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New Laws Protecting Tenants and Occupants After a Foreclosure

By Richard Gullen

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A flurry of new laws taking effect in 2013 continues the Legislature's trend over the last few years of providing additional protections to occupants of residential property after a foreclosure.

- **90-day Notice of Eviction After Foreclosure**

Similar to the federal "Protecting Tenants at Foreclosure Act of 2009" signed by President Obama, California has passed a comparable law, codified as Code of Civil Procedure § 1161(b), which requires that a 90-day written notice of termination be served on a tenant or subtenant prior to an eviction after a foreclosure. Thus, if the tenant were occupying the property under a month-to-month tenancy and ordinarily only entitled to 30-days' notice, the new law provides an additional 60 days' notice.

However, if the tenant is occupying under a fixed-term lease, the tenant may stay until the end of the lease term, and all rights and obligations under the lease shall survive foreclosure, unless one of these four exceptions applies: (1) the new owner will occupy the housing unit as his residence; (2) the tenant is the former mortgagor or the mortgagor's child, spouse, or parent; (3) the lease was not the result of an arms' length transaction; or (4) the rent charged under the lease is substantially less than fair market rent. The new owner has the burden of proving that one of the four exceptions applies.

The new law does not apply if a borrower under the promissory note secured by the deed of trust foreclosed upon remains in the property. As written, this law only applies to tenants or subtenants under a rental agreement with the prior owner, not to mere occupants. This new law also does not apply in cities

which have passed a "just-cause eviction" ordinance.

- **Revised Notice To Occupants At Time Of Notice Of Foreclosure Sale**

In conjunction with the new 90-day notice rule discussed above, the existing statute, which requires an additional notice to occupants at the time the notice of foreclosure sale is posted, was revised to be consistent with the new 90-day notice rule. Consequently, a foreclosing lender, in addition to posting the notice of sale, must also post an additional notice to the residents of the property being foreclosed upon. Consistent with the new 90-day rule discussed above, the additional notice to residents must notify them that they may have a right to stay in the premises beyond 90 days if they have a fixed-term lease (unless one of the four exceptions applies) and that in some cities with a "just case for eviction" law, the residents may not need to move at all.

This amendment to the additional notice to residents only applies if the billing address for the loan is different than the property address, *i.e.*, rental properties, and is operative as of March 1, 2013.

- **Prejudgment Claim Of Right Of Possession**

Under the old version of C.C.P. § 415.46, no occupant of the premises, whether that occupant was named in the judgment for possession or not, could object to the enforcement of the eviction if the owner served a prejudgment claim of right to possession along with the unlawful detainer summons and complaint. Under the revised version, if the unlawful detainer action follows a foreclosure, a tenant or subtenant who was not named as a defendant may still file a prejudgment claim of right of possession at any time before the judgment is entered or may object to enforcement of the judgment by filing a claim of right to possession after service of the writ of possession and before the levying officer returns to effect the eviction of those named in the judgment of possession. Thus, this revision opens the door for tenants and subtenants, *i.e.*, persons occupying under a rental agreement, but not mere occupants, to object to a judgment, or enforcement of a judgment, even if the landlord served a prejudgment claim of right of possession with the unlawful detainer summons and complaint.

Cover Sheet To Notice Of Termination Of Tenancy After Foreclosure

Existing law required that the immediate successor to a residential property after foreclosure attach a cover sheet in statutory form to any notice of termination of tenancy served on a tenant within the first year after the foreclosure sale. This law was set to expire January 1, 2013 and has now been extended to December 21, 2019. The cover sheet, which must be attached to or incorporated into the termination notice, explains that the property was recently sold in foreclosure, the new owner plans to evict the tenant, and the tenant should talk to a lawyer. In particular, the notice advises that the tenant may have a right to stay in the residence for 90 days or longer regardless of any deadline stated in the papers served, and in cities with a "just cause for eviction" law, they may not need to move at all. This law does not apply, and the notice is not required, in situations where (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.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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