

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 3196 (Stephanie Nguyen)  
Version: April 11, 2024  
Hearing Date: June 11, 2024  
Fiscal: No  
Urgency: No  
ID

**SUBJECT**

Summary proceedings for obtaining possession of real property: demurrers

**DIGEST**

This bill requires demurrers in unlawful detainer proceedings relating to commercial property to be heard within 20 court days of the filing of the demurrer.

**EXECUTIVE SUMMARY**

Unlawful detainer proceedings are streamlined, summary proceedings meant to balance a tenant's rights and ability to be heard before being evicted with a landlord's interests in promptly resolving the dispute. Law prescribes a specific process for an unlawful detainer proceeding that utilizes expedited timelines, including that a hearing on an unlawful detainer complaint must be held within 20 days of a request for a trial. However, when a defendant tenant demurs to the unlawful detainer complaint, in which they challenge the legal sufficiency of the complaint, the statutory provisions outlining the unlawful detainer process are silent on when a hearing on the demurrer must be held. Instead, California Rules of Court specify that such hearings must be held within 35 days of the filing of the demurrer, unless extended by request of both parties or for good cause shown. AB 3196 proposes to create a statutory timeline for hearing demurrers that aligns with the timeline for hearings on the unlawful detainer complaint itself, for cases involving tenants of commercial real property. The timeline created by AB 3196 would specify that a hearing on the demurrer must take place within 20 days of the filing of the demurrer.

AB 3196 is sponsored by the California Business Properties Association, and the Committee has received no other timely support or opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that, on or before the day fixed for their appearance, a defendant in an unlawful detainer action may appear and answer or demur. (Code of Civ. Proc. § 1170.)
- 2) Provides that all moving and supporting papers shall be served and filed at least 16 court days before a hearing, and that the moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. (Code of Civ. Proc. § 1005 (b).)
- 3) Establishes summary civil proceedings by which landlords may seek a court order for the eviction of tenants from their rental property, for specified reasons. (Code of Civ. Proc. § 1159 et seq.)
- 4) Provides that a tenant is guilty of an unlawful detainer when the tenant remains in possession of the leased property after the service and expiration of a three day notice demanding that the tenant pay past due rent. (Code of Civ. Proc. § 1161 (2).)
- 5) Provides that a tenant is guilty of an unlawful detainer when the tenant remains in possession of the lease property after the service and expiration of a three day notice demanding that the tenant correct the violation of a material lease term. (Code of Civ. Proc. § 1161 (3).)
- 6) Requires that a defendant's response in a summary proceeding to obtain real property must be filed within five days, excluding Saturdays and Sundays and other judicial holidays, after the complaint is served upon the defendant. (Code of Civ. Proc. § 1167 (a).)
- 7) Provides that, if a defendant in an unlawful detainer proceeding appears, and a request to set the case for trial is made, the trial of the proceeding must be held within 20 days of the date of the request for a hearing. Provides that the judge may extend the period for trial upon the agreement of all of the parties. (Code of Civ. Proc. § 1170.5.)
- 8) Specifies that a motion for summary judgment may be made at any time after the answer is filed, upon giving five days' notice. Summary judgment shall be granted or denied on the same basis as a motion under Code of Civil Procedure Section 437. (Code of Civ. Proc. § 1170.7.)
- 9) Defines "commercial real property" as any unit that is not: (1) used as a home, residence, or sleeping place; (2) a hotel where 20 percent or more of the occupants

live permanently; or (3) any space or dwelling in a mobilehome park. (Civ. Code § 1954.26 (d).)

10) Establishes that a “tenant” includes a lessee, subtenant, and sublessee. (Civ. Code § 1954.26 (g).)

This bill:

1) Provides that, notwithstanding the 16-day requirement for service of all motions and filings, if a tenant of a commercial real property, as defined, demurs to an unlawful detainer complaint, the notice of hearing on a demurrer must designate a hearing date within 20 court days of the filing of the demurrer.

