

AMENDED IN SENATE AUGUST 10, 2020
AMENDED IN SENATE JULY 28, 2020
AMENDED IN SENATE JULY 2, 2020
AMENDED IN SENATE JUNE 10, 2020
AMENDED IN ASSEMBLY MAY 16, 2019
AMENDED IN ASSEMBLY APRIL 25, 2019
AMENDED IN ASSEMBLY MARCH 27, 2019

California Legislature – 2019-20 Regular Session

ASSEMBLY BILL

No. 1436

Introduced by Assembly Members Chiu, Bonta, Gonzalez, Limón, Santiago, and Wicks
(Principal coauthor: Senator Jackson) **(Coauthors: Assembly Members Carrillo, Kalra,**
Nazarian, Quirk-Silva, and Luz Rivas)
(Coauthors: Senators Allen, Durazo, Wieckowski, and Wiener)

February 22, 2019

~~An act to add Sections 1947.01, 1947.02, and 1947.03 to, and to add Title 19 (commencing with Section 3273.01) to Part 4 of Division 3 of, the Civil Code, and to add Section 1161.6 to to amend Section 798.56 of, and to add Title 19 (commencing with Section 3273.01) to Part 4 of Division 3 of, the Civil Code, and to amend Section 1161 of, and to add Chapter 5 (commencing with Section 1179.01) to Title 3 of Part 3 of, the Code of Civil Procedure, relating to COVID-19 relief.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, as amended, Chiu. Tenancy: rental payment default: mortgage forbearance: state of emergency: COVID-19.

(1) Existing law provides that a tenant is guilty of unlawful detainer if the tenant continues to possess the property without permission of the landlord after the tenant defaults on rent or fails to perform a condition or covenant of the lease under which the property is held, among other reasons. Existing law requires a tenant be served a 3 days' notice in writing to cure a default or perform a condition of the lease, or return possession of the property to the landlord, as specified. Existing law, the Mobilehome Residency Law, prohibits a tenancy from being terminated unless specified conditions are met, including that the tenant fails to pay rent, utility charges, or reasonable incidental service charges and 3 days' notice in writing is provided to the tenant, as specified.

This bill would enact the COVID-19 Tenant Relief Act of 2020. This bill would require that any 3 days' notice that demands payment of COVID-19 rental debt that is served on a tenant during the covered time period meet specified criteria, including that the notice include an unsigned copy of an attestation of COVID-19-related financial distress and that the notice advise the tenant that the tenant will not be evicted for failure to comply with the notice if the tenant delivers a signed copy of an attestation of COVID-19-related financial distress to the landlord, as specified. The bill would define "covered time period" for purposes of these provisions as the time between March 4, 2020, and either 90 days after the termination of the COVID-19 state of emergency or April

1, 2021, whichever occurs earlier. The bill would provide that a tenant is not guilty of an unlawful detainer if the tenant makes the demanded payment, vacates the property, or delivers a signed attestation of COVID-19-related financial distress within 15 days of the service of the notice. The

bill would deem a 3 days' notice that fails to comply with this criteria void and insufficient to support a judgment for unlawful detainer or to terminate a tenancy under the Mobilehome Residency Law. The bill would prohibit a tenant that delivers an attestation of COVID-19-related financial distress in response to a demand for payment of COVID-19 rental debt from being deemed in default with regard to the COVID-19 rental debt.

Existing law regulates specified terms and conditions of tenancies. Existing law authorizes a landlord to demand security at the beginning of a tenancy for residential property and specifies the purposes for which the security may be used, including, among others, compensating the landlord for the tenant's default in payment of rent.

The bill would prohibit a landlord from applying a security deposit to satisfy COVID-19 rental debt or applying a monthly rental payment to any COVID-19 rental debt, unless the tenant agrees in writing. The bill would define "COVID-19 rental debt" as unpaid rent or any other unpaid financial obligation under the tenancy that accrued during the covered time period. The bill would prohibit a landlord from charging a tenant, or attempting to collect from a tenant, fees for a late payment of COVID-19 rental debt. The bill would prohibit a landlord from terminating a tenancy or threatening to terminate a tenancy, in retaliation against a tenant for having COVID-19 rental debt. This bill would prohibit a housing provider, credit reporting agency, tenant screening company, or other specified entities from using an alleged COVID-19 rental debt as a negative factor in evaluating creditworthiness, as specified. The bill would prohibit a plaintiff from bringing an action to recover COVID-19 rental debt until 12 months after the end of the covered period.

