California Senate Bill 1167: A Step in the Right Direction for Pest Control

By Emily Chaves

California Governor Jerry Brown recently signed Senate Bill 1167 which aims to reduce home pest infestations by requiring landlords to address structural conditions in addition to exterminating pests when there is a pest problem on their property. Currently, the law related to pest infestations only requires landlords to exterminate pests. Extermination, as discussed in last month’s article “IPM Just Makes Sense,” is merely a short-term solution to pest problems. When the pesticides wear off, pests tend to move right back in if the underlying structural problems that made the home attractive to pests in the first place are not addressed. This law aims to tackle that issue by requiring landlords to address related structural issues such as cracks or holes in walls and flooring and leaky plumbing.

Home pest infestations expose residents to high levels of allergens which are linked to asthma and other diseases. Cockroach allergens in particular are closely tied with asthma. Several diseases can be contracted through rodent bites or contact with rodent feces, urine, saliva, and fleas. Bed bug infestations can result in anxiety and insomnia in addition to physical impacts like hives and infection. This bill aims to reduce such infestations, which tend to be more problematic in tenant dwellings in low-income, inner-city neighborhoods. These neighborhoods tend to have higher rates of asthma and emergency room visits and hospitalizations due to asthma. Perhaps one of the outcomes of this new bill will be a visible reduction in pest activity and health care utilization among low-income tenants.

While Senate Bill 1167 takes a big step in the right direction for healthier homes, a few major components of integrated pest management (IPM) are not addressed by this bill. IPM utilizes a comprehensive strategy to address pest issues, beginning with use of non-toxic pesticides, baits, and traps to capture and kill pests. Also, the home environment is made inaccessible to pests by blocking entry points, and it is made unattractive to pests by removing sources of food, water, and shelter.

(continued on page 3)
An Act Clearing Titles to Foreclosed Properties

By Richard P. Howe Jr.

In the closing hours of this year’s session, the Massachusetts State Legislature enacted a bill that seeks to remedy some of the title problems that arose during the most recent foreclosure crisis. Back in the February 2014 edition of the Merrimack Valley Housing Report, I wrote about this bill when it first passed the state senate. My concluding paragraph was as follows:

This whole area of real estate law is best described as a mess brought on by sloppy practices by lenders. Still, many innocent third party purchasers now find their titles jeopardized by the uncertainty of Ibanez. While S1987 may not be the perfect solution to the problem, it’s much better than the status quo.

While the Senate has passed the bill without controversy, differing opinions on the fairness of this legislation emerged in the House. Proponents claimed it would provide necessary assistance to innocent third party purchasers of previously foreclosed properties who now have defective titles through no fault of their own. Opponents responded that it would unfairly curtail the time during which a homeowner might challenge the legality of a past foreclosure. On August 11, 2014, Governor Deval Patrick sent the bill back to the legislature with a proposed amendment that would extend the statute of limitations from three years to ten. Because it already rejected an identical amendment, the legislature is unlikely to adopt the governor’s suggestion which means the bill may be dead for this legislative session. Still, the background and implications of the bill are worth reviewing.

The vast majority of mortgages created during the real estate bubble of the past decade were not held by the originator of the mortgage but were assigned to other financial institutions. To show at the registry of deeds that ownership of the mortgage had been transferred, the initial holder of the mortgage would record an “assignment” to the new mortgage holder. Because of the volume and velocity of these transactions during the boom years, the assignment document often lagged behind the actual transfer. When some mortgages went bad and foreclosure proceedings were commenced, the assignment transferring ownership of the mortgage to the foreclosing lender either did not exist or had not been recorded. Not to worry, said the leaders of the Massachusetts legal community who advised other lawyers that as long as the assignment was recorded simultaneously with the foreclosure deed – something that happened long after the actual auction of the property – there would be no problem with the title.

They were wrong according to the Massachusetts Supreme Judicial Court which held in U.S. Bank v. Ibanez that an assignment of mortgage had to have been completed before the commencement of foreclosure proceedings. But the court did not hold that the assignment had to be recorded at the registry of deeds prior to that. Consequently, it is impossible to tell from the records of the registry of deeds if an assignment was timely.

Instead, establishing compliance with the Ibanez holding is a question of fact on a case by case basis with no easy or efficient way to make that determination. Innocent third parties who purchased homes that had a foreclosure somewhere in the background are now locked into those homes until questions about the title can be resolved.

In response to this predicament, the Massachusetts legislature is on the verge of passing Senate Bill 1987 entitled “An Act clearing titles to foreclosed properties.” Essentially, the bill establishes a three year statute of limitations for challenging the validity of a foreclosure. After the passage of three years (from the later of the date of the foreclosure or of the enactment of this bill), the prior homeowner and everyone else would be barred from challenging the foreclosure. This would resolve the title defects lurking in the back titles of so many foreclosed properties after three years, at least.

Opponents of this new bill content that the current statute of limitations for challenging defective foreclosures is twenty years. Twenty years is the time during which an action of ejectment, an ancient remedy to reclaim wrongfully taken land, must be filed. To the extent such actions are initiated in modern times, they typically involve cases of adverse possession, not defective mortgage foreclosures. That’s because almost every foreclosure is done in two ways. First by exercise of the power of sale contained in the mortgage – the process described above – but also by “entry and possession” which involves a symbolic entry onto the property by the lender to assert its ownership rights. Three years later, the entry ripens into outright ownership and any procedural errors in the foreclosure by sale process would be cured. It was this “three years to outright ownership” procedure that influenced the selection of three years as the proposed statute of limitations in Senate 1987.
Additionally, IPM includes resident education about pest behavior and methods to deter pest activity such as using sealed trash containers and storing foods in sealed containers, as well as communication with landlords and property managers. It’s clear that the basics of IPM are more comprehensive than the current Senate Bill, in that not only are structural issues addressed, but communication is encouraged, education is provided, and measures are taken to make sure that residents are not exposed to harmful chemical pesticides in the extermination process. These are all important components that make IPM work, and though the bill doesn’t address them all, it still may encourage landlords to hire IPM contractors when faced with pest problems on their properties. Not only will IPM cost landlords less in the long-run, but IPM contractors will address minor structural issues and advise landlords about how to address larger structural issues that enable pest activity. Overall, the bill makes an important step toward requiring more comprehensive approaches to pest management, and I suspect it will benefit the most vulnerable low-income communities most, possibly addressing health disparities to some degree over time.

California Senate Bill 1167 was authored by and Senator Ben Hueso and Governor Jerry Brown, and it will take effect on January 1, 2015.

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