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California's
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for Renters' Rights

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Judge Throws Out Bank Eviction, Calling into Question Validity of Evictions across California

In a direct challenge to bank evictions of tenants across the state, Tenants Together, California's statewide organization for renters' rights, is urging renters to contest foreclosure evictions. Pointing to a new ruling from an Alameda County Superior Court judge, Tenants Together argues that most post-foreclosure eviction notices issued to tenants are invalid under California law.

California law requires eviction notices (called "notices to quit") to unambiguously terminate tenancy upon expiration of a time period specified in the notice. According to Dean Preston, Executive Director of Tenants Together, "Banks across the board have failed to comply with this basic requirement of California law when terminating tenancies after foreclosure. These notices are incomprehensible. They don't clearly state when the tenant is expected to move out. Tenants who received these notices should get legal help and consider contesting these evictions."

A tenant in Oakland did exactly that. With assistance from the nonprofit East Bay Community Law Center (EBCLC), and in particular EBCLC attorney Jaime Arnone Modica, the tenant filed a motion to dismiss (called a demurrer) against an eviction lawsuit (called an unlawful detainer) commenced by Aurora Loan Services LLC. The tenant argued that the notice to quit was uncertain and confusing because it referenced several timeframes and failed to unambiguously terminate tenancy at a particular time. The court agreed. On February 9, 2010, Judge Frank Roesch dismissed the case without leave to amend, meaning that the action terminated conclusively in favor of the tenant.

Marc Janowitz, the EBCLC staff attorney who argued the case before Judge Roesch, praised the ruling, noting that "an unclear eviction notice is an invalid eviction notice. It is not the tenant's job to figure out what the landlord is trying to tell them to do. We see a lot of these confusing notices after foreclosures. In my opinion, they are invalid, and apparently, the Court agreed."

After acquiring property through foreclosure, banks routinely serve a single notice upon all occupants of the property, reciting various timeframes, legal rights and requirements that apply differently depending on the type of occupant. Banks typically do not perform due diligence to determine whether the occupant resides as a tenant or former homeowner at the property, instead serving confusing notices designed to cover all possible situations.

Certain law firms, such as The Endres Law Firm in Davis, are notorious for serving such defective notices. The Endres firm issued the defective notice at issue in the case before Judge Roesch where the tenant prevailed.

Preston of Tenants Together, himself an eviction defense lawyer before founding Tenants Together, says these notices should not withstand scrutiny if challenged in court. "These notices are so confusing that the recipient would need a legal dictionary and a team of lawyers to figure out what the banks are asking them to do. Most of the notices tell the recipient to get out in three days, 30 days, or 60 days, or 90 days, with a bunch of legalese for tenants to decipher to figure out when they are being asked to move. Any landlord lawyer in this state knows

that such a notice won't survive if challenged in court. They are banking on tenants giving up and moving so the case never gets to court."

Tenant advocates point out that California law encourages this gamesmanship by banks and their lawyers because tenants are afraid of the possible credit impacts of contesting these evictions in court. Under current law, unless the tenant wins within 60 days of the filing of the case, the bank's eviction action, even if totally invalid, can end up as part of the tenant's credit history, making it harder for tenants to find rental housing in the future. Kevin Stein, associate director of the California Reinvestment Coalition (CRC), argues that "it is unfair that an innocent tenant can be punished for standing up to a bogus eviction. Our legislators need to expand protections for innocent tenants who exercise their right to go to court, especially against these banks that are systematically violating California law." CRC plans to co-sponsor legislation to provide greater protections for renters in this situation.

Tenants Together is working with the East Bay Community Law Center to develop a sample demurrer that tenants can use to challenge these defective notices. The document will be made available on the Tenants Together website, www.TenantsTogether.org.

As California's only statewide organization for renters' rights, Tenants Together has been at the forefront of efforts to address the plight of tenants in foreclosed properties. Tenants Together released a report in 2009, *Hidden Impact: California Renters in the Foreclosure Crisis*, which estimated that at least one third of residential units in foreclosure in California are rentals. Renters in these properties are innocent and hidden victims of a foreclosure crisis they did nothing to create. Tenants Together also operates California's only hotline exclusively for tenants in foreclosure situations. California tenants can reach the hotline at (888) 495-8020.
