

**RESOLUTION 11-03-2018**

**DIGEST**

Landlord Tenant: Confidentiality of Ellis Act Evictions

Amends Code of Civil Procedure section 1161.2 and Government Code section 7060.6 to require that evictions under the Ellis Act be kept confidential.

**STATEMENT OF REASONS**

The Problem: Current 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 one specified exception. Tenants should not have their reputation damaged or their ability to access housing after an Ellis Act eviction compromised because they have been evicted under the Ellis Act. With increasing ease of access to public records through the internet, individuals who do not know the nature or process of Ellis Act evictions could understand such an eviction to be the result an individual being a poor tenant. To the extent a tenant is evicted solely because the property owner wants to remove the residential unit from the rental market, the interest of the tenant in protecting their reputation as a responsible tenant should outweigh the public interest in the outcome of the proceeding to evict them.

The Solution: This resolution would require, if an owner seeks to displace a tenant or lessee pursuant to the Ellis Act, they must state in the caption of the complaint that the civil action is described in a specified provision of the act. It would prohibit the clerk of the court from allowing access to court records filed in the above-described civil action, when the caption of the complaint states that it is a civil action described above, except as specified.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1161.2 and Government Code section 7060.6 to read as follows:

- 1 § 1161.2
- 2 (a) (1) The clerk may allow access to limited civil case records filed under this chapter,
- 3 including the court file, index, and register of actions, only as follows:
- 4 (A) To a party to the action, including a party’s attorney.
- 5 (B) To a person who provides the clerk with the names of at least one plaintiff and one
- 6 defendant and the address of the premises, including the apartment or unit number, if any.
- 7 (C) To a resident of the premises who provides the clerk with the name of one of the
- 8 parties or the case number and shows proof of residency.
- 9 (D) To a person by order of the court, which may be granted ex parte, on a showing of
- 10 good cause.
- 11 (E) To any person by order of the court if judgment is entered for the plaintiff after trial
- 12 more than 60 days since the filing of the complaint. The court shall issue the order upon issuing
- 13 judgment for the plaintiff.
- 14 (F) Except as provided in subparagraphs (G) and (H), to any other person 60 days after
- 15 the complaint has been filed if the plaintiff prevails in the action within 60 days of the filing of

16 the complaint, in which case the clerk shall allow access to any court records in the action. If a  
17 default or default judgment is set aside more than 60 days after the complaint has been filed, this  
18 section shall apply as if the complaint had been filed on the date the default or default judgment  
19 is set aside.

20 (G) In the case of a complaint involving residential property based on Section 1161a as  
21 indicated in the caption of the complaint, as required in subdivision (c) of Section 1166, to any  
22 other person, if 60 days have elapsed since the complaint was filed with the court, and, as of that  
23 date, judgment against all defendants has been entered for the plaintiff, after a trial.

24 (H) Notwithstanding paragraph (G), in the case of a complaint involving residential  
25 property described in Section 7060.6 of the Government Code, as indicated in the caption of the  
26 complaint, as required in subdivision (b) of Section 7060.6 of the Government Code, the clerk  
27 shall not allow access to any court records in the action, except as provided in paragraphs (A) to  
28 (D), inclusive.

29 (2) This section shall not be construed to prohibit the court from issuing an order that bars  
30 access to the court record in an action filed under this chapter if the parties to the action so  
31 stipulate.

32 (b) (1) For purposes of this section, “good cause” includes, but is not limited to, both of  
33 the following:

34 (A) The gathering of newsworthy facts by a person described in Section 1070 of the  
35 Evidence Code.

36 (B) The gathering of evidence by a party to an unlawful detainer action solely for the  
37 purpose of making a request for judicial notice pursuant to subdivision (d) of Section 452 of the  
38 Evidence Code.

39 (2) It is the intent of the Legislature that a simple procedure be established to request the  
40 ex parte order described in subparagraph (D) of paragraph (1) of subdivision (a).

