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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2610

Introduced by Assembly Member Skinner
(Coauthor: Assembly Member Carter)
(Coauthors: Senators Hancock, Corbett, DeSaulnier, Leno, and Pavley)

February 24, 2012

An act to amend Section 2924.8 of the Civil Code, and to amend Sections 415.46 and 1161b of the Code of Civil Procedure, relating to tenants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2610, as amended, Skinner. Tenants: foreclosure and unlawful detainer.

(1) Existing law requires a notice of sale to be posted before any power of sale can be exercised under the power of sale contained in any deed of trust or mortgage. Existing law, until January 1, 2013, requires a resident of property upon which a notice of sale has been posted to be provided a specified notice advising the resident that, among other things, if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 60-day eviction notice, and that

other laws may prohibit the eviction or provide the tenant with a longer notice before eviction. Existing law makes it an infraction to tear down the notice within 72 hours of posting. Existing law requires a state government entity to make translations of the notice available in 5 specified languages, for use by a mortgagee, trustee, beneficiary, or authorized agent, in order to satisfy the notice requirements.

This bill would revise certain portions of the notice to instead require a resident of property upon which a notice of sale has been posted to be advised that if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 90-day eviction notice. The bill would require the notice to advise a tenant who has a lease that the new property owner is required to honor the lease unless the new owner will occupy the property as a primary residence or under other limited circumstances. The bill would require the Department of Consumer Affairs to make translations of the notice available, as described above. The bill would provide that these changes to the notice would become operative on March 1, 2013, or 60 days following posting of a dated notice incorporating those amendments on the Department of Consumer Affairs Internet Web site, whichever date is later. The bill would extend the operation of these provisions until December 31, 2019.

By extending the operation of provisions establishing a crime, this bill would impose a state-mandated local program.

(2) Existing law provides, that in an unlawful detainer action, if an owner or owner's agent has obtained service of a prejudgment claim of right to possession, as specified, no occupant of the premises, whether or not that occupant is named in the judgment for possession, may object to the enforcement of the judgment, as specified.

This bill would provide that in any action for unlawful detainer resulting from a foreclosure sale of a rental housing unit pursuant to specified provisions, the above provisions regarding objection to the enforcement of a judgment do not limit the right of a tenant or subtenant to file a prejudgment claim of right of possession or to object to enforcement of a judgment for possession, regardless of whether the tenant or subtenant was served with a prejudgment claim of right to possession, as specified.

(3) Existing law, until January 1, 2013, requires a tenant or subtenant in possession of a rental housing unit at the time that property is sold in foreclosure to be provided 60 days' written notice to quit before the tenant or subtenant may be removed from the property, as specified.

This bill would instead require a tenant or subtenant in possession of a rental housing unit under a month-to-month lease at the time that property is sold in foreclosure to be provided 90 days’ written notice to quit before the tenant or subtenant may be removed from the property. The bill would provide tenants or subtenants holding possession of a rental housing unit under a fixed-term residential lease entered into before transfer of title at the foreclosure sale the right to possession until the end of the lease term, except in specified circumstances. The bill would also extend the operation of these provisions until December 31, 2019.

(4) 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.
State-mandated local program: yes.

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

1 SECTION 1. Section 2924.8 of the Civil Code is amended to
2 read:

3 2924.8. (a) (1) Upon posting a notice of sale pursuant to
4 Section 2924f, a trustee or authorized agent shall also post the
5 following notice, in the manner required for posting the notice of
6 sale on the property to be sold, and a mortgagee, trustee,
7 beneficiary, or authorized agent, concurrently with the mailing of
8 the notice of sale pursuant to Section 2924b, shall send by
9 first-class mail in an envelope addressed to the “Resident of
10 property subject to foreclosure sale” the following notice in English
11 and the languages described in Section 1632:

12
13 Foreclosure process has begun on this property, which may affect
14 your right to continue to live in this property. Twenty days or more
15 after the date of this notice, this property may be sold at
16 foreclosure. If you are renting this property, the new property
17 owner may either give you a new lease or rental agreement or
18 provide you with a 90-day eviction notice. You may have a right
19 to stay in your home for longer than 90 days. If you have a
20 fixed-term lease, the new owner must honor the lease unless the

1 new owner will occupy the property as a primary residence or in
 2 other limited circumstances. Also, in some cases and in some cities
 3 with a “just cause for eviction” law, you may not have to move at
 4 all. All rights and obligations under your lease or tenancy, including
 5 your obligation to pay rent, will continue after the foreclosure sale.
 6 You may wish to contact a lawyer or your local legal aid office or
 7 housing counseling agency to discuss any rights you may have.

