

**RESOLUTION 08-06-2008**

**DIGEST**

Real Property: Mandatory Compliance with Subdivision Map Act

Amends Government Code section 66499.30 to create a legal presumption that all real property offers and contracts are irrevocably conditioned on compliance with the Subdivision Map Act.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code section 66499.30 to create a legal presumption that all real property offers and contracts are irrevocably conditioned on compliance with the Subdivision Map Act. This resolution should be approved in principle because it addresses an inconsistency in current law that permits ambiguities as to whether parties are required to comply with the Subdivision Map Act (“SMA”) to void real property contracts and offers.

The SMA requires the conditioning of all real property transactions for sale, lease, financing, or improvement of a parcel of land on the approval and filing of a final subdivision or parcel map. However, a real property contract or offer can inadvertently or expressly contain language such that compliance with the SMA is optional. (See, e.g., *Black Hills Investments, Inc. v. Albertsons, Inc.* (2007) 146 Cal.App. 4th 883; see also *Anthony v. Snyder* (2004) 116 Cal.App.4<sup>th</sup> 643.)

This resolution attempts to avoid the unintended consequences caused by ambiguous or inadvertent excuses to real property contracts and offers that can arise out of compliance with the SMA. If approved, this resolution assures that all real property transactions are presumed to require compliance with the SMA by the parties [unless otherwise expressly and specifically bargained for by the parties]. In favor of equity, judicial economy, and fairness, approval in principle of this resolution is recommended.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code section 66499.30 to read as follows:

- 1 § 66499.30
- 2 (a) No person shall sell, lease, or finance any parcel or parcels of real property or
- 3 commence construction of any building for sale, lease or financing thereon, except for
- 4 model homes, or allow occupancy thereof, for which a final map is required by this
- 5 division or local ordinance, until the final map thereof in full compliance with this division
- 6 and any local ordinance has been filed for record by the recorder of the county in which
- 7 any portion of the subdivision is located.

8 (b) No person shall sell, lease or finance any parcel or parcels of real property or  
9 commence construction of any building for sale, lease or financing thereon, except for  
10 model homes, or allow occupancy thereof, for which a parcel map is required by this  
11 division or local ordinance, until the parcel map thereof in full compliance with this  
12 division and any local ordinance has been filed for record by the recorder of the county in  
13 which any portion of the subdivision is located.

14 (c) Conveyances of any part of a division of real property for which a final or  
15 parcel map is required by this division or local ordinance shall not be made by parcel or  
16 block number, initial or other designation, unless and until the final or parcel map has been  
17 filed for record by the recorder of the county in which any portion of the subdivision is  
18 located.

19 (d) Subdivisions (a), (b), and (c) do not apply to any parcel or parcels of a  
20 subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in  
21 compliance with or exempt from any law (including a local ordinance), regulating the  
22 design and improvement of subdivisions in effect at the time the subdivision was  
23 established.

24 (e) Nothing contained in subdivisions (a) and (b) shall be deemed to prohibit an  
25 offer or contract to sell, lease, or finance real property or to construct improvements  
26 thereon where the sale, lease, or financing, or the commencement of construction, is  
27 ~~expressly~~ conditioned upon the approval and filing of a final subdivision map or parcel  
28 map, as required under this division. Unless otherwise specifically and expressly provided  
29 in the contract, any offer or contract to sell, lease, or finance real property or to construct  
30 improvements thereon shall be by this statute irrevocably conditioned upon the approval  
31 and filing of a final subdivision map or parcel map, as required under this division, on or  
32 before the date established in such offer or contract for any party to sell, lease, or finance  
33 real property or to construct improvements thereon.

34 (f) Nothing in subdivisions (a) to (e), inclusive, shall in any way modify or affect  
35 Section 11018.2 of the Business and Professions Code.

36 (g) For purposes of this section, the limitation period for commencing an action,  
37 either civil or criminal, against the subdivider or an owner of record at the time of a  
38 violation of this division or of a local ordinance enacted pursuant to this division, shall be  
39 tolled for any time period during which there is no constructive notice of the transaction  
40 constituting the violation, because the owner of record, at the time of the violation or at  
41 any time thereafter, failed to record a deed, lease, or financing document with the county  
42 recorder.

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

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS:**

Existing Law: Requires that offers and contracts be expressly conditioned upon compliance with the Subdivision Map Act or be void.

This Resolution: Provides that all offers and contracts are by law conditioned on compliance with the Subdivision Map Act.

The Problem: Current law requires that a contract or the sale of a parcel not yet subdivided be expressly, and by case law, irrevocably, conditioned upon compliance with the Subdivision Map Act. As a result, contracts that may be conditioned on compliance are nonetheless found void because of general provisions allowing parties to waive conditions. This resolution clarifies that every offer or contract relating to a parcel not yet subdivided is irrevocably conditioned upon compliance with the Subdivision Map Act.

**IMPACT STATEMENT:**

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

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