

RESOLUTION 07-01-2007

DIGEST

Landlord/Tenant: Non-Party Service of Prejudgment Claims

Amends Code of Civil Procedure section 415.46 to permit non-party service of a prejudgment claim of right to possession.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 415.46 to permit non-party service of a prejudgment claim of right to possession. This resolution should be approved in principle because it would reduce the costs associated with eviction.

Code of Civil Procedure section 414.10 permits civil litigants to perfect service of summons through the cost-effective enlisting of non-parties who are at least 18 years of age. Within the landlord/tenant arena, however, section 415.46 imposes a more stringent requirement upon landlords by requiring that prejudgment claims against residential tenants be served exclusively by a marshal, sheriff, or registered process server.

Formal service costs can be expensive and increase the legal costs that prevailing landlords pass along to tenants. Because courts have within their discretion and powers to scrutinize service and to assure a tenant’s due process rights are protected, imposing the formal service requirements of section 415.46 on landlords is not only unnecessary, but is costly and inefficient.

All parties’ interests are promoted by permitting landlords to serve prejudgment claims on tenants when non-parties over the age of 18 are capable of doing so. Providing landlords with the option of a more cost-effective service option will likely result in overall savings being otherwise passed on to tenants as well.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Code of Civil Procedure section 415.46 to read as follows:

- 1 §415.46
- 2 (a) In addition to the service of a summons and complaint in an action for unlawful
- 3 detainer upon a tenant and subtenant, if any, as prescribed by this article, a prejudgment
- 4 claim of right to possession may also be served on any person who appears to be or who
- 5 may claim to have occupied the premises at the time of the filing of the action. Service upon
- 6 occupants shall be made pursuant to subdivision (c) by serving a copy of a prejudgment
- 7 claim of right to possession, as specified in subdivision (f), attached to a copy of the

8 summons and complaint at the same time service is made upon the tenant and subtenant, if
9 any,

10 (b) Service of the prejudgment claim of right to possession in this manner shall be
11 effected by a marshal, sheriff, or registered process server, or in the manner prescribed in
12 California Code of Civil Procedure Section 414.10.

13 (c) When serving the summons and complaint upon a tenant and subtenant, if any,
14 the marshal, sheriff, or registered process server, or other authorized server under California
15 Code of Civil Procedure Section 414.10 shall make a reasonably diligent effort to ascertain
16 whether there are other adult occupants of the premises who are not named in the summons
17 and complaint by inquiring of the person or persons who are being personally served, or any
18 person of suitable age and discretion who appears to reside upon the premises, whether there
19 are other occupants of the premises.

20 If the identity of such an occupant is disclosed to the ~~officer or process server~~ marshal, sheriff,
21 or registered process server, or other authorized server under California Code of Civil Procedure
22 Section 414.10 and the occupant is present at the premises, ~~officer or process server~~ marshal,
23 sheriff, or registered process server, or other authorized server under California Code of Civil
24 Procedure Section 414.10 shall serve that occupant with a copy of the prejudgment claim of right to
25 possession attached to a copy of the summons and complaint. If personal service cannot be made
26 upon that occupant at that time, service may be effected by (1) leaving a copy of a prejudgment
27 claim of right to possession attached to a copy of the summons and complaint addressed to that
28 occupant with a person of suitable age and discretion at the premises, (2) affixing the same so that it
29 is not readily removable in a conspicuous place on the premises in a manner most likely to give
30 actual notice to that occupant, pursuant to California Code of Civil Procedure Section 415.45, and,
31 and (3) sending the same addressed to that occupant by first-class mail.

32 In addition to the service on an identified occupant, or if no occupant is disclosed to the ~~officer~~
33 ~~or process server~~ marshal, sheriff, or registered process server, or other authorized server under
34 California Code of Civil Procedure Section 414.10, or if substituted service is made upon the tenant
35 and subtenant, if any, ~~officer or process server~~ marshal, sheriff, or registered process server, or other
36 authorized server under California Code of Civil Procedure Section 414.10 shall serve a
37 prejudgment claim of right to possession for all other persons who may claim to occupy the
38 premises at the time of the filing of the action by (1) leaving a copy of a prejudgment claim of right
39 to possession attached to a copy of the summons and complaint at the premises at the same time
40 service is made upon the tenant and subtenant, if any, (2) affixing the same so that it is not readily
41 removable, in a conspicuous place on the premises so that it is likely to give actual notice to an
42 occupant, pursuant to California Code of Civil Procedure Section 415.45, and (3) sending the same
43 addressed to "all occupants in care of the named tenant" to the premises by first-class mail.

44 The ~~person serving process~~ marshal, sheriff, or registered process server, or other
45 authorized server under California Code of Civil Procedure Section 414.10 shall state the date of
46 service on the prejudgment claim of right to possession form. However, the absence of the date of
47 service on the prejudgment claim of right to possession does not invalidate the claim.

48 (d) Proof of service under this section shall be filed with the court and shall include a
49 statement that service was made pursuant to this section. Service on occupants in
50 accordance with this section shall not alter or affect service upon the tenant or subtenant, if
51 any.

52 (e) If an owner or his or her agent has directed and obtained service of a prejudgment
53 claim of right to possession in accordance with this section, no occupant of the premises,

54 whether or not such occupant is named in the judgment for possession, may object to the
55 enforcement of that judgment as prescribed in Section 1174.3.

56 (f) The prejudgment claim of right to possession shall be made on the following
57 form:
58 [form remains unchanged]

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

PROPONENT: Santa Barbara County Bar Association

STATEMENT OF REASONS:

Existing Law: Having the Prejudgment Claim of Right to Possession service mandated to be effected by Marshal, Sheriff or registered process server only provides yet another loophole for the tenant to evade service.

This Resolution: This Resolution would provide that service of the Prejudgment Claim of Right to Possession could be effected in the same manner as the Unlawful Detainer Summons and Complaint.

The Problem: Currently, a property owner must utilize a Marshal, Sheriff or registered process server to serve a Prejudgment Claim of Right to Possession. This means that the server must go to the property in question again and again and again running up a very large bill for both the landlord and the tenant for the service fees. This amount is chargeable to the landlord initially, but if the landlord is successful in the action, such fees are then passed on to the tenant. The Unlawful Detainer Complaint and Summons may be served on the tenant by the property manager who is at the property in question on a regular basis and is therefore able to serve the tenant when they observe them outside their apartment unit, but the Prejudgment Claim of Right to Possession must currently be served by a Marshal, Sheriff or registered process server. A tenant who is evading service can tack on several weeks to the eviction time frame by refusing to open his or her door to the process server, and the process server therefore has to come back and attempt to find the tenant outside the premises. This is a very daunting task when the tenant is hiding out.

Changing California Code of Civil Procedure Section 415.46 will further public policy by bringing the service of the Prejudgment Claim of Right to Possession in line with that of the service of the actual Summons and Complaint for the action in Unlawful Detainer which may be served pursuant to California Code of Civil Procedure Section 414.10 "...by any person who is at least 18 years old and not a party to the action." It will reduce the ultimate cost to the tenant which will be awarded to the landlord upon successful completion of the action.

IMPACT STATEMENT

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

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