

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2557

Introduced by Assembly Member Feuer

February 24, 2012

~~An act to amend Section 51 of the Civil Code, relating to civil rights.~~
An act to amend Section 2929.3 of the Civil Code, and to amend Section 17980.7 of the Health and Safety Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, as amended, Feuer. ~~Unruh Civil Rights Act: discrimination.~~
Real property: maintenance and abatement.

Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased or acquired through foreclosure. Existing law also authorizes a governmental entity to impose civil fines for failure to maintain that property of up to \$1,000 per day for a violation, after notice and an opportunity to correct the violation is given.

This bill would authorize a person whose property is injuriously affected or whose enjoyment is lessened by a property owner's violation of those property maintenance provisions to bring an action for injunctive relief. The bill would authorize an action to be brought either in a small claims court or superior court within the county in which the property is situated. The bill would also authorize a prevailing plaintiff to recover court costs and reasonable attorney's fees if the action is brought in superior court.

Existing law provides for abatement of substandard conditions in buildings and authorizes an enforcement agency to issue an order or notice to repair or abate violations of specified building standards.

Under existing law, if the owner of a property with substandard conditions fails to comply within a reasonable time period with the terms of the order or notice, the enforcement agency, tenant, or tenant association or organization may seek, and the court may order, the appointment of a receiver for the substandard building.

This bill would also authorize any district attorney, county counsel, or city attorney with jurisdiction over the substandard building, acting in the name of the people, to seek a court order for the appointment of a receiver for the substandard building.

~~The Unruh Civil Rights Act generally prohibits business establishments from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation and provides civil remedies for violations of its provisions.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

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

18 (2) The governmental entity shall provide a period of not less
19 than 30 days for the legal owner to remedy the violation prior to

1 imposing a civil fine and shall allow for a hearing and opportunity
2 to contest any fine imposed. In determining the amount of the fine,
3 the governmental entity shall take into consideration any timely
4 and good faith efforts by the legal owner to remedy the violation.
5 The maximum civil fine authorized by this section is one thousand
6 dollars (\$1,000) for each day that the owner fails to maintain the
7 property, commencing on the day following the expiration of the
8 period to remedy the violation established by the governmental
9 entity.

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

14 *(b) A legal owner who fails to maintain a vacant residential*
15 *property in violation of paragraph (1) of subdivision (a) shall be*
16 *subject to an action for injunctive relief brought by any person*
17 *whose property is injuriously affected, or whose personal*
18 *enjoyment is lessened, by the property owner's violation. An action*
19 *brought pursuant to this subdivision may be brought either in a*
20 *small claims court or the superior court of the county in which the*
21 *property is situated. If the action is brought in superior court, a*
22 *prevailing plaintiff may recover court costs and reasonable*
23 *attorney's fees.*

24 ~~(b)~~

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

32 ~~(c)~~

33 (d) Notwithstanding subdivisions (a) and ~~(b)~~ (c), a governmental
34 entity may provide less than 30 days' notice to remedy a condition
35 before imposing a civil fine if the entity determines that a specific
36 condition of the property threatens public health or safety and
37 provided that notice of that determination and time for compliance
38 is given.

39 ~~(d)~~

1 (e) Fines and penalties collected pursuant to this section shall
2 be directed to local nuisance abatement programs.

3 ~~(e)~~

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

6 ~~(f)~~

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

8 ~~(g)~~

9 (h) This section shall only apply to residential real property.

10 ~~(h)~~

11 (i) The rights and remedies provided in this section are
12 cumulative and in addition to any other rights and remedies
13 provided by law.

14 ~~(i)~~

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

18 *SEC. 2. Section 17980.7 of the Health and Safety Code is*
19 *amended to read:*

20 17980.7. If the owner fails to comply within a reasonable time
21 with the terms of the order or notice issued pursuant to Section
22 17980.6, the following provisions shall apply:

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

26 (b) (1) The enforcement agency may seek and the court may
27 order the owner to not claim any deduction with respect to state
28 taxes for interest, taxes, expenses, depreciation, or amortization
29 paid or incurred with respect to the cited structure, in the taxable
30 year of the initial order or notice, in lieu of the enforcement agency
31 processing a violation in accordance with Sections 17274 and
32 24436.5 of the Revenue and Taxation Code.

