

AMENDED IN SENATE APRIL 26, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1473

**Introduced by Senator Hancock
(Coauthors: Senators DeSaulnier, Leno, and Pavley)**

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1473, as amended, Hancock. ~~Foreclosure: tenants.~~ *Tenants: foreclosure and unlawful detainer.*

Existing

(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 unless the lease was signed within the last 15 days* and that the tenant may have the right to stay in the property for longer than 90 days. 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 the issuance of an amended notice translation by the Department of Consumer Affairs Internet Web site, whichever date is later.* The bill would extend the operation of these provisions indefinitely.

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 those provisions do not limit the right of a tenant, subtenant, or occupant to file a prejudgment claim of right of possession or to object to enforcement of a judgment for possession, regardless of whether the tenant, subtenant, or occupant was served with a prejudgment claim of right to possession, as specified, in the case of an unlawful detainer arising out of, among other circumstances, a foreclosure sale.

Existing

(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 under

a residential lease with the right to possession until the end of the lease term *unless the new owner will occupy the property as a primary residence or unless the lease was signed within the last 15 days. The bill would require a residential lease that is entered into 75 days or more after a notice of default against the property has been recorded to contain a notice to advise the potential tenant that the foreclosure process has begun on the property, and that the property may be sold, which will terminate the lease.* The bill would also extend the operation of these provisions indefinitely.

The

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

12

13 “Foreclosure

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

1 the new owner must honor the lease *unless the new owner will*
2 *occupy the property as a primary residence or unless the lease*
3 *was signed within the last 15 days. You may have the right to stay*
4 *in your home for longer than 90 days. Also, in some cases and in*
5 *some cities with a “just cause for eviction” law, you may not have*
6 *to move at all. You may wish to contact a lawyer or your local*
7 *legal aid office or housing counseling agency to discuss any rights*
8 *you may have.” have.*
9

10 (b) It shall be an infraction to tear down the notice described in
11 subdivision (a) within 72 hours of posting. Violators shall be
12 subject to a fine of one hundred dollars (\$100).

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

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

20 (e) *The amendments made to subdivision (a), by the act which*
21 *added this subdivision regarding the obligation to provide the*
22 *notice set forth in that subdivision in the languages required by*
23 *Section 1632 shall become operative on March 1, 2013, or 60 days*
24 *following the issuance of an amended notice translation by the*
25 *Department of Consumer Affairs, whichever occurs later.*

26 *SEC. 2. Section 415.46 of the Code of Civil Procedure is*
27 *amended to read:*

28 415.46. (a) In addition to the service of a summons and
29 complaint in an action for unlawful detainer upon a tenant and
30 subtenant, if any, as prescribed by this article, a prejudgment claim
31 of right to possession may also be served on any person who
32 appears to be or who may claim to have occupied the premises at
33 the time of the filing of the action. Service upon occupants shall
34 be made pursuant to subdivision (c) by serving a copy of a
35 prejudgment claim of right to possession, as specified in
36 subdivision (f), attached to a copy of the summons and complaint
37 at the same time service is made upon the tenant and subtenant, if
38 any.

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

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

12 If
13 (2) If the identity of such an occupant is disclosed to the officer
14 or process server and the occupant is present at the premises, the
15 officer or process server shall serve that occupant with a copy of
16 the prejudgment claim of right to possession attached to a copy of
17 the summons and complaint. If personal service cannot be made
18 upon that occupant at that time, service may be effected by ~~(1)~~
19 leaving a copy of a prejudgment claim of right to possession
20 attached to a copy of the summons and complaint addressed to
21 that occupant with a person of suitable age and discretion at the
22 premises, ~~(2)~~ affixing the same so that it is not readily removable
23 in a conspicuous place on the premises in a manner most likely to
24 give actual notice to that occupant, and ~~(3)~~ sending the same
25 addressed to that occupant by first-class mail.

26 In
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 ~~(1)~~ leaving
33 a copy of a prejudgment claim of right to possession attached to
34 a copy of the summons and complaint at the premises at the same
35 time service is made upon the tenant and subtenant, if any, ~~(2)~~
36 affixing the same so that it is not readily removable in a
37 conspicuous place on the premises so that it is likely to give actual
38 notice to an occupant, and ~~(3)~~ sending the same addressed to “all
39 occupants in care of the named tenant” to the premises by first-class
40 mail.

1 The

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

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

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

15 (2) Paragraph (1) shall not limit the right of any tenant,
16 subtenant, or occupant of the property to file a prejudgment claim
17 of right of possession pursuant to Section 1174.25 at any time
18 before judgment, or to object to enforcement of a judgment for
19 possession as prescribed in Section 1174.3, whether or not the
20 tenant, subtenant, or occupant was served with a prejudgment
21 claim of right to possession, when the judgment for possession
22 arises from an action for unlawful detainer pursuant to Section
23 1161a.

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

1

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1

1 ~~SEC. 2.~~

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

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

10 (b) (1) *Tenants* or subtenants holding possession under a
11 residential lease of a rental housing unit at the time that the
12 property is sold at foreclosure shall have the right to possession
13 until the end of the lease term.

14 (2) *Paragraph (1) shall not apply if a new owner will occupy*
15 *the unit as a primary residence or if the lease was entered into*
16 *within 15 days prior to the posting of the notice of sale pursuant*
17 *to Section 2924f, provided, however, that in either case the new*
18 *owner shall provide the notice described in subdivision (a).*

19 (3) *Every residential lease entered into 75 days or more after*
20 *the recording of a notice of default for the property shall include*
21 *the following notice in English and the languages described in*
22 *Section 1632:*

23
24 *Foreclosure proceedings have begun on this property, which*
25 *may affect your right to continue to live in this property if you sign*
26 *this lease. This property may be sold at a foreclosure sale in as*
27 *soon as 20 days, which will terminate this lease. If you rent this*
28 *property, the new owner may evict you after a 90-day eviction*
29 *notice. In some cities with a “just cause for eviction” law, you*
30 *may not have to move.*

31

32 ~~(b)~~

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

35 (d) *This section shall not preempt any local ordinance and is*
36 *in addition to any other rights and remedies available to tenants*
37 *and owners as provided by federal, state, and local law.*

38 ~~SEC. 3.~~

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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