

NEW LAWS AFFECTING CALIFORNIA REAL ESTATE AND PROPERTY MANAGEMENT, 2013

California legislators were hard at work this year, enacting a number of new laws that will have an impact on the residential rental housing industry. (Note: SB is a Senate Bill and AB is an Assembly Bill.)

Requiring New Smoke Alarms for Home Improvers and Landlords

Starting January 1, 2014, for all dwelling units intended for human occupancy for which a building permit is issued for alterations, repairs, or additions for more than \$1,000, the issuer of the building permit will not sign off on the completion of work unless the owner demonstrates that all smoke alarms (previously “smoke detectors”) required for the dwelling unit are devices approved by the State Fire Marshal. This rule applies to any dwelling unit intended for human occupancy, including factory-built housing (but not manufactured homes or mobilehomes). Also starting January 1, 2014, to be approved and listed by the State Fire Marshal, a smoke alarm must display the date of manufacture, allow a place for the date of installation to be written, incorporate a hush feature, incorporate an end-of-life warning, and, for battery-operated devices, contain a non-removable 10-year battery. These rules may be superseded by a local rule or ordinance that is more stringent than state law. For properties rented or leased, an owner is generally responsible for testing and maintaining smoke alarms in an apartment complex or other building starting January 1, 2013, and in a single-family residence starting January 1, 2014. An owner of an apartment complex no longer needs to have a smoke detector in common stairwells. Beginning January 1, 2016, an owner of a dwelling unit intended for human occupancy that is rented or lease must generally install additional smoke alarms as needed to comply with current building standards. Existing alarms need not be replaced unless the alarm is inoperable. New alarms installed may be battery-operated if approved by the State Fire Marshal. These installation requirements for landlords do not apply to fire alarm systems with smoke detectors, fire alarm devices that connect to a panel, or devices that use a low-power radio frequency wireless signal.

Senate Bill 1394 (codified as Cal. Health & Safety Code §§ 13113.7, 13113.8, and 13114) (effective January 1, 2013 unless otherwise indicated).

Disclosing Notice of Default to Prospective Tenants

Every landlord who offers for rent a residential property containing one-to-four units must disclose in writing to any prospective tenant the receipt of a notice of default that has not been rescinded. This disclosure must be made before executing a lease agreement. If a landlord violates this law, the tenant can elect to void the lease. If voided, the tenant can recover one month’s rent or twice the amount of actual damages, whichever is greater, plus all prepaid rent, as well as any other remedies available. If the lease is not voided and the foreclosure sale has not occurred, the tenant may deduct one month’s rent from future amounts owed. The written disclosure notice as provided by statute must be in English, Spanish, Chinese, Tagalog,

Vietnamese, and Korean. A property manager will not be held liable for failing to provide the written disclosure notice unless the landlord has given the property manager written instructions to deliver the written disclosure to the tenant. This law will expire on January 1, 2018.

Senate Bill 1191 (codified as Cal. Civil Code § 2924.85) (effective January 1, 2013).

Disclosing Disability Access Inspection for Commercial Properties

A commercial property owner or landlord must state on every lease or rental agreement executed on or after July 1, 2013 whether the leased premises has been inspected by a Certified Access Specialist (CASp), and whether the property has or has not been determined to meet all applicable construction-related accessibility standards for the disabled as specified.

Senate Bill 1186 (codified as Cal. Civil Code § 1938) (law came into effect September 19, 2012).

Allowing Energy Saving Heating and Hot Water Systems

Under existing law, a landlord must meet a basic habitability standard when renting residential property, which includes, among other things, providing heating facilities and hot water. The new law clarifies that a landlord or tenant qualifying for a utility energy savings assistance program or other program for heating and/or hot water system repair or replacement does not violate the basic habitability standard.

Assembly Bill 1124 (codified as Cal. Civil Code § 1941.1) (effective January 1, 2013).

Protecting Pets from Being Declawed or Devocalized

A landlord or other person or corporation that occupies, owns, manages, or provides services in connection with any real property that allows an animal as defined on the premises, is prohibited from requiring that the animal be declawed or devocalized. The landlord or other person is also prohibited from refusing to allow or negotiate occupancy based on someone's refusal to declaw or devocalize any animal, and from advertising the availability of real property for occupancy in a manner designed to discourage applicants whose animal has not been declawed or devocalized. A violation of this law is punishable by a civil penalty of \$1,000 per animal or advertisement.

