

RESOLUTION 07-01-2019

DIGEST

Civil: Allows Landlords to Prohibit Animals When Resident Has Allergy

Amends Civil Code section 54.1 and 2 California Code of Regulations section 11065 to allow people who charter part of a primary residence to prohibit animals due to allergies.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 54.1 and that the administrative agency amend California Code of Regulations Title 2, Division 4.1, Chapter 5, Subchapter 2, Article 9, Section 11065, to read as follows:

1 § 54.1

2 (a) (1) Individuals with disabilities shall be entitled to full and equal access, as other
3 members of the general public, to accommodations, advantages, facilities, medical facilities,
4 including hospitals, clinics, and physicians' offices, and privileges of all common carriers,
5 airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public
6 conveyances or modes of transportation (whether private, public, franchised, licensed,
7 contracted, or otherwise provided), telephone facilities, adoption agencies, private schools,
8 hotels, lodging places, places of public accommodation, amusement, or resort, and other places
9 to which the general public is invited, subject only to the conditions and limitations established
10 by law, or state or federal regulation, and applicable alike to all persons.

11 (2) As used in this section, "telephone facilities" means tariff items and other equipment
12 and services that have been approved by the Public Utilities Commission to be used by
13 individuals with disabilities in a manner feasible and compatible with the existing telephone
14 network provided by the telephone companies.

15 (3) "Full and equal access," for purposes of this section in its application to
16 transportation, means access that meets the standards of Titles II and III of the Americans with
17 Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto,
18 except that, if the laws of this state prescribe higher standards, it shall mean access that meets
19 those higher standards.

20 (b) (1) Individuals with disabilities shall be entitled to full and equal access, as other
21 members of the general public, to all housing accommodations offered for rent, lease, or
22 compensation in this state, subject to the conditions and limitations established by law, or state or
23 federal regulation, and applicable alike to all persons.

24 (2) "Housing accommodations" means any real property, or portion of real property, that
25 is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home,
26 residence, or sleeping place of one or more human beings, but shall not include any
27 accommodations included within subdivision (a) or any single-family residence the occupants of
28 which rent, lease, or furnish for compensation not more than one room in the residence.

29 (3) (A) A person renting, leasing, or otherwise providing real property for compensation
30 shall not refuse to permit an individual with a disability, at that person's expense, to make
31 reasonable modifications of the existing rented premises if the modifications are necessary to
32 afford the person full enjoyment of the premises. However, any modifications under this

33 paragraph may be conditioned on the disabled tenant entering into an agreement to restore the
34 interior of the premises to the condition existing before the modifications. No additional security
35 may be required on account of an election to make modifications to the rented premises under
36 this paragraph, but the lessor and tenant may negotiate, as part of the agreement to restore the
37 premises, a provision requiring the disabled tenant to pay an amount into an escrow account, not
38 to exceed a reasonable estimate of the cost of restoring the premises.

39 (B) A person renting, leasing, or otherwise providing real property for compensation shall
40 not refuse to make reasonable accommodations in rules, policies, practices, or services, when
41 those accommodations may be necessary to afford individuals with a disability equal opportunity
42 to use and enjoy the premises.

43 (4) This subdivision does not require a person renting, leasing, or providing for
44 compensation real property to modify his or her property in any way or provide a higher degree
45 of care for an individual with a disability than for an individual who is not disabled.

46 (5) Except as provided in paragraph (6), this part does not require a person renting,
47 leasing, or providing for compensation real property, if that person refuses to accept tenants who
48 have dogs, to accept as a tenant an individual with a disability who has a dog.

49 (6) (A) It shall be deemed a denial of equal access to housing accommodations within the
50 meaning of this subdivision for a person, firm, or corporation to refuse to lease or rent housing
51 accommodations to an individual who is blind or visually impaired on the basis that the
52 individual uses the services of a guide dog, an individual who is deaf or hard of hearing on the
53 basis that the individual uses the services of a signal dog, or to an individual with any other
54 disability on the basis that the individual uses the services of a service dog, or to refuse to permit
55 such an individual who is blind or visually impaired to keep a guide dog, an individual who is
56 deaf or hard of hearing to keep a signal dog, or an individual with any other disability to keep a
57 service dog on the premises.

58 (B) Except in the normal performance of duty as a mobility or signal aid, this paragraph
59 does not prevent the owner of a housing accommodation from establishing terms in a lease or
60 rental agreement that reasonably regulate the presence of guide dogs, signal dogs, or service dogs
61 on the premises of a housing accommodation, nor does this paragraph relieve a tenant from any
62 liability otherwise imposed by law for real and personal property damages caused by such a dog
63 when proof of the damage exists.

64 (C) (i) As used in this subdivision, "guide dog" means a guide dog that was trained by a
65 person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the
66 Business and Professions Code or as defined in the regulations implementing Title III of the
67 Americans with Disabilities Act of 1990 (Public Law 101-336).

68 (ii) As used in this subdivision, "signal dog" means a dog trained to alert an individual
69 who is deaf or hard of hearing to intruders or sounds.

70 (iii) As used in this subdivision, "service dog" means a dog individually trained to the
71 requirements of the individual with a disability, including, but not limited to, minimal protection
72 work, rescue work, pulling a wheelchair, or fetching dropped items.

73 (D) Notwithstanding this or any other subdivision, it shall not be deemed a denial of
74 equal access to housing accommodations for a person, firm, or corporation to refuse to lease or
75 rent housing accommodations on the basis that the individual uses a guide dog, signal dog, or
76 service dog when the housing accommodations in question are a portion of a primary residence
77 and a resident has a medically-documented allergy to dogs.

78 (7) It shall be deemed a denial of equal access to housing accommodations within the
79 meaning of this subdivision for a person, firm, or corporation to refuse to lease or rent housing
80 accommodations to an individual who is blind or visually impaired, an individual who is deaf or
81 hard of hearing, or other individual with a disability on the basis that the individual with a
82 disability is partially or wholly dependent upon the income of his or her spouse, if the spouse is a
83 party to the lease or rental agreement. This subdivision does not prohibit a lessor or landlord
84 from considering the aggregate financial status of an individual with a disability and his or her
85 spouse.

86 (c) Visually impaired or blind persons and persons licensed to train guide dogs for
87 individuals who are visually impaired or blind pursuant to Chapter 9.5 (commencing with
88 Section 7200) of Division 3 of the Business and Professions Code or guide dogs as defined in the
89 regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law
90 101-336), and persons who are deaf or hard of hearing and persons authorized to train signal
91 dogs for individuals who are deaf or hard of hearing, and other individuals with a disability and
92 persons authorized to train service dogs for individuals with a disability, may take dogs, for the
93 purpose of training them as guide dogs, signal dogs, or service dogs in any of the places
94 specified in subdivisions (a) and (b). These persons shall ensure that the dog is on a leash and
95 tagged as a guide dog, signal dog, or service dog by identification tag issued by the county clerk,
96 animal control department, or other agency, as authorized by Chapter 3.5 (commencing with
97 Section 30850) of Division 14 of the Food and Agricultural Code. In addition, the person shall be
98 liable for any provable damage done to the premises or facilities by his or her dog.

