

The Lender has already foreclosed on your house at the time they bring a Unlawful Detainer action against you. The Unlawful Detainer is just an eviction and not a foreclosure proceeding. If you want to stop the eviction, you have to claim that they have no right to evict because of a defective deed due to fact that they are not true lender, etc.

A qualified exception to the rule that title cannot be tried in an unlawful detainer proceeding [see Evid Code § 624; 5.45[1][c]] is contained in CCP § 1161a. By extending the summary eviction remedy beyond the conventional landlord-tenant relationship to include purchasers of the occupied property, the statute provides for a narrow and sharply focused examination of title. A purchaser of the property as described in the statute, who starts an unlawful detainer proceeding to evict an occupant in possession, must show that he or she acquired the property at a regularly conducted sale and thereafter "duly perfected" the title [CCP § 1161a; *Vella v. Hudgins* (1977) 20 C3d 251, 255, 142 CR 414, 572 P2d 28]. To this limited extent, as provided by the statute, title may be litigated in the unlawful detainer proceeding [*Cheney v. Trauzettel* (1937) 9 C2d 158, 159, 69 P2d 832].

CCP § 1161

1. In General; Words and Phrases

Term "duly" implies that all of those elements necessary to valid sale exist. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Title that is "duly perfected" includes good record title, but is not limited to good record title. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Title is "duly perfected" when all steps have been taken to make it perfect, that is, to convey to purchaser that which he has purchased, valid and good beyond all reasonable doubt. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

The purpose of CCP 1161a, providing for the removal of a person holding over after a notice to quit, is to make clear that one acquiring ownership of real property through foreclosure can evict by a summary procedure. The policy behind the statute is to provide a summary method of ouster where an occupant holds over possession after sale of the property. *Gross v. Superior Court* (1985, Cal App 1st Dist) 171 Cal App 3d 265, 217 Cal Rptr 284, 1985 Cal App LEXIS 2408.

Go to Topic List 2. Construction, Interpretation, and Application

This section extended the former statute to permit persons not in the relationship of landlord and tenant to maintain an action in unlawful detainer. *Hewitt v. Justice's Court of Brooklyn Township* (1933, Cal App) 131 Cal App 439, 21 P2d 641, 1933 Cal App LEXIS 731.

Under this section, which was added to the code in 1929, an action in unlawful detainer by a purchaser at a trustee's sale under a deed of trust is a proper proceeding to remove persons from the demised premises; and, the remedy being purely statutory, if the determination of the question of title to realty becomes necessary, the legislature had the right to provide for the trial of that issue in such a proceeding. *Nineteenth Realty Co. v. Diggs* (1933) 134 Cal App 278, 25 P 2d 522, 1933 Cal App LEXIS 54.

In an action to recover possession of premises under this section, the record title owner is sufficiently the owner, notwithstanding that he holds title as trustee for some other person, to maintain the suit. *Kraemer v. Coward* (1934, Cal App) 2 Cal App 2d 506, 38 P2d 458, 1934 Cal App LEXIS 1455.

This section does not create a new right and an exclusive remedy to enforce it, but merely creates a new remedy without excluding the old remedy of ejectment where it may apply. *Mutual Bldg. & Loan Asso. v. Corum* (1934, Cal App) 3 Cal App 2d 56, 38 P2d 793, 1934 Cal App LEXIS 1138.

This section does not apply to a quiet title action. *Duckett v. Adolph Wexler Bldg. & Finance Corp.* (1935) 2 Cal 2d 263, 40 P2d 506, 1935 Cal LEXIS 321.

This section, which extends the summary remedy of unlawful detainer to certain cases where property has been sold, has no application where the party in possession raises complete issues as to title and the right of possession in an action to quiet title in a court of equity; and under such circumstances the court has power not only to decide the issues presented but to carry its decrees into effect, and it may grant relief by directing the issuance of a writ of possession even though another and different remedy might have been available had an action to quiet the title not been brought. *Furlott v. Security-First Nat'l Bank* (1936, Cal App) 14 Cal App 2d 118, 57 P2d 952, 1936 Cal App LEXIS 829.

This section is not unconstitutional. *St. George v. Meyer* (1937) 9 Cal 2d 161, 69 P2d 993, 1937 Cal LEXIS 373.

The unlawful detainer statutes, including CCP 1161 of this section are purely statutory remedies created by the legislature; hence, it is competent for the legislature to determine the scope of the issues that may be tried in such an action. *Altman v. McCollum* (1951, Cal App Dep't Super Ct) 107 Cal App 2d Supp 847, 236 P2d 914, 1951 Cal App LEXIS 1990.

CCP 1161a, governing unlawful detainer proceedings, does not require a defendant to litigate, in a summary action within the statutory time constraints, a complex fraud claim

involving activities not directly related to the technical regularity of a trustee's sale. *Vella v. Hudgins* (1977) 20 Cal 3d 251, 142 Cal Rptr 414, 572 P2d 28, 1977 Cal LEXIS 192.

So long as a person's possession of real property is achieved through the landlord-tenant relationship, unlawful detainer may be properly used to regain possession in the event of the tenant's default (CCP 1161, 1161a). Neither the relationship nor the remedy is eliminated by the mere fact that, in addition, there is an executory contract of sale between the parties under which the rent is credited against the purchase price, in whole or in part. *Provouskivitz v. Snow* (1977, Cal App 2d Dist) 74 Cal App 3d 554, 141 Cal Rptr 531, 1977 Cal App LEXIS 1943.

Go to Topic List 3. Service and Effect of Notice

Failure to serve the three-day notice upon the trustor of a trust deed, as well as upon his subtenant, does not vitiate a proceeding under this section, where the subtenant only and not the trustor contested the plaintiff's right to possession as a purchaser under the trust deed, and such failure may be deemed waived by the subtenant. *Mailhes v. Investors Syndicate* (1934) 220 Cal 735, 32 P2d 610, 1934 Cal LEXIS 595.

Service of a notice to quit on subtenants is not jurisdictional. *San Jose Pacific Bldg. & Loan Asso. v. Corum* (1934, Cal App) 2 Cal App 2d 276, 37 P2d 866, 1934 Cal App LEXIS 1418.

Go to Topic List 4. Persons by and Against Whom Action May Be Brought

A purchaser or trustee at an execution sale or under a deed of trust may maintain an action under this section. *Pacific States Sav. & Loan Co. v. Hoffman* (1933, Cal App) 134 Cal App 601, 25 P2d 1006, 1933 Cal App LEXIS 180.

In an action to recover possession of premises under this section, after sale under a deed of trust, a foreign corporation, which made the loan to defendants, was not doing business in this state in making said loan, where the notes and deed of trust were executed by defendants in favor of a party secured by defendants' agent, and said documents, with draft attached, were forwarded by defendants' agent to an eastern city where they were approved and accepted by said foreign corporation, which had theretofore been a stranger to the transaction, and which, upon such acceptance, honored the draft and sent the money to the state, payable to the order of defendants. *Kraemer v. Coward* (1934, Cal App) 2 Cal App 2d 506, 38 P2d 458, 1934 Cal App LEXIS 1455.

An action under this section is not restricted to cases covered by 1161 where a tenant holds possession "in person, or by subtenant," and may be brought against any person claiming the right of possession as a successor to or under one whose title is terminated on sale of the property through a deed of trust, pursuant to CC 2924. *Stockton Morris*

Plan Co. v. Carpenter (1936, Cal App) 18 Cal App 2d 205, 63 P2d 859, 1936 Cal App LEXIS 191.

Where a vendor remaining in possession for a limited period as part of the consideration for the sale of realty failed to surrender possession within two years after completion of the sale as provided by the contract, unlawful detainer was the proper form of action and the court was authorized to award treble damages. Moss v. Williams (1948, Cal App) 84 Cal App 2d 830, 191 P2d 804, 1948 Cal App LEXIS 1278.

