

Date of Hearing: April 25, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 2610 (Skinner) – As Amended: April 19, 2012

SUBJECT: Tenants: foreclosure and unlawful detainer

SUMMARY: Improves notice to tenants in foreclosed properties. Specifically, this bill:

- 1) Revises the requirement of existing law providing 60 days' notice to instead provide, in the case of a month-to-month lease, for 90 days' notice for tenants in a foreclosed property.
- 2) 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 would not apply if the new owner will occupy the property as his or 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.
- 3) Requires that a residential lease that is entered into after the expiration of 75 days following a notice of default must contain a notice 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.
- 4) Revises existing notice law 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. Provides that the changes in this notice would 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.
- 5) Eliminates the January 1, 2013 sunset date that would otherwise apply to these sections and the related provisions of existing law.
- 6) Specifies that Code of Civil Procedure 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.

EXISTING LAW:

- 1) Provides under state law 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 Section 1161b)
- 2) Provides under federal law that 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 or 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.)

- 3) 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 (Code Civil Procedure Section 1161a).
- 4) 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 (Code Civil Procedure Section 415.46).

FISCAL EFFECT: Unknown.

COMMENTS:

This bill is part of a package of bills sponsored by the California Attorney General in response to the mortgage foreclosure crisis. According to the author, "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 usually are the last to know of foreclosure."

Under existing state law, tenants living in a property that is sold at foreclosure are entitled to a 60-day written eviction notice. Tenants must also be notified when the notice of sale is recorded, that the foreclosure process has begun, including specific language to inform a tenant that the new property owner may provide either a new lease or a 60-day eviction notice. These protections are set to sunset at the end of this year.

On May 20, 2009, President Obama signed the Protecting Tenants at Foreclosure Act which requires a successor in interest to a foreclosed property to provide tenants with at least a 90-day eviction notice and with some exceptions to honor the tenants existing lease for the remainder of its term. If there is no lease, if the lease is month-to-month, or if the purchaser will occupy the home as their primary residence, the tenant must be provided with at least 90 days' notice to vacate. Purchasers are required to honor a residential lease if it is "bona fide". This Act will sunset on December 31, 2014.

According to those working with tenants living in foreclosed properties, the inconsistencies in state and federal law have created confusion for tenants. Additionally the standard for determining whether a tenant's lease is "bona fide" and therefore must be honored by a successor in interest is vague and does not well defined. Federal law defines a "bona fide" lease is one in which 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. There is no standard defining an "arms-length transaction" or how to determine the fair market rent for the property.

AB 2610 attempts to clarify the ambiguity between federal and state law by giving all tenants in a foreclosed property with a month-to-month lease 90-days eviction notice. Tenants with a residential lease at the time of foreclosure have the right to remain in the home for the duration of the lease. However, if the home will be occupied by a new owner as a primary residence or if the lease was entered into within 15 days prior to the notice of sale then the tenant is entitled to a 90-day eviction notice.

Sunset Date: Opponents of this bill have raised concerns about eliminating the sunset date on the provisions of the bill. The sponsor and others argue that it is unclear when the foreclosure crisis will level off and is hesitant to include a sunset date without some degree of certainty. Recent news reports forecast an increase in foreclosures in the next quarter but have not provided any estimates on when the number of foreclosures will significantly decline.

Support if amended: Trade groups representing lenders, credit unions, and others state that they would support conformity efforts in the bill if they were aligned with federal law. They request that the bill include a cross reference within the Code of Civil Procedure Section 1161b in conforming to the federal definition of a bona fide lease or tenancy.

Staff Comments: Despite the efforts to replace the ambiguous definition of "bona fide" lease under federal law, with bright line standards for determining whether a lease is legitimate, interested parties including the lenders, realtors and tenant rights group have concerns about the exceptions in the bill that permit a successor in interest to evict a tenant with a residential lease.

The committee may wish to consider refining the definition further to include the federal prohibition on renting to a family member. Additionally, providing a standard for determining the fair market value of a rental unit like the U.S. Department of Housing and Urban Development's rental index.

Double referred:

The bill as amended passed the Committee on Judiciary on April 17, 2012, by a vote of 7 to 3.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorney General's Office (sponsor)

Support, if amended:

California Bankers Association
California Credit Union League
California Financial Services Association
California Independent Bankers
California Mortgage Association

California Mortgage Bankers Association
United Trustees Association

Opposition

California Apartment Association

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