

AMENDED IN ASSEMBLY MAY 2, 2016

AMENDED IN ASSEMBLY APRIL 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2819

Introduced by Assembly Member Chiu

February 19, 2016

An act to amend Section 1161.2 of, *and to add Section 1167.1 to*, the Code of Civil Procedure, relating to unlawful detainer proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2819, as amended, Chiu. Unlawful detainer proceedings.

Under existing law, a tenant of real property, for a term less than life, or the executor or administrator or his or her estate, is guilty of unlawful detainer when he or she continues in possession, in person or by subtenant, of the property or any part of the property, after the expiration of the term for which it is let to him or her, except as specified. Under existing ~~law~~ law, access to limited civil case records filed in an unlawful detainer action is restricted to (1) parties to the action, (2) certain people who provide the court clerk with specified information about the parties to the action, (3) any person by order of the court on a showing of good cause, and (4) any other person 60 days after the complaint has been filed, unless the defendant prevails in the action within 60 days after the filing of the complaint, in which case access is limited to the other parties allowed access, as described above.

This bill would instead provide that access to limited civil case records filed in an unlawful detainer action is restricted, for purposes of (4), as described above, to any other person 60 days after the complaint has been filed if the plaintiff prevails in the action within 60 days of the

filing of the complaint. The bill would provide that if a default or default judgment is set aside more than 60 days after the complaint was filed, the court file access restrictions, as described above, shall apply as if the complaint had been filed on the date the default or the default judgment is set aside. The bill would authorize the court to bar access to court records in the action if the parties so stipulate.

Existing law requires a complaint filed in an unlawful detainer proceeding to include certain information and requires a defendant to answer the complaint, as specified, within 5 days of being served with a summons and the complaint, unless the court orders otherwise for good cause shown. Existing law also requires proof of service of a summons to be filed in a civil action, including in an unlawful detainer proceeding.

This bill would permit a court to dismiss an unlawful detainer proceeding without prejudice if proof of service of the summons has not been filed within 60 days of the complaint's filing.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the policy of the state to promote open access to public
- 4 records. It is in the interest of the public to ensure, to the greatest
- 5 extent possible, that there is open public access to court records,
- 6 including civil case records.
- 7 (b) It is the policy of the state that access to public records be
- 8 limited or restricted only under compelling circumstances.
- 9 (c) With the enactment of Chapter 1007 of the Statutes of 1991,
- 10 the Legislature began restricting public access to civil case records
- 11 in unlawful detainer proceedings. Under current law, with limited
- 12 exceptions, civil case records in unlawful detainer proceedings are
- 13 unavailable to the public for a period of 60 days after filing. Civil
- 14 case records in unlawful detainer proceedings in which the
- 15 defendant prevails within 60 days of filing are permanently
- 16 unavailable to the public.
- 17 (d) The state has a housing crisis that requires revising the
- 18 current restrictions on public access to civil case records in
- 19 unlawful detainer proceedings. More than four decades have passed

1 since the California Supreme Court first observed, in *Green v.*
2 Superior Court (1974) 10 Cal.3d 616, 625, “a scarcity of adequate
3 low cost housing in virtually every urban setting [in California].”
4 Yet the shortage of affordable housing for low-income tenants has
5 only grown. Median monthly rents in the state are now
6 approximately 50 percent higher than the national average, but
7 high prices have failed to spur sufficient housing construction to
8 meet demand. As a result, households in the state in the bottom
9 quarter of the income distribution spend an average of 67 percent
10 of their income on housing. The recent economic and foreclosure
11 crises have only exacerbated the challenges that low-income
12 households face in securing affordable housing.

13 (e) The difficulty of securing affordable housing in competitive
14 rental markets is also worsened by the existing law governing
15 access to civil case records in unlawful detainer proceedings.
16 Specifically, once unlawful detainer civil case records become
17 public, tenant screening companies and credit reporting agencies
18 capture and publish personal identifying information regarding
19 tenants named as defendants in those records. This information
20 appears in published lists, known as unlawful detainer registries,
21 and on tenants’ credit reports. So long as it is accurate, the fact
22 that a tenant was once sued for unlawful detainer is publicly
23 available for up to seven years and cannot be challenged under
24 federal or state laws governing consumer credit reporting.

25 (f) The names of thousands of innocent tenants whose cases are
26 resolved only after the 60-day deadline appear on unlawful detainer
27 registries. Many of these tenants successfully settle, secure a
28 dismissal, or win at trial, and would have escaped negative credit
29 reporting if only they had prevailed before the deadline. In other
30 instances, unlawful detainer complaints are filed against tenants
31 but never served. Because these complaints are never dismissed,
32 the tenant’s name is publicly released after 60 days and negative
33 credit reporting ensues. Because landlords, who are attempting to
34 decide between numerous applicants for scarce rental housing,
35 rely on unlawful detainer registries and on credit reports, landlords
36 often choose not to rent to tenants who appear on these registries,
37 even if the tenants were eventually found innocent of unlawful
38 detainer. As a result, given the statewide housing shortage, these
39 tenants may be shut out of rental markets for up to seven years
40 through no fault of their own.

1 (g) This act strikes a just balance between ensuring open access
2 to public records and protecting the credit and reputation of
3 innocent tenants. This act also ensures that landlords will have
4 access to timely and more accurate information regarding
5 prospective tenants. This act is a response to the state's ongoing
6 affordable housing crisis and is necessary to prevent tenants from
7 being inadvertently denied an opportunity to secure housing simply
8 as a result of being named in an unlawful detainer lawsuit.

