

## RESOLUTION 10-08-05

### DIGEST

#### Unlawful Detainer: Shortened Time for Motions for Summary Adjudication

Amends Code of Civil Procedure section 1170.7 to allow motions for summary adjudication in unlawful detainer actions to be filed on shortened time.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Code of Civil Procedure section 1170.7 to allow motions for summary adjudication in unlawful detainer actions to be filed on shortened time. This resolution should be approved in principle because it would provide a useful mechanism for narrowing the issues in summary proceedings to recover possession of real property, and would correct an obvious omission in the statute.

One of the most significant characteristics of an unlawful detainer action is its summary nature. The shortened case management timelines applicable to such claims allows issues of possession to be resolved as quickly as possible. Section 1170.7 allows parties to unlawful detainer actions to bring motions for summary judgment on an extremely shortened timeframe, but does not mention motions for summary adjudication. Therefore, such motions have to be made on 75 days' notice, as in other civil actions generally. (Code Civ. Proc., § 437c, subd. (f)(2).) This notice requirement is impossible given the greatly abbreviated life of an unlawful detainer action.

The adjudication of particular issues through summary adjudication can be a benefit to litigants and the courts. Narrowing the issues for trial makes as much sense in an unlawful detainer action as in any other action, and sometimes even more due to the summary nature of the proceedings. Litigants in unlawful detainer actions should have the ability to resolve particular issues before trial on the same shortened timeframe as is permitted for motions for summary judgment. This resolution would correct that obvious oversight by the Legislature.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1170.7 as follows:

- 1 §1170.7
- 2 ~~A motion~~ Motions for summary judgment or for summary adjudication may be made at any
- 3 time after the answer is filed upon giving five days notice. Summary judgment or summary
- 4 adjudication shall be granted or denied on the same basis as a motion under Section 437c.

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

PROPONENT: Bar Association of San Francisco

### STATEMENT OF REASONS

Existing Law: Allows motions for summary judgment to be filed upon five days notice in unlawful detainer actions, but is silent on whether motions for summary adjudication may be made upon the same shortened time.

This Resolution: Would expressly provide that parties to unlawful detainer actions may bring motions for summary adjudication upon five days notice.

The Problem: Section 1170.7 permits an unlawful detainer litigant to move for summary judgment on shortened time, but contains no such provision for summary adjudication. This omission creates an inconsistency with the Legislature's general provision that motions for summary adjudication must "proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).)

The present law creates the possibility that an unlawful detainer action litigant could move for the comprehensive relief of summary judgment, but would be barred from asking for the lesser included relief of summary adjudication. A simple clarification would resolve this inconsistency and would better express the intent of the Legislature.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

#### IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Steven S. Rosenthal and Ed Singer, 1388 Sutter Street, Suite 521, San Francisco, CA 94109, telephone (415) 928-7300, e.singer@att.net.

RESPONSIBLE FLOOR DELEGATE: