

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2314

Introduced by Assembly Member Carter
(Principal coauthor: Assembly Member Eng)
(Coauthors: Assembly Members Davis and Skinner)

February 24, 2012

An act to amend Section 2929.3 of the Civil Code, and to ~~amend Sections~~ *amend Sections* 17980 and 17980.7 of the Health and Safety Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2314, as amended, Carter. Real property: blight.

(1) Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale or acquired by that owner through foreclosure under a mortgage or deed of trust. Existing law, until January 1, 2013, authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. Existing law, until January 1, 2013, requires a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

This bill would delete the repeal clause for these provisions and thus extend the operation of these provisions indefinitely.

(2) The State Housing Law requires the housing or building department or, if there is no building department, the health department, of every city, county, or city and county, or a specified environmental agency, to enforce within its jurisdiction all of the State Housing Law, the building standards published in the State Building Standards Code, and other specified rules and regulations. If there is a violation of these provisions or any order or notice that gives a reasonable time to correct that violation, or if a nuisance exists, an enforcement agency is required, after 30 days' notice to abate the nuisance, to institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

This bill would prohibit an enforcement agency from commencing any action or proceeding until at least 60 days after a person takes title to the property, unless a shorter period of time is deemed necessary by the enforcement agency, as specified, if the person has purchased and is in the process of *diligently* abating any violation at a residential property that had been foreclosed on or after January 1, 2008. This bill would require any entity that releases a lien securing a deed of trust or mortgage on a property for which a notice of pendency of action, as defined, has been recorded against the property, as specified, to notify the enforcement agency that issued the order or notice within 30 days of releasing the lien.

(3) Existing law authorizes, among other things, the enforcement agency to seek and the court to order imposition of specified penalties or the enforcement agency, tenant, or tenant association or organization to seek, and the court to order, the appointment of a receiver for a substandard building, if the owner of the property fails to comply within a reasonable time with the terms of an order or notice.

This bill would authorize a court to require the owner of the property to pay all unrecovered costs associated with the receivership in addition to any other remedy authorized by law.

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

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

1 SECTION 1. Section 2929.3 of the Civil Code is amended to
2 read:
3 2929.3. (a) (1) A legal owner shall maintain vacant residential
4 property purchased by that owner at a foreclosure sale, or acquired

1 by that owner through foreclosure under a mortgage or deed of
2 trust. A governmental entity may impose a civil fine of up to one
3 thousand dollars (\$1,000) per day for a violation. If the
4 governmental entity chooses to impose a fine pursuant to this
5 section, it shall give notice of the alleged violation, including a
6 description of the conditions that gave rise to the allegation, and
7 notice of the entity’s intent to assess a civil fine if action to correct
8 the violation is not commenced within a period of not less than 14
9 days and completed within a period of not less than 30 days. The
10 notice shall be mailed to the address provided in the deed or other
11 instrument as specified in subdivision (a) of Section 27321.5 of
12 the Government Code, or, if none, to the return address provided
13 on the deed or other instrument.

14 (2) The governmental entity shall provide a period of not less
15 than 30 days for the legal owner to remedy the violation prior to
16 imposing a civil fine and shall allow for a hearing and opportunity
17 to contest any fine imposed. In determining the amount of the fine,
18 the governmental entity shall take into consideration any timely
19 and good faith efforts by the legal owner to remedy the violation.
20 The maximum civil fine authorized by this section is one thousand
21 dollars (\$1,000) for each day that the owner fails to maintain the
22 property, commencing on the day following the expiration of the
23 period to remedy the violation established by the governmental
24 entity.

25 (3) Subject to the provisions of this section, a governmental
26 entity may establish different compliance periods for different
27 conditions on the same property in the notice of alleged violation
28 mailed to the legal owner.

29 (b) For purposes of this section, “failure to maintain” means
30 failure to care for the exterior of the property, including, but not
31 limited to, permitting excessive foliage growth that diminishes the
32 value of surrounding properties, failing to take action to prevent
33 trespassers or squatters from remaining on the property, or failing
34 to take action to prevent mosquito larvae from growing in standing
35 water or other conditions that create a public nuisance.

36 (c) Notwithstanding subdivisions (a) and (b), a governmental
37 entity may provide less than 30 days’ notice to remedy a condition
38 before imposing a civil fine if the entity determines that a specific
39 condition of the property threatens public health or safety and

1 provided that notice of that determination and time for compliance
2 is given.

3 (d) Fines and penalties collected pursuant to this section shall
4 be directed to local nuisance abatement programs.

5 (e) A governmental entity may not impose fines on a legal owner
6 under both this section and a local ordinance.

7 (f) These provisions shall not preempt any local ordinance.

8 (g) This section shall only apply to residential real property.

9 (h) The rights and remedies provided in this section are
10 cumulative and in addition to any other rights and remedies
11 provided by law.

12 SEC. 2. Section 17980 of the Health and Safety Code is
13 amended to read:

14 17980. (a) If any building is constructed, altered, converted,
15 or maintained in violation of any provision of, or in violation of
16 any order or notice that gives a reasonable time to correct that
17 violation issued by an enforcement agency pursuant to this part,
18 the building standards published in the California Building
19 Standards Code, or other rules and regulations adopted pursuant
20 to this part, or if a nuisance exists in any building or upon the lot
21 on which it is situated, the enforcement agency shall, after 30 days'
22 notice to abate the nuisance or violation, or a notice to abate with
23 a shorter period of time if deemed necessary by the enforcement
24 agency to prevent or remedy an immediate threat to the health and
25 safety of the public or occupants of the structure, institute any
26 appropriate action or proceeding to prevent, restrain, correct, or
27 abate the violation or nuisance. Notwithstanding the above, if a
28 person has purchased and is in the process of *diligently* abating
29 any violation at a residential property that had been foreclosed on
30 or after January 1, 2008, an enforcement agency shall not
31 commence any action or proceeding until at least 60 days after the
32 person takes title to the property, unless a shorter period of time
33 is deemed necessary by the enforcement agency to prevent or
34 remedy an immediate threat to the health and safety of the public
35 or occupants of the structure.

36 (b) If any entity releases a lien securing a deed of trust or
37 mortgage on a property for which a notice of pendency of action,
38 as defined in Section 405.2 of the Code of Civil Procedure, has
39 been recorded against the property by an enforcement agency
40 pursuant to subdivision (a) of Section 17985 of the Health and

1 Safety Code or Section 405.7 or 405.20 of the Code of Civil
2 Procedure, it shall notify the enforcement agency that issued the
3 order or notice within 30 days of releasing the lien.

4 (c) (1) Whenever the enforcement agency has inspected or
5 caused to be inspected any building and has determined that the
6 building is a substandard building or a building described in Section
7 17920.10, the enforcement agency shall commence proceedings
8 to abate the violation by repair, rehabilitation, vacation, or
9 demolition of the building. The enforcement agency shall not
10 require the vacating of a residential building unless it concurrently
11 requires expeditious demolition or repair to comply with this part,
12 the building standards published in the California Building
13 Standards Code, or other rules and regulations adopted pursuant
14 to this part. The owner shall have the choice of repairing or
15 demolishing. However, if the owner chooses to repair, the
16 enforcement agency shall require that the building be brought into
17 compliance according to a reasonable and feasible schedule for
18 expeditious repair. The enforcement agency may require vacation
19 and demolition or may itself vacate the building, repair, demolish,
20 or institute any other appropriate action or proceeding, if any of
21 the following occur:

22 (A) The repair work is not done within the period required by
23 the notice.

24 (B) The owner does not make a timely choice of repair or
25 demolition.

26 (C) The owner selects an option which cannot be completed
27 within a reasonable period of time, as determined by the
28 enforcement agency, for any reason, including, but not limited to,
29 an outstanding judicial or administrative order.

30 (2) In deciding whether to require vacation of the building or
31 to repair as necessary, the enforcement agency shall give preference
32 to the repair of the building whenever it is economically feasible
33 to do so without having to repair more than 75 percent of the
34 dwelling, as determined by the enforcement agency, and shall give
35 full consideration to the needs for housing as expressed in the local
36 jurisdiction's housing element.

37 (d) (1) Notwithstanding subdivision (b) and notwithstanding
38 local ordinances, tenants in a residential building shall be provided
39 copies of any of the following:

1 (A) The notice of any violation described in subdivision (a) that
2 affects the health and safety of the occupants and that causes the
3 building to be substandard pursuant to Section 17920.3 or in
4 violation of Section 17920.10.