99 (d) A violation of the right of an individual under the Americans with Disabilities Act of
100 1990 (Public Law 101-336) also constitutes a violation of this section, and this section does not
101 limit the access of any person in violation of that act.

102 (e) This section does not preclude the requirement of the showing of a license plate or
103 disabled placard when required by enforcement units enforcing disabled persons parking
104 violations pursuant to Sections 22507.8 and 22511.8 of the Vehicle Code.

105
106 2 CCR § 11065

107 As used in this article, the following definitions apply:

108 [subdivisions (a) through (o) remain unchanged]

109 (p) "Reasonable accommodation" is:

110 (1) modifications or adjustments that are:

111 (A) effective in enabling an applicant with a disability to have an equal opportunity to be
112 considered for a desired job, or

113 (B) effective in enabling an employee to perform the essential functions of the job the
114 employee holds or desires, or

115 (C) effective in enabling an employee with a disability to enjoy equivalent benefits and
116 privileges of employment as are enjoyed by similarly situated employees without disabilities.

117 (2) Examples of Reasonable Accommodation. Reasonable accommodation may include,
118 but are not limited to, such measures as:

119 (A) Making existing facilities used by applicants and employees readily accessible to and
120 usable by individuals with disabilities. This may include, but is not limited to, providing
121 accessible break rooms, restrooms, training rooms, or reserved parking places; acquiring or
122 modifying furniture, equipment or devices; or making other similar adjustments in the work
123 environment;

- 124 (B) Allowing applicants or employees to bring assistive animals to the work site;
125 (C) Transferring an employee to a more accessible worksite;
126 (D) Providing assistive aids and services such as qualified readers or interpreters to an
127 applicant or employee;
128 (E) Job Restructuring. This may include, but is not limited to, reallocation or
129 redistribution of non-essential job functions in a job with multiple responsibilities;
130 (F) Providing a part-time or modified work schedule;
131 (G) Permitting an alteration of when and/or how an essential function is performed;
132 (H) Providing an adjustment or modification of examinations, training materials or
133 policies;
134 (I) Modifying an employer policy;
135 (J) Modifying supervisory methods (e.g., dividing complex tasks into smaller parts);
136 (K) Providing additional training;
137 (L) Permitting an employee to work from home;
138 (M) Providing a paid or unpaid leave for treatment and recovery, consistent with section
139 11068(c);
140 (N) Providing a reassignment to a vacant position, consistent with section 11068(d); and
141 (O) other similar accommodations.
142 (3) "Reasonable accommodation" shall not be construed to prohibit a person, firm, or
143 corporation from refusing to allow an animal in a residential dwelling unit that qualifies as a
144 primary residence of the landlord or another person, and a resident has a medically-documented
145 allergy to the animal.
146 [subdivisions (q) and (r) remain unchanged]

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: The legal requirement for landlords to allow accommodations for those with disabilities who need them is generally good and necessary. A problem can occur, however, when one person's accommodations are a physical threat to another person. Such is the case with requiring a landlord to allow a service animal on his or her primary residence when someone who lives there is allergic.

When someone with an allergy is renting out a portion of their primary residence and is faced with a prospective tenant who needs a service animal, the person currently has three options: (1) accept that prospective tenant, and risk having constant red itchy eyes, coughing and wheezing, runny nose, sneezing, skin reactions, or hives; (2) deny that prospective tenant and risk lawsuits; or (3) take the offer off the market and not allow anyone to rent it. People should be able to prohibit things in their home that they are allergic to without risking a lawsuit or having to shut down.

The Solution: This resolution allows those who are renting out a portion of their primary residence to not let animals on their property if a resident has a medically-documented allergy.

This narrow exception ensures that those with allergies to an animal are allowed to prohibit that animal in their primary residence.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 07-02-2019

DIGEST

Landlord Tenant: Pet Security Deposit

Amends Civil Code section 1950.5 to allow landlords to collect a separate pet security deposit.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Civil Code section 1950.5, to read as follows:

1 § 1950.5.

2

3 (a) This section applies to security for a rental agreement for residential property that is
4 used as the dwelling of the tenant.

5 (b) As used in this section, “security” means any payment, fee, deposit, or charge,
6 including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section
7 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for
8 costs associated with processing a new tenant or that is imposed as an advance payment of rent,
9 used or to be used for any purpose, including, but not limited to, any of the following:

10 (1) The compensation of a landlord for a tenant’s default in the payment of rent.

11 (2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by
12 the tenant or by a guest or licensee of the tenant.

13 (3) The cleaning of the premises upon termination of the tenancy necessary to return the
14 unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to
15 this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the
16 tenant’s right to occupy begins after January 1, 2003.

17 (4) To remedy future defaults by the tenant in any obligation under the rental agreement
18 to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and
19 tear, if the security deposit is authorized to be applied thereto by the rental agreement.

20 (c) A landlord may not demand or receive security, however denominated, in an amount
21 or value in excess of an amount equal to two months’ rent, in the case of unfurnished residential
22 property, and an amount equal to three months’ rent, in the case of furnished residential property,
23 in addition to any rent for the first month paid on or before initial occupancy.

24 This subdivision does not prohibit an advance payment of not less than six months’ rent if the
25 term of the lease is six months or longer.

26 This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement
27 for the landlord, at the request of the tenant and for a specified fee or charge, to make structural,
28 decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or
29 repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

30 (d) A landlord may demand and receive pet security in addition to the securities provided
31 in subdivision (c), to be based upon the type of each pet and the size of each pet and subject to
32 the exclusions in Civil Code section 54.2. As used in this subdivision, “pet security” means any
33 payment, fee, deposit, or charge that is imposed at the beginning of the tenancy to be used to
34 reimburse the landlord for costs associated with any of the following:

35 (1) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by
36 the pet.

37 (2) The cleaning of the premises upon termination of the tenancy necessary to return the
38 unit to the same level of cleanliness it was in at the inception.

39 ~~(d)~~(e) Any security shall be held by the landlord for the tenant who is party to the lease or
40 agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the
41 landlord.

42 ~~(e)~~(f) The landlord may claim of the security only those amounts as are reasonably
43 necessary for the purposes specified in subdivision (b). The landlord may not assert a claim
44 against the tenant or the security for damages to the premises or any defective conditions that
45 preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and
46 tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of
47 ordinary wear and tear occurring during any one or more tenancies.