41 (c) Upon the filing of a case so restricted, the court clerk shall mail notice to each  
42 defendant named in the action. The notice shall be mailed to the address provided in the  
43 complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction  
44 action) has been filed naming that party as a defendant, and that access to the court file will be  
45 delayed for 60 days except to a party, an attorney for one of the parties, or any other person who  
46 (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and  
47 provides to the clerk the address, including any applicable apartment, unit, or space number, of  
48 the subject premises, or (2) provides to the clerk the name of one of the parties in the action or  
49 the case number and can establish through proper identification that he or she lives at the subject  
50 premises. The notice shall also contain a statement that access to the court index, register of  
51 actions, or other records is not permitted until 60 days after the complaint is filed, except  
52 pursuant to an order upon a showing of good cause for access. The notice shall contain on its  
53 face the following information:

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

55 (2) The name and telephone number of any entity that requests inclusion on the notice  
56 and demonstrates to the satisfaction of the court that it has been certified by the State Bar of  
57 California as a lawyer referral service and maintains a panel of attorneys qualified in the practice  
58 of landlord-tenant law pursuant to the minimum standards for a lawyer referral service  
59 established by the State Bar of California and Section 6155 of the Business and Professions  
60 Code.

61 (3) The following statement:

62 “The State Bar of California certifies lawyer referral services in California and publishes a list of  
63 certified lawyer referral services organized by county. To locate a lawyer referral service in your  
64 county, go to the State Bar’s Internet Web site at [www.calbar.ca.gov](http://www.calbar.ca.gov) or call 1-866-442-2529.”

65 (4) The name and telephone number of an office or offices funded by the federal Legal  
66 Services Corporation or qualified legal services projects that receive funds distributed pursuant  
67 to Section 6216 of the Business and Professions Code that provide legal services to low-income  
68 persons in the county in which the action is filed. The notice shall state that these telephone  
69 numbers may be called for legal advice regarding the case. The notice shall be issued between 24  
70 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the  
71 notice shall be addressed to “all occupants” and mailed separately to the subject premises. The  
72 notice shall not constitute service of the summons and complaint.

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

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

79 (f) This section does not alter any provision of the Evidence Code.

80

81 § 7060.6

82 (a) If an owner seeks to displace a tenant or lessee from accommodations withdrawn from  
83 rent or lease pursuant to this chapter by an unlawful detainer proceeding, the owner shall state  
84 the following in the caption of the complaint: “Civil Action Described in Section 7060.6 of the  
85 Government Code.”

86 (b) If an owner seeks to displace a tenant or lessee from accommodations withdrawn  
87 from rent or lease pursuant to this chapter by an unlawful detainer proceeding, the tenant or  
88 lessee may appear and answer or demur pursuant to Section 1170 of the Code of Civil Procedure  
89 and may assert by way of defense that the owner has not complied with this chapter, or statutes,  
90 ordinances, or regulations of public entities adopted to implement this chapter, as authorized by  
91 this chapter.

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

**PROPONENT:** Bay Area Lawyers for Individual Freedom

#### **IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule other than those expressly identified.

#### **CURRENT OR PRIOR RELATED LEGISLATION**

This resolution uses the language of Assembly Bill 2405 - Landlord Tenant: Ellis Act, introduced by Ammiano in the 2014-15 Regular Session. It failed passage in committee.

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**RESPONSIBLE FLOOR DELEGATE:** Jennifer Orthwein

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**RESOLUTIONS COMMITTEE RECOMMENDATION**  
**APPROVE IN PRINCIPLE**

History:

Similar to Resolution 01-02-2017, which was disapproved.

Reasons:

This resolution amends Code of Civil Procedure section 1161.2 and Government Code section 7060.6 to require that evictions under the Ellis Act be kept confidential. This resolution should be approved in principle because tenants who are evicted often have difficulty finding other housing, even when the eviction is not the result of the tenant's actions.

When a tenant applies to rent property, the prospective landlord may obtain a credit report that reflects the tenant's prior eviction, but does not state the reason for the eviction. The prospective landlord could use this report to reach an inaccurate conclusion that the applicant was not a good tenant. In addition, a tenant's fears about having an eviction on their record could deter the tenant from fighting a specious Ellis Act eviction.

The resolution would allow tenants to fight evictions without fear of being marked as a poor tenant and will protect tenants who are evicted because the building owner no longer wishes to continue acting as a landlord, as allowed by the Ellis Act. (Gov. Code, §§ 7060 – 7060.7.) The resolution differs from Resolution 01-02-2017, as it regulates only the confidentiality of lawsuits seeking Ellis Act evictions and does not otherwise affect evictions by building owners who wish to stop being landlords.

Recent legislative efforts to limit Ellis Act evictions have not been successful. For example, Assem. Bill No. 982 (2017-2018 Reg. Sess.), Sen. Bill 364 (2015-2016 Reg. Sess.), Assem. Bill No. 2405 (2014-2015 Reg. Sess.), all failed to pass.