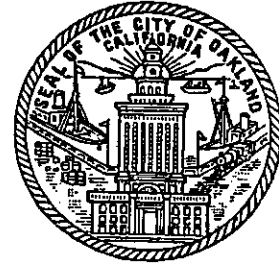


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

**CITY OF OAKLAND**  
**BILL ANALYSIS**



Date: 2009 MAY 11 PM 4:36  
May 19, 2009

**Bill Number: SB 120**

**Author: Senator Alan Lowenthal**

**DEPARTMENT INFORMATION**

**Contact: Rick Nemcik-Cruz**  
**Department: Rent adjustment Program**  
**Telephone: (510) 238-2079 FAX # (510) 238-3691**  
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**RECOMMENDED POSITION:**

Support.

**Summary of the Bill**

This bill would extend certain tenant protections that will apply after a foreclosure.

Existing law prohibits a landlord from interrupting or terminating a tenant's utility service, changing the locks, or removing a tenant's personal property from the premises with the intent to terminate the tenancy. Owners who acquired the property through foreclosure are included in the definition of "landlord" subject to these prohibitions.

Existing law permits tenants in multifamily dwellings to deduct utility payments from their rent when they usually pay for utilities as part of their rent but the owner's account is in arrears and scheduled to be terminated. SB 120 would extend these protections to all tenants, both in multiple and single-family dwellings and would change the shut-off notice utilities send to tenants. Existing law allows a utility to post shut-off notices at the building entrances and in common areas if it is not "reasonable or practicable" to post it on every tenant's door. SB 120 requires mailing of the notice to each tenant's address, and requires the notice to be provided in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

The new law clarifies that Civil Code §1950.5 (regarding the collection and return of security deposits) applies to security deposits when the landlord's interest was terminated through foreclosure.

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## **Positive Factors for Oakland**

Oakland's Just Cause for Eviction Ordinance prohibits evictions solely on the basis that the landlord lost the property through foreclosure.<sup>1</sup> This bill addresses common problems for tenants in foreclosed properties, and increases their protections where their building has been foreclosed upon. The City's Just Cause Ordinance was intended to protect tenants in rent-controlled units from being evicted in favor of higher-rent tenants, and in a foreclosure context, lenders/landlords have strong economic motivations to encourage low-rent tenants to vacate a foreclosed property. Sale of vacant units is easier than sale of rented units. Also, because Costa-Hawkins vacancy decontrol allows an owner to set initial rents without limit, empty rent-controlled units are more valuable than occupied units. SB 120 strengthens the protections afforded Oakland renters under the City's Just Cause Ordinance.

### Self-Help Eviction

SB 120 clarifies existing law by redefining landlord as used in Civil Code Section 789.3 (prohibitions on self-help evictions) to include successors-in-interest, including interests acquired through foreclosure.<sup>2</sup> This change simply clarifies the existing language. The bill broadens the definition of "tenant" used in the statute to protect all lawful occupants. This provision is needed because the legal status of the tenant with an oral agreement for occupancy is often in question after foreclosure, when the landlord is no longer available to confirm the existence of a tenancy.

### Preventing Utilities Shut-off

When landlords fail to make utility payments, this bill allows tenants to make the payments and deduct that amount from the rent. In brief, this extends an alternative to all tenants and helps avert the serious consequences to both the individual tenants and the City as a whole when residents are suddenly faced with living in unsanitary conditions.

### Shut-Off Notices

When a utility intends to shut off service to a building, the current practice is to post the notices at the main entrance to the building and attach a copy to the meter. Posted notices are often lost or removed before every tenant sees them, and meters are

<sup>1</sup> The inability to evict for foreclosure has been confirmed by the California Court of Appeal, 1<sup>st</sup> Appellate District in Gross v Superior Court (1985) 171 Cal.App.3d 265.

<sup>2</sup> Civil Code §789.3.

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usually not in a visible location. Also, many of Oakland's renters are not sufficiently proficient in English to understand the shut-off notices. SB 120 amends Public Utilities Code Section 777.1 to require the utility company to mail a copy of the notice to the affected tenant(s) in multiple languages. This greatly increases the odds that the tenant will get actual notice of the impending shut-off, and allows the tenant sufficient time to take action to avert the shut-off.

Security deposits.

Many single-family homes and smaller multi-unit buildings in foreclosure are resold for owner-occupancy, either partially or entirely. In these cases, the tenants will be required to move because owner-occupancy is one of the legal causes to evict recognized by the Just Cause for Eviction Ordinance. Tenants may not have the necessary financial resources to pay a new deposit on another unit when finally forced to move, if they do not receive their original security deposit back. SB 120 amends Civil Code Section 1950.5 (Residential Security Deposits) to clarify that successors-in-interest through foreclosure are "landlords" responsible for security deposits. It does not change the statutory scheme to increase the landlord's obligations to the tenants.

**Negative Factors for Oakland**

None.

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

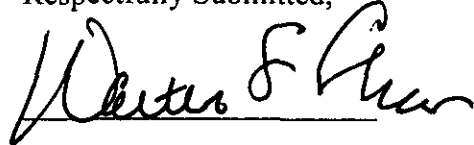
Western Center on Law and Poverty (sponsor); California Alliance for Retired Americans; CalPIRG; Consumer Action; Housing California (Tier 4)

**Known Opposition:**

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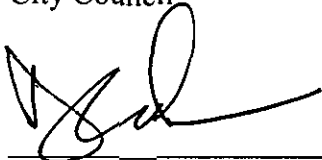
**Attach bill text and state/federal legislative committee analysis, if available.**

Respectfully Submitted,



Walter S. Cohen  
Director, Community and Economic  
Development Agency

Approved for Forwarding to  
City Council



Office of City Administrator

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**Introduced by Senator Lowenthal**February 2, 2009

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An act to amend Sections 789.3, 1950.5, and 1962 of, and to add Section 1942.2 to, the Civil Code, and to amend Sections 777.1, 10009.1, 12822.1, and 16481.1 of, and to repeal Sections 777, 10009, 12822, and 16481 of, the Public Utilities Code, relating to residential tenancies.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 120, as introduced, Lowenthal. Residential tenancies.

(1) Existing law prohibits a landlord from willfully causing the interruption or termination of any utility service furnished to a tenant, with the intent of terminating the occupancy, regardless of whether the utility service is under the control of the landlord. Existing law also prohibits a landlord from willfully preventing a tenant from gaining reasonable access to the property by changing the locks, removing doors or windows, or removing from the premises the tenant's personal property, as specified, with the intent of terminating the occupancy.

This bill would define a landlord and a tenant for purposes of the provisions governing tenancies. The bill would define a landlord for purposes of these provisions to specifically include an interest acquired pursuant to provisions governing mortgage defaults, as specified.

(2) Existing law governs the obligations of tenants and landlords under a lease or tenancy. Among other things, these provisions govern the collection and return of security deposits by the landlord or the landlord's successor in interest, including the transfer or return of any security remaining after termination of the tenancy.

Existing law also governs mortgages, including procedures in the case of mortgage default.

This bill would authorize a tenant or occupant who has made a payment to a public utility to deduct the amount of the payment from the rent when due, as specified. The bill would revise the provisions governing the transfer or return of any security remaining after termination of the tenancy to specifically apply, upon termination of the landlord's interest in the premises, in the case of a trustee sale and to apply whether the termination of the landlord's interest in the premises was voluntary or involuntary. The bill would define a "successor in interest" for purposes of these provisions to apply to an interest acquired pursuant to provisions governing mortgage defaults, as specified.

(3) Existing law requires the owner, or a party signing a rental agreement or lease on behalf of the owner, of a residential property that is offered to the public for rent or lease to make specified disclosures regarding the property to a tenant, as specified. These provisions are enforceable against any successor owner or manager, who must comply with these provisions within 15 days of succeeding the previous owner or manager.

This bill would define a "successor owner" for purposes of these provisions and would create an exception to that requirement if the owner serves a specified notice.

(4) The California Constitution establishes the Public Utilities Commission to fix rates and establish rules governing utilities. The California Constitution also provides that private corporations and persons who operate specified utilities are subject to control by the Legislature. Existing statutory law regulates public utilities. Among other things, a public utility must furnish and maintain adequate, efficient, just, and reasonable service as necessary to promote public health and safety, as specified.

Existing law provides that whenever an electrical, gas, heat, or water corporation furnishes individually metered residential service to residential occupants in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined, if the owner, manager, or operator is listed by the corporation as the customer of record, the corporation is required to make every good faith effort to inform the residential occupants, by means of a specified notice, when the account is in arrears, that service will be terminated at least 10 days prior to termination. Existing law also provides for a procedure by which those residential occupants may become customers of the corporation. Similar provisions exist for a public utility or a district that

furnishes individually metered residential light, heat, water, or power to residential occupants in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp if the owner, manager, or operator is listed by the public utility or district as the customer of record.

This bill would delete those provisions.

(5) Existing law provides that whenever an electrical, gas, heat, or water corporation furnishes residential service to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined, if the owner, manager, or operator is listed by the corporation as the customer of record, the corporation is required to make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. Certain violations of this provision are misdemeanors. Similar provisions exist for a public utility or district that furnishes light, heat, water, or power to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined, if the owner, manager, or operator is listed by the public utility or district as the customer of record.

This bill would instead require that whenever an electrical, gas, heat, or water corporation furnishes residential service to residential occupants in a residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined, if the owner, manager, or operator is listed by the corporation as the customer of record, the corporation would be required to inform the residential occupants, by means of a written notice posted on the door of each residential unit and a mailed notice to all affected service addresses known to the utility or available through reasonable and practical methods, as specified, at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. Because certain violations of this provision would be misdemeanors, the bill would create new crimes, thereby imposing a state-mandated local program.

The bill would similarly provide that whenever a public utility or district furnishes light, heat, water, or power, as specified, to residential occupants in a residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined, if the owner, manager, or operator is listed by the public utility or district as the customer of

record, the public utility or district is required to inform the residential occupants in the same method.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 789.3 of the Civil Code, as amended by  
2 Chapter 333 of the Statutes of 1979, is amended to read:

3 789.3. (a) A landlord shall not with intent to terminate the  
4 occupancy ~~under any lease or other tenancy or estate at will,~~  
5 ~~however created,~~ of property used by a tenant as his residence  
6 willfully cause, directly or indirectly, the interruption or termination  
7 of any utility service furnished the tenant, including, but not limited  
8 to, water, heat, light, electricity, gas, telephone, elevator, or  
9 refrigeration, whether or not the utility service is under the control  
10 of the landlord.

11 (b) In addition, a landlord shall not, with intent to terminate the  
12 occupancy ~~under any lease or other tenancy or estate at will,~~  
13 ~~however created,~~ of property used by a tenant as his or her  
14 residence, willfully *do any of the following:*

15 (1) Prevent the tenant from gaining reasonable access to the  
16 property by changing the locks or using a bootlock or by any other  
17 similar method ~~or device;~~ *device.*

18 (2) Remove outside doors ~~or windows;~~ *or windows.*

19 (3) Remove from the premises the tenant's personal property,  
20 the furnishings, or any other items without the prior written consent  
21 of the tenant, except when done pursuant to the procedure set forth  
22 in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4  
23 of Division 3.

24 Nothing in this subdivision shall be construed to prevent the  
25 lawful eviction of a tenant by appropriate legal authorities, nor  
26 shall anything in this subdivision apply to occupancies defined by  
27 subdivision (b) of Section 1940.



1 (c) Any landlord who violates this section shall be liable to the  
2 tenant in a civil action for all of the following:

3 (1) Actual damages of the tenant.

4 (2) An amount not to exceed one hundred dollars (\$100) for  
5 each day or part thereof the landlord remains in violation of this  
6 section. In determining the amount of such award, the court shall  
7 consider proof of such matters as justice may require; however,  
8 in no event shall less than two hundred fifty dollars (\$250) be  
9 awarded for each separate cause of action. Subsequent or repeated  
10 violations, which are not committed contemporaneously with the  
11 initial violation, shall be treated as separate causes of action and  
12 shall be subject to a separate award of damages.

