


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Larry J. Wallace, Director</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> Protections for tenants and other occupants during post-foreclosure evictions, as found in The California Homeowner Bill of Rights (HBOR)</p>	<p><i>No.</i> DLE-2016-01</p>	<p><i>Contact for information:</i> Nicklas Akers, Senior Assistant Attorney General California Department of Justice (415) 703-5505</p>
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TO: ALL CALIFORNIA SHERIFFS

California Sheriffs have a critical role in ensuring that the rights of all parties are respected during evictions. This information bulletin provides legal guidance for Sheriffs on the actions to take if they receive a Claim of Right to Possession in connection with an eviction that takes place after a foreclosure.

Summary

Some post-foreclosure occupants may temporarily stop the eviction process by presenting a Claim of Right to Possession *at any time before lockout*.

Effective, January 1, 2013, the **California Homeowner Bill of Rights (HBOR)** provides additional protections for tenants and homeowners in the foreclosure process. This bulletin describes one of the integral protections established by the HBOR for tenants and other occupants of a residential property after foreclosure, and provides guidance for Sheriffs performing evictions following a foreclosure.

Impact of the HBOR

As they could under pre-existing law, purchasers of foreclosed properties may still seek to evict existing tenants by obtaining a “Writ of Possession” that is executed by the Sheriff. Now, under the HBOR, occupants of a foreclosed property who are not named in the Writ of Possession have the right to stop enforcement of the Writ at any time up to and including the date when the Sheriff comes to remove them. They can do so by presenting a Claim of Right to Possession form (CP10) at the Sheriff’s office or to the Sheriff at the property at the time of the lockout. *Once a claim is presented, the Sheriff should take no further action until notified by the court.*

- Before HBOR went into effect, occupants were required to respond to a “Prejudgment Claim of Right to Possession” within 10 days of service even if they were not named in an Unlawful Detainer Complaint. This is no longer the law in post-foreclosure situations. Occupants may present the Claim of Right to Possession form at any time, including during Sheriff lockout.

Claim of Right to Possession

The required CP10 form is available to the general public for download at <http://www.courts.ca.gov/documents/cp10.pdf>. Sheriffs should make copies of this form available in their offices, along with contact information for local court self-help centers and legal aid organizations.

How to Respond

A Sheriff who is presented with a Claim of Right to Possession should do the following:

- Request identification from the person presenting the form
- Sign the form in the box marked “*(For levying officer use only)*” and note the date and time of receipt
- Provide the person who presented the form with a receipt or copy of the form
- Deliver the original form to the court that issued the Writ of Possession
- Notify the party seeking eviction that the original form was delivered to the court and that a receipt or copy was provided to the claimant
- *Cease execution of the Writ of Possession until further guidance is received from the court*

Requesting Identification

A Sheriff should accept any form of identification that reasonably identifies the claimant. If the claimant presents the correct form but cannot provide proper identification, the Sheriff should consult with his or her County Counsel’s office or other legal representative before proceeding with the eviction.

What Happens Next

The court will determine the validity of the occupant’s claim. If the claim is not valid, the court will issue an order directing the Sheriff to proceed with the eviction. On the other hand, if the occupant’s claim is deemed valid, then the Sheriff may never hear back. Therefore, the Sheriff should wait until receipt of a further court order before taking any additional action.


Legal Basis for This Guidance

An occupant of a foreclosed property who is not named in the Writ of Possession may file a Claim of Right to Possession any time after judgment is entered, “up to and including the time when the [Sheriff] returns to effect the eviction of those named in the judgment of possession.” (Code Civ. Pro., § 1174.3, subd. (a)(2).) The Claim of Right to Possession may be presented by the occupant at the Sheriff’s office “or at the premises at the time of the eviction.” (Code Civ. Pro., § 1174.3, subd. (b).) “If a claim of right to possession is completed and presented to the sheriff ... the officer shall forthwith (1) stop the eviction of occupants at the premises and (2) provide a receipt or copy of the completed claim of right of possession to the claimant indicating the date and time the

completed form was received, and (3) deliver the original, completed claim of right to possession to the court issuing the writ of possession of real property.” (*Ibid.*)

The California Homeowner Bill of Rights is an important element of Attorney General Harris’ response to the state’s mortgage and foreclosure crisis. We are happy to answer any further questions you may have about the HBOR, tenants in foreclosure, or the Claim of Right to Possession process.

Sincerely,



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Division of Law Enforcement

For KAMALA D. HARRIS
Attorney General