

## Memorandum 75-40

Subject: Study 36.300 - Condemnation (AB 11 and Related Bills)

The suggestion was made at the May 1975 meeting that the definition of "litigation expenses" be broadened to permit recovery of lobbying fees expended to obtain abandonment of the proceeding. The Commission requested that the staff prepare a memorandum indicating the places in the Eminent Domain Law where the phrase "litigation expenses" is used.

The definition of litigation expenses in the Eminent Domain Law is found in Section 1235.140, which provides:

1235.140. "Litigation expenses" includes both of the following:

(a) All expenses reasonably and necessarily incurred in the proceeding in preparing for trial, during trial, and in any subsequent judicial proceedings.

(b) Reasonable attorney's fees, appraisal fees, and fees for the services of other experts where such fees were reasonably and necessarily incurred to protect the defendant's interests in the proceeding in preparing for trial, during trial, and in any subsequent judicial proceedings whether such fees were incurred for services rendered before or after the filing of the complaint.

This definition continues existing law. It is used in eight provisions of the Eminent Domain Law:

(1) Dismissal or defeat of right to take. The key litigation expense section is Section 1268.610. It provides for the award of litigation expenses where the proceeding is wholly or partly dismissed for any reason or the final judgment is that the plaintiff may not acquire the property. This would require litigation expenses where there is a voluntary abandonment, an implied abandonment (e.g., for failure to pay the judgment), a partial abandonment, or a failure to prosecute.

(2) Entry on property. Where an entry on property by the plaintiff was unlawful, abusive, or violative of court order, litigation expenses are recoverable under Section 1245.060.

(3) Disclaimer. Section 1250.325 provides that a defendant's disclaimer of interest in the property may be implemented by an award of litigation expenses.

(4) Amendment of complaint. Among the terms and conditions the court may impose before permitting amendment of the complaint is the award of litigation expenses which would not otherwise have been incurred if the proceeding as originally commenced had been the same as the proceeding following amendment. Section 1250.340.

(5) Settlement offers. Section 1250.410 provides for the award of litigation expenses where the offer of the plaintiff was unreasonable and the demand of the defendant was reasonable.

(6) Prejudgment deposits. Where the plaintiff has taken possession of property and the court increases the amount required to be deposited, the plaintiff's failure to deposit the increased amount may lead to dismissal and an award of litigation expenses. Section 1255.030.

(7) Exchange of valuation data. Among the terms and conditions the court may impose as a prerequisite to permitting a witness for whom no valuation data has been exchanged to testify is the award of litigation expenses. Section 1258.290.

(8) Conditional dismissal. Where the defendant shows the plaintiff has no right to take, Section 1260.120 permits the court to make a conditional dismissal of the proceeding, subject to remedial action by the plaintiff. In such a case the court may require the plaintiff to pay all or part of the defendant's reasonable litigation expenses necessarily incurred because of the plaintiff's mistake.

Respectfully submitted,

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