13 (d) In any action under subdivision (c) the court shall award  
14 reasonable attorney's fees to the prevailing party. In any such  
15 action the tenant may seek appropriate injunctive relief to prevent  
16 continuing or further violation of the provisions of this section  
17 during the pendency of the action. The remedy provided by this  
18 section is not exclusive and shall not preclude the tenant from  
19 pursuing any other remedy which the tenant may have under any  
20 other provision of law.

21 (e) *For purposes of this section:*

22 (1) *"Landlord" includes, but is not limited to, a fee simple owner*  
23 *or owners of the property, and any successor or successors in*  
24 *interest to the landlord's interest in the property, including, but*  
25 *not limited to, interests acquired through the provisions of Chapter*  
26 *2 (commencing with Section 2920) of Title 14 of Part 4 of Division*  
27 *3.*

28 (2) *"Tenant" includes a tenant occupying the property pursuant*  
29 *to a fixed-term tenancy, a periodic tenancy, a tenancy at will, and*  
30 *a tenancy at sufferance, a subtenant, a lawful occupant, and any*  
31 *of the above persons who lawfully occupied the property*  
32 *immediately prior to the owner's acquisition of the property.*

33 SEC. 2. Section 1942.2 is added to the Civil Code, to read:

34 1942.2. A tenant who has made a payment to a utility pursuant  
35 to Section 777.1, 10009.1, 12822.1, or 16481.1 of the Public  
36 Utilities Code may deduct the payment from the rent as provided  
37 in that section.

38 SEC. 3. Section 1950.5 of the Civil Code is amended to read:

1 1950.5. (a) This section applies to security for a rental  
2 agreement for residential property that is used as the dwelling of  
3 the tenant.

4 (b) As used in this section, "security" means any payment, fee,  
5 deposit or charge, including, but not limited to, any payment, fee,  
6 deposit, or charge, except as provided in Section 1950.6, that is  
7 imposed at the beginning of the tenancy to be used to reimburse  
8 the landlord for costs associated with processing a new tenant or  
9 that is imposed as an advance payment of rent, used or to be used  
10 for any purpose, including, but not limited to, any of the following:

11 (1) The compensation of a landlord for a tenant's default in the  
12 payment of rent.

13 (2) The repair of damages to the premises, exclusive of ordinary  
14 wear and tear, caused by the tenant or by a guest or licensee of the  
15 tenant.

16 (3) The cleaning of the premises upon termination of the tenancy  
17 necessary to return the unit to the same level of cleanliness it was  
18 in at the inception of the tenancy. The amendments to this  
19 paragraph enacted by the act adding this sentence shall apply only  
20 to tenancies for which the tenant's right to occupy begins after  
21 January 1, 2003.

22 (4) To remedy future defaults by the tenant in any obligation  
23 under the rental agreement to restore, replace, or return personal  
24 property or appurtenances, exclusive of ordinary wear and tear, if  
25 the security deposit is authorized to be applied thereto by the rental  
26 agreement.

27 (c) A landlord may not demand or receive security, however  
28 denominated, in an amount or value in excess of an amount equal  
29 to two months' rent, in the case of unfurnished residential property,  
30 and an amount equal to three months' rent, in the case of furnished  
31 residential property, in addition to any rent for the first month paid  
32 on or before initial occupancy.

33 This subdivision does not prohibit an advance payment of not  
34 less than six months' rent if the term of the lease is six months or  
35 longer.

36 This subdivision does not preclude a landlord and a tenant from  
37 entering into a mutual agreement for the landlord, at the request  
38 of the tenant and for a specified fee or charge, to make structural,  
39 decorative, furnishing, or other similar alterations, if the alterations

1 are other than cleaning or repairing for which the landlord may  
2 charge the previous tenant as provided by subdivision (e).

3 (d) Any security shall be held by the landlord for the tenant who  
4 is party to the lease or agreement. The claim of a tenant to the  
5 security shall be prior to the claim of any creditor of the landlord.

6 (e) The landlord may claim of the security only those amounts  
7 as are reasonably necessary for the purposes specified in  
8 subdivision (b). The landlord may not assert a claim against the  
9 tenant or the security for damages to the premises or any defective  
10 conditions that preexisted the tenancy, for ordinary wear and tear  
11 or the effects thereof, whether the wear and tear preexisted the  
12 tenancy or occurred during the tenancy, or for the cumulative  
13 effects of ordinary wear and tear occurring during any one or more  
14 tenancies.

15 (f) (1) Within a reasonable time after notification of either  
16 party's intention to terminate the tenancy, or before the end of the  
17 lease term, the landlord shall notify the tenant in writing of his or  
18 her option to request an initial inspection and of his or her right to  
19 be present at the inspection. The requirements of this subdivision  
20 do not apply when the tenancy is terminated pursuant to subdivision  
21 (2), (3), or (4) of Section 1161 of the Code of Civil Procedure. At  
22 a reasonable time, but no earlier than two weeks before the  
23 termination or the end of lease date, the landlord, or an agent of  
24 the landlord, shall, upon the request of the tenant, make an initial  
25 inspection of the premises prior to any final inspection the landlord  
26 makes after the tenant has vacated the premises. The purpose of  
27 the initial inspection shall be to allow the tenant an opportunity to  
28 remedy identified deficiencies, in a manner consistent with the  
29 rights and obligations of the parties under the rental agreement, in  
30 order to avoid deductions from the security. If a tenant chooses  
31 not to request an initial inspection, the duties of the landlord under  
32 this subdivision are discharged. If an inspection is requested, the  
33 parties shall attempt to schedule the inspection at a mutually  
34 acceptable date and time. The landlord shall give at least 48 hours'  
35 prior written notice of the date and time of the inspection if either  
36 a mutual time is agreed upon, or if a mutually agreed time cannot  
37 be scheduled but the tenant still wishes an inspection. The tenant  
38 and landlord may agree to forgo the 48-hour prior written notice  
39 by both signing a written waiver. The landlord shall proceed with

1 the inspection whether the tenant is present or not, unless the tenant  
2 previously withdrew his or her request for the inspection.

3 (2) Based on the inspection, the landlord shall give the tenant  
4 an itemized statement specifying repairs or cleaning that are  
5 proposed to be the basis of any deductions from the security the  
6 landlord intends to make pursuant to paragraphs (1) to (4), inclusive  
7 of subdivision (b). This statement shall also include the texts of  
8 paragraphs (1) to (4), inclusive, of subdivision (b). The statement  
9 shall be given to the tenant, if the tenant is present for the  
10 inspection, or shall be left inside the premises.

11 (3) The tenant shall have the opportunity during the period  
12 following the initial inspection until termination of the tenancy to  
13 remedy identified deficiencies, in a manner consistent with the  
14 rights and obligations of the parties under the rental agreement, in  
15 order to avoid deductions from the security.

16 (4) Nothing in this subdivision shall prevent a landlord from  
17 using the security for deductions itemized in the statement provided  
18 for in paragraph (2) that were not cured by the tenant so long as  
19 the deductions are for damages authorized by this section.

20 (5) Nothing in this subdivision shall prevent a landlord from  
21 using the security for any purpose specified in paragraphs (1) to  
22 (4), inclusive, of subdivision (b) that occurs between completion  
23 of the initial inspection and termination of the tenancy or was not  
24 identified during the initial inspection due to the presence of a  
25 tenant's possessions.

26 (g) (1) No later than 21 calendar days after the tenant has  
27 vacated the premises, but not earlier than the time that either the  
28 landlord or the tenant provides a notice to terminate the tenancy  
29 under Section 1946 or 1946.1, Section 1161 of the Code of Civil  
30 Procedure, or not earlier than 60 calendar days prior to the  
31 expiration of a fixed-term lease, the landlord shall furnish the  
32 tenant, by personal delivery or by first-class mail, postage prepaid,  
33 a copy of an itemized statement indicating the basis for, and the  
34 amount of, any security received and the disposition of the security  
35 and shall return any remaining portion of the security to the tenant.

36 (2) Along with the itemized statement, the landlord shall also  
37 include copies of documents showing charges incurred and  
38 deducted by the landlord to repair or clean the premises, as follows:

39 (A) If the landlord or landlord's employee did the work, the  
40 itemized statement shall reasonably describe the work performed.

1 The itemized statement shall include the time spent and the  
2 reasonable hourly rate charged.

3 (B) If the landlord or landlord's employee did not do the work,  
4 the landlord shall provide the tenant a copy of the bill, invoice, or  
5 receipt supplied by the person or entity performing the work. The  
6 itemized statement shall provide the tenant with the name, address,  
7 and telephone number of the person or entity, if the bill, invoice,  
8 or receipt does not include that information.

9 (C) If a deduction is made for materials or supplies, the landlord  
10 shall provide a copy of the bill, invoice, or receipt. If a particular  
11 material or supply item is purchased by the landlord on an ongoing  
12 basis, the landlord may document the cost of the item by providing  
13 a copy of a bill, invoice, receipt, vendor price list, or other vendor  
14 document that reasonably documents the cost of the item used in  
15 the repair or cleaning of the unit.

16 (3) If a repair to be done by the landlord or the landlord's  
17 employee cannot reasonably be completed within 21 calendar days  
18 after the tenant has vacated the premises, or if the documents from  
19 a person or entity providing services, materials, or supplies are not  
20 in the landlord's possession within 21 calendar days after the tenant  
21 has vacated the premises, the landlord may deduct the amount of  
22 a good faith estimate of the charges that will be incurred and  
23 provide that estimate with the itemized statement. If the reason for  
24 the estimate is because the documents from a person or entity  
25 providing services, materials, or supplies are not in the landlord's  
26 possession, the itemized statement shall include the name, address,  
27 and telephone number of the person or entity. Within 14 calendar  
28 days of completing the repair or receiving the documentation, the  
29 landlord shall complete the requirements in paragraphs (1) and (2)  
30 in the manner specified.

31 (4) The landlord need not comply with paragraph (2) or (3) if  
32 either of the following apply:

33 (A) The deductions for repairs and cleaning together do not  
34 exceed one hundred twenty-five dollars (\$125).

35 (B) The tenant waived the rights specified in paragraphs (2) and  
36 (3). The waiver shall only be effective if it is signed by the tenant  
37 at the same time or after a notice to terminate a tenancy under  
38 Section 1946 or 1946.1 has been given, a notice under Section  
39 1161 of the Code of Civil Procedure has been given, or no earlier

1 than 60 calendar days prior to the expiration of a fixed-term lease.  
2 The waiver shall substantially include the text of paragraph (2).

3 (5) Notwithstanding paragraph (4), the landlord shall comply  
4 with paragraphs (2) and (3) when a tenant makes a request for  
5 documentation within 14 calendar days after receiving the itemized  
6 statement specified in paragraph (1). The landlord shall comply  
7 within 14 calendar days after receiving the request from the tenant.

8 (6) Any mailings to the tenant pursuant to this subdivision shall  
9 be sent to the address provided by the tenant. If the tenant does  
10 not provide an address, mailings pursuant to this subdivision shall  
11 be sent to the unit that has been vacated.

12 (h) Upon termination of the landlord's interest in the premises,  
13 whether *voluntary or involuntary*, by sale, *trustee sale*, assignment,  
14 death, appointment of receiver or otherwise, the landlord or the  
15 landlord's agent shall, within a reasonable time, do one of the  
16 following acts, either of which shall relieve the landlord of further  
17 liability with respect to the security held:

18 (1) Transfer the portion of the security remaining after any  
19 lawful deductions made under subdivision (e) to the landlord's  
20 successor in interest. The landlord shall thereafter notify the tenant  
21 by personal delivery or by first-class mail, postage prepaid, of the  
22 transfer, of any claims made against the security, of the amount  
23 of the security deposited, and of the ~~names~~ *name* of the ~~successors~~  
24 *successor* in interest, ~~their~~ *his or her* address, and ~~their~~ *his or her*  
25 telephone number. If the notice to the tenant is made by personal  
26 delivery, the tenant shall acknowledge receipt of the notice and  
27 sign his or her name on the landlord's copy of the notice.