9 SEC. 2. It is the intent of the Legislature to amend existing
10 statutes regarding open access to public records by making
11 permanently unavailable to the public civil case records in unlawful
12 detainer proceedings in which the plaintiff does not prevail within
13 60 days of filing instead of unlawful detainer proceedings in which
14 the defendant prevails within 60 days of filing.

15 SEC. 3. Section 1161.2 of the Code of Civil Procedure is
16 amended to read:

17 1161.2. (a) (1) The clerk shall allow access to limited civil
18 case records filed under this chapter, including the court file, index,
19 and register of actions, only as follows:

20 (A) To a party to the action, including a party's attorney.

21 (B) To a person who provides the clerk with the names of at
22 least one plaintiff and one defendant and the address of the
23 premises, including the apartment or unit number, if any.

24 (C) To a resident of the premises who provides the clerk with
25 the name of one of the parties or the case number and shows proof
26 of residency.

27 (D) To a person by order of the court, which may be granted ex
28 parte, on a showing of good cause.

29 (E) Except as provided in subparagraph (F), to any other person
30 60 days after the complaint has been filed if the plaintiff prevails
31 in the action within 60 days of the filing of the complaint, in which
32 case the clerk shall allow access to any court records in the action.
33 If a default or default judgment is set aside more than 60 days after
34 the complaint has been filed, this section shall apply as if the
35 complaint ~~has~~ had been filed on the date the default or default
36 judgment is set aside.

37 (F) In the case of a complaint involving residential property
38 based on Section 1161a as indicated in the caption of the complaint,
39 as required in subdivision (c) of Section 1166, to any other person,
40 if 60 days have elapsed since the complaint was filed with the

1 court, and, as of that date, judgment against all defendants has
2 been entered for the plaintiff, after a trial.

3 (2) This section shall not be construed to prohibit the court from
4 issuing an order that bars access to the court record in an action
5 filed under this chapter if the parties to the action so stipulate.

6 (b) (1) For purposes of this section, “good cause” includes, but
7 is not limited to, both of the following:

8 (A) The gathering of newsworthy facts by a person described
9 in Section 1070 of the Evidence Code.

10 (B) The gathering of evidence by a party to an unlawful detainer
11 action solely for the purpose of making a request for judicial notice
12 pursuant to subdivision (d) of Section 452 of the Evidence Code.

13 (2) It is the intent of the Legislature that a simple procedure be
14 established to request the ex parte order described in subparagraph
15 (D) of paragraph (1) of subdivision (a).

16 (c) Upon the filing of a case so restricted, the court clerk shall
17 mail notice to each defendant named in the action. The notice shall
18 be mailed to the address provided in the complaint. The notice
19 shall contain a statement that an unlawful detainer complaint
20 (eviction action) has been filed naming that party as a defendant,
21 and that access to the court file will be delayed for 60 days except
22 to a party, an attorney for one of the parties, or any other person
23 who (1) provides to the clerk the names of at least one plaintiff
24 and one defendant in the action and provides to the clerk the
25 address, including any applicable apartment, unit, or space number,
26 of the subject premises, or (2) provides to the clerk the name of
27 one of the parties in the action or the case number and can establish
28 through proper identification that he or she lives at the subject
29 premises. The notice shall also contain a statement that access to
30 the court index, register of actions, or other records is not permitted
31 until 60 days after the complaint is filed, except pursuant to an
32 order upon a showing of good cause for access. The notice shall
33 contain on its face the following information:

34 (1) The name and telephone number of the county bar
35 association.

36 (2) The name and telephone number of any entity that requests
37 inclusion on the notice and demonstrates to the satisfaction of the
38 court that it has been certified by the State Bar of California as a
39 lawyer referral service and maintains a panel of attorneys qualified
40 in the practice of landlord-tenant law pursuant to the minimum

1 standards for a lawyer referral service established by the State Bar
2 of California and Section 6155 of the Business and Professions
3 Code.

4 (3) The following statement:

5
6 “The State Bar of California certifies lawyer referral services in
7 California and publishes a list of certified lawyer referral services
8 organized by county. To locate a lawyer referral service in your
9 county, go to the State Bar’s Internet Web site at
10 www.calbar.ca.gov or call 1-866-442-2529.”

11
12 (4) The name and telephone number of an office or offices
13 funded by the federal Legal Services Corporation or qualified legal
14 services projects that receive funds distributed pursuant to Section
15 6216 of the Business and Professions Code that provide legal
16 services to low-income persons in the county in which the action
17 is filed. The notice shall state that these telephone numbers may
18 be called for legal advice regarding the case. The notice shall be
19 issued between 24 and 48 hours of the filing of the complaint,
20 excluding weekends and holidays. One copy of the notice shall be
21 addressed to “all occupants” and mailed separately to the subject
22 premises. The notice shall not constitute service of the summons
23 and complaint.

24 (d) Notwithstanding any other law, the court shall charge an
25 additional fee of fifteen dollars (\$15) for filing a first appearance
26 by the plaintiff. This fee shall be added to the uniform filing fee
27 for actions filed under this chapter.

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

32 (f) This section does not alter any provision of the Evidence
33 Code.

34 *SEC. 4. Section 1167.1 is added to the Code of Civil Procedure,*
35 *to read:*

36 *1167.1. If proof of service of the summons has not been filed*
37 *within 60 days of the complaint’s filing, the court may dismiss the*
38 *action without prejudice.*

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