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

37 (c) The enforcement agency, tenant, ~~or~~ tenant association or
38 organization, *or any district attorney, county counsel, or city*
39 *attorney with jurisdiction over the substandard building, acting*
40 *in the name of the people,* may seek and the court may order, the

1 appointment of a receiver for the substandard building pursuant
2 to this subdivision. In its petition to the court, the enforcement
3 agency, tenant, ~~or~~ tenant association or organization, *or any district*
4 *attorney, county counsel, or city attorney with jurisdiction over*
5 *the substandard building* shall include proof that notice of the
6 petition was served not less than three days prior to filing the
7 petition, pursuant to Article 3 (commencing with Section 415.10)
8 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure,
9 to all persons with a recorded interest in the real property upon
10 which the substandard building exists.

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

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

23 (3) If a receiver is appointed, the owner and his or her agent of
24 the substandard building shall be enjoined from collecting rents
25 from the tenants, interfering with the receiver in the operation of
26 the substandard building, and encumbering or transferring the
27 substandard building or real property upon which the building is
28 situated.

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

32 (A) To take full and complete control of the substandard
33 property.

34 (B) To manage the substandard building and pay expenses of
35 the operation of the substandard building and real property upon
36 which the building is located, including taxes, insurance, utilities,
37 general maintenance, and debt secured by an interest in the real
38 property.

1 (C) To secure a cost estimate and construction plan from a
2 licensed contractor for the repairs necessary to correct the
3 conditions cited in the notice of violation.

4 (D) To enter into contracts and employ a licensed contractor as
5 necessary to correct the conditions cited in the notice of violation.

6 (E) To collect all rents and income from the substandard
7 building.

8 (F) To use all rents and income from the substandard building
9 to pay for the cost of rehabilitation and repairs determined by the
10 court as necessary to correct the conditions cited in the notice of
11 violation.

12 (G) To borrow funds to pay for repairs necessary to correct the
13 conditions cited in the notice of violation and to borrow funds to
14 pay for any relocation benefits authorized by paragraph (6) and,
15 with court approval, secure that debt and any moneys owed to the
16 receiver for services performed pursuant to this section with a lien
17 on the real property upon which the substandard building is located.
18 The lien shall be recorded in the county recorder's office in the
19 county within which the building is located.

20 (H) To exercise the powers granted to receivers under Section
21 568 of the Code of Civil Procedure.

22 (5) The receiver shall be entitled to the same fees, commissions,
23 and necessary expenses as receivers in actions to foreclose
24 mortgages.

25 (6) If the conditions of the premises or the repair or rehabilitation
26 thereof significantly affect the safe and sanitary use of the
27 substandard building by any tenant, to the extent that the tenant
28 cannot safely reside in his or her unit, then the receiver shall
29 provide relocation benefits in accordance with subparagraph (A)
30 of paragraph (3) of subdivision (d).

31 (7) The relocation compensation provided for in this section
32 shall not preempt any local ordinance that provides for greater
33 relocation assistance.

34 (8) In addition to any reporting required by the court, the
35 receiver shall prepare monthly reports to the state or local
36 enforcement agency which shall contain information on at least
37 the following items:

38 (A) The total amount of rent payments received.

39 (B) Nature and amount of contracts negotiated relative to the
40 operation or repair of the property.