28 (2) Return the portion of the security remaining after any lawful  
29 deductions made under subdivision (e) to the tenant, together with  
30 an accounting as provided in subdivision (g).

31 (i) Prior to the voluntary transfer of a landlord's interest in the  
32 premises, the landlord shall deliver to the landlord's successor in  
33 interest a written statement indicating the following:

34 (1) The security remaining after any lawful deductions are made.

35 (2) An itemization of any lawful deductions from any security  
36 received.

37 (3) His or her election under paragraph (1) or (2) of subdivision  
38 (h).

39 This subdivision does not affect the validity of title to the real  
40 property transferred in violation of this subdivision.

1 (j) In the event of noncompliance with subdivision (h), the  
2 landlord's ~~successors~~ *successor* in interest shall be jointly and  
3 severally liable with the landlord for repayment of the security, or  
4 that portion thereof to which the tenant is entitled, when and as  
5 provided in subdivisions (e) and (g). A successor in interest of a  
6 landlord may not require the tenant to post any security to replace  
7 that amount not transferred to the tenant or ~~successors~~ *successor*  
8 in interest as provided in subdivision (h), unless and until the  
9 successor in interest first makes restitution of the initial security  
10 as provided in paragraph (2) of subdivision (h) or provides the  
11 tenant with an accounting as provided in subdivision (g).

12 This subdivision does not preclude a successor in interest from  
13 recovering from the tenant compensatory damages that are in  
14 excess of the security received from the landlord previously paid  
15 by the tenant to the landlord.

16 Notwithstanding this subdivision, if, upon inquiry and reasonable  
17 investigation, a landlord's successor in interest has a good faith  
18 belief that the lawfully remaining security deposit is transferred  
19 to him or her or returned to the tenant pursuant to subdivision (h),  
20 he or she is not liable for damages as provided in subdivision (l),  
21 or any security not transferred pursuant to subdivision (h).

22 (k) Upon receipt of any portion of the security under paragraph  
23 (1) of subdivision (h), the landlord's ~~successors~~ *successor* in  
24 interest shall have all of the rights and obligations of a landlord  
25 holding the security with respect to the security.

26 (l) The bad faith claim or retention by a landlord or the  
27 landlord's ~~successors~~ *successor* in interest of the security or any  
28 portion thereof in violation of this section, or the bad faith demand  
29 of replacement security in violation of subdivision (j), may subject  
30 the landlord or the landlord's ~~successors~~ *successor* in interest to  
31 statutory damages of up to twice the amount of the security, in  
32 addition to actual damages. The court may award damages for bad  
33 faith whenever the facts warrant that award, regardless of whether  
34 the injured party has specifically requested relief. In any action  
35 under this section, the landlord or the landlord's ~~successors~~  
36 *successor* in interest shall have the burden of proof as to the  
37 reasonableness of the amounts claimed or the authority pursuant  
38 to this section to demand additional security deposits.

39 (m) No lease or rental agreement may contain any provision  
40 characterizing any security as "nonrefundable."

1 (n) Any action under this section may be maintained in small  
2 claims court if the damages claimed, whether actual or statutory  
3 or both, are within the jurisdictional amount allowed by Section  
4 116.220 or 116.221 of the Code of Civil Procedure.

5 (o) Proof of the existence of and the amount of a security deposit  
6 may be established by any credible evidence, including, but not  
7 limited to, a canceled check, a receipt, a lease indicating the  
8 requirement of a deposit as well as the amount, prior consistent  
9 statements or actions of the landlord or tenant, or a statement under  
10 penalty of perjury that satisfies the credibility requirements set  
11 forth in Section 780 of the Evidence Code.

12 (p) *For purposes of this section, "successor in interest" includes*  
13 *all successors in interest, and includes, but is not limited to, a fee*  
14 *simple owner or owners of the property, and any successor or*  
15 *successors in interest to the landlord's interest in the property,*  
16 *including, but not limited to, interests acquired through the*  
17 *provisions of Chapter 2 (commencing with Section 2920) of Title*  
18 *14. If a successor in interest has acquired the property pursuant*  
19 *to Chapter 2 (commencing with Section 2920) of Title 14, there*  
20 *shall be a rebuttable presumption that the amount of the deposit*  
21 *is equal to one month's rent.*

22 ~~(p)~~  
23 (q) The amendments to this section made during the 1985  
24 portion of the 1985–86 Regular Session of the Legislature that are  
25 set forth in subdivision (e) are declaratory of existing law.

26 ~~(q)~~  
27 (r) The amendments to this section made during the 2003 portion  
28 of the 2003–04 Regular Session of the Legislature that are set forth  
29 in paragraph (1) of subdivision (f) are declaratory of existing law.

30 SEC. 4. Section 1962 of the Civil Code is amended to read:

31 1962. (a) Any owner of a dwelling structure specified in  
32 Section 1961 or a party signing a rental agreement or lease on  
33 behalf of the owner shall do all of the following:

34 (1) Disclose therein the name, telephone number, and usual  
35 street address at which personal service may be effected of each  
36 person who is:

37 (A) Authorized to manage the premises.

38 (B) An owner of the premises or a person who is authorized to  
39 act for and on behalf of the owner for the purpose of service of



1 process and for the purpose of receiving and receipting for all  
2 notices and demands.

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

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

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

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

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

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

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

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

35 (c) The information required by this section shall be kept current  
36 and this section shall extend to and be enforceable against any  
37 successor owner or manager, who shall comply with this section  
38 within 15 days of succeeding the previous owner or manager.

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

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

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

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

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

16 (f) If the address provided by the owner does not allow for  
17 personal delivery, then it shall be conclusively presumed that upon  
18 the mailing of any rent or notice to the owner by the tenant to the  
19 name and address provided, the notice or rent is deemed receivable  
20 by the owner on the date posted, if the tenant can show proof of  
21 mailing to the name and address provided by the owner.

22 (g) *For purposes of this section, "successor owner" includes*  
23 *all successor owners, and includes, but is not limited to, a fee*  
24 *simple owner or owners of the property, and a successor owner*  
25 *whose interest was acquired through the provisions of Chapter 2*  
26 *(commencing with Section 2920) of Title 14. However, a successor*  
27 *owner whose interest was acquired under that chapter need not*  
28 *comply with this section if the owner serves a notice pursuant to*  
29 *Section 1161b of the Code of Civil Procedure within 15 days after*  
30 *acquiring the property.*

31 SEC. 5. Section 777 of the Public Utilities Code is repealed.

32 ~~777. (a) Whenever an electrical, gas, heat, or water corporation~~  
33 ~~furnishes individually metered residential service to residential~~  
34 ~~occupants in a multiunit residential structure, mobilhome park,~~  
35 ~~or permanent residential structures in a labor camp, as defined in~~  
36 ~~Section 17008 of the Health and Safety Code, where the owner,~~  
37 ~~manager, or operator is listed by the corporation as the customer~~  
38 ~~of record, the corporation shall make every good faith effort to~~  
39 ~~inform the residential occupants, by means of a notice, when the~~  
40 ~~account is in arrears, that service will be terminated at least 10~~

1 ~~days prior to termination. The notice shall further inform the~~  
2 ~~residential occupants that they have the right to become customers,~~  
3 ~~to whom the service will then be billed, without being required to~~  
4 ~~pay any amount which may be due on the delinquent account.~~

5 ~~(b) The corporation is not required to make service available to~~  
6 ~~the residential occupants unless each residential occupant agrees~~  
7 ~~to the terms and conditions of service and meets the requirements~~  
8 ~~of law and the corporation's rules and tariffs. However, if one or~~  
9 ~~more of the residential occupants are willing and able to assume~~  
10 ~~responsibility for the entire account to the satisfaction of the~~  
11 ~~corporation, or if there is a physical means, legally available to~~  
12 ~~the corporation, of selectively terminating service to those~~  
13 ~~residential occupants who have not met the requirements of the~~  
14 ~~corporation's rules and tariffs, the corporation shall make service~~  
15 ~~available to those residential occupants who have met those~~  
16 ~~requirements.~~

17 ~~(c) Where prior service for a period of time is a condition for~~  
18 ~~establishing credit with the corporation, residence and proof of~~  
19 ~~prompt payment of rent or other credit obligation acceptable to~~  
20 ~~the corporation for that period of time is a satisfactory equivalent.~~

21 ~~(d) Any residential occupant who becomes a customer of the~~  
22 ~~corporation pursuant to this section whose periodic payments, such~~  
23 ~~as rental payments, include charges for residential electrical, gas,~~  
24 ~~heat, or water service, where those charges are not separately~~  
25 ~~stated, may deduct from the periodic payment each payment period~~  
26 ~~all reasonable charges paid to the corporation for those services~~  
27 ~~during the preceding payment period.~~

28 SEC. 6. Section 777.1 of the Public Utilities Code is amended  
29 to read:

30 777.1. (a) Whenever an electrical, gas, heat, or water  
31 corporation furnishes residential service to residential occupants  
32 through a master meter in a multiunit residential structure,  
33 mobilehome park, or permanent residential structures in a labor  
34 camp, as defined in Section 17008 of the Health and Safety Code,  
35 where if the owner, manager, or operator is listed by the corporation  
36 as the customer of record, the corporation shall make every good  
37 faith effort to inform the residential occupants, by means of a  
38 written notice posted on the door of each residential unit and a  
39 mailed notice to all affected service addresses known to the utility  
40 or available through reasonable and practical methods unless the

1 *service address is the same as the billing address, at least 15 days*  
2 *prior to termination, when the account is in arrears, that service*  
3 *will be terminated on a date specified in the notice. If it is not*  
4 *reasonable or practicable to post the notice on the door of each*  
5 *residential unit, the corporation shall post two copies of the notice*  
6 *in each accessible common area and at each point of access to the*  
7 *structure or structures. The mailed notice shall be addressed to*  
8 *"Any Person Renting Property At:" followed by the address of the*  
9 *dwelling unit. The outside of the envelope shall state, in English*  
10 *and in the languages listed in Section 1632 of the Civil Code, in*  
11 *at least 12-point type: "Utility service to this address may be cut*  
12 *off soon." The notice shall further inform the residential occupants*  
13 *that they have the right to become customers, to whom the service*  
14 *will then be billed, without being required to pay any amount which*  
15 *may be due on the delinquent account. The notice also shall*  
16 *specify, in plain language, what the residential occupants are*  
17 *required to do in order to prevent the termination or reestablish*  
18 *service; the estimated monthly cost of service; the title, address,*  
19 *and telephone number of a representative of the corporation who*  
20 *can assist the residential occupants in continuing service; and the*  
21 *address and telephone number of a legal services project, as defined*  
22 *in Section 6213 of the Business and Professions Code, which has*  
23 *been recommended by the local county bar association. The notice*  
24 *shall be in English and, to the extent practical, in any other*  
25 *language that the corporation determines is the primary language*  
26 *spoken by a significant number languages listed in Section 1632*  
27 *of the residential occupants Civil Code.*

28 (b) The corporation is not required to make service available to  
29 the residential occupants unless each a residential occupant or a  
30 representative of the residential occupants agrees to the terms and  
31 conditions of service and meets the requirements of law and the  
32 corporation's rules and tariffs. However, if one or more of the  
33 residential occupants or the representative of the residential  
34 occupants are willing and able to assume responsibility for  
35 subsequent charges to the account to the satisfaction of the  
36 corporation, or if there is a physical means, legally available to  
37 the corporation, of selectively terminating service to those  
38 residential occupants who have not met the requirements of the  
39 corporation's rules and tariffs or for whom the representative of  
40 the residential occupants is not responsible, the corporation shall

1 make service available to those residential occupants who have  
2 met those requirements or on whose behalf those requirements  
3 have been met.