Mortgagee is not entitled to possession of property, either before or after default, and he has no right of entry except when he is vested with title to property on foreclosure and sale; hence, applying provisions of CC 2924 that transfer of interest in property made only as security for performance of another act is to be deemed mortgage, plaintiff's right to maintain unlawful detainer action was not impaired by existence of deed naming defendant as grantee of property where such deed recited on its face that it was for security only and said defendant made no attempt to show there had been any foreclosure of any security interest asserted by him which would have entitled him to possession. Byrne v. Baker (1963, Cal App 2d Dist) 221 Cal App 2d 1, 34 Cal Rptr 178, 1963 Cal App LEXIS 2099.

Judgment creditor who purchases at his own execution sale and first records sheriff's certificate of sale is protected by provisions of CC 1107, 1214, and his rights are therefore superior to those of holder of unrecorded deed; any interest defendant acquired by deed in property which is subject of action for unlawful detainer would not operate as bar to plaintiff's right to maintain action where defendant's deed was not recorded until after plaintiff's title under execution sale had been perfected and marshal's deed to property recorded. Byrne v. Baker (1963, Cal App 2d Dist) 221 Cal App 2d 1, 34 Cal Rptr 178, 1963 Cal App LEXIS 2099.

A subsequent purchaser from a purchaser at a foreclosure sale was entitled to bring unlawful detainer actions pursuant to former CCP 1161a, subd. (3) (see now CCP 1161a(b)), against occupants of condominium units; the policy of the statute, to provide a summary method of ouster when an occupant holds over possession after sale of the property, would not be served by restricting availability of the action to the original purchaser at the foreclosure sale. Moreover, the requirements that the subsequent purchaser prove his acquisition of title from the foreclosure sale purchaser does not destroy the summary nature of the action. Evans v. Superior Court (1977, Cal App 2d Dist) 67 Cal App 3d 162, 136 Cal Rptr 596, 1977 Cal App LEXIS 1215.

Homeowners cannot be evicted, consistent with due process guarantees, without being permitted to raise affirmative defenses which if proved would maintain their possession and ownership. Accordingly, in an unlawful detainer action brought in municipal court by a corporation that had acquired title to homeowners' property through a loan transaction after the homeowners had defaulted on a prior loan, the homeowners were entitled to defend the eviction action based on their claims of fraud and related causes which they asserted; therefore the action necessarily exceeded the jurisdiction of the municipal

court and could not be tried there. *Asuncion v. Superior Court of San Diego County* (1980, Cal App 4th Dist) 108 Cal App 3d 141, 166 Cal Rptr 306, 1980 Cal App LEXIS 2038.

The procedure in unlawful detainer is covered in CCP 1161 et seq. The remedy, as broadened by statutory changes, is available in three situations: (1) landlord against tenant for unlawfully holding over or for breach of the lease (the traditional and most important proceeding), (2) owner against servant, employee, agent, or licensee, whose relationship has terminated, and (3) purchaser at sale under execution, foreclosure, or power of sale in mortgage or deed of trust, against former owner and possessor. The statutory situations in which the remedy of unlawful detainer is available are exclusive, and the statutory procedure must be strictly followed. *Berry v. Society of Saint Pius X* (1999, Cal App 2d Dist) 69 Cal App 4th 354, 81 Cal Rptr 2d 574, 1999 Cal App LEXIS 42, review or rehearing denied (1999, Cal) 1999 Cal LEXIS 2245.

Go to Topic List 5. Action Involving Issue of Title and Right to Possession

On a sale under a deed of trust, the purchaser has an immediate right to possession; and where a party exchanged property for an apartment house encumbered by a deed of trust, under which notice of default and election to sell was filed before the exchange, but the sale was conducted after the date of exchange, regardless of the right of possession prior to foreclosure the party who would have received the property under the exchange was not entitled to a judgment for possession of it after the sale. *Farris v. Pacific States Auxiliary Corp.* (1935) 4 Cal 2d 103, 48 P2d 11, 1935 Cal LEXIS 506.

