Don't Lean on the House

I'm retiring and plan to move to another home in another county in California. Is there any way I can prevent my property tax from being reassessed?

Maybe. California law provides an exemption from reassessment for natural persons (i.e. not an LLC or corporation) 55 years of age or older. The answer depends on the county in which the replacement property is located, according to Proposition 90. The county board of supervisors of the county in which the replacement property is located must adopt an ordinance making the provisions of Proposition 90 applicable to their county. See the C.A.R. legal article, "Proposition 90 Watch," for a list of those counties that have adopted a Proposition 90 ordinance. Because many cities are experiencing a financial crunch, they may choose to opt out of Proposition 90. Once a city passes a Proposition 90 ordinance, the city may not opt out for five years (Cal. Rev. & Tax Code § 69.5(a)(2)). For more details, see the C.A.R. Legal Q&A, "Property Tax Exemptions From Reassessment."

n Formet v. Lloyd Termite Control Co. (2010), the guest of the homeowners brought an action against the pest inspection company for negligence in not discovering and disclosing dry rot damage to the balcony railing. The guest had leaned against the balcony railing, which gave way, and he fell 10 feet, injuring himself. The homeowners had purchased one half of the property from Caskey, who had inherited the property from her mother who resided there for more than 40 years. Caskey had hired a licensed home inspector, at that time, to evaluate the property. The home inspector noted evidence of termites at posts, doors, trim, etc. Caskey then hired Lloyd Termite to provide a pest report. The report noted drywood termites throughout the main house and in the support post at a stair landing; however, it did not note the dry rot damage to the balcony railing that gave way. Lloyd Termite provided the pest control report and the fumigation services and recommended that Caskey hire a licensed contractor to repair the structural damage that was noted in the report. However, Caskey didn't hire anyone to repair the structural damage to the property.

The trial court granted summary judgment in Lloyd Termite's favor and Formet appealed. The 4th District California Court of Appeal concurred with the trial court, holding that the termite company's liability is limited to the parties and beneficiaries of the contract and that no duty is owed to third parties. The appellate court noted that even if Lloyd Termite had discovered and disclosed the damage to the railing, "there is no suggestion the property owner would have repaired such damage. Rather, it is more likely she would have ignored such

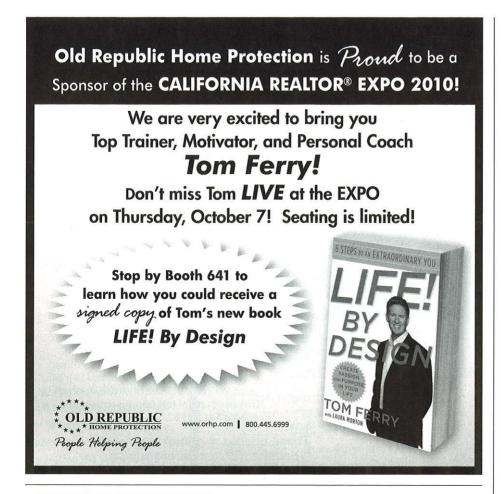
warnings of dry rot damage just like she ignored the other damage [Lloyd Termite] disclosed."

The appellate court reasoned that a limited liability for pest control companies was consistent with Bily, which limits liability for accountants, FSR Brokerage and Coldwell Banker Residential Brokerage, which limits liability for real estate licensees, and Leko, which limits liability for home inspectors. "Since a pest inspection report and termite fumigation are commercial transactions, the duty owed from disclosures made to help decide whether to purchase fumigation should be limited to the intended beneficiary-the property owner." The same reasoning applies regardless of whether the injury is economic, as in the Bily case, or personal injury, as in the FSR Brokerage case.

Despite No License, Property Manager Entitled to Compensation

>> In MKB Management v. Melikian (2010), the trial court dismissed MKB's complaint (sustained a demurrer) alleging that Melikian and several related companies failed to pay amounts due to MKB as the manager of rental properties under a property management agreement. The trial court held that MKB could not enforce any part of the agreement or recover any compensation because it neither possessed a real estate license nor a contractor's license.

MKB appealed contending that it was entitled to recover compensation for services for which a license was not required regardless of whether other services that it provided required a real estate license. The 2nd District California Court of Appeal held that the "doctrine of severability" applies to allow the recovery of compensation for



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A license was not required for duties such as causing repairs to be made, decorating, and general maintenance.

services for which no license is required. The 2007 property management agreement between MKB and Melikian granted MKB the exclusive right to advertise rentals; sign, renew, and cancel leases; collect rents and other charges; terminate tenancies and sign notices on behalf of the owner; prosecute unlawful detainer actions; cause repairs and alterations to be made; decorate the premises; purchase supplies; hire and supervise employees to operate and maintain the premises; and contract with others for services on behalf of the owner. Melikian agreed to pay any expenses in excess of the receipts and also agreed to pay a management fee of the greater of \$2,000 per month or 4 percent of the gross rents.

The appellate court noted that a license was not required for duties such as causing repairs to be made, decorating, and general maintenance. "Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest." The doctrine of severability in Civil Code section 1599 "preserves and enforces any lawful portion of a parties' contract that feasibly may be severed." •

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Correction: The September Legal column stated that carbon monoxide devices must be installed in applicable single-family dwellings by July 1, 2010 (under a new law, SB 183). The correct date is July 1, 2011.