

§8.7 F. Sale of Premises

Sale of the leased premises by the owner (as opposed to a foreclosure sale or deed in lieu of foreclosure) does not, in itself, terminate the tenancy; the new owner takes the place of the seller and becomes the new landlord. See §8.68D. See also *Rosenkranz v Pellin* (1950) 99 CA2d 650, 222 P2d 249. The parties may provide in the lease, however, that the tenancy will terminate on a sale of the property by the landlord. Such a provision is binding (*Lewis v Agoure* (1908) 8 CA 146, 96 P 327), but the landlord must show that the sale was bona fide (*Davis v Schweikert* (1900) 130 C 143, 62 P 411).

An eviction remedy under CCP §§1161a, 1161b is available to a new-owner landlord whose tenant holds over after a sale of the property by execution, foreclosure, or under a power of sale in a deed of trust, unless the tenant holds a fixed-term lease that has priority over the foreclosed lien. See §8.68E. But see §7.69 on evictions following foreclosure in rent-controlled jurisdictions.

§8.68D 2. Voluntary Sale

If the tenant has a month-to-month rental agreement or another type of periodic tenancy, eviction after a voluntary sale by the owner can be accomplished under the rules applicable to periodic tenancies. See §§8.22-8.22A, 8.69.

If the tenant has a fixed-term lease, a voluntary sale of the property does not abrogate the lease. Rosenkranz v Pellin (1950) 99 CA2d 650, 222 P2d 249. Therefore, if the tenant has a 1-year lease running from January 1 to December 31, and the landlord sells the property on April 1, the buyer may not use CCP §1161a to evict the tenant through a 30-day notice served in April. The buyer simply becomes the new landlord; if the tenant fails to leave on December 31, the buyer may have the tenant evicted. CC §821. This result follows even if the lease is unrecorded. The tenant's possession puts a purchaser on notice of the tenant's interest (Scheerer v Cuddy (1890) 85 C 270, 24 P 713) despite CC §1214, which provides that an unrecorded lease for more than 1 year does not bind a subsequent purchaser in good faith (*i.e.*, without notice) who records first.

On transitional issues in selling residential or commercial property subject to a lease (*e.g.*, rent control, lease assignment, estoppel certificate, proration of rent), see California Real Property Sales Transactions, chap 4 and Apps C-D, J-L (4th ed Cal CEB 2007).

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Code of Civil Procedure

CCP § 1161a. (a) As used in this section:

- (1) "Manufactured home" has the same meaning as provided in Section 18007 of the Health and Safety Code.
- (2) "Mobilehome" has the same meaning as provided in Section 18008 of the Health and Safety Code.
- (3) "Floating home" has the same meaning as provided in subdivision (d) of Section 18075.55 of the Health and Safety Code.
- (b) In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobilehome, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:
 - (1) Where the property has been sold pursuant to a writ of execution against such person, or a person under whom such person claims, and the title under the sale has been duly perfected.
 - (2) Where the property has been sold pursuant to a writ of sale, upon the foreclosure by proceedings taken as prescribed in this code of a mortgage, or under an express power of sale contained therein, executed by such person, or a person under whom such person claims, and the title under the foreclosure has been duly perfected.
 - (3) Where the property has been sold in accordance with Section 2924 of the Civil Code, under a power of sale contained in a deed of trust executed by such person, or a person under whom such person claims, and the title under the sale has been duly perfected.
 - (4) Where the property has been sold by such person, or a person under whom such person claims, and the title under the sale has been duly perfected.
 - (5) Where the property has been sold in accordance with Section 18037.5 of the Health and Safety Code under the default provisions of a conditional sale contract or security agreement executed by such person, or a person under whom such person claims, and the title under the sale has been duly perfected.
- (c) Notwithstanding the provisions of subdivision (b), a tenant or subtenant in possession of a rental housing unit which has been sold by reason of any of the causes enumerated in subdivision (b), who rents or leases the rental housing unit either on a periodic basis from week to week, month to month, or other interval, or for a fixed period of time, shall be given written notice to quit pursuant to Section 1162, at least as long as the term of hiring itself but not exceeding 30 days, before the tenant or subtenant may be removed therefrom as prescribed in this chapter.
- (d) For the purpose of subdivision (c), "rental housing unit" means any structure or any part thereof which is rented or offered for rent for residential occupancy in this state. [Amended by Stats. 1991, Ch. 942, Sec. 11]

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§8.68F D. Protecting Tenants at Foreclosure Act of 2009: Effect on Evictions After Foreclosure

Effective May 21, 2009, the federal government enacted legislation that temporarily protects bona fide residential tenants holding possession under a month-to-month agreement or a lease from immediate eviction after a foreclosure sale by the purchaser or the foreclosing lender. See Protecting Tenants at Foreclosure Act of 2009 (Pub L 111-22, §§701-704, 123 Stat 1660). (The text of the Act appears in Historical and Statutory Notes under 12 USC §5220 rather than in the actual United States Code; consequently all citations to the Act here refer to section numbers of Pub L 111-22.) Under §704, the Act was set to terminate on December 31, 2012. But on July 21, 2010, the Act was amended by HR 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub L 111-203, §1484, 124 Stat 1376), Title XIV, Subtitle G. Section 1484 extends the protections of the Protecting Tenants at Foreclosure Act to December 31, 2014, and defines the term "notice of foreclosure" to mean the date on which title is transferred to the buyer at the foreclosure sale. The amendment clarifies that a bona fide tenancy may be entered into at least until the date of the foreclosure sale.

To qualify for protection under the Act, the lease or tenancy must be bona fide by meeting the following criteria (§702(b)):

- The tenant must not be the borrower or related to the borrower as a child, spouse, or parent;
- The lease or tenancy must be the result of an arm's-length transaction; and
- The rent must not be substantially less than the fair market rent for the property.

Under California law, most residential tenants holding possession under a lease subordinate to the foreclosed loan are entitled to 60 days' notice of eviction after foreclosure under CCP §1161b. See §8.68C. The Act (§702(a)(1)) increases this to 90 days for month-to-month tenants. Tenants holding possession under a residential lease have the right to possession until the end of the lease term under §702(a)(2), unless the purchaser will occupy the unit as a primary residence, in which case the 90-day notice applies.

The scope of the Act is unclear if a tenant is in default under the lease. Some practitioners have doubts about whether a defaulting residential tenant may be evicted using an unlawful detainer action after a 3-day notice following a foreclosure. Arguably, the Act was intended to be only narrowly preemptive. Under the supremacy clause (US Const art VI, cl 2), Congress has the power to preempt state law on matters within congressional authority. *Farm Raised Salmon Cases* (2008) 42 C4th 1077, 1087, 72 CR3d 112. In deciding whether a federal law preempts state law, the court must examine congressional intent. 42 C4th at 1087. An express intent to preempt will be found if Congress explicitly states that it is preempting state authority. 42 C4th at 1087. An implied intent to preempt will be found (1) if it is clear that Congress intended by comprehensive legislation to occupy the entire field of regulation, (2) if compliance with both federal and state regulations is impossible, or (3) if state law presents an obstacle to the full purposes and objectives of federal law. 42 C4th at 1087. The party who asserts that a state law is preempted has the burden of proof. 42 C4th at 1088.

PRACTICE TIP: When an attorney files a postforeclosure suit to evict for nonpayment of rent after a 3-day notice, the scope of preemption in the Act may be argued in the unlawful detainer action if the issue is raised by the tenant. Arguably, because the Act does not occupy the entire field of eviction law or address defaulting tenants, it is not preemptive on that issue.