Proof that he has duly perfected his title by a sale regularly conducted may be made by the plaintiff in a proceeding under subd 3. *Mortgage Guarantee Co. v. Smith* (1935, Cal App) 9 Cal App 2d 618, 50 P2d 835, 1935 Cal App LEXIS 1196.

Matters affecting the validity of a trust deed, primary obligation, or other basic defects in the title of a plaintiff who purchased at a sale under the trust deed may not be raised by the defendant in an unlawful detainer action. *Cheney v. Trauzettel* (1937) 9 Cal 2d 158, 69 P2d 832, 1937 Cal LEXIS 372.

Right to possession alone is involved in a summary proceeding under this section, and the broad question of title cannot be raised and litigated by a cross-complaint or affirmative defense. *Cheney v. Trauzettel* (1937) 9 Cal 2d 158, 69 P2d 832, 1937 Cal LEXIS 372; *Delpy v. Ono* (1937, Cal App) 22 Cal App 2d 301, 70 P2d 960, 1937 Cal App LEXIS 116.

The title of a purchaser at a sale under a trust deed is involved in an action in unlawful detainer brought by him to the limited extent that he must prove his acquisition of title by purchase at the sale, and the defendant may attack the sufficiency of the sale. *Cheney v. Trauzettel* (1937) 9 Cal 2d 158, 69 P2d 832, 1937 Cal LEXIS 372; *Delpy v. Ono* (1937, Cal App) 22 Cal App 2d 301, 70 P2d 960, 1937 Cal App LEXIS 116; *Seidell v.*

Anglo-California Trust Co. (1942, Cal App) 55 Cal App 2d 913, 132 P2d 12, 1942 Cal App LEXIS 146.

The validity of a trust deed attacked as part of a conspiracy to evade the Alien Land Law was an issue relating to title which could not be raised in an unlawful detainer action by the purchaser at the trust deed sale. *Delpy v. Ono* (1937, Cal App) 22 Cal App 2d 301, 70 P2d 960, 1937 Cal App LEXIS 116.

Where after a sale of trust property the purchaser sued the trustor in a justice's court for unlawful detainer and alleged ownership by virtue of purchase at a trustee's sale regularly conducted, denial of such allegations put in issue title to the property and a judgment which restored possession to such purchaser was sufficient adjudication of title to render applicable the doctrine of *res judicata*. *Bliss v. Security-First Nat'l Bank* (1947, Cal App) 81 Cal App 2d 50, 183 P2d 312, 1947 Cal App LEXIS 1021.

While the broad question of title cannot be raised in an unlawful detainer action, where the action is brought under subd 4, the plaintiff must establish the sale of the property and the title perfected under such sale before recovery can be allowed. *Kelliher v. Kelliher* (1950, Cal App) 101 Cal App 2d 226, 225 P2d 554, 1950 Cal App LEXIS 1103.

Where purchaser at trustee's sale proceeds in unlawful detainer under section, he must prove his acquisition of title by purchase at sale but is not required to prove more with respect to title. *Abrahamer v. Parks* (1956, Cal App 2d Dist) 141 Cal App 2d 82, 296 P2d 341, 1956 Cal App LEXIS 1814.

Under subd 3, title, to the extent required by this section, not only may, but must, be tried in actions if provisions of statute extending remedy beyond cases where conventional relation of landlord and tenant exist are to be judicially nullified. *Kartheiser v. Superior Court of Los Angeles County* (1959, Cal App 2d Dist) 174 Cal App 2d 617, 345 P2d 135, 1959 Cal App LEXIS 1746.

Question of title is not triable in unlawful detainer action, but only question of right of possession. *Patapoff v. Reliable Escrow Service Corp.* (1962, Cal App 2d Dist) 201 Cal App 2d 484, 19 Cal Rptr 886, 1962 Cal App LEXIS 2618.

Broad questions of title may not be litigated in unlawful detainer action; though purchaser at execution sale who proceeds in unlawful detainer action under provisions of this section must prove his acquisition of title by purchase at sale, it is only to this limited extent, as provided by statute, that title may be litigated in such proceeding. *Byrne v. Baker* (1963, Cal App 2d Dist) 221 Cal App 2d 1, 34 Cal Rptr 178, 1963 Cal App LEXIS 2099.

