

A Look at Gift Cards, Gift Certificates, and their Federal and State Regulations

by Elizabeth Harmon

With the holidays approaching, gift-giving is on many people's minds. Gift cards or gift certificates are a popular alternative to a traditional gift, especially when trying to find a gift for a family-member or a friend who seems to have just about everything. Whether you are the one who gives or you are the recipient of a gift card or certificate, you may have wondered if there are any specific regulations that pertain to their use. The answer is "yes" - there are both California statutes (found in the *California Civil Code* Sections 1749.45–1749.6) and recent Federal regulations (found in the *Code of Federal Regulations* Title 12, Section 205.20) [effective August 22, 2010].

The following is a short overview of these laws:

- Regulations state that the terms "gift card" and "gift certificate" are the same. Exceptions are a gift card that can be used for a variety of merchants or services and prepaid calling cards that supply an authorization plus an entry code for calling purposes.
- Gift cards and certificates, as a general rule, do not have expiration dates, unless it can be used at more than one merchant, then it might but if that is the case then the expiration date must be printed on the card or certificate.
- A gift card or certificate cannot contain a service fee nor is a fee for non-use allowed – though there are some exceptions to this rule.
- Whether a gift card or certificate can be redeemed for cash depends on the policies of the merchant, with some sellers allowing for cash or a combination of cash and goods. While other sellers allow

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Witkin & the Law

by John Patrick Quigley

Sometimes a patron will come to the Reference Desk with a long, complicated story, followed by a question: "Do you have any cases like that?" I don't know where they get the idea that legal research should begin with cases. It's as if they dropped out of law school in the first year: use of the notorious "case method" is great for teaching students how to think like lawyers, but is not the most efficient method to research (or teach) the law.

"Bernie" Witkin reportedly hated law school for that reason, feeling that the "Socratic Method" was just the invention of lazy law professors. While a law student at the University of California in Berkeley, he made notes that he sold to fellow students. Perhaps they were in outline form, and, in my opinion, using such outlines, or better yet, creating them, is the best way to understand the law. After graduating and passing the California Bar Exam, Witkin refined his notes into a bar review course, which he taught.

And that was the basis for his famous legal treatises: Summary of California Law, Floor 3 KFC80.W5, California Procedure, Floor 3 KFC995.W52, California Criminal Law, Floor 3 KFC1100.W5, and California Evidence, Floor 3 KFC1030.W5. We also have them on the Westlaw database; its links to statutes, case annotations, Westlaw's Keycite and key number reporters plus the Restatements (frequently cited by Witkin), make especially efficient legal researching for the computer-savvy.

Legal research is usually most efficiently begun with what are misleadingly called *secondary* sources, such as a treatise or encyclopedia, and the Witkin treatises, taken together, are almost encyclopedic in their breadth. They are more concise and perhaps

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Gift Cards*(Continued from page 1)*

only use for merchandise or services and will issue a new card or certificate for the remaining value once the initial purchase is made

- A more complicated issue is whether a gift card or certificate has any value when the seller of the item declares bankruptcy. Unfortunately, in many cases the card or certificate may become worthless, although the holder may have a claim against the bankruptcy estate. When a seller files a reorganization (Chapter 11) bankruptcy, they intend to keep doing business, so in order to retain customers and protect their reputation, they generally will request that the court allow them to fulfill the terms of any gift cards or certificates. However, if the court does not agree to honor the cards or certificates or if the seller files a liquidation (Chapter 7) bankruptcy then the cardholder is added to the list of creditors and may only receive a portion of the worth of the card or certificate, depending on the assets of the bankruptcy estate.

For more in-depth information on these laws pertaining to gift cards or certificates refer to the publications mentioned above or access *Legal Guide S-11* on the California Department of Consumer Affairs website, which includes a table that compares Federal and State gift card and gift certificate laws. 

**Witkin and the Law***(Continued from page 1)*

less user-friendly than California Jurisprudence 3rd, an encyclopedia located just before Summary of California Law on our shelves. Witkin treatises don't have forms, and aren't really practice guides. But they are the best source for answering pure questions of law.

Students and practitioners are admonished that legal research should end with references to *primary* sources having the authority of law, such as statutes, cases, and regulations. One possible exception is the Witkin treatises, estimated to have been referenced by California courts over 20,000 times. (But you're not advised to try this.)

Thanks to the popularity of his treatises, Witkin became an honored authority on California law. His contribution to it is mentioned approvingly in the California Education Code, Section 19328(a). He presumably never aspired to be a Professor or Judge, but he clerked for Justices and lectured to them in seminars, eventually helping establish California Judicial Education and Research (CJER), which publishes popular short guides for Judges. We have them in our library and on Westlaw, and it's not a bad idea to read what your Judge might be reading.

It's claimed that Witkin was a strict constructionist who believed that making new law should be left to the legislature, and that the only Justice he ever criticized was Chief Justice Rose Bird (who was later voted out of office by the voters for refusing to uphold the death penalty). An amusing legend is that when the Chief Justice chaired the California Judicial Council, she refused to tell Witkin (who was the only non-judicial member) where the meetings were being held.

Bernard E. Witkin passed away on December 23, 1995 – 17 years ago! 

California Homeowner Bill of Rights

by Kelsey Chrisley



The California Homeowner Bill of Rights is a set of bills or laws that contain mortgage and foreclosure reforms, blight prevention, tenant protection, enhancement of the Attorney General Enforcement Act and the Attorney General Special Grand Jury Act. Below are highlights from the Legislative Counsel's digest for each bill. For specific bill language, please search using the bill number on the Official California Legislative Information website, www.leginfo.ca.gov/bilinfo.html. In addition, Assembly bills may also be found at KFC 6.C3A8 and the Senate bills at KFC 6.C3S4 on the main floor of the Law Library. For more information on the California Homeowner Bill of Rights, please see the California Attorney General's website at <http://oag.ca.gov/>.

Mortgage and foreclosure reforms: AB 278 (Chapter 86, Statutes of 2012) and SB 900 (Chapter 87, Statutes of 2012) defines a mortgage servicer as "a person or entity who directly services a loan, or who is responsible for the interacting with the borrower, managing the loan account on a daily basis including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner's authorized agent." These bills require a mortgage servicer to follow the same provisions that a mortgagee, trustee, beneficiary, or authorized agent must follow by contacting the borrower with the notice of default. (All are to contact the borrower before a notice of default and 'explore' options to prevent foreclosure.) In addition, these laws prohibit the recording of a notice of default or sale while a complete first lien loan modification application is pending. This law authorizes a borrower to seek an injunction and damages for violations. It also requires the mortgage servicers to have a single point of contact and outlines the responsibilities for that contact. The Department of Corporations, the Department of Financial Institutions, and Department of Real Estate are empowered to adopt and enforce regulations to implement each bill's provisions to fine a mortgage servicer who engages in multiple and repeated violations by not ensuring it has properly reviewed the borrower's default, right to foreclose, loan status and loan information. The mortgage servicer is liable for a civil penalty of up to \$7,500 per mortgage or deed of trust. This law is effective starting January 1, 2013 and expires on January 1, 2018.

Blight prevention: AB 2314 (Chapter 201, Statutes of 2012) extends indefinitely the existing law to prevent blight from vacant residential properties, which was to be repealed on January 1, 2013. California governmental

agencies are required by the State Housing Law to enforce within the agency's jurisdiction all of the State Housing Law, the State Building Standards Code, and other specified rules and regulations. The governmental agency is authorized to impose fines of up to \$1000 per day for a violation. The agency must give notice of the claimed violation to the owner, allow the owner 14 days to correct the violation, and allow a hearing for contesting the fines and penalties. In some instances, the law allows the agencies to prevent, restrain, correct, or abate the violation or nuisance. This law will prevent an agency from starting actions or proceedings until at least 60 days after a person takes title (there are some exceptions). If a pending action has been recorded against a property, the lender or entity that releases the deed will notify the enforcement agency within 60 days of the release. The law allows the enforcement agency to seek the court to order penalties or the appointment of a receiver for a sub-standard building if an owner fails to comply within a reasonable time with the terms of the order. In addition, the court is authorized to require the owner of the property to pay all unrecovered costs associated with a receivership.

Tenant protection: Tenants or subtenants, who are renting property that is sold, will have additional protection. Under AB 2610 (Chapter 562, Statutes of 2012), new property owners may either give a tenant a new lease, rental agreement, or provide the tenant with a 90-day eviction notice (instead of 60 days). If the tenant or subtenant has an existing fixed-term lease (not month-to-month), the new owner is required to honor the lease unless the new owner will occupy the property as primary residence. These notice changes will be operative on March 1, 2013 or 60 days following posting of a dated notice posted on the Department of Consumer Affairs Internet website, whichever is later. This department is charged to make translations of the revised notice available. This law extends these provisions until December 31, 2019.


Enhancements to the Attorney General Enforcement Act: The current law prohibits anyone from acting as a real estate broker or real estate salesperson without a real estate license. Current law also prohibits a person from practicing law who is not an active member of the State Bar. These violations are a misdemeanor. In addition, AB 1950 (Chapter 569, Statutes of 2012) prohibits a person from acting as a mortgage loan originator without a license endorsement. This violation is a misdemeanor. It also prohibits a

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California Homeowners

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person who negotiates or arranges residential mortgage loan modifications for a fee to demand or receive preperformance compensation. The law also prohibits the requirement of security or collateral or taking a power of attorney from the borrower. Current law requires an active member of the State Bar who performs mortgage loan modification to provide the borrower a notice concerning 3rd parties arranging loan modifications. Prosecution of these offenses is changed to 3 years from discovery of the commission of the offense or within 3 years after completion of the offense whichever is later. For specific fines and jail time, please see the bill. AB 1950 also extends the current expiration of the law from January 1, 2013 to indefinitely.

