

## RESOLUTION 5-06-03

### DIGEST

#### Notice of Termination to Tenant: No Extension of Time for Service by Mail

Amends Code of Civil Procedure section 1162 to eliminate the five-day extension of time to respond to service by mail.

### RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

#### History:

None known.

#### Reasons:

This resolution amends Code of Civil Procedure 1162 to eliminate the 5-day extension of time to respond to service by mail. This resolution should be disapproved because it is so ambiguous as to be unworkable.

The 5-day extension of time to respond exists because of delays in the postal system. In 1995, the Legislature reviewed the notice provisions in Code of Civil Procedure section 1013, subdivision (a), which provides for 5-day extension of time to respond to service by mail, and stated, "This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court." In *Losornio v. Motta* (1998) 67 Cal.App.4th 110, 115, however, the court held that the notice prerequisites in Code of Civil Procedure section 1013, subdivision (a) and 1162, subdivision (3) are mutually exclusive, and therefore created a judicial exception to 5-day extension for "nail and mail" notice in a case involving termination of a tenancy under Civil Code section 1946, requiring either 30 or 60 days' notice. (See also *Highland Plastics, Inc. v. Enders* (1980) 109 Cal.App.3d Supp. 1.)

This resolution is an attempt to clarify the situation. As drafted, however, it exacerbates rather than resolves the confusion. It is ambiguous because it can be misread to apply to other notice provisions involving three-day notices not just the notice requirements in Civil Code section 1946. Even if shortening notice time is a desired goal, this resolution does not resolve the conflicts it purports to address.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1162 to read as follows:

- 1     §1162
- 2             The notices required by Sections 1161 and 1161a may be served either:
- 3             1. By delivering a copy to the tenant personally; or,
- 4             2. If he or she is absent from his or her place of residence, and from his or her usual place of
- 5     business, by leaving a copy with some person of suitable age and discretion at either place, and
- 6     sending a copy through the mail addressed to the tenant at his or her place of residence; or
- 7             3. If such place of residence and business can not be ascertained, or a person of suitable age
- 8     or discretion there can not be found, then by affixing a copy in a conspicuous place on the property;
- 9     ~~and also delivering a copy to a person there residing, if such a person can be found;~~ and also sending
- 10    a copy through the mail addressed to the tenant at the place where the property is situated. Service
- 11    upon a subtenant may be made in the same manner.

12           4. The Code of Civil Procedure section 1013(a) extension of time “to do any act” or “make  
13 any response” when a notice is served by mail is inapplicable to a 30/60-day notice of termination  
14 served by Code of Civil Procedure section 1161(2) substitute service or Code of Civil Procedure  
15 section 1162(e) posting and mailing.

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

PROPONENT: Santa Barbara County Bar Association

#### STATEMENT OF REASONS

Existing Law: Provides only in case law that the five-day extension for mailing, set forth in Code of Civil Procedure section 1013(a), does not apply to notices delivered pursuant to Code of Civil Procedure section 1162.

This Resolution: Eliminates this confusion.

The Problem: Case law, notably *Losornio v. Motta* (1998) 67 Cal.App.4th 110, 115; and *Highland Plastics, Inc. v. Enders* (1980) 109 Cal.App.3d Supp. 1, 7-10, has held that the Code of Civil Procedure section 1013(a) five-day extension of time “to do any act” or “make any response” when a notice is served by mail is inapplicable to a 30/60-day notice of termination served by Code of Civil Procedure section 1162(2) substitute service or Section 1162(3) “nail and mail”; however, this is still a point which is argued by tenant counsel. This argument continues to clog the court system and is unfair to both parties since the matter has been resolved. It is a means to delay the legal process. Since the Legislature has already decided in Civil Code section 1946.1 that tenants residing in the premises for longer than one year shall be given at least a 60 day notice of termination of tenancy while tenants residing in the premises for less than one year shall be given at least 30 days notice of termination of tenancy, there is no need for a further extension by five days.

Amending Code of Civil Procedure section 1162 will further the public policy by avoiding confusion and will not have a detrimental effect upon the process.

#### IMPACT STATEMENT

This resolution will affect Code of Civil Procedure section 1013. This resolution will not affect any other law, statute or rule.

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#### COUNTERARGUMENT

#### SAN DIEGO COUNTY BAR ASSOCIATION

This proposal deletes a landlord’s responsibility to notify persons residing at a property of important legal notices when their rights could be involved. There does not appear to be any justification for removing this protection to a tenant’s due process rights. Further, case law has adequately addressed the problem that this proposal is intended to resolve.