4 (c) Where prior service for a period of time or other  
5 demonstration of credit worthiness is a condition for establishing  
6 credit with the corporation, residence and proof of prompt payment  
7 of rent or other credit obligation during that period of time  
8 acceptable to the corporation is a satisfactory equivalent.

9 (d) Any residential occupant who becomes a customer of the  
10 corporation pursuant to this section whose periodic payments, such  
11 as rental payments, include charges for residential electrical, gas,  
12 heat, or water service, where those charges are not separately  
13 stated, may deduct from the periodic payment each payment period  
14 all reasonable charges paid to the corporation for those services  
15 during the preceding payment period.

16 (e) Whenever a corporation furnishes residential service subject  
17 to subdivision (a), the corporation may not terminate that service  
18 in any of the following situations:

19 (1) During the pendency of an investigation by the corporation  
20 of a customer dispute or complaint.

21 (2) When the customer has been granted an extension of the  
22 period for payment of a bill.

23 (3) For an indebtedness owed by the customer to any other  
24 person or corporation or when the obligation represented by the  
25 delinquent account or other indebtedness was incurred with a  
26 person or corporation other than the electrical, gas, heat, or water  
27 corporation demanding payment therefor.

28 (4) When a delinquent account relates to another property  
29 owned, managed, or operated by the customer.

30 (5) When a public health or building officer certifies that  
31 termination would result in a significant threat to the health or  
32 safety of the residential occupants or the public.

33 (f) Notwithstanding any other provision of law, and in addition  
34 to any other remedy provided by law, if the owner, manager, or  
35 operator, by any act or omission, directs, permits, or fails to prevent  
36 a termination of service while any residential unit receiving that  
37 service is occupied, the residential occupant or the representative  
38 of the residential occupants may commence an action for the  
39 recovery of all of the following:

1 (1) Reasonable costs and expenses incurred by the residential  
2 occupant or the representative of the residential occupants related  
3 to restoration of service.

4 (2) Actual damages related to the termination of service.

5 (3) Reasonable attorney's fees of the residential occupants, the  
6 representative of the residential occupants, or each of them,  
7 incurred in the enforcement of this section, including, but not  
8 limited to, enforcement of a lien.

9 (g) Notwithstanding any other provision of law, and in addition  
10 to any other remedy provided by law, if the owner, manager, or  
11 operator, by any act or omission, directs, permits, or fails to prevent  
12 a termination of service while any residential unit receiving that  
13 service is occupied, the corporation may commence an action for  
14 the recovery of all of the following:

15 (1) Delinquent charges accruing prior to the expiration of the  
16 notice prescribed by subdivision (a).

17 (2) Reasonable costs incurred by the corporation related to the  
18 restoration of service.

19 (3) Reasonable attorney's fees of the corporation incurred in  
20 the enforcement of this section or in the collection of delinquent  
21 charges, including, but not limited to, enforcement of a lien.

22 If the court finds that the owner, manager, or operator has paid  
23 the amount in arrears prior to termination, the court shall allow no  
24 recovery of any charges, costs, damages, expenses, or fees under  
25 this subdivision from the owner, manager, or operator.

26 An abstract of any money judgment entered pursuant to  
27 subdivision (f) or (g) shall be recorded pursuant to Section 697.310  
28 of the Code of Civil Procedure.

29 (h) No termination of service subject to this section may be  
30 effected without compliance with this section, and any service  
31 wrongfully terminated shall be restored without charge to the  
32 residential occupants or customer for the restoration of the service.  
33 In the event of a wrongful termination by the corporation, the  
34 corporation shall, in addition, be liable to the residential occupants  
35 or customer for actual damages resulting from the termination and  
36 for the costs of enforcement of this section, including, but not  
37 limited to, reasonable attorney's fees, if the residential occupants  
38 or the representative of the residential occupants made a good faith  
39 effort to have the service continued without interruption.

1 (i) The commission shall adopt rules and orders necessary to  
2 implement this section and shall liberally construe this section to  
3 accomplish its purpose of ensuring that service to residential  
4 occupants is not terminated due to nonpayment by the customer  
5 unless the corporation has made every reasonable effort to continue  
6 service to the residential occupants. The rules and orders shall  
7 include, but are not limited to, reasonable penalties for a violation  
8 of this section, guidelines for assistance to residents in the  
9 enforcement of this section, and requirements for the notice  
10 prescribed by subdivision (a), including, but not limited to, clear  
11 wording, large and boldface type, and comprehensive instructions  
12 to ensure full notice to the resident.

13 (j) Nothing in this section broadens or restricts any authority of  
14 a local agency that existed prior to January 1, 1989, to adopt an  
15 ordinance protecting a residential occupant from the involuntary  
16 termination of residential public utility service.

17 (k) This section preempts any statute or ordinance permitting  
18 punitive damages against any owner, manager, or operator on  
19 account of an involuntary termination of residential public utility  
20 service or permitting the recovery of costs associated with the  
21 formation, maintenance, and termination of a tenant's association.

22 ~~(l) For purposes of this section, "representative of the residential  
23 occupants" does not include a tenants' association.~~

24 SEC. 7. Section 10009 of the Public Utilities Code is repealed.

25 ~~10009. (a) Whenever a public utility furnishes individually  
26 metered residential light, heat, water, or power to residential  
27 occupants in a multiunit residential structure, mobilehome park,  
28 or permanent residential structures in a labor camp, as defined in  
29 Section 17008 of the Health and Safety Code, where the owner,  
30 manager, or operator is listed by the public utility as the customer  
31 of record, the public utility shall make every good faith effort to  
32 inform the residential occupants, by means of a notice, when the  
33 account is in arrears, that service will be terminated in 10 days.  
34 The notice shall further inform the residential occupants that they  
35 have the right to become customers of the public utility without  
36 being required to pay the amount due on the delinquent account.~~

37 ~~(b) The public utility is not required to make service available  
38 to the residential occupants unless each residential occupant agrees  
39 to the terms and conditions of service, and meets the requirements  
40 of law and the public utility's rules. However, if one or more of~~

1 ~~the residential occupants are willing and able to assume~~  
2 ~~responsibility for the entire account to the satisfaction of the public~~  
3 ~~utility, or if there is a physical means, legally available to the public~~  
4 ~~utility, of selectively terminating service to those residential~~  
5 ~~occupants who have not met the requirements of the public utility's~~  
6 ~~rules, the public utility shall make service available to the~~  
7 ~~residential occupants who have met those requirements.~~

8 ~~(e) Where prior service for a period of time is a condition for~~  
9 ~~establishing credit with the public utility, residence and proof of~~  
10 ~~prompt payment of rent or other obligation acceptable to the public~~  
11 ~~utility for that period of time is a satisfactory equivalent.~~

12 ~~(d) Any residential occupant who becomes a customer of the~~  
13 ~~public utility pursuant to this section whose periodic payments,~~  
14 ~~such as rental payments, include charges for residential light, heat,~~  
15 ~~water, or power, where these charges are not separately stated,~~  
16 ~~may deduct from the periodic payment each payment period all~~  
17 ~~reasonable charges paid to the public utility for those services~~  
18 ~~during the preceding payment period.~~

19 SEC. 8. Section 10009.1 of the Public Utilities Code is  
20 amended to read:

21 10009.1. (a) Whenever a public utility furnishes light, heat,  
22 water, or power to residential occupants ~~through a master meter~~  
23 ~~in a multiunit residential structure, mobilehome park, or permanent~~  
24 ~~residential structures in a labor camp, as defined in Section 17008~~  
25 ~~of the Health and Safety Code, where if the owner, manager, or~~  
26 ~~operator is listed by the public utility as the customer of record,~~  
27 ~~the public utility shall make every good faith effort to inform the~~  
28 ~~residential occupants, by means of a written notice posted on the~~  
29 ~~door of each residential unit and a mailed notice to all affected~~  
30 ~~service addresses known to the utility or available through~~  
31 ~~reasonable and practical methods, unless the service address is~~  
32 ~~the same as the billing address, at least 15 days prior to~~  
33 ~~termination, when the account is in arrears, that service will be~~  
34 ~~terminated on a date specified in the notice. If it is not reasonable~~  
35 ~~or practicable to post the notice on the door of each residential~~  
36 ~~unit, the public utility shall post two copies of the notice in each~~  
37 ~~accessible common area and at each point of access to the structure~~  
38 ~~or structures. The mailed notice shall be addressed to "Any Person~~  
39 ~~Renting Property At:" followed by the address of the dwelling~~  
40 ~~unit. The outside of the envelope shall state, in English and in the~~



1 *languages listed in Section 1632 of the Civil Code, in at least*  
2 *12-point type: "Utility service to this address may be cut off soon."*  
3 *The notice shall further inform the residential occupants that they*  
4 *have the right to become utility customers, to whom the service*  
5 *will then be billed, without being required to pay the amount due*  
6 *on the delinquent account. The notice also shall specify, in plain*  
7 *language, what the residential occupants are required to do in order*  
8 *to prevent the termination or reestablish service; the estimated*  
9 *monthly cost of service; the title, address, and telephone number*  
10 *of a representative of the public utility who can assist the residential*  
11 *occupants in continuing service; and the address and telephone*  
12 *number of a legal services project, as defined in Section 6213 of*  
13 *the Business and Professions Code, which has been recommended*  
14 *by the local county bar association. The notice shall be in English*  
15 *and, to the extent practical, in any other language that the public*  
16 *utility determines is the primary language spoken by a significant*  
17 *number in the languages listed in Section 1632 of the residential*  
18 *occupants Civil Code.*

19 (b) The public utility is not required to make service available  
20 to the residential occupants unless each a residential occupant or  
21 a representative of the residential occupants agrees to the terms  
22 and conditions of service, and meets the requirements of law and  
23 the public utility's rules. However, if one or more of the residential  
24 occupants or the representative of the residential occupants are  
25 willing and able to assume responsibility for subsequent charges  
26 to the account to the satisfaction of the public utility, or if there is  
27 a physical means, legally available to the public utility, of  
28 selectively terminating service to those residential occupants who  
29 have not met the requirements of the public utility's rules or for  
30 whom the representative of the residential occupants is not  
31 responsible, the public utility shall make service available to the  
32 residential occupants who have met those requirements or on whose  
33 behalf those requirements have been met.

34 (c) Where prior service for a period of time or other  
35 demonstration of credit worthiness is a condition for establishing  
36 credit with the public utility, residence and proof of prompt  
37 payment of rent or other credit obligation during that period of  
38 time acceptable to the public utility is a satisfactory equivalent.

39 (d) Any residential occupant who becomes a customer of the  
40 public utility pursuant to this section whose periodic payments,

1 such as rental payments, include charges for residential light, heat,  
2 water, or power, where these charges are not separately stated,  
3 may deduct from the periodic payment each payment period all  
4 reasonable charges paid to the public utility for those services  
5 during the preceding payment period.

6 (e) Whenever a public utility furnishes residential service subject  
7 to subdivision (a), the public utility may not terminate that service  
8 in any of the following situations:

9 (1) During the pendency of an investigation by the public utility  
10 of a customer dispute or complaint.

11 (2) When the customer has been granted an extension of the  
12 period for payment of a bill.

13 (3) For an indebtedness owed by the customer to any other  
14 public agency or when the obligation represented by the delinquent  
15 account or other indebtedness was incurred with any public agency  
16 other than the public utility.

17 (4) When a delinquent account relates to another property  
18 owned, managed, or operated by the customer.

19 (5) When a public health or building officer certifies that  
20 termination would result in a significant threat to the health or  
21 safety of the residential occupants or the public.