A proceeding for unlawful detainer is summary in character, and ordinarily, only claims bearing directly on the right of immediate possession are cognizable. Also, cross-complaints and affirmative defenses, legal or equitable, are permissible only insofar as they would, if successful, preclude removal of the tenant from the premises. As a

consequence, a judgment in unlawful detainer usually has very limited res judicata effect and will not prevent one who is dispossessed from bringing a subsequent action to resolve questions of title or to adjudicate other legal and equitable claims between the parties. However, to the limited extent provided by CCP 1161a, subd. 3, providing that a person who continues possession of real property may be removed where the property has been duly sold and the title of the sale has been duly perfected, title may be litigated in such a proceeding. *Vella v. Hudgins* (1977) 20 Cal 3d 251, 142 Cal Rptr 414, 572 P2d 28, 1977 Cal LEXIS 192.

In an unlawful detainer action against occupants of condominium units by a subsequent purchaser from a purchaser at a foreclosure sale, pursuant to CCP 1161a, subd. (3), questions of title unrelated to compliance with Civ. Code, 2924, concerning a power of sale contained in a trust deed, and issues which would have been unavailable to the occupants' predecessor in interest, the maker of the trust deed, could not be raised as defenses, but would have to be litigated in a quiet title action. Since such issues were not cognizable in the unlawful detainer action, the judgment in that action would not be res judicata as to those issues, nor would the pendency of the unlawful detainer action be a bar to the simultaneous maintenance of a quiet title action. *Evans v. Superior Court* (1977, Cal App 2d Dist) 67 Cal App 3d 162, 136 Cal Rptr 596, 1977 Cal App LEXIS 1215.

In an action for unlawful detainer, the trial court erred in dismissing the tenants' affirmative defense that raised the issue of title, where the landlord had previously filed an action seeking declaratory relief and quiet title thereby putting the title in issue. *Greenhut v. Wooden* (1982, Cal App 2d Dist) 129 Cal App 3d 64, 180 Cal Rptr 786, 1982 Cal App LEXIS 1304.

Go to Topic List 6. Procedure

Adoption of specific findings on each detail of the proceeding for the sale of the property under a deed of trust were not necessary, where the court found that the defendant, who died pending the action, took a deed and possession with full knowledge that his grantors had no title, that he was in unlawful possession, and had no right thereto at any time. *Stockton Morris Plan Co. v. Carpenter* (1936, Cal App) 18 Cal App 2d 205, 63 P2d 859, 1936 Cal App LEXIS 191.

A judgment in unlawful detainer is res adjudicata in a subsequent suit to set aside a trustee's deed on the ground of irregularity in the foreclosure proceedings, where the unlawful detainer action brought by the purchaser at the trust deed sale involved the same issues which were determined in favor of the regularity of the foreclosure proceedings and the validity of the deed. *Seidell v. Anglo-California Trust Co.* (1942, Cal App) 55 Cal App 2d 913, 132 P2d 12, 1942 Cal App LEXIS 146.

It was improper to grant summary judgment in an unlawful detainer action instituted under this section, where a supporting affidavit related facts concerning a transfer of title

not within the personal knowledge of the plaintiff concerning which he was incompetent to testify. *Kelliher v. Kelliher* (1950, Cal App) 101 Cal App 2d 226, 225 P2d 554, 1950 Cal App LEXIS 1103.

Municipal court has jurisdiction of an unlawful detainer action by the purchaser at a trustee's sale against the trustor where the purchaser alleges the reasonable rental value of the premises to be \$100 a month and seeks damages for less than two months. *Karrell v. First Thrift of Los Angeles* (1951, Cal App) 104 Cal App 2d 536, 232 P2d 1, 1951 Cal App LEXIS 1656.

