

## RESOLUTION 01-01-2017

### DIGEST

#### Homeowners' Associations: Prohibiting Limitations on Renter's Use of Common Areas

Amends Civil Code section 4740 to prohibit limitations on a tenant's or lessee's use of common areas and facilities in common interest developments.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Civil Code section 4740 to prohibit limitations on a tenant's or lessee's use of common areas and facilities in common interest developments. This resolution should be disapproved because it is inconsistent with other subdivisions of the section, promotes potential overuse of common areas and facilities and does not take into account the recent phenomenon of temporary vacation rentals in urban areas.

Section 4740 currently allows homeowners' associations to maintain, and owners of individual units, to add restrictions limiting an owner of an undivided interest from renting or leasing a unit in common interest developments. The resolution is in part motivated by a concern that tenants may be deprived by homeowners' associations ("HOAs") from using common areas and facilities under certain circumstances. Additionally, there is concern that HOAs could limit use of the amenities by an owner who rents out her/his unit.

Proposed subdivision (f) is not limited to requiring access to the common areas and facilities to the legal occupants of a unit. Rather, it appears to allow use by *both* the legal occupants and the owner simultaneously. One who properly rents or leases a unit would logically receive, as part of the tenancy estate, use of the common areas attributable to that unit in place of the rights of access by the owner. In other words, upon leasing his/her unit, the owner would not have rights to access to the estate except upon notice to the tenant for inspections or as an invited guest. The proposed change would increase the burden on the association for maintenance of the facilities, and lessen the enjoyment of those who have a right to use such facilities, by providing for potential overuse and overcrowding. This would not be fair to the homeowners' association or the unit owners who opt to occupy their units rather than renting them out. An owner who, under the governing documents, legitimately rents or leases the unit and is offsite should not be permitted to use the common area except as permitted by law, or as a guest of the tenant or some other resident of the development.

In addition, because proposed subdivision (f) is not limited to those tenancies that are in compliance with the governing documents and the notice requirements of subdivision (d), it may be in conflict with those situations in which an owner opts to rent or lease the unit in violation of such restrictions as may be valid. (Civ. Code, § 4740, subd. (d).) In addition, in some areas of the state, common interest development unit owners are opting to turn their units into nightly or

weekly vacation rentals. A limitation on the ability of a homeowners' association to restrict common area use by such renters, in a context where the consensus of the ownership is to discourage these short-term rentals, would be unfair to owner occupants who collectively vote and agree on proper restrictions and codes of conduct as well as to legitimate long term tenants who abide by them.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4740 to read as follows

1 § 4740

2 (a) An owner of a separate interest in a common interest development shall not be subject  
3 to a provision in a governing document or an amendment to a governing document that prohibits  
4 the rental or leasing of any of the separate interests in that common interest development to a  
5 renter, lessee, or tenant, unless that governing document, or amendment thereto, was effective  
6 prior to the date the owner acquired title to his or her separate interest.

7 (b) Notwithstanding the provisions of this section, an owner of a separate interest in a  
8 common interest development may expressly consent to be subject to a governing document or  
9 an amendment to a governing document that prohibits the rental or leasing of any of the separate  
10 interests in the common interest development to a renter, lessee, or tenant.

11 (c) For purposes of this section, the right to rent or lease the separate interest of an owner  
12 shall not be deemed to have terminated if the transfer by the owner of all or part of the separate  
13 interest meets at least one of the following conditions:

14 (1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is  
15 exempt, for purposes of reassessment by the county tax assessor.

16 (2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision  
17 (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and  
18 deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

19 (d) Prior to renting or leasing his or her separate interest as provided by this section, an  
20 owner shall provide the association verification of the date the owner acquired title to the  
21 separate interest and the name and contact information of the prospective tenant or lessee or the  
22 prospective tenant's or lessee's representative.

23 (e) Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting  
24 process by which a common interest development adopts or amends its governing documents.

25 (f) A tenant or lessee of a separate interest shall not be unreasonably deprived of the same  
26 use of common areas and facilities as an owner of a separate interest is still otherwise entitled to  
27 enjoy.

28 (f)(g) This section shall apply only to a provision in a governing document or a provision  
29 in an amendment to a governing document that becomes effective on or after January 1, 2012.

(Proposed new language underlined; language to be deleted stricken)

**PROPOSERS:** Joseph A. Goldstein, Jonathan A. Goldstein, Charles H. Goldstein, Charles Wake, Jodi Taksar, Joel Douglas, Robin Bernstein-Lev, Brian Francis Doyle, Barry Ross, James De Sario

## STATEMENT OF REASONS

The Problem: Under the statute's current language, there are no protections for renters of separate interest property, who can still be deprived of the use of common areas and facilities. In addition, property owners who own property in common interest developments and who have lawfully rented their property, and who are otherwise in good standing with the HOA, can also be prohibited from using the common area facilities and amenities when they are renting their property to lessees. Both situations create injustice – to the renter who is now lawfully occupying the property; and to the homeowner who is lawfully renting the property and who pays monthly HOA dues in exchange for the ability to use common area facilities. Both homeowners and renters should be able to use common areas and facilities in a common interest development.

The Solution: Would add a new subdivision (f), which states: “a tenant or lessee of a separate interest shall not be unreasonably deprived of the same use of common areas and facilities as an owner of a separate interest is otherwise entitled to have. Would also re-letter existing subdivision (f) to become a new subdivision (g).

## IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

## CURRENT OR PRIOR RELATED LEGISLATION

None known.