22 (f) Notwithstanding any other provision of law, and in addition  
23 to any other remedy provided by law, if the owner, manager, or  
24 operator, by any act or omission, directs, permits, or fails to prevent  
25 a termination of service while any residential unit is occupied, the  
26 residential occupant or the representative of the residential  
27 occupants may commence an action for the recovery of all of the  
28 following:

29 (1) Reasonable costs and expenses incurred by the residential  
30 occupant or the representative of the residential occupants related  
31 to restoration of service.

32 (2) Actual damages related to the termination of service.

33 (3) Reasonable attorney's fees of the residential occupants, the  
34 representative of the residential occupants, or each of them,  
35 incurred in the enforcement of this section, including, but not  
36 limited to, enforcement of a lien.

37 (g) Notwithstanding any other provision of law, and in addition  
38 to any other remedy provided by law, if the owner, manager, or  
39 operator, by any act or omission, directs, permits, or fails to prevent  
40 a termination of service while any residential unit receiving that

1 service is occupied, the corporation may commence an action for  
2 the recovery of all of the following:

3 (1) Delinquent charges accruing prior to the expiration of the  
4 notice prescribed by subdivision (a).

5 (2) Reasonable costs incurred by the corporation related to the  
6 restoration of service.

7 (3) Reasonable attorney's fees of the corporation incurred in  
8 the enforcement of this section or in the collection of delinquent  
9 charges, including, but not limited to, enforcement of a lien.

10 If the court finds that the owner, manager, or operator has paid  
11 the amount in arrears prior to termination, the court shall allow no  
12 recovery of any charges, costs, damages, expenses, or fees under  
13 this subdivision from the owner, manager, or operator.

14 An abstract of any money judgment entered pursuant to  
15 subdivision (f) or (g) shall be recorded pursuant to Section 697.310  
16 of the Code of Civil Procedure.

17 (h) No termination of service subject to this section may be  
18 effected without compliance with this section, and any service  
19 wrongfully terminated shall be restored without charge to the  
20 residential occupants or customer for the restoration of the service.  
21 In the event of a wrongful termination by the public utility, the  
22 public utility shall, in addition, be liable to the residential occupants  
23 or customer for actual damages resulting from the termination and  
24 for the costs of enforcement of this section, including, but not  
25 limited to, reasonable attorney's fees, if the residential occupants  
26 or the representative of the residential occupants make a good faith  
27 effort to have the service continued without interruption.

28 (i) The public utility shall adopt rules and regulations necessary  
29 to implement this section and shall liberally construe this section  
30 to accomplish its purpose of ensuring that service to residential  
31 occupants is not terminated due to nonpayment by the customer  
32 unless the public utility has made every reasonable effort to  
33 continue service to the residential occupants. The rules and  
34 regulations shall include, but are not limited to, guidelines for  
35 assistance to actual users in the enforcement of this section and  
36 requirements for the notice prescribed by subdivision (a), including,  
37 but not limited to, clear wording, large and ~~bold face~~ *boldface*  
38 type, and comprehensive instructions to ensure full notice to the  
39 actual user.

1 (j) Nothing in this section broadens or restricts any authority of  
2 a local agency that existed prior to January 1, 1989, to adopt an  
3 ordinance protecting a residential occupant from the involuntary  
4 termination of residential public utility service.

5 (k) This section preempts any statute or ordinance permitting  
6 punitive damages against any owner, manager, or operator on  
7 account of an involuntary termination of residential public utility  
8 service or permitting the recovery of costs associated with the  
9 formation, maintenance, and termination of a tenant's association.

10 ~~(l) For purposes of this section, "representative of the residential~~  
11 ~~occupants" does not include a tenants' association.~~

12 SEC. 9. Section 12822 of the Public Utilities Code is repealed.

13 ~~12822. (a) Whenever a district furnishes individually metered~~  
14 ~~residential light, heat, water, or power to residential occupants in~~  
15 ~~a multiunit residential structure, mobilehome park, or permanent~~  
16 ~~residential structures in a labor camp, as defined in Section 17008~~  
17 ~~of the Health and Safety Code, where the owner, manager, or~~  
18 ~~operator is listed by the district as the customer of record of the~~  
19 ~~service, the district shall make every good faith effort to inform~~  
20 ~~the residential occupants, by means of a notice, when the account~~  
21 ~~is in arrears, that service will be terminated in 10 days. The notice~~  
22 ~~shall further inform the residential occupants that they have the~~  
23 ~~right to become customers of the district without being required~~  
24 ~~to pay the amount due on the delinquent account.~~

25 ~~(b) The district is not required to make service available to the~~  
26 ~~residential occupants unless each residential occupant agrees to~~  
27 ~~the terms and conditions of service, and meets the requirements~~  
28 ~~of the district's rules. However, if one or more of the residential~~  
29 ~~occupants are willing and able to assume responsibility for the~~  
30 ~~entire account to the satisfaction of the district, or if there is a~~  
31 ~~physical means, legally available to the district, of selectively~~  
32 ~~terminating service to those residential occupants who have not~~  
33 ~~met the requirements of the district's rules, the district shall make~~  
34 ~~service available to the residential occupants who have met those~~  
35 ~~requirements.~~

36 ~~(c) Where prior service for a period of time is a condition for~~  
37 ~~establishing credit with the district, residence and proof of prompt~~  
38 ~~payment of rent or other credit obligation acceptable to the district~~  
39 ~~for that period of time is a satisfactory equivalent.~~

1 ~~(d) Any residential occupant who becomes a customer of the~~  
2 ~~district pursuant to this section whose periodic payments, such as~~  
3 ~~rental payments, include charges for residential light, heat, water,~~  
4 ~~or power, where these charges are not separately stated, may deduct~~  
5 ~~from the periodic payment each payment period all reasonable~~  
6 ~~charges paid to the district for those services during the preceding~~  
7 ~~payment period.~~

8 SEC. 10. Section 12822.1 of the Public Utilities Code is  
9 amended to read:

10 12822.1. (a) Whenever a district furnishes residential light,  
11 heat, water, or power to residential occupants ~~through a master~~  
12 ~~meter in a multiunit residential structure, mobilehome park, or~~  
13 ~~permanent residential structures in a labor camp, as defined in~~  
14 ~~Section 17008 of the Health and Safety Code, where if the owner,~~  
15 ~~manager, or operator is listed by the district as the customer of~~  
16 ~~record of the service, the district shall make every good faith effort~~  
17 ~~to inform the residential occupants, by means of a written notice~~  
18 ~~posted on the door of each residential unit and a mailed notice to~~  
19 ~~all affected service addresses known to the utility or available~~  
20 ~~through reasonable and practical methods, unless the service~~  
21 ~~address is the same as the billing address, at least 15 days prior~~  
22 ~~to termination, when the account is in arrears, that service will be~~  
23 ~~terminated on a date specified in the notice. If it is not reasonable~~  
24 ~~or practicable to post the notice on the door of each residential~~  
25 ~~unit, the district shall post two copies of the notice in each~~  
26 ~~accessible common area and at each point of access to the structure~~  
27 ~~or structures. The mailed notice shall be addressed to "Any Person~~  
28 ~~Renting Property At:" followed by the address of the dwelling~~  
29 ~~unit. The outside of the envelope shall state, in English and in the~~  
30 ~~languages listed in Section 1632 of the Civil Code, in at least~~  
31 ~~12-point type: "Utility service to this address may be cut off soon."~~  
32 ~~The notice shall further inform the residential occupants that they~~  
33 ~~have the right to become customers, to whom the service will then~~  
34 ~~be billed, of the district without being required to pay the amount~~  
35 ~~due on the delinquent account. The notice also shall specify, in~~  
36 ~~plain language, what the residential occupants are required to do~~  
37 ~~in order to prevent the termination or reestablish service; the~~  
38 ~~estimated monthly cost of service; the title, address, and telephone~~  
39 ~~number of a representative of the district who can assist the~~  
40 ~~residential occupants in continuing service; and the address and~~

1 telephone number of a legal services project, as defined in Section  
2 6213 of the Business and Professions Code, which has been  
3 recommended by the local county bar association. The notice shall  
4 be in English and, ~~to the extent practical, in any other language~~  
5 ~~that the district determines is the primary language spoken by a~~  
6 ~~significant number~~ *languages listed in Section 1632 of the*  
7 *residential occupants Civil Code.*

8 (b) The district is not required to make service available to the  
9 residential occupants unless ~~each~~ a residential occupant or a  
10 representative of the residential occupants agrees to the terms and  
11 conditions of service, and meets the requirement of law and the  
12 district's rules. However, if one or more of the residential occupants  
13 or the representative of the residential occupants are willing and  
14 able to assume responsibility for subsequent charges to the account  
15 to the satisfaction of the district, or if there is a physical means,  
16 legally available to the district, of selectively terminating service  
17 to those residential occupants who have not met the requirements  
18 of the district's rules or for whom the representative of the  
19 residential occupants is not responsible, the district shall make  
20 service available to the residential occupants who have met those  
21 requirements or on whose behalf those requirements have been  
22 met.

23 (c) Where prior service for a period of time, or other  
24 demonstration of credit worthiness is a condition for establishing  
25 credit with the district, residence and proof of prompt payment of  
26 rent or other credit obligation during that period of time acceptable  
27 to the district is a satisfactory equivalent.

28 (d) Any residential occupant who becomes a customer of the  
29 district pursuant to this section whose periodic payments, such as  
30 rental payments, include charges for residential light, heat, water,  
31 or power, where these charges are not separately stated, may deduct  
32 from the periodic payment each payment period all reasonable  
33 charges paid to the district for those services during the preceding  
34 payment period.

35 (e) Whenever a district furnishes residential service subject to  
36 subdivision (a), the district may not terminate that service in any  
37 of the following situations:

38 (1) During the pendency of an investigation by the district of a  
39 customer dispute or complaint.

1 (2) When the customer has been granted an extension of the  
2 period for payment of a bill.

3 (3) For an indebtedness owed by the customer to any other  
4 public agency or when the obligation represented by the delinquent  
5 account or other indebtedness was incurred with any public agency  
6 other than the district.

7 (4) When a delinquent account relates to another property  
8 owned, managed, or operated by the customer.

9 (5) When a public health or building officer certifies that  
10 termination would result in a significant threat to the health or  
11 safety of the residential occupants or the public.

12 (f) Notwithstanding any other provision of law, and in addition  
13 to any other remedy provided by law, if the owner, operator, or  
14 manager, by any act or omission, directs, permits, or fails to prevent  
15 a termination of service while any residential unit is occupied, the  
16 residential occupant or the representative of the residential  
17 occupants may commence an action for the recovery of all of the  
18 following:

19 (1) Reasonable costs and expenses incurred by the residential  
20 occupant or the representative of the residential occupants related  
21 to restoration of service.

22 (2) Actual damages related to the termination of service.

23 (3) Reasonable attorney's fees of the residential occupants, the  
24 representative of the residential occupants, or each of them,  
25 incurred in the enforcement of this section, including, but not  
26 limited to, enforcement of a lien.

27 (g) Notwithstanding any other provision of law, and in addition  
28 to any other remedy provided by law, if the owner, manager, or  
29 operator, by any act or omission, directs, permits, or fails to prevent  
30 a termination of service while any residential unit receiving that  
31 service is occupied, the corporation may commence an action for  
32 the recovery of all of the following:

33 (1) Delinquent charges accruing prior to the expiration of the  
34 notice prescribed by subdivision (a).

35 (2) Reasonable costs incurred by the corporation related to the  
36 restoration of service.

37 (3) Reasonable attorney's fees of the corporation incurred in  
38 the enforcement of this section or in the collection of delinquent  
39 charges, including, but not limited to, enforcement of a lien.

1 If the court finds that the owner, manager, or operator has paid  
2 the amount in arrears prior to termination, the court shall allow no  
3 recovery of any charges, costs, damages, expenses, or fees under  
4 this subdivision from the owner, manager, or operator.

5 An abstract of any money judgment entered pursuant to  
6 subdivision (f) or (g) shall be recorded pursuant to Section 697.310  
7 of the Code of Civil Procedure.