48 ~~(f)~~(g) (1) Within a reasonable time after notification of either party's intention to
49 terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in
50 writing of his or her option to request an initial inspection and of his or her right to be present at
51 the inspection. The requirements of this subdivision do not apply when the tenancy is terminated
52 pursuant to subdivision (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At a
53 reasonable time, but no earlier than two weeks before the termination or the end of lease date, the
54 landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial
55 inspection of the premises prior to any final inspection the landlord makes after the tenant has
56 vacated the premises. The purpose of the initial inspection shall be to allow the tenant an
57 opportunity to remedy identified deficiencies, in a manner consistent with the rights and
58 obligations of the parties under the rental agreement, in order to avoid deductions from the
59 security. If a tenant chooses not to request an initial inspection, the duties of the landlord under
60 this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule
61 the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours'
62 prior written notice of the date and time of the inspection if either a mutual time is agreed upon,
63 or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The
64 tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written
65 waiver. The landlord shall proceed with the inspection whether the tenant is present or not,
66 unless the tenant previously withdrew his or her request for the inspection. Written notice by the
67 landlord shall contain, in substantially the same form, the following:
68

69 "State law permits former tenants to reclaim abandoned personal property left at the former
70 address of the tenant, subject to certain conditions. You may or may not be able to reclaim
71 property without incurring additional costs, depending on the cost of storing the property and the
72 length of time before it is reclaimed. In general, these costs will be lower the sooner you contact
73 your former landlord after being notified that property belonging to you was left behind after you
74 moved out."
75

76 (2) Based on the inspection, the landlord shall give the tenant an itemized statement
77 specifying repairs or cleanings that are proposed to be the basis of any deductions from the
78 security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive, of subdivision
79 (b). This statement shall also include the texts of paragraphs (1) to (4), inclusive, of subdivision

80 (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall
81 be left inside the premises.

82 (3) The tenant shall have the opportunity during the period following the initial
83 inspection until termination of the tenancy to remedy identified deficiencies, in a manner
84 consistent with the rights and obligations of the parties under the rental agreement, in order to
85 avoid deductions from the security.

86 (4) Nothing in this subdivision shall prevent a landlord from using the security for
87 deductions itemized in the statement provided for in paragraph (2) that were not cured by the
88 tenant so long as the deductions are for damages authorized by this section.

89 (5) Nothing in this subdivision shall prevent a landlord from using the security for any
90 purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between
91 completion of the initial inspection and termination of the tenancy or was not identified during
92 the initial inspection due to the presence of a tenant's possessions.

93 (g)(1) No later than 21 calendar days after the tenant has vacated the premises, but not
94 earlier than the time that either the landlord or the tenant provides a notice to terminate the
95 tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or not
96 earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord shall
97 furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an
98 itemized statement indicating the basis for, and the amount of, any security received and the
99 disposition of the security, and shall return any remaining portion of the security to the tenant.
100 After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and
101 tenant may mutually agree to have the landlord deposit any remaining portion of the security
102 deposit electronically to a bank account or other financial institution designated by the tenant.
103 After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and
104 the tenant may also agree to have the landlord provide a copy of the itemized statement along
105 with the copies required by paragraph (2) to an email account provided by the tenant.

106 (2) Along with the itemized statement, the landlord shall also include copies of
107 documents showing charges incurred and deducted by the landlord to repair or clean the
108 premises, as follows:

109 (A) If the landlord or landlord's employee did the work, the itemized statement shall
110 reasonably describe the work performed. The itemized statement shall include the time spent and
111 the reasonable hourly rate charged.

112 (B) If the landlord or landlord's employee did not do the work, the landlord shall provide
113 the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the
114 work. The itemized statement shall provide the tenant with the name, address, and telephone
115 number of the person or entity, if the bill, invoice, or receipt does not include that information.

116 (C) If a deduction is made for materials or supplies, the landlord shall provide a copy of
117 the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on
118 an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill,
119 invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost
120 of the item used in the repair or cleaning of the unit.

121 (3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be
122 completed within 21 calendar days after the tenant has vacated the premises, or if the documents
123 from a person or entity providing services, materials, or supplies are not in the landlord's
124 possession within 21 calendar days after the tenant has vacated the premises, the landlord may
125 deduct the amount of a good faith estimate of the charges that will be incurred and provide that

126 estimate with the itemized statement. If the reason for the estimate is because the documents
127 from a person or entity providing services, materials, or supplies are not in the landlord's
128 possession, the itemized statement shall include the name, address, and telephone number of the
129 person or entity. Within 14 calendar days of completing the repair or receiving the
130 documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the
131 manner specified.

132 (4) The landlord need not comply with paragraph (2) or (3) if either of the following
133 applies:

134 (A) The deductions for repairs and cleaning together do not exceed one hundred twenty-
135 five dollars (\$125).

136 (B) The tenant waived the rights specified in paragraphs (2) and (3). The waiver shall
137 only be effective if it is signed by the tenant at the same time or after a notice to terminate a
138 tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of the Code
139 of Civil Procedure has been given, or no earlier than 60 calendar days prior to the expiration of a
140 fixed-term lease. The waiver shall substantially include the text of paragraph (2).

141 (5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3)
142 when a tenant makes a request for documentation within 14 calendar days after receiving the
143 itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days
144 after receiving the request from the tenant.

145 (6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address
146 provided by the tenant. If the tenant does not provide an address, mailings pursuant to this
147 subdivision shall be sent to the unit that has been vacated.

148 (h) Upon termination of the landlord's interest in the premises, whether by sale,
149 assignment, death, appointment of receiver, or otherwise, the landlord or the landlord's agent
150 shall, within a reasonable time, do one of the following acts, either of which shall relieve the
151 landlord of further liability with respect to the security held:

152 (1) Transfer the portion of the security remaining after any lawful deductions made under
153 subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the
154 tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims
155 made against the security, of the amount of the security deposited, and of the names of the
156 successors in interest, their addresses, and their telephone numbers. If the notice to the tenant is
157 made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her
158 name on the landlord's copy of the notice.

159 (2) Return the portion of the security remaining after any lawful deductions made under
160 subdivision (e) to the tenant, together with an accounting as provided in subdivision (g).

161 (i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord
162 shall deliver to the landlord's successor in interest a written statement indicating the following:

163 (1) The security remaining after any lawful deductions are made.

164 (2) An itemization of any lawful deductions from any security received.

165 (3) His or her election under paragraph (1) or (2) of subdivision (h).

166 This subdivision does not affect the validity of title to the real property transferred in violation of
167 this subdivision.