**AUTHOR AND/OR PERMANENT CONTACT**: Joseph A. Goldstein, The Goldstein Law Firm, 8912 Burton Way, Beverly Hills, California 90211; (310) 553-4746; fax (310) 282-8070; [josephgoldsteinesq@gmail.com](mailto:josephgoldsteinesq@gmail.com)

**RESPONSIBLE FLOOR DELEGATE**: Joseph A. Goldstein

---

## COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

---

### SACRAMENTO COUNTY BAR ASSOCIATION

This resolution attempts to allow an owner of a property within a common interest development, who has leased/rented the whole of the property to a tenant, to continue to have an easement for use of amenities, amenities which are appurtenant to the property. In essence, this resolution will separate a portion of the fee interest from the fee.

In a common interest development, the owners have a proportionate share of the interest in the parts of the development designated as ‘common area’. The use of that common area is a right, which is appurtenant to the possessory interest of the lot within the development and is granted to the owner as part of the title. In *Liebler v. Point Loma Tennis Club* (1995) 40 Cal.App.4th

1600, the 4<sup>th</sup> District Court of Appeal dealt with this issue of splitting the interest between a lease holder and a non-resident owner and summed it up nicely in a footnote thus:

Necessarily, if the common areas are owned in shares of "one for each unit," it is not logically possible (even absent the covenant to the contrary herein) to convey a lease in the unit together with the interest in the common areas, while also retaining the latter separately."

This resolution goes directly against the logic of the *Liebler* Court's position; in attempting to split off the rights of use from the fee interest it would disrupt the plan of a common interest amenities appurtenant to the rights of the residents of a development. It would also potentially overburden any amenity intended for the use by the residents of any given common interest development, and allow any owner who rents the entirety of their property to continue to also use the amenities appurtenant thereto, subverting the 1-to-1 relation of the proportionate usage intended for the size and capacity of a development's amenities. In plain English, the condo was built for X number of potential users of the gym, the pool, and the barbecue areas. A potential doubling of that population and use because each owner takes the liberty of renting her/his unit while retaining her/his own rights to use the facilities is neither consistent with the long-term interests of the community nor the design and construction of the community.

## RESOLUTION 01-02-2017

### DIGEST

#### Landlord Tenant: Ellis Act

Amends Code of Civil Procedure section 1161.2 and Government Code section 7060.6 and adds Government Code section 7060.8 to require confidentiality for lawsuits seeking Ellis Act evictions and to allow local jurisdictions to suspend Ellis Act evictions.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Code of Civil Procedure section 1161.2 and Government Code section 7060.6 and adds Government Code section 7060.8 to require confidentiality for lawsuits seeking Ellis Act evictions and to allow local jurisdictions to suspend Ellis Act evictions. This resolution should be disapproved because there is no evidence that tenants, who are required to move as the result of an Ellis Act eviction, have or will be harmed if the court records remain publicly available and it will undo the balance between the rights of building owners to cease being landlords and the rights of tenants to affordable housing that is established in the Ellis Act.

This resolution would perform two independent functions. First, it amends Code of Civil Procedure section 1161.2 and Government Code section 7060.6 to keep court records of Ellis Act evictions confidential. Second, the resolution adds Government Code section 7060.8 to allow local governments or voters to suspend Ellis Act evictions, if those evictions are causing a reduction in the number of affordable rental units. Under this resolution, either the local government or the local voters could suspend Ellis Act evictions, undoing the balance between rights of tenants and rights of building owners who wish to stop being landlords. Courts, rent boards, tenants' rights organizations, and public pressure have all intervened when Ellis Act evictions are abused. While there are sometimes abuses, there are less drastic methods of addressing those abuses than requiring building owners, some of whom are families or small businesses, and who may have the bulk of their assets invested in a single building, to continue acting as landlords if they wish to cease doing so.

Recent legislative efforts to limit Ellis Act evictions have not been successful. The authors of Assembly Bill No. 982 (Bloom and Chiu), which would have allowed local jurisdictions to require notice to the public entity of an intention to terminate tenancies and would further have permitted the jurisdiction to require that existing tenancies remain in place for a year, cancelled hearings before the Committee on Housing and Community Development. Senate Bill No. 364 (Leno, 2015), which would have prevented Ellis Act evictions in San Francisco in most situations when all owners had not been owners of record for five years or longer, failed to pass out of the Senate Transportation and Housing Committee.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1161.2 and Government Code section 7060.6 and add section 7060.8 to read as follows:

1 § 1161.2

2 (a) The clerk may allow access to limited civil case records filed under this chapter,  
3 including the court file, index, and register of actions, only as follows:

4 (1) To a party to the action, including a party's attorney.

5 (2) To any person who provides the clerk with the names of at least one plaintiff and one  
6 defendant and the address of the premises, including the apartment or unit number, if any.

7 (3) To a resident of the premises who provides the clerk with the name of one of the  
8 parties or the case number and shows proof of residency.

9 (4) To any person by order of the court, which may be granted ex parte, on a showing of  
10 good cause.

11 (5) Except as provided in paragraph (6), to any other person 60 days after the complaint  
12 has been filed, unless a defendant prevails in the action within 60 days of the filing of the  
13 complaint, in which case the clerk may not allow access to any court records in the action, except  
14 as provided in paragraphs (1) to (4), inclusive.

15 (6) (A) In the case of a complaint involving residential property based on Section 1161a  
16 as indicated in the caption of the complaint, as required in subdivision (c) of Section 1166, to any  
17 other person, if 60 days have elapsed since the complaint was filed with the court, and, as of that  
18 date, judgment against all defendants has been entered for the plaintiff, after a trial. If judgment  
19 is not entered under the conditions described in this paragraph, the clerk shall not allow access to  
20 any court records in the action, except as provided in paragraphs (1) to (4), inclusive.

21 (B) Notwithstanding subparagraph (A), in the case of a complaint involving residential  
22 property described in Section 7060.6 of the Government Code, as indicated in the caption of the  
23 complaint, as required in subdivision (b) of Section 7060.6 of the Government Code, the clerk  
24 shall not allow access to any court records in the action, except as provided in paragraphs (1) to  
25 (4), inclusive.