5 (B) An order of the code enforcement agency issued after
6 inspection of the premises declaring the dwelling to be in violation
7 of any provision described in subdivision (a).

8 (C) The enforcement agency’s decision to repair or demolish.

9 (D) The issuance of a building or demolition permit following
10 the abatement order of an enforcement agency.

11 (2) Each document provided pursuant to paragraph (1) shall be
12 provided to each affected residential unit by the enforcement
13 agency that issued the order or notice, in the manner prescribed
14 by subdivision (a) of Section 17980.6.

15 (e) All notices issued by the enforcement agency to correct
16 violations or to abate nuisances shall contain a provision notifying
17 the owner that, in accordance with Sections 17274 and 24436.5
18 of the Revenue and Taxation Code, a tax deduction may not be
19 allowed for interest, taxes, depreciation, or amortization paid or
20 incurred in the taxable year. In addition, in Los Angeles County,
21 the notice shall contain a provision notifying the owner that within
22 10 days of recordation of a notice of substandard conditions or
23 similar document, the owner is required to comply with Section
24 17997.

25 (f) The enforcement agency may charge the owner of the
26 building for its postage or mileage cost for sending or posting the
27 notices required to be given by this section.

28 SEC. 3. Section 17980.7 of the Health and Safety Code is
29 amended to read:

30 17980.7. If the owner fails to comply within a reasonable time
31 with the terms of the order or notice issued pursuant to Section
32 17980.6, the following provisions shall apply:

33 (a) The enforcement agency may seek and the court may order
34 imposition of the penalties provided for under Chapter 6
35 (commencing with Section 17995).

36 (b) (1) The enforcement agency may seek and the court may
37 order the owner to not claim any deduction with respect to state
38 taxes for interest, taxes, expenses, depreciation, or amortization
39 paid or incurred with respect to the cited structure, in the taxable
40 year of the initial order or notice, in lieu of the enforcement agency

1 processing a violation in accordance with Sections 17274 and
2 24436.5 of the Revenue and Taxation Code.

3 (2) If the owner fails to comply with the terms of the order or
4 notice to correct the condition that caused the violation pursuant
5 to Section 17980.6, the court may order the owner to not claim
6 these tax benefits for the following year.

7 (c) The enforcement agency, tenant, or tenant association or
8 organization may seek and the court may order, the appointment
9 of a receiver for the substandard building pursuant to this
10 subdivision. In its petition to the court, the enforcement agency,
11 tenant, or tenant association or organization shall include proof
12 that notice of the petition was served not less than three days prior
13 to filing the petition, pursuant to Article 3 (commencing with
14 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of
15 Civil Procedure, to all persons with a recorded interest in the real
16 property upon which the substandard building exists.

17 (1) In appointing a receiver, the court shall consider whether
18 the owner has been afforded a reasonable opportunity to correct
19 the conditions cited in the notice of violation.

20 (2) The court shall not appoint any person as a receiver unless
21 the person has demonstrated to the court his or her capacity and
22 expertise to develop and supervise a viable financial and
23 construction plan for the satisfactory rehabilitation of the building.
24 A court may appoint as a receiver a nonprofit organization or
25 community development corporation. In addition to the duties and
26 powers that may be granted pursuant to this section, the nonprofit
27 organization or community development corporation may also
28 apply for grants to assist in the rehabilitation of the building.

29 (3) If a receiver is appointed, the owner and his or her agent of
30 the substandard building shall be enjoined from collecting rents
31 from the tenants, interfering with the receiver in the operation of
32 the substandard building, and encumbering or transferring the
33 substandard building or real property upon which the building is
34 situated.

35 (4) Any receiver appointed pursuant to this section shall have
36 all of the following powers and duties in the order of priority listed
37 in this paragraph, unless the court otherwise permits:

38 (A) To take full and complete control of the substandard
39 property.