8

9 (2) The amendments to the notice in this subdivision made by
 10 the act that added this paragraph shall become operative on March
 11 1, 2013, or 60 days following posting of a dated notice
 12 incorporating those amendments on the Department of Consumer
 13 Affairs Internet Web site, whichever date is later.

14

15 (b) It ~~shall be~~ *is* an infraction to tear down the notice described
 16 in subdivision (a) within 72 hours of posting. Violators shall be
 17 subject to a fine of one hundred dollars (\$100).

18 (c) The Department of Consumer Affairs shall make available
 19 translations of the notice described in subdivision (a) which may
 20 be used by a mortgagee, trustee, beneficiary, or authorized agent
 21 to satisfy the requirements of this section.

22 (d) This section shall only apply to loans secured by residential
 23 real property, and if the billing address for the mortgage note is
 24 different than the property address.

25 (e) This section shall remain in effect only until December 31,
 26 2019, and as of that date is repealed, unless a later enacted statute,
 27 that is enacted before December 31, 2019, deletes or extends that
 28 date.

29 SEC. 2. Section 415.46 of the Code of Civil Procedure is
 30 amended to read:

31 415.46. (a) In addition to the service of a summons and
 32 complaint in an action for unlawful detainer upon a tenant and
 33 subtenant, if any, as prescribed by this article, a prejudgment claim
 34 of right to possession may also be served on any person who
 35 appears to be or who may claim to have occupied the premises at
 36 the time of the filing of the action. Service upon occupants shall
 37 be made pursuant to subdivision (c) by serving a copy of a
 38 prejudgment claim of right to possession, as specified in
 39 subdivision (f), attached to a copy of the summons and complaint

1 at the same time service is made upon the tenant and subtenant, if
2 any.

3 (b) Service of the prejudgment claim of right to possession in
4 this manner shall be effected by a marshal, sheriff, or registered
5 process server.

6 (c) (1) When serving the summons and complaint upon a tenant
7 and subtenant, if any, the marshal, sheriff, or registered process
8 server shall make a reasonably diligent effort to ascertain whether
9 there are other adult occupants of the premises who are not named
10 in the summons and complaint by inquiring of the person or
11 persons who are being personally served, or any person of suitable
12 age and discretion who appears to reside upon the premises,
13 whether there are other occupants of the premises.

14 (2) If the identity of such an occupant is disclosed to the officer
15 or process server and the occupant is present at the premises, the
16 officer or process server shall serve that occupant with a copy of
17 the prejudgment claim of right to possession attached to a copy of
18 the summons and complaint. If personal service cannot be made
19 upon that occupant at that time, service may be effected by leaving
20 a copy of a prejudgment claim of right to possession attached to
21 a copy of the summons and complaint addressed to that occupant
22 with a person of suitable age and discretion at the premises, affixing
23 the same so that it is not readily removable in a conspicuous place
24 on the premises in a manner most likely to give actual notice to
25 that occupant, and sending the same addressed to that occupant
26 by first-class mail.

27 (3) In addition to the service on an identified occupant, or if no
28 occupant is disclosed to the officer or process server, or if
29 substituted service is made upon the tenant and subtenant, if any,
30 the officer or process server shall serve a prejudgment claim of
31 right to possession for all other persons who may claim to occupy
32 the premises at the time of the filing of the action by leaving a
33 copy of a prejudgment claim of right to possession attached to a
34 copy of the summons and complaint at the premises at the same
35 time service is made upon the tenant and subtenant, if any, affixing
36 the same so that it is not readily removable in a conspicuous place
37 on the premises so that it is likely to give actual notice to an
38 occupant, and sending the same addressed to “all occupants in care
39 of the named tenant” to the premises by first-class mail.

1 (4) The person serving process shall state the date of service on
2 the prejudgment claim of right to possession form. However, the
3 absence of the date of service on the prejudgment claim of right
4 to possession does not invalidate the claim.