8 (h) No termination of service subject to this section may be  
9 effected without compliance with this section, and any service  
10 wrongfully terminated shall be restored without charge to the  
11 residential occupants or customer for the restoration of the service.  
12 In the event of a wrongful termination by the district, the district  
13 shall, in addition, be liable to the residential occupants or customer  
14 for actual damages resulting from the termination and for the costs  
15 of enforcement of this section, including, but not limited to,  
16 reasonable attorney's fees, if the residential occupants or the  
17 representative of the residential occupants make a good faith effort  
18 to have the service continued without interruption.

19 (i) The district shall adopt rules and regulations necessary to  
20 implement this section and shall liberally construe this section to  
21 accomplish its purpose of ensuring that service to the residential  
22 occupants is not terminated due to nonpayment by the customer  
23 unless the district has made every reasonable effort to continue  
24 service to the residential occupants. The rules and regulations shall  
25 include, but are not limited to, guidelines for assistance to actual  
26 users in the enforcement of this section and requirements for the  
27 notice prescribed by subdivision (a), including, but not limited to,  
28 clear wording, large and ~~bold~~ *boldface* type, and  
29 comprehensive instructions to ensure full notice to the actual user.

30 (j) Nothing in this section broadens or restricts any authority of  
31 a local agency that existed prior to January 1, 1989, to adopt an  
32 ordinance protecting a residential occupant from the involuntary  
33 termination of residential public utility service.

34 (k) This section preempts any statute or ordinance permitting  
35 punitive damages against any owner, manager, or operator on  
36 account of an involuntary termination of residential public utility  
37 service or permitting the recovery of costs associated with the  
38 formation, maintenance, and termination of a tenant's association.

39 ~~(l) For purposes of this section, "representative of the residential~~  
40 ~~occupants" does not include a tenants' association.~~



1 SEC. 11. Section 16481 of the Public Utilities Code is repealed.

2 ~~16481. (a) Whenever a district furnishes individually metered~~  
3 ~~residential light, heat, water, or power to residential occupants in~~  
4 ~~a multiunit residential structure, mobilehome park, or permanent~~  
5 ~~residential structures in a labor camp, as defined in Section 17008~~  
6 ~~of the Health and Safety Code, where the owner, manager, or~~  
7 ~~operator is listed by the district as the customer of record, the~~  
8 ~~district shall make every good faith effort to inform the residential~~  
9 ~~occupants, by means of a notice, when the account is in arrears,~~  
10 ~~that service will be terminated in 10 days. The notice shall further~~  
11 ~~inform the residential occupants that they have the right to become~~  
12 ~~customers of the district without being required to pay the amount~~  
13 ~~due on the delinquent account.~~

14 ~~(b) The district is not required to make service available to the~~  
15 ~~residential occupants unless each residential occupant agrees to~~  
16 ~~the terms and conditions of service, and meets the requirements~~  
17 ~~of the district's rules. However, if one or more of the residential~~  
18 ~~occupants are willing and able to assume responsibility for the~~  
19 ~~entire account to the satisfaction of the district, or if there is a~~  
20 ~~physical means, legally available to the district, of selectively~~  
21 ~~terminating service to those residential occupants who have not~~  
22 ~~met the requirements of the district's rules, the district shall make~~  
23 ~~service available to the residential occupants who have met those~~  
24 ~~requirements.~~

25 ~~(c) Where prior service for a period of time is a condition for~~  
26 ~~establishing credit with the district, residence and proof of prompt~~  
27 ~~payment of rent or other credit obligation acceptable to the district~~  
28 ~~for that period of time is a satisfactory equivalent.~~

29 ~~(d) Any residential occupant who becomes a customer of the~~  
30 ~~district pursuant to this section whose periodic payments, such as~~  
31 ~~rental payments, include charges for residential light, heat, water,~~  
32 ~~or power, where these charges are not separately stated, may deduct~~  
33 ~~from the periodic payment each payment period all reasonable~~  
34 ~~charges paid to the district for those services during the preceding~~  
35 ~~payment period.~~

36 SEC. 12. Section 16481.1 of the Public Utilities Code is  
37 amended to read:

38 16481.1. (a) Whenever a district furnishes residential light,  
39 heat, water, or power to residential occupants through a master  
40 meter in a multiunit residential structure, mobilehome park, or

1 permanent residential structures in a labor camp, as defined in  
 2 Section 17008 of the Health and Safety Code, ~~where if~~ the owner,  
 3 manager, or operator is listed by the district as the customer of  
 4 record, the district shall ~~make every good faith effort to~~ inform the  
 5 residential occupants, by means of a written notice posted on the  
 6 door of each residential unit *and a mailed notice to all affected*  
 7 *service addresses known to the utility or available through*  
 8 *reasonable and practical methods, unless the service address is*  
 9 *the same as the billing address*, at least 15 days prior to  
 10 termination, when the account is in arrears, that service will be  
 11 terminated on a date specified in the notice. If it is not reasonable  
 12 or practicable to post the notice on the door of each residential  
 13 unit, the district shall post two copies of the notice in each common  
 14 area and at each point of access to the structure or structures. The  
 15 *mailed notice shall be addressed to "Any Person Renting Property*  
 16 *At:" followed by the address of the dwelling unit. The outside of*  
 17 *the envelope shall state, in English and in the languages listed in*  
 18 *Section 1632 of the Civil Code, in at least 12-point type: "Utility*  
 19 *service to this address may be cut off soon."* The notice shall  
 20 further inform the residential occupants that they have the right to  
 21 become customers, to whom the service will be billed, of the  
 22 district without being required to pay the amount due on the  
 23 delinquent account. The notice also shall specify, in plain language,  
 24 what the residential occupants are required to do in order to prevent  
 25 the termination or reestablish service; the estimated monthly cost  
 26 of service; the title, address, and telephone number of a  
 27 representative of the district who can assist the residential  
 28 occupants in continuing service; and the address and telephone  
 29 number of a legal services project, as defined in Section 6213 of  
 30 the Business and Professions Code, which has been recommended  
 31 by the local county bar association. The notice shall be in English  
 32 and, ~~to the extent practical, in any other language that the district~~  
 33 ~~determines is the primary language spoken by a significant number~~  
 34 ~~languages listed in Section 1632 of the residential occupants Civil~~  
 35 ~~Code.~~

36 (b) The district is not required to make service available to the  
 37 residential occupants unless ~~each~~ a residential occupant or a  
 38 representative of the residential occupants agrees to the terms and  
 39 conditions of service, and meets the requirements of law and the  
 40 district's rules. However, if one or more of the residential occupants

1 or the representative of the residential occupants are willing and  
2 able to assume responsibility for subsequent charges to the account  
3 to the satisfaction of the district, or if there is a physical means,  
4 legally available to the district, of selectively terminating service  
5 to those residential occupants who have not met the requirements  
6 of the district's rules or for whom the representative of the  
7 residential occupants is not responsible, the district shall make  
8 service available to the residential occupants who have met those  
9 requirements or on whose behalf those requirements have been  
10 met.

11 (c) Where prior service for a period of time or other  
12 demonstration of credit worthiness is a condition for establishing  
13 credit with the district, residence and proof of prompt payment of  
14 rent or other credit obligation during that period of time acceptable  
15 to the district is a satisfactory equivalent.

16 (d) Any residential occupant who becomes a customer of the  
17 district pursuant to this section whose periodic payments, such as  
18 rental payments, include charges for residential light, heat, water,  
19 or power, where these charges are not separately stated, may deduct  
20 from the periodic payment each payment period all reasonable  
21 charges paid to the district for those services during the preceding  
22 payment period.

23 (e) Whenever a district furnishes residential service subject to  
24 subdivision (a), the district may not terminate that service in any  
25 of the following situations:

26 (1) During the pendency of an investigation by the district of a  
27 customer dispute or complaint.

28 (2) When the customer has been granted an extension of the  
29 period for payment of a bill.

30 (3) For an indebtedness owed by the customer to any other  
31 public agency or when the obligation represented by the delinquent  
32 account or other indebtedness was incurred with any public agency  
33 other than the district.

34 (4) When a delinquent account relates to another property  
35 owned, managed, or operated by the customer.

36 (5) When a public health or building officer certifies that  
37 termination would result in a significant threat to the health or  
38 safety of the residential occupants or the public.

39 (f) Notwithstanding any other provision of law, and in addition  
40 to any other remedy provided by law, if the owner, operator, or

1 manager, by any act or omission, directs, permits, or fails to prevent  
2 a termination of service while any residential unit is occupied, the  
3 residential occupant or the representative of the residential  
4 occupants may commence an action for the recovery of all of the  
5 following:

6 (1) Reasonable costs and expenses incurred by the residential  
7 occupant or the representative of the residential occupants related  
8 to restoration of service.

9 (2) Actual damages related to the termination of service.

10 (3) Reasonable attorney’s fees of the residential occupants, the  
11 representative of the residential occupants, or each of them,  
12 incurred in the enforcement of this section, including, but not  
13 limited to, enforcement of a lien.

14 (g) Notwithstanding any other provision of law, and in addition  
15 to any other remedy provided by law, if the owner, manager, or  
16 operator, by any act or omission, directs, permits, or fails to prevent  
17 a termination of service while any residential unit receiving that  
18 service is occupied, the corporation may commence an action for  
19 the recovery of all of the following:

20 (1) Delinquent charges accruing prior to the expiration of the  
21 notice prescribed by subdivision (a).

22 (2) Reasonable costs incurred by the corporation related to the  
23 restoration of service.

24 (3) Reasonable attorney’s fees of the corporation incurred in  
25 the enforcement of this section or in the collection of delinquent  
26 charges, including, but not limited to, enforcement of a lien.

27 If the court finds that the owner, manager, or operator has paid  
28 the amount in arrears prior to termination, the court shall allow no  
29 recovery of any charges, costs, damages, expenses, or fees under  
30 this subdivision from the owner, manager, or operator.

31 An abstract of any money judgment entered pursuant to  
32 subdivision (f) or (g) shall be recorded pursuant to Section 697.310  
33 of the Code of Civil Procedure.

34 (h) No termination of service subject to this section may be  
35 effected without compliance with this section, and any service  
36 wrongfully terminated shall be restored without charge to the  
37 residential occupants or customer for the restoration of the service.  
38 In the event of a wrongful termination by the district, the district  
39 shall, in addition, be liable to the residential occupants or customer  
40 for actual damages resulting from the termination and for the costs

1 of enforcement of this section, including, but not limited to,  
2 reasonable attorney's fees, if the residential occupants or the  
3 representative of the residential occupants make a good faith effort  
4 to have the service continued without interruption.

5 (i) The district shall adopt rules and regulations necessary to  
6 implement this section and shall liberally construe this section to  
7 accomplish its purpose of ensuring that service to the residential  
8 occupants is not terminated due to nonpayment by the customer  
9 unless the district has made every reasonable effort to continue  
10 service to the residential occupants. The rules and regulations shall  
11 include, but are not limited to, guidelines for assistance to actual  
12 users in the enforcement of this section and requirements for the  
13 notice prescribed by subdivision (a), including, but not limited to,  
14 clear wording, large and ~~bold~~ *boldface* type, and  
15 comprehensive instructions to ensure full notice to the actual users.

16 (j) Nothing in this section broadens or restricts any authority of  
17 a local agency that existed prior to January 1, 1989, to adopt an  
18 ordinance protecting a residential occupant from the involuntary  
19 termination of residential public utility service.

20 (k) This section preempts any statute or ordinance permitting  
21 punitive damages against any owner, manager, or operator on  
22 account of an involuntary termination of public utility service or  
23 permitting the recovery of costs associated with the formation,  
24 maintenance, and termination of a tenant's association.