- 1 (B) To manage the substandard building and pay expenses of
2 the operation of the substandard building and real property upon
3 which the building is located, including taxes, insurance, utilities,
4 general maintenance, and debt secured by an interest in the real
5 property.
- 6 (C) To secure a cost estimate and construction plan from a
7 licensed contractor for the repairs necessary to correct the
8 conditions cited in the notice of violation.
- 9 (D) To enter into contracts and employ a licensed contractor as
10 necessary to correct the conditions cited in the notice of violation.
- 11 (E) To collect all rents and income from the substandard
12 building.
- 13 (F) To use all rents and income from the substandard building
14 to pay for the cost of rehabilitation and repairs determined by the
15 court as necessary to correct the conditions cited in the notice of
16 violation.
- 17 (G) To borrow funds to pay for repairs necessary to correct the
18 conditions cited in the notice of violation and to borrow funds to
19 pay for any relocation benefits authorized by paragraph (6) and,
20 with court approval, secure that debt and any moneys owed to the
21 receiver for services performed pursuant to this section with a lien
22 on the real property upon which the substandard building is located.
23 The lien shall be recorded in the county recorder's office in the
24 county within which the building is located.
- 25 (H) To exercise the powers granted to receivers under Section
26 568 of the Code of Civil Procedure.
- 27 (5) The receiver shall be entitled to the same fees, commissions,
28 and necessary expenses as receivers in actions to foreclose
29 mortgages.
- 30 (6) If the conditions of the premises or the repair or rehabilitation
31 thereof significantly affect the safe and sanitary use of the
32 substandard building by any tenant, to the extent that the tenant
33 cannot safely reside in his or her unit, then the receiver shall
34 provide relocation benefits in accordance with subparagraph (A)
35 of paragraph (3) of subdivision (d).
- 36 (7) The relocation compensation provided for in this section
37 shall not preempt any local ordinance that provides for greater
38 relocation assistance.
- 39 (8) In addition to any reporting required by the court, the
40 receiver shall prepare monthly reports to the state or local

1 enforcement agency which shall contain information on at least
2 the following items:

- 3 (A) The total amount of rent payments received.
- 4 (B) Nature and amount of contracts negotiated relative to the
5 operation or repair of the property.
- 6 (C) Payments made toward the repair of the premises.
- 7 (D) Progress of necessary repairs.
- 8 (E) Other payments made relative to the operation of the
9 building.
- 10 (F) Amount of tenant relocation benefits paid.

11 (9) The receiver shall be discharged when the conditions cited
12 in the notice of violation have been remedied in accordance with
13 the court order or judgment and a complete accounting of all costs
14 and repairs has been delivered to the court. Upon removal of the
15 condition, the owner, the mortgagee, or any lienor of record may
16 apply for the discharge of all moneys not used by the receiver for
17 removal of the condition and all other costs authorized by this
18 section.

19 (10) After discharging the receiver, the court may retain
20 jurisdiction for a time period not to exceed 18 consecutive months,
21 and require the owner and the enforcement agency responsible for
22 enforcing Section 17980 to report to the court in accordance with
23 a schedule determined by the court.

24 (11) The prevailing party in an action pursuant to this section
25 shall be entitled to reasonable attorney's fees and court costs as
26 may be fixed by the court.

27 (12) The county recorder may charge and collect fees for the
28 recording of all notices and other documents required by this
29 section pursuant to Article 5 (commencing with Section 27360)
30 of Chapter 6 of Division 2 of Title 3 of the Government Code.

31 (13) This section shall not be construed to limit those rights
32 available to tenants and owners under any other provision of the
33 law.

34 (14) This section shall not be construed to deprive an owner of
35 a substandard building of all procedural due process rights
36 guaranteed by the California Constitution and the United States
37 Constitution, including, but not limited to, receipt of notice of the
38 violation claimed and an adequate and reasonable period of time
39 to comply with any orders which are issued by the enforcement
40 agency or the court.

1 (15) Upon the request of a receiver, a court may require the
2 owner of the property to pay all unrecovered costs associated with
3 the receivership in addition to any other remedy authorized by
4 law.

5 (d) If the court finds that a building is in a condition which
6 substantially endangers the health and safety of residents pursuant
7 to Section 17980.6, upon the entry of any order or judgment, the
8 court shall do all of the following:

9 (1) Order the owner to pay all reasonable and actual costs of
10 the enforcement agency including, but not limited to, inspection
11 costs, investigation costs, enforcement costs, attorney fees or costs,
12 and all costs of prosecution.

