

## RESOLUTION 01-05-2017 (REVISED)

### DIGEST

#### Real Property: Exempt Private Property from Eminent Domain for Private Purchase

Recommends legislation be sponsored to introduce a ballot initiative to amend California Constitution article 1, section 19 to prohibit the use of eminent domain procedures to acquire private property for the purpose of conveying it to a private person.

### RESOLUTIONS COMMITTEE ANALYSIS

#### History:

This resolution is similar to resolution 12-03-2016, which was disapproved.

#### Reasons:

This resolution recommends legislation be sponsored to introduce a ballot initiative to amend California Constitution article 1, section 19 to prohibit the use of eminent domain procedures to acquire private property for the purpose of conveying it to a private person. This resolution should be approved in principle because the required public vote on such a constitutional amendment would answer the question of whether or not private owners and other private interest holders of property in California should be non-consensually deprived of their property for a use that would ultimately be private.

Under current law, only single family residences occupied by the owner for at least one year enjoy protection from condemnation for the purpose of conveyance to a private person under Article 1, section 19, subdivision (b). This resolution amends subdivision (b) to expand that protection to any private property.

The specific change proposed by the resolution does not change the clarifications at subdivisions (c) and (d) that eminent domain procedures as to such property remain available for the purpose of protecting public health and safety; preventing serious, repeated criminal activity; responding to an emergency; remedying environmental contamination; or acquiring private property for a public use or improvement. This resolution simply clarifies that any private property would be protected from non-consensual taking through eminent domain for conveyance to a private person, not just the residences occupied by owners for at least one year before an initial written offer to purchase. In 2011, the Legislature amended Health and Safety Code sections 33500, 33501, 33607.5, and 33607.7, added Part 1.8 (commencing with section 34161) and Part 1.85 (commencing with section 34170) to Division 24, and added sections 97.401 and 98.2 to effectively abolish redevelopment agencies and remove their ability to condemn property for redevelopment.

The main question posed by this resolution is whether that change should be made permanent by embedding it in the California Constitution in light of the fact there are no federal constitutional protections. (*Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005).) Clarification is, however, needed in relation to the effect on public utilities which are often private entities that are currently able to exercise eminent domain for the purpose of acquiring rights of way. (See,

e.g., Pub. Util. Code § 612; Barham v. Southern California Edison Co.(1999) 74 Cal.App.4th 744, 752.)

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored for a ballot initiative to amend California Constitution section 19, to read as follows:

1 § 19

2 (a) Private property may be taken or damaged for a public use and only when just  
3 compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the  
4 owner. The Legislature may provide for possession by the condemnor following commencement  
5 of eminent domain proceedings upon deposit in court and prompt release to the owner of money  
6 determined by the court to be the probable amount of just compensation.

7 (b) The State and local governments are prohibited from acquiring private property by  
8 eminent domain ~~an owner-occupied residence~~ for the purpose of conveying it to a private person.

9 (c) Subdivision (b) of this section does not apply when State or local government  
10 exercises the power of eminent domain for the purpose of protecting public health and safety;  
11 preventing serious, repeated criminal activity; responding to an emergency; or remedying  
12 environmental contamination that poses a threat to public health and safety.

13 (d) Subdivision (b) of this section does not apply when State or local government  
14 exercises the power of eminent domain for the purpose of acquiring private property for a public  
15 work or improvement.

16 (e) For the purpose of this section:

17 1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise,  
18 or otherwise.

19 2. "Local government" means any city, including a charter city, county, city and county,  
20 school district, special district, authority, regional entity, redevelopment agency, or any other  
21 political subdivision within the State.

22 ~~3. "Owner-occupied residence" means real property that is improved with a single family  
23 residence such as a detached home, condominium, or townhouse and that is the owner or  
24 owners' principal place of residence for at least one year prior to the State or local government's  
25 initial written offer to purchase the property. Owner-occupied residence also includes a  
26 residential dwelling unit attached to or detached from such a single family residence which  
27 provides complete independent living facilities for one or more persons.~~

28 ~~34. "Person" means any individual or association, or any business entity, including, but  
29 not limited to, a partnership, corporation, or limited liability company.~~

30 ~~45. "Public work or improvement" means facilities or infrastructure for the delivery of  
31 public services such as education, police, fire protection, parks, recreation, emergency medical,  
32 public health, libraries, flood protection, streets or highways, public transit, railroad, airports and  
33 seaports; utility, common carrier or other similar projects such as energy-related,  
34 communication-related, water-related and wastewater-related facilities or infrastructure; projects~~

35 identified by a State or local government for recovery from natural disasters; and private uses  
36 incidental to, or necessary for, the public work or improvement.  
37 56. "State" means the State of California and any of its agencies or departments.

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

**PROPONENT:** San Diego County Bar Association

### **STATEMENT OF REASONS**

The Problem: California is one of the worst states for people whose property is taken by the government. The government is supposed to take it for only a public use, but under current precedent, the government can even take from one person to give the property to another, purely on the claim that the other person can produce more tax revenue, and that is considered a "public use." The only exception is someone's principal place of residence that's been lived in for at least a year. However, the biggest abuse is taking the property of one's business and giving it to another, and that is no better; taking the roof over your head is not different from taking what pays for the roof over your head. This practice had a break for a few years when the governor and legislature abolished redevelopment agencies. However, redevelopment agencies have been revived in limited forms, reopening the door to eminent domain abuse.

Other serious attempts at reforming eminent domain that have made the ballot included restrictions on property regulations, and have then been voted down. We have never had a chance to vote a straight protection from eminent domain abuse for all forms of property.

The Solution: This resolution extends the protections currently reserved for owner-occupied homes that have been lived in at least a year to all private property; it still allows taking private property for a public work or improvement, it does not permit taking private property to convey it to another private owner.

### **IMPACT STATEMENT**

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

### **CURRENT OR PRIOR RELATED LEGISLATION**

SCA 15 (2005), SCA 20 (2005), ACA 15 (2005), ACA 22 (2005), ACA 2 (2006), ACA 8 (2007), SCA 1 (2006), Proposition 90 (2006), Proposition 98 (2008), Proposition 99 (2008).

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