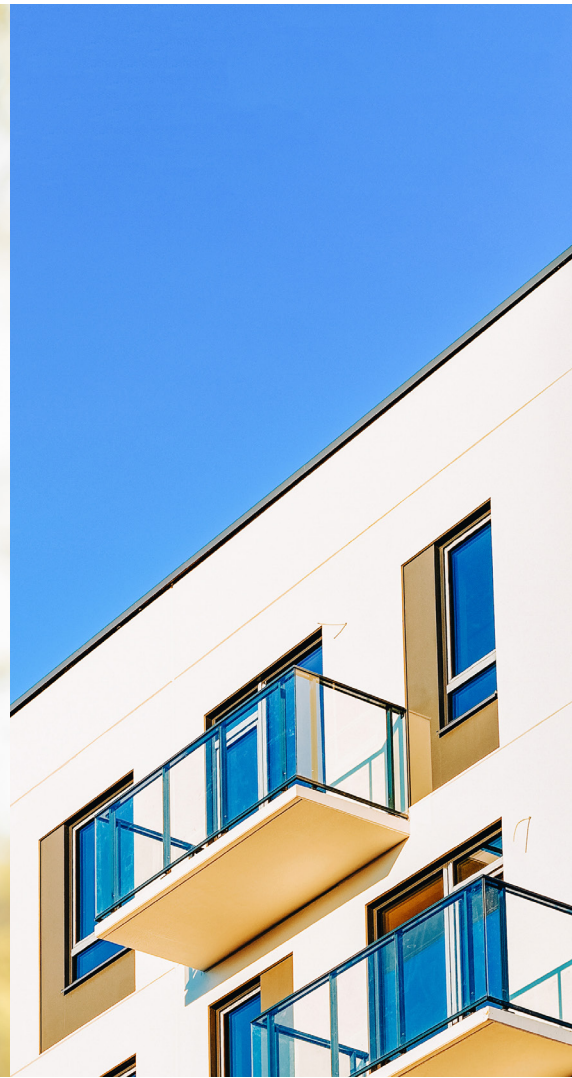




CALIFORNIA TENANTS

A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES



**HOUSING
IS KEY**



HOUSING IS KEY

All Californians deserve
a place to call home

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Official Publication of the California Department of Real Estate

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DISCLAIMER

California Tenants – A Guide to Residential Tenants’ and Landlords’ Rights and Responsibilities was written initially by the Department of Consumer Affairs’ Legal Affairs Division and substantially revised by the Department of Real Estate’s Legal Section in 2020. The Department of Real Estate’s Communications and Publications Section was responsible for publishing the booklet. The opinions expressed in this booklet are those of the authors and should not be construed as representing the opinions or policy of any official or agency of the State of California. To ensure the document is useful for the vast majority of readers, the authors have endeavored to balance the competing objectives of providing accurate, current, and complete information of the law without overwhelming readers with nuanced detail and legalese. As a result, not every subject is addressed with the same level of detail. This booklet is intended for informational purposes only and is not legal advice. To the extent that readers have questions or need further guidance, readers should consult an attorney, legal aid society, landlord association, or tenant advocacy group for advice in particular cases, and should also read the relevant statutes and court decisions when relying on cited material.

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INTRODUCTION

What should a tenant do if his or her apartment needs repairs? Can a landlord force a tenant to move? How many days' notice does a tenant have to give a landlord before moving out? Can a landlord raise a tenant's rent? *California Tenants – A Guide to Residential Tenants' and Landlords' Rights and Responsibilities* answers these questions and many others.

Whether the tenant is renting a room, apartment, house, or duplex, the landlord-tenant relationship is governed by federal, state, and local laws. This booklet focuses on the most significant aspects of the relationship of landlords and tenants in California, particularly the California laws that govern the landlord-tenant relationship. There are other parts of the landlord-tenant law that may not be covered. It is suggested that in addition to reading and using this guide, tenants and landlords may wish to seek additional information regarding their rights and responsibilities from a tenant-landlord program, a housing clinic, a legal aid organization, or an attorney.

It is important that tenants understand their legal rights when it comes to renting a residential unit. This booklet discusses various fair housing laws that protect tenants from unlawful discrimination and harassment. These laws are designed to protect and uphold the inalienable rights of all California tenants, without compromise.

This booklet also suggests steps that both landlords and tenants can take to develop and maintain a good working relationship. Although this booklet is written from the tenant's point of view, landlords can also benefit from the information contained herein.

Tenants and landlords should discuss their expectations and responsibilities before they enter into a rental agreement. If a problem occurs, the tenant and landlord should try to resolve the problem through open communication and discussion. Honest discussion of problems may show each party that they are not completely in the right, and that a fair compromise is warranted.

If the problem is one for which the landlord is responsible (see pages 56-60), the landlord may be willing to correct the problem or work out a solution without further action by the tenant. If the problem is one for which the tenant is responsible (see page 57), the tenant may agree to correct the problem once the tenant understands the landlord's concerns. If the parties cannot reach a solution on their own, they may be able to resolve the problem through mediation or arbitration (see page 126). In some situations, legal action may provide the only solution.

While much of this booklet focuses on tenants, it is designed to educate landlords and tenants on the fundamental aspects of rental housing laws in California. Although this booklet itself is not considered legal authority, the footnotes contained within it cite to the statutes and case law that are considered binding legal authority.

The Department of Real Estate hopes that tenants and landlords will use the information contained in this booklet to avoid problems in the first place, and resolve problems fairly when they do occur.

HOW TO USE THIS BOOKLET

You can find the information you need by using the Table of Contents, Index, and Glossary of Terms contained in this booklet.

TABLE OF CONTENTS

As the Table of Contents shows, this booklet is divided into nine main sections. Each main section is divided into smaller sub-sections. For example, if you seek information about the rental agreement, look under “Rental Agreements and Leases” in the “BEFORE YOU AGREE TO RENT” section.

INDEX

Most of the topics are mentioned in the Table of Contents. If you cannot find a topic there, look in the Index (see page 148) which is more specific than the Table of Contents. For example, under “Cleaning” in the Index, you will find the topics “deposits or fees,” “tenant’s responsibility,” etc.

GLOSSARY

If you just want to know the meaning of a term (such as “**eviction**” or “**holding deposit**”) look in the Glossary (see pages 128-135). The glossary gives the meaning of more than 60 terms. Each term is printed in **boldface type** the first time that it appears in the booklet.

The Department of Real Estate hopes that you will locate the information you are looking for in this booklet. If you cannot find what you are looking for, call or write to one of the resources listed in “Getting Help from a Third Party” (see pages 124-126).

WHO IS A LANDLORD AND WHO IS A TENANT?

GENERAL INFORMATION ABOUT LANDLORDS AND TENANTS

A **landlord** is a person or entity that owns a rental unit. The landlord rents the rental unit to another person, called a **tenant**, for the tenant to live in. The tenant obtains the right to the exclusive use and possession of the rental unit during the **rental period**.

Sometimes, the landlord is called the owner, and the tenant is called a resident.

A **rental unit** is an apartment, house, duplex, condominium, accessory dwelling unit (ADU), room, or other structure or part thereof that a landlord rents to a tenant to live in. Because a tenant uses the rental unit to live in, it is called a residential rental unit or dwelling unit.

Often, a landlord will retain a **rental agent** or **property manager** to manage their rental property. The agent or property manager is compensated by the landlord to represent the landlord’s interests. In some instances, the tenant will deal with the rental agent or property manager on behalf of the landlord. In other instances, the tenant will

deal directly with the landlord. For example, a tenant can work directly with the agent or property manager to resolve problems with the rental unit. When a tenant needs to give the landlord one of the required notices described in this booklet (for example, see pages 74-80 and 105-107), the tenant can give that notice directly to the landlord's rental agent, property manager, or another person if that person is identified in the rental agreement to receive service.

The name, address and telephone number of the person authorized to receive legal notices on behalf of the owner (such as a property manager or owner if no property manager is used) must be written in the rental agreement, or posted conspicuously in the rental unit or building.¹

SPECIAL SITUATIONS

The tenant's rights and responsibilities discussed in this booklet apply only to people whom the law defines as tenants. Generally, under California law, **lodgers** and residents of hotels and motels living in these locations for more than 30 days have the same rights as tenants.² The rights and responsibilities of lodgers and residents of hotels and motels are discussed in the "Special Situations" section found on pages 4-6.³

¹ Civ. Code ("Civil Code") §§ 1961, 1962, 1962.5. Moskowitz et al., California Landlord-Tenant Practice, § 1.30 (California Continuing Education of the Bar ("Cont.Ed.Bar") 2016).

² Civ. Code § 1940(a).

³ See additional discussion in Moskowitz et al., California Landlord-Tenant Practice, § 1.3 (Cont.Ed.Bar 2002, 2005, 2009, 2011, 2016).

Special Situations

Hotels and motels

If you are a resident in a hotel or motel, you do *not* have the rights of a tenant if you are in any of the following situations:

1. You live in a hotel, motel, residence club, or other short-term lodging facility for 30 days or *less*, and your occupancy is subject to the state's hotel occupancy tax.
2. You live in a hotel, motel, residence club, or other lodging facility for *more than 30 days*, but have not paid for all room and related charges owed by the 30th day.
3. You live in a hotel or motel to which the manager has a right of access and control, and all of the following is true:
 - The hotel or motel allows occupancy for periods of fewer than seven days.
 - All of the following services are provided for *all* residents:
 - a fireproof safe for residents' use;
 - a central telephone service;
 - maid, mail, and room service; and
 - food service provided by a food establishment that is on or next to the hotel or motel grounds and that is operated in conjunction with the hotel or motel.

If you live in a unit described by either 1, 2, or 3 above, you are *not* considered a tenant. Rather, you are considered a **guest**. Therefore, you do not have the same rights as a tenant.⁴ For example, a hotel manager can lock out a guest who does not pay his or her room charges on time, while a landlord cannot resort to self-help eviction measures by locking the tenant out and must follow formal eviction proceedings to evict a nonpaying tenant.

Residential hotels

If a residential hotel serves as your primary residence, you possess some of the same legal rights as a tenant.⁵ A residential hotel is any building containing six or more guestrooms designed, used, rented or occupied for sleeping purposes by guests, and which serves as the primary residence of those guests.⁶ A locking mail receptacle must be provided for each guest of a residential hotel.⁷

⁴ Civ. Code § 1940.

⁵ Health and Safety Code ("Health & Saf. Code") § 50519(b)(1). California Practice Guide, Landlord-Tenant, Paragraphs 2:39, 2:40, 7:6.2.

⁶ Ibid.

⁷ Health & Saf. Code § 17958.3; Civ. Code § 1941.1(a)(9); California Practice Guide, Landlord-Tenant, Paragraph 3:21a (Rutter Group 2019).

It is unlawful for the manager of a residential hotel to require a guest to move or to check out and re-register before the guest has lived there for 30 days, if their purpose is to have the guest maintain transient occupancy status (and, therefore, not gain the legal rights of a tenant).⁸ A person who violates this law may be subject to a \$500 civil penalty and may be required to pay the guest's attorney fees.

Single lodger in a private residence

A lodger is a person who lives in a room in a house where the owner lives. The owner may enter all areas occupied by the lodger and has overall control of the house.⁹ Most lodgers have the same rights as tenants.¹⁰

However, in the case of a single lodger in a house where there are no other lodgers, the owner can evict the lodger without using formal eviction proceedings. Instead, the owner can give the lodger written notice that the lodger cannot continue to use the room. The **amount of notice** must be the same as required for any other periodic tenancy (see *Landlord's notice to end a periodic tenancy*, page 76). After the owner has given the lodger proper notice and the applicable time period has expired, the lodger has no further right to remain in the owner's house and may be removed as a trespasser if they refuse to leave.¹¹ However, the lodger may dispute their status as a lodger which may necessitate an unlawful detainer action to be filed by the owner to obtain a writ of possession to remove the lodger.

Transitional housing

Some residents may actually occupy "transitional housing." Transitional housing provides lodging and services to formerly homeless persons for periods of 30 days to 24 months. Residents of transitional housing, who do not pay rent to occupy that housing, are generally referred to as "participants" and are subject to specific behavior rules and eviction procedures.¹² If rent is paid, then they will be considered tenants.

Mobilehome parks and recreational vehicle parks

Most landlord-tenant relationships in mobilehome parks and recreational vehicle parks are governed by the Mobilehome Residency Law¹³ and the Recreational Vehicle Park Occupancy Law.¹⁴

⁸ Civ. Code § 1940.1. Evidence that an occupant was required to check out and re-register creates a rebuttable presumption that the proprietor's purpose was to have the occupant maintain transient occupancy status. (Civ. Code § 1940.1(a).) This presumption affects the burden of producing evidence.

⁹ Civ. Code § 1946.5(c).

¹⁰ Civ. Code § 1940(a); California Practice Guide, Landlord-Tenant, Paragraphs 2:39, (Rutter Group 2019).

¹¹ Civ. Code § 1946.5; Pen. Code § 602.3.

¹² Civ. Code §§ 1954.10-1954.18.

¹³ Civ. Code §§ 798-799.10. Moskowitz et al., California Landlord-Tenant Practice, §§ 6.62-6.89 (Cont.Ed.Bar 2016).

¹⁴ Civ. Code §§ 799.20-799.79.

However, normal landlord-tenant law, including eviction procedures (see pages 107-123), must be followed for certain mobilehome residents. Specifically, a person who leases a mobilehome from its owner (where the owner has leased the site for the mobilehome directly from the management of the mobilehome park) is subject to landlord-tenant law procedures described in this booklet and not any of the in the Mobilehome Residency Law. The same is true for a person who leases occupancy in a mobilehome from the park management.

You can find more information on the Mobilehome Residency Law by accessing the following link: <https://www.hcd.ca.gov/manufactured-mobile-home/mobile-home-ombudsman/mobilehome-resident-rights.shtml>.

LOOKING FOR A RENTAL UNIT

LOOKING FOR AND INSPECTING RENTAL UNITS

Looking for a rental unit

When you are looking for a rental unit, the most important things to think about are:

- The dollar limit that you can afford for monthly rent and utilities.
- The dollar limit that you can afford for all required fees and deposits (for example, application screening fees, holding, security, and pet deposits).
- If the property is located in a city or other area that limits the amount the rent can be increased each year (usually referred to as “**rent control**”).
- The location that you want.

In addition, you also should carefully consider the following:

- The type of rental unit that you want (for example, an apartment complex, a duplex, accessory dwelling unit (ADU), or a single-family house).
- The specifications or amenities that you want (such as, the number of bedrooms and bathrooms).
- Whether you want a month-to-month rental agreement or a rental agreement for a fixed-rental term (see pages 96-98).
- Access to schools, proximity to employment, stores, public transportation, medical facilities, libraries, child-care facilities, and other necessities and conveniences.
- The neighborhood (for example, its safety or available green spaces).
- The condition of the rental unit (see “Inspecting before you rent,” page 8).
- Whether the unit is physically accessible or can be reasonably modified to allow a person with a disability to access and enjoy the housing.
- Other special requirements that you or your family members may have (for example, wheelchair access).
- What State and local tenant protection laws may apply to the unit (see pages 107-108).

You can obtain information on places to rent from many sources. Many websites list rental properties. Local newspapers carry classified advertisements on available rental units. In many areas, free weekly or monthly publications devoted to rental listings are available. Local real estate offices and property management companies often advertise rental listings. Bulletin boards in public buildings, local colleges, and places of worship often have notices about places for rent. You can also look for “For Rent” signs in the neighborhoods where you would like to live.

Note that landlords and housing providers cannot advertise or state a preference for

tenants with certain sources of income. For example, an advertisement stating “No Section 8 tenants,” is unlawful.

Inspecting before you rent

Before you decide to rent, carefully inspect the rental unit with the landlord or the landlord’s agent. This will help you to see if the unit is a safe and healthy place for you to live and will give you a chance to request needed repairs before you move in. It will also protect you from being held responsible for conditions that already existed when you move in. Make sure that the unit has been well maintained. Use the inventory checklist (pages 143-146) as an inspection guide, and take notes about any needed repairs. Ask that you and the landlord (or agent) both sign the inventory checklist at the end to show you both agree with what it says. You can also take pictures of any issues on your phone. When you inspect the rental unit, look for the following problems:

- Cracks or holes in the floor, walls, or ceiling.
- Signs of leaking water or water damage in the floor, walls, or ceiling; this may include dry or wet spots, flaking, bubbling, or a damp or moldy smell.
- The presence of mold that might affect your or your family’s health and safety. Mold may appear as dark spots on a wall or floor.
- Signs of rust in water appearing near the faucet. Bad smelling or discolored water coming from the faucet.
- Leaks in bathroom or kitchen fixtures.
- Lack of hot water.
- Windows and doors that do not open all the way or fail to shut securely.
- Inadequate lighting or insufficient electrical outlets.
- Inadequate heating or air conditioning.
- Inadequate ventilation or offensive odors.
- Defects in electrical wiring and fixtures.
- Damaged flooring.
- Damaged furnishings (if it is a furnished unit).
- Signs of insects, vermin, or rodents.
- Accumulated dirt and debris.
- Inadequate trash and garbage receptacles.
- Chipping paint in buildings, especially older buildings. Paint chipping could be indicative that the rental unit may be poorly maintained. Paint chips in older buildings sometimes contain lead, which can cause lead poisoning in children if eaten. If the rental unit was built before 1978, you should read the booklet, “Protect Your Family From Lead in Your Home,” which is available by calling (800)-424-LEAD or online at <https://www.epa.gov/lead/protect-your-family-lead-your-home-english>.

- Signs of asbestos-containing materials in older buildings, such as flaking ceiling tiles, or crumbling pipe wrap or insulation. (Asbestos particles can cause serious health problems if inhaled or consumed.) For more information, go to www.epa.gov/asbestos.
- Any sign of hazardous substances, toxic chemicals, or other hazardous waste products in the rental unit or on the property.

Also, look at the exterior of the building and any common areas, such as hallways and courtyards. Does the building appear to be well-maintained? Are the common areas clean and orderly?

The quality of rental units can vary greatly. You should understand the positive and negative aspects of the unit and consider all of them before deciding whether to rent, and if the monthly rent is reasonable. Rental units without the amenities listed in this section (generally) are unlawful and violate the Health and Safety Code. They should not be rented, unless repaired by the owner first.

Ask the landlord who will be responsible for paying for utilities (gas, electric, water, and trash collection). You will probably be responsible for paying some, and possibly all, of these utilities. Try to find out how much money the previous tenant paid for utilities. This will help you calculate whether you can afford the total amount of the rent and utilities each month. With increasing energy costs, it is also important to consider whether the rental unit and its appliances are energy efficient.

If the rental unit is a house or duplex with a yard, ask the landlord who will be responsible for taking care of the yard. If you will be responsible for the yardwork, ask whether the landlord will supply necessary equipment, such as a lawn mower and a hose. However, regardless of what the lease states, a landlord is always responsible for making sure the outdoor area is clean and free of debris and garbage.¹⁵ At the same time, the tenant has a duty to keep the premises that they occupy and use clean and sanitary.¹⁶

During your initial viewing of the rental unit, you will have the chance to see how your potential landlord reacts to any concerns and/or questions that you raise. At the same time, the landlord will learn how you likely will handle potential problems. While you may not reach agreement on every issue, how you get along during the initial viewing process will help both of you decide whether you will become a tenant.

If you find problems like those listed above, discuss them with the landlord. If the problems are ones that the landlord is required by law to repair (see pages 56-62), find out when the landlord intends to make the repairs. If you decide to rent the unit, it is recommended to include any repair promises made by the landlord as part of the written rental agreement, including the date by which the landlord will complete the necessary repairs.

If you think you may rent the unit, make note of any problems you observe when looking at the unit, including taking pictures and video. Be sure to address these issues

¹⁵ Civ. Code § 1941.1(a)(6).

¹⁶ Civ. Code §1941.2.

when you perform a “walk-through” with the landlord before or just after moving so they are included on the inventory checklist (see Inventory Checklist page 143). If the Landlord promises to make some of the repairs before you move in, be sure to confirm this in writing to avoid any problems later. You can write the promises down and ask the landlord to sign or send an email or text about the issue(s), requesting a reply as acknowledgement.” However, it is recommended that you make any repair promises a part of the written rental agreement to avoid any problems later.

Generally, the landlord will have a detailed move-in walkthrough form that the landlord will provide to all parties prior to the tenant moving in their possessions.

Finally, you should walk or drive around the neighborhood during the day, and again in the evening, to get a feel for the neighborhood. Ask neighbors whether they like living in the area. If the rental unit is in an apartment complex, ask some of the tenants how they get along with the landlord and the other tenants. Ask other tenants if the landlord has evicted tenants in the past or has served many eviction notices on other tenants. You may also want to ask how quickly the landlord responds to requests for repairs. If you are concerned about safety, ask neighbors and tenants if they know of any problems and whether they think the area is safe.

THE RENTAL APPLICATION

Before renting to you, most landlords will ask you to fill out a written **rental application**. A rental *application* is different from a *rental agreement* (see pages 24-26). The rental application is like a job or credit application that the landlord will use to decide whether to rent to you.

A rental application usually asks for the following information:

- The names, addresses, and telephone numbers of your current and past employers.
NOTE: Because California's fair housing law prohibits discrimination on the basis of source of income, tenants who will pay some or all of the rent from other than employment income must be given the opportunity to provide verification of their income from those non-employment sources.
- The names, addresses, and telephone numbers of your current and past landlords.
- The names, addresses, and telephone numbers of people whom you want to use as references.
- Criminal history information (see page 11).
- Tax identification number, which may be Social Security number.
- Your driver's license number.

There may be instances where an applicant cannot provide a social security or driver license number. In such cases, an applicant may provide a “government-issued” photo identification such as a passport or a foreign driver license instead which would allow the landlord to verify the applicant's identity without inquiring about the applicant's immigration status, which is prohibited under the law (see page 13).

Criminal History

Generally, a housing provider may check the criminal history of an applicant, although there are some types of criminal history information that providers may not seek or consider. Effective January 1, 2020, are new California regulations interpreting California anti-discrimination laws that prohibit landlords from considering certain types of criminal history including: 1) arrests that did not lead to a conviction 2) participation in a pretrial or post-trial diversion program 3) any record of a conviction that has been sealed by the court, or 4) any conviction that came from the juvenile justice system.¹⁷ The regulations also prohibit landlords from having “blanket bans” on all applicants with criminal histories.¹⁸ Instead, landlords must look at the individual circumstances involving a conviction to decide whether it is directly related to an applicant’s ability to be a good tenant.¹⁹ For more information please visit: <https://www.dfeh.ca.gov/wpcontent/uploads/sites/32/2020/04/CriminalHistoryWebinarRemediated.pdf>.

If a housing provider intends to deny someone housing (or otherwise take an adverse action against someone) based on past criminal history, it must be based on a past criminal conviction. The law requires the landlord to follow certain guidelines. Most importantly, the conviction the landlord is concerned about must be a “directly-related conviction.” This means a criminal conviction that has a direct and specific negative bearing on a substantial, legitimate, and nondiscriminatory interest or purpose of the housing provider, such as the safety of other residents, the housing provider’s employees, or the property.

Landlords should be able to provide a copy of their policy on the use of criminal history information and offer you an opportunity to present additional (mitigating) information that could inform their decision. They should also delay considering criminal history information until after your financial and other qualifications have been verified.

¹⁷ California Code of Regulations (“Cal. Code of Regulations”) § 12269 (a) 1-4.

¹⁸ Cal. Code of Regulations § 12259 (a)(5).

¹⁹ Cal. Code of Regulations §§ 12264 - 12271.

Prepaid Rental Listing Services

Businesses known as “**prepaid rental listing services**” sell lists of available rental units. These businesses are regulated by the California Department of Real Estate (DRE) and must be licensed.²⁰ You may check the status of a license issued to a prepaid rental service on the DRE website (www.dre.ca.gov) to ensure that the service is licensed. A prepaid rental listing service must enter into a contract with you *before* accepting any money from you.²¹ The contract must describe the services that the prepaid rental listing service will provide you and the kind of rental unit that you want them to find. For example, the contract must state the number of bedrooms in the unit that you want and the highest rent that you are willing to pay. Contracts with prepaid rental listing services cannot be for more than 90 days.

Before you enter into a contract with a prepaid rental listing service, check to see that they are licensed and that their list of rentals is current. The law requires a prepaid rental listing service to provide you with a list of at least three currently available rentals within five days of entering into a contract.

If the list you purchased from a prepaid rental listing service does not contain three available rental units of the kind that you described in the contract, you are entitled to a refund.²² You must demand a refund from the prepaid rental listing service within 15 days of signing the contract. Your refund demand must be in writing and must be personally delivered to the prepaid rental listing service, or sent via certified or registered mail. (Note, you are not entitled to a refund if you located a rental using the services of the prepaid rental listing service.)

If you do not locate a rental unit from the list you purchased, or if you locate a rental through another source, the prepaid rental listing service can keep only \$50 of the fee you paid. While you are entitled to a refund of the balance, you must request the refund in writing within 10 days after the end of the contract. Your refund request must include documentation that you did not move or that you did not find your new rental using the services of the prepaid rental listing service. If you cannot provide this documentation, you can fill out and swear to a form that the prepaid rental listing service will give you for this purpose (or that you can locate yourself by reviewing the form language set forth in Business and Professions Code section 10167.10). You can deliver your request for a refund personally or by mail (preferably by certified or registered mail with return receipt requested). Look in the contract for the mailing address. The service must make the refund within 10 days after it receives your request, or they are subject to statutory and actual damages.

²⁰ Business and Professions (Bus. & Prof.) Code § 10167.

²¹ Bus. & Prof. Code § 10167.9(a).

²² Bus. & Prof. Code § 10167.10.

Other Rental Application Considerations

The rental application may contain an authorization for the landlord to obtain a copy of your **credit report**, which will show the landlord how you manage your financial obligations.

The landlord may ask you questions about your employment, your monthly income, and other information to establish your ability to pay rent. It is illegal, however, for the landlord to discriminate against you based upon sex, race, color, religion, ancestry, national origin, disability, whether you have persons under the age of 18 living in your household, genetic information, marital status, sexual orientation, gender, gender identity, gender expression, veteran or military status,²³ age, medical condition, citizenship, primary language, or immigration status.²⁴ Other than your source of income and the number of persons in your household and how many are adults, it is also unlawful for a landlord to refuse to rent to you based on having or planning to have a family child care home.²⁵ A landlord may not ask you questions (either orally or in writing) about **any** of these characteristics, including your immigration or citizenship status.²⁶

California and federal law also makes it illegal for landlords to discriminate against potential tenants because they are survivors of **domestic violence**; doing so disproportionately impacts women, who comprise the vast majority of survivors, giving rise to a claim of sex discrimination.²⁷

In the context of a number of federally assisted housing programs, the Violence Against Women Act (VAWA) offers protections to applicants from being denied housing based on one's status as a victim of domestic violence, dating violence, sexual assault, or stalking.²⁸ VAWA protects survivors regardless of gender.

²³ Government Code ("Gov. Code") §§ 12955(b), 12955.1-12955.9; 12989-12989.3; 42 United States Code ("U.S.C.") §§ 3601-3631; Moskowitz et al. California Landlord Tenant Practice §§ 2.22-2.25 (Cont.Ed.Bar 2016).1

²⁴ Civ. Code §§ 51; 51.2.

²⁵ Gov. Code §§ 12955(b), 12955.1-12955.9; 12989-12989.3; 42 U.S.C. §§ 3601-3631; Moskowitz et al. California Landlord Tenant Practice §§ 2.22-2.25 (Cont.Ed.Bar 2016).1. Health & Safety Code § 1597.41 (a)-(c)(relating to family child care homes). Family child care providers, family child care provider applicants, and other affected individuals who have had their protections violated under family child care housing laws have rights to remedies and procedures under the Fair Employment and Housing Act (Gov. Code § 12980 et seq.). Health & Saf. Code § 1597.41(e).

²⁶ Civ. Code § 1940.3(b). California Practice Guide, Landlord Tenant, Paragraph 2:569.9 (Rutter Group 2019).

²⁷ 42 U.S.C. §§ 3601-3619; Cal.Gov. Code § 12955 (prohibiting sex discrimination); Sara K. Pratt, U.S. Dept. of Housing and Urban Dev., Office of Fair Housing, & Equal Opportunity, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (2011).

²⁸ See generally 34 U.S.C. § 12491. For general information about which programs are covered by VAWA, please see this pamphlet from the National Housing Law Project: <https://www.nhlp.org/wp-content/uploads/VAWA-Brochure-English-and-Spanish-combined.pdf>. An attorney can help you figure out if VAWA protections apply in your case. For the purposes of VAWA, the following definitions apply. "Domestic violence" is defined as "felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth

Although a landlord may not discriminate on the basis of the source of your income, a landlord is allowed to ask you about your level of income and the source of your income.²⁹ Also, the landlord is forbidden by law from asking questions about your age or medical condition (see “Unlawful Discrimination,” pages 18-23).³⁰

Effective January 1, 2020, landlords are prohibited from discriminating against a tenant by refusing to rent to someone on the basis that they receive Section 8 assistance or participate in other similar housing voucher programs.³¹ This means that a landlord now cannot refuse to accept a tenant on the basis that a tenant receives rental assistance from a voucher program.

The landlord may ask you about the number of people who will be living in the rental unit. In order to prevent overcrowding of rental units, California has adopted the Uniform Housing Code’s occupancy requirements.³² Generally, a landlord can establish reasonable standards for the number of people in a rental unit, but the landlord cannot use overcrowding as a pretext for refusing to rent to tenants with children if the landlord would rent the unit to the same number of adults.³³

CREDIT CHECKS

Credit reporting agencies (or “credit bureaus”) keep records of people’s credit histories, called “credit reports.” Credit reports state whether a person has a history of paying bills late, has been the subject of an **unlawful detainer lawsuit** (see pages 107-123), or has filed for bankruptcy.³⁴ The landlord or property manager will probably use

victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.” 34 U.S.C. § 12291(a)(8). “Dating violence” is defined as “violence committed by a person--(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship [;] (ii) The type of relationship[;] (iii) The frequency of interaction between the persons involved in the relationship.” 34 U.S.C. § 12291(a)(10). “Sexual assault” is defined as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.” 34 U.S.C. § 12291(a)(29). “Stalking” is defined as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to--(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. 34 U.S.C. § 12291(a)(30).

²⁹ Gov. Code § 12955(p)(2).

³⁰ Gov. Code §§ 12900-12996; Civ. Code §§ 51-53; 42 U.S.C § 3601 and following. However, after you and the landlord have agreed that you will rent the unit, the landlord may ask for proof of your disability if you ask for a “reasonable accommodation” for your disability, such as installing special faucets or door handles and your disability or the need for the accommodation are not known or apparent. (Rosenquest & Portman, *The California Landlords’ Law Book: Rights & Responsibilities*, 18th Ed., pages 172-173 (NOLO Press 2019)). See chapter 9 of this reference for a comprehensive discussion of discrimination.

³¹ Gov. Code §§ 12927(c)(1), (i); 12955(a), (k).

³² Health & Saf. Code § 17922. 1997 Uniform Housing Code § 503(b) (every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two). Different rules apply in the case of “efficiency units.” See 1997 Uniform Housing Code § 503(b), Health & Saf. Code § 17958.1.

³³ Rosenquest & Portman, *The California Landlord’s Law Book: Rights & Responsibilities*, 18th Edition, pages 183-184 (NOLO Press 2019). This reference suggests that a landlord’s policy that is more restrictive than two occupants per bedroom plus one additional occupant is suspect as being discriminatory against families with children.

³⁴ Rosenquest & Portman, *The California Landlord’s Law Book: Rights & Responsibilities*, 18th Ed., pages 21-23 (NOLO Press 2019); California Practice Guide, *Landlord-Tenant*, Paragraphs 9:419.5, 9:419.11 (Rutter Group 2019).

the tenant's rental application to check their credit history and past landlord-tenant relations. The landlord may obtain the tenant's credit report from a credit reporting agency to assist the landlord with the screening process.

Some credit reporting agencies, called **tenant screening services**, collect and sell information about tenants. This information may include whether tenants paid their rent on time; damaged previous rental units; or were the subject of an unlawful detainer lawsuit (eviction lawsuit).³⁵

The landlord may use this information to make a final decision on whether to rent to you. Generally, landlords prefer to rent to people who have a history of paying their rent and bills on time. However, there are circumstances where the court seals the record of an eviction (called "masking"). For example, the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088), which includes the COVID-19 Tenant Relief Act of 2020 (the Tenant Relief Act), masks unlawful detainer actions filed between March 1, 2020 and January 31, 2021 based on a failure to pay rent and civil actions for recovery of unpaid rent between March 1, 2020 and January 31, 2021.³⁶ When the record of an eviction is masked, credit reporting agencies are barred from including this information in a tenant screening report. Tenants can sometimes demonstrate rental history by presenting evidence of having paid rent on time and can demonstrate financial ability to pay by showing proof of income.

A landlord usually does not have to give you a reason for refusing to rent to you. However, if their decision is based partly or entirely on negative information from a credit reporting agency or a tenant screening service, the law requires the landlord to give you a written notice stating all of the following:

- The decision was based partly or entirely on information in such a report; and
- The name, address, and telephone number of the credit reporting agency or screening service; and
- A statement that you have the right to obtain a free copy of the report relied upon from the reporting agency that prepared it and to dispute the accuracy or completeness of information contained in the credit report.³⁷

If the landlord refuses to rent to you based on your credit report, it is recommended that you get a free copy of your credit report and correct any erroneous or fraudulent information that could lead to the further denials.³⁸ Additionally, if you paid an application

³⁵ *Schoendorf v. Unlawful Detainer Registry, Inc.* (2002) 97 Cal.App.4th 227, 231.

³⁶ Code Civ. Proc. §§1161.2(g)(2) & 1161.2.5.

³⁷ Consumer Credit Reporting Agencies Act, Civ. Code §§ 1785.1-1785.36 and § 1785.20(a); Investigative Consumer Reporting Agencies Act, Civ. Code §§ 1786-1786.60 and § 1786.40; 15 U.S.C. §§ 1681-1681x and 1681m(a). In order to receive a free copy of your credit report, you must request it within 60 days after receiving the notice of denial. See discussion in California Practice Guide, Landlord-Tenant, Paragraphs 2:104.50-2:104.55 (Rutter Group 2019). Landlords' responsibilities when using credit reports are outlined in a publication by the Federal Trade Commission titled "Using Consumer Reports: What Landlords Need to Know," which can be found online at www.ftc.gov/bcp/edu/pubs/business/credit/bus49.shtm.

³⁸ Civ. Code §§ 1785.16, 1786.24; 15 U.S.C. § 1681i.

fee you have a right to request a copy of that credit report from the landlord.³⁹

Also, if you know what is contained in your credit report, you may be able to explain any problems when you fill out the rental application. For example, if you know that your credit report says that you never paid a particular bill, you can provide a copy of a canceled check to show that you actually paid the bill.

Your **credit score** is also important. The landlord probably will consider your credit score in deciding whether to rent to you. Your credit score is a numerical score that is based on information from a credit reporting agency. Landlords and other creditors use credit scores to gauge how likely a person is to meet his or her financial obligations, such as paying rent. You can request your credit score when you request your credit report (you may have to pay a reasonable fee for your score) or purchase your score from a vendor.⁴⁰

APPLICATION SCREENING FEE

When you submit a rental application, the landlord may charge you an application screening fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining a credit report about you.⁴¹

The application screening fee cannot legally be more than the landlord's actual out-of-pocket costs, including the cost of obtaining a consumer credit report, and the reasonable value for the time spent by the owner or the owner's agent in gathering information concerning the applicant. The amount is adjusted annually commensurate with an increase in the Consumer Price Index.⁴² In 2020, an application screening fee cannot exceed \$52.46. The landlord must give you a receipt that itemizes the cost of obtaining and processing the information about you. The landlord must return any unused portion of the fee (for example, if the landlord does not check your references or does not run your credit).

The landlord cannot charge you an application screening fee when the landlord knows or should know that there is no vacancy, or that there will be no vacancy within a reasonable time. However, the landlord is permitted to charge an application screening fee under these circumstances if you provide informed written consent.⁴³

A landlord who has obtained your consumer credit report must provide you with a copy of the report upon your request.⁴⁴ As explained in the section on "Credit Checks," it is recommended that you obtain a copy of your credit report from the landlord so that you know what is being reported about you.

Before paying an application screening fee, ask the landlord the following questions:

³⁹ Civ. Code § 1950.6(f).

⁴⁰ Civ. Code §§ 1785.15(a)(2), 1785.15.1, 1785.15.2; 15 U.S.C. § 1681g(f). Vendors include www.TransUnion.com, www.Experian.com, www.Equifax.com, and www.myfico.com.

⁴¹ Civ. Code § 1950.6. The maximum fee is adjusted each year based on changes in the Consumer Price Index since January 1, 1998. In 2020, the maximum allowable fee is \$52.46.

⁴² Civ. Code § 1950.6.

⁴³ Civ. Code § 1950.6(c).

⁴⁴ Civ. Code § 1950.6(f).

- How long will it take to get a copy of your credit report?
- How long will it take to review the credit report and decide whether to rent to you?
- Is the fee refundable if the credit check takes too long and you're forced to rent another place?
- If you already have a current copy of your credit report, will the landlord accept it and either reduce the fee or not charge it at all?

If you do not like the landlord's policy on application screening fees, you may want to look for another rental unit. A landlord is required to return any unused portion of the screening fee. If you decide to pay the application screening fee, any agreement regarding a refund should be in writing.

HOLDING DEPOSIT

A **holding deposit** is a deposit tendered by the tenant/applicant and held by the landlord to take an available rental unit off of the market while the applicant's application is being processed or, once the landlord has approved the application and the parties have signed a rental agreement, hold the rental unit available for a stated period of time if the tenant is unable to move in immediately. Most landlords utilize a holding deposit agreement, which the parties sign, to govern how the holding deposit will be used. The holding deposit agreement requires the landlord to take the rental unit off of the market. If the application is not approved, it will direct the landlord to refund the holding deposit. If the application is approved and the parties sign a rental agreement, it will direct the landlord either to apply the holding deposit towards the first month's rent or security deposit or refund the holding deposit. If the application is approved, but the applicant fails to sign the rental agreement, it may permit the landlord to retain some or all of the holding deposit.

Ask the following questions before you pay a holding deposit:

- Will the deposit be applied to the first month's rent or security deposit? If the answer is yes, ask the landlord for a receipt and written confirmation of this agreement. Applying the deposit to the first month's rent is a common practice.
- Is any part of the holding deposit refundable if you change your mind about renting? As a general rule, if you change your mind, the landlord can keep some (and perhaps all) of your holding deposit. The amount that the landlord can keep depends on the costs that the landlord incurred in holding the unit such as additional advertising costs to find a new tenant or lost rent.

You may also lose your deposit if something happens and you cannot pay rent (for example, you lose your job).

If you and the landlord agree that all or part of the deposit will be refunded in the event that you change your mind or cannot move in, make sure that the written receipt clearly sets forth your agreement.

If you make an agreement to pay a holding deposit, always get a copy of this agreement in writing. When you pay the deposit, ask for a written receipt.

A holding deposit merely guarantees that the landlord will not rent the unit to another person for a stated period of time. It does not give the tenant the right to move into the rental unit. The tenant must pay the first month's rent and all other required deposits within the holding period before occupying the unit. Otherwise, the landlord can rent the unit to another person and keep all or part of the holding deposit, depending on the agreement.

Suppose that the landlord rents to somebody else during the holding deposit period, and you are still willing and able to move in. The landlord should, at a minimum, return the entire holding deposit to you. You may also want to talk with an attorney, legal aid organization, tenant-landlord program, or housing clinic about whether the landlord is responsible for damages you incurred due to the loss of the rental unit.

If you give the landlord a holding deposit when you submit your rental application, but the landlord does not accept you as a tenant, the landlord must return the entire holding deposit.

UNLAWFUL DISCRIMINATION

What is unlawful discrimination?

A landlord cannot refuse to rent to a tenant, or provide unequal terms to a tenant, for a discriminatory purpose. The law also safeguards certain protected classes from discrimination. In California, protected groups, or "classes", include:

- Race, color
- Ancestry, national origin
- Religion
- Disability, mental or physical
- Sex, gender
- Sexual orientation
- Gender identity, gender expression
- Genetic information
- Marital status
- Familial status
- Source of income (including housing vouchers)
- Military or veteran status

Additionally, the Unruh Act, which applies to private housing, prohibits discrimination on the basis of citizenship, immigration status, primary language, age, medical condition, or any other arbitrary personal characteristic. Discrimination on the basis of specified personal characteristics, is also prohibited.⁴⁵ Indeed, the California Legislature has

⁴⁵ California Practice Guide, Landlord-Tenant, Paragraph 2:553.25 (Rutter Group 2019).

declared that the opportunity to seek, obtain, and hold housing free of unlawful discrimination is a civil right protected under the United States and California Constitutions.⁴⁶

Discrimination can take many forms. Discrimination may mean treating a person or people differently because of a particular protected characteristic. Examples of different treatment could be a landlord failing to make repairs for tenants of a specific ethnicity or singling out tenants over a certain age for eviction. Discrimination also includes actions that were not meant to be discriminatory but that harm protected groups.⁴⁷ For example, having very strict rules against how many people can live in a housing unit may result in excluding many families with children.

Under California law, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against or harass a person because of their race, color, religion, sex (including pregnancy, childbirth or medical conditions related to them) disability, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, veteran or military status, or genetic information disability.⁴⁸ California law also prohibits discrimination based on any of the following:

- A person's age, medical condition, citizenship, primary language, immigration status,; or personal characteristics, such as a person's physical appearance or other characteristics that may be termed as 'arbitrary' discrimination;⁴⁹
- A perception of a person's race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information, or a perception that a person is associated with another person who may have any of these characteristics, or⁵⁰
- Having or planning to have a family child care home.⁵¹

A landlord cannot apply rules, regulations or policies to unmarried couples or couples who are registered domestic partners that do not apply to married couples.⁵² For example, if a landlord allows married couples to combine their incomes to qualify for a unit, the landlord must also allow people who are unmarried (i.e., domestic partners, same-sex couples, roommates, etc.) to combine their income to qualify on the same basis as married couples.

Except as may be specifically required by federal law for certain housing programs, a

⁴⁶ Gov. Code § 12921(b).

⁴⁷ Cal. Code Regs. § 12060.

⁴⁸ Gov. Code §§ 12926(p), 12927(e), 12955(a),(d). Fair Employment and Housing Act, Gov. Code § 12900 and following; and federal Fair Housing Act, 42 U.S.C. § 3601 and following.

⁴⁹ Civ. Code §§ 51, 51.2, 53; *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142.

⁵⁰ Gov. Code § 12955(m), Civ. Code § 51.

⁵¹ Health & Saf. Code § 1597.41 (a)-(c).

⁵² California Practice Guide, Landlord-Tenant, Paragraph 2:571 (Rutter Group 2019).

landlord may not inquire as to the immigration or citizenship status of the tenant or prospective tenant, or require that a tenant or prospective tenant make any statement concerning his or her immigration or citizenship status.⁵³ However, a landlord can request information or documents in order to verify an applicant's identity and financial qualifications.⁵⁴ Whether or not a landlord can inquire about an existing or prospective tenant's immigration status, it is unlawful for a landlord for purposes of influencing a tenant to vacate his/her rental unit to threaten to disclose information regarding the immigration or citizenship status of a tenant, **occupant**, or other person associated with the tenant or occupant.⁵⁵ It also is unlawful for a landlord to harass, intimidate, or retaliate against an existing or prospective tenant by disclosing that person's immigration or citizenship status to federal, state or local law enforcement officials, including federal immigration officials.⁵⁶

In the case of a government rent subsidy, a landlord who is assessing a potential tenant's eligibility for a rental unit must use a financial or income standard that is based on the portion of rent that the tenant would pay.⁵⁷

A landlord cannot apply special rules to family child care homes or refuse to rent to someone because they plan to have a family child care home.⁵⁸ Under California law, a family child care home is considered a residential use of property, not a business use.⁵⁹ Any lease provisions directly prohibiting, restricting, or indirectly limiting the use of the property as a family child care home are void.⁶⁰ Therefore, even if a lease says, for example, "for residential use only" or "no businesses allowed," a tenant is not violating their lease by operating a family child care home because these lease provisions cannot be enforced. If your rights as a provider under the above law are being violated, you can file a complaint with the California Department of Fair Employment & Housing. You can also sue whoever is violating your rights as a family child care provider.

It is illegal for landlords to discriminate against families who have or care for children under the age of 18.⁶¹ However, housing for senior citizens may exclude families with children. "Housing for senior citizens" includes housing that is occupied only by persons who are at least age 62, or housing that is operated for occupancy by persons who are

⁵³ Civ. Code § 1940.3; California Practice Guide, Landlord-Tenant, Paragraph 2:569.7 (Rutter Group 2019).

⁵⁴ California Practice Guide, Landlord-Tenant, Paragraph 2.569.10 (Rutter Group 2019).

⁵⁵ Civ. Code §1940.2(a)(5).

⁵⁶ Civ. Code §1940.35.

⁵⁷ Gov. Code §§ 12955(n),(o).

⁵⁸ Health & Saf. Code § 1597.41(b)-(c). Family child care providers do not need their landlord's consent to operate a family child care home. However, family child care providers must give their landlords a 30-day written notice before operating their family child care home. Health & Saf. Code § 1597.41(d)(1). Small family child care providers who care for more than 6 and up to 8 children at a time must get their landlord's written consent.. Large family child care providers who care for more than 12 and up to 14 children at a time must get their landlord's written consent. Health & Saf. Code § 1597.44(c); Health & Saf. Code § 1597.465 (c).

⁵⁹ Health & Saf. Code §§ 1597.40(a), 1597.43(a); 1597.45(a),(f). Health & Saf. Code § 1597.45 (no business license, fee, or tax shall be imposed on family child care homes).

⁶⁰ Health & Saf. Code § 1597.40(b)-(c).

⁶¹ Gov. Code § 12955.2.

at least age 55 and that meet other occupancy, policy, and reporting requirements stated in the law.⁶²

Landlords also cannot discriminate against tenants due to their status, or perceived status, as a survivor of domestic violence, because this may be an example of sex discrimination under both California and Federal law. These laws are subject to the limited exceptions described below.⁶³

Limited exceptions for single rooms and roommates

If the owner of an owner-occupied, single-family home rents out a single room in his/her home to a roommate or boarder, and there are no other roommates or boarders paying rent to live in the household, with a limited exception, the owner is not subject to the California Fair Employment and Housing Act or the federal Fair Housing Act.⁶⁴ The exception is that the owner cannot make oral or written statements, or use notices or advertisements which indicate any preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information.⁶⁵ Further, the owner cannot discriminate on the basis of age, medical condition, citizenship, primary language, immigration status, mental or physical disability or personal characteristics, such as a person's physical appearance or other characteristics that may be termed as 'arbitrary'

⁶² 42 U.S.C. § 3607(b), Civ. Code § 51.3(b)(1). "Housing for senior citizens" also includes: Housing that is provided under any state or federal program that the Secretary of Housing and Urban Development has determined is specifically designed and operated to assist elderly persons (42 U.S.C. § 3607(b)); or a housing development that is developed, substantially rehabilitated or substantially renovated for senior citizens and that has the minimum number of dwelling units required by law for the type of area where the housing is located (for example, 150 dwelling units built after January, 1996 in large metropolitan areas) (Civ. Code §§ 51.2, 51.3. Gov. Code § 12955.9. See *Marina Point Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 744-745.).

⁶³ Gov. Code § 12955 (FEHA), 42 U.S.C. §§ 3601-3619; Sara K. Pratt, U.S. Dept. of Housing and Urban Dev., Office of Fair Housing & Equal Opportunity, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act* (2011). In the context of a number of federally assisted housing programs, the Violence Against Women Act (VAWA) offers protections from discrimination based on one's status as a victim of domestic violence, dating violence, sexual assault, or stalking. 34 U.S.C. § 12491(b). For general information about which programs are covered by VAWA, please see this pamphlet from the National Housing Law Project: <https://www.nhlp.org/wp-content/uploads/VAWA-Brochure-English-and-Spanish-combined.pdf>. An attorney can help you figure out if VAWA protections apply in your case. For the purposes of VAWA, the following definitions apply. "Domestic violence" is defined as "felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction." 34 U.S.C. § 12291(a)(8). "Dating violence" is defined as "violence committed by a person-- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship[:]; (ii) The type of relationship[:]; (iii) The frequency of interaction between the persons involved in the relationship." 34 U.S.C. § 12291(a)(10). "Sexual assault" is defined as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent." 34 U.S.C. § 12291(a)(29). "Stalking" is defined as "engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. 34 U.S.C. § 12291(a)(30).

⁶⁴ Gov. Code § 12927(a)(2)(A); U.S.C. § 3603(b)(2).

⁶⁵ Gov. Code §§ 12927(a)(2)(A), 12955(c).

discrimination.⁶⁶

A person in a single-family dwelling who advertises for a roommate or a boarder may express a preference on the basis of sex, if living areas (such as the kitchen, living room, or bathroom) will be shared by the roommate.⁶⁷ This provision of the law does not permit a person to advertise for a roommate regarding other preferences such as their religion, whether they are in college, or whether they have children. No law allows advertisement for such preferences.

Resolving housing discrimination problems

If you are a victim of housing discrimination (for example, if a landlord refuses to rent to you because of your race or national origin), you may have several legal remedies, including:

- Recovery of out-of-pocket losses.
- An injunction prohibiting the unlawful practice.
- Access to housing that you were denied.
- Damages for emotional distress.
- Civil penalties or punitive damages.
- Attorney's fees.

Sometimes, a court may order the landlord to take specific action to stop unlawful discrimination. For example, the landlord may be ordered to advertise vacancies in minority or local newspapers, or place fair housing posters in the rental office.

A number of resources are available to help resolve housing discrimination problems:

- Local **fair housing organizations** (often known as fair housing councils). Look in the business or commercial section of the phone book, use online resources, or dial 4-1-1 for directory assistance. The National Fair Housing Alliance maintains an interactive map of local organizations that advocate for fair housing at <https://nationalfairhousing.org/find-nfha-operating-supporting-members/>.
- Landlords may look for local California apartment association chapters. Look in the business or commercial section of the phone book. The California Apartment Association maintains a list of local apartment association chapters at www.caanet.org.
- Local government agencies. Look in the governmental section of the phone book under *City* or *County Government Offices*, search your city and county website for fair housing information, or call the offices of local elected officials (for example, your city council representative or your county supervisor) or dial 4-1-1 for directory assistance.

⁶⁶ Civ. Code §§ 51, 51.2; Gov. Code § 12948.

⁶⁷ Gov. Code § 12927(c)(2)(B).

- The **California Department of Fair Employment and Housing (DFEH)** investigates housing discrimination complaints (but *not* other kinds of landlord-tenant problems). DFEH enforces the Fair Employment and Housing Act which prohibits discrimination based upon the following categories: ancestry, national origin, marital status, citizenship, mental or physical disability, primary language, familial status, race, color, gender identity, gender, religious expression, sex, gender, genetic information, sexual orientation, immigration status, and source of income. If you feel that you have been the subject of housing discrimination, contact DFEH. The DFEH Housing Enforcement Unit can be reached at (800) 884-1684 TTY (800) 700-2320. You can learn about DFEH's complaint process at <https://www.dfeh.ca.gov/complaintprocess/>.
- The **U.S. Department of Housing and Urban Development (HUD)** enforces the federal fair housing law, which prohibits discrimination based on sex, race, color, religion, national origin, familial status, and disability. Additionally, HUD's Equal Access Rule requires equal access to HUD programs without regard to a person's actual or perceived sexual orientation, gender identity, or marital status. To contact HUD, look in the governmental section of the phone book under *United States Government Offices*, or go to www.hud.gov.
- **Legal aid organizations** provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. Legal aid organizations are located throughout the state. Look in the business or commercial section of the phone book under *Attorneys* or go to <https://lawhelpca.org>. The Legal Aid Association of California also maintains a directory of legal aid organizations at www.laaonline.org, as does the Department of Real Estate at www.landlordtenant.dre.ca.gov.
- Private attorneys. You may consider hiring a private attorney to take legal action against a landlord who has discriminated against you. For the names of attorneys who specialize in housing discrimination cases, contact your county bar association or an attorney referral service.

You must act quickly if you believe that a landlord has unlawfully discriminated against you. The time limits for filing housing discrimination complaints are short. For example, a complaint to the DFEH must be filed within one year from the date of the discriminatory act.⁶⁸ Make sure you document the unlawful discrimination when it occurs. First, write down what happened, including dates and the names of those involved. Then, contact one of the resources listed above for advice and help.

BEFORE YOU AGREE TO RENT

Before you decide on a rental unit, there are several other points to consider. For example: Is an oral rental agreement legally binding? What are the differences between

⁶⁸ Gov. Code § 12980(b).

a lease and a rental agreement? What are some of the advantages and disadvantages of each? This section answers these and other questions.

RENTAL AGREEMENTS AND LEASES

General information

Before a tenant can rent a rental unit, the landlord and tenant must enter into a **rental agreement** or **lease**. A "lease" generally refers to a written agreement while a "rental agreement" generally includes both oral and written agreement. However, these terms are synonymous and can be used interchangeably. For purposes of this guide, the term "rental agreement" is used to describe both a "rental agreement" and a "lease".

The tenant's right to use and possess the landlord's rental unit is called a **tenancy**. The rental agreement includes the terms and conditions that will govern the tenancy, including the length of the tenancy, the amount of the rent, the timing when the rent payments are due, and the amount of the security deposit. Although the different types of rental agreements and tenancies are discussed below, before entering into an agreement with a landlord, the tenant may want to seek advice from an attorney, legal aid organization, housing clinic, or tenant-landlord program to make sure that they understand all of the rental agreement provisions, each party's obligations, and any risks that either party may face.

Oral and Written Agreements

The rental agreement may be oral or written, however, it is strongly recommended that the parties have a written rental agreement. The landlord is required to provide the tenant with a signed copy of the rental agreement within 15 days of its execution. The landlord and tenant should retain copies of the signed rental agreement for their records.

An oral agreement is an agreement where the terms are agreed upon by spoken communication. This is in contrast to a written agreement where the terms are set forth in a written document. A tenancy term of more than one year must be in writing.⁶⁹ Oral agreements for a tenancy term of more than a year are unenforceable.⁷⁰

If you have an oral agreement, the landlord must give you a written statement regarding the name, street address, and phone number of the landlord or agent for receipt of legal notices; the contact information for the person who will accept the rent; and how the rent is to be paid (for example by cash, check or money order).⁷¹ One disadvantage of an oral agreement is that parties will have no written proof of the terms of their rental agreement if they get into a dispute with the other party. Also, once the oral agreement is made, any change of its terms by a landlord, or its termination by either party, must still be made by a properly served and legally sufficient written notice.⁷²

Tenants with special circumstances may especially want to avoid an oral agreement. For instance, tenants may prefer a written agreement if they plan to reside at the rental

⁶⁹ Civ. Code §§ 1091; 1624(a)(1), (a)(3); 1962(a), (b).

⁷⁰ *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 877.

⁷¹ Civ. Code §§ 1091, 1962(b).

⁷² Civ. Code §§ 827, 1945, 1946, 1946.1, 1946.2

unit for an extended period (i.e., several months up to one year), the landlord permits the tenant to have pets or water-filled furniture (i.e., waterbed), or the landlord has agreed to pay any of the expenses (i.e., utilities or garbage removal) or provide any services (i.e., gardening).

Again, a written agreement is preferred and is in the best interest of both parties. The key problem with an oral agreement is that the obligations of the landlord to the tenant, and vice-a-versa, are not spelled out in an easily verifiable form.

Fixed Term and Periodic Tenancies

Whether the parties choose an oral or written agreement, either agreement must address the length of the tenancy or rental period. There are two types of tenancies, a tenancy for a fixed term and a tenancy for a periodic term. **Fixed-term tenancies** are tenancies that last for a set amount of time and have a defined expiration date, such as six months or one year. It is important to understand that the tenant is bound by the agreement until the agreement expires, which means that the tenant must pay the rent and perform all of the tenant's obligations under the agreement during the entire tenancy.⁷³ There are some advantages to having a fixed-term tenancy. For instance, the landlord cannot raise the tenant's rent during the tenancy, unless the rental agreement expressly allows rent increases. Also, the landlord cannot terminate the tenancy while the rental agreement is in effect unless the tenant breaches a term in the rental agreement (for example, the tenant fails to pay rent, damages the property, or commits illegal activity on the premises). A fixed-term tenancy gives the tenant the security of a long-term agreement at a known cost. Even if the rental agreement allows rent increases, the rental agreement should specify a limit on how much and how often the rent can be raised. One disadvantage of a fixed-term tenancy is that the rental agreement may be more difficult to break, especially if another tenant cannot be found to take over your tenancy, if you need to move before the end of the fixed-term. If you move before the fixed-term ends, you could be liable for the rent for the rest of the term or until such time as the landlord rents the unit to a new tenant.⁷⁴

Periodic tenancies are tenancies that continue for successive periods until the landlord or tenant gives the other party proper notification that they want to end the tenancy. Examples of periodic tenancies are tenancies that run from week to week or month to month. A periodic-term tenancy does not state the total number of weeks or months that the rental agreement will be in effect. The tenant can continue to live in the rental unit as long as the tenant continues to pay rent and the landlord does not provide proper notice of termination in a manner provided by law.

If a tenant is protected by just cause eviction protections, a landlord cannot ask a tenant to leave for no reason even during a month-to-month tenancy. Many tenants have city or county just cause eviction protections or have tenancies that qualify for eviction protections under the recently enacted Tenant Protection Act of 2019 (AB 1482) (hereinafter referred to as the "Tenant Protection Act"). In these circumstances, a month-to-month tenancy will continue indefinitely unless a landlord has one of the good causes

⁷³ Civ. Code §§ 1945, 1946, 1946.1.

⁷⁴ Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., pages 390-392 (NOLO Press 2019).

for eviction specified in the law and gives the tenant a valid termination notice.

As for rental payments, the landlord and tenant should agree on the timing of the rental payments. Where the term of a tenancy for a rental unit is not specified, it is presumed to have been for the time period between rental payments.⁷⁵ Thus, the term of a periodic-term tenancy with rent paid monthly is presumed to be for month to month.⁷⁶

State law provides for the **amount of advance notice** that the landlord and tenant must give to the other party to terminate the tenancy or change the terms (except the rental amount) of their rental agreement (see pages 76-81).⁷⁷ Special rules govern the amount of advance notice that a landlord must give to a tenant before the landlord can increase the rental amount, and by how much the rent can be increased (see pages 42-44).

SHARED UTILITY METERS

Some buildings have a single gas or electric meter that serves more than one rental unit. In other buildings, a tenant's gas or electric meter may also measure gas or electricity used in a common area, such as the laundry room or the lobby. In situations like these, the landlord must disclose that utility meters are shared *before* you sign the rental agreement or lease, or as soon as the landlord discovers the shared metering.⁷⁸ When utilities are apportioned among multiple rental units, a tenant may consider asking the landlord to provide them with information about how the charges are apportioned. A landlord cannot charge more than the actual cost of the utilities.

The landlord and tenant should discuss and agree upon which party will be responsible for paying the shared utilities and memorialize their understanding in writing. The options available to the landlord and tenant include:

- The landlord can pay for the utilities provided through the meter for your rental unit by placing the utilities in the landlord's name;
- The landlord can have the utilities in the area outside your rental unit put on a separate meter in the landlord's name; or
- You can agree to pay for the utilities provided through the meter for your rental unit to areas outside your rental unit.⁷⁹

If the landlord fails to do this, the tenant may bring a legal action and ask for remedies such as an order that the utilities be put in the landlord's name, or that the

⁷⁵ Civ. Code §§ 1945, 1946, 1946.1.

⁷⁶ Ibid.

⁷⁷ Civ. Code §§ 827(a), 1946, 1946.1.

⁷⁸ Civ. Code § 1940.9, Public Utilities Code ("Pub. Util. Code") § 739.5. California Practice Guide, Landlord-Tenant, Paragraphs 2:170.1–2:170.10 (Rutter Group 2019). See discussion of utilities billing in Moskovitz et al., California Landlord-Tenant Practice, Paragraph 4.41A-4.41E ("Cont.Ed.Bar 2016"). There it is discussed that the California Public Utilities Commission ("CPUC") has held that it has no jurisdiction in the vast majority of landlord-tenant billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities are agreed to in writing.

⁷⁹ Civ. Code § 1940.9. This section also provides remedies for violations.

tenant be compensated for the tenant's payment of utilities outside the dwelling unit.⁸⁰

If a public municipal utility company provides utility service to a rental dwelling, and the utility service is in the landlord's name, a tenant may be able to become the customer of record on the account in order to avoid utility shut-off if the landlord falls behind on payments.⁸¹

Rental units in older buildings may not have separate water meters or submeters. Ask the landlord if the rental unit that you plan to rent has its own water meter or submeter. If it does not, and if the landlord will bill you for water or sewer utilities, be sure that you understand how the landlord will calculate the amount that you will be billed.⁸² Under California law, a landlord is required to make specific disclosures to a tenant about the billing of water when there is a water submeter for the rental unit.⁸³

Translation of Proposed Rental Agreement

Although most lease negotiations are conducted in English, English may not be the primary language spoken by some landlords and tenants. Parties to a rental agreement may negotiate in another language. If the parties specifically negotiate in Spanish, Chinese, Tagalog, Vietnamese or Korean, the landlord must give the tenant a written translation of the proposed written agreement in the language used in the negotiation *before* the tenant signs the agreement.⁸⁴ This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for a period of one month or less. This rule only applies if Spanish, Chinese, Tagalog, Vietnamese or Korean is used. It does not apply if the parties negotiate in some other language, such as Russian.

The landlord must give the tenant the written translation of the rental agreement whether or not it is requested by the tenant. The translation must include every term and condition in the rental agreement, but may retain elements in English such as names, addresses, numerals, dollar amounts and dates. It is never acceptable for the landlord to give the written translation of the rental agreement to the tenant *after* the tenant has signed the lease. Rather, the landlord must provide the tenant with the written translation of the rental agreement prior to the execution, or signing, of the rental agreement.

However, the landlord is not required to give the tenant a written translation of the lease or rental agreement if all of the following are true:

- The Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking tenant negotiated the rental agreement through his or her own interpreter; and

⁸⁰ Civ. Code § 1940.9(b).

⁸¹ Pub. Util. Code § 10009.

⁸² See discussion of utility billing in Moskovitz et al., *California Landlord-Tenant Practice*, §§ 4.41A-4.41E (Cont.Ed.Bar 2016). There it is discussed that the CPUC has held that it has no jurisdiction in the vast majority of landlord-tenant billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities be agreed to in writing.

⁸³ Civ. Code § 1954.201 et seq., 1954.204, 1954.216.

⁸⁴ Civ. Code § 1632(b). The purpose of this law is to ensure that the Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking person has a genuine opportunity to read the written translation of the proposed agreement that has been negotiated primarily in one of these languages, and to consult with others, before signing the agreement.

- The tenant's interpreter is able to speak fluently and read with full understanding English, as well as Spanish, Chinese, Tagalog, Vietnamese, or Korean (whichever language is used in the negotiation); and
- The interpreter is not a minor (under 18 years of age); and
- The interpreter is not employed or made available by or through the landlord.

If a landlord who is required to provide a written translation of a lease or rental agreement in one of these languages fails to do so, the tenant can rescind (cancel) the agreement.⁸⁵

WHEN YOU HAVE DECIDED TO RENT

Before signing a rental agreement or a lease, the parties should read it carefully so that each party understands all of its terms. What kind of terms should be included in the rental agreement or lease? Can the rental agreement or lease limit the basic rights that the law gives to all tenants? How much can the landlord require you to pay as a security deposit? This section answers these and other questions.

WHAT THE RENTAL AGREEMENT SHOULD INCLUDE

Most landlords use printed forms for their rental agreements, however, printed forms may vary from form to form. *There is no standard rental agreement.* Some agreements may have terms that are only invoked through the checking of a box, placing a party's initials or otherwise marking the agreement. Also, some sections may require filling in one or more blanks before a term is complete and understandable. Therefore, carefully read and understand the entire document before signing it. And make sure you are given a complete and exact copy to keep before signing it. Do not sign an agreement on which any relevant blanks are not completed.

The written rental agreement should contain all of the promises that the landlord or the landlord's agent has made to you and should not contain anything that contradicts what the landlord or the agent told you. If the rental agreement refers to a separate document, such as "tenant rules and regulations," get a copy and read it before you sign the written agreement.

Do not feel rushed into signing. Make sure that you understand every term before signing the rental agreement. If you do not understand something, ask the landlord to explain it to you. If you still do not understand, discuss the agreement with an attorney, legal aid organization, tenant-landlord program, or housing clinic before signing it.

Key terms

The written rental agreement should contain key terms, such as the following:

- The names of the landlord and the tenant.

⁸⁵ Civ. Code § 1632(k). Civ. Code § 1688 and following on rescission of contract.

- The address of the rental unit.
- The amount of the rent.
- When the rent is due, to whom it is to be paid, and where it is to be paid.
- The amount and purpose of the security deposit (see pages 89-91).
- The amount of any late charge or returned check fee (see page 47).
- Whether pets are allowed. The law does not treat assistance animals and service animals as pets.
- The number of people allowed to live in the rental unit.
- Whether attorney's fees can be collected from the losing party in the event of a lawsuit between you and the landlord.
- Who is responsible for paying utilities (gas, electric, water, and trash collection).⁸⁶
- If the rental is a house or a duplex with a yard, who is responsible for taking care of the yard.
- Any promises by the landlord to make repairs, including the date by which the repairs will be completed.
- Contact information for reporting problems or necessary maintenance or repairs, including an emergency number.
- Other items, such as whether you can sublet the rental unit (see page 54-55) and the conditions under which the landlord can enter the rental unit (see pages 52-54).

In addition, the rental agreement must disclose:

- The name, address, and telephone number of the authorized manager of the rental property and an owner (or an agent of the owner) who is authorized to receive legal notices for the owner.
- If you may make your rent payment in person, the rental agreement must state the usual days and hours that rent may be paid in person. Or the document may state the name, street address, and account number of the financial institution where rent payments may be made (if it is within five miles of the unit) or information necessary to establish an electronic funds transfer for paying the rent.
- The form in which rent payments must be made (for example, by check or money order).⁸⁷ Except when there has been an issuance of a 3-Day Notice to Pay Rent or Quit or a dishonored payment instrument, the landlord cannot require that you make

⁸⁶ Civ. Code § 1942.2. If your landlord is obligated to pay utilities and has failed to pay, you may take over a utility service account if it is pending termination. This law requires utility service providers to give the termination of service notice in writing to the tenant in the following languages: English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. A tenant who has made a payment to a utility pursuant to §§ 777, 777.1, 10009, 10009.1, 12822, 12822.1, 16481, or 1648.1 of the Public Utilities Code may deduct the payment from the rent.

⁸⁷ Civ. Code §1962. Moskovitz et al, California Landlord-Tenant Practice, § 1.103-131 (Cont.Ed.Bar 2016); California Practice Guide, Landlord-Tenant, Paragraphs 2:147-147.7 (Rutter Group 2019).

rent payments in cash, or by electronic funds transfer, without offering other options (see pages 45-46).⁸⁸ A tenant should never pay rent in cash without getting a receipt every single time.

- Certain required disclosures, including bed bugs and flood hazards.⁸⁹

If the rental agreement is oral, the landlord or the landlord's agent must give the tenant, within 15 days, a written statement containing the information in the foregoing three bullet points. The tenant may request a copy of this written statement each year thereafter.⁹⁰

Every rental agreement also must contain a written notice that the California Department of Justice maintains a website at www.meganslaw.ca.gov that provides information about specified registered sex offenders. This notice must contain the legally required language.⁹¹

A rental agreement may contain other terms. Examples include whether you must park your car in a certain place, pool or clubhouse hours, whether storage is available, or when quiet hours begin. A landlord may lawfully prohibit smoking anywhere on the rental property. If the landlord chooses to do so, then the rental agreement must specify where on the property smoking is prohibited. If a landlord chooses to prohibit smoking after a rental agreement is entered into, the landlord must provide you with adequate notice of this change.⁹² A landlord cannot prevent you from posting political signs involving, for instance, noncommercial messages associated with people or issues up for public vote. As long as the sign is less than six square feet in size and is not otherwise prohibited by law, it may be posted. If no local ordinance gives time limits for how long you may post the sign, your landlord may establish a reasonable time limit for the posting and removal of the sign. A "reasonable" time period means at least 90 days before the election or vote to which the sign refers and at least 15 days after.⁹³

It is important that you understand all of the terms of your rental agreement before you sign it. If you do not comply with them, the landlord may have grounds to evict you.

Do not sign a rental agreement if you think that its terms are unfair or you believe that one or more terms violate the law. If a term does not fit your needs, try to negotiate a more suitable term (for example, a smaller security deposit or a lower late fee). It is important that any agreed-upon change in terms be included in the rental agreement that both you and the landlord sign. If you and the landlord agree to change a term in the rental agreement, the change can be made in handwriting. Both you and the landlord should initial or sign in the area immediately next to the change to show your approval of the change. Alternatively, the document can be retyped with the new term included

⁸⁸ Civ. Code § 1947.3.

⁸⁹ Civ. Code §1954.603; Gov. Code §8589.45.

⁹⁰ Civ. Code § 1962(b).

⁹¹ Civ. Code § 2079.10a, Pen. Code § 290.46. The required language differs depending on the date of the lease or rental agreement. See Appendix 5.

⁹² Civ. Code § 1947.5.

⁹³ Civ. Code § 1940.4.

therein but will need to be signed by all the parties.

If you do not agree with a term in the rental agreement and cannot negotiate a better term, carefully consider the importance of the term, and decide whether or not you want to sign the document.

The owner of the rental unit or the person who signs the rental agreement on the owner's behalf must give you a copy of the document within 15 days after you sign it.⁹⁴ Be sure that your copy shows the signature of the owner or the owner's agent, in addition to your signature. Keep the document in a safe place and do not ever discard it. A good idea is to email a scanned copy to yourself. Tenants are also entitled to receive one copy of the lease from the landlord every calendar year upon request.

⁹⁴ Civ. Code § 1962(a)(4).

Alterations to Accommodate a Tenant with a Disability

Under fair housing laws, housing providers must make reasonable exceptions to neutral policies, practices or services, or to make certain reasonable physical modifications when necessary to provide persons with disabilities an equal opportunity to use and enjoy a dwelling. A reasonable accommodation could include changing the rental due date or waiving a no animals policy in order to allow a service or emotional support animal to reside in the unit. A landlord must also allow a tenant with a disability to make *reasonable* modifications - physical changes - to the premises to the extent necessary to allow the tenant "full enjoyment of the premises."⁹⁵ Except at properties that receive 'federal financial assistance', as that term is defined by law, the *tenant* must pay for the modifications. However, the landlord is required to make structural modifications if required by a separate provision of the law related to structural access standards. It is important to recognize that a modification is distinct from a reasonable accommodation - a change to a policy or practice - which the property owner cannot charge for, even if they involve some costs. As a condition of making certain modifications, the landlord may require the tenant to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy. Yet, most modifications will not require restoration. The landlord cannot require an additional security deposit in this situation. However, the landlord can require that some form of financial guarantee be put in place that is sufficient to pay for the properly required restoration. This can take the form of requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations, where the interest in any such account shall accrue to the benefit of the tenant.⁹⁶

Assistance animals and service animals, used by persons with disabilities as a reasonable accommodation for a disability, are not pets and are not subject to a no pets policy. A refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling, violates fair housing laws.

For more information on reasonable accommodations, review https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf and https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf.

⁹⁵ Civ. Code § 54.1(b)(3)(A), Gov. Code § 12927(c)(1).

⁹⁶ Civ. Code § 54.1(b)(3)(A) U.S.C § 3604(f)(3)(A), 24 Code of Federal Regulations 100.203(a).

Tenant's basic legal rights

Tenants have basic legal rights that are always present, no matter what the rental agreement states. These rights include all of the following:

- Limits on the amount of the security deposit that the landlord can require you to pay (see pages 37-38).
- As of January 1, 2020, most rental units are covered by the Tenant Protection Act which places a cap on annual rent increases equal to 5% plus inflation, or 10%, whichever is lower, and no more than two rental increases within a 12-month period (see page 42-44).⁹⁷ Tenants living in cities with rent stabilization programs might have additional rent protections available to them. See Appendix 2 in this guidebook for a comprehensive list of California cities and counties with rent stabilization protections.
- Limits on the landlord's right to enter the rental unit (see pages 52-54).
- The right to a refund of the security deposit, or a written accounting of how any of it was used by the landlord, after you move out (see pages 89-91).
- The right to sue the landlord for violations of the law, or your rental agreement.
- The right to repair serious defects in the rental unit and to deduct certain repair costs from the rent, under appropriate circumstances, provided the tenant gives the landlord reasonable advance notice (see pages 61-71).
- The right to withhold rent under appropriate circumstances (see pages 65-68).
- Rights under the warranty of habitability (see pages 56-60).
- The right to the implied rental agreement covenant of 'quiet enjoyment' (see pages 73-74).
- Protection against retaliatory eviction (see pages 121-123).
- Most tenants are protected from being evicted without just cause, which means that the landlord must have a valid legal reason for an eviction (see pages 80-81, AB 1482).
- Right to request a reasonable accommodation.
- Right to fair housing rights and protections against unlawful discrimination.

These and other rights will be discussed throughout the rest of this booklet.

The duty of good faith and fair dealing

Every rental agreement requires that the landlord and tenant deal with each other fairly and in good faith. Essentially, this means that both the landlord and the tenant must treat each other honestly and reasonably. This duty of good faith and fair dealing is implied by law in every rental agreement even though the duty is typically not expressly

⁹⁷ The Tenant Protection Act required landlords to notify tenants before August 1, 2020 about the act's protections for tenancies that existed before July 1, 2020 and are covered by the act. Civ. Code §1946.2(f).

stated in the agreement. A typical legal description of the implied covenant of good faith and fair dealing is that neither party will do anything that will unreasonably interfere with the right of the other party to receive the benefits of the agreement. To put it another way, the implied covenant imposes upon each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose.⁹⁸

LANDLORD'S DISCLOSURES

There are many state-wide disclosures landlords are required by law to make prior to the tenancy commencing. There may be other local disclosure requirements depending on the city or county in which the rental unit is located. These required disclosures often show up as Addendums or Attachments to lease agreements. Here are some you may encounter.

Lead-based paint

If the rental unit was constructed before 1978, the landlord must comply with all of the following requirements:

- The landlord must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling before the tenant signs the rental agreement. The landlord must also give the tenant a copy of the federal government's pamphlet, "Protect Your Family From Lead in Your Home" (available by calling (800) 424-LEAD, or online at <https://www.epa.gov/lead/protect-your-family-lead-your-home>), before the tenant signs the rental agreement.⁹⁹
- The landlord is not required to conduct any evaluation of the lead-based paint, or to remove it.¹⁰⁰
- The rental agreement must contain a lead warning statement in legally-required language.¹⁰¹
- The landlord also must give potential tenants and tenants a written Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards.¹⁰²

Periodic pest control treatments

A pest control company must give written notice to the landlord and tenants of rental property regarding pesticides to be used when the company provides an initial treatment

⁹⁸ *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 589. A typical legal description of the implied covenant of good faith and fair dealing is that neither party will do anything that will injure the right of the other party to receive the benefits of the agreement. See the *Andrews* decision for a discussion of the closely related implied covenant of quiet enjoyment.

⁹⁹ California Practice Guide, Landlord-Tenant, Paragraphs 2:104.20-2:104.23 (Rutter Group 2019); 42 U.S.C §§ 4851b, 4852d (this disclosure requirement does not apply to dwellings with zero bedrooms, or to housing for elderly or disabled persons (unless a child younger than six is expected to live in the housing)); 24 Code of Federal Regulations § 35.88; Health & Saf. Code § 17920.10 (dwellings that contain lead hazards).

¹⁰⁰ 24 Code of Federal Regulations § 35.88.

¹⁰¹ 24 Code of Federal Regulations § 35.92. See Appendix 5.

¹⁰² Moskovitz et al., California Landlord-Tenant Practice, § 1.40 (Cont.Ed.Bar 2016); 24 Code of Federal Regulations §§ 35.88, 35.92. The disclosure form is available at www.epa.gov/lead/pubs/lesr_eng.pdf and is reproduced in Appendix 5.

as part of an ongoing pest-control service contract. The landlord must give a copy of this notice to every new tenant who will occupy a rental unit that will be serviced under the service contract. If the landlord fails to do so, the new tenant might be able to sue the landlord for costs incurred, moving costs, and an additional penalty of up to \$2,500.¹⁰³

Bed Bugs

Prior to creating a new tenancy for a dwelling unit, a landlord must provide a written notice to a prospective tenant about bed bugs. The required notice must include general information about bed bug identification, behavior and biology, the importance of cooperation for prevention and treatment, and the importance of, and for prompt written reporting of, suspected infestations to the landlord. If a landlord suspects that a rental unit contains bed bugs, or if they somehow learn of a possible bed bug infestation, the landlord must inspect the rental unit for bed bugs.¹⁰⁴ If bed bugs are found, a landlord cannot show, rent or lease the rental unit until the bed bugs are eradicated.¹⁰⁵

Asbestos

Residential property built before 1981 may contain asbestos. Landlords of properties built before 1981 are strongly urged to disclose the presence of asbestos whenever they discover or reasonably suspect the presence of asbestos at the property.¹⁰⁶

Carcinogenic material

In 1986, California voters approved the Safe Drinking Water and Toxic Enforcement Act of 1986 (known as “Proposition 65”). The act requires any person or entity with 10 or more employees to provide a warning of possible exposure to chemicals (listed by the State of California) that cause cancer, birth defects or other reproductive harm if that person or entity knows or suspects the chemical is present at a workplace, business or rental housing. Examples of listed chemicals include, but are not limited to, arsenic, asbestos, benzene, and lead. For landlords with 10 or more employees, the landlord must provide the notice in one or more conspicuous locations at the rental property to warn tenants, prospective tenants and others of possible exposure to the listed chemical. For more information, please visit the State of California’s Proposition 65 website at <https://www.p65warnings.ca.gov/>.”

Methamphetamine contamination

Residential property that was used for methamphetamine production may be significantly contaminated.

A local health officer who inspects a rental property and finds that it is contaminated with a hazardous chemical related to methamphetamine laboratory activities must issue an order prohibiting the use or occupancy of the property. This order must be **served** on the property owner and all occupants. The owner and all occupants then must vacate the affected units until the officer sends the owner a notice that the property requires no

¹⁰³ Bus. & Prof. Code § 8538, Civ. Code § 1940.8.

¹⁰⁴ Cal. Civ. Code § 1954.602(b).

¹⁰⁵ Cal. Civ. Code § 1954.602(a).

¹⁰⁶ Portman & Weaver, California Tenants’ Rights, 21st Ed., pages 151-157 (NOLO Press 2018).

further action.

The owner must give written notice of the health officer's order and a copy of it to potential tenants who have completed an application to rent the contaminated property. Before signing a rental agreement, the tenant must acknowledge in writing that they received the notice and order. The tenant may void (cancel) the rental agreement if the owner does not comply with these requirements. The owner must comply with these requirements until they receive a notice from the health officer that the property requires no further action.¹⁰⁷

Demolition permit

The owner of a dwelling who has applied for a permit to demolish the dwelling must give written notice of this fact to a prospective tenant *before* accepting any fee from the tenant or entering into a rental agreement with the tenant. (The owner must give notice to current tenants, including tenants who have yet to move in, before applying for a permit.) The notice must state the earliest approximate date that the owner expects the demolition to occur, and that the tenancy will end.¹⁰⁸

Military base or explosives

A landlord who knows that a rental unit is within one mile of a closed military base in which ammunition or military explosives were used must give written notice of this fact to a prospective tenant. The landlord must give the tenant this notice before the tenant signs a rental agreement.¹⁰⁹

Death in the rental unit

California law requires a landlord to disclose to a prospective tenant a death and the manner of such death that occurred at the rental unit within the last three years. The landlord is not required to disclose that an occupant of the rental unit was living with human immunodeficiency virus ("HIV") or died from AIDS-related complications. The law does not protect an owner, however, from liability for making any intentional misrepresentations in response to a direct inquiry from a prospective tenant who asked about a death at the rental unit.¹¹⁰

Condominium conversion project

A rental unit may be in a condominium conversion project. A condominium conversion project is an apartment building that has been converted into condominiums or a newly constructed condominium building that replaces demolished residential housing. Before the potential tenant signs a rental agreement, the owner or subdivider of the condominium project must give the tenant written notice that:

- The unit has been approved for sale, and may be sold, to the public, and
- The tenant's rental agreement may be terminated (ended) if the unit is sold, and

¹⁰⁷ Health & Saf. Code §§ 25400.10-25400.47.

¹⁰⁸ Civ. Code § 1940.6.

¹⁰⁹ Civ. Code § 1940.7.

¹¹⁰ Civ. Code § 1710.2.

- The tenant will be informed at least 90 days before the unit is offered for sale, and
- The tenant normally will be given a first option to buy the unit.

The notice must be in legally required language. This notice requirement applies only to condominium conversion projects that have five or more dwelling units and that have received final approval. If the notice is not given, the tenant may recover actual moving expenses not exceeding \$1,100 and the first month's rent on the tenant's new rental unit, if any, not to exceed \$1,100. These notice provisions do not apply to projects of four dwelling units or less, or as a result of transfers due to: court order (including probate proceedings), foreclosure proceedings, or trusts.¹¹¹

In some cities, additional requirements for condominium conversion may apply, or certain types of condominium conversions may be prohibited.

Flood Hazard

In all rental agreements entered into after July 1, 2018, if the owner has actual knowledge that the rental unit is located in a flood hazard zone, the landlord must disclose to the tenant that they live in a special flood hazard area or an area of potential flooding.¹¹²

Megan's Law

A landlord must include the following language in every rental agreement: "Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides."¹¹³

BASIC RULES GOVERNING SECURITY DEPOSITS

At the beginning of the tenancy, the landlord can, and most likely will, require you to pay a **security deposit**. The landlord can use the security deposit, for example, if you move out owing rent, damage the rental unit beyond normal wear and tear, or leave the rental unit less clean than when you moved in.¹¹⁴

Under California law, a rental agreement cannot say that a security deposit is nonrefundable.¹¹⁵ This means that when the tenancy ends, the landlord *must* return to you any payment that is a security deposit, *unless* the landlord uses the deposit for a lawful purpose, as described on pages 81-84 and 89-91.