25 ~~(l) For purposes of this section, "representative of the residential~~  
26 ~~occupants" does not include a tenants' association.~~

27 SEC. 13. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.

## BILL ANALYSIS

SENATE JUDICIARY COMMITTEE  
 Senator Ellen M. Corbett, Chair  
 2009-2010 Regular Session

SB 120	S
Senator Lowenthal	B
As Introduced	
Hearing Date: March 31, 2009	1
Civil Code; Public Utilities Code	2
BCP:jd	0

SUBJECT

Residential Tenancies

DESCRIPTION

This bill would extend certain tenant protections to apply after a foreclosure sale. For example, existing law prohibits a landlord, with the intent to terminate the tenancy, from interrupting or terminating a tenant's utility service, changing the locks, or removing a tenant's personal property from the premises. This bill would include a successor in interest who acquired the property through foreclosure in the definition of "landlord" subject to these prohibitions.

Existing law permits tenants in multifamily dwellings to deduct utility payments from their rent when they pay for utilities as part of their rent and the owner's account is in arrears and scheduled to be terminated. This bill would extend these protections to tenants in single-family dwellings and would enhance the notice sent to tenants notifying them of an impending utility shutoff so that it is also mailed (existing law requires only posting) and is provided in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

This bill would provide that provisions of existing law regarding the collection and return of security deposits apply whether the termination of the landlord's interest was voluntary or involuntary and in the case of a trustee's sale.

This bill would extend current law's protections requiring utilities, public utilities, and districts to notify tenants of multifamily dwellings of an impending shut-off of utility  
 (more)

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service to also include tenants living in single-family homes. This bill would also strengthen current law by requiring that the notice be mailed (existing law requires only posting) and that the notice be provided in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

BACKGROUND

California, as well as the nation, is facing an unprecedented threat to the economy and housing market due to increasing numbers of foreclosures caused by mortgage payment defaults. Often, tenants have become the innocent victims of the crisis; a November 2007 New York Times article noted: "In the foreclosure crisis of 2007, thousands of American families are losing their homes without ever missing a payment." A recent study by the National Low Income Housing Coalition found that more than 20% of the properties facing foreclosure nationwide are rentals, and "[b]ecause rental properties often are home to multiple families, renters make up roughly 40% of the families facing eviction."

For tenants of foreclosed properties, existing law generally requires those tenants to receive a 60-day notice after the foreclosed home is sold before the tenants may be evicted (although some jurisdictions require evictions to be for just cause). During the time frame where the tenant is looking for new housing, some tenants have complained about the subsequent owner shutting off necessary utilities in order to encourage the tenant to prematurely leave the home. On March 12, 2008, the Los Angeles Times' article entitled Renters Tell of Harassment in Foreclosure Proceedings reported:

They shut off the water at Ida Hancox's duplex just before Christmas, when she was doing her holiday cooking. The utility man who did the job brusquely told her to pay her bills. But Hancox and her fellow building tenant had done so. Utilities were included in their rent, which was up to

date. Such costs had been the responsibility of the landlord, who had skipped town after the lender foreclosed on his loan. Hancox and her neighbor Kim Isaac-Ray, a mother of eight, told a Bay Area utility committee Tuesday that they believe that the lender stopped paying the utility bill knowing the water would be turned off - as a way of trying to push them out of the building despite local laws preventing their eviction. Area activists agree, and say

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low-income renters who have the right to remain in their homes are increasingly being harassed in foreclosure proceedings by lenders eager to be rid of them.

To respond to the problem of limited tenant protections after a foreclosure sale, this bill would extend certain tenant protections to apply after a foreclosure sale and extend existing protections regarding utility shut-offs to tenants of single-family dwellings. An identical bill, AB 2586 (Torrico, 2008), was vetoed by the Governor after being approved by this committee on June 24, 2008.

#### CHANGES TO EXISTING LAW

1.Existing law prohibits a landlord-with intent to terminate the tenancy-from willfully causing the interruption or termination of any utility service provided to a tenant, whether or not the service is under the control of the landlord. (Civ. Code Sec. 789.3(a).)

Existing law prohibits a landlord from willfully engaging in the following acts with intent to terminate a tenancy:

- a) Preventing a tenant from gaining reasonable access to the property by changing the locks;
- b) Removing outside doors or windows; or
- c) Removing from the premises the tenant's personal property, furnishings, or any other items without the prior written consent of the tenant, except as specified. (Civ. Code Sec. 789.3(b).)

Existing law provides that a landlord who violates the above-described provisions shall be liable to the tenant for actual damages and other damages, as specified. (Civ. Code Sec. 789.3(c).)

This bill would define "landlord" and "tenant" for purposes of these provisions to mean the following:

- a) "Landlord" would include a fee simple owner or owners of the property and any successor or successor in interest to the landlord's interest in the property, including interests acquired through foreclosure; and
- b) "Tenant" would include a tenant occupying the property pursuant to a fixed-term tenancy, periodic tenancy, tenancy at will, and a tenancy at sufferance. The term would also include a subtenant, a lawful occupant, and any of the

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above persons who occupied the property immediately prior to the owner's acquisition of the property.

1.Existing law governs the collection and return of security deposits including that upon termination of a landlord's interest in the premises, whether by sale, assignment, death, appointment of a receiver or otherwise, the landlord shall either transfer the remaining portion of the tenant's security deposit, after lawful deductions are made, to the landlord's successor in interest or return the remaining portion, after lawful deductions, to the tenant along with an accounting. (Civ. Code Sec. 1950.5(h).)

This bill would revise these provisions to specify that they apply: (a) whether the termination of the landlord's interest was voluntary or involuntary; and (b) in the case of a trustee's sale. This bill would also provide that "successor in interest" for purposes of existing law regarding the collection and return of security deposits includes a fee simple owner or owners of the property and any successor or successor in interest to the landlord's interest in the property, including interests acquired through foreclosure. If a successor in interest has acquired the property through foreclosure, this bill creates a rebuttable presumption that the amount of the deposit is equal to one month's rent.

2.Existing law requires an owner of a dwelling structure to give notice in a rental agreement of specified information,

including the name, phone number, and address of the property manager and the owner and the contact information for the person to whom rent payments are to be made. Existing law provides that these provisions may be extended to, and are enforceable against, any successor owner. (Civ. Code Sec. 1962.)

This bill would provide that, for purposes of these provisions, "successor owner" includes all successor owners, including a fee simple owner or owners of the property and any successor or successor in interest to the landlord's interest in the property, including interests acquired through foreclosure. This bill would provide that a successor owner whose interest was acquired through foreclosure does not need to comply with these provisions if the owner serves a notice to quit, as specified, within 15 days of acquiring the property.

3. Existing law: provides that whenever an electrical, gas, heat,

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or water corporation provides residential service to occupants through a master meter in a multiunit residential structure where the owner, manager, or operator is listed as the customer of record, the corporation must make every good faith effort to inform the occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. Existing law provides that if it is not reasonable or practicable to post the notice on the door of each residential unit, the corporation must post two copies of the notice in each accessible common area and at each point of access.

Existing law specifies procedures and the right of tenants in multifamily units to begin utility service and permits them to deduct payments from the rent in these cases. (Pub. Util. Code Sec. 777.1.) Existing law provides similar provisions for public utilities and districts. (Pub. Util. Code Secs. 10009.1, 12822.1, and 16481.1.)

This bill would extend existing law which allows tenants in multifamily units to deduct utility payments from their rent to also include tenants in single-family dwellings when they have made a payment to a utility or district pursuant to existing law described above.

This bill would extend these provisions to tenants living in single-family homes and condominiums. This bill would revise these provisions to also require the corporation, utility, or district to mail the notice to all affected service addresses known to it or available through reasonable and practical methods, unless the service address is the same as the billing address. This bill would require that the notice be in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean (English plus the five languages described in Civil Code Section 1632), and that the outside of the envelope of the mailed notice state "Utility service to this address may be cut off soon" in those six languages.

4. Existing law: provides that whenever an electrical, gas, heat, or water corporation provides individually metered residential service to occupants in a multiunit residential structure where the owner, manager, or operator is listed as the customer of record, the corporation must make every good faith effort to inform the occupants, by means of a notice, when the account is in arrears, that service will be terminated at least 10 days prior to termination. (Pub. Util. Code Sec.

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777.) Existing law provides similar provisions for public utilities and districts. (Pub. Util. Code Secs. 10009, 12822, and 16481.)

This bill would repeal these provisions.

COMMENT

1. Stated need for the bill

According to the author, "SB 120 addresses an often overlooked aspect of the current mortgage crisis: an increase in the number of innocent renters who face eviction or other adverse effects as a result of foreclosure on a rented property."

2. Public policy supporting application of certain important tenant protections after a foreclosure sale



This bill would extend certain tenant protections to apply after a foreclosure sale. For example, this bill would apply existing law's restrictions prohibiting a landlord from terminating a tenant's utility service or changing the locks to force an eviction to a successor in interest who acquired the property through foreclosure. The bill would also make clear that existing law's protections concerning the collection and return of security deposits extend to lenders or other successors in interest after a foreclosure sale, and create a rebuttable presumption that the amount of the deposit was equal to one month's rent. The Western Center on Law and Poverty, sponsor, notes that the presumption reflects the common amount for a security deposit, but "[a]s with all rebuttable presumptions, either party can show evidence to the contrary, such as a written lease." The sponsor further maintains that "[m]ost renters desperately need the deposit - to use as a deposit before they can rent a new place."

The California Bankers Association and California Financial Services Association (trade associations), in opposition, contend that the former landlord would be unlikely to transfer the remaining security deposit to the successor in interest, thus "requir[ing] the successor in interest to return the security deposit even if they have not received those funds from the landlord thereby exposing the new successor in interest to new financial and legal burdens." The trade associations express further concern that "existing law would then expose the successor in interest to joint and several liability with the

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landlord for non-compliance in the repayment of the security deposit."

It should be noted that this bill would not require a lender, as a successor in interest, to assume all of the obligations of a landlord. Instead, it ensures that a successor in interest would have to assume certain vital tenant protections that protect, among other things, their security deposit and statutory right to remain in their home for a period of time after a foreclosure sale.

Specifically, unless a more restrictive local ordinance applies, existing law generally requires a 60-day notice prior to evicting these tenants after a foreclosure sale. (See Code Civ. Proc. Sec. 1161b.) As noted in the above Los Angeles Times article, some unscrupulous landlords use leverage to force tenants to move out of their units. From a public policy standpoint, allowing tenants to remain in their home for a period of time after a foreclosure is relatively meaningless if tenants are prematurely forced out of their home because the landlord has terminated their utility services or changed the locks in order to force an eviction. Furthermore, existing protections which give a tenant time to locate a new home following a sometimes unexpected foreclosure would be meaningless if the tenant were forced out for these reasons. These provisions of the bill further the intent of those protections and reaffirm the Legislature's policy choice to protect those tenants.

3. Extension of tenant protections when owner fails to pay utility bill and shut-off is threatened

Western Center on Law and Poverty asserts that sometimes landlords of distressed properties are unable to pay utility bills and shut-offs may occur. Existing law requires utilities, public utilities, and districts to notify residents of multifamily dwellings of an impending shut-off when the owner's account is in arrears and service is scheduled to be terminated.

Current law also allows these tenants to begin service in their own names and deduct payments from the rent. This bill would extend these protections to tenants living in single-family homes and condominiums, and would enhance the notice so that it is also mailed (existing law requires only posting) and is provided in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The sponsor contends that those "modest requirements

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are calculated to give the greatest number of tenants actual notice (and are) appropriate given the drastic deleterious effect of a utility termination of a family's health and safety."

Those proposed changes are further supported by press reports that indicate that as many as a quarter of all foreclosed single-family residences are occupied by renters (this number

does not include tenants in duplexes or multiunit buildings). From a public policy standpoint, those tenants in single-family residences deserve the same protections as those in multifamily dwellings.

