(Amended by Stats. 1982, Ch. 427, Sec. 1.)

847. (a) An owner, including, but not limited to, a public entity, as defined in Section 811.2 of the Government Code, of any estate or any other interest in real property, whether possessory or nonpossessory, shall not be liable to any person for any injury or death that occurs upon that property during the course of or after the commission of any of the felonies set forth in subdivision (b) by the injured or deceased person.

(b) The felonies to which the provisions of this section apply are the following: (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, or threat of great bodily harm; (5) oral copulation by force, violence, duress, menace, or threat of great bodily harm; (6) lewd acts on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury; (17) exploding a destructive device or any explosive

with intent to murder; (18) burglary; (19) robbery; (20) kidnapping; (21) taking of a hostage by an inmate of a state prison; (22) any felony in which the defendant personally used a dangerous or deadly weapon; (23) selling, furnishing, administering, or providing heroin, cocaine, or phencyclidine (PCP) to a minor; (24) grand theft as defined in Sections 487 and 487a of the Penal Code; and (25) any attempt to commit a crime listed in this subdivision other than an assault.

(c) The limitation on liability conferred by this section arises at the moment the injured or deceased person commences the felony or attempted felony and extends to the moment the injured or deceased person is no longer upon the property.

(d) The limitation on liability conferred by this section applies only when the injured or deceased person's conduct in furtherance of the commission of a felony specified in subdivision (b) proximately or legally causes the injury or death.

(e) The limitation on liability conferred by this section arises only upon the charge of a felony listed in subdivision (b) and the subsequent conviction of that felony or a lesser included felony or misdemeanor arising from a charge of a felony listed in subdivision (b). During the pendency of any such criminal action, a civil action alleging this liability shall be abated and the statute of limitations on the civil cause of action shall be tolled.

(f) This section does not limit the liability of an owner or an owner's agent which otherwise exists for willful, wanton, or criminal conduct, or for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

(g) The limitation on liability provided by this section shall be in addition to any other available defense.

(Added by Stats. 1985, Ch. 1541, Sec. 1.)

848. (a) Except as provided in subdivision (c), the owner of mineral rights, as defined by Section 883.110, in real property shall give a written notice prior to the first entry to the owner of the real property who is listed as the assessee on the current local assessment roll or to the owner's representative, or to the lessee of the real property if different from the mineral rights owner, and to any public utility that has a recorded interest in the real property if there is to be excavation of the utility interest, under the following circumstances:

(1) If the mineral rights owner or its agent intends to enter real property for the purpose of undertaking non-surface-disrupting activities such as surveying, water and mineral testing, and removal of debris and equipment not involving use of an articulated vehicle on the real property, the owner or agent shall provide a minimum of five days' notice. Reasonable attempts shall be made to deliver the notice by acknowledged personal delivery, but if that cannot occur, the notice shall be delivered by registered letter and be received a minimum of five days prior to the entrance on the property. The notice shall specify all of the following:

(A) Date of entry.

(B) Estimated length of time the property will be occupied.

(C) General nature of the work.

(2) If the mineral rights owner or its agent intends to enter real property for the purpose of excavation or other surface-disrupting activities such as drilling new wells, constructing structures, bringing articulated vehicles or excavation equipment on the real property, or reclamation of the real property after the surface has been disturbed, the owner or agent shall provide a minimum of 30 days' notice. The notice shall specify both of the following:

(A) The extent and location of the prospecting, mining, or extraction operation.

(B) The approximate time or times of entry and exit upon the real property.

(3) If a mineral rights owner's entry to the real property ceases for a period of one year or more, any further entry by the mineral rights owner for the purpose of surface-disturbing activities pursuant to paragraph (2) shall require written notice pursuant to this subdivision.

(b) (1) If a mineral rights owner has been authorized by the Geologic Energy Management Division to drill a relief well or to take other immediate actions in response to an emergency situation, or if the division or its agent is drilling a relief well or taking other immediate actions in response to an emergency situation, the notice provisions under paragraph (2) of subdivision (a) shall be waived.

(2) For purposes of this subdivision, an "emergency" means immediate action is necessary to protect life, health, property, or natural resources.

(c) The notice specified in subdivision (a) shall not be required if the owner of the real property or assessee has a current, already negotiated surface use, access use, or similar agreement with the mineral rights owner, lessee, agent, or operator.

(d) If the mineral rights owner has not complied with the notice requirement specified in subdivision (a), the owner of the real property listed on the current assessment roll or any public utility which has a recorded interest in the real property may request a court to enjoin the prospecting, mining, or extracting operation until the mineral rights owner has complied. The absence of a known owner on the assessment roll or any public utility which has a recorded interest in the real property relieves the mineral rights owner of the obligation to give the written notice to the owner or public utility.

(e) For purposes of this section, an “acknowledged personal delivery” means that the written notice is personally delivered to the owner, the owner’s representative, or lessee, and the owner, the owner’s representative, or lessee acknowledges, in writing, receipt of the notice.

(Amended by Stats. 2019, Ch. 771, Sec. 1. (AB 1057) Effective January 1, 2020.)