168 (j) (1) In the event of noncompliance with subdivision (h), the landlord's successors in
169 interest shall be jointly and severally liable with the landlord for repayment of the security, or
170 that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and
171 (g). A successor in interest of a landlord may not require the tenant to post any security to

172 replace that amount not transferred to the tenant or successors in interest as provided in
173 subdivision (h), unless and until the successor in interest first makes restitution of the initial
174 security as provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting
175 as provided in subdivision (g).

176 (2) This subdivision does not preclude a successor in interest from recovering from the
177 tenant compensatory damages that are in excess of the security received from the landlord
178 previously paid by the tenant to the landlord.

179 (3) Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a
180 landlord's successor in interest has a good faith belief that the lawfully remaining security
181 deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she
182 is not liable for damages as provided in subdivision (l), or any security not transferred pursuant
183 to subdivision (h).

184 (k) Upon receipt of any portion of the security under paragraph (1) of subdivision (h), the
185 landlord's successors in interest shall have all of the rights and obligations of a landlord holding
186 the security with respect to the security.

187 (l) The bad faith claim or retention by a landlord or the landlord's successors in interest
188 of the security or any portion thereof in violation of this section, or the bad faith demand of
189 replacement security in violation of subdivision (j), may subject the landlord or the landlord's
190 successors in interest to statutory damages of up to twice the amount of the security, in addition
191 to actual damages. The court may award damages for bad faith whenever the facts warrant that
192 award, regardless of whether the injured party has specifically requested relief. In an action
193 under this section, the landlord or the landlord's successors in interest shall have the burden of
194 proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to
195 demand additional security deposits.

196 (m) No lease or rental agreement may contain a provision characterizing any security as
197 "nonrefundable."

198 (n) An action under this section may be maintained in small claims court if the damages
199 claimed, whether actual, statutory, or both, are within the jurisdictional amount allowed by
200 Section 116.220 or 116.221 of the Code of Civil Procedure.

201 (o) Proof of the existence of and the amount of a security deposit may be established by
202 any credible evidence, including, but not limited to, a canceled check, a receipt, a lease
203 indicating the requirement of a deposit as well as the amount, prior consistent statements or
204 actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the
205 credibility requirements set forth in Section 780 of the Evidence Code.

206 (p) The amendments to this section made during the 1985 portion of the 1985–86 Regular
207 Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.

208 (q) The amendments to this section made during the 2003 portion of the 2003–04 Regular
209 Session of the Legislature that are set forth in paragraph (1) of subdivision (f) are declaratory of
210 existing law.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code section 1950.5(c) prohibits landlords from collecting a security deposit in excess of two month's rent for unfurnished residential property or three month's rent for furnished residential property. As a result, landlords cannot collect an additional "pet security." As a result, many landlords discriminate against tenants with pets, especially tenants with large dogs.

As an alternative, landlords can charge extra "pet rent." However, these fees are essentially non-refundable. It is more desirable to allow a landlord to collect pet security because the tenant will be motivated to keep the rental property clean and undamaged so that the landlord can refund the security at the end of the tenancy.

Civil Code section 54.2 prohibits landlords from collecting pet securities for guide dogs, signal dogs, and service dogs. However, section 54.2 does hold tenant owners of guide dogs, signal dogs, and service dogs liable for any damages caused by the dog.

The Solution: This resolution would allow landlords to collect pet security, for the purposes of cleaning and repairs only, due to damage that was caused by the pet or pets. The resolution refers to the exceptions in Civil Code section 54.2 that prohibit landlords from collecting securities for individuals with guide dogs, signal dogs, or service dogs and it also defines the term "pet security."

For example, if a pet leaves urine stains in the carpet, professional carpet cleaning services can use an ultra-violet light, also known as a "black light," to locate the stains and then the technicians can apply an enzyme treatment to the carpet to break down the urine. When such treatment is applied, it may be possible to restore the carpet without having to replace the carpet.

If landlords are allowed to collect pet securities, in addition to collecting traditional securities, then more landlords will be willing to allow tenants with pets to rent their residential properties.

IMPACT STATEMENT:

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

CURRENT OR PRIOR RELATED LEGISLATION

AB 383 (Wagner, 2013. Maintenance of the codes.), section 12, which amended Civil Code section 1950.5.

AB 1709 (Gallagher, 2016), amended Civil Code section 54.2 by replacing the term "hearing impaired" with the term "hard of hearing."

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RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 07-03-2019

DIGEST

Landlord-Tenant Law: Penalty for Retaining Security Deposit in Bad Faith

Amends Civil Code section 1950.5 to increase the penalty for withholding a security deposit from two to five times the deposit.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend California Civil Code section 1950.5 to read as follows:

1 § 1950.5

2 (a) This section applies to security for a rental agreement for residential property that is
3 used as the dwelling of the tenant.

4 (b) As used in this section, "security" means any payment, fee, deposit, or charge,
5 including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section
6 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for
7 costs associated with processing a new tenant or that is imposed as an advance payment of rent,
8 used or to be used for any purpose, including, but not limited to, any of the following:

9 (1) The compensation of a landlord for a tenant's default in the payment of rent.

10 (2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by
11 the tenant or by a guest or licensee of the tenant.

12 (3) The cleaning of the premises upon termination of the tenancy necessary to return the
13 unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to
14 this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the
15 tenant's right to occupy begins after January 1, 2003.

16 (4) To remedy future defaults by the tenant in any obligation under the rental agreement
17 to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and
18 tear, if the security deposit is authorized to be applied thereto by the rental agreement.

19 (c) A landlord may not demand or receive security, however denominated, in an amount
20 or value in excess of an amount equal to two months' rent, in the case of unfurnished residential
21 property, and an amount equal to three months' rent, in the case of furnished residential property,
22 in addition to any rent for the first month paid on or before initial occupancy.

23 This subdivision does not prohibit an advance payment of not less than six months' rent if the
24 term of the lease is six months or longer.

25 This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement
26 for the landlord, at the request of the tenant and for a specified fee or charge, to make structural,
27 decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or
28 repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

29 (d) Any security shall be held by the landlord for the tenant who is party to the lease or
30 agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the
31 landlord.

32 (e) The landlord may claim of the security only those amounts as are reasonably
33 necessary for the purposes specified in subdivision (b). The landlord may not assert a claim

34 against the tenant or the security for damages to the premises or any defective conditions that
35 preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and
36 tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of
37 ordinary wear and tear occurring during any one or more tenancies.