Almost all landlords charge tenants a security deposit. The security deposit may be

¹¹¹ Gov. Code § 66459; California Practice Guide, Landlord-Tenant, Paragraphs 5:313.5-5:313.9 (Rutter Group 2019). See Appendix 5 for the required language.

¹¹² Gov. Code § 8589.45.

¹¹³ Civ. Code § 2079.10a.

¹¹⁴ Civ. Code § 1950.5(b).

¹¹⁵ Civ. Code § 1950.5(m); Portman & Weaver, California Tenants' Rights, 21st Ed., page 213 (NOLO Press 2018).

called last month's rent, security deposit, pet deposit, key fee, or cleaning fee. The security deposit may be a combination, for example, of the last month's rent plus a specific amount for security. But note that if a tenant is living with a service or emotional support animal, they cannot be charged a separate pet deposit. No matter what these payments or fees are called, the law considers them all, as well as any other deposit or charge, to be part of the security deposit.¹¹⁶ The one exception to this rule is stated in the next paragraph. Tenants should not believe that they have somehow pre-paid their last month's rent if the landlord has used this term with respect to the security deposit. The landlord will almost always be able to insist a tenant pay rent for their last month or partial portion thereof.

EXCEPTION: The law allows the landlord to require a tenant to pay an application screening fee, *in addition* to the security deposit (see pages 16-17).¹¹⁷ The application screening fee is *not* part of the security deposit. However, any other fee charged by the landlord at the beginning of the tenancy to cover the landlord's costs of processing a new tenant *is* part of the security deposit.¹¹⁸ Here are examples of the two kinds of fees:

- **Application screening fee**—A landlord might charge you an application screening fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining your credit report (see pages 16-17). The application screening fee is *not* part of the security deposit. Therefore, it is not refundable as part of the security deposit.

The law limits the total amount that the landlord can require you to pay as a security deposit. The total amount allowed as security depends on whether the rental unit is unfurnished or furnished and whether you have a waterbed.

- **Unfurnished rental unit:** The total amount that the landlord requires as security cannot exceed *two months' rent*. If you have a waterbed or any other liquid-filled bedding, the total amount allowed as security can be up to two-and-a-half times the monthly rent.
- **Furnished rental unit:** The total amount that the landlord requires as security cannot exceed *three months' rent*. If you have a waterbed or any other liquid-filled bedding, the total amount allowed as security can be up to three-and-a-half times the monthly rent.
- The foregoing maximum security deposit amounts may be reduced by one month's rent if the tenant's household consists only of a service member and any of their spouse, parent, domestic partner, or dependents. Service members with a poor credit or tenant history may be charged up to the regular maximum deposit amount.

The landlord can require you to pay the first month's rent *in addition* to the security

¹¹⁶ Civ. Code § 1950.5(b).

¹¹⁷ Civ. Code §§ 1950.5(b), 1950.6.

¹¹⁸ Civ. Code § 1950.5(b).

deposit.¹¹⁹ If you choose to pay in cash, which is not recommended, be sure to get a receipt at the time you make the payment. The above security deposit limitations and rules also apply to family child care homes.

Security deposit examples:

- Suppose that you agreed to rent an unfurnished apartment for \$1,000 a month. Before you move in, the landlord can require you to pay up to two times the amount of the monthly rent as a security deposit ($\$1,000 \times 2 = \$2,000$). The landlord also can require you to pay the first month's rent of \$1,000, plus an application screening fee of up to \$52.46, in addition to the \$2,000 security deposit. This is because the first month's rent and the application screening fee are not part of the security deposit.
- Suppose the landlord requires you to pay \$2,000 security deposit (the maximum allowed by law for an unfurnished unit when the rent is \$1,000). The landlord cannot then add to this \$2,000 deposit additional deposit fees such as another \$200 cleaning fee, \$25 key deposit, \$50 mail box deposit fee, or other similar fees. The \$2,000 plus the added fees would be prohibited by state law.

A landlord cannot require that a security deposit is nonrefundable.¹²⁰ However, when you move out of the rental, the law allows the landlord to keep all or part of the security deposit for the following:

- You owe rent;
- You leave the rental less clean than when you moved in;
- You damaged the rental beyond normal wear and tear;
- You have made alterations and did not return the unit to the original condition; or
- You fail to restore personal property (such as keys or furniture), other than because of normal wear and tear.

If none of these circumstances are present, the landlord must return the entire amount that you paid as security. However, if you left the rental very dirty or damaged beyond normal wear and tear, for example, the landlord can keep an amount that is reasonably necessary to clean or repair the rental.¹²¹ Deductions from security deposits and the time periods when the landlord must notify the tenant of any deductions are discussed in detail on pages 85-91.

Make sure that your rental agreement clearly states that you paid a security deposit to the landlord and correctly states the amount that you paid. Most landlords will give you a

¹¹⁹ Civ. Code § 1950.5(c). These limitations do not apply to long-term leases of at least six months, in which advance payment of six months' rent (or more) may be charged. Civ. Code § 1940.5 sets the limits on security deposits when the tenant has a waterbed or water-filled furniture. The section also allows the landlord to charge a reasonable fee to cover the landlord's administrative costs.

¹²⁰ Civ. Code § 1950.5(m).

¹²¹ Civ. Code § 1950.5(b),(e).

written receipt for all amounts that you pay as a security deposit. Keep a copy of both the receipt, if any, and your rental agreement in case of a dispute.¹²²

California law provides survivors of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse the ability to terminate their lease early without penalty. A landlord may not charge a tenant a penalty for breaking their lease, regardless of what is stated in their lease, if the tenant is breaking their lease because of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse. The tenant must tell the landlord in writing that they are ending the rental agreement early because of the domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse they've experienced, and provide the landlord a copy of a restraining order no more than 180 days old, a police report no more than 180 days old, or a statement from a qualified third-party. Qualified third parties include domestic violence or sexual assault advocates, doctors, registered nurses, psychologists, or licensed clinical social workers. However, the landlord can require the tenant to pay rent for 14 days after providing this notice (which must be refunded if the landlord re-rents the unit within that time). Tenants can also break their lease early if it is necessary because the tenant's household member is a survivor of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse.¹²³ The National Housing Law Project has created an Early Lease Termination Toolkit, available at: <https://www.nhlp.org/wp-content/uploads/00-CA-Civil-Code-1946.7-Toolkit-Jan-2016updated.pdf>.

Normal security deposit law applies in cases where a survivor has to break their lease early.¹²⁴ In addition, if the tenant is a survivor of domestic violence, a landlord may not penalize the tenant for property damage, nor deduct the cost from the security deposit to repair those damages, caused by the domestic violence survivor's abuser if the domestic violence survivor (i.e., tenant) did not invite the abuser onto the property.¹²⁵

If your building changes owners during your tenancy, your prior landlord is responsible for either transferring your security deposit to your new landlord or returning the security deposit to you, minus any lawful deductions.¹²⁶

If your landlord fails to return part or all of a security deposit without having a reason allowed by law, you may be able to recover your deposit in court, such as by filing a

¹²² Civ. Code § 1950.5(o) (describes evidence that proves the existence and amount of a security deposit).

¹²³ Civ. Code § 1946.7.

¹²⁴ Civ. Code § 1946.7.

¹²⁵ Gov. Code § 12955; 42 U.S.C §§ 3601-3619 (prohibiting sex discrimination); Sara K. Pratt, U.S. Dept. of Housing and Urban Dev., Office of Fair Housing & Equal Opportunity, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (2011). In the context of a number of federally assisted housing programs, the Violence Against Women Act (VAWA) offers protections from discrimination based on one's status as a victim of domestic violence, dating violence, sexual assault, or stalking. 34 U.S.C. § 12491(b). For general information about which programs are covered by VAWA, please see this pamphlet from the National Housing Law Project: <https://www.nhlp.org/wp-content/uploads/VAWA-Brochure-English-and-Spanish-combined.pdf>. An attorney can help you figure out if VAWA protections apply in your case.

¹²⁶ Civ. Code § 1950.5(h).

lawsuit in small claims court.¹²⁷ If the landlord withheld the security deposit in bad faith, the court may award the tenant up to twice the amount of the security deposit, plus any monetary damages that the tenant suffered.¹²⁸

THE INVENTORY CHECKLIST

While not legally required, it is a good practice for you and the landlord, or the landlord's agent, to fill out the Inventory Checklist, such as the example on pages 143-146 (or one like it). Generally, the landlord will have such a form available. It is best to do this before you move in, but it can be done two or three days later, if agreed to by the landlord. You and the landlord or agent should walk through the rental unit together and note the condition of the items included in the checklist in the "Condition Upon Arrival" section. In addition to noting conditions on the checklist, it is recommended that you take pictures of conditions needing attention.

Both the landlord and tenant should sign and date the checklist, and both of you should keep a copy. Carefully completing the checklist at the beginning of the tenancy will help avoid disagreements about the condition of the unit when you move out. You should complete the Inventory Checklist and take pictures of any issues even if the landlord does not want to complete a walk through with you.

See additional suggestions about the Inventory Checklist on page 98.

RENTER'S INSURANCE

Renter's insurance protects the tenant's personal property from losses caused by fire or theft. It also protects a tenant against liability (legal responsibility) for many claims or lawsuits filed by the landlord or others alleging that the tenant negligently (carelessly) injured another person or damaged the person's property. Renter's insurance usually only protects the policyholder. A roommate must take out his or her own renter's insurance policy to protect his or her personal property. Many landlords will require a tenant to have renter's insurance, specifically liability coverage, and will set the minimum terms of coverage. Be sure to factor the cost of this insurance into what it will cost you to live at the property.

Accidentally leaving on a portable room heater which causes a fire that destroys the rental unit, or another tenant's property, is an example of **negligence** for which the tenant could be held legally responsible.¹²⁹ The tenant could be required to pay for the losses that the landlord or other tenants suffer due to the tenant's negligence. Renter's insurance would cover some or all of your liability to pay the other party their losses. For that reason, it is recommended that a tenant purchase renter's insurance.¹³⁰

Note, however, that several cases in rent control jurisdictions have held that the landlord cannot evict a tenant for the tenant's failure to purchase tenant insurance that

¹²⁷ Civ. Code § 1950.5(m).

¹²⁸ Civ. Code § 1950.5(l).

¹²⁹ In general, every person is responsible for damages sustained by someone else as a result of the person's carelessness. (Civ. Code § 1714).

¹³⁰ See discussion of renter's insurance in Portman & Weaver, *California Tenants' Rights*, 21st Ed., pages 293-295 (NOLO Press 2018).

covers their own possessions.¹³¹

If the tenant elects to purchase renter's insurance, the tenant should make certain that it provides the protection the tenant wants, meets any requirements set by the landlord, and is reasonably priced. The tenant should check with more than one insurance company, since the price and type of coverage may differ widely among insurance companies. The price also will be affected by how much insurance protection you decide to purchase.

Your landlord probably has insurance that covers the rental unit or dwelling, but you should not assume that the landlord's insurance will protect you. If the landlord's insurance company pays the landlord for a loss that you cause, the insurance company may then sue you to recover what it has paid the landlord.

If you want to use a waterbed, or you have pets, the landlord can require you to obtain an insurance policy to cover possible property damage.¹³²

Landlords also cannot require that family child care providers get liability insurance. However, a family child care provider must add their landlord to their liability insurance policy if the following conditions are met:

- The family child care provider already has or is getting a liability insurance policy;
- The landlord asks in writing to be added to the family child care provider's insurance policy;
- The insurance policy will not be canceled if the landlord is added, and
- The landlord will pay the additional amount if adding them causes the family child care provider to pay a higher premium.¹³³

LIMITS TO RENT INCREASES AND LOCAL RENT STABILIZATION PROGRAMS

In 2019, the California Legislature approved and the Governor signed Assembly Bill (AB) 1482 (known as the Tenant Protection Act of 2019) (hereinafter referred to as the "Tenant Protection Act"), which took effect on January 1, 2020.¹³⁴ The Tenant Protection Act caps gross rental increases at covered properties within a 12-month period at 5% plus the change in the cost of living pursuant to the Consumer Price Index, or 10%, whichever is lower.¹³⁵ Landlords are also prohibited from increasing rent more than two times in a 12-month period.¹³⁶

Under the new law, landlords can still establish the initial rental rate at any amount

¹³¹ *Boston LLC v. Juarez* (2016) 245 Cal.App.4th 75; *Nino 1 LLC v. Antunez* (2013) 217 Cal.App.4th Supp.1.

¹³² Civ. Code § 1940.5(a).

¹³³ Health & Saf. Code §1597.531(b).

¹³⁴ The Tenant Protection Act also addresses just cause for eviction requirements for tenants who have resided in their rental unit for 12 months or 24 months if an adult has been added to the rental agreement in the last 12 months. For more information about just cause for eviction requirements, please see pages 80-81.

¹³⁵ Civ. Code § 1947.12(a)(1).

¹³⁶ *Ibid.*

they choose. The cap on gross rental increases is only applicable to rental increases after the initial rental rate has been established.¹³⁷ The rent cap does not apply to the following types of properties:

- Some types of government-subsidized housing.¹³⁸
- Housing that is limited by agreement or other restriction to providing affordable housing for persons and families of very low, low, or moderate income.
- College dormitories.
- Housing subject to a local rent stabilization law that has more restrictive limits on rent increases.
- Housing that is less than 15 years old.
- A duplex in which the owner occupied one of the units as their principal place of residence at the beginning of your tenancy and the owner still lives there.
- Single family home or condominium if the owner is not a real estate investment trust (REIT), a corporation, or an LLC in which at least one member is a corporation, and the owner gave the tenant written notice stating the unit is exempt from this law.¹³⁹ You can find out the members of an LLC through a search on the California Secretary of State business search website.¹⁴⁰

The rent cap applies to all rent increases occurring on or after March 15, 2019. Tenants, however, are not entitled to a credit for rent overcharges paid between March 15, 2019 and January 1, 2020. The law expires on January 1, 2030, unless extended.

Some California cities have **rent stabilization ordinances** that limit or prohibit rent increases.¹⁴¹ Each jurisdiction's ordinance is different. Local rent stabilization ordinances that were enacted before September 1, 2019 will take precedence over the statewide measure, regardless whether the protections offered are stronger or weaker. Local ordinances enacted after that date take precedence over the Tenant Protection Act only if they offer stronger protections. To the extent a local ordinance applies, some local ordinances specify procedures that a landlord must follow before increasing a tenant's rent.

Some cities have rent boards that have the power to approve or deny increases in rent. Other city ordinances allow a certain percentage increase in rent each year. Under state law, all units are subject to "vacancy decontrol." This means that the landlord can re-rent a unit at the market rate when the tenant moves out voluntarily, abandons the unit, or when the landlord evicts a tenant because of a breach of the rental agreement, terminates the tenancy for nonpayment of rent or other allowed reasons.

A rent stabilization ordinance may impact the landlord-tenant relationship in other important ways besides those described herein. Find out if you live in a city or county

¹³⁷ Civ. Code § 1947.12(a)(1).

¹³⁸ Section 8 vouchers are subject to the protections of AB 1482.

¹³⁹ Civ. Code § 1947.12(d).

¹⁴⁰ Civ. Code § 1947.12(d).

¹⁴¹ See list of rent control cities in Appendix 2.

with rent stabilization or other rental housing laws (see the list of cities and counties with rent stabilization in Appendix 2). Contact your local housing officials or rent stabilization program for information. Most cities and counties post information about their rent stabilization ordinances on their website (for example, information about City of Los Angeles' rent stabilization ordinance is available at <https://hcidla.lacity.org/>).

Another law that places limits on the amount a landlord can increase rent is Penal Code section 396. This section covers the 30-day period following a state of emergency declared by the President, Governor, or local governing body vested with authority to make that declaration (i.e., City Council, Board of Supervisors, etc.) and prohibits a landlord from increasing rental prices to existing or prospective tenants by more than 10 percent.¹⁴² Known as the “anti-price gouging” statute, the protections set forth in this statute are intended to prevent sellers of goods or providers of services from charging exorbitant prices for necessities if a state of emergency is declared following a pandemic, wildfire, earthquake or other natural disaster. This rental increase prohibition does not apply if the landlord can prove that an increase of more than 10 percent is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to increase by more than 10 percent.

LIVING IN THE RENTAL UNIT

As a tenant, you must take reasonable care of your rental unit and any common areas that you use. You must also repair all damage, other than normal wear and tear, that you cause, or that is caused by anyone for whom you are responsible, such as your family, guests, or pets.¹⁴³ These important tenant responsibilities are discussed in more detail under “Dealing with Problems,” pages 56-74.

This section discusses other issues that can come up while you’re living in the rental unit. For example, can the landlord enter the rental unit without notifying you? Can the landlord raise the rent even if you have a rental agreement? What can you do if you have to move out before the end of the term of your rental agreement?

PAYING THE RENT

When is rent due?

Most rental agreements require that rent be paid at the beginning of each rental period. For example, in a month-to-month tenancy, rent usually must be paid on the first day of the month. However, your rental agreement can specify any day of the month as the day that rent is due (for example, the 10th of every month in a month-to-month rental agreement, or every Tuesday in a week-to-week rental agreement).

As explained above on page 24, the rental agreement must state the name and address of the person or entity to whom you must make rent payments (see page 24). If

¹⁴² Pen. Code § 396(e).

¹⁴³ Civ. Code §§ 1929, 1941.2.

this address does not accept personal deliveries, you can mail your rent payment to the owner at the stated name and address. If you can show proof that you mailed the rent to the stated name and address (for example, a receipt for certified mail), the law assumes that the rent was received by the owner on the date of postmark.¹⁴⁴

It is very important for you to pay your rent on or before the due date. Not paying rent on time might lead to a negative entry on your credit report,¹⁴⁵ late fees (see page 46), or even eviction (see pages 107-123).

Check, money order, electronic funds transfer, or cash?

The landlord or landlord's agent normally cannot require you to pay rent in cash or to use electronic funds transfer. They must allow you to pay by some other means such as a personal check, a money order or cashier's check. The manner of payment of your rent will usually be specified in your rental agreement. The landlord must also accept payment on your behalf by a third party, if that third party provides a legally required written acknowledgment that the payment gives the third party no rights of tenancy.¹⁴⁶

However, the landlord or agent *can* require you to pay rent in cash if, within the last three months, you paid the landlord or agent with a check that was dishonored by the bank. (A **dishonored check** is one that the bank returns without paying because you stopped payment on it or because your account did not contain sufficient funds.)

In order to require you to pay rent in cash, the landlord must first give you a written notice stating that your check was dishonored and that you must pay cash for the period of time stated by the landlord. This period cannot be more than three months after you:

- ordered the bank to stop payment on the check, or
- attempted to pay with a check that the bank returned to the landlord because of insufficient funds in your account.

The landlord must attach a copy of the dishonored check to the notice. If the notice changes the terms of your rental agreement, the landlord must give you the proper amount of advance notice (see pages 76-81).¹⁴⁷

These same rules apply if the landlord requests you to pay the security deposit in cash.

Example: Suppose that you have a month-to-month rental agreement and that your rent is due on the first of each month. Suppose that the rental agreement does not specify the form of rent payment (check, cash, money order, etc.) or the amount of notice required to change the terms of the agreement (see pages 24-26).

¹⁴⁴ Civ. Code § 1962(f).

¹⁴⁵ If the landlord intends to report negative credit information about the tenant to a credit bureau, the landlord must disclose this intent to the tenant. The landlord must give notice to the tenant, either before reporting the information, or within 30 days after reporting the negative credit information. The landlord may personally deliver the notice to the tenant or send it to the tenant by first-class mail. The form of notice may be in the rental agreement. (Civ. Code § 1785.26; Moskowitz et al., California Landlord-Tenant Practice, §§ 1.51, 4.9 (Cont.Ed.Bar 2016).

¹⁴⁶ Civ. Code § 1947.3(a)(3).

¹⁴⁷ Civ. Code § 1947.3. Waiver of the provisions of this section is void and unenforceable.

On April 1, you give your landlord your rent check for April. On April 11, your landlord receives a notice from his or her bank stating that your check was dishonored because you did not have enough money in your account. On April 12, the landlord hands you a notice stating that your check was dishonored and that you must pay rent in cash or money order for the next three months. What are your rights and obligations under these facts? What are the landlord's rights and obligations?

Unfortunately, the law that allows the landlord to require payments in cash or by money order does not clearly answer these questions. The following is based on a reasonable interpretation of the law.

The requirement that you pay rent in cash or by money order arguably changes the terms of your rental agreement and takes effect in 30 days (on May 12) (see pages 45-46). Therefore, you might argue you *could* pay your May 1 rent payment by check. However, this might cause the landlord to return your check and serve a **three-day notice** to pay or quit or decide to serve you with a **30-day** or **60-day notice** to end the tenancy (see pages 102-107). It would be better to interpret the maximum 3-month period for cash payment or payment by money order to include May's rent payment. The requirement that you pay rent in cash or by money order continues for a maximum of three months as specified by the landlord after the landlord received the notice that your check was dishonored (through July 10). You very well might have to pay your June and July rent in cash or by money order, and, if you tried to claim you were not required to do so in May, the August payment as well, if the tenancy continues. It would be prudent to not insist that you do not need to pay in cash or by money order for May.

What about your April 1 rent check that was returned by the landlord's bank? As a practical matter, you should make the check good immediately. Otherwise, the landlord can serve you with a **three-day notice** to pay or quit, which is the first step in the **eviction process** (see pages 98-123).¹⁴⁸

Obtaining receipts for rent payments

If you pay rent in cash or with a money order, you should ask your landlord for a signed and dated receipt at the same time that you pay your rent. Legally, you are entitled to a written receipt whenever you pay rent.¹⁴⁹ If you pay with a check, you can use the canceled check as a receipt. Keep the receipts or canceled checks forever, so that you have a record of your payments in case of a dispute.

Late fees and dishonored check fees

While there is a legal argument that a rental agreement cannot include a predetermined late fee, most rental agreements contain a late fee provision. This is because there is an exception to this rule when it would be difficult to figure out the **actual** cost to the landlord caused by the late rent payment, and the landlord has made an effort to determine that cost. Even then, the predetermined late fee should not be

¹⁴⁸ See discussion of late fees and dishonored check fees, pages 46-48. Paying by check with knowledge that the account contains insufficient funds, with intent to defraud, is a crime. Pen. Code § 476a.

¹⁴⁹ Civ. Code § 1499.

more than the reasonable estimate of costs that the landlord will face as a result of the late payment. A late fee that is so high that it amounts to a penalty is not legally valid.¹⁵⁰ It is common for rental agreements to provide a 'grace period' before the late fee becomes effective. A typical grace period waives the fee if the rent is paid before the 6th. Be sure to read and understand the rental agreement's late fee provisions.

Additionally, in some communities, late fees are limited by local rent control ordinances (see "Rent Control," pages 137-138).

What if you've signed a rental agreement that contains a late-fee provision, and you're going to be late for the first time paying your rent? If you have a good reason for being late (for example, your paycheck was late), explain this to your landlord. Some landlords will **waive** (forgive) the late fee if there is a good reason for the rent being late, and if the tenant has been responsible in other ways. If the landlord isn't willing to forgive or lower the late fee, ask the landlord to justify it (for example, in terms of administrative costs for processing the payment late). However, if the late fee is reasonable, it may be valid.

The landlord also can charge the tenant a fee if the tenant's check for the rent (or any other payment) is dishonored by the tenant's bank. A dishonored check is often called a "bounced" or "NSF" (non-sufficient funds) or "returned" check. In order for the landlord to charge the tenant a returned check fee, the rental agreement must authorize the fee, and the amount of the fee must be reasonable.

For example, a reasonable returned check fee would be the amount that the bank charges the landlord, plus the landlord's reasonable costs because the check was returned. Under California's "bad check" statute, the landlord can charge a service charge instead of the dishonored check fee described in this paragraph. The *service charge* can be up to \$25 for the first check that is returned for insufficient funds, and up to \$35 for each additional check.¹⁵¹

Partial rent payments

You will violate your rental agreement if you do not pay the full amount of your rent on time. If you cannot pay the full amount on time, you may want to offer to pay part of the rent. However, the law allows your landlord to refuse a partial payment or to take the partial payment and still give you a **three-day notice** to pay or quit.¹⁵²

If your landlord is willing to accept a partial rent payment and give you extra time to pay the balance, it is important that you and the landlord agree on the details in writing, and that you save this writing forever. The written agreement should state the amount of partial rent that you paid, the date by which the rest of the rent must be paid, the amount

¹⁵⁰ *Harbor Island Holdings, LLC v. Kim* (2003) 107 Cal.App.4th 790, 798-799 (liquidated damages provision unenforceable because it bore no reasonable relationship to range of actual damages parties could have anticipated); *Orozco v. Casimiro* (2004) 121 Cal.App.4th Supp. 7, 12 (late fee invalid because landlord failed to establish that damages for late payment of rent were extremely difficult to fix); *Del Monte Properties & Investments, Inc. v. Dolan* (2018) 26 Cal.App.5th Supp. 20, 24.

¹⁵¹ Civ. Code § 1719(a)(1). Advance disclosure of the amount of the service charge is a nearly universal practice, but is not explicitly required by § 1719. The landlord cannot collect both a dishonored check fee and a service charge. The landlord loses the right to collect the service charge if the landlord seeks the treble damages that are authorized by the "bad check" law. (Civ. Code § 1719).

¹⁵² Code Civ. Proc. § 1161, subdivision 2.

of any late fee due, and the landlord's agreement not to take any action to **evict** you if you pay the amount due by the specified date. Both you and the landlord should sign the agreement, and you should keep a copy forever. An agreement of this kind is legally binding.

SECURITY DEPOSIT INCREASES

Whether the landlord can increase the amount of the security deposit after you move in depends on what the rental agreement says, how much of a security deposit you have paid already, what the reason for the increase is and whether local law permits such an increase.

If you have a rental agreement, the security deposit cannot be increased unless increases are permitted by the terms of the rental agreement.

In a **periodic rental agreement** (for example, a month-to-month agreement), the landlord can increase the security deposit unless prohibited by the agreement. The landlord must give you proper notice before increasing the security deposit. (For example, 30 days' advance written notice normally is required in a month-to-month rental agreement.). In a rental agreement for a fixed-term a change in deposit can typically only occur upon renewal of the agreement, unless the rental agreement provides otherwise.

However, if the amount that you already paid as a security deposit equals two times the current monthly rent for an unfurnished unit or three times the current monthly rent for a furnished unit, then your landlord *cannot* increase the security deposit, no matter what the rental agreement says. Limits on security deposits may vary for tenants who are active duty military service personnel (see the discussion of the limits on security deposits, pages 97-98). Local rent **stabilization** ordinances may also limit or prohibit increases in security deposits.

The landlord must give you proper advance written notice of any increase in the security deposit (see "Proper Service of Notices," pages 106-107).

The landlord normally cannot require you to pay the security deposit increase in cash or by electronic funds transfer, without offering other options (see page 45).

RENT INCREASES

How much can rent be raised?

If you are covered by the Tenant Protection Act, which applies to a significant percentage of rental properties, the landlord can only raise rent in a 12-month period by 5% plus the inflation rate or 10 percent, whichever is lower.¹⁵³ If the rate of inflation exceeds 5%, the maximum rent increase will be 10% for properties covered by the Act. The rent limit does not apply to certain types of properties, as discussed on pages 80-81 of this guide.

¹⁵³ Civ. Code § 1947.12(a). The inflation rate is defined in the Act as "the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply." (Civ. Code § 1947.12(g)(2)).

How often can rent be raised?

This depends on whether your rental unit is subject to local or state rent stabilization laws and the terms of your rental agreement. For rental units subject to the state's Tenant Protection Act and not subject to any local rent stabilization ordinances, the landlord cannot raise the rent more than twice in a 12-month period, and the combined increase cannot exceed 5% plus inflation or 10%, whichever is lower. For rental agreements with a fixed term (i.e., 6 months, 1 year, 2 years, etc.), the landlord cannot increase the rent during the rental term unless the rental agreement permits rent increases. Rent may be increased if the rental agreement is renewed.

For rental agreements with periodic terms (e.g., week-to-week or month-to-month), the landlord may increase the tenant's rent, but if the property is subject to the State rent cap, the landlord must provide the tenant with at least 30 days' written notice of the increase and cannot raise the rent more than twice in any 12-month period. If the property is exempt from the State rent cap and no local rent stabilization ordinances apply, the landlord must provide the tenant with either 30 days' notice (if the rent increase is 10 percent or less) or 90 days' advanced written notice (if the rent increase is more than 10 percent). Under these circumstances, there is no limit on how many times the landlord may raise the rent, except for the required advance written notice is required, and increases cannot be retaliatory or discriminatory. The actual number of days of advance notice will depend on the amount that the landlord increases the rent. The written notice must tell you how much the rent will increase and when the increase will go into effect.

For periodic tenancies, your landlord must give you at least 30 days' advance notice if the rent increase is 10 percent or less of the rent charged to you at any time during the 12 months before the rent increase takes effect. Your landlord must give you at least 90 *days'* advance notice if the rent increase is *greater than* 10 percent of the rent charged to you at any time during the 12 months before the rent increase takes effect.¹⁵⁴ For properties that are subject to the Tenant Protection Act, a rent increase over 10% is prohibited, thus increases for a significant portion of the rental market will only require 30 days' notice.

In order to calculate the percentage of the rent increase, you need to know the lowest rent that your landlord charged you during the preceding 12 months, and the combined total of the new increase and any other increases during that period.

Example for when 30 days' notice required: Assume that your rent has been \$3,000 per month since June of last year. Your landlord wants to increase your rent by \$150, to \$3,150, beginning on June 1. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

¹⁵⁴ Civ. Code § 827(b). Longer notice periods apply if required, for example, by statute, regulation or contract. (Civ. Code § 827(c).) If a proposed rent increase is caused by a change in the tenant's income or family composition, as determined by the local housing authority's recertification, at least 30 days' advance written notice of the increase must be provided.. (Civ. Code § 827(b)(3)(B)).

First, calculate the percentage increase in the rent by dividing the amount of the proposed increase by the lowest rent charged in the past 12 months. It is:

$$\frac{150}{3000} = 5\%$$

The current rent increase (\$150) does not exceed 10 percent of the lowest rent charged in the past 12 months (\$3,000). Therefore, your landlord must give you at least 30 days' advance written notice of the rent increase.

The 30-day notice requirement applies for any rent increase of 10% or less, regardless of whether your rental unit is subject to the State rent limit or is exempt from the State rent limit.¹⁵⁵

Example for when 90 days' notice required: Assume that you live in a property that is exempt from the rent limit of the Tenant Protection Act (e.g., a rental unit that was built within the previous 15 years), so your landlord is allowed to raise your rent by more than 10%. Assume that your rent was \$2,500 last June 1, and that your landlord raised your rent by \$250, to \$2,750, last November. Your landlord wants to increase your rent again by \$250 on June 1 to \$3,000 per month. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

The percentage increase in the rent must be calculated by adding all the rental increases made in the 12 months previous to the effective date of the increase, June 1. The combined rent increase is:

$$\begin{array}{r} \$ 250 \\ + \quad 250 \\ \hline \$ 500 \end{array}$$

The percentage of increase is calculated using the lowest rent charged during the preceding 12 months. The lowest rent charged was \$2,500. The percentage of increase equals:

$$\frac{500}{2500} = 20\%$$

Since the increase is greater than 10%, the landlord must give you at least 90 days' notice.

A landlord must give proper advance written notice of the increase in rent, and the increase cannot be **retaliatory** (see pages 121-123). If the rental unit is subject to a local rent stabilization ordinance instead of the Tenant Protection Act, the local ordinance may impose stricter rent limits and additional requirements on the landlord.

Increases in rent for government-subsidized housing usually are restricted. If a tenant lives in government-subsidized housing, the tenant should check with the local public housing authority, housing counseling agency, legal aid organization, tenant-landlord program, or housing clinic to find out whether there are any restrictions on rent increases.

¹⁵⁵ Civ. Code §§ 1947.12(e), 827(b)(2).

Rent increase; notice and effective date

A landlord's notice of rent increase must be in writing. The landlord can deliver a copy of the notice to you personally.¹⁵⁶ In this case, the rent increase takes effect in 30 or 90 days, as just explained.

The landlord also can send you a notice of rent increase by first class mail. In this case, the landlord must mail a copy of the notice to you, with proper postage, addressed to you at the rental unit. The landlord must give you an additional five days' advance notice of the rent increase if the landlord mails the notice and the place of mailing is within California. The period of notice may be longer if notice is mailed from outside of California (10 days), or from outside of the United States (20 days). Therefore, if notice is mailed from within California, the landlord would have to give you at least 35 days' notice from the date of mailing if the rent increase is 10 percent or less. If the rent increase is greater than 10 percent, the landlord would have to give you at least 95 days' notice from the date of mailing.¹⁵⁷

Example of a rent increase

Most notices of rent increases state that the increase will go into effect at the beginning of the next rental period. For example, a landlord who wishes to increase the rent by 5 percent in a month-to-month rental effective on October 1 must make sure that notice of the increase is delivered to the tenant personally by September 1 or mailed to the tenant by August 27. However, a landlord can make the increase effective at any time in the month *if* proper advance notice is given.

If the increase in the rent becomes effective in the middle of the rental period, the landlord is entitled to receive the increased rent for only the last half of the rental period. For example:

- Rental period: month-to-month, from the first day of the month to the last day of the month.
- Rent: \$2,500 per month.
- Rent increase: \$125 (from \$2,500 to \$2,625) per month (a 5 percent increase).
- Date that the notice of rent increase is delivered to the tenant personally: March 17 (that is, the middle of the month).
- Earliest date that the rent increase can take effect: April 16.

If the landlord delivers the notice on March 17, the increase becomes effective 30 days later, on April 16. The landlord is entitled to the increased rent beginning on April 16. On April 1, the tenant would pay \$1,250 for the first half of April (that is, 15 days at the old rent of \$2,500, from April 1 to 15), plus \$1,312.50 for the last half of April (that is, 15 days at the new rent of \$2,625, from April 16-30). The total rent for April that is due on April 1 would be \$2,562.50. Looking at it another way, the landlord is entitled to only one-half of the increase in the rent during April, since the notice of rent increase became

¹⁵⁶ Civ. Code § 827(b)(1)(A).

¹⁵⁷ Civ. Code § 827(b)(1)(B)(2),(3).

effective in the middle of the month.

Of course, the landlord could deliver a notice of rent increase on March 17 which states that the rent increase takes effect on May 1. In that case, the tenant would pay \$2,500 rent on April 1, and \$2,625 rent on May 1.

WHEN CAN THE LANDLORD ENTER THE RENTAL UNIT?

California law states that a landlord can enter a rental unit only for certain specified reasons. The landlord does not have the right to enter to conduct a general inspection. Only the following reasons for entry are permitted:

- In an emergency.
- When the tenant has surrendered or **abandoned** the rental unit.
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements or supply necessary or agreed-upon services.
- To show the rental unit to prospective tenants, purchasers, or lenders, to provide entry to contractors or workers who are to perform work on the unit, or to conduct an **initial inspection** requested by the tenant before the end of the tenancy (see Initial Inspection sidebar, pages 85-88).
- If a court order permits the landlord to enter.¹⁵⁸
- To install, repair, replace, maintain, or read the submetering of water service.¹⁵⁹
- To inspect elevated balconies or decks.¹⁶⁰
- To inspect an area where the resident is engaging in personal agriculture.¹⁶¹
- To repair, test and/or maintain smoke detectors or carbon monoxide detectors.¹⁶²
- If the tenant has a waterbed, to inspect the installation of the waterbed when the installation has been completed, and periodically after that to assure that the installation meets the requirements of the law.¹⁶³

The landlord or the landlord's agent must give the tenant reasonable advance notice in writing before entering the unit and can enter only during normal business hours (generally, 8 a.m. to 5 p.m. seven days per week). The notice must state the date, approximate time, and purpose of the entry.¹⁶⁴ However, advance written notice is not required under any of the following circumstances:

- To respond to an emergency.

¹⁵⁸ Civ. Code § 1954(a)(4).

¹⁵⁹ Civ. Code § 1954.201.

¹⁶⁰ Health and Saf. Code § 17973.

¹⁶¹ Civ. Code § 1840.10.

¹⁶² Health & Saf. Code §§ 13113 and 17926.1.

¹⁶³ Civ. Code § 1940.5(f).

¹⁶⁴ Civ. Code § 1954(b),(d)(1).

- The tenant moved out or abandoned the rental unit.
- The tenant is present and consents to the entry at the time of entry.
- The tenant and landlord agreed that the landlord will make repairs or supply services, and agreed orally that the landlord may enter to make the repairs or supply the services. The agreement must include the date and approximate time of entry, which must be within one week of the oral agreement.¹⁶⁵

The landlord or agent may use any one of the following methods to give the tenant written notice of intent to enter the unit:

- Personally deliver the notice to the tenant; or
- Leave the notice at the rental unit with a person of suitable age and discretion (for example, a roommate or a teenage member of the tenant's household); or
- Leave the notice on, near, or under the unit's usual entry door in such a way that it is likely to be found; or
- Mail the notice to the tenant.¹⁶⁶

Absent evidence to the contrary, the law considers 24 hours' advance written notice to be reasonable in most situations.

If the notice is mailed to the tenant, mailing at least six days before the intended entry is presumed to be reasonable, in most situations.¹⁶⁷ The tenant can consent to shorter notice and to entry at times other than during normal business hours.

Special rules apply if the purpose of the entry is to show the rental to a purchaser. In that case, the landlord or the landlord's agent may give the tenant notice orally, either in person or by telephone. Absent evidence to the contrary, the law considers 24 hours' notice to be reasonable in most situations. However, before oral notice can be given, the landlord or agent must first notify the tenant in writing that the rental is for sale and that the landlord or agent may contact the tenant orally to arrange to show the rental. This written notice must be given to the tenant within 120 days of the oral notice. The oral notice must state the date, approximate time and purpose of entry.¹⁶⁸ The landlord or agent may enter only during normal business hours (typically between 8 a.m. to 5 p.m. seven days per week), unless the tenant consents to entry at a different time.¹⁶⁹ When the landlord or agent enters the rental pursuant to oral notice, they must leave written evidence of entry, such as a business card.¹⁷⁰

The landlord cannot abuse the right of access allowed by these rules, or use this right

¹⁶⁵ Civ. Code § 1954(d), (e).

¹⁶⁶ Civ. Code § 1954(d)(1).

¹⁶⁷ Civ. Code § 1954(d)(1).

¹⁶⁸ Civ. Code § 1954(d)(2); Moskowitz et al., *California Landlord-Tenant Practice*, § 3.3 (Cont.Ed.Bar 2016).

¹⁶⁹ Civ. Code § 1954(b).

¹⁷⁰ Civ. Code § 1954(d)(2).

of access to harass (repeatedly disturb) the tenant.¹⁷¹ Also, the law prohibits a landlord from significantly and intentionally violating these access rules in an attempt to influence the tenant to move out.¹⁷²

If your landlord violates these access rules, talk to the landlord about your concerns. If that is not successful in stopping the landlord's misconduct, send the landlord a formal letter asking the landlord to strictly observe the access rules stated above, and retain a copy of the letter for your records. If the landlord continues to violate these rules, you can talk to an attorney or a legal aid organization, or file suit in small claims court to recover the damages that you suffered due to the landlord's misconduct. If the landlord's violation of these rules was significant and intentional, and the landlord's purpose was to influence you to move from the rental unit, you can sue the landlord in small claims court for a civil penalty of up to \$2,000 for each violation.¹⁷³

SUBLEASES AND ASSIGNMENTS

Sometimes, a tenant with a rental agreement may need to move out before the term ends, or may need help paying the rent. In these situations, the tenant may want to sublease the rental unit or assign the rental agreement to another tenant. The tenant may sublease the rental unit or assign the rental agreement *unless* the terms of the rental agreement precludes the tenant from doing so without the prior consent of the landlord.

Subleases

A **sublease** is a separate rental agreement between the original tenant and a new tenant who moves in temporarily (for example, for the summer), or who moves in with the original tenant and shares the rent. The new tenant is called a **subtenant**.

With a sublease, the agreement between the original tenant and the landlord remains in full force and effect. The original tenant is still responsible for paying the rent to the landlord, and functions as a landlord to the subtenant. Any sublease agreement between a tenant and a subtenant should be in writing to avoid disputes.

Many rental agreements contain a provision that prohibits (prevents) tenants from subleasing or assigning rental units. This kind of provision allows the landlord to control who rents the rental unit. If your rental agreement prohibits subleases or assignments, you must get your landlord's permission before you sublease or **assign** the rental unit.

Even if your rental agreement does not contain a provision prohibiting you from subleasing or assigning, it is wise to discuss your plans with your landlord in advance. Subleases and assignments usually do not work out smoothly unless everyone has agreed in advance in writing. A lease provision requiring the landlord's consent to assign or sublease, but providing no standard for giving or withholding consent, is construed to contain an implied standard that such consent will not be unreasonably withheld.¹⁷⁴

¹⁷¹ Civ. Code § 1954(c).

