

Foreclosures and Tenant Rights in California

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California Leads in Foreclosures- Putting More Tenants in Danger

- ◆ Foreclosures nationally were up 57% in June 2008 over June 2007
- ◆ In California, foreclosure were up over 76% in June 2008 over June 2007 (filings on 68,666 properties in June alone). Highest among the states for the 18th consecutive month.

Subprime Mortgages in California

◆ 2007

- ◆ 768,629 Total Subprime in CA
 - 18.02% 30-90 days past due
- ◆ 276,712 Total Subprime Fixed Rate in CA
 - 13.78% 30-90 days past due
- ◆ 491,917 Total Subprime ARMs in CA
 - 20.39% 30-90 days past due

◆ 2008

- ◆ 755,928
 - 17.16%
- ◆ 292,483
 - 14.91%
- ◆ 463,445
 - 18.59%

Subprime Loans In California Seriously Delinquent and/or In Foreclosure

▪ 2008

- ◆ All Subprime Loans
 - Seriously Delinquent: 23.80%
 - Loans Already in Foreclosure: 16.85%
- ◆ Subprime ARMS
 - Seriously Delinquent: 32.33%
 - Loans Already in Foreclosure: 24.91%

Eviction Process and Timeline for Tenants in California

- ◆ Tenants in Rent Controlled Jurisdictions Protected By Good Cause Eviction Requirements
- ◆ Section 8 Voucher holders Get 90 days' notice (Wasatch v. Degrade, Re CC1954.535)
- ◆ All other tenants get 60 days' notice per Senate Bill 1137

Eviction Process and Timeline for Tenants in California

- ◆ After proper notice provided, tenants must be served with a summons and complaint and have 5 days to respond (sometimes more, depending on how served)
- ◆ Plaintiffs request trial
- ◆ Trial set within 30-45 days
- ◆ Plaintiff requests writ of execution for Sheriff to complete eviction process (post 5-day notice on property, then return and supervise change of locks)

Defenses to Post-Foreclosure Eviction

- ◆ Failure to provide proper notice before summons and complaint
- ◆ Failure to meet other, standard technical requirements for proper completion of a summons and complaint

Defenses to Post-Foreclosure Eviction

- ◆ Lack of standing- plaintiff not the real party in interest (new, novel, some success)
- ◆ Failure to post new notice required by SB 1137 (New CC 2924.8)

New Notice Requirement of SB1137 (effective 9/29/08)

- ◆ Trustee carrying out foreclosure sale must post notice on property regarding impending sale.
- ◆ Must also mail such notice in envelope addressed to “resident of property subject to foreclosure sale”.
- ◆ Notice must be in the 6 languages required in California’s foreign language contract act (CC 1632)
- ◆ Notice also advises tenant to consult with an attorney or housing counselor and not assume that they can be evicted

Lack of Standing to Evict

- ◆ Plaintiff in eviction action has burden of proof to show it is the real party in interest
- ◆ If uncertainty appears on face of complaint, tenant can demurrer and assert that:
 - CCP 430.10 (b) The person who filed the pleading does not have the legal capacity to sue.
 - (e) The pleading does not state facts sufficient to constitute a cause of action.
 - (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

Lack of Standing to Evict

- ◆ Tenant can also raise the issue of lack of standing through answer to complaint
- ◆ Discovery by tenant should request production of all documents necessary to prove that the promissory note and the deed of trust were transferred properly, up through and including current, alleged owner

Utility Shut-Offs

- ◆ Governor vetoed bill to protect water service for tenants in foreclose on properties (AB 1333) and broader bill to protect tenant security deposits and utility service
- ◆ However, landlords remain liable under 789.3 for an illegal lock-out for unlawful termination of utility service