

RESOLUTION 04-05-2014 (as amended)

DIGEST

Property: Fines for Landlords Who Fail to Provide an Address for Personal Service

Amends Civil Code section 1962 to specifically extend its provisions to require landlords to provide an address at which personal service can be effected.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Civil Code section 1962.1 to penalize landlords who violate Civil Code section 1962 by failing to provide an address at which personal service can be effected. This resolution should be approved in principle because it provides an enforcement mechanism for existing law and encourages landlords to comply with existing law.

Civil Code section 1962, requires that landlords provide tenants with an address where personal service can be made. However, there is currently no penalty for landlords who violate that requirement. This resolution fills that gap so that landlords will be encouraged to comply with existing law, and will help ensure that tenants can enforce their right live in a habitable property. ~~Although a mandatory minimum fine of \$1,000 may seem high if the landlord's violation was an honest and inadvertent error, a lower amount would be less likely to encourage landlords to comply with their existing obligations. For instance, a landlord could always claim that the omission was inadvertent, and therefore, the risk of facing a \$500 penalty would be outweighed by the benefits of never being served with a complaint and never having to defend a habitability claim. Further, these penalties only apply if the court finds that the property in fact breaches the warranty of habitability; the tenant must prove the landlord breached that warranty before any penalty is assessed against the landlord. The landlord of an uninhabitable property should not be able to avoid responsibility for that property by also violating their obligation to give the tenant an address for serving a complaint.~~

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1962 to read as follows:

§ 1962.

- 1 (a) Any owner of a dwelling structure specified in Section 1961 or a party signing a rental
- 2 agreement or lease on behalf of the owner shall do all of the following:
- 3 (1) Disclose therein the name, telephone number, and usual street address at which
- 4 personal service may be effected of each person who is:
- 5 (A) Authorized to manage the premises.

6 (B) An owner of the premises or a person who is authorized to act for and on behalf of
7 the owner for the purpose of service of process and for the purpose of receiving and receipting
8 for all notices and demands.

9 (2) Disclose therein the name, telephone number, and address of the person or entity to
10 whom rent payments shall be made.

11 (A) If rent payments may be made personally, the usual days and hours that the person
12 will be available to receive the payments shall also be disclosed.

13 (B) At the owner's option, the rental agreement or lease shall instead disclose the number
14 of either:

15 (i) The account in a financial institution into which rent payments may be made, and the
16 name and street address of the institution; provided that the institution is located within five
17 miles of the rental property.

18 (ii) The information necessary to establish an electronic funds transfer procedure for
19 paying the rent.

20 (3) Disclose therein the form or forms in which rent payments are to be made.

21 (4) Provide a copy of the rental agreement or lease to the tenant within 15 days of its
22 execution by the tenant. Once each calendar year thereafter, upon request by the tenant, the
23 owner or owner's agent shall provide an additional copy to the tenant within 15 days. If the
24 owner or owner's agent does not possess the rental agreement or lease or a copy of it, the owner
25 or owner's agent shall instead furnish the tenant with a written statement stating that fact and
26 containing the information required by paragraphs (1), (2), and (3).

27 (b) In the case of an oral rental agreement, the owner, or a person acting on behalf of the
28 owner for the receipt of rent or otherwise, shall furnish the tenant, within 15 days of the
29 agreement, with a written statement containing the information required by paragraphs (1), (2),
30 and (3) of subdivision (a). Once each calendar year thereafter, upon request by the tenant, the
31 owner or owner's agent shall provide an additional copy of the statement to the tenant within 15
32 days.

33 (c) The information required by this section shall be kept current and this section shall
34 extend to and be enforceable against any successor owner or manager, who shall comply with
35 this section within 15 days of succeeding the previous owner or manager. A successor owner or
36 manager shall not serve a notice pursuant to paragraph (2) of Section 1161 of the Code of Civil
37 Procedure or otherwise evict a tenant for nonpayment of rent that accrued during the period of
38 noncompliance by a successor owner or manager with this subdivision. Nothing in this
39 subdivision shall relieve the tenant of any liability for unpaid rent.

40 (d) A party who enters into a rental agreement on behalf of the owner who fails to comply
41 with this section is deemed an agent of each person who is an owner:

42 (1) For the purpose of service of process and receiving and receipting for notices and
43 demands.

44 (2) For the purpose of performing the obligations of the owner under law and under the
45 rental agreement.

46 (3) For the purpose of receiving rental payments, which may be made in cash, by check,
47 by money order, or in any form previously accepted by the owner or owner's agent, unless the
48 form of payment has been specified in the oral or written agreement, or the tenant has been
49 notified by the owner in writing that a particular form of payment is unacceptable.

50 (e) Nothing in this section limits or excludes the liability of any undisclosed owner.

51 (f) If the address provided by the owner does not allow for personal delivery, then it shall
52 be conclusively presumed that upon the mailing of any rent or notice, or service of process
53 alleging breach of the warranty of habitability, to the owner by the tenant to the name and
54 address provided, the notice or rent, or service of process alleging breach of the warranty of
55 habitability, is deemed receivable by the owner on the date posted, if the tenant can show proof
56 of mailing to the name and address provided by the owner.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code section 1962 requires landlords to provide tenants with an address where the landlord can be personally served. Civ. Code § 1962(b). ~~However, there~~ There is no penalty attached to a violation of this Section.

Tenants living with uninhabitable dwellings, as is defined by the Warranty of Habitability in Civil Code section 1941.1, are effectively blocked from enforcing their rights against landlords who refuse to provide an address where personal service can be effected. Many landlords only provide a P.O. Box mailing address. As a result, their tenants are unable to initiate lawsuits.

Although legal mechanisms exist to effect service without a personal address, such as Civil Code section 1962.7, many tenants are not aware of them. This new penalty creates a strong incentive for landlords to comply with the disclosure requirement.

The Solution: ~~This resolution creates a penalty of \$1,000 to \$5,000 for a landlord's failure to provide an address for personal service if a tenant shows there is also a violation of the Warranty of Habitability as defined in Civil Code section 1941.1. Adds language to Civil Code section 1962.7, which is consistent with similiar rules located elsewhere in the Civil Code and Code of Civil Procedure, informing tenants that mail service is possible where the landlord fails to provide an address where personal service may be effected.~~

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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COMMENTS TO RESOLUTION 04-05-2014

**BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY (CONCERNS
ADDRESSED BY AMENDMENTS TAKEN AT CONFERENCE)**

~~DISAPPROVE: There are consequences for noncompliance with Civil Code Section 1962 (a)(1)(B). Civil Code Section 1962 (c) does not allow a successor owner or manager to serve a 3 day notice or otherwise evict a tenant during any period of noncompliance. Civil Code Section 1962 (d) provides that a noncompliant party who enters into a rental agreement is deemed the agent of each person who is an owner for the purpose of service of process and other reasons. Civil Code Section 1962 (f) provides if the address provided does not allow for personal delivery, it is presumed that rent mailed to the address provided is deemed received on the date posted. Adding a minimum \$1,000 penalty is punitive particularly since many individual landlords are unaware of the requirements of Civil Code Section 1962 and tenants can usually find of the address of the owner by checking the county tax assessor or recorders records (see 04-02-2014).~~