¹⁷² Civ. Code § 1940.2(a)(4).

¹⁷³ Civ. Code § 1940.2(b).

¹⁷⁴ Civ. Code § 1995.260.

You might use a sublease in two situations. In the first situation, you may have a larger apartment or house than you need, and may want help paying the rent. Therefore, you want to rent a room to someone. In the second situation, you may want to leave the rental unit for a certain period and return to it later. For example, you may be a college student who leaves the campus area for the summer and returns in the fall. You may want to sublease to a subtenant who will agree to use the rental unit only for a particular period of time.

Under a sublease agreement, the subtenant agrees to make payments to you, not to the landlord. The subtenant has no direct responsibility to the landlord, only to you. Generally, the subtenant should not be given any greater rights than you do as the original tenant. To do so might create a conflict with your terms and obligations under your rental agreement. For example, if you have a month-to-month rental agreement, you should not promise the subtenant a fixed-term. If your rental agreement does not allow you to have a pet, then the subtenant cannot have a pet, as it creates a violation of your agreement with the landlord.

In any sublease situation, it is essential that both you and the subtenant have a clear understanding of your obligations. To help avoid disputes between you and the subtenant, this understanding should be put in the form of a written sublease agreement that both you and the subtenant sign.

The sublease agreement should cover things like the amount and due date of the rent, where the subtenant is to send the rent, who is responsible for paying the utilities (typically, gas, electric, water, trash, and telephone), the dates the agreement begins and ends, a list of any possessions that you are leaving in the rental unit, and any conditions of care and use of the rental unit and your possessions. It is also important that the sublease agreement be consistent with the rental agreement, so that your obligations under the rental agreement are fully performed by the subtenant (assuming that is what you and the subtenant have agreed upon).

Assignments

An **assignment** is a transfer of your rights as a tenant to someone else. You might use an assignment if you have a rental agreement for one year and need to move permanently before the term ends. Like a sublease, an assignment is a contract between the original tenant and the new tenant (not the landlord).

However, an assignment differs from a sublease in one important way. If the new tenant accepts the assignment, the new tenant is directly responsible to the landlord for the payment of rent, for damage to the rental unit, and so on. Nevertheless, an assignment *does not* relieve the original tenant of his or her legal obligations to the landlord unless the landlord explicitly releases the original tenant from his/her obligations. If the new tenant does not pay rent, or damages the rental unit, the original tenant (unless released from his/her obligations by the landlord) remains legally responsible to the landlord.¹⁷⁵

In order for the original tenant to be relieved of his/her obligations under the original

¹⁷⁵ Civ. Code § 822.

rental agreement, the landlord, the original tenant, and the new tenant all must agree that the new tenant will be *solely* responsible to the landlord under the assignment. This agreement is called a **novation**, and must be in writing.

Short Term Rentals

It is important to understand that most rent agreements also prohibit you from using your unit as a short term rental, such as renting the unit through websites like AirBnB and VRBO. Many local laws also prohibit rental units from being rented in this way and carry with them heavy fines for violating the law.

Remember: Even if the landlord agrees to a sublease or assignment, the original tenant is still responsible for the rental unit *unless* there is a written agreement (a novation) that states otherwise. For this reason, think very carefully about who you consider subleasing or assigning your rental unit to.

DEALING WITH PROBLEMS

All tenants have a right to a safe rental unit. Most landlord-tenant relationships go smoothly. However, problems sometimes do arise. For example, what if the rental unit's furnace goes out in the middle of the winter? What happens if the landlord sells the building or decides to convert it into condominiums? This section discusses these and other possible issues and problems that may arise in the landlord-tenant relationship.

REPAIRS AND HABITABILITY

A rental unit must be fit to live in; that is, it must be habitable. In legal terms, "habitable" means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety.¹⁷⁶

California law makes landlords and tenants each responsible for certain kinds of repairs, although landlords ultimately are legally responsible for ensuring that their rental units are habitable.

Landlord's responsibility for repairs

Before renting a rental unit to a tenant, a landlord must make the unit fit to live in, or habitable. Additionally, while the unit is being rented, the landlord must repair problems that make the rental unit unfit to live in, or **uninhabitable**.

The landlord has this duty to repair because of a California Supreme Court case, called *Green v. Superior Court*,¹⁷⁷ which held that all residential leases and rental agreements contain an **implied warranty of habitability**. Under the "implied warranty of habitability," the landlord is legally responsible for repairing conditions that seriously

¹⁷⁶ *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638. Civ. Code §§ 1941, 1941.1.

¹⁷⁷ *Green v. Superior Court* (1974) 10 Cal.3d 616.

affect the rental unit's habitability.¹⁷⁸ That is, the landlord must repair substantial defects in the rental unit and substantial failures to comply with state and local building and health codes.¹⁷⁹ However, the landlord is *not* responsible under the implied warranty of habitability for repairing damages that were caused by the tenant or the tenant's family, guests, or pets.¹⁸⁰

Generally, the landlord also must complete maintenance work which is necessary to keep the rental unit livable.¹⁸¹ Whether the landlord or the tenant is responsible for making less serious repairs is usually determined by the rental agreement.

The law is very specific as to what kinds of conditions make a rental unit uninhabitable. If you believe that your landlord is providing you with an uninhabitable home, it is best to document those conditions with photographs or written repair requests with descriptions and date of the problem and how long that condition has been occurring. These are discussed in the following pages.

Tenant's responsibility for repairs

Tenants are required by law to take reasonable care of their rental units, as well as common areas such as hallways and outside areas. Tenants must act to keep those areas clean and undamaged. Tenants also are responsible to repair all damage that results from their neglect or abuse, and to repair damage caused by anyone for whom they are responsible, such as family, guests, or pets.¹⁸² Tenants' responsibilities for care and repair of the rental unit are discussed in detail on pages 89-91.

Conditions that make a rental unit legally uninhabitable

There are many kinds of defects that could make a rental unit unlivable. The implied warranty of habitability, which applies to every single residential tenancy in California, requires landlords to maintain their rental units in a condition fit for the "occupation of human beings."¹⁸³ In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.¹⁸⁴

A rental unit may be considered uninhabitable (unlivable) if it contains a lead hazard that endangers the occupants or the public, or is a substandard building because of, for example, a structural hazard, inadequate sanitation, or a nuisance that endangers the health, life, safety, property, or welfare of the occupants or the public.¹⁸⁵

A dwelling also may be considered uninhabitable (unlivable) if it substantially lacks any of the following:¹⁸⁶

¹⁷⁸ *Green v. Superior Court* (1974) 10 Cal.3d 616; and *Hinson v. Delis* (1972) 26 Cal.App.3d 62.

¹⁷⁹ *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638

¹⁸⁰ Civ. Code §§ 1929, 1941.2.

¹⁸¹ *Green v. Superior Court* (1974) 10 Cal.3d 616.

¹⁸² Civ. Code §§ 1929, 1941.2.

¹⁸³ Civ. Code § 1941.

¹⁸⁴ *Green v. Superior Court* (1974) 10 Cal.3d 616.

¹⁸⁵ Civ. Code § 1941.1(a); Health & Saf. Code §§ 17920.3, 17920.10.

¹⁸⁶ Civ. Code § 1941.1.

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring, and equipment, in good working order.
- Clean and sanitary buildings, grounds, and appurtenances (for example, a garden or a detached garage), free from debris, filth, rubbish, garbage, rodents, and vermin at the inception of the tenancy and areas within the landlord's control during the tenancy.
- Adequate trash receptacles in good repair.
- Floors, stairways, and railings in good repair.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower. The toilet and bathtub or shower must be in a room which is ventilated and allows privacy.
- Natural lighting in every room through windows or skylights. Windows in each room must be able to open at least halfway for ventilation, unless a fan provides mechanical ventilation.
- Safe fire or emergency exits leading to a street or hallway. Stairs, hallways, and exits must be kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.¹⁸⁷
- Operable dead bolt locks on the main entry doors of rental units, and operable locking or security devices on windows.¹⁸⁸
- Working smoke detectors that meet applicable code requirements in all bedrooms and other designated areas of rental units, except for manufactured housing, such as a mobilehome. Apartment complexes also must have smoke detectors in common stairwells.¹⁸⁹ Also, any rental unit that includes appliances (water heater, heater, stove, fireplace, etc.) that utilize 'fossil fuels' (natural gas, propane, fuel oil, etc.), or which has an attached garage, are required to have working carbon monoxide detectors that meet applicable code requirements.¹⁹⁰

¹⁸⁷ Health & Saf. Code §§ 17910-17998.3; Rosenquest & Portman, *The California Landlord's Law Book: Rights and Responsibilities*, 18th Ed., page 204 (NOLO Press 2019).

¹⁸⁸ Civ. Code § 1941.3. See this section for additional details and exemptions. Remedies for violation of these requirements are listed at Civ. Code § 1941.3(c). California Practice Guide, *Landlord-Tenant*, Paragraphs 3:21.5-3:21.7 (Rutter Group 2019).

¹⁸⁹ Health & Saf. Code § 13113.7.

¹⁹⁰ Health & Saf. Code §§ 17926, 17926.1.

- A locking mail box for each unit. The mail box must be consistent with the United States Postal Service standards for apartment housing mail boxes.¹⁹¹
- Ground fault circuit interrupters for swimming pools and anti-suction protections for wading pools in apartment complexes and other residential settings (but not single family residences).¹⁹²

The implied warranty of habitability is *not* violated merely because the rental unit is not in perfect, aesthetically pleasing condition. Nor is the implied warranty of habitability violated if there are minor housing code violations, which, standing alone, do not affect habitability.¹⁹³

While it is the landlord's responsibility to install and maintain the inside wiring for one telephone jack, it is unclear whether the landlord's failure to do so is a breach of the implied warranty of habitability.¹⁹⁴

There are two additional ways in which the implied warranty of habitability may be violated. The first is the presence of mold conditions in the rental unit that the landlord has notice of and affect the livability of the unit or the health and safety of tenants. The tenant should notify his/her landlord if he/she is aware of water intrusion or suspects the presence of mold. Since January 1, 2016, visible mold growth, as determined by a health officer or a code enforcement officer, that is judged to be other than superficial, such as mildew, may be a substandard condition.¹⁹⁵ The second follows from a law that imposes obligations on a property owner who is notified by a local health officer that the property is contaminated by methamphetamine (see page 35-36). A tenant who is damaged by this kind of documented contamination may be able to claim a breach of the implied warranty of habitability.¹⁹⁶

Limitations on landlord's duty to keep the rental unit habitable

Even if a rental unit is unlivable because of one of the conditions listed above, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's own responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common areas (see page 57), the law lists specific things that a tenant must do to keep the rental unit livable.

Tenants must do all of the following:

- Keep the premises "as clean and sanitary as the condition of the premises permits."

¹⁹¹ Health & Saf. Code § 17958.3; Civ. Code § 1941.1(a)(9).

¹⁹² Health & Saf. Code §§ 116049.1(b)(1), 116064(c).

¹⁹³ *Green v. Superior Court* (1974) 10 Cal.3d 616, 637-638; *Hinson v. Delis* (1972) 26 Cal.App.3d 62, 70.

¹⁹⁴ Civ. Code § 1941.4; Public Utilities Code § 788; California Practice Guide, Landlord-Tenant, Paragraph 3:21.10 (Rutter Group 2019).

¹⁹⁵ Health & Saf. Code § 17920.3(a)(13).

¹⁹⁶ Moskovitz et al., *California Landlord-Tenant Practice*, § 3.11B (Cont.Ed.Bar 2016); Health & Saf. Code §§ 25400.10-25400.47.

- Use and operate gas, electrical, and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets; flushing large, foreign objects down the toilet; or allowing any gas, electrical, or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner. However, a landlord may agree in writing to clean the rental unit and dispose of the trash.¹⁹⁷
- Not destroy, damage, or deface the premises, or allow anyone else to do so.
- Not remove any part of the structure, dwelling unit, facilities, equipment, or appurtenances, or allow anyone else to do so.
- Use the premises as a place to live and use the rooms for their intended purposes. For example, the bedroom must be used as a bedroom, and not as a kitchen.¹⁹⁸
- Notify the landlord when dead bolt locks and window locks or security devices do not operate properly¹⁹⁹, and notify the landlord or manager if the tenant becomes aware of an inoperable smoke or carbon monoxide detection systems.²⁰⁰

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.²⁰¹

Even if a tenant violates these requirements, in some minor way, the landlord is still responsible for providing a habitable dwelling and may be prosecuted for violating housing code standards. If the tenant fails to do one of these required things, and the tenant's failure has either substantially caused an unlivable condition to occur or has substantially interfered with the landlord's ability to repair the condition, the landlord does not have to repair the condition²⁰² and the tenant cannot withhold rent, until the tenant cures his/her own violation.²⁰³

Responsibility for other kinds of repairs

As for less serious repairs, the rental agreement may require either the tenant or the landlord to fix a particular item. Items covered by such an agreement might include refrigerators, washing machines, parking places, or swimming pools. These items are usually considered "amenities," and their absence does not make a dwelling unit unfit for living.

These agreements to repair are usually enforceable in accordance with the intent of the parties to the rental agreement.²⁰⁴

¹⁹⁷ Civ. Code § 1941.2(b).

¹⁹⁸ Civ. Code § 1941.2(a)(5).

¹⁹⁹ Civ. Code § 1941.3(b).

²⁰⁰ Health & Saf. Code § 13113.7.

²⁰¹ Civ. Code § 1941.2(b).

²⁰² Civ. Code § 1941.2(a).

²⁰³ Civ. Code §§ 1929, 1941.2, and 1942(c); Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., pages 206 (NOLO Press 2019).

²⁰⁴ Portman & Weaver, *California Tenants' Rights*, page 30 (NOLO Press 2018).

However, a tenant may have a right to a reduced rent if a landlord does not provide certain amenities that are part of the tenant's lease. A local rent control ordinance may allow a tenant to file a petition seeking a reduced rent until the amenities are restored.

Tenant's agreement to make repairs

The landlord and the tenant may agree in the rental agreement that the tenant will perform some of the repairs and maintenance in exchange for lower rent.²⁰⁵ Regardless of any such agreement, the landlord is responsible for maintaining the property as required by state and local housing codes.²⁰⁶ Such an agreement must be made in good faith, namely there must be a real reduction in the rent, and the tenant must intend and be able to make all the necessary repairs. When negotiating the agreement, the tenant should consider they want to try to negotiate a cap on the amount that they can be required to spend making repairs. To be clear, a tenant being responsible for any habitability-related repairs will be a result of the tenant's agreement. A landlord cannot unilaterally change the terms of a tenancy to shift the responsibility for these repairs after the tenant's initial occupancy.

Regardless of any such agreement, the landlord is ultimately responsible for maintaining the property as required by state and local housing codes.²⁰⁷

HAVING REPAIRS MADE

If a tenant believes that his or her rental unit needs repairs and the landlord is responsible for the repairs under the implied warranty of habitability, the tenant should notify the landlord in writing and retain a copy for their records. Since rental units typically are business investments for landlords, most landlords want to keep them safe, clean, attractive, and in good repair.

If the damage or repairs require urgent attention, the tenant should notify the landlord orally (i.e., telephone or in person) and memorialize his/her communication in writing immediately thereafter. The tenant should specifically describe the damage or defects and the required repairs. The tenant should date the writing and always keep a copy of it to show that notice was given, and what it said (see pages 56-71).

If the tenant sends a letter to the landlord, manager, or agent, the tenant²⁰⁸ should try to send it by certified mail with return receipt requested. Sending the notice by certified mail is not required by law, but is a very good idea. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent and ask for a receipt to show that the notice was received. The tenant should always keep a copy of the notice and the receipt, or some other evidence that the notice was delivered (see "Giving the landlord notice," pages 68-69).

A landlord, owner or manager may enter the rental unit to make necessary or agreed upon repairs, but they must provide the tenant with a written Notice of Intent to Enter.

²⁰⁵ Civ. Code § 1942.1.

²⁰⁶ Portman & Weaver, *California Tenants' Rights*, pages 30-31 (NOLO Press 2018).

²⁰⁷ Portman & Weaver, *California Tenants' Rights*, pages 30-31 (NOLO Press 2018).

²⁰⁸ Civ. Code § 1954.

The landlord must provide the Notice at least 24-hours in advance of entry.

A landlord is also responsible for changing the locks if the tenant is a survivor of domestic violence, sexual assault, or stalking and provides the landlord with a copy of either a valid restraining order (that includes a move-out order if the abuser lives with the survivor) or a police report involving domestic violence, sexual assault, or stalking against the tenant that occurred within 180 days. The landlord must change the locks within 24 hours of notice of the tenant's request. If the landlord fails to do so within 24 hours of receiving notice from the tenant, the tenant may have the locks changed, even if the lease prohibits them from otherwise doing so. The tenant must change the lock to a similar likeness and quality to the original lock, provide the landlord with notice of the locks change and provide the landlord with the new key. The tenant can notify the landlord that the tenant made this required change themselves, and deduct the cost of changing the locks from their next rental payment in the same manner as described in the "repair and deduct remedy section discussed on page 48."²⁰⁹ If the landlord does not make the requested repairs, and does not have a good reason for not doing so, the tenant may have several remedies, depending on the seriousness of the repairs. These remedies are discussed below. *Each of these remedies has its own risks and requirements, so the tenant should use them carefully.*

Regardless of which remedy a tenant uses, it is always a good idea to document defective conditions with photographs or video.

The "repair and deduct" remedy

The "repair and deduct" remedy allows a tenant to deduct money from the rent to pay for repair of defects in the rental unit if the repairs would not cost more than one month's rent.²¹⁰ This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability (see discussion of the implied warranty of habitability, pages 56-60).²¹¹ Examples might include a leak in the roof during the rainy season, no hot running water, or a gas leak.

As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, it is recommended that the tenant talk to a lawyer, legal aid organization, or tenants' association before proceeding.

The basic requirements and steps for using the repair and deduct remedy are as follows:

1. The defects must be serious and directly related to the tenant's health and safety.²¹²
2. The repairs cannot cost more than one month's rent.

²⁰⁹ Civ. Code §§ 1941.5, 1941.6 and Family Code §§ 6321 and 6340. The National Housing Law Project has an informational packet on lock changes, available at <http://nhlp.org/files/CA-Lock-Changes-Packet-Advocates-and-Survivors.pdf>.

²¹⁰ Civ. Code § 1942.

²¹¹ California Practice Guide, Landlord-Tenant, Paragraphs 3:114-3:117 (Rutter Group 2019).

²¹² Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18 Ed., page 208 (NOLO Press 2019).

3. The tenant cannot use the repair and deduct remedy more than twice in any 12-month period.
4. The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
5. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed (see "Giving the landlord notice," pages 68-69). Writing is strongly recommended. If you notify the landlord via writing, retain a copy of the notice for your records.
6. The tenant must give the landlord a reasonable period of time to make the needed repairs before undertaking the repairs themselves.
 - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the situation. For example, if the furnace is broken and it is very cold outdoors, one to two days may be considered reasonable (assuming that a qualified repair person is available within that time period).
7. If the landlord does not make the repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do them. The tenant may then deduct the cost of the repairs from the rent when it is due. The tenant should keep all receipts for the repairs.
 - It is recommended, but not required by law, that the tenant give the landlord a written notice that explains why the tenant has not paid the full amount of the rent. The tenant should always keep a copy of this notice.

Risks: The defects may not be serious enough to justify using the repair and deduct remedy. In that event, the landlord can sue the tenant to recover the money deducted from the rent, or can serve a 3-day notice to pay rent or quit and file an **eviction** action based on the tenant's nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or did not give the landlord proper advance notice or a reasonable period of time to make repairs, the court can order the tenant to pay the full rent even though the tenant paid for the repairs, or can order that the eviction proceed. Because of the risk of a lawsuit, tenants who plan to use the repair and deduct remedy should document the defective conditions with photographs or video and keep copies of letters informing the landlord of the problem. Before the tenant repairs and deducts, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The landlord may try to terminate the tenancy, increase the rent, decrease services or file a legal action to evict the tenant because the tenant used the repair and deduct remedy. These actions are known as "**retaliatory acts**" (see pages 121-123). The law prohibits retaliation, but the landlord may still attempt to do so. A tenant should contact a legal aid organization, lawyer, housing clinic, or tenant program, if they believe they are being subject to retaliation.²¹³

²¹³ Civ. Code § 1942.5(a).

The “abandonment” remedy

Instead of using the repair and deduct remedy, a tenant can abandon (move out of) a seriously defective rental unit. This remedy is called the “abandonment” remedy. A tenant might use the abandonment remedy where the defects would cost more than one month’s rent to repair,²¹⁴ *but this is not a requirement of the remedy*. The abandonment remedy has most of the same requirements and basic steps as the repair and deduct remedy.²¹⁵

In order to use the abandonment remedy, the rental unit must have substandard conditions that affect the tenant’s health and safety, and that substantially breach the implied warranty of habitability (see discussion of the implied warranty of habitability, pages 56-60).²¹⁶ If the tenant uses this remedy properly, the tenant is not responsible for paying further rent once they have abandoned the rental unit.²¹⁷

The basic requirements and steps for lawfully abandoning a rental unit are:

1. The defects must be serious and directly related to the tenant’s health and safety.²¹⁸
2. The tenant or the tenant’s family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord, either orally or in writing, of the repairs that are needed (see “Giving the landlord notice,” pages 68-69). Writing is strongly recommended. If you notify your landlord in writing, always retain a copy for yourself.
4. The tenant must give the landlord a reasonable period of time to make the needed repairs.
 - What is a reasonable period of time? This depends on the defects and the types of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances. For example, if tree roots block the main sewer drain and none of the toilets or drains work, a reasonable period might be as little as one or two days.
5. If the landlord does not make the repairs within a reasonable period of time, the tenant should notify the landlord in writing of the tenant’s reasons for moving and then actually move out. The tenant should return all the rental unit’s keys to the landlord. The notice should be mailed or delivered as explained in “Giving the landlord notice,” pages 68-69. The tenant should always keep a copy of the notice.
 - It is recommended, but not required by law, that the tenant give the landlord written notice of the tenant’s reasons for moving out. The tenant’s letter may

²¹⁴ California Practice Guide, Landlord-Tenant, Paragraph 3:124 (Rutter Group 2019).

²¹⁵ Civ. Code § 1942.

²¹⁶ California Practice Guide, Landlord-Tenant, Paragraph 3:126-3:128, (Rutter Group 2019).

²¹⁷ Civ. Code § 1942.

²¹⁸ Rosenquest & Portman, *The California Landlord’s Law Book: Rights & Responsibilities*, 18th Ed. page 212 (NOLO Press 2019).

discourage the landlord from suing the tenant to collect additional rent or other damages. A written notice also documents the tenant's reasons for moving, which may be helpful in the event of a later lawsuit. If possible, the tenant should take photographs or a video of the defective conditions or have local health or building officials inspect the rental unit before moving out. If you end up in court, a report from a local health or building official documenting the existence of substantial substandard conditions will be helpful. The tenant should keep a copy of the written notice and any inspection reports and photographs or videos.

Risks: The defects may not affect the tenant's health and safety seriously enough to justify using the remedy. The landlord may sue the tenant to collect additional rent or damages. Again, because of the risk of a lawsuit, tenants who plan to use the abandonment remedy should document the defective conditions with photographs or video and keep copies of letters informing the landlord of the problem. Before the tenant abandons the rental property, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The “rent withholding” remedy

A tenant may have another option for getting repairs made—the “**rent withholding**” remedy.

By law, a tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability (see discussion of the implied warranty of habitability, pages 56-60).²¹⁹ The defects must be substantial—they must be serious ones that threaten the tenant's health or safety.²²⁰

By way of example, the court in *Green v. Superior Court* found the following defects serious enough to justify withholding rent:²²¹

- Collapse and non-repair of the bathroom ceiling.
- Continued presence of rats, mice, and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

In the *Green* case, *all* of these defects were present, and there also were many violations of the local housing and building codes. In other situations, the defects that would justify rent withholding may be different, but the defects would still have to be serious ones that threaten the tenant's health or safety.

²¹⁹ *Green v. Superior Court* (1974) 10 Cal.3d 616.

²²⁰ Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., pages 208-209 (NOLO Press 2019).

²²¹ *Green v. Superior Court* (1974) 10 Cal.3d 616, 621. See *Hyatt v. Tedesco* (2002) 96 Cal.App.4th Supp. 62, 68 for additional examples of substantial defects that violated the implied warranty of habitability.

In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the defects that require repair. In the event of a court action, it is helpful to have photographs or video of the defects that require repairs, witnesses, and copies of letters informing the landlord of the problem. As with the abandonment remedy, a report from a local health or building official documenting the existence of substantial substandard conditions is helpful in defending the use of this remedy.

Before the tenant withholds rent, it is a good idea to check with a legal aid organization, lawyer, housing clinic, or tenant program to help determine if rent withholding is the appropriate remedy.

The basic requirements and steps for using the rent withholding remedy are:

1. The defects or the repairs that are needed must threaten the tenant's health or safety.²²²
 - The defects must be serious enough to make the rental unit uninhabitable. For example, see the defects described in the discussion of the Green case above.
2. The tenant, or the tenant's family, guests, or pets must not have caused the defects that require repair.
3. The tenant must inform the landlord either orally or in writing of the repairs that are needed (see "Giving the landlord notice," pages 68-69). Writing is strongly recommended. If you notify the landlord in writing, always keep a copy for yourself.
4. The tenant must give the landlord a reasonable period of time to make the repairs.
 - What is a reasonable period of time? This depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but a shorter period may be considered reasonable, depending on the circumstances (see discussion above).
5. If the landlord does not make the repairs within a reasonable period of time, the tenant can withhold some or all of the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.
 - How much rent can the tenant withhold? While the law does not provide a clear test for determining how much rent is reasonable for the tenant to withhold, judges in rent withholding cases often use one of the following methods. These methods are offered as examples.

Percentage reduction in rent: The percentage of the rental unit that is uninhabitable is determined, and the rent is reduced by that amount. For example, if one of a rental unit's four rooms is uninhabitable, the tenant could withhold 25 percent of the rent. The tenant would have to pay the remaining 75 percent of the rent. Most courts use this method.

Reasonable value of rental unit: The value of the rental unit in its defective

²²² Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., page 208 (NOLO Press 2019).

state is determined, and the tenant withholds that amount. The tenant would have to pay the difference between the rental unit's fair market value (usually the rent stated in the rental agreement) and the rental unit's value in its defective state.²²³

6. The tenant should save the withheld rent money *and not spend it*. The tenant may be required to pay the landlord some or all of the withheld rent.
 - If the tenant withholds rent, the tenant should try to put the withheld rent money into a special bank account (called an **escrow account**). The tenant should notify the landlord in writing that the withheld rent money has been deposited in the escrow account and explain why.

Depositing the withheld rent money in an escrow account is not required by law but is a very good thing to do for three reasons.

First, as explained under “Risks” on page 63, rent withholding cases often wind up in court as a result of the landlord suing the tenant in an eviction case or in a monetary case to recover the withheld rent. The judge usually will require the tenant to pay the landlord some reduced rent based on the value of the rental unit with all of its defects. Judges rarely excuse payment of all rent. Depositing the withheld rent money in an escrow account ensures that the tenant will have the money to pay any “reasonable rent” that the court orders. The tenant will have to pay the rent ordered by the court five days (or less) from the date of the court's judgment.

Second, putting the withheld rent money in an escrow account proves to the court that the tenant did not withhold rent just to avoid paying rent. If there is a court hearing, the judge will often ask the tenant if they set aside the rent. The tenant should bring rental receipts or other evidence to show that they have been reliable in paying rent in the past.

Third, it may strengthen a tenant's position in their case to deposit the withheld rent money in an escrow account or set it aside, particularly if the defenses turn out to not be that strong. Tenants should contact their local legal aid organization for more information.

Sometimes, the tenant and the landlord will be able to agree on the amount of rent that is reasonable for the time when the rental unit needed repairs. If the tenant and the landlord cannot agree on a reasonable amount, the dispute will have to be decided in court, or resolved in an arbitration or mediation proceeding provided the parties included an arbitration or mediation clause in their rental agreement or subsequently have agreed to use arbitration or mediation to resolve their dispute (see page 126). Whether or not the rental agreement contains an arbitration or mediation clause, landlords and tenants are encouraged to utilize dispute resolution programs (such as arbitration or mediation) in lieu of proceeding to court where possible since disputes submitted to dispute resolution can be resolved more quickly, less expensively, and the parties can avoid the adversity associated with litigation.

Risks: The defects may not be serious enough to threaten the tenant's health or

²²³ See discussion in Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., pages 209-210. (NOLLO Press 2019), Portman & Weaver, *California Tenants' Rights*, 21st Ed., pages 103-104 (NOLLO Press 2018), and California Practice Guide, *Landlord-Tenant*, Paragraph 3:138-3:141 (Rutter Group 2019).

safety. If the tenant withholds rent, the landlord may give the tenant a three-day notice to pay the rent or quit. If the tenant refuses to pay, the landlord likely will file an unlawful detainer action to evict the tenant. In the court action, the tenant will have to prove that the landlord violated the implied warranty of habitability.²²⁴

If the tenant wins the case, the landlord can be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent amount, which may be less than the usual rent amount. The rent ordinarily must be paid five days or less from the date of the court's judgment. If the tenant wins but does not pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord, and the tenant may be evicted. If the tenant loses, they will have to pay the rent, may be evicted, will be ordered to pay the landlord's court costs, and will likely be ordered to pay the landlord's attorney's fees if the rental agreement contains an attorney's fees clause.

There is another risk of tenants withholding rent. The landlord may ignore the tenant's notice of defective conditions and seek to remove the tenant by giving them a 30-day, 60-day or 90-day notice to move. This may amount to a "retaliatory **act**" (see pages 121-123).²²⁵ The law prohibits retaliation, but there are some limitations to this protection.²²⁶

Giving the landlord notice

Whenever a tenant gives the landlord notice of the tenant's intention to repair and deduct, withhold rent, or abandon the rental unit, it is suggested that the tenant put the notice in writing. The notice should be in the form of a letter and can be typed or handwritten. The letter should describe in detail the problem and the repairs that are required. The tenant should sign and date the letter and always keep a copy.²²⁷

The tenant might be tempted to send the notice to the landlord by text message, e-mail, or fax. The laws regarding repairs specify that the tenant may give the landlord notice orally or in writing, but do not mention text messaging, e-mail, or fax. To be certain that the notice complies with the law, the tenant should follow up any texted, e-mailed, or faxed notice with a letter describing the damage or defects and the required repairs.

The letter should be sent to the landlord, manager, or agent by certified mail (return receipt requested). Sending the letter by certified mail is not required by law but is recommended. Or, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent. The tenant should ask for a signed and dated receipt showing that the notice was received or ask the landlord to date and sign (or initial) the tenant's copy of the letter to show that the landlord received the notice. Whatever the method of delivery, it is important that the tenant obtain proof that the landlord, or the landlord's manager or agent, received the notice.

The copy of the letter and the receipt will serve as proof that the tenant notified the

²²⁴ Depending on the facts, the tenant may be entitled to a rebuttable presumption that the landlord has breached the implied warranty of habitability. (Civ. Code § 1942.3.) This presumption affects the burden of producing evidence.

²²⁵ California Practice Guide, Landlord-Tenant, Paragraph 7:330 (Rutter Group 2019).

²²⁶ Civ. Code § 1942.5(a).

²²⁷ Moskowitz et al., California Landlord-Tenant Practice, § 3.13 (Cont.Ed.Bar 2016); Civ. Code § 1942(a).

landlord, and also proof of what was contained in the notice. The tenant should keep a copy of the letter and the receipt in case of a dispute with the landlord. The tenant also should take photographs or videos when possible to document the extent of the damage or defect.

The landlord or agent may call the tenant to discuss the request for repairs or to schedule a time to make the repairs. It is recommended that the tenant keep notes of any conversations and phone calls about the request for repairs. During each conversation or immediately after it, the tenant should write down the date and time of the conversation, what both parties said, and the date and time that the tenant made the notes. It is important to note that neither the tenant nor the landlord can record a telephone conversation without the other party's permission.²²⁸ If a landlord gives a notice that he/she will enter the unit to make repairs but never shows up, it is a good idea for the tenant to send the landlord a letter explaining that the landlord never showed up at the specified time. This will serve as proof if, in the future, the landlord tries to claim that the tenant did not allow entry.

Tenant information

An occupant of residential property can invite another person onto the property during reasonable hours, or because of emergency circumstances, to provide information about tenants' rights or to participate in a tenants' association or an association that advocates for tenants' rights. The invited person cannot be held liable for trespass.²²⁹

Lawsuit for damages as a remedy

The remedies of repair and deduct, abandonment, and rent withholding allow a tenant in a rental unit with serious habitability defects to take action against the landlord without filing a lawsuit. Arbitration and mediation are other methods of resolving disputes about the condition of a rental unit (see page 126).

A tenant has another option. The tenant can file a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in the rental unit in a timely manner.²³⁰ For damages under \$10,000, the tenant can file a lawsuit in the Small Claims Court in the county where the property is located. In 2020, the jurisdictional limit for Small Claims Court cases is \$10,000 or less. For damages above \$10,000, the tenant will need to file his/her lawsuit in the Superior Court in the county where the property is located.²³¹ The tenant can file this kind of lawsuit without first trying another remedy, such as the repair and deduct remedy. It is important to note that according to the law, tenants cannot be represented by a lawyer in Small Claims Court cases,

²²⁸ Pen. Code § 632.

²²⁹ Civ. Code § 1942.6. A tenants' association does not have a right under the California Constitution's free speech clause to distribute its newsletter in a privately owned apartment complex. (*Golden Gateway Center v. Golden Gateway Tenants Assoc.* (2001) 26 Cal. 4th 1013.)

²³⁰ Civ. Code § 1942.4.

²³¹ One reference book cautions against a tenant litigating implied warranty of habitability issues in small claims court because collateral estoppel precludes an issue decided there from being relitigated. Moskowitz et al., *California Landlord-Tenant Practice*, §§ 5.16, 5.39 (Cont.Ed.Bar 2016), citing *Pitzen v. Superior Court* (2004) 120 Cal. App. 4th 1374.

although many legal services organizations and court self-help centers have materials that provide guidance.

If the tenant wins the lawsuit, the court may award the tenant his or her actual damages, plus “special damages” in an amount ranging from \$100 to \$5,000.²³² “Special damages” are costs that the tenant incurs, such as the cost of a motel room, because the landlord did not repair defects in the rental unit. The party who wins the lawsuit is entitled to recover his or her costs of bringing the suit (for example, court costs), plus reasonable attorney’s fees as awarded by the court pursuant to any statute or the contract of the parties.²³³ While attorneys cannot appear in small claims court, a tenant may still have had attorney’s fees, for example for the preparation of a demand letter.

The court also may order the landlord to abate (stop or eliminate) a nuisance and to repair any substandard condition that significantly affects the health and safety of the tenant.²³⁴ For example, a court could order the landlord to repair a leaky roof, and could retain jurisdiction over the case until the roof is fixed. This type of relief, called ‘injunctive relief’, is typically not available in small claims court, but Civil Code section 1942.4 allows for it. It should be noted that local code enforcement officials can also order the landlord to correct violations by way of a “Notice of Violation and Order to Abate”. In fact, that is a necessary step for this type of affirmative lawsuit, as described in the following.

In order for a tenant to prevail in his/her affirmative lawsuit and recover actual and special damages against the landlord, all of the following conditions must be met.²³⁵ The tenant can still prevail in his/her affirmative claim without meeting these conditions, but will not recover both actual and special damages.

- The rental unit has a serious habitability defect that endangers the health, life, safety, property, or welfare of the occupants or the public;
- A housing inspector has inspected the minimum requirements for habitability listed in the eight categories on page 38; or has been declared substandard because, for example, a structural hazard, inadequate sanitation, or premises liability and has given the landlord or the landlord’s agent written notice of the landlord’s obligation to repair the substandard conditions or abate the nuisance;
- The nuisance or substandard conditions continue to exist 35 days after the housing inspector mailed the notice to the landlord or agent, and the landlord does not have good cause for failing to make the repairs;
- The nuisance or substandard conditions were not caused by the tenant or the tenant’s family, guests, or pets; and
- The landlord collects or demands rent, issues a notice of rent increase, or issues a three-day notice to pay rent or quit (see pages 102-107) after all of the above

²³² Civ. Code § 1942.4(b)(1).

²³³ Civ. Code § 1942.4(b)(2), Code Civ. Proc. § 1174.2.

²³⁴ Civ. Code § 1942.4(a),(c).

²³⁵ Civ. Code § 1942.4(a); Health & Safety Code §§ 17920.3, 17920.10.

conditions have been met.

To prepare for filing this kind of lawsuit, the tenant should take all of these basic steps:

- The tenant should notify the landlord in writing about the conditions that require repair (see “Giving the landlord notice,” pages 68-69). The rental unit must have serious habitability defects that were not caused by the tenant’s family, guests, or pets.
- The notice should specifically describe the defects and the repairs that are required.
- The notice should give the landlord a reasonable period of time to make the repairs.
- If the landlord does not make the repairs within a reasonable time, the tenant should contact the local city or county building department, health department, or local housing agency and request an inspection.
- The housing inspector must inspect the rental unit.
- The housing inspector must give the landlord or the landlord’s agent written notice of the repairs that are required.
- The substandard conditions must continue to exist 35 days after the housing inspector mailed the notice to the landlord or landlord’s agent. The landlord must then collect or demand rent, raise the rent, or serve a three-day notice to pay rent or quit.
- The tenant should gather evidence of the substandard conditions (for example, photographs or videos, statements of witnesses, inspection reports) so that the tenant can prove his or her case in court.
- The tenant should discuss the case with a lawyer, legal aid organization, tenant program, or housing clinic in order to understand what the lawsuit is likely to accomplish, and also the risks involved.²³⁶

Resolving complaints out of court

Before filing suit, the tenant should try to resolve the dispute out of court, either through personal negotiation or a dispute resolution program that offers mediation or arbitration of landlord-tenant disputes. If the tenant and the landlord agree, a neutral person can work with both of them to reach a solution. Informal dispute resolution can be inexpensive and fast (see “Arbitration and Mediation,” pages 126). Please see pages 74-80 regarding legal requirements for notices.

LANDLORD’S SALE OF THE RENTAL UNIT

If your landlord voluntarily sells the rental unit that you live in, your legal rights as a

²³⁶ Civ. Code § 1942.4, which gives the tenant the right to sue the landlord as described in this section, also can be used defensively. If the landlord brings an unlawful detainer action against the tenant based on nonpayment of rent, and the court finds that the landlord has violated all of the five conditions listed in the bullets on this page, the landlord is liable for the tenant’s attorney’s fees and costs of suit, as determined by the court. (Code Civ. Proc. § 1174.21).

tenant are not changed. Tenants who have a rental agreement have the right to remain through the end of the rental agreement under the same terms and conditions. The new landlord may be able to end a **periodic tenancy** (for example, a month-to-month tenancy), but only if allowed by law and after giving the tenant the required advance notice. The new landlord's ability to terminate the tenancy may be limited by the provisions of the Tenant Protection Act of 2019, in that just cause to terminate the tenancy may be required (see "Landlord's notice to end a periodic tenancy," pages 76-80).

The sale of the rental unit does not change the rights of the tenants to have their security deposits refunded when they move. Pages 93-95 discuss the new landlord's responsibility for the tenants' security deposits after the rental unit has been sold.

When property is sold in foreclosure

State law provides that a tenant or subtenant in possession of a rental housing unit under a month-to-month rental agreement or periodic tenancy at the time a property is sold in foreclosure shall be given 90 days' written notice to quit before the tenant may be removed from the property.²³⁷ In addition, a tenant or subtenant in possession of a rental housing unit under a fixed-term residential rental agreement (such as a one-year rental agreement) entered into before transfer of title at the foreclosure sale shall have the right to possession until the end of the term, except that the fixed-term tenancy may be terminated upon 90 days' written notice to quit if any of the following apply: (1) the purchaser in the foreclosure sale will occupy the housing unit as a primary residence; (2) the tenant is the mortgagor or the child, spouse, or parent of the mortgagor; (3) the rental agreement was not the result of an arms' length transaction; or (4) the rent is much less than the fair market value of the property (unless the rent is reduced or subsidized due to federal, state or local subsidy or law such as a Section 8 voucher).²³⁸ Federal law requires that the purchaser at foreclosure of a dwelling in which a tenant occupies with a Section 8 voucher must continue the tenancy under the rental agreement and housing assistance payment contract, being entitled to the rights and bound by the obligations of that program, unless they will occupy the dwelling as their primary residence, in which case they must first give the tenant 90 days' notice to vacate.²³⁹

CONDOMINIUM CONVERSIONS

A landlord who wishes to convert rental property into condominiums must obtain approval from the local city or county planning agency. The landlord also must receive final approval in the form of a public report issued by the California Department of Real Estate. Affected tenants must receive notices at various stages of the application and approval process.²⁴⁰ These notices are designed to allow affected tenants and the public

²³⁷ Code Civ. Proc. 1161b(a).

²³⁸ Code Civ. Proc. 1161b(b); Portman & Weaver, California Tenants Rights, page 236 (NOLO Press 2018).

