



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: May 8, 2012

Approved

Date 5/8/12

SUPPLEMENTAL

SUBJECT: REQUEST FOR SUPPORT OF SB 1191 (SIMITIAN)—SUPPLEMENTAL REPORT

REASON FOR SUPPLEMENTAL

This Supplemental Report answers questions that were raised at the May 2, 2012, Rules and Open Government Committee Meeting regarding SB 1191.

ANALYSIS

At the May 2, 2012, meeting staff requested Rules Committee support for Senate Bill 1191. This bill would penalize landlords of properties with four or fewer rental units that have received a notice of default who fail to disclose the foreclosure status to prospective tenants before execution of a rental contract. If enacted, the bill would allow a tenant that had not received notification to void their lease, would impose penalties on violating landlords, and would prescribe the contents of a landlord's notification.

The author's intention in introducing this bill is to ensure that prospective tenants have the ability to make an informed decision. If fully informed about a property's status, potential tenants would enter a lease fully informed about the possibility their lease may end before the end of its term.

At the meeting, several questions were raised as described below.

Current Legal Protections

A question was asked regarding current state and federal protections for tenants in foreclosed properties and how this bill differed from what already exists in law.

Existing laws include the federal "Protecting Tenants Foreclosure Act of 2009" (PTFA), which provides that bona fide leases of existing tenants in foreclosed properties be honored unless the purchaser intends to occupy the home as their primary residence. If so, tenants must receive 90-day notices before being forced to vacate. State law, SB 1137 (2008), requires that existing tenants receive 60 days notice before they are evicted after a foreclosure. These laws both sunset in the next couple of years: PTFA sunsets in December 2014 and SB 1137 sunsets on January 1, 2013.

The major difference between SB 1191 and existing laws regarding the protection of tenants in properties is that SB 1191 provides rights to prospective tenants of such a property. The bill would require that a landlord of a property in foreclosure provide a prospective tenant with the following notice:

"The foreclosure process has begun on this property, and this property may be sold at foreclosure. If you rent this property, and a foreclosure sale occurs, the sale may affect your right to continue to live in this property in the future. Your tenancy may continue after the sale. In order for the new owner to evict you, the new owner must provide you with at least 50 days written eviction notice or 90 days if required by any other provision of state or federal law. However, some laws may prohibit eviction."

While tenants who sign leases for a unit in the foreclosure process are also protected by the state and federal laws mentioned above, they can nonetheless be impacted. As an example, tenants who sign leases with the expectation that they will be able to live in the property for the term of the lease are impacted when a purchaser who intends to live in the property gives 90 days notice. The notice required by SB 1191 will ensure that a tenant enters the lease informed that this is one potential outcome.

Penalties

A concern was raised about the penalties included in the bill, including allowing for penalties to be traded in lieu of future rent payments, which may provide an incentive for renters to try to get free rent.

The current version of this bill, amended on April 23, 2012, imposes a penalty only when a property owner does not disclose to a prospective tenant that the property being leased is in the process of foreclosure. The penalty would be twice the monthly rent or twice the actual damages, whichever is greater, and all prepaid rent. A renter could opt to take the penalty amount in the form of credit towards future rental payments in lieu of receiving cash.

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While accepting credit towards future rental payments in lieu of cash may be favorable to the tenant, it also provides flexibility for an owner who does not have the cash available due to the foreclosure. Note that penalties are only assessed when an owner does not notify a prospective tenant of the pending foreclosure action.

Types of Properties Affected

A question was raised about the likelihood that penalties would be paid when large apartment buildings are owned by limited liability legal entities.

SB 1191 would only apply to single family residences and small apartment buildings with four or fewer units. Apartment buildings of five or more units would not be covered by this bill. Most small properties are likely to be held by individual investors and not single-asset investment entities.

Updated Supporters and Opponents on Record as of April 30, 2012

Supporters: California Apartment Association; California Public Interest Research Group (CALPIRG); California Rural Legal Assistance Foundation; EAH Housing; Housing Leadership Council of San Mateo County; Legal Aid Society of San Mateo County; MidPen Housing Corp.; National Housing Law Project; Neighborhood Housing Services Silicon Valley; Non-Profit Housing Association of Northern California; Palo Alto Housing Corporation; Tenants Together; Western Center on Law & Poverty; One individual.

Opponents: Apartment Association of California Southern Cities; Apartment Association of Greater Los Angeles; Apartment Association of Orange County; East Bay Rental Housing Association; NOR CAL Rental Property Association; San Diego County Apartment Association; Santa Barbara Rental Housing Association.

/s/

LESLYE CORSIGLIA

Director of Housing

For questions please contact Leslye Corsiglia, Director of Housing, at (408) 535-3851.