13 (2) Order that the local enforcement agency shall provide the
14 tenant with notice of the court order or judgment.

15 (3) (A) Order that if the owner undertakes repairs or
16 rehabilitation as a result of being cited for a notice under this
17 chapter, and if the conditions of the premises or the repair or
18 rehabilitation thereof significantly affect the safe and sanitary use
19 of the premises by any lawful tenant, so that the tenant cannot
20 safely reside in the premises, then the owner shall provide or pay
21 relocation benefits to each lawful tenant. These benefits shall
22 consist of actual reasonable moving and storage costs and
23 relocation compensation. The actual moving and storage costs
24 shall consist of all of the following:

25 (i) Transportation of the tenant's personal property to the new
26 location. The new location shall be in close proximity to the
27 substandard premises, except where relocation to a new location
28 beyond a close proximity is determined by the court to be justified.

29 (ii) Packing, crating, unpacking, and uncrating the tenant's
30 personal property.

31 (iii) Insurance of the tenant's property while in transit.

32 (iv) The reasonable replacement value of property lost, stolen,
33 or damaged (not through the fault or negligence of the displaced
34 person, his or her agent or employee) in the process of moving,
35 where insurance covering the loss, theft, or damage is not
36 reasonably available.

37 (v) The cost of disconnecting, dismantling, removing,
38 reassembling, reconnecting, and reinstalling machinery, equipment,
39 or other personal property of the tenant, including connection
40 charges imposed by utility companies for starting utility service.

1 (B) (i) The relocation compensation shall be an amount equal
2 to the differential between the contract rent and the fair market
3 rental value determined by the federal Department of Housing and
4 Urban Development for a unit of comparable size within the area
5 for the period that the unit is being repaired, not to exceed 120
6 days.

7 (ii) If the court finds that a tenant has been substantially
8 responsible for causing or substantially contributing to the
9 substandard conditions, then the relocation benefits of this section
10 shall not be paid to this tenant. Each other tenant on the premises
11 who has been ordered to relocate due to the substandard conditions
12 and who is not substantially responsible for causing or contributing
13 to the conditions shall be paid these benefits and moving costs at
14 the time that he or she actually relocates.

15 (4) Determine the date when the tenant is to relocate, and order
16 the tenant to notify the enforcement agency and the owner of the
17 address of the premises to which he or she has relocated within
18 five days after the relocation.

19 (5) (A) Order that the owner shall offer the first right to
20 occupancy of the premises to each tenant who received benefits
21 pursuant to subparagraph (A) of paragraph (3), before letting the
22 unit for rent to a third party. The owner's offer on the first right
23 to occupancy to the tenant shall be in writing, and sent by first-class
24 certified mail to the address given by the tenant at the time of
25 relocation. If the owner has not been provided the tenant's address
26 by the tenant as prescribed by this section, the owner shall not be
27 required to provide notice under this section or offer the tenant the
28 right to return to occupancy.

29 (B) The tenant shall notify the owner in writing that he or she
30 will occupy the unit. The notice shall be sent by first-class certified
31 mail no later than 10 days after the notice has been mailed by the
32 owner.

33 (6) Order that failure to comply with any abatement order under
34 this chapter shall be punishable by civil contempt, penalties under
35 Chapter 6 (commencing with Section 17995), and any other
36 penalties and fines as are available.

37 (e) The initiation of a proceeding or entry of a judgment pursuant
38 to this section or Section 17980.6 shall be deemed to be a
39 "proceeding" or "judgment" as provided by paragraph (4) or (5)
40 of subdivision (a) of Section 1942.5 of the Civil Code.

- 1 (f) The term “owner,” for the purposes of this section, shall
- 2 include the owner, including any public entity that owns residential
- 3 real property, at the time of the initial notice or order and any
- 4 successor in interest who had actual or constructive knowledge of
- 5 the notice, order, or prosecution.
- 6 (g) These remedies shall be in addition to those provided by
- 7 any other law.
- 8 (h) This section and Section 17980.6 shall not impair the rights
- 9 of an owner exercising his or her rights established pursuant to
- 10 Chapter 12.75 (commencing with Section 7060) of Division 7 of
- 11 Title 1 of the Government Code.