26 (b) For purposes of this section, "good cause" includes, but is not limited to, the gathering  
27 of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent  
28 of the Legislature that a simple procedure be established to request the ex parte order described  
29 in subdivision (a).

30 (c) Upon the filing of any case so restricted, the court clerk shall mail notice to each  
31 defendant named in the action. The notice shall be mailed to the address provided in the  
32 complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction  
33 action) has been filed naming that party as a defendant, and that access to the court file will be  
34 delayed for 60 days except to a party, an attorney for one of the parties, or any other person who  
35 (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and  
36 provides to the clerk the address, including any applicable apartment, unit, or space number, of  
37 the subject premises, or (2) provides to the clerk the name of one of the parties in the action or  
38 the case number and can establish through proper identification that he or she lives at the subject  
39 premises. The notice shall also contain a statement that access to the court index, register of  
40 actions, or other records is not permitted until 60 days after the complaint is filed, except

41 pursuant to an order upon a showing of good cause therefor. The notice shall contain on its face  
42 the following information:

43 (1) The name and telephone number of the county bar association.

44 (2) The name and telephone number of any entity that requests inclusion on the notice  
45 and demonstrates to the satisfaction of the court that it has been certified by the State Bar as a  
46 lawyer referral service and maintains a panel of attorneys qualified in the practice of landlord-  
47 tenant law pursuant to the minimum standards for a lawyer referral service established by the  
48 State Bar and Section 6155 of the Business and Professions Code.

49 (3) The following statement:

50 "The State Bar of California certifies lawyer referral services in California and publishes a list of  
51 certified lawyer referral services organized by county. To locate a lawyer referral service in your  
52 county, go to the State Bar's website at www.calbar.ca.gov or call 1-866-442-2529."

53 (4) The name and telephone number of an office or offices funded by the federal Legal  
54 Services Corporation or qualified legal services projects that receive funds distributed pursuant  
55 to Section 6216 of the Business and Professions Code that provide legal services to low-income  
56 persons in the county in which the action is filed. The notice shall state that these numbers may  
57 be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours  
58 of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be  
59 addressed to "all occupants" and mailed separately to the subject premises. The notice shall not  
60 constitute service of the summons and complaint.

61 (d) Notwithstanding any other provision of law, the court shall charge an additional fee of  
62 fifteen dollars (\$15) for filing a first appearance by the plaintiff. This fee shall be added to the  
63 uniform filing fee for actions filed under this chapter.

64 (e) This section does not apply to a case that seeks to terminate a mobilehome park  
65 tenancy if the statement of the character of the proceeding in the caption of the complaint clearly  
66 indicates that the complaint seeks termination of a mobilehome park tenancy.

67

#### 68 § 7060.6

69 (a) If an owner seeks to displace a tenant or lessee from accommodations withdrawn from  
70 rent or lease pursuant to this chapter by an unlawful detainer proceeding, the owner shall state  
71 the following in the caption of the complaint: "Civil Action Described in Section 7060.6 of the  
72 Government Code."

73 (b) If an owner seeks to displace a tenant or lessee from accommodations withdrawn  
74 from rent or lease pursuant to this chapter by an unlawful detainer proceeding, the tenant or  
75 lessee may appear and answer or demur pursuant to Section 1170 of the Code of Civil Procedure  
76 and may assert by way of defense that the owner has not complied with this chapter, or statutes,  
77 ordinances, or regulations of public entities adopted to implement this chapter, as authorized by  
78 this chapter.

79

#### 80 § 7060.8

81 Notwithstanding Section 7060, if a public entity, as defined in Section 811.2, finds that  
82 the prohibition of Section 7060 decreases the total number of affordable rental units within a  
83 jurisdiction, the board of supervisors, by the adoption of a resolution or by a majority vote of the  
84 electors within the county, may compel the owner of any residential real property to offer, or  
85 continue to offer, accommodations in the property for rent or lease.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bay Area Lawyers for Individual Freedom

## **STATEMENT OF REASONS**

The Problem: Under the Ellis Act, public entities generally are prohibited from adopting any statute, ordinance, or regulation, or taking any administrative action, to compel the owner of residential real property to offer or to continue to offer accommodations in the property for rent or lease. The act authorizes, if an owner seeks to displace a tenant or lessee from accommodations withdrawn from rent or lease by an unlawful detainer proceeding, the tenant or lessee to assert by way of defense that the owner has not complied with the act, or statutes, ordinances, or regulations of public entities adopted to implement the act. Existing law also authorizes a court clerk to allow access to limited civil case records filed in unlawful detainer proceedings to specified persons and, after 60 days after the complaint has been filed, to any other person, with a specified exception. The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element that includes an assessment of housing needs.

The Ellis Act was enacted in 1985 by the Legislature after the California Supreme Court held landlords do not have the right to evict tenants to go out of the landlord business. Having suffered a mortgage crisis, foreclosure crisis, and the loss of jobs and wages, local governments have little flexibility to limit the abuses occurring under the Ellis Act. Furthermore, to the extent a tenant is evicted solely because the property owner wants to remove the residential unit from the rental market, the interest of the tenant in protecting their reputation as a responsible tenant should outweigh the public interest in the outcome of the proceeding to evict them.

Current public policy reflects a growing trend towards local control. Examples include realignment of corrections and social services, the Local Control Funding Formula in education, and local housing element requirements. Allowing local jurisdictions the flexibility to voluntarily suspend Ellis Act evictions will allow participating jurisdictions to reign in Ellis Act abuses that are preventing these jurisdictions from meeting their supply of affordable housing.

