

#36.470

4/23/73

First Supplement to Memorandum 73-19

Subject: Study 36.470 - Condemnation (Comprehensive Statutes Chapter 7. Deposit and Possession Prior to Final Judgment)

At the April 1973 meeting, the Commission requested the staff to prepare a provision for recovery of rental loss in situations where the owner of the leased property serves a demand on the plaintiff for a deposit of probable compensation and the plaintiff does not comply. Exhibit I is such a provision.

Respectfully submitted,

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EXHIBIT I

§ 1255.041

§ 1255.041. Deposit on motion of owner of income property

1255.041. (a) If the property to be taken is subject to a leasehold interest and the plaintiff has not made a deposit that satisfies the requirements of this article, the lessor may move the court for an order determining the amount of compensation for the property in the same manner and subject to the same procedures and conditions as a motion pursuant to Section 1255.040 except that, upon the plaintiff's failure to make any deposit so ordered, interest shall not commence to accrue.

(b) If the plaintiff fails to make any deposit ordered pursuant to subdivision (a), the court shall include in the compensation awarded in the eminent domain proceeding or the damages on abandonment the lessor's net rental losses occurring after the date specified in the order where both of the following are established:

- (1) The losses are directly attributable to actions of the plaintiff or the pendency of the eminent domain proceeding.
- (2) The losses exceed the normal rental or vacancy experience for similar properties in the area not subject to condemnation.

Comment. Section 1255.041 is new to California law. Section 1255.041 provides for recovery of rental losses only where the lessor has obtained an order requiring a deposit prior to judgment and the plaintiff fails to comply. Compare Klopping v. City of Whittier, 8 Cal.3d 39, \_\_\_ P.2d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1972)(rental losses prior to service of summons may be recovered in cases of unreasonable delay or other unreasonable conduct by plaintiff).