

Assembly Bill No. 2819

Passed the Assembly May 16, 2016

Chief Clerk of the Assembly

Passed the Senate August 15, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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, 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, (1) to any person by order of the court if judgment is entered for the plaintiff after trial more than 60 days since the filing of the complaint, and (2) 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the policy of the state to promote open access to public records. It is in the interest of the public to ensure, to the greatest extent possible, that there is open public access to court records, including civil case records.

(b) It is the policy of the state that access to public records be limited or restricted only under compelling circumstances.

(c) With the enactment of Chapter 1007 of the Statutes of 1991, the Legislature began restricting public access to civil case records in unlawful detainer proceedings. Under current law, with limited exceptions, civil case records in unlawful detainer proceedings are unavailable to the public for a period of 60 days after filing. Civil case records in unlawful detainer proceedings in which the defendant prevails within 60 days of filing are permanently unavailable to the public.

(d) The state has a housing crisis that requires revising the current restrictions on public access to civil case records in unlawful detainer proceedings. More than four decades have passed since the California Supreme Court first observed, in *Green v. Superior Court* (1974) 10 Cal.3d 616, 625, “a scarcity of adequate low cost housing in virtually every urban setting [in California].” Yet the shortage of affordable housing for low-income tenants has only grown. Median monthly rents in the state are now approximately 50 percent higher than the national average, but high prices have failed to spur sufficient housing construction to meet demand. As a result, households in the state in the bottom quarter of the income distribution spend an average of 67 percent of their income on housing. The recent economic and foreclosure

crises have only exacerbated the challenges that low-income households face in securing affordable housing.

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

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

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

SEC. 2. It is the intent of the Legislature to amend existing statutes regarding open access to public records by making

permanently unavailable to the public civil case records in unlawful detainer proceedings in which the plaintiff does not prevail within 60 days of filing instead of unlawful detainer proceedings in which the defendant prevails within 60 days of filing.

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

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

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

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

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

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

(E) To any person by order of the court if judgment is entered for the plaintiff after trial more than 60 days since the filing of the complaint. The court shall issue the order upon issuing judgment for the plaintiff.

(F) Except as provided in subparagraph (G), 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, in which case the clerk shall allow access to any court records in the action. If a default or default judgment is set aside more than 60 days after the complaint has been filed, this section shall apply as if the complaint had been filed on the date the default or default judgment is set aside.

(G) In the case of a complaint involving residential property based on Section 1161a as indicated in the caption of the complaint, as required in subdivision (c) of Section 1166, to any other person, if 60 days have elapsed since the complaint was filed with the court, and, as of that date, judgment against all defendants has been entered for the plaintiff, after a trial.

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

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

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

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

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

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

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

(2) The name and telephone number of any entity that requests inclusion on the notice and demonstrates to the satisfaction of the court that it has been certified by the State Bar of California as a lawyer referral service and maintains a panel of attorneys qualified in the practice of landlord-tenant law pursuant to the minimum standards for a lawyer referral service established by the State Bar of California and Section 6155 of the Business and Professions Code.

(3) The following statement:

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

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

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

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

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

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

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

Approved _____, 2016

Governor