Facts that owner of realty was not in default under trust deed executed by her, that the note secured by such instrument had been fully paid, and that she had no notice that property was to be sold were available to her as a defense in a prior unlawful detainer action brought against her by a successor of the purchaser at a trust deed sale, and having failed to appear in that action she is precluded from asserting such matters in a subsequent suit instituted by her for a decree setting aside the deed from the trustee to the original purchaser, the sale to such purchaser and his successor, and the judgment in the unlawful detainer action. *Freeze v. Salot* (1954, Cal App) 122 Cal App 2d 561, 266 P2d 140, 1954 Cal App LEXIS 1085.

In summary proceeding of unlawful detainer, only the right to possession is involved, but when purchaser at trustee sale proceeds under this section, title may be litigated to limited extent that purchaser must prove his acquisition of title by purchase at sale. *Cruce v. Stein* (1956, Cal App 2d Dist) 146 Cal App 2d 688, 304 P2d 118, 1956 Cal App LEXIS 1522.

Go to Topic List 7. --Pleadings

Conclusions of law and not facts are stated by a complaint alleging that the plaintiff became the owner in fee and entitled to the possession of the premises by virtue of a sale under CC 2924, where nothing more about the deed and sale is alleged. *American Nat'l Bank v. Johnson* (1932, Cal App Dep't Super Ct) 124 Cal App 783, 124 Cal App 4th Supp 783, 11 P2d 916, 1932 Cal App LEXIS 6.

Although a complaint is insufficient as a statement of facts to bring the case within CCP 1161 where the answer shows that the fact and validity of the sale under the deed of trust is made an issue by the defendants, they cannot on appeal question the sufficiency of the complaint. *Harris v. Seidell* (1934, Cal App) 1 Cal App 2d 410, 36 P2d 1104, 1934 Cal App LEXIS 1289.

Taking of the necessary steps to a valid sale is sufficiently alleged by a complaint under subd 3 alleging that the plaintiff duly performed and caused to be performed all the conditions on his part required by CC 2924, and by other applicable laws and provisions of the deed of trust. *San Jose Pacific Bldg. & Loan Asso. v. Corum* (1934, Cal App) 2 Cal App 2d 276, 37 P2d 866, 1934 Cal App LEXIS 1418.

A complaint based on subd 3, substantially in the language of the statute is sufficient. *Quinn v. Mathiassen* (1935) 4 Cal 2d 329, 49 P2d 284, 1935 Cal LEXIS 547.

An allegation of due compliance with CC 2924 is sufficient without alleging compliance in haec verba. *Quinn v. Mathiassen* (1935) 4 Cal 2d 329, 49 P2d 284, 1935 Cal LEXIS 547.

In action by lessee for damages for eviction, where it was obvious from allegations of the complaint that the parties to the lease intended that the lessee should not be disturbed in its possession and use of the premises by the foreclosure of a trust deed or mortgage securing a bond issue, and the complaint alleged facts sufficient to show the assertion of a paramount title and right to possession by the purchaser on foreclosure under said deed of trust, the allegations of eviction were sufficient against demurrer. *Stillwell Hotel Co. v. Anderson* (1935) 4 Cal 2d 463, 50 P2d 441, 1935 Cal LEXIS 569.

In action in unlawful detainer for rent and possession of property held in part by oral agreement and in part under a written lease, there was no merit in the contention that the property covered by the written lease was not sufficiently described in the complaint where the description was sufficient to enable the appealing defendant to enter on the same and make avail thereof, and, at the trial, said defendant testified that at all times he understood what land was referred to both by the lease and the notice to pay or surrender possession; and, under the circumstances, the addition in the lease of the word "station," after the name of a town near which the land was located, did not make the description doubtful or imperfect. *Mendoza v. Castiglioni* (1936, Cal App) 14 Cal App 2d 710, 58 P2d 939, 1936 Cal App LEXIS 951.

A cause of action under subd 3 is stated by a complaint alleging that the property was sold to the original plaintiff in accordance with the terms of a deed of trust executed by the former owners, and in accordance with CC 2924, where a supplemental complaint details the proceedings required by CC 2924, including notice of default. *Stockton Morris Plan Co. v. Carpenter* (1936, Cal App) 18 Cal App 2d 205, 63 P2d 859, 1936 Cal App LEXIS 191.