38 (f) (1) Within a reasonable time after notification of either party's intention to terminate
39 the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of
40 his or her option to request an initial inspection and of his or her right to be present at the
41 inspection. The requirements of this subdivision do not apply when the tenancy is terminated
42 pursuant to subdivision (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At a
43 reasonable time, but no earlier than two weeks before the termination or the end of lease date, the
44 landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial
45 inspection of the premises prior to any final inspection the landlord makes after the tenant has
46 vacated the premises. The purpose of the initial inspection shall be to allow the tenant an
47 opportunity to remedy identified deficiencies, in a manner consistent with the rights and
48 obligations of the parties under the rental agreement, in order to avoid deductions from the
49 security. If a tenant chooses not to request an initial inspection, the duties of the landlord under
50 this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule
51 the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours'
52 prior written notice of the date and time of the inspection if either a mutual time is agreed upon,
53 or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The
54 tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written
55 waiver. The landlord shall proceed with the inspection whether the tenant is present or not,
56 unless the tenant previously withdrew his or her request for the inspection. Written notice by the
57 landlord shall contain, in substantially the same form, the following:

58 "State law permits former tenants to reclaim abandoned personal property left at the former
59 address of the tenant, subject to certain conditions. You may or may not be able to reclaim
60 property without incurring additional costs, depending on the cost of storing the property and the
61 length of time before it is reclaimed. In general, these costs will be lower the sooner you contact
62 your former landlord after being notified that property belonging to you was left behind after you
63 moved out."

64 (2) Based on the inspection, the landlord shall give the tenant an itemized statement
65 specifying repairs or cleanings that are proposed to be the basis of any deductions from the
66 security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive, of subdivision
67 (b). This statement shall also include the texts of paragraphs (1) to (4), inclusive, of subdivision
68 (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall
69 be left inside the premises.

70 (3) The tenant shall have the opportunity during the period following the initial
71 inspection until termination of the tenancy to remedy identified deficiencies, in a manner
72 consistent with the rights and obligations of the parties under the rental agreement, in order to
73 avoid deductions from the security.

74 (4) Nothing in this subdivision shall prevent a landlord from using the security for
75 deductions itemized in the statement provided for in paragraph (2) that were not cured by the
76 tenant so long as the deductions are for damages authorized by this section.

77 (5) Nothing in this subdivision shall prevent a landlord from using the security for any
78 purpose specified in paragraphs (1) to (4), inclusive, of subdivision (b) that occurs between

79 completion of the initial inspection and termination of the tenancy or was not identified during
80 the initial inspection due to the presence of a tenant's possessions.

81 (g)(1) No later than 21 calendar days after the tenant has vacated the premises, but not
82 earlier than the time that either the landlord or the tenant provides a notice to terminate the
83 tenancy under Section 1946 or 1946.1, Section 1161 of the Code of Civil Procedure, or not
84 earlier than 60 calendar days prior to the expiration of a fixed-term lease, the landlord shall
85 furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an
86 itemized statement indicating the basis for, and the amount of, any security received and the
87 disposition of the security, and shall return any remaining portion of the security to the tenant.
88 After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and
89 tenant may mutually agree to have the landlord deposit any remaining portion of the security
90 deposit electronically to a bank account or other financial institution designated by the tenant.
91 After either the landlord or the tenant provides notice to terminate the tenancy, the landlord and
92 the tenant may also agree to have the landlord provide a copy of the itemized statement along
93 with the copies required by paragraph (2) to an email account provided by the tenant.

94 (2) Along with the itemized statement, the landlord shall also include copies of
95 documents showing charges incurred and deducted by the landlord to repair or clean the
96 premises, as follows:

97 (A) If the landlord or landlord's employee did the work, the itemized statement shall
98 reasonably describe the work performed. The itemized statement shall include the time spent and
99 the reasonable hourly rate charged.

100 (B) If the landlord or landlord's employee did not do the work, the landlord shall provide
101 the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the
102 work. The itemized statement shall provide the tenant with the name, address, and telephone
103 number of the person or entity, if the bill, invoice, or receipt does not include that information.

104 (C) If a deduction is made for materials or supplies, the landlord shall provide a copy of
105 the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on
106 an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill,
107 invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost
108 of the item used in the repair or cleaning of the unit.

109 (3) If a repair to be done by the landlord or the landlord's employee cannot reasonably be
110 completed within 21 calendar days after the tenant has vacated the premises, or if the documents
111 from a person or entity providing services, materials, or supplies are not in the landlord's
112 possession within 21 calendar days after the tenant has vacated the premises, the landlord may
113 deduct the amount of a good faith estimate of the charges that will be incurred and provide that
114 estimate with the itemized statement. If the reason for the estimate is because the documents
115 from a person or entity providing services, materials, or supplies are not in the landlord's
116 possession, the itemized statement shall include the name, address, and telephone number of the
117 person or entity. Within 14 calendar days of completing the repair or receiving the
118 documentation, the landlord shall complete the requirements in paragraphs (1) and (2) in the
119 manner specified.

120 (4) The landlord need not comply with paragraph (2) or (3) if either of the following
121 applies:

122 (A) The deductions for repairs and cleaning together do not exceed one hundred twenty-
123 five dollars (\$125). (B) The tenant waived the rights specified in paragraphs (2) and (3). The
124 waiver shall only be effective if it is signed by the tenant at the same time or after a notice to

125 terminate a tenancy under Section 1946 or 1946.1 has been given, a notice under Section 1161 of
126 the Code of Civil Procedure has been given, or no earlier than 60 calendar days prior to the
127 expiration of a fixed-term lease. The waiver shall substantially include the text of paragraph (2).

128 (5) Notwithstanding paragraph (4), the landlord shall comply with paragraphs (2) and (3)
129 when a tenant makes a request for documentation within 14 calendar days after receiving the
130 itemized statement specified in paragraph (1). The landlord shall comply within 14 calendar days
131 after receiving the request from the tenant.

132 (6) Any mailings to the tenant pursuant to this subdivision shall be sent to the address
133 provided by the tenant. If the tenant does not provide an address, mailings pursuant to this
134 subdivision shall be sent to the unit that has been vacated.

135 (h) Upon termination of the landlord's interest in the premises, whether by sale,
136 assignment, death, appointment of receiver, or otherwise, the landlord or the landlord's agent
137 shall, within a reasonable time, do one of the following acts, either of which shall relieve the
138 landlord of further liability with respect to the security held:

139 (1) Transfer the portion of the security remaining after any lawful deductions made under
140 subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the
141 tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims
142 made against the security, of the amount of the security deposited, and of the names of the
143 successors in interest, their addresses, and their telephone numbers. If the notice to the tenant is
144 made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her
145 name on the landlord's copy of the notice.

146 (2) Return the portion of the security remaining after any lawful deductions made under
147 subdivision (e) to the tenant, together with an accounting as provided in subdivision (g).

148 (i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord
149 shall deliver to the landlord's successor in interest a written statement indicating the following:

150 (1) The security remaining after any lawful deductions are made.

151 (2) An itemization of any lawful deductions from any security received.

152 (3) His or her election under paragraph (1) or (2) of subdivision (h).