The Solution: Would require, if an owner seeks to displace a tenant or lessee pursuant to the Ellis Act, they must state in the caption of the complaint that the civil action is described in a specified provision of the act. It would prohibit the clerk of the court from allowing access to court records filed in the above-described civil action, when the caption of the complaint states that it is a civil action described above, except as specified. Lastly, it would authorize, if a public entity finds the prohibition of the Ellis Act decreases the total number of affordable rental units within a jurisdiction, the board of supervisors to compel the owner of a residential real property to offer, or continue to offer, accommodations in the property for rent or lease by adoption of a resolution or by a majority vote of the electors within the county.

## **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

This resolution uses the language of Assembly Bill 2405 - Landlord Tenant: Ellis Act, introduced by Ammiano in the 2014-15 Regular Session. It failed passage in committee.

**AUTHOR AND/OR PERMANENT CONTACT:** Jennifer Orthwein, 2532 Santa Clara Ave, #227, Alameda, CA 94501-4634, voice: (415) 786-3855, email: [jennifer.orthwein@gmail.com](mailto:jennifer.orthwein@gmail.com)

**RESPONSIBLE FLOOR DELEGATE:** Jennifer Orthwein

## RESOLUTION 01-03-2017

### DIGEST

#### Real Estate: Prohibits Dual Agency by Individual Real Estate Agents

Amends Civil Code sections 2079.16, 2079.17 and 2079.21 to prohibit real estate agents who are associate licensees from representing both seller and buyer in real estate transactions.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Civil Code sections 2079.16, 2079.17 and 2079.21 to prohibit real estate agents who are associate licensees from representing both seller and buyer in real estate transactions. This resolution should be approved in principle because it maintains independent representation of buyers and sellers of real property while allowing the current practice permitting the same real estate broker to act as “dual agent.”

Current law permits dual agency in real estate transactions provided the buyer and seller are informed of the agency relationships involved and obtain buyer and seller’s consent. (Civ. Code, §§ 2079.14, 2079.16, 2079.17; *Horiike v. Coldwell Banker Residential Brokerage Co.* (2016) 1 Cal.5th 1024, 1030-1031.) Under California law, only licensed real estate *brokers* may act as “agents” in real property transactions. (Bus. & Prof. Code, §§ 10130, 10131.) Real estate brokers may be a corporate brokerage firm, in which case the corporation is the agent. (*Id.*, §§ 10158, 10159, 10211; 2 Miller & Starr, Cal. Real Estate (4th ed. 2016) § 4:17, p. 4-61.) Licensed real estate brokers are often assisted by licensed “real estate salespersons” (associate licensees) who are required to work under the supervision of a licensed real estate broker. (Bus. & Prof. Code, § 10132.)

The problem is that the hierarchy of “real estate broker” and “real estate salesperson” (associate licensee) is often misunderstood by members of the public and is confused by common notions of “agent” versus how California law defines “agent” and the concept of dual agency in relation to real estate transactions. In the vast majority of residential real estate transactions, client contact is with a licensed real estate salesperson and the client considers the real estate salesperson their “agent” in the transaction even though it is actually the broker. Consumers typically presume the real estate salesperson acting on their behalf acts in their best interest and maintains confidences.

This resolution would maintain current practice of allowing a broker to act as a “dual agent” representing both buyer and seller in the transaction while providing a layer of separation to avoid potential conflicts of interest and questions of conflicting loyalties. It would preclude associate licensee “real estate salespersons” from representing both sides of the transaction thereby ensuring a degree of exclusivity in representation consistent with public perception.

The Resolutions Committee notes additional drafting maybe necessary to the proposed language of Section 2079.16 to better clarify the difference between “agent,” “broker,” and “associate licensee” / “real estate salesperson.” Additionally, while precluding the same associate licensee from representing both sides makes sense given the direct contact and communications and potential for appearances of impropriety, the additional requirement of separate office locations should probably be stricken as it presents a barrier to smaller single office brokerage firms while giving an advantage to larger firms that have multiple offices within a given geographic location.

## **TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code sections 2079.16, 2019.17 and 2079.21 to read as follows:

1 § 2079.16

2 The disclosure form required by Section 2079.14 shall have Sections 2079.13 to 2079.24,  
3 inclusive, excluding this section, printed on the back, and on the front of the disclosure form the  
4 following shall appear:

5 **DISCLOSURE REGARDING**  
6 **REAL ESTATE AGENCY RELATIONSHIP**

7 (As required by the Civil Code)

8 When you enter into a discussion with a real estate agent regarding a real estate transaction, you  
9 should from the outset understand what type of agency relationship or representation you wish to  
10 have with the agent in the transaction.

11 **SELLER’S AGENT**

12 A Seller’s agent under a listing agreement with the Seller acts as the agent for the Seller only. A  
13 Seller’s agent or a subagent of that agent has the following affirmative obligations:

14 To the Seller:

15 A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

16 To the Buyer and the Seller:

17 (a) Diligent exercise of reasonable skill and care in performance of the agent’s duties.

18 (b) A duty of honest and fair dealing and good faith.

19 (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of  
20 the property that are not known to, or within the diligent attention and observation of, the parties.

21 An agent is not obligated to reveal to either party any confidential information obtained from the  
22 other party that does not involve the affirmative duties set forth above.

23 **BUYER’S AGENT**

24 A selling agent can, with a Buyer’s consent, agree to act as agent for the Buyer only. In these  
25 situations, the agent is not the Seller’s agent, even if by agreement the agent may receive  
26 compensation for services rendered, either in full or in part from the Seller. An agent acting only  
27 for a Buyer has the following affirmative obligations:

28 To the Buyer:

29 A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

30 To the Buyer and the Seller:

31 (a) Diligent exercise of reasonable skill and care in performance of the agent’s duties.

32 (b) A duty of honest and fair dealing and good faith.

33 (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of  
34 the property that are not known to, or within the diligent attention and observation of, the parties.  
35 An agent is not obligated to reveal to either party any confidential information obtained from the  
36 other party that does not involve the affirmative duties set forth above.