Senate Bill 1229 (codified as Cal. Civil Code § 1942.7) (effective January 1, 2013).

Requiring 90-Day Notice to Terminate After Foreclosure

A month-to-month tenant or subtenant in possession of a rental housing unit at the time the property is foreclosed must be given a 90-day written notice to terminate under California law. For a fixed-term residential tenancy, the tenant or subtenant can generally remain until the end of the lease term, and all rights and obligations under the lease shall survive foreclosure, including the tenant's obligation to pay rent. However, four exceptions allow a 90-day written notice to terminate a fixed-term lease after foreclosure as follows: (1) the purchaser or

successor-in-interest will occupy the property as a primary residence; (2) the tenant is the borrower or the borrower's child, spouse, or parent; (3) the lease was not the result of an arms' length transaction; or (4) the lease requires rent that is substantially below fair market rent (except if under rent control or government subsidy). The purchaser or successor-in-interest bears the burden of proving that one of the 4 exceptions has been met. Additionally, this law does not apply if a borrower stays in the property as a tenant, subtenant, or occupant, or if the property is subject to just cause rent control. This law will expire on December 31, 2019. This new California law is similar, but not identical, to the 90-day termination notice requirement under the federal Protecting Tenants at Foreclosure Act (12 U.S.C. § 5201, et seq.) as extended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which is set to expire on December 31, 2014.

Assembly Bill 2610 (codified as Cal. Code of Civ. Proc. § 1161b) (effective January 1, 2013).

Revising Notice of Trustee's Sale to Tenants

The specified notice that a lender posting a notice of trustee's sale for a non-judicial foreclosure must also post, and send by first-class mail to the occupants, has been amended. The revised notice states that the occupants may be entitled to a 90-day eviction notice or the right to stay until the end of a fixed-term lease, depending on the circumstances. It also states that all the tenant's rights and obligations under the lease continue after the foreclosure sale, including the tenant's obligation to pay rent. This notice is only required for residential properties where the billing address for the mortgage loan is different than the property address. The notice must be in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The Department of Consumer Affairs (DCA) must make translations of the notice available on its website. Changes to the notice take effect on March 1, 2013 or 60 days after the DCA makes the notice available on its website, whichever is later. This law will sunset on December 31, 2019.

Assembly Bill 2610 (codified as Cal. Civil Code § 2924.8) (law comes into effect on January 1, 2013).

Objecting to Landlord's Claim of Right to Possession After Foreclosure

Under existing law, a landlord can preclude an occupant's objection to the enforcement of a judgment to evict by properly serving a prejudgment claim of right to possession on anyone who appears to be occupying, or may claim to have occupied, the property when the unlawful detainer action was filed. Under the new law, a prejudgment claim of right to possession will not limit the right of any tenant or subtenant to also file a prejudgment claim of right to possession, or to object to enforcement of a judgment, in any action for unlawful detainer resulting from a foreclosure sale of a rental housing unit.

Assembly Bill 2610 (codified as Cal. Code of Civ. Proc. § 415.46) (effective January 1, 2013).

Extending Post-Foreclosure Protection for Tenants

Existing law requiring a statutory notice when terminating a residential tenant after foreclosure,

which was set to expire on January 1, 2013, has been extended to December 31, 2019. Under this requirement, any immediate successor-in-interest in a residential property must, for one year after a foreclosure sale, provide a specific notice when terminating a residential tenant. This notice explaining the tenant's rights must be on a separate cover sheet or, for a 90-day termination, incorporated into the notice to terminate. The notice is not required in the following situations: (1) the tenant is guilty of unlawful detainer; (2) the tenant and successor-in-interest have entered into a rental agreement; or (3) the tenant who will be receiving the notice was not a tenant at the time of foreclosure.

Senate Bill 825 (codified as Cal. Code of Civil Proc. § 1161c) (effective January 1, 2013).

Restricting Landlord's Demand for Form of Payment

A landlord or landlord's agent must generally allow a tenant to pay rent and a security deposit by at least one form of payment other than cash or electronic funds transfer. The previous law did not address an electronic funds transfer which generally means a transfer of funds initiated electronically to debit or credit an account. A landlord can, however, demand cash payments exclusively for three months after a tenant attempts to pay with an NSF or stop payment check. A demand for payment in cash must be made by giving the tenant a written notice as prescribed with the dishonored check attached. A waiver of these requirements is void as against public policy.

Senate Bill 1055 (codified as Cal. Civil Code § 1947.3) (effective January 1, 2013).

Prohibiting Eviction by a Noncompliant Successor Landlord

A successor owner or manager cannot serve a 3-day notice to pay or quit, or otherwise evict a tenant for nonpayment of rent that accrued during a period of noncompliance with four requirements by the successor owner or manager. The tenant, however, is not relieved of any liability for unpaid rent. The four requirements that the successor owner or manager must comply with, as provided under existing law, are as follows: (1) Disclosing the name, phone number, and street address for service of process upon the property manager, as well as either the owner or owner's agent for service of process and receiving notices and demands; (2) Providing the name, phone number, and address or account information for rent payments; (3) Providing the form in which rent is to be paid; and (4) Providing a copy of the rental agreement to the tenant within 15 days of the tenant's signing, and once a year thereafter at the tenant's request. Existing law also requires any successor owner or manager to comply with these requirements within 15 days of succeeding the previous owner or manager.

Assembly Bill 1953 (codified as Cal. Civil Code § 1962) (effective January 1, 2013).

Providing Contact Info for Lawyer Referral Services to Unlawful Detainer Defendants

Starting January 1, 2013, a court clerk must mail to each defendant named in an unlawful detainer or eviction action a notice that contains specified language with the contact information for the State Bar of California, as well as the names and phone number of any certified lawyer

referral service that requests to be included in the notice, provided that the entity has a panel of qualified landlord-tenant attorneys. This new law expands the previous requirement that the notice contains the name and phone number of the county bar association and the local legal aid office that assist low-income persons.

Assembly Bill 1865 (codified as Cal. Code of Civ. Proc. § 1161.2) (effective January 1, 2013).

Easing Escrow Requirement for a Seller's 30-Day Notice to Terminate Tenancy

Under existing law, a landlord must generally give a month-to-month tenant, who has resided in a dwelling for one year or more, a 60-day notice to terminate tenancy. However, if the landlord enters into a contract to sell, a 30 day-notice to terminate tenancy is sufficient as long as 6 requirements are met, as set forth in our C.A.R. standard form Notice of Termination of Tenancy (NTT). One of the 6 requirements is the landlord opens escrow with an escrow company licensed by the Department of Corporations or a licensed real estate broker. The new law also includes an escrow with a title insurer or underwritten title company.

Assembly Bill 2303 (codified as Cal. Civil Code § 1946.1) (effective January 1, 2013).

Allowing Electronic Handling of Security Deposit after Tenancy Termination

After either the landlord or tenant provides notice to terminate tenancy, the parties can mutually agree as follows: (1) for the landlord to deposit any remaining unused portion of the security deposit electronically to a bank account designated by the tenant; and (2) for the landlord to provide a copy of the itemized statement and any required copies to an email account provided by the tenant.

Assembly Bill 1679 (codified as Cal. Civil Code § 1950.5) (effective January 1, 2013).

Disposing Abandoned Personal Property Less Than \$700

The total resale value of personal property left behind by a tenant after termination of a tenancy that a landlord must sell at a public auction, rather than merely retain for his or her own use or dispose of in any manner, has been increased from \$300 to \$700, if certain procedures are followed. This law, however, also prohibits a landlord from assessing any storage cost if the tenant reclaims personal property within 2 days of vacating the premises. The statutory notices of Right to Reclaim Abandoned Property have been revised to reflect these changes. In addition to sending this notice to a former tenant by first class mail as specified, a landlord may also send the notice by email if the former tenant provided the landlord with the tenant's email address. Finally, a landlord's notices of termination of tenancy and pre-move out inspection must contain specified language that former tenants may reclaim abandoned personal property left on the premises, subject to certain conditions.

Assembly Bills 2521 and 2303 (codified as Cal. Civil Code § 1946.1, 1950.5, and 1983 et seq.) (effective January 1, 2013).