153 This subdivision does not affect the validity of title to the real property transferred in violation of
154 this subdivision.

155 (j)(1) In the event of noncompliance with subdivision (h), the landlord's successors in
156 interest shall be jointly and severally liable with the landlord for repayment of the security, or
157 that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and
158 (g). A successor in interest of a landlord may not require the tenant to post any security to
159 replace that amount not transferred to the tenant or successors in interest as provided in
160 subdivision (h), unless and until the successor in interest first makes restitution of the initial
161 security as provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting
162 as provided in subdivision (g).

163 (2) This subdivision does not preclude a successor in interest from recovering from the
164 tenant compensatory damages that are in excess of the security received from the landlord
165 previously paid by the tenant to the landlord.

166 (3) Notwithstanding this subdivision, if, upon inquiry and reasonable investigation, a
167 landlord's successor in interest has a good faith belief that the lawfully remaining security
168 deposit is transferred to him or her or returned to the tenant pursuant to subdivision (h), he or she
169 is not liable for damages as provided in subdivision (l), or any security not transferred pursuant
170 to subdivision (h).

171 (k) Upon receipt of any portion of the security under paragraph (1) of subdivision (h), the
172 landlord’s successors in interest shall have all of the rights and obligations of a landlord holding
173 the security with respect to the security.

174 (l) The bad faith claim or retention by a landlord or the landlord’s successors in interest
175 of the security or any portion thereof in violation of this section, or the bad faith demand of
176 replacement security in violation of subdivision (j), may subject the landlord or the landlord’s
177 successors in interest to statutory damages of up to ~~twice~~ five times the amount of the security,
178 in addition to actual damages. The court may award damages for bad faith whenever the facts
179 warrant that award, regardless of whether the injured party has specifically requested relief. In an
180 action under this section, the landlord or the landlord’s successors in interest shall have the
181 burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this
182 section to demand additional security deposits.

183 (m) No lease or rental agreement may contain a provision characterizing any security as
184 “nonrefundable.”

185 (n) An action under this section may be maintained in small claims court if the damages
186 claimed, whether actual, statutory, or both, are within the jurisdictional amount allowed by
187 Section 116.220 or 116.221 of the Code of Civil Procedure.

188 (o) Proof of the existence of and the amount of a security deposit may be established by
189 any credible evidence, including, but not limited to, a canceled check, a receipt, a lease
190 indicating the requirement of a deposit as well as the amount, prior consistent statements or
191 actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the
192 credibility requirements set forth in Section 780 of the Evidence Code.

193 (p) The amendments to this section made during the 1985 portion of the 1985–86 Regular
194 Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.

195 (q) The amendments to this section made during the 2003 portion of the 2003–04 Regular
196 Session of the Legislature that are set forth in paragraph (1) of subdivision (f) are declaratory of
197 existing law.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Existing law has failed to prevent landlords from improperly withholding a portion of all of tenants’ security deposits for items that are covered by ordinary wear and tear or otherwise should not have been deducted. The process for formally disputing a security deposit refund (or lack thereof) requires that formal notice be provided by certified mail and the tenants filing and pursuing the claim in small claims court. Because the maximum amount that may be recovered is only twice the security deposit in addition to whatever amount was improperly withheld, tenants are too often disincentivized to pursue landlords who regularly engage in unfair practices and improper withholding of security deposits. This is especially true where multiple tenants lived together and must collectively decide whether to proceed in the hopes of obtaining a fraction of the recovery, if any.

The Solution: By increasing the maximum penalty for improperly withholding a security deposit, this will help incentivize tenants whose deposit has been improperly withheld and increase the

incentive for landlords to only withhold funds from the security deposit that cover damages beyond reasonable wear and tear to a rental unit.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

IMPACT STATEMENT

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

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RESOLUTION 07-04-2019

DIGEST

Attorneys' Fees: Adding Statutory Attorneys' Fees

Amend Civil Code section 832 to add a statutory attorneys' fees clause.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 832 as follows:

1 § 832

2 (a) Each coterminous owner is entitled to the lateral and subjacent support which his land
3 receives from the adjoining land, subject to the right of the owner of the adjoining land to make
4 proper and usual excavations on the same for purposes of construction or improvement, under
5 the following conditions:

6 1. Any owner of land or his lessee intending to make or to permit an excavation shall give
7 reasonable notice to the owner or owners of adjoining lands and of buildings or other structures,
8 stating the depth to which such excavation is intended to be made, and when the excavating will
9 begin.

10 2. In making any excavation, ordinary care and skill shall be used, and reasonable
11 precautions taken to sustain the adjoining land as such, without regard to any building or other
12 structure which may be thereon, and there shall be no liability for damage done to any such
13 building or other structure by reason of the excavation, except as otherwise provided or allowed
14 by law.

15 3. If at any time it appears that the excavation is to be of a greater depth than are the walls
16 or foundations of any adjoining building or other structure, and is to be so close as to endanger
17 the building or other structure in any way, then the owner of the building or other structure must
18 be allowed at least 30 days, if he so desires, in which to take measures to protect the same from
19 any damage, or in which to extend the foundations thereof, and he must be given for the same
20 purposes reasonable license to enter on the land on which the excavation is to be or is being
21 made.

22 4. If the excavation is intended to be or is deeper than the standard depth of foundations,
23 which depth is defined to be a depth of nine feet below the adjacent curb level, at the point where
24 the joint property line intersects the curb and if on the land of the coterminous owner there is any
25 building or other structure the wall or foundation of which goes to standard depth or deeper then
26 the owner of the land on which the excavation is being made shall, if given the necessary license
27 to enter on the adjoining land, protect the said adjoining land and any such building or other
28 structure thereon without cost to the owner thereof, from any damage by reason of the
29 excavation, and shall be liable to the owner of such property for any such damage, excepting
30 only for minor settlement cracks in buildings or other structures.

31 (b) An owner of land or lessee who either fails to provide the notice required in
32 subsections (a)(1) and (a)(3) or who fails to use ordinary care as required by subsection (a)(2)
33 and causes damage to a coterminous owner's land or structure(s) under (a)(4) shall also be liable
34 for attorneys' fees and costs incurred in any dispute regarding damage to the coterminous
35 owner's land or structure(s).

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Adjacent land owners depend on each other's land for lateral and subjacent support of the structures on one's own land. A neighbor who needs to excavate on their own property must give notice to adjacent landowners of certain kinds of excavation to allow the neighbors to shore up their own property to protect against damage to their own land or structures. Currently, Section 832 provides for strict liability for the excavating party who causes damage to their neighbor's property, save for minor settlement cracks. However, parties can differ wildly as to whether certain cracks in the non-excavating neighbor's structure were pre-existing or qualify as "minor settlement cracks," thus inviting litigation over the nature of such cracks. An unscrupulous land developer can begin excavating on their property without giving proper notice to the neighboring properties or proper support of neighboring land and simply choose to litigate damages, even if it is clear that liability exists. The litigation over the extent of the damages can overtake the cost of repairing the damage to property in the first place, thereby eviscerating the protections that section 832 seeks to afford.

