

RESOLUTION 04-10-2016

DIGEST

Releases: Expand Section 1542 Releases Beyond Debtors

Amends Civil Code section 1542 to make a general release applicable to any releasing party.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1542 to read as follows:

§1542

- 1 A general release does not extend to claims which the ~~creditor~~ releasing party does not
- 2 know or suspect to exist in his or her favor at the time of executing the release, which if known
- 3 by him or her must have materially affected his or her settlement with the ~~debtor~~ released party.

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: This statute is used in virtually every single settlement agreement in the state. Although case law and counsel have come to accept it as generally applicable to all types of settlement situations in which one party may have an unknown claim against the other, it becomes very problematic when a pro per is involved. Parties have pushed back at this language with the belief that they are not a “creditor” or “debtor” in the traditional sense, such as family law cases. As a result, it is more difficult to obtain release of claims from those parties who refuse to sign based on the creditor or debtor language.

The Solution: This resolution modifies the creditor and debtor language to releasing party and released party to clarify that it is applicable to all situations in which there may be an unknown claim. This is consistent with how the courts interpret and treat Section 1542.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 1542 to make a general release applicable to any releasing party. This resolution should be approved in principle because it uses a broader and more accurate and adaptable releasing party/released party vernacular, over the more confining creditor/debtor dichotomy.

Civil Code section 1542, providing that a general release does not extend to claims not known or suspected to exist at the time of the release, is employed in virtually all releases, whether protectively or specifically waived, and whether the releasing party is a creditor, debtor, or someone else. The proposed change employs broader, more apt and flexible language, universally applying to all pertinent situations, unlike the narrow formulation in the current statute. The resolution would clarify the statute's applicability to releases associated with tort claims, family law matters, and business dealings, which may not involve a true creditor-debtor relationship.

COUNTERARGUMENTS

TEXCOM

SUPPORT IN PRINCIPLE

Rationale:

The proponents of this resolution note that Civil Code section 1542 is commonly used in settlement agreements in California. Although courts accept that section 1542 is generally applicable to all types of settlement situations in which one party may have an unknown claim against another party, the use of the terms "creditor" and "debtor" in the language of section 1542 is confusing to unrepresented parties and can deter settlement if those unrepresented parties object to the language because they are not a "creditor" or "debtor" in the traditional sense. To resolve that problem, the author of the resolution suggests that the term "creditor" be changed to "releasing party" and the term "debtor" be changed to "released party" to clarify that the statute applies to all situations in which there may be an unknown claim.

The proposed amended Civil Code section 1542 would read as follows:

§1542

A general release does not extend to claims which the ~~creditor~~ releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the ~~debtor~~ released party. TEXCOM's position is that the proposed change may cause confusion in light of the fact that Civil Code section 1541 also uses the terms "debtor" and "creditor."

TEXCOM suggests that rather than striking the terms "creditor" and "debtor" from section 1542, the statute be amended to read "creditor or releasing party" and "debtor or released party" to accomplish the author's objective and to avoid the possibility of confusion.

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