

**RESOLUTION 08-05-2008**

**DIGEST**

Real Property: Withdrawal of Condemned Property Deposited Funds

Amends Code of Civil Procedure section 1255.260 to provide for an exception to waivers when monies withdrawn from a condemned property deposit are withdrawn by a lienholder.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 1255.260 to provide for an exception to waivers when monies withdrawn from a condemned property deposit are withdrawn by a lienholder. This resolution should be approved in principle because an amendment would assure against unfair “waivers” that occur beyond the control of a property owner.

Code of Civil Procedure section 1255.260 provides that in the event money deposited during a condemnation proceeding is withdrawn, the receipt of such money shall constitute a legal waiver of claims and only claims for greater compensation are so preserved. As proponents highlight, when property owners are involved in condemnation cases they often lack the resources and stop paying the mortgage in favor of assuring alternative housing. Thus deposit monies become a viable source for lenders and other lienholders to secure ready and available funds – which in turn forces a waiver of claims by which the owner is then prejudiced.

By providing an exception to waiver, this resolution enables courts to examine the special circumstances that could result in a withdrawal of deposit monies and subsequent legal waiver that would otherwise not exist.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates recommends that legislation be sponsored to amend Code of Civil Procedure section 1255.260 to read as follows:

- 1    § 1255.260
- 2            If any portion of the money deposited pursuant to this chapter is withdrawn, the
- 3    receipt of any such money shall constitute a waiver by operation of law of all claims and
- 4    defenses in favor of the persons receiving such payment except a claim for greater
- 5    compensation. Such waiver shall not be operative where a lienholder, of its own accord,
- 6    withdraws the money to satisfy the lien.

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

**PROPONENT:** San Diego County Bar Association

## **STATEMENT OF REASONS:**

Existing Law: Provides that the waiver of the right to take challenge is operative upon “receipt” of money deposited in exchange for early possession of condemned property. Recent court rulings, including *Redevelopment Agency of San Diego v. Mesdaq* (2007) 154 Cal.App.4th 1111 have defined "receipt" as the withdrawal of any money by a lienholder.

This Resolution: Would clarify that money is not automatically received when a lienholder withdraws funds on deposit.

The Problem: When early possession is sought in a condemnation case, the property owner is nearly always placed in the position of having no choice but to stop paying on the mortgage. If the condemnation is residential, the owner will have to pay for replacement housing and will not often be able to pay for the condemned house as well. If the condemnation is commercial, the income from the property will cease and so will the income stream that paid the mortgage. Once the owner stops paying the mortgage, the lender will either initiate foreclosure or withdraw the money owed from the deposit. Obviously, the easiest source of income is the money on deposit. The owner does not benefit from this because he or she no longer has use of the property. Foreclosure would not impact the owner because he or she no longer has use of the property. It is unjust under these circumstances to force the owner to be penalized for the lienholder's act.

## **IMPACT STATEMENT:**

This resolution does not impact any other law, statute, or regulation.

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