Attorney General Special Grand Jury Act: SB 1474 (Chapter 568, Statutes of 2012) authorizes the Attorney General to convene a special statewide grand jury for cases involving fraud or theft that occur in more than one county and were conducted by a single defendant or multiple defendants acting in concert. This law allows the Attorney General to act when public interest requires investigation into criminal matters. The Attorney General may convene a special statewide grand jury with or without the concurrence of the district attorney and may issue subpoenas, prepare indictments and all other actions like that of a district attorney. 



Winter Book
Display:
e-Law

The Library's new display involves e-LAW . The staff has provided books, CDs and handouts for your e-enlightenment. Today, you're nobody if you or your business is not on some e-social media. Get on the e-bandwagon by looking through our e-media materials.

Book display arranged by Tricia Trujillo
Bibliography by Mora Prestinary

Looking at the Web



by Mora Prestinary

Gift Cards & Gift Certificates

www.dca.ca.gov/publications/legal_guides/s-11.shtml

California Small Business Administration

www.dgs.ca.gov/pd/Programs/OSDS.aspx

U.S. Small Business Administration

www.sba.gov/

Homeowners Bill of Rights

Goes into effect on January 1, 2013. Contains significant mortgage and foreclosure reforms. Assembly Bill 278 and Senate Bill 900

AB 278

www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0251-0300/ab_278_bill_20120711_chaptered.pdf

SB 900

www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0851-0900/sb_900_bill_20120711_chaptered.pdf

Uniform Electronic Legal Material Act

This bill would enact the Uniform Electronic Legal Material Act, which would provide for the official designation, authentication, and preservation of certain legal material in electronic records by an official publisher. The bill would designate the Legislative Counsel Bureau as the official publisher for purposes of the act and would make the act operative on July 1, 2015

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1075&search_keywords

Witkin Institute


This site highlights recent developments in the law of interest to the bench and bar, discusses techniques for efficient legal research, explains the publications that comprise the Witkin Library, and provides information about the Witkin Legal Institute and its programs.

www.witkin.com/



There is More Than One Way to Use a Law Book

by Elizabeth Harmon

Have you ever seen a Christmas tree made of law books? If not, which would be no surprise, check out <http://homeklondike.com/2011/12/16/Christmas-tree-of-law-books/> to get a look at what Juniper Books constructed out of olive green law books. It is definitely worth the visit. 



by Lu Nguyen




Is it possible to see an example of a legal Durable Power of Attorney so that we can make one up ourselves? We are also in need of Living Wills.



I recommend that you use a publication titled "Living Wills & Powers of Attorney for California," authored by Shae Irving, J.D., published by Nolo Press, 3rd edition, for guidance.

You can access this publication on a database called "EBSCO" available through the Law Library's website www.ocpll.org/databases.html

Scroll until you get to the EBSCO link, click and follow the database directions to log-in. The password is "orange." 

by Molly Solazzo

WHAT'S GOING ON

Superior Court E-Filing begins January 1st

Effective January 1, 2013 all documents filed in limited, unlimited, and complex civil actions **must be filed electronically** (unless the Court rules otherwise).

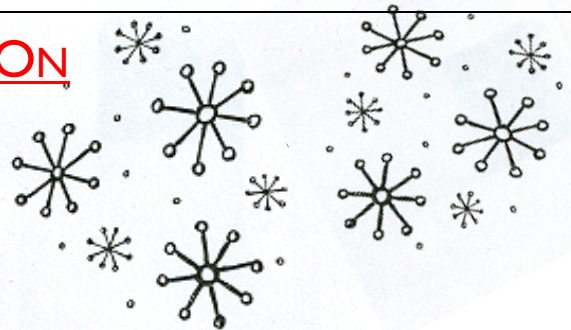
After January 1, 2013 any document that is electronically filed with the court after the close of business, 4 PM, shall be deemed to have been filed on the next court day. "Close of business" means the time at which the court no longer accepts filings at the court's filing counter (e.g., 4:00 PM).

There are 3 approved Electronic Filing Service Providers (EFSP):
American LegalNet
Essential Publishers
One Legal

For links to the EFSPs, and more information see the Court's webpage on Efiling at www.occourts.org/online-services/efiling/

The Library will be Closed:

December 12, 24, 25, 26, 31
and
January 1, 2013



Law Library Workshop

Clean Up Your Criminal Record

Every 2nd and 4th Tuesday of the month, at 2 pm.

You must check-in at 2 pm to be admitted and you must bring your California criminal record(s) from the Court(s) in which convicted, OR, your California Dept. of Justice Rap Sheet; if necessary your own interpreter.

Orange County Public Law Library

Monday-Thursday	8 am - 6 pm
Friday	8 am - 5 pm
Saturday	9 am - 5 pm

515 North Flower Street
Santa Ana, CA 92703
Civic Center Plaza, Building 32
Tel: (714) 834-3397

www.ocpll.org



Transcript Contributors:

E. Harmon, J.P. Quigley, K. Chrisley,
M. Prestinary, L. Nguyen,
M. Solazzo (Editor).

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