²³⁹ 42 U.S.C 1437f(o)(7).

²⁴⁰ Gov. Code § 66427.1(a),(b).

to have a voice in the approval process.²⁴¹ Tenants can check with local elected officials or housing agencies about the approval process and opportunities for public input.

Perhaps most important, affected tenants must be given written notice of the conversion to condominiums at least 180 days before their tenancies end due to the conversion.²⁴² Affected tenants also must be given a first option to buy the rental unit on the same terms that are being offered to the general public (or better terms). The tenants must be able to exercise this right for at least 90 days following issuance of the Department of Real Estate's public report.²⁴³ Local laws may provide additional requirements and protections for tenants.

DEMOLITION OF DWELLING

The owner of a dwelling must give written notice to current tenants before applying for a permit to demolish the dwelling. The owner also must give this notice to tenants who have signed rental agreements but who have not yet moved in (see page 36). The notice must include the earliest approximate dates that the owner expects the demolition to occur and the tenancy to end.²⁴⁴

INFLUENCING THE TENANT TO MOVE

California law protects a tenant from retaliation by the landlord because the tenant has lawfully exercised a tenant right (see pages 121-123). California law also makes it unlawful for a landlord to attempt to influence a tenant to move out by doing any of the following:

- Engaging in conduct that constitutes theft or extortion.
- Using threats, force, or menacing conduct that interferes with the tenant's quiet enjoyment of the rental unit. Quiet enjoyment means you have the right to full use and enjoyment of the rental unit free from substantial interference from the landlord. (Menacing conduct by the landlord must be of a nature that would create the fear of harm in a reasonable person.)
- Committing a significant and intentional violation of the rules limiting the landlord's right to enter the rental unit (see pages 52-54).²⁴⁵

A landlord does not violate the law by giving a tenant a warning notice, in good faith, that the tenant's or a guest's conduct may violate the rental agreement, rules or laws. The notice may be oral or in writing. The law also allows a landlord to give a tenant an oral or written explanation of the rental agreement, rules or laws in the normal course of business.²⁴⁶

²⁴¹ Gov. Code §§ 66451.3, 65090, 65091.

²⁴² Gov. Code § 66427.1(a)(2)(E).

²⁴³ Gov. Code § 66427.1, 66427.1(a)(2)(F); Bus. & Prof. Code §§ 11018, 11018.2; California Practice Guide, Landlord-Tenant, Paragraph 5:3 (Rutter Group 2019).

²⁴⁴ Civ. Code § 1940.6.

²⁴⁵ Civ. Code § 1940.2(a).

²⁴⁶ Civ. Code § 1940.2(c).

If a landlord engages in unlawful behavior as described above, the tenant may sue the landlord in small claims court or Superior Court. If the tenant prevails, the court may award them a civil penalty of up to \$2,000 for each violation.²⁴⁷ Before filing a lawsuit, the tenant should be mindful that lawsuits can be very contentious, stressful, expensive and continue for extended periods of time. If you are faced with actions similar to those described above, try to assess the situation realistically. You may want to discuss the situation with a tenant advisor, or a lawyer who represents tenants. You should consider whether the landlord's actions have a discriminatory motive, in which case you should contact a local fair housing organization, a local legal aid organization or the California Department of Fair Employment and Housing. If you are convinced that you cannot work things out with the landlord, then consider your legal remedies.

MOVING OUT

GIVING AND RECEIVING PROPER NOTICE

Tenant's notice to end a periodic tenancy

A periodic tenancy is a tenancy that continues weekly or monthly with no specified end date. To end a periodic tenancy (for example, a month-to-month agreement), the tenant must give the landlord proper written notice before moving. Even a periodic-term agreement entered into orally requires a proper written notice.

The law requires the tenant to give the landlord the same amount of notice as there are days in the rental term.²⁴⁸ This means that if you have a month-to-month tenancy, you must give the landlord written notice at least 30 days before you move. If you are in a week-to-week tenancy, you must give the landlord written notice at least seven days before you move. This is true even if the landlord has given you a 60-day notice to end a month-to-month rental agreement and you want to leave sooner (see discussion, page 102-103).²⁴⁹

If the rental agreement specifies a different amount of notice (for example 10 days), the tenant must give the landlord written notice as required by the agreement.²⁵⁰

To avoid later disagreements, date the notice, state the date that you intend to move, and always make a copy of the notice for yourself. Although the law provides tenants with several options for delivering your notice to the landlord, it is recommended that you deliver the notice to the landlord or property manager in person or mail it by certified mail with return receipt requested. You can also serve the notice by one of the methods described under "Proper Service of Notices," pages 106-107.²⁵¹

²⁴⁷ Civ. Code § 1940.2(b).

²⁴⁸ Civ. Code § 1946.

²⁴⁹ Civ. Code § 1946.1(e).

²⁵⁰ Civ. Code § 1946.

²⁵¹ Civ. Code § 1946.

You can give the landlord notice any time during the rental period, but you must pay full rent during the period covered by the notice. For example, say you have a month-to-month rental agreement, and pay rent on the first day of each month. You could give notice any time during the month, but are required to leave within 30 days of giving your notice. For instance, if you give your notice on September 10th, then you must leave on or before October 10th and you are responsible for rent through October 10th (i.e., 20 days of September and 10 days of October). The prior example was based on a month with 30 days. If you give the same 30-day notice on the 10th day of a month in a month with 31 days, your time period to move out would fall on the 9th day of the following month. **(Exception:** You may not have to pay rent for the entire 30-day period if you moved out before the end of the 30 days and the landlord rented the unit to another tenant who moved in before the end of the 30-day period and started paying rent.)²⁵²

The rental agreement must state the name and address of the person or entity to whom you must make rent payments (see pages 28-30). If this address does not accept personal deliveries, you can mail your notice to the owner at the name and address stated in the rental agreement. If you can show proof that you mailed the notice to the stated name and address (for example, a receipt for certified mail), the law assumes that the notice was received by the owner on the date of postmark.²⁵³

Special rights of tenants who are victims of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse.

You may notify your landlord that you or another household member has been a victim of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse and that you intend to move out and terminate your lease early. You are able to terminate your lease with 14 days' notice (instead of the normal 30 days' notice), without penalty, if you provide written notice to your landlord that you intend to move out due to your or a household member being a victim of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse. You would still be responsible for payment of the rent for 14 days following your notice, unless the landlord is able to re-rent your unit within that time period.²⁵⁴ You are required to attach to your notice to the landlord a copy of the restraining order, emergency protective order, or police report, within 180 days of the day such order or report was issued or made, or provide a statement by a qualified third party including a domestic violence advocate, sexual assault advocate, human trafficking advocate, doctor, registered nurse, licensed clinical social worker, or psychologist. If a tenant terminates their lease early due to domestic violence, sexual assault, stalking, human trafficking, or **elder abuse**, the landlord must return the security deposit without penalty for early termination.²⁵⁵

If the person subject to the restraining order or emergency protective order is also a

²⁵² Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., page 388 (NOLO Press 2019).

²⁵³ Civ. Code § 1962(f).

²⁵⁴ Civ. Code § 1946.7(d).

²⁵⁵ Civ. Code § 1946.7 (f)(2).

tenant of the unit, that person is still responsible for upholding their end of the rental agreement.²⁵⁶

A landlord cannot end or refuse to renew your tenancy based upon the fact that you or a member of your household is the victim of domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse.²⁵⁷ Such actions may also invoke protections based on fair housing law as well as tenant law. Furthermore, a landlord cannot evict you for calling for police or emergency assistance on your own behalf as a victim of crime, victim of abuse, or person in an emergency if you believed the assistance was necessary.²⁵⁸

If you request that the landlord change your locks and the landlord fails to do so within 24 hours of your request, you may then change the locks yourself.²⁵⁹

In the context of a number of federally assisted housing programs, the Violence Against Women Act (VAWA) offers protections for victims of domestic violence, dating violence, sexual assault, or stalking.²⁶⁰ Such protections include, but are not limited to, the ability to request an emergency transfer to a safe unit, the ability to remove the abuser from the lease, and protection from eviction or subsidy termination because of the abuse. Covered housing programs include programs such as public housing, the Section 8 Housing Choice Voucher program, Project-Based Section 8 housing, Low-Income Housing Tax Credit housing, and USDA Rural Development Multifamily housing programs, among other federal programs. An attorney can help you figure out if VAWA protections apply in your case. For general information about VAWA housing protections and a longer list of covered programs, please see this pamphlet from the National Housing Law Project: <https://www.nhlp.org/wp-content/uploads/VAWA-Brochure-English-and-Spanish-combined.pdf>.

Landlord's notice to end a periodic tenancy

A landlord can end a periodic tenancy (for example, a month-to-month or week-to-week tenancy) by giving the tenant proper advance written notice. Your landlord must

²⁵⁶ Civ. Code § 1946.7(e).

²⁵⁷ Code Civ. Proc. § 1161.3.

²⁵⁸ Civ. Code § 1946.8.

²⁵⁹ Civ. Code §§ 1941.5(c), 1941.6(c).

²⁶⁰ 34 U.S.C. § 12491. For the purposes of VAWA, the following definitions apply. “Domestic violence” is defined as “felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.” 34 U.S.C. § 12291(a)(8). “Dating violence” is defined as “violence committed by a person-- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship[;] (ii) The type of relationship[;] (iii) The frequency of interaction between the persons involved in the relationship.” 34 U.S.C. § 12291(a)(10). “Sexual assault” is defined as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.” 34 U.S.C. § 12291(a)(29). “Stalking” is defined as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. 34 U.S.C. § 12291(a)(30).

give you 60 days, and for certain tenancies 90-days, advance written notice that the tenancy will end. If you, and every other tenant or resident, have lived in the rental unit for a year or more the notice must be 60-days.²⁶¹ If the landlord is terminating a tenancy involving rental assistance the notice must be 90-days.²⁶² However for non-assisted tenancies, the landlord may give you 30 days advance written notice in either of the following situations:

- Any tenant or resident has lived in the rental unit less than one year;²⁶³ or
- The landlord has contracted to sell the rental unit to another person who intends to reside in it for at least a full year after the tenancy ends. In addition, all of the following must be true in order for the selling landlord to give you a 30-day notice:
 - The landlord has contracted to sell the dwelling unit and has opened escrow with a licensed escrow agent, title insurance company, or a real estate broker;
 - The landlord must have given you the 30-day notice no later than 120 days after opening the escrow;
 - The landlord must not previously have given you a 30-day or 60-day notice;
 - The purchaser is a natural person or persons (not a partnership, LLC, corporation, etc.);
 - The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy,
 - The rental unit must be one that can be sold separately from any other dwelling unit. For example, a house or a condominium can be sold separately from another dwelling unit.²⁶⁴

Prior to the enactment of the Tenant Protection Act (effective January 1, 2020) the landlord was not required to state a reason for ending the tenancy when using a 30-day or 60-day notice; however, the Tenant Protection Act, if applicable to the rental unit, requires just cause for termination of periodic tenancies, “which shall be stated in the written notice to terminate tenancy (see 30-Day or 60-Day Notice, page 102).”²⁶⁵ For tenancies with rental assistance, depending on the source of that assistance, a 90-day notice may be required to state a reason. However, for rental units now covered by that law, a landlord will need to have just cause to terminate a tenancy and state that cause in the notice (see discussion of the Tenant Protection Act on pages 80-81 and the Tenant Protection Act Fact Sheet).²⁶⁶ The landlord can serve the 30-day, 60-day or 90-day notice by certified or registered mail or by one of the methods described under

²⁶¹ Civ. Code § 1946.1(b).

²⁶² Civ. Code § 1954.535.

²⁶³ Civ. Code § 1946, Civ. Code § 1946.1(c).

²⁶⁴ Civ. Code § 1946.1(d).

²⁶⁵ Civ. Code § 1946.2(a), (b).

²⁶⁶ Civ. Code § 1946.2.

“Proper Service of Notices,” pages 106-107.²⁶⁷

Any of the above discussed landlords’ notices to terminate a periodic tenancy must also include the following statement.²⁶⁸

“State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.”

Note: In the circumstances described on pages 102-103, a landlord can give you just *three days* advance written notice.

If you receive a 30-day, 60-day, or 90-day notice, you must leave the rental unit by the later of the date specified in the notice or the end of the 30th, 60th, or 90th day as specified in your notice. Otherwise, your landlord may file an unlawful detainer lawsuit against you (see page 107-108). For example, if the landlord served a 60-day notice on July 16, you would begin counting the 60 days on July 17, and the 60-day period would end on September 14. If September 14 falls on a weekday, you would have to leave on or before that date. However, if the last day of the notice falls on a Saturday, Sunday or legal holiday, you would not have to leave until the next day that is not a Saturday, Sunday or legal holiday.²⁶⁹

If you do not move out by the end of the notice period (i.e., the date in the notice or the end of the notice period), the landlord may file an unlawful detainer lawsuit to evict you (see page 107-108).

What if the landlord has given you a 60-day notice, but you want to leave sooner? You should give the landlord the same amount of notice as there are days between rent payments (for example, if you pay your rent every 30 days, then you should provide your landlord with 30 days’ notice) provided that —

- The number of days of your notice to your landlord is not less than the number of days between rent payments, and
- Your proposed termination date is before the landlord’s termination date.²⁷⁰

What if the landlord has given you a 30-day, 60-day or 90-day notice, but you want to continue to rent the property because you believe that you have not done anything to cause the landlord to give you a notice of termination, or that the landlord is retaliating against you for exercising your rights? In this kind of situation, you can try to communicate with the landlord and come to an agreement where the landlord withdraws the notice and allows you to stay. Try to find out why the landlord gave you the notice. If

²⁶⁷ Civ. Code § 1946.1(f); Civ. Code § 1162(a).

²⁶⁸ Civ. Code § 1946.1(h).

²⁶⁹ Code Civ. Proc. § 12a. See California Practice Guide, Landlord-Tenant, Paragraph 7:220 to 7:220.6 (Rutter Group 2019) on whether service of the 30-day notice by mail extends the time for the tenant to respond.

²⁷⁰ Civ. Code § 1946.1(e).

the issue is something within your control (for example, consistently late rent, or playing music too loud), assure the landlord that in the future, you will pay on time or keep the volume turned down. Then, keep your promise. If the landlord refuses to withdraw the notice, you will have to move out at the end of the notice period, or be prepared for the landlord to file an unlawful detainer lawsuit to evict you. If you believe the landlord has acted in retaliation against you, you can raise the landlord's retaliation as a defense at trial in the landlord's unlawful detainer action or assert it as part of a new lawsuit against the landlord for retaliation after you vacate or move out of the rental unit. In either event, you should consider the nature and extent of the landlord's alleged retaliation before asserting it as a defense or affirmative claim and you should always keep copies for your records of all communications between the landlord and you.²⁷¹

In addition to provisions of the Tenant Protection Act, special rules may apply in cities or counties with rent stabilization ordinances. It is important to know whether you live in a unit covered by a local rent stabilization ordinance. For example, in some jurisdictions with rent stabilization ordinances, the landlord cannot end a periodic tenancy without a good faith “**just cause**” or “good cause” reason to evict, which may supersede the Tenant Protection Act in certain situations. In these jurisdictions, the landlord must state the reason for the termination, and the reason may be reviewed by local housing authorities.

Special rules also apply to tenants who participate in certain federal housing programs, such as the Section 8 housing voucher program, project-based Section 8 housing, and the Low Income Housing Tax Credit programs. While the rental agreement is in effect, the landlord must have good cause to terminate (end) the tenancy.²⁷² This means that the landlord cannot end your tenancy without a specific reason. Examples of good cause include failing to pay your rent, serious or repeated violations of the rental agreement, or criminal activity that threatens the health or safety of other residents.²⁷³ However, incidents of domestic violence may not be used as a violation by the victim or threatened victim as good cause for the landlord to terminate the tenancy or occupancy rights of the victim.²⁷⁴

To terminate the tenancy of a tenant who participates in the Section 8 Housing Choice Voucher program, the landlord must first give the tenant the applicable three-day or 90-day notice of termination under California law²⁷⁵ (see pages 102-105), and the landlord

²⁷¹ Civ. Code § 1942.5

²⁷² Project-based Section 8: 12 U.S.C.A. §§ 1715z-1b(a) (definition of “multifamily housing project”); 1715z-1b(b)(3) (lease must provide that tenant may be evicted only for good cause); Section 8 Housing Choice Voucher Program: 42 U.S.C.A. §§ 1437f(d)(1)(B)(ii), (iii), (v), 1437f(o)(7)(C), (D); LIHTC program: 26 U.S.C.A. § 42(h)(6)(E)(ii). For LIHTC units, see also California Tax Credit Allocation Committee, Compliance Online Reference Manual, at 12.

²⁷³ California Practice Guide, Landlord-Tenant, Paragraphs 12:202 and following (Rutter Group 2019). See this chapter for an in-depth discussion of the Section 8 housing program.

²⁷⁴ California Practice Guide, Landlord-Tenant, Paragraph 12:203 (Rutter Group 2019) citing 42 U.S.C. §§ 14043e-11(b)(1), (2) [note that the U.S. Code citation has changed to 34 U.S.C. § 12491(b)(1), (2)]; 24 CFR §§ 5.2005(a), 982.452(b)(1).

²⁷⁵ Civ. Code § 1954.535.

must give the public housing agency a copy of the notice at the same time.²⁷⁶ If the landlord simply decides not to renew the rental agreement, or decides to terminate the HAP (housing assistance payment) contract, the landlord must give the tenant 90 days' advance written notice of the termination date, to occur on or after the expiration date of a rental agreement for a fixed-term.²⁷⁷ If the tenant does not move out by the end of the 90 days, the landlord must follow California law to evict the tenant.²⁷⁸

Likewise, if a landlord has served a 3-day type of notice for a violation that either is not corrected, or is for those limited violations that cannot be corrected, and the tenant has also not quit the premises, the landlord must follow California law to evict the tenant.²⁷⁹

If the tenancy is protected by local just cause for eviction laws, or the 2019 Tenant Protection Act, the landlord must have a valid reason justifying "cause" to terminate the tenancy, such as the tenant's failure to pay rent.²⁸⁰ Even if the tenant is not at fault, the landlord can terminate the tenancy if the landlord has just cause, such as the property will be demolished, substantially remodeled, or occupied by the landlord or his or her close family member. However, in situations where the tenant is not at fault, but the landlord has just cause to terminate, the landlord will often be obligated to pay the tenant relocation assistance—either equal to one month's rent under the Tenant Protection Act or different relocation assistance amounts under applicable local ordinances.²⁸¹

If you live in government financed or subsidized housing, or in an area with rent control, check with your local housing officials or a housing counseling agency to see if any special rules apply in your situation.

TENANT PROTECTION ACT OF 2019

The **Tenant Protection Act of 2019** ("Tenant Protection Act") (AB 1482) establishes limitations on rent increases and requires just cause for terminating certain tenancies. The bill established Civil Code sections 1946.2 (just cause) and 1947.12 (rent limitations). The Tenant Protection Act is complex and the following serves as an overview or summary of its just cause termination of tenancy provisions.²⁸² For further detail see the Tenant Protection Act Fact Sheet.

Generally, properties covered by the just cause requirement are rental units in complexes with two or more units and the complex is at least 15 years old, and are not already covered by local just cause protections. Regardless of age, a duplex in which the owner occupies a unit is exempt, as are many, but not all, single-family homes and condominiums. Tenants in single-family homes and condominiums that qualify for

²⁷⁶ 24 Code of Federal Regulations 982.310(e), Tenancy Addendum - Section 8 Tenant-Based Assistance - Housing Choice Voucher Program (HUD-52641-A); California Practice Guide, Landlord-Tenant, Paragraphs 12:210-12:211 (Rutter Group 2019).

²⁷⁷ Civ. Code § 1954.535; *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111

²⁷⁸ California Practice Guide, Landlord-Tenant, Paragraph 12:211(Rutter Group 2019).

²⁷⁹ 24 Code of Federal Regulations 982.310(f).

²⁸⁰ Civ. Code § 1946.2(b).

²⁸¹ Civ. Code § 1946.2(d)(3).

²⁸² Civ. Code § 1946.2(b).

exemption must be notified of the exemption with a specified written notice or rental agreement term in order for the landlord to actually be exempt. For termination of a tenancy at a property covered by the Tenant Protection Act, the allowable just cause must be stated in the written notice terminating the tenancy.

The law specifies two types of just cause that a landlord can cite as grounds for terminating a tenancy. These are “at fault” and “no fault”. At fault cause is the result of a tenant violating a term of their rental agreement, which goes uncorrected after a 3-day notice, or which is a violation that the law requires the landlord give a chance for correction. It also includes failure to pay rent, refusing to renew a lease on similar terms to an expiring one, a tenant not vacating pursuant to the tenant’s own notice or agreement to do so, or the failure of an employee or agent to vacate housing provided in connection with their duties following termination from those duties.

No fault cause would be a notice given for what amounts to a landlord’s permissible business reasons. These are removing the unit from the rental market, the owner’s occupation of the unit or occupancy of the rental unit by the owner’s family members, the owner complying with governmental requirements or actions, and demolition or certain substantial rehabilitation of premises. For substantial rehabilitation, the Tenant Protection Act requires the landlord to obtain a government permit or the remediation of hazardous materials. No fault terminations require the landlord to either pay the tenant one month’s rent or forgive their last month’s rent.

In addition to limitations as to property type, just cause under the Tenant Protection Act applies only under certain conditions of tenure of the tenants. It applies if a tenancy has been in place for 12 months or more. However, if any adult is added to occupancy in the unit before any tenant has resided there for 24 months, then the protection does not apply until all tenants have resided in the unit for 12 months or any tenant has resided there continuously for 24 months.²⁸³

ADVANCE PAYMENT OF LAST MONTH’S RENT

Many landlords require tenants to pay “last month’s rent” at the beginning of the tenancy as part of the security deposit or at the time the security deposit is paid. Almost without exception what a residential landlord calls “last month’s rent” is really nothing other than a security deposit. The security deposit law, Civil Code section 1950.5, places strict limits on the advance payment of rent and characterizes any money given to the landlord, except for an application fee and the first month’s rent, as security deposit.²⁸⁴

REFUND OF SECURITY DEPOSITS

Common problems and how to avoid them

One of the most common disagreements between landlords and tenants is over the refund of the tenant’s security deposit after the tenant has moved out of the rental unit. California law, therefore, specifies procedures that the landlord must follow for refunding, using, and accounting for tenants’ security deposits.

California law specifically allows the landlord to use a tenant’s security deposit for four

²⁸³ Civ. Code § 1946.2(a).

²⁸⁴ Civ. Code § 1950.5(b), (c)(3).

purposes:

- For unpaid rent;
- For cleaning the rental unit when the tenant moves out, but only to make the unit as clean as it was when the tenant first moved in;²⁸⁵
- For repair of damages, other than normal wear and tear, caused by the tenant or the tenant's guests; and
- If the rental agreement allows it, for the cost of restoring or replacing furniture, furnishings, or other items of personal property (including keys), other than because of normal wear and tear.²⁸⁶

A landlord cannot refuse to return your entire security deposit simply because you lived in the unit. A landlord can withhold from the security deposit *only* those amounts that are reasonably necessary for the purposes outlined above. The security deposit *cannot* be used for repairing defects that existed in the unit before you moved in, for conditions caused by normal wear and tear during your tenancy or previous tenancies, or for cleaning a rental unit that is as clean as it was when you moved in.²⁸⁷ A rental agreement can *never* state that a security deposit is “nonrefundable.”²⁸⁸

A landlord also cannot withhold a tenant's partial or full security deposit based solely on the tenant being a victim of domestic violence and/or terminating their lease early as described previously.

Under California law, your landlord has 21 days from the date that you moved out to:

- Send you a full refund of your security deposit, or
- Mail or personally deliver to you an itemized statement that lists the amounts of any deductions from your security deposit and the reasons for the deductions, together with a refund of any amounts not deducted.²⁸⁹

The landlord should not send a “statement” to you via e-mail unless you have previously agreed with the landlord to receive the “statement” via e-mail.²⁹⁰ If you have not agreed to receive the “statement” via e-mail, you should provide your landlord with your forwarding address and provide the U.S. Postal Service with instructions to forward your mail to your new address. The landlord is obligated to mail the “statement” to your “last known address,” which would be the address of the rental unit that you moved out of if the landlord does not have a current address for you.²⁹¹

The landlord also must send you copies of receipts for the charges that the landlord

²⁸⁵ Civ. Code § 1950.5(b)(3).

²⁸⁶ Civ. Code § 1950.5(b)(3),(e).

²⁸⁷ Civ. Code § 1950.5(b)(3),(e).

²⁸⁸ Civ. Code § 1950.5(m).

²⁸⁹ Civ. Code § 1950.5(g)(1).

²⁹⁰ Ibid.

²⁹¹ Civ. Code § 1950.5(g)(6).

incurred to repair or clean the rental unit and that the landlord deducted from your security deposit. Receipts for services should include the hourly rate and amount of time spent, both of which must be reasonable and not be excessive. The landlord must include the receipts with the itemized statement.²⁹² The landlord must follow these rules:

- **If the landlord or the landlord's employees did the work**—The itemized statement must describe the work performed, including the time spent and the hourly rate charged. The hourly rate must be reasonable.
- **If another person or business did the work**—The landlord must provide you copies of the person's or business' invoice or receipt. The landlord must provide the person's or business' name, address, and telephone number on the invoice or receipt, or in the itemized statement.
- **If the landlord deducted for materials or supplies**—The landlord must provide you a copy of the invoice or receipt. If the item used to repair or clean the unit is something that the landlord purchases regularly or in bulk, the landlord must reasonably document the item's cost (for example, by an invoice, a receipt or a vendor's price list).²⁹³
- **If the landlord made a good faith estimate of charges**—The landlord is allowed to make a good faith estimate of charges and include the estimate in the itemized statement in two situations: (1) the repair is being done by the landlord or an employee and cannot reasonably be completed within the 21 days, or (2) services or materials are being supplied by another person or business and the landlord does not have the invoice or receipt within the 21 days. In either situation, the landlord may deduct the estimated amount from your security deposit. In the situation where services or materials are being supplied by another person or business, the landlord must include the name, address and telephone number of the person or business that is supplying the services or materials.
- Within 14 calendar days after completing the repairs or receiving the invoice or receipt, the landlord must mail or deliver to you a correct itemized statement, the invoices and receipts described above, and any refund to which you are entitled.²⁹⁴

The landlord is not required to send you copies of invoices or receipts, or a good faith estimate, if the total deductions are less than \$125, or if you waive your right to receive them.²⁹⁵ If you wish to waive the right to receive these documents, you may do so by signing a waiver when the landlord gives you a 30-day, 60-day or 90-day notice to end the tenancy (see pages 102-103), when you give the landlord a 30-day notice to end the tenancy (see pages 68-69), when the landlord serves you a three-day notice to end the tenancy (see pages 102-105), or after any of these notices. If you have a rental agreement, you may waive this right no earlier than 60 days before the term ends. The waiver form given to you by the landlord must include the text of the security deposit law

²⁹² Civ. Code § 1950.5(g)(2).

²⁹³ Civ. Code § 1950.5(g)(2).

²⁹⁴ Civ. Code § 1950.5(g)(3).

²⁹⁵ Civ. Code § 1950.5(g)(4).

that describes your right to receive receipts.²⁹⁶ Tenants should understand the consequences before agreeing to waive their right to such documentation.

What if the repairs cost less than \$125 or you waived your right to receive copies of invoices, receipts and any good faith estimate? The landlord still must send you an itemized statement 21 calendar days or less after you move, along with a refund of any amounts not deducted from your security deposit. When you receive the itemized statement, you may decide that you want copies of the landlord's invoices, receipts, and any good faith estimate. You may request copies of these documents from the landlord within 14 calendar days after you receive the itemized statement. It is best to make this request both orally and in writing. Always keep a copy of your written communication. The landlord must send you copies of invoices, receipts and any good faith estimate within 14 calendar days after they receive your request.²⁹⁷

²⁹⁶ Civ. Code § 1950.5(g)(4)(B). Civ. Code § 1950.5(g)(2) describes the tenant's right to receive receipts. The waiver must "substantially include" the text of § 1950.5(g)(2). See Appendix 5.

²⁹⁷ Civ. Code § 1950.5(g)(5).

Initial Inspection Before Tenant Moves Out

A tenant can and should ask the landlord to inspect the rental unit before the tenancy ends. This helps you to know ahead of time what repairs, if any, are necessary. This will also keep the landlord from adding charges for unidentified repairs later. During this “initial inspection,” the landlord or the landlord’s agent identifies defects or conditions that justify deductions from the tenant’s security deposit. This gives the tenant the opportunity to do the identified cleaning or repairs in order to avoid deductions from the security deposit. The tenant has the right to be present during the inspection.

The landlord must perform an initial inspection as described above if requested by the tenant. However, a landlord *cannot* conduct an initial inspection *unless* one is requested by the tenant. A landlord is not required to perform an initial inspection if the landlord has served the tenant with a three-day notice (an **eviction notice**) for one of the reasons specified in footnote 298.²⁹⁸

Landlord’s notice

The landlord must give the tenant written notice of the tenant’s right to request an initial inspection of the rental to take place during the last 14 days of the tenancy, and to be present during the inspection. The landlord must give this notice to the tenant within a “reasonable time” after either the landlord or the tenant has given the other written notice of intent to terminate (end) the tenancy (see pages 74-80 and 98-102). If the tenant has a fixed term rental agreement, the landlord must give the tenant this notice within a “reasonable time” before the rental term ends. If the tenant does not request an initial inspection, the landlord has no duties with respect to the initial inspection described above.²⁹⁹

The landlord’s notice must also include the following statement:³⁰⁰

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.

Scheduling the inspection

When the tenant requests an initial inspection, the landlord and the tenant must try to agree on a mutually convenient date and time for the inspection. The inspection cannot be scheduled earlier than two weeks before the end of the rental term. The inspection should be scheduled to allow the tenant ample time to perform repairs or do cleaning

²⁹⁸ Civ. Code § 1950.5(f)(1). The landlord is not required to perform an initial inspection if the landlord has served the tenant with a three-day notice because the tenant has failed to pay the rent, violated a provision of the lease or rental agreement, materially damaged the property, committed a nuisance, or used the property for an unlawful purpose.

²⁹⁹ Civ. Code § 1950.5(f)(1).

³⁰⁰ Ibid.

identified during the initial inspection, tenants generally should not schedule the inspection on their last day in possession.³⁰¹ If the tenant has requested an inspection, the landlord must give the tenant at least 48 hours advance written notice of the date and time of the inspection whether or not the parties have been able to agree to a date and time for the inspection. The landlord is not required to give the 48-hour notice to the tenant if:

- The parties have not agreed on a date and time, *and* the tenant withdraws the request for the inspection, in which case the inspection will not be conducted; or
- The landlord and tenant agree in writing to waive (give up) the 48-hour notice requirement.

Itemized statement

The landlord or the landlord's agent may perform the inspection if the tenant is not present, unless the tenant previously withdrew their request for an inspection.³⁰²

Based on the findings in the inspection, the landlord or agent must prepare an itemized statement of repairs or cleaning that the landlord or agent believes the tenant should perform in order to avoid deductions from the tenant's security deposit. The landlord or agent must give the statement to the tenant if the tenant is present for the inspection, or leave it inside the unit if the tenant is not present.³⁰³ The landlord or agent also must give the tenant a copy of the sections of California's security deposit statute that list lawful uses of tenants' security deposits.³⁰⁴

The security deposit statute has the effect of limiting the kinds of repairs or cleaning that the landlord or agent may properly include in the itemized statement. Because of this statute, the landlord cannot, for example, use the tenant's security deposit to repair damages or correct defects in the rental that existed before the tenant moved in or are the result of ordinary wear and tear.³⁰⁵ Since the landlord cannot use the tenant's deposit to correct these kinds of defects, the landlord or agent cannot list them in the itemized statement.

Before the tenancy ends, the tenant may make the repairs or do the cleaning described in the itemized statement, as allowed by the rental agreement, in order to avoid deductions from the deposit.³⁰⁶ However, the tenant cannot be required to repair defects or do cleaning if the tenant's security deposit could not be used properly to pay for that repair or cleaning.

³⁰¹ Portman & Weaver, *California Tenants' Rights*, 21st Ed., pages 213-215 (NOLO Press 2018).

³⁰² Civ. Code § 1950.5(f)(1).

³⁰³ Civ. Code § 1950.5(f)(2).

³⁰⁴ Civ. Code § 1950.5(f)(2), referring to Civ. Code §§ 1950.5(b)(1)-(4). See Appendix 5.

³⁰⁵ Civ. Code § 1950.5(b)(2),(e). See discussion in "Suggested Approaches to Security Deposit Deductions" sidebar pages 89-91.

³⁰⁶ Civ. Code § 1950.5(f)(3).

Final inspection

The landlord may perform a final inspection after the tenant has moved out of the rental. The landlord may make a deduction from the tenant's security deposit to repair a defect or correct a condition:

- That was identified in the inspection statement and that the tenant did not repair or correct; or
- That occurred after the initial inspection; or
- That was not identified during the initial inspection due to the presence of the tenant's possessions.³⁰⁷
- Any deduction must be reasonable in amount, and must be for a purpose permitted by the security deposit statute.³⁰⁸ Twenty-one calendar days (or less) after the tenancy ends, the landlord must refund any portion of the security deposit that remains after the landlord has made any lawful deductions (see pages 37-41, 81-95).³⁰⁹

Example

Suppose that you have a month-to-month tenancy, and that you properly give your landlord 30 days' advance written notice that you will end the tenancy. A few days after the landlord receives your notice, the landlord gives you written notice that you may request an initial inspection and be present during the inspection. A few days after that, the landlord telephones you, and you both agree that the landlord will perform the initial inspection at noon on the 14th day before the end of the tenancy. Forty-eight hours before the date and time that you have agreed upon, the landlord gives you a written notice confirming the date and time of the inspection.

The landlord performs the initial inspection at the agreed time and date, and you are present during the inspection. Suppose that you have already removed some of your possessions, but that your sofa remains against the living room wall. When the landlord completes the inspection, the landlord gives you an itemized statement that lists the following items, and also gives you a copy of the required sections of the security deposit statute. The itemized statement lists the following:

- Repair cigarette burns on window sill.
- Repair worn carpet in front of couch.
- Repair door jamb chewed by your dog.
- Wash the windows.
- Clean soap scum in bathtub.

³⁰⁷ Civ. Code § 1950.5(f)(4),(5); Civ. Code § 1950.5(e).

³⁰⁸ Civ. Code § 1950.5(b),(e).

³⁰⁹ Civ. Code § 1950.5(g).

Suppose that you scrub the bathtub until it sparkles, but don't do any of the repairs or wash the windows. After you move out, the landlord performs the final inspection. Twenty-one days after the tenancy ends, the landlord sends you an itemized statement of deductions, along with a refund of the rest of your security deposit. Suppose that the itemized statement lists deductions from your security deposit for the costs of repairing the window sill, the carpet and the door jamb, and for washing the windows. Has the landlord acted properly?

Whether the landlord has acted properly depends on other facts. Suppose that the cigarette burns were caused by a previous tenant and that the carpet in the room with the couch was 10 years old. According to the security deposit statute, the cigarette burns are defective conditions from another tenancy, and the worn carpet is normal wear and tear, even if some of it occurred while you were a tenant. The statute does not allow the landlord to deduct from your security deposit to make these repairs.³¹⁰ However, the landlord can deduct a reasonable amount to repair the door jamb chewed by your dog because this damage occurred during your tenancy and is more than normal wear and tear.³¹¹

Suppose that the windows were dirty when you moved in, and that they were just as dirty when you moved out. According to the security deposit statute, the windows are in "the same state of cleanliness" as at the beginning of your tenancy. The statute does not allow the landlord to deduct from your security deposit to do this cleaning.³¹² Also, with regards to dirt on the exterior of the windows there is an argument that a tenant is only responsible for dirt caused by themselves or their guests and dirt on the exterior of windows is caused by the environment not the tenant.

Now suppose that while you were moving out, you broke the glass in the dining room light fixture and found damage to the wall behind the sofa that you caused when you moved in. Neither defect was listed in the landlord's itemized statement. Suppose that your landlord nonetheless makes deductions from your security deposit to repair these defects. Has the landlord acted properly in this instance?

The landlord has acted properly, as long as the amounts deducted are reasonably necessary for the repairs made.³¹³ Both of these defects are more than normal wear and tear, and the landlord is allowed to make deductions for defects that occur after the initial inspection, as well as for defects that could not be discovered because of the presence of the tenant's belongings.³¹⁴

³¹⁰ Civ. Code § 1950.5(b),(e).

³¹¹ Civ. Code § 1950.5(b),(e),(f)(4).

³¹² Civ. Code § 1950.5(b)(3).

³¹³ Civ. Code § 1950.5(e).

³¹⁴ Civ. Code § 1950.5(f)(5).

Suggested Approaches to Security Deposit Deductions

California's security deposit statute specifically allows the landlord to use a tenant's security deposit for the four purposes stated on page 82. The statute limits the landlord's deduction from the security deposit to an amount that is "reasonably necessary" for the listed purposes.³¹⁵

Unfortunately, the terms "reasonably necessary" and "normal wear and tear" are vague and mean different things to different people. The following suggestions are offered as practical guides for dealing with security deposit issues. While these suggestions are consistent with the law, they are not necessarily the law in this area.

1. Costs of cleaning

A landlord may properly deduct from the departing tenant's security deposit the amount necessary to make the rental unit as clean as it was when the tenant moved in.³¹⁶

A landlord cannot routinely charge each tenant for cleaning carpets, drapes, walls, or windows in order to prepare the rental unit for the next tenancy. Instead, the landlord must look at how well the departing tenant cleaned the rental unit, and may charge cleaning costs only if the departing tenant left the rental unit (or a portion of it) less clean than when they moved in. Reasonable cleaning costs would include the cost of such things as eliminating flea infestations left by the tenant's animals, cleaning the oven, removing decals from walls, removing mildew in bathrooms, defrosting the refrigerator, or washing the kitchen floor. But the landlord could not charge for cleaning any of these conditions if they existed at the time that the departing tenant moved in. In addition, the landlord could not charge for the cumulative effects of wear and tear. Suppose, for example, that the tenant had washed the kitchen floor but that it remained dingy because of wax built up over the years. The landlord could not charge the tenant for stripping the built-up wax from the kitchen floor.

The landlord is allowed to deduct from the tenant's security deposit only the *reasonable* cost of cleaning the rental unit.³¹⁷

2. Carpets and drapes —"useful life" rule

Normal wear and tear to carpets, drapes and other furnishings cannot be charged against a tenant's security deposit.³¹⁸ Normal wear and tear includes simple wearing down of carpet and drapes because of normal use or aging and includes moderate dirt or spotting. In contrast, large rips or indelible stains justify a deduction from the tenant's security deposit for repairing the carpet or drapes, or replacing them if that is reasonably necessary.

³¹⁵ Civ. Code § 1950.5(e).

³¹⁶ Civ. Code § 1950.5(b)(3).

³¹⁷ Civ. Code § 1950.5(e).

³¹⁸ Civ. Code § 1950.5(e).

One common method of calculating the deduction for replacement prorates the total cost of replacement so that the tenant pays only for the remaining useful life of the item that the tenant has damaged or destroyed. For example, suppose a tenant has damaged beyond repair an eight-year-old carpet that had a life expectancy of ten years, and that a replacement carpet of similar quality would cost \$1,000. The landlord could properly charge only \$200 for the two years' worth of life (use) that would have remained if the tenant had not damaged the carpet.

3. Repainting walls

One approach for determining the amount that the landlord can deduct from the tenant's security deposit for repainting, when repainting is necessary, is based on the length of the tenant's stay in the rental unit. This approach assumes that interior paint has a two-year life. (Some landlords assume that interior paint has a life of three years or more.)

Length of Stay	Deduction
Less than 6 months	full cost
6 months to 1 year	two-thirds of cost
1 year to 2 years	one-third of cost
2 or more years	no deduction

In general charging for painting is only allowable if it is necessary because of damage beyond normal wear and tear to painted surfaces or because of soiling that cannot be reasonably cleaned. Using the above approach, if the tenant lived in the rental unit for two years or more, the tenant could not be charged for any repainting costs, no matter how dirty the walls were.³¹⁹ This is particularly true when the landlord has a standard business practice of repainting units between most tenancies.

4. Other damage to walls

Generally, minor marks or nicks in walls are the landlord's responsibility as normal wear and tear (for example, worn paint caused by a sofa against the wall). Therefore, the tenant should not be charged for such marks or nicks. However, a large number of holes in the walls or ceiling that require filling with plaster, or that otherwise require patching and repainting, could justify withholding the cost of repainting from the tenant's security deposit. In this situation, deducting for painting would be more likely to be proper if the rental unit had been painted recently, and less likely to be proper if the rental unit needed repainting anyway. Generally, large marks or paint gouges are the tenant's responsibility.³²⁰

³¹⁹ Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., pages 415-416 (NOLO Press 2019).

³²⁰ Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., pages 416 (NOLO Press 2019).

