

Memorandum 77-20

Subject: Study 78.50 - Unlawful Detainer Proceedings (AB 13)

At the last meeting, the Commission substantially revised Assembly Bill 13. Because the revisions were so substantial, the staff has had the bill amended as set out in Exhibit 1 (attached) and has set the hearing on the bill in the Senate Judiciary Committee over until April 19. This will give interested persons and organizations time to review the revised bill and will give the Commission an opportunity to review the revised bill at its April meeting.

The staff is of the view that the revised bill does not provide the lessor much in the way of savings in cost and time. We would not recommend the bill except that we believe that it codifies what is existing law with some important protections to the lessee:

(1) A requirement that the unlawful detainer complaint be amended to state a claim for any damages sought to be recovered that were not pleaded and recoverable in the unlawful detainer proceeding and that the amended complaint be served on the defendant in the same manner as an original complaint is served.

(2) An express provision that the compulsory cross-complaint statute does not apply to the lessee's related causes of action except in certain specified limited circumstances.

(3) An express statement of the time the defendant has to respond to the plaintiff's pleading or amended pleading.

The staff has no recommendations for further revision of Assembly Bill 13 as set out in the attached Exhibit 1. Any problems any interested person or organization has with the bill as revised can be brought to the Commission's attention at the April meeting.

Attached as Exhibit 2 is a report prepared for the Senate Judiciary Committee providing a Comment for amended Section 1952 and a revised Comment for new Section 1952.3. This report should be reviewed by the Commission before it is presented to the Senate Judiciary Committee on April 19 for adoption and printing in the Senate Journal.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

ASSEMBLY BILL 13 AS REVISED

SECTION 1. Section 1952 of the Code of Civil Procedure is amended to read:

1952. (a) Except as provided in subdivision (c), nothing in Sections 1951 to 1951.8, inclusive, affects the provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, relating to actions for unlawful detainer, forcible entry, and forcible detainer.

(b) The bringing of an action under the provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure Procedure, whether or not such action becomes an ordinary civil action as provided in Section 1952.3, does not affect the lessor's right to bring a separate action for relief under Sections 1951.2, 1951.5, and 1951.8, but no damages shall be recovered in the subsequent action for any detriment for which a claim for damages was made and determined on the merits in the previous action.

(c) After the lessor obtains possession of the property under a judgment pursuant to Section 1174 of the Code of Civil Procedure, he is no longer entitled to the remedy provided under Section 1951.4 unless the lessee obtains relief under Section 1179 of the Code of Civil Procedure.

SEC. 2. Section 1952.3 is added to the Civil Code, to read:

1952.3. (a) Except as provided in subdivisions (b) and (c), if the lessor brings an unlawful detainer proceeding and possession of the property is no longer in issue because possession of the property has been surrendered to the lessor before trial or, if there is no trial, before judgment is entered, the case becomes an ordinary civil action in which:

(1) The lessor may obtain any relief to which he is entitled, including, where applicable, relief authorized by Section 1951.2; but, if the lessor seeks to recover damages described in paragraph (3) of subdivision (a) of Section 1951.2 or any other damages not pleaded and recoverable in the unlawful detainer proceeding, the lessor shall first amend the complaint pursuant to Section 472 or 473 of the Code of Civil Procedure to state a claim for such damages and shall serve a copy of the amended complaint on the defendant in the same manner as a copy of a summons and original complaint is served.

(2) The defendant may, by appropriate pleadings or amendments to pleadings, seek any affirmative relief, and assert all defenses, to which he is entitled, whether or not the lessor has amended the complaint; but subdivision (a) of Section 426.30 of the Code of Civil Procedure does not apply unless, after giving up possession of the property, the defendant (i) files a cross-complaint or (ii) files an answer or an amended answer in response to an amended complaint filed pursuant to paragraph (1).

(b) The defendant's time to respond to a complaint for unlawful detainer is not affected by the surrender of possession of the property to the lessor; but, if the complaint is amended as provided in paragraph (1) of subdivision (a), the defendant has the same time to respond to the amended complaint as in an ordinary civil action.

(c) If the defendant's default has been entered on the unlawful detainer complaint and such default has not been set aside, the case shall proceed as an unlawful detainer proceeding.

(d) Nothing in this section affects the pleadings that may be filed, relief that may be sought, or defenses that may be asserted in an unlawful detainer proceeding that has not become an ordinary civil action as provided in subdivision (a).

EXHIBIT 2

REPORT PREPARED FOR SENATE JUDICIARY COMMITTEE

REPORT OF SENATE COMMITTEE ON JUDICIARY

ON ASSEMBLY BILL 13

In order to indicate more fully its intent with respect to Assembly Bill 13, the Senate Committee on Judiciary makes the following report.

