

Senate Bill No. 1149

Passed the Senate August 26, 2010

Secretary of the Senate

Passed the Assembly August 25, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1161.2 and 1166 of, and to add and repeal Section 1161c of, the Code of Civil Procedure, relating to residential tenancies and foreclosure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1149, Corbett. Residential tenancies: foreclosure.

Existing law governs unlawful detainer proceedings. Existing law authorizes the court clerk to allow access to limited civil case records filed under these provisions to certain persons, including a party to the action or a resident of the premises, under certain conditions, without regard to when they request that access. Existing law also authorizes the clerk to allow access to any other person 60 days after the complaint has been filed, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action, except as specified.

This bill would additionally authorize the clerk to allow access to those records to any other person in the case of a complaint involving residential property that has been sold in foreclosure, or under other, specified proceedings, as indicated in the caption of the complaint, if 60 days have elapsed since the complaint was filed with the court and judgment against all defendants has been entered for the plaintiff, after a trial. The bill would also require the plaintiff in those proceedings to include a specified caption in the complaint. If judgment is not entered under these conditions, the bill would prohibit the clerk from allowing access to any court records in the action, except to the persons described above who are permitted access without regard to when they request access.

Existing law governing unlawful detainer proceedings also requires that a tenant or subtenant in possession of a rental housing unit, as defined, which has been sold by reason of certain enumerated causes, including foreclosure, who rents or leases the rental housing unit either on a periodic basis, as specified, or for a fixed period of time, be given written notice to quit, as specified, at least as long as the term of hiring itself but not exceeding 30

days, before the tenant or subtenant may be removed from that rental housing unit.

This bill would additionally require, until January 1, 2013, that any notice to quit regarding a housing unit served within one year after a foreclosure sale include a separate cover sheet that contains an additional notice to renters. The bill would set forth the content of this notice providing the tenant with specified information regarding tenants' rights. The bill would also provide that under certain circumstances the cover sheet need not be served, as specified.

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

SECTION 1. Section 1161.2 of the Code of Civil Procedure is amended to read:

1161.2. (a) The clerk may allow access to limited civil case records filed under this chapter, including the court file, index, and register of actions, only as follows:

- (1) To a party to the action, including a party's attorney.
- (2) To any person who provides the clerk with the names of at least one plaintiff and one defendant and the address of the premises, including the apartment or unit number, if any.
- (3) To a resident of the premises who provides the clerk with the name of one of the parties or the case number and shows proof of residency.
- (4) To any person by order of the court, which may be granted ex parte, on a showing of good cause.
- (5) Except as provided in paragraph (6), to any other person 60 days after the complaint has been filed, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action, except as provided in paragraphs (1) to (4), inclusive.
- (6) In the case of a complaint involving residential property based on Section 1161a as indicated in the caption of the complaint, as required in subdivision (c) of Section 1166, to any other person, if 60 days have elapsed since the complaint was filed with the court, and, as of that date, judgment against all defendants has been entered for the plaintiff, after a trial. If judgment is not entered under the conditions described in this paragraph, the clerk shall

not allow access to any court records in the action, except as provided in paragraphs (1) to (4), inclusive.

(b) For purposes of this section, “good cause” includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an order upon a showing of good cause therefor. The notice shall contain on its face the name and telephone number of the county bar association and the name and telephone number of an office or offices funded by the federal Legal Services Corporation or qualified legal services projects that receive funds distributed pursuant to Section 6216 of the Business and Professions Code, that provide legal services to low-income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to “all occupants” and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall charge an additional fee of fifteen dollars (\$15) for filing a first

appearance by the plaintiff. This fee shall be added to the uniform filing fee for actions filed under this chapter.

(e) This section does not apply to a case that seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

SEC. 2. Section 1161c is added to the Code of Civil Procedure, to read:

1161c. (a) In the case of any foreclosure on a residential property, the immediate successor in interest in the property pursuant to the foreclosure shall attach a cover sheet, in the form as set forth in subdivision (b), to any notice of termination of tenancy served on a tenant of that property within the first year after the foreclosure sale. This notice shall not be required if any of the following apply:

- (1) The tenancy is terminated pursuant to Section 1161.
- (2) The successor in interest and the tenant have executed a written rental agreement or lease or a written acknowledgment of a preexisting rental agreement or lease.
- (3) The tenant receiving the notice was not a tenant at the time of the foreclosure.

(b) The cover sheet shall consist of the following notice, in at least 12-point type:

Notice to Any Renters Living At
[street address of the unit]

The attached notice means that your home was recently sold in foreclosure and the new owner plans to evict you.

You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers it may hurt your credit if you do not respond and simply move out.

Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without hurting your credit. You should ask a lawyer about it.

You may have the right to stay in your home for 90 days or longer, regardless of any deadlines stated on any attached papers. In some cases and in some cities with a “just cause for eviction

law,” you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

How to Get Legal Help

If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

(c) If the notice to quit specifies an effective date of at least 90 days after the notice is served, without qualification, no cover sheet shall be required, provided that the notice incorporates the text of the cover sheet, as set forth in subdivision (b) in at least 10-point type. The incorporated text shall omit the caption and the first paragraph of the cover sheet and the fourth paragraph of the cover sheet shall be replaced by the following language:

You may have the right to stay in your home for longer than 90 days. If you have a lease that ends more than 90 days from now, the new owner must honor the lease under many circumstances. Also, in some cases and in some cities with a “just cause for eviction law,” you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 3. Section 1166 of the Code of Civil Procedure is amended to read:

1166. (a) The complaint shall:

(1) Be verified and include the typed or printed name of the person verifying the complaint.

(2) Set forth the facts on which the plaintiff seeks to recover.

(3) Describe the premises with reasonable certainty.

(4) If the action is based on paragraph (2) of Section 1161, state the amount of rent in default.

(5) State specifically the method used to serve the defendant with the notice or notices of termination upon which the complaint is based. This requirement may be satisfied by using and

completing all items relating to service of the notice or notices in an appropriate Judicial Council form complaint, or by attaching a proof of service of the notice or notices of termination served on the defendant.

(b) The complaint may set forth any circumstances of fraud, force, or violence that may have accompanied the alleged forcible entry or forcible or unlawful detainer, and claim damages therefor.

(c) In an action regarding residential real property based on Section 1161a, the plaintiff shall state in the caption of the complaint “Action based on Code of Civil Procedure Section 1161a.”

(d) (1) In an action regarding residential property, the plaintiff shall attach to the complaint the following:

(A) A copy of the notice or notices of termination served on the defendant upon which the complaint is based.

(B) A copy of any written lease or rental agreement regarding the premises. Any addenda or attachments to the lease or written agreement that form the basis of the complaint shall also be attached. The documents required by this subparagraph are not required to be attached if the complaint alleges any of the following:

(i) The lease or rental agreement is oral.

(ii) A written lease or rental agreement regarding the premises is not in the possession of the landlord or any agent or employee of the landlord.

(iii) An action based solely on subdivision (2) of Section 1161.

(2) If the plaintiff fails to attach the documents required by this subdivision, the court shall grant leave to amend the complaint for a five-day period in order to include the required attachments.

(e) Upon filing the complaint, a summons shall be issued thereon.

Approved _____, 2010

Governor