37 AGENT REPRESENTING BOTH SELLER AND BUYER

38 A real estate agent, ~~either acting directly or through one or more~~ who is an associate licensee,  
39 cannot legally be the agent of both the Seller and the Buyer in a transaction, ~~but only with the~~  
40 ~~knowledge and consent of both the Seller and the Buyer.~~ However, a real estate agent who is a  
41 broker may have two or more persons from different offices legally be the agents of both the  
42 Seller and the Buyer in a transaction.

43 In a dual agency situation, the agent/broker has the following affirmative obligations to both the  
44 Seller and the Buyer:

45 (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the  
46 Seller or the Buyer.

47 (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

48 In representing both Seller and Buyer, the agent may not, without the express permission of the  
49 respective party, disclose to the other party that the Seller will accept a price less than the listing  
50 price or that the Buyer will pay a price greater than the price offered.

51 The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the  
52 responsibility to protect his or her own interests. You should carefully read all agreements to  
53 assure that they adequately express your understanding of the transaction. A real estate agent is a  
54 person qualified to advise about real estate. If legal or tax advice is desired, consult a competent  
55 professional.

56 Throughout your real property transaction you may receive more than one disclosure form,  
57 depending upon the number of agents assisting in the transaction. The law requires each agent  
58 with whom you have more than a casual relationship to present you with this disclosure form.  
59 You should read its contents each time it is presented to you, considering the relationship  
60 between you and the real estate agent in your specific transaction.

61 This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the  
62 Civil Code set forth on the reverse hereof. Read it carefully.

Agent(date)	Buyer/Seller(date)
	(Signature)
Associate Licensee(date)	Buyer/Seller(date)
(Signature)	(Signature)

63

64 § 2079.17

65 (a) As soon as practicable, the selling agent who is an associate licensee shall disclose to  
66 the buyer and seller whether the selling agent is acting in the real property transaction  
67 exclusively as the buyer's agent, or exclusively as the seller's agent, ~~or as a dual agent~~

68 ~~representing both the buyer and the seller~~, and the broker for the selling agent shall disclose to  
69 the buyer and seller whether the selling broker is acting in the real property transaction  
70 exclusively as the supervising broker for the buyer, seller or as a dual agent representing both the  
71 buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real  
72 property or in a separate writing executed or acknowledged by the seller, the buyer, and the  
73 selling agent prior to or coincident with execution of that contract by the buyer and the seller,  
74 respectively.

75 (b) As soon as practicable, the listing agent shall disclose to the seller ~~whether that the~~  
76 listing agent is acting in the real property transaction exclusively as the seller's agent, ~~or as a~~  
77 ~~dual agent representing both the buyer and seller.~~ This relationship shall be confirmed in the  
78 contract to purchase and sell real property or in a separate writing executed or acknowledged by  
79 the seller and the listing agent prior to or coincident with the execution of that contract by the  
80 seller.

81 (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

(Name of Listing Agent) _____ is the agent of <del>(check one):</del>
<input checked="" type="checkbox"/> the seller exclusively; <del>or</del>
<input type="checkbox"/> <del>both the buyer and seller.</del>
_____ (Name of Selling Agent <del>if not the same as the Listing Agent</del> ) _____ is the agent of (check one):
<input type="checkbox"/> the buyer exclusively; or
<input type="checkbox"/> the seller exclusively; <del>or</del>
<input checked="" type="checkbox"/> <del>both the buyer and seller.</del>

82 (d) The disclosures and confirmation required by this section shall be in addition to the  
83 disclosure required by Section 2079.14.

84  
85 § 2079.21

86 No agent who is an individual licensee may be a dual agent in any real property  
87 transaction; provided, however, that a supervising broker may allow two individual licensees  
88 from different offices to act as agents for the buyer and seller in a real property transaction. A  
89 dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price  
90 less than the listing price, without the express written consent of the seller. A dual agent shall not  
91 disclose to the seller that the buyer is willing to pay a price greater than the offering price,  
92 without the express written consent of the buyer.

93 This section does not alter in any way the duty or responsibility of a dual agent to any  
94 principal with respect to confidential information other than price.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

## **STATEMENT OF REASONS**

The Problem: For the last 40 years, dual agency by real estate agents has been permitted by California law. However, this law is outdated and has been supported by various real estate interests in order to gain a larger percentage of the market share of buyers and sellers. This does their clients a disservice. By definition, a dual agent cannot represent and look out for the best interests of their client when representing a buyer and seller. If an attorney cannot represent both sides of a transaction, why should a realtor? A dual agent cannot advise their buyer how much they think a seller will take in making an offer or counteroffer because that would breach his duty to the seller to get the best and highest price. In effect, the agent is comprised and cannot provide effective representation to his client. This irony was noted by the California Supreme Court in 2016 when it held that the listing agent in a dual agency had a fiduciary duty to the buyer due to having the same broker, even though the buyers agent was a different individual. (Horiike v. Coldwell Banker Residential Brokerage Company (2016) 1 Cal.5<sup>th</sup> 1024.)

The Solution: This resolution prohibits dual agency by individual real estate agents known as associate licensees. This will give better protection to consumers who hire real estate agents to represent their interests and stop real estate agents from bullying people into signing off on disclosures because it is legal and “everyone does it.” This does not prohibit dual representation by the same broker as long as the parties are represented by two separate agents in different offices so that the larger brokerages (such as Keller Williams, Pacific Sotheby’s, etc.) can still offer a wide selection of homes to their buyers without worrying about being conflicted out.

## **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

## **CURRENT OR PRIOR RELATED LEGISLATION:**

None known.

