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8/22/69

Memorandum 69-106

Subject: Study 50 - Leases

As you know, the Commission's bill to effectuate the recommendation on leases was defeated on the Assembly floor, reconsideration was granted, and the bill ultimately was rereferred to the Assembly Judiciary Committee which decided that the bill needed interim study.

Apparently, the problem with the bill was that it permitted a lump sum judgment for the difference between the rent provided in the lease and the reasonable rental value of the property. The fear was expressed that the lessor would recover a huge judgment from the lessee at a time when the property had not been rented and would then receive a windfall upon reletting the property. The existing law permits this result only if the lease provides for this remedy. Our bill would have provided this relief in every case.

The staff believes that this problem can be met--hopefully to the satisfaction of all interested persons and organizations--by restoring the existing law on the recovery for loss of future rent from the time of judgment. This change in the bill could be accomplished by revising Section 1951.2 to read as follows:

1951.2. (a) Except as otherwise provided in Section 1951.4, if a lessee of real property breaches the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the lessee proves could have been reasonably avoided;

(3) A reasonable commission for the reletting of the property;

~~(3)~~--The (4) If the lease so provides, the worth at the time of award of the amount by which the unpaid rent for the balance of the term (or such lesser period as the lease provides) after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided; and

~~(4)~~--Any (5) If the lease so provides, any other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

(b) The "worth at the time of award" of the amounts referred to in paragraphs (1) and (2) of subdivision (a) is computed by allowing interest at such lawful rate as may be specified in the lease or, if no such rate is specified in the lease, at the legal rate. The worth at the time of award of the amount referred to in paragraph ~~(3)~~ (4) of subdivision (a) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

(c) Efforts by the lessor to mitigate the damages caused by the lessee's breach of the lease do not waive the lessor's right to recover damages under this section.

(d) Nothing in this section affects the right of the lessor under a lease of real property to indemnification for liability arising prior to the termination of the lease for personal injuries or property damage where the lease provides for such indemnification.

If the Commission believes that this would be a desirable revision, we can revise the former recommendation to make this change and send it out for comment after the September meeting. We would hope to have the comments from interested persons in time for our October meeting and, if the comments are favorable for the bill as revised, the Commission could have the revised bill introduced at the 1970 legislative session.

Respectfully submitted,

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Executive Secretary