5 (d) Proof of service under this section shall be filed with the
6 court and shall include a statement that service was made pursuant
7 to this section. Service on occupants in accordance with this section
8 shall not alter or affect service upon the tenant or subtenant, if any.

9 (e) (1) If an owner or his or her agent has directed and obtained
10 service of a prejudgment claim of right to possession in accordance
11 with this section, no occupant of the premises, whether or not that
12 occupant is named in the judgment for possession, may object to
13 the enforcement of that judgment as prescribed in Section 1174.3.

14 (2) In any action for unlawful detainer resulting from a
15 foreclosure sale of a rental housing unit pursuant to Section 1161a,
16 paragraph (1) shall not limit the right of any tenant or subtenant
17 of the property to file a prejudgment claim of right of possession
18 pursuant to subdivision (a) of Section 1174.25 at any time before
19 judgment, or to object to enforcement of a judgment for possession
20 as prescribed in Section 1174.3, whether or not the tenant or
21 subtenant was served with a prejudgment claim of right to
22 possession.

23 (f) The prejudgment claim of right to possession shall be made
24 on the following form:

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit no., city and ZIP code):
3. The address of “the premises” subject to this claim is (address):
4. On (insert date): , the landlord or the landlord’s authorized agent filed a complaint to recover possession of the premises. (This date is in the accompanying Summons and Complaint.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing fee of \$ _____ or file with the court “Application for Waiver of Court Fees and Costs.” I understand that if I don’t pay the filing fee or file the form for waiver of court fees within 10 days from the date of service on the form (excluding court holidays), I will not be entitled to make a claim of right to possession. I also understand that I will have 5 days (excluding court holidays) to file a response to the Summons and Complaint after I file this claim of possession.

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

11. Rental agreement. I have (check all that apply to you):

- a. an oral rental agreement with the landlord.
- b. a written rental agreement with the landlord.
- c. an oral rental agreement with a person other than the landlord.
- d. a written rental agreement with a person other than the landlord.
- e. other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

.....  _____
 (TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

NOTICE TO OCCUPANTS

YOU MUST ACT AT ONCE IF ALL THE FOLLOWING ARE TRUE:

- (1) You are not named in the accompanying Summons and Complaint.
- (2) You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.
- (3) You still occupy the premises.

You can complete and SUBMIT THIS CLAIM FORM within 10 days from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed.

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.

1 SEC. 3. Section 1161b of the Code of Civil Procedure is
2 amended to read:

3 1161b. (a) Notwithstanding Section 1161a, a tenant or
4 subtenant in possession of a rental housing unit under a
5 month-to-month lease or periodic tenancy at the time the property
6 is sold in foreclosure shall be given 90 days' written notice to quit
7 pursuant to Section 1162 before the tenant or subtenant may be
8 removed from the property as prescribed in this chapter.

9 (b) In addition to the rights set forth in subdivision (a), tenants
10 or subtenants holding possession of a rental housing unit under a
11 fixed-term residential lease entered into before transfer of title at
12 the foreclosure sale shall have the right to possession until the end
13 of the lease term, and all rights and obligations under the lease
14 shall survive foreclosure, except that the tenancy may be terminated
15 upon 90 days' written notice to quit pursuant to subdivision (a) if
16 any of the following conditions apply:

17 (1) The purchaser or successor in interest will occupy the
18 housing unit as a primary residence.

19 (2) The lessee is the mortgagor or the child, spouse, or parent
20 of the mortgagor.

21 (3) The lease was not the result of an arms' length transaction.

22 (4) The lease requires the receipt of rent that is substantially
23 less than fair market rent for the property, except when rent is
24 reduced or subsidized due to a federal, state, or local subsidy or
25 law.

26 (c) The purchaser or successor in interest shall bear the burden
27 of proof in establishing that a fixed-term residential lease is not
28 entitled to protection under subdivision (b).

29 (d) This section shall not apply if any party to the note remains
30 in the property as a tenant, subtenant, or occupant.

31 (e) Nothing in this section is intended to affect any local just
32 cause eviction ordinance. This section does not, and shall not be
33 construed to, affect the authority of a public entity that otherwise
34 exists to regulate or monitor the basis for eviction.

35 (f) This section shall remain in effect only until December 31,
36 2019, and as of that date is repealed, unless a later enacted statute,
37 that is enacted before December 31, 2019, deletes or extends that
38 date.

39 SEC. 4. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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