- 1 (C) Payments made toward the repair of the premises.
- 2 (D) Progress of necessary repairs.
- 3 (E) Other payments made relative to the operation of the
- 4 building.
- 5 (F) Amount of tenant relocation benefits paid.
- 6 (9) The receiver shall be discharged when the conditions cited
- 7 in the notice of violation have been remedied in accordance with
- 8 the court order or judgment and a complete accounting of all costs
- 9 and repairs has been delivered to the court. Upon removal of the
- 10 condition, the owner, the mortgagee, or any lienor of record may
- 11 apply for the discharge of all moneys not used by the receiver for
- 12 removal of the condition and all other costs authorized by this
- 13 section.
- 14 (10) After discharging the receiver, the court may retain
- 15 jurisdiction for a time period not to exceed 18 consecutive months,
- 16 and require the owner and the enforcement agency responsible for
- 17 enforcing Section 17980 to report to the court in accordance with
- 18 a schedule determined by the court.
- 19 (11) The prevailing party in an action pursuant to this section
- 20 shall be entitled to reasonable attorney's fees and court costs as
- 21 may be fixed by the court.
- 22 (12) The county recorder may charge and collect fees for the
- 23 recording of all notices and other documents required by this
- 24 section pursuant to Article 5 (commencing with Section 27360)
- 25 of Chapter 6 of Division 2 of Title 3 of the Government Code.
- 26 (13) Nothing in this section shall be construed to limit those
- 27 rights available to tenants and owners under any other provision
- 28 of the law.
- 29 (14) Nothing in this section shall be construed to deprive an
- 30 owner of a substandard building of all procedural due process
- 31 rights guaranteed by the California Constitution and the United
- 32 States Constitution, including, but not limited to, receipt of notice
- 33 of the violation claimed and an adequate and reasonable period of
- 34 time to comply with any orders which are issued by the
- 35 enforcement agency or the court.
- 36 (d) If the court finds that a building is in a condition which
- 37 substantially endangers the health and safety of residents pursuant
- 38 to Section 17980.6, upon the entry of any order or judgment, the
- 39 court shall do all of the following:

- 1 (1) Order the owner to pay all reasonable and actual costs of
2 the enforcement agency including, but not limited to, inspection
3 costs, investigation costs, enforcement costs, attorney fees or costs,
4 and all costs of prosecution.
- 5 (2) Order that the local enforcement agency shall provide the
6 tenant with notice of the court order or judgment.
- 7 (3) (A) Order that if the owner undertakes repairs or
8 rehabilitation as a result of being cited for a notice under this
9 chapter, and if the conditions of the premises or the repair or
10 rehabilitation thereof significantly affect the safe and sanitary use
11 of the premises by any lawful tenant, so that the tenant cannot
12 safely reside in the premises, then the owner shall provide or pay
13 relocation benefits to each lawful tenant. These benefits shall
14 consist of actual reasonable moving and storage costs and
15 relocation compensation. The actual moving and storage costs
16 shall consist of all of the following:
- 17 (i) Transportation of the tenant's personal property to the new
18 location. The new location shall be in close proximity to the
19 substandard premises, except where relocation to a new location
20 beyond a close proximity is determined by the court to be justified.
 - 21 (ii) Packing, crating, unpacking, and uncrating the tenant's
22 personal property.
 - 23 (iii) Insurance of the tenant's property while in transit.
 - 24 (iv) The reasonable replacement value of property lost, stolen,
25 or damaged (not through the fault or negligence of the displaced
26 person, his or her agent or employee) in the process of moving,
27 where insurance covering the loss, theft, or damage is not
28 reasonably available.
 - 29 (v) The cost of disconnecting, dismantling, removing,
30 reassembling, reconnecting, and reinstalling machinery, equipment,
31 or other personal property of the tenant, including connection
32 charges imposed by utility companies for starting utility service.
- 33 (B) (i) The relocation compensation shall be an amount equal
34 to the differential between the contract rent and the fair market
35 rental value determined by the federal Department of Housing and
36 Urban Development for a unit of comparable size within the area
37 for the period that the unit is being repaired, not to exceed 120
38 days.
- 39 (ii) If the court finds that a tenant has been substantially
40 responsible for causing or substantially contributing to the

1 substandard conditions, then the relocation benefits of this section
2 shall not be paid to this tenant. Each other tenant on the premises
3 who has been ordered to relocate due to the substandard conditions
4 and who is not substantially responsible for causing or contributing
5 to the conditions shall be paid these benefits and moving costs at
6 the time that he or she actually relocates.

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

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

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

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

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

33 (f) The term "owner," for the purposes of this section, shall
34 include the owner, including any public entity that owns residential
35 real property, at the time of the initial notice or order and any
36 successor in interest who had actual or constructive knowledge of
37 the notice, order, or prosecution.