This bill would provide that any provision of a stipulation settlement agreement, or other agreement that conflicts with or purports to waive these provisions is prohibited and void as contrary to public policy. The bill would provide that if a local initiative, ordinance, regulation, or other policy conflicts with these provisions, the provision that provides the greater protection to tenants controls.

(2) Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust. In this regard, existing law requires that a notice of default and a notice of sale be recorded and that specified periods of time elapse between the recording and the sale. Existing law establishes certain requirements in connection with foreclosures on mortgages and deeds of trust, including restrictions on the actions mortgage servicers may take while a borrower is attempting to secure a loan modification or has submitted a loan modification application.

This bill would enact the Small Landlord and Homeowner Relief Act of 2020. The bill would authorize a borrower to request forbearance during the effective time period from any mortgage obligation by submitting a request to the borrower's mortgage servicer, either orally or in writing, affirming that the borrower is experiencing a financial hardship that prevents the borrower from making timely payments on the mortgage obligation due, directly or indirectly, to the COVID-19 emergency. The bill would define "borrower" for these purposes as a natural person who is a mortgagor, trustor, or confirmed successor in interest; an entity other than a natural person provided that the secured property is currently occupied by one or more residential tenants; or a mobilehome owner who is the borrower on a security agreement relating to a loan or conditional sale contract that gives the secured party the right to foreclose its security interest in a manufactured home or mobilehome, except as specified. The bill would define "effective time period" as the time period between the operational date of these provisions and either 90 days after the termination of the COVID-19 state of emergency or April 1, 2021, whichever occurs first.

This bill would also authorize a mobilehome owner who is the borrower on any security

agreement relating to a loan or conditional sale contract which, according to its terms, gives the secured party the right to foreclose its security interest in a manufactured home or mobilehome to request forbearance during the effective time period, as specified.

This bill would require a mortgage servicer or lienholder to, if certain requirements are met, offer the forbearance requested for an initial period of up to 180 days, which may be extended at the request of the borrower or mobilehome borrower for a total forbearance period not to exceed 12 months, as specified. The bill would prohibit a mortgage servicer or lienholder from assessing, accruing, or applying any fees, penalties, or additional interest during the forbearance period, as specified.

The bill would require a mortgage servicer or lienholder to attempt to contact the borrower, including a mobilehome borrower, with diligent effort at least 30 days before the end of any forbearance period granted pursuant to these provisions to inquire whether the borrower is able to resume making preforbearance mortgage or loan payments. The bill would, if the borrower indicates that they will not be able to resume preforbearance payments, require the mortgage servicer or lien holder to evaluate the borrower for loss mitigation and foreclosure prevention, as specified. Alternatively, if the borrower affirms they are able to resume preforbearance payments or fails to respond to the mortgage servicer, the bill would require the mortgage servicer or lienholder to reinstate the preforbearance payments and provide a specified notice to the borrower that includes, among other things, a description of any options available to the borrower to address the amount unpaid during the forbearance.

This bill would authorize a multifamily borrower that was current on its payments as of February 1, 2020, to submit an oral or written request for up to 6 months' forbearance to the mortgage servicer affirming that the multifamily borrower is experiencing a financial hardship during the COVID-19 emergency. The bill would define "multifamily borrower" for purposes of these provisions as a borrower of a residential mortgage loan that is secured by a lien against a property comprising 5 or more dwelling units. The bill would authorize a mortgage servicer to request reasonable documentation that demonstrates a decrease of at least 10% or more of the multifamily borrower's gross rental revenue, as specified. The bill would require the mortgage servicer to provide a forbearance of up to 30 days upon receipt of satisfactory documentation of financial hardship. The bill would require the mortgage servicer to extend the forbearance for up to 5 additional 30-day periods, as specified. The bill would authorize a mortgage servicer to require payment during the forbearance period equal to the net operating income derived from the property to the extent that the rental revenue is not used for operation or maintenance of the property, as specified.

This bill would authorize a borrower, including a mobilehome borrower and multifamily borrower, who is harmed by a violation of these provisions to bring an action to obtain injunctive relief, damages, and restitution, as specified. The bill would require a court to award a prevailing borrower reasonable attorney's fees and costs in any action based on a violation of these provisions.

This bill would provide that any waiver by a borrower of these provisions is contrary to public policy and void.

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