5. Common sense and good faith

Remember: *These suggestions are not hard and fast rules. Rather, they are offered to help tenants and landlords avoid, understand, and resolve security deposit disputes.*

Security deposit disputes often can be resolved, or avoided in the first place, if the parties exercise common sense and good judgment, and deal with each other fairly and in good faith (see page 33). For example, a landlord should not deduct from the tenant's security deposit for normal wear and tear, and a tenant should not try to avoid responsibility for damages that the tenant has caused.

The requirement that the landlord send the tenant copies of invoices and receipts with the itemized statement of deductions (see pages 81-84) may help avoid potential security deposit disputes. Before sending these items to the tenant, the landlord has the opportunity to double check them to be sure that the amounts deducted are reasonable, accurate and reasonably necessary for a purpose specified by the security deposit statute. Before challenging the deductions, the tenant has the opportunity to review and carefully evaluate the documentation provided by the landlord. Straightforward conduct by both parties at this stage may avoid or minimize a dispute over deductions from the tenant's security deposit.

Especially in disputes about security deposits, overreaching by one party only invites the other party to take a hard line. Disputes that reach this level often become unresolvable by the parties and wind up in court.

What should you do if you believe that your landlord has made an improper deduction from your security deposit, or if the landlord keeps all of the deposit without good reason?

Tell the landlord or the landlord's agent why you believe that the deductions from your security deposit are improper. *Immediately* ask the landlord or agent for a refund of the amount that you believe you're entitled to get back. You can make this request orally or in writing, but if you request it orally you should follow up with a letter and always keep a copy. The letter should state the reasons that you believe the deductions are improper, and the amount that you feel should be returned to you. Keep a copy of your written communication. It is recommended that you send the letter (if you elected the preferred communication via letter) to the landlord or agent by certified mail and to request a return receipt to prove that the landlord or agent received the letter. Or, you can deliver the letter personally and ask the landlord or agent to acknowledge receipt by signing and dating your copy of the letter.

If the landlord or agent still does not send you the refund that you think you are entitled to receive, try to work out a reasonable compromise that is acceptable to both of you. You also can suggest that the dispute be mediated by a neutral third person or agency (see page 126-127). You can contact one of the agencies listed on pages 124-126 for assistance. If none of this works, you may want to take legal action (see pages 95-96). If you believe there is evidence that the landlord has engaged in "bad faith retention" of some or all of your deposit, the security deposit law contains a provision that may cause the landlord to be more willing to settle the matter, rather than taking it to court. You can request that the court, or the court on its action, can award up to twice the total security deposit as statutory damages if the court finds that the landlord is engaged in such "bad faith" action (see further discussion below).³²¹ Making sure the landlord is aware of this provision may lead them to be more inclined to resolve the dispute.

What if the landlord does not provide a full refund, or a statement of deductions and a refund of amounts not deducted, by the end of the 21-day period as required by law? According to a California Supreme Court decision, the landlord loses the right to keep any of the security deposit and must return the entire deposit to you.³²² Even so, it may be difficult for you to get your entire deposit back from the landlord.³²³ The landlord may still claim damages for unpaid rent, repairs, and cleaning either as a defense for a set-off against the security deposit or by an affirmative counter claim against you (see the discussion on page 81). You should contact one of the agencies listed on pages 124-126 for advice.

Practically speaking, you have two options if the landlord does not honor the 21-day rule. The first step under either option is to call and write the landlord to request a refund of your entire security deposit. You can also suggest that the dispute be mediated. If the landlord presents good reasons for keeping some or all of your deposit for a purpose

³²¹ Civ. Code § 1950.5(l).

³²² *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 745; California Practice Guide, Landlord-Tenant, Paragraphs 2:783-2:783.6 (Rutter Group 2019).

³²³ Portman & Weaver, *California Tenants' Rights*, 21st Ed., page 213-215 (NOLO Press 2018).

listed on page 81, it is probably wise to enter into a reasonable compromise with the landlord. This is because the other option is difficult and the outcome may be uncertain.

The other option is to sue the landlord in small claims court or Superior Court for return of your security deposit. Keep in mind that you will have to file that suit in a court with jurisdiction over either the location of the property or the location where the rental agreement was signed or otherwise entered into. This can present problems if you are moving away from the area where the property is located, especially if you are moving out-of-state. While it is recommended that an action at court be commenced promptly, you will have up to 4 years to sue pursuant to a written rental agreement and 2 years pursuant to an oral one.³²⁴ Keep in mind that the landlord can file a counterclaim against you. In the counterclaim, the landlord can assert a right to make deductions from the deposit, for example, for unpaid rent or for damage to the rental unit that the landlord alleges that you caused. The landlord also can seek to recover for damage or unpaid rent that exceeds the security deposit. Each party then will have to argue in court why they are entitled to the deposit or, in the landlord's case, damages or unpaid rent that exceeds the security deposit.³²⁵ Also, understand that you, as a Plaintiff in small claims court, will have no right to appeal a decision on your claim with which you disagree. You will, however, have the right to appeal the decision in a landlord's counterclaim.

Refund of security deposits after sale of building

When a rental unit is sold, the selling landlord must do one of two things with the tenants' security deposits. The selling landlord must either transfer the security deposits to the new landlord or return the security deposits to the tenants following the sale.³²⁶

Before transferring the security deposits to the new landlord, the selling landlord may deduct money from the security deposits. Deductions can be made for the same reasons that deductions are made when a tenant moves out (for example, to cover unpaid rent). If the selling landlord makes deductions from the security deposits, they must transfer the balance of the security deposits to the new landlord.³²⁷ The new landlord becomes legally responsible upon receipt of the security deposit.³²⁸

The selling landlord must notify the tenants of the transfer in writing. The selling landlord must also notify each tenant of any amounts deducted from the security deposit and the amount of the deposit transferred to the new landlord. The written notice must also include the name, address, and telephone number of the new landlord. The selling landlord must send this notice to each tenant by first-class mail, or personally deliver it to

³²⁴ Code Civ. Proc. §§ 337, 339.

³²⁵ *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 749-750 Portman & Weaver, California Tenants' Rights, 21st Ed., page 236. (NOLO Press 2018). In simplest terms, the landlord must convince the judge that the damage occurred, and that the amount claimed is reasonable and is a proper deduction from the security deposit. The tenant then must prove that the landlord's conduct makes it unfair to allow the deductions from the deposit (for example, because the landlord waited too long to claim the damage and the delay harmed the tenant in some way).

³²⁶ Civ. Code § 1950.5(h).

³²⁷ Civ. Code § 1950.5(e),(h)(1).

³²⁸ Civ. Code § 1950.5(k).

each tenant.³²⁹

The new landlord becomes legally responsible for the security deposits when the selling landlord transfers the deposits to the new landlord.³³⁰

If the selling landlord returns the security deposits to the tenants, the selling landlord may first make lawful deductions from the deposits (see pages 81-95). The selling landlord must send each tenant an itemized statement that lists the amounts of and reasons for any deductions from the tenant's security deposit, along with a refund of any amounts not deducted (see pages 81-95).³³¹

If the selling landlord fails to either return the tenants' security deposits to the tenants or transfer them to the new owner, *both* the new landlord and the selling landlord are legally responsible to the tenants for the security deposits.³³² If the selling landlord and the security deposits cannot be found, the new landlord must refund all security deposits (after any proper deductions) as tenants move out.³³³

The new landlord cannot charge a new security deposit to current tenants simply to make up for security deposits that the new landlord failed to obtain from the selling landlord. But if the security deposits have been returned to the tenants, or if the new landlord has properly accounted to the tenants for proper deductions taken from the security deposits, the new landlord may legally collect *new* security deposits.³³⁴

If the selling landlord has returned a greater amount to a tenant than the amount of the tenant's security deposit, after allowing for legitimate deductions, the new landlord may utilize this ability to collect a "*new*" deposit to recoup an amount of deposit that should otherwise be in their possession.³³⁵

Can the new landlord increase the amount of your security deposit? This depends, in part, on the type of tenancy that you have. If you have a fixed-term rental agreement, the new landlord cannot increase your security deposit during the term unless this is specifically allowed by the rental agreement. For periodic tenants (those renting month-to-month, for example) the new landlord can increase security deposits only after giving proper advance written notice, and if local law, such as a rent control ordinance, does not prohibit changing the terms of your tenancy or increasing the security deposit. In either situation, the total amount of the security deposit after the increase cannot be more than the legal limit (see pages 37-40). The landlord normally cannot require that you pay the security deposit increase in cash or electronic funds transfer without offering

³²⁹ Civ. Code § 1950.5(h)(1).

³³⁰ Civ. Code § 1950.5(k).

³³¹ Civ. Code § 1950.5(e),(g),(h)(2).

³³² Civ. Code § 1950.5(j). Exception: pursuant to Civ. Code § 1050.5(j)(3), If the new landlord acted in the good faith belief based upon an inquiry and reasonable investigation that the old landlord properly complied with the transfer or refund requirement, the new landlord is not jointly liable with the old landlord.

³³³ Portman & Weaver, *California Tenants' Rights*, page 215 (NOLO Press 2018).

³³⁴ Civ. Code § 1950.5(j).

³³⁵ California Practice Guide, *Landlord-Tenant*, Paragraph 2:810 (Rutter Group 2019).

other options (see page 45).

All of this means that it is important to keep copies of your rental agreement and the receipt for your security deposit. You may need those records to prove that you paid a security deposit, to verify the amount, and to determine whether either a previous or current landlord had a right to make a deduction from the deposit.³³⁶

Legal actions for obtaining refund of security deposits

Suppose that your landlord does not return your security deposit as required by law, or makes improper deductions from it. If you cannot successfully resolve the problem with your landlord, you can file a lawsuit in small claims court (for claims not exceeding \$10,000) or Superior Court for the amount of the security deposit plus court costs, and possibly also a penalty and interest.³³⁷ If your claim is for a little more than \$10,000, you can waive (give up) the extra amount and still use the small claims court. For amounts greater than \$10,000, you must file in Superior Court, and you ordinarily will need a lawyer in order to effectively pursue your case. In such a lawsuit, the landlord has the burden of proving that his or her deductions from your security deposit were reasonable.³³⁸

If you prove to the court that the landlord acted in “bad faith” in refusing to return your security deposit, the court can order the landlord to pay you the amount of the improperly withheld deposit, plus up to twice the amount of the security deposit as a “bad faith” penalty. The court can award a bad faith penalty in addition to actual damages whenever the facts of the case warrant—even if the tenant has not requested the penalty.³³⁹ These additional amounts can also be recovered if a landlord who has purchased your building makes a “bad faith” demand for replacement of security deposits. The landlord has the burden of proving the authority upon which the demand for the security deposits was based.³⁴⁰

Whether you can collect attorney’s fees if you win such a suit depends on whether the rental agreement contains an attorney’s fee clause.³⁴¹ If the rental agreement contains an attorney’s fee clause, you can claim attorney’s fees as part of the judgment, even if the clause states that only the landlord can collect attorney’s fees.³⁴² However, you can only collect attorney’s fees if you were represented by an attorney.³⁴³

TENANT’S DEATH

If a tenant dies during the term of the tenancy, the tenant’s estate as overseen by an

³³⁶ Civ. Code § 1950.5(o) (describes evidence that proves the existence and amount of a security deposit).

³³⁷ Civ. Code § 1950.5(n), Code Civ. Proc. § 116.221.

³³⁸ Civ. Code § 1950.5(l).

³³⁹ Civ. Code § 1950.5(l).

³⁴⁰ Civ. Code § 1950.5(l).

³⁴¹ Code Civ. Proc. §§ 1032(b), 1033.5(a)(10)(A).

³⁴² Civ. Code § 1717.

³⁴³ *Jacobson v. Simmons Real Estate* (1994) 23 Cal.App.4th 1285; *Trope v. Katz* (1995) 11 Cal.4th 274; California Practice Guide, Landlord-Tenant, Paragraphs 9:391-9:391.6(b), 9:391.10 and following (Rutter Group 2019).

executor or administrator will be responsible financially for rent through the remainder of the term, despite the tenant's death. For instance, if the tenant had a **fixed term rental agreement** (i.e., a rental term of six months or one year) and dies, the tenant's estate will be responsible for the remainder of the six-month or one-year rental term. The tenant's estate may surrender the tenancy and return possession back to the landlord, but the tenant's estate will remain responsible financially unless and until the landlord re-lets the rental unit. The landlord must make a good faith effort to re-let the unit to minimize or eliminate the liability of the tenant's estate for future rent. If the tenant had a periodic tenancy (i.e., week to week or month to month) and dies, the tenancy is terminated (ended) by notice of the tenant's death and the tenancy ends on the 30th day following the tenant's last payment of rent before the tenant's death.³⁴⁴ No notice (other than the notice to the landlord of the tenant's death) is required to terminate the tenancy.³⁴⁵ There still might be issues involving the return of the tenant's personal belongings after the termination of the tenancy (see page 119).

Moving out at the end of a rental agreement

A fixed-term rental agreement expires automatically at the end of the term unless the terms of the agreement provide otherwise.³⁴⁶ At the expiration of the fixed-term rental agreement, the tenant is expected to renew the rental agreement (with the landlord's consent) or move out if the tenancy is not covered by just cause for eviction protections, such as a local rent-control ordinance, just cause ordinance, or the Tenant Protection Act of 2019 (the "Tenant Protection Act"). The Tenant Protection Act covers all tenancies where the tenant has resided at the rental unit for more than 12 months or 24 months if an adult tenant has been added to the rental agreement in the last 12 months.³⁴⁷ If the tenancy is subject to just cause for eviction protections, the tenancy continues on a month-to-month basis at the end of the rental term and will continue until either the tenant gives notice of move-out or the landlord has a valid reason under the law to terminate the tenancy.

Most fixed-term rental agreements do not require a tenant to notify their landlord at the expiration of their rental agreement that they do not intend to renew. As a courtesy, however, the tenant may want to consider giving the landlord notice that they intend to move out and not renew their rental agreement.

If you do not have just cause eviction protections and continue living in the rental unit after the rental agreement expires, the landlord has two options. The landlord can proceed with an eviction proceeding to remove you from the rental unit or treat you as a holdover tenant. If the landlord accepts rent from you after the end of your term, you will automatically become a holdover tenant and can continue legally to occupy the rental unit. Your new tenancy will be a periodic tenancy and the length of your tenancy will be determined based on the length of time between your rent payments (for example,

³⁴⁴ Civ. Code § 1934.

³⁴⁵ *Miller & Desatnik Management Co. v. Bullock* (1990) 221 Cal.App.3d Supp. 13, 18-19. Rosenquest & Portman, *The California Landlord's Law Book: Rights & Responsibilities*, 18th Ed., pages 400 (NOLLO Press 2019).

³⁴⁶ Civ. Code §1933.

³⁴⁷ Civ. Code §1946.2(a).

monthly rent payments result in a month-to-month tenancy). With the exception of the rental term, which is now a periodic tenancy, all other provisions of the rental agreement will remain in effect.³⁴⁸ Keep in mind that if the tenancy becomes a periodic one, the terms can be changed with proper written notice as allowed by law.³⁴⁹

For rental units not covered by a local rent-control ordinance, just cause ordinance, or the Tenant Protection Act of 2019, the landlord can file an eviction lawsuit immediately without giving you notice (see page 98-106) if you do not move out at the expiration of your rental term and the landlord refuses to accept rent after the rental term expires.

Important: If the tenant wants to *renew* his/her rental agreement, the tenant should begin negotiating with his/her landlord in plenty of time before the rental term expires. Both the landlord and tenant will have to agree to the terms of a new rental agreement. This process may take some time if one or both parties wants to negotiate different provisions in the new rental agreement. If the tenant has just cause eviction protections, the tenant may not be required to renew his/her tenancy and sign a new rental agreement unless the landlord presents the tenant with a new lease containing terms substantially similar to the expiring rental agreement.

Special Rules for Tenants in the Military: A servicemember may terminate (end) a rental agreement any time after entering the military or after the date of the member's military orders. This right applies to a tenant who joins the military after signing a rental agreement, and to a servicemember who signs a rental agreement and then receives orders for a change of permanent station or deployment for at least 90 days.

The servicemember must give the landlord or the landlord's agent written notice of termination and a copy of the orders. The servicemember may personally deliver the notice to the landlord or agent, send the notice by private delivery service (such as FedEx or UPS), or send it by certified mail with return receipt requested. Proper termination relieves a servicemember's dependent, such as a spouse or child, of any obligation under the rental agreement.

When rent is paid monthly, termination takes effect 30 days after the next rent due date that follows delivery of the notice. Rent must be paid on a prorated basis up to the date that the termination takes effect. If rent or lease amounts have been paid in advance for any period following the effective date of termination, the landlord must refund these amounts within 30 days after the effective date.³⁵⁰

Example: The servicemember pays \$600 rent on the tenth of each month under the terms of his or her lease. The servicemember pays the rent on June 10, and then personally gives the landlord proper notice of termination on June 15. The date that termination takes effect is August 9 (30 days after the July 10 rent due date). The servicemember must pay \$600 rent on July 10 for the period from July 10 through August 9. By September 8, the landlord must return any rent paid in advance for the period after the effective date of termination. The landlord also must return any "lease

³⁴⁸ Civ. Code § 1945, Portman & Weaver, California Tenants' Rights, 21st Ed., page 196 (NOLO Press 2018).

³⁴⁹ Civ. Code § 827.

³⁵⁰ Servicemembers Civil Relief Act, 50 U.S.C. § 3955(e); California Practice Guide, Landlord-Tenant, Paragraphs 7:328-7:328.5 (Rutter Group 2019).

amounts paid in advance” (such as the unused portion of the servicemember’s security deposit) by September 8.

THE INVENTORY CHECKLIST

You and the landlord or the landlord’s agent can use the inventory checklist (see pages 143-146) to both document the condition of the unit when you move in and again if you request, as recommended, an initial inspection of the rental unit before you move out (see pages 85-88). The landlord is not obligated to participate in using the “Condition Upon Arrival” portion of the checklist at move-in, but it is still good practice for a tenant to use it, along with taking date stamped pictures, to document any pre-existing deficiencies or lack of cleanliness.

For the initial move-out inspection, you and the landlord or agent should agree on a mutually convenient date and time for the inspection during the last two weeks before the end of the tenancy or the term. It is recommended that tenants not wait until the last day of the tenancy to schedule their inspections because tenants may find themselves without time to repair or clean items noted during the inspection. You and the landlord or agent should walk through the rental unit at that time and complete the “Condition Upon Initial Inspection” portion of the checklist.

After you have moved out, the landlord can use the “Condition Upon Departure” portion of the checklist to conduct the final inspection (see pages 143-146). Most landlords prefer to conduct their final inspection after the tenant has removed all of his/her belongings and returned legal possession of the unit to the landlord. Although landlords are not required by law to permit tenants to attend the final inspection, if possible, it is recommended that tenants try to be present when the landlord conducts his/her final inspection. Prior to moving out, tenants are encouraged to clean the rental unit and repair damaged or broken items to improve the likelihood of receiving a full refund of their security deposit.

Both you and the landlord or agent should sign and date the inventory checklist after each inspection. (The landlord or agent should sign the checklist even if you’re not present.) Be sure to get a copy of the signed form after each inspection.

See additional suggestions regarding the inventory checklist on page 143, and “Refunds of Security Deposits,” pages 81-95.

TERMINATIONS AND EVICTIONS

EVICTION MORATORIUM ALERT: On August 31, 2020, the Governor signed emergency legislation entitled the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088), which included the COVID-19 Tenant Relief Act of 2020 (the “Tenant Relief Act”). The Tenant Relief Act took effect on August 31, 2020, and places a moratorium on evictions through January 31, 2021, for a tenant’s failure to pay rent due to financial distress arising from or related to COVID-19, provided the tenant timely returns to the landlord a signed declaration of COVID-19-Related Financial Distress. The Tenant Relief Act also protects tenants from “no cause” evictions, meaning

an eviction where the landlord does not state a reason for evicting the tenant. For more information about the Tenant Relief Act, please go to <https://landlordtenant.dre.ca.gov/>.

In addition to the Tenant Relief Act, tenants facing financial hardships due to COVID-19 also may be protected under the federal Centers for Disease Control's (the CDC) moratorium against evictions and/or moratoria against evictions enacted by some local jurisdictions. For more information about the CDC Moratorium, please go to <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>. For more information about eviction moratoria enacted by local jurisdictions, please go to [https://landlordtenant.dre.ca.gov/pdf/resources/tenant/Local Eviction Moratoria Ordinances.pdf](https://landlordtenant.dre.ca.gov/pdf/resources/tenant/Local_Eviction_Moratoria_Ordinances.pdf).

Unless extended by the legislature, the Tenant Relief Act's provisions relating to the moratorium on evictions and the prohibition against "no cause" evictions will expire on January 31, 2021. Although the Tenant Relief Act influences discussions in this chapter, this chapter is written with a focus on the law governing tenancy terminations and tenant evictions occurring before March 1, 2020 or after January 31, 2021. For more information about the Tenant Relief Act and a landlord's ability to terminate a tenancy and evict a tenant between March 1, 2020 and January 31, 2021, please go to <https://landlordtenant.dre.ca.gov/>.

WHEN CAN A LANDLORD TERMINATE A TENANCY?

In 2019, the California Legislature passed, and the Governor signed, the Tenant Protection Act of 2019 (the "Tenant Protection Act"). The Tenant Protection Act imposes statewide rent control and just cause eviction requirements. Landlords of residential real property covered by the Tenant Protection Act must notify their tenants of the act's protections.³⁵¹ For rental agreements in effect before July 1, 2020, the landlord must provide their tenants with written notice by August 1, 2020. For rental agreements entered into or renewed after July 1, 2020, landlords must include the notice as an addendum to the lease or provide the notice to the tenant and obtain the tenant's signature acknowledging receipt. The notice must contain the following language:

"California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information."

The sections of the Tenant Protection Act relevant to just cause evictions are summarized below. The sections relevant to rent increases are summarized starting on page 42.

The landlord's ability to terminate the tenancy and evict the tenant is based on whether or not the rental unit is subject to local just cause for eviction laws or the State of California's Tenant Protection Act. If a rental unit is subject to both local and state just

³⁵¹ Civ. Code §1946.2(f).

cause for eviction laws, the Tenant Protection Act's just cause protections do not apply if the local ordinance was adopted on or before September 1, 2019, or it was adopted or amended after September 1, 2019 and provides stronger protections to the tenant.³⁵² The Tenant Protection Act's just cause protections apply statewide and cover rental units where the tenant has resided at the unit for more than 12 months or 24 months if an additional adult tenant was added to the rental agreement less than 12 months ago³⁵³. Certain types of housing units are exempt from the Tenant Protection Act, including: transient and tourist hotel occupancy; housing accommodations in a nonprofit hospital, religious facility, extended care facility or licensed residential care facility for the elderly; dormitories owned and operated by an institution of higher education or a school for grades kindergarten through 12th grade; housing accommodations in which the tenant shares bedroom or kitchen facilities with the owner who maintains their principal residence at the property; single-family owner-occupied residences; a duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy and continues to occupy that unit; housing that has been issued a certificate of occupancy within the previous 15 years; or residential real property that is alienable separate from the title to any other dwelling unit provided that the landlord has notified the tenants that the rental unit is exempt from the Tenant Protection Act.³⁵⁴

If the Tenant Protection Act applies, then the landlord cannot terminate the tenancy or evict the tenant without just cause. The Tenant Protection Act defines just cause as either "At-fault just cause" or "No-fault just cause."³⁵⁵ At-fault just cause includes: failure to pay part or all of the rent; a breach of a material term of the rental agreement; engaging in criminal activity or committing nuisance or waste at the rental unit; the tenant's refusal to execute a written extension or renewal of the rental agreement with the same or similar provisions as the original agreement after the landlord's written request or demand; assigning or subletting the rental unit in violation of the rental agreement; the tenant's refusal to permit the landlord to enter the rental unit as required by law or the terms of the rental agreement; using the rental unit for an unlawful purpose; failure to vacate when the tenant's employment with the landlord terminates; and failure to deliver possession of the rental unit to the landlord after providing the landlord with written notice of tenant's intent to do so.³⁵⁶ No-fault just cause includes: landlord's intent to occupy the rental unit for him/herself or his/her spouse, domestic partner, children, grandchildren, parents, or grandparents if the tenant agrees in writing to the termination or the rental agreement permits the landlord to terminate under these circumstances; withdrawal of the rental unit from the rental market; an order by a court or government agency for the tenant to vacate the rental unit due to habitability issues;

³⁵² Civ. Code §1946.2(g).

³⁵³ Civ. Code §1946.2(a).

³⁵⁴ Civ. Code §1946.2(e).

³⁵⁵ Civ. Code §1946.2(b).

³⁵⁶ Civ. Code §1946.2(b)(1).

or landlord's intent to demolish or substantially remodel the rental unit.³⁵⁷

If the landlord is relying on at-fault just cause as the basis to terminate the tenancy and evict the tenant, then the landlord must provide the tenant with an opportunity to correct the violation if the violation is curable.³⁵⁸ In such cases, the landlord must give the tenant notice of the violation and an opportunity to cure or correct it. Only if the tenant does not cure or correct the violation within the timeframe set forth in the notice may the landlord serve a three-day notice to quit without an opportunity to cure to terminate the tenancy.³⁵⁹

If the landlord is relying on no-fault just cause as the basis to terminate the tenancy and evict the tenant, then the landlord must provide the tenant with relocation assistance irrespective of the tenant's income.³⁶⁰ The relocation assistance is an amount equal to one month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy and, at the landlord's option, the landlord may pay this amount directly to the tenant or waive the tenant's obligation to pay their final month's rent. The landlord's termination notice must notify the tenant that the landlord is terminating the tenancy based on no-fault just cause and inform the tenant of the landlord's election between paying relocation assistance to the tenant or waiving the tenant's final month rent. If the tenant fails to move out and return possession of the rental unit back to the landlord within the timeframe set forth in the termination notice, the landlord may recover the amount of relocation assistance paid to the tenant as damages in an action to recover possession.³⁶¹

Separate and apart from the Tenant Protection Act, landlords are prohibited from evicting a tenant (or refusing to renew a tenant's lease) based on acts of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse committed against the tenant where the tenant (1) has obtained a restraining order or police report that is not older than 180 days and (2) does not live with the abuser.³⁶² The landlord may evict the perpetrator of the acts, but not the victim, under California law.

If the rental unit is not protected by just cause eviction protections, a landlord can terminate (end) a periodic tenancy by giving the tenant advance written notice of 30 days, 60 days, or, in some instances, 90 days. (For an explanation of periodic tenancies, see page 25; for an explanation of 30-day, 60-day and 90-day notices, see pages 74-80 and 102-103.)

If the rental unit is covered either by a local or state just cause eviction law and the landlord has provided the tenant with a notice to cure a violation as discussed above, the tenant must cure the violation within the timeframe set forth in the notice. If the tenant fails to cure the violation, the landlord may serve a three-day notice to quit without

³⁵⁷ Civ. Code §1946.2(b)(2).

³⁵⁸ Civ. Code §1946.2(c).

³⁵⁹ Civ. Code §1946.2(c).

³⁶⁰ Civ. Code §1946.2(d).

³⁶¹ Civ. Code §1946.2(d).

³⁶² Civ. Code §1161.3.

providing the tenant an opportunity to cure for rental units covered by the Tenant Protection Act. Within three days of the date that the landlord serves the notice to quit, the tenant must move out of the rental unit and return possession of it back to the landlord or face possible eviction by the landlord. If the rental unit is not covered either by a local or state just cause eviction law and the landlord has given the tenant a 30-day, 60-day, or 90-day notice, the tenant must move out of the rental unit and return possession of it back to the landlord within the timeframes set forth in the notice or face possible eviction by the landlord. If the landlord wishes to proceed with evicting the tenant then the landlord must file with the Superior Court in the county where the property is located an unlawful detainer complaint, obtain from the court a summons, and serve the summons along with a copy of the court-filed complaint on the tenant.

WRITTEN NOTICES OF TERMINATION

30-day, 60-day, or 90-day notice

A landlord who wants to terminate (end) a periodic tenancy can do so by properly serving a written 30-day, 60-day, or, in certain instances, 90-day, notice on the tenant.

How to respond to a 30-day, 60-day or 90-day notice

If your rental unit is not covered by local or state just cause for eviction requirements and the landlord has properly served you with a notice to terminate the tenancy you may either prepare to move out or try to make arrangements with the landlord to remain past the deadline in the notice. If you want to continue to occupy the rental unit, ask the landlord what you need to do to make that possible. Most landlords will provide you with an explanation although not required to do so unless the rental unit is covered by a local or state just cause for eviction requirement. If the landlord will permit you to stay, you should memorialize the agreement in writing, retain a signed copy for your records, and the landlord should withdraw their notice to terminate in writing.

If the reason the landlord has given for terminating your tenancy is an act of domestic violence, sexual assault, human trafficking, stalking or elder/dependent abuse committed against you, explain that to the landlord. For instance, if there was a loud argument and broken window that disturbed other tenants, and the cause of it was an act of domestic violence, the tenant should not have to leave if they take steps to remove the abuser and do not allow the abuser to return to the property. If you live in a federally assisted property covered by the Violence Against Women Act, survivors of domestic violence, dating violence, sexual assault, and stalking are protected from eviction for reasons based on the abuse. Federally assisted landlords or public housing authorities (where appropriate) are required to provide a notice outlining VAWA rights when a household is being evicted, as well as a self-certification form.³⁶³ Survivors can use that form to demonstrate abuse occurred and seek VAWA protections. A lawyer, legal aid organization or tenant advocate can help you determine if VAWA applies in your case.

If the landlord and you are unable to reach agreement on you remaining past the deadline set forth in the notice to terminate, then you will be required to move out and

³⁶³ 34 U.S.C. § 12491(d). The notice and self-certification form should be made available in non-English languages. HUD has made the VAWA notice (Form 5380) and self-certification form (Form 5382) available online in multiple languages: https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a.

must do so by the end of the time period set forth in the notice. If the last day of the landlord's notice is more than 30-days in the future you can choose to give your own 30-day notice that will expire before the landlord's notice if you desire to move out before the deadline set forth in the landlord's notice to terminate. Just be certain that you can actually move according to your own notice, because failing to do so could subject you to a court eviction action. When you move out, take all of your personal belongings with you, and leave the rental unit at least as clean as when you rented it. This will help with the refund of your security deposit (see "Refund of Security Deposits," pages 81-95).

If you have not moved at the end of the notice period, you will be unlawfully occupying the rental unit after that day, and the landlord can file an unlawful detainer (**eviction**) lawsuit to evict you.

If you believe that the landlord has acted unlawfully in giving you the notice, or that you have a valid defense to an unlawful detainer lawsuit, you should consult with a lawyer, legal aid organization, tenant advocate, or housing clinic (see "Getting Help From a Third Party," pages 124-126).

Three-day notice

Prior to giving the tenant a three-day pay or quit notice, for rental units covered by local or state just cause eviction requirements, including the Tenant Protection Act, the landlord must give a tenant an opportunity to cure or correct any violations presuming the violations can be cured or corrected. Only after the tenant fails to cure or correct the violations within the timeframes set forth in the notice may a landlord give the tenant a three-day notice to quit without an opportunity to cure. For rental units not covered by local or state just cause eviction requirements, a landlord may give a tenant a three-day notice either to pay or quit or cure or quit if the tenant has done, among other things, any of the acts specified above on page 98.³⁶⁴ As stated above, landlords are prohibited from evicting a tenant based on acts of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse committed against the tenant where the tenant (1) has obtained a restraining order or police report that is not older than 180 days and (2) does not live with the abuser.³⁶⁵ The landlord may evict the perpetrator of the acts, but not the victim, under California law. If the tenant lives in a property covered by the Violence Against Women Act (as discussed above), the housing provider or public housing authority (where appropriate) must ensure that the tenant receives a notice outlining VAWA rights when a household is given the three-day notice, as well as a VAWA self-certification form.³⁶⁶

If the landlord gives the tenant a three-day notice because the tenant has not paid the rent, the notice must accurately state the amount of rent that is due. In addition, the notice must state:

- The name, address and telephone number of the person to whom the rent must be

³⁶⁴ Code Civ. Proc. § 1161(2)-(4).

³⁶⁵ Civ. Code §1161.3.

³⁶⁶ 34 U.S.C. § 12491(d). The notice and self-certification form should be made available in non-English languages. HUD has made the VAWA notice (Form 5380) and self-certification form (Form 5382) available online in multiple languages: https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a. See also *DHI Cherry Glen Associates, L.P. v. Gutierrez* (2019), 46 Cal.App.5th Supp. 1 (Ca. Sup. Ct. App. Div. Nov. 2019).

paid.

- If payment may be made in person, the usual days and hours that the person is available to receive the rent payment. If the address does not accept personal deliveries, then you can mail the rent to the owner at the name and address stated in the three-day notice. If you can show proof that you mailed the rent to the stated name and address (for example, a receipt for certified mail), the law assumes that the landlord received the rent payment on the date that the payment was mailed.
- Where the notice does not require payment in person, the notice may state the name, street address and account number of the financial institution where the rent payment may be made (if the institution is within five miles of the unit). If an electronic fund transfer procedure was previously established for paying rent, payment may be made using that procedure.³⁶⁷

With some exceptions, the landlord cannot require that the tenant pay the past-due rent in cash or by electronic funds transfer without offering other options (see page 45).

If the three-day notice is based on a reason other than non-payment of rent, the notice must either describe the tenant's violation of the rental agreement, or describe the tenant's other improper conduct. The three-day notice must be properly served on the tenant (see pages 106-107).

Depending on the type of violation, the three-day notice demands either (1) that the tenant correct the violation or leave the rental unit (quit) or (2) that the tenant leave the rental unit (quit) because the law deems the violation "non-curable". For curable violations, the notice must be clearly written in the alternative (i.e. pay or quit; perform a covenant of the agreement or quit). If the violation involves something that the tenant can correct (for example, the tenant has not paid the rent, or the tenant has a pet but the rental agreement does not permit pets), the notice must give the tenant the option to correct the violation.

Most violations can be corrected, such as failing to pay rent. In these situations, the three-day notice must give the tenant the option to correct the violation. However, the other acts listed on page 103 *cannot* be corrected, and the three-day notice can simply order the tenant to leave at the end of the three days.

If the violation is correctable, it is important to cure the violation within three court days of receiving the three-day notice and keep proof that you have done so. If you pay the rent that is due or correct a correctable violation of the rental agreement during the three-day notice period, the tenancy continues and the landlord cannot legally evict you.³⁶⁸ Please note that the landlord is not required to accept partial rent payment.

The time period covered in the three-day notice to pay or quit is important. If you attempt to pay all the past-due rent demanded after the three-day period expires, the landlord either can refuse to accept the payment and file a lawsuit to evict you or accept

³⁶⁷ Code Civ. Proc. § 1162(2); California Practice Guide, Landlord-Tenant, Paragraphs 7:104.10-7:104.12, 7:119.3-7:110.4 (Rutter Group 2019).

³⁶⁸ Code Civ. Proc. § 1161(3).

the rent payment. If the landlord accepts the rent, the landlord waives (gives up) the right to evict you based on late payment of rent.³⁶⁹

See page 106 on how to count the days in the three-day notice.

How to respond to a three-day notice

Suppose that your landlord properly serves you with a three-day notice because you have not paid the rent. You must either pay the full amount of rent that is due or vacate (leave) the rental unit by the end of the third court day, unless you have a legal basis for not paying rent or the amount of rent that the landlord is attempting to charge you is incorrect, either because you have been overcharged or because there are bad conditions in your unit, such as conditions that your landlord has failed to repair. (see pages 57-59). You might see if the landlord will accept a partial payment and/or give some additional time to “cure” the non-payment. If you get such an agreement be sure to get it in writing with the landlord’s signature. Your failure to later pay and/or quit as agreed will likely still be grounds for the landlord to begin an eviction action at court. Remember the landlord is not obligated to make any such agreement, however they may see it as a more practical resolution than having to actually evict you.

If you decide to pay the rent that is due, it is recommended that you call the landlord or the landlord’s agent immediately. Tell the landlord or landlord’s agent that you intend to pay the amount demanded in the notice (if it is correct) and arrange for a time and location where you can deliver the payment to the landlord or agent. *You must pay the rent by the end of the third day.* You should pay the unpaid rent by cashier’s check, money order, or cash (if allowed by the rental agreement). Whatever the form of payment, be sure to get a receipt signed by the landlord or agent that shows the date and the amount of the payment. If the landlord does not answer your call, you still only have three days to mail or deliver the payment to the address listed in the notice.

With some exceptions provided by state law, the landlord cannot require that you pay the unpaid rent in cash or by electronic funds transfer without offering other options. (see page 45).

If the amount of rent demanded is not correct, it is recommended that you discuss this with the landlord or landlord’s agent immediately and offer to pay the amount that is actually due. Make this offer orally and in writing and keep a copy of the written offer. The landlord’s notice is not legally effective if it demands more rent than is actually due, or if it includes any charges other than for past-due rent (for example, late charges, unpaid utility charges, dishonored check fees, or interest).³⁷⁰ On this last point be careful, because some rental agreements characterize other amounts due the landlord, such as late fees, as “additional rent” and might properly be included in a notice to pay rent or quit. Without such rental agreement provisions these other charges must be sought by a 3-day notice to perform covenant or quit.³⁷¹

³⁶⁹ *EDC Associates Ltd. v. Gutierrez* (1984) 153 Cal.App.3d 167, 171.

³⁷⁰ Brown, Warner and Portman, *The California Landlord’s Law Book: Rights & Responsibilities*, 18th Ed., pages 338-339 (NOLO Press 2019).

³⁷¹ Brown, Warner and Portman, *The California Landlord’s Law Book: Rights & Responsibilities*, 18th Ed., pages 338-339 (NOLO Press 2019).

If the amount of rent demanded is correct and does not include any other impermissible charges, and if you decide not to pay, then you must move out or remain in your rental unit and defend against the eviction lawsuit.

If you stay beyond the three court days without paying the rent that is properly due, you will be occupying the rental unit unlawfully. The landlord then has a single, powerful remedy: a court action (called an “unlawful detainer [eviction] lawsuit” [see page 107]) to evict you and obtain a judgment for the unpaid rent, and possibly other amounts, such as court costs, attorney’s fees and “holdover” rent damages.

If the three-day notice is based on something other than failure to pay rent, the notice will state whether you can correct the problem and remain in the rental unit (see page 103). If the problem can be corrected and you want to stay in the rental unit, *you must correct the problem by the end of the third court day*. You should retain records substantiating the repairs or corrections for your records. Once you have corrected the problem, you should promptly notify the landlord or the property manager.

If you believe that the landlord has acted unlawfully in giving you a three-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic (see “Getting Help From a Third Party,” pages 124-127).

How to count the three days

For 3-day notices with an opportunity to cure, begin counting the three days on the first day that is not a weekend or court holiday after the day the notice was served. Continue counting all days that are not weekends or court holidays and stop on the third day. That is the day by which you must pay unpaid rent in a notice to pay or quit or cure the violation in a notice to cure or quit. For example if the notice is served on the Friday before Labor Day, do not count Saturday, Sunday or Monday because these days are weekends or court holidays. Day one will be Tuesday, day two will be Wednesday and day three will be Thursday.³⁷² For non-curable 3-day notices the counting is different. Day one is the day following the service, no matter if that day is a weekend or a court holiday. Only if the third day falls on a weekend or court holiday will you get until the next day that is not a weekend or court holiday to quit (see the next section for a discussion of service of the notice and the beginning of the notice period).³⁷³

PROPER SERVICE OF TERMINATION NOTICES

A landlord’s three-day, 30-day, 60-day, or 90-day notice to a tenant must be “served” properly to be legally effective. The terms “**serve**” and “**service**” refer to procedures required by the law to give a tenant notice that the landlord seeks to end their tenancy and recover possession of the rental unit. These procedures are designed to increase the likelihood that the person to whom notice is given actually receives the notice.

A landlord can serve a *three-day eviction* notice on the tenant in one of three ways: by

³⁷² Code Civ. Proc. § 1161(2) (3), see also Code Civ. Proc. §§ 12,12a, and 135 regarding the definition of legal and judicial holidays.

³⁷³ Code Civ. Proc. §§ 1161(4), 12, 12a.

personal service, by substituted service, or by posting and mailing. The landlord, the landlord's agent, or anyone over 18 can serve a notice on a tenant.

- **Personal service**—To serve you personally, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it).³⁷⁴
- **Substituted service on another person**—If the landlord cannot find you at home, the landlord should try to serve you personally at work. If the landlord cannot find you at home or at work, the landlord can use “substituted service” instead of serving you personally.

To comply with the rules on substituted service, the person serving the notice must leave the notice with a person of “suitable age and discretion” at your home or work and *also mail* a copy of the notice to you at home.³⁷⁵ A person of suitable age and discretion normally would be an adult at your home or workplace, or a teenage member of your household.

Service of the notice is legally complete when *both* of these steps have been completed. The three-day period begins no sooner than the day after both steps have been completed, but it could begin several days later (see “How to count the three days” above).

- **Posting and mailing**—If the landlord cannot serve the notice to you personally or by substituted service, the notice can be served by taping or tacking a copy to the rental unit in a conspicuous place (such as the front door of the rental unit) *and* by mailing another copy to you at the rental unit's address.³⁷⁶ This service method is commonly called “posting and mailing” or “nailing and mailing.”