38 (g) These remedies shall be in addition to those provided by
39 any other law.

1 (h) Nothing in this section or in Section 17980.6 shall impair
2 the rights of an owner exercising his or her rights established
3 pursuant to Chapter 12.75 (commencing with Section 7060) of
4 Division 7 of Title 1 of the Government Code.

5 SECTION 1. Section 51 of the Civil Code is amended to read:

6 ~~51. (a) This section shall be known, and may be cited, as the~~
7 ~~Unruh Civil Rights Act.~~

8 ~~(b) All persons within the jurisdiction of this state are free and~~
9 ~~equal, and no matter what their sex, race, color, religion, ancestry,~~
10 ~~national origin, disability, medical condition, genetic information,~~
11 ~~marital status, or sexual orientation are entitled to the full and equal~~
12 ~~accommodations, advantages, facilities, privileges, and services~~
13 ~~in all business establishments of every kind whatsoever.~~

14 ~~(c) This section shall not be construed to confer any right or~~
15 ~~privilege on a person that is conditioned or limited by law or that~~
16 ~~is applicable alike to persons of every sex, color, race, religion,~~
17 ~~ancestry, national origin, disability, medical condition, marital~~
18 ~~status, or sexual orientation or to persons regardless of their genetic~~
19 ~~information.~~

20 ~~(d) Nothing in this section shall be construed to require any~~
21 ~~construction, alteration, repair, structural or otherwise, or~~
22 ~~modification of any sort whatsoever, beyond that construction,~~
23 ~~alteration, repair, or modification that is otherwise required by~~
24 ~~other provisions of law, to any new or existing establishment,~~
25 ~~facility, building, improvement, or any other structure, nor shall~~
26 ~~anything in this section be construed to augment, restrict, or alter~~
27 ~~in any way the authority of the State Architect to require~~
28 ~~construction, alteration, repair, or modifications that the State~~
29 ~~Architect otherwise possesses pursuant to other laws.~~

30 ~~(e) For purposes of this section:~~

31 ~~(1) "Disability" means any mental or physical disability as~~
32 ~~defined in Sections 12926 and 12926.1 of the Government Code.~~

33 ~~(2) (A) "Genetic information" means, with respect to any~~
34 ~~individual, information about any of the following:~~

35 ~~(i) The individual's genetic tests.~~

36 ~~(ii) The genetic tests of family members of the individual.~~

37 ~~(iii) The manifestation of a disease or disorder in family~~
38 ~~members of the individual.~~

39 ~~(B) "Genetic information" includes any request for, or receipt~~
40 ~~of, genetic services, or participation in clinical research that~~

1 includes genetic services, by an individual or any family member
2 of the individual.

3 (C) “Genetic information” does not include information about
4 the sex or age of any individual.

5 (3) “Medical condition” has the same meaning as defined in
6 subdivision (h) of Section 12926 of the Government Code.

7 (4) “Religion” includes all aspects of religious belief,
8 observance, and practice.

9 (5) “Sex” includes, but is not limited to, pregnancy, childbirth,
10 or medical conditions related to pregnancy or childbirth. “Sex”
11 also includes, but is not limited to, a person’s gender. “Gender”
12 means sex, and includes a person’s gender identity and gender
13 expression. “Gender expression” means a person’s gender-related
14 appearance and behavior whether or not stereotypically associated
15 with the person’s assigned sex at birth.

16 (6) “Sex, race, color, religion, ancestry, national origin,
17 disability, medical condition, genetic information, marital status,
18 or sexual orientation” includes a perception that the person has
19 any particular characteristic or characteristics within the listed
20 categories or that the person is associated with a person who has,
21 or is perceived to have, any particular characteristic or
22 characteristics within the listed categories.

23 (7) “Sexual orientation” has the same meaning as defined in
24 subdivision (r) of Section 12926 of the Government Code.

25 (f) A violation of the right of any individual under the federal
26 Americans with Disabilities Act of 1990 (P.L. 101-336) shall also
27 constitute a violation of this section.