An allegation of due compliance with CC 2924, as authorized by 459, is not merely a conclusion of law, but an allegation of fact which, if not denied, must be deemed to have been admitted. *Bank of America Nat'l Trust & Sav. Asso. v. McLaughlin Land & Livestock Co.* (1940, Cal App) 40 Cal App 2d 620, 105 P2d 607, 1940 Cal App LEXIS 150, cert den (1941) 313 US 571, 61 S Ct 958, 85 L Ed 1529, 1941 US LEXIS 686.

An unlawful detainer proceeding is summary in character, and use of cross-complaint in such case would frustrate remedy and render it inadequate. *Tide Water Associated Oil Co. v. Superior Court of Los Angeles County* (1955) 43 Cal 2d 815, 279 P2d 35, 1955 Cal LEXIS 387.

It is proper to sustain, without leave to amend, demurrer to a complaint seeking to set aside a sale under a trust deed, based on alleged failure to comply with the legal requirements as to notice, where the trust deed, which was made a part of the complaint, discloses a provision making the recital in the trustee's deed conclusive, and where such deed, also made part of the complaint, recites that sale and notice complied with the law. *Pierson v. Fischer* (1955, Cal App 3d Dist) 131 Cal App 2d 208, 280 P2d 491, 1955 Cal App LEXIS 2037.

Complaint in unlawful detainer against defaulting trustors of trust deed states facts sufficient to constitute cause of action where it alleges that plaintiff, to whom property was sold by trustee, "is owner and entitled to possession of," property, and where there is attached to complaint as exhibit a copy of trustee's deed which recites that default was made in payment due on note and obligation secured by trust deed specified them. *Abrahamer v. Parks* (1956, Cal App 2d Dist) 141 Cal App 2d 82, 296 P2d 341, 1956 Cal App LEXIS 1814.

In unlawful detainer action based on sale of property by defendants to plaintiff and agreement to vacate property by specified date "if it is possible," it is not necessary to allege facts showing that it was possible for defendants to vacate premises by date set, and complaint alleging that real property involved had been duly sold to plaintiff and title under sale had been duly perfected, that plaintiff was entitled to possession, that three-day notice to quit premises had been personally served on defendants, and that they held over and continued in possession after three-day notice had been served, is sufficient. *Johnson v. Hapke* (1960, Cal App 2d Dist) 183 Cal App 2d 255, 6 Cal Rptr 603, 1960 Cal App LEXIS 1746.

Go to Topic List 8. --Defenses

Equitable defense of cancellation of escrow and withdrawal of defendant's consent to transfer before made is properly raised in action by vendee for removal of vendor from premises and award of damages for withholding possession. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Equitable defense of delivery of deed to plaintiff in violation of escrow is properly raised in action by vendee for removal of vendor from premises and award of damages for withholding possession. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Equitable defense of failure of consideration is properly raised in action by vendee for removal of vendor from premises and award of damages for withholding possession. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Equitable defense of fraud in inducement for relinquishment of property is properly raised in action by vendee for removal of vendor from premises and award of damages for withholding possession. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Equitable defense of rescission of transaction prior to suit is properly raised in action by vendee for removal of vendor from premises and award of damages for withholding possession. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Equitable defense of unauthorized unilateral change in escrow instructions by plaintiff to effect delivery of deed is properly raised, in action by vendee for removal of vendor from premises and award of damages for withholding possession. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

Summary proceeding in unlawful detainer is subject to control of equity in proper case; hence, if defendant in such action possessed valid equitable rights in property that would make it inequitable for plaintiff to proceed, defendant could, by seeking injunction in quiet title suit pending between parties, prevent plaintiff from proceeding. *Byrne v. Baker* (1963, Cal App 2d Dist) 221 Cal App 2d 1, 34 Cal Rptr 178, 1963 Cal App LEXIS 2099.

