

Date of Hearing: June 27, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

SB 1473 (Hancock) – As Amended: June 19, 2012

SENATE VOTE: 25-13

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 or periodic tenancy, 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, the lessee is the borrower or the child, spouse or parent of the borrower, the lease was not the result of an arm's-length transaction or the rent is substantially less than the fair market rent for the property, unless reduced or subsidized by federal, state or local law. In either case, however, the new owner must give the tenant a 90-day notice to vacate.
- 3) 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 would provide 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 (DCA), whichever occurs later.
- 4) Extends the January 1, 2013 sunset date that would otherwise apply to these sections and the related provisions of existing law for six years.
- 5) Specifies that Code of Civil Procedure Section 415.46 does not limit the right of any tenant or subtenant of the property to file a prejudgment claim of right of possession pursuant to Code of Civil Procedure Section 1174.25 (a) at any time before judgment, or to object to enforcement of a judgment for possession as prescribed in Code of Civil Procedure Section 1174.3 in an action for unlawful detainer resulting from a foreclosure sale of a rental housing unit pursuant to Code of Civil Procedure Section 1161a, whether or not the tenant or subtenant was served with a prejudgment 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 1161(b)]

- 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 1161(a)].
- 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, "SB 1473 addresses the increasing hardship and confusion faced by tenants during one of the worst foreclosure crises in decades. Too often, tenants are the unwitting victims when a home they are renting is foreclosed on. Tenants—usually the last to know of foreclosure—often face the specter of sudden dislocation of their homes, their families, and their belongings. In particular, the inconsistency between state and federal law has left tenants confused and, at times, misled about their legal protections."

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.

SB 1473 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. The bill further, incorporates the federal definition of "bona fide" lease as described above.

This bill would make changes to the notice that must be sent to tenants in foreclosed properties when the property is noticed for a foreclosure sale. The changes ensure that the notice is accurate and reflective of state and federal law. For example, the existing notice states that the new property owner may provide the tenant with a 60 days' eviction notice, however the bill would revise this provision to require that a tenant's lease be honored, except in certain cases, and tenants in month-to-month leases be provided with 90 days' notice. As a result, the bill would then revise the notice accordingly so that tenants are accurately advised of state law. In order to address concerns raised by the business trade associations, the bill would delay the operation of this section until March 1, 2013, or 60 days following the issuance of a form by the Department of Consumer Affairs, whichever is later.

This bill would specify that existing law which permits an owner to use a prejudgment claim of right of possession against a holdover former owner when the property has been sold at foreclosure 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. This change would permit a tenant in a foreclosed property to file a post-judgment claim of right to possession or a claim of right to possession pursuant to Code of Civil Procedure Section 1174.3.

Related legislation: This bill is identical to AB 2610 (Skinner) which passed out of this committee, 5-2.

Double referred: If SB 1473 passes this committee, the bill will be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Kamala Harris (sponsor)
Alameda County Board of Supervisors
California Apartment Association
California Bankers Association

California Chamber of Commerce
California Credit Union League
California Independent Bankers
California Mortgage Association
California Mortgage Bankers Association
California Nurses Association
Consumers Union
National Asian American Coalition
Public Counsel Law Center
Tenants Together, California's Statewide Organization for Renters' Rights
United Trustees Association

Opposition

None on file.

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