The Solution: Civil Code Section 832 should have teeth in the shape of a statutory attorneys' fees clause in order to dissuade a more financially robust neighbor from aggressively litigating damages when liability is clear. The parties are still free to litigate damages, but then have to consider whether the squabbling over the size of the cracks is worth the exposure to the opponents' attorneys' fees. The existence of a statutory attorneys' fees clause would encourage settlement earlier and promote neighborhood harmony such that the neighbors whose home has already been damaged would not then be subject to years of expensive litigation against their adjoining land owner.

IMPACT STATEMENT

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

CURRENT OR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Katy M. Young

RESOLUTION 07-05-2019

DIGEST

Eminent Domain: Appraisal Costs

Amends Code of Civil Procedure section 1263.025 to clarify that a “condemning agency” is responsible for reasonable appraisal costs in eminent domain proceedings.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1263.025, to read as follows:

- 1 § 1263.025
- 2 (a) A ~~public entity~~ condemning agency shall offer to pay the reasonable costs, not to
- 3 exceed five thousand dollars (\$5,000), of an independent appraisal ordered by the owner of a
- 4 property that the public entity offers to purchase under a threat of eminent domain, at the time
- 5 the public entity makes the offer to purchase the property. The independent appraisal shall be
- 6 conducted by an appraiser licensed by the Office of Real Estate Appraisers.
- 7 (b) For purposes of this section, an offer to purchase a property “under a threat of
- 8 eminent domain” is an offer to purchase a property pursuant to any of the following:
- 9 (1) Eminent domain.
- 10 (2) Following adoption of a resolution of necessity for the property pursuant to Section
- 11 1240.040
- 12 (3) Following a statement that the ~~public entity~~ condemning agency may take the
- 13 property by eminent domain.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law requires payment of reasonable appraisal costs, not to exceed \$5,000, for an independent appraisal ordered by the owner of property subject to condemnation through eminent domain. However, Code of Civil Procedure section 1263.025 currently limits the requirement to a condemning “public entity” which means that private companies with the power of eminent domain, like utility companies, may not be included.

The Solution: By expanding the language from “public entity” to “condemning agency”, all entities vested with the power of eminent domain will be required to compensate owners for the reasonable costs of an independent appraisal.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Karen Frostrom

RESOLUTION 07-06-2019

DIGEST

Landlord Tenant: Modification of Permitted Landlord Entry on Premises

Amends Civil Code section 1954 to permit prospective recipients of real property to enter real property with adequate notice.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend the Civil Code section 1954 as follows:

- 1 §1954
- 2 (a) A landlord may enter the dwelling unit only in the following cases:
- 3 (1) In case of emergency.
- 4 (2) To make necessary or agreed repairs, decorations, alterations or improvements,
- 5 supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual;
- 6 purchasers, mortgagees, tenants, workers, or contractors, vested or contingent beneficiaries,
- 7 devisees, or donees, or to make an inspection pursuant to subdivision (f) of Section 1950.5.
- 8 (3) When the tenant has abandoned or surrendered the premises.
- 9 (4) Pursuant to court order.
- 10 (5) For the purposes set forth in Chapter 2.5 (commencing with Section 1954.201).
- 11 (6) To comply with the provisions of Article 2.2 (commencing with Section 17973) of
- 12 Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code.
- 13 (b) Except in cases of emergency or when the tenant has abandoned or surrendered the
- 14 premises, entry may not be made during other than normal business hours unless the tenant
- 15 consents to an entry during other than normal business hours at the time of entry.
- 16 (c) The landlord may not abuse the right of access or use it to harass the tenant.
- 17 (d) (1) Except as provided in subdivision (e), or as provided in paragraph (2) or (3), the
- 18 landlord shall give the tenant reasonable notice in writing of his or her intent to enter and enter
- 19 only during normal business hours. The notice shall include the date, approximate time, and
- 20 purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a
- 21 suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the
- 22 premises in a manner in which a reasonable person would discover the notice. Twenty-four hours
- 23 shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may
- 24 be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is
- 25 presumed reasonable notice in the absence of evidence to the contrary.
- 26 (2) If the purpose of the entry is to exhibit the dwelling unit to prospective or actual
- 27 purchasers, the notice may be given orally, in person or by telephone, if the landlord or his or her
- 28 agent has notified the tenant in writing within 120 days of the oral notice that the property is for
- 29 sale and that the landlord or agent may contact the tenant orally for the purpose described above.
- 30 Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. The
- 31 notice shall include the date, approximate time, and purpose of the entry. At the time of entry,
- 32 the landlord or agent shall leave written evidence of the entry inside the unit.
- 33 (3) The tenant and the landlord may agree orally to an entry to make agreed repairs or
- 34 supply agreed services. The agreement shall include the date and approximate time of the entry,
- 35 which shall be within one week of the agreement. In this case, the landlord is not required to

- 36 provide the tenant a written notice.
37 (e) No notice of entry is required under this section:
38 (1) To respond to an emergency.
39 (2) If the tenant is present and consents to the entry at the time of entry.
40 (3) After the tenant has abandoned or surrendered the unit.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Current law only permits the entry of a landlord onto the premises, without the consent of the tenant, in certain circumstances, absent a court order. While the list of situations where entry is permitted is somewhat exhaustive, it does not allow for entry in situations where the transfer of ownership of the property may not be pursuant to a sale.

In addition to a sale, real property can be transferred by a gift and/or devise. In all situations, it is likely that the fiduciary will need to enter the premises to inspect the condition, in order to ensure proper administration of the estate. Current law does not permit such entry without either the consent of the tenants or the substantial expense of obtaining a court order.

Additionally, it is possible that either through the terms of the testamentary instrument or by dispute amongst the beneficiaries, in kind distributions of property can be made, effectively altering the dispositive scheme. Such distributions require beneficiaries to enter the premises to determine the condition to allow them to make an educated decision on whether they: (1) want the property, and (2) what value they will place on the property.

The Solution: One minor tweak to Civil Code section 1954 can alleviate all issues without placing any additional burden on the tenant. Adding prospective or actual recipients alleviates the issues preventing fiduciaries and beneficiaries from entering the premises to review the real property prior to receipt.

The proposed modification will not significantly adversely affect any tenants. The landlord is still prohibited from entering the premises without adequate notice and from entering during unreasonable hours. This modification will not place any improper burden on a tenant, but rather, eliminates a void preventing the adequate administration of estates.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None.

