

Resolution 02-05-2009

Landlord-Tenant: Renter Protections Following Foreclosure

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Civil Code Sections 789.3 to read as follows:

1 §789.3

2 (a) A landlord shall not with intent to terminate the occupancy ~~under any lease or~~
3 ~~other tenancy or estate at will, however created,~~ of property used by a tenant as his residence
4 willfully cause, directly or indirectly, the interruption or termination of any utility service
5 furnished the tenant, including, but not limited to, water, heat, light, electricity, gas,
6 telephone, elevator, or refrigeration, whether or not the utility service is under the control of
7 the landlord.

8 (b) In addition, a landlord shall not, with intent to terminate the occupancy ~~under any~~
9 ~~lease or other tenancy or estate at will, however created,~~ of property used by a tenant as his or
10 her residence, willfully do any of the following:

11 (1) Prevent the tenant from gaining reasonable access to the property by changing the
12 locks or using a bootlock or by any other similar method or device;

13 (2) Remove outside doors or windows; ~~or~~

14 (3) Remove from the premises the tenant's personal property, the furnishings, or any
15 other items without the prior written consent of the tenant, except when done pursuant to the
16 procedure set forth in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of
17 Division 3.

18 Nothing in this subdivision shall be construed to prevent the lawful eviction of a
19 tenant by appropriate legal authorities, nor shall anything in this subdivision apply to
20 occupancies defined by subdivision (b) of Section 1940.

21 (c) Any landlord who violates this section shall be liable to the tenant in a civil action
22 for all of the following:

23 (1) Actual damages of the tenant.

24 (2) An amount not to exceed one hundred dollars (\$100) for each day or part thereof
25 the landlord remains in violation of this section. In determining the amount of such award,
26 the court shall consider proof of such matters as justice may require; however, in no event
27 shall less than two hundred fifty dollars (\$250) be awarded for each separate cause of action.
28 Subsequent or repeated violations, which are not committed contemporaneously with the
29 initial violation, shall be treated as separate causes of action and shall be subject to a separate
30 award of damages.

31 (d) In any action under subdivision (c) the court shall award reasonable attorney's fees
32 to the prevailing party. In any such action the tenant may seek appropriate injunctive relief
33 to prevent continuing or further violation of the provisions of this section during the
34 pendency of the action. The remedy provided by this section is not exclusive and shall not
35 preclude the tenant from pursuing any other remedy which the tenant may have under any
36 other provision of law.

37 (e) For purposes of this section:

38 (1) "Landlord" includes, but is not limited to, a fee simple owner or owners of the
39 property, and any successor or successors in interest to the landlord's interest in the property,
40 including, but not limited to, interests acquired through the provisions of Chapter 2
41 (commencing with Section 2920) of Title 14 of Part 4 of Division 3.
42 (2) "Tenant" includes a tenant occupying the property pursuant to a fixed-term
43 tenancy, a periodic tenancy, a tenancy at will, and a tenancy at sufferance, a subtenant, a
44 lawful occupant, and any of the above persons who lawfully occupied the property
45 immediately prior to the owner's acquisition of the property.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild, San Francisco Chapter

STATEMENT OF REASONS:

Existing Law: Existing law governs the termination of tenancies and generally requires landlords to return security deposits with exceptions for specified damages. Existing law also prevents landlords from harassing tenants by changing locks, removing doors and windows and entering the premises in an attempt to force the tenant to move.

This Resolution: This resolution expands the definition of landlord to include successors in interest to an original landlord including those persons or entities acquiring a property through foreclosure. It defines tenants as any lawful occupant who occupied a property immediately prior to the time a successor in interest to the original landlord acquired the property.

The Problem: With the rise of subprime mortgages over the last several years, there has been a substantial increase in property bought as an investment. Much of that investment has been through adjustable rate mortgages.

Much of that investment property has been rented to provide income to pay mortgages. As the adjustable rates on the mortgages change, many owners find themselves facing foreclosures.

The tenants in those properties who have paid rent and provided security deposits are suddenly forced out of their homes with little or no advance warning.

The California Legislature and Gov. Arnold Schwarznegger have provided tenants with some measure of protection by increasing the time to move after a notice to quit is given from 30 to 60 days.

This measure would give tenants additional protection by defining landlords to include successors in interest to the landlord's property, including any interest acquired pursuant to foreclosure. It would revise various protections under existing law including prohibitions against changing locks, blocking access to premises or removing personal property, so that lenders or other successors in interest must honor these protections after a foreclosure sale.

IMPACT STATEMENT:

This resolution does not affect any other law, statute, or rule.

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