Assembly Bill 13 was introduced to effectuate the Recommendation of the California Law Revision Commission Relating to Damages in Action for Breach of Lease, 13 Cal. L. Revision Comm'n Reports 1679 (1976). The following new comment and revised Law Revision Commission comment reflect the intent of the Senate Committee on Judiciary in approving Assembly Bill 13.

Code of Civil Procedure § 1952 (amended)

Comment. The language added to subdivision (b) of Section 1952 makes clear that the conversion of an unlawful detainer proceeding to an ordinary action for damages (see Section 1952.3) does not eliminate the lessor's election to seek the remedies afforded by Sections 1951.2, 1951.5, and 1951.8 in separate action, whether or not the lessor prosecutes the unlawful detainer proceeding to judgment.

Code of Civil Procedure § 1952.3 (added)

Comment. Section 1952.3 is new. The provision of subdivision (a) that surrender of possession of the property by the tenant converts an unlawful detainer proceeding into an ordinary civil action codifies prior case law. If the tenant gives up possession of the property after commencement of an unlawful detainer proceeding, "the action thus becomes an ordinary one for damages." Union Oil Co. v. Chandler, 4 Cal. App.3d 716, 722, 84 Cal. Rptr. 756, 760 (1970). This is true where possession is given up "before the trial of the unlawful detainer action." Green v. Superior Court, 10 Cal.3d 616, 633 n.18, 517 P.2d 1168, 1179 n.18, 111 Cal. Rptr. 704, 715 n.18 (1974). Accord, Erbe Corp. v. W. & B. Realty Co., 255 Cal. App.2d 773, 778, 63 Cal. Rptr. 462, 465 (1967); Turem v. Texaco, Inc., 236 Cal. App.2d 758, 763, 46 Cal. Rptr. 389, 392 (1965). In this situation, the rules designed to preserve the summary

nature of the proceeding are not longer applicable. See, e.g., Cohen v. Superior Court, 248 Cal. App.2d 551, 553-554, 56 Cal. Rptr. 813, 815-816 (1967) (no trial precedence when possession not in issue); Heller v. Melliday, 60 Cal. App.2d 689, 696-697, 141 P.2d 447, 451-452 (1943) (cross-complaint allowable after surrender); cf. Bell v. Haun, 9 Cal. App. 41, 97 P. 1126 (1908) (defendant not in possession entitled to same time to answer as in civil actions generally). The limitation of Section 1952.3 to unlawful detainer proceedings is not intended to preclude application of the rule stated in subdivision (a) in forcible entry or forcible detainer cases.

Paragraph (1) of subdivision (a) makes clear that, when the statutory conditions for the application of Section 1951.2 are met, the damages authorized by that section are among the remedies available to the lessor when an unlawful detainer proceeding has been converted to an ordinary civil action. The paragraph serves, among other purposes, the salutary purpose of avoiding multiplicity of actions. The statutory conditions for the application of Section 1951.2 are that there be a lease, breach of lease by the lessee, and either abandonment by the lessee before the end of the term or termination by the lessor of the lessee's right to possession. Civil Code § 1951.2(a). The lessor is not required to seek such damages in the unlawful detainer proceeding which has been thus converted, but may elect to recover them in a separate action. See Civil Code § 1952(b).

If damages for loss of rent accruing after judgment are sought by the lessor pursuant to paragraph (3) of subdivision (a) of Section 1951.2, the additional conditions of subdivision (c) of that section must be met. And, if the lessor seeks such damages or any other damages not pleaded and recoverable in the unlawful detainer proceeding, the last portion of paragraph (1) of subdivision (a) of Section 1952.3 requires the lessor to amend the complaint to state a claim for such relief. If the case is at issue, the lessor's application for leave to amend is addressed to the discretion of the court. See Code Civ. Proc. § 473. The court is guided by a "policy of great liberality in permitting amendments at any stage of the proceeding" 3 B. Witkin, California Procedure, Pleading § 1040, at 2618 (2d ed. 1971).

Under subdivision (b), if the lessor amends the complaint, the defendant has a right to answer "within 30 days after service thereof" or within such time as the court may allow. Code Civ. Proc. §§ 471.5, 586. Paragraph (2) of subdivision (a) makes clear that the defendant may cross-complain and may plead any defenses to the lessor's action for damages. However, under paragraph (2), the defendant is not obliged to "allege in a cross-complaint any related cause of action" (Code Civ. Proc. § 426.30) unless, after giving up possession of the property, the defendant files a cross-complaint or files an answer, or an amended answer, in response to the amended complaint. This will protect the defendant against inadvertent loss of a related cause of action.

Subdivision (d) makes clear that Section 1952.3 has no effect on existing law with respect to unlawful detainer proceedings where possession remains in issue. In such proceedings, there are a number of affirmative defenses the defendant is permitted to raise. See, e.g., Green v. Superior Court, 10 Cal.3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); Abstract Investment Co. v. Hutchinson, 204 Cal. App.2d 242, 22 Cal. Rptr. 309 (1962).