

RESOLUTION 07-09-2015

DIGEST

Unlawful Detainer: Attorney Fees for Defendants by Local Ordinance

Adds Code of Civil Procedure section 1174.1 to allow local governmental entities to authorize attorney fees to prevailing defendants by ordinance.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Association recommends that legislation be sponsored to add Code of Civil Procedure section 1174.1 to read as follows:

§1174.1

- 1 (a) Nothing in this chapter shall limit or affect the authority of a local government or
2 instrumentality thereof from allowing for recovery of attorney fees to prevailing defendants in
3 unlawful detainer actions. This law overturns *Larson v. City and County of San Francisco*, 192
4 Cal. App. 4th 1263 (2011).

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Cities with a shortage of affordable rental housing stock are witnessing a steep rise in pre-textual, “low-fault evictions.” Low-fault evictions are unlawful detainers with little or no merit that are designed solely to force rent-controlled tenants to defend their tenancies at great financial cost. These evictions are flooding courts and forcing local jurisdictions to react. The City and County of San Francisco, for example, was recently forced to spend \$2.3 million of taxpayer dollars to fund nonprofits that defend tenants facing low-fault evictions.

The expansion of Anti-SLAPP laws has caused the perfect storm. Landlords cannot be sued for wrongful eviction for filing meritless unlawful detainer actions. Absent a way for a tenant to recover attorney fees in an action, there is little risk for a landlord. Landlords are shielded by Anti-SLAPP legislation and the litigation privilege and can be forced to defend evictions for things like, cooking late at night, having a documented service animal, and leaving vehicles outside parking lines.

In an attempt to address the issue, San Francisco voters passed Proposition M, which allowed for the recovery of attorney fees to prevailing defendants in unlawful detainer actions. The goal was to force landlords to bring only meritorious eviction cases. However, that law was struck down in *Larson v. City and County of San Francisco*, 192 Cal. App. 4th 1263 (2011). The court held that only the state can expand laws allowing for the recovery of attorney fees.

This resolution addresses the *Larsen* decision, adding to Code of Civil Procedure section 1174.1 to allow local governments to pass laws to allow for recovery of attorney fees in eviction actions.

The proposal should be approved because it will protect California's tenants from low-fault unlawful detainer actions where the landlord's sole reason is to harass a tenant through litigation if a local government enacts a rule providing for attorney fees.

In 2013, the Eviction Defense Collaborative, a non-profit law firm specializing in eviction defense, published a study that documented the significant rise in the number of pre-textual, low-fault evictions.¹ The report showed that the vast majority of tenants evicted in San Francisco earn below the area median income. Many are even below the federal poverty line. These tenants are likely to be members of single-parent households, low-income and first generation.

The state has elsewhere allowed for recovery of attorney fees in eviction actions to protect vulnerable tenants. In recognition of the economic disparity between mobile home residents and park owners, the Mobilehome Residency Law at Civil Code section 798.85 provides that prevailing parties in mobile home eviction actions may recover attorney fees and costs.

The Solution: This proposal would grant cities and counties the authority to pass ordinances to allow prevailing defendants to collect attorney fees in unlawful detainer actions. Cities and counties would still need to pass local legislation, so local bodies would need to go through their legislative processes to find a legitimate need. The proposed resolution is not meant to burden property owners, but only to limit bad faith evictions to maintain an affordable housing stock for all Californians.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Stephen Noel Ilg

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Code of Civil Procedure section 1174.1 to allow local governmental entities to authorize attorney fees to prevailing defendants by ordinance. This resolution should be

¹ Eviction Defense Collaborative, *2013 Eviction Report*, available at <http://evictiondefense.org/wp-content/uploads/2014/07/report.pdf>

disapproved because as framed, it does not address the type of case that it seeks to affect with sufficient specificity, and any such enabling legislation should be in the Civil Code.

Civil Code section 1947.7, subdivision (a), articulates the Legislature's position on Rent Control Ordinances. It states that the operation of local rent stabilization programs can be complex and that disputes often arise with regard to standards of compliance with the regulatory processes of those programs. The intent of the Legislature is to limit the imposition of penalties and sanctions against an owner of residential rental units where that person has attempted in good faith to fully comply with the regulatory processes.

Problems in certain cities with frivolous unlawful detainer actions calculated to get rent controlled tenants to abandon their tenancies, should be directly addressed in the enabling legislation for the rent control itself, and articulate reasonable standards for evaluating whether or not a landlord should be sanctioned. Any right a governmental entity that has a rent control ordinance would have to provide for a right to recover attorney fees by a defendant only should be based in the law regulating rent control ordinances, not unlawful detainers. For example, Code of Civil Procedure sections 1174.2 and 1174.21, allow attorney fees to the prevailing party and are based on defenses provided in Civil Code sections 1941 and 1942.4, which relate to habitability issues.

The resolution contains no standards, giving local governments and instrumentalities unfettered discretion to provide for an award of attorney fees to any prevailing defendant in an unlawful detainer action, regardless of the reason, including in cases where a landlord realized in good faith there was a procedural flaw in the notice procedure and opted to dismiss the case even where the rent was not being paid. Normally, under Civil Code section 1717, subdivision (b)(2), a dismissal without prejudice would result in no prevailing party if there were a rental agreement with an attorney fee clause. This resolution directly conflicts with this Civil Code provision.

