

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2405

Introduced by Assembly Member Ammiano

February 21, 2014

An act to amend Section 1161.2 of the Code of Civil Procedure, and to amend Section 7060.6 of, and to add Section 7060.8 to, the Government Code, relating to landlord tenant.

LEGISLATIVE COUNSEL'S DIGEST

AB 2405, as amended, Ammiano. Landlord tenant: Ellis Act.

(1) Under the Ellis Act, public entities generally are prohibited from adopting any statute, ordinance, or regulation, or taking any administrative action, to compel the owner of residential real property to offer or to continue to offer accommodations in the property for rent or lease. The act authorizes, if an owner seeks to displace a tenant or lessee from accommodations withdrawn from rent or lease by an unlawful detainer proceeding, the tenant or lessee to assert by way of defense that the owner has not complied with the act, or statutes, ordinances, or regulations of public entities adopted to implement the act.

This bill would require, if an owner seeks to displace a tenant or lessee from accommodations withdrawn pursuant to the act ~~solely on the basis of this withdrawal, the case to civil action other than a civil action for unlawful detainer in which the tenant or lessee may assert the above-described defenses,~~ *the plaintiff to state in the caption of the complaint that the civil action is described in a specified provision of the Ellis Act.*

(2) Existing law authorizes a court clerk to allow access to limited civil case records filed in unlawful detainer proceedings to specified persons and, after 60 days after the complaint has been filed, to any other person, with a specified exception.

This bill would prohibit the clerk of the court from allowing access to court records filed in the above-described civil action to displace a tenant or lessee from withdrawn accommodations, *when the caption of the complaint states that it is a civil action described above*, except as specified.

(3) The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element that includes an assessment of housing needs.

~~This bill would, would authorize, if a county or city and county fails to identify or make available adequate sites to accommodate its portion of the regional housing need allocated to specified income levels, authorize the county or city and county public entity, as defined, finds that the prohibition of the Ellis Act decreases the total number of affordable rental units within a jurisdiction, the board of supervisors to compel the owner of a residential real property to offer, or continue to offer, accommodations in the property for rent or lease by adoption of a resolution or by a majority vote of the electors within the county.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares:
- 2 (a) ~~Legal issues in an Ellis Act eviction proceeding are complex,~~
- 3 ~~unlike unlawful detainer proceedings for nonpayment of rent and~~
- 4 ~~other common evictions.~~
- 5 (b) ~~Briefs in an Ellis Act eviction proceeding are often~~
- 6 ~~extensive. Drafting or responding to pleadings on an unlawful~~
- 7 ~~detainer timeline is a challenge. Exhibits are extensive in an Ellis~~
- 8 ~~Act eviction proceeding and need to be thoroughly reviewed to~~
- 9 ~~determine whether “strict compliance” has been achieved.~~
- 10 (c) ~~Owners that invoke the Ellis Act are using a draconian~~
- 11 ~~remedy – removal from rental use – and careful court review is~~
- 12 ~~warranted. Unlike a typical eviction for nonpayment of rent, which~~
- 13 ~~forees a tenant out, but doesn’t otherwise restrict the unit, an Ellis~~

1 Act eviction results in a deed restriction on the unit, removing it
2 from the rental market.

3 (d) The detriment to owners from a longer civil action to recover
4 rental property is fundamentally different. In an Ellis Act eviction
5 proceeding, the owner does not allege damage or misconduct by
6 a tenant that would otherwise require a prompt eviction.

7 (e) It is very difficult for tenants to find representation in part
8 because Ellis Act eviction proceedings are complex and attorneys
9 are required to drop everything to deal with tight timelines. Tenants
10 cannot be expected to competently represent themselves in Ellis
11 Act eviction proceedings. Converting these proceedings to be civil
12 actions other than those for unlawful detainer could make it easier
13 to get representation or low income tenants.