**AUTHOR AND PERMANENT CONTACT:** Melissa L. Bustarde, Esq., Mayfield Bustarde, LLP, 462 Stevens Ave., Suite 303, Solana Beach, CA 92075, (858) 793-8090

**RESPONSIBLE FLOOR DELEGATE:** Melissa L. Bustarde, Esq.

## RESOLUTION 01-04-2017

### DIGEST

#### Lease Agreement: Termination of Tenancy by Victim of Domestic Violence

Amends Civil Code section 1946.7 to require an order after an evidentiary hearing before a domestic violence claim may be used to terminate a tenancy, and to exclude the alleged abuser from the statute's benefits.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

Similar to Resolution 12-04-2016, which was withdrawn.

#### Reasons:

This resolution amends Civil Code section 1946.7 to require an order after an evidentiary hearing before a domestic violence claim may be used to terminate a tenancy, and to exclude the alleged abuser from the statute's benefits. This resolution should be disapproved because requiring a domestic violence victim to participate in a full evidentiary hearing and obtain a permanent order conflicts with the statute's purpose, may undermine the intended relief for domestic violence situations, and there may be circumstances where it would be unfair to compel the tenant against whom the protective order was obtained to remain solely responsible for the lease.

This resolution seeks to prevent misuse of the statute by a person who, simply to get out of a lease, submits a false declaration of domestic violence in an ex parte application for a temporary restraining order with no intention of, or ability to, continue the process through an evidentiary hearing where domestic abuse must be sufficiently established to support a permanent injunction. A landlord should not be left with a prematurely terminated lease where the allegations are merely pretextual. Further, the unsupported supposition that people will lie about domestic abuse to get out of a lease is not eliminated by the resolution. If the real motive of the tenant is to terminate a lease early, and he or she is willing to falsely claim domestic abuse to do so, nothing under the proposed amendment prevents either tenant, or both, from lying about being a victim.

The resolution also undermines the intended relief provided by the statute. For many victims of domestic abuse, going to court to obtain a temporary restraining order or even filing a police report is a daunting challenge, and one that increases the risk of escalating violence by their victimizers. (See <https://oag.ca.gov/news/press-releases/attorney-general-lockyer-report-domestic-violence-finds-criminal-justice-system>.) The additional burden of having to persevere in the judicial process and present evidence against the abuser at an evidentiary hearing for a permanent injunction disregards the reality of the situation. In the absence of a showing that this provision is frequently being misused by tenants willing to perpetrate a fraud to avoid their lease obligations, any benefit from the proposed change is outweighed by the detriment to the statute's intended beneficiaries.

The resolution would also expressly exclude the person against whom the restraining order was issued from the definition of "household member" in order to prevent that person from similarly

terminating his or her lease obligations. While it may seem reasonable to preclude the perpetrator of domestic violence from benefiting from his or her abuse, an automatic exclusion goes too far. Situations involving domestic abuse are not always one-sided and may entail complex factors and dynamics. Sometimes the abuse in the relationship is mutual and both parties seek judicial protection.

The resolution does raise the question whether both tenants are relieved from the lease as a victim receiving a protective order, or whether both are still responsible to pay rent because they are persons against whom an order after hearing has been issued and therefore excluded from the definition of "household member." The resolution has the prospect of rendering nugatory an important statute which provides important relief to victims of domestic abuse.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1946.7, to read as follows:

1 § 1946.7

2 (a) A tenant may notify the landlord that he or she or a household member was a victim  
3 of an act that constitutes an act of domestic violence as defined in Section 6211 of the Family  
4 Code, sexual assault as defined in Section 261, 261.5, 262, 286, 288a, or 289 of the Penal Code,  
5 stalking as defined in Section 1708.7, human trafficking as defined in Section 236.1 of the Penal  
6 Code, or abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare  
7 and Institutions Code, and that the tenant intends to terminate the tenancy.

8 (b) A notice to terminate a tenancy under this section shall be in writing, with one of the  
9 following attached to the notice:

10 (1) A copy of ~~the a temporary restraining order, emergency protective order, or protective~~  
11 order after hearing on the petition lawfully issued pursuant to Part 3 (commencing with Section  
12 6240) or Part 4 (commencing with Section 6300) of Division 10 of the Family Code, Section  
13 136.2 of the Penal Code, Section 527.6 of the Code of Civil Procedure, or Section 213.5 or  
14 15657.03 of the Welfare and Institutions Code that protects the tenant or household member  
15 from further domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder  
16 or a dependent adult.

17 (2) A copy of a written report by a peace officer employed by a state or local law  
18 enforcement agency acting in his or her official capacity stating that the tenant or household  
19 member has filed a report alleging that he or she or the household member is a victim of  
20 domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a  
21 dependent adult.

22 (3) (A) Documentation from a qualified third party based on information received by that  
23 third party while acting in his or her professional capacity to indicate that the tenant or household  
24 member is seeking assistance for physical or mental injuries or abuse resulting from an act of  
25 domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult  
26 abuse.

27 (B) The documentation shall contain, in substantially the same form, the following:

Tenant Statement and Qualified Third Party Statement
--

under Civil Code Section 1946.7

Part I. Statement By Tenant

I, [insert name of tenant], state as follows:

I, or a member of my household, have been a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.]

The most recent incident(s) happened on or about:

[insert date or dates.]

The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide:

[if known and safe to provide, insert name(s) and physical description(s).]

(signature of tenant)(date)

Part II. Qualified Third Party Statement

I, [insert name of qualified third party], state as follows:

My business address and phone number are:

[insert business address and phone number.]

Check and complete one of the following:

\_\_\_\_ I meet the requirements for a sexual assault counselor provided in Section 1035.2 of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization providing the programs specified in Section 13835.2 of the Penal Code.