### COMMENTS

#### 1. Author’s statement

According to the author:

AB 3196 seeks to simply align the timelines for demurrer hearings with the expedited timeframe for unlawful detainers to ensure a more streamlined, predictable, and equitable legal process. This alignment is essential for reducing procedural disparities, and ensuring fair treatment across the board to support the economic vitality of our communities and all stakeholders involved. AB 3196 bolsters the legal framework in a way that supports our community's emerging businesses and property owners, paving the way for continued growth and success.

#### 2. Tenant’s rights and the unlawful detainer process

In order to ensure that a tenant’s rights are respected and they have an opportunity to be heard before being forced out of the property which they rent, California law closely prescribes when a landlord may evict a tenant and the process that must be followed to do so. Landlords may only evict tenants for specified reasons, including for when a tenant defaults on payment of rent, violates a term of the rental agreement without correcting within three days of notice, and committing waste on the premises. (Code of Civ. Proc. § 1161.) Almost all forced evictions in the residential and commercial context must take place through a judicial process, called an unlawful detainer. The unlawful detainer process is governed by Code of Civil Procedure Sections 1159 to 1179. These sets of laws and procedures recognize the importance of housing to tenants, and the significant disruption that eviction poses to both residential and commercial tenants. However, to balance these interests with the interests of landlords to be able to promptly re-rent their properties if the current tenant is not paying rent or subject to

eviction, the unlawful detainer process is also a summary proceeding, meaning that it is a streamlined, fast-tracked judicial proceeding.

In order to evict a tenant, a landlord must file an unlawful detainer action and request a judicial order that the tenant be evicted. An unlawful detainer proceeding is very similar to standard civil proceedings, though with significantly shortened timelines. A defendant must file a response to the unlawful detainer complaint within five court days of being served with the complaint, for example, while in standard civil proceedings, the defendant is provided 30 days to respond to a complaint. (Code of Civ. Proc. § 1167 and 1167.3; 412.20; 430.40; 471.5.) Generally, a defendant may either answer the complaint, by conceding or contesting the allegations in the complaint, or they can demur. (Code of Civ. Proc. § 1170.) A demurrer alleges that the complaint is legally deficient, such as by failing to state a cognizable claim, rather than challenging the factual allegations in the complaint. A demurrer may be sustained with leave to amend, such that the plaintiff can re-file their complaint stating sufficient facts to state a claim, or it be sustained without leave to amend, in which case the case is dismissed. If a defendant answers the landlord's complaint, and requests a trial, the trial must be held within 20 days of the request for a trial, unless extended by agreement of the parties. (Code of Civ. Proc. § 1170.5.) Parties in unlawful detainer proceedings also may file motions for summary judgement, make motions for discovery, and conduct depositions. (Code of Civ. Proc. §§ 1170.7, 1170.8.) In each of these contexts, the timelines for notice are also shortened. Lastly, unlawful detainers are meant to take precedence in courts' civil docket, so that all unlawful detainer actions are quickly heard and determined. (Code of Civ. Proc. § 1179a.)

If the judge or the jury rules for the landlord, the court will issue a writ of possession, and the sheriff will notify the tenant that they have five days to vacate the premises before being forcibly removed. If the tenant wins the case, they will be allowed to remain in the premises, and may even be owed money from the landlord.

3. AB 3196 establishes a streamlined process for hearings on demurrers in unlawful detainer proceedings in the commercial property context

AB 3196 proposes to amend the laws relating to unlawful detainer for commercial real property to specify an expedited timeline for demurrers. It provides that, if a defendant demurs to an unlawful detainer complaint, the notice of hearing for the demurrer must designate a hearing date within 20 court days of the filing of the demurrer. The timeline set by AB 3196 only applies to tenancies of commercial property, and does not change any other process or timeline for commercial property unlawful detainer proceedings. AB 3196 includes a clause that specifies that its 20-day timeline is to take precedence over the 16-day requirement for filing a notice of hearing on the other party contained in Code of Civil Procedure Section 1005, should they conflict.

The author asserts that AB 3196 is necessary to align the demurrer process with the expedited timeline for unlawful detainer proceedings, and to ensure fair treatment of unlawful detainer proceedings. The author asserts that an absence of an explicit timeline in the Code of Civil Procedure provisions for hearings on a demurrer has resulted in delays and inconsistencies when a defendant files a demurrer. They cite examples of commercial unlawful detainer cases where hearings on the demurrer are not scheduled for two, four, five, and seven months after the filing of the demurrer.

While it is true that the current rules for unlawful detainers do not include a specific timeline for hearing a demurrer, the courts' own rules include further guidance on demurrers. The California Rules of Court provide that demurrers must be set for a hearing within 35 days of the filing of the demurrer, or on the first date available to the court thereafter. (Cal. Rules of Court 3.1320(d).) That rule also provides that, for good cause shown, the court may order the hearing on the demurrer to be held either earlier or later than the date set for the hearing. This rule is not as streamlined as the timeline required by AB 3196, and it provides for exceptions and delays for good cause. It also is an administrative rule, subject to change, and not a statutory requirement. However, considering that AB 3196's timeline provides for 20 court days, which are essentially business days less court holidays, and the California Rules of Court 3.1320 does not specify that its 35-day deadline be court days, the timelines under both rules would be fairly similar – there would be about a week difference in most circumstances. Thus, the most significant aspect of AB 3196 is that it provides a strict timeline requirement that courts must follow without exceptions. While this would provide certainty for defendants and plaintiffs in commercial unlawful detainer proceedings, it would not provide flexibility to the courts and judges presiding over commercial unlawful detainer cases. Additionally, under the current laws, if a court sets a hearing on a demurrer too far into the future, the landlord may always file an ex parte motion requesting that the hearing be advanced. Accordingly, AB 3196's most significant effect would be to provide courts less flexibility in scheduling demurrer hearings, and to save plaintiffs the need to request hearings be advanced when they are scheduled too far into the future, and it conforms the hearing timeline for a demurrer with the timeline required for hearings on unlawful detainer complaints.

#### 4. Arguments in support

According to the California Business Properties Association, which is the sponsor of AB 3196:

Currently, the lack of clear timelines for demurrer hearings in § 1170 contrasts sharply with other sections, such as §§ 1167, 1167.3, and 1170.5-1170.8, that emphasize rapid proceedings from the filing of responses to the setting of trials, aiming to mitigate the financial and emotional strain on both property owners and tenants. However, the lack of defined timelines for demurrer hearings in § 1170 disrupts this streamlined approach, leading to inconsistent case handling

and delays that detract from the statutes' intent to facilitate quick dispute resolution.

AB 3196 aims to bring consistency and efficiency to these proceedings, aligning with the statute's intent to expedite dispute resolution. This improvement is crucial for the fair and timely adjudication of rights in commercial tenancies, without affecting residential tenancies.

### **SUPPORT**

California Business Properties Association (sponsor)

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 395 (Wahab, 2023) requires a landlord to file with the office of the Secretary of State a copy of any notice of termination or notice of rent increase within 10 days of serving the notice on the tenant, and makes failure to do so an affirmative defense to an unlawful detainer. SB 395 was held by the Senate Appropriations Committee.

SB 1103 (Menjivar, 2024) applies various tenant protections for residential tenants to commercial, small business tenants, as defined, and creates transparency requirements for operating costs fees charged to such tenants. SB 1103 is currently at the Assembly Desk.

**Prior Legislation:** None known

### **PRIOR VOTES:**

Assembly Floor (Ayes 68, Noes 0)  
Assembly Judiciary Committee (Ayes 12, Noes 0)

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