



Lead: Investment Housing Committee

Level of Government: Legislative Committee

10/2013

TITLE

TENANT ATTORNEYS REQUESTING JURY TRIALS IN UNLAWFUL DETAINER ACTIONS

THE QUESTION

Should CAR sponsor legislation in 2014 to restrict extortionate demands for jury trials in unlawful detainer actions?

ACTION REQUIRED?:

Yes, IF legislation is to be sponsored by C.A.R. in 2014.

POSSIBLE POSITIONS:

1. Sponsor legislation to create a California law that restricts or creates defined parameters for jury trial requests by tenant attorneys in unlawful detainer (U.D.) actions. Potential actions to consider are a blanket prohibition of such filings, requiring a financial undertaking to file these demands, legislative provision for all costs to be awarded to the prevailing party, or requiring binding arbitration in lieu of such proceedings.
2. Request C.A.R Legal to create a "Q & A" or "Strategy Guide" on this issue.
3. Survey C.A.R. Membership to assess the magnitude of the problem.
4. Request C.A.R. Standard Forms Advisory Committee to modify the C.A.R. Rental Agreement form to require the filing party requesting the jury trial to pay the jury trial costs which are the direct result of the jury trial request in an U.D. action.
5. Take no action.
6. Other

DISCUSSION

1. THE PROBLEM

Primarily in Southern California at this stage, attorneys representing tenants' rights groups such as BASTA, Inc., Legal Aid, the Eviction Defense Center, and Tenants United of Los Angeles have been extorting cash settlements from landlords by petitioning courts to set jury trials for unlawful detainer actions. Very few actually go to trial; the objective of these requests is to negotiate a settlement which ultimately results in tenants receiving free rent for up to 6 months, the court record being sealed, and tenant agreeing to move out by a specified date. What this actually creates is a situation whereby the tenant receives free rent for 6 months because most rental property owners wait at least two months of rent nonpayment before filing an action. A court date has to then be calendared and the tenant representatives negotiate another two months of free rent before the tenant has to move out of the unit. The cost of pursuing one of these cases to trial reportedly can reach upwards of \$15,000. Because the tenants are usually destitute, the landlord has little or no chance of reimbursement if victorious in one of these cases. C.A.R. property managers report that most clients are insisting on the pursuit of settlements because they simply cannot afford to pursue such burdensome judgments.

2. POTENTIAL SOLUTIONS AND RAMIFICATIONS

A. Sponsor legislation requiring the attorney requesting the jury trial in an U.D. action to file a bond or other form of deposit to cover filing costs. Such costs would be subject to reimbursement by the landlord should the case be won by the tenants' advocate.

While this solution may make the most sense for landlords attempting to maintain current rent payments on units they own/manage, it also has virtually no chance of passing even its first policy committee in the current Legislature consisting of 2/3 majorities of Democratic legislators in both houses. Such a proposal would undoubtedly be vigorously opposed by tenants' rights groups which are closely allied with the Democrat super-majorities in the Legislature.

B. Sponsor legislation prohibiting jury trial requests for unlawful detainer proceedings.

This certainly would be attractive to our property managers, its chances of surviving its first policy committee hearing in the Legislature are "somewhere between slim and none".

C. Require binding arbitration of any jury trial request for binding arbitration in an unlawful detainer proceeding.

Trial attorneys and tenants' rights groups would "climb all over" such a proposal and its chances of surviving its first hearing in a Legislature with 2/3 Democrat majorities is very slim.

D. Request C.A.R. Legal to create a "Q & A" or "Strategy Guide" for REALTORS® experiencing these unlawful detainer challenges.

E. Conduct a survey of C.A.R. Membership to determine the magnitude of REALTOR® exposure to this problem and whether any solutions are being implemented successfully by REALTORS®.

There may be practices being applied around the state that are addressing this problem and, if made known to REALTORS® universally, could be quite helpful in dealing with this problem. This could be a very helpful tool for REALTOR® property managers facing the challenges of tenant attorneys attempting to extort settlements for tenants behind in rent payments. It may be that this is more a regional than statewide problem. A survey of REALTORS® could be a helpful tool in ascertaining the magnitude of the problem.

F. Modify the C.A.R. Rental Agreement to require the filing party requesting the jury trial for a U.D. action to pay all initial costs of the trial, subject to reimbursement if the tenant prevails.

This non-legislative solution can be done by C.A.R. internally and avoid any exposure to the legislative process. It could provide a helpful tool for our REALTOR® rental property owners and managers. Does such an approach raise the potential for a legal challenge on a constitutional basis?

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What action, if any, should C.A.R. take with respect to requests for jury trials in unlawful detainer actions?