\_\_\_\_ I meet the requirements for a domestic violence counselor provided in Section 1037.1 of

<p>the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.</p>
<p>____ I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.</p>
<p>____ I am licensed by the State of California as a:</p>
<p>[insert one of the following: physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.] and I am licensed by, and my license number is:</p>
<p>[insert name of state licensing entity and license number.]</p>
<p>The person who signed the Statement By Tenant above stated to me that he or she, or a member of his or her household, is a victim of:</p>
<p>[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.]</p>
<p>The person further stated to me the incident(s) occurred on or about the date(s) stated above.</p>
<p>I understand that the person who made the Statement By Tenant may use this document as a basis for terminating a lease with the person's landlord.</p>
<p>(signature of qualified third party)(date)</p>

28 (C) The documentation may be signed by a person who meets the requirements for a  
29 sexual assault counselor, domestic violence counselor, or a human trafficking caseworker only if  
30 the documentation displays the letterhead of the office, hospital, institution, center, or  
31 organization, as appropriate, that engages or employs, whether financially compensated or not,  
32 this counselor or caseworker.

33 (c) The notice to terminate the tenancy shall be given within 180 days of the date that any  
34 order described in paragraph (1) of subdivision (b) was issued, within 180 days of the date that  
35 any written report described in paragraph (2) of subdivision (b) was made, or within the time  
36 period described in Section 1946.

37 (d) If notice to terminate the tenancy is provided to the landlord under this section, the  
38 tenant shall be responsible for payment of rent for no more than 14 calendar days following the  
39 giving of the notice, or for any shorter appropriate period as described in Section 1946 or the  
40 lease or rental agreement. The tenant shall be released from any rent payment obligation under  
41 the lease or rental agreement without penalty. If the premises are relet to another party prior to

42 the end of the obligation to pay rent, the rent owed under this subdivision shall be prorated.  
43 Existing law governing the security deposit shall apply.

44 (e) Nothing in this section relieves a tenant, other than the tenant who is, or who has a  
45 household member who is, a victim of domestic violence, sexual assault, stalking, human  
46 trafficking, or abuse of an elder or a dependent adult and members of that tenant's household,  
47 from their obligations under the lease or rental agreement.

48 (f) (1) "Household member," as used in this section, means a member of the tenant's  
49 family who lives in the same household as the tenant. "Household member" does not include the  
50 person or persons against whom an order after hearing has been issued.

51 (2) "Qualified third party," as used in this section, means a health practitioner, domestic  
52 violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault  
53 counselor, as defined in Section 1035.2 of the Evidence Code, or a human trafficking  
54 caseworker, as defined in Section 1038.2 of the Evidence Code.

55 (3) "Health practitioner," as used in this section, means a physician and surgeon,  
56 osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical  
57 social worker, licensed marriage and family therapist, or licensed professional clinical counselor.

58 (h) (1) A landlord shall not disclose any information provided by a tenant under this  
59 section to a third party unless the disclosure satisfies any one of the following:

60 (A) The tenant consents in writing to the disclosure.

61 (B) The disclosure is required by law or order of the court.

62 (2) A landlord's communication to a qualified third party who provides documentation  
63 under paragraph (3) of subdivision (b) to verify the contents of that documentation is not  
64 disclosure for purposes of this subdivision.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County.

## **STATEMENT OF REASONS**

The Problem: A person who is a joint tenant under a lease cannot unilaterally terminate the rental agreement. That tenant may have reasons not related to domestic violence to terminate the lease.

Civil Code §1946.7 allows the terminating tenant to obtain a TRO, present the TRO to the landlord and then terminate the lease with no further liability. Terminating tenants who cannot otherwise get consent from the landlord and co-tenants can use a TRO to terminate the lease. The terminating tenant completes the TRO application making claims the other joint tenant(s) committed domestic violence and has the court issue the TRO. The terminating tenant takes the TRO to the landlord to terminate the lease and is relieved from any responsibility for rent. The result is the tenant(s) against whom the TRO is obtained are still responsible for the full rent. The terminating tenant who filed the TRO does not appear for the hearing on the permanent injunction. The tenant(s) against whom the TRO is obtained now has a court file indicating they committed domestic violence when the reality is the terminating tenant filed the TRO to terminate the lease, not because domestic violence occurred.

The Solution: The proposed change would amend the language in Civil Code section 1946.7(b)(1) to require an order after hearing on the petition for a restraining order to require the terminating tenant go forward with the request of an injunction through a hearing to reduce the attempt to use a TRO to get out of a bad agreement.

The proposed change would amend Civil Code section 1946.7(f)(1) to exclude any person or persons against whom an order after hearing restraining that person or those persons from using the order as a method to terminate a rental agreement. This proposed change would prevent co-occupants jointly using Civil Code section 1946.7 to terminate a lease early without financial consequences. This proposed change would also prevent a person or persons against whom an order restraining them has been issued using the order to terminate the lease.

As an example of the problem, in 2016, wife Janine Trainor and husband Victor Soriano rented a house and lived together in the house. Wife obtained a TRO against Husband in October 2016. (San Diego Superior Court DVN 26483.) Wife notified the landlord in November 2016 of the TRO and left the premises. Husband then notified the landlord that the TRO against him terminated the lease and he was no longer obligated to pay rent and vacated the property. The husband's logic that the lease terminated as to him is that he is a member of a household under 1946.7(f)(1), who had a household member that was a victim of domestic violence.

#### **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

#### **CURRENT OR PRIOR RELATED LEGISLATION**

None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Wayne Templin, 144 E. Washington Ave., Escondido, CA 92025; (760) 743-0222.

**RESPONSIBLE FLOOR DELEGATE:** Mary V.J. Cataldo, Procopio, Cory, Hargreaves & Savitch, LLP, 12544 High Bluff Drive, Ste. 300, San Diego, CA 92130; (760) 444-1773.

## RESOLUTION 01-05-2017

### DIGEST

#### Real Property: Exempt Private Property from Eminent Domain for Private Purchase

Recommends legislation be sponsored to introduce a ballot initiative to amend California Constitution article 1, section 19 to prohibit the use of eminent domain procedures to acquire private property for the purpose of conveying it to a private person.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

This resolution is similar to resolution 12-03-2016, which was disapproved.

