



## **Injunctions in California – General Concepts**

An injunction is an extraordinary remedy used to require a defendant or other person to take, or refrain from taking, a specified action when necessary to protect a legal right being pursued by the plaintiff.

The statutes authorizing injunctions are broad and encompass most common law circumstances under which equity courts would grant injunctive relief. [See Civ. Code §§3368(authorizing injunction to prevent party "from doing that which ought not to be done"), 3422 (authorizing permanent injunctions); Code Civ. Proc. §527(authorizing preliminary injunctions)] In addition, courts have equitable powers to grant injunctions not specifically authorized by statute.

The party seeking a temporary restraining order or preliminary injunction must show that the relief sought in the underlying lawsuit depends, in whole or in part, on restraining the commission or continuance of an act that would cause waste or irreparable injury.

An injunction can be granted, subject to conditions imposed by applicable statutes, on a showing of:

1. an inadequate remedy at law, meaning that compensation would be insufficient;
2. a serious risk of irreparable harm absent injunctive relief;
3. a likelihood that the plaintiff will prevail on the merits of the underlying controversy; and
4. a comparison of the harm to defendant in issuing an injunction versus the harm to plaintiff in withholding it, which on balance favors the plaintiff.

## **Mandatory and Prohibitory Injunctions**

There are two main classifications of injunctions. One classification, mandatory versus prohibitory, depends on the type of conduct affected by the injunction. A mandatory injunction, which is a form of specific relief

[see Civ. Code §3367(2)], requires someone to do something affirmative and tends to change the status quo. A prohibitory injunction, which is a form of preventive relief, restrains specified behavior, by prohibiting a party from doing that which ought not to be done. [Civ. Code §3368]

## **Temporary, Preliminary, & Permanent Injunctions**

The other classification of injunctions depends on the point at which the injunction can be issued and its duration. Those categories are:

1. temporary restraining order or TRO [Code Civ. Proc. §§527, 528];
2. preliminary [Code Civ. Proc. §527] or provisional [Civ. Code §3420] injunction; and
3. permanent or final injunction [Civ. Code §§3420, 3422]

A temporary restraining order is granted to maintain the status quo pending a decision on a preliminary injunction. It can be granted ex parte if the applicant establishes great or irreparable injury. [Code Civ. Proc. §527] A temporary restraining order can also be granted as provided by statute. [See, for example, Fam. Code §2045(family law proceeding), Fam. Code §§7700, 7710, 7720(action to establish parentage), Code Civ. Proc. §527.6 (to prevent harassment), Fam. Code §§6250–6257, 6300–6305, 6320–6327 (to prevent domestic violence)]

A preliminary injunction cannot be granted without a full evidentiary hearing giving all parties the opportunity to present arguments and evidence. [Code Civ. Proc. §527]

A ruling on a final injunction entails final adjudication of the ultimate rights in controversy, following a hearing on the merits.

## **Cases in Which Injunction Will Be Granted**

A final injunction is authorized to prevent the breach of an obligation where [Civ. Code §3422]:

1. pecuniary compensation would not afford adequate relief;
2. it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
3. the restraint is necessary to prevent a multiplicity of judicial proceedings; or
4. the obligation arises from a trust, including a public trust

In addition, an injunction is authorized [Code Civ. Proc. §526(a)]:

1. when it appears by the complaint that the plaintiff is entitled to the relief demanded, and any part of the relief consists in restraining the commission or continuance of the act complained of;
2. when it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste or great or irreparable injury to a party to the action;
3. when it appears during the litigation that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual; or  
on any of the four grounds provided in Civ. Code §3422.
4. on any of the four grounds provided in Civ. Code §3422.

There are a number of areas where injunctions are authorized by specific statutes for certain purposes. For example, an injunction may be obtained:

1. to prevent harassment [Code Civ. Proc. §527.6, CRC 363] or domestic violence [Civ. Code §§4359, 5102, Code Civ. Proc. §§540–553, CRC 1225]
2. to preserve peace and property during marital dissolution proceedings [Civ. Code §4359]
3. to preserve peace during Uniform Parentage Act proceedings [Civ. Code §7020]
4. to restrain expenditure or waste of public funds or property [Code Civ. Proc. §526a]
5. to enjoin concerted acts of violence [Code Civ. Proc. §527.7], or to prohibit unlawful violence or threats of violence in the workplace [Code Civ. Proc. §527.8]
6. to restrain fraudulent conveyances [Civ. Code §3439.07]
7. to prohibit false advertising [Bus. & Prof. Code §§17531.9, 17535]
8. to abate a nuisance [see, for example, Code Civ. Proc. §731(nuisance), Health & Saf. Code §§100170 (public health), 116670 (drinking water), Wat. Code §13304(pollution)]

