

BILL ANALYSIS

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|SENATE RULES COMMITTEE           |                               | SB 1473 |
|Office of Senate Floor Analyses  |                               |         |
|1020 N Street, Suite 524         |                               |         |
|(916) 651-1520                   |           Fax: (916)       |         |
|327-4478                         |                               |         |
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THIRD READING

Bill No: SB 1473
Author: Hancock (D), et al.
Amended: 4/26/12
Vote: 21

SENATE JUDICIARY COMMITTEE : 3-2, 4/17/12

AYES: Evans, Corbett, Leno

NOES: Harman, Blakeslee

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Residential tenancies: foreclosure

SOURCE : Attorney General Kamala Harris

DIGEST : This bill, which is part of the six-bill package sponsored by Attorney General Kamala Harris entitled the "California Homeowner Bill of Rights," is intended to provide additional protections to tenants living in foreclosed homes. This bill revises the 60-day notice to vacate and instead provides, in the case of a month-to-month lease, for 90 days' notice for these tenants. This bill also provides that new owners of a foreclosed property must honor a tenant's lease, except in certain cases, and unless the new owner will occupy the property as his/her primary residence. In that case, the new owner must give the tenant a 90-day notice to vacate. This bill revises the notice that is sent to tenants when the property is noticed for a foreclosure sale to reflect these changes and also deletes the January 1, 2013 sunset

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also permits a tenant in a foreclosed property to file a postjudgment claim of right to possession, as specified.

ANALYSIS : Existing state law provides that tenants living in a rental unit at the time the property is sold in foreclosure must be given 60-days' notice before they may be evicted. This provision, which does not apply if any party to the mortgage note remains in the property as a tenant, subtenant, or occupant, sunsets on January 1, 2013. (Code of Civil Procedure (CCP) Section 1161b)

Existing federal law requires a successor in interest in a property subject to foreclosure to provide a bona fide tenant in the property with a 90-day notice to vacate. The successor in interest must also honor the tenant's lease until the end of the lease term unless the property is sold to a purchaser who intends to occupy the home as his/her primary residence. In that case, the tenant must be provided with a 90-day notice to vacate (unless a longer period is required by state or local law). In addition, tenants of foreclosed properties must be provided with 90-days' notice to vacate if there is no lease or the lease is terminable at will. Federal law provides that a lease or tenancy shall be "bona fide" only if (1) the tenant is not the mortgagor or the child, spouse, or parent of the mortgagor; (2) the lease or tenancy is the result of an arms-length transaction; and (3) the rent for the lease or tenancy is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized by a federal, state, or local subsidy. These provisions sunset on December 31, 2014. ("Protecting Tenants at Foreclosure Act of 2009," Public Law 111-22)

This bill revises existing law's requirement of 60-days' notice to instead provide, in the case of a month-to-month lease, for 90-days' notice for these tenants.

This bill specifies that a tenant holding possession under a residential lease of a rental housing unit at the time the property is sold in foreclosure shall have the right to possession until the end of the lease term. This provision will not apply if the new owner will occupy the property as his/her primary residence or if the lease was entered into

within 15 days prior to the posting of the notice of sale. In either case, however, the new owner must give the tenant a 90-day notice to vacate.

This bill requires that a residential lease that is entered into after the expiration of 75 days following a notice of default must contain a notice in English and the languages described in Section 1632 that alerts the prospective tenant that the foreclosure process has started on the property and the property may be sold at foreclosure in as soon as 20 days, which will terminate the lease. The

notice also informs tenants that if they rent the property, the new owner may evict them after a 90-day eviction notice.

This bill also revises existing law's notice that is sent to tenants when a notice of sale is posted on the property to ensure that it accurately reflects the revisions proposed above. This bill provides that the changes in this notice will not become operative until March 1, 2013, or 60 days following the issuance of an amended new translation by the Department of Consumer Affairs, whichever occurs later.

This bill removes the January 1, 2013 sunset date that will otherwise apply to these sections.

Existing law provides that a former owner of a foreclosed property who holds over and remains in the property after it has been sold through foreclosure may be removed after a three-day notice to quit has been served. (CCP Section 1161a)

Existing law provides that if an owner uses a prejudgment claim of right of possession, no occupant of the premises, whether or not that person is named in the judgment for possession, may object to the enforcement of the judgment. (CCP Section 415.46)

This bill specifies that CCP Section 415.46 does not limit the right of a tenant to file a prejudgment claim of right of possession at any time before judgment or to object to enforcement of a judgment for possession whether or not the tenant was served with the claim of right to possession.

