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CIVIL CODE - CIV

DIVISION 4. GENERAL PROVISIONS [3274 - 9566] (*Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.*)

PART 3. NUISANCE [3479 - 3508.2] (*Part 3 enacted 1872.*)

TITLE 2. PUBLIC NUISANCES [3490 - 3496] (*Title 2 enacted 1872.*)

3490. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

(Enacted 1872.)

3491. The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

(Amended by Code Amendments 1880, Ch. 11.)

3492. The remedy by indictment or information is regulated by the Penal Code.

(Amended by Code Amendments 1880, Ch. 11.)

3493. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

(Enacted 1872.)

3494. A public nuisance may be abated by any public body or officer authorized thereto by law.

(Enacted 1872.)

3494.5. (a) (1) A property owner who voluntarily participates in a lead paint abatement program, and all public entities, shall be immune from liability in any lawsuit where a responsible party seeks to recover any cost associated with a lead paint abatement program from a property owner or public entity.

(2) For purposes of this subdivision, participation in a lead paint abatement program may be as limited as submission of an application to a lead paint abatement program or as extensive as completion of all activities conducted pursuant to a lead paint abatement program.

(b) (1) A property owner's participation in a lead paint abatement program shall not be evidence that the participating property is any of the following:

(A) A nuisance.

(B) Substandard under Section 17920.3 of the Health and Safety Code or is in violation of Section 17920.10 of the Health and Safety Code, to the extent that those sections apply to lead-based paint or other substandard conditions controlled utilizing program funds.

(C) Untenantable under Section 1941.1 of the Civil Code, as that section applies to lead-based paint or other conditions controlled utilizing program funds.

(2) For the purposes of this subdivision, "participation in a lead paint abatement program" means that a property has been voluntarily enrolled in a lead paint abatement program, qualifies for inspection and services, is deemed to contain actionable lead-

based paint, and has been satisfactorily abated, is in the process of being satisfactorily abated, or is awaiting abatement under the lead paint abatement program.

(c) For the purposes of this section:

(1) "Lead paint abatement program" means a program that satisfies both of the following:

(A) The program is created to abate lead-based paint.

(B) The program is created as a result of a judgment or settlement in any public nuisance or similar litigation.

(2) "Property owner" means the property owner as well as all agents or employees thereof acting within the course and scope of their agency or employment.

(3) "Public entities" includes the state, the Regents of the University of California, the Trustees of the California State University, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, including any employees or agents thereof acting within the course and scope of their employment or agency.

(4) "Responsible party" means a private party legally responsible for the inspection costs, abatement costs, or any other costs associated with a lead paint abatement program.

(d) This section shall not alter existing obligations on homeowners to maintain their property under applicable law or otherwise limit a tenant's legal remedies for addressing the presence of lead paint on a dwelling.

(Added by Stats. 2019, Ch. 171, Sec. 1. (AB 206) Effective January 1, 2020.)

3495. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

(Enacted 1872.)

3496. In any of the following described cases, the court may award costs, including the costs of investigation and discovery, and reasonable attorney's fees, which are not compensated for pursuant to some other provision of law, to the prevailing party:

(a) In any case in which a governmental agency seeks to enjoin the sale, distribution, or public exhibition, for commercial consideration, of obscene matter, as defined in Section 311 of the Penal Code.

(b) In any case in which a governmental agency seeks to enjoin the use of a building or place for the purpose of illegal gambling, lewdness, assignation, human trafficking, or prostitution; or any case in which a governmental agency seeks to enjoin acts of illegal gambling, lewdness, assignation, human trafficking, or prostitution in or upon a building or place, as authorized in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(c) In any case in which a governmental agency seeks to enjoin the use of a building or place, or seeks to enjoin in or upon any building or place the unlawful sale, manufacture, service, storage, or keeping or giving away of any controlled substance, as authorized in Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code.

(d) In any case in which a governmental agency seeks to enjoin the unlawful sale, service, storage, or keeping or giving away of alcoholic liquor, as authorized in Article 1 (commencing with Section 11200) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(Amended by Stats. 2012, Ch. 254, Sec. 1. (AB 2212) Effective January 1, 2013.)