14 (a) *The Ellis Act was enacted in 1985 by the Legislature after*
15 *the California Supreme Court found that landlords do not have*
16 *the right to evict tenants to go out of the business of being a*
17 *landlord.*

18 (b) *Having suffered a mortgage crisis, foreclosure crisis, and*
19 *the loss of jobs and wages, local governments have had little*
20 *flexibility with limiting the abuses that are occurring subsequent*
21 *to the enactment of the Ellis Act.*

22 (c) *Current public policy reflects a growing trend towards local*
23 *control. Examples include realignment of corrections and social*
24 *services, the Local Control Funding Formula in education, and*
25 *local housing element requirements.*

26 (d) *Allowing local jurisdictions the flexibility to voluntarily*
27 *suspend Ellis Act evictions will allow participating jurisdictions*
28 *to reign in Ellis Act abuses that are preventing these jurisdictions*
29 *from meeting their supply of affordable housing.*

30 (f)

31 (e) To the extent that a civil action is brought to evict a tenant
32 solely because the property owner wants to remove the residential
33 unit from the rental market and the tenant did not engage in acts
34 that would constitute a breach of the lease, the interest of the tenant
35 in protecting his or her reputation as a responsible tenant outweighs
36 the public interest in the outcome of the proceeding to evict the
37 tenant.

38 *SEC. 2. Section 1161.2 of the Code of Civil Procedure is*
39 *amended to read:*

1 1161.2. (a) The clerk may allow access to limited civil case
 2 records filed under this chapter, including the court file, index,
 3 and register of actions, only as follows:

- 4 (1) To a party to the action, including a party’s attorney.
- 5 (2) To any person who provides the clerk with the names of at
 6 least one plaintiff and one defendant and the address of the
 7 premises, including the apartment or unit number, if any.
- 8 (3) To a resident of the premises who provides the clerk with
 9 the name of one of the parties or the case number and shows proof
 10 of residency.
- 11 (4) To any person by order of the court, which may be granted
 12 ex parte, on a showing of good cause.
- 13 (5) Except as provided in paragraph (6), to any other person 60
 14 days after the complaint has been filed, unless a defendant prevails
 15 in the action within 60 days of the filing of the complaint, in which
 16 case the clerk may not allow access to any court records in the
 17 action, except as provided in paragraphs (1) to (4), inclusive.
- 18 (6) (A) In the case of a complaint involving residential property
 19 based on Section 1161a as indicated in the caption of the complaint,
 20 as required in subdivision (c) of Section 1166, to any other person,
 21 if 60 days have elapsed since the complaint was filed with the
 22 court, and, as of that date, judgment against all defendants has
 23 been entered for the plaintiff, after a trial. If judgment is not entered
 24 under the conditions described in this paragraph, the clerk shall
 25 not allow access to any court records in the action, except as
 26 provided in paragraphs (1) to (4), inclusive.
- 27 (B) *Notwithstanding subparagraph (A), in the case of a*
 28 *complaint involving residential property described in Section*
 29 *7060.6 of the Government Code, as indicated in the caption of the*
 30 *complaint, as required in subdivision (b) of Section 7060.6 of the*
 31 *Government Code, the clerk shall not allow access to any court*
 32 *records in the action, except as provided in paragraphs (1) to (4),*
 33 *inclusive.*
- 34 (b) For purposes of this section, “good cause” includes, but is
 35 not limited to, the gathering of newsworthy facts by a person
 36 described in Section 1070 of the Evidence Code. It is the intent of
 37 the Legislature that a simple procedure be established to request
 38 the ex parte order described in subdivision (a).
- 39 (c) Upon the filing of any case so restricted, the court clerk shall
 40 mail notice to each defendant named in the action. The notice shall

1 be mailed to the address provided in the complaint. The notice
2 shall contain a statement that an unlawful detainer complaint
3 (eviction action) has been filed naming that party as a defendant,
4 and that access to the court file will be delayed for 60 days except
5 to a party, an attorney for one of the parties, or any other person
6 who (1) provides to the clerk the names of at least one plaintiff
7 and one defendant in the action and provides to the clerk the
8 address, including any applicable apartment, unit, or space number,
9 of the subject premises, or (2) provides to the clerk the name of
10 one of the parties in the action or the case number and can establish
11 through proper identification that he or she lives at the subject
12 premises. The notice shall also contain a statement that access to
13 the court index, register of actions, or other records is not permitted
14 until 60 days after the complaint is filed, except pursuant to an
15 order upon a showing of good cause therefor. The notice shall
16 contain on its face the following information:

17 (1) The name and telephone number of the county bar
18 association.

19 (2) The name and telephone number of any entity that requests
20 inclusion on the notice and demonstrates to the satisfaction of the
21 court that it has been certified by the State Bar as a lawyer referral
22 service and maintains a panel of attorneys qualified in the practice
23 of landlord-tenant law pursuant to the minimum standards for a
24 lawyer referral service established by the State Bar and Section
25 6155 of the Business and Professions Code.

