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2009 Cases and Legislative Intent

HAPPY NEW YEAR! We're wrapping up our 2009 Points and Authorities Supplement to our main points and authorities and we provide below a survey of three cases in 2009 that cited to legislative history materials and documents that were generated by different legislative committees and interested parties. Citing support from an earlier state supreme court's decision in the *Hughes v. Pair*, 46 Cal.4th 1035 (2009) case, the First District Court of Appeal recently addressed CCP § 638, indicating that the legislative history of this section:

> . . . confirms that the Legislature meant to empower the trial court with discretionary authority to refuse enforcement of a reference agreement. While the statutory language is clear in expressing this Legislative intent, we may also "look to legislative history to confirm our plain-meaning construction of statutory language. [*citations omitted*] Here, legislative intent on this point is unmistakable.
> Prior to 1982, section 638 authorized a court to order trial by referee upon the present agreement of parties to pending litigation. (**Legis. Counsel's Dig**., Assem. Bill No. 3657 (1982 Sess.) **Summary Dig**., p. 152) Section 638 was amended in 1982 to authorize a court to order trial by referee upon a predispute reference agreement when one of the parties moved to enforce the agreement. (*Ibid*.; Stats.1982, c. 440, p. 1810.) The State Bar of California sponsored the bill to amend section 638 and urged its adoption, arguing "that this bill is needed because there is no present procedure for compelling a reference if one party unilaterally decides not to abide by a prior agreement that any dispute may be submitted to a referee." (**Assem. Com. on Judiciary, Analysis** of Assem. Bill No. 3657 (1982 Sess.) April 28, 1982, p. 1.) The bill's sponsor argued that "court congestion" makes reference an "attractive remedy." (*Ibid.*)
> (See *Tarrant Bell Property v. Superior Court*, 2009 WL 4295925 (Cal.App. 1 Dist.), 09 Cal. Daily Op. Serv. 14,421, 2009 Daily Journal D.A.R. 16,939; *Emphasis added*)

This same court also discussed the various amended versions of the bill and cited to other Assembly Committee analyses and staff comments. (See *Tarrant Bell Property v. Superior Court*, *ibid*.)

In June of 2009, the Third District Court of Appeal in *People v. James* (174 Cal.App.4th 662, 94 Cal.Rptr.3d 576) concluded that a United States Supreme Court decision did not extend Second Amendment protection to assault weapons and .50 caliber MBG rifles. (*Ibid*.) In its opinion, the Third District Court cited to a 2000 California supreme court opinion that "reviewed the historical context of the Assault Weapons Control Act." (*Ibid.*; see *Kasler v. Lockyer* (2000) 23 Cal.4th 472, 97 Cal.Rptr.2d 334). The court noted that the legislative history revealed the details of shooting incidents and the testimonies heard before the policy committees reviewing the legislation. (*Ibid*.) The *James* court also cited to supporter's testimony found within the committee analyses. (Ibid.)

Another 2009 court opinion addressing legislative history materials was *Hoffman Street v. City of West Hollywood*, 2009 WL 4021624 (Cal.App. 2 Dist.), rendered this past November, in which the Second District Court of Appeal drew support for its construction of Government Code § 65858 from legislative history documents, stating in a footnote the following:

> *8 The legislative history supports this construction. Legislative committee reports and analyses prepared in connection with the bill that added the second sentence of Government Code section 65858, subdivision (c); paragraphs (1) through (3) of subdivision (c); and subdivisions (g) and (h) stated that the requirement of additional findings would not apply to interim ordinances relating to the types of projects described in subdivision (g). (Sen. Rules Com., **Off. Of Sen.**

* Final draft of a legislative proposal

Floor Analyses, analysis of Sen. Bill No. 1098 (2001-2002 Reg. Sess.) as amended Aug. 28, 2001, p. 3; **Assem. Com. on Local Government, Analyses** of Sen. Bill No. 1098 (2001-2002 Reg. Sess.) as amended June 28, 2001, p. 1; **Assem. Com. on Housing and Community Development, Analyses** of Sen. Bill No. 1098 (2001-2002 Reg. Sess.) June 27, 2001 [proposed amendment], p. A.) The legislative history also indicates that the bill imposed findings requirements similar to those under the Housing Accountability Act in order to prevent local governments from circumventing the requirements of that act, through the adoption of interim ordinances. (Sen. Rules Com. **Off. Of Sen. Floor Analyses**, analysis of Sen. Bill No. 1098 (2001-2002 Reg. Sess.) as amended Aug. 28, 2001, pp. 2,4.) [FN7]
(See Hoffman Street v. City of West Hollywood, 2009 WL 4021624 (Cal.App. 2 Dist.); *Emphasis added*)

Watch for your updated points and authorities, which are always available at no charge at our website at legintent.com.

2009 Notable Legislation

For those interested in a survey of **2009 notable legislation** enacted in California, we have published our annual **COMPENDIUM** for your easy review at our website. Go to: http://www.legintent.com/legislation.php

One popular legislative history for research in our office has been **SB 94**, which was signed by Governor Schwarzenegger on October 11, 2009. The purpose of this legislation, according to the Assembly Committee on Appropriations, was:

> . . . to regulate loan modification businesses, which have proliferated during the past few years and whose actions have generated numerous consumer complaints. It does so by eliminating advanced fees and ensuring that borrowers are aware that the services provided can be received for free through direct contract with lenders, or through non-profit agencies.
> (Assem. Comm. On Appropriations analysis, pg.1)

The legislative history materials gathered on SB 94 included competitor bill, **AB 764 of 2009**, which was vetoed by Gov. Schwarzenegger because:

> Although I support the prohibition of individuals charging advance fee for mortgage loan modifications, I do not agree with the provision of this bill that will only allow fees to be collected if a modification is successful. This could adversely affect legitimate businesses that provide loan modification services. As such, I am signing SB 94 that accomplishes this prohibition against advanced fees without unnecessarily harming legitimate companies.
> (See *AB 764*, Veto Message)

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