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Background

California leads the nation with one of the highest rates of foreclosure. According to RealtyTrac, in California, one in every 303 housing units received a foreclosure filing in March 2012, and 48,422 houses received a foreclosure notice in February alone. Tenants living in those homes have overwhelmingly been impacted. A November 18, 2007 New York Times article, "As Owners Feel Mortgage Pain, So Do Renters," noted "thousands of American families are losing their homes without ever missing a payment. They are renters in houses whose owners default on their mortgages - a large but little noticed class of casualties."

In January 2011, Tenants Together released its third annual report entitled "California Renters in the Foreclosure Crisis." The report estimated that at least 38 percent of homes in foreclosures were rentals and more than 200,000 California renters were directly affected by home foreclosures in 2010 alone. Tenants Together further

estimated that these numbers, based on data from Foreclosure Radar, likely undercount the number of foreclosed homes that are in fact rentals. The report indicated that the counties with the highest foreclosed rental units (5,000 or more) were Los Angeles, Riverside, Sacramento, and San Bernardino. In those counties, 45,860 renters were affected in Los Angeles; 18,823 in Riverside; 17,033 in Sacramento; and 17,356 in San Bernardino. In San Francisco, 61 percent of foreclosed units were renter occupied. The report listed other counties with comparatively high percentages of renter-occupied foreclosed units including: Alameda (40%); Fresno (42%); Humboldt (42%); Mono (41%); Napa (40%); and San Mateo (41%). (See "California Renters in the Foreclosure Crisis, Third Annual Report," January 2011, Tenants Together; <http://tenantstogether.org/>)

The impact of foreclosure on tenants has not gone unnoticed by policymakers, and recent state and federal laws have been enacted to provide tenants with additional time to move when the home in which they are living is the subject of a foreclosure. In 2008, the Legislature passed and the Governor signed SB 1137 (Perata, Corbett, Machado, Chapter

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69, Statutes of 2008), which requires that tenants receive 60-days' notice before they may be evicted after the rental unit in which they are living is foreclosed. These provisions sunset on January 1, 2013.

Federal lawmakers have also acted to protect tenants in foreclosure situations. On May 20, 2009, President Obama signed S. 896, Public Law 111-22, which included the "Protecting Tenants at Foreclosure Act of 2009" (PTFA). The PTFA generally requires a successor in interest in a property subject to foreclosure to provide bona fide tenants with a 90-day notice to vacate and, with limited exceptions, to honor the tenant's lease until the end of the lease term. In 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), which extended the PTFA until December 31, 2014 and clarified that its protections extend to tenants who have entered into leases before the date on which complete title is transferred as the result of a foreclosure.

Comments

This bill makes the state law provisions similar to federal law by providing that a new owner of a foreclosed property must honor a tenant's lease. Under this bill, this provision will not apply if the new owner will occupy the property as his/her primary residence or if the lease was entered into within 15 days prior to the posting of the notice of sale. In either of those instances, the new owner must give the tenant a 90-day notice to vacate.

Tenant advocates raise concerns that, despite the protections envisioned by Congress under the PTFA, landlords have taken advantage of the ambiguity of the "bona fide" definition and have taken eviction action against tenants despite the fact that they arguably are entitled to additional time in the property. In many cases, tenants do not challenge these actions because they are unaware of their rights or they cannot afford legal representation.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

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SUPPORT : (Verified 5/16/12)

Attorney General Kamala Harris (source)
California Nurses Association
Consumers Union
County of Santa Cruz

OPPOSITION : (Verified 5/16/12)

California Apartment Association
California Association of Realtors

ARGUMENTS IN SUPPORT : The bill's sponsor, Attorney General Kamala Harris, notes that "As more and more homes are sold through foreclosure, tenants increasingly face the specter of sudden dislocation of themselves, their families, and their belongings. Renters are usually the last to know of foreclosure, and many renters, including families with children, are ending up homeless due to foreclosure evictions. Due to inconsistency in state law, and between state and federal law, tenants are often confused, or misled, about their legal protections, and about how much time they have to move when served with a notice to vacate after a foreclosure sale.

Consumers Union writes that "Tenants have been silent victims in the foreclosure crisis, often kept in the dark by their landlords and unsure as to who owns the property they live in. This bill will help ensure that innocent tenants receive adequate notice of the foreclosure status impacting their residences, and will protect tenants across the state from unjust eviction by new owners of foreclosed properties."

CTW:mw 5/16/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