#### Reasons:

This resolution recommends legislation be sponsored to introduce a ballot initiative to amend California Constitution article 1, section 19 to prohibit the use of eminent domain procedures to acquire private property for the purpose of conveying it to a private person. This resolution should be disapproved because the Legislature should retain the power to reinstate urban redevelopment procedures should it deem them necessary in the future.

Under current law, only single family residences occupied by the owner for at least one year enjoy protection from condemnation for the purpose of conveyance to a private person under Article 1, section 19, subdivision (b). This resolution amends subdivision (b) to expand that protection to any private property.

In 2011, the Legislature amended Health and Safety Code sections 33500, 33501, 33607.5, and 33607.7, added Part 1.8 (commencing with section 34161) and Part 1.85 (commencing with section 34170) to Division 24, and added sections 97.401 and 98.2 to effectively abolish redevelopment agencies and remove their ability to condemn property for redevelopment. The main question posed by this resolution is whether that change should be made more permanent by being embedded in the California Constitution in light of the fact there are no federal constitutional protections. (*Kelo v. City of New London, Conn.* (2005) 545 U.S. 469.)

Even though there are currently no provisions for redevelopment through the use of eminent domain procedures to aggregate parcels in blighted urban areas, a review of virtually every downtown urban area in any major California city demonstrates the effectiveness the redevelopment procedures had in revitalizing these areas. The Legislature should retain the power to enable such redevelopment in the future, should the need arise.

The resolution is further problematic in terms of its potential unanticipated consequences to public utilities. Currently many public utilities are private entities that are able to exercise eminent domain for the purpose of acquiring rights of way. (See, e.g., Pub. Util. Code, § 612; *Barham v. Southern California Edison Co.* (1999) 74 Cal.App.4th 744, 752.) This resolution would likely end their ability to acquire rights of way.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored for a ballot initiative to amend California Constitution section 19, to read as follows:

1 § 19

2 (a) Private property may be taken or damaged for a public use and only when just  
3 compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the  
4 owner. The Legislature may provide for possession by the condemnor following commencement  
5 of eminent domain proceedings upon deposit in court and prompt release to the owner of money  
6 determined by the court to be the probable amount of just compensation.

7 (b) The State and local governments are prohibited from acquiring private property by  
8 eminent domain ~~an owner-occupied residence~~ for the purpose of conveying it to a private person.

9 (c) Subdivision (b) of this section does not apply when State or local government  
10 exercises the power of eminent domain for the purpose of protecting public health and safety;  
11 preventing serious, repeated criminal activity; responding to an emergency; or remedying  
12 environmental contamination that poses a threat to public health and safety.

13 (d) Subdivision (b) of this section does not apply when State or local government  
14 exercises the power of eminent domain for the purpose of acquiring private property for a public  
15 work or improvement.

16 (e) For the purpose of this section:

17 1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise,  
18 or otherwise.

19 2. "Local government" means any city, including a charter city, county, city and county,  
20 school district, special district, authority, regional entity, redevelopment agency, or any other  
21 political subdivision within the State.

22 ~~3. "Owner-occupied residence" means real property that is improved with a single family  
23 residence such as a detached home, condominium, or townhouse and that is the owner or  
24 owners' principal place of residence for at least one year prior to the State or local government's  
25 initial written offer to purchase the property. Owner-occupied residence also includes a  
26 residential dwelling unit attached to or detached from such a single family residence which  
27 provides complete independent living facilities for one or more persons.~~

28 34. "Person" means any individual or association, or any business entity, including, but  
29 not limited to, a partnership, corporation, or limited liability company.

30 45. "Public work or improvement" means facilities or infrastructure for the delivery of  
31 public services such as education, police, fire protection, parks, recreation, emergency medical,  
32 public health, libraries, flood protection, streets or highways, public transit, railroad, airports and  
33 seaports; utility, common carrier or other similar projects such as energy-related,  
34 communication-related, water-related and wastewater-related facilities or infrastructure; projects  
35 identified by a State or local government for recovery from natural disasters; and private uses  
36 incidental to, or necessary for, the public work or improvement.

37 56. "State" means the State of California and any of its agencies or departments.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

## **STATEMENT OF REASONS**

The Problem: California is one of the worst states for people whose property is taken by the government. The government is supposed to take it for only a public use, but under current precedent, the government can even take from one person to give the property to another, purely on the claim that the other person can produce more tax revenue, and that is considered a “public use.” The only exception is someone’s principle place of residence that’s been lived in for at least a year. However, the biggest abuse is taking the property of one’s business and giving it to another, and that is no better; taking the roof over your head is not different from taking what pays for the roof over your head. This practice had a break for a few years when the governor and legislature abolished redevelopment agencies. However, redevelopment agencies have been revived in limited forms, reopening the door to eminent domain abuse.

Other serious attempts at reforming eminent domain that have made the ballot included restrictions on property regulations, and have then been voted down. We have never had a chance to vote a straight protection from eminent domain abuse for all forms of property.

The Solution: This resolution extends the protections currently reserved for owner-occupied homes that have been lived in at least a year to all private property; it still allows taking private property for a public work or improvement, it does not permit taking private property to convey it to another private owner.

## **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

## **CURRENT OR PRIOR RELATED LEGISLATION**

SCA 15 (2005), SCA 20 (2005), ACA 15 (2005), ACA 22 (2005), ACA 2 (2006), ACA 8 (2007), SCA 1 (2006), Proposition 90 (2006), Proposition 98 (2008), Proposition 99 (2008).

**AUTHOR AND/OR PERMANENT CONTACT:** Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben\_rudin@hotmail.com.

**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin