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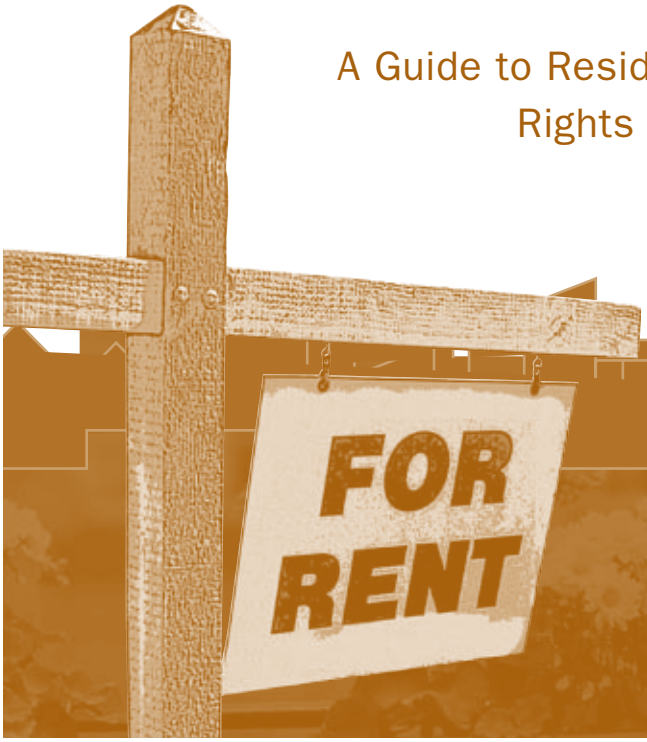
CALIFORNIA TENANTS

A Guide to Residential Tenants' and Landlords' Rights and Responsibilities



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CALIFORNIA TENANTS

A Guide to Residential Tenants' and Landlords' Rights and Responsibilities

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NOTICE

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. While this publication is designed to provide accurate and current information about the law, readers should consult an attorney or other expert for advice in particular cases, and should also read the relevant statutes and court decisions when relying on cited material.

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For information on ordering copies of this booklet, see page 108.

Dear Reader:

For most of us, where we live is the most significant consumer decision we make, and our housing costs are the biggest part of our budget. Our home is where we spend much of our time, and we want it to be hassle-free!

Move-in day marks the beginning of an important relationship between a tenant and a landlord. To help tenants and landlords manage their rental-housing responsibilities, we're pleased to provide the Department of Consumer Affairs' practical "California Tenants" guide.

The "California Tenants" booklet is a practical resource for both tenants and landlords. We've provided information about rental applications, unlawful discrimination, security deposits, repair responsibilities, rent increases, termination of leases, and eviction notices. We've included an inventory checklist for use before moving in, and again when moving out.

If you need additional assistance, we've also provided a comprehensive list of resources in communities throughout the Golden State.

We hope you find "California Tenants" helpful. You can get more information by visiting the Department's Web site at www.dca.ca.gov or by calling 1-800-952-5210.

California Department of Consumer Affairs

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CALIFORNIA TENANTS

A Guide to Residential Tenants' and Landlords' Rights and Responsibilities

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 the tenant moves? 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, an apartment, a house, or a duplex, the landlord-tenant relationship is governed by federal, state, and local laws. This booklet focuses on California laws that govern the landlord-tenant relationship, and suggests things that both the landlord and tenant can do to make the relationship a good one. Although the booklet is written from the tenant's point of view, landlords can also benefit from its information.

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 by open communication and discussion. Honest discussion of the problem may show each party that he or she is not completely in the right, and that a fair compromise is in order.

If the problem is one for which the landlord is responsible (see pages 35–38), 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 pages 35–38), 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 77). In some situations, a court action may provide the only solution (see pages 44–46, 61–62, 68–73).

The Department of Consumer Affairs hopes that tenants and landlords will use this booklet's information to avoid problems in the first place, and to resolve those problems that do occur.

How to Use This Booklet

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

TABLE OF CONTENTS

The Table of Contents (pages v–vii) shows that the booklet is divided into nine main sections. Each main section is divided into smaller sections. For example, if you want 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 don't find a topic there, look in the Index (page 101). It's more specific than the Table of Contents. For example, under "Cleaning" in the Index, you'll 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 (page 79). The glossary gives the meaning of more than 60 terms. Each of these terms also is printed in **boldface type** the first time that it appears in each section of the booklet.

The Department of Consumer Affairs hopes that you will find the information you're looking for in this booklet. If you can't find what you're looking for, call or write one of the resources listed in "Getting Help From a Third Party" (see pages 76–77) or "Tenant Information and Assistance Resources" (see page 87).

Who is a "Landlord" and Who is a "Tenant?"

GENERAL INFORMATION ABOUT LANDLORDS AND TENANTS

A landlord is a person or a company that owns a rental unit. The landlord rents or leases 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 lease or 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, or room that a landlord rents to a tenant to live in. In this booklet, the term rental unit means any one of these. Because the tenant uses the rental unit to live in, it is called a "residential rental unit."

Often, a landlord will have a rental agent or a property manager who manages the rental property. The agent or manager is employed by the landlord and represents the landlord. In most instances, the tenant can deal with the rental agent or property manager as if this person were the landlord. For example, a tenant can work directly with the agent or manager to resolve problems. When a tenant needs to give the landlord one of the tenant notices described in this booklet (for example, see pages 43–44, 47–48), the tenant can give the notice to the landlord's rental agent or property manager.

The name, address and telephone number of the manager and an owner of the building (or other person who is authorized to receive legal notices for the owner) must be written in the rental agreement or lease, or posted conspicuously in the rental unit or building.[1]

SPECIAL SITUATIONS

The tenant 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 have the same rights as tenants.[2] Situations in which lodgers and residents of hotels and motels do and do not have the rights of tenants, and other special situations, are discussed in the "Special Situations" sidebar on pages 3–4.[3]

Continued on page 5

1 *Civil Code Sections 1961, 1962, 1962.5. See Moskovitz et al., California Landlord-Tenant Practice, Section 1.21A (Cal. Cont. Ed. Bar, 2006).*

2 *Civil Code Section 1940(a).*

3 *See additional discussion in Moskovitz et al., California Landlord-Tenant Practice, Section 1.3 (Cal. Cont. Ed. Bar, 2002, 2005).*

Special Situations

Hotels and motels

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

1. You live in a hotel, motel, residence club, or other 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 owing by the thirtieth 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* a tenant; you are a **guest**. Therefore, you don't have the same rights as a tenant.[4] For example, the proprietor of a hotel can "lock out" a guest who doesn't pay his or her room charges on time, while a landlord would have to begin formal eviction proceedings to evict a nonpaying tenant.

Residential hotels

You have the legal rights of a tenant if you are a guest in a residential hotel which is in fact your primary residence.[5] "Residential hotel" means any building which contains six or more guest rooms or efficiency units which are designed, used, rented or occupied for sleeping purposes by guests, and which is the primary residence of these guests.[6]

It is unlawful for the proprietor 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 the proprietor's purpose is to have the guest maintain transient occupancy status (and therefore not gain the legal rights of

Special Situations continued on page 4

4 *Civil Code Section 1940.*

5 *Health and Safety Code Section 50519(b)(1); see California Practice Guide, Landlord-Tenant, Paragraphs 2:39, 2:40.1, 7:6.2 (Rutter Group, 2005).*

6 *Health and Safety Code Sections 50519(b)(1), 17958.1.*

Special Situations continued from page 3

a tenant).[7] A person who violates this law may be punished by 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 can enter all areas occupied by the lodger and has overall control of the house.[8] Most lodgers have the same rights as tenants.[9]

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. 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 the number of days between rent payments (for example, 30 days). (See "Landlord's notice to end a periodic tenancy," page 48.) When the owner has given the lodger proper notice and the time has expired, the lodger has no further right to remain in the owner's house and may be removed as a trespasser.[10]

Transitional housing

Some tenants are residents of "transitional housing." Transitional housing provides housing to formerly homeless persons for periods of 30 days to 24 months. Special rules cover the behavior of residents in, and eviction of residents from, transitional housing.[11]

Mobilehome parks and recreational vehicle parks

Special rules in the Mobilehome Residency Law[12] or the Recreational Vehicle Park Occupancy Law,[13] and not the rules discussed in this booklet, cover most landlord-tenant relationships in mobilehome parks and recreational vehicle parks.

However, normal eviction procedures (see pages 68–73) must be used to evict certain mobilehome residents. Specifically, a person who leases a mobilehome from its owner (who has leased the site for the mobilehome directly from the management of the mobilehome park) is subject to the eviction procedures described in this booklet, and not the eviction provisions in the Mobilehome Residency Law. The same is true for a person who leases both a mobilehome and the site for the mobilehome from the mobilehome park management.[14]

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7 *Civil Code Section 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. (Civil Code Section 1940.1(a).) This presumption affects the burden of producing evidence.*

8 *Civil Code Section 1946.5.*

9 *Civil Code Section 1940(a).*

10 *Civil Code Section 1946.5, Penal Code Section 602.3.*

11 *Health and Safety Code Sections 50580-50591.*

12 *Civil Code Sections 798-799.10. See Moskovitz et al., California Landlord-Tenant Practice, Sections 6.62-6.89 (Cal. Cont. Ed. Bar, 2005).*

13 *Civil Code Sections 799.20-799.79.*

14 *California Practice Guide, Landlord-Tenant, Paragraphs 11:27-11:28 (Rutter Group 2005).*

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 deposits that may be required (for example, holding and security deposits).
- The location that you want.

In addition, you also should carefully consider the following:

- The kind of rental unit that you want (for example, an apartment complex, a duplex, or a single-family house), and the features that you want (such as the number of bedrooms and bathrooms).
- Whether you want a month-to-month rental agreement or a lease (see pages 14–17).
- Access to schools, stores, public transportation, medical facilities, child-care facilities, and other necessities and conveniences.
- The character and quality of the neighborhood (for example, its safety and appearance).
- The condition of the rental unit (see "Inspecting before you rent," page 5).
- Other special requirements that you or your family members may have (for example, wheelchair access).

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

Inspecting before you rent

Before you decide to rent, carefully inspect the rental unit with the landlord or the landlord's agent. Make sure that the unit has been maintained well. Use the inventory checklist (page 104) as an inspection guide. 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.
- The presence of mold that might affect your or your family's health and safety.
- Signs of rust in water from the taps.
- Leaks in bathroom or kitchen fixtures.
- Lack of hot water.
- 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's a furnished unit).
- Signs of insects, vermin, or rodents.
- Accumulated dirt and debris.
- Inadequate trash and garbage receptacles.
- Chipping paint in older buildings. (Paint chips sometimes contain lead, which can cause lead poisoning if children eat them. If the building was built before 1978, you should read the booklet, "Protect Your Family From Lead in Your Home," which is available by calling 1-800-424-LEAD or at www.epa.gov/lead.)
- 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 they are inhaled.) 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 well-kept?

The quality of rental units can vary greatly. You should understand the unit's good points and shortcomings, and consider them all when deciding whether to rent, and whether the rent is reasonable.

Ask the landlord who will be responsible for paying for utilities (gas, electric, water, and trash collection). You will probably be responsible for some, and possibly all, of them. Try to find out how much the previous tenant paid for utilities. This will help you be certain that you can afford the total amount of the rent and utilities each month. With increasing energy costs, it's 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, ask whether the landlord will supply necessary equipment, such as a lawn mower and a hose.

During this initial walk-through of the rental unit, you will have the chance to see how your potential landlord reacts to your concerns about it. At the same time, the landlord will learn how you handle potential problems. You may not be able to reach agreement on every point, or on any. Nonetheless, how you get along will help both of you decide whether you will become a tenant.

If you find problems like the ones listed above, discuss them with the landlord. If the problems are ones that the law requires the landlord to repair (see pages 35–38), find out when the landlord intends to make the repairs. If you agree to rent the unit, it's a good idea to get these promises in writing, including the date by which the repairs will be completed.

If the landlord isn't required by law to make the repairs, you should still write down a description of any problems if you are going to rent the property. It's a good idea to ask the landlord to sign and date the written description. Also, take photographs or a video of the problems. Use the time and date stamp, if your camera has this feature. Your signed, written description and photographs or video will document that the problems were there when you moved in, and can help avoid disagreement later about your responsibility for the problems.

Finally, it's a good idea to walk or drive around the neighborhood during the day and again in the evening. Ask neighbors how 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. If you are concerned about safety, ask neighbors and tenants if there have been any problems, and whether they think that the area is safe.

THE RENTAL APPLICATION

Before renting to you, most landlords will ask you to fill out a written **rental application form**. A rental application is different from a **rental agreement** (see pages 14–16). The rental application is like a job or credit application. The landlord will use it 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.
- 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.

Continued on page 8

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 and must be licensed.[15]

If you use a prepaid rental listing service, it must enter into a contract with you before it accepts any money from you.[16] The contract must describe the services that the prepaid rental listing service will provide you. The contract also must include a description of the kind of rental unit that you want to find. For example, the contract must state the number of bedrooms that you want and the highest rent that you will pay.

Before you enter into a contract with a prepaid rental listing service or pay for information about available rental units, ask if the service is licensed and whether the list of rentals is current. The contract cannot be for more than 90 days. The law requires the service to give you a list of at least three currently available rentals within five days after you sign the contract.

You can receive a refund of the fee that you paid for the list of available rentals if the list does not contain three available rental units of the kind that you described in the contract.[17] In order to obtain a refund, you must demand a full refund from the prepaid rental listing service within 15 days of signing the contract. Your demand for a refund must be in writing and must be personally delivered to the prepaid rental listing service or sent to it by certified or registered mail. (However, you can't get a refund if you found a rental using the services of the prepaid rental listing service.)

If you don't find a rental unit from the list you bought, or if you rent from another source, the prepaid rental listing service can keep only $50 of the fee that you paid. The service must refund the balance, but you must request the refund within 10 days after the end of the contract. You must provide 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 don't have documentation, you can fill out and swear to a form that the prepaid rental listing service will give you for this purpose. 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 address. The service must make the refund within 10 days after it receives your request.

15 *Business and Professions Code Section 10167.*

16 *Business and Professions Code Section 10167.9(a).*

17 *Business and Professions Code Section 10167.10.*

- Your social security number.
- Your driver's license number.
- Your bank account numbers.
- Your credit account numbers for credit reference.

The application also may contain an authorization for the landlord to obtain a copy of your **credit report**, which will show the landlord how you have handled your financial obligations in the past.

The landlord may ask you what kind of job you have, your monthly income, and other information that shows your ability to pay the rent. It is illegal for the landlord to ask you questions about your race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or whether you have persons under the age of 18 living in your household. Also, the landlord should not ask you questions about your age or medical condition.[18] (See "Unlawful Discrimination," pages 11–14.)

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,[19] and the basic legal standard is set out in footnote 19. However, the practical rule is this: a landlord can establish reasonable standards for the number of people per square feet 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 to the same number of adults.[20]

CREDIT CHECKS

The landlord or the landlord's agent will probably use your rental application to check your credit history and past landlord-tenant relations. The landlord may obtain your credit report from a **credit reporting agency** to help him or her decide whether to rent to you. Credit reporting agencies (or "credit bureaus") keep records of people's credit histories, called "credit reports." Credit reports state whether a person has been reported as being late in paying bills, has been the subject of an **unlawful detainer lawsuit** (see page 68), or has filed bankruptcy.[21]

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

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18 *Government Code Sections 12900-12996; Civil Code Sections 51-53; 42 United States Code Section 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. (Brown, Warner and Portman, The California Landlords' Law Book, Vol. I: Rights & Responsibilities, pages 9/19-9/20 (NOLO Press 2005)) (see chapter 9 of this reference for a comprehensive discussion of discrimination).*

19 *Health and Safety Code Section 17922; see 1997 Uniform Housing Code Section 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 Section 503(b), Health and Safety Code Section 17958.1.)*

20 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 9/24-9/26 (NOLO Press 2005). 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.*

21 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 1/16 (NOLO Press 2005); California Practice Guide, Landlord-Tenant, Paragraphs 9:419.5, 9:419.11 (Rutter Group, 2002).*

whether landlords considered them good or bad tenants.[22]

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 other bills on time.

A landlord usually doesn't have to give you a reason for refusing to rent to you. However, if the 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 the credit report; and
- The name, address, and telephone number of the credit reporting agency; and
- A statement that you have the right to obtain a free copy of the credit report from the credit reporting agency that prepared it and to dispute the accuracy or completeness of information in the credit report.[23]

If the landlord refuses to rent to you based on your credit report, it's a good idea to get a free copy of your credit report and to correct any erroneous **items of information** in it.[24] Erroneous items of information in your credit report may cause other landlords to refuse to rent to you also.

Also, if you know what your credit report says, 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 bill, you can provide a copy of the canceled check to show the landlord that you did pay it.

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 fee for the score), or purchase your score from a vendor.[25]

If the landlord refuses to rent to you based on your credit report, it's a good idea to get a free copy of your credit report and to correct any erroneous items of information in it.

APPLICATION SCREENING FEE

When you submit a rental application, the landlord may charge you an application screening fee. The landlord may charge up to $37.57, and may use the fee to cover the cost of obtaining information about you, such as checking your personal references and obtaining a credit report on you.[26]

The application fee cannot legally be more than the landlord's actual out-of-pocket costs,

22 *Schoendorf v. Unlawful Detainer Registry, Inc. (2002) 97 Cal.App.4th 227 [118 Cal.Rptr.2d 313].*

23 *Consumer Credit Reporting Agencies Act, Civil Code Sections 1785.1-1785.36 and Section 1785.20(a); Investigative Consumer Reporting Agencies Act, Civil Code Sections 1786-1786.60 and Section 1786.40; 15 United States Code Sections 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 2004). Landlords' responsibilities when using credit reports are outlined at www.ftc.gov/bcp/conline/pubs/buspubs/landlord.htm.*

24 *Civil Code Sections 1785.16, 1786.24, 15 United States Code Section 1681i.*

25 *Civil Code Sections 1785.15(a)(2), 1785.15.1, 1785.15.2; 15 United States Code Section 1681g(f). Vendors include www.transunion.com, www.experian.com, www.equifax.com and www.myfico.com.*

26 *Civil Code Section 1950.6. The maximum fee is adjusted each year based on changes in the Consumer Price Index since January 1, 1998. In 2006, the maximum allowable fee is $37.57. (Issue Insights, California Apartment Association, January 2006.)*

and can never be more than $37.57. The landlord must give you a receipt that itemizes his or her out-of-pocket expenses in 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).

The landlord can't 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 can charge an application screening fee under these circumstances if you agree to it in writing.[27]

If the landlord obtains your credit report, the landlord must give you a copy of the report if you request it.[28] As explained in the section on "Credit Checks," it's a good idea to get a copy of your credit report from the landlord so that you know what's being reported about you.

Before you pay the application screening fee, ask the landlord the following questions about it:

- How long will it take the landlord to get a copy of your credit report? How long will it take the landlord 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 don't like the landlord's policy on application screening fees, you may want to look for another rental unit. If you decide to pay the application screening fee, any agreement regarding a refund should be in writing.

HOLDING DEPOSIT

Sometimes, the tenant and the landlord will agree that the tenant will rent the unit, but the tenant cannot move in immediately. In this situation, the landlord may ask the tenant for a **holding deposit**. A holding deposit is a deposit to hold the rental unit for a stated period of time until the tenant pays the first month's rent and any security deposit. During this period, the landlord agrees not to rent the unit to anyone else. If the tenant changes his or her mind about moving in, the landlord may keep at least some 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? If so, ask the landlord for a deposit receipt stating this. 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 has incurred because you changed your mind—for example, additional advertising costs and lost rent.

You may also lose your deposit even if the reason you can't rent is not your fault—for example, if you lose your job and cannot afford the rental unit.

If you and the landlord agree that all or part of the deposit will be refunded to you in the event that you change your mind or can't move in, make sure that the written receipt clearly states your agreement.

27 *Civil Code Section 1950.6(c).*

28 *Civil Code Section 1950.6(f).*

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

Suppose that the landlord rents to somebody else during the period for which you've paid a holding deposit, 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 may be responsible for other costs that you may incur because of the loss of the rental unit.

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

UNLAWFUL DISCRIMINATION

What is unlawful discrimination?

A landlord cannot refuse to rent to a tenant, or engage in any other type of **discrimination**, on the basis of group characteristics specified by law that are not closely related to the landlord's business needs. Race and religion are examples of group characteristics specified by law.[29] Arbitrary discrimination on the basis of any personal characteristic such as those listed under this heading also is prohibited.[30] Indeed, the California Legislature has declared that the opportunity to seek, obtain and hold housing without unlawful discrimination is a civil right.[31]

Under California law, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against a person or harass a person because of the person's race, color, religion, sex (including pregnancy, childbirth or medical conditions related to them, as well as gender and perception of gender), sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability.[32] California law also prohibits discrimination based on any of the following:

- A person's medical condition or mental or physical disability; or
- Personal characteristics, such as a person's physical appearance or sexual orientation that are not related to the responsibilities of a tenant;[33] or
- A perception of a person's race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or medical condition, or a perception that a person is associated with another person who may have any of these characteristics.[34]

Under California law, a landlord cannot use a financial or income standard for persons who want to live together and combine their incomes

Continued on page 13

29 *For example, the landlord may properly require that a prospective tenant have an acceptable credit history and be able to pay the rent and security deposit, and have verifiable credit references and a good history of paying rent on time. (See Portman and Brown, California Tenants' Rights, pages 5/2, 5/4 (NOLO Press 2005).)*

30 *California Practice Guide, Landlord-Tenant, Paragraph 2:553.15 (Rutter Group 2005), citing Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142 [278 Cal.Rptr. 614].*

31 *Government Code Section 12921(b).*

32 *Government Code Sections 12926(p), 12927(e), 12955(a),(d). See Fair Employment and Housing Act, Government Code Section 12900 and following; federal Fair Housing Act, 42 United States Code Section 3601 and following.*

33 *Civil Code Sections 51, 51.2, 53; Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142 [278 Cal.Rptr. 614].*

34 *Government Code Section 12955(m), Civil Code Section 51.*

Examples of Unlawful Discrimination

Unlawful housing discrimination can take a variety of forms. Under California's Fair Employment and Housing Act and Unruh Civil Rights Act, it is unlawful for a landlord, managing agent, real estate broker, or salesperson to discriminate against any person because of the person's race, color, religion, sex (including pregnancy, childbirth or medical conditions related to them, as well as gender and perception of gender), sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, medical condition, or age in any of the following ways:

- Refusing to sell, rent, or lease.
- Refusing to negotiate for a sale, rental, or lease.
- Representing that housing is not available for inspection, sale, or rental when it is, in fact, available.
- Otherwise denying or withholding housing accommodations.
- Providing inferior housing terms, conditions, privileges, facilities, or services.
- Harassing a person in connection with housing accommodations.
- Canceling or terminating a sale or rental agreement.
- Providing segregated or separated housing accommodations.
- Refusing to permit a person with a disability, at the person with a disability's own expense, to make reasonable modifications to a rental unit that are necessary to allow the person with a disability "full enjoyment of the premises." As a condition of making the modifications, the landlord may require the person with a disability to enter into an agreement to restore the interior of the rental unit to its previous condition at the end of the tenancy (excluding reasonable wear and tear).
- Refusing to make reasonable accommodations in rules, policies, practices, or services when necessary to allow a person with a disability "equal opportunity to use and enjoy a dwelling" (for example, refusing to allow a person with a disability's companion or service dog).[35]

35 *Government Code Sections 12926(p), 12927(c)(1),(e), 12948, 12955(d), Civil Code Sections 51, 51.2. See Moskovitz et al., California Landlord-Tenant Practice, Section 2.27 (Cal. Cont. Ed. Bar, 2006).*

that is different from the landlord's standard for married persons who combine their incomes. 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.[36] A landlord cannot apply rules, regulations or policies to unmarried couples who are registered domestic partners that do not apply to married couples.[37]

It is illegal for landlords to discriminate against families with children under 18. 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 at least age 55 and that meets other occupancy, policy and reporting requirements stated in the law.[38]

Limited exceptions for single rooms and roommates

If the owner of an owner-occupied, single-family home rents out a room in the home to a roomer or a boarder, and there are no other roomers or boarders living in the household, the owner is not subject to the restrictions listed under "Examples of unlawful discrimination" on page 12.

However, 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, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability.[39] Further, the owner cannot discriminate on the basis of medical condition or age.[40]

A person in a single-family dwelling who advertises for a roommate may express a preference on the basis of gender, if living areas (such as the kitchen, living room, or bathroom) will be shared by the roommate.[41]

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 the landlord denied you.
- 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 newspapers

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36 *Government Code Sections 12955(n),(o).*

37 *California Practice Guide, Landlord-Tenant, Paragraph 2:571.11 (Rutter Group 2005), citing Koebke v. Bernardo Heights Country Club (2005) 36 Cal.4th 824 [31 Cal.Rptr.3d 565].*

38 *42 United States Code Section 3607(b), Civil Code Section 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 United States Code Section 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) (Civil Code Sections 51.2, 51.3. See Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 72 [180 Cal.Rptr. 496]). While the law prohibits unlawful age discrimination, housing for homeless youth is both permitted and encouraged. (Government Code Section 11139.3.)*

39 *Government Code Sections 12927(c)(2)(A), 12955(c).*

40 *Civil Code Sections 51, 51.2, Government Code Section 12948.*

41 *Government Code Section 12927(c)(2)(B).*

published by ethnic minority groups, or to 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 white (business) and yellow pages of the phone book.
- Local California apartment association chapters. Look in the white (business) and yellow pages of the phone book.
- Local government agencies. Look in the white pages of the phone book under *City* or *County Government Offices*, or call the offices of local elected officials (for example, your city council representative or your county supervisor).
- The **California Department of Fair Employment and Housing** investigates housing discrimination complaints (but *not* other kinds of landlord-tenant problems). The department's Housing Enforcement Unit can be reached at 1-800-233-3212 (TTY 1-800-700-2320). You can learn about the department's complaint process at www.dfeh.ca.gov.
- 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 handicap (disability). To contact HUD, look in the white pages 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 yellow pages of the phone book under *Attorneys*, or go to www.lawhelpcalifornia.org/CA/StateDirectory.cfm.
- Private attorneys. You may be able to hire 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, call 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 Department of Fair Employment and Housing must be filed within one year from the date of the discriminatory act.[42] 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 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 you can rent a rental unit, you and the landlord must enter into one of two kinds of agreements: a **periodic rental agreement** or a **lease**. The periodic rental agreement or lease creates the tenant's right to live in the **rental unit**. The tenant's right to use and possess the landlord's rental unit is called a **tenancy**.

A periodic rental agreement states the length of time (the number of days) between the rent

42 *Government Code Section 12980(b).*

payments—for example a week (seven days) or a month (30 days). The length of time between rent payments is called the **rental period**.

A periodic rental agreement that requires one rent payment each month is a "month-to-month" rental agreement, and the tenancy is a "month-to-month" tenancy.[43] The month-to-month rental agreement is by far the most common kind of rental agreement, although longer (or shorter) rental periods can be specified.

If the periodic rental agreement requires that rent be paid once a week, it is a "week-to-week" rental agreement and the tenancy is a "week-to-week" tenancy.[44]

In effect, a periodic rental agreement expires at the end of each period for which the tenant has paid rent, and is renewed by the next rent payment.[45] A periodic rental agreement does not state the total number of weeks or months that the 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 as long as the landlord does not ask the tenant to leave.

In a periodic rental agreement, the length of time between the rent payments (the rental period) determines three things:

- How often the tenant must pay rent;
- The **amount of advance notice** that the tenant must give the landlord, and that the landlord must give the tenant, if either decides to terminate (end) the tenancy; and
- The amount of advance notice the landlord must give the tenant if the landlord decides to change the terms of the rental agreement other than the rent.[46] (Special rules apply to the amount of advance notice that the landlord must give the tenant to raise the rent (see pages 30–32).)

Oral rental agreements

In an oral rental agreement, you and the landlord agree orally (not in writing) that you will rent the rental unit. In addition, you agree to pay a specified rent for a specified period of time —for example, a week or a month. This kind of rental agreement is legally binding on both you and the landlord, even though it is not in writing. However, if you have a disagreement with your landlord, you will have no written proof of the terms of your rental agreement. Therefore, it's usually best to have a written rental agreement.

It's especially important to have a written rental agreement if your tenancy involves special circumstances, such as any of the following:

- You plan to live in the unit for a long time (for example, nine months or a year);
- Your landlord has agreed to your having a pet or water-filled furniture (such as a waterbed); or
- The landlord has agreed to pay any expenses (for example, utilities or garbage removal) or to provide any services (for example, a gardener).

Any time that a tenant and a landlord agree to the lease of a rental unit for more than one year, the *agreement must be in writing*.[47] If such an agreement is not in writing, it is not enforceable.

Written rental agreements

A written rental agreement is a periodic rental agreement that has been put in writing. The written rental agreement specifies all the terms of the agreement between you and the landlord —for example, it states the rent, the length of time between rent payments, and the landlord's and your obligations. It may also contain clauses on pets, late fees, and amount of notice.

43 *Civil Code Section 1944.*

44 *Civil Code Section 1944.*

45 *Civil Code Sections 1945, 1946.*

46 *Civil Code Section 827(a),(b).*

47 *Civil Code Sections 1091, 1624(a)(3).*

The length of time between rent payments is important. In most cases, the amount of advance notice that the landlord gives you when notifying you of changes in the terms of the tenancy must be the same as the length of time between rent payments. For example, if you have a month-to-month rental agreement, the landlord usually must give you 30 days' advance written notice of changes such as an increase in the charge for parking or an increase in the security deposit.

In addition, the amount of advance written notice that *you* give the *landlord* before you move out of the rental unit must be the same as the length of time between rent payments. For example, in a month-to-month rental agreement, you must give the landlord at least 30 days' advance written notice in order to end the rental agreement (see page 47–48). If you have a week-to-week rental agreement, you must give the landlord at least seven days' advance written notice in order to end the rental agreement.

Normally, the amount of advance written notice that the landlord gives the tenant to change the terms of the tenancy must be the same as the length of time between rent payments. However, the landlord and tenant can specifically agree in writing to a shorter amount of notice (a shorter notice period).[48] A landlord and a tenant who have a month-to-month rental agreement might agree to 10 days' advance written notice for a change in the terms of the agreement (other than the rent). This would allow the landlord, for example, to increase the charge for parking or end the tenancy by giving the tenant 10 days' advance written notice. Similarly, the tenant could end the tenancy by giving the landlord 10 days' advance written notice. The notice period agreed to by the landlord and the tenant can *never* be shorter than seven days.[49]

If you have a written periodic rental agreement, special rules apply to the amount of advance notice that the landlord must give you to raise the rent (see pages 30–32).

Leases

A lease states the total number of months that the lease will be in effect—for example, 6 or 12 months. Most leases are in writing, although oral leases are legal. If the lease is for more than one year, it must be in writing.[50]

It is important to understand that, even though the lease requires the rent to be paid monthly, you are bound by the lease until it expires (for example, at the end of 12 months). This means that you must pay the rent and perform all of your obligations under the lease during the entire lease period.[51]

There are some advantages to having a lease. If you have a lease, the landlord cannot raise your rent while the lease is in effect, unless the lease expressly allows rent increases. Also, the landlord cannot evict you while the lease is in effect, except for reasons such as your damaging the property or failing to pay rent.

A lease gives the tenant the security of a long-term agreement at a known cost. Even if the lease allows rent increases, the lease should specify a limit on how much and how often the rent can be raised.

The disadvantage of a lease is that if you need to move, a lease may be difficult for you to break, especially if another tenant can't be found to take over your lease. If you move before the lease ends, the landlord may have a claim against you for the rent for the rest of the lease term.

Before signing a lease, you may want to talk with an attorney, legal aid organization, housing

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48 *Civil Code Sections 827(a), 1946.*

49 *Civil Code Section 827(a).*

50 *Civil Code Sections 1091, 1624(a)(3).*

51 *However, the tenant's obligation to pay rent depends on the landlord's living up to his or her obligations under the* ***implied warranty of habitability****. See discussion of "Repairs and Habitability" (pages 35–38) and "Having Repairs Made" (pages 38–43).*

clinic, or tenant-landlord program to make sure that you understand all of the lease's provisions, your obligations, and any risks that you may face.

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 to you that utility meters are shared *before* you sign the rental agreement or lease.[52] If you become a tenant, the landlord must reach an agreement with you about who will pay for the shared utilities (see page 20).

Rental units in older buildings may not have separate water meters or submeters. California law does not specifically regulate how landlords bill tenants for water and sewer utilities. 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.[53]

TRANSLATION OF PROPOSED RENTAL AGREEMENT

A landlord and a tenant may negotiate primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean for the rental, lease, or sublease of a rental unit. In this situation, the landlord must give the tenant a written translation of the proposed lease or rental agreement in the language used in the negotiation *before* the tenant signs it.[54] This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less.

The landlord must give the tenant the written translation of the lease or rental agreement whether or not the tenant requests it. The translation must include every term and condition in the lease or rental agreement, but may retain elements such as names, addresses, numerals, dollar amounts and dates in English. It is never sufficient for the landlord to give the written translation of the lease or rental agreement to the tenant after the tenant has signed it.

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
- 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 was 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.[55]

When You Have Decided to Rent

Before you sign a rental agreement or a lease, read it carefully so that you understand all of its

52 *Civil Code Section 1940.9, Public Utilities Code Section 739.5. See California Practice Guide, Landlord-Tenant, Paragraphs 2:170.1–2:170.9 (Rutter Group 1999).*

53 *See discussion of utility billing in Moskovitz et al., California Landlord-Tenant Practice, Sections 4.41A-4.41E (Cal. Cont. Ed. Bar, 2006).*

54 *Civil Code Section 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.*

55 *Civil Code Section 1632(k). See Civil Code Section 1688 and following on rescission of contracts.*

terms. What kind of terms should be 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 OR LEASE SHOULD INCLUDE

Most landlords use printed forms for their leases and rental agreements. However, printed forms may differ from each other. *There is no "standard rental agreement" or "standard lease!"* Therefore, carefully read and understand the entire document before you sign it.

The written rental agreement or lease 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 lease or rental agreement refers to another document, such as "tenant rules and regulations," get a copy and read it before you sign the written agreement.

Don't feel rushed into signing. Make sure that you understand everything that you're agreeing to by signing the rental agreement or lease. If you don't understand something, ask the landlord to explain it to you. If you still don't understand, discuss the agreement with a friend, or with an attorney, legal aid organization, tenant-landlord program, or housing clinic.

Key terms

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

- The names of the landlord and the tenant.
- 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 23–25).
- The amount of any late charge or returned check fee (see pages 28–29).
- Whether pets are allowed.
- The number of people allowed to live in the rental unit.35
- 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).
- 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.
- Other items, such as whether you can sublet the rental unit (see page 34–35) and the conditions under which the landlord can inspect the rental unit (see pages 32–33).

In addition, the rental agreement or lease 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. (This information can be posted conspicuously in the building instead of being disclosed in the rental agreement or lease.)
- The name, address, and telephone number of the person or entity to whom rent payments must be made. If you may make your rent payment in person, the agreement or lease 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).[56] (As a general rule, the landlord cannot require that you make rent payments in cash. See pages 27–28.)[57]

Every rental agreement or lease also must contain a written notice that the California Department of Justice maintains a Web site at www.meganslaw.ca.gov that provides information about specified registered sex offenders. This notice must be in legally-required language.[58]

A rental agreement or lease may contain other terms. Examples include whether you must park your car in a certain place, and whether you must obtain permission from the landlord before having a party.

It is important that you understand all of the terms of your rental agreement or lease. If you don't comply with them, the landlord may have grounds to evict you.

Don't sign a rental agreement or a lease if you think that its terms are unfair. If a term doesn't fit your needs, try to negotiate a more suitable term (for example, a smaller security deposit or a lower late fee). It's important that any agreed-upon change in terms be included in the rental agreement or lease that both you and the landlord sign. If you and the landlord agree to change a term, the change can be made in handwriting in the rental agreement or lease. Both of you should then initial or sign in the area immediately next to the change to show your approval of the change. Or, the document can be retyped with the new term included in it.

If you don't agree with a term in the rental agreement or lease, and can't 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 or lease on the owner's behalf must give you a copy of the document within 15 days after you sign it.[59] 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.

Tenant's basic legal rights

Tenants have basic legal rights that are always present, no matter what the rental agreement or lease 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 23–25).
- Limits on the landlord's right to enter the rental unit (see pages 32–33).
- The right to a refund of the security deposit, or a written accounting of how it was used, after you move (see pages 50–60).
- The right to sue the landlord for violations of the law or your rental agreement or lease.
- The right to repair serious defects in the rental unit and to deduct certain repair costs from the rent, under appropriate circumstances (see pages 39–40).
- The right to withhold rent under appropriate circumstances (see pages 41–43).
- Rights under the warranty of habitability (see pages 35–38).
- Protection against retaliatory eviction (see pages 74–75).

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

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56 *Civil Code Sections 1961-1962.7. See Moskovitz et al., California Landlord-Tenant Practice, Section 1.21A (Cal. Cont. Ed. Bar 2006); California Practice Guide, Landlord-Tenant, Paragraphs 2:147-2:147.6 (Rutter Group 2005).*

57 *Civil Code Section 1947.3.*

58 *Civil Code Section 2079.10a, Penal Code Section 290.46. The required language differs depending on the date of the lease or rental agreement. See Appendix 5.*

59 *Civil Code Section 1962(a)(4).*

Landlord's and tenant's duty of good faith and fair dealing

Every rental agreement and lease 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 and every lease, even though the duty probably is not expressly stated.[60]

Shared utilities

If the utility meter for your rental unit is shared with another unit or another part of the building (see page 17), then the landlord must reach an agreement with you on who will pay for the shared utilities. This agreement must be in writing (it can be part of the rental agreement or lease), and can consist of one of the following options:

- 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.[61]

LANDLORD'S DISCLOSURES

Lead-based paint

If the rental unit was constructed before 1978, the landlord must comply with all of these 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 lease or rental agreement. The landlord also must give the tenant a copy of the federal government's pamphlet, "Protect Your Family From Lead in Your Home" (available by calling 1-800-424-LEAD, or at www.epa.gov/lead), before the tenant signs the lease or rental agreement.[62]
- The lease or rental agreement must contain a Lead Warning Statement in legally-required language.[63]
- The landlord also must give potential tenants and tenants a written Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards.[64]

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 as part of an ongoing pest-control service contract. The

Continued on page 22

60 *Andrews v. Mobile Aire Estates (2005) 125 Cal.App.4th 578 [22 Cal.Rptr.3d 832]. 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.*

61 *Civil Code Section 1940.9. This section also provides remedies for violations.*

62 *California Practice Guide, Landlord-Tenant, Paragraphs 2:104.20-2:104.23 (Rutter Group 2004); 42 United States Code Sections 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 Section 35.88; see Health and Safety Code Section 17920.10 (dwellings that contain lead hazards).*

63 *24 Code of Federal Regulations Section 35.92. See Appendix 5.*

64 *Moskovitz et al., California Landlord-Tenant Practice, Section 1.29 (Cal. Cont. Ed. Bar 2006); 24 Code of Federal Regulations Sections 35.88, 35.92. The disclosure form is available at www.epa.gov/lead/pubs/lesr_eng.pdf and is reproduced in Appendix 5.*

Alterations to Accommodate a Tenant With a Disability

A landlord must allow a tenant with a disability to make *reasonable* modifications to the rental unit to the extent necessary to allow the tenant "full enjoyment of the premises."[65] The *tenant* must pay for the modifications. As a condition of making the 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. The landlord cannot require an additional security deposit in this situation. However, the landlord and tenant may agree, as part of the tenant's agreement to restore the rental unit, that the tenant will pay a "reasonable estimate" of the restoration cost into an **escrow account**.[66]

65 *Civil Code Section 54.1(b)(3)(A). See Examples of Unlawful Discrimination, page 12.*

66 *Civil Code Section 54.1(b)(3)(A).*

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.[67]

Asbestos

Residential property built before 1981 may contain asbestos. A leading reference for landlords recommends that landlords make asbestos disclosures to tenants whenever asbestos is discovered in the rental property. (This book also contains detailed information on asbestos disclosures, and protections that landlords must provide their employees.)[68]

Carcinogenic Material

A landlord with 10 or more employees must disclose the existence of known carcinogenic material (for example, asbestos) to prospective tenants.[69]

Illegal Controlled Substances

The owner of a dwelling who knows that an illegal controlled substance has been spilled or dumped on or beneath the dwelling must give a prospective tenant written notice of this fact before the tenant signs a rental agreement. LSD and methamphetamines are examples of illegal controlled substances. The owner must provide this notice if the owner knows of the condition, or if he or she has received notice of it from a law enforcement or health agency. The notice may be a copy of the agency's notice to the owner.[70]

This notice is not required after December 31, 2005.

Methamphetamine Contamination

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

A local health officer who inspects 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 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 he or she has received the notice and order. The tenant may void (cancel) the rental agreement if the owner does not does not comply with these requirements. The owner must comply with these requirements until he or she receives a notice from the health officer that the property requires no further action.[71]

These requirements took effect on January 1, 2006.

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*

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67 *Business and Professions Code Section 8538, Civil Code Section 1940.8.*

68 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 12/31-12/34 (NOLO Press 2005).*

69 *Moskovitz et al., California Landlord-Tenant Practice, Section 1.29 (Cal. Cont. Ed. Bar, 2006). Health and Safety Code Sections 25249.5-25249.13.*

70 *Civil Code Section 1940.7.5. Marijuana is not an illegal controlled substance for the purpose of this notice. This notice requirement was in effect from January 1, 2002 through December 31, 2005.*

71 *Health and Safety Code Sections 25400.10-25400.46, effective January 1, 2006.*

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 haven't moved in yet, before applying for a permit.) The notice must state the earliest approximate dates that the owner expects the demolition to occur and that the tenancy will end.[72]

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.[73]

Death in the rental unit

If a prior occupant of the rental unit died in the unit within the last three years, the owner or the owner's agent must disclose this fact to a prospective tenant when the tenant offers to rent or lease the unit. The owner or agent must disclose the manner of death, but is not required to disclose that the occupant was ill with, or died from, AIDS. However, the owner or agent cannot intentionally misrepresent the cause of death in response to a direct question.[74]

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 lease or 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 lease may be terminated (ended) if the unit is sold, and
- 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.[75]

BASIC RULES GOVERNING SECURITY DEPOSITS

At the beginning of the tenancy, the landlord 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 less clean than when you moved in.[76]

Under California law, a lease or rental agreement cannot say that a security deposit is "nonrefundable."[77] This means that when the tenancy ends, the landlord *must* return to you any payment that is a security deposit, *unless* the landlord properly uses the deposit for a lawful purpose, as described on pages 25 and 50–60.

Almost all landlords charge tenants a security deposit. The security deposit may be called "last month's rent," "security deposit," "pet deposit,"

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72 *Civil Code Section 1940.6.*

73 *Civil Code Section 1940.7.*

74 *Civil Code Section 1710.2.*

75 *Government Code Section 66459; California Practice Guide, Landlord-Tenant, Paragraphs 5:313.5-5:313.9 (Rutter Group, 2003). See Appendix 5 for the required language.*

76 *Civil Code Section 1950.5(b).*

77 *Civil Code Section 1950.5(m); Portman and Brown, California Tenants' Rights, page 14/2 (NOLO Press 2005).*

"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. 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.[78] The one exception to this rule is stated in the next paragraph.

The law allows the landlord to require a tenant to pay an application screening fee, *in addition* to the security deposit (see page 9–10).[79] 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.[80] 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 8–10). The application screening fee is *not* part of the security deposit. Therefore, it is not refundable as part of the security deposit.
- **New tenant processing fee**—A landlord might charge you a fee to reimburse the landlord for the costs of processing you as a new tenant. For example, at the beginning of the tenancy, the landlord might charge you for providing application forms, listing the unit for rent, interviewing and screening you, and similar purposes. These kinds of fees *are* part of the security deposit.[81] Therefore, these fees are refundable as part of the security deposit, *unless* the landlord properly uses the deposit for a lawful purpose, as described on pages 25 and 50–60.

The law allows the landlord to require a tenant to pay an application screening fee, in addition to 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 be more than the amount of *two months' rent*. If you have a waterbed, 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 be more than the amount of *three months' rent*. If you have a waterbed, the total amount allowed as security can be up to three-and-a-half times the monthly rent.
- **Plus first month's rent:** The landlord can require you to pay the first month's rent *in addition* to the security deposit.[82]

The landlord normally cannot require that you pay the security deposit in cash. (See pages 27–28.)

Security deposit example: Suppose that you have agreed to rent an unfurnished apartment for $500 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 ($500 x 2 = $1,000). The landlord also can require you to pay the first month's rent of $500, plus an application

78 *Civil Code Section 1950.5(b).*

79 *Civil Code Sections 1950.5(b), 1950.6.*

80 *Civil Code Section 1950.5(b).*

81 *Civil Code Section 1950.5(b).*

82 *Civil Code Section 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. Civil Code Section 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.*

screening fee of up to $37.57, in addition to the $1,000 security deposit. This is because the first month's rent and the application screening fee are not part of the security deposit.

Suppose that the landlord has required you to pay a $1,000 security deposit (the maximum allowed by law for an unfinished unit when the rent is $500 a month). The landlord cannot also demand, for example, a $200 cleaning deposit, a $15 key deposit, or a $50 fee to process you as a new tenant. The landlord *cannot* require any of these extra fees because the total of all deposits then would be more than the $1,000 allowed by law when the rent is $500 a month.

Suppose that you ask the landlord to make structural, decorative or furnishing alterations to the rental unit, and that you agree to pay a specific amount for the alterations. This amount is not subject to the limits on the amount of the security deposit discussed on pages 24–25, and is not part of the security deposit. Suppose, however, that the alterations that you have requested involve cleaning or repairing damage for which the landlord may charge the *previous tenant's* security deposit. In that situation, the amount that you pay for the alterations *would* be subject to the limits on the amount of the security deposit and *would* be part of the security deposit.[83]

A payment that is a security deposit cannot be "nonrefundable."[84] However, when you move out of the rental, the law allows the landlord to keep part or all of the security deposit in any one or more of the following situations:

- You owe rent;
- You leave the rental less clean than when you moved in;
- You have damaged the rental beyond normal wear and tear; and
- You fail to restore personal property (such as keys or furniture), other than because of normal wear and tear.

If none of these circumstances is present, the landlord must return the entire amount that you have paid as security. However, if you have 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.[85] Deductions from security deposits are discussed in detail on pages 50–60.

Make sure that your rental agreement or lease clearly states that you have paid a security deposit to the landlord and correctly states the amount that you have paid. The rental agreement or lease should also describe the circumstances under which the landlord can keep part or all of the security deposit. Most landlords will give you a written receipt for all amounts that you pay as a security deposit. Keep your rental agreement or lease in case of a dispute.[86]

THE INVENTORY CHECKLIST

You and the landlord or the landlord's agent should fill out the Inventory Checklist on pages 104–107 (or one like it). It's best to do this before you move in, but it can be done two or three days later, if necessary. 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. Both of you should sign and date the checklist, and both of you should keep a copy of it. Carefully completing the checklist at the beginning of the tenancy will help avoid disagreements about the condition of the unit

83 *Civil Code Section 1950.5(c).*

84 *Civil Code Section 1950.5(m).*

85 *Civil Code Section 1950.5(b),(e).*

86 *Civil Code Section 1950.5(o) (describes evidence that proves the existence and amount of a security deposit).*

when you move out. See additional suggestions about the Inventory Checklist on page 104.

RENTER'S INSURANCE

Renter's insurance protects a tenant against property losses, such as losses from 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 has negligently (carelessly) injured another person or damaged the person's property.

Carelessly causing a fire that destroys the rental unit or another tenant's property is an example of **negligence** for which you could be held legally responsible.[87] You could be required to pay for the losses that the landlord or other tenant suffers. Renter's insurance would pay the other party on your behalf for some or all of these losses. For that reason, it's often a good idea to purchase renter's insurance.[88]

Renter's insurance may not be available in every area. If renter's insurance is available, and if you choose to purchase it, be certain that it provides the protection you want and is fairly priced. You 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 shouldn't 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, the landlord can require you to have a waterbed insurance policy to cover possible property damage.[89]

RENT CONTROL

Some California cities have **rent control ordinances** that limit or prohibit rent increases. Some of these ordinances specify procedures that a landlord must follow before increasing a tenant's rent, or that make evicting a tenant more difficult for a landlord. Each community's ordinance is different.

For example, some ordinances allow landlords to evict tenants only for "just cause." Under these ordinances, the landlord must state and prove a valid reason for terminating a month-to-month tenancy. Other cities don't have this requirement.

Some cities have boards that have the power to approve or deny increases in rent. Other cities' ordinances allow a certain percentage increase in rent each year. Because of recent changes in state law, all rent control cities now have "vacancy decontrol." This means that the landlord can re-rent a unit at the market rate when the tenant moves out voluntarily or when the landlord terminates the tenancy for nonpayment of rent.

Some ordinances make it more difficult for owners to convert rentals into condominiums.

Some kinds of property cannot be subject to local rent control. For example, property that was issued a certificate of occupancy after February 1995 is exempt from rent control. Beginning January 1, 1999, tenancies in single family homes and condos are exempt from rent control if the tenancy began after January 1, 1996.[90]

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87 *In general, every person is responsible for damages sustained by someone else as a result of the person's carelessness. (Civil Code Section 1714.)*

88 *See discussion of renter's insurance in Portman and Brown, California Tenants' Rights, pages 17/1-17/2 (NOLO Press 2005).*

89 *Civil Code Section 1940.5(a).*

90 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 4/3 and Appendix C (NOLO Press 2005); Civil Code Section 1954.52.*

A rent control ordinance may change the landlord-tenant relationship in other important ways besides those described here. Find out if you live in a city with rent control. (See the list of cities with rent control in Appendix 2.) Contact your local housing officials or rent control board for information. You can find out about the rent control ordinance in your area (if there is one) at your local law library,[91] or by requesting a copy of your local ordinance from the city or county clerk's office. Some cities post information about their rent control ordinances on their Web site (for example, information about Los Angeles' rent control ordinance is available at www.lacity.org/lahd).

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 that you cause, or that is caused by anyone for whom you are responsible, such as your family, guests, or pets.[92] These important tenant responsibilities are discussed in more detail under "Dealing with Problems," pages 35–38.

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 **lease**? What can you do if you have to move before the end of the lease?

PAYING THE RENT

When is rent due?

Most **rental agreements** and leases 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 lease or 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 on page 18, the rental agreement or lease must state the name and address of the person or entity to whom you must make rent payments. If 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 is receivable by the owner on the date of postmark.[93]

It's very important for you to pay your rent on the day it's due. Not paying on time might lead to a negative entry on your **credit report**,[94] late fees (see next page), and even eviction (see pages 64–65).

Check or Cash?

The landlord or landlord's agent normally cannot require you to pay rent in cash. However, the landlord or agent *can* require you to pay rent in cash if, within the last three months, you have paid the landlord or agent with a check that has been 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 have enough money in it.)

91 *For example, see the discussions in Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, Appendix C (NOLO Press 2005) and California Practice Guide, Landlord-Tenant, Chapter 5 (Rutter Group 2005).*

92 *Civil Code Sections 1929, 1941.2.*

93 *Civil Code Section 1962(f).*

94 *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 it. The landlord may personally deliver the notice to the tenant or send it to the tenant by first-class mail. The notice may be in the rental agreement. (Civil Code Section 1785.26; Moskovitz et al., California Landlord-Tenant Practice, Sections 1.29, 4.9 (Cal. Cont. Ed. Bar 2006).)*

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 14–16).[95]

These same rules apply if the landlord requests that you 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 the 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 14–16).

On April 1, you give your landlord your rent check for April. On April 11, your landlord receives a notice from his bank stating that your check has been 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 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 cash payments does not clearly answer these questions. The following is based on a fair interpretation of the law.

The requirement that you pay rent in cash changes the terms of your rental agreement and takes effect in 30 days (on May 12). This is because under your rental agreement, the landlord must give you 30 days' notice of changes in it. (See pages 14–16.) Therefore, you *could* pay your May 1 rent payment by check. However, this might cause the landlord to serve you with a **thirty-day notice** to end the tenancy (see page 64–65). The requirement that you pay rent in cash continues for three months after the landlord received the notice that your check was dishonored (through July 10). You would have to pay your June 1 and July 1 rent payments in cash, if the tenancy continues. 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. If you don't, the landlord can serve you with a **three-day notice**, which is the first step in an action to **evict** you (see pages 65–66).[96]

Obtaining receipts for rent payments

If you pay your rent in cash or with a money order, you should ask your landlord for a signed and dated receipt. Legally, you are entitled to a written receipt whenever you pay your rent.[97] If you pay with a check, you can use the canceled check as a receipt. Keep the receipts or canceled checks so that you will have records of your payments in case of a dispute.

Late fees and dishonored check fees

A landlord can charge a late fee to a tenant who doesn't pay rent on time. However, a landlord can do this only if the lease or rental

95 *Civil Code Section 1947.3. Waiver of these provisions is void and unenforceable.*

96 *See discussion of late fees and dishonored check fees, pages 28–29. Paying by check with knowledge that the account has insufficient funds and with intent to defraud is a crime. (Penal Code Section 476a.)*

97 *Civil Code Section 1499.*

agreement contains a late fee provision. In some communities, late fees are limited by local **rent control ordinances**. (See "Rent Control," pages 26–27.)

Late fees must be reasonably related to the costs that your landlord faces as a result of your rent payment being late. A properly set late fee is legally valid. However, a late fee that is so high that it amounts to a penalty is not legally valid.[98]

What if you've signed a lease or 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 probably is valid; you will have to pay it if your rent payment is late, and if the landlord insists.

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" or "returned" check.) In order for the landlord to charge the tenant a returned check fee, the lease or 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.[99]

Partial rent payments

You will violate your lease or rental agreement if you don't pay the full amount of your rent on time. If you can't pay the full amount on time, you may want to offer to pay part of the rent. However, the law allows your landlord to take the partial payment and still give you an **eviction notice**.[100]

If your landlord is willing to accept a partial rent payment and give you extra time to pay the balance, it's important that you and the landlord agree on the details in writing. The written agreement should state the amount of rent that you have paid, the date by which the rest of the rent must be paid, the amount of any late fee that is due, and the landlord's agreement not to evict you if you pay the amount due by that date. Both you and the landlord should sign the agreement, and you should keep a copy. Such an agreement 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 lease or rental agreement

98 *See Harbor Island Holdings, LLC v. Kim (2003) 107 Cal.App.4th 790 [132 Cal.Rptr.2d 406] (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 [17 Cal.Rptr.3d 175] (late fee invalid because landlord failed to establish that damages for late payment of rent were extremely difficult to fix).*

99 *Civil Code Section 1719(a)(1). Advance disclosure of the amount of the service charge is a nearly universal practice, but is not explicitly required by Section 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. (Civil Code Section 1719; see 3 Consumer Law Sourcebook [Department of Consumer Affairs 1996] Sections 28.12-28.47; see Legal Guide K-5, "California's Bad Check Law," Department of Consumer Affairs (1998) (see page 95 for ordering information).)*

100 *Code of Civil Procedure Section 1161 paragraph 2.*

says, and how much of a security deposit you have paid already.

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

In a periodic rental agreement (for example, a month-to-month agreement), the landlord can increase the security deposit unless this is 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.)

However, if the amount that you have 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 *can't* increase the security deposit, no matter what the rental agreement says. (See the discussion of the limits on security deposits, pages 24–25.) Local **rent control ordinances** may also limit 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 67–68.)

The landlord normally cannot require that you pay the security deposit increase in cash. (See pages 27–28.)

RENT INCREASES

How often can rent be raised?

If you have a lease for more than 30 days, your rent cannot be increased during the term of the lease, unless the lease allows rent increases.

If you have a **periodic rental agreement**, your landlord can increase your rent, but the landlord must give you proper advance notice in writing. The written notice tells you how much the increased rent is and when the increase goes into effect.

California law guarantees you at least 30 days' advance written notice of a rent increase if you have a month-to-month (or shorter) periodic rental agreement.

Under the law, your landlord must give you at least 30 days' advance notice if the rent increase is 10 percent (or less) of the rent charged at any time during the 12 months before the rent increase takes effect. Your landlord must give you at least *60 days'* advance notice if the rent increase is *greater than* 10 percent.[101] 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 total of the new increase and all other increases during that period.

Examples: Assume that your current rent is $500 per month due on the first of the month and that your landlord wants to increase your rent $50 to $550 beginning this June 1. To see how much notice your landlord must give you, count back 12 months to last June.

30 days' notice required: Suppose that your rent was $500 last June 1. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$500 rent x .10			
$50	$50	is the same as	$50

101 *Civil Code Section 827(b). Longer notice periods apply if required, for example, by statute, regulation or contract. (Civil Code Section 827(c).) Tenants in Section 8 housing must be given at least 30 days' written notice of a greater-than-10-percent rent increase if the increase is caused by a change in the tenant's income or family composition, as determined by the local housing authority's recertification. (Civil Code Section 827(b)(3).)*

Your landlord therefore must give you at least 30 days' advance written notice of the rent increase.

60 days' notice required: Suppose that your rent was $475 last June 1, and that your landlord raised your rent $25 to $500 last November. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$475 rent x .10	$25 +$50		
$47.50	$75	is more than	$47.50

Your landlord therefore must give you at least 60 days' advance written notice of the rent increase.

Now suppose that your rent was $500 last June 1, but that instead of increasing your rent $50, your landlord wants to increase your rent $75 to $575 beginning this June 1. Here's how to calculate the percentage of the rent increase and the amount of notice that the landlord must give you:

10% of rent last June 1	Amount of rent increase	Compared to	10% of rent
$500 rent x .10			
$50	$75	is more than	$50

Your landlord therefore must give you at least 60 days' advance written notice of the rent increase.

Normally, in the case of a periodic rental agreement, the landlord can increase the rent as often as the landlord likes. However, the landlord must give proper advance written notice of the increase, and the increase cannot be **retaliatory** (see pages 74–75). Local rent control ordinances may impose additional requirements on the landlord.

Increases in rent for government-financed housing usually are restricted. If you live in government-financed housing, check with the local public housing authority to find out whether there are any restrictions on rent increases.

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.[102] In this case, the rent increase takes effect in 30 or 60 days, as just explained.

The landlord also can give 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. Therefore, 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 more than 10 percent, the landlord would have to give you at least 65 days' notice from the date of mailing.[103]

Example of a rent increase

Most notices of rent increase state that the increase will go into effect at the beginning of the rental period. For example, a landlord who wishes to increase the rent by 10 percent or less 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,

102 Civil Code Section 827(b)(1)(A).

103 Civil Code Section 827(b)(1)(B),(2),(3); Code of Civil Procedure Section 1013.

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: $500 per month.
- Rent increase: $50 (from $500 to $550) per month (a 10 percent increase).
- Date that the notice of rent increase is delivered to the tenant personally: April 15 (that is, the middle of the month).
- Earliest date that the rent increase can take effect: May 15.

If the landlord delivers the notice on April 15, the increase becomes effective 30 days later, on May 15. The landlord is entitled to the increased rent beginning on May 15. On May 1, the tenant would pay $250 for the first half of May (that is, 15 days at the old rent of $500), plus $275 for the last half of May (that is, 15 days at the new rent of $550). The total rent for May that is due on May 1 would be $525. Looking at it another way, the landlord is entitled to only one-half of the increase in the rent during May, since the notice of rent increase became effective in the middle of the month.

Of course, the landlord could deliver a notice of rent increase on April 15 which states that the rent increase takes effect on June 1. In that case, the tenant would pay $500 rent on May 1, and $550 rent on June 1.

WHEN CAN THE LANDLORD ENTER THE RENTAL UNIT?

California law states that a landlord can enter a rental unit only for the following reasons:

- In an emergency.
- When the tenant has moved out or has **abandoned** the rental unit.
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements.
- 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** before the end of the tenancy (see Initial Inspection sidebar, pages 53–56).
- If a court order permits the landlord to enter.[104]
- 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 law's requirements.[105]

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. on weekdays). The notice must state the date, approximate time and purpose of entry.[106] However, advance written notice is not required under any of the following circumstances:

- To respond to an emergency.
- The tenant has moved out or has abandoned the rental unit.

104 Civil Code Section 1954(a).

105 Civil Code Section 1940.5(f).

106 Civil Code Section 1954(b),(d)(1).

- The tenant is present and consents to the entry at the time of entry.
- The tenant and landlord have agreed that the landlord will make repairs or supply services, and have 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.[107]

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

- 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.[108]

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.[109] 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. 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 have notified 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 it. 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.[110] The landlord or agent may enter only during normal business hours, unless the tenant consents to entry at a different time.[111] When the landlord or agent enters the rental, he or she must leave written evidence of entry, such as a business card.[112]

The landlord cannot abuse the right of access allowed by these rules, or use this right of access to harass (repeatedly disturb) the tenant. Also, the law prohibits a landlord from significantly and intentionally violating these access rules to attempt to influence the tenant to move from the rental unit.[113]

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. 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 damages that you have 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.[114]

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107 Civil Code Section 1954(d), (e).

108 Civil Code Section 1954(d)(1).

109 Civil Code Section 1954(d)(1).

110 Civil Code Section 1954(d)(2); see Moskovitz et al., California Landlord-Tenant Practice, Section 3.3 (Cal. Cont. Ed. Bar 2004).

111 Civil Code Section 1954(b).

112 Civil Code Section 1954(d)(2).

113 Civil Code Section 1940.2(a)(4).

114 Civil Code Section 1940.2(b).

SUBLEASES AND ASSIGNMENTS

Sometimes, a tenant with a lease may need to move out before the lease ends, or may need help paying the rent. In these situations, the tenant may want to **sublease** the rental unit or **assign** the lease to another tenant. However, the tenant cannot sublease the rental unit or assign the lease *unless* the terms of the lease allow the tenant to do so.

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 force. 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.

Most rental agreements and leases 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 or lease prohibits subleases or assignments, you must get your landlord's permission before you sublease or assign the rental unit.

Even if your rental agreement doesn't contain a provision that prohibits you from subleasing or assigning, it's wise to discuss your plans with your landlord in advance. Subleases and assignments usually don't work out smoothly unless everyone has agreed in advance.

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 that 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. The subtenant has no greater rights than you do as the original tenant. For example, if you have a month-to-month rental agreement, so does the subtenant. If your rental agreement does not allow you to have a pet, then the subtenant cannot have a pet.

In any sublease situation, it's essential that both you and the subtenant have a clear understanding of both 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 include 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 that 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's also important that the sublease agreement be consistent with the lease, so that your obligations under the lease will be fully performed by the subtenant, if that is what you and the subtenant have agreed on.

Assignments

An **assignment** is a transfer of your rights as a tenant to someone else. You might use an assignment if you have a lease and need to move permanently before the lease 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. If the new tenant doesn't pay rent, or damages the rental unit, the original tenant remains legally responsible to the landlord.[115]

In order for the original tenant to avoid this responsibility, 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 should be in writing.

Remember: Even if the landlord agrees to a sublease or assignment, the tenant is still responsible for the rental unit *unless* there is a written agreement (a novation) that states otherwise. For this reason, think carefully about whom you let live in the rental unit.

DEALING WITH PROBLEMS

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 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.[116]

> A rental unit must be fit to live in; that is, it must be habitable.

California law makes **landlords** and **tenants** each responsible for certain kinds of repairs, although landlords ultimately are legally responsible for assuring 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,[117] 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 affect the rental unit's habitability.[118] 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.[119] 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.[120]

Generally, the landlord also must do maintenance work which is necessary to keep

115 *Civil Code Section 822.*

116 *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 719]; Civil Code Sections 1941, 1941.1.*

117 *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

118 *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704]; Hinson v. Delis (1972) 26 Cal.App.3d 62 [102 Cal.Rptr. 661].*

119 *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719].*

120 *Civil Code Sections 1929, 1941.2.*

the rental unit liveable.[121] 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 uninhabitable. 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 for repair of all damage that results from their neglect or abuse, and for repair of damage caused by anyone for whom they are responsible, such as family, guests, or pets.[122] Tenants' responsibilities for care and repair of the rental unit are discussed in detail on pages 36–38.

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 requires landlords to maintain their rental units in a condition fit for the "occupation of human beings."[123] In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.[124]

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, for example, a structural hazard, inadequate sanitation, or a nuisance endangers the health, life, safety, property, or welfare of the occupants or the public.[125]

A dwelling also may be considered uninhabitable (unlivable) if it substantially lacks any of the following:[126]

- 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.
- 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.
- A kitchen with a sink that cannot be made of an absorbent material such as wood.
- 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

121 *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

122 *Civil Code Sections 1929, 1941.2.*

123 *Civil Code Section 1941.*

124 *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

125 *Civil Code Section 1941.1 paragraph 1, Health and Safety Code Sections 17920.3, 17920.10.*

126 *Civil Code Section 1941.1.*

kept litter-free. Storage areas, garages, and basements must be kept free of combustible materials.[127]

- Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.[128]
- Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.[129]
- Ground fault circuit interrupters for swimming pools and antisuction protections for wading pools in apartment complexes and other residential settings (but not single family residences).[130]

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.[131]

While it is the landlord's responsibility to install and maintain the inside wiring for one telephone jack, the landlord's failure to do so probably does not violate the implied warranty of habitability.[132]

An authoritative reference book suggests 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 affect the livability of the unit or the health and safety of tenants. The second follows from a new 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 22.) This reference book suggests that a tenant who is damaged by this kind of documented contamination may be able to claim a breach of the implied warranty of habitability.[133]

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 36), the law lists specific things that a tenant must do to keep the rental unit liveable.

Tenants must do all of the following:

- Keep the premises "as clean and sanitary as the condition of the premises permits."
- Use and operate gas, electrical, and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets; flushing large, foreign objects down the toilet; and allowing any gas, electrical, or plumbing fixture to become filthy.)
- Dispose of trash and garbage in a clean and sanitary manner.

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127 *Health and Safety Code Sections 17900-17995.*

128 *Civil Code Section 1941.3. See this section for additional details and exemptions. Remedies for violation of these requirements are listed at Civil Code Section 1941.3(c). See California Practice Guide, Landlord-Tenant, Paragraphs 3:21.5-3:21.10 (Rutter Group 2004).*

129 *Health and Safety Code Section 13113.7.*

130 *Health and Safety Code Sections 116049.1, 116064.*

131 *Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 718-719]; Hinson v. Delis (1972) 26 Cal.App.3d 62, 70 [102 Cal.Rptr. 661, 666].*

132 *Civil Code Section 1941.4; Public Utilities Code Section 788. See California Practice Guide, Landlord-Tenant, Paragraph 3:21.10 (Rutter Group, 2004).*

133 *Moskovitz et al., California Landlord-Tenant Practice, Section 3.11B (Cal. Cont. Ed. Bar, 2006); see Health and Safety Code Sections 25400.10-25400.46, effective January 1, 2006.*

- 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.[134]
- Notify the landlord when dead bolt locks and window locks or security devices don't operate properly.[135]

However, a landlord may agree in writing to clean the rental unit and dispose of the trash.[136]

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 condition.[137] However, a tenant cannot withhold rent or sue the landlord for violating the implied warranty of habitability if the tenant has failed to meet these requirements.[138]

Responsibility for other kinds of repairs

As for less serious repairs, the rental agreement or **lease** 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 or lease.[139]

Tenant's agreement to make repairs

The landlord and the tenant may agree in the rental agreement or lease that the tenant will perform all repairs and maintenance in exchange for lower rent.[140] Such an agreement must be made in good faith: 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 whether he or she wants to try to negotiate a cap on the amount that he or she can be required to spend making repairs. Regardless of any such agreement, the landlord is responsible for maintaining the property as required by state and local housing codes.[141]

HAVING REPAIRS MADE

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

It's best for the tenant to notify the landlord of damage or defects by *both* a telephone call *and* a letter. The tenant should specifically describe the damage or defects and the required repairs in both the phone call and the letter. The tenant

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134 Civil Code Section 1941.2(a)(5).

135 Civil Code Section 1941.3(b).

136 Civil Code Section 1941.2(b).

137 Civil Code Section 1941.2(a).

138 Civil Code Sections 1929, 1942(c); see Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 11/8-11/9 (NOLO Press 2005).

139 Portman and Brown, California Tenants' Rights, pages 11/6-11/7 (NOLO Press 2005).

140 Civil Code Section 1942.1.

141 Portman and Brown, California Tenants' Rights, page 2/5 (NOLO Press, 2005).

should date the letter and keep a copy to show that notice was given and what it said. If the tenant gives notice to the landlord by e-mail or fax, the tenant should follow up with a letter. (See pages 43–44.)

The tenant should send the letter to the landlord, manager, or agent 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 keep a copy of the notice and the receipt, or some other evidence that the notice was delivered. (See "Giving the landlord notice," pages 43–44.)

If the landlord doesn't make the requested repairs, and doesn't have a good reason for not doing so, the tenant may have one of several remedies, depending on the seriousness of the repairs. These remedies are discussed in the rest of this section. *Each of these remedies has its own risks and requirements, so the tenant should use them carefully*.

The "repair and deduct" remedy

The "**repair and deduct**" remedy allows a tenant to deduct money from the rent, up to the amount of one month's rent, to pay for repair of defects in the rental unit.[142] This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability.[143] (See discussion of the implied warranty of habitability, pages 35–38.) 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's a good idea for the tenant to 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.[144]
2. The repairs cannot cost more than one month's rent.
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 43–44.)
6. 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 situation. For example, if the furnace is broken and it's very cold outdoors, two days may be considered reasonable (assuming that a qualified repair person is available within that time period).
7. If the landlord doesn't make the repairs within a reasonable period of time, the tenant may

142 *Civil Code Section 1942.*

143 *California Practice Guide, Landlord-Tenant, Paragraphs 3:115-3:116 (Rutter Group, 2003).*

144 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/9 (NOLO Press 2005).*

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's a good idea, but not a legal requirement, for the tenant to give the landlord a written notice that explains why the tenant hasn't paid the full amount of the rent. The tenant should 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 file an **eviction** action based on the nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or didn't give the landlord proper advance notice or a reasonable 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.

The landlord may try to evict the tenant or raise the rent because the tenant used the repair and deduct remedy. This kind of action is known as a "**retaliatory eviction**" (see pages 74–75). The law prohibits this type of eviction, with some limitations.[145]

The "abandonment" remedy

Instead of using the repair and deduct remedy, a tenant can **abandon** (move out of) a 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,[146] *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.[147]

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.[148] (See discussion of the implied warranty of habitability, pages 35–38.) If the tenant uses this remedy properly, the tenant is not responsible for paying further rent once he or she has abandoned the rental unit.[149]

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.[150]
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 43–44.)
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 doesn't 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

145 *Civil Code Section 1942.5(a).*

146 *California Practice Guide, Landlord-Tenant, Paragraph 3:127 (Rutter Group, 1999).*

147 *Civil Code Section 1942.*

148 *California Practice Guide, Landlord-Tenant, Paragraphs 3:115-3:116, 3:126 (Rutter Group, 1999).*

149 *Civil Code Section 1942.*

150 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/9 (NOLO Press 2005).*

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 43–44. The tenant should keep a copy of the notice.

- It's a good idea, but not a legal requirement, for the tenant to give the landlord written notice of the tenant's reasons for moving out. The tenant's letter may 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. 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.

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.[151] (See discussion of the implied warranty of habitability, pages 35–38.) In order for the tenant to withhold rent, the defects or repairs that are needed must be *more* serious than would justify use of the repair and deduct and abandonment remedies. The defects must be substantial—they must be serious ones that threaten the tenant's health or safety.[152]

The defects that were serious enough to justify withholding rent in Green v. Superior Court[153] are listed below as examples:

- Collapse and nonrepair 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.

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 videos, witnesses, and copies of letters informing the landlord of the problem.

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.

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151 *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704].*

152 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/11 (NOLO Press 2005).*

153 *Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr. 704]. See Hyatt v. Tedesco (2002) 96 Cal.App.4th Supp. 62 [117 Cal.Rptr.2d 921] for additional examples of substantial defects that violated the implied warranty of habitability.*

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.[154]
   - 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 43–44.)
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.
5. If the landlord doesn't 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 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 or lease) and the rental unit's value in its defective state.[155]
6. The tenant should save the withheld rent money *and not spend it*. The tenant should expect to have to pay the landlord some or all of the withheld rent.
   - If the tenant withholds rent, the tenant should 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" below, rent withholding cases often wind up in court. 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 assures 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

154 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/11 (NOLO Press 2005).*

155 *See discussion in Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 11/12 (NOLO Press 2005) , Portman and Brown, California Tenants' Rights, page 7/15 (NOLO Press 2005), and California Practice Guide, Landlord-Tenant, Paragraph 3:140-3:142 (Rutter Group, 2005).*

tenant didn't withhold rent just to avoid paying rent. If there is a court hearing, the tenant should bring rental receipts or other evidence to show that he or she has been reliable in paying rent in the past.

Third, most legal aid organizations and lawyers will not represent a tenant who has not deposited the withheld rent money in an escrow account.

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 can't agree on a reasonable amount, the dispute will have to be decided in court, or resolved in an **arbitration** or **mediation** proceeding (see page 77).

Risks: The defects may not be serious enough to threaten the tenant's health or safety. If the tenant withholds rent, the landlord may give the tenant an **eviction notice** (a **three-day notice** to pay the rent or leave). If the tenant refuses to pay, the landlord will probably go to court to evict the tenant. In the court action, the tenant will have to prove that the landlord violated the implied warranty of habitability.[156]

If the tenant wins the case, the landlord will be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent. The rent ordinarily must be paid five days or less from the date of the court's judgment. If the tenant wins, but doesn't pay the amount of rent ordered when it is due, the judge will enter a judgment for the landlord, and the tenant probably will be evicted. If the tenant loses, he or she will have to pay the rent, probably will be evicted, and may be ordered to pay the landlord's attorney's fees.

There is another risk of using rent withholding: if the tenant doesn't have a lease, the landlord may ignore the tenant's notice of defective conditions and seek to remove the tenant by giving him or her a 30-day notice to move. This may amount to a "**retaliatory eviction**" (see pages 74–75).[157] The law prohibits retaliatory evictions, with some limitations.[158]

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's best to 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 keep a copy.

Whenever a tenant gives the landlord notice of the tenant's intention to repair and deduct, withhold rent, or abandon the rental unit, it's best to put the notice in writing.

The tenant might be tempted to send the notice to the landlord by e-mail or fax. The laws on repairs specify that the tenant may give the landlord notice orally or in writing, but do not mention e-mail or fax. To be certain that the notice complies with the law, the tenant should follow up any 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 a very good idea. 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

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

157 *Moskovitz, California Eviction Defense Manual, Section 16.19 (Cal. Cont. Ed. Bar 2003).*

158 *Civil Code Section 1942.5(a).*

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's important that the tenant have proof that the landlord, or the landlord's manager or agent, received the notice.

The copy of the letter and the receipt will be proof that the tenant notified the landlord, and also proof of what the notice said. Keep the copy of the letter and the receipt in case of a dispute with the landlord.

The landlord or agent may call the tenant to discuss the request for repairs or to schedule a time to make them. It's a good idea for the tenant to 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. **Important**: Neither the tenant nor the landlord can tape record a telephone conversation without the other party's permission.[159]

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 tenants' rights. The invited person cannot be held liable for trespass.[160]

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 77).

A tenant has another option: filing 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.[161] This kind of lawsuit can be filed in small claims court or superior court, depending on the amount demanded in the suit.[162] The tenant can file this kind of lawsuit without first trying another remedy, such as the repair and deduct remedy.

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.[163] "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.[164]

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.[165]

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159 *Penal Code Section 632.*

160 *Civil Code Section 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 [111 Cal. Rptr. 2d 336].)*

161 *Civil Code Section 1942.4.*

162 *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. Moskovitz et al., California Landlord-Tenant Practice, Sections 5.16, 5.39 (Cal. Cont. Ed. Bar, 2006), citing Pitzen v. Superior Court (2004) 120 Cal.App.4th 1374 [16 Cal.Rptr.3d 628].*

163 *Civil Code Section 1942.4(b)(1).*

164 *Civil Code Section 1942.4(b)(2), Code of Civil Procedure Section 1174.2.*

165 *Civil Code Section 1942.4(a),(c).*

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.

In order for a tenant to win such a lawsuit against the landlord, all of the following conditions must be met:[166]

- The rental unit has a serious habitability defect. That is, the rental unit contains a lead hazard that endangers the occupants or the public; or substantially lacks any of the minimum requirements for habitability listed in the eight categories on page 36; or has been declared substandard because, for example, a structural hazard, inadequate sanitation, or a nuisance endangers the health, life, safety, property, or welfare of the occupants or the public; and
- A housing inspector has inspected the premises 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; and
- 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; and
- 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 65–66) after all of the above 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 43–44.) 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 doesn't 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 then must 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,

166 Civil Code Section 1942.4(a). See Health & Safety Code Sections 17920.3, 17920.10.

or housing clinic in order to understand what the lawsuit is likely to accomplish, and also the risks involved.[167]

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," page 77.)

LANDLORD'S SALE OF THE RENTAL UNIT

If your landlord voluntarily sells the rental unit that you live in, your legal rights as a tenant are not changed. Tenants who have a lease have the right to remain through the end of the lease under the same terms and conditions. The new landlord can end a periodic tenancy (for example, a month-to-month tenancy), but only after giving the tenant the required advance notice. (See "Landlord's notice to end a periodic tenancy," pages 48–49.)

The sale of the building doesn't change the rights of the tenants to have their **security deposits** refunded when they move. Pages 60–61 discuss the landlord's responsibility for the tenants' security deposits after the rental unit has been sold.

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 state Department of Real Estate. Affected tenants must receive notices at various stages of the application and approval process.[168] These notices are designed to allow affected tenants and the public to have a voice in the approval process.[169] 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.[170] 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.[171]

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 pages 22–23.) The notice must include the earliest approximate dates that the owner expects the demolition to occur and the tenancy to end.[172]

INFLUENCING THE TENANT TO MOVE

California law protects a tenant from retaliation by the landlord because the tenant

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167 *Civil Code Section 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 page 45, the landlord is liable for the tenant's attorneys fees and costs of suit, as determined by the court. (Code of Civil Procedure Section 1174.21.)*

168 *Government Code Section 66427.1(a),(b).*

169 *Government Code Sections 66451.3, 65090, 65091.*

170 *Government Code Section 66427.1(c).*

171 *Government Code Section 66427.1. See Business and Professions Code Sections 11018, 11018.2, California Practice Guide, Landlord-Tenant, Paragraph 5:306 and following (Rutter Group, 2003).*

172 *Civil Code Section 1940.6.*

has lawfully exercised a tenant right (see pages 74—75). California law also makes it unlawful for a landlord to attempt to influence a tenant to move 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. (The conduct 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 32–33).[173]

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 lease, 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 lease, rental agreement, rules or laws in the normal course of business.[174]

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 him or her a civil penalty of up to $2,000 for each violation.[175] Keep in mind, however, that a lawsuit is not always a good solution. If you are faced with actions such as described above, try to assess the situation realistically. You may want to discuss the situation with a trusted friend, a tenant advisor, or a lawyer who represents tenants. 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

To end a **periodic rental agreement** (for example, a month-to-month agreement), you must give your **landlord** proper written notice before you move.

You must give the landlord the same **amount of notice** as there are days between rent payments.[176] This means that if you pay rent monthly, you must give the landlord written notice at least 30 days before you move. If you pay rent every week, you must give the landlord written notice at least seven days before you move. If your rental agreement specifies a different amount of notice (for example, 10 days), then you must give the landlord written notice as required by the agreement.[177]

To avoid later disagreements, date the notice, state the date that you intend to move, and make a copy of the notice for yourself. It's best to 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 67–68.)[178]

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 (for example, on the tenth). Then, you

173 Civil Code Section 1940.2(a).
174 Civil Code Section 1940.2(c).
175 Civil Code Section 1940.2(b).
176 Civil Code Section 1946.
177 Civil Code Section 1946.
178 Civil Code Section 1946.

could leave 30 days later (on the tenth of the following month, or earlier if you chose to). But you would have to pay rent for the first 10 days of the next month whether you stay for those 10 days or move earlier. (**Exception**: You would not have to pay rent for the entire 10 days if you left earlier, *and* the landlord rented the unit to another tenant during the 10 days, *and* the new tenant paid rent for all or part of the 10 days.)[179]

The **rental agreement** or **lease** must state the name and address of the person or entity to whom you must make rent payments (see page 14). If this address does not accept personal deliveries, you can mail your notice to the owner at the name and address stated in the lease or 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 is receivable by the owner on the date of postmark.[180]

Landlord's notice to end a periodic tenancy

A landlord can end a periodic **tenancy** (for example, a month-to-month tenancy) by giving the tenant proper advance written notice. The landlord must give the tenant 30 days' advance written notice in the case of a month-to-month tenancy, seven days' advance written notice for a week-to-week tenancy, or the amount of notice specified in the rental agreement (but never less than seven days).[181]

The landlord usually isn't required to state a reason for ending the tenancy in the 30-day notice (see "**Thirty-Day Notice**," pages 64–65). The landlord can serve the 30-day notice by certified mail or by one of the methods described under "Proper Service of Notices," pages 67–68.[182]

Note: In the circumstances described on pages 65–66, the landlord can give the tenant just *three* days' advance written notice.

If you receive a 30-day notice, you must leave the rental unit by the end of the thirtieth day after the date on which the landlord served the notice (see page 65). For example, if the landlord served a 30-day notice on July 16, you would begin counting the 30 days on July 17, and the 30-day period would end on August 15. If August 15 falls on a weekday, you would have to leave on or before that date. However, if the end of the 30-day period falls on a Saturday, you would not have to leave until the following Monday, because Saturdays and Sundays are legal holidays. Other legal holidays also extend the notice period.[183]

If you don't move by the end of the notice period, the landlord can file an **unlawful detainer lawsuit** to evict you (see page 68).

What if you have received a 30-day notice, but you want to continue to rent the property, or you believe that you haven't done anything to cause the landlord to give you a notice of termination? In this kind of situation, you can try to convince the landlord to withdraw the notice. Try to find out why the landlord gave you the notice. If it's 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 won't withdraw the notice, you will have to move out at the end of the 30-day period, or be prepared for the landlord to file an unlawful detainer lawsuit to evict you.

Special rules may apply in cities with rent control. For example, in some communities

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179 *See Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page19/4 (NOLO Press 2005).*

180 *Civil Code Section 1962(f).*

181 *Civil Code Section 1946. Between January 1, 2003 and December 31, 2005, Civil Code Section 1946.1 required 60 days' notice if the tenant had lived in the unit for a year or more. Section 1946.1 was repealed operative January 1, 2006.*

182 *Civil Code Section 1946.*

183 *Code of Civil Procedure Section 12a. See California Practice Guide, Landlord-Tenant, Paragraphs 7:220-7:220.6 (Rutter Group 2003) on whether service of the thirty-day notice by mail extends the time for the tenant to respond.*

with rent control ordinances, a periodic tenancy cannot be ended by the landlord without a good faith "just cause" or "good cause" reason to evict. In these communities, the landlord must state the reason for the termination, and the reason may be reviewed by local housing authorities.

Suppose that you are a tenant who participates in the Section 8 housing voucher program. While the lease is in effect, the landlord must have good cause to terminate (end) the tenancy. Examples of good cause include serious or repeated violations of the lease, or criminal activity that threatens the health or safety of other residents.[184] The landlord must give the tenant a 3-day or 30-day notice of termination under California law (see pages 64–67), and both the landlord and the tenant must give the public housing agency a copy of the notice.[185] What if the landlord simply decides not to renew the lease, or decides to terminate the HAP (housing assistance payment) contract? In this case, the landlord must give the tenant 90 days' advance written notice of the termination date.[186] If the tenant doesn't move out by the end of the 90 days, the landlord must follow California law to evict the tenant.[187]

If you live in government-assisted housing or in an area with rent control, check with your local housing officials to see if any special rules apply in your situation.

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. Whether the tenant can use this amount at the end of the tenancy to pay the last month's rent depends on the language used in the **rental agreement** or **lease**.[188]

Suppose that at the beginning of the tenancy, you gave the landlord a payment for the last month's rent and for the security deposit, and that the lease or rental agreement labels part of this upfront payment "last month's rent." In this situation, you have paid the rent for your last month in the rental unit. However, sometimes landlords raise the rent before the last month's rent becomes due. In this situation, can the landlord require you to pay the amount of the increase for the last month?

The law does not provide a clear answer to this question. If your lease or rental agreement labels part of your upfront payment "last month's rent," then you have a strong argument that you paid the last month's rent when you moved in. In this situation, the landlord should *not* be able to require you to pay the amount of the increase for the last month.[189] However, if your lease or rental agreement labels part of your upfront payment "security for last month's rent," then the landlord has a good argument that you have not actually paid the last month's rent, but have only provided security for it. In this situation, the landlord *could* require you to pay the amount of the increase for the last month.

For example, say that your rental agreement labeled part of the total deposit that you paid when you moved in "security for last month's rent," or that "last month's rent" is one of the items listed in your rental agreement under the heading "Security." Suppose that your rent was $500 when you moved in and that you paid your

184 *California Practice Guide, Landlord-Tenant, Paragraphs 12:270 and following (Rutter Group 2005). See this chapter for an in-depth discussion of the Section 8 housing program.*

185 *Moskovitz, California Eviction Defense Manual, Section 18.22 (Cal. Cont. Ed. Bar 2005), citing Gallman v. Pierce (ND Cal. 1986) 639 F. Supp. 472, 485 (landlord must follow California law when terminating a tenant's Section 8 lease).*

186 *Wasatch Property Management v. Degrate (2005) 35 Cal.4th 1111 [29 Cal.Rptr.3d 262].*

187 *California Practice Guide, Landlord-Tenant, Paragraph 12:301(Rutter Group 2005).*

188 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 5/4-5/5 (NOLO Press 2005).*

189 *Portman and Brown, California Tenants' Rights, page 14/10 (NOLO Press 2005); see Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 5/4-5/5 (NOLO Press 2005).*

landlord $500 as "security for the last month's rent." Suppose that you also paid your landlord an additional $500 as a security deposit. If the landlord properly raised your rent to $550 while you were living in the rental unit, you can expect to owe the landlord $50 for rent during the last month of your tenancy (that is, the current rent [$550] minus the prepaid amount [$500] equals $50 owed).

If your rental agreement calls your entire upfront payment a "security deposit" and does not label any part of it "last month's rent," or "security for last month's rent," then you will have to pay the last month's rent when it comes due. In this situation, you cannot use part of your security deposit to pay the last month's rent. However, you will be entitled to a refund of your security deposit, as explained in the next section.

REFUND OF SECURITY DEPOSITS

Common problems and how to avoid them

The most common disagreement 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 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;[190]
- For repair of damages, other than normal wear and tear, caused by the tenant or the tenant's guests; and
- If the lease or 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.[191]

A landlord can withhold from the security deposit *only* those amounts that are reasonably necessary for these purposes. 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.[192] A rental agreement or lease can *never* state that a security deposit is "nonrefundable."[193]

Under California law, 21 calendar days or less after you move, your landlord must either:

- 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

190 *For many years, landlords, tenants, and courts used the "clean as it was when the tenant moved in" standard as the practical standard for determining whether the departing tenant left the rental unit clean. A new law has made this practical standard the legal standard as well. (Civil Code Section 1950.5(b)(3).) The new legal standard applies to tenancies for which the tenant's right to occupy the unit began after January 1, 2003.*
As with any statutory provision, this provision should be given "a reasonable and common sense interpretation consistent with the apparent purpose, which will result in wise policy rather than mischief or absurdity." (7 Witkin, Summary of California Law (10th ed.2005) Constitutional Law, Section 115.)
Notwithstanding this new standard, the tenant is not responsible for damages resulting from normal wear and tear (Civil Code Section 1950.5(b),(e)), and the rental must, at a minimum, be fit to live in at the beginning of each tenancy (Civil Code Section 1941; see discussion of "Habitability," pages 35–38).

191 *Civil Code Section 1950.5(b),(e).*

192 *Civil Code Section 1950.5(b),(e).*

193 *Civil Code Section 1950.5(m).*

deductions from your security deposit and the reasons for the deductions, together with a refund of any amounts not deducted.[194]

The landlord also must send you copies of receipts for the charges that the landlord incurred to repair or clean the rental unit and that the landlord deducted from your security deposit. The landlord must include the receipts with the itemized statement.[195] 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).[196]
- **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 situation (2), 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.[197]

The landlord must send the itemized statement, copies of invoices or receipts, and any good faith estimate to you at the address that you provide. If you do not provide an address, the landlord must send these documents to the address of the rental unit that you moved from.[198]

The landlord is not required to send you copies of invoices or receipts, or a good faith estimate, if the repairs or cleaning cost less than $126 or if you waive your right to receive them.[199] If you wish to waive the right to receive these documents, you may do so by signing a waiver when you or the landlord gives the other a 30-day notice to end the tenancy (see pages 64–65), or when the landlord serves you a 3-day notice to end the tenancy (see pages 65–67), or after any

194 *Civil Code Section 1950.5(g)(1). The landlord has the option of providing you the itemized statement and any refund to which you are entitled when you or the landlord gives the other a 30-day notice to end the tenancy (see pages 64–65), or when the landlord serves you a 3-day notice to end the tenancy (see pages 65–67), or no earlier than 60 days before the end of a lease.*

195 *Civil Code Section 1950.5(g)(2).*

196 *Civil Code Section 1950.5(g)(2).*

197 *Civil Code Section 1950.5(g)(3).*

198 *Civil Code Section 1950.5(g)(6).*

199 *Civil Code Section 1950.5(g)(4).*

of these notices. If you have a lease, you may waive this right no earlier than 60 days before the lease ends. The waiver form given to you by the landlord must include the text of the security deposit law that describes your right to receive receipts.[200]

What if the repairs cost less than $126 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's best to make this request both orally and in writing. Keep a copy of your letter or e-mail. The landlord must send you copies of invoices, receipts and any good faith estimate within 14 calendar days after he or she receives your request.[201]

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 by phone or e-mail, but you should follow it up with a letter. 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 letter. It's a good idea to send the 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 doesn't send you the refund that you think you're 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 77.) You can contact one of the agencies listed on pages 95–103 for assistance. If none of this works, you may want to take legal action (see pages 61–62).

What if the landlord doesn't 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.[202] Even so, it may be difficult for you to get your entire deposit back from the landlord.[203] You should contact one of the agencies listed on pages 87–95 for advice.

Practically speaking, you have two options if the landlord doesn't honor the 21-day rule. The first step for both 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 listed on page 50, it's probably wise to enter into a reasonable compromise with

continued on page 60

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

201 *Civil Code Section 1950.5(g)(5).*

202 *Granberry v. Islay Investments (1995) 9 Cal.4th 738, 745 [38 Cal.Rptr.2d 650, 653]. See California Practice Guide, Landlord-Tenant, Paragraphs 2:783-2:783.6 (Rutter Group 2005).*

203 *Portman and Brown, California Tenants' Rights, page 14/4 (NOLO Press 2005).*

Initial Inspection Before Tenant Moves Out

A tenant can ask the landlord to inspect the rental unit before the tenancy ends. 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 in this sidebar if the tenant requests it, but *cannot* make an initial inspection *unless* the tenant requests it. However, the 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 204.[204]

Landlord's notice

The landlord must give the tenant written notice of the tenant's right to request an initial inspection of the rental and to be present during the inspection. The landlord must give this notice to the tenant 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 47–49 and 64–65). If the tenant has a lease, the landlord must give the tenant this notice a "reasonable time" before the lease ends. If the tenant does not request an initial inspection, the landlord does not have any other duties with respect to the initial inspection.[205]

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 tenancy or lease term. In any event, the inspection should be scheduled to allow the tenant ample time to perform repairs or do cleaning identified during the initial inspection.[206] 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 agreed 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 no longer wants the inspection; or
- The landlord and tenant have agreed in writing to **waive** (give up) the 48-hour notice requirement.

Initial Inspection continued on page 54

204 *Civil Code Section 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.*

205 *Civil Code Section 1950.5(f)(1).*

206 *See Senate Judiciary Committee Report on AB 2330 (2001-02 Regular Session), as amended May 21, 2002, p.10.*

Initial Inspection continued from page 53

Itemized statement

The landlord or the landlord's agent may perform the inspection if the tenant is not present, unless the tenant has previously withdrawn the request for inspection.[207]

Based on 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.[208] 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.[209]

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 when the tenant moved in or that are the result of ordinary wear and tear.[210] 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.[211] 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.

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.[212]

Any deduction must be reasonable in amount, and must be for a purpose permitted by the security deposit statute.[213] 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 25, 50).[214]

Initial Inspection continued on page 55

207 Civil Code Section 1950.5(f)(1).

208 Civil Code Section 1950.5(f)(2).

209 Civil Code Section 1950.5(f)(2), referring to Civil Code Sections 1950.5(b)(1)-(4). See Appendix 5.

210 See Civil Code Section 1950.5(b)(2),(e). See discussion in "Suggested Approaches to Security Deposit Deductions" sidebar pages 57-59.

211 Civil Code Section 1950.5(f)(3).

212 Civil Code Section 1950.5(f)(4),(5); see Civil Code Section 1950.5(e).

213 Civil Code Section 1950.5(b),(e).

214 Civil Code Section 1950.5(g).

Initial Inspection continued from page 54

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 fourteenth 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 moved 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.

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.[215] However, the landlord can deduct a reasonable amount to repair the door jamb chewed by your dog. This is because this damage occurred during your tenancy and is more than normal wear and tear.[216]

Initial Inspection continued on page 56

215 *Civil Code Section 1950.5(b),(e).*

216 *Civil Code Section 1950.5(b),(e),(f)(4).*

Initial Inspection continued from page 55

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.[217]

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.[218] 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.[219]

217 *Civil Code Section 1950.5(b)(3).*

218 *Civil Code Section 1950.5(e).*

219 *Civil Code Section 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 50. The statute limits the landlord's deduction from the security deposit to an amount that is "reasonably necessary" for the listed purposes.[220]

Unfortunately, the statute's 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 to make the rental unit as clean as it was when the tenant moved in.[221]

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 he or she 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.[222]

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.[223] Normal wear and tear includes simple wearing down of carpet and

Suggested Approaches continued on page 58

220 *Civil Code Section 1950.5(e).*

221 *Civil Code Section 1950.5(b)(3). The "clean as it was when the tenant moved in" legal standard applies only to tenancies for which the tenant's right to occupy the rental began after January 1, 2003.*

222 *Civil Code Section 1950.5(e).*

223 *Civil Code Section 1950.5(e).*

Suggested Approaches continued from page 57

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.

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

Using this 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.[224]

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.[225]

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.*

Suggested Approaches continued on page 59

224 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 20/15-20/16 (NOLO Press 2005).*

225 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 20/15-20/16 (NOLO Press 2005).*

Suggested Approaches continued from page 58

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 20). 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 51–52) 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.

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 for return of your security deposit. However, the landlord then 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 that the landlord alleges that you caused. Each party then will have to argue in court why he or she is entitled to the deposit.[226]

Refund of security deposits after sale of building

When a building 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.[227]

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, he or she must transfer the balance of the security deposits to the new landlord.[228]

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 each tenant.[229]

The new landlord becomes legally responsible for the security deposits when the selling landlord transfers the deposits to the new landlord.[230]

If the selling landlord returns the security deposits to the tenants, the selling landlord may first make lawful deductions from the deposits (see pages 25–50). 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 50–52).[231]

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.[232] If the selling landlord and the security deposits can't be found, the new landlord must refund all security deposits (after any proper deductions) as tenants move out.[233]

The new landlord can't charge a new security deposit to current tenants simply to make up

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226 *See Granberry v. Islay Investments (1995) 9 Cal.4th 738, 749-750 [38 Cal.Rptr.2d 650, 656-657]; Portman and Brown, California Tenants' Rights, page 14/4 (NOLO Press 2005). 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).*

227 *Civil Code Section 1950.5(h).*

228 *Civil Code Section 1950.5(e),(h)(1).*

229 *Civil Code Section 1950.5(h)(1).*

230 *Civil Code Section 1950.5(k).*

231 *Civil Code Section 1950.5(e),(g),(h)(2).*

232 *Civil Code Section 1950.5(j). Exception: If the new landlord acted in the good faith belief that the old landlord properly complied with the transfer or refund requirement, the new landlord is not jointly liable with the old landlord.*

233 *See Portman and Brown, California Tenants' Rights, page 14/4 (NOLO Press 2005).*

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.[234]

If the selling landlord has returned a greater amount to a tenant than the amount of the tenant's security deposit, the new landlord may recover this excess amount from the tenant.[235]

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 lease, the new landlord can't increase your security deposit unless this is specifically allowed by the lease. For periodic tenants (those renting month-to-month, for example) the new landlord can increase security deposits only after giving proper advance written notice. In either situation, the total amount of the security deposit after the increase cannot be more than the legal limit (see pages 23–25). The landlord normally cannot require that you pay the security deposit increase in cash. (See pages 27–28.)

All of this means that it's 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 the landlord had a right to make a deduction from the deposit.[236]

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 work out the problem with your landlord, you can file a lawsuit in small claims court for the amount of the security deposit plus court costs, and possibly also a penalty and interest, up to a maximum of $7,500. (If your claim is for a little more than $7,500, you can **waive** (give up) the extra amount and still use the small claims court.) For amounts greater than $7,500, 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.[237]

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.[238] 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.[239]

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234 Civil Code Section 1950.5(j).

235 California Practice Guide, Landlord-Tenant, Paragraph 2:810 (Rutter Group, 2005).

236 Civil Code Section 1950.5(o) (describes evidence that proves the existence and amount of a security deposit).

237 Civil Code Section 1950.5(l).

238 Civil Code Section 1950.5(l).

239 Civil Code Section 1950.5(l).

Whether you can collect attorney's fees if you win such a suit depends on whether the lease or rental agreement contains an attorney's fee clause.[240] If the lease or 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.[241] However, you can only collect attorney's fees if you were represented by an attorney.[242]

TENANT'S DEATH

Suppose that a tenant who has a tenancy for a specified term (for example, a one-year lease) dies. The tenancy continues until the end of the lease term, despite the tenant's death. Responsibility for the rest of the lease term passes to the tenant's executor or administrator.[243]

Now suppose instead that the tenant had a month-to-month tenancy. In this case, the tenancy is terminated (ended) by notice of the tenant's death.[244] The tenancy ends on the thirtieth day following the tenant's last payment of rent before the tenant's death. No 30-day notice is required to terminate the tenancy.[245]

MOVING AT THE END OF A LEASE

A lease expires automatically at the end of the lease term. The tenant is expected either to renew the lease before it expires (with the landlord's agreement) or to move out. A lease usually doesn't require a tenant to give the landlord any advance written notice when the lease is about to expire. However, the tenant should read the lease to see if it has any provisions covering what happens at the end of the lease.

Before you move, you may want to give the landlord a courtesy notice stating that you do not want to renew your lease.

If you continue living in the rental after the lease expires, and if the landlord accepts rent from you, your tenancy will be a periodic tenancy from that point on. The length of time between your rent payments will determine the type of the tenancy (for example, monthly rent results in a month-to-month tenancy). Except for the length of the agreement, all other provisions of the lease will remain in effect.[246] Sometimes, a landlord will give a tenant a 30-day notice before the lease ends to be certain that the tenancy does not continue after the lease expires.[247]

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240 *Code of Civil Procedure Sections 1032(b), 1033.5(a)(10)(A).*

241 *Civil Code Section 1717.*

242 *Jacobson v. Simmons Real Estate (1994) 23 Cal.App.4th 1285 [28 Cal.Rptr.2d 699]; Trope v. Katz (1995) 11 Cal.4th 274 [45 Cal. Rptr.2d 241]; see California Practice Guide, Landlord-Tenant, Paragraphs 9:391.1-9:391.4, 9:391.10 and following (Rutter Group, 2003).*

243 *Joost v. Castle (1939) 33 Cal.App.2d 138 [91 P.2d 172]; Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 9/12-9/14 (NOLO Press 2005).*

244 *Civil Code Section 1934.*

245 *Miller & Desatnik Management Co. v. Bullock (1990) 221 Cal.App.3d Supp. 13, 18-19 [270 Cal.Rptr. 600, 604]. See Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 9/13-9/14 (NOLO Press 2005).*

246 *Civil Code Section 1945, Portman and Brown, California Tenants' Rights, page 13/2 (NOLO Press 2005).*

247 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, page 19/5 (NOLO Press 2005).*

If you don't move in time, and if the landlord refuses to accept rent after the lease expires, the landlord can file an **eviction** lawsuit immediately without giving you any notice (see page 68–73). (This may not be true if you live in a rent control jurisdiction.)[248]

Important: If you want to *renew* your lease, you should begin negotiating with your landlord in plenty of time before the lease expires. Both your landlord and you will have to agree to the terms of the new lease. This process may take some time if one of you wants to negotiate different terms in the new lease.

Special Rules for Tenants in the Military: A servicemember may terminate (end) a lease 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 lease, and to a servicemember who signs a lease 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 lease.

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 the period following the effective date of termination, the landlord must refund these amounts within 30 days after the effective date.[249]

Example: The servicemember pays $600 rent on the tenth of each month under the terms of his 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 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 104–107) if you request an initial inspection of the rental unit before you move out (see pages 53–56). You and the landlord or agent should agree on a mutually convenient date and time for the inspection about two weeks before the end of the tenancy or the lease term. 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 104–107). It's a good idea for you to be present when the landlord conducts the final inspection, but the law does not require that you be present or that the landlord allow you to be present.

248 *Portman and Brown, California Tenants' Rights, page 15/7 (NOLO Press 2005).*

249 *Servicemembers Civil Relief Act, 50 United States Code Appendix Sections 501-596 and Section 535. See California Practice Guide, Landlord-Tenant, Paragraphs 7:328-7:328.5 (Rutter Group 2004).*

If you don't want an initial inspection, you and the landlord should make arrangements for a final inspection close to the time that you move out. You and the landlord or agent should walk through the rental and complete the "Condition Upon Departure" portion of the checklist. Ideally, this walkthrough should occur after you have moved all of your belongings and have thoroughly cleaned the rental unit. Carefully completing the checklist at this point will help identify problem areas, and will help avoid disagreements after you have moved.

For example, you can identify repairs or cleaning that may be needed by comparing items noted under "Condition Upon Arrival" and "Condition Upon Departure." Items identified as needing repair or cleaning may result in deductions from your security deposit, unless you take care of them yourself or reach an agreement with the landlord.

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 104, and "Refunds of Security Deposits," pages 50–60.

TERMINATIONS AND EVICTIONS

WHEN CAN A LANDLORD TERMINATE A TENANCY?

A **landlord** can terminate (end) a month-to-month **tenancy** simply by giving the **tenant** 30 days' advance written notice. (For an explanation of month-to-month tenancies, see pages 14–16; for an explanation of 30-day notices, see pages 48–49 and 64–65.)

However, the landlord can terminate the tenancy by giving the tenant only *three* days' advance written notice if the tenant has done any of the following:[250]

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").
- Substantially interfered with other tenants ("committed a nuisance").
- Used the rental property for an unlawful purpose.

Three-day notices are explained on pages 65–67.

WRITTEN NOTICES OF TERMINATION

Thirty-day notice

A landlord who wants to terminate (end) a month-to-month **tenancy** can do so by properly serving a written 30-day notice on the tenant. Generally, a 30-day notice doesn't have to state the landlord's reason for ending the tenancy. The **Thirty-Day Notice** is discussed on pages 48–49, and proper service of notices is discussed on pages 67–68.

In some localities or circumstances, special rules may apply to 30-day notices:

- Some rent control cities require "just cause" for **eviction**, and the landlord's notice must state the reason for termination.
- Subsidized housing programs may limit allowable reasons for eviction, and may require that the notice state one of these reasons (see pages 48–49).
- Some reasons for eviction are unlawful. For example, an eviction cannot be **retaliatory** or discriminatory (see pages 74–75).

250 Code of Civil Procedure Section 1161(2)-(4).

- A landlord cannot evict a tenant for the reason that the water heater must be braced to protect against earthquake damage.[251]

How to respond to a thirty-day notice

Suppose that the landlord has properly served you with a 30-day notice to terminate the tenancy. During the 30-day period, you should either move out or try to make arrangements with the landlord to stay. If you want to continue to occupy the **rental unit**, ask the landlord what you need to do so make that possible. While a landlord is not required to state a reason for giving a 30-day notice, most landlords do have a reason for terminating a tenancy. If you want to stay, it's helpful to know what you can do to make your relationship with the landlord a better one.

If your landlord agrees that you can continue to occupy the rental unit, it's important that your agreement with the landlord be in writing. The written agreement might be an attachment to your **lease** or **rental agreement** that both the landlord and you sign, or an exchange of letters between you and the landlord that states the details of your agreement. Having the agreement in writing ensures that you and your landlord are clear about your future relationship.

If the landlord doesn't agree to your staying, you will have to move out. You should do so by the end of the 30 days. Take all of your personal belongings with you, and leave the rental property 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 50–60).

If you have haven't moved at the end of the 30 days, you will be unlawfully occupying the rental unit, 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 a 30-day notice, or that you have a valid defense to an unlawful detainer lawsuit, you should carefully weigh the pros and cons of contesting the landlord's likely eviction lawsuit against you if you don't move out. As part of your decision-making process, you may wish to consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic. (See "Getting Help From a Third Party," pages 76–77.)

Three-day notice

A landlord can use a written three-day notice (**eviction notice**) if the tenant has done any of the following:[252]

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").
- Substantially interfered with other tenants ("committed a nuisance").
- Used the rental property for an unlawful purpose, such as selling illegal drugs.

If the landlord gives the tenant a three-day notice because the tenant hasn't 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 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

251 *Health and Safety Code Section 19211(c).*

252 *Code of Civil Procedure Section 1161(2)-(4).*

that the rent payment is received by the owner on the date of postmark.

- Instead, 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.[253]

The landlord normally cannot require that the tenant pay the past-due rent in cash. (See pages 27–28.)

If the three-day notice is based on one of the other four conditions listed on page 65, the notice must either describe the tenant's violation of the lease or rental agreement, or describe the tenant's other improper conduct. The three-day notice must be properly served on the tenant (see pages 67–68).

Depending on the type of violation, the three-day notice demands either (1) that the tenant correct the violation or leave the rental unit, or (2) that the tenant leave the rental unit. If the violation involves something that the tenant can correct (for example, the tenant hasn't paid the rent, or the tenant has a pet but the lease doesn't permit pets), the notice must give the tenant the option to correct the violation.

Failing to pay the rent, and most violations of the terms of a lease or rental agreement, can be corrected. In these situations, the three-day notice must give the tenant the option to correct the violation. However, the other three conditions listed on page 65 *cannot* be corrected, and the three-day notice can simply order the tenant to leave at the end of the three days.

If you pay the rent that is due or correct a correctable violation of the lease or rental agreement during the three-day notice period, the tenancy continues.[254] If you attempt to pay all the past-due rent demanded after the three-day period expires, the landlord can either file a lawsuit to evict you or accept 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.[255]

See page 67 on how to count the three days.

How to respond to a three-day notice

Suppose that your landlord properly **serves** you a three-day notice because you haven't 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 day, unless you have a legal basis for not paying rent (see pages 67–74).

If you decide to pay the rent that is due, it's best to call the landlord or the landlord's agent immediately. Tell the landlord or 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. 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.

The landlord normally cannot require that you pay the unpaid rent in cash. (See pages 27–28.)

If the amount of rent demanded is not correct, it's essential that you discuss this with the landlord or agent immediately, and offer to pay the amount that is actually due. Make this offer orally and in writing, and keep a copy of

253 *Code of Civil Procedure Section 1162 paragraph 2. See California Practice Guide, Landlord-Tenant, Paragraphs 7:104.10-7:104.12, 7:119.3-7:110.4 (Rutter Group 2005).*

254 *Code of Civil Procedure Section 1161(3).*

255 *EDC Associates Ltd. v. Gutierrez (1984) 153 Cal.App.3d 167 [200 Cal.Rptr. 333].*

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).[256]

If the amount of rent demanded is correct and doesn't include any other charges, and if you decide not to pay, then you and any other occupants should move out promptly.

If you stay beyond the three 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 to evict you and recover the unpaid rent (called an "unlawful detainer [eviction] lawsuit" [see page 68]). Your failure to pay the rent and to leave promptly may also become part of your credit history, which could affect your ability to rent from other landlords.

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 pages 65–66). 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 day*. Once you have corrected the problem, you should promptly notify the landlord or the property manager.

Even if the notice does not state that you can correct the problem, you can try to persuade the landlord that you will correct the problem and be a good tenant if the landlord agrees to your staying. If the landlord agrees, keep your promise immediately. The landlord should then waive (forgive) your violation, and you should be able to stay in the rental unit. However, in the event of another violation, the landlord probably will serve you with another three-day notice, or with a thirty-day notice.

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 carefully weigh the pros and cons of contesting the landlord's likely eviction lawsuit against you if you don't move out. As part of your decision-making process, you may wish to consult with a lawyer, legal aid organization, tenant-landlord program, or housing clinic. (See "Getting Help From a Third Party," pages 76–77.)

How to count the three days

Begin counting the three days on the first day after the day the notice was served. If the third day falls on a Saturday, Sunday, or holiday, the three-day period will not expire until the following Monday or nonholiday.[257] (See the next section for a discussion of service of the notice and the beginning of the notice period.)

PROPER SERVICE OF NOTICES

A landlord's three-day or thirty-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. 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* notice on the tenant in one of three ways: by 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).[258] The three-day period begins the day *after* you receive the notice.
- **Substituted service on another person**—If the landlord can't find you at home, the landlord

256 *Brown, Warner and Portman, The California Landlord's Law Book, Vol. I: Rights & Responsibilities, pages 16/2-16/3 (NOLO Press 2005).*

257 *Code of Civil Procedure Sections 12,12a.*

258 *Code of Civil Procedure Section 1162(1).*

should try to serve you personally at work. If the landlord can't 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.[259] 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 the day after both steps have been completed.

- **Posting and mailing**—If the landlord can't serve the notice on 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.[260] (This service method is commonly called "posting and mailing" or "nailing and mailing.")

  Service of the notice is not complete until the copy of the notice has been mailed. The three-day period begins the day after the notice was posted *and* mailed.[261]

How to count the three days is explained on page 67.

A landlord can use any of these methods to serve a *30-day* notice on a tenant, or can send the notice to the tenant by certified or registered mail with return receipt requested.[262]

THE EVICTION PROCESS (UNLAWFUL DETAINER LAWSUIT)

Overview of the eviction process

If the tenant doesn't voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can evict the tenant. In order to evict the tenant, the landlord must file an **unlawful detainer** lawsuit in superior court.

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

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 cases, the tenant has only *five days* to file a written response to the lawsuit after being served with a copy of the landlord's complaint.[263] Normally, a judge will hear and decide the case within 20 days after the tenant files an answer.[264]

The court-administered eviction process assures the tenant of the right to a court hearing 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 or electricity, remove outside windows or doors, or seize (take) the tenant's belongings in order to carry out the eviction. The landlord *must use the court procedures*.

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259 *Code of Civil Procedure Section 1162(2).*

260 *Code of Civil Procedure Section 1162(3).*

261 *Walters v. Meyers (1990) 226 Cal.App.3d Supp. 15, 19-20 [277 Cal.Rptr. 316, 318-319] (service of a three-day notice is effective from the date the notice is mailed, not from the date the tenant received it). See California Practice Guide, Landlord-Tenant, Paragraphs 7:186-7:188.2 (Rutter Group 2005) (mailing three-day notice does not extend time to respond).*

262 *Civil Code Section 1946, Code of Civil Procedure Section 1162.*

263 *Code of Civil Procedure Section 1167.3.*

264 *Code of Civil Procedure Section 1170.5(a).*

If the landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for the tenant's damages, as well as penalties of up to $100 per day for the time that the landlord used the unlawful methods.[265]

In an unlawful detainer lawsuit, the court holds a hearing at which the parties can present their evidence and explain their case. If the court finds that the tenant has a good defense, the court will not evict the tenant. If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay court costs (for example, the tenant's filing fees). 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.[266]

If the court decides in favor of the landlord, the court will issue a **writ of possession**. 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, and seize (take) the tenant's belongings that have been left in the rental unit. *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 also may award the landlord damages, court costs, and attorney's fees (if the rental agreement or lease 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 $600 as a penalty.[267] The judgment against the tenant will be reported on the tenant's **credit report** for seven years.[268]

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*. 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 76–77.)

You usually have only *five days* to respond in writing to the landlord's complaint. You must respond during this time by filing the correct legal document with the Clerk of Court in which the lawsuit was filed. If the fifth day falls on a weekend or holiday, you can file your written response on the following Monday or nonholiday.[269] 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.courtinfo.ca.gov/cgi-bin/forms.cgi (Form 982.1(95).)

You may have a legal defense to the landlord's complaint. If so, you must state the defense in a written answer and file your written answer with the Clerk of Court by the end of the fifth day. Otherwise, you will lose 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**.

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265 *Civil Code Section 789.3.*

266 *Civil Code Section 1717; Trope v. Katz (1995) 11 Cal.4th 274 [45 Cal.Rptr.2d 241]; see California Practice Guide, Landlord-Tenant, Paragraphs 9:391.1-9:391.4, 9:391.10 and following (Rutter Group, 2003).*

267 *Code of Civil Procedure Section 1174(b).*

268 *Civil Code Section 1785.13(a)(2),(3).*

269 *Code of Civil Procedure Section 1167.*

- 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.

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 **Demurrer**. *It is important that you obtain advice from a lawyer before you attempt to use these procedures*.

If you don't file a written response to the landlord's complaint by the end of the fifth day, the court will enter a **default judgment** in favor of the landlord. A default judgment allows the landlord to obtain a **writ of possession** (see page 72), and may also award the landlord unpaid rent, damages and court costs.

The Clerk of Court will ask you to pay a filing fee when you file your written response. The filing fee typically is about $180. However, if you can't afford to pay the filing fee, you can request that the Clerk allow you to file your response without paying the fee (that is, you can request a waiver of the fee). An application form for a fee waiver, called an "**Application for Waiver of Court Fees and Costs**," can be obtained from the Clerk of Court or online at www.courtinfo.ca.gov/cgi-bin/forms.cgi (Form 982a(17)).[270]

After you have filed your written answer to the landlord's complaint, the Clerk of Court will mail to both you and the landlord a notice of the time and place of the trial. If you don't appear in court, a default judgment will be entered against you.

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. 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.[271]

Eviction of "unnamed occupants"

Sometimes, people who are not parties to the rental agreement or lease 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 doesn't know who they are. In this case, the landlord will tell the process server to serve the occupants with a **Prejudgment Claim of Right to Possession** form at the same time that the eviction summons and complaint are served on the tenants who are named defendants.[272] See additional discussion of "unnamed occupants" and Claim of Right to Possession forms on pages 85–86.

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270 *The application form is Judicial Council Form 982(a)(17). You should qualify for a fee waiver if you receive benefits under the SSI/SSP, CalWORKs/TANF, Food Stamp or General Relief/General Assistance program, or if your gross monthly household income for a family of four is less than $2,083.33. You also may qualify for fee waiver if your income is not enough to pay for the common necessaries of life and also pay court fees and costs.*

271 *Servicemembers Civil Relief Act, 50 United States Code Appendix Sections 501-596 and Section 531. See California Practice Guide, Landlord-Tenant, Paragraph 7:80.10 (Rutter Group 2004).*

272 *Code of Civil Procedure Section 415.46.*

Before the court hearing

Before appearing in court, you must carefully prepare your case, just as an attorney would. Among other things, you should:

- Talk with a housing clinic, tenant organization, attorney, or legal aid organization. This will help you understand the legal issues in your case and the evidence that you will need.
- Decide how you will present the facts that support your side of the case—whether by witnesses, letters, other documents, photographs or video, or other evidence.
- Have at least five copies of all documents that you intend to use as evidence—an original for the judge, a copy for the court clerk, a copy for the opposing party, a copy for yourself, and copies for your witnesses.
- 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 for a witness to appear. The subpoena must be served on (handed to) the witness, and can be served by anyone but you 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.[273] After you have filed your answer to the landlord's complaint, the court will send you a document called a **Memorandum to Set Case for Trial** (officially called a "Request/Counter-Request to Set Case for Trial" form (Judicial Council Form UD-150).)[274] This document will indicate whether the plaintiff (landlord) has requested a jury trial. If not, and if you are not represented by a lawyer, tenant advisers usually recommend that you *not* request a jury trial.

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 nonlawyer 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; and third, the losing party will have to pay all of the jury costs.[275]

After the court's decision

If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay the tenant's court costs (for example, filing fees) and the tenant's attorney's fees. However, the tenant will have to pay any rent that the court orders.

If the landlord wins, the tenant will have to move. In addition, the court may order the tenant to pay the landlord's court costs and attorney's fees, and any proven damages, such as overdue rent or the cost of repairs if the tenant damaged the premises.

It is possible, but 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: that the eviction would cause the tenant severe hardship, and that the tenant is able to pay all of the rent that is due or that the tenant will fully comply with the lease or rental agreement.[276]

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273 *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 can require that any dispute that arises be submitted to arbitration. (Grafton Partners LP v. Superior Court (PricewaterhouseCoopers LLP (2005) 36 Cal.4th 944 [32 Cal.Rptr.3d 5].)*

274 *In some counties, the landlord must file the Request to Set Case for Trial form. Moskovitz, California Eviction Defense Manual, Section 25.1 (Cal. Cont. Ed. Bar 2005).*

275 *See Portman and Brown, California Tenants' Rights, pages 15/42-15/44 (NOLO Press 2005).*

276 *Code of Civil Procedure Section 1179.*

A tenant can obtain relief from forfeiture of a lease or a rental agreement, 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 (or the tenant's attorney) must apply for relief *immediately* after the court issues its judgment in the unlawful detainer lawsuit.[277]

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 before the appeal is heard, unless the tenant obtains a stay of enforcement of the judgment or 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.[278]

A landlord who loses an unlawful detainer lawsuit also may appeal the judgment.

Writ of possession

If a judgment is entered against you and becomes final (for example, if you do not appeal or if you lose on appeal), and you do not move out, the court will issue a **writ of possession** to the landlord.[279] The landlord can deliver this legal document to the sheriff, who will then forcibly evict you from the rental unit if you don't leave promptly.

Before evicting you, the sheriff will serve you with a copy of the writ of possession.[280] The writ of possession instructs you that you must move out by the end of the fifth day after the writ is served on you, and that if you do not move out, the sheriff will remove you from the rental unit and place the landlord in possession of it.[281] The cost of serving the writ of possession will be added to the other costs of the suit that the landlord will collect from you.

After you are served with the writ of possession, you have five days to move. If you have not moved by the end of the fifth day, the sheriff will return and physically remove you.[282] If your belongings are still in the rental unit, the sheriff may either remove them or have them stored by the landlord, who can charge you reasonable storage fees. If you do not reclaim these belongings within 18 days, the landlord can mail you a notice to pick them up, and then can either sell them at auction or keep them (if their value is less than $300).[283] If the sheriff forcibly evicts you, the sheriff's cost will also be added to the judgment, which the landlord can collect from you.

Setting aside a default judgment

If the tenant does not file a written response to the landlord's complaint, the landlord can ask

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277 *California Practice Guide, Landlord-Tenant, Paragraph 9:444 (Rutter Group 2003). 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 of Civil Procedure Section 1179.)*

278 *Code of Civil Procedure Section 1176.*

279 *Code of Civil Procedure Section 715.010.*

280 *Code of Civil Procedure Section 715.020.*

281 *Code of Civil Procedure Section 715.010(b)(2).*

282 *Code of Civil Procedure Section 715.020(c).*

283 *Code of Civil Procedure Sections 715.030, 1174(h); Civil Code Sections 1965, 1988. See the Department of Consumer Affairs' Legal Guides LT-4, "How to Get Back Possessions You Have Left in a Rental Unit," and LT-5, "Options for a Landlord: When a Tenant's Personal Property has Been Left in the Rental Unit." These Legal Guides are available on the Department of Consumer Affairs' Web site, www.dca.ca.gov.*

the court to enter a **default judgment** against the tenant. The tenant then 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. It is even possible (but not likely) that the tenant was never served with the landlord's summons and complaint. In situations such as 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.

> 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.

Setting aside a default judgment can be a complex legal proceeding. 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.[284] A tenant who wants to ask the court to set aside a default judgment must act promptly. The tenant should be able to show the court that he or she has a satisfactory excuse for the default, acted promptly in making the request, and has a good chance to win at trial.[285] A tenant who thinks that grounds exist for setting aside a default judgment should first seek advice and assistance from a lawyer, a legal aid organization, or a tenant organization.

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.[286]

A word about bankruptcy

Some tenants think that filing a bankruptcy petition will prevent them from being evicted. This is not always true.

Filing bankruptcy is a serious decision with many long-term consequences beyond the eviction action. In addition, much of what the public knows about bankruptcy has been changed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

A tenant who is thinking about filing bankruptcy because of the threat of eviction, or for any reason, should consult a bankruptcy expert and carefully weigh the expert's advice.

Bankruptcy is a complicated legal specialty and explaining it is beyond the scope of this booklet. However, here is some basic information about bankruptcy as it relates to unlawful detainer proceedings:[287]

- A tenant who files a bankruptcy petition after October 17, 2005 (the effective date of the 2005 bankruptcy act) normally is entitled to an immediate automatic stay (delay) of a pending unlawful detainer action. If the landlord hasn't 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.[288]

284 Code of Civil Procedure Section 473(b). See Moskovitz, California Eviction Defense Manual, Section 12.12 (Cal. Cont. Ed. Bar 2003).

285 Moskovitz, California Eviction Defense Manual, Sections 12.15, 12.16 (Cal. Cont. Ed. Bar 2005). See Moskovitz et al., California Landlord-Tenant Practice, Sections 13.7-13.14 (Cal. Cont. Ed. Bar, 2006).

286 Servicemembers Civil Relief Act, 50 United States Code Appendix Sections 521(a),(b),(c),(g) and Judicial Council Form 982(a)(6); see California Practice Guide, Landlord-Tenant, Paragraphs 8:518.5-8:518.7 (Rutter Group 2005).

287 See California Practice Guide, Landlord-Tenant, Chapter 10, (Rutter Group 2005), Moskovitz e al., California Landlord-Tenant Practice, Chapter 14 (Cal. Cont. Ed. Bar, 2006).

288 11 United States Code Section 362(a)(1)-(3).

- The landlord may petition the bankruptcy court for permission to proceed with the unlawful detainer action (called "relief from the automatic stay").[289]
- 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 he or she is entitled to relief.[290]
- 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.[291]
- 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.[292]
- 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.[293]

RETALIATORY ACTIONS, EVICTIONS AND DISCRIMINATION

Retaliatory actions and evictions

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 39–40) 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 either situation, the landlord's action is said to be **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.[294]

The law infers (assumes) that the landlord has a retaliatory motive if the landlord seeks to evict the tenant (or takes other retaliatory action) within six months after the tenant has exercised any of the following tenant rights:[295]

- 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 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 he or she exercised one or more of these rights within the six-month period, 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

289 *11 United States Code Section 362(d).*

290 *11 United States Code Section 362(c),(d).*

291 *11 United States Code Sections 362(b)(22), 362(l)(1).*

292 *11 United States Code Sections 362(b)(23), 362(m)(1).*

293 *Moskovitz et al., California Landlord-Tenant Practice, Section 14.32 (Cal. Cont. Ed. Bar, 2006).*

294 *Civil Code Section 1942.5.*

295 *Civil Code Section 1942.5.*

produces all of this evidence, then the landlord must produce evidence that he or she did not have a retaliatory motive.[296] Even if the landlord proves that he or she has a valid reason for the eviction, the tenant can prove retaliation by showing that the landlord's effort to evict the tenant is not in good faith.[297] 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. In these circumstances, the tenant must prove that he or she engaged in the protected activity, and that the landlord's conduct was retaliatory.[298]

If you feel that your landlord has retaliated against you because of an action that you've properly taken 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 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:[299]

- Opposed practices that are unlawful under the Act;
- Informed law enforcement officials of practices that the person believes are unlawful under the Act; or
- Aided or encouraged a person to exercise rights protected by the Act.

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.[300]

RESOLVING PROBLEMS

TALK WITH YOUR LANDLORD

Communication is the key to avoiding and resolving problems. If you have a problem with your **rental unit**, it's 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 formal action. The tenant may be willing to correct the problem once he or she understands the landlord's concerns. Both parties should bear in mind that each has the duty to deal with the other fairly and in good faith (see page 20).

If discussing the problem with the landlord doesn't solve it, and if the problem is the landlord's responsibility (see pages 35–38), you should write a letter or send an e-mail to the landlord. The letter or e-mail 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, and what you would like the landlord to do. You should keep a copy of this letter or e-mail.

296 Civil Code Section 1945.2 (a),(b); see California Practice Guide, Landlord-Tenant, Paragraphs 7:368-7:380 (Rutter Group 1999).

297 Moskovitz et al., California Landlord-Tenant Practice, Section 12.38 (Cal. Cont. Ed. Bar, 2004).

298 Civil Code Section 1942.5(c).

299 Government Code Section 12955(f), 12955.7.

300 California Practice Guide, Landlord-Tenant, Paragraphs 7:205, 7:391-7:394 (Rutter Group 2005).

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. The name, address and telephone number of the owner and the property manager, or the person who is authorized to receive legal notices for the owner, must be written in your **rental agreement** (or **lease**) or posted conspicuously in the building.[301] You can also contact your County Assessor's Office for this information.

If you don't hear from the landlord after you send 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 booklet (such as the **repair and deduct remedy**, pages 39–40), 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 considered appropriate unless the problem is extremely serious.

Remember: The landlord and the tenant discussing problems with each other can prevent little problems from becoming big ones. Trying to work out problems benefits everybody. Sometimes, it's helpful to involve someone else, such as a mutual friend or a trained **arbitrator** or **mediator** (see page 77). If the problem truly cannot be resolved by discussion, negotiation, and acceptable compromise, *then* each party can look to the remedies provided by the law.

GETTING HELP FROM A THIRD PARTY

Many resources are available to help tenants and landlords resolve problems. Check which of the following agencies are available in your area, and call or write them for information or assistance:

- Local consumer protection agency. See the *City and County Government* listings in the white pages of the phone book.
- Local housing agency. See the *City and County Government* listings in the white pages of the phone book.
- Local district attorney's office. See the *County Government* listings in the white pages of the phone book.
- City or county rent control board. See the *City and County Government* listings in the white pages of the phone book.
- Local tenant association, or rental housing or apartment association. Check the white (business) and yellow pages in the phone book.
- Local dispute resolution program. To order a county-by-county list, see page 95.
- Local tenant information and assistance resources. See list on page 87.

You may also obtain information from the California Department of Consumer Affairs' Consumer Information Center at 1-800-952-5210 (916) 445-1254 for Sacramento area calls). For TDD, call (916) 322-1700. You can also visit the Department of Consumer Affairs' Web site at www.dca.ca.gov.

Many county bar associations offer lawyer referral services and volunteer attorney programs which can help a tenant locate a low-fee or free attorney. **Legal aid organizations** may provide **eviction** defense service to low-income tenants. Some law schools offer free advice and assistance through landlord-tenant clinics.

Tenants should be cautious about using so-called eviction defense clinics or bankruptcy clinics. While some of these clinics may be legitimate and provide good service, others are not legitimate. Some of these clinics may use high-pressure sales tactics, make false promises, obtain your signature on blank forms, take your money, and then do nothing.

301 Civil Code Sections 1961, 1962, 1962.5.

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 pages 73–74.) While this may stop the eviction temporarily, it can have an extremely bad effect on the tenant's future ability to rent property or to obtain credit, since the bankruptcy will be part of the tenant's credit record *for as long as 10 years*.

"Unlawful detainer assistants" are non-lawyers who are in business to provide advice and assistance to landlords and tenants on unlawful detainer issues. Unlawful detainer assistants (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.[302] A tenant who signs a contract with a UDA can cancel the contract within 24 hours after signing it.[303]

"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.[304]

The fact that a UDA or LDA is properly registered with the County Clerk does not guarantee that the UDA or LDA has the knowledge or ability to help you.

ARBITRATION AND MEDIATION

Some local housing agencies refer landlord-tenant disputes to a local dispute resolution center or mediation service. The goal of these services is to resolve disputes without the burden and expense of going to court.

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 normally does not make a binding decision in the case.

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.

Tenants and landlords should always consider resolving their disputes by mediation or arbitration instead of a lawsuit. 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.

Mediation services are listed in the yellow pages of the telephone book under *Mediation Services*. To obtain a county-by-county listing of dispute resolution services, see page 95.

302 *Business and Professions Code Sections 6400-6415.*

303 *Business and Professions Code Section 6410(e). The contents of the UDA's contract are governed by regulation. See 16 California Code of Regulations, Section 3890.*

304 *Business and Professions Code Sections 6400-6415. The contents of the legal document assistant's contract for self-help services are governed by regulation. See 16 California Code of Regulations, Section 3950.*

GLOSSARY

[All words in **boldface type** are explained in this Glossary. The number at the end of each explanation refers to the page 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. (40)

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. 15–16)

appeal—a request to a higher court to review a lower court's decision in a lawsuit. (72)

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. (70)

arbitration—using a neutral third person to resolve a dispute instead of going to court. Unless the parties have agreed otherwise, the parties must follow the arbitrator's decision. (77)

arbitrator—a neutral third person, agreed to by the parties to a dispute, who hears and decides a dispute. An arbitrator is not a judge, but the parties normally must follow the arbitrator's decision (the decision is said to be "binding" on the parties). (See **arbitration**; compare to **mediator**.) (77)

assign/assignment—an agreement between the original tenant and a new tenant by which the new tenant takes over the lease of a rental 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 doesn't live up to the lease obligations. (See **novation**; compare to **sublease**.) (34)

California Department of Fair Employment and Housing—the state agency that investigates complaints of unlawful discrimination in housing and employment. (14)

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. (86)

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, has been sued, and is subject to court judgments. (8)

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 also **tenant screening service**.) (8)

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 that a person is a better credit risk, and a low score (for example, 300–400) indicates a potential credit risk. (9)

default judgment—a judgment issued by the court, without a hearing, after the tenant has failed to file a response to the landlord's complaint. (70, 72)

Demurrer—a legal response that a tenant can file in an **unlawful detainer lawsuit** to test the legal sufficiency of the charges made in the landlord's complaint. (70)

discrimination (in renting)—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, harassing a person in connection with housing accommodations, or providing segregated housing because of a person's race, color, religion, sex (including pregnancy, childbirth or medical conditions related to them, as well as gender and perception of gender), sexual orientation, national origin, ancestry, source of income, age, disability, medical condition, whether the person is married, or whether there are children under the age of 18 in the person's household. Discrimination also can be refusal to make reasonable accommodation for a person with a disability. (11)

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. (27)

escrow account—a bank account into which a tenant deposits withheld rent, to be withdrawn only when the landlord has corrected uninhabitable conditions in the rental unit or when the tenant is ordered by a court to pay withheld rent to the landlord. (42)

eviction—a court-administered proceeding for removing a tenant from a rental unit because the tenant has violated the rental agreement or lease, or did not comply with a notice ending the tenancy (also called an "**unlawful detainer lawsuit**"). (68)

eviction notice (or three-day notice)—a three-day notice that the landlord serves on the tenant when the tenant has violated the lease or rental agreement. The three-day notice usually instructs the tenant to either leave the rental unit or comply with the lease or rental agreement (for example, by paying past-due rent) within the three-day period. (64, 65)

fair housing organizations—city or county organizations that help renters resolve housing discrimination problems. (14)

federal stay (or automatic stay)—an order of a federal bankruptcy court that temporarily stops proceedings in a state court, including an **eviction** proceeding. (73)

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. (3)

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**. (35–38)

holding deposit—a deposit that a tenant gives to a landlord to hold a rental unit until the tenant pays the first month's rent and the security deposit. (10)

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. 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 35–38.

initial inspection—an inspection by the **landlord** before the tenancy ends to identify defective conditions that justify deductions from the **security deposit**. (53)

item of information—information in a **credit report** that causes a creditor to deny credit or take other adverse action against an applicant (such as refusing to rent a rental unit to the applicant). (9)

landlord—a business or person who owns a rental unit, and who rents or leases the rental unit to another person, called a **tenant**. (2)

lease—a rental agreement, usually in writing, that establishes all the terms of the agreement and that lasts for a predetermined length of time (for example, six months or one year). Compare to **periodic rental agreement**. (16)

legal aid organizations—organizations that provide free legal advice, representation, and other legal services in noncriminal cases to economically disadvantaged persons. (13, 76, 87)

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. (68)

lodger—a person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger, and has overall control of the house. (2, 4)

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. (77)

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**.) (77)

Memorandum to Set Case for Trial—a court document that notifies the parties in an unlawful detainer lawsuit that the case has been set for trial. This document also states whether the plaintiff (the landlord) has requested a jury trial. (71)

Motion to Quash Service of Summons—a legal response that a tenant can file in an **unlawful detainer lawsuit** if the tenant believes that the landlord did not properly serve the summons and complaint. (70)

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. (26)

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. (35)

occupant—a person who is not named as a **tenant** in the **rental agreement** or **lease** who has moved into a **rental unit** before the **landlord** files an **unlawful detainer (eviction) lawsuit**. Since 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. (70, 85)

periodic rental agreement—an oral or written rental agreement that states the length of time between rent payments—for example, a week or a month—but not the total number of weeks or months that the agreement will be in effect. (14)

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. (85)

prepaid rental listing services—businesses that sell lists of available rental units. (7)

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's 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 lease. (71)

rent control ordinances—laws in some communities that limit or prohibit rent increases, or that limit the circumstances in which a tenant can be evicted. (26, 31, 48)

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. (41)

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**.) (14)

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. (6)

rental period—the length of time between rent payments; for example, a week or a month. (15)

rental unit—an apartment, house, duplex, or condominium that a **landlord** rents to a **tenant** to live in. (2)

renter's insurance—insurance protecting the **tenant** against property losses, such as losses from theft or fire. This insurance usually also protects 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. (26)

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. (39)

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 used the **repair and deduct remedy** or the **rent withholding** remedy, or has asserted other tenant rights. (74)

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 or less clean than when the tenant moved in. (23)

serve/service—legal requirements and procedures that seek to assure that the person to whom a legal notice is directed actually receives it. (67)

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**.) (34)

subpoena—an order from the court that requires the recipient to appear as a witness or provide evidence in a court proceeding. (71)

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**. (14)

tenant—a person who rents or leases a **rental unit** from a **landlord**. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period. (2)

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. (8)

three-day notice—see **eviction notice**.

thirty-day notice—a written notice from a **landlord** to a **tenant** telling the tenant that the **tenancy** will end in 30 days. A thirty-day notice usually does not have to state the landlord's reason for ending the tenancy. (48–49, 64–65)

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**.) (35–38)

unlawful detainer lawsuit—a lawsuit that a landlord must file and win before he or she can evict a tenant (also called an "**eviction**" lawsuit). (68–73)

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 handicap. (14)

waive—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 he or she is giving up. (61)

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. (69, 72)

APPENDICES

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** or **lease** 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. (See "Writ of possession," page 72.)

The landlord can take steps to avoid this result. The landlord can instruct the 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.[305]

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 70)). 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.

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. The court then rules on the occupant's defense to the eviction along with the defenses of the other defendants.[306] If the landlord wins, the occupant cannot delay the eviction, whether or not the occupant is named in the writ of possession issued by the court.[307]

305 *Code of Civil Procedure Section 415.46.*

306 *Code of Civil Procedure Section 1174.25.*

307 *Code of Civil Procedure Section 415.46.*

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 of possession," page 72]), 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.[308]

Within two business 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 70)). 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 fifteen 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 5 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).

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.[309]

APPENDIX 2—LIST OF CITIES WITH RENT CONTROL

Berkeley

Beverly Hills

Campbell

East Palo Alto

Fremont

Hayward

Los Angeles

Los Gatos

Oakland

Palm Springs

San Francisco

San Jose

Santa Monica

Thousand Oaks

West Hollywood

Resources on rent control ordinances include Brown, Warner and Portman, *The California Landlord's Law Book, Vol. I: Rights & Responsibilities, Appendix C* (NOLO Press 2005) and *California Practice Guide, Landlord-Tenant, Chapter 5* (Rutter Group 2005).

308 *Code of Civil Procedure Section 1174.3.*

309 *Code of Civil Procedure Section 1174.3.*

APPENDIX 3—TENANT INFORMATION AND ASSISTANCE RESOURCES

This Tenant Information and Assistance Resources listing also is available through the Department of Consumer Affairs' Web site at www.dca.ca.gov.

The Web site 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 Web site, www.calbar.ca.gov. Click on the "Public Services" button, then click on the "Lawyer Referral Services" link and then click on the "County Programs" button.
- **California legal aid organizations, bar-certified lawyer referral services, and court services:** Go to LawHelpCalifornia.org's Web site, www.lawhelpcalifornia.org/CA/StateDirectory.cfm.

ALAMEDA COUNTY

Bay Area Legal Aid
Alameda County Regional Office
405 14th Street, 11th Floor
Oakland, CA 94612
(510) 663-4744
info@baylegal.org

Berkeley Rent Stabilization Board
2125 Milvia Street
Berkeley, CA 94704
(510) 644-6128
Rent@ci.berkeley.ca.us

City of Fremont—Housing and Redevelopment
39550 Liberty Street, First Floor
Fremont, CA 94538
(510) 494-4500
Housingandredevelopment@ci.fremont.ca.us

Department of Fair Employment and Housing
1515 Clay Street, Suite 701
Oakland, CA 94612-5212
(housing discrimination complaints only)
(510) 622-2945 (800) 233-3212

Eden Council for Hope and Opportunity, Inc. (ECHO)
770 A Street
Hayward, CA 94541
(510) 581-9380
Livermore office (925) 449-7340
Info@echofairhousing.org

Fremont Fair Housing
39155 Liberty Street, Suite D440
Fremont, CA 94538-1513
(housing discrimination complaints only)
(510) 574-2270
fairhousing510@cs.com

Housing Rights, Inc.
1966 San Pablo Avenue
Berkeley, CA 94704
(510) 548-8776 Fax (510) 574-5805
(northern Alameda County)
hrights@pacbell.net
www.housingrights.org

Law Center for Families
510 16th Street, Suite 300
Oakland, CA 94612
(510) 451-9261
info@lcff.org

BUTTE COUNTY

Community Legal Information Center
25 Main Street
Chico, CA 95929
(530) 898-4354
Mail: California State University Chico, Building 25
Chico, CA 95929

Legal Services of Northern California
Butte Regional Office
541 Normal Avenue
Chico, CA 95928
(530) 345-9493 Fax (530) 345-6913
chico_office@lsnc.net

CONTRA COSTA COUNTY

Bay Area Legal Aid
Contra Costa Regional Office
1025 MacDonald Avenue
Richmond, CA 94801
(510) 233-9954 (800) 551-5554
info@baylegal.org

Bay Area Legal Aid
Pittsburg Office
1901 Railroad Avenue, Suite D
Pittsburg, CA 94565
(925) 219-3325
info@baylegal.org

Housing Rights, Inc.
1966 San Pablo Avenue
Berkeley, CA 94702
Mail: PO Box 12895
Berkeley, CA 94702
(510) 548-8776 Fax (510) 548-5805
hri@housingrights.com

Pacific Community Services
329 Railroad Avenue
Pittsburg, CA 94565
(925) 439-1056 Fax (925) 439-0831
www.pcsi.org

Shelter, Inc.
1815 Arnold Drive
Martinez, CA 94553
(925) 957-7592
HELPLINK (800) 273-6222
www.shelterincofccc.org

DEL NORTE COUNTY (SEE HUMBOLT COUNTY)

FRESNO COUNTY

California Rural Legal Assistance
Delano Regional Office
629 Main Street
Delano, CA 93215
(661) 725-4350
www.crla.org

City of Bakersfield Office of Fair Housing
900 Truxton Avenue, Suite 201
Bakersfield, CA 93301
(661) 634-9245
www.ci.bakersfield.ca.us/edcd/faq/fairhouse.htm

Kern County Fair Housing Division
2700 “M” Street, Suite 250
Bakersfield, CA 93301
(661) 862-5050 (800) 552-5376
kerncd@co.kern.ca.us
www.co.kern.ca.us/cd/cdhome.asp

LOS ANGELES COUNTY

Bet Tzedek Legal Services
145 South Fairfax Avenue, Suite 200
Los Angeles, CA 90036
(323) 939-0506 Fax (323) 549-5880
www.bettzedek.org/html/apartment_repair.html

Citizens of Inglewood Tenant Association
6824 La Tijera Boulevard
Los Angeles, CA 90045
(310) 677-7294
cita107@aol.com

Coalition for Economic Survival (CES)
514 Shatto Place, Suite 270
Los Angeles, CA 90020
(213) 252-4411 Fax (213) 252-4422
contactces@earthlink.net
www.CESinAction.org

Tenants Rights Clinic
Joe Praml, Clinic Coordinator
jpraml@sbcglobal.net

Consumer Action
523 West Sixth Street, Suite 1105
Los Angeles, CA 90014
(213) 624-8327
www.consumer-action.org

City of Santa Monica Consumer Affairs Protection, Fair Housing & Public Rights Unit
1685 Main Street, Room 310
Santa Monica, CA 90401
(310) 458-8336 Español (310) 458-8370
attorney@ci.santa-monica.ca.us
www.santa-monica.org/atty/consumer_protection/aboutus.htm

Culver City Housing Agency
(Contracts with Housing Rights Center. See entry below.)

Fair Housing Council of the San Fernando Valley
8134 Van Nuys Boulevard, Suite 206
Panorama City, CA 91402
(818) 373-1185 (800) 287-4617
brunofhsfv@fairhousingcouncil.org
www.fairhousing.com/fhcsc/page33.html

Housing Rights Center
520 South Virgil Avenue, Suite 400
Los Angeles, CA 90020
(213) 387-8400 (800) 477-5977
mheredia@hrc-la.org
www.fairhousingsource.org

Inner City Law Center
1325 East 7th Street
Los Angeles, CA 90021
(213) 891-2880, ext. 210
Fax (213) 891-2888
INNERCITYLAWCENTER.org

Community Economic Development Unit
South Central Office
8601 South Broadway Avenue
Los Angeles, CA 90003
(213) 640-3884 Fax (213) 640-3988

Legal Aid Foundation of Los Angeles
1102 South Crenshaw Boulevard, No. 240
Los Angeles, CA 90019
(323) 801-7989
Emergency help on landlord-tenant issues:
(213) 487-7609
www.lafla.org

Fair Housing Foundation (For Compton, Lynwood, Downey, Long Beach, Huntington Park, Norwalk, Paramount and South Gate)
3605 Long Beach Boulevard, Suite 302
Long Beach, CA 90802
(562) 898-1206 Fax (562) 989-1836
www.fhfla.com

Los Angeles County
Department of Consumer Affairs
500 West Temple Street, Room B-96
Los Angeles, CA 90012-2706
(213) 974-1452 (800) 593-8222
http://consumer-affairs.co.la.ca.us

Los Angeles County Department of Consumer Affairs—East Los Angeles Service Center
133 North Sunol Drive, Room 218
Los Angeles, CA 90063
(323) 260-2893
(Monday and Thursday)

Los Angeles County
Department of Consumer Affairs—
Florence Firestone Service Center
7807 South Compton Avenue
Los Angeles, CA 90001
(323) 586-6508
(Monday 8:00 a.m. to 4:30 p.m. and Wednesday 8:00 a.m. to 4:30 p.m.)

Los Angeles County
Department of Consumer Affairs
Lancaster Public Library
601 West Lancaster Boulevard
Lancaster, CA 93534
Main (661) 726-7550 Rollover (661) 726-7551
(Friday only 10:00 a.m. to 3:30 p.m.)

Los Angeles County
Department of Consumer Affairs
San Gabriel Service Center
3017 Tyler Avenue
El Monte, CA 91731
(626) 575-5425 or (626) 575-5426
(Monday and Friday 8:00 a.m. to 4:00 p.m.)

Los Angeles County
Department of Consumer Affairs
South Bay/Lomita Center
24340 South Narbonne Avenue
Lomita, CA 90717
(310) 325-1035
(Tuesday 8:00 a.m. to 4:30 p.m.,
Thursday 8:00 a.m. to 4:30 p.m.)

Los Angeles County
Department of Consumer Affairs
Valencia/Court House
23747 West Valencia Boulevard
Valencia, CA 91355
(661) 253-7328
(Wednesday 8:30 a.m. to 4:30 p.m.)

Los Angeles County
Department of Consumer Affairs
San Fernando Valley Office
14340 Sylvan Street
Van Nuys, CA 91411
(818) 901-3829 or (818) 901-3820
(Tuesday and Thursday 8:00 a.m. to 4:30 p.m.)

San Fernando Valley
Neighborhood Legal Services Program
13327 Van Nuys Boulevard
Pacoima, CA 91331
(818) 896-5211

Santa Monica Rent Control Board
1685 Main Street, No. 202
Santa Monica, CA 90401
(310) 458-8751
Rentcontrol@smgov.net

MADERA COUNTY

California Rural Legal Assistance
Madera Regional Office
117 South Lake Street
Madera, CA 93638
(559) 674-5671

MARIN COUNTY

Fair Housing Program of Marin County
615 "B" Street
San Rafael, CA 94901
(415) 457-5025

Marin Mediation Services
30 North San Pedro Road, Suite 170
San Rafael, CA 94903
(415) 499-7454
Fhom@fairhousingmarin.com
Bkob@co.marin.ca.us

MERCED COUNTY

Central California Legal Services
357 West Main Street, Suite 201
Merced, CA 95340
(209) 723-5466 (800) 464-3111

MONTEREY COUNTY

California Rural Legal Assistance
Salinas Regional Office
3 Williams Road
Salinas, CA 93905
(831) 757-5221

Conflict Resolution/Mediation Center of Monterey County
2160 Garden Road, Suite 109
Monterey, CA 93940
(831) 649-6219
From Salinas: (831) 424-4694
dorenecreme@aol.com

NAPA COUNTY

Greater Napa Fair Housing Center
611 Cabot Way
Napa, CA 94559
(707) 224-9720
robertj@napanet.net
Napafairhousing.net

Napa County Rental Information and Mediation Services
1714 Jefferson Street
Napa, CA 94559
(707) 253-2700 Fax (707) 253-0207
ehubbard@napanet.net

NORTHERN CALIFORNIA COUNTIES

Senior Legal Hotline
Free telephone advice to persons over 60 (without regard to income) in the following counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mariposa, Merced, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba

Senior Legal Hotline
444 North Third Street, Suite 312
Sacramento, CA 95814
(916) 551-2140 (800) 222-1753
seniorhotline@lsnc.net
www.seniorlegalhotline.org

ORANGE COUNTY

Fair Housing Council of Orange County
201 South Broadway
Santa Ana, CA 92701
(714) 569-0823
www.fairhousingoc.org

Legal Aid Society of Orange County
902 North Main Street
Santa Ana, CA 92701
(714) 571-5200 (800) 834-5001
www.legal-aid.com

PLACER COUNTY

Legal Services of Northern California
190 Reamer Street
Auburn, CA 95603
(530) 823-7560 (800) 660-6107
(also serves Amador, Calaveras, El Dorado, Nevada, and Sierra counties)
Auburn_office@lsnc.net

RIVERSIDE COUNTY

California Rural Legal Assistance
Coachella Regional Office
1460 6th Street
Coachella, CA 92236
(760) 398-7261

Fair Housing Council of Riverside County Inc.
3600 Lime Street, Suite 613
Riverside, CA 92501
(909) 682-6581 (800) 655-1812
fhcrc@aol.com
www.fairhousing.net

SACRAMENTO COUNTY

California Apartment Association
980 9th Street, Suite 200
Sacramento, CA 95814
(916) 447-7881 (800) 967-4222
(877) 999-7881
info@caanet.org
www.caanet.org

Human Rights/Fair Housing Commission for the City and County of Sacramento
1112 “I” Street, Suite 250
Sacramento, CA 95814
Hotline (916) 444-0178 Main (916) 444-6903
www.hrfh.org

Legal Center for the Elderly and Disabled
2862 Arden Way, Suite 200
Sacramento, CA 95825
(916) 488-5298
www.lcedlaw.org

Legal Services of Northern California
515 12th Street
Sacramento, CA 95814
(916) 551-2150
sacto@lsnc.net
www.lsnc.net

Sacramento Mediation Center
2131 Capitol Avenue, Suite 205
Sacramento, CA 95816
(916) 441-7979
services@sacmediation.org

SAN BERNARDINO COUNTY

Inland Fair Housing and Mediation Board
1005 Begonia Avenue
Ontario, CA 91762
(909) 984-2254 (800) 321-0911
inmedbd@aol.com
http://members.aol.com/inmedbd/index.html

SAN DIEGO COUNTY

Heartland Human Relations and Fair Housing
1068 Broadway, Suite 221
El Cajon, CA 92021
(619) 444-5700
info@hhrfha.org

Fair Housing Council of San Diego
625 Broadway, Suite 1114
San Diego, CA 92101
(619) 699-5888
www.fhcsd.com

Legal Aid Society of San Diego
110 South Euclid
San Diego, CA 92114
(877) 534-2524
lassd.org

Neighborhood House Association
5660 Copley Drive
San Diego, CA 92111
(858) 715-2642
www.neighborhoodhouse.org

National Conflict Resolution Center
(formerly San Diego Mediation Center)
625 Broadway, Suite 1221
San Diego, CA 92101-5419
(619) 238-2400 (760) 494-4728
www.sdmediate.com

Tenants Legal Center
5252 Balboa Avenue, Suite 408
San Diego, CA 92117
(858) 571-7100
www.tenantslegalcenter.com

SAN FRANCISCO COUNTY

Asian Law Caucus
939 Market Street, Suite 201
San Francisco, CA 94103
(415) 896-1701
alc@asianlawcaucus.org
www.asianlawcaucus.org

Bay Area Legal Aid
San Francisco Regional Office
50 Fell Street, 1st Floor
San Francisco, CA 94103
(415) 982-1300 (415) 354-6360
www.baylegal.org

Consumer Action Hotline
221 Main Street, Suite 480
San Francisco, CA 94105
(415) 777-9635
hotline@consumer-action.org
www.consumer-action.org

Housing Rights Committee of San Francisco
427 South Van Ness Avenue
San Francisco, CA 94103
(415) 703-8644
www.hrcsf.org

San Francisco County District Attorney—Consumer Protection Unit (handles security deposit cases after tenants move out)
732 Brannan Street
San Francisco, CA 94102
(415) 551-9595
www.sfdistrictattorney.org

San Francisco Human Rights Commission
25 Van Ness Avenue, Suite 800
San Francisco, CA 94102
(415) 252-2500
www.sfhrc.org

San Francisco Rent Board
25 Van Ness Ave., Room 320
San Francisco, CA 94102-6033
(415) 252-4602 Fax (415) 252-4669
www.sfgov.org/rentboard

San Francisco Tenants Union
558 Capp Street
San Francisco, CA 94110
(415) 282-6622
www.sftu.org

Tenderloin Housing Clinic
126 Hyde Street
San Francisco, CA 94102
(415) 771-2427
www.thclinic.org

SAN JOAQUIN COUNTY

California Rural Legal Assistance
20 North Sutter, Suite 203
Stockton, CA 95202
(209) 946-0605
www.crla.org

SAN LUIS OBISPO COUNTY

California Rural Legal Assistance
1160 Marsh Street, Suite 114
San Luis Obispo, CA 93401
(805) 544-7997
www.crla.org

San Luis Obispo County Government Center—Economic Crime Unit
1050 Monterey Street, Room 223
San Luis Obispo, CA 93408
(805) 781-5856 Fax (805) 781-1173
sloda.com/economic_crime

SAN MATEO COUNTY

Bay Area Legal Aid
San Mateo Regional Office
2287 El Camino Real
San Mateo, CA 94403
(650) 358-0745 (800) 551-5554
www.baylegal.org

Legal Aid Society of San Mateo County
521 East 5th Avenue
San Mateo, CA 94402
(650) 558-0915 (800) 381-8898
TTD (650) 558-0786
www.legalaidsmc.org

San Mateo County District Attorney Consumer Fraud Unit
400 County Center, Third Floor
Redwood City, CA 94063
(650) 363-4651
www.co.sanmateo.ca.us./dao/consumer.htm

Peninsula Conflict Resolution Center
1660 South Amphlett Boulevard No. 219
San Mateo, CA 94402
(650) 513-0330
info@pcrcweb.org
www.pcrcweb.org

SANTA BARBARA COUNTY

California Rural Legal Assistance
324 East Carrillo Street, Suite B
Santa Barbara, CA 93101
(805) 963-5981
www.crla.org

SANTA CLARA COUNTY

Bay Area Legal Aid
Santa Clara Regional Office
2 West Santa Clara Street, 8th Floor
San Jose, CA 95113
(408) 283-3700 (800) 551-5554
www.baylegal.org

California Rural Legal Assistance
Gilroy Regional Office
7365 Monterey Road, Suite H
Gilroy, CA 95020
(408) 847-1408
www.crla.org

Legal Aid Society of Santa Clara County
480 North 1st Street
San Jose, CA 95103
(408) 283-1540 Main (408) 998-5200
www.legalaidsociety.org

Midpeninsula Citizens for Fair Housing
457 Kingsley Avenue
Palo Alto, CA 94301
(650) 327-1718 or (408) 730-8491
Fax (650) 327-1859
MCFHousing@cs.com

Project Sentinel
7415 Eigleberry Street, Suite B
Gilroy, CA 95020
(408) 842-7740
Projectsentinelgilroy@verizon.net
www.housing.org

Project Sentinel
1055 Sunnyvale Saratoga Road, Suite 3
Sunnyvale, CA 94087
(888) 331-3332
info@housing.org
mediate4us@aol.com

Project Sentinel
430 Sherman Avenue, Suite 308
Palo Alto, CA 94306
(415) 468-7464
info@housing.org

Santa Clara District Attorney's Office
70 West Hedding Street
San Jose, CA 95110
(408) 299-7400 Direct Consumer Unit
(408) 792-2880

SANTA CRUZ COUNTY

California Rural Legal Assistance
21 Car Street
Watsonville, CA 95076
(831) 724-2253
www.crla.org

Santa Cruz District Attorney's Office
701 Ocean Street, Room 200
Santa Cruz, CA 95060
Consumer Affairs (831) 454-2050
Check Recovery (831) 454-2233
dat155@co.santa-cruz.ca.us
www.co.santa-cruz.ca.us
dao@ca.Santa-cruz.ca.us

SHASTA COUNTY

Legal Services of Northern California—Shasta Regional Office
1370 West Street
Redding, CA 96001
(530) 241-3565 (800) 822-9687
www.lsnc.net

SOLANO COUNTY

Legal Services of Northern California—Solano
1810 Capitol Street
Vallejo, CA 94590
(707) 643-0054
(Closed Wednesdays)
solano@lsnc.net
www.lsnc.net

SONOMA COUNTY

California Rural Legal Assistance
Santa Rosa Regional Office
725 Farmers Lane, No.10, Building B
Santa Rosa, CA 95405
(707) 528-9941
www.crla.org

Fair Housing of Sonoma County
1300 North Dutton
Santa Rosa, CA 95401
Hotline (707) 579-5033 Fax (707) 544-0159
www.fhosc.org
fairhousing@capsonoma.org

TULARE COUNTY

Central California Legal Services—Tulare Kings Legal Service
208 West Main Street, Suite U-1
Visalia, CA 93291
(559) 733-8770
www.las.org

VENTURA COUNTY

California Rural Legal Assistance (and CRLA Migrant Project)
338 South "A" Street
Oxnard, CA 93030
(805) 486-1068
www.crla.org

Commission on Human Concerns
621 Richmond Avenue
Oxnard, CA 93030
(805) 436-4000

Housing Rights Center
Serving the cities of Camarillo, Filmore, Moorpark, Ojai, Oxnard, Port Hueneme, and Santa Paula
1020 North Fair Oaks Avenue
Pasadena, CA 91103
(626) 744-7300
Charris@cityofpasadena.net
www.hrc-la.org

Oxnard Housing Department
435 South "D" Street
Oxnard, CA 93030
(805) 385-8041 Fax (805) 385-7969
www.ci.oxnard.ca.us
Mail@oxnardhousing.net

Ventura County District Attorney—Consumer Mediation Unit
800 South Victoria Avenue
Ventura, CA 93009
(805) 654-3110 or (805) 654-5054
da.countyofventura.org/contact_information.htm

YOLO COUNTY

Community Mediation Services and Office of Fair Housing
604 Second Street
Davis, CA 95616
(530) 757-5623
www.ci.davis.ca.us/pcs/socialservices

Legal Services of Northern California
619 North Street
Woodland, CA 95695
(530) 662-1065
www.lsnc.net/fairhousing.html

STATE DEPARTMENTS

Department of Consumer Affairs
1625 North Market Boulevard
Sacramento, CA 95834
(916) 445-1254 TDD (916) 322-1700
(800) 952-5210 TDD (800) 326-2297
www.dca.ca.gov

Department of Fair Employment and Housing
2000 "O" St., No. 120
Sacramento, CA 95814
(housing discrimination complaints only)
Main (916) 478-7251 (800) 233-3212
www.dfeh.ca.gov

Department of Real Estate
2201 Broadway
Sacramento, CA 95818
Licensing information (916) 227-0931
Consumer information (916) 227-0864
www.dre.ca.gov

APPENDIX 4—OTHER RESOURCES

PUBLICATIONS ON LANDLORD TENANT LAW

Books

Brown, Warner and Portman, *The California Landlord's Law Book, Vol. I: Rights and Responsibilities*, 11th edition (Nolo Press, 2005).

Portman and Brown, *California Tenants' Rights*, 16th edition (Nolo Press, 2005).

Friedman et al., *California Practice Guide: Landlord-Tenant* (Rutter Group, 2005 update).

Moskovitz et al., *California Eviction Defense Manual*, 2nd edition (California Continuing Education of the Bar, 2006 update).

Moskovitz et al., C*alifornia Landlord-Tenant Practice*, 2nd edition (California Continuing Education of the Bar, 2006 update).

These books are available at county and university law libraries.

DEPARTMENT OF CONSUMER AFFAIRS—LEGAL GUIDES

LT-4 *How to Get Back Possessions You Have Left in a Rental Unit*

LT-5 *Options for Landlord: When Tenant's Personal Property Has Been Left in the Rental Unit*

Legal Guides LT-4 and LT-5 are available in the Legal Guides section of the Department's home page at www.dca.ca.gov. Other Legal Guides on landlord-tenant law may be available in the future. Write the Department of Consumer Affairs, Policy & Publications Development Office, 1625 North Market Boulevard, Suite N-112, Sacramento, CA 95834, or call 1-866-320-8652 (1-916-574-7378 for Sacramento area calls). Please specify Legal Guides by number and name.

DEPARTMENT OF CONSUMER AFFAIRS—OTHER PUBLICATIONS

Arbitration/Mediation

California Dispute Resolution Programs Act: Program Directory (lists arbitration and mediation programs by county).

Small Claims Court

Small Claims Advisors Directory (lists small claims court advisors by county).

The Small Claims Court: A Guide to Its Practical Use.

These arbitration and small claims publications can be obtained by writing the Department of Consumer Affairs, Policy & Publications Development Office, 1625 North Market Boulevard, Suite N-112, Sacramento, CA 95834, or call 1-866-320-8652 (1-916-574-7378 for Sacramento area calls). Please specify publication by name.

You can access these publications online at the Department of Consumer Affairs' Web site, www.dca.ca.gov.

APPENDIX 5—LEGALLY-REQUIRED TEXT OF NOTICES

MEGAN'S LAW" NOTICE (SEE PAGE 19)

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 below.

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 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.

LEAD WARNING STATEMENT (SEE PAGE 20)

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.

LEAD DISCLOSURE STATEMENT (SEE PAGE 20)

Required by 24 Code of Federal Regulations Section 35.92. (This notice must be in the language used in the contract, for example, English or Spanish.)

continued on page 99

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

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 known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure
(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

_____

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

_____

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)
(c) _____ Lessee has received copies of all information listed above.
(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home.*

Agent's Acknowledgment (initial)
(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor	Date	Lessor	Date
Lessee	Date	Lessee	Date
Agent	Date	Agent	Date

CONDOMINIUM CONVERSION NOTICE (See Page 23)
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)

WAIVER OF RIGHT TO RECEIVE COPIES OF INVOICES, RECEIPTS, OR GOOD FAITH ESTIMATE (SEE PAGE 52)

Civil Code Section 1950.5(g)(2) (as of January 1, 2006). (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 54)

Civil Code Sections 1950.5(b)(1)-(4) (as of January 1, 2006). (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.

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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. Among 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:_____
KITCHEN	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				

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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California Tenants:

A Guide to Residential Tenants' and Landlords' Rights and Responsibilities (2006)

2007 UPDATE

The Legislature has reinstated the requirement that a landlord give a tenant 60 days' advance written notice to end a periodic tenancy in some circumstances. Most periodic tenancies are month-to-month or week-to-week.

Beginning January 1, 2007, the landlord must give the tenant 60 days' advance written notice to end the tenancy if every tenant and resident have lived in the rental unit for a year or more.

However, the landlord can give the tenant *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; or

- The landlord has contracted to sell the rental unit to another person who intends to occupy it for at least a year after the tenancy ends. In addition, all of the following must be true in order for the selling landlord to give the tenant a 30-day notice –

  - The landlord must have opened escrow with a licensed escrow agent or real estate broker, and
  - The landlord must have given the tenant the 30-day notice no later than 120 days after opening the escrow, and
  - The landlord must not previously have given the tenant a 30-day or 60-day notice, and
  - 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.)

A tenant who wants to end a periodic tenancy must give the landlord the same amount of written notice as there are days between rent payments (for example, 30 days' notice if the tenant pays rent monthly). This is true even if the landlord has given the tenant a 60-day notice, provided that the amount of the tenant's notice is at least as long as the number of days between rent payments, and the tenant's proposed termination date is before the landlord's termination date.

These changes were made by AB 1169 (Torrico), Stats. 2006, ch. 842, and take effect on January 1, 2007.