Service of the notice is not complete until both the notice has been posted and the copy of the notice has been mailed. The three-day period begins on the later of the day on which the notice was posted *or* mailed, but it could begin several days later (see “How to count the three days” above).³⁷⁷

A landlord can use any of these methods to serve a *30-day*, *60-day* or *90-day* notice to terminate a tenancy on a tenant, or they can send the notice to the tenant by certified or registered mail with return receipt requested.³⁷⁸ For these notices, the timeframes begin on the day when service is made and continue for the number of days stated in the notice. If the last day falls on a weekend or court holiday, that deadline rolls over to the next day that is not a weekend or court holiday.

THE EVICTION PROCESS (UNLAWFUL DETAINER LAWSUIT)

EVICTIION MORATORIUM ALERT: On August 31, 2020, the Governor signed

³⁷⁴ Code Civ. Proc. § 1162(1).

³⁷⁵ Code Civ. Proc. § 1162(2).

³⁷⁶ Code Civ. Proc. § 1162(3).

³⁷⁷ *Walters v. Meyers* (1990) 226 Cal.App.3d Supp. 15, 19-20 (service of a three-day notice by way of posing and mailing is effective from the date the notice is posted and mailed, not from the date the tenant received it). See also California Practice Guide, Landlord-Tenant, Paragraphs 7:186-7:188.2 (Rutter Group 2019) (mailing three-day notice does not extend time to respond).

³⁷⁸ Civ. Code § 1946, Code Civ. Proc. § 1162.

emergency legislation entitled the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088), which included the COVID-19 Tenant Relief Act of 2020 (the “Tenant Relief Act”). The Tenant Relief Act took effect on August 31, 2020, and places a moratorium on evictions through January 31, 2021, for a tenant’s failure to pay rent due to financial distress arising from or related to COVID-19, provided the tenant returns to the landlord a signed declaration of COVID-19-Related Financial Distress. The Tenant Relief Act also protects tenants from “no cause” evictions, meaning an eviction where the landlord does not state a reason for evicting the tenant. For more information about the Tenant Relief Act, please go to <https://landlordtenant.dre.ca.gov/>.

In addition to the Tenant Relief Act, tenants facing financial hardships due to COVID-19 also may be protected under the federal Centers for Disease Control’s (the CDC) moratorium against evictions and/or moratoria against evictions enacted by some local jurisdictions. For more information about the CDC Moratorium, please go to <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>. For more information about eviction moratoria enacted by local jurisdictions, please go to [https://landlordtenant.dre.ca.gov/pdf/resources/tenant/Local Eviction Moratoria Ordinances.pdf](https://landlordtenant.dre.ca.gov/pdf/resources/tenant/Local_Eviction_Moratoria_Ordinances.pdf).

Unless extended by the legislature, the Tenant Relief Act’s provisions relating to the moratorium on evictions and the prohibition against “no cause” evictions will expire on January 31, 2021. Although the Tenant Relief Act influences discussions in this chapter, this chapter is written with a focus on the law governing tenancy terminations and tenant evictions occurring before March 1, 2020 or after January 31, 2021. For more information about the Tenant Relief Act and a landlord’s ability to terminate a tenancy and evict a tenant between March 1, 2020 and January 31, 2021, please go to <https://landlordtenant.dre.ca.gov/>.

Overview of the eviction process

If the tenant does not voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can begin the court eviction process. In order to evict the tenant, the landlord must file an unlawful detainer lawsuit in Superior Court in the county where the rental unit is located and then properly serve you with a summons and a copy of the unlawful detainer complaint. In general, proper service requires that someone personally hand you the summons and complaint.³⁷⁹ There are circumstances where they can be handed to someone else, but in that instance you will be given more days in which to respond.³⁸⁰ In certain instances a court may allow a landlord to serve you by posting copies at the rental unit and mailing copies to you via certified mail.³⁸¹

In an eviction lawsuit, the landlord is called the “plaintiff” and the tenant is called the “defendant.”

Laws designed to stop drug dealing³⁸² and unlawful use, manufacture, or possession

³⁷⁹ Code Civ. Proc. § 415.10.

³⁸⁰ Code Civ. Proc. § 415.20.

³⁸¹ Code Civ. Proc. § 415.45.

³⁸² Civ. Code § 3486, Moskowitz et al., California Landlord-Tenant Practice § 3.7 (Cont.Ed.Bar 2016).

of weapons and ammunition,³⁸³ permit a city attorney or prosecutor in selected jurisdictions³⁸⁴ to file an unlawful detainer action against a tenant based on an arrest report (or other action or report by law enforcement or regulatory agencies) if the landlord fails to evict the tenant after 30 days' notice from the city. The tenant must be notified of the nature of the action and possible defenses.

An unlawful detainer lawsuit is a “summary” court procedure. This means that the court action moves forward very quickly, and that the time given the tenant to respond during the lawsuit is very short. For example, in most unlawful detainer cases, the tenant has only *five court days* (i.e., days that are not Saturdays, Sundays, or judicial holidays) to file a written response to the lawsuit after being properly served with a copy of the landlord’s summons and complaint.³⁸⁵ Normally, a date for a trial in front of a judge or jury will be set within 20 days after the tenant or the landlord files a request to set the case for trial.³⁸⁶ These time periods are substantially shorter than the time periods for non-summary cases. Given the expedited treatment given to summary court procedures, should you seek assistance from someone knowledgeable in landlord/tenant law, you should not delay seeking guidance from an attorney, legal aid organization, or tenant advocacy group because your written response (e.g. an Answer) must be filed within five days of the date that you were served unless the fifth day is a weekend or court holiday, in which case the answer must be filed on the next day that is not a weekend or court holiday. Note that obtaining a jury trial requires additional steps and, as with any trial, it is highly recommended a tenant retain legal representation especially if the case will be tried to a jury.

The court-administered eviction process assures the tenant of the right to a trial if the tenant believes that the landlord has no right to evict the tenant. The landlord *must* use this court process to evict the tenant; the landlord *cannot* use self-help measures to force the tenant to move. For example, the landlord cannot physically remove or **lock out** the tenant, cut off utilities such as water, gas or electricity, remove outside windows or doors, or seize (remove) the tenant’s belongings in order to carry out the eviction. The landlord *must use the court procedures*.

If the landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for the tenant’s actual damages, such as needing to stay in hotel, additional cost of paying to eat away from home, etc., as well as penalties of up to \$100 per day, but no less than \$250, for the time that the landlord used the unlawful methods.³⁸⁷

In an unlawful detainer lawsuit, the court holds a trial where the parties can present their evidence and explain their case. If the court decides in favor of the tenant, the tenant will not have to move out (but may still be liable for unpaid rent), and the landlord

³⁸³ Civ. Code § 3485(a).

³⁸⁴ California Practice Guide, Landlord-Tenant, Paragraphs 7:306 (Rutter Group 2019) (For unlawful detainers based on weapons and ammunitions allegations, the cities are Los Angeles, Long Beach, Oakland, and Sacramento. For drug abatement unlawful detainers, the cities are Los Angeles, Long Beach, Sacramento and Oakland.)

³⁸⁵ Code Civ. Proc. § 1167.3.

³⁸⁶ Code Civ. Proc. § 1170.5(a).

³⁸⁷ Civ. Code § 789.3(c).

may be ordered to pay court costs (for example, the tenant's filing fees). If the tenant's defense involves alleging the landlord failed to provide a habitable premises, which justified their non-payment of rent, the court may order the landlord to make repairs. The landlord also may have to pay the tenant's attorney's fees, if the rental agreement contains an attorney's fee clause and if the tenant was represented by an attorney.³⁸⁸

If the court decides in favor of the landlord, the court will issue a **writ of possession**.³⁸⁹ The writ of possession orders the sheriff to remove the tenant from the rental unit, but gives the tenant five days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the fifth day, the writ of possession authorizes the sheriff to physically remove and lock the tenant out. When a tenant is locked out, if the tenant leaves behind personal property, the tenant's personal property must be processed in accordance with California law, specifically Civil Code section 1951.3. *The landlord is not entitled to possession of the rental unit until after the sheriff has removed the tenant.*

The court also may award the landlord any unpaid rent if the eviction is based on the tenant's failure to pay rent. The court can also award additional rent damages (so-called "holdover damages") for days of rent, for which the landlord would not otherwise be paid, for the time the tenant has remained in the unit up to the day the court's judgment is entered. The court also may award the landlord court costs, and attorney's fees (if the rental agreement contains an attorney's fee clause and if the landlord was represented by an attorney). If the court finds that the tenant acted maliciously in not giving up the rental unit, the court also may award the landlord up to an additional \$600 as a penalty.³⁹⁰ The judgment against the tenant will be reported on the tenant's credit report for seven years.³⁹¹ Any amount of money awarded to the landlord may be garnished from the tenant's wages, the tenant's bank account, and/or by other judgment enforcement means.

How to respond to an unlawful detainer lawsuit

If you are served with an unlawful detainer complaint, you should get legal advice or assistance *immediately* because unlawful detainer actions are summary proceedings and have shortened deadlines. Tenant organizations, tenant-landlord programs, housing clinics, legal aid organizations, or private attorneys can provide you with advice, and assistance if you need it (see "Getting Help From a Third Party," pages 124-127). Keep in mind that only licensed attorneys can give you legal advice, but other organizations can help with the process of responding to an unlawful detainer. Many courts also have "self-help" centers where you can get access to resources and assistance to help you respond. Again, these centers cannot provide legal advice, but they can help you navigate the process.

³⁸⁸ Civ. Code § 1717; *Trope v. Katz* (1995) 11 Cal.4th 274; California Practice Guide, Landlord-Tenant, Paragraphs 9:391.1-9:391.4, 9:391.10 and following (Rutter Group 2019).

³⁸⁹ Code Civ. Proc. §§ 712.010 and 715.010.

³⁹⁰ Code Civ. Proc. § 1174(b).

³⁹¹ Civ. Code § 1785.13(a)(2),(3).

You usually have only *five court days* to respond in writing to the landlord's complaint.³⁹² You must respond during this time by filing the correct legal document with the Clerk of Court in which the lawsuit was filed. Typically, a tenant responds to a landlord's complaint by filing a written "answer" (you can get a copy of a form to use for filing an answer from the Clerk of Court's office or online at www.courts.ca.gov/documents/ud105.pdf). There is a substantial filing fee for each defendant submitting an answer. However, if you are very low income or paying the fee would be a hardship you can file additional forms to ask that the fee be waived (these forms are available from the court or online at <https://www.courts.ca.gov/forms.htm?query=fee%20waivers>) at the same time you file your answer.

You may have a legal defense or defenses to the landlord's complaint. If so, you must state the defense(s) in a written answer and file your written answer with the Clerk of Court by the end of the fifth court day following the day you were properly served the summons and complaint. Otherwise, the landlord can ask the court for a 'default judgment' because you failed to answer, and you may lose any chance to state any defenses that you may have. Some typical defenses that a tenant might have are listed here as examples:

- The landlord's three-day notice requested more rent than was actually due.
- The rental unit violated the implied warranty of habitability by failing to provide safe and habitable conditions at the property.
- The landlord filed the eviction action in retaliation for the tenant exercising a tenant right or because the tenant complained to the building inspector about the condition of the rental unit.
- The landlord filed the eviction action because an act of domestic violence, sexual assault, stalking, elder abuse or human trafficking that disturbed the other tenants, but the victim has not allowed the perpetrator to return to the unit.
- The landlord filed the eviction because police or emergency assistance were called by or on behalf of a victim of crime, victim of abuse, or person in an emergency where assistance was believed to be necessary.

The answer form has check boxes that allow you to select "affirmative defenses" that you believe apply to your case. You then should provide in the answer an explanation of the facts that support any selected defense(s). You may also attach relevant documents to answer as "Exhibits" that help state and/or prove the facts you are relying upon.

Depending on the facts of your case, there are other legal responses to the landlord's complaint that you might file instead of an answer. For example, if you believe that your landlord did not properly serve the summons and the complaint, you might file a **Motion to Quash Service of Summons**. If you believe that the complaint has some technical defect or does not properly allege the landlord's right to evict you, you might file a document called a "**demurrer**" requesting dismissal of the complaint. You might also file a Motion to Strike to ask the court to invalidate some portion, or even all, of the

³⁹² Code Civ. Proc. § 1167.

landlord's complaint. It is strongly recommended that you obtain advice from a lawyer before you attempt to use these procedures. It is also recommended that you obtain advice from a lawyer before you file your answer. However, keep in mind that you do not want to miss the deadline, so seek legal assistance the same day you are served an unlawful detainer complaint.

In addition to filing any form of response to the landlord's summons and complaint you must properly serve a copy of that response to the landlord, or more likely to the attorney who represents the landlord. Most often this is done by mail. However, you, as a party to the case, are not permitted to be the one carrying out that service. You must get an adult (i.e., someone who is over the age of 18) who is not a party to the case to perform the service and sign a "proof of service" form that you will file with the court.

If you do not file a written response to the landlord's complaint by the end of the fifth day, assuming that the landlord properly served the summons and complaint, the court may approve the landlord's request to enter a **default judgment** in favor of the landlord after the landlord submits a request to the court to enter a default against you. A default judgment allows the landlord to obtain a writ of possession (see page 118) and may also lead to an award to the landlord for unpaid rent, damages and court costs. A default judgment means that you lose the case and will be evicted.

The Clerk of Court will ask you to pay a filing fee for each answering defendant named in the landlord's complaint when they file a written response. As of January 1, 2020, the filing fee typically is about \$385 per answering defendant, but it may be waived based on income or hardship (see discussion on page 111).³⁹³

After you file your written answer to the landlord's complaint, and serve a copy of that answer to the landlord or their attorney, the landlord will submit a request to the court for a trial date for the case called a "Request to Set Case for Trial" (form UD-150). The landlord is supposed to also mail you a copy of this request, however that often does not happen. You can also file the same form as a "Counter Request to Set Case for Trial." Once the court clerk has received the landlord's request, and possibly your counter request, they will mail to both you and the landlord a notice of the time and place of the trial. If you fail to appear in court, the trial may occur without your presence, which will mean you will have no ability to contradict any evidence or testimony presented by your landlord.

Service of tenant's written answer: You must also serve your landlord (or the landlord's attorney, if the landlord is represented by legal counsel) with a copy of the written answer to the landlord's complaint. This must be done by someone over the age of 18 who is not a party to the case. Service is usually completed by mailing or personally serving a copy of the written answer on/to the landlord (or the landlord's attorney, if the landlord is represented). The person who completes this service should then fill out and sign a Proof of Service. The tenant should file the Proof of Service,

³⁹³ The application form is Judicial Council Form FW-001. You may qualify for a fee waiver if you receive benefits under the Food Stamps, SSI/SSP, Medi-Cal, County Relief/Gen. Assist., HISS, CalWORKs/TANF, CAPI, or if your gross monthly household income for your household size is less than the amount shown in a table on the form. You also may qualify for fee waiver if your income is not enough to pay for your household's basic needs as well as the court fees.

along with his/her answer, with the Clerk of the Court.

Special Rules for Tenants in the Military: A servicemember may be entitled to a stay (delay) of an eviction action for 90 days. This rule applies to the servicemember and his or her dependents (such as a spouse or child) in a residential rental unit with rent of \$2,400 per month or less, as adjusted by the housing price inflation adjustment beginning in 2004. In 2018, the rental ceiling was \$3,717. The servicemember's ability to pay rent must be materially affected by military service. The judge may order the stay on his or her own motion or upon request by the servicemember or a representative. The judge can adjust the length and terms of the delay as equity (fairness) requires.³⁹⁴ Landlords that violate the court-ordered eviction process in regards to a servicemember may face a fine and/or imprisonment for up to one year.³⁹⁵

Eviction of “unnamed occupants”

Sometimes, adults who are not parties to the rental agreement move into the rental unit with the tenant or after the tenant leaves, but before the unlawful detainer lawsuit is filed. When a landlord thinks that these “occupants” might claim a legal right to possess the rental unit, the landlord may seek to include them as defendants in the eviction action, even if the landlord does not know who they are. In this case, the landlord will serve the tenant and “all other occupants” with a **Prejudgment Claim of Right to Possession** at the same time that the eviction summons and complaint are served on the tenants who are named defendants.³⁹⁶ Note that when service includes this form it may only be performed by a marshal, sheriff, or a process server registered with the state. See additional discussion of “unnamed occupants” and the Claim of Right to Possession on page 113. Unnamed occupants should consider whether it is prudent to complete and submit the Prejudgment Claim form, which effectively adds their name as a defendant in the eviction lawsuit. While being a defendant may allow a person to state their own defense it may come at the price of having a record of a court eviction. However, without making such a submission, the unnamed occupants' fate with respect to being evicted will depend on what happens to those already named in the lawsuit. If those tenants lose at court the sheriff will evict everyone at the unit, as the opportunity to submit a (post-judgment) Claim of Right to Possession is foreclosed by the service of the Prejudgment Claim form.

Before the court hearing

Before appearing in court, if you are not able to be represented by an attorney, you must carefully prepare your case, just as an attorney would. If you elect to retain an attorney, you should try to find an attorney as early as possible. Among other things, you should:

- Be mindful that when you are served with the summons and complaint, you have only five court days after you have been properly served the summons and complaint in which to file an answer. You should carefully read the summons, which

³⁹⁴ Servicemembers Civil Relief Act, 50 U.S.C.3901 et seq.; California Practice Guide, Landlord-Tenant, Paragraph 7:80.10 (Rutter Group 2019).

³⁹⁵ Servicemembers Civil Relief Act, 50 U.S.C. 3951(b)(2).

³⁹⁶ Code Civ. Proc. § 415.46(a).

contains very specific information on how to answer the complaint and the strict timelines. (Please refer to page 110)

- Talk with a housing clinic, tenant organization, attorney, or legal aid organization as early as possible. This will help you understand the legal issues in your case and the evidence that you will need.
- Request **discovery** of the evidence that may be helpful to your case or to preparing a defense (see “Discovery in Unlawful Detainer Cases” page 116).
- Decide how you will present the facts that support your side of the case. What documents, letters, photographs or videos will you attempt to offer into evidence? What witnesses do you intend to call to testify on your behalf.
- Have at least five copies of all documents that you intend to use as evidence—an original for the judge and copies for the court clerk, the opposing party, your witnesses and you.
- Ask witnesses who will help your case to testify at the trial. You can **subpoena** a witness who will not testify voluntarily. A subpoena is an order from the court compelling a witness to appear. The subpoena must be served upon (handed to) the witness within a reasonable time before the hearing (for example, two weeks prior to the hearing), and can be served by anyone, other than yourself, who is over the age of 18. You can obtain a subpoena from the Clerk of Court. You must pay witness fees at the time the subpoena is served on the witness, if the witness requests them.

The parties to an unlawful detainer lawsuit have the right to a jury trial, and either party can request one.³⁹⁷ After you have filed your answer to the landlord’s complaint, usually the landlord will file a document called a **Memorandum to Set Case for Trial** (officially called a “Request/Counter-Request to Set Case for Trial - Unlawful Detainer” form [Judicial Council Form UD-150].)³⁹⁸ You can get a copy online at www.courts.ca.gov/documents/ud150.pdf. This document will indicate whether the plaintiff (landlord) has requested a jury trial. Whether or not you should request a jury trial will depend on the individual facts and circumstances of your case. Jury trials may be more beneficial under the certain circumstances and less beneficial under other circumstances. However, you may want to list in your answer that you request a jury trial, and you can later decide to waive your right to a jury, if you so choose. But if you do not request a jury timely, then later you will not have the right to a jury.

There are several good reasons for this recommendation. First, presenting a case to a jury is more complex than presenting a case to a judge, and a non-lawyer representing himself or herself may find it very difficult. Second, the party requesting a jury trial will be responsible for depositing the initial cost of jury fees with the court, unless a supplemental fee waiver request is granted. Third, the losing party will have to pay all of

³⁹⁷ The lease or rental agreement cannot require that the tenant waive the right to a jury trial before a dispute arises. However, the lease or rental agreement might be able to require that any dispute that arises be submitted to arbitration. (*Grafton Partners LP v. Superior Court*) (*PricewaterhouseCoopers LLP* (2005) 36 Cal.4th 944, 967.) The enforceability of arbitration requirements in a rental agreement is not a fully settled question (see *Weiler v. Marcus & Millichap Real Estate Investment Services* (2018) 22 Cal. App. 5th 970).

³⁹⁸ California Practice Guide, Landlord-Tenant, Paragraphs 9.3-9.19 (Rutter Group 2019).

the jury costs.³⁹⁹

At any time prior to entry of final judgment, either party may initiate settlement discussions to resolve the parties' dispute. There are a number of reasons why landlords and/or tenants may find settlement preferable to proceeding through trial, including if any party has doubts about the merits of their case, the prospect that a material witness may not testify or testify adversely against their case, and/or concerns about the litigation costs and time associated with preparing and trying their case to conclusion before a judge or jury.

If the parties reach a settlement, the settlement typically is made official by a document called a "stipulated judgment." The agreement may be that the tenant pays the landlord a certain amount, possibly in installments instead of one lump sum, the tenant agrees to move out by a certain date, or the landlord agrees to make certain repairs. **It is very important that both parties fully understand all provisions of any settlement before signing the stipulation**, which then will be presented to the judge. Do not let yourself be rushed into agreeing to a stipulation without understanding it and make sure that you can perform the promises that you are agreeing to.

If at all possible, as part of the negotiation in arriving at the settlement, the defendant (i.e., the tenant if the landlord filed the lawsuit or the landlord if the tenant filed the lawsuit) should demand that in exchange for the defendant's promised actions the plaintiff will agree to dismiss the case. Be aware that such settlements typically are structured so that if a party fails to do any one of things he/she agreed to (a default) the non-defaulting party will immediately have the right to enter a judgment against the defaulting party and receive certain relief as part of that judgment. If the tenant is the defaulting party, that may lead to the landlord obtaining an immediate issuance of a writ of possession to remove the tenant from the rental unit. However, if the defendant performs as agreed, and the agreement calls for it, the plaintiff will dismiss the case and there will be no adverse judgment against the defendant.

³⁹⁹ Portman and Weaver, California Tenants' Rights, 21st Ed., pages 271-273 (NOLO Press 2018).

Discovery in Unlawful Detainer Cases

Parties to a lawsuit, including an unlawful detainer (eviction) lawsuits are entitled to conduct discovery to learn about another party's facts, defenses or the bases for their legal positions. Any party may avail him/herself of any one or all four of the available discovery vehicles, which consist of written interrogatories,⁴⁰⁰ requests for production of documents,⁴⁰¹ requests for admissions,⁴⁰² and depositions⁴⁰³ of another party to the lawsuit or third parties not involved in the lawsuit. Interrogatories are written questions that the responding party must answer under oath. Requests for production seek to obtain copies of the responding party's documents. Requests for admissions seek to have the responding party admit or deny the truthfulness of a particular statement. Depositions are live, in-person opportunities for one party to ask another party or a third-party questions that that party must answer under oath. Each of the four available discovery vehicles requires a minimum of five days' notice to the other party before that party is required to respond.⁴⁰⁴ This timeline applies if the discovery requests are personally delivered either to the office of the other party or the office of his/her attorney if they are represented. The responding party is afforded an additional 5 days (10 days total) if service is performed by mail. Under these rules, the responding party must comply with the requesting party's request for discovery within five days.⁴⁰⁵ **All discovery must be completed on or before the fifth day before the date set for trial.**⁴⁰⁶ Because the landlord can request the court to set a trial date as soon as an answer is filed, it is imperative that any discovery action is commenced within a few days of filing and serving the answer, or even before that occurs.

- If the tenant intends to defend his or her case, and intends to use the discovery process as a tool, the tenant must follow strict timelines applicable to evictions in California.
- The discovery process works in five-day increments. Once the landlord serves the tenant with the unlawful detainer complaint, the tenant may begin discovery by personally serving or mailing any discovery requests. The responding party must respond within five days of the date that they received it if personally served or within ten days of the date that they received it if mailed. All of the discovery must be completed at least five days before the date of the trial.⁴⁰⁷

⁴⁰⁰ Code Civ. Proc. § 2030.260(b).

⁴⁰¹ Code Civ. Proc. §§ 2031.010, 2031.020(c), (d), 2031.030(c), and 2031.260(b).

⁴⁰² Code Civ. Proc. § 2033.020(c).

⁴⁰³ Code Civ. Proc. § 2025.270(b).

⁴⁰⁴ California Practice Guide, Landlord-Tenant, Paragraphs 8:428-8:431a (Rutter Group 2019).

⁴⁰⁵ California Practice Guide, Landlord-Tenant, Paragraphs 8:428-8:431a (Rutter Group 2019).

⁴⁰⁶ Code Civ. Proc. § 2024.040(b)(1).

⁴⁰⁷ The time periods discussed assume that no orders are obtained shortening or extending time. See California Practice Guide, Landlord-Tenant, Paragraphs 8:431.1 (Rutter Group 2019).

After the court's decision

If the court decides in favor of the tenant, the tenant will not have to move out, and the landlord may be ordered to pay the tenant's court costs (for example, filing fees) and the tenant's attorney's fees if that is a provision of the rental agreement and the tenant was represented by an attorney at trial. However, the tenant may have to pay any rent that the court orders within 5 days, which if not paid within that timeframe could result in the court issuing a judgment in favor of the landlord instead.⁴⁰⁸ If the tenant's defense to the landlord's unlawful detainer action was based on a breach of the warranty of habitability the rent to be paid will likely be reduced from that called for by the rental agreement. The court may order a continued reduction in rent until certain necessary repairs are made.

If the landlord wins, the tenant will have to move out. In some circumstances, the court may order the tenant to pay the landlord's court costs and attorney's fees if the landlord was represented by an attorney at trial and the rental agreement contains an attorneys' fees clause. The court also may order the tenant to pay rent during the holdover period (i.e., the period of time between the end of the rental term and the date of trial).

The court has discretion to stay the execution of any judgment.⁴⁰⁹ A losing tenant can request the court to exercise that discretion to delay when they will have to move out. That request would typically be made through an 'ex parte' application, before the trial judge, for more time to surrender the premises due to hardship or other good cause. Proper notice of this 'ex parte' application needs to be provided to the landlord or the landlord's attorney, and the hearing needs to happen quickly, and prior to the sheriff's **lockout**. The sheriff will post a 5-day notice to vacate at the property before the lockout can occur (see Writ of Possession, page 118).

The application to stay the execution of the Court's judgment should be supported by the tenant's written declaration (i.e., a statement by the tenant made under penalty of perjury) that states detailed facts regarding the hardship or other good cause. If the court agrees to stay the execution of the judgement it will condition it on payment of rent for the period of the stay, but not upon paying any past due rent. The extra time likely will be limited, as the judge might deem equitable, perhaps as little as a week or up to a month. Most likely this type of stay would not be granted for any period past 10 days after the time limit to appeal the judgment, which could be around 40 days.⁴¹⁰ For any further stay it would be necessary to seek or already have sought a stay pending appeal pursuant to Code of Civil Procedure Section 1176, further discussed below.

It is possible, but very rare, for a losing tenant to convince the court to allow the tenant to remain in the rental unit. This is called **relief from forfeiture** of the tenancy. The tenant must convince the court of two things in order to obtain relief from forfeiture: (1) that the eviction would cause the tenant severe hardship, and (2) either that the tenant is able to pay all of the rent that is due or that the tenant will fully comply with the rental

⁴⁰⁸ Code Civ. Proc. § 1174.2(a).

⁴⁰⁹ Code Civ. Proc. § 918(a).

⁴¹⁰ Code Civ. Proc. § 918(b).

agreement.⁴¹¹

A tenant can obtain relief from forfeiture even if the tenancy has terminated (ended), so long as possession of the unit has not been turned over to the landlord. A tenant seeking relief from forfeiture must apply for relief at any time prior to restoration of the premises to the landlord, but such a petition should be made as soon as possible after the court issues its judgment in the unlawful detainer lawsuit. To do this, the tenant must file a motion for relief from forfeiture.⁴¹² A tenant who is not represented by an attorney at trial can even make an oral motion for relief from forfeiture immediately following the court's decision or by speaking with the judge in an '**ex parte**' hearing.

A tenant who loses an unlawful detainer lawsuit may **appeal** the judgment if the tenant believes that the judge mistakenly decided a legal issue in the case. However, the tenant will have to move out of the rental unit before the appeal is decided by the court, unless the tenant petitions for a stay of enforcement of the judgment or applies for relief from forfeiture (described immediately above). The court will not grant the tenant's request for a stay of enforcement unless the court finds that the tenant or the tenant's family will suffer extreme hardship, and that the landlord will not suffer irreparable harm. If the court grants the request for a stay of enforcement, it will order the tenant to make rent payments to the court in the amount ordered by the court and may impose additional conditions.⁴¹³

A landlord who loses an unlawful detainer lawsuit also may appeal the judgment as well.

Writ of possession

If a judgment is entered against the tenant and becomes final (for example, if the tenant does not appeal or loses on appeal), and the tenant does not move out, the court will issue a **writ of possession** to the landlord.⁴¹⁴ The landlord can deliver this legal document to the sheriff, who will then forcibly evict the tenant from the rental unit if the tenant does not leave within the time allowed.

Before evicting the tenant, the sheriff will serve the tenant with a copy of the writ of possession along with a **notice to vacate**.⁴¹⁵ If the tenant is not at home, the sheriff may post it on the tenant's door. The writ of possession instructs the tenant that he/she must move out by the end of the fifth day after the writ is served, and that if the tenant does not move out, the sheriff will remove the tenant from the rental unit and place the

⁴¹¹ Code Civ. Proc. § 1179.

⁴¹² California Practice Guide, Landlord-Tenant, Paragraph 9:444-9:445.1(Rutter Group 2011). The tenant's written petition must be served on the landlord at least five days before the date of the hearing on the request for relief. If the tenant does not have an attorney, the tenant may orally apply to the court for relief, if the landlord either is present in court or has been given proper notice. The court also may order relief from forfeiture on its own motion. The court may order relief from forfeiture only on condition that the tenant pay all of the rent due (or fully comply with the lease or rental agreement). (Code Civ. Proc. § 1179).

⁴¹³ Code Civ. Proc. § 1176.

⁴¹⁴ Code Civ. Proc. § 715.010.

⁴¹⁵ Code Civ. Proc. § 715.020.

landlord back in possession.⁴¹⁶ The cost of serving the writ of possession will be added to the other costs of the suit that the landlord can collect from the tenant.

After the tenant is served with the writ of possession, the tenant has five days to move. If the tenant has not moved by the end of the fifth day, the sheriff will return and physically remove the tenant.⁴¹⁷ If a tenant's belongings are still in the rental unit, they will initially be locked in. The landlord must exercise reasonable care of your belongings and store them in a place of safekeeping. The landlord has the option of continuing to store your belongings in the unit or removing them to another storage space for safekeeping. The landlord cannot unreasonably deny you the right to reclaim your belongings.⁴¹⁸ However, before the tenant can reclaim his/her belongings the landlord may require the tenant to pay for the reasonable storage costs and moving costs, if any. If they are stored in the rental unit the landlord can ask the tenant to pay the reasonable daily rental value for the unit for each day they are stored. If the tenant does not reclaim these belongings within 15 days, the landlord can mail the tenant a notice to pick them up, and then can either sell them at auction or keep them (if their value is less than \$700).⁴¹⁹ If the sheriff forcibly evicts you, the sheriff's cost will also be added to the judgment, which the landlord can collect from you, e.g. through wage garnishment, bank garnishment, or other judgment enforcement means.

Stay of Execution

Once you are served with a writ of possession, you may be able to file something called a Stay of Execution to stay in your home for a short while longer. A Stay of Execution asks the court to delay the eviction for a certain period of time not longer than 40 days. In return, you must pay rent to the court for each extra day that you remain once the Stay is granted. A Stay does not change the eviction judgment or reinstate your tenancy, but it can grant you more time to file a motion seeking to do so. Different courts may use different procedures for requesting a Stay, but each one will require you to notify your landlord and file a written request.⁴²⁰

Setting aside or vacating a default judgment or trial judgment

If the tenant does not file a written response to the landlord's complaint, the landlord can ask the court to enter a default judgment against the tenant. Upon the court entering default, the tenant will receive a notice of judgment, and a writ of possession as described above.

There are many reasons why a tenant might not respond to the landlord's complaint. For example, the tenant may have received the summons and complaint, but was not able to respond because the tenant was ill or incapacitated, or for some other very good reason. There are also circumstances where the landlord failed properly to serve the tenant with the summons and complaint, hence the reason why the tenant may have been unaware of the legal proceeding or the need to appear at trial. In situations such as

⁴¹⁶ Code Civ. Proc. § 715.010(b)(2).

⁴¹⁷ Code Civ. Proc. § 715.020(c).

⁴¹⁸ Civ. Code § 1965.

⁴¹⁹ Code Civ. Proc. §§ 715.030, 1174(h); Civ. Code §§ 1965, 1988.

⁴²⁰ Code Civ. Proc. § 918(a).

these, where the tenant has a valid reason for not responding to the landlord's complaint, the tenant can ask the court to set aside the default judgment.

Setting aside or “vacating” a judgment can be a complex legal proceeding, so be sure to retain an attorney as early as possible if you plan on having an attorney represent you in your efforts to set aside or vacate a judgment. Common reasons for seeking to set aside a default judgment are the tenant's (or the tenant's lawyer's) mistake, inadvertence, surprise, or excusable neglect.⁴²¹ A tenant who wants to ask the court to set aside a judgment must act promptly. The tenant should be able to show the court that they have a satisfactory excuse for not filing a response or missing the trial, acted promptly in making the request, and had a good chance to win at trial.⁴²² This last item is crucial, and is achieved by submitting a ‘proposed answer’ that states a seemingly plausible affirmative defense to the eviction, along with the other required documents when requesting a default be set aside. If possession of the unit has been returned to the landlord (i.e. the tenant has been locked out) the tenant can still seek to set aside the default, but it may not result in the tenant being restored to the unit.

Special rules for tenants in the military may make it more difficult for a landlord to obtain a default judgment against the tenant, and may make it possible for a tenant to reopen a default judgment and defend the unlawful detainer action.⁴²³

A word about bankruptcy

Some tenants think that filing a bankruptcy petition will prevent them from being evicted. This is not always true. Even if it delays an eviction, filing for bankruptcy without having a legitimate need for other economic relief is generally a poor idea.

Filing bankruptcy is a serious decision with many long-term consequences beyond the eviction action.

A tenant who is thinking about filing bankruptcy because of the threat of eviction, or for any reason, should consult a bankruptcy attorney and carefully weigh their advice. While it is possible for a person to file for bankruptcy without the use of an attorney's services, it is ill-advised at best.

Bankruptcy, which is handled in the federal bankruptcy courts, is a complicated legal specialty and explaining it is beyond the scope of this guide. However, here is some basic information about bankruptcy as it relates to unlawful detainer proceedings:⁴²⁴

- A tenant who files a bankruptcy petition normally is entitled to an immediate **automatic stay** (delay) of a pending unlawful detainer action. If the landlord hasn't

⁴²¹ Code Civ. Proc. § 473(b); California Practice Guide, Landlord-Tenant, Paragraphs 8:520 (Rutter Group 2019).

⁴²² Moskowitz et al., California Landlord-Tenant Practice, §§ 13.7-13.14 (Cont.Ed.Bar 2011). See also California Practice Guide, Landlord-Tenant, Paragraph 8:542 (Rutter Group 2019), relief pursuant to Code of Civ. Proc. Sec. 473(b) must be made within a reasonable time, not exceeding six months after entry of the default.

⁴²³ Servicemembers Civil Relief Act, 50 U.S.C § 3901; California Practice Guide, Landlord-Tenant, Paragraphs 8:518.5-8:518.7 (Rutter Group 2019).

⁴²⁴ California Practice Guide, Landlord-Tenant, Chapter 10, (Rutter Group 2019), and Moskowitz et al., California Landlord-Tenant Practice, Chapter 14 (Cont.Ed.Bar 2016).

already filed the unlawful detainer action, the automatic stay prevents the landlord from taking steps such as serving a three-day notice or filing the action.⁴²⁵

- The landlord may petition the bankruptcy court for permission to proceed with the unlawful detainer action (called “relief from the automatic stay”).⁴²⁶
- The automatic stay may continue in effect until the bankruptcy case is closed, dismissed, or completed. On the other hand, the bankruptcy court may lift the stay if the landlord shows that they are entitled to relief.⁴²⁷ It is fairly routine for the bankruptcy court to grant the landlord’s petition, resulting in some delay of the eviction process, but any actual prevention of the eviction proceeding.
- The automatic stay normally does not prevent the landlord from enforcing an unlawful detainer judgment that was obtained before the tenant’s petition was filed. In some cases, however, the tenant may be able to keep the stay in effect for 30 days after the petition is filed.⁴²⁸
- The automatic stay does not apply if the landlord’s eviction action is based on the tenant’s endangering the rental property or using illegal controlled substances on the property, and if the landlord files a required certification with the bankruptcy court. The stay normally will remain in effect, however, for 15 days after the landlord files the certification with the court.⁴²⁹
- A bankruptcy case can be dismissed for “cause”—for example, if the tenant neglects to pay fees or file necessary schedules and financial information, causes unreasonable delay that harms the landlord, or files the case in bad faith.⁴³⁰
- The bankruptcy court also can issue sanctions (i.e., penalties) against a person who files for bankruptcy petition in bad faith.

A landlord may try to evict a tenant because the tenant has exercised a legal right (for example, using the repair and deduct remedy, pages 62-63) or has complained about a problem in the rental unit. Or, the landlord may raise the tenant’s rent or otherwise seek to punish the tenant for complaining or lawfully exercising a tenant right.

In these situations, the landlord’s action may be considered retaliatory because the landlord is punishing the tenant for the tenant’s exercise of a legal right. The law offers tenants protection from retaliatory eviction and other retaliatory acts.⁴³¹

If a landlord tries to evict a tenant within six months after the tenant has exercised

⁴²⁵ 11 U.S.C § 362(a)(1)-(3) and 11 U.S.C § 362(b)(22).

⁴²⁶ 11 United States Bankruptcy Code § 362(d).

⁴²⁷ 11 U.S.C § 362(c),(d).

⁴²⁸ 11 U.S.C §§ 362(b)(22), 362(l)(1), which provide protection for the tenant if there are circumstances which would allow the tenant to cure the money damages or where the tenant has deposited with the clerk of the court any rent due after the filing of the bankruptcy.

⁴²⁹ 11 U.S.C §§ 362(b)(23), 362(m)(1).

⁴³⁰ Moskovitz et al., California Landlord-Tenant Practice, § 14.32 (Cont.Ed.Bar 2016).

⁴³¹ Civ. Code § 1942.5.

certain rights, the law assumes the eviction is retaliatory.⁴³² The following are examples of rights that the tenant may lawfully exercise:

- Using the repair and deduct remedy or telling the landlord that the tenant will use the repair and deduct remedy.
- Complaining about the condition of the rental unit to the landlord, or to an appropriate public agency (such as local code enforcement) after giving the landlord notice.
- Filing a lawsuit or beginning arbitration based on the condition of the rental unit.
- Causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.

In order for the tenant to defend against eviction on the basis of retaliation, the tenant must prove that they exercised one or more of these rights within the six-month period immediately preceding the landlord's attempt to evict the tenant, that the tenant's rent is current, and that the tenant has not used the defense of retaliation more than once in the past 12 months. If the tenant produces all of this evidence, then the burden is on the landlord to present evidence and prove that they did not have a retaliatory motive.⁴³³ Even if the landlord proves that they have a valid reason for the eviction, the tenant may still prove retaliation by showing that the landlord's effort to evict the tenant is not in good faith (i.e. it is merely a pretext).⁴³⁴ If both sides produce the necessary evidence, the judge or jury then must decide whether the landlord's action was retaliatory or was based on a valid reason.

A tenant can also assert retaliation as a defense to eviction if the tenant has lawfully organized or participated in a tenants' organization or protest or has lawfully exercised any other legal right, such as requesting repairs that the landlord is required to make or making a complaint about the landlord to a government agency. In these circumstances, the tenant must prove that they engaged in the protected activity, and that the landlord's conduct was retaliatory.⁴³⁵

In addition to citing illegal retaliation as a defense to eviction, a tenant can file an affirmative case seeking actual and statutory monetary damages if they believe they have been the victim of retaliation. A tenant can bring such a claim even if they move due to a landlord's retaliatory actions. A tenant does not have to 'stay and fight'. However, if a tenant unsuccessfully raises retaliation as a defense in an unlawful detainer, such an affirmative claim on the same or similar facts will likely be unsuccessful, as a court has already rule that there was no retaliation. In addition to actual damages, the anti-retaliation law provides for up to \$2,000 in statutory damages for each actual or attempted retaliatory act by the landlord.

If you feel that your landlord has retaliated against you because of action you properly

⁴³² Civ. Code § 1942.5.

⁴³³ Civ. Code § 1942.5 (a),(b); California Practice Guide, Landlord-Tenant, Paragraphs 7:368-7:380 (Rutter Group 2019).

⁴³⁴ Moskowitz et al., California Landlord-Tenant Practice, § 12.38 (Cont.Ed.Bar 2016).

⁴³⁵ Civ. Code § 1942.5(d).

took against your landlord, talk with an attorney or legal aid organization. An attorney also may be able to advise you about other defenses.