9. to enjoin waste pending foreclosure [Code Civ. Proc. §745]
10. to prevent the use of a misleading corporate name [Corp. Code §201]
11. in the context of the breach of a marketing contract [Corp. Code §13354]
12. to enjoin health and safety violations [Health & Saf. Code §§1291 (unlicensed health facility), 116670(drinking water), 5460 (sewage disposal), 114735 (radioactive waste)]
13. in the context of labor disputes [Lab. Code §§1116(jurisdictional strikes), 1126 (enforcement of collective bargaining agreement)]
14. to suspend the powers of the executor of a prior will [Prob. Code §9614]
15. to prevent wasteful production of natural gas [Pub. Res. Code §3314]
16. in the context of water rights [see Code Civ. Proc. §534(actions to enjoin diversion), Wat. Code §§1052 (unlawful diversion), 1845(enforcement of cease and desist order), 2020 (restrain pumping of underground water), 4160(correcting distribution by watermaster), 13304 (pollution or nuisance)]
17. to prevent unfair competition [Bus. & Prof. Code §§17200 et seq.]
18. to stay criminal conduct which is a public nuisance [Civ. Code §§3369, 3480]
19. to prevent the removal of public officers [Gov. Code §1366]
20. to prevent breach of a statutorily specified contract that is not otherwise specifically enforceable [Code Civ. Proc. §526(b)(5)]

## **Temporary Restraining Orders**

A temporary restraining order can be granted without notice to the opposite party, but only if it appears from facts shown by affidavit or the verified complaint that great or irreparable injury would result. [Code Civ. Proc. §527(c)(1)]

Injury to real property is frequently held to be irreparable, due to the presumption that every piece of land is unique. Also, a serious threat to

First Amendment interests can be irreparable injury.

Temporary restraining orders are generally issued on "ex parte" application on very short notice. If a temporary restraining order is granted without notice pursuant to Code Civ. Proc. §527(c), the matter must be made returnable on an order to show cause why a preliminary injunction should not be granted on the earliest day that the business of the court will allow, but no later than 15 days or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued. [Code Civ. Proc. §527(d)(1)]

### **Hearing on Preliminary Injunction**

A hearing on the order to show cause takes precedence over all other matters on the calendar on the day of the hearing, except for older matters of the same character, and matters given special precedence by law. [Code Civ. Proc. §527(e)]

The hearing will include oral argument. However, a preliminary injunction under Code Civ. Proc. §527 may be granted solely on affidavits - the court does not have to hear testimony from witnesses at the hearing.

When deciding whether to issue a preliminary injunction, a trial court will evaluate two interrelated factors:

1. the likelihood that the plaintiff will prevail on the merits at trial, and
2. the interim harm that the plaintiff is likely to sustain if the injunction were denied, as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued

At the conclusion of the hearing to show cause, the court will either rule from the bench or take the matter under submission. A written order of injunction and a written undertaking must be given to the judge within 1 day, or the time ordered, after the application for a preliminary injunction is granted. [Code Civ. Proc. §529, CRC 359]

A preliminary injunction does not determine the ultimate rights of the parties, and a factual determination made at the hearing on the preliminary injunction does not bind the court at the trial.

### **Permanent Injunction**

A ruling on a final injunction entails final adjudication of the ultimate rights in controversy, following a hearing on the merits (usually at the final trial of the matter).

On granting a preliminary or permanent injunction, the court must require an undertaking for the future payment of the damages of a wrongfully enjoined party, up to a specified amount. [Code Civ. Proc. §529(a), CRC 359] An injunction which is made without an undertaking is void.

### **Duration of Injunction**

An injunction may state its date of expiration. Many injunctions are effective "until further order of the court."

A temporary restraining order that is granted without notice is returnable on an order to show cause usually 15 days, but under some statutes as much as 25 days, later. [See Civ. Code §4359 (20–25 days), Code Civ. Proc. §§527(a) (15–20 days), 527.6 (15 days)]

A temporary restraining order terminates automatically when the preliminary injunction is granted or denied. It can also be vacated without notice if the preliminary injunction is granted but the prevailing party fails to present the court with an order to sign within 1 day or the time ordered. [CRC 359]

### **Motion to Dissolve or Modify Injunction**

On notice and motion, a trial court may modify or dissolve a final injunction on a showing that there has been a material change in the facts on which the injunction was granted, that the law on which the injunction was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction. [Civ. Code §3424(a)] However, Civ. Code §3424 is inapplicable to a final injunction issued pursuant to the Family Code. [Civ. Code §3424(c)]

Similarly, in any action, the court may on notice modify or dissolve an injunction or temporary restraining order on a showing that there has been a material change in the facts on which the injunction or temporary restraining order was granted, that the law on which the injunction or temporary restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order. [Code Civ. Proc. §533]

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