



Supplemental Agenda Related Writings/ Documents Provided To  
A Majority Of The Ridgecrest City Council / Redevelopment  
Agency Board Members After Distribution Of The  
July 15, 2009 Agenda Packet

Additional Information/Corrections For  
Agenda Item Number 1

This information is available for viewing on  
The City of Ridgecrest web page

<http://ci.ridgecrest.ca.us>

City Council Agendas



2393 Townsgate Road • Suite 201 • Westlake Village • California 91361 • Tel: 805-495-4770 • Fax: 805-495-2787

July 14, 2009

Michael D. Avery, City Manager  
City of Ridgecrest  
100 W. California Ave.  
Ridgecrest, CA 93555-4054

**RE: Eviction Regulations**

We are asked whether the City may regulate the eviction of tenants in connection with foreclosure sales. We conclude the City lacks clear authority to adopt such a regulation.

At least three and often more than three parties can be affected when a trust deed is foreclosed on property occupied by a tenant: the property owner, the beneficiary of the trust deed, the trustee for the trust deed, and the tenant. The legal relationship between the property owner, the beneficiary and the trustee is set forth in the law and in a contract, i.e., "deed of trust." The relationship between the property owner and the tenant is set forth in the law, in a "lease" or an oral agreement. The trust deed will include the agreement among the property owner, beneficiary, and trustee as to how to foreclose if the property owner breaches the agreement. The written lease will say how to terminate the leasehold interest if the tenant breaches the lease agreement. The relationship between the trust deed and the lease can vary. The trust deed can be "subject to" the lease, in which event, foreclosure will have no effect on the lease. The lease can be subordinated to the trust deed, in which event, foreclosure can terminate the lease.

The United States Constitution says government cannot "impair" contracts. A regulation which prevents the eviction of tenants during or after foreclosure proceedings will impair the contract rights of the beneficiary, trustee, and tenant. However, not every impairment is prohibited. The jurisprudence of contract impairment is complicated. Courts will balance the public policy of the regulation with the burden of the impairment to decide whether an unconstitutional impairment has occurred. We are not ready to conclude an unconstitutional impairment will occur if the proposal is adopted. For example, courts have allowed rent control regulations to override leases and eviction regulations have been permitted to enforce rent controls. However, the public policy concerning foreclosures and evictions is complicated by our nation's "housing crisis." It is also not clear the proposed regulation would advance a public purpose, or a public purpose more important than the burden of impairment.

Even in the absence of impairment, a city cannot adopt a regulation unless the city has the power to act. Cities have powers over *municipal affairs*. The municipal affairs

doctrine is amorphous. The cases allowing eviction regulation are in the context of ensuring the effectiveness of rent-control programs. This rationale does not exist in the absence of rent control. The next question is whether cities can adopt eviction regulations in the absence of rent control.

In deciding whether a municipal affair exists, the courts will consider whether the state has adopted statutes or regulations covering the subject. Even though it is not logical, state statutes become arguments against the existence of a municipal affair. The State of California has adopted statutes and regulations for banking transactions, including many types of home loans. Code of Civil Procedure § 1161(b) says a tenant in possession when a property is sold in foreclosure shall be given sixty days written notice to quit before the tenant can be removed in the foreclosure proceeding. This seems to preempt local eviction regulations. But the statute amending § 1161(b) also says:

“Nothing in this act is intended to affect any local just-cause eviction ordinance. This act does not, and shall not, be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.”

This statute does not support preemption but does not empower eviction regulations within the context of rent control or otherwise. The city may have the power to regulate evictions without rent control but no statute supports such a conclusion.

It is not clear eviction regulations pass the contract impairment test in light of current conditions in the housing market. Assuming eviction regulations can pass the contract impairment test, the City can regulate evictions as part of a rent control program but there is no authority for an eviction regulation in the absence of a rent control program.<sup>1</sup>

Very truly yours,

LEMIEUX & O'NEILL

  
Wayne K. Lemieux

WKL/lms

---

<sup>1</sup> The City could be required to pay attorney fees and punitive damages if the eviction regulation is found to violate the impairment clause. In the absence of clear authority, the City should commence a test case before adopting a regulation.