

# San Jose Mercury News

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## *Tenants should be told if property is in default*

**By Samantha James**

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Earlier this year the Mercury News told the story of a dozen tenants crammed into a single home, being victimized by a landlord who was making thousands of dollars by continuing to rent rooms despite having lost the house to the bank in foreclosure.

As I discovered through my own experience, it's shocking not only what some landlords will do, but also how little protection state law offers people looking to rent a room, a house or an apartment. Fortunately, state Sen. Joe Simitian (D-Palo Alto) is working to arm prospective tenants with better information by authoring legislation, Senate Bill 1191, that would require landlords to inform prospective

tenants that the property is subject to foreclosure.

From June 2011 to October 2011, I rented a duplex in the College Park area of San Jose. After four months, I was surprised to receive an email from the landlord telling me he was in the process of loan modification and "if the loan was not approved the duplex could be sold." He hoped, he said, that "things could work out for the best."

Having just moved, paid thousands in a deposit and furnished the place, I was frustrated. If the duplex was sold, the new owner would have the right to cancel my lease on three-months' notice per federal law. The landlord gave no indication of when he had entered loan re-modification and brushed off my follow-up questions. My instincts told me my landlord was behaving

illegally and needed to be held accountable.

What I found was astonishing: The Internet is full of horror stories of tenants moving into properties and quickly finding out that their home is up for auction. Tenants are also required to pay rent while the landlord may or may not be paying the mortgage, and most end up in Small Claims Court fighting to get their deposits back.

A quick search on the Santa Clara County website provided the property's Assessor's Parcel Number, which indicated my landlord was two years behind on property taxes. A few weeks later, I received a letter with a Trustee Sales Number for the property. After several failed attempts to gain information from the landlord, I contacted the firm the

bank had hired to manage the foreclosure. They notified me that the property had been scheduled for auction multiple times in the past two years but had been postponed for arbitrary reasons, and there was no way to tell whether it would be postponed again.

Further research proved that what my landlord was doing was not illegal, just immoral. Currently in California, landlords are not required to disclose any information to prospective tenants about a notice of sale.

While widely seen as a supporter of tenants' rights, California lacks legislation that states and cities such as Oregon, Nevada, Arizona, Vermont, Chicago and Minneapolis have already enacted. They require that landlords disclose the fore-

closure process to potential tenants and notify current tenants within a declared period of time.

With thousands of properties in California in foreclosure, stronger protections are needed for tenants. Simitian's bill would require a landlord who has received a notice of default to tell prospective tenants, and it would set penalties for failure to comply.

I hope the Legislature will pass SB 1191 and that the governor will sign it into law. While my rental ordeal is over, others around the state are still at risk.

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*Samantha James of San Jose was a winner this year in State Sen. Joe Simitian's "There Oughta Be a Law" contest. She wrote this for this newspaper.*

# THE DAILY JOURNAL

Leading local news coverage in San Mateo County

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## Bill to protect renters signed by governor

DAILY JOURNAL STAFF REPORT

A bill to warn prospective tenants when the property they are looking to rent is subject to foreclosure was signed into law by Gov. Jerry Brown Tuesday.

Senate Bill 1191 requires that a landlord who receives a notice of default provide written notice to any prospective tenant before a lease is signed. Under existing law, a landlord is not required to disclose this fact to a prospective tenant.

The bill was authored by state Sen. Joe Simitian, D-Palo Alto, and was a winning entry in the lawmaker's "There Oughta Be a Law" contest.

The bill proposal was submitted by Samantha James of San Jose. About a year ago, James rented a property, paid her security deposit and furnished her apartment, only to find out two months later that it was in foreclosure. Sale of the property had been scheduled at various times, and then postponed, according to Simitian's office.

As James noted in her contest entry, properties in foreclosure might soon change owners, possibly forcing a new tenant to move out



Joe Simitian

within months, or making it difficult to get a security deposit returned.

"I am extremely pleased that the governor signed this bill," Simitian wrote in a statement. "In this foreclosure crisis, much of the focus has been on homeowners, and renters have gotten lost in the shuffle. This bill, once it

becomes law, is going to ensure that renters don't get their homes yanked out from under them, and are fully informed before they sign a lease on the dotted line."

A foreclosure sale can extinguish leases. For example, if the new owner intends to make the property their residence, then existing leases are invalid.

Additionally, during foreclosure, tenants can face:

- Loss of their security deposit;
- Decreased services from the landlord;
- Additional moving and furnishing costs; and
- Having to change schools for children.

"The bill is a common sense solution. It doesn't prohibit a landlord from renting a home; it simply requires the owner to ensure that the tenant has full disclosure about the rental home that is currently facing foreclosure," Debra Carlton, senior vice president of the California Apartment Association, wrote in a statement.

SB 1191 allows tenants to void the lease if a landlord fails to disclose the foreclosure and sets forth other penalties.

The bill takes effect on Jan. 1, 2013.

The bill was opposed by the Rental Housing Coalition, a nonprofit, the San Diego County Apartment Association and the Apartment Association of Greater Los Angeles among others.

The groups urged Brown to veto the legislation.

"SB 1191 may be well-intentioned but in an effort to help consumers make better-informed decisions, the author has overlooked the potentially destructive impacts the bill could have on property owners, including the likelihood of hastening foreclosures," according to a RHC statement.