26 (3) The following statement:

27
28 “The State Bar of California certifies lawyer referral services in
29 California and publishes a list of certified lawyer referral services
30 organized by county. To locate a lawyer referral service in your
31 county, go to the State Bar’s website at www.calbar.ca.gov or call
32 1-866-442-2529.”

33
34 (4) The name and telephone number of an office or offices
35 funded by the federal Legal Services Corporation or qualified legal
36 services projects that receive funds distributed pursuant to Section
37 6216 of the Business and Professions Code that provide legal
38 services to low-income persons in the county in which the action
39 is filed. The notice shall state that these numbers may be called
40 for legal advice regarding the case. The notice shall be issued

1 between 24 and 48 hours of the filing of the complaint, excluding
2 weekends and holidays. One copy of the notice shall be addressed
3 to “all occupants” and mailed separately to the subject premises.
4 The notice shall not constitute service of the summons and
5 complaint.

6 (d) Notwithstanding any other provision of law, the court shall
7 charge an additional fee of fifteen dollars (\$15) for filing a first
8 appearance by the plaintiff. This fee shall be added to the uniform
9 filing fee for actions filed under this chapter.

10 (e) This section does not apply to a case that seeks to terminate
11 a mobilehome park tenancy if the statement of the character of the
12 proceeding in the caption of the complaint clearly indicates that
13 the complaint seeks termination of a mobilehome park tenancy.

14 ~~SEC. 2.~~

15 *SEC. 3.* Section 7060.6 of the Government Code is amended
16 to read:

17 7060.6. (a) If an owner seeks to displace a tenant or lessee
18 from accommodations withdrawn from rent or lease pursuant to
19 this chapter ~~solely on the basis of this withdrawal, the case shall~~
20 ~~be a civil action, other than a civil action for unlawful detainer, in~~
21 ~~which the tenant or lessee by an unlawful detainer proceeding, the~~
22 ~~owner shall state the following in the caption of the complaint:~~

23 “Civil Action Described in Section 7060.6 of the Government
24 Code.”

25 (b) *If an owner seeks to displace a tenant or lessee from*
26 *accommodations withdrawn from rent or lease pursuant to this*
27 *chapter by an unlawful detainer proceeding, the tenant or lessee*
28 *may appear and answer or demur pursuant to Section 1170 of the*
29 *Code of Civil Procedure and may assert by way of defense that*
30 *the owner has not complied with this chapter, or statutes,*
31 *ordinances, or regulations of public entities adopted to implement*
32 *this chapter, as authorized by this chapter.*

33 ~~(b) The clerk of the court shall not allow access to court records~~
34 ~~filed in a civil action described in subdivision (a), including the~~
35 ~~court file, index, and register of actions, except as follows:~~

- 36 ~~(1) To a party to the action, including a party’s attorney.~~
- 37 ~~(2) To any person who provides the clerk with the names of at~~
38 ~~least one plaintiff and one defendant and the address of the~~
39 ~~premises, including the apartment or unit number, if any.~~

1 ~~(3) To a resident of the premises who provides the clerk with~~
2 ~~the name of one of the parties or the case number and shows proof~~
3 ~~of residency.~~

4 ~~(4) (A) To any person by order of the court, which may be~~
5 ~~granted ex parte, on a showing of good cause.~~

6 ~~(B) For purposes of this paragraph, “good cause” includes, but~~
7 ~~is not limited to, the gathering of newsworthy facts by a person~~
8 ~~described in Section 1070 of the Evidence Code. It is the intent of~~
9 ~~the Legislature that a simple procedure be established to request~~
10 ~~the ex parte order described in subparagraph (A).~~

11 ~~SEC. 3.~~

12 ~~SEC. 4. Section 7060.8 is added to the Government Code, to~~
13 ~~read:~~

14 ~~7060.8. Notwithstanding Section 7060, if a county or city and~~
15 ~~county fails to identify or make available adequate sites to~~
16 ~~accommodate its portion of the regional housing need allocated~~
17 ~~to low-income and moderate income levels pursuant to Section~~
18 ~~65584, public entity, as defined in Section 811.2, finds that the~~
19 ~~prohibition of Section 7060 decreases the total number of~~
20 ~~affordable rental units within a jurisdiction, the board of~~
21 ~~supervisors, by the adoption of a resolution or by a majority vote~~
22 ~~of the electors within the county, may compel the owner of any~~
23 ~~residential real property to offer, or continue to offer,~~
24 ~~accommodations in the property for rent or lease until the county~~
25 ~~or city and county meets its portion of the regional housing need~~
26 ~~lease.~~