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*California's New Cell  
Phone Law...Look In-  
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## Autumn Leaves, Tree Roots, And Good Neighbors



**Matthew Jensen,  
Esq.**

Walt Whitman once said that large and melodious thoughts descended upon him whenever he walked under trees. Other things can descend from trees too, like troubles with neighbors. Just ask a homeowner about tree roots encroaching from a neighbor's property.

A common question that property owners ask is whether a neighbor may be held liable for damages caused by encroaching tree roots. The answer is yes. If your tree roots encroach and cause damage to a neighbor's planter's box, pipes, or retaining wall, you could be held liable for the cost of actual repairs made by your neighbor. Landowners have a duty to exercise reasonable care in the maintenance of their property so as to not infringe on the rights of neighbors. However, the same is not true with respect to debris from trees such as fallen leaves, fruit, and sap as this is a part of the natural growth of trees.

In addition to recovering the cost of actual

repairs incurred as a result of encroaching tree roots, a property owner has the right to sever roots encroaching on his property. The same is true of overhanging branches and limbs. However, tree trimmers beware! A property owner who fails to use reasonable care so as to not damage or kill the offending tree can be held liable for the damage caused to the tree (it is an open question whether damages are measured by the replacement cost of the tree or the diminution in value of the property caused by the loss of the tree). So play it safe and hire a professional to do the trimming.

Before you get into a lawsuit with your neighbor (over a tree), try to work things out informally and make reasonable accommodations. If you can't or have any questions, give us a call at 408-441-7500. Your homeowners insurance company may also be able to assist you.

***"If your tree roots encroach and cause damage...you could be held liable for the actual cost of the repairs..."***



## Success Story



One of SLG's clients wanted to terminate a problem employee but contacted SLG first out of concern that the employee may become vindictive and file retaliatory claims. SLG's attorneys counseled the client in understanding the potential liability. Ultimately, the client offered a severance payment to the employee in exchange for a release of all claims—and the employee accepted. As a result, the client was able to part ways with a problem employee without fear of any frivolous retaliatory claims.

## Wireless Telephone Laws FAQs

Here are some answers to frequently asked questions about the new hands free telephone law that took effect July 1, 2008.

**What are the fines if I am caught?** The base fine for the First offense is \$20 and \$50 for subsequent convictions.

**Will the conviction appear on my driving record?** Yes, but a violation point will not be added.

**Can I be pulled over by a law enforcement officer just for using my handheld wireless telephone?** YES.

**Can I text while driving?** The law does not yet specifically prohibit texting, but an officer can pull over and issue a citation to a driver of any age if, in the officer's opinion, the driver was distracted and not operating the vehicle safely. However, starting in 2009 it will be illegal to read or send a text message while driving.

**Will it be legal to use a Bluetooth or other earpiece?** Yes, however you cannot have BOTH ears covered.

[source: California Highway Patrol]



### Drivers under 18

**Am I allowed to use my wireless telephone hands free?** NO. Drivers under the age of 18 may not use a wireless telephone, pager, laptop or any other electronic communication or mobile services device to speak or text while driving in any manner, even hands free. EXCEPTION: in emergency situations to call police, fire or medical authorities.

**May I use the hands-free feature while driving if my car has the feature built in?** NO. The law prohibits anyone under the age of 18 from using any type of wireless device while driving, except in an emergency situation.

**Can a law enforcement officer stop me for using my hands-free device while driving?** No. For drivers under the age of 18, this is considered a SECONDARY violation meaning that a law enforcement officer may cite you for using a hands-free wireless phone if you were pulled over for another violation. However, the prohibition against using a handheld wireless telephone while driving is a PRIMARY violation for which a law enforcement officer can pull you over.

## Tax Corner

- Win a Lawsuit and Get Your Taxes Paid?

Win a lawsuit and you may be able to boost your damages to cover any extra taxes. A paramedic won a discrimination case and a district court increased the damages for the extra taxes she would have to pay as a result of the lump sum payment putting her in a higher tax bracket. (Loesch v. Philia, D.C., PA) [Source: Kiplinger Tax Letter, Vol. 83, No. 15]

- Tax Return Due Dates Changing in 2009

The IRS just moved the extension due date up by one month for partnerships, LLCs, and trusts. This means that, for calendar year taxpayers, your partnership, LLC and trust federal returns will be due September 15, 2009 rather than October 15th. California has not changed its due dates, so you will still have until October 15th to file your California returns.