In an unlawful detainer action under CCP 1161a, subd. (3), by a subsequent purchaser from a purchaser at a foreclosure sale, the subsequent purchaser may not claim the status of a bona fide purchaser without notice against one in open and notorious possession of the premises, so as to cut off defenses which would have been available to the occupant against the original purchaser. *Evans v. Superior Court* (1977, Cal App 2d Dist) 67 Cal App 3d 162, 136 Cal Rptr 596, 1977 Cal App LEXIS 1215.

The statutory remedies for recovery of possession and of unpaid rent (CCP 1159-1179a; Civ. Code, 1951 et seq.) do not preclude a defense based on municipal rent control legislation enacted pursuant to the police power imposing rent ceilings and limiting the grounds for eviction for the purpose of enforcing those rent ceilings. Thus, CCP 1161 (unlawful detainer), does not preempt a defense based upon local rent control legislation. Also, since 1161 does not preempt such a defense, it follows that CCP 1161a (removal of person holding over after notice to quit), does not preempt such a defense. Accordingly, 1161a did not preempt that portion of a local rent stabilization ordinance limiting the grounds for eviction. Passage of such legislation by a local government was an exercise of police power which substantively placed a limitation on an owner's property rights. *Gross v. Superior Court* (1985, Cal App 1st Dist) 171 Cal App 3d 265, 217 Cal Rptr 284, 1985 Cal App LEXIS 2408.

The county's motion for summary judgment on plaintiff's claim of excessive force in evicting her should be granted, absent evidence the county had a policy or custom other than to lawfully enforce writs of possession. Under CCP 1161a, a writ of possession

may be effectuated without a warrant; peace officers may obtain possession through eviction under a valid writ of possession. *Busch v. Torres* (1995, CD Cal) 905 F Supp 766, 1995 US Dist LEXIS 19998.

Go to Topic List 9. --Evidence

To prevail, in action by vendee against vendor for removal of vendor from premises and award of damages for withholding possession, plaintiff must prove affirmatively that property was "duly sold" and that "the title under the sale has been duly perfected," and, contrary to rule applying to unlawful detainer where landlord-tenant relationship is involved, title thus becomes issue. *Kessler v. Bridge* (1958, Cal App Dep't Super Ct) 161 Cal App 2d Supp 837, 327 P2d 241, 1958 Cal App LEXIS 1814.

In unlawful detainer action, property involved is shown to have been duly sold by defendants to plaintiff, within meaning of CCP 1161, by evidence that at request of defendant husband, joined in by defendant wife as evidenced by her active participation, both executed escrow constructions and grant deed conveying title to plaintiff, and that no material representations were made by plaintiff to defendants concerning escrow instructions, reconveyance of second trust deed, grant deed or general agreement of parties. *Johnson v. Hapke* (1960, Cal App 2d Dist) 183 Cal App 2d 255, 6 Cal Rptr 603, 1960 Cal App LEXIS 1746.

In unlawful detainer action based on sale of property to plaintiff and agreement by defendants to vacate premises by stated date "if it is possible," such agreement conditioned defendants' performance on event that was within their control, placing collateral duty on them to bring about happening of event of vacating premises within reasonable time, and placing burden on them to show any reason why it was impossible to vacate on or before agreed date, and where such burden was not fulfilled finding that it was possible for defendants to vacate on or before agreed date was supported. *Johnson v. Hapke* (1960, Cal App 2d Dist) 183 Cal App 2d 255, 6 Cal Rptr 603, 1960 Cal App LEXIS 1746.

In fixing plaintiff's damages for unlawful detention of real property purchased at a non-judicial sale under a trust deed, the trial court did not err in considering, in part, the rents received by defendant during the period of unlawful detention. The proper measure of damages in an unlawful detainer action is the detriment to the owner because of the detention of the property, and the detriment to plaintiff caused by defendant's unlawful detention was measurable in the amount of a reasonable rental value that plaintiff might have realized had it not been denied possession. *MCA, Inc. v. Universal Diversified Enterprises Corp.* (1972, Cal App 2d Dist) 27 Cal App 3d 170, 103 Cal Rptr 522, 1972 Cal App LEXIS 838.