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RESPONSIBLE FLOOR DELEGATE: Joseph E. Gruber, Jr.

RESOLUTION 07-07-2019

DIGEST

Home Owners Associations: Document Delivery

Amends Civil Code section 4040 to allow Home Owners Associations to deliver routine documents by email, facsimile or other electronic means without prior written consent of recipient.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add Civil Code section 4040, to read as follows:

- 1 § 4040
- 2 (a) If a provision of this act requires that an association deliver a document by “individual
- 3 delivery” or “individual notice,” the document shall be delivered by one of the following
- 4 methods:
- 5 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
- 6 overnight delivery by an express service carrier. The document shall be addressed to the
- 7 recipient at the address last shown on the books of the association.
- 8 (2) Email, facsimile, or other electronic means, ~~if the recipient has consented, in writing~~
- 9 ~~or by email, to that method of delivery. The consent may be revoked, in writing or by email, by~~
- 10 ~~the recipient.~~
- 11 (b) Upon receipt of a request by a member, pursuant to Section 5260, identifying a
- 12 secondary address for delivery of notices of the following types, the association shall deliver an
- 13 additional copy of those notices to the secondary address identified in the request:
- 14 (1) The documents to be delivered to the member pursuant to Article 7 (commencing
- 15 with Section 5300) of Chapter 6.
- 16 (2) The documents to be delivered to the member pursuant to Article 2 (commencing
- 17 with Section 5650) of Chapter 8, and Section 5710.
- 18 (c) For the purposes of this section, an unrecorded provision of the governing documents
- 19 providing for a particular method of delivery does not constitute agreement by a member to that
- 20 method of delivery.

(Proposed language to be added underlined, language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code section 4040(a)(2) in its current form only allows Homeowners Associations (HOAs) to deliver required, routine information to Members via email “if the recipient has consented.” For example, HOAs are required to deliver multiple-page documents to the Members every year. Civil Code section 5300 requires every HOA to “distribute an annual budget report” to the Members, and Civil Code section 5310 requires every HOA to “distribute an annual policy statement” to the Members. HOAs also routinely deliver copies of

board meeting agendas and board meeting minutes (when requested). Compliance with section 4040(a)(2) as currently written can be, and usually is unnecessarily costly. The cost of printing and postage can in many instances run into the thousands of dollars.

The Solution: If HOAs had the option to send routine financial reports, policy statements, and board meeting agendas and minutes by email, then the delivery costs would be minimal. This resolution would allow HOAs to deliver **such** routine documents by email or by printing hard copies and sending them by U.S. mail. If a Member wants a “hard copy” of an HOA document, the Member can easily print out a hard copy from a pdf file that will be delivered by email, facsimile or other electronic means. In addition, if a Member does not have access to a personal computer with a printer, the Member can contact the HOA’s property manager and make arrangements to pay for the printing and mailing costs. *See* Civil Code section 5205(f), which allows the HOA to “bill the requesting member for the direct and actual cost of copying and mailing requested documents.” *See also* section 5220, which allows a Member to receive information through the “alternative process described in subdivision (c) of section 8330 of the Corporations Code.”

Further, the Civil Code has special delivery requirements for documents about “Member Election” (including elections for assessments and amendments to the governing documents) in sections 5100-5145, “Assessment Payment and Delinquency,” in sections 5850-5985, and “Dispute Resolution and Enforcement,” in sections 5850-5985. This resolution would not affect those special requirements.

When delivering routine required documents to the Members, Homeowners Associations should be allowed to provide the documents by email, facsimile, other electronic means, or U.S. mail. If certain Members refuse to provide their email addresses, Civil Code section 5205(f), under “Record Inspection,” allows Associations to charge Members fees for the associated printing and mailing costs before the documents are delivered.

CURRENT OR PRIOR RELATED LEGISLATION

SB 261 (Roth, 2018), which amended Civil Code section 4040.

IMPACT STATEMENT:

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

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, 448 Ignacio Blvd, #124, Novato, CA 94949, catherinerucker@me.com, 415-246-6647.

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 07-08-2019

DIGEST

Civil: Exclude Amendment of HOA Operating Rules from Secret Ballot Requirements

Amends Civil Code section 5100 to exclude votes on HOA operating rules from the general requirement that votes on HOA governing documents be done by secret ballot.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Civil Code section 5100, to read as follows:

- 1 § 5100
- 2 (a) Notwithstanding any other law or provision of the governing documents, elections
- 3 regarding assessments legally requiring a vote, election and removal of directors, amendments to
- 4 the governing documents, excluding any amendment of the operating rules, or the grant of
- 5 exclusive use of common area pursuant to Section 4600 shall be held by secret ballot in
- 6 accordance with the procedures set forth in this article.
- 7 (b) This article also governs an election on any topic that is expressly identified in the
- 8 operating rules as being governed by this article.
- 9 (c) The provisions of this article apply to both incorporated and unincorporated
- 10 associations, notwithstanding any contrary provision of the governing documents.
- 11 (d) The procedures set forth in this article shall apply to votes cast directly by the
- 12 membership, but do not apply to votes cast by delegates or other elected representatives.
- 13 (e) In the event of a conflict between this article and the provisions of the Nonprofit
- 14 Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title
- 15 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.
- 16 (f) Directors shall not be required to be elected pursuant to this article if the governing
- 17 documents provide that one member from each separate interest is a director.

(Proposed language to be added underlined, language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): There is a conflict between Civil Code sections 5050 and 4150. Section 5050 sets out a secret ballot process to amend all HOA governing documents, which include “operating rules.” In contrast, section 4150 sets out a less formal process to amend “operating rules.”

Civil Code section 4150 defines the term "governing documents" as:

The declaration [Declaration of Covenants, Conditions, and Restrictions ("CC&Rs")] and any other documents, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

As a result, "operating rules" are defined as one of several types of HOA "governing documents."

Sections 5100-5145, prescribe the procedures for HOA "Member Election," and specify the secret ballot requirements for such "member elections", and the requirements also apply to amending HOA "governing documents."

In contrast, section 4360 sets out informal notice and approval requirements to amend "operating rules." Section 4360 requires a 28 day notice period and allows the Board of Directors to approve amended operating rules at an open session of a subsequent Board Meeting without mailing of ballots to all Members and without a formal election.

The Solution: This resolution resolves the conflict between Civil Code section 5100 and section 4150 by excluding the amendment of "operating rules" from section 5100.

CURRENT OR PRIOR RELATED LEGISLATION

AB 569 (Chau, 2014), which amended Civil Code section 5100 for "Member Election."
SB 261 (Roth, 2018), which amended Civil Code section 4360 for "Operating Rules."

IMPACT STATEMENT

This resolution would not impact any other law.

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