- Buy a Car For Your Business

2008 is a good year to buy a car for business. First year write-offs are much higher than 2007, with even higher limits for SUVs over 6,000 pounds. On a \$50,000 new heavy SUV put in use in 2008, 100% used for business, \$40,000 can be written off. [Source: Kiplinger Tax Letter, Vol. 83, No. 15]

- LLC Fee Update

We have another verdict on the California LLC Gross Receipts Tax. Section 17942 of the LLC Act now states that the LLC fee is based upon "total income from all sources derived from or attributable to this state for the taxable year." The California Court of Appeals recently used this statutory language to redetermine the LLC fee due for years prior to the change in the law. (Ventas Finance I, LLC v. FTB (August 11, 2008)) This case has been sent back to the lower court to calculate the fee, and an appeal is anticipated. However, it looks like the LLC fee will survive, based on California source income.

## Interview Questions - What Not To Ask

The hiring process can create a myriad of problems for potential employers including what kind of questions to ask during an interview. One wrong question could result in a discrimination lawsuit. In order to avoid this potential problem, here is a list of questions that should not be asked during a job interview.

1. Are you married or divorced?
2. How old are you?
3. Do you have any children, and if so, how old are they?
4. Do you own or rent your home?
5. What church do you attend?
6. Do you have any debt?
7. Do you belong to any social or political groups?
8. How much and what kinds of insurance do you have?
9. Do you suffer from an illness or disability?
10. Have you ever been hospitalized?
11. Have you received treatment from a psychiatrist?
12. Have you had a major illness recently?
13. Do you have any disabilities or impairments that might affect your performance in this job?
14. Are you taking prescription drugs?
15. Have you ever been treated for alcoholism or drug addiction?
16. Do you plan to get married?
17. Do you plan to start a family?
18. What are your day care plans?
19. Do you think you could perform the job as well as a man?
20. Are you likely to take time off under FMLA?

Every question should relate to how a person is qualified to perform the job they are applying for. If a job candidate gives you information that you're not allowed to ask about, don't pursue the topic any further. [Source: HR Specialist, December 2007]



### Real Estate

#### Plan Ahead to Avoid 3<sup>1</sup>/<sub>3</sub>% Withholding on Sale of California Real Estate

Escrow companies are required to withhold 3 <sup>1</sup>/<sub>3</sub>% of the gain on the sale of California real estate in order to cover California taxes due on the sale. Partnerships, corporations and some LLCs are exempt from the requirement. Now, for sales after January 1, 2007 a seller may elect to calculate the actual estimated gain or loss (subject to certain exclusions as well as penalties for perjury) and have that amount withheld instead. The seller must provide a Form 593-E to the escrow company before the withholding is submitted to the FTB. Be careful, there will be no refunds for taxpayer error. Once the funds are withheld, you will have to wait for a refund based on your filed tax return.

### Estate Planning Tip

These days, while the titans of Wall Street teeter on the edge of financial ruin and there is media chatter about the great depression, bank failures, and the domino effect, here's a comforting tip: the Federal Deposit Insurance Corporation (FDIC), which is guaranteeing bank deposits up to \$250,000, offers extra insurance for accounts owned by a living trust. Here's how it works: The owner of a living trust account (person who set up the trust) can insure up to \$250,000 per beneficiary, provided these requirements are met: A beneficiary must be the owner's spouse, child, grandparent, parent or sibling. A beneficiary must get their money when the trust owner dies. The account title at the bank must indicate that the account is held by the trust. Here's an example: A father has a living trust which leaves his assets equally to his three children. This trust can be insured up to \$750,000. Trusts with two owners can get \$250,000 of insurance per beneficiary per owner, as long as the beneficiaries will inherit the money when the second owner dies. To see how much your account is insured for, go to the FDIC's "EDIE" Estimator Website [www.fdic.gov/edie/index.html](http://www.fdic.gov/edie/index.html).



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## Dates to Remember

October 13	Columbus Day
October 16	Boss's Day
October 31	Halloween
November 4	Election Day
November 11	Veterans Day- some courts and government offices closed
November 27	Thanksgiving
December 25	Christmas Day
December 31	New Years Eve



*We appreciate your referrals!*



**Mark R. Figueiredo, Esq.**



**Tamara B. Pow, Esq.**

## Did You Know?

- The maximum weight for a golf ball is 1.62 oz.
- Tiger Wood's yacht is named "Privacy."
- No word in the English language rhymes with month.
- The first football player on a Wheaties box was Walter Payton of Columbia.
- It is physically impossible for pigs to look into the sky.
- The Pillsbury doughboy's name is Poppin' Fresh .

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