4. Veto of AB 2586

The Governor's veto message for AB 2586 (Torrico, 2008), identical to this bill, stated:

I believe this bill is inequitable and fundamentally changes existing provisions in law because it would sign liability to the successor in interest for money never received and for actions not under its control. New owners who acquire property through foreclosure, who never signed an agreement with the tenant, should not be required to take over the legal obligations of the previous owner, including an obligation to return security deposits. As a result, this bill may increase costs and discourage purchases of foreclosed properties, and thus delay economic recovery in California.

Additionally this year, I have signed several other measures to strengthen tenant notifications and rights during foreclosure proceedings, including SB 1137, which, among other things, doubled the amount of time that tenants have to find a new home before they must vacate foreclosed property.

Support : Asian Americans for Civil Rights & Equality (AACRE); California Alliance for Retired Americans (CARA); California Rural Legal Assistance Foundation; FamiliesFirst; StoneSoup; Tenants Together

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Opposition : California Bankers Association; California Financial Services Association

HISTORY

Source : Western Center on Law and Poverty

Related Pending Legislation : None Known

Prior Legislation :

AB 2586 (Torrico, 2008), would have enacted a substantially similar set of tenant protections. This bill was vetoed.

AB 1333 (Hancock, 2008), would have provided that the legal owner of real property must pay the utilities provided to a property or its tenants following a foreclosure under specified circumstances. This bill was vetoed.

SB 1137 (Perata, Corbett, Machado, Chapter 69, Statutes of 2008), provided, among other things, that tenants of foreclosed properties receive notice that their home is in foreclosure, and receive a 60-day notice to quit, as specified.

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BILL ANALYSIS

SENATE RULES COMMITTEE	SB 120
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 120  
 Author: Lowenthal (D)  
 Amended: As introduced  
 Vote: 21

SENATE JUDICIARY COMMITTEE : 3-2, 3/31/09  
 AYES: Corbett, Florez, Leno  
 NOES: Harman, Walters

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Residential tenancies  
SOURCE : Western Center on Law and Poverty

DIGEST : This bill extends certain tenant protections to apply after a foreclosure sale. For example, existing law prohibits a landlord, with the intent to terminate the tenancy, from interrupting or terminating a tenant's utility service, changing the locks, or removing a tenant's personal property from the premises. This bill includes a successor in interest who acquired the property through foreclosure in the definition of "landlord" subject to these prohibitions. This bill provides that provisions of existing law regarding the collection and return of security deposits apply whether the termination of the landlord's interest was voluntary or involuntary and in the case of a trustee's sale. This bill extends current law's protections requiring utilities, public utilities, and districts to notify tenants of multifamily dwellings of an

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impending shut-off of utility service to also include tenants living in single-family homes. This bill also strengthens current law by requiring that the notice be mailed (existing law requires only posting) and that the notice be provided in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

ANALYSIS : Existing law prohibits a landlord, with intent to terminate the tenancy, from willfully causing the interruption or termination of any utility service provided to a tenant, whether or not the service is under the control of the landlord.

Existing law prohibits a landlord from willfully engaging in the following acts with intent to terminate a tenancy:

1. Preventing a tenant from gaining reasonable access to the property by changing the locks;
2. Removing outside doors or windows; or
3. Removing from the premises the tenant's personal property, furnishings, or any other items without the prior written consent of the tenant, except as specified.

Existing law provides that a landlord who violates the above-described provisions shall be liable to the tenant for actual damages and other damages, as specified.

This bill defines "landlord" and "tenant" for purposes of these provisions to mean the following:

1. "Landlord" would include a fee simple owner or owners of the property and any successor or successor in interest to the landlord's interest in the property, including interests acquired through foreclosure; and
2. "Tenant" would include a tenant occupying the property pursuant to a fixed-term tenancy, periodic tenancy,

tenancy at will, and a tenancy at sufferance. The term would also include a subtenant, a lawful occupant, and any of the above persons who occupied the property immediately prior to the owner's acquisition of the property.

Existing law governs the collection and return of security

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deposits including that upon termination of a landlord's interest in the premises, whether by sale, assignment, death, appointment of a receiver or otherwise, the landlord shall either transfer the remaining portion of the tenant's security deposit, after lawful deductions are made, to the landlord's successor in interest or return the remaining portion, after lawful deductions, to the tenant along with an accounting.

This bill revises these provisions to specify that they apply: (a) whether the termination of the landlord's interest was voluntary or involuntary; and (b) in the case of a trustee's sale. This bill also provides that "successor in interest" for purposes of existing law regarding the collection and return of security deposits includes a fee simple owner or owners of the property and any successor or successor in interest to the landlord's interest in the property, including interests acquired through foreclosure. If a successor in interest has acquired the property through foreclosure, this bill creates a rebuttable presumption that the amount of the deposit is equal to one month's rent.

Existing law requires an owner of a dwelling structure to give notice in a rental agreement of specified information, including the name, phone number, and address of the property manager and the owner and the contact information for the person to whom rent payments are to be made. Existing law provides that these provisions may be extended to, and are enforceable against, any successor owner.

This bill provides that, for purposes of these provisions, "successor owner" includes all successor owners, including a fee simple owner or owners of the property and any successor or successor in interest to the landlord's interest in the property, including interests acquired through foreclosure. This bill would provide that a successor owner whose interest was acquired through foreclosure does not need to comply with these provisions if the owner serves a notice to quit, as specified, within 15 days of acquiring the property.

Existing law provides that whenever an electrical, gas, heat, or water corporation provides residential service to occupants through a master meter in a multiunit residential

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structure where the owner, manager, or operator is listed as the customer of record, the corporation must make every good faith effort to inform the occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. Existing law provides that if it is not reasonable or practicable to post the notice on the door of each residential unit, the corporation must post two copies of the notice in each accessible common area and at each point of access.

Existing law specifies procedures and the right of tenants in multifamily units to begin utility service and permits them to deduct payments from the rent in these cases. Existing law provides similar provisions for public utilities and districts.

This bill extends existing law which allows tenants in multifamily units to deduct utility payments from their rent to also include tenants in single-family dwellings when they have made a payment to a utility or district pursuant to existing law described above.

This bill extends these provisions to tenants living in single-family homes and condominiums. This bill would revise these provisions to also require the corporation,

utility, or district to mail the notice to all affected service addresses known to it or available through reasonable and practical methods, unless the service address is the same as the billing address. This bill requires that the notice be in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean (English plus the five languages described in Civil Code Section 1632), and that the outside of the envelope of the mailed notice state "Utility service to this address may be cut off soon" in those six languages.

Existing law provides that whenever an electrical, gas, heat, or water corporation provides individually metered residential service to occupants in a multiunit residential structure where the owner, manager, or operator is listed as the customer of record, the corporation must make every good faith effort to inform the occupants, by means of a

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notice, when the account is in arrears, that service will be terminated at least 10 days prior to termination. Existing law provides similar provisions for public utilities and districts.

This bill repeals these provisions.

Prior Legislation

AB 2586 (Torricono, 2008), would have enacted a substantially similar set of tenant protections. This bill was vetoed.

AB 1333 (Hancock, 2008), would have provided that the legal owner of real property must pay the utilities provided to a property or its tenants following a foreclosure under specified circumstances. This bill was vetoed.

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Veto of AB 2586

The Governor's veto message for AB 2586 (Torricono, 2008), identical to this bill, stated:

I believe this bill is inequitable and fundamentally changes existing provisions in law because it would sign liability to the successor in interest for money never received and for actions not under its control. New owners who acquire property through foreclosure, who never signed an agreement with the tenant, should not be required to take over the legal obligations of the previous owner, including an obligation to return security deposits. As a result, this bill may increase costs and discourage purchases of foreclosed properties, and thus delay economic recovery in California.

Additionally this year, I have signed several other measures to strengthen tenant notifications and rights during foreclosure proceedings, including SB 1137.

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which, among other things, doubled the amount of time that tenants have to find a new home before they must vacate foreclosed property.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

SUPPORT : (Verified 4/14/09)

Western Center on Law and Poverty (source)  
Asian Americans for Civil Rights & Equality  
California Alliance for Retired Americans  
California Rural Legal Assistance Foundation  
FamiliesFirst  
StoneSoup  
Tenants Together

OPPOSITION : (Verified 4/14/09)

California Bankers Association  
California Financial Services Association

ARGUMENTS IN SUPPORT : According to the author's office, "SB 120 addresses an often overlooked aspect of the current mortgage crisis: an increase in the number of innocent renters who face eviction or other adverse effects as a result of foreclosure on a rented property."

Western Center on Law and Poverty asserts that sometimes landlords of distressed properties are unable to pay utility bills and shut-offs may occur. Existing law requires utilities, public utilities, and districts to notify residents of multifamily dwellings of an impending shut-off when the owner's account is in arrears and service is scheduled to be terminated. Current law also allows these tenants to begin service in their own names and deduct payments from the rent. This bill extends these protections to tenants living in single-family homes and condominiums, and would enhance the notice so that it is also mailed (existing law requires only posting) and is provided in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The sponsor contends that those "modest requirements are calculated to give the greatest number of tenants actual notice (and are) appropriate given the

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drastic deleterious effect of a utility termination of a family's health and safety."

ARGUMENTS IN OPPOSITION : The California Bankers Association and California Financial Services Association contend that the former landlord would be unlikely to transfer the remaining security deposit to the successor in interest, thus "requir[ing] the successor in interest to return the security deposit even if they have not received those funds from the landlord thereby exposing the new successor in interest to new financial and legal burdens." They express further concern that "existing law would then expose the successor in interest to joint and several liability with the landlord for non-compliance in the repayment of the security deposit."

RJG:n1 4/14/09 Senate Floor Analyses

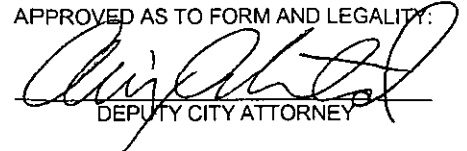
SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2009 MAY 14 PM 4:36

APPROVED AS TO FORM AND LEGALITY:

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

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### RESOLUTION TO SUPPORT SB 120 (LOWENTHAL) TO ADD TENANT PROTECTIONS IN FORECLOSURE SITUATIONS

**WHEREAS**, the City of Oakland has experienced a very high rate of mortgage foreclosures; and

**WHEREAS**, many of the foreclosures have involved properties rented for residential purposes for which the defaulting owner is responsible for providing the utilities services to the tenant; and

**WHEREAS**, in many instances the defaulting owner has failed to pay the utility bills resulting in interruptions of the utility services to the tenants in said properties; and

**WHEREAS** in some reported instances owners who acquire title in foreclosure deliberately and intentionally fail to assume payment of the utilities to pressure tenants to move out and abandon their rights secured by Oakland's Just Cause for Eviction Ordinance; and

**WHEREAS**, in some instances utility services to units in foreclosed residential rental buildings are interrupted or terminated causing unsanitary and unhealthy conditions in the affected rental units; and

**WHEREAS**, such unsanitary conditions have a negative impact on the affected tenants, as well as the general conditions of health and safety of the City of Oakland; and

**WHEREAS**, landlords with property in foreclosure frequently fail to transfer their tenants' security deposits to the successor-in-interest through foreclosure or otherwise comply with the provisions of Civil Code §1950.5; and

**WHEREAS**, the provisions of the bill are complementary to the Municipal Ordinances enacted for the protection of tenants; and

**WHEREAS**, Senator Alan Lowenthal has introduced Senate Bill 120 which would: (1) clarify that successors-in-interest taking title via foreclosure may not use self-help measures to evict tenants, (2) increase the likelihood that actual prior notice of utility service shut-off will be received by such tenants, and (3) extend the responsibility for security deposits through the foreclosure process to the successors-in-interest; now, therefore, be it

**RESOLVED:** That the City Council of the City of Oakland hereby supports SB 120 (Lowenthal) which will provide greater protections for tenants whose building are being foreclosed upon; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator, and/or his designee, to work actively for the passage of SB 120.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California