

AMENDED IN ASSEMBLY JANUARY 13, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1263**

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**Introduced by Assembly Member Audra Strickland**

February 27, 2009

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An act to amend Section 1162 of the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 1263, as amended, Audra Strickland. Unlawful detainer: service of notice.

Existing law governs unlawful detainer proceedings to effect the removal of a tenant from the property. Existing law specifies the manner of serving notice upon a tenant under those circumstances. Existing law requires service of the notice by delivering a copy to the tenant personally. If the tenant is absent from his or her place of residence, and from his or her usual place of business, existing law provides that notice may be served by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence. If the residence and business cannot be ascertained, or a person of suitable age and discretion there cannot be found, existing law authorizes the notice to be served by affixing a copy in a conspicuous place on the property and delivering a copy to the person there residing, if that person can be

found, and by sending a copy through the mail addressed to the tenant at the place where the property is situated.

This bill would revise the provision governing the methods of serving notice upon a *commercial* tenant, *as defined*, for purposes of the unlawful detainer provisions by deleting the requirement that service be made at the tenant’s place of residence or usual place of business. The bill would instead require that service be made by (1) delivering a copy of the notice to the tenant personally, (2) leaving a copy of the notice at the property with a person of suitable age and discretion and mailing a copy of the notice to the tenant at the address of the property and at an alternate address designated in writing by the tenant and accepted in writing by the landlord, or (3) affixing a copy of the notice in a conspicuous place on the property and mailing a copy of the notice to the tenant at the address of the property and the alternate address, if the process server attests under penalty of perjury that he or she was unable to serve the tenant, using reasonable diligence, by the other 2 methods. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program provide that service upon a commercial tenant be made by (1) delivering a copy to the tenant personally, (2) leaving a copy with some person of suitable age and discretion at the property and sending a copy through the mail, as specified, or (3) by affixing a copy in a conspicuous place on the property and sending a copy through the mail, as specified.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: ~~yes-no~~.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1162 of the Code of Civil Procedure is  
2 amended to read:

3 1162. ~~The~~(a) Except as provided in subdivision (b), the notices  
4 required by Sections 1161 and 1161a may be served, ~~either~~ by any  
5 of the following methods:

6 ~~±~~

7 (1) By delivering a copy to the tenant personally; ~~or,~~

1 ~~2.~~

2 (2) If he or she is absent from his or her place of residence, and  
3 from his or her usual place of business, by leaving a copy with  
4 some person of suitable age and discretion at either place, and  
5 sending a copy through the mail addressed to the tenant at his or  
6 her place of residence; ~~or,~~

7 ~~3.~~

8 (3) If such place of residence and business can not be  
9 ascertained, or a person of suitable age or discretion there can not  
10 be found, then by affixing a copy in a conspicuous place on the  
11 property, and also delivering a copy to a person there residing, if  
12 such person can be found; and also sending a copy through the  
13 mail addressed to the tenant at the place where the property is  
14 situated. Service upon a subtenant may be made in the same  
15 manner.

16 (b) *The notices required by Section 1161 may be served upon*  
17 *a commercial tenant by any of the following methods:*

18 (1) *By delivering a copy to the tenant personally.*

19 (2) *If he or she is absent from the commercial rental property,*  
20 *by leaving a copy with some person of suitable age and discretion*  
21 *at the property, and sending a copy through the mail addressed*  
22 *to the tenant at the address where the property is situated.*

23 (3) *If a person of suitable age or discretion can not be found at*  
24 *the rental property, then by affixing a copy in a conspicuous place*  
25 *on the property, and also sending a copy through the mail*  
26 *addressed to the tenant at the address where the property is*  
27 *situated. Service upon a subtenant may be made in the same*  
28 *manner.*

29 (c) *For purposes of subdivision (b), “commercial tenant” means*  
30 *a person or entity that hires any real property in this state that is*  
31 *not a dwelling unit, as defined in subdivision (c) of Section 1940*  
32 *of the Civil Code, or a mobilehome, as defined in Section 798.3*  
33 *of the Civil Code.*

34 ~~SECTION. 1. Section 1162 of the Code of Civil Procedure is~~  
35 ~~amended to read:~~

36 ~~1162. The notices required by Sections 1161 and 1161a may~~  
37 ~~be served by any of the following methods:~~

38 ~~(a) By delivering a copy to the tenant personally.~~

39 ~~(b) If the tenant is absent from the property, by leaving a copy~~  
40 ~~with a person of suitable age and discretion at the property, and~~

1 sending a copy through the mail addressed to the tenant at the  
2 property and to any one alternate location specified in writing by  
3 the tenant for these purposes, and acknowledged in writing by the  
4 landlord.

5 (e) If service cannot be achieved by the methods described in  
6 subdivisions (a) and (b), and the process server attests, under  
7 penalty of perjury, that he or she has used reasonable diligence in  
8 attempting service, then by affixing a copy in a conspicuous place  
9 on the property and sending a copy through the mail addressed to  
10 the tenant at the property and the alternate location described in  
11 subdivision (b). Service upon a subtenant may be made in the same  
12 manner. Attestation of reasonable diligence by a certified process  
13 server shall be prima facie proof of that fact for purposes of this  
14 subdivision.

15 (d) For purposes of this section, "property" refers to the property  
16 that is the subject of the lease.

17 SEC. 2. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 a local agency or school district has the authority to levy service  
20 charges, fees, or assessments sufficient to pay for the program or  
21 level of service mandated by this act or because costs that may be  
22 incurred by a local agency or school district will be incurred  
23 because this act creates a new crime or infraction, eliminates a  
24 crime or infraction, or changes the penalty for a crime or infraction,  
25 within the meaning of Section 17556 of the Government Code, or  
26 changes the definition of a crime within the meaning of Section 6  
27 of Article XIII B of the California Constitution.