Retaliatory discrimination

A landlord, managing agent, real estate broker, or salesperson violates California's Fair Employment and Housing Act and the federal Fair Housing Act by harassing, evicting, or otherwise discriminating against a person in the sale or renting of housing when the "dominant purpose" is to retaliate against a person who has done any of the following:⁴³⁶

- Opposed practices that are discriminatory and unlawful under either Act;
- Told the police about a landlord's discriminatory or unlawful behavior; or
- Aided or encouraged a person to exercise rights protected by California laws prohibiting housing discrimination.

A tenant who can prove that the landlord's eviction action is based on a discriminatory motive has a defense to the unlawful detainer action. A tenant who is the victim of retaliatory discrimination also has a cause of action for damages under the Fair Employment and Housing Act.⁴³⁷ If your landlord has been discriminating against you, you can contact your local legal services office found at lawhelpca.org and/or the Department of Fair Employment and Housing at www.dfeh.ca.gov.

RESOLVING PROBLEMS

TALK WITH YOUR LANDLORD

Communication is the key to avoiding and resolving most problems. If you have a problem with your rental unit, it is usually best to talk with your landlord before taking other action. Your landlord may be willing to correct the problem or to work out a solution. By the same token, the landlord (or the landlord's agent or manager) should discuss problems with the tenant before taking legal action. The tenant may be willing to correct the problem once they understand the landlord's concerns. Both parties should remember that each has the duty to deal with the other fairly and in good faith (see page 33). While the communication might be effective through talking, in some instances it may not be possible, or it just be better to communicate in writing, especially if there is a need to document the content of the communication.

If discussions with the landlord does not solve the problem, and if the problem is the landlord's responsibility (see pages 56-60), you should write to the landlord. Your written communication should describe the problem, its effect on you, how long the problem has existed, what you may have done to remedy the problem or limit its effect (although the law does not require a tenant to correct an inhabitable unit), and what action you would

⁴³⁶ Gov. Code §§ 12955(f), 12955.7, 42 U.S.C § 3617.

⁴³⁷ California Practice Guide, Landlord-Tenant, Paragraphs 7:209-7:210, 7:391-7:394 (Rutter Group 2019).

like the landlord to take. You should always keep a copy of your written communication.

If you have been dealing with an agent of the landlord, such as a property manager, you may want to directly contact the owner of the rental unit if you know or can learn the owner's identity. The name, address and telephone number of the owner, the property manager, or another person authorized to act on the owner's behalf with respect to notices to be given/received and service of process must be written in your rental agreement or posted conspicuously in the building.⁴³⁸

If you do not hear from the landlord after sending the letter or e-mail, or if the landlord disagrees with your complaint, you may need to use one of the tenant remedies that are discussed in this guide, or obtain legal assistance. The length of time that you should wait for the landlord to act depends on the seriousness of the problem. Normally, 30 days is presumed to be a reasonable time for the landlord to act unless the nature of the problem dictates otherwise (i.e. heater not working during extremely cold weather, a lack of hot water, a blocked sewer line, etc.).

Remember, communication can prevent little problems from becoming big ones. Attempting to work out problems benefits everybody. Sometimes, it is helpful to involve someone else, such as a trained mediator (see page 126), but it is not required. If the problem truly cannot be resolved by discussion, negotiation, or acceptable compromise, *then* each party can look to the remedies provided by law.

GETTING HELP FROM A THIRD PARTY

Many resources are available to help tenants and landlords resolve problems and there are some limited resources to help tenants with access to rental assistance programs. Check which of the following agencies are available in your area, review their websites to determine if they can offer you assistance, or call, email or write them for information or assistance:

- Local consumer protection agency (see the *City and County Government* listings in the government section of the phone book or go online to <https://www.usa.gov/state-consumer/california>).
- Local housing authority or housing department (see the *City and County Government* listings in the government section of the phone book, visit <https://landlordtenant.dre.ca.gov/>, visit your local government's website, or visit <https://www.hud.gov/states/california/offices>).
- A HUD-Approved Housing Counseling agency. Search online at <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=CA>.
- City or county rent stabilization board (see the *City and County Government* listings in the government section of the phone book or go online to <https://www.hud.gov/states/california/renting/tenantrights>).
- Local tenant association, or rental housing or apartment association. Check the business and advertisements sections in the phone book or visit

⁴³⁸ Civ. Code §§ 1961, 1962, 1962.5.

<https://landlordtenant.dre.ca.gov/>.

- Local tenant resources, go to <https://landlordtenant.dre.ca.gov/>.
- Local dispute resolution program. For a list, go online to https://www.dca.ca.gov/consumers/mediation_programs.shtml.

You may also obtain information from the California Department of Real Estate at (877) 373-4542. You can also visit the Department of Real Estate's at <https://landlordtenant.dre.ca.gov/>.

Many county bar associations offer lawyer referral services and volunteer attorney programs that can help tenants locate a low-fee or free attorney. Legal aid organizations may provide eviction defense services, including legal advice, information and representation, to low-income tenants. Some law schools offer free advice and assistance through landlord-tenant clinics. See page 124 for your local services.

Tenants should be cautious about using for-profit so-called eviction defense clinics or bankruptcy clinics that are not tied to attorneys or a local non-profit organization. While there are many free and low-cost services available through your local Court and non-profit organizations, there are certain businesses that hold themselves out to be clinics that are not legitimate or may be legitimate but costly. Exercise caution when any clinic uses high-pressure sales tactics, make false promises such as guaranteeing a favorable outcome, obtains your signature on blank forms, take upfront fees, and do not communicate with you about your case at all.

These clinics may promise to get a **federal stay** (also called an automatic stay) of an eviction action. This usually means that the clinic intends to file a bankruptcy petition for the tenant (see the discussion of filing bankruptcy on page 120). While this may stop the eviction temporarily, it can have extremely negative effects on the tenant's future ability to rent property or to obtain credit as the bankruptcy will be part of the tenant's credit record *for as long as 10 years*. Always do your research and consult an eviction defense attorney before filing any such petition, especially if a clinic is doing it solely for the purpose of delaying an eviction.

Tenants should distinguish between those who are licensed and in good standing to practice law in California versus someone who is a registered Unlawful Detainer Assistant or Legal Document Assistant. The latter can help with the completion of court forms but cannot give legal advice. Be sure to check that someone who claims to be an attorney is actually licensed to practice law in California. An attorney's license status can be checked at <http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch>.

Unlawful detainer assistants (UDAs) are non-lawyers who are in business to provide advice and assistance to landlords and tenants on unlawful detainer issues. UDAs must be registered with the County Clerk's office in the counties where they have their principal place of business and where they do business.⁴³⁹ A tenant who signs a contract

⁴³⁹ Bus. & Prof. Code §§ 6400-6415.

with a UDA can cancel the contract within 24 hours after signing it.⁴⁴⁰

Legal document assistants (LDAs) are non-lawyers who type and file legal documents as directed by people who are representing themselves in legal matters. Similar registration and contract cancellation requirements apply to legal document assistants.⁴⁴¹

The fact that a UDA or an LDA is properly registered with the County Clerk does not guarantee that the UDA or LDA has the knowledge or ability to help you. Anytime you are dealing with someone who holds themselves out as an LDA or UDA, be sure to ask for their registration information. UDAs are required to disclose their registration information on any legal pleadings they file with the Court.

Landlord and Tenants should also be cautious about using so-called Paralegal Services that offer to file documents with the Courts and representation in Court proceedings. Paralegals are non-lawyers who cannot engage in the practice of law, cannot appear in Court, and must be supervised and affiliated with a licensed attorney in order to provide any sort of legal assistance or advice.⁴⁴² Unlike UDAs or LDAs, there is no required licensing or registration for paralegals. Many of these services will charge upfront fees and will do nothing, often to the detriment of the person they allege to be representing.

ARBITRATION AND MEDIATION

Some local housing agencies refer landlord-tenant disputes to local dispute resolution centers or mediation services. The goal of these services is to resolve disputes without the burden, stress, and expense of going to court. Courts in California collect fees that are used to operate Alternative Dispute Resolution programs that are overseen by county governments. These mediation programs are typically available to parties to certain court actions, are free of charge, and can be accessed before a trial or even at the court house on the day of trial.

Mediation involves assistance from an impartial third person, called a **mediator**, who helps the tenant and landlord reach a voluntary agreement on how to settle the dispute. The mediator does not make a binding decision in the case, but instead facilitates the parties achieving their own agreement. Willingness to participate in mediation is entirely up to the discretion of any of the parties.

Arbitration involves referral of the dispute to an impartial third person, called an **arbitrator**, who decides the case. If the landlord and tenant agree to submit their dispute to arbitration, they will be bound by the decision of the arbitrator, unless they agree to nonbinding arbitration. Unlike mediation, which is usually available at no or little cost, arbitration often requires payment of significant fees to a professional arbitrator. The cost for arbitration is usually split equally by the parties, but a tenant could ask the landlord to

⁴⁴⁰ Bus. & Prof. Code § 6410(f). The contents of the unlawful detainer assistant's contract are governed by regulation. See 16 California Code of Regulations § 3890.

⁴⁴¹ Bus. & Prof. Code §§ 6400-6415. The contents of the legal document assistant's contract for self-help services are governed by regulation. See 16 California Code of Regulation, § 3950.

⁴⁴² Bus. & Prof. Code § 6125-6133, Bus. & Prof. Code §§ 6450-6456. These sections govern the unlawful practice of law and the duties that may be lawfully carried out by a paralegal.

bear a greater share of the cost, including the entire cost. It is a legally unsettled question as to whether a term of a rental agreement that requires a tenant to submit disputes to arbitration is in fact enforceable.

Tenants and landlords should consider resolving their disputes by mediation or arbitration instead of a lawsuit, if it is available to them and they have the financial means to participate in these programs. Mediation is almost always faster, cheaper, and less stressful than going to court. While arbitration is more formal than mediation, arbitration can be faster, and is usually less stressful and burdensome, than a court action. It is important for both parties to remember that a mediator/arbitrator is supposed to remain neutral and is not an attorney or advocate for either party, rather they are charged with trying to reach a resolution that is agreeable to both parties. Mediators and Arbitrators are also not always experts in the area of law, so it is important for both parties to be informed of their rights and obligations prior to entering into a mediation or arbitration.

Mediation services are listed in the commercial or advertising sections of the telephone book under *Mediation Services*. For a county-by-county listing of dispute resolution services, go online to www.dca.ca.gov/consumers/mediation_programs.shtml.

GLOSSARY

[All words in **boldface type** are explained in this Glossary. The number at the end of each explanation refers to the page or pages in the text where the term is discussed.]

abandon/abandonment—the tenant’s remedy of moving out of a rental unit that is uninhabitable and that the landlord has not repaired within a reasonable time after receiving notice of the defects from the tenant. (52, 64)

amount of notice/amount of advance notice—the number of days’ notice that must be given before a change in the tenancy can take effect. Usually, the amount of advance notice is the same as the number of days between rent payments. For example, in a month-to-month tenancy, the landlord usually must give the tenant 30 days’ advance written notice that the landlord is increasing the amount of the security deposit. (5, 49-50, 74, 78)

appeal—a request to a higher court to review a lower court’s decision in a lawsuit. (93, 117-118)

Application for Waiver of Court Fees and Costs—a form that tenants may complete and give to the Clerk of Court to request permission to file court documents without paying the court filing fee. (111)

arbitration—using a neutral third person to resolve a dispute instead of going to court. Arbitration results can be binding or non-binding on the parties. A binding result means the result is final without an opportunity to appeal or contest it and the prevailing party can enforce it (like a judgment) against the non-prevailing party. A non-binding result means a determination that is not binding on the parties, meaning that either party can still file a legal action against the other party in the Superior Court. (126)

arbitrator—a neutral third person, agreed to by the parties in a dispute, who hears and decides a dispute (see arbitration; compare to mediator). (126)

assign/assignment—an agreement between the original tenant and a new tenant by which the new tenant takes over the rental agreement pertaining to the unit and becomes responsible to the landlord for everything that the original tenant was responsible for. The original tenant is still responsible to the landlord if the new tenant does not live up to the obligations of the rental agreement (see novation; compare to sublease). (54-56)

California Department of Fair Employment and Housing—the state agency that investigates complaints of unlawful discrimination in housing and employment. (23)

Claim of Right to Possession—a form that the occupants of a rental unit can fill out to temporarily stop their eviction by the sheriff after the landlord has won an unlawful detainer (eviction) lawsuit. The occupants can use this form only if: the landlord did not serve a Prejudgment Claim of Right to Possession form with the summons and complaint; the occupants were not named in the writ of possession; and the occupants have lived in the rental unit since before the unlawful detainer lawsuit was filed. (113,

137)

COVID-19 Tenant Relief Act of 2020 (the Tenant Relief Act)—An emergency act that took effect on August 31, 2020, and places a moratorium on evictions through January 31, 2021, for a tenant's failure to pay rent due to financial distress arising from or related to COVID-19, provided the tenant returns to the landlord a signed declaration of COVID-19-Related Financial Distress. For more information about the Tenant Relief Act, please go to <https://landlordtenant.dre.ca.gov/>. (98, 108)

credit report—a report prepared by a credit reporting agency that describes a person's credit history for the last seven years (except for bankruptcies, which are reported for 10 years). A credit report shows, for example, whether the person pays his or her bills on time, has delinquent or charged-off accounts. (13-17, 38, 45, 110)

credit reporting agency—a business that keeps records of people's credit histories, and that reports credit history information to prospective creditors (including landlords) (see tenant screening service). (15)

credit score—a numerical summary of a person's credit worthiness that is based on information from a **credit reporting agency**. Credit scoring uses a statistical program to compare a person's history of bill paying, credit accounts, collection actions and other credit information with the credit performance of other consumers. A high credit score (for example, 750 and up) indicates a history of better credit performance than other consumers, and potentially a better credit risk. A low credit score (for example, 300-400) indicates a history of worse credit performance than other consumers, and potentially a worse credit risk. (14-15)

default judgment—a judgment issued by the court, without a hearing, after the defendant has failed to file a response to the plaintiff's complaint. (112, 119)

demurrer—a legal response that a defendant can file in a lawsuit to test the legal sufficiency of the charges made in the plaintiff's complaint. In an unlawful detainer action to evict a tenant, the tenant may file a demurrer to the landlord's complaint if the complaint is legally insufficient, for instance, the complaint fails to state that the landlord served the tenant with a 3-day pay or quit notice, 30-day notice, 60-day notice, or 90-day notice. (111)

discovery—the process through which parties to a legal action are allowed to obtain relevant information known to other parties or non-parties before trial. (114, 116)

discrimination (in rental housing)— denying a person housing, telling a person that housing is not available (when the housing is actually available at that time), providing housing under inferior terms, providing unequal access to housing, harassing a person in connection with housing accommodations, or providing segregated housing because of a person's race, color, ancestry, national origin, citizenship, immigration status, primary language, age, religion, mental or physical disability, sex, gender, sexual orientation, gender identity, gender expression, genetic information, marital status, familial status, source of income, and/or military or veteran status. Discrimination also can be refusal to make reasonable accommodation or not allow a reasonable modification of the property in order for a person with a disability to be able to use and enjoy the property. (18-23)

dishonored check—a check that the bank returns to the payee (the person who received the check) without paying it. The bank may return the check because the payor's (the check writer's) account did not have enough money to cover the check. This is called a "bounced" or "NSF" check. Or, the bank may return the check because the payor stopped payment on it. (45)

domestic violence—abuse perpetrated against a spouse, former spouse, cohabitant, former cohabitant, a person that the abuser is having or has a dating or engagement relationship, or a person that the abuser has had a child with. For more information regarding domestic violence, please see page 75 (13).

elder abuse—Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering against an elder or dependent adult. (75)

escrow account—a bank account into which a party deposits money, which the escrow officer will disburse pursuant to the terms and conditions of the escrow agreement. If a rental unit is uninhabitable, the tenant may deposit withheld rent into an escrow account to be withdrawn and disbursed only when the landlord has corrected the uninhabitable conditions in the rental unit or when the tenant is ordered by a court to pay the withheld rent to the landlord. (67)

eviction—a court-administered proceeding for removing a tenant from a rental unit because the tenant has violated the rental agreement, or did not comply with a notice ending the tenancy (also called an "unlawful detainer" lawsuit). (103)

eviction moratorium—a temporary halt to eviction proceedings. (98)

eviction notice—a notice intended to terminate a tenancy. An eviction notice can be a three-day notice (curable and incurable), 30-day notice, 60-day notice, or 90-day notice. (85, 106)

eviction process—the official process that the landlord follows to evict a tenant from a rental unit. (107-110)

ex parte hearing—a way in which a party to a legal proceeding can bring a matter before a judge without an absolute requirement that all other parties be present. The party seeking the hearing has to inform the other parties that they are seeking the hearing and giving them the opportunity to attend if they wish. (118)

fair housing organizations—city, county or private organizations that help renters resolve housing discrimination problems. (22)

family child care home—A family child care home is a "home that regularly provides care, protection, and supervision for 14 or fewer children, in the [child care] provider's own home, for periods of less than 24 hours a day, while the parents or guardians are away."⁴⁴³ A family child care home can be located in a single family home, apartment, condominium, townhome, duplex, and other multi-family buildings. Family child care homes are licensed and regulated by the California Department of Social Services (Community Care Licensing Division) and California State Fire Marshal. Landlords have

⁴⁴³ Health & Saf. Code § 1596.78(a).

no authority to regulate family child care homes. Family child care providers are vital to the community by supporting the needs of children, parents and employers, and boosting economic development (13).

federal stay (or automatic stay)—an order of a federal bankruptcy court that temporarily stops proceedings in a state court, including an eviction proceeding. (120, 125)

fixed term rental agreement—A rental agreement between the landlord and tenant usually in writing, that establishes all the terms of the agreement and that lasts for a predetermined length of time with defined start and end dates (for example, six months or one year). Compare to periodic rental agreement. (25, 49, 96)

guest—a person who does not have the rights of a tenant, such as a person who stays in a transient hotel for fewer than seven days or someone staying at a rental unit at the invitation of the tenant. (4)

habitable—a rental unit that is fit for human beings to live in. A rental unit that substantially complies with building and safety code standards that materially affect tenants' health and safety is said to be "habitable." See uninhabitable and implied warranty of habitability. (56-60)

holding deposit—a deposit that a tenant gives to a landlord to hold a rental unit while the landlord's approval or disapproval of the tenant's application is pending or until the tenant pays the first month's rent and the security deposit. (17)

implied warranty of habitability—a legal rule that requires landlords to maintain their rental units in a condition fit for human beings to live in. This warranty applies to every single residential tenancy in California, no matter what. A rental unit must substantially comply with building and housing code standards that materially affect tenants' health and safety. The basic minimum requirements for a rental unit to be habitable are listed on pages 56-60. (56)

initial inspection—an inspection by the landlord before the tenancy ends to identify defective conditions that justify deductions from the security deposit. (52, 85-88)

Just Cause Evictions—Allowable grounds upon which a landlord may evict a tenant from a rental unit, including but not limited to, a tenant's nonpayment of rent or causing intentional damage to the rental unit. (80)

landlord—a business or person who owns a rental unit, and who rents the unit to another person, called a tenant. (2)

legal aid organizations—organizations that provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. (23, 125)

lockout—when a landlord locks a tenant out of the rental unit with the intent of terminating the tenancy. Lockouts, and all other self-help eviction remedies, are illegal. The term can also apply to what happens when a sheriff executes a writ of possession following a court eviction judgment.(117)

lodger—a person who lives in a room in a house where the owner lives. The owner

may enter all areas occupied by the lodger, and has overall control of the house. (3, 5)

mediation—a process in which a neutral third person meets with the parties to a dispute in order to assist them in formulating a voluntary solution to the dispute. (126)

mediator—a neutral third person, agreed to by the parties to a dispute, who meets with the parties in order to assist them in formulating a voluntary solution to the dispute. The mediator's decision normally is not “binding” on the parties (see mediation; compare to arbitrator). (126)

Memorandum to Set Case for Trial—a court document filed in an unlawful detainer lawsuit requesting that the case be set for trial. This document also states whether the plaintiff (the landlord) has requested a jury trial. A tenant may also file such a document, it is then called a Counter-Memorandum. (114)

Motion to Quash Service of Summons—a legal response that a defendant can file in a lawsuit if the defendant believes that plaintiff's service of the summons is defective. In an unlawful detainer action, rather than file an answer to the complaint, the defendant/tenant can file a motion to quash service of summons if he/she believes the landlord/plaintiff did not properly serve the summons and complaint. (111)

negligence—a person's carelessness (that is, failure to use ordinary or reasonable care) that results in injury to another person or damage to another person's property. (41)

notice to vacate—A notice intended to terminate a tenancy. A notice to vacate can be a 30-day notice, 60-day notice, or 90-day notice. (72, 117-118)

novation—in an assignment situation, a novation is an agreement by the landlord, the original tenant, and the new tenant that makes the new tenant (rather than the original tenant) solely responsible to the landlord. (56)

occupant—a person who is not named as a tenant in the rental agreement who has moved into a rental unit before the landlord files an unlawful detainer (eviction) lawsuit. An occupant may be authorized by the rental agreement. If the landlord does not know that the occupant is living in the rental unit, the landlord may not name the occupant as a defendant in the unlawful detainer lawsuit. (20, 35, 113)

periodic tenancy or tenancies—is a tenancy that continues week-to-week or month-to-month with no specified end date. Periodic tenancies continue from period to period until the landlord or tenant gives the other party notification that he/she wants to end the tenancy. (25, 72)

periodic rental agreement—are tenancies that continue for successive periods until the landlord or tenant gives the other party notification that they want to end the tenancy. Examples of periodic tenancies are tenancies that run from week to week or month to month. (48)

Prejudgment Claim of Right to Possession—a form that a landlord in an unlawful detainer (eviction) lawsuit can have served along with the summons and complaint on all persons living in the rental unit who might claim to be tenants, but whose names the landlord does not know. Occupants who are not named in the unlawful detainer

complaint, but who claim a right to possess the rental unit, can fill out and file this form to become parties to the unlawful detainer action. (113, 136) This gives the occupant an opportunity to file an answer, but also exposes them to adverse consequences of an unlawful detainer, including a judgment against them. See Appendix 1 (136-137)

prepaid rental listing services—businesses that sell lists of available rental units. (12)

property manager—the property manager or rental agent is compensated by the landlord to represent the landlord's interests. In some instances, the tenant will deal with the rental agent or property manager on behalf of the landlord. In other instances, the tenant will deal directly with the landlord. (2)

relief from forfeiture—an order by a court in an unlawful detainer (eviction) **lawsuit** that allows the losing tenant to remain in the rental unit, based on the tenant convincing the court that the eviction would cause the tenant severe hardship and that the tenant can pay all of the rent that is due, or otherwise fully comply with the terms of the rental agreement. (117-118)

rent control—a government program that places a limit on the amount that a landlord can demand for renting a home or for renewing a rental agreement. (137)

rent stabilization (or control) ordinances—laws in some communities that limit or prohibit rent increases, or that limit the circumstances in which a tenant can be evicted. (15, 42)

rent withholding—the tenant's remedy of not paying some or all of the rent if the landlord does not fix defects that make the rental unit uninhabitable within a reasonable time after the landlord receives notice of the defects from the tenant. (65)

rental agent—see property manager.

rental agreement—an oral or written agreement between a tenant and a landlord, made before the tenant moves in, which establishes the terms of the tenancy, such as the amount of the rent and when it is due (see lease and periodic rental agreement). (3, 24-25)

rental application form—a form that a landlord may ask a tenant to fill out prior to renting that requests information about the tenant, such as the tenant's address, telephone number, employment history, credit references, and the like. (10)

rental period—the length of time between rent payments; for example, a week or a month. 2, (25)

rental unit—an apartment, house, duplex, condominium, accessory dwelling unit (ADU), or room, or other structure or part thereof that a landlord rents to a tenant to live in. (2, 7-10)

renter's insurance—insurance protecting the tenant against property losses, such as losses from theft or fire. Also, this insurance may protect the tenant against liability (legal responsibility) for claims or lawsuits filed by the landlord or by others alleging that the tenant negligently injured another person or property. (41)

repair and deduct remedy—the tenant’s remedy of deducting from future rent the amount necessary to repair defects covered by the implied warranty of habitability. The amount deducted cannot be more than one month’s rent. (62-63)

retaliatory eviction or action—an act by a landlord, such as raising a tenant’s rent, seeking to evict a tenant, or otherwise punishing a tenant because the tenant has exercised a lawful right, such as using the repair and deduct remedy or the rent withholding remedy. (121-123)

security deposit—a deposit or a fee that the landlord requires the tenant to pay at the beginning of the tenancy. The landlord can use the security deposit, for example, if the tenant moves out owing rent or leaves the unit damaged, other than normal wear and tear, or less clean than when the tenant moved in. (37-41)

serve/service—legal requirements and procedures that seek to assure that the person to whom a legal notice is directed actually receives it. (106-107)

sublease—a separate rental agreement between the original tenant and a new tenant to whom the original tenant rents all or part of the rental unit. The new tenant is called a “subtenant.” The agreement between the original tenant and the landlord remains in force, and the original tenant continues to be responsible for paying the rent to the landlord and for other tenant obligations. (Compare to assignment.) (54-55)

subpoena—an order from the court that requires the recipient to appear as a witness or provide evidence in a court proceeding. (114)

subtenant—see sublease.

tenancy—the tenant’s exclusive right, created by a rental agreement between the landlord and the tenant, to use and possess the landlord’s rental unit. (24)

tenant—a person who rents a rental unit from a landlord. The tenant obtains the right to the exclusive use and possession of the rental unit during the rental period. If the rental agreement identifies more than one person as the tenant, then all of the identified people are co-tenants and together they have the right to the exclusive use and possession of the rental unit vis a vis the landlord and other third parties during the rental period but non-exclusive use and possession of the rental unit with respect to each other. (2)

Tenant Protection Act of 2019 (the Tenant Protection Act)—the Tenant Protection Act imposes statewide limits on rental increases. The Tenant Protection Act also imposes statewide just cause eviction requirements for rental units where the tenant has resided at the unit for more than 12 months or 24 months if an adult tenant was added to the tenancy during the preceding 12 months. (80)

Tenant Relocation Payment—a payment from the landlord to the tenant to assist the tenant with relocation if the landlord relies on no-fault just cause as the basis to terminate the tenancy and evict the tenant. Under the Tenant Protection Act of 2019, the relocation payment is an amount equal to one month of the tenant’s rent that was in effect when the owner issued the notice to terminate the tenancy and, at the landlord’s option, the landlord may pay this amount directly to the tenant or waive the tenant’s obligation to pay his/her final month’s rent. (80, 101)

tenant screening service—a credit reporting agency that collects and sells information on tenants, such as whether they paid their rent on time, whether they damaged previous rental units, whether they were the subject of an unlawful detainer lawsuit, and whether landlords considered them good or bad tenants. (15)

uninhabitable—a rental unit which has such serious problems or defects that the tenant's health or safety is affected. A rental unit may be uninhabitable if it is not fit for human beings to live in, if it fails to substantially comply with building and safety code standards that materially affect tenants' health and safety, if it contains a lead hazard, or if it is a dangerous substandard building. (Compare to habitable.) (56)

unlawful detainer lawsuit—a lawsuit that a landlord must file and win before they can evict a tenant (also called an eviction lawsuit). (107-108)

unlawful detainer judgment—A judgment issued at the conclusion of an unlawful detainer (eviction) action. (121)

U.S. Department of Housing and Urban Development—the federal agency that enforces the federal fair housing law, which prohibits discrimination based on sex, race, color, religion, national or ethnic origin, familial status, or disability. (23)

waive/waiver—to sign a written document (a waiver) giving up a right, claim, privilege, etc. In order for a waiver to be effective, the person giving the waiver must do so knowingly, and must know the right, claim, privilege, etc. that they are giving up. (47, 83, 136)

writ of possession—a document issued by the court after the landlord wins an unlawful detainer (eviction) lawsuit. The writ of possession is served on the tenant by the sheriff. The writ informs the tenant that the tenant must leave the rental unit by the end of five days, or the sheriff will forcibly remove the tenant. (118)

3-day notice to cure or quit—see eviction notice.

3-day notice to pay or quit—see eviction notice.

30-day notice—see eviction notice or notice to vacate.

60-day notice—see eviction notice or notice to vacate.

90-day notice—see eviction notice or notice to vacate.

APPENDIX 1 — OCCUPANTS NOT NAMED IN EVICTION LAWSUIT OR WRIT OF POSSESSION

OCCUPANTS NOT NAMED IN EVICTION LAWSUIT

People who are not named as tenants in the rental agreement sometimes move into a rental unit before the landlord files the unlawful detainer (eviction) lawsuit. The landlord may not know that these people (called “occupants”) are living in the rental unit, and therefore may not name them as defendants in the summons and complaint. As a result, these occupants are not named in the writ of possession if the landlord wins the unlawful detainer action. A sheriff enforcing the writ of possession cannot lawfully evict an occupant whose name does not appear on the writ of possession and who claims to have lived in the unit since before the unlawful detainer lawsuit was filed, if the occupant takes the correct steps in time (see writ of possession, page 118).

The landlord can take steps to avoid this result. The landlord can instruct the marshal, sheriff or registered process server who serves the summons and complaint on the named defendants to ask whether there are other occupants living in the unit who have not been named as defendants. If there are, the person serving the summons and complaint can serve each of the so-called “unnamed occupants” with a blank Prejudgment Claim of Right to Possession form and an extra copy of the summons and complaint.⁴⁴⁴

These occupants then have 10 days from the date they are served to file a Prejudgment Claim of Right to Possession form with the Clerk of Court, and to pay the clerk the required filing fee (or file an **Application for Waiver of Court Fees and Costs** if they are unable to pay the filing fee [see page 111]). Any unnamed occupant who does not file a Prejudgment Claim of Right to Possession form with the Clerk of Court (along with the filing fee or a request for waiver of the fee) can then be evicted if the tenants named in the eviction action lose at court.

An unnamed occupant who files a Prejudgment Claim of Right to Possession form automatically becomes a defendant in the unlawful detainer lawsuit, and must file an answer to the complaint within five days after filing the form.⁴⁴⁵ If the landlord wins, the occupant will be subject to the eviction. Any other occupant who did not file a Prejudgment Claim cannot delay the eviction, whether or not that occupant is named in the writ of possession issued by the court.⁴⁴⁶

OCCUPANTS NOT NAMED IN WRIT OF POSSESSION

The landlord sometimes does not serve a Prejudgment Claim of Right to Possession form on the unnamed occupants when the unlawful detainer complaint is served. When the sheriff arrives to enforce the writ of possession (that is, to evict the tenants [see writ

⁴⁴⁴ Code Civ. Proc. § 415.46.

⁴⁴⁵ Code Civ. Proc. § 1174.3.

⁴⁴⁶ Code Civ. Proc. § 415.46.

of possession, page 118]), an occupant whose name does not appear on the writ of possession, and who claims a right of possession, may fill out a **Claim of Right to Possession** form and give it to the sheriff. The sheriff must then stop the eviction of that occupant, and must give the occupant a copy of the completed form or a receipt for it.⁴⁴⁷

Within two court days after completing the form and giving it to the sheriff, the occupant must deliver to the Clerk of Court the court's filing fee (or file an Application for Waiver of Court Fees and Costs if the occupant is unable to pay the filing fee (see page 111)). The occupant also should deliver to the court an amount equal to 15 days' rent for the rental unit (the writ of possession must state the daily rental value of the rental unit).

Five to 15 days after the occupant has paid the filing fee (or has filed a request for waiver of the fee), and has deposited an amount equal to 15 days' rent, the court will hold a hearing. If the occupant does not deposit the 15 days' rent, the court will hold the hearing *within five days*.

At the hearing, the court will decide whether or not the occupant has a valid claim to possession. If the court decides that the occupant's claim to possession is valid, the amount of rent deposited will be returned to the occupant. The court will then order further proceedings, as appropriate to the case (for example, the occupant may be given five days to answer the landlord's complaint and defend the eviction action).

If the court finds that the occupant's claim to possession is not valid, an amount equal to the daily rent for each day the eviction was delayed will be subtracted from the rent that is returned to the occupant, and the sheriff or marshal will continue with the eviction.⁴⁴⁸

APPENDIX 2—LIST OF CITIES WITH RENT CONTROL ORDINANCES (AS OF 2019)

Alameda
Baldwin Park
Berkeley
Beverly Hills
Burbank
Camarillo
Campbell
City of Commerce

⁴⁴⁷ Code Civ. Proc. § 1174.3.

⁴⁴⁸ Code Civ. Proc. § 1174.3.

Concord
Culver City
East Palo Alto
Emeryville
Fremont
Gardena
Glendale
Hayward
Inglewood
Los Angeles
Los Gatos
Menlo Park
Mountain View
Oakland
Palm Springs
Palo Alto
Pasadena
Redwood City
Richmond
Sacramento
San Diego
San Francisco
San Jose
San Leandro
Santa Monica
Thousand Oaks
Unincorporated Los Angeles County
West Hollywood

Resources on rent control ordinances include *The California Landlord's Law Book: Rights & Responsibilities*, 18th edition, (NOLO Press 2019) and *California Practice Guide, Landlord-Tenant* (Rutter Group 2019).

APPENDIX 3—TENANT INFORMATION AND ASSISTANCE RESOURCES

Tenant Information and Assistance Resources listing is available through the Department of Real Estate’s website at <https://landlordtenant.dre.ca.gov/>.

The website listing is updated periodically. You can also locate lawyer referral services and legal aid programs through these other resources:

- **Lawyer referral services:** Go to the State Bar of California’s website, www.calbar.ca.gov. Click on the “Public” tab, then click on the “Lawyer Referral Services” link and then use the “County Programs” menu to find legal help in your area or call (866) 442-2529.
 - **California legal aid organizations, self-help organizations, bar-certified lawyer referral services, and court services:** Go to LawHelpCalifornia.org’s, website www.LawHelpCA.org.
-

APPENDIX 4—OTHER RESOURCES

PUBLICATIONS ON LANDLORD-TENANT LAW

Books

Rosenquest & Portman, *The California Landlord’s Law Book: Rights & Responsibilities*, 18th edition, (NOLO Press 2019).

California Practice Guide: Landlord-Tenant (Rutter Group 2019).

Moskovitz et al., *California Eviction Defense Manual*, 2nd edition (California Continuing Education of the Bar 2011 update).

Moskovitz et al., *California Landlord-Tenant Practice*, (California Continuing Education of the Bar 2016).

Portman and Weaver, *California Tenants’ Rights*, 21st edition (NOLO Press 2018).

These books are available at county and university law libraries.

DEPARTMENT OF CONSUMER AFFAIRS—OTHER RESOURCES

California Dispute Resolution Programs Act: Program Directory (lists arbitration and mediation programs by county).

https://www.dca.ca.gov/consumers/mediation_programs.shtml

Small Claims Advisors Directory (lists small claims court advisors by county).

<https://www.courts.ca.gov/selfhelp-advisors.htm?rdeLocaleAttr=en>

The Small Claims Court: A Guide to Its Practical Use.

https://www.dca.ca.gov/publications/small_claims/. For printed copies of this publication, call (866) 320-8652 or write to:

APPENDIX 5—LEGALLY REQUIRED TEXT OF NOTICES

MEGAN’S LAW NOTICE (see page 37)

Civil Code Section 2079.10a (The notice used must be in at least 8-point type.)

Language required from July 1, 1999, to August 31, 2005:

Notice: The California Department of Justice, sheriff’s departments, police departments serving jurisdictions of 200,000 or more, and many other local law enforcement authorities maintain for public access a database of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The database is updated on a quarterly basis and is a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a “900” telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the “900” telephone service.

Language required from September 1, 2005, to March 31, 2006: Either the language above or as follows.

Language required on and after April 1, 2006:

Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet website maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender’s criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which the offender resides.

LEAD WARNING STATEMENT (see page 34)

24 Code of Federal Regulations Section 35.92. (This notice must be in the language used in the contract, for example, English or Spanish.)

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

WAIVER OF RIGHT TO RECEIVE COPIES OF INVOICES, RECEIPTS, OR GOOD

FAITH ESTIMATE (see page 83)

Civil Code Section 1950.5(g)(2) (as of January 1, 2011). (If the tenant waives the right to receive copies of invoices, receipts, or a good faith estimate with the landlord's itemized statement of deductions from the tenant's security deposit, the waiver must "substantially include" this text of the security deposit statute.)

(g)(2) Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as follows:

(A) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged.

(B) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. The itemized statement shall provide the tenant with the name, address, and telephone number of the person or entity, if the bill, invoice, or receipt does not include that information.

(C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item by providing a copy of a bill, invoice, receipt, vendor price list, or other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

LAWFUL USES OF TENANT'S SECURITY DEPOSIT (see page 81)

Civil Code Sections 1950.5(b)(1)-(4) (as of January 1, 2011). (This text of the security deposit statute must accompany the landlord's itemized statement of repairs or cleaning.)

(b) As used in this section, "security" means any payment, fee, deposit or charge, including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.

(3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.

(4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property or appurtenances, exclusive

of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

CONDOMINIUM CONVERSION NOTICE (see page 72)

Government Code Section 66459. (This notice must be printed in at least 14-point bold type.)

TO THE PROSPECTIVE TENANTS OF: _____
ADDRESS: _____

The unit you may rent has been approved for sale to the public as a condominium project, community apartment project, or stock cooperative project (whichever applies). The rental unit may be sold to the public, and, if it is offered for sale, your lease may be terminated. You will be notified at least 90 days prior to any offering to sell. If you still lawfully reside in the unit, you will be given a right of first refusal to purchase the unit.

SIGNATURE OF OWNER OR OWNER'S AGENT: _____
DATED: _____

RENT CAP AND STATEMENT OF CAUSE TO TERMINATE TENANCY NOTICE

Government Code Section 1946.2

"California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information."

INVENTORY CHECKLIST (1 OF 4)

This inventory form is for the protection of both the tenant and the landlord.

You (the tenant) and the landlord or the landlord's agent should fill out the "Condition Upon Arrival" section of the form within three days of your moving in. If you request an initial inspection before you move out, you and your landlord or agent should conduct the initial inspection about two weeks before the end of the tenancy or lease term and fill out the "Condition Upon Initial Inspection" section. As soon as possible after you have moved out, the landlord or agent should fill out the "Condition Upon Departure" section. It's a good idea for you to be present during the final inspection, but the law does not require that you be present or that the landlord allow you to be present.

The landlord or agent should sign a copy of this form following each inspection, and you should sign following each inspection for which you are present. Both you and the landlord or agent should receive a copy of the form following each inspection.

Be specific and check carefully when completing this form. Amort other things, look for dust, dirt, grease, stains, burns, and excess wear.

Additions to this form may be made as necessary. Attach additional paper if more space is needed, but remember to include copies for both the landlord and the tenant. Both parties should initial any additional pages after each inspection. Cross out any items that do not apply.

Address _____ Unit Number _____

Name of tenant(s) _____

ITEM	QUALITY If applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear. DATE: _____	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____
Cupboards				
Floor covering				
Walls and ceiling				
Counter surfaces				
Stove and oven, range hood (broiler pan, grills, etc.)				
Refrigerator (ice trays, butter dish, etc.)				
Sink and garbage disposal				
Windows (draperies, screens, etc.)				
Doors, including hardware				
Light fixtures				

KITCHEN

INVENTORY CHECKLIST (2 OF 4)

ITEM	QUALITY If applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear. DATE: _____	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____
LIVING ROOM				
Floor covering				
Walls and ceiling				
Windows (draperies, screens, etc.)				
Doors, including hardware				
Light fixtures				
BATHROOM				
Floor covering				
Walls and ceiling				
Shower and tub (walls, door, tracks)				
Toilet				
Plumbing fixtures				
Windows (draperies, screens, etc.)				
Doors, including hardware				
Light fixtures				
Sink, vanity, medicine cabinet				

INVENTORY CHECKLIST (3 OF 4)

ITEM	QUALITY If applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear. DATE: _____	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____
HALLWAYS OR OTHER AREAS				
Floor covering				
Walls and ceiling				
Closets, including doors and tracks				
Light fixtures				
Furnace/Air conditioner filter(s)				
Patio, deck, yard (planted areas, ground covering, fencing, etc.)				
Other (specify)				
BEDROOM 1				
Floor covering				
Walls and ceiling				
Closet, including doors and tracks				
Windows (draperies, screens, etc.)				
Doors, including hardware				
Light fixtures				

INVENTORY CHECKLIST (4 OF 4)

ITEM		QUALITY If applicable	CONDITION UPON ARRIVAL Note condition, including existing damage and wear and tear. DATE: _____	CONDITION UPON INITIAL INSPECTION Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____	CONDITION UPON DEPARTURE Note deterioration beyond reasonable use and wear for which tenant is alleged to be responsible. DATE: _____
BEDROOM 2					
Floor covering					
Walls and ceiling					
Closets, including doors and tracks					
Windows (draperies, screens, etc.)					
Doors, including hardware					
Light fixtures					
BEDROOM 3					
Floor covering					
Walls and ceiling					
Closets, including doors and tracks					
Windows (draperies, screens, etc.)					
Doors, including hardware					
Light fixtures					

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A stylized icon where the top part is a house outline and the bottom part is a key outline, both in a light blue color.

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