

RESOLUTION 08-08-2008

DIGEST:

Real Property: Termination of Tenancy Notices On Foreclosed Property

Amends Code of Civil Procedure section 1161 to require 60-day termination notice for tenants of foreclosed manufactured, mobile, or floating homes for more than one year.

RESOLUTIONS COMMITTEE RECOMMENDATION:

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

The resolution seeks to amend Code of Civil Procedure section 1161 to require 60-day termination notice for tenants of foreclosed manufactured, mobile or floating homes for more than one year. This resolution should be approved in principle because the notice requirements would conform to those provided in Civil Code section 1946.1 to similarly situated tenants.

The current notice requirements for termination of tenancy on foreclosed properties provide for only 30-day notices to tenants who have resided in manufactured, mobile, or floating homes for more than one year. As proponents highlight, there are significant problems inherent in requiring families to move and locate alternative housing with only 30-days' notice. By extending notice requirements to 60 days, the burden imposed on unsuspecting tenants who are forced to move due to foreclosure would be lessened.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Code of Civil Procedure section 1161a to read as follows:

- 1 §1161a
- 2 (a) As used in this section:
- 3 (1) "Manufactured home" has the same meaning as provided in Section 18007 of
- 4 the Health and Safety Code.
- 5 (2) "Mobilehome" has the same meaning as provided in Section 18008 of the
- 6 Health and Safety Code.
- 7 (3) "Floating home" has the same meaning as provided in subdivision (d) of
- 8 Section 18075.55 of the Health and Safety Code.
- 9 (b) In any of the following cases, a person who holds over and continues in
- 10 possession of a manufactured home, mobilehome, floating home, or real property after a
- 11 three-day written notice to quit the property has been served upon the person, or if there is
- 12 a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in
- 13 Section 1162, may be removed therefrom as prescribed in this chapter:
- 14 (1) Where the property has been sold pursuant to a writ of execution against such

15 person, or a person under whom such person claims, and the title under the sale has been
16 duly perfected.\

17 (2) Where the property has been sold pursuant to a writ of sale, upon the
18 foreclosure by proceedings taken as prescribed in this code of a mortgage, or under an
19 express power of sale contained therein, executed by such person, or a person under whom
20 such person claims, and the title under the foreclosure has been duly perfected.

21 (3) Where the property has been sold in accordance with Section 2924 of the Civil
22 Code, under a power of sale contained in a deed of trust executed by such person, or a
23 person under whom such person claims, and the title under the sale has been duly
24 perfected.

25 (4) Where the property has been sold by such person, or a person under whom such
26 person claims, and the title under the sale has been duly perfected.

27 (5) Where the property has been sold in accordance with Section 18037.5 of the
28 Health and Safety Code under the default provisions of a conditional sale contract or
29 security agreement executed by such person, or a person under whom such person claims,
30 and the title under the sale has been duly perfected.

31 c) Notwithstanding the provisions of subdivision (b), a tenant or subtenant in
32 possession of a rental housing unit which has been sold by reason of any of the causes
33 enumerated in subdivision (b), who rents or leases the rental housing unit either on a
34 periodic basis from week to week, month to month, or other interval, or for a fixed period
35 of time, shall be given written notice to quit pursuant to Section 1162, at least as long as
36 the term of hiring itself but not exceeding 30 days, before the tenant or subtenant may be
37 removed therefrom as prescribed in this chapter.

38 If the tenant or subtenant has resided in the dwelling for more than one year, then a
39 written 60-day notice to quit pursuant to Section 1162 shall be given before the tenant or
40 subtenant may be removed therefrom as prescribed in this chapter.

41 (d) For the purpose of subdivision (c), “rental housing unit” means any structure or
42 any part thereof which is rented or offered for rent for residential occupancy in this state.

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

PROPONENT: San Fernando Valley Bar Association

STATEMENT OF REASONS:

Existing Law: Under the existing law, a tenant or subtenant is given only a 30-day notice to vacate when the former landlord’s interest in the residential real property has been foreclosed.

This Resolution: Would increase the written notice given to a tenant or subtenant of the foreclosed residential property from 30 to 60 days if the tenant or subtenant has resided in the dwelling for more than one year. This increase time would conform with CC § 1946.1(c).

The Problem: The tenant or subtenant is an innocent victim of the foreclosure process. The former owner is not in possession and, therefore, only the tenant is subject to eviction upon only a 30-day written notice. The way the CCP § 1161.1 currently reads is that a tenant may be evicted from his or her foreclosed rented home with only a 30-day notice, no matter the length of

the tenancy. Tenants who have resided on foreclosed properties for more than one year should be entitled to the same 60-day notice period as other similar tenants pursuant to Civil Code § 1946.1(c).

IMPACT STATEMENT:

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

AUTHOR AND PERMANENT CONTACT: Roger Franklin, 16000 Ventura Blvd., Suite 908, Encino, California 91436; (818) 986-5253; email: rogerfranklin@prodigy.net

RESPONSIBLE FLOOR DELEGATE: Roger Franklin