

SACRAMENTO REPORT

60-Day Notice Passed by Governor!

By Greg McConnell

In two major hits to property owners, Governor Schwarzenegger vetoed AB 2712 which would have provided a liability shield to owners who rent to registered sex offenders, and signed AB 1169 which extends the 30 day termination notice to 60 days. On both bills, the Governor asserted his sympathy for the concerns of property owners and then sided with opponents.

AB 2712 - Megan's Law Reform

Megan's law requires owners to tell prospective tenants about an internet website that provides information about where registered sex offenders live. However, it prohibits owners from using the website information to make decisions about renting to sex offenders, except to protect a person at risk. The problem with the exception is that Megan's Law does not define the term "person at risk." If owners use the website information to deny tenancy to registered sex offenders in order to protect tenants at risk, they may face significant penalties if they make the wrong guess.

Two major strategies were attempted to resolve this problem. A different apartment association attempted unsuccessfully for two years to pass a law to amend Megan's law to specifically provide that owners could use the website information to screen and evict registered sex offenders. That approach went down in flames. It never passed a single committee of the legislature, in part, because that approach would mean that thousands of registered sex offenders and their families would be made homeless, and because the Attorney General and other legal scholars opined that such an approach would render Megan's Law unconstitutional. Under the legal theory, Megan's law would become an unconstitutional permanent source of punishment against convicted criminals who had served their time and paid their debt to society.

The other strategy was advanced under AB 2712. In a nutshell, the bill provided that if owners had no choice but to rent to registered sex offenders, they should have no liability for doing so.

AB 2712 enjoyed broad bi-partisan support from landlord groups and tenant and legal groups. The only opponent was another apartment association which argued that if AB 2712 passed, the legislature would never support the tougher approach that it had previously advanced. One might be sympathetic to their argument but for the fact that the proponents of AB 2712 had waited two years while this other association failed to get any traction on its approach.

When AB 2712 was heard by the Assembly, republicans saw an election year edge in characterizing democrats who supported AB 2712 as soft on sex offenders to the detriment of tenant safety. The Governor also apparently felt that he would give his democratic rival an issue to attack him on if he signed a bill that protected landlords from liability. His veto message clearly states that he is aware that property owners have problems under the current law. Nevertheless, he would not resolve the liability challenges that owners face.

The end result of all of this is that owners continue to face the dilemma of being forced to rent to registered sex offenders and being forced to tell prospective tenants that

they live nearby, but they have no ability to deny tenancy and no protection against lawsuits by tenants who are injured if the sex offender re-offends.

I certainly hope that no innocent tenant is hurt by a sex offender while we continue to work on this important issue. I also hope that no owner is sued in such a situation. But, if this happens, there are three groups that will have to shoulder the blame: the legislature which refuses to clarify when and how owners can protect persons at risk; the one landlord association that argued that owners should not have a liability shield because that would hurt their chances to get their bill passed; and, our Governor, who despite acknowledging the problems of landlords in this complex situation, refused to sign a bill that protected landlords from liability.

Thanks to all who worked so hard to get this bill passed by the legislature. We will continue to work on this.

AB 1169 – 60 Day Notices

Over the objection of the entire rental housing and real estate industries, the Governor signed AB 1169 which extends the 30 day termination notice to 60 days. Our opposition asserted that owners do not terminate good tenants. Instead, owners use the 30 day no fault termination to get rid of bad tenants. In situations where tenancies are terminated and the tenant has not engaged in bad conduct, owners invariably work with tenants to soften the blow of relocation.

The proponents of this bill argued that seniors and others have a very difficult time finding replacement housing when their tenancies are terminated. The Governor agreed. In his signing message, he states, “this bill will better ensure that groups in need of special accommodations, such as the elderly and the disabled, have sufficient time to find new housing when asked to leave their current rental property.” He goes on to state that owners can still use other laws to get rid of tenants who damage property, fail to pay rent, or violate the law. Apparently, his advisors spend very little time in landlord/tenant court. Otherwise, they would know how costly and problematic it is to get rid of a bad tenant for cause.

Unlike some of my colleagues, I am sympathetic to the problems that seniors may have when faced with relocation. I have long advanced the theory that longer notices may be appropriate for some, if work was done to streamline and limit the proof burdens on owners who use the three day notice process. Some readers of this column have accused me of “fuzzy thinking” for suggesting a compromise. Well, now we have no fix on the three day notice and an extension of the time period on termination notices to 60 days. Maybe my thinking was not quite so fuzzy after all.

Next Year

It looks like Arnold Schwarzenegger will still be the Governor next year. Hopefully, we will get better results when he is not facing an election year challenge. I also hope the rental housing industry will find ways to work as a united front. AB 2712 was a text book example of how to make sure that landlord interests are not protected. I will report on other bills next month.

Governor’s Veto Message on AB 2712 - *“I am returning Assembly Bill 2712 without my signature. I sympathize with property owners who are faced with the problems presented by registered sex offenders. However, this bill would prioritize property-owner liability protection before tenant safety. I cannot support legislation that may compromise the safety of families and children. Protection of our children from sexual predators should be the top priority and I encourage the Legislature to revisit this dilemma in more depth next session to develop a solution that protects both families and property owners. For these reasons, I cannot support this measure.”* – Arnold Schwarzenegger

Governor’s Signing Message on AB 1169 - *“I am signing Assembly Bill 1169, which reinstates a law requiring landlords to give 60 days notice before ending a rental agreement with a tenant who has resided in a dwelling for over one year. As a landlord for many years, I am acutely aware of the burdens faced by property owners and managers. I support property owners’ ability to maximize the use of their properties in an economically advantageous manner. That said, California faces significant challenges in its housing market and I believe that AB 1169 strikes a reasonable balance between the needs of tenants and those of property owners. Most importantly, this bill will better ensure that groups in need of special accommodations, such as the elderly and the disabled, have sufficient time to find new housing when asked to leave their current rental property. This bill does not change existing law, which ensures the right of landlords to undertake eviction proceedings against tenants that are damaging property, failing to pay rent or violating the law. Further, this law will be in place only until 2010, giving policy makers time to review its impact on both tenants and property owners. I look forward to reviewing this law at that time and making any appropriate alterations.”* – Arnold Schwarzenegger

Greg McConnell is a rental housing consultant and legislative advocate. He represents and advises apartment associations, property management companies, and individual landlords throughout California. For more information please visit www.themcconnellgroup.com.

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